September 27, 2000

After Seattle: Public International Organizations, Non-Governmental Organizations (Ngos), and Democratic Legitimacy in an Era of Globalization: An Essay in Contested Legitimacy

Kenneth Anderson

After Seattle:
Public International Organizations, Non-Governmental Organizations (NGOs),
and Democratic Sovereignty in an Era of Globalization
An Essay on Contested Legitimacy
by Kenneth Anderson¹

"People must sooner or later rebel against uniformity,
and attempts at global solutions of any sort."
- Isaiah Berlin²

"Reformers, lawyers and bureaucrats -- then as always a sinister alliance --
had erected obstacles formidable enough to thwart ... local initiatives."
- Richard Fletcher, The Barbarian Conversion³

["Pardon him, Caesar, for he is a barbarian, and he believes
that the customs of his island are the laws of the universe."
George Bernard Shaw, Julius Caesar]⁴

J. Anderson

1) Enjoyed this
2) Comments throughout
3) My sharpened skepticism at 124-130 136-153
Hager

¹ Visiting associate professor of law, Harvard Law School (2000-2001); associate professor of law and director, JD-MBA program, Washington College of Law, American University; board chair and general counsel, Media Development Loan Fund, Inc., New York and Prague, a non-profit venture fund promoting free and independent media worldwide; special counsel, Open Society Institute, New York; formerly general counsel, Open Society Institute, New York; formerly director, Human Rights Watch Arms Division, New York. Mr. Anderson most recently served as legal editor of Crimes of War: What the Public Should Know (WW Norton 1999, Ry Gutman & David Rieff, general eds.). Thanks to James Boyle, Ezra Field, David Rieff, and John Ryle, as always; my colleagues at Washington College of Law who generously offered substantive comments, particularly []; and my research assistants Anne Briggs, Elizabeth Horton, Lolita Lukose, Adama Ndao, and Amber O'Malley. Special thanks to Jack Simon for handling child care duties for his grand-niece, Renee, while her father was writing this article. Email: mailto:kanders@wcl.american.edu.

² Sir Isaiah Berlin, in Nathan Gardels, "Two Concepts of Nationalism: An Interview with Isaiah Berlin," New York Review of Books, November 21, 1991, at 15, 19.

³ Richard Fletcher, The Barbarian Conversion From Paganism to Christianity (NY Henry Holt 1997), at 477.

⁴ George Bernard Shaw, Julius Caesar [cite - this is a paraphrase, get exact quote]

Table of Contents

I. Introduction: Legitimacy and Globalization.

- A. A Democratic Deficit.**
- B. The Order of Argument.**
- C. A Note on Public International Organizations.**
- D. A Note on Globalization.**
- E. A Note on the History of the Idea of Civil Society.**
- F. A Note on Legitimacy.**

II. Who Speaks for Whom? The Contested Legitimacy of Public International Organizations Following Seattle.

- A. Economic Globalization, the Voiceless and the Poor.**
- B. The Prospect of Democratic Legitimacy Through Supranational Democracy.**
- C. Achieving "Democratic" Legitimacy By Redefining Democracy.**

III. The Alternative Legitimacy Claimed By International NGOs.

- A. An Alternative Claim of Legitimacy.**
- B. Civil Society in a Domestic Democracy.**
- C. Is "International Community" Analogous to Domestic Democracy?**
- D. Can International NGOs Overcome the Democratic Deficit?**

IV. The Incestuous Relationship of Mutual Legitimation Between Public International Organizations and International NGOs.

- A. The Faux Legitimacy Dispensed by International NGOs.**
- B. Divisions Over Globalization Within the Ranks of International NGOs.**
- C. Sovereignists and Bad Faith Sovereignists in Seattle.**

V. The Special Legitimizing Function of the Ideology of Human Rights.

- A. Human Rights as a Substitute for Democracy?**
- B. Human Rights as Handmaid and Godchild of Globalization.**

VI. The Missionary Work of a "Polished" and "Polite" International Bourgeoisie?

- A. Religion, Empire, and the Curious Ahistoricism of Human Rights Ideology.**
- B. The Withdrawal of the International Elites?**

VII. Conclusion: Legitimacy and Democratic Sovereigns.

- A. Sovereignty.**
- B. Democracy.**

I. Legitimacy and Globalization

A. A Democratic Deficit

This is an Essay about the legitimacy of two actors, public international organizations and international nongovernmental organizations (NGOs), in an era driven by globalization. The Essay demurs from assumptions widely held by those immersed in what today might be called the culture of global governance, liberal internationalism, and international law. It makes two fundamental points, one a critique of the legitimacy of public international organizations and the other a critique of the legitimacy of international NGOs.

The first point is that public international organizations -- organs of nascent supranationalism and global governance -- lack democratic legitimacy. It is a lack that has become increasingly evident since the events in Seattle that scuttled meetings of the World Trade Organization in November-December 1999. They lack democratic legitimacy particularly as the tasks which they both have been assigned and have taken upon themselves have grown in ideological weight -- ^{because they are} tasks which would require that they ^{be constituted} constitute genuine world government, ~~supranational rather than merely multilateral institutions, institutions which have genuine~~ supremacy over merely national states, institutions for a era in which nation-state sovereignty is severely curtailed in favor of supranational institutions. As the demands of the agenda of political globalization grow -- responding, we are told, to the pressures of economic globalization -- and particularly as the decisions of these bodies start to have effects on the lives of individuals within states, then the democratic deficit of public international organizations grows correspondingly.

The second point is that the democratic deficit of public international organizations cannot be overcome by the burgeoning movement of international NGOs -- the organizations often referred to as "international civil society." International NGOs and their scholarly advocates often speak as though international civil society provides an alternative democratic legitimacy that public international organizations lack. A central part of the message of the NGOs, both domestic and international, present in Seattle was that they were prepared to contest the legitimacy of public international organizations. The protesting NGOs in Seattle were prepared to claim in particular that they, and not public international organizations, spoke for the

interests of the world's poor -- those with the most to gain or lose by economic globalization and those who, because of their poverty and want, ought morally to have the greatest claim on the agendas of public international organizations. But of course only a small fraction of the world's NGOs took part, or even supported from afar, the protests in Seattle. Thus a claim made by a much broader range of international NGOs is that the involvement and interaction of international NGOs in international fora and decision-making can provide public international organizations with the democratic legitimacy they otherwise lack, on the grounds that international NGOs are representatives of the world's "citizens," world "public opinion," and, most generally, the "world's peoples." This Essay denies that international NGOs represent some alternative source of democratic legitimacy, that their involvement and interaction with public international organizations somehow overcome the democratic deficit of public international organizations, or that international NGOs have any kind of special legitimacy to speak on behalf of the world's voiceless and poor.

This Essay thus denies that either of the two vanguards of supranationalism -- public international organizations or international NGOs -- have the democratic legitimacy required, at least if democratic values are important, to undertake the tasks of global governance that the current enthusiasm among many for supranational political globalization would urge them to undertake. The Essay strongly suggests that this democratic deficit is permanent and incurable. Whatever the struggles between public international organizations and international NGOs -- sometimes they fight and sometimes they embrace -- public international organizations and at least the mainstream of international NGOs share a common conviction, based in their commitment to supranationalism, and that is the necessity of undermining the sovereignty of the nation-state. Convinced of the moral superiority of supranational institutions over merely partial, parochial, national ones, and eager to convert that moral superiority into political and legal superiority, both public international institutions and at least many international NGOs, the mainstream of international NGOs, make common cause in attacking nation-state sovereignty. This is true notwithstanding the many appeals to sovereignty made by various NGOs protesting economic globalization in Seattle; in many cases the appeal to sovereignty is merely strategic, merely disagreement with who happens to exercise international power, a disagreement that

would disappear if actors more congenial to the protesting NGOs had international political power.

The Essay closes with a denial of the moral superiority of supranational institutions -- it denies that they have a superior claim to legitimacy and allegiance -- and an affirmation of the moral legitimacy of the constitutional democratic nation-state. While not offering a detailed defense, the Essay ends by defending the sovereignty of the constitutional democratic nation-state, meaning its moral and political position as apex in the international system, its claim to acknowledge no superior political authority, and its right to act in accordance with its own internal, democratic political mechanisms (including counter-majoritarian constitutionalism) even when they run counter to the demands of the international system. Since this represents what most people ordinarily understand to be the international system today, the point is that their ideal of the international system -- the sovereign nation-state system -- is *not* the ideal of what this Essay calls "liberal internationalism," which believes in the inherent moral superiority of international, transnational, and supranational institutions. Under that ideal, the sovereignty of nation-states ought to wither away as it is transferred to transnational and supranational authority (in a fashion usually modelled on the gradual transfer of sovereignty of nation-states in Europe to the European Union (EU)). This Essay, by contrast, implies a defense of constitutional democratic nation-state sovereignty. It denies the moral, political, or legal virtue of a gradual evolution toward a top-down world constitutional order in which international, transnational, or supranational institutions have constitutional superiority over the national.

B. The Order of Argument

The order of argument is as follows. The remainder of Part I deals with certain definitional concepts that are important as background to the main argument. These are the definition of "public international organizations"; the meaning of "globalization," in three categories of the economic, political, and cultural; a brief history of the idea of "civil society"; and the definition and criteria of "legitimacy," including specifically *democratic* legitimacy.

Part II turns to debates over the meaning of the protests and responses to protestors in Seattle at the time of the anti-WTO, anti-globalization protests in November-December 1999. It considers the claim of public international organizations to represent the interests of the peoples of the world, and the world's poor, in particular. It finds, however, that whatever good things

these organizations perform or do not perform, they all suffer from a fundamental lack of legitimacy, specifically a lack of democratic legitimacy, to undertake the widening range of activities either for which they volunteer or are assigned by other actors in the international system. The result is a spiraling demand for activity on the part of public international organizations, partly driven by globalization and the perception of globalization, but creating concomitantly a widening deficit of democratic legitimacy. Next, the Essay considers whether public international organizations could overcome this democratic deficit, in the context of political globalization and through the growth of supranational institutions. Part II concludes that what is ordinarily understood as "democracy," i.e., meaningful electoral institutions, will not be forthcoming at the level of the world for reasons both practical and theoretical; it asserts that territorial size and numbers of people matter to democracy and that globalization assumes, incorrectly, that the size of a genuinely democratic polity is consistent with the size of the optimal common market. Supranational institutions, therefore, will almost certainly not be grounded in meaningful democracy even as international elites press them to take on tasks that ordinarily, in domestic societies, would be thought to require democracy or the "consent of the governed." The democratic deficit at the level of public international organizations, as they become supranational institutions, becomes insuperable.

Part III considers the alternative claim of legitimacy that has long been asserted by international NGOs, but which was particularly persistent in Seattle. International NGOs present themselves as "international civil society," and as the voice of the citizens of the world and particularly the world's poorest and least-heard, and hence as a source of democratic legitimacy that public international organizations lack. Part III considers the general function of civil society in a domestic society. It then considers two claims of analogy, first, that there is an "international community" that is the international equivalent of a "domestic society" and, second, that there is an "international civil society" that is the international equivalent of domestic "civil society." Part III rejects each of these claimed analogies. It finally considers, however, whether, even if "international civil society" *were* the equivalent of domestic "civil society," it could overcome the democratic deficit of political globalization, and it concludes that it could not.

Part IV considers the relationship between public international organizations and international NGOs; the apparently antagonistic relationship conceals, among the genuine antagonisms, certain affinities. In particular, Part IV argues that public international organizations need international NGOs as a source of allegedly democratic legitimacy to make up for the democratic deficit of public international organizations. Since, according to this Essay, international NGOs do not have such democratic legitimacy to give, it is only a "faux" legitimacy -- but a powerful reason why public international organizations inflate so much the ideological tenor of their praise for international NGOs, treating them as stand-ins for the 'peoples of the world'. Part IV then considers ideological divisions over globalization within the ranks of international NGOs, considering ways in which such organizations as radical environmentalist and human rights organizations sometimes view globalization; international NGOs are not a homogenous category, and some in fact oppose globalization in favor of local and national structures, while others benefit from globalization or, seeing it as inevitable, see a need to shape it toward their interests.

Part V considers the special role that the ideology of human rights plays within the world of international NGOs, public international organizations, the formation of international elites and, indeed, the process of globalization generally. It argues that as the ideology of human rights has spread, it has taken on imperial and religious overtones, and asserted itself as the morality of globalization. The international human rights movement has benefited from globalization; it is both godchild and handmaid of globalization, so much so that, over time, it runs the risk that its primary allegiance might shift from the substantive core of human rights that once governed it to supranationalism itself. Moreover, as the human rights movement expands relentlessly the scope of matters -- particularly cultural, social, familial, and intimate -- that it considers the province of international human rights (in tandem with expanding globalization itself), it increasingly considers itself not a ground of democracy or a necessary complement to it, but instead as an ideological substitute. This results in a human rights ideology of global elites -- asserting their "internationalism" as being identical with "universalism" -- being offered as a substitute source of legitimacy for supranational institutions, one which dispenses with the need for democracy and the "consent of the governed" in favor of allegedly "universal" human rights. Part V is skeptical of these extravagant claims by the international human rights movement, not on

grounds of cultural relativism, but on grounds that the identity of the "international" and the "universal" is not self-evident, and that it is as likely that local or national structures of governance are able to apperceive, through constitutional democracy, what is truly "universal" as international bodies are able to do. To the reply that these national or local bodies are partial, whereas international bodies and elites are impartial, Part V counter-replies that it is untrue that "international" means impartial; it goes on to argue that the international elites that largely define the content of supposedly universal human rights have interests in globalization itself that undermine their claims to impartiality and hence their special entitlement to determine "universality." The remainder of Part V is an analysis of the sociological formation of these emergent international elites (including historical analogies to religion in other cultures and to the history of the formation of the Western bourgeoisie), arguing that it is at least possible, on the basis of historical comparison to the formation of civil society in earlier times, that the establishment of an international civil society, if it were to happen, would actually signal its *disengagement* from the rest of world society, rather than a claim faithfully to represent it. As it integrates itself as an elite "horizontally," so to speak, it disengages from other parts of societies in the world "vertically" -- even while asserting its competence and, indeed, right to manage them and announce their morality. Part V is thus centrally about the *sensibility* of emergent international elites -- their attitudes, their ideologies, their cultural aspects, their intellectual fashions and changing modes of thought and discourse -- and so argues from a wide variety of cultural sources, including the argument that international human rights is best understood as an emerging religion. Indeed, large parts of this Essay could be considered an exercise in cultural criticism of emerging international elites.

Part VI concludes the Essay with a consideration of what, if anything, might be still standing if the arguments of the Essay were successful -- such that neither public international organizations nor international NGOs have democratic legitimacy, nor are likely ever to acquire any, and that human rights ought to limit itself to offering a narrow but necessary ground and complement to democracy, rather than a substitute for it convenient to the interests of international elites. The out-of-fashion concept of constitutional democratic sovereigns, constitutionally limited democratic nation-states, is offered. Democratic sovereignty is not

argued for as such, but instead left as the possibility whose virtues, so slighted among international elites-in-formation, ought to be reconsidered.

Scattered throughout the Essay are references to the writings of Michael Ignatieff and, in particular, an article of his on the general condition of the international human rights movement that appeared in the New York Review of Books.⁵ That article -- which in part critiques an article of mine which introduced some of the ideas in this Essay⁶ -- has been an important stimulant to my thinking. Although I am sharply critical of Ignatieff's views, significant parts of this Essay can be read as an extended colloquy with Ignatieff.⁷

C. A Note on Public International Organizations

The public international organizations collectively referred to in this Essay are the United Nations and its agencies (UN), the World Bank, the International Monetary Fund (IMF), the World Trade Organization (WTO), and the Organization for Economic Cooperation and Development (OECD). This is a deliberately idiosyncratic list, and one that opens the possibility from the beginning of being too heterogenous to be useful. What, really, do the UN and the Bretton Woods organizations have to do with each other -- legally or functionally? What does the OECD have to do with any of them? Surely the differences must outweigh the similarities. The UN is a collection of agencies and bodies, and does not speak one voice, and its various voices are with great regularity critics of the actions of other organizations on this list, especially the IMF. Moreover, the Security Council and the General Assembly are politically and functionally nearly separate organizations, with the office of the Secretary General caught somewhere in between. The Bretton Woods organizations such as the World Bank and the IMF, for their part, have weighted voting on what amounts to a model of contributed capital of the shareholder-ownership variety that gives the US as well as collections of the world's wealthy countries, such as the European Union (EU), effective vetoes and often the ability to force through policies. The OECD is merely a multilateral advisory, technical "talking shop" that has no capital of its own and is not really part of the "international organization system" in the same

⁵ Michael Ignatieff, "Human Rights: The Midlife Crisis," New York Review of Books, May 20, 1999, at <http://www.nybooks.com/nyrev/WWWarchdisplay.cgi?100-528R> (last visited July 31, 2000).

⁶ Kenneth Anderson, "Secular Eschatologies and Class Interests of the Internationalized New Class," in Peter Juviler and Carrie Gustafson, eds. (NY ME Sharpe 1998), at 107.

⁷ The principal discussions of Michael Ignatieff's work appear at [].

way as the others.⁸ On what basis can they be called collectively "public international organizations"? Moreover, the list seems not only too inclusive, it also seems too exclusive; why have regional organizations such as the Organization of American States or the EU or the Organization of African Unity been left out, and for that matter, why not the regional development banks or the central bankers' Swiss club, the Bank for International Settlements (BIS) in Basle?⁹

The answers may not be entirely satisfactory -- and, indeed, the list could be significantly amended without affecting the tenor of the Essay's argument -- but they are these. The regional organizations and regional development banks have been left out because the focus of this Essay is on planetary organizations; the EU is discussed at some length, but for purposes of comparison. The BIS might well have been put in, but it does not happen to arise in the course of discussion. The OECD might have been left off, except for the highly visible role it played in the promulgation of the (ultimately defeated) OECD draft Multilateral Agreement on Investment (MAI). The real question is why it is functionally useful to group together what might be thought of as the clubs of the rich countries, the IMF and World Bank, and then the OECD, together with what many regard as a club of the rich countries although it does not have the same weighted voting structure, the WTO -- and finally all those together with the UN and its many parts.

The reason is simply that -- ideologically, morally, and practically -- each of these institutions has committed itself to some form of global capitalism. They differ in extent and commitment, they differ in means and in particular how much regulation they propose for it, but all of them have, in one way or another, signed on to some agenda of economic globalization. In the case of the WTO, IMF, the OECD, and the World Bank, this is self-evident. But the UN? It is entirely true that specialized agencies of the UN have served and continue to serve as fora of opposition to the broad economic program of neo-liberalism and especially its IMF policy cognate, "structural adjustment" within a particular country as a condition of receiving IMF aid;¹⁰ as well as to economic globalization, global markets more generally, and what is often perceived

⁸ See James Salzman [cite to Jim Salzman forthcoming article on OECD].

⁹ For that matter, being only slightly facetious, why not the (private) World Economic Forum in Davos?

¹⁰ See Daniel Bradlow [cite to Bradlow article on IMF structural adjustment]

as the American model of global capitalism. Speeches in the General Assembly frequently reflect deep ambivalence, sometimes trepidation, sometimes sometimes outright hostility to the spread of economic globalization.¹¹ And yet the agency of the UN that most speaks for the institution in a unified way (if any does), the office of the UN Secretary General, has plainly come down in favor of global markets, economic globalization, global capitalism. The UN Secretary General, Kofi Annan, as we shall see, has firmly aligned the UN with global capitalism not simply in a practical sense that it is how the world today is run, but in a broader and deeper sense, the sense that global capitalism, economic globalization, is the morally legitimate economic system for the world, the "current of our times."¹²

This commitment of the Secretary General should not be overstated. Annan has committed himself and the UN as much to seeking to *manage* global capitalism as to furthering it, and there are many for whom this spirit of "managed capitalism" is precisely the problem which slows or stalls capitalism's engine of economic growth. The Secretary General's motivations, if we are to take him at his word in his speeches, which we shall have opportunity to consider at length, are two fold. First, he appears genuinely to believe that global capitalism (with some debate over its form and the extent of its regulation and management) is good for the global "common good" and good for the world's poor because only it, as an economic system, can deliver the economic growth necessary to remedy poverty. In holding this, Annan has set himself squarely against the views of many NGOs protesting in Seattle and, indeed, has set the UN as an institution in *solidarity* with the WTO, IMF, and World Bank that believe the same thing. Second, the Secretary General appears to accept the view that global capitalism and political liberalism -- the liberal internationalism leading toward genuinely supranational institutions of global governance whose emergence he favors -- go hand in hand, and that they are morally and politically linked together in the way that many American political thinkers have long claimed they are at the level of individual states and societies. "Managed global capitalism," in other words -- granting great leeway in interpreting how managed is "managed" -- in the view of the Secretary General both *requires* global governance (in order to create orderly

¹¹ [cite to General Assembly speeches we already have at home]

¹² See discussion and citations at [].

markets as well as to ensure, within the morality of global capitalism, that rich as well as poor benefit from economic globalization) but also *pulls* the world toward it.

The other major public international organizations are all committed to versions of this view at least as strong, and typically stronger, than the Secretary General's. Since the UN, represented by the Secretary General, is the most surprising member of this list and the one least likely to subscribe to what might easily be thought of as the economic and political ideologies of the rich countries, this Essay, in taking up public international organizations, focuses largely but not exclusively on the UN and the office of the Secretary General. The other institutions are, typically, even more strongly committed to these views than the UN and so it matters particularly to know the views of the Secretary General in his leadership of the organization. The broader point, however, is that all these institutions claim that global capitalism is the legitimate economic system for the world as a whole; likewise, all claim that they have some measure of legitimacy both by appeal to the legitimacy of global capitalism, whose agenda in one way or another press forward and by appeal to their traditional bases of legitimacy, their founding legal charters and the authority delegated to them by multilateral treaty arrangements.

These organizations, however, whether the UN, the IMF, the WTO, or others, are both taking on and are being pressed to take on themselves a whole range of activities that look, arguably at least, considerably wider than their original treaty-blessed missions; whether the UN in establishing de facto protectorates in failed states, or the OECD in promulgating a treaty with profound effects, to say the least, on the internal economies of the world, or the IMF in moving beyond its original role in relieving short term liquidity crises to management of a sizable number of national economies. The bases of legitimacy on which these activities and aspirations are founded look, with some understatement, inadequate. Economic globalization is both driver and justification for these supranationalizing trends, we are told, but whether or not that is true, none of these institutions can claim to act on these expanding missions on any kind of *democratic* basis. None of them, including the UN, so this Essay will argue, is a democratic institution; none has any remotely plausible democratic legitimacy; and none, so far as this Essay can determine, will ever have any.

Does it matter? Well, I happen to believe that global capitalism is on balance a good thing; the spread of markets on balance a good thing; and liberalization of economic systems

worldwide, including occasionally even IMF policies, on balance a good thing. The arguments against free trade made by protesting NGOs and US unionists in Seattle, for example, seem to me quite wrong. But it ought to matter not only whether I, or the economists of the World Bank or the IMF, or the Secretary General, think it a good thing, even granted our collectively considerable wisdom as international elites. It ought to matter what people in Indonesia think, it ought to matter what people in Brazil or India think, and it ought even to matter what, in my estimation, misguided US unionists think; we call this democratic participation. It is the contention of this Essay that the planet as a whole will not and, indeed, cannot be a democracy in such a way as to take into account the views of all those people. This brute inability generates clever ideological ploys to claim democratic legitimacy without *actual* democratic participation -- the mainstream international NGOs, as we shall see, play a large role in this claimed legitimacy, along with the increasingly non-participatory doctrines of international human rights -- but ultimately each fails the test of actual democracy. Democratic legitimacy matters because democratic participation matters, but at best the largest political level at which democracy has a chance of being achieved is the much maligned nation-state, that institution which, as we shall see, much of the world's international elites think ought to surrender its sovereignty. At least with respect to democratic nation-states, this Essay says not.

This is scarcely a new or original argument. It is, instead, merely a forgotten one, forgotten in today's excitement over utopian fantasies of global governance and the belief that the world for purposes of governance can be made a constitutionally unitary place and that, under the pressures of economic globalization, it *must* be made so. The Essay's argument is a limited one; it is not a defense of sovereignty "as such" but, instead, only an implied defense of the sovereignty of democratic states against the widespread belief among liberal internationalists that such sovereignty lacks legitimacy or has less legitimacy than that of international institutions or, at least, the supranational ones of their imaginations. The defense of sovereignty as such can be made, and ought to be made, but this argument is not that; it is a defense of the sovereignty of the United States but not of Saudi Arabia. It is also a deeply unfashionable argument but, perhaps, compensates for being unfashionable by being committed in a serious way to democracy, even over the siren call of internationalism, transnationalism, and supranationalism, and even to the point of giving up the latter if they cannot embody the former.

D. A Note on Globalization

Globalization functions in the argument of the Essay as a presumed driver toward an increasingly integrated and interdependent world. Since this might appear merely to say that globalization drives toward globalization, it is worth briefly discussing the concept and category of globalization as used here. It is not as empty as it might be thought to say that globalization drives further globalization; the fact that globalization spirals upward toward further globalization and fuels further integration is an important one. In the structure of this Essay, however, globalization also drives increased demand for legitimacy from global actors, whether they be public international organizations, international NGOs, or others -- or, at least, it is widely presumed by these actors, among others, to do so. Thus, if one question is why is there *today* increased debate over the legitimacy of such actors as public international organizations, one answer often given is that it is required by the increased demands on them, the widening range of tasks of governance they are asked, or seek, to take on, deepening in turn the need for legitimacy -- but the reason why their governance role increases is to meet the demands of increased globalization.

Globalization is often used in confusing, sometimes overlapping, and sometimes contradictory ways. For many, it simply means the globalization of the economy, the spread of a global market -- not only the spread of the ideology of markets into local economies, but the spread of a worldwide, interdependent global market.¹³ "Economic globalization," as this Essay will term that phenomenon, however, is not all there is to the concept of globalization. This Essay follows the general schema of globalization developed by Malcolm Waters in his useful survey of the category. Waters defines "globalization" as:

"A social process in which the constraints of geography on social and cultural arrangements recede and in which people become increasingly aware that they are receding."¹⁴

Waters then elaborates this definition by showing that globalization expresses itself in three fundamental categories of social life:

¹³This is roughly how Alan Rugman sees it, for example, in his *Alan Rugman, The End of Globalization* (NY Random House 2000); in arguing that globalization is collapsing into regionalism, he considers only economic globalization (and about that issue he is likely correct), but does not consider other aspects of globalization such as culture.

¹⁴Malcolm Waters, *Globalization* (NY Routledge 1993), at 3.

"Globalization is traced through three arenas of social life that have come to be recognized as fundamental in many theoretical analyses. They are:

1. The economy: social arrangements for the production, exchange, distribution and consumption of goods and tangible services.

2. The polity: social arrangements for the concentration and application of power, especially as it involves the organized exchange of coercion and surveillance (military, police etc.) as well as such institutionalized transformations of these practices as authority and diplomacy, that can establish control over populations and territories.

3. Culture: social arrangements for the production, exchange and expression of symbols that represent facts, affects, meanings, beliefs, preferences, tastes and values."¹⁵

These three categories are fundamental to the use of the term "globalization" throughout this Essay. The Essay will normally specify which category of globalization it means in each case -- economic globalization, political globalization, or cultural globalization, as the case may be -- and where the Essay refers generically to globalization, it means all three of these categories taken together. Moreover, this Essay assumes, following Waters (who follows Weber on this point), that these three categories are

"structurally independent. It therefore rejects both the Marxist position that the economy is constitutive of polity and culture and the Parsonian position that culture determines the other two arenas. However, it also makes the assumption that the relative effectivity of the arenas can vary across history and geography. A more effective set of arrangements in one arena can penetrate and modify arrangements in the others."¹⁶

This Essay not only accepts Waters' (quite standard) sociological categories, it also accepts his fundamental theorems about the relationship of each of these categories to 'space'.

Those theorems are:

"The claims of the theory of globalization centre on the relationship between social organization and territoriality ... this link is established by the types of exchange that predominate in social relationships at any particular moment. Different types of exchange apply to each of the arenas indicated above. Respectively they are:

[1. Economic:] material exchanges including trade, tenancy, wage-labour, fee-for-service, and capital accumulation;

[2. Political:] political exchanges of support, security, coercion, authority, force, surveillance, legitimacy and obedience;

¹⁵Malcolm Waters, *Globalization*, at 7-8.

¹⁶See Malcolm Waters, *Globalization*, at 8.

[3. Cultural:] symbolic exchanges by means of oral communication, publication, performance, teaching, oratory, ritual, display, entertainment, propaganda, advertisement, public demonstration, data accumulation and transfer, exhibition and spectacle."¹⁷

The constitutive acts of globalization in any of its three categories, in other words, are *exchanges*. Each category of exchanges "exhibits a particular relationship to space," and it is the relationship of particular categories of exchange to space that gives globalization its distinctive texture, 'feel', and dynamic force:

"[1. Economic:] Material exchanges tend to tie social relationships to localities: the production of exchangeable items involves local concentrations of labour, capital and raw materials; commodities are costly to transport which mitigates against long-distance trade unless there are significant cost advantages; wage-labour involves face-to-face supervision; service delivery is also most often face-to-face. Material exchanges are therefore rooted in localized markets, factories, offices, and shops. Long-distance trade is carried out by specialist intermediaries (merchants, sailors, financiers, etc.) who stand outside the central relationships of the economy.

[2. Political:] Political exchanges tend to tie relationships to extended territories. They are specifically directed towards controlling the population that occupies a territory and harnessing its resources in the direction of territorial integrity or expansion. Political exchanges therefore culminate in the establishment of territorial boundaries that are coterminous with nation-state-societies. The exchanges between these units, known as international relations (i.e. war and diplomacy), tend to confirm their territorial sovereignty.

[3. Cultural:] Symbolic exchanges liberate relationships from spatial referents. Symbols can be produced anywhere and at any time and there are relatively few resource constraints on their production. Moreover they are easily transportable. Importantly, because they frequently appeal to human fundamentals they can often claim universal importance."¹⁸

I have dwelt at length on these three categories not merely for definitional reasons -- not merely to clarify the usage of these three categories of globalization in the remainder of this Essay. The interplay of Waters' categories implies a substantive consequence about globalization and its nature, beyond simple definition. That substantive consequence can be summarized as the theorem:

"[M]aterial exchanges localize; political exchanges internationalize; and symbolic exchanges globalize."¹⁹

The implication of this theorem for globalization is significant. It is that the degree to which the economy and the world's political arrangements will become globalized -- not merely

¹⁷ Malcolm Waters, *Globalization*, at 8.

¹⁸ Malcolm Waters, at 9.

¹⁹ Malcolm Waters, at 9.

"internationalized," as exchanges that reinforce *existing* territorial arrangements, but globalized the sense of tending to *erase* them -- to the extent that culture is globalized. Or as Waters puts it: "[T]he globalization of human society is contingent on the extent to which cultural arrangements are effective relative to political and economic arrangements. We can expect the economy and the polity to be globalized to the extent that they are culturalized, that is, to the extent that the exchanges that take place within them are accomplished symbolically."²⁰

This theorem could be thought to run counter to many contemporary theories of globalization. For Thomas Friedman, for example, globalization is fundamentally driven by technology. His book, *The Lexus and the Olive Tree*, is a peculiar mixture of euphoria at technological change but also a warning against being left behind; behind it all, however, is a crude economic determinism, technology forcing culture and politics to accommodate or die.²¹ Economic determinism is also the heart of the case, contrary to Friedman and against economic globalization made by John Gray in his *False Dawn: The Delusions of Global Capitalism*.²² It might also be thought, as well, that Waters' theorem is merely holding for Parsonian sociology and its emphasis on culture as the organizing principle, as against Marx and others' economic determinism. In fact, however, Waters is correct when he says that he holds the three categories of economics, politics, and culture to be independent; what gives culture its special role in Waters' schematization is the nature of cultural exchanges, and the fact that cultural exchanges are largely symbolic exchanges -- *and* they have lower costs, in production, transportation, communication, and assimilation, than costs of primarily non-symbolic, material goods. In that sense, Waters is not really in opposition to Friedman and Gray and the rest who see globalization as technology driven -- in the special sense that cultural exchanges turn out, on account of the new technology, to have lower costs and hence can be globalized more easily than other commodities. It is not Parsonian sociology that gives culture a special place in Waters' account; it is the contingent fact of what the new technology happens to favor.²³

²⁰ Malcolm Waters, at 9.

²¹ See Thomas L. Friedman, *The Lexus and the Olive Tree* (NY Anchor Books/Random House 2000); see also the superb review by John Lloyd, "Like a Dallas Cowboys Cheerleader," *London Review of Books*, September 2, 1999, at 11.

²² See John Gray, *False Dawn: The Delusions of Global Capitalism* (NY New Press 1998).

²³ Had the new technology been not *communications* technologies but instead, for example, a pollution free energy source which was massive and not easily transportable, the results for culture might have been very different. Similarly, had the invention been a Star Trek style

The critical consequence for this Essay is that Waters' account implies that, without cultural globalization, the tendency of economic exchanges and political exchanges is, in Waters' special use of the term, "internationalize," rather than "globalize" politics. In other words, in the absence of globalizing culture, political exchanges in the atmosphere of globalization tend to reinforce international, i.e., *territorial* dominance, rather than breaking down territory into a truly borderless, global polity. This Essay accepts that, in the absence of cultural change, the tendency of economic and political change is to reinforce the nation-state system -- perhaps with greater multilateralism, but with the fundamental considerations of sovereignty unchanged. Those that this Essay describes as "liberal internationalists," that is, those who seek truly global and supranational institutions of global governance along with global markets, thus *also* seek to buck what would otherwise be, absent cultural globalization, the tendency of economics and politics to remain local or regional or national -- not supranational. Cultural globalization, if Waters is right, takes on enormous importance, then, in pressing forward the liberal internationalist dream of political and economic globalization. As I suggest toward the end of this Essay, however, the cultural globalization that matters for this process is only partly global popular culture -- much more central to cultural globalization leading to at least *formal* structures of political globalization is the globalization of *elite* culture, and indeed the creation and consolidation of a truly global, international, culturally-linked elite. The formation of that global or international elite, I suggest, is well underway. The gap between global or international elites and the peoples of the world, however, raises the possibility, as I argue toward the end of the Essay, of a parallel gap between formal international or global structures of governance, on the one hand, and what the peoples of the world, outside of the nascent international elite, accept as legitimate, on the other.

My use of the term "international" is looser than Waters' special definition, which deliberately distinguishes it from "global." My usage is in keeping with the looser way in which it is used across the wider literature that forms the backbone of this Essay. International can refer

transporter beam, cultural results might have been very different. For the classic science fiction account of the cultural effects of a teleporter based transportation revolution, similar to the Star Trek transporter beam but worked out with vastly more acute sensitivity to the implications for culture and economics, see Alfred Bester, *The Stars My Destination* (1956) (NY Franklin Watts 1987).

genuinely supranational political arrangements -- political structures which are juridically or constitutionally supreme over national or local political entities. I use it in this sense when describing "liberal internationalism" -- a theory, as meant here, that aims at supranational governance among other things. It is also used more generically, however, sometimes to include multilateral arrangements between sovereign states and sometimes simply to describe the social space lying between states, in the newspaper-reader's sense, for example, of "international community." I hope that the meaning of this generic term will be clear from context and description in each instance of its use.

The term supranationalism, on the other hand, is specifically reserved for international governance that is constitutionally superior to nation-states; it implies a ceding of nation-state sovereignty to supranational institutions.

The terms political globalization and global governance are likewise used in this Essay to refer to supranational governance. One theory that has become popular in some quarters in recent years proposes to separate "global governance" from "global government." I criticize a recent version of that theory, offered by Wolfgang H. Reinicke, in the final section of this Essay.²⁴ At this stage, however, I will simply assert that the purported delinking of the two fails, and treat global governance as a description of, and a process requiring, supranational institutions.

Finally, a comment about globalization and the world's poor. As will be seen in later discussion, a great deal of the debate over globalization in each of its categories, but especially economic globalization, is offered in terms of what it does and does not do for the poor. As will be seen, economic globalization is said by some to be good for the poor, and by others as disastrous. This Essay assumes the main line of argument often asserted by proponents of economic globalization, viz., that economic globalization has a moral justification which in large part rests upon its ability to deliver benefits to the world's poor. It is a test of the merit of economic globalization that is often broadly endorsed by conservatives, as subsequent discussion will show; it is the argument that the "rising tide lifts all boats."²⁵ The Essay accepts this as a large part, albeit not the exclusive test, of the moral worthiness of economic globalization. Yet it

²⁴ See Wolfgang H. Reinicke, "The Other World Wide Web: Global Public Policy Networks," 76 *Foreign Affairs* 6 (November 1997), at 127; see discussion at [] of this Essay.

²⁵ Indeed, not just conservative but Reaganesque.

should be noted that this criterion is a good deal more stringent as a moral criterion of the goodness of economic globalization that is required under several theories of morality. Under various utilitarian moral theories, for example, it might well be thought that if economic globalization produced broad benefits^{to} a large majority but left unimproved or, under some versions of the theory, even worsened the conditions of the poor, economic globalization would still be morally justified. Moreover, the claim in favor of the world's poor assumes that because they are "poor" and they exist in the "world," they are therefore the *world's* poor, in the sense of something perhaps approaching communal responsibility; the move from description to normative responsibility would require, for the argumentatively fastidious, a showing of this communal premise so as to imply responsibility, and that is perhaps harder than might be thought. ✓

These worries about whether the strength of the distributive concern about the poor is morally *compelled* notwithstanding, this Essay has assumed that no matter what other good results might come of economic globalization, it is at least a serious, perhaps decisive, moral failure if it fails to produce significant gains for the world's poor. And, moreover, although this Essay is highly skeptical of the existence of a "global community," it is willing to accept the view that if globalization produces gains for international commercial enterprise on account of it being able to engage with the "world," then that "world" ought to include the world's poor in its calculations of costs and benefits.²⁶ In this regard, the test of the morality of economic globalization used in this Essay is close in spirit to Rawls' "difference principle";²⁷ if the situation of the worst off is not improved, then the fact that others, even many others, do well is not decisive. This more stringently egalitarian test seems to me the morally right one; in addition, however, it has been widely endorsed by proponents of economic globalization in seeking, as this Essay will discuss, to declare economic globalization, global capitalism, global markets, not only the inescapable fate of the planet, but the *just* global economic system as well. For this reason, among others, it is scarcely possible to discuss the legitimacy of international entities in this age of globalization without speaking to the fulfilment of the needs of the world's poor.

E. A Note on the History of the Idea of Civil Society

²⁶ I discuss these principles more fully in Kenneth Anderson, "Globalization and Microfinance," forthcoming 2000.

²⁷ [cite to Rawls, also to Nagel review in TLS of Cohen book]

It is beyond the scope of this Essay to offer either a lengthy intellectual history of the idea of civil society or a lengthy catalogue of the many ways in which the idea of civil society has been reinvented in liberal theory during the last quarter century.²⁸ Yet it is worth noting at the outset that there are various usages of the term "civil society" in contemporary political discourse and various usages in the history of political thought. As a contemporary category of social and political theory, civil society has proved to be distressingly slippery and disturbingly elastic, notwithstanding that nearly everyone agrees that within it are at least one and perhaps several concepts essential to liberal democracy. It difficult to define in the abstract and the difficulty is compounded by the fact that the term has not one, but several intellectual pedigrees, some of them "liberal" in the classical sense and some of them not.²⁹ In perhaps the most widely recognized understanding of the past several decades, it has come to mean:

"all of those institutions and associations which exist between the individual and the state. These structures allow groups in society to represent themselves vis-a-vis other groups and the state. As such they form cross-cutting networks which contribute to pluralism and balance of power of the state."³⁰

Or as Jean Bethke Elshtain has summarized the current usage, by "civil society" we mean

"the many forms of community and association that dot the landscape of a democratic culture -- families ... churches, neighborhood groups, trade unions, self-help movements, volunteer activities of all sorts. Historically, political parties, too, were part of this picture, part of a network that lies outside the formal structure of state power. Observers of American democracy have long recognized the vital importance of civil society thus understood. Some have spoken of 'mediating institutions' that lie between the individual and the government or state, locating each of us in a number of little estates, so to speak, which are themselves nested within wider, overlapping frameworks of sustaining and supporting institutions. This densely textured social ecology was -- and remains -- the ideal. For civil society is a realm that is neither individualist nor collectivist. It partakes of both the 'I' and the 'we'."³¹

²⁸ Useful general discussions are Adam Seligman, *The Idea of Civil Society* [cite]; John Keane, *Civil Society and Democracy* [cite]; John Keane, ed., *Civil Society and the State: New European Perspectives* (London Verso 1988); Jean L. Cohen and Andrew Arato, *Civil Society and Political Theory* (Cambridge MIT Press 1992).

²⁹ See discussion at [].

³⁰ John King Gamble and Charlotte Ku, "International Law -- New Actors and New Technologies: Center Stage for Ngos?" 31 *Law and Policy in International Business* 221, 228, citing Ken J. Kille et al., *Sinking the Billiard Ball Model in the Corner Pocket: An Analytic Topology of the NGOs and the Implications for IR Research* 6, Paper Prepared for Delivery at the International Studies Association Annual Convention (April 16-20, 1996).

³¹ Jean Bethke Elshtain, "Not a Cure-All: Civil Society Creates Citizens, It Does Not Solve

These definitions emphasize mediation between the individual and the state. In addition to this long concern with the state, in contemporary usage "civil society" has been seen as the realm that also lies outside of purely commodified, market relationships. As Edward Goldsmith notes, speaking of "communities," but meaning the same sense of civil society, a purpose of civil society is to create places where people, their communities, and the family are able to "sustain themselves free of state and corporate dominance"³²; or, as Jean L. Cohen and Andrew Arato frame matters, "But what is this contested social terrain that is *neither the state nor the market mechanism*? It is, of course, civil society."³³ The relationship between civil society organizations, on the one hand, and *both* state and market, on the other, has been characterized metaphorically by Leon Gordenker and Thomas G. Weiss:

"The prince represents governmental power and the maintenance of public order; the merchant symbolizes economic power and the production of goods and services; and the citizen stands for people's power. As such, the growth of NGOs arises from demands by citizens for accountability from the prince and the merchant."³⁴

This account gives the impression, however, that civil society is made up solely of NGOs, in the sense of advocacy groups. As Thomas Carothers observes:

"At the core of much of the current enthusiasm about civil society is a fascination with nongovernmental organizations, especially advocacy groups devoted to public interest causes -- the environment, human rights, women's issues, election monitoring, anticorruption, and other 'good things' ... Nevertheless, it is a mistake to equate civil society with NGOs. Properly understood, civil society is a broader concept, encompassing all the organizations and associations that exist outside of the state (including political parties) and the market. It includes the gamut of organizations that political scientists traditionally label interest groups -- not just advocacy NGOs but also labor unions, professional associations (such as those of doctors and lawyers), chambers of commerce, ethnic associations, and others. It also incorporates the many

Problems," in E.J. Dionne, *Community Works: The Revival of Civil Society in America* (Washington DC Brookings Institution Press 1998), at 24-25.

³² Edward Goldsmith, "The Last Word: Family, Community, Democracy," in Jerry Mander and Edward Goldsmith, eds., *The Case Against the Global Economy and For a Turn Toward the Local* (San Francisco Sierra Club Books 1996), at 501.

³³ Jean L. Cohen and Andrew Arato, *Civil Society and Political Theory* (Cambridge MIT Press 1992), at 515 (emphasis added).

³⁴ Leon Gordenker and Thomas G. Weiss, "Pluralising global governance: analytical approaches and dimensions," 16 *Third World Quarterly* 357, 359 (1995); this article draws upon Marc Nerfin, "Neither Prince nor Merchant: Citizen -- An Introduction to the Third System," 56 *IFDA Dossier* 3-29 (1986).

other associations that exist for purposes other than advancing specific social or political agendas, such as religious organizations, student groups, cultural organizations (from choral societies to bird-watching clubs), sports clubs, and informal community groups."³⁵

The theory behind the current understanding of civil society, even within a domestic society, is deeply confused; and even in the context of this brief comment on civil society as a background concept in this Essay, it is essential to grasp the fact of this confusion.³⁶ It is not uncommon, for example, to hear the "family" spoken of as the smallest unit of civil society; David Blankenhorn, in a formulation that in my experience is common among both conservatives such as Blankenhorn as well as liberals, simply says that the "family is the first and by far the most important institution of civil society."³⁷ Yet surely the family is not one of the "mediating institutions" between citizen and state and market, one of the mechanisms by which citizens demand accountability; the family, along with individuals, one would have thought, is *what is* mediated.³⁸ The "family," seemingly, is not a form of "associational life," as Blankenhorn implies (in the surprisingly instrumentalized view of the family that has emerged from American conservatives in recent years); it *is* life.³⁹ Intellectual guardians of the idea of civil society must choose whether it shall be seen as the locus of life, essentially family life as its own irreducible social category, or as the mediator between individuals and family life (in the

³⁵ Thomas Carothers, "Civil Society: Think Again," *Foreign Policy*, December 22, 1999, at 18.

³⁶ A particularly important source of confusion about civil society, the vice of believing that civil society consists only of those associational groups one happens to like, is discussed at [].

³⁷ David Blankenhorn, "Conclusion: The Possibility of Civil Society," in Mary Ann Glendon & David Blankenhorn, (eds.), *Seedbeds of Virtue: Sources of Competence, Character, & Citizenship in American Society* (NY Madison Books 1995), at 275.

³⁸ Jean Bethke Elshtain is one of the few who notes this problem, observing that "we often put the family in civil society, although it is lodged there rather clumsily." Jean Bethke Elshtain, "Not a Cure-All: Civil Society Creates Citizens, It Does Not Solve Problems," in E.J. Dionne Jr., ed., *Community Works: The Revival of Civil Society in America* (Washington DC Brookings Institution Press 1998), at 25.

³⁹ David Blankenhorn and Mary Ann Glendon, eds., *Seedbeds of Virtue*, is a good example -- I understand perfectly well their desire to show the bad effects on larger society when the family is weakened. Nor do I suppose that they would disagree with me, but would simply say that they do not seek to give a complete description of the family, including its *most important* role, but instead to show what happens when its secondary role in society withers. Still, there is something disconcerting to read a conservative treatise on the family that treats it as merely a means to an end, the end of producing citizens, rather than as an end of social life in itself. It would be better to say that the family is the means to the end of producing ... the consolations of family.

sense of protecting the terms of their social reproduction), on the one hand, and state and market, on the other. This inconsistency in usage points to a still deeper conceptual problem as to whether the function of civil society is to *be* the social space in which ordinary human life takes, or whether its function is to *mediate between* the place where that ordinary social life takes place, on the one hand, and state and market, on the other. "Living" life and "mediating" between it and other institutions are not the same thing and connote quite very different institutions.⁴⁰

Even the assumption that civil society is solely a feature of *democratic* societies is historically questionable. Marvin Becker, for example, points out that "[n]umerous models of civil society can and do exist and flourish under a variety of regimes distinct from liberal democracy."⁴¹ Commenting on the political philosopher John Gray, he observes:

⁴⁰ Indeed, I doubt very much that it is possible to understand just how incoherent the contemporary account of civil society is without returning to a historically based understanding of its role in overcoming the aftermath of the civil wars and violence in 17th century England and Scotland -- something most contemporary theorists of civil society appear completely uninterested in considering (John Keane is a noteworthy and profound exception). There is a tendency to speak in the language of narrowly ahistorical political theory, partly in order to seek "universal" theories that can be applied across the globe, without regard for the inconveniences of local culture, and partly because acknowledgment of the profound specificity that history suggests about the formation of civil society in Western societies might put a damper on the ability to project imaginary utopias based around civil society. Whereas Marvin Becker, by contrast, carefully documents how such institutions of civil society of eighteenth century England and Scotland -- its social clubs and debating societies -- with the historical background of political and confessional violence uppermost in the minds of the new rising commercial elites, were quite deliberately places in which social and political passions were ratcheted down, deliberately damped, in favor of practical, utilitarian, distinctly unheroic and unprofound questions of small improvements in society. As Becker puts it, civil culture "served to dampen the flames of controversy still smoldering from [the Civil War, the Interregnum, and the Restoration] ... [Britain in] the seventeenth century was a dreadful time ... What was learned was a monumental distrust of heroism, religious fanaticism, and reckless gallantry. This contributed to that downsizing of heroic virtues ... [the downsizing was seen] as a mark of civil society." Marvin B. Becker, *The Emergence of Civil Society in the Eighteenth Century* (Indiana UP 1994), at 68 and xxi. Civil society in eighteenth century Edinburgh was not conceived as a place for pressing forward, in the manner of a Václav Havel, the Velvet Revolution; those who embraced the notion of "civil society did not have an idea of social progress as an end; in fact, they were conservative (not authoritarian), and what they valued was social stability and the reduction of misery." Marvin Becker, at xx. See the discussion of the emergent bourgeois elites of eighteenth century Scottish civil society in comparison to the emergent international elites of today at [].

⁴¹ Marvin Becker at xix.

"The origins of modern European civil society have been fixed in eighteenth-century England and Scotland -- a privileged time. John Gray, a contemporary scholar of liberalism, argues cogently that both in the eighteenth century and in modern times, democracy was and is not essential for its genesis. He points to present-day examples of civil society such as Singapore, Korea, and Japan. Perhaps a bit harshly, he suggests that the republican-democratic tradition 'typified in our time by Hannah Arendt' is irrelevant for post-communist countries aiming to establish the lineaments of a civil society."⁴²

Perhaps most important for the argument of this Essay, contemporary usage of the term civil society very frequently means, without necessarily saying so, the associated but still distinct concept of the so-called "new social movements."⁴³ A full understanding of the idea of new social movements, like civil society, is far beyond the scope of this Essay. In brief, however, if "social movements" in the abstract designate, in Herbert Blumer's words, "collective enterprises [seeking] to establish a new order of life,"⁴⁴ then the new social movements designate, in David Plotke's words,

"feminist movements, the gay movement, the environmental movement, (sometimes) movements among racial minorities, and anti-nuclear weapons efforts. Like most political categories that matter, the concept is not only descriptive; it has also been a means of arguing about how those political forces ought to proceed to realize their aims. Thus 'new' has a different meaning from the interest-group liberalism of the mid-decades of the century and from classical socialist conceptions. (In both cases, 'new' also means different from the labor movement). 'Social

⁴² Marvin Becker, *The Emergence of Civil Society in the Eighteenth Century* (Indiana UP 1994) at 128, note 12, citing John Gray, "Post-Totalitarianism, Civil Society, and the Limits of the Western Model," *The Reemergence of Civil Society in Eastern Europe and the Soviet Union*, ed. Z. Rau (Boulder CO Westview 1991); but see the view of Kenneth Roth, executive director of a leading international human rights organization, Human Rights Watch, in a letter responding to David Rieff, "The False Dawn of Civil Society," *Nation*, February 22, 1999 (article skeptical of claims about civil society); in his letter, Roth simply takes it for granted that Singapore, for example, does not have a civil society and, moreover, finds that elections in Singapore "are a farce because Singapore has no civil society to make them meaningful," 268 *Nation* 12, March 29, 1999, at 12 (Letters). Thus, in Roth's view, civil society is apparently necessary in order for electoral democracy to be meaningful.

⁴³ Useful places to begin, however, are Claus Offe, "The New Social Movements: Challenging the Boundaries of Institutional Politics," 52 *Social Research* 4 (1985), at 819; Andrew Arato, "Civil Society Against the State: Poland 1980-1981," 47 *Telos* (Spring 1981), at 23; Alberto Melucci, "The New Social Movements: A Theoretical Approach," 19 *Social Science Information* 2 (1980), at 199-226; Jean L. Cohen and Andrew Arato, *Civil Society and Political Theory* (Cambridge MIT Press 1992), at 510-523 (section on "the new social movements paradigm") [also want to include references to Seyla Benhabib, etc.- need to fill out this list].

⁴⁴ Herbert Blumer, "Social Movements," (1951) in Stanford M. Lyman, ed., *Social Movements: Critiques, Concepts, Case-Studies* (London Macmillan 1995), at 60.

movement' means concerned with changes in ways of life, in norms -- posing objectives that not only go beyond routine political reforms but also may be impossible to achieve through conventional political channels."⁴⁵

The new social movements gained enormous prestige in the run-up to the fall of Eastern European communism; the Solidarity movement in Poland, of course, gave great impetus to the idea of a social space, even within communist societies, that was outside the state.⁴⁶ The flowering of the women's movement, the environmental movement, and peace movement particularly, were seen by the communist authorities in the most "Western" of the Soviet-bloc states -- Yugoslavia, Hungary, and Czechoslovakia, for example -- in a curiously mixed, ambivalent light. They plainly represented a challenge to the authority of the party and the state, and yet they were also plainly "progressive," rather than "reactionary," in some abstract sense that even communist state authority recognized. The ambivalence was crucial in allowing these groups a toe-hold in their societies; and their fortunes waxed and waned with the shifting degrees of ambivalence on the part of communist officialdom.⁴⁷ They had counterparts in Western Europe, especially, and attracted the fascinated gaze of the US progressive movements and their intellectuals, eager to find new paradigms following the exhaustion of models of social change of the 1960s.⁴⁸

The point about new social movements for purposes of this Essay is that with considerable frequency, proponents of civil society, especially coming from the political left, actually mean, not civil society in all its plural glory, but instead new social movements, and in fact a fairly narrow range of them.⁴⁹ For them, civil society is a term interchangeable with the feminist movement, the environmental movement, the peace movement, the international human rights movement, and many of the smaller movements that have fractured away from those movements, such as the movements to ban landmines, ban the recruitment of child soldiers, promote labor standards in the developing world, and many others. As we shall have opportunity

⁴⁵ David Plotke, "What's so New About New Social Movements?" in Stanford M. Lyman, ed., *Social Movements: Critiques, Concepts, Case-Studies* (London Macmillan 1995) at 115.

⁴⁶ [cite to Poland-Solidarity literature - i've referenced a lot of it here, Andrew Arato and Adam Michnik, but should add some others too]

⁴⁷ [cite to Sabrina Ramet]

⁴⁸ See [cite to articles in], Stanford M. Lyman, ed., *Social Movements: Critiques, Concepts, Case-Studies* (London Macmillan 1995) [maybe Plotke or others]

⁴⁹ See David Rieff's remarks at [].

to consider in detail later on, organizations such as the National Rifle Association do not count in the minds of political left-progressives as new social movements and, therefore, do not count for them as part of "civil society," even though they otherwise fits all the criteria save for being broadly left-progressive. This Essay will later consider the consequences of normatively "loading" the term civil society by conflating it with the idea of new social movements that, by their theorists' own preference, denotes a particular brand of politics; for now it is enough to point out that the conflation takes place.⁵⁰

If contemporary usages of the term "civil society" are multiple, sometimes inconsistent, and sometimes deeply confused, this is in part because the history of the idea of civil society shows multiple ways in which the term was used, very often in ways inconsistent with each other. In classical Roman thought, such as that of Cicero, civil society simply meant the state: "The term [civil society] formed part of an old European tradition traceable from modern natural law back through Cicero's idea of *societas civilas* to classical political philosophy -- above all to Aristotle, for whom civil society ... is that society, the *polis*, which contains and dominates all others. In this old European tradition, civil society was coterminous with the state."⁵¹

Civil society figured prominently in the writings of the early modern social contractarians,

Hobbes and Locke, yet in keeping with the long European tradition, civil society was the state -- roughly, civil society was the condition into which the individual emerged from the state of nature, into the commonwealth or the state. If civil society was not analytically necessarily *quite* the same thing as the state, there was analytically no room at all for the idea of civil society *against* the state. In the case of Hobbes, [from *Leviathan* and secondary lit, etc].⁵² In the case of Locke, the *Two Treatises of Civil Government* make clear that civil society is the solution to the dilemma of the account of society in which pre-modern explanations no longer hold sway:

"Locke could not admit that society was a natural and intrinsically hierarchic situation. Rather, the deconstruction of of such a natural artifice meant that the basis of society, the basis of its possibility and its future, had to be located in society itself. Hence, the centrality of civil society to John Locke. At the very threshold of modernity, Locke used the imagination of civil society

⁵⁰ See discussion at [].

⁵¹ John Keane, "Despotism and Democracy: The Origins and Development of the Distinction Between Civil Society and the State 1750-1850," in John Keane, ed., *Civil Society and the State* (London Verso 1988), at 35.

⁵² See Thomas Hobbes, *Leviathan* (NY Dutton 1950) [at pp]; see [Hobbes cite, probably Sharon Lloyd, *Ideals and Interests in Hobbes' Leviathan*].

to explain how society was possible ... For Locke, civil society was the guarantee of modernity."⁵³

Yet in either case, Hobbes or Locke, along with everyone else, until the mid-eighteenth century, "without exception used the term civil society to describe a type of political association which places its members under the influence of its laws and thereby ensures peaceful order and good government."⁵⁴

At this point, however, things began to change; the linkage between the state and civil society began to erode until, finally, the traditional concept of civil society

"began to implode during the second half of the eighteenth century. Sharing the fate of many other concepts in the terminological upheavals of this [time], it becomes fragile and polysemic, an object of intensive discussion and controversy. The term civil society certainly remained a key word of European political thought throughout the period 1750-1850. by the middle of this period, however, civil society and the state, traditionally linked by the relational concept of *societas civilis*, were seen as *different* entities."⁵⁵

A key writing that suggests, in early and tentative form, the separation of civil society from the state is Adam Ferguson's famous *An Essay on the History of Civil Society* (1767).⁵⁶ Ferguson (an enthusiastic intellectual of the Scottish Enlightenment, that flowering of thought between approximately 1750 to 1830 which included David Hume, Adam Smith, and Adam Ferguson as well as a host of lesser intellectuals)⁵⁷ seeks in his essay to account for the rise of a sophisticated

⁵³ Keith Tester, *Civil Society* (NY Routledge 1992) at 40; see the additional commentary at 35-45; see John Locke, *Two Treatises of Civil Government* [cite].

⁵⁴ John Keane, "Despotism and Democracy," at 35.

⁵⁵ John Keane, "Despotism and Democracy," at 36.

⁵⁶ See Adam Ferguson, *An Essay on the History of Civil Society*, ed. and introduced by Louis Schneider (New Brunswick NJ Transaction 1991).

⁵⁷ "In round figures, [the Scottish Enlightenment] lasted from 1750 to 1830. David Hume's *Treatise of Human Nature* appeared as early as 1739, but Hume was then only twenty-eight and he lived to publish significant works well beyond 1750 ... Adam Smith's *Theory of Moral Sentiments* appeared originally in 1759 and his *Wealth of Nations* in 1776. Ferguson's main books came out between 1767 and 1792. When Ferguson died in 1816 at the age of ninety-two, the stream in which he had been included was close to its end." Louis Schneider, "Introduction to the Transaction Edition," Adam Ferguson, *An Essay on the History of Civil Society* (1767), edited and introduced by Louis Schneider (New Brunswick NJ Transaction 1991), at v. See also Istvan Hont and Michael Ignatieff, eds., *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment* (Cambridge UP 1983), particularly the opening essay, Istvan Hont and Michael Ignatieff, "Needs and justice in the *Wealth of Nations*: an introductory essay," at 1.

commercial society, advancing in the arts, commerce, science, and technology. He recognizes that the advance of modern civil society and its more complex forms of social organization and administration subject people to the evil of corruption as the wealthy pursue wealth, pleasure, and luxury, forsaking the responsibilities of the public realm. John Keane captures this concern out of Ferguson's essay very precisely:

"Modern civil societies are civilized to an insufficient -- and reversible -- degree. They may be called 'civilized' or 'polished', but they are subject none the less to various powerful forms of corruption and decline. Ferguson emphasizes that ... it is an unintended product of the arrangements of modern civil society itself. Of particular concern to Ferguson -- his indebtedness to the older tradition of civic humanism is evident here -- is the matter in which civil society produces a loss of 'public spirit' among its (male, property-owning) citizens. Their 'disinterested love of the public' withers away; public life is considered 'a scene for the gratification of mere vanity, avarice, and ambition; never as furnishing the best opportunity for a just and happy engagement of the mind and heart.'⁵⁸

The removal of responsible citizen-leadership from the polity is an invitation to political despotism; corruption and despotism are twin temptations not merely of ancient regimes, but just as much of advancing technical and commercial society:

~~"The dialectic between civil society and political despotism is basic to Ferguson's argument.~~ Despotism is seen as a form of oligarchic state which pacifies its subjects and divests them of their traditional civil rights, if necessary by bureaucratic regulation, fraud and military force. It dispenses with public discussion and encourages jealousy and mutual mistrust among the governed. Despotism greatly fears man's natural 'spirit of dissension' ... and for that reason thrives on the corruption of public spirit. *For that reason also, despotism has a deep affinity with modern civil society.* Ferguson warns that the path to despotism is *prepared* by civil society ... Civil society destroys public spirit. It strengthens the scope and power of state administration and accustoms its subjects to the civil order and tranquillity it secures. Civil society also institutes a professional army, thus exposing itself to the dangers of government by military force."⁵⁹

For the largely ahistorical political theorists and contemporary promoters of democracy and human rights worldwide, this concept of the *risks* posed by civil society -- the risk of despotism *made possible by civil society itself* -- described in one of the foundational documents of the modern usage of the term, must seem strange. Yet Ferguson's logic is not hard to follow. Civil society is commercial society, resting on the division of labor; at the bottom, workers are more machine like and less "full" human beings, at least in their labor time, and so more passive

⁵⁸ John Keane, "Despotism and Democracy," at 41.

⁵⁹ John Keane, "Despotism and Democracy," at 42.

than in earlier times, including politically passive. At the top, increased wealth, luxury, and the crass commercial competition made possible by civil society, commercial society, causes the upper classes to lose the civic virtues of governing that are critical to avoid both corruption and despotism; giving in to the former, they fall prey to the latter.

Ferguson attempts a solution to this problem, hesitatingly and tentatively, but a solution which nonetheless brings him toward the concept of civil society as we tend to think of it today.

His key idea is

"the creation and strengthening of citizens' associations -- whether in courts of law (juries), the military (citizens' militias) or in civil society at large. According to Ferguson, man, in contrast to the animals, has an innate capacity 'to consult, to persuade, to oppose, to kindle in the society of his fellow-creatures'. He acts best when in social groups. His life is therefore happiest and freest when under the influence of the 'animated spirit of society'. ... It follows that governments become illegitimate -- despotic -- whenever they stifle the public spirit so engendered by association in social groups."⁶⁰

Yet for all Ferguson's closeness to the contemporary usage of civil society, he does not quite say it. He hangs back, unwilling to follow where that thought would lead:

"Ferguson comes close to saying that the survival and progress of modern civil society require the development of independent social associations -- the development of a civil society within a civil society. Not surprisingly, his classical train of thought never allowed this paradoxical conclusion ... [because] civil society and the state would no longer be coterminous entities."⁶¹

The ground is prepared in Ferguson; the next steps are taken with rapidity in Thomas Paine's *The Rights of Man*,⁶² his polemic against Burke's demurrer to the French Revolution.⁶³ For Paine, it is evident that the power of the state is set against the power of civil society, and the power of the former must be constrained; the state is a "necessary evil and civil society an unqualified good."⁶⁴ By the time we come to Hegel two decades later, the concept of civil society is separated altogether from the state, but, in a reversal from the radical conception of

⁶⁰ John Keane, "Despotism and Democracy," at 43-44.

⁶¹ John Keane, "Despotism and Democracy," at 44.

⁶² See Thomas Paine, *Rights of Man: Being an Answer to Mr. Burke's Attack on the French Revolution* (Part I, 1791) (NY Free Thought Press Association -[my used book store copy from years ago - is very old and undated, probably should cite a more recent edition]);

⁶³ See Edmund Burke, *Reflections on the Revolution in France* [cited later in this paper somewhere].

⁶⁴ John Keane, "Despotism and Democracy," at 45. I paraphrase from John Keane here; his extended discussion of Paine is exceptionally acute, at 44-50.

Paine, it is the state, not civil society, which is the normatively superior institution, because in it the selfishness of individuals acting privately, for their private and particular ends, is resolved in favor of the universality of the state:

"For Hegel the creation of civil society 'is the achievement of the modern world'.... He would make a distinction between society as a sphere of 'universal egoism' omnipresent and characteristic of every society and that of civil society in present times. In modern societies individual self-interest is sanctioned and then emancipated from 'religious and ethico-political considerations'. Until recent times the traditional constraints had hampered the free play and full extension of individual interests ... Hegel goes beyond this, however, to propose that civil society is predicated on needs and a lower kind of knowledge. This lower kind of knowledge ... is contrasted with the higher level of reasons ... which is to be discerned *in the state* ... Civil society, although it precedes 'the state in the logical order, is ultimately dependent upon the state for its very existence and preservation'."⁶⁵

The result of this ordering is that although civil society analytically precedes the state, it is not the final end. Moreover, the *opposition* between civil society and state that is central to Ferguson in an implied way and explicit in Paine disappears in Hegel, and it is clear where Hegel comes down; civil society for Hegel is "purely instrumental -- not an end in itself as is the state."⁶⁶ Or as Tester interprets Hegel:

"Hegel accepted the claims which were made by the state and, indeed, in many ways confirmed them. Hegel thought that civil society as indeed a sphere of private egoism riddled by conflicts between individuals. But, for him, the state *was what it claimed to be*. It was indeed the overarching architecture which could control and reconcile these conflicts ... Hegel stresses the status of civil society as the sphere of individuals operating in their private capacities. But he also emphasizes that the particularities are subsumed within a wider universality; that universality is unsurprisingly identified as the state."⁶⁷

Whereas for Marx, by contrast, civil society simply means "bourgeois society."⁶⁸ About that and its relation to the contemporary usage of the term civil society, we shall have much more

⁶⁵ Marvin B. Becker, *The Emergence of Civil Society in the Eighteenth Century: A Privileged Moment in the History of England, Scotland, and France* (Bloomington Indiana UP 1994), at 121-122 (emphasis added); Becker is quoting from Georg Hegel, *Philosophy of Right* [cite].

⁶⁶ Marvin B. Becker, *The Emergence of Civil Society*, at 122; for comparison, see John Keane, "Democracy and Despotism," at 50-55.

⁶⁷ Keith Tester, *Civil Society*, at 21-22 (emphasis added).

⁶⁸ [cite to marx - ask jamie boyle if he remembers where this is]; see also, Marvin B. Becker, *The Emergence of Civil Society*, at 121: "What Hegel termed 'civil society', Marx called 'bourgeois society'."

to say later.⁶⁹ For now, the question is what difference some knowledge of this tangled history of the usage and idea of civil society makes today. Does it make any difference? Well, tangled intellectual pedigrees of key conceptual terms often indicate deep conceptual problems that appear to be covered over by terminology but which reemerge, sometimes with severe political consequences. One of these is, of course, the fraught relationship between civil society and the state; in the heroic revival of civil society as a category of emancipation by Solidarity in the early 1980s, the relationship of opposition was clear.⁷⁰ In legitimate, constitutional democracies, however, the *normative* oppositional relationship -- how much and how little there ought to be -- between civil society and the state is much less clear. A second issue is the relationship between civil society and the market; a right wing view might hold, after all, that civil society *is* the marketplace, rather than accepting what is, in many respects, a kind of social democratic perspective of the left that the market is something different and is to be identified not with freedom and emancipation but instead with corporatism and economic domination, not to say exploitation.⁷¹ A third issue (and one that is critical to the argument of this Essay) is how to regard Marx's insistence that civil society is just bourgeois society; what does this mean for advocates of civil society who are equally insistent that their new social movements within civil society are emancipatory and moreover "draw their support in novel ways from across class boundaries"?⁷² What does it mean, to presage the argument of the Essay, to believe both that

⁶⁹ See discussion at [].

⁷⁰ See, among many useful sources, Adam Michnik, *Letters from Prison and Other Essays* (Berkeley Univ. of California Press 1985) [need this book, i don't have it]; and the analyses of the reconstruction of civil society in Poland in the first Solidarity period, 1980-1981 in Andrew Arato, "Civil Society Against the State: Poland 1980-1981," 47 *Telos* (Spring 1981), at 23; Andrew Arato, "Empire vs. Civil Society: Poland 1981-1982," 50 *Telos* (Winter 1981-1982), at 19.

⁷¹ I will not argue it here, but it seems to me that Francis Fukuyama adopts something like this conservative position in Francis Fukuyama, *Trust: The Social Virtues and the Creation of Prosperity* (NY Free Press 1996); his notion of association does not seek to distinguish the commercial from what today would be regarded as the "noncommercial," associational realm of civil society; and in that regard, he is closer in spirit, in some measure, to the writers of the Scottish Enlightenment. See discussion at [].

⁷² John Keane, "Introduction," John Keane, ed., *Civil Society and the State* (London Verso 1988), at 12. This is one of Keane's very few lapses of good sense, and he falls into it by endorsing uncritically the heroic view of civil society as exemplified by the struggles in Eastern Europe in the 1980s. Perhaps it reflects the spirit of the times more than, for example, Keane's much more cautious view in his recent biography of Vaclav Havel, John Keane, *Havel* [cite - it's brand new

globalization is partly about the rise of global civil society and, with Marx, that it is simply the

and cite reviews also in TLS and elsewhere]. The idea that the new social movements reach across social classes in novel ways or otherwise is, in my experience, whether in Eastern Europe or elsewhere, simply nonsense; they are movements of the middle class, always have been and always will. Sitting, for example, through countless meetings of ecological, peace, and human rights organizations in Croatia and Slovenia during the 1980s on behalf of Human Rights Watch and other organizations, it was obvious that the new social movements were an entirely middle class, indeed upper middle class, activity. Moreover, the ways in which they lent themselves to the breakup of Yugoslavia were (granted, to be sure, with twenty-twenty hindsight) less than exemplary and turned out to be, in some sense, especially in Slovenia, a combination of "progressive" nationalism, nationalism that managed quite cleverly to fit itself into the left's new social movement categories, so to put itself beyond criticism as nationalism, and the phenomenon of "not in my back yard" (so-called "nimbyism"), in which the calls for localism by Slovenia and Croatia were simply a way of turning their back on the problems of Serbia and Kosovo. It called itself "Green localism" and the "peace movement" in both Croatia and Slovenia, but in many respects it was the nationalist and sometimes racist attitudes of peoples who had decided that they were "European," while the Serbs and Albanians were not, dressed up in progressive clothing, and saying that they simply did not want to have anything to do with the "southerners" and their problems. It was a politics indistinguishable, so far as I could tell, from the secessionism of the Northern Leagues in Italy and their desires to jettison southern Italy and its problems, but in Croatia and Slovenia was never subjected to the hysterical calls of facism and racism, because in those places it used all the right language of new social movements. And did not just use the right language -- they *were* in many places, the vaunted new social movements. See, for a view I almost entirely disagree with, Sabrina P. Ramet, *Social Currents in Eastern Europe: The Sources and Meaning of the Great Transformation* (Durham NC Duke UP 1991). Ramet's book reflects both the euphoria and the blindness of the times, coming as it did, just between 1989 and the outbreak of the wars of the Yugoslav succession. Suffice it to say, by way of critique, that looking backward from the vantage point of the uneasy peace in the former Yugoslavia almost a decade later, that there is something normatively wrong in regarding uncritically the movements of both Albanians and Serbs in Kosovo as examples of new social movements, as though "people power" were anything more, in this case, than incitement to war. Moreover, there is reason to doubt, as certainly I do, the dominant account, once again heroic romanticism, of the fall of communism as being a function of the new social movements and civil society. Communism fell in Eastern Europe, so far as I can determine, on account of the collapse of the center -- the actions of Gorbachev and his decision to let the empire go in order to try and fix the core. As John Hall, himself a strong advocate of ideas of civil society, has observed, "communism did not fall, as many expected and some still believe, because of pressures from below, that is, from the forces of civil society." John A. Hall, "In Search of Civil Society," in John A. Hall, ed., *Civil Society: Theory, History, Comparison* (Cambridge Polity 1995), at 1. Still the best analysis for the reasons for the fall of the Soviet empire is Paul Piccone, "[Contradictions of Perestroika]", *Telos* [cite]; Piccone is a breath of cool clarity entirely free of the romantic mythmaking of the liberation of Eastern Europe "from below" -- a notion that has about as much accuracy, to my mind, as thinking that because De Gaulle entered Paris first, it was liberated by the French army.

rise of the bourgeoisie? The conceptual contradictions that lie beneath the surface of this comforting, unthreatening word matter indeed.

F. A Note on Legitimacy

Much in this Essay depends upon the concept of legitimacy. In discussing a term so intertwined with all the rest of the Essay, however, a certain number of the Essay's concepts and conclusions must unavoidably, if inelegantly, be introduced now although they properly belong later in the argument. I would ask the reader to accept them for purposes of understanding the role of legitimacy in the Essay and allow them to be argued later.

In general, the legitimacy of a "social order is the effective belief in its binding or obligatory quality."⁷³ This formulation draws upon Weber and carries a sense that legitimacy is an empirical fact to be determined about a social order and its members:

"Action, especially social action which involves a social relationship, may be guided by the belief in the existence of a legitimate order. The probability that action will actually be so governed will be called the 'validity' (*Geltung*) of the order in question."⁷⁴

Weber's criterion for determining the existence of legitimacy is, roughly, stability -- the ~~"probability," in other words, that a social action will be governed by belief in the legitimacy of~~ the social order measures the degree of legitimacy. Moreover, legitimacy is to be distinguished from other kinds of reasons for obeying laws or rules of the social order, such as the fear of punishment, or even custom or habit; as a standard sociology text puts it:

"Commands, then, always carry a minimum of voluntary compliance; they are obeyed because of a belief in the legitimacy of the authority. It is, therefore, not a question of an 'organized minority', or elite, imposing its rule on an unorganised mass, but rather of the process of institutionalising the 'inner support' of subjects for the different modes of authority. Weber's sociology of domination is ultimately less concerned with the sources of power in material

⁷³ Alan Hyde, "The Concept of Legitimation in the Sociology of Law," 1983 Wisconsin Law Review 379, at 380-81. As Hyde points out, this is not the only sense in which legitimacy or legitimate are used. "[L]egitimate' is sometimes a simple description of a positive legal doctrines, under which one could speak of a Supreme Court decision as 'legitimizing' or granting 'legitimacy' ... In a closely related sense, 'legitimate' may mean any sort of public relations which attempts to put political institutions or decisions in a favorable light ... one [also] encounters the use of 'legitimate' and 'legitimacy' as wholly evaluative comments. The speaker may describe abortion laws, discriminatory laws or entire political systems as 'illegitimate' and not be understood as making any assertion about belief." Hyde, at 381, note 1.

⁷⁴ Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, Guenther Roth and Claus Wittich, eds. (Berkeley Univ of California 1978), Vol. 1, at 31.

forces, such as property ownership, than in the ideologies which legitimate different forms of rule."⁷⁵

Legitimacy, for Weber, is a kind of "background" category that serves to ground social norms and provides a specific kind of motivation for adherence to them and acceptance of the authority that promulgates them:

"[T]he validity of an order means more than the mere existence of a uniformity of social action determined by custom or self-interest ... [A]n order [will] be called 'valid' [only] if ... among other reasons ... it is in some way regarded by the actor as in some way obligatory or exemplary for him. Naturally, in concrete cases, the orientation of action to an order involves a wide variety of motives. But the circumstances that, along with the other sources of conformity, the order is also held by at least part of the actors to define a model or to be binding, naturally increases the probability that action will in fact conform to it, often to a very considerable degree."⁷⁶

This famous passage makes entirely clear that the sole enquiry concerning legitimacy is, so far as Weber is concerned, a question of fact of how people actually regard their social order. In that sense, it is a purely descriptive enquiry and, indeed, as Weberian sociology makes clear, one which in advanced bourgeois society devolves into a question of formal rulemaking and the legality of enacted rules -- finally, a matter of procedure and process. As John Keane has interpreted Weber:

"The Weberian theory of legitimate domination countered the early nineteenth-century understanding of 'legitimism' as divinely sanctioned hereditary rule with a potentially conformist thesis: Widespread belief in a system of governing institutions, it was argued, contributes to the stability of its relationships of command obedience. Legitimacy denotes the positive valuation and acceptance enjoyed by a system of power and its bearers, who 'voluntarily' accept their masters as valid and deserving and their own subordination as an obligatory fate ... According to Weber, the survival of every system of social action structured by relations of command and obedience depends upon its capacity to establish and cultivate widespread belief in its meaningfulness to the degree that any system guarantees its reproduction in this way, it can said to be legitimate. As is well known, Weber's analysis of various modes of consensus of legitimate authority -- tradition, affect, value rationality, charisma, legality -- produced the conclusion that the modern bourgeois world tends to legitimate itself by fostering belief in the legality of enacted rules and the right of those elevated to authority under such rules to command. Not only obedience, but also internalized respect tends to be granted to the impersonal, legally founded social and political order, which is more and more organized in administrative and bureaucratic form. Compared with earlier forms of legitimacy, Weber proposed, the modern form becomes thoroughly formalistic: The basis of legitimacy shrivels to mere belief in the legality of

⁷⁵Alan Swingewood, *A Short History of Sociological Thought*, 2nd ed. (NY St. Martins 1991), at 191.

⁷⁶Max Weber, *Economy and Society*, Vol. 1, at 31.

procedure. Institutions of power are legitimate by virtue of their legality; populations nowadays display a readiness to conform with rules that have been developed and deployed according to *formally* correct and accepted procedures."⁷⁷

Thus the Weberian view of legitimacy offers a definition and proposes two corollaries.⁷⁸

Legitimacy, defined, is the widely held belief among a population that a social order is obligatory. The first corollary is that legitimacy is a reason for acting in a certain way, in conformity with the social order's requirements, and it is a reason independent from other reasons for conforming to the social order, such as custom or self-interest. The second corollary is that legitimacy gives *greater* conformity than either custom or self-interest would yield, and this greater conformity reveals itself in greater social stability. And as Keane has pointed out, a corollary of these corollaries is that, for Weber, the form of legitimacy in modern society is procedural rather than substantive. Legitimacy itself is a question of fact about the relationship of social actors to their social order.

Important objections to the Weberian view can be essayed. Alan Hyde, for example, challenges among other things whether there are good grounds for thinking that legitimacy can ~~be distinguished from other reasons for conforming to the social order, such as custom or~~ self-interest. He argues that there are good grounds for skepticism about legitimacy versus Weber's other two classic grounds of action, habit and expediency. As he says, the Weberian model has been accepted largely uncritically for many decades in American sociology of law; the general theory, he notes:

"is that the procedures, rituals, ideology, and substantive decisions of legal institutions, particularly judicial institutions, measurably shape American popular beliefs in the legitimacy of government and the American sense of obligation and loyalty to nation. Legal scholars of the left and right, with sharply divergent beliefs as to whether the American social order is just and worthy of obedience, share a belief in the empirical reality of this legitimacy process."⁷⁹

⁷⁷ John Keane, *Public Life and Late Capitalism: Toward a Socialist Theory of Democracy* (Cambridge UP 1984), at 224-225.

⁷⁸ I draw here from Alan Hyde, "The Concept of Legitimation in the Sociology of Law," 1983 *Wisconsin Law Review* 379, at 382.

⁷⁹ Alan Hyde, at 383.

Hyde's analysis leads him to the conclusion that, at least with respect to American legal institutions, "the Weberian model -- law to belief to behavior -- is at best problematic and unproven and at worst is probably wrong."⁸⁰

I do not propose to analyze Hyde's skeptical attack in any depth, except to note that although I think he makes an important critique of American legal institutions and the strength with which many American legal theorists cling to a Weberian framework, my experience of the world beyond the US leads me to believe, much more than Hyde is willing to grant, in the existence of an *independent* category of legitimacy. My work in human rights and international NGOs has taken me to several conflicted societies, scenes of civil war and its aftermath, and whether in Kosovo, Abkhazia and Georgia, Tajikistan, Kurdistan, Guatemala, Panama, Columbia, and other places, and under those extreme circumstances, the sense -- qualitative as it might be -- of whether existing command structures were legitimate played an enormous role in whether violence would be sporadic or endemic. Perhaps in no other circumstance is it starker than in situations of occupation; in which foreign troops, often under UN flag, seek to maintain order. In those circumstances, the perception of legitimacy is what determines whether the foreign troops would be regarded as "soldiers" or "police." The difference is crucial; soldiers seek to destroy an enemy's will to fight and coerce it into accepting another's political commands, while police seek to preserve order among social actors who are not, provided the social order has even minimal legitimacy, the "enemy."⁸¹ The lives of police depend everyday, so far as I can tell, on an irreducible category of legitimacy;⁸² to spend a night on patrol with soldiers trying to play at the role of police in a place where their legitimacy to act as police is uncertain is to receive a persuasive lesson in the existence of legitimacy as an irreducible social category. The judgment is subjective, I grant, but at least in those extreme circumstances, the existence of an independent category of legitimacy is evidenced by the depth of *resentment* at its absence; I frankly cannot conceive that it can be reduced in every case to custom or self-interest.

⁸⁰ Alan Hyde, at 385.

⁸¹ Kenneth Anderson, "Remarks [on Differences Between Police and Soldiers]," Proceedings of the American Association of International Law, Panel on International Law and Literature, April, 10, 1997, at 116; see further discussion of these points at [].

⁸² And not only the lives of the police, but also the lives of the civilians, who in situations when the police lack legitimacy, find themselves facing more frightened, trigger-happy officers.

A more central concern about Weberian legitimacy for this Essay is that it is an impoverished discourse of social science, because it reduces the concept of legitimacy to a matter of mere perception. "Sharing the fate of much of our early modern political vocabulary," writes John Keane,

"[t]he concept of legitimacy has in recent decades suffered a considerable loss of meaning. Our political discourses seem to have all but forgotten its deep significance. This impoverishment of the concept of legitimacy dates at least from the eighteenth-century efforts to overthrow the concern of the modern social contract tradition with 'legitimate government'; in particular, it derives from Hume's assertion that government is founded only upon opinion, especially the 'sense' of general advantage that is reaped from government ... In [Weber's account], questions about the principles in accordance with which a regime comes to be seen as legitimate are confounded: *There can be no independent inquiry into the validity of beliefs of the regime's dominated groups and the claims of their rulers and their procedures to authority. [Weberian theory] prematurely rules out the possibility of investing the truth basis of existing beliefs.* The suspicion that such beliefs have a deceptive or ideological basis that suppresses awareness of a regime's historical contingency cannot be pursued. As a consequence, the processes through which a regime more or less successfully secures its relations of power through the planned production and deployment of mass loyalty resources ceases to be an object of critical analysis. 'Legitimacy' [for Weber] connotes mass consensus."⁸³

It is possible, in other words, to establish criteria of legitimacy that are not dependent merely upon the fact of mass consensus. Pre-Weberian, pre-Humean views of legitimacy, even without invoking transcendent, religious criteria such as divine kingship, offered unabashedly *normative* criteria that surely ought to remain of crucial relevance in establishing legitimacy.⁸⁴ One such criterion, with us since at least the days of the social contractarians, is the consent of the governed as the basis for democratic rule.⁸⁵ There are others, such as adherence to fundamental

⁸³ John Keane, *Public Life and Late Capitalism*, at 225-226 (emphasis added).

⁸⁴ "In one crucial sense, the theories of legitimate authority of the early modern, ancient, and medieval worlds shared an *evaluative, even critical*, thrust that now stands in danger of falling into obscurity. These theories were emphatic: Legitimacy was only one very particular form of established consensus about the distribution and operations of power. In the case of the nonmodern world, for example, the force or validity of claims to power was seen as resting upon neither the 'natural attitude' of believers nor the arbitrary and mystifying claims of those who exercised power. Such claims, on the contrary, were seen as drawing their validity from an objective order that had a relative independence or "otherness." It was this independent order that served as the standard against which the established universe of power could be evaluated or criticized or by which could lay claim upon the lives and duties of its subjects." John Keane, *Public Life and Late Capitalism*, at 226.

⁸⁵ "The seventeenth- and eighteenth-century contractarian concept of legitimacy ... must be distinguished from its objectivist predecessors. Although it also eschewed the unthinking

standards of human rights. Yet the Weberian model does not take into account normative views; in its apparently neutral, studiously social-science stance, it does not inquire into the moral validity of a social order as a criterion of its legitimacy.

The critique of Weber gives rise to three possible fundamental criteria for the legitimacy of a social order: Weberian empirical description or "proceduralism"; normative criteria based upon moral or other evaluative considerations; or a mixture of the two. It is important to recognize that although Weber adopted a theory that is descriptive (rather than evaluative), but also "procedural." Yet it should be noted that it is possible to hold a normative theory of legitimacy that is "thin," in that its only criteria are purely those of procedure, without being "Weberian" in the sense that it might not matter for purposes of the theory whether the population actually believes the processes give legitimacy. All that might matter is that the processes be fulfilled, whether or not they are believed or perceived to have been fulfilled. Weber's proceduralism is *not* normative in that sense, it should be emphasized, however, because in the end it asserts that proceduralism is important *whether or not* it is objectively so, because it is simply the fact of modern society that legally valid procedure is what matters in advanced bourgeois society for the *perception* of legitimacy, and hence *for* legitimacy -- and not for any stronger, normative reason.

As both Hyde⁸⁶ and Keane note, Weberian theories still dominate thinking about legitimacy:

"In spite of continuing controversy over its substantive assumptions and implications, the influence of the Weberian theory of legitimacy has been sustained throughout the twentieth century. MacIver's classic, *The Web of Government*, typically establishes the constitutionality or 'accepted standards of legality' as the single most important index of a government's legitimacy ... More recently Luhmann has pursued this idea: He argues that systems of power legitimately stabilize themselves inasmuch as they operate in accordance with definite, positively established legal rules ... Drawing upon Weber, Parsons is concerned those 'functionally imperative' social processes whereby certain value orientations come to be shared, internalized in the form of personality, and institutionalized within the social structure ... Lipset's investigation of the

association of legitimacy and mass consensus, its singular achievement was the defetishism of the old claims upon power. It insisted that the entitlement of legitimacy of power must be brought to earth and grounded upon individual *subjects'* natural capacities for self-reflection, judgment, and action. Legitimate power, in this novel view, only *emerged* from the agreements made by contracting individuals." John Keane, *Public Life and Late Capitalism*, at 227.

⁸⁶ Alan Hyde, at 383, "There is thus a large body of theory that rests on the supposedly significant contribution of law and legal institutions to popular belief in legitimacy."

necessary conditions of equilibrium democracy similarly concerns itself with the capacity of a social system to engender and perpetuate the belief that the logic of its institutions is most appropriate, and therefore necessary."⁸⁷

Jurgen Habermas, by contrast, has explicitly set out a "mixed" theory of legitimacy that intertwines descriptive elements with normative ones.⁸⁸ In the version of the argument given in Legitimation Crisis, Habermas rejects Weberian legitimacy because it is no more than "belief in legitimacy ... conceived as an empirical phenomenon without an immanent relation to truth."⁸⁹

Habermas is explicit that the inadequacy of Weber's formulation is because

"the connection between reasons and motives that exists in communicative action is screened out of the analysis. At least any independent evaluation of reasons is methodically excluded -- the researcher himself refrains from any systematic judgment of the reasons on which the claim to legitimacy is based."⁹⁰

Yet although Habermas criticizes Weber's theory for having no normative element,⁹¹ he is likewise critical of theories that are wholly normative. Habermas' own theory of legitimacy in Legitimation Crisis is indeed "mixed," in that it introduces an irreducibly evaluative element:

"Legitimacy means that there are good arguments for a political order's claim to be recognized as right and just; a legitimate order deserves recognition. *Legitimacy means a political order's worthiness to be recognized.*"⁹²

This may not seem deeply revelatory at first blush, but it takes on substantive weight in the context of Habermas' larger epistemology of communicative action and contestable validity claims: "This definition [of legitimacy]," says Habermas, "is a contestable validity claim."⁹³ It is beyond the scope of this Essay to pursue more deeply Habermas' epistemology, without which an assessment of Legitimation Crisis' theory of legitimacy cannot be undertaken.⁹⁴ What matters for

⁸⁷ John Keane, *Public Life and Late Capitalism*, at 225.

⁸⁸ See Alan Hyde, at 399, note 45 for a useful summary of Habermas' view.

⁸⁹ Jurgen Habermas, *Legitimation Crisis* (1975), at 97 [Can't find my copy - need this book and check references].

⁹⁰ Jurgen Habermas, *Legitimation Crisis*, at 200.

⁹¹ Although it might be argued -- I will not pursue it here -- that Weberian legitimacy, apparently neutral and uninterested in the content of the social order, in fact smuggles in substantive criteria in the way Weber treats legal formalism and, more broadly, the emphasis on social stability.

⁹² Jurgen Habermas, *Legitimation Crisis*, at 178.

⁹³ Jurgen Habermas, *Legitimation Crisis*, at 178.

⁹⁴ [See cites to Habermas and legitimacy]

this Essay is that it is thought possible to elaborate theories of legitimacy which go beyond purely Weberian description and proceduralism, but which are not purely "objectivist," either.

The "social actors" (to use the Weberian term) which figure in this Essay are public international organizations and international NGOs, and they stand in a peculiar relationship to these possible justifications of legitimacy. As the Essay will discuss, public international organizations and the mainstream of international NGOs broadly share a vision of the world, a loose and sometimes contradictory vision, but one in which, whatever disagreements may exist over the form and extent of *economic* globalization, *political* globalization is thought desirable (although with significant disagreements over its form and extent, too). They share a commitment, in other words, to the emergence of a new kind of polity, a global polity, which does not yet exist. Moreover, it does not yet exist in a form which gives Weberian legitimacy to the kinds of actions which these actors would like to see global institutions undertake. The formation of that global political order of genuinely supranational institutions, requires the formation of international elites that have an interest in moving forward toward those institutions and which serve, in a very loose sense, as their vanguard party. This Essay later discusses the formation and some of the characteristics of that emerging international elite; it includes both public international organizations and many international NGOs, institutionally and individually. One of its characteristics, however, is that it is convinced about the rightness of globalization, at least in a "broad church" sense. It may disagree about many of its characteristics and how they should be shaped in the coming new economic, political, and cultural order of things, as this Essay discusses later, but its members believe sufficiently in one part or another of the project of globalization that this emerging elite as a whole believes in the rightness of globalization. To be sure, not *all* international NGOs believe this; the Essay will discuss how radical environmental NGOs, in particular, sometimes offer a vision of the "local" that is a genuine alternative to the vision of globalization in all of its categories and genuinely "anti-globalization." But important as these organizations are -- important as the existence of an articulated, theorized alternative to globalization is -- the mainstream of international NGOs are accepting of globalization, either of its rightness or, at a minimum, as discussed below, its *inevitability*.

These assertions about emerging international elites and their attachment to globalization (discussed in part IV of this Essay) imply the following about legitimation and globalization. On

the one hand, these international elites recognize that they do not have Weberian legitimacy with respect to the broad swathe of human beings across the planet to establish the kind of supranational institutions that comprise political globalization. However, they also understand that because the supranational order they seek to establish will not be founded on *democratic* legitimacy -- the "consent of the governed" as the normative criterion of legitimacy -- reaching down to the consent of the broad swathe of humanity, the Weberian legitimacy that matters lies at the level of institutions, institutions that must be re-constituted and reshaped to accept the constitutional supremacy of supranational institutions over merely national ones and over economic actors as well. That in turn requires a shift in the allegiance and the inculcation of Weberian legitimacy within the broad middle class of the world, in its two fundamental categories -- *both* the global middle class, the global bourgeoisie, that constitutes the individuals in these institutions, on the one hand, and the national middle classes within the world's most important societies, on the other -- to accept these supranational institutions as proper, good, and legitimate. It is a thoroughly utopian project and, as discussed later, is largely modelled on the vision of the EU, transferred to a global level. The project, in other words, involves the active participation of a cosmopolitanized international elite and the *acquiescence* of the national bourgeoisie across many national societies and its acceptance of its Weberian legitimacy, although this broader bourgeoisie might not necessarily be counted as part of the vanguard international elites.

Who
is
this
elite
other
than
those
working
actively
on
global
issues?

Emergent international elites understand that they must secure Weberian legitimacy and they understand, moreover, that this Weberian consent differs from democratic legitimacy. However, they are not committed merely to Weberian legitimacy; they are committed in the first place to a normative criterion of legitimacy -- and the normative criterion that they believe in most firmly is the inevitability of globalization and their right and obligation to govern it. Having abandoned the normative criterion of the consent of the governed, the only criterion that matters is the consent of the governors; these elites believe in their legitimacy to run things, however they conceive what the "running" should look like. As a consequence, what matters to get the dynamic of a common interest in globalization going among these various constituencies is not necessarily a belief in the *goodness* of globalization; they may in fact be highly critical of it -- all that matters, even lacking a belief in its net goodness, is a belief in its *inevitability*. The

various constituent parts of this loose, broad church ruling elite believe in the inevitability of globalization -- at least *in some form*. They therefore see, each from its different perspective, a need to shape and form globalization, in order that *other* parts of these emergent elite do not do so in ways that they dislike -- the free marketeers of globalization, who would minimize supranational institutions and their power, for example, versus global governance advocates, who would use supranational institutions to regulate the global market, and so on. Each constituent among the emergent international elites -- including, seemingly paradoxically, some (not all) international NGOs that apparently propose to put checks and regulation upon economic globalization, often through *more* globalization, political globalization -- worries that if *its* view does not prevail in the coming order, then that of its competitors will. There are, then, sizable disagreements about the shape of globalization and its institutions, but a belief in the inevitability of them in some form, and competition to shape them, is enough loosely to link together groups that might not otherwise be thought to have much to do with one another. The competition among these visionaries of one kind or another links them together as an emergent elite that drives forward globalization. In describing their common project as a "common" one, in other words, it is not necessary to describe a common *value*.

In terms of legitimacy, each believes that it is right, or right enough, that it ought to prevail over the others. If the question is what makes these apparently competitive interests in globalization an emergent international elite, it is that they share an interest in globalization -- each its own particular form of globalization, and competition to see its version prevail rather than someone else's is an important (although not exclusive, by any means) dynamic driving forward globalization. Yet the competitors are united in a vision that globalization *is* coming.

As a criterion of legitimacy, globalization-is-coming-and-it-must-be-my-way is purely normative. Emergent international elites believe powerfully that they deserve to rule, and their sense of entitlement is enhanced by the belief that if they do not, someone else will. It is not a matter of leaving the status quo alone; it *will* change and the questions are what it will look like and who will run it. Weberian legitimacy, it follows, is just a matter of management, creation, and manipulation of public opinion. Because, as discussed in the next part, political globalization makes, at best, rhetorical rather than actual appeal to democratic legitimacy, the consent of the governed, all that matters is the *perception* of legitimacy, on some ideology. It

How are they "common" if what they share is perception of facts not values?
Or: it must not be your way...
How is anyone to appeal to democratic legitimacy?
Can this be done?
Such a possibility

What?

can be by appeal to the ideology of democracy, or to the ideology of human rights, or even just to the ideology of "effectiveness" in managing the economy of the planet -- it does not objectively matter. What matters is simply that people, the right people, the broad bourgeoisie of the planet, believe it. It can afford to be a long term process; it can afford to be a process that moves in tandem with economic globalization driving forward, apparently, the necessity of political globalization. It need not be conceived as anything other than a slow and emergent process. But it is not a question of satisfying *democracy* as the normative requirement of legitimacy.

This discussion has, of necessity, touched on many elements of the subsequent discussion in the Essay. It is unavoidable, because the question of legitimacy is both a question at the outset of the Essay -- what does the Essay mean by it? -- but a question the answering of which requires understanding the peculiar relationships between social actors that give them their particular view of legitimacy and its criteria. To this extent it is necessary to invoke now conclusions that properly come later in the argument. The view, then, that this Essay takes of legitimacy is that, contrary to the views of many that are part of the emerging international elites, legitimacy includes several normative elements, and one of them is democracy, consent of the governed in a meaningful way. This Essay argues, in effect, that supranational governance fails this test. It also accepts that adherence to a sufficiently narrow and limited conception of universal human rights is also a normative element -- but as a ground and complement to constitutional democracy and not as a substitute for it. The Essay argues that supranational governance also fails this test because it fails to limit the reach of the ideology of human rights in these ways. It finally accepts, however, that Weberian legitimacy is *also* part of the test of legitimacy, and argues that supranational governance also fails this test; whether it will *continue* to do so, as international elites undertake the long march through the institutions and the creation and manipulation of public opinion, is a question of fact that will be known only in the sequel.

Habermas!
Weber
what?

The last thing that needs to be said about legitimacy before turning to the argument of the Essay proper is what the theory of legitimacy, under conditions of globalization, has to do with legitimacy in the existing "international," meaning by that "mostly multilateral," system of states, public international organizations, and international NGOs. Thomas Frank has written the leading contemporary account of the legitimacy of the international system in his book *The*

Power of Legitimacy Among Nations. Frank seeks to answer a persistent question about international law -- viz., why is it that in

"the international system, rules usually are not enforced yet they are mostly obeyed. Lacking support from a coercive power comparable to that which provides backing for the laws of a nation, the rules of the international community nevertheless elicit much compliance on the part of sovereign states. Why do powerful nations obey powerless rules?"⁹⁵

It is a question posed against the views of international realists, who tend to regard international law as not really being "law" in the sense of domestic law. An example of the view that Franck seeks to undermine would be the realist approach of John Bolton:

"To claim that the concepts and structures of international law mirror domestic law is simply wrong ... In reality, international law, especially customary international law, meets none of the tests we normally impose on 'law'. In common-sense terms, law is understood as a system of rules that regulate relations among individuals and associations -- and between them and the government (the source of coercive authority that can enforce compliance with the rules) ... Governments often follow only those 'laws' that suit their interests and ignore those that do not, with relative impunity. None of the international organizations that exist today could pass for accountable law-giving, law-interpreting, or law-enforcing bodies ... [Treaties] are just now 'law' as we apprehend the term. And what happens to countries when they do not adhere to international law on some matter? Usually nothing. Why, then, do we continue to talk about international 'law'? Because the word has a strong emotive appeal."⁹⁶

Franck and Bolton disagree over the degree to which international law is actually obeyed by states; what is more important for this Essay is the difference between them as to the source of such obedience to international law as does exist. Bolton sees it, in Weberian terms, as essentially self-interest; in a line of argument that roughly mirrors Hyde's skepticism, Bolton does not see any reason why what Franck sees as legitimacy is not reducible to mere self-interest or possibly custom. Franck, by contrast, sees both substantial adherence and believes that it comes about not merely from self-interest on the part of states but because of the independent effect of the legitimacy of international law. Franck sees the fact of substantial compliance with international law as, in part, a measure of its legitimacy.

⁹⁵ Thomas M. Franck, *The Power of Legitimacy Among Nations* (NY Oxford UP 1990), at 3.

⁹⁶ John R. Bolton, "Review Essay: The Global Prosecutors: Hunting War Criminals in the Name of Utopia," *Foreign Affairs*, January-February 1999, at 157. Bolton perhaps falls into the category that Franck quotes Grotius as speaking about in despair, that "there is 'no lack of men' who make light of the international rule system 'as if it were nothing but an empty name'." Thomas Franck, *The Power of Legitimacy Among Nations*, at 4.

This raises an immediate question as to whether Franck relies on Weberian legitimacy or some normative criterion of legitimacy. The question matters because it might be that Franck means nothing more than that, in his observation of the international system, sufficient compliance exists from reasons of a widespread belief among states in its authority and right to have its rules obeyed, that it is *descriptively* legitimate. If one does not carefully distinguish between Weberian and normative legitimacy, it is an easy slide to the proposition that because the international system has observable *Weberian* legitimacy, it has *legitimacy*, and therefore it also has *normative* legitimacy, and so has an "objectively" moral right to have its rules obeyed. In effect, this would be seeking to get an "ought" from an "is," and while some theories of legitimacy -- Habermas' in particular⁹⁷ -- could be described as seeking to do exactly that, it would require a great deal of argument. With respect to Franck, his definition of legitimacy makes clear that he thinks both that the international system both needs and has Weberian legitimacy:

"A partial definition of legitimacy adapted to the international system could be formulated thus: *a property of a rule or rule-making institution which itself exerts a pull toward compliance on those addressed normatively because those addressed believe that the rule or institution has come into being and operates in accordance with generally accepted principles of right process.*"⁹⁸

Franck is, however, scrupulous, and he understands that this definition does not, by itself, make any claim of normative weight and, particularly, as he says any claim about justice:

"Justice and legitimacy do have something in common. Both tend to pull toward non-coerced compliance. They frequently interact synergistically. Nevertheless, they are discrete phenomena; neither is a dependent variable of the other."⁹⁹

⁹⁷ Franck summarizes Habermas with particular acuity on this point: "Habermas speaks of a discursive validation which is rooted in scientific empiricist reasoning that produces a rational result. In his view, the 'procedures and presuppositions of justification are themselves now the legitimating grounds on which the validity of legitimation is based. The idea of an agreement that comes to pass among all parties, as free and equal, determines the procedural type of legitimacy in modern times'. He distinguishes this from 'a contingent or forced consensus' and 'domination ... accepted *without reason* by the bulk of the population'. The latter is inherently unstable or, to put it empirically, has low value in predicting whether the public will obey." Thomas M. Franck, *The Power of Legitimacy Among Nations* (NY Oxford UP 1990), at 17, quoting Jurgen Habermas, *Communication and the Evolution of Society* (T. McCarthy trans. 1979), at 188.

⁹⁸ Thomas M. Franck, *The Power of Legitimacy Among Nations* (NY Oxford UP 1990), at 24.

⁹⁹ Thomas M. Franck, *The Power of Legitimacy Among Nations* (NY Oxford UP 1990), at 209

Franck does believe that the international system ought to be not merely legitimate, but he believes that justice lexically follows upon habitual, uncoerced obedience to rules that have a pull of their own. In that sense, although he might not characterize it as such, Franck is describing Weberian legitimacy.

I have substantial disagreements with Franck's conclusions about the legitimacy of the existing international system. For purposes of this Essay, however, it is not necessary to undertake that debate. The reason is that *The Power of Legitimacy Among Nations* is just that -- an argument about legitimacy "among nations." It is largely an argument for the legitimacy of the existing, still largely multilateral, international system. True, Franck draws his argument in an evolutionary fashion that looks forward hopefully to the gradual transition from a multilateral system to a genuinely supranational one. But the main body of argument is to defend the proposition that the existing multilateralist system has Weberian legitimacy. This Essay, however, is forward-looking; it is concerned not per se with multilateralism but with where Franck and so many other international lawyers hope the system will go -- supranationalism, ~~political globalization~~. The legitimacy that this Essay argues is lacking in public international organizations and international NGOs and emergent international elites generally is the legitimacy of political globalization and, the Essay argues, there are strong reasons to think it will not acquire any greater specifically *democratic* legitimacy than it has now as a multilateralist system, which is to say, very little whatever.

Public international organizations, international NGOs, and international elites lack legitimacy in seeking over time to establish systems of governance vastly more reaching in their claims to govern and coerce than existing multilateralism. This Essay asserts this on the basis of Weberian legitimacy as well as a normative criterion -- democratic legitimacy, consent of the governed. The ideal of legitimacy used by this Essay thus has at least three requirements, descriptive Weberian legitimacy, and the two normative requirements of democratic legitimacy and universal but sufficiently limited and chastened catalogue of human rights that does not propose, however, to serve as an alternative for democratic legitimacy.¹⁰⁰

And human rights?

¹⁰⁰ Democratic legitimacy, in other words, is accepted not the only relevant normative criterion of legitimacy; fundamental human rights is another. It is not necessary to raise it as a contested criterion of legitimacy in this context, however, because, for reasons explained at part IV of this

II. Who Speaks for Whom? The Legitimacy of Public International Institutions After Seattle

A. Economic Globalization, the Voiceless and the Poor

Following anti-globalization protests carried out by thousands of activists that shut down meetings in Seattle of the WTO in November 1999,¹⁰¹ UN Secretary General Kofi Annan delivered a speech in which he responded to the claims of protestors that they spoke for the world's poor.

The world's poor, he said, "are poor not because of too much globalization, but because of too little -- because they are not part of it, because they are excluded."¹⁰² Economic growth and -- significantly, *opportunity* to participate in that growth and not merely receive some bit of its redistribution as an afterthought, the leftovers of the rich -- is the only way out of poverty for the world's poor. It is "within our power," Annan said, "to extend the new opportunities [of globalization] to all."¹⁰³ Global capitalism, Annan declared, is the spirit of the age and the only way to create the economic growth without which the poorest of the future once again will be those left out of the grand spiral of wealth creation and the accumulation of capital:

"[T]he overarching challenge of our times is to make globalization mean more than bigger markets ... while globalization has produced winners and losers, the solution is not confrontation. It is not to make winners of the losers and losers of the winners. It is to ensure that nobody sinks, but that we swim together with the current of our times."¹⁰⁴

Essay, proponents of political globalization endorse human rights -- in part unfortunately, however, as a substitute for democracy. Democracy, not human rights, is a contested criterion of the legitimacy of political globalization, which is why it is explicitly asserted here.

¹⁰¹ See Sam Howe Verhovek and Steven Greenhouse, "National Guard Is Called to Quell Trade-Talk Protests; Seattle Is Under Curfew After Disruptions," NY Times, Wednesday, December 1, 1999, sec. A, page 1, col. 6; Brian Knowlton, "WTO Delays Talks as Police Rout Protesters Pepper Spray Used on Seattle Throng," International Herald Tribune, Wednesday, December 1, 1999; Helene Cooper, "Waves of Protests Disrupt WTO Meeting, Police Repel Demonstrators As Seattle Mayor Sets an Overnight Curfew," Wall Street Journal, Wednesday, December 1, 1999, section A, page 2..

¹⁰²Kofi Annan, UN Secretary General, "Secretary-General, addressing participants at Millennium Forum, calls for intensified 'NGO revolution'," M2 Presswire, May 23, 2000 (text of speech); Barbara Crossette, "Work With Us, Annan Asks Independents," International Herald Tribune, Wednesday, May 24, 2000, News, page 5.

¹⁰³Kofi Annan speech, M2 Presswire, May 23, 2000.

¹⁰⁴Kofi Annan speech, M2 Presswire, May 23, 2000.

Annan thus aligned the public international system of the United Nations with a particular form of global economic organization, market capitalism, the "current of our times"¹⁰⁵ -- the first Secretary General ever to do so without ambiguity or apology. More precisely, Annan aligned the global moral claim represented by the UN as a public international institution with the global moral claim represented by the global private market -- in the interests of the world's poorest people, according to Annan, but contrary to the claims of the Seattle protestors for whom the rules of the new global economy have been, in the words of Jay Mazur, president of the Union of Needletrades, Industrial and Textile Employees (US), at a Seattle rally, "rigged against workers, and we're not going to play by them anymore."¹⁰⁶ To be sure, the form of economic globalization that the Secretary General endorses is far from the unfettered, unregulated global marketplace that, for example, the editorial page of the Wall Street Journal might prefer;¹⁰⁷ it is "managed" global capitalism, where the purpose of "management" is, in large part, to ensure that the world's

¹⁰⁵Kofi Annan speech, M2 Presswire, May 23, 2000.

¹⁰⁶NYT, "National Guard Is Called to Quell Trade-Talk Protests," December 1, 1999, quoting Jay Mazur speech of November 30, 1999. ~~Not all of those supporting the positions of the protestors~~ were necessarily political leftists or anti-free trade conservatives; the conservative columnist William Safire wrote: "I am not a global warmnik, union agitator, or stocking-masked anarchist; indeed, laissez-fairies have always been dancing in my garden. But by jingo, I believe the United States should be a light unto nations by virtue of our example of enlightened free enterprise. That means not lowering our health and labor standards to let investors everywhere to make a buck, but applying our standards to others who want to make a buck with us. International trade that does not use its leverage to encourage personal freedom does not deserve the name of 'free trade'. We accept the burden of importing many of the world's problems; our trading partners should note that America's most rewarding export is individual liberty." William Safire, "The Clinton Round," New York Times, Monday, December 6, 1999, at A-31 (opinion page).

¹⁰⁷ Editorial and opinion page discussions of Seattle in the Wall Street Journal include "Sleepless in Seattle," Wall Street Journal, November 30, 1999, editorial, at A-26; "While the WTO Burns," Wall Street Journal, December 2, 1999, editorial, at A-22; Thomas J. Duesterberg, "Free Trade Can Progress Without WTO," Wall Street Journal, December 2, 1999, opinion, at A-22; "Stephen Schwartz, 'Seattle Has Gone 'Wobble' Before,'" Wall Street Journal, December 3, 1999, opinion, at A-26; Francis Fukuyama, "The Left Should Love Globalization," Wall Street Journal, December 1, 1999, opinion, at A-26; Jeffrey E. Garten, "CEOs: Prepare for More Protests," Wall Street Journal, December 6, 1999, opinion, at A-34; Jack L. Goldsmith and John C. Yoo, "Seattle and Sovereignty," Wall Street Journal, December 6, 1999, opinion, at A-35; George Melloan, "Welcome to the Seattle World's Fair, Circa 1999," Wall Street Journal, November 30, 1999, opinion, A-27.

poor also gain from globalization and that the common interests of people around the world in environmental protection be enforced. Still, it is evident from Annan's speeches that his commitment to economic globalization is not merely accommodating as best one can to the inevitable; Annan appears genuinely to believe that the poor cannot be helped without the economic growth that only world markets can provide, and that they must participate in that growth as *producers* and not merely as welfare recipients in a redistribution of someone else's wealth. There is no gainsaying that this is a remarkable ideological shift for the upper echelons of the UN, and it has not been sufficiently remarked by American conservatives.

The Secretary General's claim to represent the "true" interests of the poor was echoed by officials of other public international institutions, including Mike Moore, Director General of the WTO and former prime minister of New Zealand, who on November 30, in the midst of the Seattle protests, told reporters:

"This is a sad day. To those who argue that we should stop our work, I say: tell that to the poor, to the marginalized around the world who are looking to us to help them."¹⁰⁸

These claims took on considerably greater urgency as the legitimacy of such public international institutions as the UN, the World Bank, the IMF, the OECD, and the WTO to speak for the world's poor and their interests was challenged by the loose coalition of NGOs that unveiled itself at Seattle and, with more limited impact, in April 2000 at meetings of the World Bank and IMF in Washington DC.¹⁰⁹

¹⁰⁸NYT, "National Guard," December 1, 1999, quoting Mike Moore, WTO Director General on November 30, 1999; WTO Director-General Mike Moore, press statement, M2 Presswire, December 1, 1999 (commenting on the protests in Seattle, stating that in Seattle they have "witnessed a very sad day").

¹⁰⁹ On the April 2000 Washington DC protests, see, e.g., "Today's pig is tomorrow's bacon: No Seattle in Washington," *The Economist*, Saturday, April 22, 2000 (comparing the protests in Seattle and DC, and referring to the protesters who had no idea why they were there); Helene Cooper, "Protesters Hit World Bank/IMF Sessions, Antiglobalization Forces March in Washington; Police Respond Strongly," *Wall Street Journal*, Monday, April 17, 2000 (comparing the 2 protests and stating that the main difference was that in DC, the protesters were unable to reach their goal of trying to prevent the meetings); AP, "Finance Meetings Spur More Protests in Washington, Area Around Headquarters of World Bank Blocked Off," *Wall Street Journal*, Tuesday, April 18, 2000; Albert R. Hunt, "A Flawed Protest Actually Produces Some Good Results," *Wall Street Journal*, Thursday April 20, 2000, Section A, page 27 (although meetings went on as scheduled, the protesters did reach their goal of increasing awareness of "poverty and income inequality").

B. The Prospect of Democratic Legitimacy Through Supranational Democracy

Legitimacy is always a central issue for public international institutions. Sometimes the issue of legitimacy is even recognized and admitted by senior officials of these institutions -- typically, however, only when events such as the Seattle protests sharply call that legitimacy into question. And so Louise Frechette, UN Deputy Secretary General, acknowledged in the wake of Seattle that the "dense network of conventions and organizations" comprising the system of public international organizations, including the UN, must meet the "test of legitimacy."¹¹⁰ But what is that test? It is not enough, after all, merely to invoke "We, the peoples" of the world, as the UN Charter so grandly does.¹¹¹ For Frechette and, impliedly, UN officialdom, the test of legitimacy is that as

"more decisions taken at the international level impinge on our daily lives, the more the countries and peoples of the world will need to be reassured that their national and individual concerns, and aspirations can be taken into account."¹¹²

Mere "reassurance" to the countries and peoples of the world that their concerns and aspirations will be "taken into account" would appear to be a distinctly unarduous test of legitimacy for public international organizations. ~~Surely the test of who shall legitimately speak~~ for whom is *the* central issue in a system, such as the UN, which purports to have moral authority to speak for "We, the peoples," and yet does not have genuinely democratic legitimacy. As Dianne Otto has put it, in an argument frankly aimed at strengthening the hand of international NGOs in relation to public international organizations:

"[I]t is hardly surprising that the dearth of democratic mechanisms in the structure is under the spotlight. Until now, the lack of democracy in the UN has been justified by the dominant realist discourse of international relations which accepts that realities of global power arrangements, rather than shared values or interests, form the foundational principle of international cooperation. This discourse is now facing serious challenge from both liberal and postliberal camps. There is no doubt that increasing activity in international civil society has catapulted the issue of democracy in the global polity squarely onto the international agenda ... The democratic credentials of the UN are in question."¹¹³

¹¹⁰UN Deputy Secretary General Louise Frechette, "UN Deputy Secretary-General, addressing human rights and globalization, stresses need for long-term planning," M2 Presswire, January 20, 2000 (text of address).

¹¹¹ The United Nations Charter, entered into force October 24, 1945, in Carter and Trimble (eds), *International Law Selected Documents* (Aspen Publ. 1999), at 1-27.

¹¹² UN Deputy Secretary General Louise Frechette, M2 Presswire, January 20, 2000.

¹¹³ Dianne Otto, "Nongovernmental Organizations in the United Nations System: The Emerging

How to confront this charge of a lack of democratic legitimacy of public international organizations as this exist *today*?¹¹⁴ One possible response is unapologetically declare that *democratic* legitimacy is not required of public international organizations. Instead, it is enough that public international organizations simply be *effective* at what they do. The legitimacy of the World Bank is achieved through its effectiveness in reducing world poverty; the legitimacy of the WTO is achieved through reducing barriers to trade (however they are defined in its enabling statute); and so on. The UN presents a more difficult case, as its mission is so much more varied than the other public international organizations, but nonetheless there is room for some notion of legitimacy through effectiveness. Closely related to this non-democratic ideal of effectiveness is "accountability"; as we shall see in the next part of this Essay, international NGOs tend to assume that accountability is always in some sense *democratic* accountability (or, at least, accountability rendered to international NGOs). But accountability need not be rendered for purposes of democracy, but often merely for purposes of measuring effectiveness -- much as the owners of a business do with financial statements provided by accountants.

Moreover, the criterion of effectiveness is especially related to claims about the needs of the poor. The world's poor have particular needs, for food, shelter, education, health care, and so on; these are all areas requiring expertise, and public international organizations built around principles of technical effectiveness and expertise, it could be argued, are better able to serve those needs than organizations that are more democratic but, for that very reason, less expert. Thus an argument for preserving and indeed extending the aloofness and bureaucratic distance of such organizations as the World Bank and IMF; they will be more effective if they can make decisions less constrained, if not precisely unconstrained, by democratic governance -- which is

Role of International Civil Society," 18 Human Rights Quarterly 107-141 (1996), at 126, 128, 140. It is possible to agree with Otto's assessment of the UN system's lack of democratic credentials without accepting either her assumption that there is a "global polity" or her conclusion that "international civil society" can fill the democratic deficit. This Essay disputes each but recognizes, nonetheless, the existence of a vast democratic deficit.

¹¹⁴ We will turn and consider how transformed public international organizations of, so to speak, *tomorrow* might respond to the challenge of democratic legitimacy presently, at []. We are, at this point, considering the problem of democratic legitimacy for public international organizations as they exist now, including the challenges they are today taking upon themselves and being urged to take upon themselves.

to say, democratic politics. Let technocracy reign, at least in the lives of the poor; that is better of for it.

It would be safe to say that, even before Seattle, the day of the pure technocracy, development for the benefit of the world's poor had passed. International NGOs had already seen to that; that even before Seattle, the World Bank, through its president, James Wolfensohn, has "made 'dialogue' with NGOs a central component of the institution's work ... More than half of World Bank projects [in 1998] involved NGOs ... From environmental policy to debt relief, NGOs are at the centre of World Bank policy."¹¹⁵

In the next part, this Essay will raise questions about the accountability of the international NGOs who are largely the beneficiaries of this new openness; that part will address the question of whether international NGOs provide for democratic legitimacy just by being NGOs. For the moment, the question is whether effectiveness can substitute as a criterion for democratic legitimacy. Without assuming that the value of international NGOs in providing democratic credentials, the point is that a technocracy that looks purely within itself -- the World Bank making decisions solely on the expertise and advice of its own staff, at an extreme, and ignoring ~~for the moment the effect of member governments on it~~ -- has passed as a model. ✓

One answer is simply that even if everyone agreed on what needed to be done to help the world's poor (to take one example among the many aims of global governance), the mere fact of agreement on the goal is not enough to suspend the need for democratic institutions to guide the process; pure expertise is not enough, even when there is consensus regarding the goal.

However, the situation is vastly more fraught than that; the question of what the goals should be and the means to get there are all heavily contested terrain. It is not as though once having set the goal, a technocracy could, in theory, get there without further questions about democratic process. I happen to believe that an important way to help the world's poor is through free trade; the staff of the WTO agree with me but, unremarkably, many people in the world do not. I also happen to believe that the case for free capital flows is much weaker than that for free trade and that capital controls can sometimes be useful; many technically qualified people at the OECD disagree, but many others, on the streets in Seattle, agree.¹¹⁶ One could go on and on -- the point ✓

¹¹⁵ Economist, "Special: Citizens' groups: The non-governmental order: Will NGOs democratise, or merely disrupt, global governance?" December 11, 1999.

¹¹⁶ For a discussion of the merits of the capital flow argument, see [].

10
is that the terrain of what constitutes good public policy, let alone the methods for achieving it, are far too contentious to think it can simply be turned over to the experts. That has been a message that international NGOs have been sending to public international organizations and their funders for a long time and to some extent, as measured by speeches by heads of public international organizations at least, they are being heard.

"Effectiveness," therefore, is not enough; and, moreover, it seems reasonably clear that no other technical or instrumental criterion of legitimacy will be satisfactory unless it also satisfied some basic standard of democracy, in order to have a legitimate mechanism that resolves questions about what the fundamental ends and means of policy should be. The requirement of democratic legitimacy appears thoroughly entrenched.

A second possible response by public international organizations is to acknowledge the necessity of democratic legitimacy, but to claim it in some extremely abstract, almost entirely "delegated" sense. In this account of legitimacy, power, authority, and, supposedly, legitimacy passes from states to public international organizations. If those states, or at least enough of them, are democratic and follow their own democratic procedures in delegating power and

authority, then the public international organizations to which they delegate can claim that same legitimacy. Through mechanisms which in the abstract satisfy Weber's procedural requirements of formal legality, democratic assent is passed by citizens of states to their states, who then ratify the authority and actions of public international organizations. This delegation theory has perhaps been the most traditional justification for the democratic legitimacy of public international organizations during the postwar period; it is the one that is most consistent with multilateralism and the one that does not require that public international organizations themselves have any democratic connection to people of the world as such. It is a theory that is consistent with democratic nation-state sovereignty.

For all that, however, it is a theory that bit by bit is breaking down under pressures of globalization. As David Held et al. have expressed it, it appears to liberal internationalists, at least, that

"[a]voiding global ecological crisis and managing the pervasive social, economic, and political dislocation arising from contemporary processes of globalization 'will require the articulation of a collaborative ethos based upon the principles of consultation, transparency, and accountability

Why
isn't
it just
a difficult
empirical
question?

... There is no alternative to working together and using collective power to create a better [democratic] world'.¹¹⁷

The view, in other words, is that the pressures of economic globalization must drive political globalization, and that the current theory of delegation, and its merely multilateral arrangements, is not enough to deal with those exigencies of economic globalization; action must come through something more "collaborative" and "collective" than merely multilateral arrangements given legitimacy by delegation.

Implicit in this view is the need for greater democratic legitimacy than that given by delegation. This seems to me normatively entirely correct. If public international organizations are to be called upon, or volunteer, to engage in a much wider range of tasks of governance than the classical postwar multilateral model has assigned them, exercising much wider powers, powers which are acknowledged to be constitutionally superior to and binding on nation-states, and acting in matters much broader and, with regards to individual person, much "deeper" than they have acted before, then the need for democratic legitimacy increases proportionately. We shall consider shortly the difficulties in gaining democratic legitimacy for new, newly

empowered or newly reformed supranational institutions. The point for the moment is simply that as *existing* public international organizations are assigned or volunteer themselves new roles as regulators of matters ranging from international trade and financial flows to questions of the age of recruitment of soldiers to the adjudication of war crimes, it is not immediately evident that they have the democratic legitimacy to take on all these matters. It seems even less likely that democratic legitimacy could be thought to flow to an ever-widening and deepening range of activities purely on a theory of democratic delegation.

That much the Commission on Global Governance has acknowledged. The multilateral model supposes that the matters to be taken up by public international bodies are taken up by treaty -- in such disparate fields as global finance, such as the MAI; the environment, such as the Kyoto Protocol; human rights, such as the Convention on the Rights of the Child. Each of these treaties contemplates a considerable extrusion of international standards into what would otherwise have been considered domestic decision-making. In the case of the MAI, for example,

¹¹⁷ David Held, et al., *Global Transformations: Politics, Economics and Culture*, at 447 (quoting Commission on Global Governance, *Our Global Neighborhood* (NY Oxford UP 1995), at 2, 5).

the treaty's critics are surely right to note its effects on the ability of local jurisdictions to regulate labor, safety, and environmental standards.¹¹⁸ In the case of the Kyoto Protocol, the impact on individual businesses having to comply with its requirements would be substantial.¹¹⁹ In the case of the Convention of the Rights of the Child, if it were fully incorporated into domestic law, it could provide whole new standards for issues such as child custody, child rearing, and the ability of children to enter the courts in opposition to their parents.¹²⁰ Perhaps all these things would be good effects, perhaps they would be bad effects; individuals will differ in their views. The issue is not the substance of each of these agreements, or the many others contemplated as the global reach of public international institutions is pressed forward. The issue is whether, at some point, the ability to conceive of democratic legitimacy to order and ordain in all these subject matters, widely and deeply into individual societies, must reach the point that a doctrine of delegation fails on the grounds that the *layers* of delegation and the *remoteness* of decision-makers, power, and authority make the democratic legitimacy of the purported delegation unsustainable. At what do abstraction and remoteness enervate the doctrine of delegation so much that it expires as a basis for democratic legitimacy?

In the US, to give some point of comparison, it is likely that at some point the doctrine of delegation fails, on constitutional grounds of limitation of the treaty power to substitute for the regular processes of domestic legislation, if no other.¹²¹ Granted, this is contested, like other constitutional doctrines, especially as they intersect with the desires of international law scholars to further the cause of international law.¹²² Still, without seeking to answer definitively the

¹¹⁸ [cite to mai]

¹¹⁹ [kyoto protocol cite]

¹²⁰ [child rights convention]

¹²¹ [cites to law review literature arguing that treaty power is limited constitutionally]

¹²² [cites arguing from law review literature that treaty power is not constitutionally limited.]

Louis Henkin, *Foreign Affairs and the Constitution*, 2nd ed. (NY Oxford UP 1996), at 263, [need Henkin book, can't find my copy] argues that delegations to international agencies, for example, can be seen as an extension of the general trend permitting the delegation of legislative power to executive agencies; and, moreover, "legislative" or "regulatory" powers granted to international agencies should "properly [be] seen as implementations of the original treaty establishing the organization and giving it 'regulatory powers' and, in consenting to that agreement, the Senate may be said to have consented in advance to any regulations authorized by that agreement." In other words, in Henkin's view, international agencies are interchangeable with agencies of the US government, in terms of their democratic accountability and legitimacy to US citizens, insofar as the Senate entered into a treaty.

Why
not
There
more
remoteness
remoteness
b/c
they're
doing
more
things?

Is it
the
substitution
for
domestic
supplantation
of domestic
approaches?
What if there are
none or
no effective ones

question of US constitutional law, but instead merely offering an example of how, in one worked-out system of constitutional law and democratic governance, remoteness and abstraction from those who are governed, one might quote from Supreme Court decisions. In *Reid v. Covert*, for example, the Court laid down in famous and emphatic terms that the Constitution constrains the treaty power in the sense that the subject matter of a treaty cannot alter Constitutionally-mandated arrangements, including the mechanisms by which laws which govern domestically must be passed:

"The United States is entirely a creature of the Constitution. Its power and authority have no other source. It can act only in accordance with all the limitations imposed by the Constitution ... If our foreign commitments become of such a nature that the Government can no longer satisfactorily operate within the bounds laid down by the Constitution, that instrument can be amended by the method which it prescribes ... [N]o agreement with a foreign nation can confer power on the Congress, or on any other branch of Government, which is free from the restraints of the Constitution ... It would be manifestly contrary to the objectives of those who created the Constitution ... to construe Article VI as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions."¹²³

More recently, Justice Kennedy has made the point of the limits of remoteness and abstraction. ~~As he said in his concurring opinion in *Clinton v. New York*:~~

"The idea and promise [of the Constitution and Bill of Rights] were that when the people delegate some degree of control to a remote central authority, one branch of government ought not possess the power to shape their destiny without a sufficient check from the other two. In that vision, liberty demands limits on the ability of any one branch to influence basic political decisions."¹²⁴

Ratified?
The implication for treaties is that, as creatures of the Executive Branch entered into without the full range of domestic legislative restrictions designed to protect the ability of "any one branch" to shape the destiny of people, "liberty demands limits" on what the Executive Branch may do through them. As a consequence, at least in the US, it seems quite well settled that the US cannot transfer war powers (assuming we can agree what they are) by treaty from Congress to the president; the fact of a treaty with NATO or a resolution of the UN Security Council would be insufficient by itself to confer power on the president to go to war in a way that was admitted to be within the exclusive power of the Congress, such as making a declaration of war.¹²⁵ Similarly,

¹²³ *Reid v. Covert*, 354 US 1 (1957), at 5-6, 14 [check page numbers].

¹²⁴ *Clinton v. New York*, 118 S. Ct. 2091 (1998), at 2109 (Justice Kennedy, concurring).

¹²⁵ Third Restatement of the Foreign Relations Law of the United States, section 111, Comment

it seems clear from authoritative commentary that a treaty cannot transfer away power of the purse from the Congress to the Executive even to pay dues to public international organizations; the treaty power does not extend so far as to revise the constitutional separation of powers.¹²⁶

These examples are the more striking because they at least do involve matters that are arguably within the foreign affairs remit of the Executive branch. The constitutional ability to regulate domestic matters through treaty that have little or no relation to the president's ability to conduct foreign affairs -- save for the fact that the method of regulation itself happens to be a treaty -- might plausibly be thought to be even less.

The point of this US example is not to suggest that all countries must take the same view about the effect of treaties; obviously, many do not and many incorporate treaty law directly into the highest law of the land.¹²⁷ It is plain that many international law scholars wish the US would do the same, and regret its fidelity to its constitutional arrangements, seeing them as an impediment in the establishment of a supranational order.¹²⁸ The point, rather, is to demonstrate the plausibility of believing that delegation, extended further and further, might eventually fail as a theory of democratic legitimacy and, in the case of the US, is indeed thought to fail when the combination of the remoteness of the delegation and the subject matter of the delegation are enough to undermine constitutional liberty.

This abstract delegation might plausibly be thought not enough to satisfy the requirements of *democratic* legitimacy, even in those cases where the states supposedly delegating this legitimacy are themselves democratic -- and in the case of one state for better or worse unavoidably important to the legitimacy of public international organizations, the US, it is very likely not enough as the range of matters under international remit grows. If delegation eventually fails on grounds of remoteness, however, what then are the alternatives? It is not really a possibility to argue that it does not matter; nearly everyone accepts that democratic legitimacy is important, whether at the level of the nation state or international organization. The Secretary General has pointed out, after all, that it is "now widely understood that States are the

(i).

¹²⁶ Third Restatement of Foreign Relations Law, section 111, Comment (i).

¹²⁷ [cite]

¹²⁸ [probably come up with some stuff from Michign conference; some of the papers attacking the US - Jim Hathaway's comes to mind]

servants of, and accountable to, their peoples, not the other way around."¹²⁹ It is a lovely sentiment and would, of course, be lovelier still if applied to public international organizations starting with, for example, the UN Security Council, that believe they ought to have and, in increasing circumstances, claim that they *do* have legal supremacy over merely sovereign national institutions.¹³⁰ It is hard to claim, on the one hand, that public international institutions gain their democratic legitimacy "from below," from the peoples of the earth *through* their sovereign states rather than through democratic planetary institutions, but simultaneously that public international institutions are, or at least ought to be, constitutionally supreme over those *same* supposedly sovereign states, on the other.

*Yes
maybe*

To be sure, it is true that in classical social contract theory, individuals *surrender* their individual sovereignty in order to form society and the state; in like manner it could be said that sovereign states surrender their sovereignty in order to form a legitimate supranational state -- but that is not what is being described here. We are not, at this moment, describing the moment of the formation of a legitimate supranational sovereign out of the surrendered sovereignty of nation-states. We are, rather, describing the legitimacy that supposedly exists *today* for public international organizations; that legitimacy is no more than that of multilateral relations between sovereigns, because sovereign states have *not* surrendered their sovereignty. The difficulty arises when public international organizations act, or are called upon to act, as though they had

¹²⁹ Kofi Annan, quoted by UN Deputy Secretary General Louise Frechette, M2 Presswire, January 20, 2000; see Secretary General's Annual Report to the General Assembly, September 20, 1999, Press Release SG/SM/7136 GA/9596, at <http://srch0.un.org:80/plweb-cgi/fastwe...dj&templatename=preddoc.tpl&setcookie=1> (last visited July 18, 2000); see also Kofi Annan, "Two Concepts of Sovereignty," Economist, September 18, 1999, at 49 ("States are now widely understood to be instruments at the service of their peoples, and not vice versa.").

¹³⁰ In fairness, it is clear that the Secretary General and his staff understand very well the lack of democratic or any other accountability particularly in the UN Security Council. As Frechette says, the "enlargement of the United Nations Security Council, for instance, is viewed almost universally as an imperative if its authority is to be preserved in the new century." Frechette, M2 Presswire, January 20, 2000. On the other hand, opponents of supranationalism such as myself favor expansion of the Security Council precisely because we believe, contra Frechette, that expanding the Security Council is the fastest way to undermine its authority and ability to act, at least so long as the United States remains the dominant military power, because expansion is likely to lead to political paralysis rather than concerted action because, for the foreseeable future, "concerted action" means no more and no less than US action. See Coral Bell, "American Ascendancy and the Pretense of Concert," National Interest No. 57, Fall 1999, at 55.

more legitimacy, and sovereignty, than that, in areas that invoke the problems of remoteness. At that point the deficit of democratic legitimacy becomes glaringly apparent.

To break out of this box ideally would require the creation of genuinely sovereign and legitimate public international organizations -- and, in a world governed by moral principles of democracy and human rights, that would have to mean democratic legitimacy. Only in that way could the problem of democratic legitimacy and sovereignty be resolved for public international organizations. Theorists of political globalization have eagerly taken up the task; their solutions can be said to range between two poles, utopia and elision, democracy fantasized at the planetary level or democracy redefined to give it criteria that ease its satisfaction. Some, that is, have understood that if democracy is to mean what we mean by it in ordinary political systems, it must mean elections for at least parts of these public international bodies; and, with admirable clarity bordering, perhaps, on naivete, they have proposed exactly this. Others have recognized that such issues as size and numbers make this ideal impossible, and so have proposed different mechanisms of participation and accountability short of planetary elections, while still arguing that they are "democratic" in the relevant sense. We will examine versions of each of these alternative solutions to the problem of size and numbers and democracy; the first, the democratization of supranational institutions, will be considered in the remainder of this section, and the second, the redefinition of democracy, will be considered in the next.

The Commission on Global Governance has endorsed the general idea of a "People's Assembly" to sit, in a suitably reformed UN, alongside the General Assembly. Members of the People's Assembly would, eventually anyway, be directly elected:

"One suggestion widely canvassed is to establish 'an assembly of the people' as a deliberative body to complement the General Assembly, which is representative of governments. What is generally proposed is the initial setting up of an assembly of parliamentarians, consisting of representatives elected by existing national legislatures from among their members, and the subsequent establishment of a world assembly through direct election by the people."¹³¹

¹³¹ Commission on Global Governance, *Our Global Neighborhood: The Report of the Commission on Global Governance* (NY Oxford UP 1995), at 257. This idea has had many proponents over the years; see, e.g., Marc Nerfin, "Neither Prince nor Merchant: Citizen -- An Introduction to the Third System," in Krishna Ahooja-Patel et al. (eds.), *World Economy in Transition* (Publisher? 1986), at 47, 55, for a proposal to establish a "citizens' parliament" alongside the General Assembly and Security Council; see also Erskine Childers with Brian Urquhart, *Renewing the United Nations System* (Uppsala Sweden Dag Hammarskjöld Foundation 1994).

This is a solution based on seizing the bull by the horns, as it were, and saying, "Very well, you say that democracy means elections and parliamentarianism -- here are your global elections and parliamentarianism." The strategy is simply to reproduce the logic of domestic liberal democracy in large nation states at the level of the world. Parliament, executive, judiciary, specialized agencies, all the paraphernalia of large nation-state democracy is simply inflated, as it were, to encompass the whole globe.

The members of the Commission on Global Governance are serious and well-known figures, very far from the "one worldists"¹³² of the political fringe in decades past -- their membership reads like a list of world parliamentarians-in-waiting -- and they are serious in their call for the evolution of truly planetary structures of government that they also seriously believe can be democratic in the full sense.¹³³ David Held et al. correctly describe this as a form of liberal internationalism that "seeks to construct an ideal of 'democracy beyond borders' on the theoretical edifice of modern liberal democratic thinking."¹³⁴ The plan, it should be noted, however, involves considerable reliance on federalism -- really, "subsidiarity" in the EU sense of that term¹³⁵ -- and indeed, as with so many liberal internationalist imaginings, it is fundamentally based on the vision of the EU inflated to the size of the world, rather than the vision of a single nation-state.¹³⁶ Its idea of world parliament is in substance modeled on the European parliament rather than on national parliaments.

The virtues of this idea of global democracy are at least two-fold. First, if it could actually be achieved, it would fulfil at the least the formal, outward requirements of democracy as people in the world ordinarily accept it -- elections mean something that nothing else does.

¹³² See, e.g., James A. Yunker, *World Union on the Horizon* (London: UP of America 1993), at xi ("The vision of pragmatic market socialism as a steppingstone to supernational federation occurred to me -- with all the emotional force of a religious conversion -- during the winter of 1961-62.").

¹³³ Commission on Global Governance, *Our Global Neighborhood*, front-page listing commission members; see also the critical discussion of the Commission on Global Governance in Richard Neuhaus, "Forget the Bilderbergers," *First Things: A Monthly Journal of Religion and Public Life*, February 1, 2000, at 77.

¹³⁴ David Held and Anthony McGrew, David Goldblatt and Jonathan Perraton, *Global Transformations: Politics, Economics and Culture* (Stanford UP 1999), at 447

¹³⁵ [definition of subsidiarity in EU terms]

¹³⁶ See discussion of Anthony Giddens on the EU as the model of global democracy, below at [].

Second, the Commission's idea of domestic democracy inflated to the world level does solve the problem of legitimacy as it was posed above. The problem, we have said, of democratic legitimacy of supranational, constitutionally superior institutions is, on the one hand, that they purport to acquire their legitimacy from presumptively inferior institutions that have not surrendered their sovereignty and, in a fundamental moral sense, are bound *not* to because that to which they propose to surrender it would not be democratic. (One might even say that if one takes the idea of democratic legitimacy seriously, then not only are democratic nation-states 'obligated', in keeping with their social compact with their citizens, not to cede fundamental sovereignty to undemocratic institutions, they *cannot* do so; they lack the capacity to act in so undemocratic a fashion.) On the other hand, if those nation-states have not surrendered sovereignty, then it is hard to see that supranational institutions have any claim to supranational, constitutional superiority over nation-states. If, however, supranational institutions can be made democratic in ways that are clearly cognizable, then the problem of democratic legitimacy of public international organizations simply goes away. ✓

It is doubtful, however, that this can work; it suffers from the vice of most utopian proposals in being, well, *utopian*. It is very doubtful that democracy in this vitally important electoral sense is compatible with the size of the planet and the numbers of people involved. In some sense, it seems that the argument that size and numbers matter is too crude, too unimaginative, too vulgar to bring up; yes, of course everyone knows that the planet is a big place with many people, but the task at hand is to figure out how to make it democratic. It seems somehow almost unsporting to bring the game, so to speak, to an early halt by suggesting that the facts provide an insurmountable obstacle to political theory. Yet there is some evidence already that size and numbers do matter to the possibility of democracy, even in existing nation-states, let alone larger political institutions. The work of Larry Diamond, co-editor of the *Journal of Democracy*, and researcher Svetlana Tsalik, for example, strongly suggests that size and numbers matter to democracy:

"One of the most striking features of the distribution of democracies (liberal and otherwise) around the world is also, curiously, on of its least discussed, theoretically: its significantly greater incidence in very small countries, with populations of less than about one million ... Overall, close to 75 percent of the states that now have populations of less than one million were formally democratic at the start of 1998, compared to less than 60 percent of the larger states. The difference in the incidence of liberal democracy is particularly stunning: two thirds of states ✓

with populations of less than one million are rated 'free' by Freedom House, compared to only about one-third of states with populations over one million. (Further, the small states have a more democratic median freedom score [on Freedom House's scale], compared to ... the larger states.) Even more striking is the incidence of democracy among the thirty-three states with populations of less than half a million. Five in six of these 'microstates' are democracies, and more than three-quarters are liberal democracies ... In fact, the greater incidence of democracy in states under one million population is entirely due to the microstates."¹³⁷

It might be asked, what has any of this to do with developing democracy on a planetary scale? But with respect to the kind of democratized supranational government that the Commission on Global Governance proposes, the answer is quite a lot. After all, the model of the Commission is to project upward liberal democratic structures of governance drawn from nation-states to the supranational level -- and in that case, it matters to know under what conditions those liberal democratic structures have flourished. The answer appears to be, in states much smaller than the world's large states.

One can question whether size and numbers are the critical issues:

"Skeptics contend that the relationship between size and democracy is an artifact of British (and later American) imperial reach across the oceans. To be sure, it is hard to disentangle the two effects: two-thirds of the democracies with populations under one million are former colonies or dependencies of Britain, the United States, and Australia. Yet so are five of the eleven nondemocracies under one million population (and four of the five nondemocracies with population less than half a million). The incidence of democracy (both electoral and liberal) is higher in former Anglo-American colonies than in the entire population of states ... and thus it is higher still when compared only with other developing countries. *However ... it is the impact of Anglo-American colonialism that is an artifact of size.* Among the fifty-three countries that were once Anglo-American colonies or dependencies (excluding the settler lands of the United States, Canada, Australia, and New Zealand), we find the same pattern of variation as among the entire set of countries in the world: those with populations under one million are appreciably more likely to be electoral democracies and more than twice as likely to be liberal democracies. The former Anglo-American colonies above one million population have the same proportions of democracies and liberal democracies as other states in the world of the same size, and so do the former colonies with populations under half a million. If causation is being confounded, it seems to be the other way around: at least part of the 'credit' for democratic success that is ascribed to Anglo-American cultural and institutional influence owes to an accident of history: that so many British and U.S. colonies were so small."¹³⁸

¹³⁷ Larry Diamond, *Developing Democracy: Toward Consolidation* (Baltimore Johns Hopkins UP 1999), at 117-118 (chapter written with Svetlana Tsalik).

¹³⁸ Larry Diamond, *Developing Democracy*, at 118-119 (emphasis added).

I suspect that there is rather a lot more to say about the effects of culture and history on the development of democracy than Diamond's analysis would permit; still, those effects would tend to work even less toward the democratization proposals of the Commission, since they would tend to emphasize the need for a history of democracy "from below" before attempting to create in institutions "above."

For that matter, for proposals that appear to be as strongly influenced by the history (mythology, I should say) of the EU as the Commission's appear to be, they take a remarkably relaxed view of the requirements of *membership* in the EU. The EU requires, after all, that new entrants have already met basic requirements of democracy and human rights before being considered for membership.¹³⁹ The Commission's proposals for supranational institutions, by contrast, seem to imagine that democratic structures of electoral governance can somehow be created, permitting people to participate in global parliamentary elections even where many of those people have no meaningful national voting rights at all. Perhaps this should be seen as a virtue; as with so many proposals for global institutions, it could be seen as a mechanism for creating democracy by effectively avoiding recalcitrant nation states, creating institutions that nation states cannot avoid and which reach directly to their citizens. This is, to say the least, an unlikely prospect. What the proposals of the Commission might mean for an undemocratic China, for example, or Castro's Cuba, or Iran, Iraq, or formal but "wobbly" democratic states such as Indonesia is anybody's guess. It does not seem likely, however, that the result would be democratized supranational institutions. There is something so distinctly other-worldly about it that notwithstanding the great respect with which the Commission's proposals have been received in liberal internationalist circles, even to discuss them has the odd sense of what it feels like to hear green or taste yellow.

Would be rejected by democracy and nondemocracy alike

The brute fact is that size and numbers matter to the possibility of democracy. This may seem inelegant to political theorists accustomed to operating in abstractions in which geography and demography are contingent and thus irrelevant facts, but there it is. The fundamental struggle that Diamond points to is one of the persistent themes of this Essay -- that the large democratic nation-states are the product of a compromise between the size and numbers consistent with democracy, and the size and numbers of the optimal common market.

Interesting

¹³⁹ [cite to EU requirements, stuff on who is in line for consideration]

C. Achieving "Democratic" Legitimacy By Redefining Democracy

Cognizant of these concerns, perhaps, many theorists who press for world governance have tended (rather than proposing to create global structures of *electoral* democracy) to take a relaxed view of what democratic legitimacy means, while nonetheless assigning to public international organizations functions that within a nation-state one would ordinarily have thought required electoral democratic assent.¹⁴⁰ Chief among these relaxations is a redefinition of democracy to reduce its association with elections and the ballot box.

David Held is perhaps the most eloquent -- certainly the most sophisticated -- of those who have theorized the withering away of the nation-state, or at least its sovereignty, in favor of some form of world government. We now examine in some detail both his account of how the nation-state's sovereignty is undermined in favor of some form of supranational governance and his account of how the requirements of democracy can be met above the nation-state level. His view of the erosion of sovereignty and the emergence of supranational governance is summarized in a table in his text and adapted (to eliminate graphics) by Malcolm Waters:

"(i) Increasing economic and cultural connections reduce the power and effectiveness of governments at the nation-state level -- they can no longer control the flow of ideas and economic items at their borders and thus their internal policy instruments become ineffective.

(ii) State power is further reduced because transnational processes grow in scale as well as in number -- [transnational corporations] for example are often larger and more powerful than many governments.

(iii) Many traditional areas of state responsibility (e.g. defence, communications, economic management) must therefore be coordinated on an international or intergovernmental basis.

(iv) States have thus been obliged to surrender sovereignty within larger political units (e.g. EU, ASEAN), multilateral treaties (e.g. NATO, OPEC), or international organizations (e.g. UN, WTO (GATT), IMF).

(v) A system of 'global governance' is therefore emerging with its own policy development and administrative systems which further curtails state power.

¹⁴⁰ One way in which some would overcome this problem of democratic legitimacy is to assign the role of the "people" of the world not to actual voters, but instead to international NGOs who, it is suggested, would demand the accountability from world governance organizations that the "citizens" of the world would demand if size and numbers, so to speak, were not in the way. In effect, international NGOs stand in for the world's "citizens." This seems to me a pernicious idea, and one which has little to do with democracy and largely to do with aggrandizing international NGOs, and I discuss it further at [] in the text. But it is terribly important to understand that this is the most common way by which theorists of supranational government propose to overcome the issue of democratic legitimacy.

(vi) This provides the basis for the emergence of a supranational state with dominant coercive and legislative power."¹⁴¹

This contains a great deal about which one could be skeptical simply as an analytic description of how a supranational state could emerge. It is extremely doubtful, for example, that transnational corporations are often or even rarely more powerful than governments. As John Gray has written:

"It is fashionable to see multinational corporations as constituting a kind of invisible government supplanting many of the functions of nation-states. In reality they are often weak and amorphous organizations. They display the loss of authority and the erosion of common values that afflicts practically all late modern social institutions. The global market is not spawning corporations which assume the past functions of sovereign states. Rather, it has weakened and hollowed out both institutions."¹⁴²

Much more importantly, however, it is hard to see what forces among those Held identifies as the "drivers" toward supranationalism might result in democratization of that system, even if one thought supranational, planetary democracy were possible. Neither the loss of control by governments over flows of information, technology, and capital across their ~~borders; nor their need to cooperate with other governments to the ends of increased international~~ coordination in these matters; nor the emergence of an international and later supranational system with its own administrative and political structures appear by themselves to contain any strong (or weak) drivers toward democracy. On the contrary, under that description, it might be thought wondrous if the system were democratic at all.¹⁴³ Held et al. remark at one moment in

¹⁴¹ Malcom Waters, *Globalization* (NY: Routledge 1995), at 97, summarizing David Held, "Democracy and the Global System," in David Held (ed.) *Political Theory Today* (Cambridge: Polity 1991), at 197-235, table adapted by Waters at 209; see also the discussion of David Held in John Gray, *False Dawn: The Delusions of Global Capitalism* (NY: New Press 1998), at 63-70.

¹⁴² John Gray, *False Dawn: The Delusions of Global Capitalism* (NY: New Press 1998), at 63.

¹⁴³ It should be noted that other theorists have challenged whether the economic interdependence that Held sees as leading to a loss of sovereignty overall for nation-states is in fact the case. Stephen Krasner, for example, has persuasively argued that sovereignty has several independent aspects, and that it is a mistake to view a deficit in one aspect of sovereignty, such as economic interdependence, as creating a deficit in another, such as the ability to control political action within one's borders. I venture that Krasner would in large part disagree with, or at least regard as exaggerated, Held et al.'s assessment that "the locus of effective political power can no longer assumed to be national governments -- effective power is shared, bartered and struggled over by diverse forces and agencies at national, regional, and global levels. In other words, we must recognize that political power is being repositioned, recontextualized and, to a degree,

their analysis of globalization that "[i]mplicit in liberal-internationalist thinking is an assumption that political necessity will drive forward the democratization and civilization of globalization."¹⁴⁴ It is not clear what Held and his colleagues think of that assessment; still, it does seem clear Held's actual drivers toward globalization appear to push toward a combination of bureaucracy and corporatism, not democracy, and it is not evident what the "political necessity" is that will press for democratization and civilization. ✓

This is not to say that Held does not propose a democratic global system; he does. As Dianne Otto has summarized it:

"Held's central concern is that mechanisms be established which can hold states and other international actors directly accountable to the peoples of civil society. In his view, this would include the formation of regional and international democratic assemblies and crossnational referenda, complemented by the deepening and strengthening of local participatory democratic processes."¹⁴⁵

Held, in other words, is careful not to suggest that democracy can be had in the form of the ballot box at a global level; he recognizes that such a dream is unworkable. His rhetorical strategy, therefore, is not to propose a patently unrealistic global democracy, but instead to skeptically challenge whether any existing democratic forms, in nation-states, can achieve meaningful democratic results for their respective citizens in a globalized world in which nation-states have only limited means to control facts beyond their borders. ✓

"Global transformations have affected our concept of the political community and, in particular, our concept of the democratic political community, which often gets split into the 'inner' and 'outer' spheres of political life. It is readily understood that the quality of democracy depends on rendering political decision-making accountable to citizens in a delimited political community. It is also understood, moreover, that the quality of democracy depends on more than merely the formal access citizens have to the public sphere and polity -- to public deliberation and decision-making ... It is still too rarely acknowledged that the nature, form and prospects of political communities are clouded by the multiplying interconnections among them. While more countries seek to establish national democracies, powerful forces our social, economic, cultural

transformed by the growing importance of other less territorially based power systems." David Held, et al., *Global Transformations*, at 447. See Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton UP 1999). This Essay considers Krasner's views in detail in part VII, at [].

¹⁴⁴ David Held, et al., *Global Transformations: Politics, Economics and Culture*, at 447.

¹⁴⁵ Dianne Otto, "Nongovernmental Organizations in the United Nations System: The Emerging Role of International Civil Society," 18 *Human Rights Quarterly* 107-141 (1996), at 134; see David Held, "Democracy: Past, Present, and Possible Futures," 18 *Alternatives* 259 (1993), at 266.

and environmental welfare now transcend the boundaries of nation-states. Fundamental questions are raised about meaning of democracy and citizenship in this context."¹⁴⁶

Globalization thus raises the profoundly disturbing possibility that a political community could join together in perfect democracy -- and yet have it be a meaningless exercise, because the fundamental decisions and actions with respect to the community's members are taken elsewhere, by different actors. In other words, it is the caution that this Essay has repeatedly made that the optimal size of a democracy and the optimal size of the common market are not necessarily co-extensive¹⁴⁷ -- and the political community that decides simply to "delink" them altogether, in order to perfect its democracy may pay a heavy, perhaps catastrophic price for its expectation that it can still have an impact on the behavior of the market or anything external to itself:

"In existing liberal democracies, consent to government and legitimacy for governmental action are dependent on electoral politics and the ballot box. Yet the notion that consent legitimates government, and that the ballot box is the appropriate mechanism whereby the citizen body as a whole periodically confers authority on government to enact the law and regulate economic and social life, becomes problematic as soon as the nature of a 'relevant 'community' become contested. what is the proper constituency, and the proper realm of jurisdiction, for developing and implementing policy with respect to health issues such as AIDS, narcotics, the management of nuclear waste, military security, the harvesting of rainforests, indigenous peoples, the use of non-renewable resources, the instability of global financial markets, and the management and control of genetic engineering and manipulation in animals and humans? National boundaries have traditionally demarcated the basis on which individuals are included and excluded from participation in decisions affecting their lives ... but if many socio-economic processes, and the outcomes of decisions about them, stretch beyond national frontiers, then the implications of this are serious, not only for the categories of consent and legitimacy but for all the key ideas of democracy. At issue is the nature of a political community -- how should the proper boundaries of a political community be drawn in a more regional and global order? In addition, questions can be raised about the meaning of representation (who should represent whom and on what basis?) and about the proper form and scope of political participation (who should participate and in what way?). As fundamental processes of governance escape the categories of the nation-state, the traditional national resolutions of the key questions of democratic theory and practice look increasingly threadbare."¹⁴⁸

¹⁴⁶ David Held and Anthony McGrew, David Goldblatt and Jonathan Perraton, *Global Transformations: Politics, Economics, and Culture* (Stanford UP 1999), at 446. It will be apparent that I disagree deeply with the conclusions Held et al. reach concerning democracy -- nonetheless, this is *the* indispensable book today on globalization.

¹⁴⁷ See [].

¹⁴⁸ Held, et al., *Global Transformations*, at 446-447.

As a consequence, Held et al. regard *some form* of political globalization to be a critically necessary step -- in effect, to ensure that the scope of the regulator matches the scope of activities of the regulated.¹⁴⁹ That general principle, more than any other, is the fundamental justification for the global political changes that, in some form, Held et al. see as crucial. However, Held et al. describe three different extant visions of how such changes might be modeled. The first of these is called by Held et al. "liberal internationalism" (although it is a narrower usage of the term than the usage of this Essay, and we have considered it in the previous section in the discussion of the leveraging of democratic structures of the nation-state into public international organizations. The second is called by Held et al. "radical republicanism" and the third is called by Held et al. "cosmopolitanism."

What Held et al. describe as "radical republicanism" stresses not the reform of existing structures of public international organizations, in the manner of the Commission on Global Governance, but instead the

"creation of *alternative* mechanisms of global social, economic and political organization based on certain republican principles; that is, the self-government of communities in which the public good is to the fore. The radical republican project is concerned to establish the conditions necessary to empower people to take control of their own lives and to create communities based on ideas of equality, the common good and harmony with the natural environment. For many radical republicans the agents of change are to be found in existing (critical) social movement, such as the environmental, women's and peace movements, which challenge the authority of states and international agencies as well as orthodox definitions of the 'political'."¹⁵⁰

This Essay will have much to say in the later discussions of international NGOs about the *representativeness* of the new social movements and their associated international NGOs.¹⁵¹ For the moment, it is enough to point out just how much the new social movements assume to be agreed upon as the common good. When the new social movements talk of ideas of equality, the common good, and harmony with the environment, they mean *their* ideas of those things, and the fact of frequently large disagreement with the democratic majorities even in those countries with democratic structures shows just how contested that terrain is.¹⁵² Indeed, Held et al.'s very

¹⁴⁹ See discussion of this general principle at [].

¹⁵⁰ Held et al., *Global Transformations*, at 448-449.

¹⁵¹ See discussion at [].

¹⁵² There is always the conceptual move, sometimes indulged, that the democratic majority that does not adhere to the new social movements' ideas about these things is not, by definition, acting either democratically or in the common good, but this is not, even for *radical* republicans,

characterization of this position as radical *republicanism* betrays a certain predisposition toward granting a normative status that I would dispute is warranted; it would be more exact simply to describe this as a movement for government by ... new social movements. But, as we shall also have occasion to discuss in considerable detail in considering the strategies of international NGOs, which frequently are extensions of new social movements, one of the very reasons for the reach new social movements to the international arena is precisely because, in those countries in which some level of democracy functions, their views are rejected by democratic majorities.¹⁵³ Lacking the ability to win in the domestic arena, new social movements seek strategies to succeed in capturing the locus of governance by removing it from democratic majorities "upwards" to public international organizations which are less susceptible to majoritarian pressures precisely because they are not democratic.¹⁵⁴

One great irony of what Held et al. describe as 'radical republicanism' is that the success of its strategy depends in the long run on gaining control of institutions that not only are not democratic now, but which, in order for them to retain control, had better not become democratic in the future. Another is that the new social movements, which gained enormous prestige as the foci of resistance to communism pre-1989, actually had more legitimacy in those days, when they were the only source of resistance within communist societies; once democratic majorities could express themselves, it turned out that they were, in Western democratic terms, of course, vastly more conservative than the folk of the new social movements. Unwilling to accept merely electoral judgments, the movement to recreate the new social movements as transnational movements is not, as Held et al. describe them, the creation of "communities of resistance and solidarity,"¹⁵⁵ but instead anti-democratic pressure groups unwilling to accept the need to convince and persuade their fellow citizens in the places where they actually live.¹⁵⁶ For them, the possibility of political globalization, especially if it is undemocratic in the sense of accepting within constitutional limits,¹⁵⁷ the views of majorities, comes like a *deus ex machina*.

a very attractive move.

¹⁵³ See discussion at [].

¹⁵⁴ See discussion at [].

¹⁵⁵ Held et al., *Global Transformations*, at 449.

¹⁵⁶ See discussion at [].

¹⁵⁷ See discussion at [].

What Held et al. describe as "cosmopolitanism" attempts to specify political and institutional arrangements

"for making accountable those sites of power and forms of power which presently operate beyond the scope of democratic control ... It argues that in the millenium ahead¹⁵⁸ each citizen of a state will have to learn to become a 'cosmopolitan citizen' as well: that is, a person capable of mediating between national traditions, communities of fate and alternative forms of life. Citizenship in a democratic polity of the future, it is argued, is likely to involve a growing mediating role: a role which encompasses dialogue with the traditions and discourses of others with the aim of expanding the horizons of one's own framework of meaning, and increasing the scope of mutual understanding. Political agents who can 'reason from the point of view of others' will be better equipped to resolve, and resolve fairly, the new and challenging transboundary issues and processes that create overlapping communities of fate."¹⁵⁹

At this level, however, it is hard to see the cosmopolitanism describes a political project, insofar as that involves *institutions* rather than attitudes. However, one institution does correspond to the needs of a political project that involves people learning to be something new, and that is education. It is therefore unsurprising that one of the seminal articles urging the cosmopolitan idea, Martha Nussbaum's "Patriotism and Cosmopolitanism,"¹⁶⁰ focuses on the need to have a project of global education in order to teach people that they have "multiple citizenships," as

Held et al. put it.¹⁶¹ In this sense, cosmopolitanism describes a world where citizens

"[f]aced with overlapping communities of fate ... need to be not only citizens of their own communities but also of the wider regions in which they live, and of the wider global order. Institutions will certainly need to develop in order to reflect the multiple issues, questions and problems that link people together regardless of the particular nation-states in which they were born or brought up."¹⁶²

To my mind the project of cosmopolitanism collapses, at the level of institutions, into some form of liberal internationalism, supranational democracy. The reason is simply that for all the discussion of multiple citizenships, multiple and overlapping communities of which one is a

¹⁵⁸ The use of the term "millenium" to describe political arrangements which, if they last fifty or a hundred years, would be a surprising thing, let alone a thousand, is one irritating part of Held et al.'s prose.

¹⁵⁹ Held et al., *Global Transformations*, at 449.

¹⁶⁰ Martha Nussbaum, "Patriotism and Cosmopolitanism," in Martha Nussbaum and Joshua Cohen, eds., *For Love of Country: Debating the Limits of Patriotism* (Boston Beacon Hill 1996); see discussion of that article and replies to it at [] and [].

¹⁶¹ Held et al., *Global Transformations*, at 449.

¹⁶² Held et al., *Global Transformations*, at 449.

member, there are, at moments of extremis and crisis, ultimate questions of allegiance communities, among one's multiple and overlapping memberships, is one willing for -- and against which, in the name of one or another, is willing to fight? Cosmo appears to me to be a project with two premises: first, the reeducation of citizens so fundamental questions of allegiance do not arise and, second, if they do, then allegiance is to supranational community. Only the supranational community shall have the legitimacy to *fight*, and if that be the case, then for all the undeniable value of a world of people who understand their commonalities as well as their differences, and have a willingness to see things from others' points of view, the only community that matters for order and legitimacy is the supranational one. The others are not *political* communities, not really; they are communities of fellowship and many other things, but they exist at the suffrage of the global sovereign which, we are assured, shall be democratic. It is an ethic of empire into which the project of cosmopolitanism fits simply as the adjunct task of education so as to reduce the propensity to fight against the sovereign.¹⁶³

The skeptic can thus point to two general problems with each of these three approaches to global governance; liberal internationalism, the radical republicanism, so called, of the new social movements, and cosmopolitanism. First, the 'drivers' that the leading theorists of globalization identify as pressing forward toward globalization do not obviously lead toward democracy; they would appear, rather, to lead toward corporatism and bureaucracy, if anything.

Second, at least with respect to the latter two, new social movements and cosmopolitanism, one can easily dispute that the forms of governance that they prescribe are actually *democratic* ones, as we ordinarily conceive of those institutions. Held et al., after all,

¹⁶³ The root of this project in a certain version of Hobbes seems to me evident, at least if one plausible reading of Hobbes is that the prudent sovereign will not only crush opposition to its authority, but will also seek to persuade people that its rule is legitimate. See S.A. Lloyd, *Ideals as Interests in Hobbes's Leviathan* (Cambridge UP 1992). Lloyd's analysis is important because it shows convincingly that, far from thinking that Hobbes thought the threat of physical punishment sufficient to deter threats to social order, in fact he took seriously the problem of what she calls "transcendental interests" that can cause one defy the sovereign even in the face of threats of death. With those -- principally religiously motivated -- people, no appeal to what we conventionally think of as Hobbesian rationality will suffice. Hobbes' is characteristically blunt in his approach -- in his day, seek to persuade them that their theology is wrong (hence the otherwise superfluous "Of Christian Commonwealth" in *Leviathan*) and, that failing, eliminate them and reeducate their children. In either case, a "proper" education is essential.

make an elaborate case that existing national institutions cannot democratically cope with the crossborder pressures of globalization; that is quite different from making a case either that those same forces of globalization will press toward, or at least not thwart, movements toward global democracy, or that the solutions that one proposes are themselves democratic. On the contrary, neither new social movement republicanism nor cosmopolitanism seems to me persuasively democratic at all. Whereas the only one that *could* be democratic, if enactable, what Held et al. term liberal internationalism,¹⁶⁴ appears to be quite implausible -- at least in democratic form. ✓

Not everyone would agree with that assessment of the prospect of global democracy. Sociologist Anthony Giddens has argued that even if existing *international* organizations, such as the UN system, cannot be democratized, the possibility of democratization might exist for new *transnational* institutions, of which Giddens regards the EU as exemplary.¹⁶⁵ The EU, Giddens thinks, might serve as a model of democratic transnational institutions that ought eventually to govern the planet as a whole and not just a piece of it.¹⁶⁶

"Talk of democracy above the level of the nation might seem quite unrealistic. Such ideas, after all, were widely spoken of a hundred years ago. Instead of an era of global harmony, there arrived the two world wars; more than a hundred million people have been killed in warfare during the twentieth century. Are circumstances different now? Obviously no one can say for sure, but I believe they are ... The world is much more interdependent than it was a century ago, and the nature of world society has changed ... How might democracy be fostered above the level of the nation-state? I would look to the transnational organizations as much as the international ones ... I would see [the EU] as forging a way that could, and very likely will, be followed in

¹⁶⁴ This Essay uses the term 'liberal internationalism' more broadly to denote supranational governance generally; it incorporates parts of the new social movements insofar as they incorporate the mainstream of international NGOs, as discussed in the next part of this Essay, and parts of cosmopolitanism.

¹⁶⁵ The European Commissioner for External Affairs, Chris Patten, has remarked, in an interview with Financial Times commentator Peter Norman, that contrary to Giddens' vision, "Above all, [the EU] has to recognise that 'the nation state is the basic political unit and likely to remain so'. For reasons of history and community, it is the focus of most citizens' loyalties." Peter Norman, "Ideas man with practical intentions: Chris Patten reflects on his first year as European Commissioner for external affairs to Peter Norman," Financial Times (London), Monday, July 31, 2000, at 15.

¹⁶⁶ It is remarkable how much liberal internationalism's vision of global political union owes to the perceived model of EU integration; whenever one reads of visionaries such as Giddens or Held pouring forth about crossnational referenda and transnational citizens assemblies and the like, it is plain that they are imagining all the world as Western and Central Europe. To a certain extent, perhaps, one should envy them the blinders of their romanticism.

other regions too. What is important about the EU isn't that it is located in Europe, but that it is pioneering a form of transnational governance."¹⁶⁷

: As with Held, one can entertain skepticism. Is it really true, for example, that what is important about the EU isn't that it is located in Europe? Where exactly in the world does Giddens believe that the transition from common market to political union envisioned by the Maastricht Treaty¹⁶⁸ could possibly be followed, except in Europe -- and perhaps, to the extent required by the strength of Giddens' argument about transnational democratic union, not even there? Nafta? Surely the point of Nafta is that the economic common market forestalls the need for closer political ties, for the simple reason, from the US point of the view, that the economic migrants of Mexico will stay home; it was formed as much as anything to prevent a de facto political union, not to foster one.¹⁶⁹ Mercosur, among the Southern Cone nations of Argentina, Brazil, and Chile?¹⁷⁰ Anywhere in sub-Saharan Africa? Central Asia? Anywhere in East Asia with its long memories of past Japanese occupation and fears of contemporary China? If one pushes far enough into the unknown future, then anything is possible, but it becomes merely political fantasy. ✓

Even the Economist, typically a reliable cheerleader for globalization,¹⁷¹ does not see European integration as setting the tone for anywhere else in the world, let alone for the world as a whole:

"The only large part of the world where boundaries between states might conceivably be rubbed out in the next half-century is Europe: and herein lies a lesson for the believers in globalisation.

¹⁶⁷ Anthony Giddens, *Runaway World: How Globalization Is Reshaping Our Lives* (NY: Routledge 2000), at 97-98.

¹⁶⁸ The Treaty of the European Union (Maastricht), entered into force November 1, 1993, in Carter and Trimble, *International Law Selected Documents* (Aspen Publ. 1999), at 193-207.

¹⁶⁹ As Conrad Black observes, "Nafta is a free trade association only, and, since the United States will not concede any sovereignty, it will not ask others to do so." Conrad Black, "Westward Look, the Land is Bright," *Spectator* (London), July 15, 2000, at 12,14 (note the editor's correction to (unquoted parts of the) text at *Spectator* (London), July 22, 2000, at 22).

¹⁷⁰ Concerning Mercosur, see Roett, Riordan ed., *MERCOSUR: Regional Integration, World Markets*, Lynne Rienner Publishers Inc., Boulder Colorado, 1999. [The Chapter used from the book is entitled "Toward the Common Market of the South: MERCOSUR's Origins, Evolution and Challenges," by Lia Valls Pereira, pages 7-23] (discussing the historical background and evolution of MERCOSUR, the success of integration in Latin America and the future challenges that MERCOSUR faces.).

¹⁷¹ See discussion of Economist and its ideological line at [].

If part of Europe does manage to convert itself into a political union, a United States of Euro, this will be the result of a conscious act of will, not of the workings of impersonal economic forces; and that act of will, it is clear, will have been driven by politics, not economics. The Europeans will have erased their borders either to prove that they will never fight each other again or -- more ominously -- because they want to be big enough to separate themselves from America. No equivalent driving force, capable of generating a similar act of will, is detectable anywhere else. If some Europeans eventually do abolish their borders (a large if), they should not deceive themselves into thinking that the rest of the world is about to follow in their footsteps."¹⁷²

Surely a more realistic view than Giddens' of the project of European integration -- and very far from being anti-European -- is that of the conservative British press magnate, Conrad Black. Writing in the Spectator (London), Black recognizes the appeal of genuine political union on the Continent while rejecting it for Britain:

"No one but a xenophobic philistine can fail to be impressed by the grandeur of the concept of a united Europe embracing historic nationalities and rich cultures that have often been antagonistic to each other, and few of which have shown much aptitude for self-government. It is a magnificent achievement, and those in [Britain] who compared Helmut Kohl to Hitler, or rejected Europe on grounds of mere bigotry are contemptible. Most of the Continental European countries should unite. They are more or less socialist regimes with coalition governments, generated by their proportional representative voting systems, that make the radical economic and social reforms which are necessary almost impossible. Few of their political institutions, except perhaps for the Dutch and the Danes, have any seniority or proven value, and they don't have much to lose institutionally in transferring authority to Brussels and Strasbourg ... In a federal Europe, Germany can achieve Kohl's admirable and sincere dream of a 'European Germany and not a German Europe'. France can continue in the statist tradition of Richelieu, Colbert, Napoleon and de Gaulle. Italy can rely on the monetary and fiscal management of others and blame the resulting inconvenience on the Germans since it can't manage a hard currency itself. Spain can complete its remarkable reintegration into the mainstream of Europe after a lapse of nearly 300 years, and the Greeks and Portuguese can emulate the Irish in selling their [European Union Commission] votes for unexampled prosperity based on transfer payments. It is an easeful rest for a tired continent."¹⁷³

But even with all these blessings of a united Europe, that is would be democratic is still far from clear. As Giddens acknowledges, the

"European Union isn't itself particularly democratic. It has famously been said of the EU that if it applied to join itself, it wouldn't get in. The EU doesn't meet the democratic criteria it

¹⁷² Brian Beedham, "Survey: The New Geopolitics: The thing that won't go away: Why the state stays the basic unit," Economist, July 31, 1999, at 8, 9-10.

¹⁷³ Conrad Black, "Westward Look, the Land is Bright," Spectator (London), July 15, 2000, at 12 (note editor's correction to (unquoted parts of the) text, Spectator (London), July 22, 2000, at 22).

demands of its members. Yet there is nothing in principle that prevents its further democratisation and we should press hard for such change."¹⁷⁴

"Nothing in principle" prevents its further democratization? Well, one such principle might well be physical size and numbers of people and the diversity of their cultures.¹⁷⁵ It is just conceivable that the European Union might manage to become genuinely democratic -- German Chancellor Gerhard Schroder in June 2000 called for the EU to move forward toward genuinely EU-wide direct elections for a European executive, although it was noteworthy that the French demurred¹⁷⁶ -- in the same sense that the United States of America is a democracy notwithstanding its large geographical area and large population.¹⁷⁷ On the other hand, the United States is more or less unitary with respect to language and whatever diversity of cultures it may have, that diversity is not comparable to the diversity within Europe, especially if the project of EU enlargement goes forward. It is peculiar to see a sociologist such as Giddens so blithely ignoring the question of shared culture. The size of a polity consistent with democracy is not necessarily coincident with the size of the optimal common market.¹⁷⁸

¹⁷⁴ Anthony Giddens, *Runaway World: How Globalization Is Reshaping Our Lives* (NY: Routledge 2000), at 98.

¹⁷⁵ European Commissioner for External Affairs Chris Patten, in an interview with Peter Norman, has remarked that "the debate about the levels -- local, national or federal -- at which authorities exercise competence in future in the EU is liveliest in Germany ... Europe must define "where we pool sovereignty and where we don't"... It is ... important that the EU "addresses more creatively the issue of democratic accountability'." Peter Norman, "Ideas man with practical intentions," *Financial Times* (London), Monday, July 31, 2000, at 15.

¹⁷⁶ [Cite to NYT article, June 2000.]

¹⁷⁷ One must be careful, of course, not to overstate the degree of democracy in the United States. It would be perhaps more accurate to describe the United States as a society that has historically balanced off the benefits of full and genuine democracy, which arguably functions best with a territory and population smaller than that of the United States, and the benefits of a common market, for which larger is better. I appreciate fully the criticisms made by Jose Alvarez, [EJIL 2000], responding in part to Kenneth Anderson, "The Ottawa Convention Banning Landmines, the Role of International Non-governmental Organizations and the Idea of International Civil Society," 11 *European Journal of International Law* 1, at 91-120 (March 2000), that in order to criticize the democratic deficit at the level of public international organizations, I romanticize the extent to which large nation-states such as the United States are in fact democratic. One consequence of this caution is that it could well be argued that even if the EU held direct elections for its executive along with its current system for electing the European parliament, it would still not be genuinely democratic; the nominally democratic system might, for example, fall into the one party trap of, for example, the PRI during its many decades in power in Mexico.

¹⁷⁸ See Kenneth Anderson, "The Ottawa Convention," 11 *European Journal of International Law*

But if
democracy is
so exceptional

In any case, the question of democracy and diversity within Europe, or indeed within any particular region, quite pales beside what that would mean for global institutions for the entire planet. Giddens brushes aside the possibility that democracy at the level of the whole planet might be intractable as a matter, so to speak, of the facts of geography and demography. Such pessimism reveals, he says, merely a lack of political imagination and moral willpower: *why is it the criterion*

"One might be forgiven for thinking that some problems are simply intractable, without hope of resolution. Democracy might appear to flourish only in especially fertile soil, which has been cultivated in the long term. In societies, or regions, that have little history of democratic government, democracy seems to have shallow roots and is easily swept away. Yet perhaps all this is changing. Rather than thinking of democracy as a fragile flower, easily trampled underfoot, perhaps we should see it more as a sturdy plant, able to grow on quite barren ground ... the expansion of democracy is bound up with structural changes in world society. Nothing comes without struggle. But the furthering of democracy at all levels is worth fighting for and it can be achieved."¹⁷⁹ *of legitimacy*

One might be forgiven for thinking that Giddens perhaps has in mind Ernest Gellner's warnings about seeing it too easy to establish conditions of democracy in widely divergent cultures:

~~"Theorists of democracy who operate in abstract, without reference to concrete social conditions, end up with a vindication of democracy as a general ideal, but are then obliged to concede that in many societies the ideal is not realizable. They end up with an ideal, universally vindicated in some bizarre sense, but one which at the same time is quite irrelevant to many, probably the very large majority of societies, because it is held to be inaccessible for them. Is it not better to include the pre-conditions in the notion of the desired order, and operate with something realistic, rather than with something absurdly abstract?"¹⁸⁰~~

1, March 2000, at 115-116.

¹⁷⁹ Anthony Giddens, *Runaway World: How Globalization Is Reshaping Our Lives* (NY: Routledge 2000), at 99-100.

¹⁸⁰ Ernest Gellner, *Conditions of Liberty: Civil Society and Its Rivals* (NY: Allen Lane Penguin 1994), at 188-89. I hesitate to invoke Gellner's analysis, for it is quite problematic; he goes on to suggest that civil society should substitute for democracy in many cultures and places, in what might appear to be exactly what this Essay argues against at []. However, Gellner uses a far wider definition of civil society than the definition used by international NGO advocates in the argument of the Essay, so perhaps the contradiction is resolved in that way. Still, there is something idiosyncratic, to say the least, in how Gellner deploys the categories of democracy and civil society. What is important about Gellner is his willingness to acknowledge that the pre-conditions of culture and antecedent social arrangements matter; it is not a matter of a bit of a-historical social tinkering, whether one speaks of conditions of democracy or civil society. His definition of civil society is, however, sufficiently different from the concerns of this Essay that I will not take *Conditions of Liberty* as a central point of analysis.

Giddens' neo-Victorian moral exhortation aside, the record on the establishment of long term democracies in particular places where the soil might have been thought barren has been mixed. Germany, Japan, South Korea, and Taiwan figure on the positive side of the ledger, although for some of them real democracy is still a fairly recent development and for Germany and Japan, it was the result of complete military defeat and total occupation for years; nearly all of sub-Saharan Africa figures on the negative.¹⁸¹ What the results will be in Bosnia, Haiti, or Kosovo is far too early to tell, but the prognosis cannot be said to be look promising.¹⁸² Meanwhile there is something peculiar about the schizophrenia of international organizations, state aid agencies, American philanthropic foundations, contract Western aid workers, civil society experts, election observers, OSCE¹⁸³ civilian monitors, UN peacekeeping forces, human

¹⁸¹ See the indispensable Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve* (Washington DC: Carnegie Endowment 1999), for a far more experienced and less pollyanish view of the possibilities of exporting democracy and civil society than Giddens suggests; likewise, in the context of the Latin American wars of the Reagan period, Thomas Carothers, *In the Name of Democracy: U.S. Policy Toward Latin America In the Reagan Years* (Los Angeles Univ. of California Press 1991).

¹⁸² See David Rieff, "The Law of Revenge Rules," *Newsweek*, August 23, 1999, *World Affairs*, page 35 (establishing a new rule of law and creating new civic institutions is the UN goal in Kosovo, but from what was taught in Bosnia, this goal may never be reached, and the only thing the West can really do is offer money and humanitarian relief); David Rieff, "Abandoning Bosnia-Again," *Newsweek*, September 16, 1996, *Opinion*, page 63 (the wishful thinking of the West that elections in Bosnia are the solution are actually going to "increase the chances of renewed war" and that all the international community is interested in is declaring an establishment of democracy, even if that is not in Bosnia's best interest); David Rieff, "War and Peace," *The New Republic*, July 18-July 25, 1994, page 14 ("Many people, myself included, have been appalled and disgusted by the policy of the United Nations in Bosnia," who assume that by using humanitarian relief workers as a "fig leaf for the refusal of the great powers do anything to prevent the genocide . . ." peace will ensue); see also Ambassador Robert Barry, "Time for Bosnia to take care of business: As international economic aid flows to fresh crisis areas, political leaders must build a sustainable economy," *Financial Times* (London), Thursday, June 8, 2000, opinion page, at 13. With respect to Haiti, see the superb Bob Shacochis, *The Immaculate Invasion* (NY Viking 1999), and see also [Chuck Nihan review for *Iowa Journal* once finalized].

¹⁸³ Organization for Security and Cooperation in Europe, whose civilian monitors were pulled out of Kosovo shortly before Nato's 1999 bombing campaign began. See Steven Lee Myers, "2,000 Monitors to Go to Kosovo, but Their Power is Unclear," *The New York Times*, Thursday, October 15, 1998, Section A, Page 6 (describing the task ahead of the OSCE as its "largest and thorniest" considering there is no resolution as to the organization's exact role); Guy Dinmore, "Kosovo tense as envoy arrives," *The Financial Times*, London, Thursday, November 12, 1998,

rights investigators, disaster assistance experts, refugee officials, and all the rest of the international social engineers who, on the one hand, recite the internationally politically correct mantra about their profound respect for local culture -- but then operate according to a theory of international liberalism, on the other, that says that culture in fact has no decisive role in the ability to reengineer local political institutions in any given place so as to produce democracy as required by the terms of all these people's international aid agency contracts.¹⁸⁴

Giddens approaches the problem of democracy with the can-do cheeriness of a mid-Victorian social engineer, just a knife-edge away from colonialism. But even if somehow he turned out to be right about democracy in all those particular places on the planet, it would not address the larger issue that he elides -- that of *planetary* democracy. The difference between national and even regional institutions, on the one hand, and planetary institutions, on the other, is one of kind and not merely degree. Michael Walzer gets at something like this difference in criticizing the idea that one can be a "world citizen" when, in speaking of his own experience, his personal identity as, among other things, a Jew and a social democrat,

"I am not a citizen of the world ... I am not even aware that there is a world such that one could be a citizen of it ... I have commitments beyond the borders of this or any other country, to fellow Jews, say, or to social democrats around the world, or to people in trouble in far-away countries, but these are not citizen-like commitments."¹⁸⁵

Europe Section, page 3, Dateline Pristina; "60 Nations Prepare for Kosovo Mission," The New York Times, Sunday, December 6, 1998, Section 1, Page 14, Oslo; Nora Boustany, "Diplomatic Dispatches: Ready for Trouble in Yugoslavia," The Washington Post, Friday, February 19, 1999, Section A, page 18 (commenting on discussions between Secretary of State Madeline Albright and chairman of the OSCE, Norway's foreign minister, Knut Vollebaek, regarding the evacuation of 1,200 "verifiers" in case of a NATO military strike); Charles S. Rudnick, "How to bring peace to Kosovo," The Boston Globe, Op-Ed section, page A15, Wednesday, January 20, 1999 (commentary regarding the goal of peace discusses the OSCE mission as "bound for failure" based on the prior experiences in Bosnia).

¹⁸⁴ See Kevin Quigley, *For Democracy's Sake: Foundations and Democracy Assistance in Central Europe* (Baltimore: Johns Hopkins UP 1997); Alison Van Rooy (ed.), *Civil Society and the Aid Industry* (London: Earthscan 1998); Lawrence E. Harrison, "Culture Matters," 60 National Interest 55 (Summer 2000), or the book length version of the thesis in Lawrence E. Harrison and Samuel P. Huntington (eds.) *Culture Matters: How Values Shape Human Progress* (NY: Basic Books 2000).

¹⁸⁵ Michael Walzer, "Spheres of Affection," in Martha Nussbaum and Joshua Cohen, eds., *For Love of Country: Debating the Limits of Patriotism* (Boston Beacon Hill Press 1996), at 125-126.

This difference of kind is something Giddens implicitly acknowledges when he says that the expansion of democracy, presumably to planet-wide governance, is bound up with "structural changes in world society." That is no doubt right, and perhaps, in keeping with the agendas of universalist social engineers of the past, some kind of New Globalist Man and Woman¹⁸⁶ would need to be engineered, too, for it is hard to see that merely institutional changes would be enough; the changes in "society" that Giddens would require would likely require changes in the nature of individual human beings as well.¹⁸⁷ This returns us to the "cosmopolitan" project of global governance that Held et al. earlier described, and its emphasis on education.¹⁸⁸ And hence the emphasis too, quite naturally, on "struggle." ; why not just belatedly say outright, "coercion"?

III.

The Alternative Legitimacy Claimed By International NGOs

A. An Alternative Claim of Legitimacy

I propose to accept at least provisionally, for purposes of this Essay and admittedly in the teeth of many passionately-held objections, that public international organizations lack democratic legitimacy and, more provocatively, that this "democratic deficit" is insurmountable, now and in the future. I regard it as sufficient reason to reject supranational government; I do not suppose, however, that all readers would agree.

Assuming that legitimacy matters at all, however, are there alternative sources of legitimacy that can *substitute* for democratic legitimacy in public international institutions that both strive and are called upon by many to become supranational institutions? And if there are such alternative sources, might they be *competitors* to the legitimacy claimed by public

¹⁸⁶ See also, Alain de Benoist, "Confronting Globalization," 108 Telos 117 (Summer 1996), at 133 ("Capitalism proposes to succeed where communism failed: to create a planet with no borders, inhabited by a 'new man'").

¹⁸⁷ One of the very few writers openly to acknowledge this is Martha Nussbaum, in her remarkably plain-spoken essay "Patriotism and Cosmopolitanism." See discussion of cosmopolitanism as described by Held et al. at []. That essay tells us flatly that we have a Kantian obligation to become citizens of the planet and to eschew the easy sentimentality of national or local allegiances, allegiances to particular place and particular people; and, moreover, that we ought to educate children to a global allegiance. The essay is reprinted with responses in Martha Nussbaum and Joshua Cohen, *For Love of Country: Debating the Limits of Patriotism* (Boston Beacon Press 1996); respondents included among others Michael Walzer, Kwame Anthony Appiah, and Gertrude Himmelfarb.

¹⁸⁸ See discussion at [].

international institutions, rather than complementing them? The answers to these questions matter, because it helps determine who, morally and politically, ought to be in the driver's seat in setting the agenda of globalization, under circumstances in which, especially following Seattle, sharp disagreement exists over what that agenda ought to be and how committed it should be to global capitalism providing the solutions -- especially with reference to the needs of the world's poor and voiceless.

Faced with questions about who may legitimately speak for whom, and particularly for the poor and their interests, Annan and other defenders of the growth of (managed) global capitalism have been understandably quick to point to the broad support for the WTO and regimes of trade expansion among the governments of poor countries. This featured prominently in the defense of the WTO following the Seattle protests. [Quotes?]¹⁸⁹ Some of those governments, of course, can speak seriously of a democratic mandate to speak for their people, but many others cannot. Here, at least in some cases, the Secretary General is on firmer grounds of democratic legitimacy. But because neither the UN, nor institutions of public international development finance and trade, nor even national governments have unchallengeable democratic legitimacy to speak for the world's poor and their views on economic and political globalization, many of the world's NGOs believe they have as much or more moral authority to do so -- and the responsibility to do so, as well. These international NGOs believe that they have claim to an alternative source of legitimacy and that this gives them the moral high ground in dealing with national governments, public international organizations, or private multinational enterprises; the question is, in what does this claim of alternative legitimacy consist and is it coherent?

Everyone understands, of course, that the protestors and the members of the organizations present in Seattle, in Washington DC in April 2000, and most recently in the trial of French activist Jose Bove, whose followers vandalized a French McDonald's,¹⁹⁰ are not themselves, with

¹⁸⁹ [Need cites and quotes from around the time of Seattle]

¹⁹⁰ See Economist (London), "The French farmers' anti-global hero," July 8, 2000, at 50; Vivienne Walt, "Super-size frustration drives French farmers," USA Today, Friday, June 30, 2000, News Section, page 16A, Millau, France (quoting Bove's supporters claiming that "the multinationals are taking all the power" as the trial in Millau becomes a "anti-globalization gathering" as Bove becomes a folk hero); Charles Bremmer, "Big Mac protester a 'French Gandhi,'" The Times (London), Saturday, July 1, 2000 (Bove compared their actions to Gandhi as a non-violent resistance to "American provocation" as the French Farm minister, Jean Glavany claimed that it is a trial of a crime, and not a trial of globalization as Bove states); Suzanne

negligible exceptions, "los de abajo,"¹⁹¹ the poor of the planet, or anyone actually sent by the poor to "represent" them in the capitals of the developed world. These activists are, as commentators have mockingly pointed out, overwhelmingly middle class and from the better off parts of the developed Western democracies.¹⁹² They do not, in fact, differ all that much from the staff of the public international organizations, except that those organizations perhaps might have more representation from the global South, although those personnel tend to be themselves the educated middle class or above, elites in their own societies.¹⁹³ The Seattle protests, in particular, were numerically dominated by American trade unionists, whose organizational -- as perhaps distinguished from personal -- motives were often, again as commentators mockingly noted, simple protection of American industrial jobs at the expense of underdeveloped countries.¹⁹⁴ The organizations present, too, were overwhelmingly those representing the social agendas of the rich West -- environmentalism, to start.¹⁹⁵ The world's poor were not present to make their case, and the organizations that were there had not been authorized to make it for them. The international NGOs have not, after all, been *deputized* to speak for the poor. Nonetheless, in Seattle, and in thousands of other less spectacular international fora, these organizations claim that they have the legitimacy lacking in the world's public bodies to speak for the interests of the have-nots and the voiceless.

In announcing this legitimacy, the world's international NGOs (of all varieties, causes, and interests) are also much given to announcing themselves as "international civil society"-- the

Daley, "French Turn Vandal Into Hero Against U.S.," The New York Times, Saturday, July 1, 2000, Section A, Page 1, Millau, France; John Lloyd, "The trial of Jose Bove: When a French farmer took direct action against McDonald's, he became a champion of anti-globalisation protesters and his case became an international media event," The Financial Times, Saturday, July 1, 2000, Comment & Analysis, page 13.

¹⁹¹ Loosely translated, "the underdogs"; see Mariano Azuela, *Los de abajo: novela de la revolucion mexicana* (Mexico DF Editorial Pedro Robredo 1938).

¹⁹² Helene Cooper, "Some Hazy, Some Erudite and All Angry, Diversity of WTO Protests Makes Them Hard to Dismiss," Wall Street Journal, Tuesday, November 30, 1999, A2 (discussing the diversity of the protesters, ranging from those that cite specific instances of WTO rules and policies, to those who are limited to sound bites with no specific knowledge); [More Cites -- include the New Yorker profile of that woman from wherever]

¹⁹³ [Cites]

¹⁹⁴ [Cites]

¹⁹⁵ [Cites]

international equivalent of voluntary civic organizations of ordinary societies.¹⁹⁶ On this model of treating international NGOs as being the equivalent, in the international arena, of NGOs in domestic societies, NGOs and their scholarly advocates have seen themselves as demanding accountability from the very two sources of power that the Secretary General conjoined in his commitment to managed global capitalism: international institutions of governance and international private market. This is an ambitious intellectual and political claim by international NGOs. It requires showing at least three things: First, that the theory of civil society is coherent even within a domestic society; second, that there is a meaningful analogy between the domestic and international realms, such that "international society" is sufficiently similar to domestic society so that it can support the existence of an "international civil society"; and third, that the concept of international civil society can sustain the political tasks and privileges the international NGOs give themselves in an international arena that is not democratic, in the meaning of a democratic domestic society. ✓

B. Civil Society in a Domestic Democracy

Advocates of the idea of civil society often have in mind that civil society is prescriptive and not simply descriptive of the types of organizations and social relationships, of whatever kind, people wish to engage in. These advocates typically want civil society, associational life, to consist of socially and politically progressive organizations that favor the causes that these advocates believe in. The risk, as Ernest Gellner reminds us, is that "civil society," on the contrary, includes "many forms of social order which would not satisfy us" -- i.e., Western enthusiasts of civil society.¹⁹⁷ The strongest advocates of international civil society as modeled, supposedly, on domestic civil society frequently believe civil society consists solely of the "good guys" -- meaning only the people that they agree with. Civil society, David Rieff says, is } ✓

¹⁹⁶ For example, in the context of the global campaign against landmines, Jody Williams closed her Nobel Peace Prize acceptance speech saying that the landmines campaign was "historic because, for the first time, the leaders of states have come together to answer the will of civil society." Jody Williams, Acceptance Speech for 1997 Nobel Peace Prize, December 10, 1997, at http://www.foreignaffairs.org/envoy/documents/v8n6_nobel.html (last visited June 22, 2000); see also the celebration of this idea in the landmines campaign throughout *To Walk Without Fear: The Global Movement To Ban Landmines*.

¹⁹⁷ Ernest Gellner, *Conditions of Liberty: Civil Society and Its Rivals* (NY Allen Lane Penguin 1994), at 6.

"a projection of our desires. Worse, it gravely misdescribes the world we actually confront. As a concept, it has almost no specific gravity. It is little better than a Rorschach blot, the interpretations of which have been so massaged and expanded over the past fifteen years that the term has come to signify everything -- which is to say nothing. Conventionally, we use civil society to apply to groups, societies and social trends of which we approve ... to make the claim that civil society is bound to be, or is even likely to be, a force for good is roughly akin to claiming that people, at least when left to their own devices, are good. In contrast, proponents of civil society are often mesmerized by the depredations of states and seem to assume that states, by their nature, are malign or impotent or both. But there are other predators besides government officials, other ills besides those unleashed by untrammelled state power. An example might be the Bosnian Serbs under Radovan Karadzic. During the Bosnian war, it was a liberal conceit that the Serbs acted as they did because of fear or media manipulation. The idea, say, that people are capable, without manipulation, of great evil was dismissed out of hand. And yet as one who spent a good deal of time covering the war in Bosnia, my view is that Karadzic represented the aspirations of ordinary Serbs in that extraordinary time all too faithfully and could rightfully lay just as great a claim to being an exemplar of civil society as Vaclav Havel. That Karadzic is an evil man and Havel a good one should go without saying. But where the question of civil society is concerned, it is beside the point, unless, of course, you accept the claim that civil society exists only when the ideals or interests being expressed are good, peace-loving and tolerant. At that point civil society becomes, as it has for its more unreflective advocates, a theological notion, not a political or sociological one."¹⁹⁸

Defining civil society in this prescriptive way as "my list of righteous causes" thus confuses a theory of individual and community association, and the benefits that can flow from such association, with a theory of the good. The associational life carries with it benefits for society -- but those benefits are not automatic and they are of two distinct kinds, a distinction often not recognized by naive advocates of civil society. Some benefits of civil society accrue to a community because association is, in general, a good thing, in that it gives individuals a sense of community and belonging, as well as performing important "mediating" functions between individuals and their families, on the one hand, and institutions of the state and market, on the other.

Other benefits accrue from the work of associations, by contrast, because the *causes* being pursued are perceived to be good for the community in and of themselves, such as raising money for a local hospital or school, pressuring government to clean up a local hazardous waste dump, or lobbying to put zoning controls on private businesses or, for that matter, pressuring for

¹⁹⁸ David Rieff, "The False Dawn of Civil Society," *Nation*, Vol. 268, No. 7, February 22, 1999, at 11.

the right of citizens to carry concealed weapons in church.¹⁹⁹ But there is no necessary match between communal esprit d'corps, so to speak, or "mediating" effects of associations, the "associational benefits," on the one hand; and the goodness of the ends being pursued, the "benefits of good causes," on the other. Even evil ends pursued through civic associations can bring many of the benefits of the associational life, "associational benefits," to a society.²⁰⁰ Yet it

¹⁹⁹ If we are genuinely going to be agnostic about the purposes of civil society, then it ought to be reflected in our choice of examples. See [legislation on guns in churches - in Texas, maybe a federal statute that is proposed, I don't know].

²⁰⁰ This is not the place to consider deeply the contentious issue of whether pre-war Nazi Germany is a case of the cooption of organizations of civil society by the state and the suppression of the rest, excepting a handful of noble "White Rose" movements resisting the Nazis, thus leaving the Nazi state free to carry out its agenda unimpeded by civil society; or whether it had a civil society, an associational life which, as it happened, independently and enthusiastically supported the Nazi regime. Enthusiasts of civil society as something *automatically* virtuous, supporting causes that they support, prefer the former to the latter, and certainly at some point early in the course of the war, civil society had disappeared altogether; whether that was on account of the war or on account of the Nazis is the same question, repeated. The view that civil society had been repressed and replaced with "faux" organizations of civil society is the vision of Orwell's 1984; the hiking groups, youth groups such as the "Spies," the "Junior Anti-Sex League," often organized by the state to replace, perversely, similar organizations of civil society of an earlier time, and certainly that was the pattern of Stalinist societies, if not Nazi society. George Orwell, 1984 (1949) (NY Signet New American Library 1980), at 100-101.

But the Nazis did not *start out* as the regime; they started out as an associational group in civil society that rose through Weimar society to capture the apparatus of the state. Moreover, as Sheri Berman has pointed out in a sobering article on civil society in Weimar Germany, associational life in Weimar was rich, varied, highly contested, and indeed pluralistic; it was the state that was weak and it, she argues, collapsed under the weight of associations of civil society. As Thomas Carother summarizes the crucial point, "not only did Germany's vibrant civil society fail to solidify democracy and liberal values, it subverted them. Weak political institutions were unable to respond to the demands placed on them by the many citizens organizations, leading the latter to shift their allegiance to nationalist, populist groups and eventually to the Nazi Party. In the end, the density of civil society facilitated the Nazis' rapid creation of a dynamic political machine." See Sheri Berman, "Civil Society and the Collapse of the Weimar Republic," *World Politics*, April 1997; it has aptly been nicknamed "Bowling With Hitler"; Thomas Carothers, "Civil Society: Think Again," *Foreign Affairs*, December 22, 1999. The playwright Bertolt Brecht seems to have had something of this view, writing in the midst of Weimar's most decadent period and indeed contributing to it; this view is at the center of his thinly veiled allegory-in-opera, *The Rise and Fall of the City of Mahagonny*. See John Willett and Ralph Manheim, *Bertolt Brecht Collected Plays, Volume Two, Part Three, "The Rise and Fall of the City of Mahagonny"* (London Eyre Methuen 1979), at 1, 63 (Scene 20) ("And amid increasing confusion, inflation and universal mutual hostility those who had not yet been killed

is all "civil society." Conflating the two kinds of benefits, as many advocates of civil society are wont to do, and assuming that if you have one, you have the other, is socially a very dangerous recipe.

A recent account by David Grann of the overwhelming domination of organized crime in Youngstown, Ohio during the past few decades illustrates the dangers -- not in the far away and slightly unreal context of Bosnia, but in the United States. Prosperity, through the steel mills, had brought the mob to Youngstown early in the 20th century; by the late part of the century, it was one of the most economically depressed, and the mob was completely in control of local institutions:

"[I]f prosperity had brought the mob to the valley a half-century earlier, depression had cemented its rule. The professional classes that did so much to break the culture of the Mafia in Chicago and Buffalo and New York in the 1970s and '80s practically ceased to exist in Youngstown. Much of the [Mahoning] valley's middle class either left or stopped being middle-class. And Youngstown experienced a version of what sociologists have described in the inner city. The city lost its civic backbone -- its doctors and lawyers and accountants. The few upstanding civic leaders who remained were marginalized or cowed. Hierarchies of status and success and moral value became inverted. The result was a generation of ... kids who worshipped the dons the way other children worshiped Mickey Mantle or Joe Di Maggio ... *The mob, which had once competed with the valley's civil society, largely became its civil society.*"²⁰¹

demonstrated for their ideals during the last weeks of Suckerville -- having learnt nothing.")

Historian John Lukacs also notes that the "clever" Carl Schmitt, the reactionary legal theorist and sometime Nazi, "wrote in 1935 that the National Socialist regime meant the end of the old Prussian 'Beamtenstaat', with its Hegelian conception of a state governed by officials. It was, instead, a 'Volksgenossenstaat', a state of the comradeship of the people ... That was exactly what Hitler thought ... The German working class, among others, felt something of this, too: Many of the steelworkers of Krupp were more reliable followers of the Fuhrer than were some of the old Prussian civil servants." John Lukacs, *The Hitler of History* (NY Knopf 1997), at 115. The French *philosophe* Bernard-Henri Levy has argued, on the contrary, that Schmitt and his statist followers were "renegades" by 1934, and that the Nazi "state" was not really a state in the sense of either democratic states or even what we ordinarily think of the all-inclusive totalitarian state; what actually mattered in domestic Nazi domination was the Party, absorbing the state, and implying a very different relationship between state and civil society: "The Hitlerites in power also dreamed in their way of making the state wither away." Bernard-Henri Levy, *The Testament of God* (NY Harper & Row 1980), at 12-15.

The question of Weimar civil society and the Nazis is likely to be argued for a long time without resolution, but Berman's article at least ought to give pause to unreflective advocates of civil society -- as doubtless it was intended to do.

²⁰¹ David Grann, "Crimetown USA: The city that fell in love with the mob," *New Republic*, Vol. 223, Nos 2 & 3, Issues 4460 & 4461, July 10 & 17, 2000, at 23, 28 (emphasis added).

Moreover, Grann continues, according to one of the few sociologists to study the region, Mark Shutes, it is a deep mistake to believe that Youngstown is in the grip of oppression by the mob, lording it over a populace that resents it but has no choice:

"When I stop off at Youngstown State University to talk to Mark Shutes, an anthropologist ... the first thing he says is, 'You're not gonna write some crap about how we're all victims of gangsters, are you?' Shutes contends that, after so many years of eroded civic institutions, the community has come to rely increasingly on mobsters, who play the same role in civic life that the police and the political establishment do in other cities. 'We have socialized ourselves and our offspring that this is the way the world is', he says. 'This is our little safe part, with our community and church, but in order for it to be safe, you need these people to be brokers'. Indeed, in a world in where corruption is normal, he says, values prized in other cities are, in the valley, deemed counterproductive. 'We don't see high ideals as being a benefit', he explains. 'We see [them] as being a weakness. There is no sense in this community in which gangsters are people who have imposed their will on our community. Their values are our values'."²⁰²

Civil society, in other words, is no guarantee against evil associations which, nonetheless, still perform many of the "mediating" -- what Shutes calls the brokering -- functions of civil society. Thomas Carothers frames this as an explicit warning to enthusiasts of international civil society on the basis of domestic society models and, especially, extrapolating from the experience of Eastern Europe revolutions allegedly made by civil society organizations and the so-called "new social movements"²⁰³:

"Civil Society Is Warm and Fuzzy: That depends on whether you like snuggling up to the Russian mafia and militia groups from Montana as well as to your local parent-teacher association. They're part of civil society too. Extrapolating from the courageous role of civic groups that fought communism in Eastern Europe, some civil society enthusiasts have propagated the misleading notion that civil society consists only of noble causes and earnest, well-intentioned actors. Yet civil society everywhere is a bewildering array of the good, the bad, and the outright bizarre ... Recognizing that people in any society associate and work together to advance nefarious as well as worthy ends is critical to demystifying the concept of civil society ... The idea that civil society inherently represents the public good is wrong in two other ways as well. Although many civic activists may feel they speak for the public good, the public interest is a highly contested domain. Clean air is a public good, but so are low energy costs. The same could be said of free trade versus job security at home or free speech versus libel protection.

²⁰² David Grann, "Crimetown USA: The city that fell in love with the mob," New Republic, July 10 & 17, 2000, at 31. I do not want to deny the possibility, however, that Grann's analysis suffers from his coming to Youngstown with a theory of the takeover of civil society already in mind; he may simply have bought overmuch into Shutes' civil society analysis, although I incline to doubt it.

²⁰³ [Nasty footnote from Telos and other places on Gorbachev and new social movements literature]

Single issue NGOs, such as the National Rifle Association and some environmental groups, are intensely, even myopically, focused on their own agendas; they are not interested in balancing different versions of the public good. Struggles over the public interest are not between civil society on the one hand and bad guys on the other but within civil society itself. Moreover, civil society is very much concerned with private economic interests. Nonprofit groups, from tenants' organizations to labor unions, work zealously to advance the immediate economic interests of their members. Some civil society groups may stand for "higher" -- that is, non-material -- principles and values, but much of civil society is preoccupied with the pursuit of private and frequently parochial and grubby ends."²⁰⁴

The goodness of civil society within a domestic society thus cannot be assumed. The risk of defining civil society to be just the "good guys" is that it fatally confuses the benefits of "good causes" with the benefits of "association" and assumes that one brings the other. They are conceptually independent, even while both are important. Moreover, there are grounds for worry that the idea of civil society, even domestically, does not have intellectually coherent moral and political foundations for the increasingly heroic tasks that its proponents assign it in contemporary domestic society, particularly as the role and ability of government to promote civic culture is perceived to be increasingly marginal. Alleviating poverty, providing social services to the poor, restoring civic morality, educating children in the inner city -- these represent just a small part of the social agenda that politicians in the United States, conservative as well as liberal, have been eager to hand over the domestic civil society, to American NGOs and particularly to so-called "faith-based organizations." For their part, many American NGOs have been eager to accept the invitation and the government funding that accompanies it.²⁰⁵ Whether American domestic civil society can fulfil the promise of the "NGO-ization" of social services, and so fulfil the expectations of the civil society theorists, remains to be seen.²⁰⁶ The outcome of this social experiment will not be irrelevant, to say the least, to the future of so-called

²⁰⁴ Thomas Carothers, "Civil Society: Think Again," *Foreign Policy*, December 22, 1999, at 18.

²⁰⁵ See, within the voluminous literature, especially as the 2000 presidential campaign accelerates, Hanna Rosin, "Applying Personal Faith to Public Policy," *Washington Post*, Monday, July 24, 2000, at A1 (George W. Bush and "faith-based initiatives"); georgewbush.com, Faith Based Initiatives, at

<http://www.georgewbush.com/issues.asp?FormMode=FullText&ID=33> (last visited July 25, 2000); Al Gore, "Remarks As Prepared For Delivery by Vice President Al Gore on the Role of Faith-Based Organizations," Monday, May 24, 1999, at

http://www.algore2000.com/speeches/speeches_faith_052499.html (last visited July 25, 2000).

²⁰⁶ See Albert R. Hunt, "Faith-Based Efforts: The Promise and Limitations," *Wall Street Journal*, Thursday, August 12, 1999, opinion section.

"international civil society," which have also assigned themselves, and had assigned to them by others, extraordinarily ambitious roles in international life.²⁰⁷

C. Is "International Community" Analogous to Domestic Democracy?

Yet, for better or worse, international NGOs believe themselves to be domestic civil society's international analogue. They believe themselves to be the international analogue of the local animal welfare league, PTA, Boy Scouts, cancer charity, Sierra Club, local church, civil liberties association, and all the myriad organizations of civic action that play so important a role in the life of a democratic society, especially in the United States, despite the concern that civil society enthusiasts are overburdening them with obligations they cannot meet.²⁰⁸ The

²⁰⁷ One distinct possibility is that large scale government funding erodes the associational character of NGOs -- so eroding the very internal culture that made them attractive as mechanisms to deliver social services, rebuild civic culture, or whatever might be the goal of government funding -- by turning them from NGOs into mere government contractors. The result might perhaps be service providers to the government not really very different from government bureaucracies or for-profit providers, or perhaps a special variety of government contractor, uniquely "NGO" in its approach but simply not very good at its job. This concern is rarely raised, however, outside of the circle of conservative Christian churches and NGOs that seek to avoid, above anything else, damaging entanglements with government. See Michael Horowitz, "Subsidies May Cost Churches Their Souls," Wall Street Journal, Thursday, December 16, 1999, opinion section; Leslie Lenkowsky, "Houses of Worship: Wary of Charity," Wall Street Journal, Weekend Journal: Taste, Friday, July 9, 1999. In my experience of American NGOs, it is considered an issue of the management of efficiency and internal organizational culture rather than an issue of principle; this is how the Economist, in a relatively rare reference to the question by the mainstream press, regards it: "It could be argued that it does not matter even if NGOs are losing their independence, becoming just another arm of government or another business ... [they,] after all, may be more efficient than the old sort of charity." Economist, "NGOs: Sins of the secular missionaries," January 29, 2000, at 25, 27. In my view, however, the erosion of mission is *the* issue of principle, and it will certainly be a central issue in the future of international NGOs.

²⁰⁸ Of course, a fierce debate is underway over whether "associational life" is in decline in the United States. See Robert Putnam, "Bowling Alone," Journal of Democracy, January 1995; Alan Wolfe, "Is Civil Society Obsolete?" Brookings Review, Fall 1997; Michael Foley and Bob Edwards, "The Paradox of Civil Society," Journal of Democracy, July 1996; Robert Putnam responds to Wolfe, Foley and Edwards, and other critics in Robert Putnam, Bowling Alone (NY: Simon & Schuster 2000).

Critical to that debate is whether the explosive growth of on-line "communities" constitute meaningful social and associational life within the meaning of civil society. It is clear from the history of the landmines ban campaign and the defeat of the Multilateral Agreement on Investment (MAI) that the Internet can create ferociously effective advocacy organizations around the world. See Maxwell A. Cameron, Brian W. Tomlin, and Robert J. Lawson, To Walk

heterogenous nature of international NGOs' activities defies easy characterization -- and that, of course, includes their attitudes toward economic, political, or cultural globalization; only a tiny subset was involved or even necessarily sympathetic to the anti-globalization agenda at Seattle -- leading many commentators, as King and Ku note, to "turn away from definition towards classification."²⁰⁹ The term "NGO," Kille, Peterson, and Smith observe, "includes everything from village associations in developing countries to large multifaceted organizations active around the globe," and they prefer to refer to international NGOs as "civil society organizations," on the grounds that the term "provides a more accurate label of what these organizations actually are and it is the term which is now being used by parts of the UN system."²¹⁰ Irrespective of differences of size or other characteristics, however, a feature common among international NGOs is that they are wont to claim the moral authority that do-gooders have always claimed, only now in the international, rather than merely domestic, arena.

If it is true that civil society requires a *society*, a community within which it operates, then it is far from clear that what journalists and international bureaucrats are fond of calling the "international community" in fact fills that role. Indeed, it is far from clear that there is any such thing, at least in the sense relevant to civil society. Perhaps the strongest expression of this view in recent years has come from Charles Krauthammer:

"We have local communities. We have national communities. We have no international community. Why? Because community implies a commonality of interest. Different nations have different, often conflicting, interests. What overlap there is tends to be narrow and

Without Fear: The Global Movement to Ban Landmines (London: Oxford UP 1998); Alan Rugman, *The End of Globalization* (NY Random House 2000), at 35-85. But, notes William Barndt of the Carnegie Endowment for International Peace, "the argument that the Internet is creating a meaningful, virtual civil society depends heavily on the medium's ability to generate 'social capital' -- what Putnam identified as 'features of social organizations such as networks, norms, and social trust that facilitate coordination and cooperation for mutual benefit' among citizens ... Internet based associations need to have the same qualities as associations in traditional civil society ... Beyond being a tool, cyberspace needs to be a place." William Barndt, *Foreign Policy*, December 22, 1999 [at page?].

Strikingly, even the UN Secretary General has taken a position on virtual associations. "Today, of course, more and more communities are 'virtual'," Annan remarked in a recent address, "discovering and promoting their shared values through the Internet." Kofi Annan, "Sec-Gen examines 'meaning of international community' in address to DPI/NGO conference," M2 Presswire, September 16, 2000 (address delivered September 15, 2000).

²⁰⁹ Gamble and Ku, at 227

²¹⁰ Kille et al., cited in Gamble and Ku, at 227.

temporary. The notion of a global unanimity of interest is always an illusion, and almost always an evasion."²¹¹

This is a commonly expressed view among American conservatives; pundit George Will, for example, refers to that "fiction, the 'international community',"²¹² and on other occasions Krauthammer has declared that the "international community ... is a figment of the liberal imagination."²¹³ Krauthammer's argument is, in summary, that because countries have radically different histories and geographies, and it naturally follows that they have very different interests; American interests are not the same as the Canadians, let alone those of Iran. There is insufficient commonality of interests among states for there to be anything other than ad hoc coalitions of interest that gradually shift over time. As Krauthammer says:

"Different countries have radically different geographies, histories, and levels of power, and therefore radically different interests. There may be ad hoc coalitions of interest. Nations may occasionally unite in some emergency (World War II, the Gulf war). But there is no natural, inherent, or enduring international community. What community of interests is there among, say, Brazil, Iraq, Zimbabwe, and the United States? Community? The international arena is a state of nature with no enforcer and no universally recognized norms. Anarchy is kept in check, today as always, not by some hollow bureaucracy on the East River, but by the will and power of the Great Powers, and today, in particular, of the one great superpower."²¹⁴

This amounts to a straightforward expression of realism. Indeed, that part of Krauthammer's argument was expanded upon in the China Daily, in the wake of the Kosovo conflict, although it characterized, in realist fashion from China's point of view, the threat to be from the United States and not the UN:

"The emergence of something called 'the international community' is a recent phenomenon ... This innocuous, even benign-sounding phrase on the surface seems to make the world a cozier, more firendly place, perhaps even mitigating the adverse effects of globalizations. But can we also discern a de facto reconstitution of global power in the 1990s in it? ... An informally constituted 'international community' threatens to supersede the function of the United Nations, although it does not disdain to use that institution as a pretext for imposing itself upon the world

²¹¹ Charles Krauthammer, "What International Community?" Washington Post, Friday, December 26, 1997, op-ed, page A-29

²¹² George Will, "Still Not Serious," Washington Post, Tuesday, November 17, 1998, op-ed, at A-27.

²¹³ Charles Krauthammer, "Who's In Charge Here, Anyway? America risks blood and treasure in the Gulf. Kofi Annan calls the shots." Time, November 30, 1998, essay, at 136.

²¹⁴ Charles Krauthammer, "A World Imagined: The flawed premises of liberal foreign policy," New Republic, March 15, 1999, at 26.

... Its distinguishing features is its resolve to act, not so much in the interest of the world, as in the interests of the dominant powers within it. Its operations include quixotic and arbitrary interventions in other countries, sometimes in the name of fighting tyranny, and now in Kosovo, in the name of 'humanitarianism' ... The very idea of 'international community' hints at shared values, an absence of conflict, a common endeavor to suppress dissent. The word 'community' is always double-edged, implying, as it does, a commitment to a common purpose which can be generous and inclusive. But, it can also become a powerful mechanism for disciplining recalcitrants. At the level where it has a real meaning, in the sense of the locality, the neighbourhood, places where people are attached to each other by bonds of propinquity, kinship, or shared experience, it will uphold and support the weak and vulnerable. But it can be merciless to those who transgress its norms. Inflated to the global level, the concept 'international community' is meaningless."²¹⁵

Leaving aside the attack on the United States in favor of a UN that is conceived *not* to be supranationalist in the way that Krauthammer, along with the China Daily, opposes, there is much in this denunciation of the concept of the "international community" that American conservatives would share as against liberal internationalists, in particular the inapposite application of a word, "community," to the local, the national, and the international -- using the term, after all, is not the same thing as showing that the same concept applies, or even *can* apply, to each level. ~~The China Daily is surely right to say that "inflated to the global level,"~~
international community is meaningless.

But Krauthammer is not merely a realist. He will have none of liberal internationalism's idealism and moves to attack not only liberal internationalist utopianism, as he sees it, on grounds of hard-headed pragmatism, but also its fundamental yet often-unstated presumption of moral superiority:

"Why should the United States take seriously, morally seriously, as Americans do, the pronouncements and decisions of that preeminent international governor, the U.N. Security Council? By what logic is action that is taken with the blessing of the butchers of Tiananmen Square, the ex-apparatchiks of Moscow, or the cynics of Paris inherently more worthy than action taken by the people of the United States in Congress assembled and by direction of the president? ... The problem with contemporary liberalism is that it ... sincerely believes that multilateral action -- and, in particular, action blessed by the U.N. -- is in and of itself morally superior to, and more justifiable than, the United States unilaterally asserting its own national interest."²¹⁶

²¹⁵ China Daily, "China - Community shatters order," FT Asia Intelligence Wire, June 2, 1999.

²¹⁶ Charles Krauthammer, The New Republic, March 15, 1999.

Krauthammer's argument -- which was widely discussed in Washington foreign policy circles -- is thus not simply an assertion of realism, prudential interests, but instead the assertion of a counter-morality, one which asks directly why it is so generally assumed that international or global bodies have more moral legitimacy to act than merely national ones, and in particular national ones that reflect a democratic mandate. One answer to Krauthammer is precisely the issue of interests; even if a national polity acts in a democratic fashion, it acts according to interests, whereas an international or global body is able to act according impartially. But Krauthammer has available a ready response; bodies, such as the Security Council, which have such actors as China or Russia on them, cannot under any circumstances be justified by reference to morality. They are bad actors, and the only reason for including them on such a body as the Security Council is not internationalist morality, but internationalist prudence, because they are powerful and nuclear-armed. The genuinely moral thing to do is *not* to treat them as moral equals, or as part of a body which is regarded, because it is "international," as morally superior to the sovereign United States, because they are not and it is not, but instead to treat with them explicitly on the basis of interests, for reasons of realistic prudence. It is the tribute paid to power, no less, but also no more. Realism, in this case, is a better *moral* answer to the question of evil power than the pretence of a damaging moral equality.

This seems to me a powerful moral argument, and yet it is one which is consistently ignored by liberal internationalists. ~~On the contrary, the moral superiority of "impartial" and "universal" systems of international law, norms, and institutions is continually asserted.~~ As one leading human rights advocate once put it to me in conversation, the American "constitution was an inspiring model for what should happen on a global level -- but it is now a parochial document that stands in the way of enacting something that would accomplish the same aims on a truly universal, global level."²¹⁷ Something like the same impatience with America's parochial, partial, and hence un-universal preoccupation with its own constitution and constitutional system was on display at a conference on US unilateralism in international affairs in fall 1999 at the University of Michigan Law School; liberal internationalists, some American and some not, asserted over and over that American constitutionalism had become an impediment to the

²¹⁷ Author conversation.

The real reason
is their confidence that it will look

consolidation of a world order.²¹⁸ In my experience of the world of international law, I would describe these attitudes as being the norm and not the exception; Krauthammer's arguments, which seem to me quite persuasive, are considered nearly beyond the pale of what is considered "polite" discourse on international affairs and law.

One reason why Krauthammer's argument is so roundly rejected by liberal internationalists is that liberal internationalism indulges in an intellectually fatal conflation of "universal," on the one hand, with "international" or "global," on the other. If one is committed to thinking that the international or global are the same as the universal, then naturally one will assume (if one is a universalist) that the international has moral superiority. But that assumption seems quite unwarranted; "globalization is not universality."²¹⁹ That said, there is no obvious reason why the "universal" -- and hence universally desirable or universally to be protected, such as human rights -- should be specially known to international bodies over national or even local ones. What is the privileged access to this knowledge of international bodies, supranational institutions, or international NGOs? This is not an assertion of cultural relativism; one can believe in the existence of universals that should be defended while believing that knowledge of the *content* of those universals is at least as, or even more, likely to be known at the local or national level than at the international level. Skepticism about who is best positioned to know what is truly universal and what is not does not make one into a cultural relativist, but it does disincline one to hand over the power and sovereignty connected with making those choices stick to international bodies, merely on the grounds that they are international.²²⁰

Finn
argue
to be

Right

²¹⁸ Conference on U.S. Unilateralism, September 1999, University of Michigan Law School and [full cite]. Much of this discussion took place in oral exchanges, but parts of it come through in the conference papers published in the 11 European Journal of International Law 1 (March 2000) and 12 European Journal of International Law (forthcoming 2000), and particularly in the summary remarks by Jose E. Alvarez, "Multilateralism and Its Discontents," 12 European Journal of International Law (forthcoming 2000).

²¹⁹ Alain de Benoist, "Confronting Globalization," 108 Telos 117 (Summer 1996), at 133.

²²⁰ See Kenneth Anderson, "Secular Eschatologies of the Internationalized New Class," Peter Juviler and Carrie Gustafson, eds., Religion and Human Rights: Competing Claims? (NY: M.E. Sharpe 1998), at 107, 114-115. One response that could be given is that the international bodies are morally superior because they are impartial -- unlike local or national bodies, they are disinterested and so have a morally superior ability to determine the truly universal. This assumes an impartiality and disinterestedness that is, I think, quite at odds with the condition of those who make up international bodies who, I have argued, are today effectively coalescing into a broad international elite, a sort of internationalized elite. This elite is not disinterested; it has

Krauthammer's argument has not gone unanswered by UN officialdom. Secretary General Kofi Annan delivered a speech on the meaning of "international community" to a conference of international NGOs in which he began by acknowledging that criticism of the term and what it implies:

"Some people say the international community is only a fiction. Others say it is too elastic a concept to have any real meaning. Still others say it is a mere vehicle of convenience, to be trotted out only in emergencies or when a scapegoat for inaction is needed. Some say there are no internationally recognized norms, goals or fears on which to base such a community. Op-ed pages refer to the 'so-called' international community. And news reports often put the term in quotation marks, as if it does not yet have the solidity of actual fact."²²¹

The reason that the "international community" matters today, says Annan, is that globalization makes it a necessity; the function of the international community, in part, is to be both a sort of midwife to, as well as *result* of, that process: ✓

"Globalization has become the essence of modern life. It must become second nature in our thinking ... For many there is an urge to resist the process and take refuge in the comforts of the local. Globalization may be exacerbating inequality. It may also be disturbing cultural traditions

definite interests, international interests, and the confusion of the international interests of an international elite with "universal" interests seems to me not just confusion, but pernicious confusion. As I put it in "Secular Eschatologies": "The international New Class claims universality, in the name of everyone, for the sake of everyone, regardless of whether they are participants in this New Class or not. What it actually pursues, however, is something different -- globalism and internationalism. The international New Class, it seems to me, pursues its particular class interest by declaring it to be a universal interest; it is able to do so by deliberately exploiting the confusion between 'global' and 'international', on the one hand, and 'universal', on the other. But they are not the same thing." Michael Ignatieff has taken sharp exception to the aspersion, as it were, that "Secular Eschatologies" casts on the impartiality of the international human rights movement and its prerogative to establish the content, on behalf of everyone else, of human rights -- what they are, what they mean, how far they reach, and how they change over time. See Michael Ignatieff, "Human Rights: The Midlife Crisis," New York Review of Books, May 20, 1999. But it seems to me that his response simply repeats that the international human rights movement is impartial, in this sense, or else asserts that in fact it reflects norms that, so to speak, bubble up from below, which in my experience is simply false and has been a sharp source of contention within the human rights movement for many years. See further discussion of this point and Ignatieff's objections to it at [].

²²¹ Kofi Annan, "Sec-Gen examines 'meaning of international community' in address to DPI/NGO conference," M2 Presswire, September 16, 1999 (text of speech delivered September 15, 1999); see newspaper opinion page versions of this speech in, e.g., Kofi Annan, "The World Community Often Fails to Act Together, but It Can and Should," Independent (London), Monday, December 27, 1999, comment, at 4.

and increasing our sense of spiritual dislocation ... [Yet] globalization is undeniably improving standards of living and creating more opportunity.²²²

Thus globalization is the driver and justification for the existence of a stronger international community; the argument is a familiar one. Environmental problems, flows of immigration, trade -- all these and many other matters now transcend borders. The private marketplace and multinational enterprises all transcend borders too. Just as a single society needs a regulator that has reach and jurisdiction and authority coextensive with the regulated, international society needs a political regulator that has reach coextensive with the economic activities of participants in the regulated market. Economic globalization, globalization of the private market, requires political globalization, globalization of governance. Put even more simply, without a global regulator, both private business enterprises and states can externalize costs of many kinds, economic and social.

The usual response to this argument from economic globalization is that such regulation as the global market requires can be accomplished through multilateral institutions, negotiations, and treaties that do not require anything like genuinely supranational public organizations or the concept of an "international community." Externalities can be negotiated without supranational political structures or the need to pretend that "We, the peoples" of the earth are actually closer to one another than we are. The fact of economic globalization is used by some, including Annan, as an excuse for a much grander political creation.

But the Secretary General makes an important point, one that Krauthammer and the realist argument generally overlooks, when he identifies the components of the "international community" as including more than simply nation-states. Krauthammer is inclined to see the international world as one of states, acting according to interests. Annan sees a more complex set of actors; they include international and multilateral institutions of many kinds, actors in the private marketplace, and international NGOs, along with nation-states. Annan is right to insist on this, and yet he is wrong to see this as enough to establish a "community." Moreover, to the extent that Annan relies on the existence of supposed institutions of international civil society, which are themselves supposed to require an international community in order to exist -- well,

²²² Kofi Annan, International Community Speech, September 16, 1999.

this part of the argument, at least, begins to look mildly circular, perhaps not fatally, but circular at least with respect to the international NGOs.

Michael Ignatieff, writing on the question of why it is that strangers from around the world come to the aid of others who are trapped in natural disasters, wars, genocides, or simple poverty, asks what motivates people to involve themselves charitably with the problems of people who are far away:

"My concern here is with moral obligation beyond our tribe, beyond our nation, family, intimate network ... Why exactly do some of us feel that these strangers are our responsibility? What scripts and narratives of involvement get some of us to commit ourselves to people we had no connection to until some chance encounter with televised images of atrocity galvanized us into action? It isn't obvious why strangers in peril halfway across the world should be our business. For most of human history, the boundaries of our moral universe were the borders of tribe, language, religion, or nation."²²³

Answering his own question, Ignatieff suggests that such aid as is provided is because, simply, we now recognize that what happens far away is morally of concern to us all. He does not say definitively whether he thinks that this constitutes the bonds of a global community; eliding the issue, rather, he says:

"The idea that we might have obligations to human beings beyond our borders simply because we belong to the same species is a recent invention, the result of our awakening to the same of having done so little to help the millions of strangers who died in this century's experiments in terror and extermination. Nothing good has come of these experiments except perhaps the consciousness that we are all Shakespeare's 'thing itself': unaccommodated man, the poor, bare forked animal. It is 'the thing itself' that has become the subject -- and the rationale -- for the modern universal human rights culture ... an impalpable moral ideal: that the problems of other people, no matter how far away, are of concern to us all."²²⁴

One way to read this passage is to believe that the shared values of Shakespeare's "thing itself," the values of the "modern universal human rights culture," are enough to create community, even on a global basis.²²⁵ Another way to read it, however, is to believe that the existence of non-existence of a community finally does not matter at all; the rightness of

²²³ Michael Ignatieff, *The Warrior's Honor: Ethnic War and the Modern Conscience* (NY: Henry Holt 1997) at 4-5.

²²⁴ Michael Ignatieff, *Warrior's Honor*, at 5.

²²⁵ Shakespeare did have far more specific things to say about humanitarianism and law in the context of armed conflict and violence. See the two fascinating monographs, Theodor Meron, [get cites from books in my office - 2 of them]

"modern universal human rights culture" means, in sternly Kantian fashion, viewing human rights as categorical imperatives, that each is obliged to come to another's aid, even halfway around the globe, because of the stringency of the values at stake, not for the sake of a member of "our" community, even a universal or global one; fellow-feeling, whether for ourselves or strangers, is not the issue. Ignatieff seems to think that the question of motivation is critical, but then fails to answer the question in part, perhaps, because his rapture with the supposedly universal moral culture of human rights leads him to think it is enough, whether it creates its own community or relies on stand-alone categorical imperatives or both. Still, it is intellectually odd that at the beginning of a book-length enquiry into motivations for humanitarianism, he apparently does not think this most fundamental question -- one which he himself poses -- requires an answer, especially when so much of the rest of his book is concerned with the "Westerners who make the misery of strangers their business: the outrage and ideals that spur their involvement, the moral complexities that follow engagement, and the cycle of disillusion that often accompanies burnout and disengagement."²²⁶

²²⁶ Michael Ignatieff, *The Warrior's Honor*, at 5. I find *The Warrior's Honor* a puzzling book. The title comes, as much as anything, from passage by the military historian John Keegan from which I, too, have drawn much inspiration: "'The experience of land war in two world wars', observes Adam Roberts in *The Laws of War* [the book under review by Keegan] must necessarily raise a question as to whether formal legal codification is necessarily superior to notions of custom, honour, professional standards, and natural law' in making for battlefield decencies ... There is no substitute for honour as a medium for enforcing decency on the battlefield, never has been, and never will be." John Keegan [article is in my office, need title and page], *Times Literary Supplement* (London), November 24, 1995, at []; quoted in part by Michael Ignatieff, *The Warrior's Honor*, at 118; for further discussion of the contrast between the culture of legality and culture of honor in warfare, see also Kenneth Anderson, "First in the field: The unique mission legitimacy of the Red Cross in a culture of legality," *Times Literary Supplement* (London), No. 4974, July 31, 1998: "The dream of an international culture of legality that has all the virtues of a settled and legitimate domestic legal order is the ancient dream of a *deus ex machina*. Faith in legality as the engine driving such adherence as exists to the laws of war seems to me, however, entirely misplaced: it is a fantasy tailor-made for lawyers, and especially American lawyers. Lawyers believe the problem is one of enforcement, whereas in fact it is one of allegiance."

Yet the whole point about the honor of warriors is that it is a code of conduct attached to their social caste; the point of appealing to it is that it appeals to something other than, and one hopes, stronger than the cold comfort of "our common humanity" when it comes to battlefield atrocities. Whereas much of the rest of *The Warrior's Honor* seems predicated on exactly appeal to "our common humanity." See David Rieff [review of *The Warrior's Honor* in *New Republic* or maybe *LA Times* book review.]

The answer to this cycle -- not merely the realistic answer, but the morally better answer -- is to conceive of these obligations as the obligations, under some circumstances, of one community toward another, and in other circumstances, the obligations of individuals toward those not of their community, obligations that are limited and not unlimited, what Michael Walzer has described as concentric circles of obligations, which grow weaker as they get further away from the individual, and yet do not disappear even when they no longer call upon the bonds of community. It is a better and truer ideal of human beings than calling upon some universal identification that is abstract to the point of insustainability:

"[The] image of concentric circles is more helpful than ... [the] idea of world citizenship -- precisely because it suggests how odd it is to claim that my *fundamental* allegiance is, or ought to be, to the outermost circle. My allegiances, like my relationships, start at the center. Hence we need to describe the mediations through which one reaches the outer circles, acknowledging the value of, but also passing through, the others. That is not so easy to do; it requires a concrete, sympathetic, engaged (but not absolutely engaged) account of the inner circles -- and then an effort not so much to draw the outermost circle in as to open the inner ones out ... *No doubt commitments and obligations are diminished as they are extended, but the extension is still valuable.*"²²⁷

~~The Secretary General, for his part, thinks the existence of community is essential to~~
motivation; indeed, Annan seems to regard charity as confirming the existence of community.

He takes it that the fact of an international community is "proved" by, among other things:

"When governments, urged along by civil society, come together to create the International Criminal Court, that is the international community at work for the rule of law. When we see an outpouring of international aid to the victims of recent earthquakes in Turkey and Greece -- a great deal of it from those having no apparent link with Turkey and Greece except for a sense of common humanity -- that is the international community following its humanitarian impulse. When people come together to press governments to relieve the world's poorest countries from crushing debt burdens -- I refer here to the Jubilee 2000 campaign -- that is the international community throwing its weight behind the cause of development. When the popular conscience,

²²⁷ Michael Walzer, "Spheres of Affection," in Martha Nussbaum and Joshua Cohen, *For Love of Country: Debating the Limits of Patriotism* (Boston: Beacon Hill 1996), at 126 (emphasis added). The image of concentric circles that Walzer draws upon comes from the essay in the same book to which Walzer is replying, Martha Nussbaum, "Patriotism and Cosmopolitanism," at 3. The philosophical argument over what we owe to strangers and what we owe to those to whom we are bound by bonds of affection is perhaps most clearly stated in Peter Railton, "Alienation, Consequentialism, and the Demands of Morality," 13 *Philosophy and Public Affairs* 2 (Spring 1984), at 134.

outraged at the carnage caused by landmines, succeeds in banning these deadly weapons, that is the international community at work for collective security."²²⁸

But one might well say that these undertakings of goodness are not necessarily the works between members of a community at all; the fact of doing good things for others is not a definitive sign of "community." Justice and charity done for strangers, even carried to great lengths, do not necessarily make them part of your community or part of a new, more inclusive community. Jewish law, for example, instructs the Hebrews to "love ye therefore the stranger: for ye were strangers in the land of Egypt";²²⁹ it further commands that "thou shalt not pervert the judgment of the stranger";²³⁰ and, finally, it even commands that

"[I]f a stranger sojourn with thee in your land, ye shall not vex him. But the stranger that dwelleth with you shall be unto you as one born among you, and thou shalt love him as thyself; for ye were strangers in the land of Egypt."²³¹

And yet, despite that extraordinary injunction to treat the stranger as oneself, as though he or she *were* part of the community from birth, there is still no suggestion that they *are* part of the community, and Jewish law does not regard them as other than a stranger and sojourner notwithstanding their treatment.²³² Neither justice nor kindness done to strangers automatically makes them *part of* the community; the whole point is the ethical treatment of strangers who remain what they are, strangers.

The Secretary General seems to have neglected, too, the possibility of one community coming to the aid of another. Annan seems to take it by assumption that when sovereign states act jointly to use force -- as in the Gulf War, for example -- in defense of common principles, such as territorial sovereignty, the defense of human rights, and so on -- it is evidence of a model

²²⁸ Kofi Annan, International Community Speech, September 16, 1999.

²²⁹ Deuteronomy 10:19, King James Version. I have used the King James Version (KJV) partly for the beauty of the language but also (notwithstanding the many problems of translation) out of mindfulness of the Robert Alter's observation that "modern English versions [of the Hebrew Bible] ... have placed readers at a grotesque distance from the distinctive literary experience of the Bible in its original language. As a consequence, the King James Version, as Gerald Hammond, an eminent British authority on Bible translations, has convincingly argued, remains the closest approach for English readers to the original." Robert Alter, *Genesis: Translation and Commentary* (NY Norton 1996), at x.

²³⁰ Deuteronomy 24:17 KJV.

²³¹ Leviticus 19:33-34 KJV.

²³² [quote from email from Kostek Gebert]

of the "international community" acting essentially as a police force to stop and punish evil-doers, "rogue states," *within* that community. It is true that the Bush administration often spoke in these terms about the Gulf War, in its effort to shore up the multilateral effort, and in so doing helped light the ideological fire of enthusiasm about the "new world order."²³³ But the view that such actions as the Gulf War represented the international community groping toward "policing itself" is self-evident only if it is assumed that there is a community in the first place. It is just as plausible (indeed more plausible, considering who supplied the overwhelming muscle in the Gulf War²³⁴) to see the Gulf War as representing not the international community policing itself, but separate political communities in the world and, in particular, one political community, the US, coming to the aid and rescue of another political community, Kuwait. What about the exercise makes it any more than that?

And the Gulf War represents the most ambitious attempt at that form of "rescue multilateralism." Even such actions as the Kosovo war²³⁵ have a claim to be the international community policing itself as a community only if one assumes the existence of a "community" in which "policing," and not "war-making," makes sense. Because fundamentally, in order for the use of force to be thought of as policing rather than making war, the conditions of community must *already* be present.²³⁶ Policing -- actual police work, not war-making conveniently redescribed as police work by metaphor -- requires a certain legitimacy among the population being policed even to constitute police work. It requires the acceptance, in a Weberian sense, of the legitimacy of those using force, rather than mere custom or self-interest; it requires this because actual police could never hope to control a hostile population by the threat of force alone -- they would be overwhelmed. This, after all, is the tragic dilemma of *occupation*; occupation and, by extension, the international humanitarian law of occupation,²³⁷ describes the attempt by

²³³ [Cites to Bush administration on Gulf War and new world order]

²³⁴ [cites on portion of gulf war fighting and military etc supplied by US versus rest of the world]

²³⁵ [cite to some general summary books on the Kosovo war - several are on the market now]

²³⁶ I draw here from Kenneth Anderson, "Remarks on Differences Between Police and Soldiers," Proceedings of the American Association of International Law, Panel on International Law and Literature, April 10, 1997, at 116.

²³⁷ The principal statement of the law of occupation is the Fourth Geneva Convention, "Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949," The Geneva Conventions of August 12, 1949 (1977 Geneva International Committee of the Red Cross undated), at 153, supplemented by Protocols Additional to the Geneva Conventions of 12

an occupier to square the circle of legitimacy and force.²³⁸ An occupier seeks to have its soldiers treated as police by the occupied population *even though* it lacks legitimacy; in Weberian terms, it seeks obedience through the custom of obedience to authority even if not legitimate authority and, above all, self-interest. But not legitimacy.

Sometimes this model works and sometimes it does not. The disasters produced, however, by the alleged international community believing its own metaphors -- its own press releases, really -- about policing hostile local populations include the US debacle in Somalia.²³⁹ The shoot-out in Mogadishu, after all, began when US forces literally went out to "police" the city and "arrest" a wrong-doer, despite his considerable support among key parts of the local population.²⁴⁰ In that case, the effort at policing rapidly turned back into the only thing that an

August 1949 (Geneva International Committee of the Red Cross 1977); see also Jean Pictet, general ed., Commentary: IV Geneva Convention of August 12, 1949 Relative to the Protection of Civilian Persons in Time of War (Geneva International Committee of the Red Cross 1958). The 1949 Geneva Conventions are universally considered binding customary international law; various controversies exist over what parts of the Additional Protocols are binding upon those states, including the US, which have not ratified one or the other of the two Additional Protocols. See Theodor Meron, *Human Rights and Humanitarian Norms as Customary Law* (Oxford Clarendon 1989), at 41-78. The best discussion of the US position on this issue is Remarks by Michael Matheson (Deputy Legal Adviser, US Department of State), in panel on Customary Law and Additional Protocol I to the Geneva Conventions for Protection of War Victims: Future Directions in Light of the U.S. Decision not to Ratify, 81 Proceedings of the American Society of International Law 26, 28 (1989).

²³⁸ The most useful technical discussion of the law of occupation I know in the secondary literature is Eyal Benvenisti, *The International Law of Occupation* (Princeton UP 1993); for a brief layperson's discussion, see Caryle Murphy, "Occupation of Territory," in Roy Gutman and David Rieff, general eds., Kenneth Anderson, legal ed., *Crimes of War: What the Public Should Know* (NY WW Norton 1998), at 263.

²³⁹ I draw in this account from Mark Bowden, *Black Hawk Down: A Story of Modern War* (NY Atlantic Monthly Press 1999); see also [Charles Nihan Review in Iowa draft articles.] *Black Hawk Down* is an incomparable source book on this tragedy in part because Bowden was able to draw in writing it not only from extensive interviews with the participants, but also from the detailed radio and video records that, in the US military today, are part of the technological record. "Already circling high above the target was the slickest intelligence support America had to offer, including satellites, a high-flying P3 Orion spy plane, and three OH 58 observation helicopters ... The observation birds were equipped with video cameras and radio equipment that would relay the action live to ... the Joint Operations Center." *Black Hawk Down*, at 11.

²⁴⁰ Within minutes after the touchdown of the US Ranger force to try and arrest a key Somali clan and militia leader charged with attacking international troops (including the "slaughter of twenty-four Pakistani soldiers," at 92), Mohamed Farrah Aidid, cameras "from high over the fight captured crowds of Somalis throughout the areas erecting barricades and lighting tires to

occupier, lacking the legitimacy to police, knows it can depend upon, the use of force.²⁴¹ And even that use of force, precisely on account of the lack of legitimacy, differs from that of police: Police engaged in legitimate police work use guns, not mortars, for one thing.²⁴² But most fundamentally, police do not have legal or moral recourse to the concept of "collateral damage" allowed (within limits) to soldiers in war.²⁴³ Because real police in real communities, if successful, have legitimacy, they are presumed not to need (and legally do not have), freedom to pursue the "bad guys" within merely the minimal restraints imposed by humanitarian law on collateral damage.²⁴⁴ Soldiers fighting wars, by contrast, are specifically granted immunity for

summon help. Thousands of people were pouring into the streets, many with weapons. They were racing from all directions ... Moving in from more distant parts were vehicles overflowing with armed men." Mark Bowden, *Black Hawk Down*, at 18.

²⁴¹ "Struecker had warned his own gunner to pick targets carefully. 'When you shoot that fifty cal, that round goes on forever', the sergeant explained. It was clear the rest of the convoy was not taking such precautions. They were throwing lead all over that part of Mogadishu." Mark Bowden, *Black Hawk Down*, at 278.

²⁴² "[O]ne cannot police a population, even a population one despises, with tanks or that now-universal weapon of the developing world, the rocket-propelled grenade, or even an assault rifle." Kenneth Anderson, ASIL Remarks.

²⁴³ The concept of "collateral damage" is given legal expression, among other places, in 1977 Additional Protocol I to the Geneva Conventions of 1949, at Article 51(4) and (5) (protection of civilian population from indiscriminate attacks), and Article 52 (protection of civilian objects); from the voluminous secondary literature, see Michael Walzer, *Just and Unjust Wars* [cite], chapter 9, "Noncombatant Immunity and Military Necessity," at 138-159. For brief overviews of collateral damage and related concepts in international humanitarian law, see also Heike Speiker, "Civilian Immunity," at 84; Joel Greenberg, "Illegal Targeting of Civilians," at 85; Horst Fischer, "Collateral Damage," at 88; and Francoise Hampson, "Military Necessity," at 251, in Roy Gutman and David Rieff, general eds., Kenneth Anderson, legal ed., *Crimes of War: What the Public Should Know* (NY WW Norton 1998).

²⁴⁴ The debate over tactics in Somalia was decisively influenced by the moralistic views of certain key US commanders that, because the international force had international legitimacy "from above," its actions ought to be in the nature of police actions, rather than military actions. In other words, these commanders, principally Admiral Jonathan Howe, tragically took seriously the euphemism about "police actions" that had always previously been applied to situations understood to be real war, such as the Korean War. Following the ambush of the Pakistani soldiers, the "Turkish commander of UN troops, General Cevik Bir, and his second, U.S. Army Major General Thomas Montgomery, wanted to take the kid gloves off. This would be an attack without warning, a chance to chop off the [Aidid clan's] head. The clan leadership had taken to meeting regularly at the Abdi House. The plan called for helicopters to encircle it from the air, fire TOW missiles and cannons into it, then raid the house to arrest survivors. Howe opposed it. Why, he asked, couldn't troops simply surround the plac and order those inside to come out, or why not just storm the house and arrest everybody?" Mark Bowden, *Black Hawk Down*, at

collateral damage (provided that it stays within certain legal limits that are of a different mode entirely from the constraints on police). The legal model of warfare presumes the legitimacy of collateral damage *precisely because* it does recognize that the battlefield lacks the legitimacy of a settled community.²⁴⁵

War is, in one sense, then, the violence that takes place in the absence of the restraints of legitimacy in a settled society; the rules of war are an attempt to create a noble artifice that preserves minimal order and minimal compliance; it is not Weberian legitimacy. Nor is it the legitimacy of actual communities. The means and methods of warfare themselves, both the actual violence and the structure of the legal rules constraining it, in other words, argue

94-95.

²⁴⁵ One of the most moving and disturbing experiences I have had as a teacher of international humanitarian law occurred the academic year following the Mogadishu battle. One of my students in a Harvard Law School course on the laws of war came to me after a class on the technical rules of collateral damage and noncombatant immunity in which these distinctions about the differences between police and soldiers had arisen. He was a Marine officer, doing a year long course at the Kennedy School of Government, Harvard University; he was older and, frankly, less polished than the many other serving US military officers in the class. He had risen from the ranks in Viet Nam and although it was obvious in class that he had less education than others, he was treated with a great deal of deference for being, as another student put it, a "real" soldier. This was reflected in his assignments; whereas many of his classmates were on their way to a Pentagon, "inside the Beltway" career, for which Harvard was a kind of finishing school (as one of them put it to me), he was given assignments which required serious field experience. That day after class, he told me about being one of the senior commanders in charge of the Marine withdrawal from Mogadishu following the Black Hawk downing. The situation was tense and Marine units had been ordered withdrawn from scattered outposts across the city. It was feared that mobs, directed by various warlord groups, would set about attacking isolated Marine units. Messages, he said, were being carried between the various armed groups by young boys, unarmed boys of ten, twelve, fourteen years, in the absence of other communications. Fearing attacks coordinated by the messages carried by these boys that could overwhelm outposts, he told me that he instructed his forces that in case of armed attack, they were to take out the boy messengers. It turned out not to be necessary but, he told me, he had wondered ever since whether he was morally or legally justified in giving those orders. As a legal matter, he was; the boys, even unarmed, were legally combatants. As a moral matter -- well, I put the situation to a later class, in the context of Somalia, and asked whether US forces would be morally and legally justified in taking out the messengers; overwhelmingly the class agreed that they would. However, when I about asked the same situation in a course the following year, but setting it this time in the context of Serb forces engaged in a withdrawal from villages in Bosnia, not otherwise implicated in war crimes, the class just as overwhelmingly agreed that shooting the boys would be a war crime, punishable as wilful murder of civilians. They were not swayed, in later discussion, by the principle of "sauce for the gander, sauce for the goose."

powerfully against the existence of an "international community," except used as a metaphor stretched so relentlessly to justify itself as a "community" that it becomes meaningless. And, in real situations, too frequently tragic. The forces occupying Kosovo -- occupation, after all, is the precise legal term²⁴⁶ -- appear to have learned something from Somalia and are being very careful indeed.²⁴⁷ For what they have learned is that it is a bad idea to assume that one's troops have legitimacy on the ground because liberal internationalist elites -- Ignatieff and his kindred spirits²⁴⁸ -- inform them that they do.²⁴⁹ In any case, war by one political on behalf of another

²⁴⁶ The Kosovo war has created something of a problem for the sizable number of international legal scholars who have long taken the view that the US is legally and even constitutionally bound by international law, including law on use of force and the presumed necessity of Security Council authorization for force not related to self-defense, but who also were eager for NATO to intervene in Kosovo, whether Security Council authorization was forthcoming or not -- as, ultimately, it was not. See John C. Yoo, "Kosovo, War Powers, and the Multilateral Future," 148 University of Pennsylvania Law Review 1673 (May 2000), at 1725-1729 (does the American have the constitutional duty to obey international law; "[u]nder the view promoted by many foreign relations law scholars, the President's violation of international law should have made Kosovo [intervention] presumptively unconstitutional"). The precise legal status of Kosovo itself is separate from the treatment of civilians in Kosovo by occupying forces; the law of occupation ~~applies on its own terms, although, given its ample provisions for security measures by~~

occupying forces, it is not likely that actions by NATO forces have contravened that body of law. What is important, however, is that it has been virtually ignored as a source of legal obligations on the part of the NATO forces; in my off-record conversations with US military lawyers involved in the administration of Kosovo, they believe that with or without Security Council authorization, Kosovo is essentially a NATO "protectorate," not an occupation; the legal implications of a protectorate are not clear, as they readily admit. See 4th Geneva Convention and 1977 Additional Protocol I cited earlier].

²⁴⁷ [cites to caution of NATO forces on ground in Kosovo and unwillingness to risk casualties]

²⁴⁸ See Michael Ignatieff, *Virtual Wars: Kosovo and Beyond* (NY Henry Holt 2000).

²⁴⁹ "[T]his perception of the legitimacy of international operations may not be shared by the people one goes out to police in their societies. No less than with other social actions, this legitimacy will not be acquired from the barrel of a gun, because it is of a fundamentally different type. I therefore want to suggest that those who conduct peacekeeping operations consider with a great deal of skepticism the legitimacy they believe they possess. Peacekeeping forces cannot simply operate on the assumption that their 'legitimacy' is not at issue just because the UN Secretary-General and Security Council blessed their operations from 'above' and so conferred legitimacy ... when sniping at peacekeeping forces [by the local population] begins, the fear and disillusionment of those charged with 'policing' a population that considers them illegitimate unsurprisingly leads to crimes by what are in fact occupiers. This is in part the lesson of the recent crimes of Canadian peacekeeping forces; the lack of full legitimacy sufficient to act truly as police among a civilian population and not as an army, in combination with the presumption that international organizations bestowed legitimacy, and that the local population

political community is not clear evidence of the existence of an *international* community; all it need be thought to point to is the fact of two or more political communities that share certain values and are willing to fight for them.

Even the existence of a certain set of core values -- essential human rights, norms of humanity in war and disaster -- does not make for a common community, strange as that may sound to liberal internationalists, who tend to assume that communities are, at bottom, nothing more than shared values.²⁵⁰ And nothing in what Annan says appears dispositive of an "international community"; it all seems consistent with the idea of separate communities around the world with certain shared and sometimes shifting interests and values. It would seem, rather, that Annan has reached to things designed to promote the idea of an "international community" in the hope of justifying the larger political structures, supranational institutions that would be entailed thereby. The concept of an "international community" is a fiction useful to the aspirations of liberal internationalists, political globalists, and supranationalists, a construct established by the wishful thinking for a global polity as well as a global economy.

And, perhaps surprisingly, some genuine and frank admirers of supranationalism agree, including former UN under secretary general for peacekeeping operations, Brian Urquhart:

"Politicians love to refer to the international community or the world community. It does not exist. A community is a group of people who have a common interest, common concerns, common institutions, common rules of behavior and more or less a shared view of the future. That's not true of the United Nations."²⁵¹

D. Can International NGOs Overcome the Democratic Deficit?

thus *betrayed* the forces by not recognizing this legitimacy, led to crimes." Kenneth Anderson, ASIL Remarks, April 10, 1997.

²⁵⁰ This is what I take to be Franck's core argument for international community, as against realist skeptics, in Thomas M. Franck, *The Power of Legitimacy Among Nations* (NY Oxford UP 1990), at 195-207.

²⁵¹ David Rieff and Brian Urquhart, "Saving the World: the limits of humanitarianism; foreign policy experts David Rieff and Brian Urquhart discuss the issues; Interview," 264 *Nation* 19, May 19, 1997, at 11. To be sure, Urquhart goes on to add, "The U.N. is at what I would call the sheriff's posse stage. There are a lot of people who don't really agree with each other very much most of the time who suddenly are shocked by some horrendous human event into putting together some ad hoc and improvised posse to do something about it after the fact. It is better than doing nothing. But we've got to move on from this stage."

But let us grant, for argument's sake, that enough of an "international community" exists that could support the existence, in theory at least, of an international civil society. And grant too, of course, that the world has many international NGOs taking up myriad causes.²⁵² *Are* they international civil society within an international community, analogous to how we understand domestic civil society within a domestic democracy?

The answer is no -- not, at least, if we take seriously the idea of democracy, both domestically and internationally.²⁵³ This Essay has already addressed the issue of the democratic deficit of public international institutions; they are not democratic now and are not likely to become so -- not in the ordinary electoral sense that matters for there to be a relevant analogy to domestic democratic society. Given that lack of democratic legitimacy, international NGOs have offered themselves as the bearers, so to speak, of democracy in the international sphere; they offer themselves as organizations of the world's citizens demanding accountability from the admittedly undemocratic organs of public international law. Activists of the landmines ban campaign, for example, boldly proclaim:

²⁵² Thomas Carothers says that at "last count, more than 5,000 transnational NGOs -- NGOs based in one country that regularly carry out activities in others -- had been identified." Thomas Carothers, "Civil Society: Think Again," *Foreign Affairs*, December 22, 1999. The *Economist* notes that a "1995 UN report on global governance suggested that nearly 29,000 international NGOs existed. Domestic ones have grown even faster. By one estimate, there are no 2m in America alone, most formed in the past 30 years. In Russia, where almost none existed before the fall of communism, there are at least 65,000. Dozens are created daily; in Kenya alone, some 240 NGOs are now created every year." *Economist*, "NGOs: Sins of the secular missionaries," January 29, 2000, at 25.

²⁵³ One essay in *To Walk Without Fear*, Maxwell A. Cameron's "Democratization of Foreign Policy," addresses the issue of democratization of the foreign policy process in one country, Canada, in the matter of the landmines ban campaign. I have few quarrels with his analysis of the relationship between Canadian civil society and Canada's foreign policy establishment. But it illustrates precisely the difference between civil society operating within a domestic democratic society, where the function of civil society is ultimately to affect electoral processes, or legislative or executive institutions that ultimately must respond to electoral processes, and international NGOs seeking to influence bureaucracies that in no meaningful sense respond to democratic pressures -- unless one decides, in the absence of electoral institutions, that the international NGOs are themselves democratic pressures. See Maxwell A. Cameron, "Democratization of Foreign Policy: The Ottawa Process as a Model," Maxwell A. Cameron, Robert J. Lawson, & Brian W. Tomlin (eds.), *To Walk Without Fear: The Global Movement to Ban Landmines* (NY: Oxford UP 1998), at 424.

"The emergence of global civil society holds the promise of making existing international institutions more democratic, transforming them through innovation and experimentation, and anchoring them in world opinion ... global civil society is a basic ingredient of this transformation."²⁵⁴

But does this really make sense? What, if anything, does it mean for international NGOs to declare that they are collectively the representatives of the citizens of the world; what Stephen Goose and Jody Williams of the International Campaign to Ban Landmines call, in the context of the landmines campaign, a "global citizens' coalition"?²⁵⁵ Can the idea of "citizen of the world"²⁵⁶ make any sense in the absence of a global polity, and if it does not, how can there meaningfully be organizations supposedly representing such "citizens"?

One way of beginning to answer these question is to ask what role NGOs and such organizations of civil society play in a democratic polity. They are *not*, quite evidently, organs of democracy themselves; in a democratic polity, the organs of democracy are electoral institutions, voters and voting, and legislative institutions that reflect those electoral choices. And so the first, significant disanalogy between domestic civil society and its supposed international counterpart: the offer by international NGOs to provide democratic legitimacy has

no domestic analogue, because domestic civil society organizations do not provide democratic legitimacy; elections do. When international NGOs assert that they are the voice of the world's citizens, the assertion makes no sense because the world is not a polity that has citizens -- it has, to be sure, people, many of them with great needs -- but to be a "citizen" is to be part of a constituted polity, not just a supporter of an NGO and its agenda. As Michael Walzer has put it, "I am not a citizen of the world ... I am not even aware that there is a world such that one could be a citizen of it."²⁵⁷ To be a citizen of a democratic polity requires, in turn, that the *polity*, the public political institutions of that system, be itself democratic; it is not enough that NGOs

²⁵⁴ Cameron, Lawson & Tomlin, "To Walk Without Fear," *To Walk Without Fear*, at 13.

²⁵⁵ Stephen Goose and Jody Williams, "The International Campaign to Ban Landmines," *To Walk Without Fear*, at 20, 22. The phraseology has a crucial ambiguity; does "citizens" refer in this case to citizens of particular states and particular polities, coming together transnationally around a particular issue, such as landmines, or does it mean "citizens" of the world, of the planet, organizing themselves *as* citizens of the world? Goose and Williams and, I think, most international NGO activists would say, both.

²⁵⁶ [Julie Laskaris to give me the cite to Diogenes]

²⁵⁷ Michael Walzer, "Spheres of Affection," in Martha Nussbaum and Joshua Cohen, eds., *For Love of Country: Debating the Limits of Patriotism* (Boston Beacon Hill 1996), at 125.

seeking to influence those public institutions support democracy.²⁵⁸ To be a "citizen" is a socially and politically constituted identity of a very particular kind, and the existence of NGOs is insufficient to create it.²⁵⁹

The response from scholarly commentators on this issue has not been filled with much criticism of these ideas; as Gamble and Ku observe, the idea of an "expanded role for NGOs has produced a voluminous scholarly literature, most of which is very positive."²⁶⁰ Indeed, it is a literature noteworthy principally for its lack of interest in considering seriously any possibility that international NGOs may play a role very different from that imagined by international NGO advocates or that the supposedly democratizing transformations to be brought about by international NGOs might not turn out to be democratizing at all or that, even more simply, that the vision of the international system promulgated by the leading "progressive" international NGOs may not be desirable despite its international or supranational nature. Typical of this enthusiasm is Farouk Mawlawi, writing that:

"The significant proliferation of non-governmental organizations ... in recent years, and their growing contributions to the improvement of the human condition, have led to increased -- and

²⁵⁸ It is far from clear, in any case, that international NGOs collectively support democracy at the level of world institutions; what they support unequivocally is their *own* voice in world affairs -- but that and "democracy" are scarcely the same thing.

²⁵⁹ Should anyone doubt the extent of that cultural construction, consider Simon Schama's account of the construction of the citizen in the French Revolution, in Simon Schama, *Citizens: A Chronicle of the French Revolution* (NY: Knopf 1989), at 123-182, and further this cautionary passage at 859, well worth reading by those considering the easy and slipshod redefinition of sovereignty:

"What occurred between 1789 and 1793 was an unprecedented explosion of politics ... it was in tens of thousands of little meetings convened to draft *cahiers* and elect deputies to the Estates General that French men (and occasionally women) found their voice. In so doing, they became part of a process that tied the satisfaction of their immediate wants into the process of redefining sovereignty. That was both the opportunity and the problem. Suddenly, subjects were told they had become Citizens; an aggregate of subjects held in place by injustice and intimidation had become a Nation. From this new thing, this Nation of Citizens, justice, freedom and plenty could be not only expected but required. By the same token, should it not materialize, only those who had spurned their citizenship, or who were by their birth or unrepentant beliefs incapable of exercising it, could be held responsible. Before the promise of 1789 could be realized, then, it was necessary to root out Uncitizens. Thus began the cycle of violence which ended in the smoking obelisk and the forest of guillotines ... From the very beginning -- from the summer of 1789 -- violence was the motor of the Revolution."

²⁶⁰ Gamble and Ku at note 33.

long overdue -- recognition of the important role they can and do play in preventing and resolving conflicts."²⁶¹

Michael Ignatieff is scarcely less fulsome, praising the emergence of the international NGO sector as a "revolution in humanitarian concern" and celebrating the "emergence of vast constituencies of human rights activists, development workers and aid experts whose moral rationale is the indivisibility of human interests and needs in an interdependent world."²⁶²

[Or ... [insert some additional quotes, look at Gamble and Ku note 33 for cites to check]].

One of the very few critics of the fashionable idea of civil society, David Rieff, has summarized this passion:

"[C]ivil society has come ... to be thought of as encompassing everything that is not the state and as exemplifying a set of inherently democratic values. That is why those who tout it as the silver bullet to both to 'open' repressive societies and to guarantee or deepen democratic liberties and curb state power move with feline grace between using civil society as a descriptive term and a prescriptive one. to which it might be added that the dogma holding that strengthening civil society is the key to creating or sustaining a healthy polity has come to dominate the thinking of major charitable foundations, as well as human rights and humanitarian organizations."²⁶³

Triumphalism, in other words, has largely overcome caution and skepticism. This inflated rhetoric, however, grants to international NGOs a role in world affairs that, in order for them to fulfil it, would require that the system within which they operate, the international "context" be profoundly different -- be, that is, democratic which, of course, it is not.

But if that is so, then what in fact *are* international NGOs, if they are not bearers of democratic legitimacy, institutions having the democratic legitimacy that the public international organizations so conspicuously lack? Again, a comparison with domestic NGOs is instructive. In a domestic democratic society, NGOs are typically advocacy organizations within the broader umbrella of civil society. In short they are, as David Rieff has aptly said, political pressure groups; speaking of the international human rights movement, but equally applicable to NGO advocacy groups generally, he has noted that activists sometimes talk as though their movement

²⁶¹ Farouk Mawlawi, "New Conflicts, New Challenges: The Evolving Role for Non-Governmental Actors," 46 *Journal of International Affairs* 391 (1993), at 392, cited in Gamble & Ku at note 35.

²⁶² [Quoted by David Rieff in his NYT Magazine human rights article; it must be in Ignatieff's book *The Warrior's Honor* - I can't find it, but I'll ask David.]

²⁶³ David Rieff, "The False Dawn of Civil Society," *Nation*, February 22, 1999.

were "an emblem of grass-roots democracy. Yet it is possible to view it as an undemocratic pressure group."²⁶⁴ In a domestic democracy, of course, there is nothing wrong with political pressure groups; on the contrary, they are part of the glory of a democratic system. Yet they are able to fulfil that role because domestic civil society is adjunct to, merely a part of, democratic politics. Organizations of civil society, no matter how high minded their aims or morally worthy their work, are by definition pressure groups, lobbying groups, within a democratic political process that is ultimately settled by elections. In domestic democracy, democratic legitimacy is established by elections, not merely by the presence of pressure groups, whether one describes them merely as pressure groups or by the more exalted name of civil society.

The contrast between domestic civil society and so-called international civil society on this point could not be greater. At most international civil society has the status of pressure groups in a democratic society. But in the international system as it actually exists, it does not even have that much, because the system is not democratic and unlikely ever to become so. The relationship of civil society in a domestic democratic society is triadic, among pressure groups, institutions of democratic governance, and citizen-voters. The relationship in the international community, at this point in time, is merely dyadic; it is the relationship between pressure groups and institutions of undemocratic bureaucracy, in a system that has no voters and no citizens. It is thus something of an irony that international NGOs would see themselves as watchdogs to ensure the accountability of public international organizations, when they themselves are accountable to no one except their own, frequently narrow, constituencies and to their funders.

This irony has not gone completely unnoted, although it is a minor voice in the chorus of NGO triumphalism -- although, since Seattle, the mainstream press, favoring free trade, has shown much less indulgence toward the international NGO sector than it did during the 1990s, when it seemed much more that all the forces of globalization, economic as well as political, were a single coalition to the same ends. The Economist, for example, quickly opined a month after Seattle:

"The general public tends to see [NGOs] as uniformly altruistic, idealistic and independent. But the term 'NGO', like the activities of the NGOs themselves, deserves much sharper scrutiny ... not all single-interest groups may be the best guarantors of long-term success. They are rarely

²⁶⁴ David Rieff, "The Precarious Triumph of Human Rights," NYT Magazine, Sunday, August 8, 1999.

obliged to think about trade-offs in policy or to consider broad, cross-sector approaches to development."²⁶⁵

Likewise, Justin Marozzi, writing in the *Spectator* (London), comments on the lack of democratic accountability of international NGOs. Interviewing Peter Melchett, executive director of Greenpeace UK, Marozzi notes:

"Critics accuse NGOs of being undemocratic. this is a truism, but then companies are hardly paragons of democratic virtue, either. 'I think it's a fact rather than a criticism', says Peter Melchett, executive director of Greenpeace UK. 'Democratic governments are elected and have democratic legitimacy. Other organisations, such as Greenpeace, *The Spectator* and the *Guardian*, do not. We have the legitimacy of our market of who buys us or supports us. I don't claim any greater legitimacy than that, nor do I want it'.²⁶⁶

Melchett would be rather more persuasive, concerning the international NGO movement as a whole, if it were not so devoted to playing for all the advantage it can the legitimacy that it has, in other circumstances, so often claimed.²⁶⁷ Marozzi goes on to quote the views of Fareed Zakaria, managing editor of *Foreign Affairs*:

"The nature of representation within democratic systems is changing and politicians are the losers. Fearful of adverse publicity and dedicated to more 'inclusive' politics, governments and intergovernmental organizations routinely establish NGO liaison units to deal with this noisy mob, and then rely on input from them to formulate policy. NGOs now call the shots in determining the full range of World Bank policy. This is a damaging and giant cop-out, insists Fareed Zakaria ... We may think little of politicians but it is they, rather than NGO types, that we elect. The media-friendly, poll-driven, soft-focus leaders of the West, typified by Blair and Clinton, tend to avoid difficult and contentious issues, [Zakaria] says, thereby devolving power to interested, unelected, unrepresentative and unaccountable NGOs ... we are drifting towards government of the noisy."²⁶⁸

Journalist Reginald Dale, too, has observed that "NGOs often display none of the transparency they seek in others, hide the sources of their funding and represent only narrow special interests, not the wider public."²⁶⁹ And even UN Deputy Secretary General Louise Frechette has noted

²⁶⁵ Economist, "NGOs: Sins of the secular missionaries," January 29, 2000, at 25 ("aid and campaign groups, or NGOs, matter more and more in world affairs ... they are not always a force for good").

²⁶⁶ Justin Marozzi, "Whose world is it, anyway," *Spectator* (London), August 5, 2000, at 14.

²⁶⁷ See discussion at [].

²⁶⁸ Justin Marozzi, "Whose world is it, anyway?" *Spectator* (London), August 5, 2000, at 14, 15.

²⁶⁹ Reginald Dale, "The NGO Specter Stalks Trade Talks," *International Herald Tribune*, March 5, 1999, at 11.

that "[g]overnments often question non-governmental organizations[]" (NGOs) representativeness."²⁷⁰ The honeymoon, in other words, that partially existed between forces of free trade and economic globalization, on the one hand, and international NGOs, on the other, is over -- or, at least, distinctions between NGOs that support free trade and economic globalization and those that do not are being much more closely drawn by business organizations, the press, and frequently governments.

In a democratic polity, this lack of NGO representativeness and accountability is offset by the fact that ultimately voters are responsible for the kind of institutions they want, but in the undemocratic international sphere, the lack of international NGO representativeness and accountability in a system that *also* lacks a democratic voting public radically alters its role and its moral legitimacy to do what civil society does in a domestic democracy. The peculiarity is that in a domestic democracy, it is legitimate for advocacy groups in civil society to play an expansive role because, despite their lack of democratic accountability and, frequently, transparency, they are in the end merely associations of members and constituencies. Because they are held in check by actual voters and actual elections, it is legitimate for unaccountable associations to be watchdogs who hold public organizations in check. In international life, none of those checks are present and the moral legitimacy of NGOs to undertake all those roles is correspondingly less. This is notwithstanding the fact that in an undemocratic, unaccountable system, the *need* for watchdogs is undeniable -- ~~else~~ ^{who} could fill the role if not international NGOs? No one²⁷¹ -- still, that is not a reason to pretend that in an undemocratic system NGOs

²⁷⁰ Louise Frechette, M2 Presswire, January 20, 2000.

²⁷¹ Although, realistically, in my view such accountability as has come to the UN system has come as much or more through demands of the US as a condition of paying some of its backlog of dues as through international NGOs. In an undemocratic international system, the mechanism for turning demands for accountability into actual accountability is missing. Obviously this is a contentious issue. See Francesco Francioni, "Multilateralism a la Carte: The Limits to Unilateral Withholdings of Assessed Contributions to the UN Budget," 11 European Journal of International Law 1 (March 2000), at 43; Allan Gerson, "Multilateralism a la Carte: The Consequences of 'Pick and Pay' Approaches," 11 European Journal of International Law 1 (March 2000), at 61; Emilio J. Cardenas, "UN Financing: Some Reflections," 11 European Journal of International Law 1 (March 2000), at 67; for newspaper accounts and editorial opinion, see also, "UN's Holbrooke Talks to Congress," The Associated Press, Tuesday, April 11, 2000, by Tom Raum; "Funds For Family Planning," The Boston Globe A16, Monday, April 17, 2000, editorial ("Last Year legislation to pay back some of the \$1 billion in UN dues was taken hostage by a small band of anti abortion zealots who insisted that riders be attached to

offer more than accountability, that they also offer democracy. International NGOs offer, to some extent at least, a demand for accountability, but they do not democratize the international system. Accountability and democracy are not the same thing; audited financial statements are not a substitute for the ballot box. Rieff, as usual, is the bluntest:

"Finally, there is the problem of democracy. Leaders of associations, pressure groups and NGOs -- unlike politicians in democracies -- are accountable to no one except their members and those who provide them with funds. That may seem a minor question to adherents of a particular cause. Does it matter that Jody Williams was never elected to lead the campaign against landmines? Perhaps it doesn't. But proponents of civil society are claiming that it offers a better alternative, or at least an important additional voice, to that of governments and parliaments, not just on a single issue but on all the pressing questions of our time. And leaders of such groups, unlike politicians, do not have to campaign, hold office, allow the public to see their tax returns or stand for re-election. It is, indeed, the new medievalism, with the leaders of the NGOs as feudal lords ... were they to achieve the kind of prominence and centrality that is being predicted for them, we would all be far worse off than we are today."²⁷²

restricting funds."); "Kofi Annan: A 'Moral Voice' He Has Spoken as the World's Conscience. But It's Hard to Measure the Results," *The Nation* 20, Monday, June 19, 2000, by Ian Williams ("~~... Annan has so far been firm but not abrasive about the US default on its dues arrears,~~ currently running at nearly 1.8 billion."); "American Debt Row Threatens Finances at UN," *London Times*, Friday, January 2, 1998, by James Bone ("America demands that its share of the UN's administrative budget be cut from 25 percent to 22 percent this year. But European nations refused even to discuss the reduction unless Washington made good its billion-dollar debt to the world organization, which it has failed to do."); "Senate Oks UN Dues Payment, But Check Isn't in the Mail," *Chicago Tribune* 3, Wednesday, June 23, 1999, by Philip Shenson; "UN Envoy Get a Talking --To and Surprise--Talk Back," *Chicago Tribune* 2, Sunday, April 2, 2000, by James Warren ("Sir Jeremy Quentin Greenstock--of the United Kingdom declared that the U.S. 'has muffled its voice and stained its reputation' by being a dues deadbeat."); "Our Obligations to the UN," *Series: Editorials*, *St. Petersburg Times* 16A, Friday, June 2, 2000 ("Congressional critics of the United Nations have used the international body's administrative shortcomings as an excuse for shirking our government's financial and political obligations."); "U.S. Shirks UN Dues," *Detroit News* 10, Friday, April 21, 2000; "Statement in Support of Paying U.S. Arrears to UN," *Government Press Release*, Monday June 16, 1997, Richard Lugar; "The Debate: Peace and the UN; We Must Help Pay the Price of Peace; Who Owes the UN," *USA Today* 08A, Thursday, August 18, 1998; "UN Leader Puts Clinton on the Spot," *London Times* 25, Thursday, September 23, 1999; "Clinton Strikes Deal on Paying Off UN Debts," *London Times* 17, Tuesday, November 16, 1999, by Ian Brodie; "Money Squeeze: UN's Health Agency Finds Funds Shrinking While Work Expands---WHO's Fight Against Aids, Other Killers is Weakened as U.S. Withholds Dues," *Wall Street Journal*, Thursday, April 7, 1988, by Philip Revzin.

²⁷² David Rieff, "The False Dawn of Civil Society," *Nation*, February 22, 1999.

Or, as Rieff put it on another occasion, "So who elected the NGOs?"²⁷³

In a narrow sense, then, international NGOs are analogous to their domestic counterparts, in the sense that international NGOs, like domestic NGOs, are political pressure groups. They exist to try and get institutions of various kinds to do various things, to act in certain ways and to stop acting in certain others. But in a broader sense, the analogy with domestic civil society -- that both international NGOs and domestic NGOs are political pressure groups -- ends there. It ends for reasons beyond the control of international NGOs, but it ends there nonetheless. The analogy breaks down because democratic domestic society is one thing, and undemocratic international society (even if it is a "community" or "society") quite another. In a democratic domestic society, pressure groups of civil society can modestly be just that; they are what they are, expressions of a viewpoint in democratic society, with which voters can agree or disagree come the next election. The burden is not on them to claim to *be* the public institutions of democracy.

The circumstances of international NGOs are altogether different -- radically and immodestly different. There being no public institutions of electoral democracy, international NGOs are thus in the position of announcing that they will, in effect, stand in for those institutions and, by implication, for those who would, in a democratic polity, be the voters of the world. But since there are not *actually* voters of the world, the international NGOs *querup* to volunteer for the job. It is *as if* those who *would be* the world's voters, *if only* the world *were* a democratic polity, *had* given the international NGOs a proxy for their votes. The intellectual exercise in the moral conditional and the political subjunctive by which international NGOs assert themselves as proxy for the hypothetical citizens of the world, the hypothesized voters of the planet, is a creation myth of the first order, an imagined social contract that might perhaps leave those earlier contractarian theorists -- Hobbes, Locke, Hume and the rest²⁷⁴ -- agog with

²⁷³ David Rieff, at a conference on the landmines campaign and international civil society, sponsored by the Washington College of Law and the American Society of International Law, and held at Washington College of Law, American University, Washington DC, February 27, 1998, during the course of a panel that I moderated. This theme of unelected, non-accountable NGOs is increasingly echoed in the press; the Economist, for example, noted in its cautionary article about NGOs that "they are not accountable to anyone." Economist, "NGOs: Sins of the secular missionaries," January 29, 2000, at 25, 27.

²⁷⁴ For a short overview of social contract theory of these and other historically important theorists, see John Keane, *Public Life and Late Capitalism: Toward a Socialist Theory of*

admiration at its audacity and hubris. So much legitimacy manufactured out of so little actual presence.²⁷⁵

IV.

The Incestuous Relationship of Mutual Legitimation Between Public International Organizations and International NGOs

A. The Faux Legitimacy Dispensed by International NGOs

This, however, leaves unanswered a critical question. Why is it that international NGOs are today invested with so much moral authority, so much legitimacy, by public international organizations, by states, by the so-called international community?²⁷⁶ If international NGOs so conspicuously lack democratic legitimacy themselves, why is it that, for example, UN officials treat them as though they did have that legitimacy? Because the ideological pitch of the rhetoric, the praise heaped upon international NGOs is altogether extraordinary, particularly from public international organizations such as the UN that are so frequently targets of international NGO calls for transparency and accountability. Consider how the Secretary General has spoken of international NGOs:

"I see a United Nations keenly aware that if the global agenda is to be properly addressed, a partnership with civil society is not an option; it is a necessity. I see a United Nations that recognizes that the non-governmental organizations revolution -- the new global people-power, or whatever else you wish to call this explosion of citizens' concern at the global level -- is the best thing that has happened to our Organization in a long time."²⁷⁷

Democracy (Cambridge UP 1984), at 227-229; for a longer contemporary discussion, see David Gauthier and Robert Sugder (eds.), *Rationality, Justice and the Social Contract* (Ann Arbor Michigan University Press 1993).

²⁷⁵ Justin Marozzi describes Fareed Zakaria, managing editor of *Foreign Affairs*, as having, in the "smouldering aftermath of the battle of Seattle ... contacted ten NGOs. Most consisted of 'three people and a fax' and many had been established specifically for Seattle. In his view, they were 'largely unrepresentative of public opinion'. Nevertheless, infinitely more media-savvy (and sexy) than the trade negotiators they were targeting, they were able to Hoover up airtime on all the major networks. 'My concern', Zakaria says, 'is that governments will listen too much to the loud minority and neglect the fears of the silent majority'." Justin Marozzi, "Whose world is it, anyway?" *Spectator* (London), August 5, 2000, at 14, 15.

²⁷⁶ This section expands an argument made in passing in Kenneth Anderson, "The Ottawa Convention Banning Landmines," 11 *European Journal of International Law*, at 116-117.

²⁷⁷ Kofi Annan, "Secretary-General says 'global people-power' best thing for United Nations in long time," M2 Presswire, December 9, 1999 (Secretary General to World Civil Society Conference on December 8, 1999).

At the time Annan was describing this new "global people-power," citizens at the global level, a certain number of those citizens were rioting in Seattle; and yet he does not hesitate to describe the non-governmental organizations themselves *as* citizens acting at a global level. Indeed, he goes on to say that:

"Civil society organizations have already given new life and new meaning to the idea of an international community. The desire to participate in the management of a changing world, and the need to engage in areas where Governments are unable or unwilling to act, have driven you to action. [NGOs] will give global civil society its rightful place as one of the pillars of the international community in the twenty-first century. I am counting on you."²⁷⁸

These are not words of praise merely for the many and indubitable good works that international NGOs perform worldwide; the language and tone deliberately elevates the ideological and moral significance of international NGOs far beyond the efficient providers of social services worldwide or even doers of planetary good works. Had the Secretary General wanted merely to praise international NGOs for their good works, there would have been no need to reach to the ideological super-charged language of global citizens and international civil society, language embedded in a conceptually profound theory of the international sphere. The reach to the charged language of international civil society is intended to attach to international NGOs a vastly more important role than that of mere charity. In order to praise charity, it is not necessary to say to international NGOs, with a certain kind of reverence for them:

"Not only do you bring to life the concept of 'We, the Peoples', in whose name our United Nations Charter was written; you bring to us the promise that 'people power' can make the Charter work for all the world's peoples in the twenty-first century."²⁷⁹

To be sure, the Secretary General is now so used to using this kind of exalted rhetoric when referring to international NGOs that it is scarcely noticeable anymore; this kind of language infuses the speeches and writings of senior UN officials.²⁸⁰ Nor should it be thought that this kind of effervescence is merely the sort of insincerity that UN officials say when speaking (as Annan was in these quoted speeches) to gatherings of international NGOs. No, Annan is sincere, as are senior officials of other organizations such as the World Bank even when

²⁷⁸ Kofi Annan, M2 Presswire, December 9, 1999.

²⁷⁹ Kofi Annan, "Secretary-General, addressing participants at Millenium Forum, calls for intensified 'NGO revolution'," M2 Presswire, May 23, 2000.

²⁸⁰ [Need some more similar speeches of other senior UN officials like Louise Frechette -- M2 Presswire is easiest place to find]

their organizations suffer under attacks from international NGOs; if these officials wanted to ignore international NGOs, they could to a great extent, as they have in the past. Although certain international NGOs have always been accepted within international organization circles -- the International Committee of the Red Cross,²⁸¹ for example, as well as numbers of other "expert" organizations -- the acceptance of much sharper advocacy organizations, organizations aggressively pressing particular issues, such as human rights, has been a much more recent and contested phenomenon. The international human rights advocacy organization, Human Rights Watch, for example, felt no need to designate a UN lobbyist and advocate until the mid-1990s, in part because it believed that the UN was an ineffective place to lobby because it exerted little influence but partly, also, because it believed that the UN was uninterested and unwilling to listen.²⁸²

It is also true that post-Seattle, some international NGOs are worried and complaining that they are feeling hostility to them from both public international organizations and their agencies, as well as from the diplomatic community and states, a point which we shall take up later.²⁸³ It is thus all the more striking that Annan should take the opportunity to praise international NGOs in such ideologically extravagant terms precisely at the moment when international NGOs began to feel pressure following Seattle; it is not a case of a honeymoon with international NGOs gone sour, in which Annan and senior public international organization officials preached sermons in praise of "global citizens" only to withdraw from them following the Seattle rupture. On the contrary, Annan went out of his way to praise international NGOs, express his undying love for them -- not for the disturbances in Seattle, of course, but in its aftermath offering deliberate expressions of reassurance that they continued to be as important to the international community now as before Seattle. The question is why such ideologically extravagant praise for international NGOs?

²⁸¹ See, e.g., United Nations Assembly Resolution 45/6, October 16, 1990, see <http://www.un.org/gopher-data/ga/recs/45/6> [what does it say?].

²⁸² I am relying here on my personal experience of watching Human Rights Watch decide to establish that advocacy position when I was director of the Human Rights Watch Arms Division, 1992-94; for an organization with a tightly stretched budget, it was a decision that had to be made with strong concerns for effective use of resources.

²⁸³ See discussion of this issue at section IV.B of this Essay.

The answer would appear to be that the UN and public international organizations need international NGOs, and not merely for the good works they accomplish. Public international organizations need international NGOs, beyond their good works, because it is thought that they can provide public international organizations with the democratic legitimacy that they otherwise so conspicuously lack. International NGOs claim to an alternative legitimacy that public international organizations lack, the legitimacy of supposedly being representatives of the peoples of the world, its global citizens; this Essay has challenged that claim, but it is still the predominant ideology. Public international organizations -- by drawing international NGOs into dialogue with them; by offering them places of one kind or another within international legal, bureaucratic, organizational, and diplomatic processes; by *treating them as what they say they are*; by validating their claims to be organizations of global citizens -- can thereby partake of the supposed democratic legitimacy that international NGOs claim to have. If the problem of democratic legitimacy for public international organizations is that they have no direct connection to anybody, then the discovery of international NGOs that allegedly *do* is a felicitous thing. International NGOs can apparently serve as substitutes, proxies, for the citizens of the planet, and by treating with them, it is as though public international organizations have gained democratic credentials.

In order for this maneuver to leverage, so to speak, maximum democratic legitimation for public international organizations out of the supposed democratic legitimacy of international NGOs, however, the international NGOs must have maximum democratic legitimacy themselves. This provides an incentive for public international organizations and their spokespeople, starting with the UN Secretary General, to cover international NGOs with the most extravagant praise for their democratic credentials. The greater the praise, it is hoped, the greater the democratic credibility and the greater democratic credibility that accrues to public international organizations that treat seriously with international NGOs as, in the Secretary General's favorite term for international civil society, "partners" with public international organizations.²⁸⁴ It is not merely the pragmatic effectiveness of these organizations that the Secretary General seeks to obtain by treating them as "partners," it is their claim to be organizations of global citizens and all the democratic credentials that, in today's fashionable

²⁸⁴ Kofi Annan, M2 Presswire, December 9, 1999 ("a partnership with civil society").

thinking about international civil society, are supposed to accrue from that. If you are the leader of a notably undemocratic (as well as inefficient and ineffective) public international organization, then, provided the fashionable theory of democratic international civil society and organizations of global citizens is widely believed, the advent of international NGOs claiming democratic legitimacy is little short of a *deus ex machina*, ideology to the rescue.

It is this phenomenon, it seems to me, that best explains the otherwise hard to understand enthusiasm for often irritating advocacy organizations in the corridors and, increasingly, meeting halls of public international organizations. It is remarkable the extent to which international NGOs have permeated the deliberations of diplomatic bodies and meetings of public international organizations. In the negotiation of the text of the Ottawa convention banning landmines, for example, not only the International Committee of the Red Cross (which traditionally has had access as an observer to treaty negotiations on matters of its competence),²⁸⁵ but also the umbrella organization of the international NGOs active on the subject, the International Campaign to Ban Landmines (ICBL), with rights of intervention.²⁸⁶ A number of states in those sessions had appointed nationals who were members of ICBL-affiliated NGOs as members of their negotiating delegations:

"In some cases that meant that some countries essentially handed their policy and negotiating apparatus to activists; in other cases, the government had its own line, usually sympathetic but not identical to the NGO position, but allowed the NGO inside access to the negotiations. And the Oslo drafting sessions, which developed the draft treaty itself, allowed not only the ICRC access in its traditional observer role -- with rights of intervention and to be heard -- but granted the same to the ICBL. And why not, since the negotiations took place not under the aegis of the United Nations or some other agglomeration of all states, but instead merely as a group of like-minded countries that could set any rules of participation they liked."²⁸⁷

A similar phenomenon has been noted in other contexts, such as environmental treaty negotiation; international NGOs are drawn further and further into the negotiation process, in what the Secretary General might regard as a "partnership" with international civil society, but which might otherwise be regarded as turning policy-making over to unrepresentative and

²⁸⁵ [ICRC access to international meetings]

²⁸⁶ Kenneth Anderson, "The Ottawa Convention Banning Landmines," 11 *European Journal of International Law* 1 (March 2000), at 91, 112, drawing on the author's experience as a participant for the ICBL in the Oslo treaty drafting sessions.

²⁸⁷ Kenneth Anderson, "The Ottawa Convention Banning Landmines," 11 *European Journal of International Law* 1 (March 2000), at 91, 112.

unaccountable international NGOs. As the constitutional law scholar Jeremy Rabkin has remarked:

"Another factor that gives special momentum to international control ventures is the increasing role of nongovernmental organizations (NGOs). The media skills of organizations like Greenpeace have helped to build generalized constituencies for those ventures in leading Western countries. At the same time, such organizations have become important players in the negotiations, sending their own specialists to monitor and often to lobby governmental negotiators at each successive gathering in a series of rolling negotiations ... Sensing the political value of nongovernmental advocates (at least in certain controlled settings), the United Nations Environment Program has offered them a visible platform at international meetings."²⁸⁸

But what is the "political value of nongovernmental advocates" that public international organizations discern in international NGOs? Public international organizations need international NGOs for legitimacy, to provide a way out of the bind of created by their democratic deficit, democratic legitimacy without actual democracy, without actual elections, and a claimed form of democratic legitimacy that keeps it safely confined, as we shall presently discuss, within the ranks of international elites who, whatever their other differences, are committed to the sanctity and precedence of the international and supranational over the national or local. International NGOs thus become a form of loyal opposition -- pressure groups on particular issues and thus irritating, on the one hand, but the most loyal of constituents on the broader, more important question, the supremacy of internationalism and supranationalism, on the other. Public international organizations are happy to live with the irritation of the narrow issues if it gives them what they most desperately lack on the broad question.

International NGOs extract rents on their perceived democratic legitimacy in the form not only of access, in order to press for their specific issues, but in the form of heightened legitimacy for themselves. It is a positive feedback loop, in which the perception of legitimacy for both public international organizations and international NGOs is heightened when both sides of what, on the surface, might appear to be an arms-length and sometimes antagonistic relationship play along in the process of mutual legitimation. There is nothing sinister, nothing consciously or overtly corrupt about this process, everyone acts with complete sincerity and, within the confines of the process, good faith -- but it is not what, on the surface, exactly what it claims to be. On the surface, international NGOs appear to demand accountability from public

²⁸⁸ Jeremy Rabkin, *Why Sovereignty Matters* (American Enterprise Institute Press 1998), at 41.

international organizations, for response on particular issues -- human rights, womens' development, the environment, etc.; the international NGOs genuinely do demand action and accountability. But, ironically, in an atmosphere of mutual respect, communication, trust, and access, the underlying result is one of mutual benefit, mutual legitimation, mutual servicing of each other's legitimacy needs, an upward spiral of mutually perceived legitimacy. It is heightened when the language used to describe each other is deliberately that of democratic legitimacy. As I remarked in an earlier article discussing this phenomenon:

"If the issue is merely effectiveness in affairs around the world, then the tone of international civil servants need be nothing more than pragmatic and specific to circumstances. If, on the other hand, the issue is legitimacy in a democratic sense, then the tone of international civil servants properly ought to be the ideologically inflated language -- the wholesale adoption of metaphors taken from domestic democratic society -- of 'international civil society'. Such an explanation denies nothing to the admirable achievements of many international NGOs, but does at least offer a reason why the praise has become so ideologically extravagant."²⁸⁹

Is this a bad thing? It depends on whether one believes, first, that public international organizations ought to be constitutionally supreme in the world but also ought to have democratic legitimacy, do not now have it, and are not able to achieve it through electoral democracy; second, that international NGOs really are international civil society, the world's citizens, the global citizenry, in the strong sense of being vessels of democratic legitimacy; and, third, that international NGOs can play the same role that domestic civil society does in domestic democracy even an otherwise undemocratic international community.

It bears noting that for the most visionary theorists of international civil society, the role of international NGOs ought, in an ideal world, to go beyond even the liberal internationalism that has formed the globalist vision that this Essay has attacked. If liberal internationalism proposes an international order based on global markets and global governance, positing in proper liberal fashion the necessity of a regulator jurisdictionally co-extensive with the regulated, then the most forward-thinking "postliberal" theorists propose an international order based unabashedly on identity politics, on shifting categories of personal identity carried out as politics

²⁸⁹ Kenneth Anderson, "The Ottawa Convention Banning Landmines," 11 *European Journal of International Law* 1 (March 2000), at 116-117.

at the global level, through the mechanism of international civil society and so-called "new social movements"²⁹⁰:

"Many transnational social movements define their goals as transformative of the present international order. These visions are based on critiques that question the ability of liberalism to actualize its rhetoric of equality, neutrality, openness, freedom, and rights ... A significant contribution of postliberal paradigms is their insistence that human identities are multidimensional and fluid. While the importance of national and autonomous individuals identities is stressed in liberal thought, the new social movements stress that identity is considerably more complex ... The multiplicitous foci of the new social movements are themselves indicative of the enormous potential for human identification -- indigeneity, race, culture, spirituality, class, gender, sexuality, and ideology, to name a few. This suggests that identity can be simultaneously local and transnational."²⁹¹

The point of this postliberal paradigm is that in the most visionary version of the glory of international NGOs, there is no longer any necessity of actual people "below" the level of the NGO; it is not necessary to maintain the polite fiction that international NGOs represent actual people, in a democratic fashion, because identity is vested in new social movements, the international NGOs themselves. As Otto puts it, "[a]llied to the idea of multilayered identity is the postliberal emphasis on participatory democracy, on contradistinction to the reliance of republican liberalism on electoral formality and the highly artificial notion of consent through the ballot box."²⁹² The subject, so to speak, of the so-called global polity is no longer the individual, but the groups that constitute identities, and those groups -- conveniently -- often happen to be international NGOs. Combined with an exceedingly vague account of what democratic process is supposed to look like in a "postliberal" and "postmodern" world,²⁹³ adopting a "group identity" approach removes many difficulties for liberal internationalism feeling uneasy over its democratic deficit and the unlikelihood of remedying it -- postliberalism might be seen as a *deus ex machina* for trapped liberal internationalists.

²⁹⁰ [New social movements - what are they? cite to Arato, Keane, Cohen etc.]

²⁹¹ Dianne Otto, "Nongovernmental Organizations in the United Nations System: The Emerging Role of International Civil Society," 18 Human Rights Quarterly 107-141 (1996), at 133. It is curious that Otto refrains from mentioning "religion" specifically as a source of identity, preferring the more ambiguous "spirituality."

²⁹² Dianne Otto, "Nongovernmental Organizations in the United Nations System," 18 Human Rights Quarterly, at 134.

²⁹³ Dianne Otto, "Nongovernmental Organizations," at 134.

Such postliberal "solutions" are not likely, however, to count as "democratic" to the many people for whom democracy, however "formalistically" or "artificially," is measured at the ballot box. Postliberal and postmodern approaches are not yet favored by most theorists of global governance but, then, they have scarcely begun to grapple with the issue of democratic legitimacy, and it would not be surprising if fashionable internationalist theory moved these directions as the gap between governance and democracy becomes more visible and seemingly unbridgeable because, as this Essay has argued, unbridgeable is exactly what it is.

Again, what is this, beyond those directly participating?

This Essay contests both liberal and postliberal versions of internationalism and supranationalism; contesting liberal internationalism especially is not an activity receiving wide approval among international elites or among international lawyers.²⁹⁴ But if, instead, this Essay is right, then the situation of international NGOs is that of two sectors, within what might be broadly called "international elites," locked in an embrace of mutual, but ultimately faux, legitimization. They need and serve and service each other. Or, put another way:

"International organizations and international NGOs can be seen as locked in a romance, a passionately mutual embrace, offering each other love tokens of confirmations of legitimacy and eternal fealty, but, as with lovers everywhere, oblivious to the world outside, and oblivious as to whether anyone else thinks that such mutual legitimations make either one any more 'legitimate'." ²⁹⁵

B. Divisions Over Globalization Within the Ranks of International NGOs

Yet all is not well within the relationship of public international organizations and international NGOs, in part because it is coming to be recognized that there is less unity within "international civil society" than once was presumed, over the question of globalization itself. If the crescendo of applause for international NGOs reached, perhaps, some kind of climax with the

²⁹⁴ For criticism of Kenneth Anderson, "The Ottawa Convention Banning Landmines," 11 European Journal of International Law 1 (March 2000), at 91, see James Hathaway, "America, Defender of Democratic Legitimacy?" 11 European Journal of International Law 1 (March 2000), at 121; for criticism of Kenneth Anderson, "Secular Eschatologies of the Internationalized New Class," Peter Juviler and Carrie Gustafson (eds.) Religion and Human Rights: Competing Claims? (NY ME Sharpe 1998), at 107, see Michael Ignatieff, "Human Rights: The Midlife Crisis," New York Review of Books, May 20, 1999, and see also my discussion and criticism of Ignatieff's article at [].

²⁹⁵ Kenneth Anderson, "The Ottawa Convention Banning Landmines," 11 European Journal of International Law, at 117.

1997 signing ceremony of the Ottawa convention banning landmines and the 1997 Nobel Peace Prize that went along with those efforts, then Seattle displayed, on the front page of the newspapers, fissures within the international NGO movement over whether, and to what extent, NGOs should endorse the ideological unity of global capitalism and global governance or, in other words, the essential unity at the heart of liberal internationalism. These fissures had existed long before the Seattle disturbances, but during much of the 1990s, there was less acrimony between parts of the international NGO community and other kinds of globalists -- free traders and global financiers, for example -- than one might have imagined their apparent conflicts of position merited.

The unarticulated view of these business and bureaucratic international elites seems to have been roughly as follows, expressed in the abstract: Globalization required the formation of global elites; in order for these elites to have the elements of a complete international "society," and hence the permanency and stability of a genuine society, these elites would have to encompass not only business and bureaucratic sectors, but sectors of "civil society"; these "international civil society" elites, as a kind of "loyal opposition" (loyal to the flag of globalization if not to any particular detail of policy), would inevitably have different views on particular issues, consistent with the domestic analogy of civil society; on the large issue, however, the issue that ultimately would count, globalization itself, they would be committed because it would be their source of access, influence, and even more fundamentally their cultural and indeed spiritual center.²⁹⁶

Sounds
much
too
self-
conscious
and
pre
meditated

²⁹⁶ This idea of international civil society as the "loyal opposition" within the structure of international elites owes a great deal to the concept of "artificial negativity" in the context of the "wholly administered society," developed by Paul Piccone and others of the Telos circle in the late 1970s and early 1980s. The Telos editorial group has subsequently abandoned the concept in favor of the ideologies of Carl Schmitt, which seems to me a great mistake. See discussion of Carl Schmitt at []. The concept of "artificial negativity" -- an artificially generated opposition, i.e., an opposition established by a bureaucratic regime itself, which serves to help rationalize the sclerosis and paralysis of the regime by providing some measure of controlled opposition and critique, but which has no real roots in organic society -- seems to me to retain its Burkean force, at least under conditions where a genuine opposition and one artificially created by a regime can be differentiated. The risk of artificial negativity theory is that it runs the strong risk of being nonverifiable -- how to distinguish between real opposition and artificial opposition? It is the usual problem of proving false consciousness. See [cites to Telos articles].

Michael Ignatieff finds this commonality of larger interest, while dividing over the smaller ones, implausible. The NGO activists, he writes

"who devote their lives to challenging the employment practices of global giants like Nike and Shell would be astonished to discover that they were serving the interests of global capital all along."²⁹⁷

Well, perhaps they would be astonished but, then, perhaps they mistake intentions for effects. More precisely, it is not exactly a radical political or intellectual position to think that social action can have one kind of local, immediate role, even an oppositional one, and yet play a role in the larger legitimization of overall processes and social institutions.²⁹⁸ This is, after all, exactly what the idea of a "loyal opposition" is all about. What does Ignatieff find so implausible about that?

Moreover, as noted in the earlier discussion of legitimization, there is also the possibility of a quite different social dynamic at work in globalization. If it is the case that international actors, including international NGOs, believe that globalization, whether desirable or not, is inevitable, then they may have a strong incentive to work to control the shape of structures of globalization. ~~It is not necessarily a shared vision of the desirability of globalization that links them to what are,~~

at another level, oppositional international groups -- perhaps public international organizations, multinational corporations, or other international NGOs -- but instead, driven by the belief in globalization's inevitability, *competition* with other international actors that leads to the overall consolidation of *some form* of globalization. Competition to control the details can serve as a spur that, nonetheless, drives forward the overall process.²⁹⁹

I would describe the larger, structural role of many (not all) international NGOs as a kind of 'loyal opposition', loyal to the grand cause of globalization even with considerable

²⁹⁷ Michael Ignatieff, "Human Rights: The Midlife Crisis," New York Review of Books, May 20, 1999.

²⁹⁸ Or perhaps Ignatieff is saying that all forms of Marxist analysis were to be jettisoned in 1989; it is, after all, a staple of Western Marxist sociology. For that matter, it is the theme of an entire play by Bertolt Brecht, *St. Joan of the Stockyards* in Eric Bentley, ed., *Seven Plays by Bertolt Brecht* (NY Grove Press 1961), at 149; see also the lucid analysis of the play in relation to themes of international human rights by Julie Stone Peters, "Joan of Arc Internationale," American Society of International Law, Proceedings of the 91st Annual Meeting, Panel on International Law and Literature, April 10, 1997, at 116, 124.

²⁹⁹ See discussion of legitimacy at [].

But they support often do be against it...

I've yet to see the argument that they

are serving global capital. By legitimizing

it?

1) How are they legitimizing it?

2) It doesn't need their help.

This is too aggressively paradoxical to be plausible

disagreement over what it is supposed to look like or mean or, alternatively, caught within the dynamic of competition to control outcomes in a world in which some form of globalization is seen as inevitable. There are international NGOs that are genuinely localist, that do not participate in this dynamic, to be sure, but they are the exception, not the rule; and in any case, they tend to be radical environmental NGOs that have an altogether different vision of the planet, not to say metaphysic,³⁰⁰ and not international human rights organizations which, as he acknowledges have benefited from the fact that

"the emergence of the global market has assisted the diffusion of human rights, since markets break down traditional social structures and encourage the emergence of assertive temperments."³⁰¹

Ignatieff is ingenuous when he says that my claim about a functionally loyal opposition among the international NGOs, even among many of the NGOs opposed to economic globalization, "conflates globalism and internationalism and mixes up two classes, the free market globalists and the human rights internationalists, whose interests and values are in conflict."³⁰² There are those organizations to which this description does not apply, but the predominant groups among international NGOs, even most of those in some sense opposed to economic globalization, function in the larger sense a kind of loyal opposition to it.

There
what
would
genuine
opposition
look like:
zen-like
refusal
to discuss
globalization

David Rieff has aptly, even notoriously, characterized the larger role of international civil society, these international NGOs, as "the useful idiots of globalization." His account of international NGOs as part of the process of global privatization bears quoting at length:

"[T]he idea of civil society begins to look less like a way of fostering democratic rights and responsive governments and more like part of the dominant ideology of the post-cold war period: liberal market capitalism. A perfect example of this synthesis of emancipatory sentiments and faith in free markets can be found in the Executive Summary of the 1997 Carnegie Commission on Preventing Deadly Conflict. Civil society is assigned a pivotal role. 'Many elements of civil society', the report states, 'can work to reduce hatred and violence and to encourage the attitudes of concern, social responsibility and mutual aid within and between groups. In difficult economic and political transitions, the organizations of civil society are of crucial importance in alleviating the dangers of mass violence'. The paragraph then segues, without break or transition, into the following assertion: 'Many elements in the private sector are dedicated to helping prevent deadly conflict'.

³⁰⁰ See discussion at [].

³⁰¹ Michael Ignatieff, *Human Rights: The Midlife Crisis*.

³⁰² Michael Ignatieff, "Human Rights: The Midlife Crisis," *New York Review of Book*, May 20, 1999.

Obviously, the communitarians, human rights activists and liberal foundation executives who first raised the banner of civil society were no more interested in helping refurbish liberal capitalism's ideological superstructure than was the human rights movement in making its cause the quasi-religious faith of the international new class, but this is nonetheless exactly what they have done. Surely, it is a safe assumption that any term embraced as warmly by the Clinton Administration and the European Commission as 'civil society' has been threatens no important vested interests in the rich world.

Again, there is no question of a subterfuge. The idea of civil society simply coincides with the tropism toward privatization that has been the hallmark of these post-cold war times. Far from being oppositional, it is perfectly in tune with the Zeitgeist of an age that has seen the growth of what proponents like Bill Clinton and Tony Blair are pleased the call the 'Third Way' and what might more unsentimentally be called 'Thatcherism with a human face'. As we privatize prisons, have privatized development assistance and are in the process, of privatizing military interventions into places like New Guinea, Sierra Leone and Angola by armies raised by compaines like Sandline and Executive Outcomes, so let us privatize democracy-building. Let's give up on the state's ability to establish the rule of law or democracy through elections and legislation, and instead give civic associations -- the political equivalent of the private sector -- a chance to do their thing.

The fact that all this comes couched in the language (and the imaginative framework) of emancipation does not, in and of itself, make it emancipatory. Indeed, there are times when it seems as if the advocates of civil society are the useful idiots of globalization. In further undermining the state, they undermine the only remaining power that has at least the potential to stand in opposition to the privatization of the world, commonly known as globalization."³⁰³

One concrete expression of this world view on the part of elite international business and bureaucrats that Rieff describes was that for several years following the end of the Cold War, some elite media organs of essentially global corporatism remained remarkably well-disposed, in a largely unarticulated, largely implicit way, toward international NGOs and even pressed forward their calls to be active and activist participants in global politics at the highest levels. The Economist provides a good example. As the world's leading newsmagazine among well-off elites, it commands an influential position as a transnational opinion-maker; for the past 150 years, too, it has been the world's leading journal arguing for free trade and, in recent years, a leading proponent of economic globalization.³⁰⁴ In the debate over the proposed international

³⁰³ David Rieff, "The False Dawn of Civil Society," Nation, February 22, 1999.

³⁰⁴ Consider what then Secretary of Labor Robert Reich considered the ultimate put-down to Newsweek columnist Robert Samuelson a number of years ago [get letter from Newsweek from Robert Reich -- it said something like, 'like most educated people, I get my facts from the

ban on landmines, the Economist was an early supporter, on grounds that might be described as responsible globalism, collective humanitarianism; the magazine adopted a role of global corporate good citizen.

The first large scale report on landmines, issued by Human Rights Watch and Physicians for Human Rights in 1993, *Landmines: A Deadly Legacy*,³⁰⁵ for example, received favorable comment in the Economist [quote Economist], and over the remainder of the decade, the magazine both pressed forward the cause and championed the work of the international NGOs striving toward a ban.³⁰⁶ As it said in its article on the landmines ban campaign receiving the 1997 Nobel Peace Prize, [quote Economist],³⁰⁷ It, like other parts of the elite international media and international elites generally, had accepted uncritically, or at least had accepted without inquiring too deeply into possible points of divergence, the idea of international civil society as a necessary and important bulwark of the kind of managed global capitalism, global governance,

Economist, not Newsweek.] But see remarks critical of the Economist's quality -- position and influence notwithstanding -- in Andrew Sullivan, "London Fog: Why Americans go soft in the head for the Economist," New Republic, June 14, 1999: "Apart from Austin Powers, there can be few British institutions as groovy right now as The Economist. Der Spiegel has hailed its 'legendary influence'. Vanity Fair has written that 'the positions The Economist takes change the minds that matter'. In Britain, the Sunday Telegraph has declared that 'it is widely regarded as the smartest, most influential weekly magazine in the world'. In America, it is regularly fawned on as a font of journalistic reason. Anthony Lewis has referred to it in more than 50 columns in recent years, deferring to The Economist on such diverse subjects as tax cuts, Patrick Buchanan, medical marijuana, tort reform. Gates has boasted of reading it cover to cover. According to the magazine's media kit, Larry Ellison, the CEO of Oracle, has remarked: 'I used to think. Now I just read The Economist'."

³⁰⁵ Human Rights Watch and Physicians for Human Rights (Kenneth Anderson, Stephen Goose, Monica Schurtman, and Eric Stover, principal eds.), *Landmines: A Deadly Legacy* (NY: Human Rights Watch 1993).

³⁰⁶ Economist, Volume 327, No. 7808, ISSN: 0013-0613, Saturday, April 24, 1993; for other Economist coverage of the landmines issue over the 1990s, see "Landmines: A Man With a Stick, and Luck," Economist 45, Saturday, February 26, 1994; "An Unacceptable Weapon," Economist 15, editorial, Volume 338, No. 7958, Saturday March 23, 1996; "Treading Gingerly: Landmines," Economist 46, Volume 339, No. 7963, Saturday April 27, 1996; "South Africans Return to Mozambique," Economist 44, Volume 339, NO. 7965, Saturday, May 11, 1996; "Landmines: Clearing the Killing Fields," Economist 73, Volume 347, Issue 8066, Saturday, May 2, 1998; "Mozambique's misery: Tragedy in Mozambique: Floods have Devastated much of South-Eastern Africa. Hundreds are Dead, Thousands Face Hunger, and Mozambique's Economic Revival is in Danger," Economist, Saturday, March 4, 2000.

³⁰⁷ "A Woman Spurned," Economist at 30, October 18, 1997 (regarding Jody Williams and the Nobel Peace Prize awarded to her and the landmines ban campaign).

and gradual building of a truly global citizenry that globalism both seemed to promise as well as require.

But with Seattle, the tone changed. Not completely, by any means -- not a complete rupture with the international NGO movement. But there was a recognition that the international NGO world is vastly more complex and divergent than the simple slogans of "partnership" with "international civil society" had conveyed. As the Economist expressed matters in its special report following Seattle:

"The battle of Seattle is only the latest and most visible in a string of recent NGO victories. The watershed was the Earth Summit in Rio de Janeiro in 1992, when the NGOs roused enough public pressure to push through agreements on controlling greenhouse gases. In 1994, protestors dominated the World Bank's anniversary meeting with a "Fifty Years is Enough" campaign, and forced a rethink of the Bank's goals and methods. In 1998, an ad hoc coalition of consumer-rights activists and environmentalists helped to sink the Multilateral Agreement on Investment (MAI), a draft treaty to harmonise rules on foreign investment under the aegis of the OECD. In the past couple of years, another global coalition of NGOs, Jubilee 2000, has pushed successfully for a dramatic reduction in the debts of the poorest countries. The NGO agenda is not confined to economic issues. One of the biggest successes of the 1990s was the campaign outlaw landmines, where hundreds of NGOs, in concert with the Canadian government, pushed through a ban in a year. Nor is it confined to government agendas. Nike has been targeted for poor labour conditions in its overseas factories, Nestle for the sale of powdered baby milk in poor countries, Monsanto for genetically modified food. In a case in 1995 that particularly shocked business, Royal Dutch/Shell, although it was technically in the right, was prevented by Greenpeace, the most media-savvy of all NGOs, from disposing of its Brent Spar oil rig in the North Sea. In short, citizens' groups are increasingly powerful at the corporate, national, and international level. How they have become so, and what this means, are questions that urgently need to be addressed."³⁰⁸

One noteworthy feature of the Economist's coverage is its use of the term "NGO" to mean, really, a certain set of NGOs, generally on the political Left, such as Greenpeace or the Nader-organized groups that defeated the MAI -- or, in other words, the "new social movements," movements within the international NGO movement of a very particular political hue, or in other words, environmentalism, feminism, and a few other largely leftwing 'isms'.³⁰⁹

1.e. The ones that tend to be rhetorically anti-globalist?

The Economist essentially conceded to a politically distinctive subset of NGOs, the new social movements, all the benefits of the moral high ground that it further assumed should go, naturally

³⁰⁸ Economist, "Special: Citizens' groups: The non-governmental order: Will NOGs democratise, or merely disrupt, global governance?" Saturday, December 11, 1999 (pg. unavail. online).

³⁰⁹ [Cite to discussion earlier defining them and giving literature.]

and automatically, with being "international civil society," "citizens' groups," and "nonprofit organizations." At the same time, it ignored -- and bestowed none of this moral high ground -- on the not insignificant NGOs that had worked, in the case of the Rio de Janeiro conference, for example, on exactly the opposite side of the policy fence, opposing the greenhouse gas treaty; they included not just business-oriented NGOs but also various labor organizations fearful about growth and jobs. As Michael Beyer noted with respect to the passage of the WTO treaty in 1995, the "International Chamber of Commerce is an NGO; so are the United Steelworkers of America."³¹⁰ It is as though the Economist, and many other elite media, had not understood the point Thomas Carothers made that although "many civic activists may feel they speak for the public good, the public interest is a highly contested domain. Clean air is a public good, but so are low energy costs. The same could be said of free trade versus job security at home."³¹¹ Over the course of a decade, they largely gave over the right to define the public interest to a particular sector of NGO opinion. They conceded as well that these groups -- rather than groups across the full range of political opinion, and indeed the full range of NGOs -- deserved the special moral approval that these same elite media had given simply for being "civil society," the embryonic

"international civil society" that elite international media such as the Economist were so willing to see emerge in an international sphere that they hoped, consistent with liberal internationalism, to see emerge with three legs: the global market, transnational governance, and international civil society.

Having bestowed this special moral accolade on particular groups of international NGOs and their particular causes, onto the new social movements and not onto NGOs as such, it has proved much harder after Seattle to take it back again -- not, in the Economist's case, for lack of trying: "Are citizen's groups, as many of their supporters claim, the first steps towards an 'international civil society' (whatever that might be)? Or do they represent a dangerous shift of power to unelected and unaccountable special-interest groups?"³¹² All of a sudden, the Economist,³¹³ which had earlier treated the new social movements and international NGOs as

³¹⁰ Michael Beyers, "Woken Up in Seattle," *London Review of Books*, Vol. 22, No. 1, January 6, 2000, at 16, 17.

³¹¹ Thomas Carothers, "Civil Society: Think Again," *Foreign Policy*, December 22, 1999.

³¹² Economist, "Special: Citizens' Groups," December 11, 1999.

³¹³ There had been some hints of worry on the part of the Economist when the MAI was defeated; see "Finance and Economics: The Sinking of the MAI," *Economist*, March 14, 1998.

being international civil society and had not taxed itself overmuch wondering what they might stand for apart from do-gooding and compassionate, responsible globalization, now began to wonder whether these groups were instead unelected and unaccountable "special interests" -- a term of disapproval that it, and other elite international media, had largely left unchallenged when applied to other NGOs of political persuasions other than, for example, that of Greenpeace in such debates as greenhouse gases and other environmental issues. All of a sudden what, in the case of the landmines campaign, for example, had been the noble struggle of many different NGOs from around the world, became a question of

"amorphous groups of NGOs, linked online, descending on a target ... dubbed an 'NGO swarm' in a RAND study by David Fonfeldt and John Arquilla. And such groups are awful for governments to deal with. An NGO swarm, say the RAND researchers, has no 'central leadership or command structure; it is multiheaded, impossible to decapitate'. And it can sting a victim to death."³¹⁴

The risk posed by international NGOs, the risk posed by NGOs always, whether national or international, is precisely the one noted by David Rieff, and it is surprising -- or perhaps not -- that it would take the Seattle disturbances to cajole elite, internationally committed media such as the Economist to state it:

"If the power of NGOs has increased in a globalised world, who has lost out? A popular view is that national governments have. In an article in Foreign Affairs in 1997, Jessica Mathews, the head of the Carnegie Endowment for International Peace, wrote that the 'steady concentration of power in the hands of states that begin in 1648 with the Peace of Westphalia, is over, at least for a while'. Certainly national governments no longer have a monopoly of information, or an unequalled reach, compared to corporations and civil society. But the real losers in this power shift are international organizations. Inter-governmental institutions such as the World Bank, the IMF, the UN agencies or the WTO have an enormous weakness in an age of NGOs: they lack political leverage. No parliamentarian is going to face direct pressure from the IMF or the WTO; but every policymaker faces pressure from citizens' groups with special interests. Add to this the poor public image that these technocratic, faceless bureaucracies have developed, and it is hardly surprising that they are popular targets for NGO 'swarms'. The WTO is only the latest to suffer."³¹⁵

It is mildly surprising that it should have taken a decade, and a threat to free trade, for international elite media to recognize that international NGOs, like domestic NGOs, are special interest pressure groups in the contested definition of the "public interest." It is likewise mildly

³¹⁴ Economist, "Special: Citizens' Groups," December 11, 1999.

³¹⁵ Economist, "Special: Citizens' Groups," December 11, 1999.

surprising that it should have taken a decade for international business and media elites to understand -- in a system of undemocratic public international organizations, in which public international organizations have spent a decade announcing to international NGOs that, in the absence of a genuinely democratic, electoral constituency -- that these same public international organizations will (re)organize themselves around satisfying the agendas of international NGOs. And it is mildly surprising that it should have taken a decade for international elite business and media to understand that public international organizations allow the NGOs to extract rents from them (in exchange for allegedly democratic legitimacy and, anyway, not sitting-in their doorsteps or invading their conference halls), in the form both of accommodating their agendas to those of the NGOs and giving NGOs reciprocal legitimacy.

Only after Seattle has even part of this possibility dawned on the Economist:

"Less obvious is whether NGO attacks will democratise, or merely disable, these organisations. At first sight, Seattle suggests a pessimistic conclusion: inter-governmental outfits will become paralysed in the face of concerted opposition. History, however, suggests a different outcome. Take the case of the World Bank. The Fifty Years is Enough campaign of 1994 was a prototype of Seattle (complete with activists invading the meeting halls). Now the NGOs are surprisingly quiet about the World Bank. The reason is that the Bank has made a huge effort to co-opt them. James Wolfensohn, the Bank's boss, has made 'dialogue' with NGOs a central component of the institution's work in the Bank's field offices. More than half of World Bank projects last year involved NGOs. Mr. Wolfensohn has built alliances with everyone, from religious groups to environmentalists ... From environmental policy to debt relief, NGOs are at the centre of World Bank policy. Often they determine it. The new World Bank is more transparent, but it is also more beholden to a new set of special interests."³¹⁶

But is the world of international NGOs as homogenous as all that? The Economist suggests one division -- that there is a difference in the perception of NGOs by public international organizations and states, divided between what it calls "technical" NGOs, on the one hand, and more purely mobilizational NGOs, on the other. Public international organizations are able to appreciate the contributions and more easily find common ground with technical NGOs that are able to provide expertise along with lobbying for particular positions.

Technical NGOs

"specialise in providing highly sophisticated analysis and information, and they can be crucial to the working of some treaties. In 1997, for instance, the verification system for the Chemical Weapons Treaty was devised by the world's chemical-manufacturing associations. In the

³¹⁶ Economist, "Special: Citizens' Groups," December 11, 1999.

campaign to cut third-world debt, a handful of NGOs, including Oxfam, have become as expert in the minutiae of debt-reduction procedures as the bureaucrats at the IMF and World Bank. Increasingly, they have been co-opted into making policy. At the WTO, these technical NGOs (staffed overwhelmingly with lawyers) have concentrated on training and providing information on the arcana of trade law to delegates from poor countries."³¹⁷

The same experience has been seen in the Ottawa convention banning landmines; monitoring compliance with the treaty has largely been seen as a task of "international civil society," with the publication of an annual report, *Landmine Monitor*, that gathers information on landmine use, deployment, production, trade, stockpiling, injuries, and social services for survivors by mobilizing a large network of NGOs around the world.³¹⁸ The experience of *Landmine Monitor* has been important in the exploration of one of these so-called "partnerships" between international NGOs and public international organizations and governments. The ability of NGOs -- many of which are genuinely local NGOs in a particular country³¹⁹ -- to gather information about landmine use and pass it to the international NGOs that collate and gather the information into a single report is a serious issue; the obstacles to gathering *usable* information are considerable.

Indeed, the obstacles are so serious that it leads one to wonder whether the purpose really is to gather information or primarily, instead, to use the information gathering exercise as a pretext for political conscious raising about the issue, irrespective of whether useful information is gathered or not. In that case, it looks like the development of a "technical" NGO deploying its expert knowledge in the policy-making process, but instead, because the information is not especially reliable, is really the maintenance of a political mobilization network among NGOs.

³¹⁷ Economist, "Special: Citizens' Groups," December 11, 1999.

³¹⁸ See International Campaign to Ban Landmines, *Landmine Monitor: Toward a Mine-Free World: Report 1999* (NY Human Rights Watch 1999). This impressive volume runs over 1,000 pages and is far and away the most serious attempt to gather worldwide data on all aspects of landmines. Still, it raises the issues outlined in the text above. In raising these issues, I speak both from personal experience in the campaign while at Human Rights Watch Arms Division, but also as an advisory board member of the Open Society Institute Landmines Project, which has been responsible for distributing \$4 million of grants in support of the landmines ban campaign between 1997 and today; as one of the grantmakers, I have reviewed most of the major proposals related to the campaign, including applications for funding from *Landmines Monitor*. The questions and comments raised in the discussion above are essentially issues raised with the staff of *Landmines Monitor*.

³¹⁹ See *Landmine Monitor* for a list of participating NGOs [cite to pages in LM report].

In the case of Landmine Monitor, it is almost certainly some of both; no other group, in government, public international organizations, or NGOs has better information even if it is not all reliable, but Landmine Monitors leaders would readily admit that it is also a vehicle for maintaining a political coalition in a new, post treaty phase.

In a similar vein, the seriousness of the obstacles leads on to wonder whether a sizeable purpose is to pass along funds from donors to local NGOs to keep them interested and involved in the landmine campaign as it moves from what might be called its "diplomatic" phase of drafting and bringing into force a treaty to its "compliance" phase, in which the treaty must actually be respected. Donors, after all, to the Landmine Monitor effort -- which really represents the next phase in the evolution of the ICBL -- have been almost entirely governmental, Canada particularly, and not private foundation or individual donors.³²⁰ The effect of having overwhelmingly governmental funding for Landmines Monitor is that it risks, in the future if not today, losing its independence as it becomes nominally an NGO, but really a government contractor, providing services on a given topic but dependent almost entirely for its resources on governments. This does not appear to have been a significant problem for Landmines Monitor so far, since its major patron, Canada, is perfectly aware of and happy with the dual role of "technical" expertise and political network building among NGOs that its money is buying. But there are other situations, apart from landmines, where the organizations themselves tend to divide into the two different camps of technical NGOs and political mobilization NGOs -- and the organizations favored by governments and public international organizations tend to be the technical NGOs.³²¹

³²⁰ As a strong supporter of the landmines ban campaign and of Landmine Monitor, I note with considerable regret that apart from the Open Society Institute Landmines Project, very little private donor funding has been forthcoming to Landmines Monitor.

³²¹ The effect of national government regulation of NGOs should not be overlooked as a source of differences between these kinds of organizations. The Economist, for example, cites Oxfam as an example of a technical NGO in its work with the World Bank and IMF on debt reduction; Oxfam plays this role in part because it is good at it, but also because the constraints of British charities law, which are extremely strict with respect to overtly political activities, drive it in that direction. In my own activist work on the landmines campaign, I often had conversations with Oxfam's counsel, concerned about the strictness of British law and concerned to keep Oxfam, typically, within narrowly technical, rather than political, activities, especially in its public statements. [Cite to British charities law] US charities law is altogether lax by comparison in allowing NGOs openly to state their policy preferences and to engage in much more overtly

But a division between technical and mobilization NGOs is not the only way to divide international NGOs following Seattle. The division of NGOs into those that favor economic globalization and those that do not is, to be sure, cruder, but may also get directly to the vital point. What can no longer be taken for granted among international elites after Seattle, it would seem, is that international NGOs favor "globalization" as a package deal -- a package that accepts economic globalization in the sense of economic liberalization around the world, within individual countries and between countries, so long as it is packaged together with political globalization, in the sense of a push toward supranational global governance, global regulators fully as extensive as the global market. Some international NGOs favor the latter, global governance, while wanting to restrict the former, economic globalization. Others simply do not believe that the current program of liberal internationalism will produce anything other than economic globalization; they believe that global markets will be achieved without global governance.

C. Sovereignists and Bad Faith Sovereignists at Seattle

Seattle had, of course, other strands of NGOs, including some that were genuinely national and some genuinely nationalist in their opposition to both global markets and global governance.³²² The unabashed American economic nationalism preached by Patrick Buchanan, for example, fit comfortably with some parts of the ethos of the Seattle protests, although not with others.³²³ Leaving aside narrow American-centric economic nationalism, however, a common theme among the protesting groups was a claim that "sovereignty" -- not just of the United States, but of other countries, and indeed *especially* of other countries insofar as globalization was seen as a covertly American agenda -- was being undermined by economic globalization. The intellectual framework leading up to the Seattle protests, including campaigns through the 1990s against NAFTA, the Uruguay Round of the GATT, US membership in the WTO, and the MAI, had long emphasized the twin themes of a loss of local or national control over

political activity; so long as, in essence, US charities do not directly intervene in political campaigns or directly attempt to influence legislation (and with some surprisingly permissive rules even in the matter of pending legislation), they are free to express themselves. [Cite to US tax law and to books on charities lobbying - see in my office].

³²² [Cite to wherever in text organizations in Seattle is discussed.]

³²³ See Patrick Buchanan, *A Republic, Not an Empire: Reclaiming America's Destiny* (? Regnery Press? 1999).

environmental regulation, health and safety standards, media and culture, and labor, wage and workplace issues in the face of the inexorable forces of global capitalism reinforced by public international institutions serving juridically to dismantle the sovereignty by which local control over these things could be maintained.

An influential statement of this view in connection with US acceptance of the WTO was given by Ralph Nader and Lori Wallach; according to them, a US Congressional vote for the WTO

"would have corrosive effects on the supremacy of our domestic democratic procedures, including the right of federal, state, and local governments to establish our laws, and on the ability of the United States of America to maintain some control over the powers of transnational corporations. This vote would essentially decide whether half a century of laws protecting the safety of consumers, workers, and the environment could be expanded or even sustained into the future ... Under the new [WTO] system, many decisions that affect billions of people are no longer to be made by local and national governments but instead, if challenged by any WTO Member nation, would be deferred to a group of unelected bureaucrats sitting behind closed doors in Geneva. The bureaucrats can decide whether or not people in California can prevent the destruction of their last virgin forests or determine if carcinogenic pesticides can be banned from their food; or whether European countries have the right to ban the use of dangerous biotech hormones in meat ... As a legal matter, the WTO's rules and powerful enforcement mechanism promote downward harmonization of wages, environmental, worker, and health standards, and the undermining of democratic procedures and processes ... At risk is the very basis of democracy and accountable decision making that is the necessary undergirding of any citizen struggle for sustainable, adequate living standards and health, safety, and environmental protections."³²⁴

Some version of this thesis has featured prominently in every activist campaign against the institutions of economic globalism in the 1990s, and have typically been given their most sophisticated formulation by actors who would identify themselves as from the political left, not the right.³²⁵ The left, not only the right, is today complaining against the rise of internationalism and supranationalism on the grounds of sovereignty. As Nader and Wallach continue, the "new economic model establishes supranational limitations on any nation's legal and practical ability to subordinate commercial activity to the nation's goals ... [in joining the WTO, the Clinton

³²⁴ Ralph Nader and Lori Wallach, "GATT, NAFTA, and the Subversion of the Democratic Process," in Jerry Mander and Edward Goldsmith (eds.) *The Case Against the Global Economy and For a Turn Toward the Local* (San Francisco Sierra Club Books 1996), at 92, 92-94, 105-106. [Need other cites to Nader and/or Wallach, more recent speeches, eg from presidential campaign - check nader public citizen website.]

³²⁵ [cites]

if you
put
aside
the fact
that
countries
can
ignore
the
decisions,
face
the
sanctions,
and
essentially
withdraw
from
the
system
if
what's
at
stake
is
important
enough.

administration] voluntarily sacrificed U.S. sovereignty."³²⁶ Following the Seattle protests, Nader wrote:

"Seattle was a fork in the road ... The global corporations preach a model of economic growth that rests on the flows of trade and finance between nations dominated by the giant multinationals -- drugs, tobacco, chemical, oil, nuclear, munitions, biotechnology, autos, textile, banking, insurance and other services. For third world nations, export-dependent economies become too dependent on international finance and its speculative instability, on non-sustainable or seriously polluting technologies and on cash crops instead of growing food for their own people. The global corporate model is premised on the concentration of power over markets, governments, mass media, patent monopolies over critical drugs and seeds, the workplace and corporate culture. All these and other power concentrates, homogenize the globe and undermine democratic processes and their benefits. Far better for countries to focus on building domestic markets through land reform, microcredit for small businesses, use of local materials for housing and renewable energy solar-style. For developing countries, it is far better for bottom-up capital formation to encourage activities that are more job intensive -- generating purchasing power -- than adopting highly capitalized and chemical plantation type agribusinesses with destructive technologies. Just look at American economic history and recall the enormous multiplier effect of growing more food and fiber by small farms following the great Homestead Act of 1863. Obviously, the domestic markets' priority requires more democracy while the global corporatist approach is quite congenial with dictatorial regimes."³²⁷

Not all liberals (in the partisan American sense), it seems, are internationalists. Indeed,

some, particularly some whose theoretical base lies in radical environmentalism, are "localists" -- committed to a vision of a world that, far from being a global interdependency, consists of multiple social, economic, communal and ecological "ecosystems." Edward Goldsmith, for example, offers a localist utopian vision, in contradistinction to the globalist one, in which local communities are characterized by economic self-sufficiency, local communal government, and, out of all that, self-sustainability:

"[T]he process of globalization and development has also been the process of removing from the local economy, the community, and the family the abilities to sustain themselves free of state and corporate domination. Cooperative interactions and services, once performed freely and successfully within communities, have been monetized and removed from any semblance of local control, thus making all people vulnerable to distant interests ... To reverse this grim process, which is leading to nothing but social and environmental devastation, we need to identify the ways that corporations and the state have usurped all aspects of our lives and reestablish viable local communities and participatory democracy."³²⁸

³²⁶ Ralph Nader and Lori Wallach, at 94, 104.

³²⁷ Ralph Nader, "Seattle and the WTO," In the Public Interest (Ralph Nader for President website, <http://votenader.org/PublicInterest/12799.html>, last visited August 2, 2000.

³²⁸ Edward Goldsmith, "The Last Word: Family, Community, Democracy," in Jerry Mander and

Never mind that democracy tends to go with integration

Like the most successful developing economies.

Or so he says, land reform being the only demonstrably successful suggestion he forwards

Like collective sheep-dung gathering?

You're way too easy on these people but I guess your polaroid is in the opposite direction

Goldsmith's vision is noteworthy, in part, because it essentially draws on one strand of intellectual history about civil society -- the idea that it represents a social space in which state and commerce are *absent* rather than, as in the vision of the Scottish Enlightenment philosophers, a social space in which prince and merchant meet as citizens to determine how best to seek their common interest, the common interest of prince and merchant and, to be sure, the rest of society, considered dispassionately from the idealized vantage point of the citizen. For Adam Ferguson, Adam Smith, and David Hume, it is a place of idealized interaction, the place of interaction rather than absence, between state and market; for Goldsmith, civil society is the place that is unsullied, unspoiled, and unpolluted (the metaphor from environmentalism is the appropriate one) by either.³²⁹

It is also a noteworthy vision because it is so very, very far from the vision of global economic growth and interdependence leading, and spreading, that growth. Goldsmith continues:

Never mind that living standards and life expectancy are rising and that hunger and disease are receding in much of the developing world.

"The development of the global economy ... is supposed to usher in an era of unprecedented prosperity for all ... Since the end of World War II ... [w]orld GNP has increased by five times, and world trade by twelve times. If the conventional wisdom held true, then the world should have been transformed into a veritable paradise. Poverty, unemployment, malnutrition, homelessness, disease, and environmental disruption should be but vague memories of our barbaric and underdeveloped past. Needless to say, the opposite has proven true. Never have these problems been more serious and more widespread ... To solve these problems, society must follow the very opposite path. Instead of seeking to create a single global economy, controlled by vast and ever less controllable transnational corporations, we should instead seek to create a diversity of loosely linked, community-based economies managed by much smaller companies and catering above all (though not exclusively) to local or regional markets. It is not economic globalization that we should aim for but the reverse: *economic localization*."³³⁰

The Sierra Club, which published this book, is, of course, part of international civil society; it is a prominent international NGO. It is not, however, part of the "loyal opposition" pressing, albeit indirectly, for liberal internationalism. Neither are some of the other, much more radical environmental NGOs which protested in Seattle; although this Essay sketches out a picture of

Edward Goldsmith (eds.) *The Case Against the Global Economy and For a Turn Toward the Local* (San Francisco Sierra Club Books 1996, at 501.

³²⁹ See discussion of different conceptions of the idea of civil society at [].

³³⁰ Edward Goldsmith, "The Last Word: Family, Community, Democracy," in *The Case Against the Global Economy*, at 501-502.

international NGOs that, in the main, seek to turn globalization to their ends and so are committed in some sense to internationalism, that is not true of all international NGOs by any means, and it is especially true of some of the most radical protesting groups in Seattle. The radical ecologist Gus diZerega, for example, as Michael Zimmerman notes in his book on the theorists, rather than the activists, of radical environmentalism,³³¹

"would also warn deep ecologists not to replicate modernity's control impulse, such as, by calling for a U.N.-sponsored 'unified integrated ecosystem approach' in order to prevent wilderness destruction. Like deep ecologist Gary Snyder, diZerega feels that calling for the United Nations or some other centralized organization to protect the planet is like inviting foxes to guard the henhouse. Though a centrally controlled movement 'from above' would be counterproductive, diZerega maintains that local, grassroots action is most effective when undertaken in the light of available information about the larger social, economic, and ecological context."³³²

Blah
Blah
Blah

Likewise, deep ecologist Tim Luke confirms radical environmentalism's deep distrust of the new international elites of which most international NGOs are a part:

"Acting locally' while 'thinking globally' means surfing in Maui and thinking about the next business deal in Manila, working at home but commuting cybernetically to the bond business pits in Tokyo, or contributing to the local PBS television station to pay its share of producing a documentary in London about saving elephants in Africa. Beyond the [new international elites'] environmentalist rhetoric, these increasingly borderless minimal 'communities' remain ensnared in

³³¹ I have used the term "radical environmentalism" rather than the term Michael Zimmerman and many others use, "deep ecology" or "radical ecology." Such terms as "deep ecology" carry connotations for debates within strands of the radical environmental movement; the term radical environmentalism aims at a general description, rather than entering those debates. All these positions, however, are distinguished from radical environmentalism's bete noir, "shallow" or "reform" environmentalism. The difference, Michael Zimmerman informs us, is that reform environmentalists "seek to curb industrial pollution and to use natural resources more wisely, but ... do not call for basic alterations in modernity's instrumentalist view of nature. Radical ecologists insist, however, that unless far-reaching changes *do* occur in this and related views, as well as in authoritarian political and socioeconomic arrangements associated with them, modernity's attempt to gain wealth and security through technological control over nature could trigger off ecological catastrophes capable of destroying humankind and much of the rest of terrestrial life. Rejected twenty years ago by mainstream society, some of the claims of radical ecologists are being examined carefully by a number of contemporary economists, scientists, and politicians, who concede that ecological problems cannot be solved simply by tinkering with the attitudes and practices that generated those problems." Michael E. Zimmerman, *Contesting Earth's Future: Radical Ecology and Postmodernity* (Berkeley Univ. of California 1994), at 3; see also Kenneth Anderson, "Our natural selves," *Times Literary Supplement* (London), No. 4823, September 8, 1995, at 10 (reviewing Michael E. Zimmerman, *Contesting Earth's Future*).

³³² Michael E. Zimmerman, *Contesting Earth's Future: Radical Ecology and Postmodernity*, at 330.

Oh no,
they've
gotten
to
you..

global exchange networks, living off millenia of slowly accumulated fossil fuels. Their major concern is with maximizing mobility rather than ensuring sustainability. Often none of their vital ecological support mechanisms are in the immediate environmental vicinity. Environmental outputs are not used on a sustainable scale appropriate to each bioregional setting. Instead, these supporting flows are sourced from around the larger nation-state or even the world, bound together by the wasteful expenditure of scarce non-renewable energy ... Resisting these ... practices must take the form of thinking and acting ecologically. Unless and until most communities reconnect their economies with their immediate supporting ecoregions, they will be subject both the New Class [i.e., international elite] domination and environmental collapse. Living in balance with the local bioregional surroundings while still tied to larger networks of information and expertise, communities can turn into sustainable commonwealths instead of predatory profiteers."³³³

These are radical thinkers with genuinely different views about globalization and locale, about the relative value of species, the place of human beings in nature, and about the nature of consciousness -- indeed the very willingness of these thinkers to engage in actively metaphysical thinking, even when it becomes, to the rest of us, New Age flights of fancy, sets them apart from the mainstream. The concepts of human dignity that are esteemed, for example, by the human rights movement as being the finest expression of virtue are seen by many of these thinkers as shallow and merely human-centric.³³⁴ ~~Those of us disinclined~~ those directions tend to dismiss them as tree-huggers, vapid New Agers, mad animal-rights activists, or worse.³³⁵ That is intellectually a mistake; it is far more intellectually and morally powerful a vision of the world

³³³ Tim Luke, "Community and Ecology," 88 Telos 69 (Summer 1991), at 75-76.

³³⁴ See, e.g., Michael E. Zimmerman, *Contesting Earth's Future: Radical Ecology and Postmodernity*, at 2 ("In general, deep ecologists call for a shift away from anthropocentric humanism toward an ecocentrism guided by the norm of self-realization for all beings.").

³³⁵ I am reflecting, in part, on my personal experience in the early 1980s as a researcher for two prominent environmentalists, Amory and L. Hunter Lovins; their Rocky Mountain Institute in Old Snowmass, Colorado, was -- and is -- filled with some of the most remarkable thinkers I have met, and yet they operated within a counterculture that philosophically in large part had no "connect" with mainstream intellectual or academic thought, even when some of its policy analyses have had wide impact. See, e.g., Amory B. Lovins, *Soft Energy Paths: Toward a Durable Peace* (NY Harper Colophon 1979).

When I say "worse," I mean the accusation, which has long haunted the intellectual wing of radical environmentalism, that it is linked, as an idea, to the well-known Nazi love for nature, forests, the great outdoors, and National Socialism's quite strong legal protection of the natural environment. It is a charge that the environmental movement continues to be tarred with; see, e.g., the quite unfair attack in Luc Ferry, *The New Ecological Order* (Carol Volk trans. Univ of Chicago Press 1995); see also my review of Ferry in Kenneth Anderson, "Our natural selves," *Times Literary Supplement* (London), No. 4823, September 8, 1995, at 10.

They're the most mystically and anti-democratic of all... You're talking to a major skeptic my friend. I

than conventional liberals or conservatives give credit for.³³⁶ It is a vision deeply committed to the local, and it arises out of moral, political, and spiritual sources that, partly because they are so maddeningly plural, are not easily assimilated. In this sense it is anti-modernity. In other senses not so; it seeks to establish an alternative modernity. But for our purposes, those who are serious about it are simply not 'globalists' in any sense of common ground with what this Essay has understood as 'globalization' -- even when they are deeply concerned with what happens to the global ecology as a planetary system, as a whole. They have international NGOs, yes, but they are not internationalists -- and although they are in many respects the most radical of the NGOs, they do not represent its main current of thought, either, especially about globalization. look forward to the footnote

Culturally and politically, too, it is in many respects, to be sure, an *attractive* vision, not just a jeremiad, and more attractive than the vision of global "monoculture"³³⁷ -- "the global homogenization of culture, lifestyle, and level of technological immersion, with the corresponding dismantlement of local traditions and economics"³³⁸ -- that economic and cultural globalization brings, notwithstanding the valiant attempts of two Economist writers, among others, to dignify it: I'm with the Economist

"If globalisation's crimes against culture are often exaggerated, its positive effects are often even more glaringly ignored. To begin with, it not only helps crass blockbusters [from Hollywood], but also increasingly much more highbrow 'micromarkets'. Musicians, artists, television channels, magazines and even fine wines that would scramble for a market in only one country, can now exploit their niche in every country in the world ... More fundamentally, the basic act of globalisation -- breaking down barriers -- is essential for culture. The Renaissance, the here: why romanticize and preserve in amber cultures

³³⁶ [big footnote on deep ecology]

³³⁷ As with so many of environmentalism's metaphors for cultural, social, and economic life, this too is drawn from biological sources. "Monoculture" in environmentalist literature refers to single crop agriculture and what some environmentalists saw as a weakness of the 1960s Green Revolution in developing world agriculture, with its reliance on a few strains of "supercrops," i.e., crops with extremely high yields -- they feared that crop homogeneity and reduced agricultural biodiversity increased susceptibility to disease and insect infestation, as well as exhaustion of the soil through overuse of only a few species. Some environmentalists initiated programs of planting multiple grains in a single plot in order to diversify yields, and some sought to breed perennials, rather than the usual grain annuals, such as wheat, that must be replanted each year, in order to reduce environmental damage to the soil. See [need sources - heavens i haven't thought of this since 1981 when i was working in colorado for amory lovins!]. the inhabitants of which prefer to alter from

³³⁸ Jerry Mander, "Facing the Rising Tide," in Jerry Mander and Edward Goldsmith, *The Case Against the Global Economy and For a Turn Toward the Local* (San Francisco Sierra Club Books 1996), at 3, 5. by means of outside fertilization?

Now, you're getting sensible again.

Enlightenment, even modern English fiction have all gained from the promiscuous mixing of cultures. It was Sparta, not Athens, that tried to preserve its culture from alien corruption."³³⁹

But it would be more accurate to say that culture results from a fortuitous mix of continuity and change, tradition and avant garde, mixing and purifying, promiscuity and fidelity.³⁴⁰ London is benefiting from the mixing of cultures because, in part, it is sustained by long traditions (no matter how disdained by New Labour); Mexico City is benefiting as well -- but Guatemala City? In the new world order, it is merely a downmarket slum on the dim outskirts of Mexico City, condemned for the foreseeable future, in the politically correct vision of what "ought" to be the culture of Guatemala, to reproducing Mayan textiles to be sold on the Web for aficionados of indigenous art.³⁴¹ That country's indigenous art traditions are perfectly worthy, but globalization has made it more difficult to develop culture outside of that which it is assigned in the tour guides or, in other words, a culture of the kind that sustained, say, Miguel de Asturias.³⁴²

But anti globalism is a different kind of cultural freeze.

The problem with the vision of the environmentalists, in their call to turn to the local, is that they treat the transformations that have led toward globalization as having, almost by definition, no "organic" cultural base, in the sense that Burke would have meant.³⁴³ Whereas it

³³⁹ John Micklewait and Adrian Woolridge, "The market shall make you free: It is fashionable to attack globalisation but, say John Micklewait and Adrian Woolridge, hamburgers, immigrants and Hollywood schlock can elevate our culture," *Spectator* (London), June 24, 2000, at 10, 11; see also John Micklewait and Adrian Woolridge, *A Future Perfect: The Challenge and Hidden Promise of Globalisation* (London William Heinemann 2000).

³⁴⁰ [cite]

³⁴¹ [cite to textile web site on guatemala]

³⁴² [footnote on culture in guatemala - putting in bright colored threads etc.]

³⁴³ My understanding of Edmund Burke is admittedly dependent on the magnificent Conor Cruise O'Brien, *The Great Melody: A Thematic Biography of Edmund Burke* (Chicago Univ. of Chicago Press 1992), especially his commentary on Burke's *Reflections on the Revolution in France*, at 391-393, and also at 608, drawing on Philippe Raynaud's apt description of Burke as a "liberal and counter-revolutionary"; O'Brien continues, "Burke, in attacking the French revolution and its would-be imitators in Britain, was no more reactionary than was George Orwell when he attacked the Russian Revolution and its would-be imitators in Britain ... Nor did Burke [contrary to the view of Isaiah Berlin] deliver any 'attacks on the Enlightenment' as whole.

Burke was himself a child of the Enlightenment, in its earlier phases and forms: the Enlightenment of Locke and Montesquieu." Conor Cruise O'Brien, *The Great Melody*, at 608-609; see also Edmund Burke, "Reflections on the Revolution in France," in Edmund Burke, *On Taste, On the Sublime and Beautiful, Reflections on the French Revolution, A Letter to a Noble Lord* (NY Collier Harvard Classics 1909), particularly at 179-186; and see Gerald W. Chapman, *Edmund Burke: The Practical Imagination* (Cambridge Harvard UP 1967), at 3

seems to me, rather, that many of these changes are rooted in what ordinary people want and how they live. And because radical environmentalists fundamentally cannot imagine that the drivers toward globalization are anything other than pernicious policies of state and market, pernicious manipulations by prince and merchant, they cannot imagine, either, the amount of coercion that their program would in fact entail. If the cosmopolitan ideal endorsed by Anthony Giddens and Martha Nussbaum requires the remaking of human beings into the New Globalist Man and Woman, as this Essay has so sharply criticized, then the making of the New Localist Man and Woman, too, would require just as much remaking, at immense cost to human liberty, because it would require giving up the urge to greater and greater consumption. Perhaps it is the virtuous path, voluntary sacrifice and restraint upon consumption; the cultural critic Christopher Lasch came to urge exactly this. How, he asked, can the living standards of the rich

"be extended to the poor, on a global scale, without putting an unbearable burden on the earth's natural resources. The need for a more equitable distribution of wealth ought to be obvious, both on moral and on economic grounds, and it ought to be equally obvious that economic equality cannot be achieved under an advanced system of capitalist production. What is not so obvious is that equality now implies a more modest standard of living for all, not an extension of the lavish standards enjoyed by the favored classes in the industrial nations to the rest of the world. In the twenty-first century, equality implies a recognition of limits, both moral and material."³⁴⁴

Lasch may have thought people capable of voluntary self-restraint, but on that he was surely wrong. Giving up consumption is not a path people will tread uncoerced.³⁴⁵ And are the NGO

("Burke means many thing to many men. His preclacy in conservatism is commonly recognized; yet, as Harold Laski says, Burke also gives 'deep comfort to men of liberal temper'."). I am indebted to James Boyle for discussions in which he has pointed out the antinomic quality of the Reflections on the Revolution in France, and the possibilities of a constructivist politics out of the fabric of tradition: "Your constitution, it is true ... suffered waste and dilapidation; but you possessed ... the foundations, of a noble and venerable castle ... you might have built on those old foundations." Reflections, at 183.

³⁴⁴ Christopher Lasch, The True and Only Heaven: Progress and Its Critics (NY WW Norton 1991), at 532.

³⁴⁵ As I have noted in another context, is the "totalizing consumerism urged" by corporations "supply meeting democratic, popular, mass demand, or [is it] instead the manipulated creation of demand. Of course, the answer is, well, both. Consumers want what they want, and corporations also manufacture demand to get them to want it, especially among children. But critics of the consumption culture -- those willing to challenge the blithe, libertarian assumptions of free choice -- face an unpalatable issue in attempting to draw the lines of 'authentic' versus 'manufactured' and, hence, 'inauthentic' demand. After all, actually doing anything about it, as a matter of politics and policy rather than exhortation and railing against the consumptionist ethic,

Yes, they are

visionaries of localism prepared to endorse coercion? Their answer seems to be that they will not have to -- the failure of globalization's economic model will cause it to happen anyway, although it would be better if self-restraint and the turn to the local avoided the problem altogether:

"Since the direction in which we're heading is sure to fail, we must stop in our tracks and then change direction ... the democratic process was openly circumvented to create the instruments of globalization. In this anti-democratic rush, the Western "democracies" behaved no better than anyone else; in fact, we were far worse. Since it was our scheme to begin with, we used our economic and military stature to intimidate smaller, more resistant countries into acceptance. The movement toward economic globalization is no expression of democracy, nor is it the kind of 'evolutionary' process that its advocates claim it is, like a force of nature. It is simply a scheme people thought up, an economic experiment designed to favor the institutions that promote it. It's been sold to businesses as an answer to the growing problems of the corporate and political elite. But it's the wrong answer, and it's not in the people's or the planet's interest to continue."³⁴⁶

To use an environmentalist, neo-Malthusian metaphor, restraint on consumption will happen, if by no other means, by a sort of economic "die-back" -- a sudden collapse in the population a species in a given eco-system due to overstretch beyond the eco-system's "carrying capacity." If that happens, it will render coercion moot.

Globalization and localism are thus two opposite romanticisms; these two romantic visions sharply divide the world of NGOs (although most international NGOs tend toward

requires decidedly unlibertarian actions by the State, to interfere not only with corporate choices, but with consumer choices as well." Kenneth Anderson, "Disneyworld is not enough: Corporate America and the religion of consumption," Times Literary Supplement (London), No. 5053, February 4, 2000, at 2, 3; see also Henry A. Giroux, *The Mouse That Roared: Disney and the End of Innocence* (Lanham MD Rowman & Littlefield 1999); for a overview of sociological theories of consumption, see the useful Robert Bocock, *Consumption* (NY Routledge 1993); Gary Cross, *Time and Money: The Making of Consumer Culture* (NY Routledge 1993); and for a historical discussion of the phenomenon, see Luciano Pellicani, *The Genesis of Capitalism and the Origins of Modernity*, transl. James G. Colbert (NY Telos Press 1994), especially Chapter VIII, "The Market as Agent of Cultural Secularization," at 163-180.

It is worth noting that Hegel had already noted, by the early 19th century, that the spiralling commodification of wants into needs involves the conscious creation by producers of demand for their commodities and, significantly, he saw *civil society* as the place in which those new demands were generated. As Marvin Becker explains, "Civil society for Hegel was the mechanism not only through which 'felt needs are satisfied', but through which additional demand was created consciously by producers. 'Hence the need for greater comfort does not exactly arise within you directly; it is suggested to you by those who hope to make a profit from its creation'." Marvin Becker, *The Emergence of Civil Society in the Eighteenth Century*, at 123.

³⁴⁶ Jerry Mander, "Facing the Rising Tide," in *The Case Against the Global Economy*, at 3, 17.

What is it?

globalization). Yet talk of choosing between the two is a little like declaring oneself as between Star Trek and Peter Pan; neither of those imagined worlds is really on offer.³⁴⁷ It seems to me, on the one hand (in the interests of transparency I will simply declare my view without argument, in order not to be thought to be aiming at a conclusion from a hidden agenda), that Wendell Berry's localism³⁴⁸ presents a much more attractive picture of social, communal life than the

³⁴⁷ We are not, after all, going to adopt the radical localist vision; Arcadia is not on offer, and my sense is that the radical environmental community knows this implicitly and waits for the die-back.

By contrast, there are a large number of people in the world who believe quite firmly in linear progress of human civilization toward a world that bears an uncanny resemblance to Star Trek, in each of its guises. The key element is the unification of the planet, thence to go join the rest of civilization in the galaxy, in order to reproduce the logic of the UN, in the form of the United Federation of Planets, on the one hand, and NATO, in the form of Star Fleet Command, on the other. If this sounds deeply silly, well, that is exactly the point -- this silly dream *is*, stripped of Captain Kirk and Mr. Spock (or perhaps not) the underlying dream of liberal internationalists that I have known. Their ranks even include leading liberal internationalists (George Soros and Aryeh Neier come to mind) whom I suspect of never having never seen the TV series.

Sensibilities evolve from decade to decade, but successive Star Trek generations succeed in capturing the idealized vision of the future with an accuracy that is heightened by the series' cartoonishness; emblematic of a certain logic of popular culture, it captures the big picture

because the details are so idiotic. So, the 1960s version was the triumph of technological modernism; by the 1990s, technology was seen roughly as the Internet is romanticized now -- a technological solution to the problems of a society that celebrates deracination and connection simultaneously. See Taylor Harrison, Sarah Projansky, Kent A. Ono, And Elyce Rae Helford, eds., *Enterprise Zones: Critical Positions on Star Trek* (Boulder CO Westview 1996); Chris Gregory, *Star Trek: Parallel Narratives* (London Macmillan 2000), especially the chapters on liberalism and multiculturalism in Star Trek, at 160-195.

But now the problem. Even Star Trek itself contemplates that the unification of the planet comes about *on account of* the arrival of Vulcans from the sky; in the film *Star Trek: First Contact* (1996), Enterprise officer Deanna Troi delivers a long speech to Zephram Cochrane, discoverer of warp drive, explaining that the very fact of knowing that humanity was not alone was enough to bring about the unity of the human race. See *First Contact* (adv.). Troi expresses this with the romantic sense that knowing that humanity was not alone in the universe caused human beings to put aside their squabbles, but one might better have said that, in the Star Trek mythology, planetary unity is achieved because there is something out there *against which* humanity needs to define itself. Identity, as always, is achieved in opposition. I too will believe in the liberal internationalist dream -- when the Vulcans arrive in our skies and invite us to join the United Federation of Planets -- because on that day will there be a genuinely *political* community of human beings. Not before. See Kenneth Anderson, "Where no man has gone before: Star Trek and the death of cultural relativism in America," *Times Literary Supplement* (London), No 4892, January 3, 1997, at 18.

³⁴⁸ See Wendell Barry, "Conserving Communities," in *The Case Against the Global Economy*, at

cosmopolitanism of Martha Nussbaum,³⁴⁹ which substantively, in the end, is little more than today's political correctness offered as timeless civilization. I doubt, however, that the localist economic vision could work in the way it says it would or, in particular, that the world's poor would be better off for it. I doubt entirely the ability to "localize" the economy without a catastrophic drop in living standards.³⁵⁰ Moreover, I doubt that the program of economic globalization really is destined to run out of steam in the neo-Malthusian way that the radical environmentalist agenda asserts. The question of economic globalization, it seems to me, is much more urgently the question the Secretary General continues to press -- how are its benefits to be shared with the world's poor?³⁵¹

On the other hand, while a convinced free trader³⁵² -- I yield to none in my admiration for Ricardo -- I agree with nearly all the criticisms made by Nader and Wallach about the *process* by

407.

³⁴⁹ See Martha Nussbaum, "Patriotism and Cosmopolitanism," in Martha Nussbaum and Joshua Cohen, *For Love of Country: Debating the Limits of Patriotism* (Boston Beacon Press 1996).

³⁵⁰ It has long been apparent to me that the program of the radical environmental localists involves contemplation of changes in social life that make radical right wing visions look positively normal by comparison, and by that I do not just mean the Manifesto of Theodore Kaczynski, the Unabomber. (For full text of Theodore Kaczynski's Manifesto, "Industrial Society and Its Future," see <http://www.thecourier.com/manifest.htm> (last visited August 4, 2000); see also David Gelertner: *Surviving the Unabomber* (NY Free Press 1997); see also Tim Luke, "Re-Reading the Unabomber Manifesto," 107 *Telos* 81 (Spring 1996).) American conservative publications have often noted the religiosity (the only genuine religiosity, I am sorely tempted to add) of Al Gore in Albert Gore, *Earth in Balance: Ecology and the Human Spirit* (Boston Houghton Mifflin 1992); see [cite to places like national review, american spectator discussing gore book]. One of the striking features of social discourse among elites, both American and international, however, is that neo-Malthusian jeremiads and other imaginings of those attached, however vaguely, to a "left" or "progressive" agenda, such as Gore's, get a respectful hearing even if rejected. Jeremiads of the right, on the other hand, are simply laughed at or thought to be good reason to call the FBI (as they sometimes are). See Daniel Pipes, *Conspiracy: How the Paranoid Style Flourishes and Where It Comes From* (NY Free Press 1997); see also Wendy Kaminer, *Sleeping With Extra-Terrestrials: The Rise of Irrationalism and Perils of Piety* (NY Pantheon 1999), and my review of Kaminer, Kenneth Anderson, "Get Smart: The Rise of Authoritarianism and Our Crackpot Culture," *Los Angeles Times Book Review*, Sunday, February 6, 2000. With respect to the visions of radical environmentalism, see note [].

³⁵¹ [cite to Annan speeches]

³⁵² The arguments for the completely free flow of capital, however -- while superficially analogous to trade -- are altogether different and the case for it in toto much weaker and not global as in the case of trade. Even highly committed free traders such as Jhagdish Bagwhati

Well, one answer to this is to jettison the WTO process and move to unilateral "free tradism". I guess Not what Ader/Wallick have in mind

which economic globalization has been and continues to be implemented. It is indeed a fundamental circumvention of democracy, democratic process, and democratic national sovereignty, in the US and elsewhere.³⁵³ The process has been undemocratic and the results

acknowledge this; see Jagdish Bhagwati, "Yes to Free Trade, Maybe to Capital Controls," Wall Street Journal, November 16, 1998, Section A, page 38: "[T]he case for free capital flows and the case for free trade are not identical. In fact, there is no compelling reason why if one is for free trade, one should also be for free direct foreign investment, or for free capital flows ... On the economic dimension, free trade and free capital flows have striking differences, not just similarities. These differences reflect a unique downside to a policy of free capital flows. The similarities between both policies are well understood. They relate to the upside of both trade and capital flows. Freeing both affirms the freedom to transact where and how one wishes. At the same time, any time you segment a market, you lose efficiency. Barriers to capital mobility thus carry the presumption of economic losses, just as barriers to trade do. But here's the downside: Capital flows are subject to what the economic historian Charles Kindleberger of MIT has called 'panics, manias, and crashes'. In a classic response to these concerns, Milton Friedman famously argued that speculative flows would tend to be 'stabilizing', hence welfare-enhancing, because the speculators who betted against 'fundamentals' would be wiped out in the marketplace. But the unfortunate fact is that speculation can be self-justifying. The fundamentals may change to reflect the speculation. Is this not what most likely happened when, out of panic, investors fled from what they perceived as weakened Asian economies, weakening them when they were originally strong? The case for free trade is overwhelmingly powerful,

thanks to both economic logic and the empirical demonstration of the postwar success with outward trade orientation. But if we are to back free capital mobility with the same confidence, we have to be assured on two counts. First, the costs of these crises should not be of the order seen in Indonesia [during the Asian crisis]. Second, the probability of such crises must be greatly and credibly diminished ... prudence and caution concerning free capital mobility are in order." George Soros gives approximately the same opinion in his book in wake of the Asian crisis, George Soros, The Crisis of Global Capitalism: Open Society Endangered (NY Public Affairs Books 1998), at 192: "It has become an article of faith that capital controls should be abolished ... Yet the experience of the Asian crisis ought to make us pause. The countries that kept their financial markets closed weathered the storm better than those that were open ... Unfortunately international financial markets are unstable. Keeping domestic financial markets totally exposed to the vagaries of international financial markets could cause greater instability ... Some form of capital controls may therefore be preferable to instability even if it would not constitute good policy in an ideal world."

Persuaded by these arguments, among others including concerns for democratic accountability, I did not support the MAI and see no inconsistency with holding that position while robustly favoring free trade.

³⁵³ This is not, of course, to suggest that there was anything *illegal* about the manner in which, for example, the US entered the WTO; it adhered to the legal standards and formalities of American democracy. Still, there is such a thing as a more or less democratic process, even within what is overall a democracy, and on that standard, the process has consistently veered toward the undemocratic. Moreover, I strongly agree with conservative constitutional scholar Jeremy

The question is whether Indonesia with no controls and the occasional crash is better off than a slower-growing Indonesia with controls but less capital as a result.

undemocratic as well -- as even the Economist has swung round to recognize in some small measure, noting belatedly, for example, the concern that WTO processes and panel hearings be more transparent.³⁵⁴ The case for free trade is worth making in a democratic way, and although I have no sympathy for the economic arguments, such as they were, made by the protestors in Seattle, I am entirely sympathetic to their protests about the undemocratic processes which are bringing about economic globalization. Bill Clinton correctly, in my view, made this point when he said, in his speech in the midst of the Seattle

"[W]e need to do a better job of making the basic case [for the WTO and world trade]. No one in this room can seriously argue that the world would have been a better place if our forebears over the last 50 years had not done their work to bring us closer together. Whatever the problems that exist ... this is a stronger, more prosperous world because we have worked to ... reduce the barriers to trade among people."³⁵⁵

Having made the important point that democratic processes had to be respected, including making the case to the public, Clinton arguably seemed to show himself willing to accept, however, NGOs as a proxy for democratic process:

"[W]e are called upon here to meet against a background of a lot of people coming here to protest ... When I hear the voices outside the meeting rooms, I disagree with a lot of what they have to say, but I'm still glad they're here. Why? *Because their voices now count in this debate.*"³⁵⁶

Rabkin's arguments (made, ironically, in a book attacking international environmental NGOs and their desire to circumvent national democratic processes through international law) that at some point -- sooner rather than later -- the Constitution puts limits on what can be accomplished through treaties, executive agreements, and mechanisms of international law without enactment by the regular domestic legislative process and subject to the constraints of federalism. See Jeremy Rabkin, *Why Sovereignty Matters* (Washington DC American Enterprise Institute Press 1998), particularly chapter 6, at 66-79; see also John C. Yoo, "Kosovo, War Powers, and the Multilateral Future," 148 *Univ. of Pennsylvania Law Review* 1673 (May 2000), at 1722-1729 for discussion of the converse question of whether international law puts Constitutional constraints on a US president..

³⁵⁴ See, e.g., "The battle in Seattle," *The Economist*, November 27, 1999, [there is no page number, I can track it down] (One of the goals of the US in the Seattle conference is "increased WTO transparency").

³⁵⁵ Bill Clinton, "Remarks by the President to the Luncheon in Honor of the Ministers Attending the Meeting of the World Trade Organization," December 1, 1999, Office of the Press Secretary, The White House.

³⁵⁶ Bill Clinton, WTO speech, December 1, 1999 (emphasis added).

what would
this be, exactly?

I thought
your point
was that
the ideal
common mark
exceeded
in scale
the scope
for meaningful
democracy.
Wade
&
Lori
shaking
their
heads...

Clinton, that is, seemingly came close to repeating the error which this Essay has attacked, that of treating international NGOs as convenient bearers of democracy and democratic legitimacy whereas in fact they are just pressure groups. *while the labor organizations may be suspected of having taken up the mantle of international law purely strategically*

But within this increasingly tangled mass of international NGOs (which look less and less like a single category and not at all like a category that, in keeping with being "international," can automatically be presumed thereby to favor globalization), we must draw a distinction within the category of international NGOs that ostensibly preach the virtues of localism, domestic democracy, and national sovereignty. Not all that have taken up that line in fact mean it; some, particularly some environmental organizations, have adopted the cause of sovereignty and democracy purely strategically, on account of the fact that public international organizations have already endorsed some form or other of economic globalization that precludes the forms of regulation -- environmental, labor, social -- that they would like to see. These organizations might be called "bad faith sovereigntists," and as legal scholars Jack Goldsmith and John Yoo observed in the aftermath of Seattle:

"Protestors at the World Trade Organization's meeting ... claimed they were defending American ~~sovereignty from the threat of globalization and secretive international organizations ...~~ What makes these arguments odd is not just that, as Francis Fukuyama observed ... 'the left should love globalization' because it improves the living conditions of the poor. Rather, the Seattle protests ring false because the left is attacking the very vision of international law and institutions that it usually rushes to embrace. If anything threatens to undermine American democratic institutions, it is not the WTO, but the plethora of international organizations and agreements devoted to the environment, human rights, arms control and other causes of the left. With respect to these causes, liberals are all too happy to support undemocratic international organizations and to call for international laws that override American domestic norms ... for the past two decades, liberal intellectuals and activists have launched broad assaults on American ... sovereignty. their efforts, if successfully incorporated into domestic law, would bring hundreds of important changes to every corner of the domestic legal system. They have, for example, urged the U.S. to adopt international agreements -- such as those at the Kyoto convention on the environment -- that threaten to impose restrictions on economic activity that go far beyond anything contemplated by American environmental laws ... These agreements are usually promulgated by international organizations that are unelected and unaccountable. Finding that their anti-market, pro-regulatory agenda no longer holds sway in domestic councils, the left has shifted its attention to the international arena, where its activities receive little public scrutiny. Supporters of these international agendas recognize that ... sovereignty [is] the true obstacl[e] to their plans. many have written books and articles, most of them in the international law literature, that decry sovereignty and praise international legal mechanisms that override domestic legal systems ... In Seattle, it is hard to avoid the conclusion that liberal activists were defending American

sovereignty not because they care about domestic democratic institutions, but because of their opposition to free trade and economic interdependence."³⁵⁷

It is easy to see how international NGOs can become bad-faith sovereigntists. If your position on the regulation of multinational corporations is even slightly more realistic than that of the unsullied localism of a Jerry Mander or Edward Goldsmith, as is the case of nearly all the environmental groups, for example, at least as an interim step on the way to pure localism, then supranational regulation is very possibly your preferred regulatory outcome. It is consistent with the general principal that the jurisdiction of the regulator should match the jurisdiction of the regulated. Although it has been suggested earlier that this need not mean a supranational regulator -- multilateral regulation among genuinely sovereign actors could accomplish the same thing, provided one accepted limits on the appropriate subjects of regulation so as meaningfully to preserve democratic sovereignty -- supranational regulation is indeed consistent with, even if not mandated by, this principle.³⁵⁸ The problem for the bad-faith sovereigntists is not that supranational governance is a bad thing -- it is simply that they do not happen to those in charge of that supranational governance. Others have beaten them to it, or have been politically more powerful, as the case may be, setting the agenda according to priorities different from these international NGOs, such as free trade or free capital flows.³⁵⁹ Hence the strategic retreat to

³⁵⁷ Jack L. Goldsmith and John C. Yoo, "Seattle and Sovereignty," Wall Street Journal, Monday, December 6, 1999, opinion, at A35; for the article Goldsmith and Yoo cite from Fukuyama, see Francis Fukuyama, "The Left Should Love Globalization," Wall Street Journal, opinion, December 1, 1999, page A26 (pointing to the irony of the protesters in their attempts to strike down globalization, which "is one of the most progressive forces in the world today;" there is "little empirical evidence" backing the protesters' claims).

³⁵⁸ See discussion at [].

³⁵⁹ In the case of the WTO, for example, Michael Beyers points out that the actors setting the agenda were, first, the US, and then the EU and Japan: "The WTO came into being as the result of a 26,000 page treaty concluded in Marakeesh ... The United States saw an opportunity ... to create stronger trade obligations in those areas of particular interest to its own corporations, in services (banking, law, management consultancy, etc) and intellectual property (copyrights and patents) ... Much of the rest of the rest of the world was caught off guard. The sheer complexity of the Uruguay Round, with groups working in parallel on more than thirty specialised agreements, meant that most countries were at an immediate disadvantage relative to the US, Japan and the European Union, with their armies of negotiators ... Japan, the members of the EU and Canada ... saw a distinct advantage in locking the US into a system of binding rules and dispute settlement procedures ... This advantage was undermined, however, by a national security exception being written into the WTO agreement ... In exchange for their co-operation

You've taken them from

- 1) concern with global issues; through
- 2) legitimizers of globalization; to
- 3) committed to globalization

national sovereignty and national democratic values; given a different political reality, then supranationalism would be the preferred outcome, for the reason that such groups are wedded to a particular outcome, not to the process or jurisdiction by which to get there.

The world has woken up, in any case, to the fact that international NGOs are not a single force, as the Economist could once comfortably and simply imagine them, "international civil society," homogenous in its commitment to liberal internationalism's plan for a global economy and global governance. Those interested in the formation of international elites, like the Economist, looked forward to the give and take, the rough and tumble, of politics in a "unitary" global political system; the international NGOs, on this "hail-fellow-and-well-met" vision, would be a boisterous, noisy, unruly part of a supranational political system that would gradually, under their loud demands for accountability, become increasingly democratic. Fighting over the particulars would be permissible because everyone had already agreed on the vision. As it turns out, however, some international NGOs, at least, are unruly, yes, noisy, yes -- and this is because they aim at something that is altogether different from liberal internationalism.³⁶⁰ One result of this splintering is that, as the world of governments and public

I think you may be lumping them all together too much, despite caveat of previous section

on services and intellectual property, developing countries were promised further negotiations on agriculture and textiles -- negotiations which, they hoped, would give them non-discriminatory access to European and North American markets. But the US and the EU remain irreconcilably divided on the issue of agricultural subsidies, and unwilling to pay the domestic political price of moving forward on textiles. This has left the developing countries with nothing in return for their concessions [on services and intellectual property]." Michael Beyers, "Woken Up in Seattle," London Review of Books, Vol. 22, No. 1, January 6, 2000, at 16.

³⁶⁰ Michael Beyers also provocatively suggests that a significant development in the Seattle protests "has been the rise in the power not of the NGOs, but of the individuals activists. Most of the Seattle protestors are not strongly wedded to any particular NGO. They are merely educated, informed people concerned about some of the effects of economic globalisation. Many, it turns out, are retired professionals with time on their hands and access to the internet. This new breed of activist poses an enormous challenge to governments and corporations, for its members cannot be dismissed as lacking expertise and knowledge or as having any particular agenda. And their numbers are growing." Michael Beyers, "Woken Up in Seattle," London Review of Books, January 6, 2000, at 16, 17. I am skeptical of this assessment; perhaps it was merely the hostility of the reporters of elite multinational media organizations that caused protestors to appear distinctly uninformed about the issues surrounding the WTO meetings, but I would not have described them as having "expertise." Moreover, even if it is true that they do not have any particular organizational agenda in fact makes them in another sense all the more vulnerable to manipulation to the ends of international NGOs who dominate all the media speaking roles in protests such as those in Seattle and Washington DC. Finally, it appeared that American trade

international organizations have become aware of (what ought not to have been) this surprising fact, a wide range of the international NGO world today says that they are feeling a backlash against them. They report a denial of access in the corridors and conference rooms of international policy, deriving from the dawning recognition by the rest of the international community that merely to be an international NGO does not necessarily mean that it is part of Team Globalization:

"[S]everal independent groups were reporting that they are feeling a backlash at the United Nations, as countries try to limit their access and activities. In recent years nongovernmental organizations -- known around the world as N.G.O.'s -- have been increasingly active in and around the United Nations in fields as diverse as international criminal law, the environment, arms control and women's rights. They have often framed issues succinctly and done the most successful lobbying for world attention to them. The organizations gain access to the United Nations and its meetings through a committee of the Economic and Social Council, which has the power to deny them accreditation. Most at risk are human rights and democracy groups, which come under close scrutiny from countries like China, India, Cuba and Russia.."³⁶¹

V.

The Special Legitimizing Function of the Ideology of Human Rights

A. Human Rights as a Substitute for Democracy?

The organizations most prominent in the Seattle protests were environmental organizations and labor unions.³⁶² International human rights organizations were not conspicuously present in Seattle -- at least not major, respectable international players such as Amnesty International or Human Rights Watch.³⁶³ Nevertheless, as the New York Times notes, it is human rights and democracy groups which find themselves most at risk from a backlash among public international organizations,³⁶⁴ and particularly those committees, agencies, and

unionists, who do have organizational affiliation in organizations with clear agendas, were numerically dominant in Seattle. [Cites]

³⁶¹ Barbara Crossette, "Groups Fear Exclusion From the U.N.," New York Times, Tuesday, May 23, 2000, at A-12; for a description of the accreditation process for NGOs and proposals to amend it, see Dianne Otto, "Nongovernmental Organizations in the United Nations System: The Emerging Role of International Civil Society," 18 Human Rights Quarterly 107-141 (1996), at 107.

³⁶² [Cite]

³⁶³ [Cite to interview with Mike Dolan WTO protest organizer, if he'll go on the record, but anyway reference back to description of groups that were there.]

³⁶⁴ Barbara Crossette, NYT, May 23, 2000.

organs (such as the accreditation committee of the Economic and Social Council of the UN) which have individual states as members.³⁶⁵

There are certain ironies in this, and they are not merely that one group of NGOs suffers, so to speak, for another's "sins." The ability of states, especially human rights violators acting in bad faith, to take action against international human rights NGOs is partly a function of the tendency of international NGOs themselves to emphasize this reified thing called "international civil society," as something more unified than it really is, unified around the concept of its supposedly automatic virtue. Today there is a greater propensity to segment the international NGO community and to eliminate in part its presumption of automatic goodness -- as splits within the agendas of international NGOs are becoming more evident, both to them and to the rest of the world. Yet bad-actor states partly rely on the supposed *unity* of "international civil society" to attack particular parts of it, imputing views of one to the whole.

} Really?
Examples?

It is an unfair chain of conclusions, but this is how, in the abstract, it operates: Certain groups protested at Seattle, some violently; these groups are NGOs; NGOs, at least the most visible, international ones, are part of something called "international civil society";

"international civil society" is responsible for the irresponsibility in Seattle; even apparently uninvolved international NGOs, such as human rights organizations, are part of "international civil society"; human rights organizations are therefore partly responsible for the irresponsible actions in Seattle; human rights organizations should be punished for what went on in Seattle.

No one, of course, articulates it so crudely, and no doubt everyone would deny acting on the basis of it, but it seems likely that something like this chain of reasoning (besides sheer opportunism on the part of bad-actor states) lies below the resentment directed at a wide variety of international NGOs following events in Seattle, the resentment that international NGOs report in their dealings with public international organizations. It is a certain inchoate feeling -- a mood, as much as anything, that expresses itself partly in official actions such as denials and delays in accreditation but also partly in the informal interactions between international NGO

³⁶⁵ [Cite to UN structure of committees with states as members, eg accreditation committee -- see Dianne Otto article for help in getting original sources] In addition, the UN has a variety of committees and organs that are nominally staffed by individuals in their individual or expert capacities but who -- sometimes because they are named by states, sometimes for other political reasons -- effectively represent the interests of particular states. [cites]

staff and diplomatic and international organization staff³⁶⁶ -- that international NGOs have gotten out of hand or, more precisely, have got "above themselves" in the international social order. It is time to rein them in and put some brakes on their high talk³⁶⁷ -- talk which, to be sure, was widely indulged in by public international organizations and many states themselves, when they were interested in helping themselves to the supposed democratic legitimacy of international civil society.³⁶⁸

This Essay is not the occasion to address the many special issues raised by the international human rights movement in relation to supranationalism, international NGOs, and public international organizations; the topic is too large to do justice in this space. Still, the account this Essay gives of the relationships and struggles for legitimacy between public international organizations and international NGOs under the pressure of economic globalization would not be complete with at least putting forward two assertions about the role that international human rights ideology and the international human rights movement plays in the struggle for legitimacy and the democratic deficit.

The first is that international human rights, considered as an ideology, in part serves as a substitute for democracy. This may seem either a perverse assertion or a banal one. It may seem perverse in that, after all, the content of human rights includes such things as free and fair elections, and within the broad range of human rights activities carried out by international NGOs such activities as election monitoring and support for ordinary democratic process are prominent. Nevertheless, there is a sense in which the assertion is true and important to understanding the full picture of human rights and international human rights organizations. It is the sense in which human rights as an ideology, first (and uncontroversially), subordinates the

³⁶⁶ Obviously this is hard to document in any written form; in my reasonably constant dealings with international NGO staff and international agency staff through my work with several international NGOs, I can report that it is, at least at this writing, a real phenomenon, inchoate as it may be.

³⁶⁷ I have been queried about this expression; see Harper Lee, *To Kill a Mockingbird* (orig. 1960) (NY HarperCollins 1999), at 86 (Atticus Finch: "[T]here's been some high talk around town to the effect that I shouldn't do much about defending this man.")

³⁶⁸ And as they continue to be, for the democratic deficit of public international organizations continues unabated -- which is what accounts, at least in part, for the extraordinary lengths the Secretary General and senior UN executives have gone to in order to reassure international NGOs of their continuing relationship. See [cites to Annan and Frechette speeches to NGO gatherings in 2000].

Lost me . . .

outcomes of elections, electoral process, popular will, and democracy to the strictures of human rights commands and, second (and, for this Essay, controversially), locates determination of the *content* of those human rights commands in international rather than local or national fora. The ideology of international human rights says, in other words, that democratic processes must conform to the categorical imperatives of human rights, and that the content of those categorical imperatives shall be determined by international bodies rather than anything more local.

The assertion may also seem banal in that the idea that even democratic process is constrained by certain categoricals is not a controversial notion for nearly anyone; nearly everyone accepts both that there are indeed certain absolute standards and that democracy requires some form of constitutionalism to enforce those standards. However, what is increasingly under strain from the human rights movement is how far those categorical imperatives can extend. The traditional idea of the relationship of human rights and democracy, at least in the US, was that the demands of human rights were "narrow but deep" and even absolute. A constraint of "narrowness" was seen as essential to preserve social consensus on what could truly be called absolute imperatives, genuine categoricals, on the one hand, and what was simply social policy, on the other, in which disagreement was both empirically present and perfectly legitimate. A constraint of narrowness was seen as necessary to preserve the independent sphere of democracy and the popular will; it is what constitutionalism is all about.

But "narrowness" was also understood as necessary to preserve the absolutist and universalist qualities of human rights and indeed to protect the human rights movement itself. It does not take much imagination to understand -- as has been seen especially in the US as the course of the American "rights revolution" has gone on in the last few decades³⁶⁹ -- that when everything is a "right," nothing is a right. At least not everything can be a right in the original, strong sense of "rights" as trumps, things that absolutely prevent other people from doing things, the sort of trump that one wants in the case, say, of torture. When every social policy can be cast in terms of absolute rights, then rights no longer operate as trumps. Adjudicators of rights necessarily find themselves considering absolute against absolute, and must inevitably one supposed absolute against another supposed absolute -- and either choose one over the other, or

³⁶⁹ See Mary Ann Glendon, Rights Talk [cite from elsewhere in essay]

else compromise between them.³⁷⁰ The "categorical" quality of human rights suffers if the guardians of human rights as an ideology, the NGOs that form the moral backbone of the movement, do not deliberately hold themselves back from freely counting whatever they feel like as absolute and universal rights.

Even to talk about this, to call to discuss the constraint of the content of rights, however, has a hopelessly unfashionable feel to it; the international human rights movement feels itself to so far beyond this kind of discussion that even to raise it marks one as a reactionary. It instead has made a dangerous bet that it can use the power of rhetoric to extend the language of rights over a wider and wider set of policies, and that the power of the rights rhetoric will see it through. Even assuming that what it wants is actually "good" (whereas in fact much of that agenda is highly contested terrain), the risk is that in the end the result is not an increase in the territory of rights, but a decrease in the strength of morally and socially necessary universal and absolute prohibitions such as that, for example, against torture.

*I feel
your
pain.
You
are
so
right.*

For many, the idea that what ought to count as absolute and universal human rights needs to be limited at all has always been a particularly American way of thinking about human rights, and merely a political ploy to limit the consideration of rights to peculiarly American, not

³⁷⁰ Indeed, the real winners in this process are the adjudicators who, in a scheme in which democratic process counts for naught, given two absolutes, wind up with absolute discretion in allocating what is not, where rights genuinely are trumps, supposed to be allocated at all. See C. Neal Tate and Torbjorn Vallinder, *The Global Expansion of Judicial Power* (NY NYU 1995), at 1-37. Some contemporary constitutional systems, such as Canada's Constitutional Charter, for example, explicitly allow "for conflicts among liberties and rights" and seek "to specify the conditions under which rights or basic liberties may be overridden, rather than to contour away their difficulties." John Gray, *Enlightenment's End: Politics and culture at the close of the modern age* (NY Routledge 1995), at 72. The problem with this is that it is simply another tool for undermining democracy; the recognition that having many different, conflicting "fundamental" rights has, in Canada, had the effect merely of putting ever vaster amounts of political power into the hands of unelected judges; Canada's political society is a nearly unparalleled triumph of New Class elites, and one whose judicial elites, it is no exaggeration to say, despise democracy. The rightwing has paid considerably more attention to this issue than anyone else; see, e.g., Petra Dickenson, "Canadian Justice: Andrea Dworkin meets Mme. Claire L'Heureux-Dube," *American Spectator* (September 2000), at 60 (quoting Canadian Supreme Court Justice Mme. Claire L'Heureux-Dube that "[s]ince our legal system is ineffective in protecting the rights of women and children, it is necessary to re-examine the doctrines which reflect the cultural and social limitations that have preserved dominant male interests at the expense of women and children.").

Drop a footnote
to substantiate?

universal, conceptions drawn from Anglo-American political assumptions about the primacy of liberty and autonomy. From the very beginning of the UN era, these limitations were challenged by the assertion of economic, social, cultural, and solidarity rights, and many of these are as much enshrined in international law -- it simply is the case that international human rights law enshrines a certain version of social democracy -- as those which Americans are most comfortable with supporting.³⁷¹ Americans in the international human rights movement generally climbed aboard the bandwagon of expansion when it came to adding rights arising not so much from economic and distributional issues as issues of identity politics, i.e., the conversion of "status" into fundamental human rights -- cultural matters, in effect, and, seen realistically from the standpoint of American politics and culture, a flanking maneuver in the American culture wars.³⁷² American conservatives are increasingly mindful of this; as John Bolton, senior vice president of the conservative American Enterprise Institute has noted, in connection with the death penalty and other American issues:

spell
it out...

"'Civil society' ... seeks to re-argue its preferred issues, by trying to leverage political power from outside of the democratic polities where they have been unsuccessful politically. This 'outside' political power may well, over the long term, leave them in a stronger domestic position than their opponents, who have neither access to nor allies beyond their own countries. In effect, therefore, 'civil society' attempts to renegotiate the basic constitutional issue of democracies -- who governs? -- to their own advantage."³⁷³

Or as Jeremy Rabkin has put it:

"If one steps back from the details, one can discern the outline of a political arena that is an international projection of the style of public-interest advocacy politics developed in the United States in the 1970s. Some of the same groups that have been most active in American advocacy politics have become most active in counterpart forums at the international level and describe their involvement in similar terms ... They have gained new prestige or new pathos by globalizing their rhetoric ... The groups transfer deliberation from U.S. forums, where opposing interests know how to mobilize opposition, to strange new forums in distant capitals, where internationally oriented advocacy groups have a comparative advantage. More important, the groups transfer deliberations from the U.S. political system, with its own set of checks and balances, to international gatherings with none of those safeguards. The active, informal

³⁷¹ [cite to economic, social, and cultural and solidarity rights]

³⁷² One of the most useful sources for thinking about the culture wars, even a decade later, is James Davison Hunter, *Culture Wars: The Struggle to Define America* (NY Basic Books 1991).

³⁷³ John Bolton, "The Fallacy of 'Law' in International Affairs," *Iowa Journal of Transnational Law and Politics* (forthcoming 2000), at 23-24 of unpublished draft (discussion in reference to Kyoto treaty on environment and American death penalty politics).

lobbying by activist NGOs, especially when international conference organizers encourage it, cannot replace the system of formal, procedural controls under which U.S. agencies operate."³⁷⁴

International human rights groups have long since abandoned any idea of self-restraint in defining human rights in favor regarding them as a kind of open account for drafting up categorical on any topic which, in the cultural milieu of international human rights organizations -- their place in the culture of international elites -- seems to require socially progressive legislation.³⁷⁵ It is thought, in my experience of many conversations of this type, impolite to raise again the discussion about the constraint of rights that so exhausted its participants in earlier decades that they agreed to shelve it, rather than resolve it;³⁷⁶ and impertinent to suggest that the international human rights movement runs the risk of a crisis of legitimacy as its proclaimed reach extends ever wider. More than impolite or impertinent -- to raise these issues is simply and unforgivably *passe*, and marks one as not part of the "cool" cutting edge of international human rights.³⁷⁷

Passe, uncool, banal, perverse, impolite, or impertinent, however, the relentless expansion of the content of human rights to cover areas that might, and popularly are still thought (at least in the United States) to be part of the democratic remit (the conversion of human rights into progressive social policy *fashionable at the moment* but changeable tomorrow, framed in absolutist language as though it really were *for the ages*, but just as tomorrow's new sentiments

³⁷⁴ Jeremy Rabkin, *Why Sovereignty Matters* (Washington DC American Enterprise Institute Press 1998) at 42.

³⁷⁵ Several examples are given at [].

³⁷⁶ One way in which it has been shelved within the movement has been to regard the question of what should constitute a human right as not a substantive question any longer, but instead merely a question of *procedurally* what kinds of questions the international human rights movement is politically able to take on, as I was informed in a discussion with a senior movement leader a couple of years ago. See note [] for further discussion of the circularity problems it raises; still it has the virtue, from the standpoint of keeping peace within the movement, of avoiding questions of substance.

³⁷⁷ Intellectual discussion within the international human rights movement, alas, increasingly recalls the tone of drawing room conversation of the aristocracy of Restoration France: "So long as you did not speak lightly of God, or of the clergy, or of the King, or of the men in power, or of the artists patronised by the court, or of anything established; so long as you did not say anything good of Beranger, or of the opposition press, or of Voltaire, or of Rousseau, or of anything that allowed itself the liberty of a little freedom of speech; so long, above all, as you did not talk politics, you could discuss anything you pleased with freedom." Stendhal (Marie-Henri Beyle), *The Red and the Black* (1830), transl. C.K. Scott-Moncrieff (NY Heritage Press 1947), at 225.

will be framed in equally ageless, absolute language) means that, whatever good things international human rights and the international human rights movement do to promote democracy, it also views itself as a legislative and constitutional alternative. It expands, and the democratic remit contracts. But it expands not only in the sense that it asserts its categorical over whole new subject matters; it also expands in the sense that it does not believe that democracy is necessary or good in these matters, the democratic will ought not to count in an expanding list of things.³⁷⁸

Although you assume too glibly that democratic remit exists lots of places where it does not?

What things? This Essay has considered some already in the discussion of [].³⁷⁹ The list has certainly expanded in the field of international children's rights; the Convention on the Rights of the Child, for example (which, it is so often and piously said, has been ratified by every country except the United States and [Somalia or Ethiopia?]), makes the subject of international law that, among other things, a child "shall have ... freedom to seek, receive, and impart information of all kinds ... in print, in the form of art or through any other media of the child's choice"; no child "shall be subject to arbitrary ... interference with his or her privacy ... or correspondence"; one could go on.³⁸⁰ The Convention on the Elimination of All Forms of Discrimination against Women directs governments to ensure, among other things, "the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education ... by the revision of textbooks and school programmes."³⁸¹ Are we really to suppose that these are fundamental and universal human rights, discoverable by natural reason out of the concept of human dignity, in the same way that we might discover that torture is evil, rather than the more obvious conclusion that this is simply particularist ideas by particular parties, many international NGOs and their staffs among them, of what they believe progressive social legislation for children and women ought to provide? All this is in addition to the distributional rights, the social and economic rights, which provide among other things, for vacations with pay; these features have been the subject of argument and ridicule since the text of

³⁷⁸ See the discussion of Michael Ignatieff's arguments for grounding of human rights and their expansion at [].

³⁷⁹ See discussion at [].

³⁸⁰ Convention on the Rights of the Child, in Carter and Trimble (eds), *International Law Selected Documents* (Aspen Publishing, 1999), at 463-471.

³⁸¹ Convention on the Elimination of Discrimination Against Women, in Carter and Trimble (eds), *International Law Selected Documents* (Aspen Publishing, 1999), at 440-451.

the Covenant on Economic and Social Rights³⁸² was mooted at the beginning of the UN era, and few if any insiders to the culture of international human rights organizations see any value in revisiting the arguments again. But, again to emphasize, merely to suggest that these are not appropriate matters for international treaty is to reveal oneself, within the culture of international elites, as a hopeless reactionary, behind the times, anti-child and misogynist, to boot. Only Americans, it might well be added, would be sufficiently boorish to put such complaints in print,³⁸³ although one conservative Canadian journalist (unsurprisingly resident in America, as his views might be proscribable under Canada's repressive speech codes³⁸⁴), framed this issue of the culture wars gone global in this way:

I can see why you wanted to get out of this field...

"'International law' is the new colonialism, the imposition on the world's peoples of the moral certainties of a remote, unaccountable Western elite. Indeed, the old imperialists were far more tolerant of local customs and culture than the monolithically leftist body of activist law. In 1998, the British government forced its reluctant Caribbean colonies to abandon their prohibitions on homosexuality to bring their laws into compliance with the European Convention. But what chance do those Muslim and Third World countries who regard abortion as an abomination have of foisting their views on Europe or North America? 'International law' represents not a global consensus, but left-wing orthodoxy on an unlimited budget: pro-gay, pro-abortion, anti-Pinochet."³⁸⁵

!! Too true

³⁸² Convention on Economic, Social and Cultural Rights, in Carter and Trimble (eds), *International Law Selected Documents* (Md: Aspen Publishing, 1999), at 417-425.

³⁸³ And (being boorish) the reason is simply that which Conrad Black was quoted as saying earlier in this Essay: with respect to the countries of Europe, "[f]ew of their political institutions ... have any seniority or proven value, and they don't have much to lose institutionally in transferring authority to Brussels and Strasbourg" under the EU; it is an "easeful rest for a tired continent." Conrad Black, "Westward Look, the Land is Bright," *Spectator* (London), July 15, 2000, at 12. The situation is different for the United States and (Tony Blair and New Labour notwithstanding), for Britain, neither of which has needed five republics; the US and Britain actually have something significant institutionally to lose. See David Thomson, *Democracy in France Since 1870* (London Cassell 1989); and Jonathan Fenby, *France on the Brink: A Great Civilization Faces the New Century* (NY Arcade Publishing 1999).

³⁸⁴ See, e.g., the so-called "Dr. Laura" case, in which the Canadian Broadcast Standards Council ruled that the popular American talk show host, Laura Schlessinger, had violated "Canada's strict codes barring hate speech. Responding to complaints by gay rights groups," the Council found that "Laura Schlessinger's characterization[s] were 'abusively discriminatory' ... To prevent losing their broadcast licenses, the 30 stations in Canada that carry the show will not be required to offer an on-air apology for Schlessinger's remarks. They will also be required to take steps to screen her famously no-holds-barred commentaries before they are aired." *Washington Post*, "World In Brief," Friday, May 12, 2000, at A35.

³⁸⁵ Mark Steyn, "The Rise of the Fu Movement," *Spectator* (London), March 4, 2000, at 22, 24.

However offensive progressive Western elites might find this, it speaks for a very large number of people even in the Western democracies. What is striking about the international human rights movement, however, is that it no longer feels any need to respond to criticism of this kind; sufficiently entrenched as an elite, debate about these fundamental issues (outside the pages of such venues as the New York Review of Books, in which the debate is exceedingly polite because everyone fundamentally agrees anyway; it might well be called the journal of the straw man argument) is seen as weakening, rather than strengthening, the moral authority of the movement. Since in international venues, it answers to no democratic impulses or checks, there is no one it need persuade of much of anything except other international elites.³⁸⁶

I have deliberately framed these comments about the international human rights movement around questions of politesse and impolitesse, good manners and bad, and *sensibility*,³⁸⁷ because it is not sufficiently acknowledged that the human rights movement is as much a social movement as anything else, however much it seeks to reify itself as the guardian of

³⁸⁶ This studied indifference to the views of, so to speak, the great unwashed, the disdain of majoritarian processes, and the tendency to take refuge among one's own kind in the jet stream, has certain strategic risks to the movement's agenda, insofar as it is actually about human rights and not merely about enthroning supranationalism. As David Rieff has noted: "Human rights is one of the major ideas to emerge from the 20th century. But it has yet to become an integral part of the fabric of American *democracy*. So far, what power the human rights movement has obtained derives not from an evolution in popular sentiment -- as occurred, for example with regard to civil rights or the environment -- but from the press and the political elite. But in an age in which gross human [rights] violations seem to require military force or, at least, the threat of it -- power that often only America can provide -- the advantages of this elite strategy are disappearing fast ... Today's human rights workers wield great clout in Washington as long as they can work on an issue to which the public is not paying much attention. But when risks are involved ... the weaknesses of the insider approach quickly becomes apparent ... Human rights workers sometimes talk of their movement as an emblem of grass-roots democracy. yet it is possible to view it as an undemocratic pressure group, accountable to no one but its own members and donors, that wields enormous power and influence. For example, would there have been a war in Kosovo without the human rights movement? As a supporter of the war in Kosovo, I applaud the result. As a democrat, I worry. It was a moral decision, but it was arrived at undemocratically." David Rieff, "The Precarious Triumph of Human Rights," New York Times Magazine, August 8, 1999, at section 6, page 37.

³⁸⁷ Strikingly, however, Marvin Becker notes that "[w]ith the onset of civil society [in the eighteenth century], the very word 'sensibility' lost something of its traditional definition as a mental faculty. In civil society sensibility became a designation for a style of life." Marvin Becker, *The Emergence of Civil Society*, at xix; see the further discussion at [].

the categorical imperative, the ghost within the machine of the universal, the good, and the right.³⁸⁸ It (the *movement*, rather than human rights as such) is dependent on political and social cultures internal to the movement as well as cultures of the broader movements of progressivism and evolving movements of identity politics and the post-communist left, of which it is both a part and foundational morality. These cultures produce and reproduce the ideology of human rights and are in great part responsible for its evolution -- the new subject matters of human rights, the scope of its ambitions, and its attachment to internationalism, among many other things. That ideology puts forth laws and moral views, but it exists within a certain sensibility that derives from the overlapping cultures of the human rights movement.

It is impossible, in my view, to understand the trajectory of human rights merely on the basis of its juridical products -- the laws, treaties, norms, court decisions, institutions -- or its achievements or excesses without formally acknowledging the role of its cultures, its internal culture and the (several) external cultures in which it is embedded.³⁸⁹ There is a curious reticence

³⁸⁸ What the international human rights movement needs in the way of analysis at this point, in other words, is not so much a John Rawls as a Thorstein Veblen. See Thorstein Veblen, *The Theory of the Leisure Class: An Economic Study of Institutions* (1899) (NY Modern Library 1934); see also David Riesman, *Thorstein Veblen* (New Brunswick NJ Transaction 1995).

³⁸⁹ This culture is just starting to be examined in fiction and literature, genres in which the question of sensibility is unavoidable. Human rights workers, international aid workers, members of the international aid industry, are starting to show up in the landscape of a certain kind of novel.

One recent example is the recent novel by Michael Ondaatje, *Anil's Ghost* (NY Knopf 2000). *Anil's Ghost* features a forensic anthropologist sent by an international human rights organization to examine various grave sites in Sri Lanka. I admit I found *Anil's Ghost* excruciating; having worked with the forensic team that Ondaatje modeled his novel on for several months in Iraqi Kurdistan in 1991 as leader of a documentation team for Human Rights Watch and Physicians for Human Rights, I found the book to have romanticized the work in ways that made it nearly impossible for me to read. The extant literature does not seem to have advanced very far beyond the sentimentality and hero worship of the children's biographies I read as a child of Clara Barton, Civil War Nurse, or Florence Nightengale, Angel of the Crimea. For a somewhat more positive assessment, see Michael Gorra, "Murder on the island," *Times Literary Supplement* (London), No. 5065, April 28, 2000, at 23.

The most insightful and certainly the funniest of the extant novels is, in my estimation, Francisco Goldman, *The Long Night of White Chickens* (NY Atlantic Monthly Press 1992); among other things, he unerringly draws out the sex appeal of the (male) "brave local journalist"/ "noble local human rights campaigner"/ "heroic local etc." for idealistic young women from the industrialized democracies: "All the other foreign women who came to Guatemala and inevitably sought out Moya always brought a dignifying and even reverential air to their fist

*This is true of
other liberal sacred cows too...*

to treat the human rights movement as fit for study as normative culture. The human rights movement itself seems unwilling to embrace a scrutiny that would treat it as merely a human institution like any others, and not Kant, 'Immanent, Transcendent, and a Mystery', beyond critique. Unsympathetic intellectuals (conservatives generally) do not have the textured, nuanced experience to discuss the sensibility of a movement of which they are not a part, while sympathetic intellectuals are too eager to prove their movement bona fides to subject it to the sort of scrutiny that they would apply to pretty much any other merely human institution, and so prefer to engage in hagiography.³⁹⁰

meetings and, vos, this gave him much to work with ... For in great American and European cities, at solidarity and university conferences and in editorial meetings, and even once, it had been inferred in Moya's presence, in the actual halls of Congress, Washington, DC, women ... who cared for Guatemala and had been there or were planning trips there, spoke of Moya, and apparently said things like, "Well, you must look up this Luis Moya Martinez. It's amazing, the things he gets away with in his newspaper, even despite the State of Siege! True, his paper is little read compared with others there. But he's very brave, and quite brilliant; I imagine that much of what he writes probably goes right over the heads of the secret police, if you know what I mean. Still, it's amazing he's alive. When you think of how many journalists have already been killed or disappeared there ... So young too! Quite handsome in a funny way! Though his hair is turning white." Francisco Goldman, *The Long Night of White Chickens*, at 145. Goldman understands that, in certain crucial aspects, international aid work, human rights work, all the rest of it, is a species of exotic travel -- "disaster tourism," as John Ryle among others has called it. See John Ryle, "The Hazards of Reporting Complex Emergencies in Africa," Lecture delivered October 30, 1997, Nuffield College, Oxford (forthcoming in *Iowa Journal of Transnational Law and Politics*, 2000). It frequently carries a component of what Lucretia Stewart has described as the "erogenous zones" of travel; see Lucretia Stewart (ed.), *Erogenous Zones: An anthology of sex abroad* (NY Modern Library 2000), and see also the review, A.N. Wilson, "Unwise Why not," *Times Literary Supplement* (London), No. 5078, July 28, 2000, at 9.

The most scandalous and also quite hilarious novel in this genre is Timothy Mo, *Brownout on Breadfruit Boulevard* (London Paddleless Press 1995); a kind of comedy of international manners, it is perhaps the most politically incorrect novel written in several decades on international elites, the international aid industry, and the politics of international academia and NGOs. *The Spectator* (London) (in one of the novel's very few reviews) remarked that it seemed to have been written "expressly to annoy John Pilger" (the exceedingly politically correct writer on the Third World), and added that it is one of the very few examples of "genuinely reactionary literature," an assessment with which I quite agree. [i don't have these quotes right - need these from the *Spectator*, in London, in 1995 or latest 1996]. The novel had difficulty finding a publisher on account (at least according to the *Spectator*) of the size of advance Mo wanted; a contributing factor, however, may have been the scene of coprophilia that opens the story. Mo published the book himself. See [cite to *spectator*].

³⁹⁰ See, e.g., Michael Ignatieff, *The Warrior's Honor: Ethnic War and the Modern Conscience* (NY Henry Holt 1997) and, unsurprisingly, Michael Ignatieff, "Human Rights: The Midlife

You're not only going to lose out on tenure, you're going to be assassinated! But I'll still be your friend if you can get me on some cool trips...

The result is a culture of international human rights that is increasingly willing to *substitute* human rights for democracy. If you are willing to expand the scope of human rights to cover many matters once thought appropriate instead for democratic process, and if you regard those rights as absolute in the sense of trumps over merely majoritarian social policies, then you are asserting that the foundational legitimacy of your system of governance is not democracy, but anti-majoritarian human rights. It would not be the first time, to be sure, that an originally emancipatory social discourse overstretched itself and became a discourse of oppression, eventually to be overthrown by some other discourse. That is a serious possibility for human rights discourse as it loses any sense of modesty and self-limitation and reaches to become the language by which all goodness is expressed. It seems to me, indeed, that the language of human rights is decaying from the inside out precisely as it seems to be winning an ideological victory that is nearly imperial in its scope -- and, perhaps, precisely because it is imperial in scope.

Its decay, however, would finally be a tragic loss, because the disciplined, self-limiting, modest discourse of human rights, one that self-consciously holds itself to the "narrow but deep," preserves a force for good in human affairs that is nearly irreplaceable: the idea that there *really* are certain universally unacceptable actions. Lose the language of *absolute* trump to a broader, shallower enactment of social policies declared to be rights, and we shall all be sorry. It seems very hard to me to find another language in which to protect the absolute content of rights, if for no other reason than that this language of absolute rights really belongs to an earlier time, another age, that we have deployed to emancipatory ends -- but not, I suspect, for long.³⁹¹ As John Gray has said,

"The notion that different communities might legitimately have different legal regimes for abortion or pornography,³⁹² for example, is hardly considered. Indeed, it becomes difficult to state such a proposition intelligently, as the discourse of rights increasingly drives out all others

Crisis," New York Review of Books, May 20, 1999. For criticism of Ignatieff's *The Warrior's Honor* on exactly these charges of hagiography, see David Rieff, [cite - i think New Republic in 1997 or 1998]

³⁹¹ I draw here from the critique of rights discourse in Kenneth Anderson, "A New Class of Lawyers: The Therapeutic as Rights Talk," 96 Columbia Law Review 4 (May 1996), at 1062, 1084: "[T]oday rights talk as a specifically *liberal* discourse is exhausted, drained of content by its endless expansion, and thus a discourse open to be filled by an alternative content."

³⁹² Or, for other examples, the minimum age for soldiers, whether and what information a child might receive in the judgment of its parents, whether a society has an obligation to undertake affirmative action for women, and so on.

I
from political life. If the theoretical goal of the new liberalism is the supplanting of politics by law, its practical result -- especially in the United States, where rights discourse is already the only public discourse that retains any legitimacy -- has been the emptying of political life of substantive argument and the political corruption of law."³⁹³

Again I stress, however, nearly all supporters of democratic legitimacy are constitutionalists who would accept some measure of anti-majoritarianism as the concept of at least some universal and absolute individual rights requires³⁹⁴ -- but the human rights movement instead asserts itself, at least partly, as an alternative form of legitimacy to that ideal of constitutional democracy.³⁹⁵

And it is a form of legitimacy peculiarly suited to what I earlier observed about the human rights movement -- that it locates the knowledge and the means of ascertaining the content of human rights in international and, better still, genuinely supranational fora rather than in local or national fora. Much earlier this Essay, in the discussion of the possibility of an "international community," noted that liberal internationalism fatally conflates "internationalism"

³⁹³ John Gray, *Enlightenment's Wake: Politics and culture at the close of the modern age* (NY Routledge 1995), at 6.

³⁹⁴ Not quite all, however; the following exchange between Paul Piccone, the editor of *Telos*, and myself perhaps gets at the nub of the issue:

Piccone: "Without indulging here in a philosophical diatribe to show how rights are theoretically indefensible other than on contractarian grounds (which entails that they cannot be imposed on those who have not willingly entered into the contract), how their New Class interpretation is ultimately grounded either on untenable reifications such as natural law or hidden theological dogma, and how their deployment as universally valid can only be a theoretically indefensible act of cultural imperialism, it suffices to point out here the extent to which they are part and parcel of New Class ideology detrimental to the preservation of particularistic cultures and community autonomy. In a nutshell, most rights discourse is usually an ideological smokescreen meant to keep in line poor slob in particularistic communities, which somehow behave in ways contrary to New Class norms."

Anderson: "Piccone ... fails to draw any distinction between the explosion of rights discourse in the past couple of decades and the idea that there are some core rights ... The idea that all rights discourse, including the most elementary forms of free speech, freedom from torture, freedom from a number of other things, is nothing but New Class ideology, nothing but statist discourse, is just utter nonsense. We must sharply distinguish between that level of talking about rights and some form of contemporary discourse which collapses all discussions of values into discussions of rights. Where would we be without the First Amendment? I can you where Piccone would be: in jail."

Kenneth Anderson, Russell A. Berman, Tim Luke, Paul Piccone, and Michael Taves, "The Empire Strikes Out: A Roundtable on Populist Politics," 87 *Telos* 3 (Spring 1991), at 30.

³⁹⁵ In that sense, in an American way of thinking of things, the international human rights movement is the Federalists of today.

and "universalism." That part of liberal internationalism most prone to this is the international human rights movement; after all, its function within international culture is to act, really, as priests to the sacred source of moral universals, to act as conveyors of what might as well be thought of as the sacred fire to the rest of the world, to safeguard it and its sacred status. But if one were to apply a small measure of ordinary skepticism to what is really a structure of sacred belief, religious belief, one would have to ask *why* the universal is treated as identical with the international, and *why* it is believed by the international human rights movement that international bodies, international NGOs, international culture is somehow more privileged to "know" the content of universal rights than local or national entities.

There are possible answers to this 'why'. One is offered by Michael Ignatieff,³⁹⁶ by way of criticism of an article of mine, "Secular Eschatologies and Class Interests of the Internationalized New Class,"³⁹⁷ which posed much the same question. Ignatieff says, in part, that merely because they are international bodies does not mean that they reach their determinations of what is universal in a purely "top down" manner. It is possible that input about the content of universals bubbles up "from below" and is captured in international bodies more successfully than it would be in national or local fora:

"Anderson writes as if human rights are always imposed from the top down by an international elite bent on 'saving the world'. He ignores the extent to which the demand for human rights is issuing from the bottom up. In Pakistan, it is local human rights groups, not international agencies, who are leading the fight to defend poor country women from being burned alive when they disobey their husbands; it is local Islamic women who are criticizing the grotesque way in which Islam is being distorted to provide justification for such gross physical abuse. Human rights has gone global, but it has also gone local."³⁹⁸

This, at least, is a response that acknowledges the question. The short answer is that I doubt very much that one can actually characterize the way in which human rights universals are elaborated, especially in the hothouse atmosphere of international NGOs who today are among

*You
are
correct*

³⁹⁶ Michael Ignatieff, "Human Rights: The Midlife Crisis," New York Review of Books, May 20, 1999, at <http://www.nybooks.com/nyrev/WWWarchdisplay.cgi?100-528R> (last visited August 9, 2000).

³⁹⁷ Kenneth Anderson, "Secular Eschatologies and Class Interests of the Internationalized New Class," Peter Juviler and Carrie Gustafson, eds., Religion and Human Rights: Competing Claims? (NY ME Sharpe 1998), at 107.

³⁹⁸ Michael Ignatieff, "Human Rights: The Midlife Crisis," New York Review of Books, May 20, 1999.

the central players in the elaboration of new international human rights norms, as having to do very much with those "from below." Ignatieff makes much of various local women's groups or local activist groups of one kind or another as evidence of a connection to "los de abajo," but he never considers the possibility that many of these groups have no weight and no connection to their locales but are instead the creations of the imaginations and wallets of an international elite eager to purchase the legitimacy of those from below. Or as Thomas Carothers put it, "burgeoning NGO sectors in" some "countries are often dominated by elite-run groups that have only tenuous ties to the citizens on whose behalf they claim to act, and they depend on international funders for budgets they cannot nourish from domestic sources."³⁹⁹ It is wrongheaded, in any event, at this stage for Ignatieff to defend a model of heroic, locally connected, "organic" NGOs at the base of local society having embraced the language of international human rights when a "new social movement" such as international feminism makes no bones that it is creating an deliberately international, vanguard movement that is intended to go back and challenge the "organic" base of local society through local women who have found identification and, frequently, emancipation, in international elite culture, rather than in their

This is worth an article!

I believe it but where is your evidence?

frequently oppressive local culture. Ignatieff gives a picture of the human rights movement that, to be sure, has its moments of truth but, finally, is a romantic projection that obscures more than it illuminates.

In any event, such local groups and local individuals have very little to do with the *formation* of international norms -- they may benefit from their emancipatory power, sometimes -- but they do not play any great role in formulating them. The most important part of the process of formation is a cultural one that takes place not in villages around the planet, nor in the slums on the outskirts of giant but, in terms of global cultural ~~not~~ very important cities. It takes place instead in informal discussions within international elites, in the great capitals, places like New York and London, in the elite discourse of the Western universities, in the halls of the international bureaucracies in Geneva, in the conference rooms of the well-connected international NGOs in Washington, in the conversations of program officers at leading foundations looking for the next "killer app" of international philanthropy. A trickle down

³⁹⁹ Thomas Carothers, "Civil Society: Think Again," Foreign Policy, December 22, 1999.

mechanism of cultural production, it slides down to the remainder, sometimes to emancipate the rest of the planet and sometimes not.

The relationship, moreover, even between the groups that count as part of international elite culture is also uneasy, because not all groups are created equal in international civil society. There are those with money and those without. Honest discussions about who stands where even *within* the pecking order of the international human rights movement, let alone between it and the rest of the world, over who sets the agenda and what shall be the content of rights and what shall the priorities, are very, very difficult to come by, because they can so easily affect funding and, even more fundamentally, groups within supposedly "autonomous" civil society are who they in part because of who funded them in the past. But surely a critical question about how the content of international human rights is established would have to be who pays for it; Ignatieff's romantic view that it comes bubbling up from below as well as from above never really has to confront that issue. What is noteworthy is how little that question is asked by academics, journalists and others who, studying any other part of the question of globalization, would think that who pays and who benefits were the obviously first questions.⁴⁰⁰

Praise
to you
for
raising
these
questions

Again, this is not the assertion of cultural relativism; this is not the claim that there are no universals.⁴⁰¹ The skepticism is about who shall be the special ones to know and determine the content of these universals. The thrust of international elite culture says that it shall be by international bodies. I should like to know why. It seems to me that today, the first allegiance of the international human rights movement is to internationalism, supranationalism, and only secondarily to universal rights. Of course, within its internal cultural discourse, it cannot entertain the possibility of a universalism that is not made manifest, as it were, through international fora; it cannot entertain the skepticism that the possibility of a separation of the two entails. But this seems to me only further evidence that it is caught within the grip of a false identity -- and the possibility of splitting it into two, internationalism and universalism, it steadfastly refuses to acknowledge.

⁴⁰⁰ One of the very few published discussions of some of these disagreements is Henry Steiner, *Diverse Partners: Non-Governmental Organizations in the Human Rights Movement: The Report of a Retreat of Human Rights Activists* (Cambridge Harvard Law School Human Rights Program 1991).

⁴⁰¹ For my view on cultural relativism, see note [].

Nice pun...

A moral, political, and legal discourse that remains, if what I have suggested is correct, in the hands of international elites and elite culture and elite sensibility, and which can be offered as an alternative source of democratic legitimacy -- this has much to recommend it, one would think, to international elites seeking foundations on which to govern the planet but unable to achieve actual democracy. Part of the reason for its attraction is that a fundamental core of it is something that no one would really want to give up; the problem is that that core cannot justify the rest, hard as it tries. And as the "rest" expands to encompass all of properly progressive social policy, then it conflicts inevitably with the impulse, also strong because, in large part, the international human rights movement has fomented it, to genuine democracy.

Curiously, one of the strongest challenges to the hegemony of human rights as an alternative to democratic process and the idea of the "consent of the governed" came in a leftwing magazine, the Nation (before it had decided to tie the knot with internationalism), in an article in the mid-1990s attacking the formation of the Yugoslavia war crimes tribunal and that darling of the internationalist left of the late 1990s, the International Criminal Court. Objecting to the development of criminal law by an undemocratic UN, C. Douglas Lummis wrote:

"Of course, the United Nations has never pretended to be a representative democratic organization. This made good sense when the U.N. also did not pretend to have the legislative, executive and judicial powers of a sovereign state. But now that the U.N. has begun generating criminal law, it is fair to ask, whatever happened to that cherished tenet of political philosophy that people can be obligated to obey only those laws to which they have consented?"⁴⁰²

Turning to speeches of then-Secretary General Boutros Boutros-Ghali asserting that, in effect, consent of the governed is irrelevant because the doctrines of human rights stand in their place as the source of legitimacy and obligation, Lummis notes:

"Boutros-Ghali's speech sketches a theory of power that has no need of consent, a theory that is, to my knowledge, new. It is grounded in 'human rights'. 'Human rights', he says, are 'absolute timeless injunctions' and are 'truly universal'. At the same time, 'human rights ... reflect a power relationship'. Although it may be difficult for a dedicated human rights activist to see the problem here, whenever people in high places start weaving together notions of 'absolute injunctions', watch out ... For Boutros-Ghali, 'human rights' serve the same function that 'divine right' did in the seventeenth century. As absolute injunctions, they generate an authority higher than any other."⁴⁰³

⁴⁰² C. Douglas Lummis, "Time to Watch the Watchers? Globocop?" Nation, September 26, 1994, at 304, 304.

⁴⁰³ C. Douglas Lummis, "Time to Watch the Watchers: Globocop?" Nation, September 26, 1994,

Lummis is correct, and correct when he adds, finally, that given an absolutist and universalist theory of human rights that nonetheless ventures farther and farther from the "narrow and deep," something as democratically founded as "consent would only muddy the process."⁴⁰⁴ That is the first point I wished to make regarding the special legitimating function of human rights; it offers to substitute for democracy in a particularly disturbing way and, as Lummis says, it is nearly impossible for the dedicated -- fanatical? -- activists of the international human rights movement to see that there might be even a problem.

B. Human Rights as Handmaid and Godchild of Globalization

I'm more skeptical here...

The second point is, perhaps for many, no less disturbing or controversial. The international human rights movement serves and is served by economic globalization. It is at once handmaid and godchild of economic globalization. As with the earlier point that international human rights offers itself as a substitute for democracy, this may seem, once again, either perverse or banal. Leading human rights monitors frequently condemn many aspects of economic globalization when those processes violate human rights around the globe -- as they so often do. For instance, international human rights monitors have criticized the failure to secure labor rights by maquiladora plants.⁴⁰⁵ They have condemned the use of child labor in many places around the world.⁴⁰⁶ They have attacked the repression of indigenous community leaders seeking to prevent environmental degradation of their homelands.⁴⁰⁷ Human rights organizations

at 302, 304-5.

⁴⁰⁴ C. Douglas Lummis, at 305.

⁴⁰⁵ See Corporations and Human Rights, Freedom of Association in a Maquila in Guatemala, Human Rights Watch, see <http://hrw.org/reports/1997/guat2/> (site last visited August 5, 2000).

⁴⁰⁶ See Amnesty International Children's Action Report, 1999, Children's Rights: The Future Starts Here, see <http://www.amnesty.org/ailib/intcam/children/kids99/kidreport.html> (last visited August 4, 2000); Human Rights Watch, The Small Hands of Slavery: Bonded Child Labor in India, September 1996, see <http://www.hrw.org/hrw/summaries/s.india969.html> (last visited August 4, 2000); Human Rights Watch, World Report 2000, section on Children's Rights, see <http://www.hrw.org/hrw/wr2k/Crd.html> (last visited August 4, 2000); Human Rights Watch, Promises Broken: An Assessment of Children's Rights on the 10th Anniversary of the Convention on the Rights of the Child, see <http://www.hrw.org/campaigns/crp/promises/labor.html> (last visited August 4, 2000).

⁴⁰⁷ See, among the voluminous literature on the murder of Amazon rainforest activist Chico Mendes, Associated Press, "Amazon Jailbreak: Assassin of Famed Rain Forest Guardian Escapes From Jail," at <http://nativenet.uthasca.edu/archive/nl/9302/0066.html> (last visited August 4, 2000) (human rights activists "said the Mendes trial and the conviction were highly unusual for

have demanded that human rights standards be included in the criteria for lending and other aid by public international organizations and particularly the World Bank and IMF.⁴⁰⁸ Perhaps most important in practical political terms, leading human rights organizations have fought to keep the benefits of WTO membership from China until it shows greater respect for human rights.⁴⁰⁹ It might therefore seem perverse to suggest that the international human rights movement serves as anything other than an impartial force, demanding that processes of economic globalization, if they are going to move forward, meet certain universal human rights criteria applicable to all activities. Indeed, it might seem that, if anything, the international human rights is mildly oppositional to economic globalization, at least insofar as it asserts that purely economic criteria alone are not acceptable in setting policy, for making investments, for governing development activities.⁴¹⁰

Grammar
Grammar

rural Brazil, where violence often goes unpunished.").

⁴⁰⁸ For example, the New York-based Lawyers Committee for Human Rights has done much technically sophisticated work on human rights aspects of work of the World Bank; see, e.g., Lawyers Committee for Human Rights, *The World Bank, NGOS, and Freedom of Association: A Critique of the World Bank's Draft "Handbook on Good Practices for Laws Relating to Non-Governmental Organizations"*, November 1997, <http://www.lchr.org/ngo/wbank.html> (last visited August 4, 2000).

⁴⁰⁹ See, e.g., "Opening China to Goods and Ideas," *The New York Times*, May 25, 2000, Section A, page 28, Editorial (as the House paved the way for "normalizing" trade relations with China, there is a hope to "open their country to democracy...and respect for human rights," although continuing "vigorous action" will be needed to pressure China on human rights); Elisabeth Rosenthal, "China Trying to Crack Down on Vocal Liberal Intellectuals," May 8, 2000, Section A, page 1 (Liberals in China say that government leader's are worried about what the entry into WTO could "unleash" the intellectuals); Human Rights Watch, "China Talks Sweet on Human Rights," Mike Jendrzeczyk, Commentary, see <http://www.hrw.org/hrw/editorials/2000/china-geneva.html> (last visited August 7, 2000) (published in *Asian Wall Street Journal*, March 23, 2000, page 10); HRW, "WTO Process Should Push China on Rights," Mike Jendrzeczyk, Commentary, see <http://www.hrw.org/hrw/editorials/1999/wto-china.html> (last visited August 7, 2000); Lawyers Committee on Human Rights, *Advancing Legal Reform, Beyond "Linkage" and "Engagement": A New Approach to US China Policy*, May 1998, see <http://www.lchr.org/hongkong/chinapol98.html> (last visited August 7, 2000).

⁴¹⁰ For example, Human Rights Watch and other human rights monitors have benefited in their reporting work from the inclusion of the so-called Nafta "side agreements" on [categories of side agreements] in reporting on human rights in Mexico; human rights reports routinely cite to these provisions as standards that must be complied with. See [Need Nafta cite, plus cite to some HRW report that raises Nafta -may be a Mexico report?]

Nevertheless, in a larger sense, the international human rights movement can be understood as a partner with economic globalization. It is not the whole story, but it is an important part of it and the movement as a whole cannot be understood without it. *Yes, "godchild"* To start with, the international human rights movement benefits from economic globalization. If economic globalization means anything, it means a decline in prices for consumer electronics and particularly in telecommunications costs,⁴¹¹ which in turn lowers the cost of spreading a global culture -- what Jerry Mander referred to as global "monoculture," but one that includes the values of the human rights movement. The spread of consumerism in the form of relatively cheap electronics goods and appliances has meant different things to different people -- free traders take it as a sign of the success of their economic program, while radical environmentalists take it as a sign of an ever more unsustainable use of resources -- but there is little doubt that the spread of Western-style consumption, Western items of consumption, and Western popular culture is one of the main aspects of globalization -- taken to mean economic globalization, political globalization, and cultural globalization⁴¹² -- to date.

⁴¹¹ See Alan Rugman, *The End of Globalization* (NY Random House 2000). Rugman's point is simply that if one looks at claims of globalization of the production, transportation and consumption of goods and services, then really very little globalization has taken place -- it is not economical to transport most heavy manufactured goods very far, even if they can be made more cheaply one place than another. Globalization in the case of those goods is really regionalization, the development of regional blocs such as the EU and NAFTA. With respect to telecommunications and light weight consumer electronics, however, the story is different -- and many respects, what people mean by economic globalization is concentrated in falling telecommunications costs, in a sector where "transport" costs for "goods," or, in other words, telecommunications costs for moving information, are nearly as cheap globally as nationally or regionally. This in turn facilitates the globalization of culture, insofar as it is organized around flows of information. But heavy manufactured goods are another issue entirely as, perhaps surprisingly, are services, which still remain at this point heavily national and regional in delivery. The same general point about regionalization and skepticism about the supposedly globalizing economy is found in Paul Krugman, *Pop Internationalism* (Cambridge MIT Press 1996), especially in the introduction at vii-xiv, and "The Localization of the World Economy," at 205-214.

⁴¹² I am following Malcolm Waters' useful categorization in Maxwell Waters, *Globalization* (London Routledge 1993), at 7-8; see discussion on the meaning of globalization in this Essay at [].

The penetration of Western consumerism and popular culture into every corner of the globe has been noted many times. Giddens, for example, opens his account of globalization, *Runaway World*, with the story of

"a friend of mine [who] studies village life in central Africa. A few years ago, she paid her first visit to a remote area where she was to carry out her fieldwork. The day she arrived, she was invited to a local home for an evening's entertainment. She expected to find out about the traditional pastimes of this isolated community. Instead, the occasion turned out to be a viewing of *Basic Instinct* on video. The film at that point hadn't even reached the cinemas in London."⁴¹³

As Giddens points out, what is most important about vignettes such as these -- and practically every traveller to supposedly remote areas of the world today has experienced something like this -- is the fact of cultural globalization, brought forward by economic globalization at least insofar as certain basic consumer goods are concerned:

"Such vignettes reveal something about our world. And what they reveal isn't trivial. It isn't just a matter of people adding modern paraphernalia -- videos, television sets, personal computers, and so forth -- to their existing ways of life. We live in a world of transformations, affecting almost every aspect of what we do. For better or worse, we are being propelled into a global order that no one fully understands, but which is making its effects felt upon all of us."⁴¹⁴

Similarly, journalist and humanitarian aid worker John Ryle, in a lecture at Nuffield College, Oxford, on journalistic reporting of so-called "complex humanitarian emergencies" in such places as the southern Sudan, recounts how, when in Addis Ababa, Ethiopia, to cover the opening of trial for crimes against humanity and genocide, he was surprised to find that although the trials were broadcast over Ethiopian state television, the television "in the hotel I was staying in and those in the houses I visited were tuned to CNN. People were keen to watch, not the human rights trial up the road, but the OJ trial opening in Los Angeles."⁴¹⁵ This penetration has been attacked, many times, by those unhappy with the spread of monoculture and the loss of cultural diversity.⁴¹⁶ It has been attacked by those unhappy with the weakening of existing

⁴¹³ Anthony Giddens, *Runaway World*, at 24.

⁴¹⁴ Anthony Giddens, *Runaway World*, at 24-25

⁴¹⁵ John Ryle, "The Hazards of Reporting Complex Emergencies in Africa," Lecture delivered October 30, 1997, Nuffield College, Oxford (forthcoming in *Iowa Journal of Transnational Law and Politics*, 2000).

⁴¹⁶ See, e.g., Richard Barnett and John Cavanaugh, "Homogenization of Global Culture," in Jerry Mander and Edward Goldsmith, *The Case Against the Global Economy and For a Turn Toward the Local*, (San Francisco Sierra Club Books 1996), at 71 (role of the entertainment industry in promoting global monoculture); Alain de Benoist, "Confronting Globalization," 108 *Telos* 117

authority, the loss of local, indigenous, traditional authority. But, importantly, it also has been praised by those seeking to weaken that authority on grounds of being entrenched, oppressive, unjust, or patriarchal. It used to be a truism that to escape the straitjacket of small town life, you had to go to the big city; cultural globalization means, in part, that the big city comes to you. Global culture, brought about by economic globalization, can be deracinating or emancipating, or both.

Deracination, however -- the undermining of local and traditional culture by cultural globalization, driven by economic globalization -- has been good for the international human rights movement.⁴¹⁷ The process has allowed both the values and missionaries of international human rights access to a wealth of places and cultures where, in the absence of the de-centering effects of global culture and the electronic goods by which it is spread, they are unlikely to have made so much headway, so soon. Again, to emphasize, the process is one that even liberals, even liberal internationalists, can feel ambivalent about -- the breakdown of communal structures of authority and power can be emancipatory, especially for women, and yet the results can, and are, also pathological. It is a familiar story of modernization, carried out in many places, documented in thousands of sociological studies; in this sense, the story of globalization and the international human rights movement is banal.⁴¹⁸

But for the international human rights movement -- eager to implant the flag of universal values and to subject new peoples and cultures and places to monitoring and compliance with international regimes from above -- economic and cultural globalization act as the flying wedge that levers open one local culture after another to the Word; consumer material goods and popular culture acting as Commodore Perry in advance of the flotilla of Western morality gone global, human rights, come to bring the good news. It is a process that is now very largely complete, worldwide; there are not a lot of wholly unplowed fields; what remains are places in

(Summer 1996) (homogenization of citizens into global consumers); Tim Luke, "Community and Ecology," 88 *Telos* 69 (Summer 1991) ("The New Class empowers itself and disempowers local communities all over the globe ... In exchange for accepting their systems of knowledge and power ... the short term flow of goods and services on a global scale will continue." At 75).

⁴¹⁷ Whether it has been good for respect for international human rights, in the sum total of behavior, given the social pathologies that accompany the breakdown of local authority, as distinguished from the international human rights *movement*, however, is another question.

⁴¹⁸ [cites]

the world sufficiently wealthy, self-confident, and insular enough to assert their own national, local, or religious vision -- Saudi Arabia and Iran are possible examples. Yet even those societies are essentially international "counter-cultures" -- not at this point genuinely alternative, self-sustaining forms of modern societies with an narrative of modern society and technology differing from liberalism. Saudi Arabia is simply reactionary and doomed to failure as a political model; it is counter-cultural to Western liberalism because it is entirely dependent on the West. Iran is a much more important and striking case, precisely as that society evolves beyond the Islamic revolution; it is an important case because, despite its many lapses in basic human rights and despite its illiberalism, it does have an authentically democratic system and a populace that, so far as one can tell from the outside, does not desire to merely pick up the trail of Western-style modernization and liberalization where it left off in 1979. Culturally, morally, politically, it is much more complicated than that, even for the so-called reformers, moderates, and liberals; they clearly want much greater freedom for individuals, and yet it does not appear that this is merely envy or nostalgia for Western standards of freedom -- to judge from emerging cultural samples such as cinema, it is all much more nuanced than Western liberalism, with its missionary zeal to promote human rights is capable of acknowledging.⁴¹⁹ Yet at this point, it is still counter-cultural

⁴¹⁹ My knowledge of Iran is second hand, from reading and conversations with the growing number of journalists and activists, from such places as the Open Society Institute, seeking to open operations there; I have not been in Iran. The flowering of Iranian cinema, however, is remarkable and, I believe, gives a useful indication of how complex the feelings are about the Islamic revolution, cultural standards, and the place of women, especially such films as *The Apple*, directed by eighteen year old Samira Makhmalbaf, daughter of Iranian filmmaker Mohsen Makhmalbaf; or *Leila*, directed by Dariush Mehrjui. For a useful online reference to Iranian cinema, see <http://cinemairan.com> (last visited August 7, 2000).

Western liberals, however, hold an enormous chip on their shoulders about the status of women in Iran -- they see, with reasonable accuracy -- not only the effect that the Islamic revolution had on the modernizing role of women under the Shah, but also the way in which that conservative Islamist model spread into the wider Islamic world, and the depredations of the Taliban in Afghanistan in particular. There is a certain resentful sense I get from conversations with Western feminists that they will not really be satisfied unless Iranian culture were, so to speak, give up, admit that it was wrong and that Western feminists were right, and "say uncle." It is at least possible, however, that Iranian society might be in the long term process of constructing a new understanding in its culture about the role of women, modesty, clothing, gender, and social relations that, while nothing that Western feminists or, for that matter, I would like to live with, reflects a broad consensus of both women and men -- thoroughly *modern* women and men, reflective and self-conscious women and men in a society that, however appalling its record in fundamental human rights (especially as exemplified in its current show trials of Iranian Jews)

in that its ideology is defined less the assertion of independence than by the assertion of opposition; it can only see itself measured against something else, the Great Satan, the West, the United States.

Still, if liberals generally are capable of feeling ambivalence about this process of destroying local institutions in order to win them for liberalism, the international human rights movement must see it as a plain win -- after all, it is not, institutionally, concerned with the rupture of authority or the loss of cultural diversity but instead solely with the opportunity to spread its values and mechanisms of compliance.⁴²⁰ Indeed, the very undermining of local and traditional authority can be seen as a good thing for the human rights movement, because the very fact of a vacuum of values and authority occasioned by the penetration of global popular culture with all its deracinating effects creates an opportunity for asserting human rights as a new, modern, emancipatory source not only of values, but also of *authority*. Hence, perhaps, part of the reason for the the deep interest developed by the international human rights movement in recent years in prosecutions of all kinds -- war crimes to domestic violence -- because it is sees international human rights as a source of authority and power to govern, and not merely as a means to protect individuals from the depredations of others; human rights are not merely a check on power, but a source of authority themselves. The breakdown of values and authority, leading to social pathology, and occasioned by the penetration of global culture, including the

nonetheless does have a surprisingly democratic system for a theocracy. Whether a long term construction that reflects a broad cultural acceptance in Iran emerges or, instead, whether such a process (if indeed it were to take place) would collapse in the face of the penetration of global culture, well, only time will tell.

Or perhaps there will be no movement of any kind, neither within a broadly Iranian consensus or any other; at this point, reformers in Iran are losing badly, as the government closes the last of the reform press and jails writers and others. See Roula Khalaf, "Iran's delicate balance tips to the right," Financial Times, Tuesday, August 8, 2000, opinion, at 11 (discussing the balance between conservatives and reformers in "Ayatollah Khamenei's decision to block reformist legislation"); [other cites on closing of reform newspapers from around August 2-10, 2000].

⁴²⁰ One frequent complaint about NGOs generally is that, being single interest organizations, they do not have to confront the tradeoffs that actual policy and governance entails. International human rights organizations are in exactly this "single issue" position, and so institutionally are indifferent to the costs of their programme. As the Economist notes, NGOs "... are rarely obliged to think about trade-offs in policy ..." Economist, "Sins of the Secular Missionaries," January 29, 2000, at 25, 27.

values of human rights, itself becomes a reason for the authority of human rights, as though there had been no constraining authority in the past.

This process is thus far about the effects of consumption and consumer goods that, through cultural globalization, bring the international human rights movement along as a new source of moral and legal authority and order. The penetration of mechanisms of production, facilities of production, factories and maquiladoras and packing plants and advanced agriculture, all further these changes as well, partly because they provide the income to fuel the engine of consumption, but also because the new means of production and the foreign investment that sometimes finances them ineluctably changes social relations of authority. To the extent that the situation of the poor is bettered, then this is obviously to the good, but one must also take account of the balance of emancipation and deracination and dislocation thereby generated.⁴²¹ In these matters, the international human rights movement has reason to pay attention not only to the local people whose values it aims to colonize, but also to the morality and behavior of the colonizers -- not just the multinational enterprises, but also the new local companies acting as subcontractors to the multinationals, other new local employers, the national agencies looking to build new infrastructure over existing villages, the international development agencies looking to fund it. With respect to these actors, international human rights organizations are something like a "Sunday school of the nations" to the global corporate world, essentially preaching to them that if they are going to benefit from economic globalization, then it must meet certain standards of conduct.

Yet it should be emphasized that none of this denigrates the good works done by international human rights organizations; we can all sleep better knowing they are vigilant. The

⁴²¹ There is a tendency among comfortable international bourgeois elites to treat this deracination and dislocation as a matter of no great import -- merely a mostly "cute" side effect having to spend so much time the world's airport international transit lounges that one can know them far better than the cities they are located in. This is the tendency of the nonetheless insightful and witty Pico Iyer, *The Global Soul: Jet lag, shopping malls and the search for home* (London Bloomsbury 2000); see also the review of Iyer in Annette Kobak, "Deracination state," *Times Literary Supplement* (London), No. 5078, July 28, 2000, at 32. Deputy Secretary General Louise Frechette is aware, however, that it means much more than that: "Millions of people around the world experience globalization not as an agent of progress, but as a disruptive, even destructive force." ~~UN Deputy Secretary General Louise Frechette, "UN Deputy Sec-Gen, addressing human rights and globalization, stresses need for long-term planning," M2 Presswire, January 20, 2000.~~

they spoken with?

(contrarian)

or so say the airport tourists.

How many of the supposedly disrupted millions have

question, rather, is where the movement is going and whether we will still sleep better in several decades or fifty years or a hundred on its account. Far from acting as an oppositional force to economic globalization, or at least as a neutral force demanding the adherence to universal standards of behavior in the process of economic globalization, the international human rights movement at least in part appears to benefit from economic and cultural globalization. Taking a historically broad view, the most telling image of the human rights movement is as a kind of secular religion, sending its missionaries abroad along with boatloads of Western manufactured goods, to open up whatever remains of unassimilated culture, on the one hand; and, in the assimilated regions, increasingly assuming the tone of (prosecutorial) authority and taking its international structures as grounds for the reform of recalcitrant nation-states within what might be thought of the Holy Human Rights Empire.

To the degree that global culture, spurred on by economic globalization, the penetration of goods, services, trade, communications, contact generally, can dismantle pre-existing culture -- soften it up, so to speak, to receive imperial, global values -- then cultural and economic globalization serve the interests of international human rights. But there are limits on how far that consensus among people, and not just international elites, about what constitute Walzer's rights to life and liberty reaches, and how far it *can* reach. It can be deployed to the ends of a certain modest degree of cultural globalization -- but political globalization, creating institutions of supranational governance out of the ideology of human rights, on account of being "international," is something else entirely. In addition, the process of creating global governance involves the political costs of that which is destroyed and dismantled to make way for the new god, including, if the program were genuinely carried out, the dismantling of actual democracies, such as that in the US, in the name of global abstractions about democracy and global governance. Values are not emancipatory just because they are promulgated by international elites and, of course, the question of which values are and which are not is highly contested. In any case, the new values of global culture, emancipatory or not, are typically shallower than that which was there before; they may sometimes emancipate but they also reflect the moral poverty of liberal thought generally and of rights discourse particularly.⁴²²

⁴²² See Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (NY Free Press 1991); Mary Ann Glendon, *A Nation Under Lawyers: How the Crisis in the Legal Profession is Transforming American Society* (Cambridge Harvard UP 1994); Alasdair

Perhaps, then, it becomes easier to understand why international human rights organizations were not present in the Seattle streets, although they were present for the official NGO meetings. Certainly, it is not the style of the leading organizations, not the method of elite organizations such as Human Rights Watch that have no large scale membership base, even though certain issues of the meetings in Seattle were central to any human rights agenda -- among other things, the opportunity to pressure the WTO to embrace human rights standards into its adjudication and other mechanisms. But the trajectory -- more precisely, the fate -- of the international human rights movement is bound up with the forward trajectory of economic, political, and cultural globalization in a way that is not true of some of these other social movements. Some of them -- some strands of radical environmentalism, in particular -- would genuinely like to arrest it or at least transform it into something altogether different. This is not

MacIntyre, *After Virtue*, 2nd ed. (Notre Dame UP 1984). For an argument that, in the US at least, the discourse of liberal rights talk has been warped into a therapeutic mode of discourse, see Kenneth Anderson, "A New Class of Lawyers: The Therapeutic as Rights Talk," 96 *Columbia Law Review* 1062 (May 1996), at 1082-1084:

~~"[A]lthough ... regimes of therapy and regimes of punishment and justice could be mixed, conceptually they remain two separate and indeed diametrically opposed forms of social control.~~ Society could go down one or go down the other, but it could not -- consistently at least -- go down both. And yet is plain that go down both roads it did ... The expansion of rights talk is evident to any lawyer, but there would seem to be few important features of Philip Rieff's classic, mid-sixties warning, *The Triumph of the Therapeutic*, that have not now come to pass. But both roads [of therapy and rights] could be pursued only by transforming the discourse of liberal rights into something radically different. The resulting rights talk, far from a language of individual liberty, instead commingles bureaucracy and therapy. Its function is to provide a discourse by which the New Class, including its constitutive lawyers and helping professions minister, coercively, to a dysfunctional society. The attraction of this societal structure to New Class elites is apparent, because the legitimacy of New Class elites to govern is based fundamentally on expertise, their ability to declare that they know best; expertise is by its nature a hierarchical discourse downward from expert to non-expert -- and so, too, is therapy. Yet this analysis requires an additional large assumption -- that liberal rights discourse was available to be colonized, available as a language by which therapy could be taken public ... *today rights talk as a specifically liberal discourse is exhausted, drained of content by its endless expansion, and thus a discourse open to be filled by an alternative content, in this case the concept of the therapeutic.*" At 1082-84 (emphasis added).

Is this the fate of the international human rights movement and of human rights discourse? *Yes.*
Given the dependence of important parts of human rights ideology on the model of the so-called rights revolution that Glendon describes in *Rights Talk* as it has specifically evolved in the US, perhaps, but while it is not too early to warn against the exhaustion of rights discourse, it is too early to know what alternative content might move to fill its form of discourse.

to say that the international human rights organizations have been coopted by public international organizations, by the WTO or others, on any particular issue; they have not and fight vigorously for their views. But in the larger picture, they are liberal internationalism's "loyal opposition," committed to internationalism because liberal internationalism embraces the ideology of international human rights as its own -- in part because its "liberalism" supports democracy, yes, but also in part because its "internationalism" has so very much trouble embracing democracy. The international human rights movement is, in the end, a movement about liberal internationalism, and ultimately it is served by liberal internationalism's package deal of liberal global governance and the regulated global market.

VI. The Missionary Work of a "Polished" and "Polite" International Bourgeoisie?

A. Religion, Empire, and the Curious Ahistoricism of Human Rights Ideology

Religiosity is exacerbated as the content of international human rights loses any limiting conception of the "deep but narrow," and instead becomes increasingly concerned not so much with distributional matters as with cultural matters -- with individuals, families, the relations between men and women, and children. As culture comes to matter more than distribution as the source of the pressure to expand the content of human rights, the fundamental religiosity, the competitive religiosity, of the human rights movement becomes ever plainer. Having lost the sense of limits on what the proper subject matter of human rights should be, it looks ever more like a movement concerned to reform society in total, to make it worthy of transcendence, than a movement concerned with "rights" as, for example, a limitation on government action against individuals. It is therefore worth reflecting on an earlier example of that process, the forcible conversion of the Saxons to Christianity by the Franks in the eight century:

"The Saxon Capitulary ... records the measures taken for the Christianization of Saxony. Refusal to be baptized became a capital offense. Cremation of the dead became a capital offense. Eating meat in Lent became a capital offense. So did attacks on churches, slaying of clergy, participation in various rituals identified as pagan, alongside disloyal conspiracy against the king ... Churches were to be provided by their congregations with endowments in land, buildings and slaves; they were to be supported by tithes of income and labour payable by all men. Infants were to be baptized within a year of birth. Marriages within certain degrees of relationship were forbidden. Burials were to take place only in cemeteries attached to churches ... The Saxon Capitulary stands as a blueprint for the comprehensive and ruthless Christianization of a

Since you're spending so much time on human rights, shouldn't it be as you're title and intro.

And isn't this itself a deflection from narrow but deep?

And is new state?

You're critiquing human rights on grounds beyond lack of democratic legitimacy?

conquered society. It was not simply that the sanctions were of an extreme harshness. It was also that the *measures to be adopted in Christianization would destabilize and dislocate the social texture of Saxon life at the most intimate levels of family existence, touching birth, marriage and death.*"⁴²³

yes it seems
does seem
a trifle
hyperbolic

Human rights advocates might be irritated at the impertinence of this passage. Their ahistoricism and reliance on abstract pieties of liberalism and liberal internationalism -- their belief that they are *altogether* something new in the history of the planet, as though there had never been missionaries, crusaders, or moral reformers⁴²⁴ in this world -- is like a soothing, shielded womb, hermetically sealed from the outside, floating in the amniotic fluid of its own moral discourse which, as the discourse itself says, is complete unto itself and serves, in large part, to confirm its own virtue.⁴²⁵ A nearly Fordist⁴²⁶ lack of interest in history protects them from being confronted with the risks to their own values that are entailed by the dangerous relaxation of limits, the disappearance of inhibitions about formulating ever-new human rights that have, as their core aim, not just the protection of human beings from what the state might do to them, and not even just the moral improvement of human beings, but their purification.⁴²⁷

⁴²³ Richard Fletcher, *The Barbarian Conversion From Paganism to Christianity* (NY Henry Holt 1997), at 215-216 (emphasis added).

⁴²⁴ Part of this history is that of the 19th century American religious movements for social and moral reform; see Robert H. Abzug, *Cosmos Crumbling: American Reform and the Religious Imagination* (NY Oxford 1994); for later early 20th century reform movements, see Christopher Lasch, *The New Radicalism in America, 1889-1963: The Intellectual as a Social Type* (NY WW Norton 1965).

⁴²⁵ See Kenneth Anderson, "Heartless world revisited: Christopher Lasch's parting polemic against the New Class," *Times Literary Supplement* (London), No. 4825, September 22, 1995: "[I]t is axiomatic in contemporary liberal theory that liberalism is complete and self-sustaining. Liberalism is, in the ambitions of its American theorists especially, *a priori* 'provable' as the end to which rational people aspire. This view cannot tolerate anyone who suggests that not only is liberalism not rational, but that as a social practice, distinguished from political theory, it exists by scavenging off older, traditional forms of social life."

⁴²⁶ "History is more or less bunk." Henry Ford, cited in "Great Quotes by and about Henry Ford and the Model T," The Model T Ford Club International Inc., at <http://www.modelt.org/tquotes.html> (last visited August 8, 2000).

⁴²⁷ With this concern, the liberal progressivism of the international human rights movement rejoins the purificationist impulse of the radical environmental movement; see note [], and particularly not just Mary Douglas' classic *Purity and Danger: An analysis of the concepts of pollution and taboo* (NY Routledge 1966), but also, for a recent interpretation that is directly about political purity and persecution in its pursuit in history, Barrington Moore, Jr., *Moral Purity and Persecution in History* (Princeton NJ Princeton UP 2000). But the concept of

le: the emphasis increasingly on human rights that deal directly with intimate matters of
un...e, and hence too the benefits to the international human rights movement of economic
lobalization, not only because it leads to new fields to conquer, but because it leads to cultural
lobalization and the erosion of forms of morality and authority that might once have stood in its
ray.⁴²⁸

Let me try to put this vital point in a very, very different way -- a way which, alas, some
ay find troubling, others irritating, and still others irrelevant, because it insists on taking history
nd the possibility of historical parallels seriously.⁴²⁹ Consider the records of Spanish friar

trification of human beings in modern societies is inseparable, too, from ideologies of
progress," because they give an underlying framework of what constitutes "purity" and
mpurity" in societies that do not necessarily delineate them as such, including the social and
litical movement necessary from one to the other. Regarding the concept of progress and its
itique, see Robert Nisbet, *History of the Idea of Progress* (NY Basic Books 1980) and
ristopher Lasch, *The True and Only Heaven: Progress and Its Critics* (NY WW Norton 1991).
or critique of the critique of the idea of progress, see Stephen Holmes, *The Anatomy of*
nti-Liberalism (Cambridge Harvard UP 1993), particularly chapter 5, "Anti-Promethanism: The
se of Christopher Lasch," at 122-140. Holmes' book is, however, a particularly distressing
ar of an intelligent, well-read liberal intellectual for whom criticism of liberalism is simply
a -- despite his many disclaimers of the intention to tar such anti-liberals as Christopher

sci, Roberto Unger, or Alasdair MacIntyre with the brush of fascism, Nazism, racism,
ti-semitism, or other unsavory antecedents, he does it just enough to leave the ugly, lingering
nt but without a quite identifiable brush stroke. Thus, for example, Holmes informs us that his
ok does not "indulge in guilt by association. I am *not* insinuating that MacIntyre and Unger
: quasi-fascists or fascist-sympathizers or fascists-with-a-human-face." He then turns about
her nastily and tells us, however, that they are rescued from "dangerous thoughts" because
y "benefit from historical circumstances that make them politically harmless." Stephen
lmes, *The Anatomy of Anti-Liberalism*, at xiii. Moreover, at least in the case of Roberto
ger (Chapter 6, "Unger: Antiliberalism Unbound," at 141), it is not evident to me, at least, that
has actually read Unger. The possibility that liberals ought, at a minimum, to listen to their
tics, radical or reactionary, if only to chasten themselves with the possibility that, after all,
y might be wrong and their philosophy not as triumphant as they think, simply cannot be
ertained. One detects in such writers as Holmes, in the midst of triumphalism, a certain
perate clamping of the hands over the ears and squeezing the eyes shut in order to fend off the
isibility of hearing or seeing something that might not fit the approved theoretical cookie
ter.

See Nicholas Kittrie, *The War Against Authority: From the Crisis of Legitimacy to a New*
cial Contract (Baltimore John Hopkins Press 1995), particularly chapter 8, "Legitimacy in a
ralistic World," at 225. I have benefited a great deal from close study of this book, and from
versations with its author, who is a colleague and friend at Washington College of Law.

Discussion that follows might be regarded as yet another attempt to find a way of talking
leaks intellectual discussion of the international human rights movement out of the

human sacrifice sharply accelerated during the last eighty years of Aztec rule, partly as a result of political pressures within and without the Aztec empire:

"The Templo Mayor was the scene of elaborate human sacrifices that increased to large numbers during the last eighty years of Aztec rule ... the profound tensions between the capital and peripheral towns, and the political threats and cosmic insecurities that Aztec elites felt as a result, contributed in a major way to the increase of human sacrifice at the Templo Mayor ... the exemplary center [the Aztec capital city, Tenochtitlan] had repeated difficulties in conquering rebel rulers and rival city-states and when they did, it was equally difficult to dominate them. The chosen method of symbolic and actual domination was incremental, ritual human slaughter."⁴³⁴

It can be long debated whether outsiders had the right or obligation to intervene to stop such a system of slaughter -- which, notably, lay at the very heart of the Aztec world-view.⁴³⁵ One could not destroy it without destroying the cosmogony of blood on which it was based, for sacrifice literally meant feeding the gods without which the sun could not continue.⁴³⁶ And yet simultaneously (in a trope similar to the arguments over whether slaughter in places like the former Yugoslavia or places in Africa is "ancient tribal violence," and part of their "world-view," or instead the production of contemporary politicians and media at their service),⁴³⁷ ritual

⁴³⁴ David Carrasco, *City of Sacrifice: The Aztec Empire and the Role of Violence in Civilization* (Boston Beacon Press 1999), at 73, 76, also 85-86. Carrasco has written a profound and disturbing study, and one which bears close study in consideration of civilization, cosmopolitanism, violence, and sacrifice.

⁴³⁵ See David Carrasco, *City of Sacrifice*, chapter 3, "The New Fire Ceremony and the Binding of the Years," at 88-114, for a discussion of the most momentous of the Aztec sacrifices, the renewal of the sun every fifty two years. It is only one of many parts of Aztec belief whereby the blood and hearts of human beings sustained the gods: "Specific parts of the human body, especially the heart, the head, and the liver, contained animistic entities that were gifts and presences of the gods and could be returned to them as gifts through ritual sacrifice. Offerings of the divine fire embedded in the head and the heart were especially crucial for the sun's continued motion through the heavens and the earth's subsequent renewal of time, crops, human life, and the divine forces of the cosmos." David Carrasco, *City of Sacrifice*, at 73.

⁴³⁶ See David Carrasco, *City of Sacrifice*, at 82-85 ("... human sacrifice was carried out within a larger, more complex ceremonial system in which a tremendous amount of energy, wealth, and time was spent in a variety of ritual festivals dedicated to a crowded and hungry pantheon.").

⁴³⁷ For example, the view of British journalist Lindsey Hilsum is summarized by Roy Gutman and David Rieff: "[W]hen a journalist reports that the situation on the ground is one of anarchy, or resorts to such reductive clichés as describing a particular conflict as the product of ancient ethnic or tribal hatreds, the chances are that he or she has not fully understood what was going on." Roy Gutman and David Rieff, general eds, Kenneth Anderson, legal ed., *Crimes of War: What the Public Should Know* (NY WW Norton 1999), at 12; see also Susanne Rudolph and

sacrifice was also a means of political dominance utilized and was monumentally increased, quite deliberately by the contemporary Aztec rulers for political reasons; it struck fear into conquered and enemy peoples.⁴³⁸ Moctezuma II, for example, the Aztec ruler at the time of

Lloyd Rudolph, "Modern Hate: How Ancient Animosities Get Invented," *New Republic*, March 22, 1993, at 24; Anthony Spaeth, "Inventing an Ethnic Rivalry: Sri Lanka's civil war has political, not historical roots," *Harper's Magazine*, November 1991, at 67.

It is striking, and troubling, to compare the explanation given by Christy G. Turner and Jacqueline A. Turner for the extraordinary episodes of mass killings and cannibalism that occurred among the Anasazi people of the American Southwest over several centuries prior to 1500 A.D.; after many years of bitter scientific battles over whether such cannibalism took place, the thesis has been widely accepted on the basis of physical evidence adduced by the Turners in the book summarizing their lifework, Christy G. Turner and Jacqueline A. Turner, *Man Corn: Cannibalism and Violence in the Prehistoric American Southwest* (Salt Lake City Univ. of Utah Press 1999); see also Douglas Preston, "Cannibals of the Canyon: Has a controversial anthropologist uncovered the truth about a great Southwestern civilization?" *The New Yorker*, November 30, 1998, at 76.

However, the Turners go on from the physical evidence of the killings and cannibalism to suggest, first, that the culture of cannibalism came to Anasazi lands from the Valley of Mexico and, second -- notably -- they speculate that individuals from Mexican cultures took over the Anasazi culture: "A scenario could be ... envisioned ... Mesoamerican warrior-cultists from the northern frontier moving into the Southwest." Turner and Turner, *Man Corn*, at 477. They propose, strikingly, deviant *individuals*, psychopaths, rather than the usual focus on cultures and abstract groups, moving up from Mexico to pathologize Anasazi culture. "The extraordinary quality of the Southwestern cannibal events should make us think more about what *individuals* did in the past, rather than focusing entirely on abstractions such as cultures, systems, spheres of influence, and traditions, which obscure the chain of events that can stem from a single individual's actions." Turner and Turner, *Man Corn*, at 484. This is a pregnant and troubling thought; still, I am worried about what it means to talk about an entire culture as being in the grip of psychopathology for two hundred or more years; can such concepts from the abnormal psychology of individuals retain any meaning applied to whole cultures for centuries -- for periods of time exceeding the existence, for example, of the United States? What then shall we call "abnormal" about it? This worry is expressed in a review, Paul Henley, "A Generous Quantity of Fat," *London Review of Books*, September 2, 1999, at 24, 25: "[P]ositing the existence of pathological cult killers of the Charles Manson variety, to use the Turner's own analogy (in interviews, Christy Turner has also drawn comparisons with Hitler, Ghengis Khan and Stalin), who first terrorised and then destroyed Anasazi society, clearly requires a huge imaginative leap. Turner recognises that there is absolutely no ethno-historical evidence for any cult of this kind."

⁴³⁸ Although, Carrasco adds, in the long run the increment in sacrifice "served to strengthen *and* weaken the authority of Tenochtitlan," the Aztec capital. While many cities "were securely integrated into the Aztec sphere, some were alienated to the direction of other kingdoms, and the capacity for rebellion increased. So, when the Spaniards came, Indian allies were not hard to find and, in fact, played vigorous roles in the conquest of Tenochtitlan." David Carrasco, *City of*

Cortes' arrival, "invited" and coerced vassal and even enemy rulers and nobility to come and secretly witness the ceremonies of their own warriors being sacrificed, after which, according to a then-contemporary account, these "lords of the foreign provinces and cities dispersed full of 'temor y espanto', dread and fear."⁴³⁹ The fraught relationship between ancient culture, the needs of political elites, and violence is nothing new.⁴⁴⁰

Yet even liberals (in the broad sense in which 'we are all liberals now'⁴⁴¹) can understand and empathize with the sense of an *entire world* lost to the Nahua elders. Monumental levels of human sacrifice notwithstanding, we can feel today a sense of cultural loss in a way that is not simply contemporary feelings of guilt by those who feel themselves to have inherited the mantle of the Conquest. There can be genuine regret for the loss of a people's whole way of life and the loss, in some sense, of cultural diversity not dissimilar in sensibility to the loss of a species from the planet. And yet it is a sense of loss that we can feel contemplating the skull racks of

Sacrifice, at 77, as well as at 86 (discussing how the royal counselor under Moctezuma I, Tlacaelel, set in motion a number of innovations, including increases in ritual sacrifice and renovations of temples, "to ensure Aztec dominance in the face of the intense rebellions and threatening agricultural crises that periodically plagued the capital.").

For a comparison of the role of the city and urbanization in connection with violence, see Jean Bethke Elshtain, "The City, the Law and the Civic Philosopher," in Kenneth L. Grasso and Cecilia Rodriguez Castillo, *Liberty Under Law: American Constitutionalism, Yesterday, Today and Tomorrow* (NY University Press of America 1997), at 25, 27 ("The city emerged out of the crushing of earlier familial and tribal loyalties, or at least putting them in their place, and settled into permanence as a fortification, a fortress. The long elaborate story of the sociology of the city often neglects this complex politics of origins. I tag this history "the discourse of armed civic virtue."); see also Robert L. O'Connell, *Ride of the Second Horseman: The Birth and Death of War* (NY Oxford UP 1995), chapter 7, "Urban Ignition," which argues for a special place for the city in the development of war, at 85-103, but which also notes, at 177-180, a very special role of the city in Mesoamerica in which war lacked the horse and the mounted marauder and so, according to O'Connell, put fewer pressures on cities to circumvallate: without the pressure of horse-mounted attackers, the Aztecs "had left their municipalities unshielded by surrounding walls and therefore vulnerable to assault" (at 178); see also Kenneth Anderson, "Warrior Ants," *Times Literary Supplement* (London), No. 4850, March 15, 1996, at 4 (reviewing *Ride of the Second Horseman*).

⁴³⁹ David Carrasco, *City of Sacrifice*, at 145.

⁴⁴⁰ "In the Aztec case, the *imago mundi* replicated a violent cosmology that legitimated the institutional authority of the realm." David Carrasco, at 76.

⁴⁴¹ "We are all Keynesians now," Richard Nixon [cite].

Tenochtitlan that would be inconceivable contemplating, for example, the skull ossuaries of the Khmer Rouge.⁴⁴²

The point, however, is that the *institutional* human rights movement would not be able to say any such thing or have any such regrets or share the sense of cultural loss. It is analogous (on certain specific points) to the Christian church and its Christian friars in New Spain; it has a limited mission, but the *very limits* of that mission operate as blinders to the effects that the mission *also* causes. Within the strict limits of human rights doctrine, the loss of an empire so centrally devoted to human sacrifice cannot be conceived as a loss, but only as a gain.

One might imagine, with a little liberty of thought, for example, the Christian friars saying to the Nahua elders, in their encounter presided over by the conqueror, the new lord, Cortes, look around, everything here is now in moral and cultural ruin; we have an obligation to bring moral order to it all -- through, of course, Christianity.⁴⁴³ It is obvious that the Nahuas would reply, yes, but this ruin only came about because Cortes arrived with his men, horses, guns, and disease; no new moral order would be needed here if you had not caused the existing moral order to be destroyed.⁴⁴⁴ Likewise, in today's world, the mechanism for transforming

As an indicator of today's inconsistent and jumbled feelings, consider the reactions that David Carrasco describes to the initial articles that led to his pathbreaking book on sacrifice: "After I lectured at Stanford University on Aztec sacrificial practices ... a graduate student nearly accosted me physically ... The awareness of the difficulties that religious violence presents to the public and to the academy continued when my essay "The Templo Mayor: The Aztec Vision of Place" was refused for publication by *Parabola* magazine because I failed, and then later refused, to insert a disclaimer about the theme of human sacrifice" ... But there were "reactions from the other side: Didn't I realize how sacrificial the Christians were; how brutal the Inquisition was; how hungry for martyrdom the Muslims are; how militant the State of Israel is; how devastating the atomic bombings of Hiroshima and Nagasaki were; how widespread, in military terms, human sacrifice is? I realized that ritual violence troubles, fascinates, and stimulates people to think about their own cultural traditions and religious practices." David Carrasco, *City of Sacrifice*, at 4. It is my own modest hope that those who lead the way the planet's largest secular religion, that of human rights, might also consider seriously their own historical antecedents, parallels, and analogies -- and not merely the ones that flatter.

⁴⁴³ Some friars, indeed, had concerns that the very collection and publication of the ancient Aztec religion might provoke a dangerous resurgence of the faith; they succeeded in obtaining a Royal Cedula of Philip II of Spain in 1577, which proscribed the publication and dissemination of the materials. See Miguel Leon-Portillo, *Aztec Thought and Culture*, at 186-187

⁴⁴⁴ In their final appearance before Cortes and the twelve friars, in the debate over theology and philosophy, the Nahua sages, the *tlamatinime*, "bringing the drama of their dying culture to its climax, exclaimed, 'If, as you say, our gods are dead, it is better that you allow us to die too'."

Needs a little explaining - Mustn't the answer be that Mexico was a real "civilization" whereas we don't think the Rouge were or could have been?

Or is it the fact that the Aztec slaughter was religious not political

isn't this not so much the case for the properly limited human rights movement as for the blood one?

culture and dismantling existing moral order is through the penetration of global culture; afterwards, in the ruins, the human rights missionaries arrive to announce that things are a mess and that they bear with them *another* gift from global culture, the moral culture of human rights. The irony is that they announce that they have no relation to and no responsibility for the production of the social chaos that preceded them, and indeed are modestly in opposition to it -- as if, so to speak, Cortes had *not* been accompanied by the priests, who arrive later, announcing that they have come to repair the damage -- but in a *Christian* way. Is there really no relation and no responsibility? And in their institutional mission, have the missionaries not benefited from that which preceded them -- from, in the contemporary case, the vanguard march (at once emancipatory and at once imperial and oppressive) of globalization?

It will perhaps be thought that reference to the Aztecs -- speaking as though their encounter with the Spaniards could have any moral relevance to us today and the international human rights movement -- is inapposite if not simply silly. Equate the international human rights movement with the proselytizing of the Christian church in past centuries?⁴⁴⁵ In other writing I have suggested one reason why the international human rights movement tends to be unattracted to historical reasoning about doctrines of human rights and their historical effects is that as a form of reasoning, it tends not to provide an easy avenue for finding anyone who can be held accountable, in a personal and legal sense, for atrocities that have occurred:

"[H]istory cannot be called to account ... The human rights movement has a powerful attraction to any form of explanation, empirically accurate or not, that yields someone, someone *living*, to point at and call to account and which provides, whether in fact or only in fantasy, contingencies that might have resulted in something different."⁴⁴⁶

Or as Camus put it:

"When the English prosecuting attorney observes that 'from Mein Kampf the road led straight to the gas chambers at Maidenek', he touches on the real subject of the [Nuremberg] trial, that of the historic responsibilities of Western nihilism and the only one which, nevertheless, was not really discussed at Nuremberg, for reasons only too evident. A trial cannot be conducted by

The analogy would certainly be stronger if you could point to actual slaughter in the name of human rights:

Miguel Leon-Portillo, *Aztec Thought and Culture*, at 182-183.

⁴⁴⁵ This is, however, exactly what I propose slightly further on, at [].

⁴⁴⁶ Kenneth Anderson, "Illiberal Tolerance: An Essay on the Fall of Yugoslavia and the Rise of Multiculturalism in the United States," 33 *Virginia Journal of International Law* 2 (Winter 1993), at 385, 404.

announcing the general culpability of a civilization. Only the actual deed which, at least, stank in the nostrils of the entire world were brought to judgment."⁴⁴⁷

On the other hand, the international human rights movement *has* sometimes been tempted to extract morals from history -- the most common, perhaps, is the slogan "no justice, no peace."⁴⁴⁸ The lesson is supposed to be that without adherence to human rights and accountability for past violations, no peace can be stable in the future; therefore, it is not only immoral for diplomats and political actors to agree to compromise peace deals that permit amnesties, it is, the human rights movement has said, ineffective; as Peter Bouckaert,

Our own
"soft"
Reconstruction
after
the Civil
war
refutes--
albeit
imperfectly--
the
slogan.

⁴⁴⁷ Albert Camus, *The Rebel: An Essay on Man in Revolt* (Anthony Bower transl., NY Vintage Books 1956), at 181.

⁴⁴⁸ The other prominent matter on which the human rights movement has given in to the temptation to make historical judgments that (somehow unsurprisingly) turn out to confirm the moral lessons of human rights is on the question of whether ethnic or "communal" wars can ever have historically deep ethnic roots or whether they are all the "manufactured" products of contemporary politicians. The human rights movement has been astonishingly successful in conveying the view to journalists that history is irrelevant to apparently ethnic conflict and that what matters to ethnic conflict is, first, the designs of contemporary political actors and, second, local media manipulating local populations. It is now almost entirely a cliché. Commentators less ingenuous than journalists or human rights workers might have asked themselves if this account were not peculiarly suited to the talents of journalists (interviewing political leaders) and their amor propre (media is the most important thing in moving the masses); human rights workers might have asked themselves whether their desire to have actual live persons to hold accountable for atrocities has not led them to prefer, a priori, explanations other than the historical. It would have seemed obvious, I would have thought, that it is an empirical question, in principle not to be settled by human rights categorical imperative, whether a conflict can ever have "ancient ethnic roots." In any case, there is little contradiction in having both ancient ethnic hatreds and the manipulations of contemporary politicians. I discuss this matter at length in Kenneth Anderson, "Illiberal Tolerance: An Essay on the Fall of Yugoslavia and the Rise of Multiculturalism in the United States," 33 *Virginia Journal of International Law* 2 (Winter 1993), at 385, 399-406. Curiously, when I raise questions about the appropriateness of attempting to settle historical questions by reference to moral maxims of human rights, I am frequently referred to Noel Malcolm's histories of Bosnia and Kosovo -- curious, because what journalists and human rights workers alike seem to have taken from Malcolm's work is the conclusion that he "proved" that history does not matter and that his own historical writings are in proof of the proposition that history does not matter. I cannot imagine that Malcolm would be pleased with this as the lesson of his books; on the contrary, Malcolm appears to believe that history matters a great deal, the question is simply the history of *what*. The relevant history in the former Yugoslavia, for Malcolm, is not that of ethnicity but of communism. I think he overstates the case considerably, but his view could not be further from believing that history does not matter. See Noel Malcolm, *Bosnia: A Short History* (NY NYU Press 1994) and Noel Malcolm, *Kosovo: A Short History* (NY NYU Press 1998).

Emergencies Researcher of Human Rights Watch, put it in a recent letter to the Washington Post, "There is little chance for lasting peace in Sierra Leone until the criminal responsibility of all parties to the conflict is addressed."⁴⁴⁹

But the attempt to derive a categorical imperative from historical experience is dangerous, and ultimately not what the reasoning of the human rights movement is about. After all, even if it turned out that in some cases, peace *really* was best established by making a deal of non-accountability for human rights violations, a deal of peace-with-impunity, the international human rights movement would be bound by its own mandate to criticize and oppose it. It cannot really take account of history, at least not as a source of human rights morals, although it is increasingly tempted to try. David Rieff has commented on this tendency in relation to the attempted deal in Sierra Leone in 1999:

"Advocates routinely claim that there can be no peace without justice. But the evidence suggests that often that isn't true. Consider the eight-year civil war in Sierra Leone, during which Revolutionary United Front guerrillas committed the most unspeakable atrocities and war crimes -- routinely mutilating children and raping and murdering civilians when they were defeated by a Nigerian-led regional intervention force in 1998, their leader, Foday Sankoh, was tried and sentenced to death. To have executed Sankoh would have been justice. But the reality in Sierra Leone was that there could be no peace without a deal between the rebels and the Government. The guerrillas would not sign until Sankoh and other detained rebels were pardoned and set free. In the name of peace, the Government agreed not to prosecute -- rightly, in my view. In order to seize what was almost certainly Sierra Leone's only chance, justice had to be sacrificed. And as a result, a fragile piece reigns in Freetown for the first time since 1991 ... But the outrage of the human rights movement knew no bounds. Mary Robinson, the United Nations High Commissioner for Human Rights, declared that the United Nations did not accept the deal. there could be no impunity for human rights violations, she insisted. And in a letter to the United Nations Security Council, Human Rights Watch denounced the agreement. Its advocacy director, Reed Brody, announced that his group would lobby to get the blanket amnesty for Sankoh and his comrades annulled."⁴⁵⁰

⁴⁴⁹ Peter Bouckaert, Emergencies Researcher, Human Rights Watch, "Letter to Editor: Justice in Sierra Leone," Washington Post, Sunday, August 27, 2000, at B6.

⁴⁵⁰ David Rieff, "The Precarious Triumph of Human Rights," New York Times (Magazine), Sunday, August 8, 1999, at section 6 (magazine), page 37; for UN views on the peace deal, see, e.g., United Nations Press Release, Joint Statement by Carol Bellamy, Executive Director of UNICEF; Sadaka Ogata, UN High Commissioner for Refugees; Olara Otunua, Special Representative of the Secretary-General for Children and Armed Conflict; Mary Robinson, UN High Commissioner for Human Rights and Sergio Vieira de Mello the UN Emergency Relief Coordinator, 17 June 1998, HR/98/40 ("The actions of the rebel forces constitute outrageous violations of the human rights of the victims and their families.").

Yes- But of course, the peace in Freetown has not held; as of this writing, there has been considerable new fighting and to the extent there is no fighting at this moment in Sierra Leone, it is on account of British armed intervention.⁴⁵¹ The deal with Sankoh did not achieve peace; the human rights community saw itself as vindicated. And yet it might have gone the other way, with the human rights advocates in the perverse position of hoping, further and further into the future, that the deal breaks down in order to vindicate what is in the end the assertion of a categorical imperative with inappropriately empirical historical trappings.⁴⁵² As Stephen Holmes has remarked, Sierra Leone notwithstanding, "[j]ustice and peace are often not the same thing. Actually, they can be contradictory."⁴⁵³ As Rieff continues, "[a]t the same time Western leaders were welcoming Slobodan Milosevic's indictment for war crimes and insisting that the days of the 'culture of impunity' were numbered, the Blair Government in Britain was releasing paramilitary prisoners in Northern Ireland to further the peace process there."⁴⁵⁴ One could at least propose, surely, the cases of Chile, Uruguay, and Francoist Spain all as cases in which peace-with-impunity was a better arrangement, overall, than justice at whatever cost.⁴⁵⁵ The point is that, while it is perfectly defensible to maintain that justice always must be served, as a categorical imperative, the claim that it leads to the best long term disposition for peace is an

⁴⁵¹ [cites to breakdown of peace deal in Sierra Leone and British troop intervention]

⁴⁵² As of August 2000, the United Nations has approved the creation of (yet another) special tribunal to hear charges of war crimes and other international crimes in Sierra Leone. See [cites to NYT etc, first 2 weeks in August.]

⁴⁵³ Stephen Holmes, quoted by David Rieff, "The Precarious Triumph of Human Rights," *New York Times (Magazine)*.

⁴⁵⁴ David Rieff, "The Precarious Triumph of Human Rights."

⁴⁵⁵ Two books that capture the debate are Aryeh Neier, *War Crimes: Brutality, Genocide, Terror, and the Struggle for Justice* (NY Times Books 1998) and Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston: Beacon Press, 1998); see the review of these two books, John R. Bolton, "The Global Prosecutors: Hunting War Criminals in the Name of Utopia," *Foreign Affairs*, January/February 1999, at 157. With respect to the debates over reconciliation in South Africa, see R.W. Johnson, "Why there is no easy way to dispose of painful history," *21 London Review of Books* 20 (October 14, 1999), at 9, reviewing Anthea Jeffrey, *The Truth About the Truth Commission [in South Africa]* (South African Institute of Race Relations 1999). The indispensable academic legal account of international law on these matters, even after a decade, is Diane Orentlicher, "Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime," *100 Yale Law Review* 2537 (1991). Finally, on the question of reconciliation, I recommend greatly a strangely neglected book by a thoughtful Christian ethicist, Donald W. Shriver Jr., *An Ethic for Enemies: Forgiveness in Politics* (NY Oxford UP 1995).

empirical claim -- maybe it does, maybe it doesn't; sometimes it does, sometimes it doesn't -- which the human rights movement is ill-equipped to answer because it is morally prepared only to accept one answer. This fact ought to make it uncomfortable with ever drawing conclusions about the efficacy of human rights from history.

But perhaps the most important objection to the interjection of history and historical parallel into this argument, through discussion of the Aztecs and the Conquest is that it is no longer possible to compare the contemporary world with the genuine clashes of culture that took place when the Aztecs met the Spaniards. That encounter cannot serve as a valid thought experiment for moral understanding today, because the world today *does* share a common value about sacrificing captive human beings. It is merely a common value, not enough to make us a "community"; still, we can no longer think thoughts about suddenly coming upon a civilization hitherto unknown to us, to find that it sacrifices tens of thousands of captives and slaves a year, because it means so little in the world today. The "smallness" of our world today means that we cannot simply suspend disbelief in the way that was permissible for the age of More's Utopia,⁴⁵⁶ to believe in a world *culturally* vast enough that cultures could genuinely diverge on even the most fundamental questions -- as, when it came to Christianity and the world of the Aztecs, they did.⁴⁵⁷ Likewise, were a society to announce that it had decided to return to its traditions of the

⁴⁵⁶ For discussion of how More's Utopia was seen by his contemporaries, see David Weil Baker, *Divulging Utopia: Radical Humanism in Seventeenth Century England* (Amherst Univ. of Mass. 1999).

⁴⁵⁷ See Thomas More, *Utopia* (1516) (NY Heritage Press 1935), transl. from Latin, Ralph Robynson. I do not of course suggest that More himself was relativist -- his Catholicism would seemingly have precluded it; perhaps he had that form of toleration that is sometimes confused with relativism but which in fact is compatible with universalism of a "narrow and deep" sort. The popular Anglo-American image of More is so much formed by Robert Bolt's play *A Man For All Seasons*, wherein More does exhibit exactly this form of enlightened tolerance that it takes some effort to look to the historical record, which was considerably more mixed. See Robert Bolt, *A Man For All Seasons* (NY Random House 1960); see also Peter Ackroyd, *The Life of Thomas More* (NY Talese/Doubleday 1998) ("a concerted assault upon presumed heretics was conducted by More and his ecclesiastical colleagues"), at 277. Voltaire does seem to have asserted a genuinely Enlightenment form of relativism -- and it bears recalling, when relativism in our day is held to be pernicious by many in favor of some form of human rights universalism thought to follow from Enlightenment thinking, that Enlightenment thought *is* compatible with forms of relativism, as Alasdair MacIntyre has disapprovingly noted in Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, 2nd ed. (Univ. of Notre Dame 1984); for Voltaire, see the reference to *Candide*, below at []. The closest we can come is science fiction and fantasy fiction,

past and re-start mass sacrifices of tens of thousands, the possibility, so to speak, of holding a culturally relativist agnosticism on the issue is moot -- not necessarily wrong in theory, but in a world in which there genuinely is a shared value about not killing people, at least in *those* ways, moot.⁴⁵⁸ It was not moot at the time of the Conquest,⁴⁵⁹ but about *certain* issues, the position of cultural relativism is moot today.⁴⁶⁰

to imagine worlds beyond our own that are genuinely different, places in which potentially none of our "universal" assumptions hold, in which to assert the values of our common humanity is *not* to have asserted something universal. But we cannot imagine a world of the Aztecs existing today; we have, instead, the Khmer Rouge. Imagining the Aztecs as a truly "live" possibility is not possible for us anymore, anymore than it is possible for readers of this article to believe in the existence of the Greek gods or, for that matter, the Aztec ones; they do not even rise to the level of being "true" or "false" -- to describe them as a "false hypothesis" would give them more status than in fact they have.

⁴⁵⁸ As I have indicated, I am not a cultural relativist, and the skepticism I have invoked about the moral authority of the international human rights movement to pronounce on the content of human rights is not relativist. It is a skepticism about who shall authoritatively know these things, above or below -- not a skepticism that there are a certain number of universals. It is also a skepticism about the supposed disinterestedness of the human rights movement which, it seems to me, has a strong interest in multiplying universals. But this is far from cultural relativism.

~~My difficulty with cultural relativism (apart, of course, from thinking that there really are a~~
small number of genuine universals) is this: "It is but a small step from the relativist doctrine that standards of social behaviour are relative, to another doctrine -- post-relativism -- which is far from permissiveness. Since standards are arbitrary, one may as well arbitrarily enforce a standard, and indeed cleanse the culture, to conform to an arbitrary standard. This is multiculturalism, but it is also conservative majoritarianism, the view that no individual liberties can stand against the majority's conventions. These are conclusions that both the multiculturalist 'New Class' and cultural conservatives have drawn from ... relativism; so long as the culture is reshaped towards conformity, from which can be drawn a convention, there can be no external constraint (such as those that morality or religion might provide) on the content of the convention and the exercise of authority to enforce it. True, relativism teaches that there are no constraints except contingent cultural ones. But, always mindful of the lesson of the hegemony of culture, multiculturalists and conservatives alike conclude not that there can be no constraints on individual behavior, but that there can be no constraints on the power of society, or anyway its cultural governing class, to enforce a nakedly arbitrary power of the state." Kenneth Anderson, "Where no man has gone before: Star Trek and the death of cultural relativism in America," Times Literary Supplement (London), No. 4892, January 3, 1997, at 18, 19.

Hard
to
follow

Yet cultural relativism, while not a view to which I subscribe, has suffered an unwarranted demonization in recent years. I recall several years ago, for example, raising some gentle skepticisms about the human rights movement with one senior human rights organization executive; he gasped and said in a truly horrified tone, "But that would make you a -- a *cultural relativist*." Well, not actually -- but his horror exemplified the fashionable view of international elites and intellectuals eager to help themselves to the machinery of manufacturing universals

that serve their causes. However, the baby boom generation of today's rabid universalists has conveniently suppressed the memory of its equally fashionable cultural relativism of the sixties and seventies. Rabid about relativism yesterday, rabid about universalism today, rabid about what tomorrow? The constant is not rightness of thinking, but always thinking you are right.

Curiously and disturbingly, however, I sometimes detect a strand of relativist thinking in, of all places, the minds of some of the leaders of the international human rights movement itself. The evidence is sketchy, anecdotal, and personal, but intriguing. I recall a conversation a few years ago with a leading executive of a leading human rights organization in which he told me that he was genuinely puzzled by my complaints that the human rights agenda was growing beyond anything that could plausibly be called universal. We were beyond all that kind of thinking, he said. He told me that today the human rights agenda, and indeed what was to be described as universal, was not to be set against any set of substantive criteria, but instead against the criteria of what could be campaigned about using the methodologies of the international human rights movement -- public shaming of governments and actors through the media, essentially. The appropriate moral agenda of the human rights movement was determined by the kinds of targets for which it could generate moral outrage. When I replied that this seemed somewhat morally circular -- a substantive agenda set by what procedurally succeeds in setting a substantive agenda -- I was offered an astonishing mix of relativism and absolutism. On the one hand, the substantive agenda was relative in the sense of completely malleable, set by what the traffic would bear, what the methodology was useful for accomplishing. On the other hand, it was completely absolute in the sense that there were implicit understandings among the advocates ~~about what things one would seek to campaign for, to test within the methodology~~ these understandings paid no attention to traditional categories of political theory about rights and policy, but simply reflected the beliefs of elite human rights campaigners who "know" what is right, what things the "good guys" campaign for, limited only by a strategic judgment of one's credibility. It is absolutist, yet completely subjective at the same time. Journalist David Rieff, at least, has recounted to me similar conversations.

⁴⁵⁹ As it was not moot for Voltaire, to judge by *Candide*: "The two wanderers [lost in South America] heard faint cries... from two completely naked girls ... running gently along ... while two monkeys pursued them and bit their buttocks. *Candide* ... raised his ... gun, fired, and killed the two monkeys. *Cacambo* ... replied: 'You have performed a wonderful masterpiece; you have killed the two lovers of these young ladies'. 'Their lovers! Can it be possible?' ... 'My dear master', replied *Cacambo*, "you are always surprised by everything'. Voltaire, *Candide*, or *Optimism* [original date?] (London Nonesuch Press 1939), at 62-65.

⁴⁶⁰ I have benefited from Rex Martin, *Historical Explanation: Re-enactment and Practical Inference* (Ithaca Cornell UP 1977), although I would hesitate to say that I fully understand Martin's densely argued analysis of Collingwood and others. What I have taken from Martin is an understanding that the act of historical explanation introduces an element of cultural relativism that is integral to historical understanding itself; he offers ways of resolving the problem of relativism. If something like what I draw from Martin is correct, then a further, deep reason for the uncomfortableness of the human rights movement with historical explanation -- other than moral fables that invariably confirm its views -- is that it introduces, in the very method of giving historical explanation, a certain cultural relativism that the ideology of human rights tends to deny, at least with respect to many large historical matters.

Yet "mootness" *is* precisely the point. The reason it is moot is because of the spread of a certain kind of global culture -- emancipatory, in this matter. It is that spread that allows the international human rights movement plausibly to claim, not merely that it knows, "from above," the content of the categorical imperative informing the world that such killing is wrong and a violation of rights, but instead that the world shares an authentic consensus about this -- not as a community, but as a consensus. There are indeed certain limited but absolute rights of life and liberty, and while they include far less than human rights advocates, in their new role as legislators of socially progressive international legislation, would tell the rest of us, they do include strictures against human sacrifice. And it is that consensus which finally matters, not the divinations of the international human rights movement as to the content of categoricals brought down from above. The question, however, is how far such consensus actually goes; it is, naturally, in the interest of the human rights movement to say far indeed, and to say that *it* knows how far and on what issues; likewise, it is in the interest of the human rights movement to say that consensus is measured by looking to the views of international civil society, congeries of international elites.

To demand restraint in enunciating universal human rights, it should be said, was, until quite recently, the position taken by many American political theorists of a distinctly liberal persuasion. Lloyd Weinreb -- scarcely a conservative -- described what he regarded as the typical view of international rights and their extent in a book that was intended to be and indeed *is* very generous to the idea of rights:

"For all its currency, the idea of human rights notably lacks specific meaning or content ... The General Assembly of the United Nations adopted the Universal Declaration of Human Rights without a dissent in 1948. In thirty articles, the Declaration sets forth a list of rights that is universal only in the sense that it includes just about everything. No nation recognizes all the rights on the list or even acknowledges that it ought to consider doing so ... at least in international politics, where the term has had the most currency, it is evident that it is used, at best, only aspirationally, to refer to goals that ought to be pursued. Even so understood, human rights are contested and far from universal. There remains a conviction among scholars and theorists as well as many politicians that whatever else our aspirations may include, there is a core of human rights that are incontestable; and the popular appeal of the idea of human rights supports the conclusion ... The heart of the issue, and the central theoretical difficulty for defenders of human rights, is the connection that is made between humanness as a matter of fact and the possession of rights, which has normative significance."⁴⁶¹

⁴⁶¹ Lloyd Weinreb, *Oedipus at Fenway Park: What Rights Are and Why There Are Any* (Harvard

It is noteworthy, however, that what Weinreb regards as the "central theoretical difficulty" is, for Michael Ignatieff, not such a large problem. Commenting on the sense among various religious thinkers that human rights, the *transcendentalism* of human rights is, in Michael Perry's phrase, "ineliminably religious,"⁴⁶² or, in Max Stackhouse's view, that it needs theology to explain, before anything else, why human beings "have the right to have rights,"⁴⁶³ Ignatieff says

"Why do we need an idea of God in order to believe that human beings should not be beaten, tortured, coerced, indoctrinated, or in any way sacrificed against their will? These intuitions derive from our own experience of pain and our capacity to imagine the pain of others ... A secular defense of human rights depends on the idea of moral reciprocity: that we cannot conceive of any circumstances in which we or anyone we know would wish to be abused in mind or body. That we are capable of this thought experiment -- i.e., that we possess the faculty of imagining pain and degradation done to other human beings as if it were own own -- is simply a fact about us as a species. Being capable of such empathy, we all possess a conscience, and because we do, we wish to be free to make up our own minds and express our own justifications for our views."⁴⁶⁴

This passage merits attention for a number of reasons. First, it represents quite faithfully, as so much of Ignatieff's writing on human rights does, received intellectual opinion about how to think about human rights. It expresses the typical, not an original, view of how to justify human rights; I have heard similar things said in countless conferences and meetings with a degree of piety that is, well, *religious*.

Second, this passage takes no account whatsoever of the *historicism* of the philosophical arguments over rights; it takes no account of the fact that this kind of argument from the idea of what we share as a species, the common grounds of our "human flourishing," in a contemporary and secular sense, is a line of moral argument that only gained ascendancy in the past couple of decades, as utilitarianism waned among analytic moral philosophers; likewise the argument from

UP 1994), at 114-115.

⁴⁶² Michael J. Perry, *The Idea of Human Rights* (NY Oxford UP 1998), at [11-41?? need page cite - need this book from library].

⁴⁶³ Max L. Stackhouse, "Human Rights and Public Theology: The Basic Validation of Human Rights," in Peter Juviler and Carrie Gustafson, eds., *Religion and Human Rights: Competing Claims?* (NY ME Sharpe 1998), at 13, 16. [need to get this book - it may be on my office shelves].

⁴⁶⁴ Michael Ignatieff, "Human Rights: The Midlife Crisis," *New York Review of Books*, May 20, 1999.

moral reciprocity. I happen to think that something like this account is right, objectively right; on the other hand, it does not seem irrelevant to know, for example, that I was a student of Philippa Foot's at a certain time and place in the evolution of her anti-utilitarian moral views.⁴⁶⁵ Ignatieff seems to think that he can get roughly the same certainty out of performing "thought experiments" in the manner of genteel, middle class Oxbridge philosophers that biblical prophets seemed to think they could get out of revelations from heaven -- but being thought experiments, after all, and not prayers, they carry more weight with the secular. Moral philosophers of sterner stuff and less piety than Ignatieff would find, I suspect, his account not without its difficulties, even within the confined discourse of analytic moral philosophy.⁴⁶⁶ But consider, for example, the relatively modest skepticism of John Gray:

"It is a fundamental contribution of [Joseph] Raz's political philosophy to have shown that a [complete] rights-based political morality is an impossibility. Raz demonstrates that both the scope or content and the ground and weight of fundamental rights are given by their contribution to the protection and promotion of vital human interests. It is by appeal to further claims about human interests that disputes about rights are settled -- when they can be settled at all. Rights discourse, for this and other reasons, cannot -- as the proponents of a pure philosophy of right suppose -- be insulated from controversy about the content of human well-being or flourishing and the relative place in it of different human interests. Indeed different conceptions of human well-being will generate different views of human interests, or at least divergent rankings of human interests. To understand this is to understand that rights claims are never primordial or foundational claims but always conclusionary, provisional results of long chains of reasoning which unavoidably invoke contested judgements about human interests and well-being. It is to grasp -- what in political philosophy before Kant was a commonplace -- that rights are never the foundation of any political philosophy."⁴⁶⁷

Ignatieff, having written an excellent biography of Isaiah Berlin, would accept, I suspect, Gray's main point here, as to the conclusionary nature of rights, but then say, but we *do* have sufficient agreement about basic conditions of human flourishing that we can outline a set of procedurally "rigid" rights.⁴⁶⁸ (There is, too, a certain sense in which the arguments from human flourishing

⁴⁶⁵ See Philippa Foot, *Virtues and Vices* (Berkeley University of California 1978).

⁴⁶⁶ For that matter, Ignatieff himself in an earlier incarnation appears to be a sterner critic of his ideas than he is today. [Needs of strangers cite]

⁴⁶⁷ John Gray, *Enlightenment's Wake: Politics and Culture at the Close of the Modern Age* (NY Routledge 1995), at 72.

⁴⁶⁸ See Michael Ignatieff, *Isaiah Berlin: A Life* (NY Henry Holt 1998); in the context of John Gray's criticism of rights discourse, see the philosophical discussion of Berlin's thought in the excellent John Gray, *Isaiah Berlin* (NY HarperCollins 1995), particularly on these points of what Gray calls "agonistic liberalism."

If human rights is a religion,
it could only be followed ~~as~~ by
forsaking just about anything
else that goes by the
name

are really an updated version of the medieval theologians' 'natural arguments' for the existence of God, for all that thinkers like Ignatieff urge that it is simply a modest, secular, pragmatic argument that, somehow, gets a transcendental conclusion.) I accept that something like the argument from human flourishing is right with regards to torture, say, but to go beyond that I believe involves at least some leap of faith -- one that Ignatieff, presumably because it would cramp the human rights movement's pontifical style, God addressing Eternity, does not want to make.

And to go much beyond such things as torture onwards to the many, many things the human rights movement thinks can be governed by human rights discourse unavoidably does enter the lists of differing conceptions of the good. This circumstance is, in the end, one of the reasons the international human rights movement is *not* neutral about cultural globalization of a certain kind. It wants cultural globalization not merely to *push* a certain version of the faith, but much more deeply to *undermine* the more fundamental cultural differences that could, at one time, have produced genuinely different understandings of human life. An aim of cultural globalization, from the point of view of the human rights movement, is to eliminate, at one extreme, the very possibility of the Aztecs and their religion, leaving no one with a sufficiently different understanding of human life to have a firm cultural standing to object to the religion of human rights. Once established that no one has cultural standing to object to the faith of human rights in principle, then it is much easier to introduce the ideology of human rights in all its increasing specificity about the nature of the good society, while asserting the same sacred untouchability. Understanding the opposite, on the other hand -- that universalism requires the consolations of faith (religious or otherwise), rather than the boundless certainty of a moral philosophy that is characterized by the immodesty of its assumptions and robustness of its conclusions -- leads to a form of human rights doctrine conspicuous for a modesty and moderation that is, however, alien to Ignatieff's muscular pietism.⁴⁶⁹

⁴⁶⁹ To put it another way, the project that Ignatieff and other human rights religionists urge for human rights is to be a species of the so-called "politics of redemption." See Paul Breines, "Redeeming Redemption," 65 Telos 152 (Fall 1985); Ferenc Feher, "Redemptive and Democratic Paradigms in Radical Politics," 63 Telos 147 (Spring 1985); Moishe Gonzales, "Theoretical Amnesia," 65 Telos 163 (Fall 1985); Joel Whitebook, "The Politics of Redemption," 63 Telos 156 (Spring 1985); and Richard Wolin, "Against Adjustment," 65 Telos 158 (Fall 1985).

Third, this passage already initiates the sometimes subtle, sometimes not so subtle, process of mixing prohibitions on such things as torture together with things that, at a minimum, one would want to know a great deal more about. Human beings should not be "coerced" or "indoctrinated" against their will? I spend a great deal of my life coercing and indoctrinating my eight year old daughter, and anticipate doing so for years to come. How now? Of course, the immediate response is, well, of course *you know what we mean*, and of course we do not mean *that*. But I do *not* know what Ignatieff means (particularly since the human rights movement increasingly intends things towards children),⁴⁷⁰ and the fact that he relies on the shared meanings of an "in-crowd," international elites that have culturally specific understandings of what they mean and which shift over time, while still calling them universal -- well, it looks to me as though a culturally specific elite ("international," to be sure) has a culturally specific set of shared understandings about such terms as coercion, indoctrination, and many others, which, the rest of us are told, we should accept as universal. The thought experiments that, I am completely prepared to grant, gave us grounds against torture and murder are not sufficient to specify what all these other things mean -- and calling them "international" does not make them "universal."

Lest it be thought that I am weighing too heavily on a few words such as "indoctrination," in an earlier section of his article Ignatieff informed us that among the "'universal' prerogatives," universal human rights, figures a right for women to have "professional health care *provided by a woman*."⁴⁷¹ Where, outside of Ignatieff's article, is this written? I consider myself reasonably familiar with human rights law and yet this is news to me. Perhaps this would be a good social policy, at least in the rich West, but a universal prerogative of women to be treated by a woman health professional? Did Ignatieff think of this new universal human right himself, or did he hear it bubbling in the undercurrents, in the exciting, evolving culture of human rights and

Too
Funny

Or alternatively: "The project of modest and anti-hubris admits no angels to its ranks and has nothing to do with redemption. It aims merely to secure what used to be known as political liberalism: the conditions under which each can work out his or her salvation in fear and trembling before any deity except politics, and understand that, with respect to politics, 'a limit, under the sun, shall curb them all'." Kenneth Anderson, 33 *Virginia Journal of International Law* 385 (1993), at 423-424, citing Albert Camus, *The Rebel: An Essay on Man in Revolt* (Anthony Bower transl., NY Vintage 1956), at 306.

⁴⁷⁰ See note at [on children's rights].

⁴⁷¹ Michael Ignatieff, "Human Rights: The Midlife Crisis," *New York Review of Books*, May 20, 1999.

international elites, a kind of laboratory of the moral avant garde, where all things are possible? Where, if at all, except in the *particular* cultural understandings of human rights elites, busy elaborating, in conversations, dinner parties, conferences, all the cultural meeting places of this elite-in-formation, standards reflecting the specificity of their culture, their sensibility, their priorities, their particularities -- and announced to the rest of the world as universals to which good people everywhere shall adhere. Ignatieff will forgive me if I continue to express skepticism about the process by which human rights standards are discovered to be "universal," even while accepting that there are genuine universals.

Fourth, it is surely false modesty on the part of this passage to pretend that a deeply religious sensibility is not at work. When I open the pamphlet on my desk of the International Bill of Rights, published by the UN, what does the frontpiece say? "People only live full lives in the light of Human Rights."⁴⁷² A mere platitude, something from the public relations department? No doubt, and yet it is both as platitudinous and as religious as the slogans I used to study as a child in Sunday School. Living in the "light" of human rights? This is not the thin, secular, pragmatic appeal that Ignatieff would have us believe; this is transcendental religion, even if it lacks a deity, and a religious person would not be mistaken in seeing in it, as Ignatieff says, a "form of idolatry."⁴⁷³ After all, the first time I recall seeing this slogan was in 1993 on a human rights mission for Human Rights Watch in Tbilisi, Georgia in the midst of the Abkhaz war; the mission interpreter, a sincere, well-educated woman who made her living translating for the international missions that came to town, had a large poster of it illustrated with a shining torch, hanging over her bed. I asked her where she had got it. She said that the UN mission had given it to her; they had been passing them out in order, she said, that people "would know the truth."⁴⁷⁴ The truth? Is it really so easy as that? For some things, yes; for many others, such as Ignatieff's views on health care, no. Neither I, nor David Rieff, who (with Erica Dailey of Human Rights Watch) were with me there, had any desire to disturb the admirable faith of that young woman (a

⁴⁷² United Nations, *Human Rights: The International Bill of Rights* (NY United Nations 1988).

⁴⁷³ Michael Ignatieff, "Human Rights: The Midlife Crisis," *New York Review of Books*, May 20, 1999 (emphasis added).

⁴⁷⁴ Well, I was once a Mormon missionary in Peru, and this is all very familiar. This is not to say it is objectionable; if it helped persuade people in Georgia to stop killing each other, then it served a worthwhile purpose, but to pretend that it is not religion and, indeed, a particularly artless form of religion, to judge by this kind of poster campaign, is just silly.

child of the Soviet system, but one recently orphaned by history) in, so to speak, the crucifix hanging upon the wall over her bed. She wanted nothing more fervently than to know that the civil war which a few months earlier had demolished the center of Tbilisi with tanks was over for good, and an amicable end to the Abkhaz conflict. It was clear that ending those conflicts would require intellectual, cultural, and spiritual resources outside of those indigenously available at that point in the Republic of Georgia, and the religion of secular human rights would indubitably have to be among them.

But while having no desire to undermine this woman's faith, I *do* ask that Ignatieff and the other theologians of this new religion of empire specify what precisely they require of their new adherents; that they openly specify the *process* (even if they have no more success, Ignatieff's thought experiments notwithstanding, in constructing a philosophically impregnable justification), of reaching the new articles of faith; and, in order not to exploit the credulity of the new believers -- who, after all, have largely been acquired by the new priests of human rights, as the Spanish friars in New Spain acquired their believers before them, through the material, not spiritual, empire of globalization -- that they walk a rigorous spiritual path of self-denial in elaborating new articles of faith, a path of modesty and moderation against the omnipresent appetite to go beyond what is minimally necessary to secure the universal and instead remake them in their own image as citizens of the empire of globalization. Spiritual leadership of a movement that has succeeded largely in the past decade from the material dynamics of globalization requires great self-restraint if it is not both to exploit its followers and exhaust the spiritual power of the discourse, to the discomfort of us all; lead us not into temptation, etc. But, of course, recognizing the possibility of temptation rather than taking the opportunity relentlessly to expand one's political remit requires that one have a willingness to recognize the deep religiosity of one's enterprise. And *that*, the intellectuals of the human rights movement seem at this point quite unwilling to do.

But where, then, shall we look for principles and consensus on what the genuinely fundamental rights are, if not in Ignatieff's complacent thought experiments, and if not in the shifting cultural milieu of international human rights elites, and if not in human rights as the Sunday School of the nations? What is left?

What *can* be said is that the silliest place to look for consensus, in the strong sense, the *social* sense that is required, is merely to the treaties and documents that states have signed and ratified: the number of times that human rights advocates, when pressed to show why some or other norm or supposed international standard of human rights is authentically universal, proudly announce that it has been accepted by 100, 120, or 140 countries around the world. Were the matter anything other than establishing support for a favored position, these same advocates would not hesitate to challenge whether the mere ratification by states -- democratic states, dictatorships, oligopolies, hereditary monarchies -- and the elites that run them has any actual morally binding meaning; in any case where ratification by states and their elites would run contrary to the advocates' interests, they would not hesitate to ignore the fact of ratification in favor either of categoricals discovered "from above" or else to announce that they, the advocates, and not their state's elites, speak for "the people." To assert the sanctity of state ratification as meaning anything, for example, instead of looking a bare millimeter beneath the surface to who controls ratification and why, reveals either the ingenuousness of a child or the cynicism of a lawyer. And when it becomes obvious that consensus cannot possibly be inferred from the usual suspects, whether from state ratifications, or from the the human rights movement and international NGOs, or anything that could plausibly show a "communal" norm, one held by a "community," then the human rights movement falls back on divinations of categoricals from on high, the content of which it is able largely to control and determine. We are caught within the situation described by John Gray, of the "hegemony within the public discourse of an essentially indeterminate and at the same time absolutist discourse of rights."⁴⁷⁵

But what is the limit of what one ought to be able accomplish by the bare invocation of human rights? The limit before which one is in the land of universals and absolutes, and beyond which one is no longer in the realm of bare human rights, that which is narrow but deep, but instead in territory wherein lie "rights" that have been created by affirmative social policy and which ought therefore to require affirmative enactment by a political community -- a real community and not the faux one imagined by the intertwined hypothesizing of public international organizations and international NGOs. I am not averse to philosophical reasoning

⁴⁷⁵ John Gray, "Classic Problems," Times Literary Supplement (London), April 28, 1995, at 28.

on the matter -- just averse to believing, as Ignatieff seems to, that, in religiously reliable hands, such reasoning is infallible. Michael Walzer has expressed the sense of limitation best:

"The effort to produce a complete account of justice or a defense of equality by multiplying rights soon makes a farce of what it multiplies. To say of whatever we think people ought to have that they have a right to it is not to say very much. Men and women do indeed have rights beyond life and liberty, *but these do not follow from our common humanity; they follow from shared conceptions of social goods; they are local and particular in character.*"⁴⁷⁶

The international human rights movement has affirmatively moved into territory of creating rights which are about allocations of social goods, including cultural "goods," based on shared conceptions. It defends this with a peculiar and not very persuasive intellectual move: On the one hand, when pressed for an account of what makes these rights of allocation "universal," it tends to stress the idea of a community and shared conceptions, the international community and our common consensus, the things which "we" all agreed to, through such mechanisms as the signatures of governments on treaties and agreements, or the assent of the international NGO movement as stand-ins for the peoples of the world. On the other hand, when pressed for an

⁴⁷⁶ Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (NY Basic Books 1983), at xv (emphasis added). To say that this profoundly important book has been passed over with merely polite comment, as the human rights movement has moved to assert precisely the opposite of what Walzer says and has moved to discover rights with alarming abandon, would be a serious understatement. Part of the reason, perhaps, is that Walzer himself seems to have hesitated to draw out the full-blown conclusions from his theory; as John Gray says, accurately I believe: "It is in Michael Walzer's *Spheres of Justice* that the most ambitious attempt is made at developing an alternative to the spurious universality of liberal justice ... Walzer's book is arresting in its insistence that elucidating ideas of justice is a sort of social and historical phenomenology, not the statement of timeless verities; and it is welcome with its pluralist insight that justice is complex not simple, with different distributive principles being applicable to different goods according to the meaning those goods have in various social contexts ... Like other communitarian thinkers, however, Walzer is reluctant to accept that abandoning the universalist standpoint of doctrinal liberalism leaves liberal practice without privileges, as only one form of life among many. He will not see that the method immanent criticism he advocates by no means guarantees outcomes congenial to liberal sensibilities -- that it may well be subversive of liberal practice. This blindness in Walzer is one he shares with virtually all the communitarian critics of liberalism, and it has the same root. The community invoked by these writers is not one that anyone has ever lived in, an historic human settlement with its distinctive exclusivities, hierarchies and bigotries, but an ideal community ... In our world -- the only one we know -- the shadow cast by community is enmity, and the boundaries of communities must often be settled by war." John Gray, *Enlightenment's End: Politics and culture at the close of the modern age* (NY Routledge 1995), at 7.

account of how those mechanisms form a community and a shared conception, it tends to stress the universality of these rights,⁴⁷⁷ just because they are, allegedly, rights.⁴⁷⁸

⁴⁷⁷ This is not to endorse the conception of "negative" and "positive" rights, rights against infringements of liberty and rights as entitlements to things, the categories encapsulated, for example, by Isaiah Berlin, in his classic article, "Two Concepts of Liberty," in Isaiah Berlin, *The Proper Study of Mankind: An Anthology of Essays* (NY Farrar Straus Giroux 1998), at 191. A standard conservative account of how those distinctions operate to confine what can count as fundamental human rights is found in George Weigel and Robert Royal, eds., *Building the Free Society: Democracy, Capitalism, and Catholic Social Teaching* (Washington DC Ethics and Public Policy Center/Grand Rapids Michigan Eerdmans 1993), chapter 4, George Weigel, "The Human Rights Revolution: *Pacem in Terris* (1963)," at 69, 76: "The encyclical's failure to order 'basic human rights' schematically was also troubling. *Pacem in Terris* did not address (and indeed it may have exacerbated) the problems that arise when two notions of 'basic human rights' are wedded together: immunity from the coercive power of government ... and economic, social, and/or cultural goods or entitlements." Weigel and Royal's critique it is useful precisely because it considers it in the context of the most sophisticated world-view of the *unity* of "negative" and "positive" rights, liberty and entitlements, that of the last hundred years of Catholic social thought; the religion of human rights tends to ignore Catholic social thought partly because it represents a rival, equally universalist theology and partly from simple prejudice because of Catholic views on abortion. I think rights to life and liberty do go beyond rights as simple negative injunctions; it seems to me to include the right not to starve to death in southern Sudan as much as not to be tortured by government agents. However, this is contested territory --

territory which I would willingly contest in favor of a more expansive view than Weigel offers, and yet contested nonetheless. In any case, just as or even more important than the actual categories offered are the constraints on their *interpretation*, and whether in fact there are any.

⁴⁷⁸ There is on last possibility to consider with respect to human rights as a religion. This Essay has spoken of it as a religion because it seems to me that it has certain features that are normally associated with the anthropology of religion, including but not limited to mystical foundations, sacred texts, sources of authority, strongly normative standards of comportment, transcendental beliefs, martyrs, a sense of divine authority over all other contenders whether religious, moral, or political, a missionary apparatus and, perhaps most important of all, a sense of infallibility. I do not propose to debate here whether these are all the elements necessary to religion and whether some are superfluous, nor whether these criteria are in fact met. What I want to note here is that I have proposed these criteria for the human rights movement as fitting the general requirements of religion -- and in parallel to the rest of the world's religions. We could consider the question of religion in a different way, however. We could ask whether and how, as a matter of empirical religious anthropology, the human rights movement arises from *existing* religions. It is part of the religion of human rights, that is, to regard itself as purely secular; it is part of its claim to authority over other sources of authority, including religion, and it is part of its claim that all ought to confess it, because its secularism is part of what gives it universality and avoids the particularism of any creed. We can grant its secularism -- although this Essay contests much of what else is thought to flow from that -- while still thinking the question of whether and how it might have derived from actual religious convictions an important one. It might tell us, for example, something about the concerns and priorities of the movement, rather than having to

B. The Withdrawal of the International Elites?

This Essay has spoken throughout of "international elites," referring to the organizations and individuals which comprise public international organizations, international NGOs, crossborder business interests (a broader category than simply multinational business enterprises), and those parts of national governments that concern themselves with international and crossborder matters (a broader category than simply diplomats and foreign ministries). . These categories of international elites are overinclusive in that some parts are genuinely unconcerned with crossborder affairs or globalization, while some parts are genuinely in opposition to one part or another of globalization -- whether economic globalization, political globalization, or cultural globalization -- and they are underinclusive with respect to other organizations and people who, for one reason or another, also share a commitment to globalization or one or another aspect of it.

I do not propose in this Essay to characterize these elites formally as a "class"; in fact I think they, or at least important parts of them, do meet the classic criteria of a "class,"⁴⁷⁹ but rather than insist upon it, I will apply the less rigorous and more permeable description "elites."

These elites have been aptly characterized by Christopher Lasch. They operate on a basis that is now "international in scope," and their activities, ambitions, and fortunes

"are tied to enterprises that operate across national boundaries. They are more concerned with the smooth functioning of the system as a whole than with any of its parts. Their loyalties -- if the term is not itself anachronistic in this context -- are international rather than regional, national, or local. They have more in common with their counterparts in Brussels or Hong Kong

believe that they sprang full blown, as it were, out of the brow of the categorical imperative. I do not know what the answers might be to that question, but it seems to me an exceptionally important matter of the anthropology of religion.

⁴⁷⁹ Indeed, I have said it elsewhere: "By the time one has come so far as to suggest that ... internationalism ... is premised upon the interests of global capital, however, it is time to ask whether those who make up the ranks of managers of global capital and the internationalist movement among activists, scholars, and so on do not have at least some loose characteristics of class. Much has been written in recent year about the so-called 'knowledge class' and 'symbolic analysts,' to use Robert Reich's terms in *The Work of Nations*, or alternatively just the 'New Class', the internationalism of this class, uniting capital and public regulation of it, is inescapable." Kenneth Anderson, "Secular Eschatologies and Class Interests of the Internationalized New Class," in Peter Juviler and Carrie Gustafson (eds.) *Religion and Human Rights: Competing Claims?* (NY ME Sharpe 1998), at 107, 114.

than with the masses of Americans not yet plugged into the network of global communications."⁴⁸⁰

This Essay has suggested that beneath the surface of the many real conflicts among these international elites, it is possible to discern a certain commonality of interest in the promotion of the concept of the international, the transnational, the supranational, or globalization. I do not wish to deny the permeability of the categories comprising these international elites or to assert a greater commonality of interest than this Essay describes; the interest is closer to a "family resemblance"⁴⁸¹ than being truly the "same" interest for each. Nevertheless, I do claim that, as

⁴⁸⁰ Christopher Lasch, *The Revolt of the Elites and the Betrayal of Democracy* (NY WW Norton 1995) at 34-35. Seven years after Lasch penned these words (he completed this manuscript shortly before his death in 1993), Americans lead the way in being plugged into global communications, so much so that the Internet is overwhelmingly an English-language medium and cultural globalization is, as the French are so apt to complain, really "Americanization." See Kenneth Anderson, "Heartless world revisited: Christopher Lasch's parting polemic against the New Class," *Times Literary Supplement* (London), No. 4825, September 22, 1995 ("[Lasch] died of cancer a few days after completing the manuscript [of *The Revolt of the Elites*], in February 1994, at the age of sixty-one."); with respect to French thinking about globalization and Americanization, see Peter W. Rodman, "The World's Resentment: Anti-Americanism as a Global Phenomenon," *The National Interest*, Summer 2000, at 33, 36: "A common theme of European rhetoric, even of the friendliest of our allies, is that it is time for Europe to make itself an equal of the United States, to be a counterweight to it, to achieve greater autonomy from it, to lessen dependence on it, and so on. Naturally the French give this its most pointed expression. Foreign Minister Hubert Vedrine has labeled the United States not only a superpower but a 'hyperpower', for the unique range of its dominance in the political, military, economic and cultural realms. The need for Europe to counterbalance this power is, for France, a self-evident axiom."

In America, "international elites" comprise a larger portion of the population than when Lasch wrote in the early 1990s; the same is true in many places. But that in no sense means that it is becoming the population at large -- rather, the risk lies in assuming that merely because one is hooked into the global communications of the Internet, one has joined the ranks of the "international elites." On the contrary, as the Internet moves into our homes as a mechanism of ordinary purchases, it has less and less to do with defining an individual as part of "globalization" -- international elites as I refer to them in this Essay are consciously so; they have interests apart from shopping. At least as I use the term in this Essay, it is perfectly true, for example, that anyone who without giving it a second thought buys flowers airshipped from Brazil or tomatoes airshipped from Holland benefits from globalization. But the very fact that it is without reflection removes them from the sense of "international elites" that I mean in this Essay. International elites, as used here, is not synonymous with anyone who merely benefits from crossborder commerce.

⁴⁸¹ One might use Albert Camus' words: "I construct a portrait which is the image of all and of no one. A mask, in short, rather like those carnival masks which are both lifelike and stylized, so

Lasch suggests, that beneath the conflicts, beneath the particular sometimes conflicting interests, there are organizations and people who are tied to "enterprises," sometimes businesses and sometimes NGOs and sometimes international public or national agencies, that operate across borders and who have a common interest in the "smooth functioning" of the international system, including its increased internationalization. These are loose elites, but ones which are joined by interests in the fate of common institutions and loosely as well by culture; people who do indeed have more in common with their "counterparts" around the world than with people of very different classes in their own societies.⁴⁸²

But that just means that portions of the elite in every country work on international stuff

Again, I emphasize, this is so despite the many conflicts between them. They share interests not just in mutual and reciprocal legitimation, as we have already discussed in the context of the relationship between public international organizations and international NGOs, but also between international business and governance and even international NGOs. Business in the short term is typically hostile to regulation (unless it amounts to subsidy on its behalf), but overall it recognizes that a certain amount of regulation (with wide variation in any particular circumstance about how much) is useful, and it is also capable of recognizing that regulation requires a regulator, regulations must create (at worst) a level playing field. It would be incorrect

that they make people say: 'Why surely I've met him!'" Albert Camus, *The Fall*, (NY Knopf 1964), at 139.

⁴⁸² I know whereof I speak -- in describing these commonalities of culture -- and it is altogether possible, dear reader, that so do you. Of my close friends, for example, one lives in London, and we correspond by email mostly but, still, I manage to have dinner with him more often than with nearly any other friends; a second lives in Prague, but (in a feature characteristic of international elites) our work and friendships overlap, so that our work brings us together across borders every few weeks for work and play. Our common language is English, our common reading the *Economist* and a handful of online 'zines, our common communication email, and our most significant divergence, the genuine cultural divide of the international elites, the one that still matters, is who smokes and who does not; America versus everyone else. But for many readers of this Essay (assuming there are any), I have not only described my life -- I have described yours. "When the portrait is finished ... I show it with great sorrow: 'This, alas, is what I am!' The prosecutor's charge is finished. but at the same time the portrait I hold out to my contemporaries becomes a mirror." Albert Camus, *The Fall* (NY Knopf 1964), at 139-140; see also Pico Iyer, *The Global Soul: Jet lag, shopping malls and the search for home* (London Bloomsbury 2000). This is not a new phenomenon within Europe, certainly; Europe has long had crossborder elites, a density of people who lived their lives crossing borders in numbers and ways that were significant, but it is new with respect even to Europe and the United States, let alone Asia and the rest of the world, insofar as the numbers of people and the significance of their activities -- economic, political, and cultural -- are concerned.

to say either that business always opposes regulation or that state or international regulators are reflexively anti-business, so as to give them no common ground in the furtherance of globalization: "Neither the regulatory nor the welfare policies of the state," wrote Lasch in *The Culture of Narcissism*, "rest on 'an implacable hatred of private business and free enterprise', as [Ludwig von] Mises claims. On the contrary, regulation controls competition and stabilizes the market."⁴⁸³ Moreover, the regulator must have a sufficient amount of legitimacy to carry the regulatory project forward, which, as this Essay has argued, is partly given by the activities of international NGOs. The role of international NGOs is conceived, in this emerging system, as the "loyal opposition," committed to the overall project of globalization despite opposition on many and varying particulars.

Understanding the loose, ideological common interest of these international elites helps better to understand a matter which was left open in the discussion of international human rights. It is the not insignificant question of whether international bodies are not generally and conceptually better able to determine such things as the content of human rights universals and other matters that cut across borders because they, after all, are disinterested and impartial, and

hence proximate to the "universal" point of view than the merely partial, interested, and parochial actors in national or local bodies. The point is a loosely Kantian one, about who is best placed to render the impartial categorical judgment. But as this Essay has previously argued, it is fallacious to assume an identity between the universal and the international, or to assume a special ability to know the universal by reference to the international. A critical reason for this is that if one accepts that international actors constitute an international elite that, in turn, generally supports the empowerment of international actors, then the special claim to disinterestedness and impartiality no longer holds. International elites have interests, shared interests, in furthering some variety of the partly overlapping projects of globalization and internationalism or supranationalism or global governance. Their claim to impartiality is no better than that of national or local actors; their special claim to be guardians of the universals, the categorical imperatives, in virtue of being *by definition* disinterested in a way that local or national actors *by definition* never are, turns out to be false. International elites have international interests.

Why?
How so?

I don't...

⁴⁸³ Christopher Lasch, *The Culture of Narcissism: American Life in an Age of Diminishing Expectations* (NY WW Norton 1979), at 234.

Understanding international elites as elites raises, however, another possibility -- one which is difficult to frame except by historical parallel, this time to the emergence of civil society in the eighteenth century. The reason for going back is that given by Marvin Becker:

"In exploring the question of the distancing between state and society, it might be well to go back to the seventeenth and eighteenth centuries. It was then that the term 'society' was undergoing changes in definition. A secondary meaning was added to the traditional one of fellowship, companionship, and company -- both social and business. It was then that it also came to mean something much less immediate and concrete. For the first time in the history of the West the word *society* defined an entity both distant and abstract. In English, French, Italian, and later German, this entity was characterized as impersonal and possessed of a life of its own ... There was a heightened consciousness of the disjunction between private and public life, the result being the creation of a more ample social space. Gradually, the area between these two poles was colonized by new forms of voluntary association and associative life ... Beginning in the late seventeenth century and gaining momentum in the eighteenth, this awareness of the disjunction between state and society intensified. Increasingly, civil society was delineated by references to elementary property rights, intermediate institutions, a market economy, and the free play of interests protected from state intervention."⁴⁸⁴

Our purpose is not the grand, overall story of the rise of civil society,⁴⁸⁵ however, but instead the observation, as Becker points out, that the rise of civil society in that period as a "privileged moment" in the history of England, Scotland, and France; by that he means a moment of relative calm in politics and religion that allowed for the flourishing of a vigorous commercial life, the foundations of "bourgeois society" which, after all, as Becker points out, was Marx's term for "civil society."⁴⁸⁶ The rise of bourgeois society in the social space created between private and public life, in one sense, and between market and state, in another, however, went hand in hand with the change in the social virtues -- a change championed by Adam Smith, among others⁴⁸⁷ -- from those appropriate to a society based upon "civility" to those appropriate

⁴⁸⁴ Marvin Becker, *The Emergence of Civil Society*, at 2.

⁴⁸⁵ As I said earlier in the Essay, I do not attempt any history of civil society as such, but focus on particular points that arguably are important for possible historical parallels with the present day. See discussion at []. In this section I am much indebted to Marvin Becker's work both in *The Emergence of Civil Society in the Eighteenth Century* as well as his earlier *Marvin B. Becker, Civility and Society in Western Europe, 1300-1600* (Bloomington Indiana UP 1988). I am also indebted to a work from earlier in Michael Ignatieff's career, *Istvan Hont and Michael Ignatieff, eds., Wealth and Virtue: The Shaping of Classical Political Economy in the Scottish Enlightenment* (Cambridge UP 1983), although the principal line I follow is Becker's.

⁴⁸⁶ Marvin Becker, *The Emergence of Civil Society in the Eighteenth Century*, at 121 ("What Hegel termed 'civil society', Marx was to call 'bourgeois society'.").

⁴⁸⁷ Adam Smith's *The Theory of Moral Sentiments* (1759) was very much in the vein of the new,

for a "civil society" or "bourgeois society." The older society of "civility" championed the "heroic" individual virtues, on the one hand, and communal obligations, on the other; its ethic included "heroic standards of virtue, communal obligation, civic duty, good lordship, hospitality and open entertainment, Christian benevolence and ... ritual, ceremony, and the play of extravagant political language."⁴⁸⁸ In the new civil society, however,⁴⁸⁹

"virtue was to be defined in negative terms, no longer anchored in the classical foursome of prudence, justice, temperance, and fortitude. Nor was it to bear the burden of that Christian virtue, *benevolence*. So defined, the claims of virtue could be satisfied most often by doing nothing. Further, the pursuit of self-interest was now not only condoned but presupposed. Civil society had little need for heroics, gallantry, or courtesy; morality was more a matter of common sense. Men and women possessed the capacity for decency ... The patient lawyer who determined the facts and perused documents year after year in order to see that justice was done was now credited with displaying that most heroic quality, 'civil courage'."⁴⁹⁰

It will, I think, be obvious where I am going with this line of thought. Intellectual proponents of the idea of an international civil society have put forth what, in my view, is an

bourgeois social virtues; see discussion of both the manuscript's making and criticism of it in Ian Simpson Ross, *The Life of Adam Smith* (Oxford Clarendon 1995), at 157-194; see also Thomas K. McCraw, "The Trouble With Adam Smith," *American Scholar* (Summer 1992), at 353 (arguing that Smith was hostile toward large-scale industrial organization and hence less useful to the present day than often thought).

⁴⁸⁸ Marvin Becker, *The Emergence of Civil Society*, at 3.

⁴⁸⁹ Contemporary communitarians, such as Amitai Etzioni, seem to me to overlook the etiology of the "sociability" that they urge in lieu of "individualism," and that sociability itself was historically a "downsizing" of the ethical obligations of the society that preceded the eighteenth century of Scotland, England, and France. As Becker explains: "[T]heories of society ... were rooted in doctrines of self-preservation and the force of self-interest ... The foundation of natural law was the human desire to preserve oneself. Exposed to wants and unable to secure his own safety, the individual required the assistance of his fellows. It was necessary that he be social in order to secure his own interests and promote his own rights. A more limited conception of sociability therefore obtained, far distant from the Aristotelian idea of man as a social and political animal. Natural law and moral law were simplified; both were deduced from the right of self-preservation. Finally, what was right (*honestum*) was useful (*utile*). Moral philosophy was simplified, with morality scaled down by a Descartes to magnanimity and by a Hobbes to a question of justice. The latter would reduce social virtue to peaceableness, whereas others would translate it into benevolence or kindness ... So much less was expected of the individual and the very definition of sociability diminished the charge of obligation and duty." Marvin Becker, *The Emergence of Civil Society*, at xviii-xix; see also Amitai Etzioni, *The Spirit of Community: The Reinvention of American Society* (NY Touchstone Simon & Schuster 1994); C.F. Delaney (ed.), *The Liberalism-Communitarianism Debate* (London Rowman & Littlefield 1994)

⁴⁹⁰ Marvin Becker, *The Emergence of Civil Society*, at 6.

extravagant and implausible claim about the nature of the international society in formation. That said, however, one ought ruthlessly to pursue the possibilities of what that society might mean, even the less agreeable ones. Drawing historical parallels is always risky and always subject to objection; on the other hand, those following what they think is the dream of creating internationally the glories of civil society ought carefully to consider all that the dream entails. There is a possible parallel with the eighteenth century's "privileged moment" that Becker describes; despite the fact history did not come to an end in 1989,⁴⁹¹ despite the upheavals, the wars and conflicts of the 1990s, the end of the Cold War still gave a certain calm which was, of course, the source of frothy internationalist utopianism among many intellectuals, held in abeyance for so many decades by the Cold War stasis.

Even among reflective and un-utopian intellectuals, the decade gives hope, primarily through the growth of the bourgeoisie globally; as the Spectator's reviewer of historian Michael Howard's *The Invention of Peace*, Philip Ziegler, puts it, quoting Howard:

"'By the beginning of a new millennium there has come into being a genuine global transnational community with common values and a common language'. Does this, Howard asks 'at last provide a firm foundation on which the architects of peace can build a new world order?' Up to a point ~ is his cautious answer. Outside the West the bourgeois elites which provide the motive force for the new international order are a tiny and usually embattled minority."⁴⁹²

For many of the activists of the international NGOs, who imagine themselves to be radical, something new, it may not be welcome news that the order which they imagine themselves to be building is founded -- and has its only chance of success -- to the degree that it is bourgeois. And yet this is simply another description of the liberal internationalism that the international NGOs, with some exceptions, are pledged to support. It is the attempt to establish a space between the global market and the nascent global state in which to establish a bourgeois society which, in at least one important respect, might turn out to be even more "bourgeois" internationally than it is

⁴⁹¹ See Fukuyama, Francis, *The End of History and the Last Man*, (The Free Press; New York, NY, 1992); see also the symposium papers discussing this book in Arthur Melzer, Jerry Weinberger, and M. Richard Zinman (eds.), *History and the Idea of Progress* (Ithaca Cornell UP 1995), and particularly the papers in that collection by Conor Cruise O'Brien and Christopher Lasch.

⁴⁹² Philip Ziegler, "When the fighting has to stop," *Spectator* (London), July 29, 2000, at 33-34, quoting Michael Howard, *The Invention of Peace: Reflections on War and International Order* (Profile Books 2000).

locally or nationally, because, after all, bourgeois civil society tends, as Adam Smith understood, to "a society of strangers,"⁴⁹³ something that describes perhaps more aptly than anything else the quality of associative life on the Internet, whether by email or in the chatrooms.⁴⁹⁴ The project is the entrenchment -- economically, politically, culturally -- of a specifically international bourgeoisie. In a crucial sense, that *is* globalization.

But the "privileged moment" of the eighteenth century meant something more than that. This "something more" formed a core concern of the great theorist of civil society, Adam Ferguson, who detected in the emerging bourgeois society of Scotland that

"[t]he commercial arts gain an ascendant at the expense of other pursuits ... the separation of professions, while it seems to promise improvement in skill, yet in its ultimate effects serves, in some measure, *to break the bonds of society and to withdraw individuals from the common scene* ... Under the distinction of callings by which members of polished society are separated from each other, society is made to consist of parts of which *none is animated with the spirit of society itself* ... members can no longer apprehend the common ties of society. The members of a

⁴⁹³ [this is a famous quote from Smith, and I think it is in the theory of the moral sentiments - may be we can find the original, but if desperate, we can quote it indirectly from Marvin Becker, at 7].

⁴⁹⁴ I mean this for better and worse; communication over the Internet and especially the formation of new online "communities" (if they can really be called that) have huge benefits for the ability to organize and communicate about issues that previously could not be efficiently facilitated. Obviously certain kinds of global political organizing fall into this category, but much of that is simply political organizing, not really community formation on even loose standards. Nor is it even the vastly improved ability, for example, to play online chess with others from around the globe. No, my guess is that the "communities" that have benefited most from the Internet at this point are sexual subcultures, the bondage and sadomasochism communities, for example, but also, for that matter, child pornography and paedophiliacs, all of for whom the *anonymity* provided by the Internet, both with respect to the outside world and as between themselves, is conceptually crucial. Online chess players do not need anonymity; these sexual subcultures online, however, do, and so are closest in spirit to being *communities* in some real, associative sense, but simultaneously the purest expression of Smith's poignantly ironic "*society of strangers*." (emphasis added) See Kenneth Anderson, "The Erotics of Virtue," Los Angeles Times Book Review, Sunday, June 20, 1999, at 3 (reviewing Pauline Reage, *Story of O* (1954), "BDSM subculture has gradually felt more self-confident in asserting itself (the role of the internet in creating networks where once were isolated individuals cannot be overstated) as a genuinely different form of sexuality."). I have benefited from conversations with James Boyle on these questions of community and the Internet, and from James Boyle, *Shamans, Software and Spleens: Law and the Construction of the Information Society* (Cambridge Harvard UP 1996); see also Saskia Sassen, *Globalization and Its Discontents: Essays on the New Mobility of People and Money* (NY New Press 1998), at chapter 9, "Electronic Space and Power," at 177.

community may, in this manner, like the inhabitants of a conquered province, be made to lose the sense of every connection, and have no common affairs to transact but those of trade."⁴⁹⁵

Ferguson speaks of the members of "polished society," the emergent bourgeoisie; we speak here of international elites, the emergent international bourgeoisie. And his concern is that the very emergence of bourgeois society, civil society -- because it means a more complex, interdependent, specialized economic life -- *necessarily* means a more impersonal, distant, society in which the bonds of society are broken and individuals withdraw from the "common scene" and have no "common affairs to transact but those of trade."

To members of nascent global civil society, if it exists, this may seem like a completely alien concern. Virtually everything they have been taught by the gurus of the Internet, by cheerleaders of globalization such as Thomas Friedman⁴⁹⁶ or John Micklewait and Adrian Woolridge,⁴⁹⁷ or by the experience of international political organizing through the Internet⁴⁹⁸ in such campaigns as those against landmines⁴⁹⁹ or the MAI⁵⁰⁰ or for the International Criminal

⁴⁹⁵ Adam Ferguson, *An Essay on the History of Civil Society* (New Brunswick NY Transaction 1991), at 217-218.

⁴⁹⁶ See Thomas L. Friedman, *The Lexus and the Olive Tree* (NY Anchor Books/Random House 2000); see also the superbly critical review, John Lloyd, "Like a Dallas Cowboys Cheerleader," *London Review of Books*, September 2, 1999, at 11.

⁴⁹⁷ See John Micklewait and Adrian Woolridge, *A Future Perfect: The Challenge and Hidden Promise of Globalization* (London William Heinemann 2000).

⁴⁹⁸ See John King Gamble and Charlotte Ku, "International Law -- New Actors and New Technologies: Center Stage for Ngos?" 31 *Law and Policy in International Business* 221.

⁴⁹⁹ See Kenneth Anderson, "The Ottawa Convention Banning Landmines, the Role of International Non-governmental Organizations and the Idea of International Civil Society," 11 *European Journal of International Law* 1 (March 2000), at 91; see also *To Walk Without Fear: The Global Movement to Ban Landmines*.

⁵⁰⁰ See Alan Rugman, *The End of Globalization* (NY Random House 2000), at [on MAI]; for alternative views of anti-MAI activists, see e.g., Lori M. Wallach, "A dangerous new manifesto for global capitalism: Global economy in turmoil," *Le Monde diplomatique* (online edition), February 1998, at <http://www.monde-diplomatique.fr/en/1998/02/07mai> (last visited on August 9, 2000); Darrell Udelhoven, Empowerment Communications, "Multilateral AGreement on Investments - MAIs," at <http://userpages.pcii.net/udarrell/multimaterialagreementinvestments.html> (last visited August 9, 2000); Elizabeth Drake, Laura Benygar, Michael Ewing, Paul Boesen, Elizabeth Da Trindade-Asher, Rebecca Archer, Harvard Law School Clinical Project Program, *MAI & Human Rights: The Multilateral Agreement on Investment: A Step Backwards in International Human Rights* (undated), at <http://www.citizen.org/pctrade/MAI/What%20is/maiharvard.htm> (last visited August 9, 2000).

Court,⁵⁰¹ tells them that the world is getting smaller, the globe increasingly a village, everything increasingly interdependent, and that we are a global community now. International society is becoming ever more intimate, not more distant; the new international bourgeois actors, whether institutional or individual, are drawing closer than ever, and far from seeing a withdrawal from the "common scene," the existence of all these new international actors, especially international NGOs, must signal the dawn of a new commitment to the international community and to the international commons and to international "connections" and to relationships that -- thanks to the international NGOs -- are *not* merely about transacting international trade. Yet it is saved from the vice of utopianism by being so sturdily bourgeois -- driven forward, in other words, not by evanescent dreams, but by solid 'welt-burghers' from everywhere transacting international trade with everyone.

Well, perhaps. But Ferguson was not speaking primarily of the bourgeoisie withdrawing from contacts *with each other*, however, and neither am I. He recognized that the bourgeoisie of his day and society were in a process of formation by intimacy⁵⁰² between themselves; he, after

⁵⁰¹ For activist views favorable to the formation of the International Criminal Court, including links to extensive official and academic discussion favorable to the ICC, see The CICC International Criminal Court Home Page, at <http://www.iccnw.org> (last visited August 9, 2000). For American views unfavorable to the formation of the ICC, see, e.g., David Frum, "The International Criminal Court Must Die," *The Weekly Standard* (Washington DC), August 10/17, 1998, at 27; Jesse Helms (S-NC), "Personal View: Jesse Helms: Voting Against the International Criminal Court is Not Enough, The US Should Try to Bring it Down," *Financial Times* (London), July 31, 1998, at 18; John Bolton, "The Fallacy of International Law," *Iowa Journal of Transnational Law and Politics* (forthcoming 2000) [need final cites and quotes when ready for publication]; Nancy deWolf Smith, "Missing From the International Criminal Court," *Wall Street Journal*, Tuesday, June 20, 2000, at A27; Jeremy Rabkin, "This Court Would Be Criminal: Congressional Republicans' just war on the International Criminal Court," *Weekly Standard*, June 26, 2000, at 19. For a thoughtful discussion of shortcomings of the current ICC statute by a prominent American expert in human rights and humanitarian law, member of the US negotiating team in treaty negotiations in Rome, and certainly not an enemy of the idea of an ICC, see Theodor Meron, "The Court We Want," *Washington Post*, October 13, 1998, at A15. For a version of the standard moralizing lecture directed at the US government from Europe for the US failure to sign onto the ICC, see *Economist*, "World Law and World Power (US ed.), December 5, 1998, at 16.

⁵⁰² It was an intimacy was bound together, in large part, through taste -- taste being a critical category of the organizations and individuals we are considering here, both of the eighteenth century and the twenty-first. It is a category no less important for understanding the formation of today's international elites than it is for understanding those of the eighteenth century. As Becker says, "[t]aste became part of a discursive revolution encouraging readers, listeners, and viewers

all, was a member, along with Adam Smith and David Hume, of the Select Club, one of the numerous voluntary associations that sprang up in England and Scotland in that period, membership in which, according to Hume, brought the ruling elites of Scotland together with professional men and (comfortably bourgeois and prosperous) men of letters such as Hume himself.⁵⁰³

"Young and old, noble and ignoble, witty and dull, all the world are ambitious of a place amongst us, and on each occasion (of election) we are as much solicited by candidates as if we were to choose a member of parliament."⁵⁰⁴

Elite formation was underway, and it involved a crucial mixing of *certain* groups and social classes, which in an earlier society would not have mixed, in this new, easy atmosphere.⁵⁰⁵

But not *all* groups, of course; it was the formation of the bourgeoisie as we understand it today, the mixing of the middle class, the upper middle class, and the aristocracy:

"The public concert, the race meeting, and that proudest symbol of extended sociability and easy exchange -- the assembly room -- was no monopoly of a single order. Families of town gentry mixed with squires from the neighborhood, professional men, clergy and merchants. At Sheffield and Birmingham we see assemblies of ironmongers, goldsmiths, wealthy 'hardwaremen', physicians, parsons, lawyers, and others. This motley group was joined by

squires who traveled to town from their great houses in the country. A recent survey of the social scene at Leeds during the first half of the eighteenth century concludes that 'not only did the close association between gentry and merchants ... create a society that was far more open than any on the Continent, but there was also a perfect mutual understanding of each other's world'. The opinion is rendered that this was indeed a privileged social moment. In the 1770s

to alter their conviction or even take a new perspective. Ideally, taste was egalitarian -- independent of class, birth, and rank: good taste would produce 'good society'. The capacity of individuals to transcend their private predilections to reach the entitlement of judgment was a key. The shared nature of their judgments rendered taste social rather than a private phenomenon." Marvin Becker, at 73. For a contemporary comparison of the meaning of taste, see Stephen Bayley, *Taste: The Secret Meaning of Things* (NY Pantheon 1991).

⁵⁰³ I paraphrase from Marvin Becker, at 75.

⁵⁰⁴ David Hume in a letter to the painter Allan Ramsay the younger in 1755, quoted by Marvin Becker, at 76.

⁵⁰⁵ Indeed, in Edinburgh there was specifically formed an "Easy Club" in 1712, its name chosen to highlight the shift in manners and dropping of social punctilio; its Journal described its mission: "The gentlemen who compose this society ... have ... unanimously determined their society should go under the name of the Easy Club, designing thereby that their denomination should be a check to all unruly and disturbing behavior among their members." Quoted in Marvin Becker, at 69-70.

and 80s, new manufacturing would produce social segregation, but for the time being, social stability and the mix held."⁵⁰⁶

The mixing, in other words, of merchant and prince, high and middling born, professionals with squire farmers, is what yields civil society -- it is the creation and consolidation of the bourgeoisie as the center of social stability:⁵⁰⁷

"Over the eighteenth century, the nature of 'polite' society was itself becoming increasingly porous. This was a world much enlarged and open to virtually all candidates possessing the required credentials. Voluntary forms of associative life served as a bridge to join professional men, middling tradesmen, and skilled artisans with their social superiors."⁵⁰⁸

Not so porous, however, as to admit the illiterate, the unlettered, the lower orders; still, in this process, the existence of voluntary associations serving as the mixing bowl, so to speak, was indispensable.

⁵⁰⁶ Marvin Becker, at 71.

⁵⁰⁷ This process means, in other words, that the solid bourgeois middle classes gradually became the center of stability for society -- a fact that is as true in the United States and the other industrialized Western democracies today as it gradually came to be in England and Scotland. ~~What it also means is that the social mixing that went on was *not* fundamentally about social climbing -- that surely went on, but the ideal of "self improvement" and "social climbing" are very different; the status of being an aristocrat had lost its automatic moral cachet based on status; what was aspired to was to be a "gentleman," in some broader moral sense of merit and sociability -- a status, that is, rooted solidly in bourgeois values. These were not people who aspired to climb into a social status in which the virtues of industriousness, love of learning, and utility lost their value.~~

Social climbing as a function of the mixing of classes, the mixing of social orders, was, by contrast, the epitome of the Hotel de la Mole in Stendhal's *The Red and the Black* -- the ball given by the Duc de Ritz in chapter 39, "The Ball," or perhaps the nasty, "unmixing" social intercourse of the dinner party of chapter 34, in which those of high rank ridicule (as the social climbers they indeed are) those of lower rank: "It was rare that ... incivility was direct, but Julien had already overhead at table two or three brief little passages between the Marquis and his wife, wounding to those who were placed near them. These noble personages did not conceal their sincere contempt for everyone that was not the offspring of people who *rode in the King's carriages*. Julien observed that the word *Crusade* was the only one that brought to their faces an expression of intense seriousness, blended with respect. Their ordinary respect had always a shade of condescension." Indeed, Julien Sorel's very attitude of disapproval of the whole conversation is characterized by Stendhal as Julien's "provincial or English prudery"; the tone of the Hotel de la Mole could not be further from the tone of the Select Club, the Poker Club, or the Honourable Society of Improvers in the Knowledge of Agriculture in Scotland. Stendhal (Marie-Henri Beyle), *The Red and the Black* (1830) (NY Heritage Press 1947), at 226-229.

⁵⁰⁸ Marvin Becker, at 75.

The proponents of today's international civil society would believe themselves to fit much of that description. The voluntary associations that are most prominent as international NGOs all claim something like that pedigree -- yet with a crucial difference. The most prominent international NGOs are fundamentally campaigning organizations; they are not, as in the case of Edinburgh's clubs, debating societies in which various political opinions can be held and discussed, the very point of which is to ensure that they are discussed amicably rather than leading backwards to the civil strife that reigned earlier in the seventeenth century. John Tolland wrote in 1711:

"I must do our coffee-houses the justice to affirm, that for social virtue they are equalled by few, and exceeded by none, though I wish they may be imitated by all. A Tory does not stare and leer when a Whig comes in, nor a Whig look sour and whisper at the sight of a Tory. These distinctions are laid by with the winter suit at London."⁵⁰⁹

Although some parts of the Internet, through 'zines such as Slate and more informal chat sites, perhaps maintain something of that "mixing," that is not the function of international NGOs. They know their beliefs, their causes, their political positions which, moreover, are often confined to single issues; and they regard as irrelevant the choosing between social goods

required by actual governance. They are organs of political activists, not debating societies in which the purpose is to find a distanced and rational perspective that allows principled disagreement, a meeting place for people with possibly conflicting fundamental views.

In that sense today's international NGOS would have seemed quite alien to Smith, Hume, and Ferguson, and indeed, might even have seemed to them the purest expression of political *faction*, that which the idea of civil society, in its most noble eighteenth century self-conception, seeks to avoid. From the standpoint of the promoters of civil society in eighteenth century Edinburgh, international NGOs simply *are* factional meeting places for Whigs *or* Tories, whereas the ideal, and indeed the point, of voluntary organizations of eighteenth century civil society was to provide meeting grounds for Whigs *together with* Tories.⁵¹⁰ It is another reason to doubt that what is promoted as "international civil society" really is.

⁵⁰⁹ John Toland, *Description of Epsom* (1711), quoted by Marvin Becker, at 72.

⁵¹⁰ Becker tells us that John Macky visited York shortly after the accession of George I to the throne, where "he found the town's 'polite' society considerably embarrassed by the continuation of a convention fixed in the bitter atmosphere of the late Queen Anne's reign. The convention dictated that holding to assemblies during the week. Monday was the day for Tories and

Yet at the same time, in the realm of commerce and letters, there are better contemporary analogies to the institutions of civil society than international NGOs. In the realm of letters, for example, the Economist seemingly self-consciously maintains the attitude Addison adopted in creating the Spectator, the magazine which then (and perhaps more than today), exemplified the "proper" sensibility of civil society:

"Although the journalist Addison was closely tied to the Whig point of view, he castigated 'the rage of party'. When strife between Whig and Tory was at white heat (1711), he cautioned his readers that 'a furious party spirit, when it rages in its full violence, exerts itself in civil war and bloodshed ... it fills a nation with spleen and rancor, and extinguishes all seeds of good nature, compassion, and humanity ... We should not any longer regard our fellow subjects as Whigs or Tories, but should make the man of merit our friend and the villain our enemy' ... In *The Spectator*, Addison constructed a literary persona -- that of the spectator. Using this voice, the author fixed himself at a benevolent distance from politics, observing rather than engaging in this heated activity ... This imaginary, unprejudiced observer of our actions proved the standard by which individuals might learn to judge themselves. through these rhetorical strategies journalists like Addison were able to create an ample cultural space in which morals, refinement, and taste might be cultivated. Furthermore, it would *be possible to have critical discourse on these matters*. Politeness entered that domain of behavior where civility had once been dominated and, in turn, was integrated into a moral framework."⁵¹¹

Although, as has been seen, I am no friend of much of globalization as the Economist conceives it, this spirit of debate and politeness seems to me an apt description of the Economist's style, and one reason why it has come so much to dominate in elite American circles -- leaving aside the substance of its project, its Addisonian tone of debate and politeness, clarity and indeed sharpness about political differences but framed with a certain politeness that is not the same as suppressing discussion, has served as a great relief particularly to American liberal elites. In particular, the Economist has served as an important sounding board for liberal elites in America for whom, during the 1980s, straightforward discussion on matters of identity politics within purely American venues had become more difficult under strictures of political correctness.⁵¹²

Thursday belonged to the Whigs. This type of antisocial practice would not do in the more tranquil reign of King George. The loyal Whig, Lord Carslisle, himself took the initiative to alter custom by 'carrying mixed company' to both assemblies." Strikingly, and reminiscent of the hopes of some of those involved in promoting national reconciliation today following civil wars or the end of South African apartheid, "Macy learned that 'the officers of the army' played a crucial role in the process of healing old wounds by 'making no distinctions'." Marvin Becker, at 72.

⁵¹¹ Marvin Becker, at 72-73 (emphasis added).

⁵¹² See, e.g., Economist, "Is Reagan turning his back on blacks?" (US ed.) September 5, 1981, at

The Economist has provided a polite, more or less neutral, distanced place in which it became possible for American liberal elites to discuss these matters with somewhat less risk of the charge of racism being tossed around -- the very spirit of Addisonian journalism.⁵¹³

But this is neither the tone nor the mission of international NGOs. They exist to act, not debate; they know what they believe and so, in that sense, are the polar opposite of the Edinburgh ideal in which

"[n]ew forms of associative life were housed in halls, institutes, and assembly rooms as professional men, merchants, middling tradesmen, clergy, and women joined reading and book clubs as well as societies for cultural and economic improvement. Broadly based groups were regularly meeting out of mutual interests rather than confessional affiliation. *Ideally they might learn to cooperate with those holding rival ideas.* One might entertain strong private convictions but they were not to serve as the springboard for positing social arrangements."⁵¹⁴

International NGOs (and particularly those, such as international human rights organizations, that practically constitute their own confession) do not serve as the "mixing bowl" that voluntary associations did in eighteenth century London or Edinburgh. But voluntary associations in the eighteenth century were about the formation not of society at large, but of "polite" society. They were about mixing, yes, but about mixing together certain groups -- the breakdown of the concept of social "orders," in the older sense of an earlier society.

And in order to do that, those voluntary associations, civil society of the eighteenth century, constituted a social *withdrawal* from larger society, in order to concentrate on consolidation of the new commercial, bourgeois society:

21; Economist, "Tawana Brawley: Symbol v system," (US ed), October 15, 1988, at 37; Economist, "Atlanta: Tomorrow is still another day," (US ed), May 6, 1989, at 26; Economist, "Universities: Colouring books," (US ed.), May 20, 1989, at 28; Economist, "Brown 40 years on," (US ed.), May 28, 1994, at 15. The utility of the Economist as a social "place" for discussion is not so much what the Economist says, but that, as one policy-maker friend of mine (a Democrat) in Washington remarked in the 1980s, the discussion can be conducted by reference to the Economist, without participants themselves having to take responsibility for what was said. All very indirect -- and very Addisonian.

⁵¹³ In my view, as the Economist has become more sensible of its influence within America, it has become less and less distanced, less Addisonian, and more of an actor within Washington DC especially. This apparently strategic behavior on the part of the magazine has been an important reason for what I, at least, regard as its intellectual decline in recent years -- a somewhat different reason for decline than that given by Andrew Sullivan, [cite New Republic].

⁵¹⁴ Marvin Becker, at 77 (emphasis added). [comment on differences between this and pc deliberative democracy]

"[I]n England class formation was forged not only by individuals acting on the basis of economic interest but also as a result of *the withdrawal of aristocrats and gentry from village communities*. Like other sectors of English society, they retreated into the private domain of family life. While still controlling the economic fate of villages, they embarked at a distance from its boundaries ... Affluent farmers -- at least those of the 'improving' variety -- were likewise distancing themselves from the agricultural laborer. They removed their children from village schools and dismissed servants from their households, withdrawing into isolated farmhouses securely fenced about ... Within the household of the well-to-do and well-educated, servants were relegated to the servants' hall or kitchen. The Great Hall and huge dining table laden with food was modified as the norms of hospitality and largess lost pride of place. Meals were more delicate; refinement rather than abundance was valued ... smaller, warmer rooms, well-furnished, were now the stage for a more intimate upper-class family life. Among wealthy merchants, lawyers, bankers, and others of that ilk (composing an urban gentry), we observe the celebration of the joys and consolation of the family ... Family life at the upper levels no longer overflowed into the streets now that the well-endowed and well-educated retreated into their realm of domesticity. *The consequences of this increased privatization of social life could be paradoxical: an autonomous sphere was generated where public issues might be vigorously debated and the power of the state resisted.*"⁵¹⁵

One effect of this was that the consolidating bourgeoisie increasingly isolated themselves from the vertically integrated rural village and indeed from any kind of social setting that involved anything other than the giving of orders to servants. The integrative force of traditional culture, Becker tells us, lost ground, and the social cohesion that held together the high and low frayed precisely as the emergent bourgeoisie integrated, so to speak, "horizontally":

"There had always been a separate and clearly defined elite culture ... but these quality folk had joined in the more broadly based rituals, ceremonies, and plebian pastimes. By the late seventeenth century, however, English polite society had become freer from the need to patronize local customs and the recreation of ordinary folk ... Individual skepticism [rather than clerical condemnation] concerning popular [magical and superstitious] belief proved highly fashionable, since these beliefs were associated with social inferiority rather than 'ungodliness'; in the end this

⁵¹⁵ Marvin Becker, at 3-4 (emphasis added). There is nothing inevitable about the evolution of private domestic space into civil society, however; numerous societies have private familial space with little or no civil society. Indeed, it is a point that Christopher Lasch has made with respect to contemporary American family life; its privacy, what he ironically termed the "haven in a heartless world," was part of the mechanism by which civil society in the US, in his view, lost ground. See Christopher Lasch, *Haven in a Heartless World: The Family Besieged* (NY Basic Books 1997), at xviii: "The same historical developments that have made it necessary to set up private life -- the family particular -- as a refuge from the cruel world of politics and work, an emotional sanctuary, have invaded this sanctuary and subjected it to outside control. A retreat into 'privatism' no longer serves to shore up values elsewhere threatened with extinction. Americans can preserve what is valuable in their culture only by changing the conditions of public life itself."

transference proved most damaging to popular culture. But perhaps most telling of all was the attempt to impose linguistic uniformity. Quality people were to shun the local speech world of dialect and variability in favor of standardized pronunciation ... This tendency toward *a withdrawal of the 'best people' from common residential, linguistic, and cultural context* shaped more than the townscape. It offered a 'polite and commercial people' the prospect of a relaxation from a demanding public life."⁵¹⁶

The historical parallel I suggest is, I suppose, clear enough. There is at least reason to wonder whether international civil society (if there is such a thing) is not in a process of constructing itself by consolidating "horizontally," consolidating itself among its own members, in a process by which its own constituents withdraw from their own societies in order to establish the new "polite" society of liberal internationalism. Some have urged it explicitly; Wolfgang Reinicke has written, for example, that the

"nation-state as an externally sovereign actor in the international system will become a thing of the past. But this will only happen if internal sovereignty is realized through global public policy. This requires *political elites to dissociate themselves to some degree from territory* and create more dynamic and responsive institutions of governance."⁵¹⁷

Full consolidation requires the three elements of globalization -- economic, political, cultural -- and in that process international NGOs play a crucial role in creating a common culture, not just of global popular culture, but rather a common elite culture. It is striking that both Becker, speaking of the eighteenth century and Howard, speaking of the twenty first, focus upon a common language as part of a process by which elites withdraw into "polite" society.⁵¹⁸ Moreover, in the absence of any effective possibility of democratization at the international level, an important common denominator of the individuals who make up these elites, regardless of the institution in which they are embedded, is that they are the professional orders, knowledge-workers in the information society, "symbolic analysts," to use Robert Reich's terminology.⁵¹⁹ This is the social order that Ferguson, too, focused upon in his concerns about

⁵¹⁶ Marvin Becker, at 4-5 (emphasis added).

⁵¹⁷ Wolfgang H. Reinicke, "The Other World Wide Web: Global Public Policy Networks," 76 *Foreign Affairs* 6 (November/December 1997), at 127, 137.

⁵¹⁸ [cite to michael howard book on 21st century, reviewed in spectator]

⁵¹⁹ See Robert Reich, *The Work of Nations: Preparing Ourselves for 21st Century Capitalism* (NY Knopf 1991), at 171-242.

the withdrawal of the elites, of "polished society," from the rest of society, when he spoke of the "separation of the professions."⁵²⁰

The question, then, is whether the consolidation of global elites -- largely professionals, knowledge workers, symbolic analysts, technically qualified personnel -- into a global bourgeoisie, into polished international society and polite global society, will entail, as it did in the eighteenth century, a withdraw from the global village, a withdrawal from its forms of life, from its forms of legitimation, from vertical integration with it towards the administration and management of local and national communities of which their international managers are no longer really a part. The very possibility requires that one accept -- as this Essay has been skeptical about doing -- the categories of global village, global community, international society and international civil society; if one does, however, then one should be prepared to consider even possible consequences that do not fit with the approved script. Christopher Lasch described such a process with respect to elites in American society; drawing upon the trope of Jose Ortega y Gasset's famous 1930 essay, *The Revolt of the Masses*,⁵²¹ Lasch suggested that in contemporary American society, it is the elites, not the masses, who are in "revolt" or, more exactly, "withdrawal":

"Once it was the 'revolt of the masses' that was held to threaten social order and the civilizing traditions of Western culture. In our time, however, the chief threat seems to come from those at the top of the social hierarchy, not the masses ... When Jose Ortega y Gasset published *The Revolt of the Masses* ... he could not have foreseen a time when it would be more appropriate to speak of a revolt of elites. Writing [in 1930] in the era of the Bolshevik Revolution and the rise of facism ... Ortega attributed the crisis of Western culture to the 'political domination of the masses'. Today it is the elites, however -- those who control the international flow of money and information, preside over philanthropic foundations and institutions of higher learning, manage the instruments of cultural production and thus set the terms of public debate -- that have lost faith ... From Ortega's point of view, one that was widely shared at the time, the value of cultural elites lay in their willingness to assume responsibility for the exacting standards without which civilization is impossible. They lived in the service of demanding ideals."⁵²²

⁵²⁰ Adam Ferguson, *An Essay on the History of Civil Society* (1767) (New Brunswick NJ Transaction 1991), at 218.

⁵²¹ Jose Ortega y Gasset, *La rebelion de las masas* (1930) (Madrid Revista de Occidente en Alianza Editorial 1995).

⁵²² Christopher Lasch, *The Revolt of the Elites and the Betrayal of Democracy* (NY WW Norton 1995), at 25-26.

I have quoted this passage for the reason that at first blush it appears to run counter to the argument I have advanced about the possible *withdrawal* of international elites into an international bourgeoisie. After all, what are the international human rights organizations, except those who "assume responsibility for exacting standards without which civilization is impossible"? What are the groups agitating against child labor, against global poverty, if not those who live in the service of "demanding ideals"? Yet the point still stands, for at least two reasons. First, "international elites" are a much wider group of people and, significantly, *organizations* than merely international NGOs and their staff and supporters. Indeed, compared with the ranks of international elites in private business, national governments that work in international matters, and public international institutions -- and even more so when it comes to funding and budgets and resources controlled -- international NGOs, for all their visibility and vaunted influence and publicity value to the project of globalization, are really a small part of the international elites. They are the icing on the cake of globalization. The real resources of globalization, and the people and organizations which deploy them, are not exactly in the service of "demanding ideals" or "assuming responsibility" for civilization, and it is a serious mistake to impute to the latter the virtue of the former.

why not, esp. for public intl'l organizations?

Second, and more serious as Lasch makes clear, referring to American elites, a "withdrawal" of elites into their own horizontal culture is not inconsistent with their desire to manage and administer society, including to direct its presumed moral reform. On the contrary, the very distancing of elites from ordinary people and their views -- and the willingness of elites to formulate what they believe the views of ordinary people ought to be, in discourse not with the ordinary folk, but in horizontal discourse between elites themselves, imagining what the ordinary folk think and amending it to what they *would* think if only they were, well, enlightened elites themselves -- gives the new elites a certain colonial entitlement in directing the morals, manners, customs, laws, and cultural forms of those below them. Indeed, when confronted with resistance to their moralizing zeal, these elites

"betray the venomous hatred that lies not far beneath the smiling face of upper-middle-class benevolence. Opposition makes humanitarians forget the liberal virtues they claim to uphold. They become petulant, self-righteous, intolerant. In the heat of political controversy, they find it impossible to conceal their contempt for those who stubbornly refuse to see the light ...

Simultaneously arrogant and insecure, the new elites ... regard the masses with mingled scorn and apprehension."⁵²³

Is this an unfair description of the moralizing international NGOs? Writers like Michael Ignatieff will continue to insist, I suppose, that this "ignores the extent to which the demand for human rights is issuing from the bottom up."⁵²⁴ In part, of course, he is right; the language of rights has, as he says, "gone local."⁵²⁵ But Ignatieff, as noted earlier in this Essay,⁵²⁶ in his eagerness to show the happy unity, top to bottom, bottom to top, of the international human rights movement, entirely ignores the balance of power in the world of international human rights. He never addresses the less romantic and more grubby questions of who has money, who does not, who controls and funds the invitations to the international conferences that help set international standards and which, I would guess, Ignatieff would describe as shining examples of "top" and "bottom" in harmonious interplay but which, I would have thought, could just as easily be described as "bourgeoisization," a meeting of a global "Select Society," who sets agendas, who issues invitations, who controls accreditation, who actually writes the comuniques, the treaty language, the terms by which everyone else is expected to live. These matters are not often written about, for obvious reasons, but we might consider the open letter written by a prominent Eastern European human rights activist, Dimitrina Petrova, in the midst of the Kosovo war; in announcing her opposition to continued bombing, she rather bravely noted what everyone knows but few say, that among the factors that make it difficult for activists to speak out is that: "[O]ur very status and jobs as human rights defenders have been made sustainable by the generous support of western donors, and we see no future for our movement and even for civil society itself without continued support from them."⁵²⁷

He who pays the piper calls the tune; how could it be any different? It is the central question that NGO funders and fundees have confronted in post-communist societies since 1989, without

⁵²³ Christopher Lasch, *The Revolt of the Elites*, at 28.

⁵²⁴ Michael Ignatieff, "Human Rights: The Midlife Crisis," *New York Review of Books*, May 20, 1999. See discussion of related matters at [].

⁵²⁵ Michael Ignatieff, "Human Rights: The Midlife Crisis," *New York Review of Books*, May 20, 1999.

⁵²⁶ See discussion at [].

⁵²⁷ Dimitrina Petrova, "My personal view on Kosovo," April 12, 1999, sent over Public Interest Law Network (smtp:piln@law.columbia.edu), moderator Edwin Rekosh, at <mailto:erekosh@law.columbia.edu>. (copy of email communication on file).

solution; even George Soros, the most prominent and smartest private donor in Eastern Europe, has never succeeded in overcoming the conflict of interest between top and bottom. Ignatieff skips the hard questions, however, and instead gives us anecdotes (such as the one this Essay earlier quoted)⁵²⁸ of women in the Islamic world pleading their human rights as grounds to protect them from the Taliban, on the one hand, and domestic violence in Pakistan, on the other.⁵²⁹

The stories Ignatieff cites are genuinely moving and important. Unfortunately he chooses to sentimentalize and trivialize them with a certain dangling hint that even by asking critical questions about power and domination and money in the international human rights movement, one has implicitly thereby endorsed the murder of women. Yet wrapping himself in the human rights movement's flag of virtue conceals some surprisingly vacuous thinking. For example, he says with respect to "women in Kabul who come to Western human rights agencies seeking their protection from the Taliban militias" that the "dignity of the person" they seek to protect is "not necessarily derived from Western models"; they do not want to "cease being Muslim wives and mothers; they want to combine respect for their traditions with certain 'universal' prerogatives."⁵³⁰

I have no doubt that they do wish to combine them both. The question, however, that an intellectual such as Ignatieff ought to ask is what that means and whether it is possible. And moreover, if it is possible, and if it is also true that the 'dignity of the person' of these Muslim wives and mothers is not necessarily derived from Western models, why is it that the only the places where they can seek refuge are international agencies that, in money, status and power, plainly derive from Western models? Does Ignatieff think it is as easy as that to combine being Muslim wives and mothers with universal prerogatives? Perhaps it is, but I cannot say that Muslims in many places in the world have found it so. And when he says that the women hope the "agencies" will defend them against being beaten and persecuted for claiming such rights, what that means -- but Ignatieff, apparently for reasons of delicate multicultural political correctness, declines to say -- is that they hope the *West* will defend them.⁵³¹

You may be underestimating the repressive power of Muslim states and patriarchy.

⁵²⁸ See discussion at [].

⁵²⁹ Michael Ignatieff, "Human Rights: The Midlife Crisis," New York Review of Books, May 20, 1999.

⁵³⁰ Michael Ignatieff, "Human Rights: The Midlife Crisis," New York Review of Books, May 20, 1999.

⁵³¹ I would prefer that it were all so easy for various religious traditions to come to terms with the

It is a tiresome tactic of argument in the intellectual world of human rights -- the move to imply that if one questions judgments about human rights made by the human rights movement, or proposes to debate the social and political and power structure of the human rights movement, then one must therefore support torture.⁵³² Whereas all I would ask is that the same mild skepticism that social critics and intellectuals would apply to the analysis of any other institution be applied to the international human rights movement.⁵³³ Inconsistencies and gaps in the

new religion of human rights, but it is not, and Ignatieff's easy elision does not help. I am a great admirer of the considerations of human rights and Islam by Abdullahi Ahmed An-Na'im, for example -- but I am also perfectly aware, as he himself remarked to me in conversations when we were both at Human Rights Watch, that he is considered a heretic within important parts of the Muslim world. See, e.g., the quite splendid article, Abdullahi Ahmed An-Na'im, "Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives," 3 Harvard Human Rights Journal 13 (Spring 1990) Likewise, I am happy to read such feminist works interpreting and reinterpreting Islam as Fatima Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam* (NY Addison Wesley 1991), and I hope they have effects deep and wide within the religious community within which such discourse is meaningful -- I only hope that Mernissi's community of meaning, so to speak, is actually Islam and not, instead, merely that of Western human rights intellectuals eager to announce, for public relations purposes if nothing else, that they, too, have Muslims on board the movement.

Religion and human rights, at least for those religions that still assert grounds of immanence, present genuine conflicts of authority -- something that the contributors to a book specially on the subject itself, Peter Juviler and Carrie Gustafson, eds., *Religion and Human Rights: Competing Claims?* (NY ME Sharpe 1998) could not quite get themselves to grapple with, as they had long since given up religious claims to knowledge in favor of the hegemony of the kinds of revelations available to secular human rights. Only those, like Ignatieff, who assume that this conflict *must* be fundamentally resolved in favor of the secular transcendentalism of human rights and the authority of the human rights movement, could think it other than a profoundly disturbing conflict of sources of immanent authority. Those who think this is a matter easily resolved might reflect on Michael Walzer, *Interpretation and Social Criticism* (Cambridge Harvard UP 1985), especially chapter 3, "The Prophet as Social Critic," at 69.

⁵³² It is, at bottom, simply the move to suppress argument and dissent that has long been central to political correctness; Shelby Steele gives an account of what it looks like in domestic US terms, and the kind of strictly unreflective, self-congratulatory discourse that Ignatieff by implication champions: "[L]iberalism controls our very terms of social decency. And no ideology can have a greater power than this because at this level ideology becomes invisible. It becomes a propriety so obviously good and true that only the indecent would question it." Shelby Steele, "A New Front in the Culture War," Wall Street Journal, August 2, 2000, opinion, at A22.

⁵³³ See Michael Walzer, *The Company of Critics* (NY Basic Books 1988), at 4 ("The modern social critic is a specialist in complaint, not the first, certainly not the last.").

intellectual fabric of its thought, particularly when they concern both power and ideology, eventually force themselves to the surface anyway.

It is much too early to know, in any case, if there even is such a thing international society and international civil society, whether this is its social trajectory. This Essay is unconvinced of either fundamental element, at least in a form that would support the ideological conclusions of their proponents. Still, for those who do accept the international community and international civil society account of things, some elements are there that point in the direction of the evolution of an international bourgeoisie characterized by its withdrawal from ordinary folk. Particularly in the absence of any significantly countervailing democratic structures or the possibility thereof, it is a fair question whether the path of international elites is not in the direction of agencies, technocratically administered and international in authority, that nonetheless reach into the intimate matters at the level of the individual, the family, parents and children, that the Saxon Capitulary touched upon.⁵³⁴ At the very least one would want to know why it would not lead these directions. Three answers will, however, *not* suffice to address the question.

First, it will not do to suggest that the parts of this international civil society -- public international organizations, international civil society, and the international market -- will serve as checks upon one another, will serve as oppositional forces to prevent international elites from serving common interests. It has already been suggested that these are elites often with common interests in globalization itself. In that broad regard, they are typically not in opposition to each other and offer no check one upon another. What does offer a check is that which has always offered a check, and that is the much maligned sovereign nation-state.⁵³⁵ As David Rieff has noted with respect to the supposedly oppositional power of international NGOs:

Remind me again what those common interests are: are they material or moral?

"Making the world safe for global capitalism may be one of the effects of the triumph of the ideal of civil society, but it is not, of course, the sole or even the principal reason for its prominence. The ideal of civil society responds to a deeper problem -- an intellectual, not to say, moral, void. the most profound legacy of the post-cold war era may prove to be the ideological hollowing-out all developed countries and many poor one have experienced. The disappointments, for liberals and leftists, respectively, of nationalism and communism were already largely assimilated well before the collapse of the Soviet empire. What was unexpected was that the end of the superpower rivalry and the victory of market capitalism over state socialism would also reveal

⁵³⁴ See discussion at [].

⁵³⁵ See discussion at [].

Grammar?

just how diminished the nation-state had become over the half-century since the end of the Second World War, and just how ineffectual the international institutions -- above all the United Nations and the Bretton Woods organizations -- that were established in its wake ... *In further undermining the state, [advocates of civil society] undermine the only remaining power that has at least the potential to stand in opposition to the privatization of the world, commonly known as globalization.*"⁵³⁶

Second, it will not do to claim that international civil society is in fact engaged in a vertical integration with the rest of the world's societies and their constituents. Evidence against an alleged withdrawal of international elites may be offered in the form of the endless amounts of time and energy devoted by these elites to such matters as economic development and the needs of the world's poor. But this kind of activity is not the point; it is not necessarily evidence of engagement. After all, the minutes of the Select Club, for example, show that a central preoccupation of its members was to debate and propose -- often for and in the presence of key policymakers -- various programs for the benefit of the poor, the development of the rural lands, the improvement of agriculture. As one might expect of a society chaired in its first meeting by Adam Smith, the agenda was firmly fixed upon questions of political economy that would warm the hearts of the World Bank and the IMF -- including, for example, an essay contest upon the question of "[t]he most reasonable scheme for maintaining and employing the poor in North Britain; and how far the scheme can be executed by the laws now in force."⁵³⁷ The technocratic management of the poor is not, by itself, evidence of engagement with them. And in other matters, such as the formulation of standards of international human rights, for example, it would be more accurate to say that their elaboration is the result of international elites -- sometimes vast numbers of them -- talking to each other, horizontally, in meetings in Geneva, in New York, in London, in the great conferences convened to give a veneer of public approval to what is, at bottom, either technocracy or else the ideological agendas for international elites who, far from engaging with the societies from which they come, seek (as John Bolton has already remarked) to achieve among themselves what they have not been able to obtain by actual democratic engagement in actual, democratic societies and bless it with the name of "We, the Peoples."⁵³⁸

⁵³⁶ David Rieff, "The False Dawn of Civil Society," *Nation*, February 22, 1999 (emphasis added).

⁵³⁷ Marvin Becker, at 77-78.

⁵³⁸ See John Bolton, at [cite earlier discussion]; Jeremy Rabkin, at [cite earlier discussion].

There are thus reasons to believe that international elites are engaged in an effort to deploy the ideology of internationalism and globalization in order to do an "end run" around democratic societies and the preferences expressed by their members in accordance not merely with democratic majorities, but *including the checks* on majoritarianism contained in the constitutional orders of those particular societies. Whether this goes further to constitute a "withdrawal" of international elites from their individual societies, in order to consolidate a "polished" and "polite" international society between themselves, but strangers to the rest, remains to be seen.

Third, and finally, it will not do simply to say, "Hooray for the bourgeoisie!" and answer that the extension of the bourgeoisie worldwide is a good thing. But why not? After all, Scotland, England, and France all benefited from the growth of the bourgeoisie, as a separate class, and as a class not dependent merely on the aristocracy. The rise of the bourgeoisie enables civil society, enables economic growth, it is the backbone of stable democratic societies. Why should it not be applauded at the global level?

Thanks
for
addressing
because
that's
my
question

The answer to this very sensible question is that there is a fundamental difference between the bourgeoisie of those historical societies and the emergent global bourgeoisie, a difference rooted in the twin matters of what each claims as its source of social authority and how each sustains itself, i.e., makes money. In one sense, this is to re-express the doubts I have already indicated as to whether today's emergent elites really are civil society in the way that proponents of that model urge. But in another sense, it is a separate concern about the deep nature of today's global bourgeoisie, and in particular its relation to the category of the profession.⁵³⁹ In an important recent account of the changes in professionalism, the sociologist Steven Brint notes that in an older period -- just a few decades ago in the US -- professional life was guided not only by technical expertise, but additionally it

"promised to be guided by an appreciation of the important social ends it served. In demanding high levels of self-governance, professionals claimed not only that others were not *technically* equipped to judge them, but also that they could not be *trusted* to judge them."⁵⁴⁰

⁵³⁹ For sociological background to this category of bourgeois elites, see [cites, including Durkheim and more recent people].

⁵⁴⁰ Steven Brint, *In an Age of Experts: The Changing Role of Professionals in Politics and Public Life* (Princeton UP 1994), at 7; I draw parts of this discussion from Kenneth Anderson, "Review Essay: A New Class of Lawyers: The Therapeutic as Rights Talk," 96 *Columbia Law Review*

Indeed, the British social critic R.H. Tawney, writing in 1948, championed this picture of the bourgeois professional, what Brint calls "social trustee professionalism" as enormously beneficial to the community in which he⁵⁴¹ resided and worked:

"[Professionals] may, as the in the case of the successful doctor, grow rich; but the meaning of their profession, both for themselves and for the public, is not that they make money, but that they make health, or safety, or knowledge, or good government, or good law ... [Professions uphold] as the criterion of success the end for which the profession, whatever it may be, is carried on."⁵⁴²

Social trustee professionalism was defined by a combination of technical expertise and social purpose, each edifying the other. This combination had a certain moral force, based on authority and not merely on its efficiency and expertise, as well as on the perception that it served, understood itself to serve, and conformed its behavior to community norms so as to serve one or another aspect of public welfare.⁵⁴³ This required, however, as a concomitant of having that authority, that the bourgeoisie, even if separated by class, education, and all the other ways in which we have already noted the withdrawal of the bourgeoisie from the rest of social life, still maintain at least some connection with the communities in which they aspired to authority and position.

Brint notes, however, that the social trustee model of bourgeois professional life has "become increasingly disconnected from functions perceived to be central to the public welfare and more exclusively connected to the idea of 'expert knowledge'."⁵⁴⁴ Social trustee bourgeois professionalism is increasingly replaced by a new social model of the bourgeois professional and the bourgeoisie in general: "expert professionalism." It is expertise, not authority and, far more than the older social trustee model, depends upon two things -- sale of expertise to the highest bidder and, in order to maximize value, mobility to go where expertise is best compensated.

Expert professionalism

1062 (May 1996), at 1072-1092.

⁵⁴¹ The masculine pronoun seems correct in this historical context.

⁵⁴² Steven Brint, *In an Age of Experts*, at 7, quoting R.H. Tawney, *The Acquisitive Society* (1948), at 94-95 [I don't have this book, we should get Tawney and not just quote from Brint]

⁵⁴³ It had many distasteful qualities as well, which I do not dwell on here.

⁵⁴⁴ Steven Brint, *In an Age of Experts*, at 8.

I find both poles of this supposed transformation a trifle hyperbolic

"need[s] no sharp distinction from business enterprise, and it require[s] less separation from the idea of pursuing a trade for a profit ... those who claim knowledge-based authority increasingly eschew any claims to representing vital or public interests. From a sociological perspective, expertise is now a resource sold to bidders in the market for skilled labor."⁵⁴⁵

The result is what Brint calls a "separation of community orientation and expert authority."⁵⁴⁶

We can therefore discern (if this way of thinking about international elites as civil society has any validity) a double shift in the separation of the bourgeoisie from the rest of social life; one which took place in the formation of the bourgeoisie itself, in its formation as a class, and a second which is just a few decades in the making in advanced industrial countries like the US, the hallmarks of which are mobility, the sale of expertise, and claims to authority based not on any connection to the community in which one has a place, but simply on the basis of expertise alone. The implication for the emergent international elites is simply that which Lasch was at pains to state -- the conditions of the revolt of the elites, a new step forward in their disconnection from their local and national communities. Although the term bourgeoisie describes a class much wider than simply professionals, international elites, even among those who are simply "business persons," are correctly described as "professionals" in the sociological sense meant here -- in large part because the international business elites are so closely tied to finance and to the abstract knowledge and expert systems involved in finance, rather than industrial production or physical transactions, and in that sense they are professionals in the full sense of that term.

I like this way of putting it.

Really?

And it is not significantly less true for including in its reach the personnel of international NGOs, the ones that Ignatieff asserts I have conflated, mixing "up two classes, the free market globalists and the human rights internationalists."⁵⁴⁷ The international NGO activists are, after all, overwhelmingly bourgeois, even in their political and activist commitments -- how could it be otherwise? -- and they act within the larger expert-based bourgeoisie of international society analogously to how they act within domestic society, as expert professionals. They are as mobile as the rest of the international elites and (given the turnover in international NGOs as people move into other kinds of careers, as international lawyers and other positions) possibly even

⁵⁴⁵ Steven Brint, *In an Age of Experts*, at 15.

⁵⁴⁶ Steven Brint, *In an Age of Experts*, at 15.

⁵⁴⁷ Michael Ignatieff, *Human Rights: The Midlife Crisis*.

more transient than the business people, who are highly mobile but tend to stay in business. No one is disparaging the idealism of the international NGO activists or the concrete good they accomplish, but that should not blind us, either, to seeing that collectively they are broadly part of the same elites -- and the authority of those elites is based not upon its commitment to bearing the fruits of its expertise in communities in which they have a place, roots, location, geography, but instead across no geography except that of the whole planet, which is to say, no place at all. Seen as a large, otherwise heterogenous group of internationalized professionals of one kind or another -- the business people, the international NGO staffs, the government and international organization elites -- these international elites are characterized by expertise, the sale of expertise, and the mobility necessary to make such sales.

Perhaps this would not be of any special consequence. International elites can be indicted, I suppose, as Lasch did, for an unwillingness (for the sake of selling expertise) to locate themselves long enough and deeply enough to lead the communities from which these highly educated, upwardly mobile, and ultimately ungrateful elites themselves sprang, for seeking "a way of life that distinguishes [them] from the rest of the population."⁵⁴⁸ What *does* matter, however, is that they desire to have both mobility *and* authority; in one sense, this is what the assertion of the ideology of human rights, through the careless arrogance of its priestly class, is coming to mean -- a ground of authority that is wholly mobile, that one can take from place to place, in one's pocket, packed as easily as a bathing suit or razor, the morality for whatever place one happens to end up always packed and ready to unpack, shallow in its commitments and yet inflexible in its impositions, weighing lightly upon the international bourgeoisie for whom it is its breathed sensibility and yet absolutely demanding upon everyone else, portable and yet universal, mobile and yet authoritative. The key *social* characterization of human rights, perhaps, is not that it is universal, but that it is *mobile* -- in a way that democracy, always tied to a *demos*, is not. As a consequence, these emergent international elites really are

"in revolt against the burdens of [local community] leadership because [that would] require becoming *part of* these communities and would put some restriction on their mobility. It would require that they talk with the masses and not simply to each other as experts. The old elites wanted to be the top of the communities in which they had grown up; whether to lead or dominate, to serve communities or exploit them, at least they understood themselves as having a place in them. The new elites, by contrast, want no connection; they understand that power is

⁵⁴⁸ Christopher Lasch, *Revolt of the Elites*, at 33.

elsewhere, money is elsewhere, and mobility is everything ... Yet simultaneously they want to dominate."⁵⁴⁹

VII.

Conclusion: Legitimacy and Democratic Sovereigns

A. Sovereignty

This Essay has been an exercise in critique. Its fundamental aims have been to underscore the lack of democratic legitimacy of public international organizations, whether the UN system or the Bretton Woods institutions; to underscore the lack of democratic legitimacy of international NGOs; and to underscore that the one cannot compensate for the lack of democratic legitimacy of the other. The democratic deficit gapes wider as the subject matter of international regulation reaches further and further into cultural matters and into familial and intimate life; it is, in the view of this Essay, a gap unclosable in principle. This is so despite the best efforts of those supporting the twin aims of liberal internationalism, global markets and global governance, either to discover new ways to demonstrate democratic legitimacy at the global level or, instead, to enshrine sources of legitimacy alternative to democracy, principally by converting the ideology of human rights from something that supports democracy and complements it into an ideology of human rights that can serve as a substitute for it. The size and numbers of people who can be governed democratically and the optimal reach of the common market are not necessarily the same.

What, however, is still potentially left standing as a repository of democratic legitimacy after public international organizations and international NGOs are removed from the field? There is still, to be sure, the democratic nation-state. It is an institution much maligned by international elites, eager to push it aside in the interests of their internationalist consolidation; sovereignty has acquired a reputation as something dirty, something unworthy, in the circles of international elites and international lawyers. Wolfgang H. Reinicke, for example, informs us that the "nation-state as ... sovereign actor in the international system will become a thing of the past"; this blessed process is to happen as "political elites" dissociate themselves "to some degree from territory" or, in other words, as political elites withdraw their allegiances to country in favor

⁵⁴⁹ Kenneth Anderson, "A New Class of Lawyer: The Therapeutic as Rights Talk," 96 Columbia Law Review 1062 (May 1996), at 1089.

of the grander allegiances (and, one might add, grander privileges) of international class.⁵⁵⁰

Reinicke further thinks (along with many other enthusiasts) that the withering of the sovereignty of the nation-state can result in global governance without a world government, without supranational governance. Any new international system, Reinicke says

"must avoid the pitfalls of territoriality. Forming a global government is one response, but it is unrealistic. It would require states to abdicate their sovereignty not only in daily affairs, but in a formal sense as well. A more promising strategy differentiates governance and government. Governance, a social function crucial for the operation of any market economy, does not have to be equated with government. Accordingly, global public policy uncouples governance from the nation-state and government. To implement such a strategy, policymakers would delegate tasks to other actors and institutions that are in a better position to implement global public policies -- not only to public sector agencies like the World Bank and the IMF, but also business, labor, and nongovernmental organizations ... Such public-private partnerships would increase the legitimacy of global public policy and produce a more efficient and effective process."⁵⁵¹

Reinicke's proposal, like so many floated in this "privileged moment" of unlimited political imagination among consolidating international elites, lacks nothing for audacity. It is hard to tell, however, whether it is a counsel of despair, because of the inability to get past the formality of nation-state sovereignty to form a genuine world government, or whether it is a counsel of enthusiasm, a real belief in the ability to separate governance and government in the way he suggests. The proposal has an air of almost old-fashioned Marxist optimism about it; just as in Marxism the state was to wither away, so here it withers away to leave governance with no governor, the machine of governance with no animating ghost, the grin on the Cheshire cat. Unless, on the other hand, we take seriously Reinicke's reference to "policymakers" -- who are they, one wonders, if not governors, deciding not whether they are necessary, but instead which functions to outsource and which not? Does anyone really believe that because functions of government are outsourced, that means there is no government? So perhaps Reinicke's proposal looks increasingly like world government, after all, merely without the formal trappings of sovereignty. In that case, as is *already* the case with the World Bank and the IMF and, for that matter, with business, labor, and nongovernmental organizations: he who pays the piper calls the tune. Outsourcing, as any government official who has ever undertaken it knows, is designed to

⁵⁵⁰ Wolfgang H. Reinicke, "The Other World Wide Web: Global Public Policy Networks," 76 Foreign Affairs 6 (November 1997), at 127, 137.

⁵⁵¹ Wolfgang H. Reinicke, "The Other World Wide Web: Global Public Policy Networks," 76 Foreign Affairs 6 (November 1997), at 127, 132.

increase accountability to the agency that pays the bills, to increase the power of government by giving it greater ability to control an outside contractor -- that is *why* contracting-out exists, to increase the power of government by increasing efficiencies.⁵⁵² This is a good thing, of course, if the efficiencies are actually realized -- but not a reason to imagine it means governance without government. We might also wonder, if governance without government is such a good idea, why it has not happened with national governments. The US internal market is sufficiently large, one might have thought, to have approximated the conditions of the global economy that Reinicke seems to believe drive toward governance without government;⁵⁵³ so, for that matter, is the EU. Yet one would be hard pressed to say that either one has moved toward Reinicke's model.

The reason the large, national internal markets of the US and EU have not is, if for no other reason, than that they are checked to some extent by forces of democracy that would rightly fear the effects of the outsourcing of governance to specialized agencies that are, on at least one way of reading Reinicke's model, unaccountable.⁵⁵⁴ And thus it seems that the real point of Reinicke's proposal is to empower international elites -- not merely to empower international elites through a loss of national sovereignty to supranational bodies that in turn empower the elites that staff and influence them, but international elites *as such*, directly, international "business, labor, and nongovernmental organizations" doing the work and exercising the authority of supranational government, but simply not calling it that. And so what starts out looking to be a benign alternative to the political non-starter of supranational world government, ends up looking like a mechanism for elite consolidation and empowerment.

There are approximately as many schemes for transferring power away from nation-states as there are professors writing in journals of international law.⁵⁵⁵ However one views one proposal or another, however, what is plain is that liberal internationalism believes that it cannot effectively move forward unless sovereignty is eroded one way or another. Secretary General Annan, who must tread a fine line between the sensitivities of nation-states and his own

⁵⁵² [cite on government contracting out of services and efficiency gains and accountability]

⁵⁵³ See Reinicke, at 129-130 ("While globalization integrates markets, it fragments politics.").

⁵⁵⁴ [private prison outsourcing - accountability problems, return of prisons in some cases to state control, certainly no diminishing of state authority -ask Ira Robbins on this, he's an expert on prison privatization]

⁵⁵⁵ See John Bolton, [cite to Iowa draft paper when in final form].

supranationalist tendencies, nevertheless delicately asserts the need for sovereignty to be "transformed":

"[where is this - in some speech - somewhere in our files]"⁵⁵⁶

Equally important is the claim that nation-state sovereignty has indeed been eroding under pressures of globalization; the consequence is to bolster the claim that an alternative must be established to deal with the vacuum inevitably created by the loss of sovereignty. Typical of this view is Kay Hailbronner, who has written, for example, that "[m]odern public international law seems to have broken through the armour of sovereignty."⁵⁵⁷ It is a sentiment that has been expressed many times, often with a great deal of hopefulness.⁵⁵⁸

Those who favor nation-state sovereignty's erosion, however, have a powerful incentive to discover that it is, in fact, eroding. So it is worth asking, is it so? Chris Patten, the current EU minister for external affairs, has said flatly that even within Europe -- the only region where genuine political integration is likely to take place anytime soon⁵⁵⁹ -- it must be recognized by the EU that "the nation state is the basic political unit and likely to remain so. For reasons of history and community, it is the focus of most citizens' loyalties."⁵⁶⁰ But the *sovereignty* of the nation-state? Stephen Krasner divides "sovereignty" into four distinct usages:

"The term sovereignty has been used in four different ways -- international legal sovereignty, Westphalian sovereignty, domestic sovereignty, and interdependence sovereignty. International legal sovereignty refers to the practices associated with mutual recognition, usually between territories that have formal juridical independence. Westphalian sovereignty refers to political organization based on the exclusion of external actors from authority structures within a given territory. Domestic sovereignty refers to the formal organization of political authority within the state and ability of public authorities to exercise effective control within the borders of their own polity. Finally, interdependence sovereignty refers to the ability of public authorities to regulate

⁵⁵⁶ [cite to Annan speech on transformation of sovereignty]

⁵⁵⁷ Kay Hailbronner, "The Legal Status of Population Groups in a Multinational State Under Public International Law," in Yoram Dinstein and Mala Tabory (eds.), *The Protection of Minorities and Human Rights* (Dordrecht Martinus Nijhoff 1992), at 117-144, 117.

⁵⁵⁸ [additional cites on erosion of sovereignty]

⁵⁵⁹ "The only large part of the world where boundaries between states might conceivably be rubbed out in the next half-century is Europe." Brian Beedham, "Survey: The New Geopolitics: The thing that won't go away: Why the state stays the basic unit," *Economist*, July 31, 1999, at 8, 9.

⁵⁶⁰ Peter Norman, "Ideas man with practical intentions: Chris Patten reflects on his first year as European Commissioner for external affairs to Peter Norman," *Financial Times* (London), Monday, July 31, 2000, at 15.

the flow of information, ideas, goods, people, pollutants, or capital across the borders of their state."⁵⁶¹

Krasner points out that it is possible for a state to have one kind of sovereignty, while not having another; the various kinds of "sovereignty do not covary."⁵⁶² With respect to interdependence sovereignty, the trend appears to be that it is decreasing as states lose the ability to regulate information, communications, transportation, and other technological advancements due to economic globalization. With respect to Westphalian and domestic sovereignty, however, Krasner finds little evidence that it has declined on account of globalization:

"I do not want to claim that globalization has had no impact on state control, but these challenges are not new. Rulers have always operated in a transnational environment; autarky has rarely been an option; regulation and monitoring of transborder flows have always been problematic. the difficulties for states have become more acute in some areas, but less in others. There is not evidence that globalization has systematically undermined state control or led to the homogenization of policies and structures. In fact, globalization and state activity have moved in tandem. The level of government spending for major countries has, on average increased substantially since 1950 along with increased trade and capital flows. Government policy has not been hamstrung by the openness of international capital markets; there has been no empirical relationship, for instance, between government spending and capital flows: Levels of investment have not been inversely correlated with corporate tax rates. Corporate investment decisions depend on many factors, including the quality of infrastructure -- education, telecommunications, transportation -- provided by state funds. The organization of firms has varied across countries with regard to financing, governance structures, and suppliers. Social welfare policies and tax policies are not the same across the advanced industrialized states, the entities most affected by globalization ... Transnational activities have challenged state control in some areas, but these challenges are not manifestly more problematic than in the past."⁵⁶³

The Economist has reached roughly the same conclusion:

"The huge growth in the absolute amount of global wealth and trade since the 1950s, the involvement in trade of a much bigger part of the world and -- above all -- the revolution that late-20th-century electronics has caused in the movement of information and money have genuinely altered the world: and, in the process, have arguably trimmed the power of the state. Yet none of this means that the state has lost, or is likely to lose, the means of functioning as a separate entity in the world. Nor does it mean that manoeuvrings among these states will cease to be the chief component of geopolitics."⁵⁶⁴

⁵⁶¹ Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton UP 1999), at 3-4.

⁵⁶² Stephen D. Krasner, at 4.

⁵⁶³ Stephen Krasner, *Sovereignty*, at 223.

⁵⁶⁴ Brian Beedham, "Survey: The New Geopolitics: The thing that won't go away: Why the state stays the basic unit," *Economist*, July 31, 1999, at 8.

Why all the fuss claiming the urgent need to erode nation-state sovereignty, and the need, under the pressures of globalization, to construct new structures of international governance, supranationalism or governance without government, or the rest of the liberal internationalist agenda? If Krasner is right (which is to say that Held et al., discussed earlier, are wrong)⁵⁶⁵ and economic globalization is not hampering the nation-state, either in its ability to control affairs within or its ability, if it desires in a multilateral context, to resolve certain matters without, then why is it so critical that it be devalued in favor of public international organizations ratcheted up to the level of supranationalism and new actors, such as international NGOs? Why indeed? It seems to me that liberal internationalists, in the interests of the consolidation of international elites as such, have had a powerful drive to conflate the erosion of interdependence sovereignty with an alleged erosion of domestic and Westphalian sovereignty. If they are *conflated*, then it makes a powerful ideological argument for the decline of the sovereign nation state and the rise of supranational institutions.⁵⁶⁶ But the conflation rests on the assumption that because a state is less able than before to control crossborder flows of goods, capital, labor, and information, then that means new institutions created to control those interdependence flows must *also* thereby erode domestic and Westphalian sovereignty, the ability of a state to exercise control over political processes within a state and exclude foreigners from its domestic decisionmaking.⁵⁶⁷ But this does not follow; as Krasner says, they are *independent* aspects of sovereignty, and the drive to conflate them is a drive by international elites to find justifications, in the end, to intervene in domestic political arrangements and to solidify their own position as elites on the basis that they supply something that the world cannot get along without.

This is not to say that there are not urgent problems requiring multilateral solutions. I would in a heartbeat, for example, grant highly indebted poor country debt relief, the agenda of the Jubilee 2000 campaign. I support US ratification of the Ottawa landmines ban treaty. I regard global warming and many diverse environmental issues, for example, as serious matters; on the other hand, it seems to me that they are susceptible of multilateral, rather than liberal

⁵⁶⁵ See discussion at [].

⁵⁶⁶ I am referring especially, of course, to the views of Held et al., discussed at [].

⁵⁶⁷ I am drawing here loosely from the argument of Jack L. Goldsmith and John C. Yoo, "Seattle and Sovereignty," Wall Street Journal, December 6, 1999, opinion, at A35 ("While WTO critics in Seattle claim they are defending domestic and Westphalian sovereignty, they are really fighting the rise of international interdependence.").

internationalist or supranationalist, solutions. Multilateralism was not really on display at the environmental conferences in Kyoto and Rio de Janeiro; they were regarded by the organizers and many of the participants as warm-up exercises for the transformation of multilateral fora into genuinely liberal internationalist institutions, and training grounds for incipient international elites.⁵⁶⁸

Nor is the difference between multilateralism and liberal internationalism confined to a question of *who* participates. The *subject matter* of treaties and how far they reach into such things as cultural matters also delimit whether democratic sovereigns ensure that multilateralism remains multilateralism or is a step in the gradual transmutation into supranationalism. The ever-extending reach of the ideology of human rights and the human rights movement is the outstanding example of a movement which, having shifted its allegiance from the universal to the international, imagines that the human rights movement is just legislation at the international level of all the things it imagines to be right and good. Yet the importance of the concept of human rights, focused upon the "narrow but deep," is such that it is worth fighting for in the teeth of today's seemingly inexorable pressure to become the flexible, ad hoc ethic for whatever the new international elites desire morally and legally to justify on any given day. It becomes -- has become -- in other words, an aspect of international elite taste and aesthetic, and yet *also* its implacable religion. Human rights ideology thus gives the world the worst possible combination of what might be called "serial absolutism": A series of moral, legal, aesthetic, and political absolutes, binding as though religious doctrine, but absolutes which change serially, from day to day, tossed by every wind of doctrine and fashion that seizes the culture of international elites -- while insisting, nonetheless, that on each day they remain absolute. Each and every new day, a new absolute.⁵⁶⁹

And yet, it is a faith which I share; and hence my concern about the erosion of

B. Democracy

Moreover, if it is time to roll back the pretensions of public international organizations, to limit their ambitions to multilateralism and nothing more, then it is also time to roll back the

a vital legacy of

⁵⁶⁸ [cite to that article describing all the ways in which ngos invited into programme]

⁵⁶⁹ In a curious and disturbing way, the mutability of serially absolute doctrines becomes a source of elite social control over everybody else, because as quickly as they have absorbed the new ethic and new aesthetic absolutes -- they change, and it is entirely clear who and who does not control the machinery of change.

pretensions of the international NGO movement. If they are not needed to provide "faux" legitimacy to public international organizations (which, properly understood as merely multilateral institutions, need no more legitimacy than that), then it is time to sweep international NGOs out of the meeting halls of international organizations, shut them out of international meetings and take them off of international agendas; let them lobby from corridors, not from within the meeting rooms. No one wants to slight the good works they perform or suggest that they ought not to have the liberty to speak; may they always be willing to take to the streets to remind international bureaucrats that they are not democratic and have precious little legitimacy. But it is *also* time to write off the international NGOs' claims to have democratic legitimacy and their claims to represent the peoples of the world: let them shout in Seattle, but then go back and fight for their agendas in actual democracies, let them see their agendas written into the agendas of actual states. And of course, there are many -- Canada, Sweden, the Netherlands -- that would be willing to do so: if they can win elections on their platforms, more power to them. Let their proposals be tested in the waters of democratic systems rather than giving them a hero's welcome as harbingers of global democracy that they do not deserve. Let the Secretary General shelve his many speeches lauding international NGOs as the bearers of planetary democracy and global people's power; they are not, and his overly-fulsome praise is tainted by organizational self-interest.

The democratic deficit at the level of public international organizations, with pretensions to govern the whole planet, does not matter very much today, when ordinary people look, if they look anywhere, to sovereign states to provide democratic accountability and legitimacy. In a world in which ordinary people are told that their allegiance ought to be to supranational institutions that have constitutional authority over nation-states in a widening range of matters, however, then that democratic deficit matters a great deal. Likewise, lack of democratic accountability by international NGOs, being pressure groups responsible only to their own mandates and issues, is indeed an *admirable* state of affairs in a world in which NGOs must prevail in sovereign political systems which are democratic -- mostly majoritarian, in keeping with democracy, and sometimes not, in keeping with constitutionalism -- but in an undemocratic, managerial-bureaucratic global system, which is the *best* public international organizations can

hope for, it is much less admirable, being merely the extrusion of an international elite, pursuing both its interests *and* its ideals.

Interests are not enough to hold an elite together; ideals are the glue that binds. Across the divergencies of emergent international elites, there is a broadly held ideal of liberal internationalism, whatever their other disagreements. Even for those for whom the attraction of liberal internationalism is weak, there is the sense of the *inevitability* of globalization, and hence competition to prevail in the shaping of globalization -- but thereby confirming the overall logic of globalization, after all. Today's emergent international elites are full of ideals, fervently and sincerely held, not merely interests -- and, from the standpoint of other people, ordinary people, people who buy in the global market but do not live their lives in the jet stream, people who live on the ground and not in the sky, who live by their pay packets and not their passports, perhaps *too* full of ideals about the shape of other people's lives with whom their connection is little more than idealization.

The Portuguese writer Miguel Rorga, says Zaki Laidi, "defined the universal as the 'place without walls'"; by this, Laidi continued, Rorga "meant that the *values of universality could not be promoted or defended unless people already felt connected in a real, solid place.*"⁵⁷⁰

Globalization has the potential to undermine the commitment to the universal, by uprooting commitments to everything, including the universal; Diogenes' "citizen of the world"⁵⁷¹ runs a serious risk, in the end, a being a citizen of nothing, adrift on a

"planet without borders, inhabited by a 'new man'. But this new man is no longer the worker or the citizen but the 'plugged in' consumer who shares the common destiny of an undifferentiated humanity connected only by the Internet or the supermarket."⁵⁷²

This is not likely to happen, because resistance to such rootlessness is so deeply ingrained; the risk, instead, is the damage to "really existing" institutions, such as the democratic nation-state, as international elites, armed with their interests and ideals, discover that their social engineering

⁵⁷⁰ Alain de Benoist, "Confronting Globalization," 108 Telos 117 (Summer 1996), at 117, 133, quoting Zaki Laidi, "Qu'est-ce que la Mondialisation?" Liberation, July 1, 1996, at 6 (Laidi quoting Miguel Rorga) (emphasis added).

⁵⁷¹ "When anyone asked him where he came from, he said, 'I am a citizen of the world'." Diogenes Laertius, Life of Diogenes the Cynic [get cite from Julie Laskaris]. See also Martha Nussbaum and Joshua Cohen, eds., For Love of Country: Debating the Limits of Patriotism (Boston Beacon Press 1996), at 2.

⁵⁷² Alain de Benoist, "Confronting Globalization," 108 Telos 117 (Summer 1996), at 133.

does not unfold as planned. Meanwhile, however, among other things, the deep and abiding poverty in the world that international elites propose to eradicate is increasingly understood, as Zygmunt Bauman has movingly written, to be no longer

"romantic and politically interesting. It is now a suffering that does not entail redemption but calls for more bureaucracy and -- if heeded -- this call would only strengthen the oppressive grip of [capitalism] ... [T]his new kind of poverty, the *poverty of flawed consumers*, sees the rich and powerful not as enemies ... but as the measure of their own inadequacy. [Even the] Left is reluctant to throw in its lot with this particular form of suffering. There can be pity and compassion, but *no political identification*."⁵⁷³

Consumers and flawed consumers? Yes, that can exist at the level of whole planet, and in that sense, globalization of culture can *lessen* rather than heighten the sense of identification of rich with poor, haves with have-nots. Citizens of a planetary democracy? No, that cannot. The fact of *location* is the promise of the democratic sovereignty of the nation-state; sovereignty grounds democracy and place grounds the citizen. The localist, radical environmentalists discussed earlier in this Essay -- Jerry Mander, Edward Goldsmith, Wendell Berry, for example⁵⁷⁴ -- are not wrong in their call for a "turn to the local" as the guarantor of democracy. They are wrong, however, as to how much mobility and how large a common market "citizens" want today, because, like it or not, they are *also* "consumers." The democratic sovereignty of the large nation-states represents a historic compromise between territorial size and the numbers of people compatible with democracy and the efficiencies of the largest possible common market; some democratic nation-states are bigger and some are smaller, some are more democratic and some are less so, and size and numbers are not, of course, the only or even necessarily decisive factors in whether or how democratic a nation-state is, but it is an ineliminable factor. These advantages of constitutional democratic sovereigns are not to be thrown away lightly in pursuit of a grand planetary dream, even one that promises to base itself on human rights as the new and better ground of global legitimacy.

A strand of feminist political theory -- now neglected in the turn of much feminism to internationalism⁵⁷⁵ -- has best captured the importance of place, location, sovereignty, citizenship,

⁵⁷³ Zygmunt Bauman, "The Left as the Counter-Culture of Modernity," 70 *Telos* 81 (Winter 1986-87), at 83 (emphasis added).

⁵⁷⁴ See discussion at [].

⁵⁷⁵ [cites on feminism's turn to the international and universal, away from particular - cite to general articles, and see particularly Joan Williams and Charlotte Bunche and Karen Engle and

and nation.⁵⁷⁶ Helene Carere d'Encausse, for example, has argued that attachment to one's nation is

"an accomplishment of civilized man, not a regression. The nation-state is not a tribal construction. Elements of familialism and tribalism may reverberate and are certain features of any genealogical construction of the modern identity, but they do not dominate."⁵⁷⁷

Liberal internationalists will sourly reply that, after the wars of the Yugoslav succession, after Rwanda, after events following the hopes of 1989, the nation-state is nothing but a regression and that, as Aryeh Neier, a leading activist of the new liberal internationalism, has put it, with respect to fundamental universal categories of such things as war crimes, the world needs "one goal, one process, one result."⁵⁷⁸ Jean Bethke Elshtain is no friend of unreflective, unreconstructed sovereignty, but she captures better than liberal internationalism the complexities of local and universal, arguing that

"a chastened version of sovereignty is protective of plurality internally and cosmopolitanism externally. The possibility of agreement and alliances is always open ... Identification with a national 'imagined community' is a complex, many-sided construction. It taps particularism and universalism. Indeed, one might argue it *requires* such, being composed of normatively vital aspects of both ethnicity and universal values, organic integration and voluntarism. Human beings require concrete reference groups in order to attain individuality and identity but too complete immersion in such groups limits the boundaries of identity and of identification to fixed familial, tribal, or territorial lines."⁵⁷⁹

The democratic nation-state is, it seems to me, far better suited than the supranationalist constructs of liberal internationalism to maintain the complex balances that must be struck

francis olsen, but also to jean bethke elshtain]

⁵⁷⁶ [cite to elshtain's work on feminism of place and locale and local]

⁵⁷⁷ Helene Carere d'Encausse, "Springtime of Nations," New Republic, January 21, 1991, 17-22 [get this article].

⁵⁷⁸ Aryeh Neier, War Crimes: Brutality, Genocide, Terror, and the Struggle for Justice (NY Times Books 1998), at [i have the book in front of me and can't find this quote - i think it is in the chapter on what's wrong with amnesties - need to find]; see also, John R. Bolton, "The Global Prosecutors: Hunting War Criminals in the Name of Utopia," Foreign Affairs January/February 1999, at 157 (reviewing Neier, War Crimes, and discussing critically "one goal, one process, one result").

⁵⁷⁹ Jean Bethke Elshtain, "Rethinking Sovereignty," in Francis A. Beer and Robert Hariman, eds., Post-Realism: The Rhetorical Turn in International Relations (East Lansing MI Michigan State Univ. Press 1996), at 171, 185-186.

between these aspects of modernity. And, in any case, it has the advantage of being democratic.⁵⁸⁰

⁵⁸⁰ I mean this, too, as against the view, currently fashionable among some, that the best way to balance particularity and the universal is through structures of empire that enforce values of the universal while allowing the flowering of the particular in local cultures. The model is sometimes thought of as the Austro-Hungarian empire, which was tolerant of local culture; the classical Roman empire, too, was remarkably tolerant of local culture. I critically discuss this model briefly in Kenneth Anderson, "Illiberal Tolerance: An Essay on the Fall of Yugoslavia and the Rise of Multiculturalism in the United States," 33 *Virginia Journal of International Law* 385 (Winter 1993), at 427-431. The short answer, however, is that the empire would not be democratic and, in a world in which communications and transport permit far greater supervision of local culture than was true in the past, likely far less tolerant of local culture than the parallels with earlier multicultural empires might optimistically suggest. The long answer would require a lengthy analysis of the theories of the reactionary political theorist Carl Schmitt who, as is often not appreciated in America, is the authentic 20th century inventor of these views, a fact that ought to give their enthusiasts some pause.

Reading Carl Schmitt is not for those who grow faint of heart at reading technically demanding German political theorists; the secondary literature is a better place to begin. For a negative view of Schmitt, including the view that his theories are unsavory perhaps to the point of being better left unread because of Schmitt's association with the Nazis during the mid-1930s, see Stephen Holmes, *The Anatomy of Anti-Liberalism* (Cambridge Harvard UP 1993), at 37-60. For examples of enthusiasm for Schmitt's theories, albeit not Schmitt the man, see "Special Issue: Carl Schmitt: Enemy or Foe?" 72 *Telos* (Summer 1987); Paul Piccone and G.L. Ulmen, "E Pluribus Unum: Schmitt's 'Testament' and the Future of Europe," 83 *Telos* 3 (Spring 1990), at 3-70; G.L. Ulmen, "Schmitt and Federalism: Introduction to 'The Constitutional Theory of Federalism' [by Carl Schmitt, 1928]," 91 *Telos* 16 (Spring 1992). The point is that however despicable and opportunistic a character Schmitt was -- Bernard Henri Levy is probably correct to say that Schmitt was a reactionary, not a Nazi, and that his joining with the Nazis until they threw him out was probably simply political opportunism, not a fundamental intersection of views (see note []) -- Schmitt's vision of a federal Europe remains the most theoretically worked out account of it, even today. Americans assume that because Schmitt was seriously tainted, his ideas were therefore written out of subsequent European history. I am no enthusiast of Schmitt the person, nor of his ideas of federal Europe, but I do not think it is possible to understand the intellectual history of the European Union believing that it began with the idea of a coal union; generations of European university students imbibed Schmitt's ideas as a model of federation, and it is hard to have a European debate over union and other forms of European political association without the ghost of Schmitt in the background. As Wolfgang Palaver remarks: "Unlike in Europe, in the US Carl Schmitt remains relatively unknown. His involvement with the Nazis made him an outlaw in academic circles and prevented a proper evaluation of his work ... Yet, Schmitt's work clearly influenced political realists such as Hans Morgenthau and Henry Kissinger... Morgenthau ... even met Schmitt once ... Although afterwards Morgenthau felt he had met 'the most evil man alive', this did not prevent him from appreciating Schmitt's scholarly work." Wolfgang Palaver, "Carl Schmitt on *Nomos* and Space," 106 *Telos* 105 (Winter 1996); see also Gary Ulmen, "Schmitt as a Scapegoat," 106 *Telos* 128 (Winter 1996).

Moreover, Michael Ignatieff, with whom this Essay has taken so much exception, has recognized and gives profound expression to this sentiment favoring the democratic nation-state; and so let him have the (not quite) last word:

"It is only too apparent that cosmopolitanism is the privilege of those who can take a secure nation-state for granted. Though we have passed into a post-imperial age, we have not moved to a post-nationalist age, *and I cannot see how we will ever do so*. The cosmopolitan order of the great cities -- London, Los Angeles, New York, Paris -- depends critically on the rule-enforcing capacities of the nation-state ... In this sense, therefore, cosmopolitans like myself are not beyond the nation; and a cosmopolitan, post-nationalist spirit will always depend, in the end, on the capacity of nation-states to provide security and civility for their citizens. *In that sense alone, I am a civic nationalist, someone who believes in the necessity of nations and in the duty of citizens to defend the capacity of nations to provide the security and the rights we all need in order to live cosmopolitan lives*. At the very least, cosmopolitan disdain and astonishment at the ferocity with which people will fight to win a nation-state of their own is misplaced. They are, after all, fighting for a privilege cosmopolitans have long taken for granted."⁵⁸¹

⁵⁸¹ Michael Ignatieff, *Blood and Belonging: Journey Into the New Nationalism* (NY Farrar Straus Giroux 1994), at 13-14 (emphasis added); see also Jean Bethke Elshtain, *New Wine & Old Bottles: International Politics and Ethical Discourse* (Univ. of Notre Dame 1998) (the 1996 Hesburgh Lectures on Ethics and Public Policy, Notre Dame), at 26-39 (on the "new nationalism").

I have deliberately left out one part of this passage by Ignatieff, in which he equates ethnic war in places such as Bosnia with ethnic riots and violence in Los Angeles: "When this order breaks down, as it did during the Los Angeles riots of 1992, it becomes apparent that civilized, cosmopolitan multi-ethnic cities have as great a propensity for ethnic warfare as any Eastern European country." Michael Ignatieff, *Blood and Belonging*, at 13.

This seems wrongheaded to me. Granted, the capacity for violence, including ethnic violence, is as great or greater in cities like Los Angeles or New York as anywhere else. But the sources and roots of that violence are quite different, in a way that describing them both as "ethnic warfare" fails to capture; it seems to me an attempt to soothe Eastern European sensibilities, wounded at being thought of these days as all potentially murderous crazies on account of having ethnicities, by suggesting that the same situation obtains in the "civilized" Western industrial democracies, too.

If I may quote from my own analysis of the Yugoslav wars and their comparison to the United States, in order to frame a prescient insight of the cultural critic Louis Menand: Many US commentators on the war in Yugoslavia, conservatives in particular, shared a fundamental conviction that

"there is tribalism in the United States. They share the assumption that 'tribalism' in the United States, like Yugoslavia, has its roots in history and in the constitutive elements of civil society, and that it is, somehow, threatening to modernity. But nothing could be further from the truth. Nothing threatens modernity in the United States ... We have *roots*, to be sure, but the claim that we have roots like the *tribal* roots of the Balkans is as false -- and seductive -- as a Ralph Lauren ad. Louis Menand is therefore correct to observe:

'[W]hen the whole culture is self-consciously 'diverse', real diversity has disappeared ... People

This passage had the capacity to express a very ugly conviction, viz., that cosmopolitans -- roughly, the international elites of all varieties -- rely on the nation-state to provide them with the security necessary to allow them to *be* cosmopolitan elites, to float safely and securely in the jet stream far above the ordinary folk whose lives they propose to order and ordain. The nation-state could then be seen as the gendarmerie of the international bourgeoisie, shielding it and protecting its privileges (and, we might add, its considerable property) even while it genteelly discourses to those on the ground about the morality of human rights -- about a morality, in other words, that urges ordinary folk to emulate their betters while giving license in the name of "rights" to the cosmopolitans to float free; power without duties, authority without obligations, command without connection, commitment, presence, or investment in *place*, an ethic made for Christopher Lasch's *Revolt of the Elites*. It is rescued from that unattractive position, I am happy to say, by Ignatieff's admission that *he, too*, is a "civic nationalist"; *he, too*, has a duty as a citizen within his *own* nation-state to secure the conditions of citizenship. It is not

in the United States still want to be 'American'. It is just that *being American is now understood to mean wearing your ethnicity, religion, gender, and sexual history -- your 'differences' -- on your sleeve ... This new method of national self-definition has naturally heightened the degree of racial and cultural conflict in American life, which is why it is common, although misleading, to hear the United States spoken of as though it were a society of discrete communities, or of competing identity groups*. [Louis Menand, "Being an American: How the United States is becoming less, not more diverse," *Times Literary Supplement* (London), October 30, 1992, at 4, emphasis added.]

The claim of cultural diversity is thus little more than cover for the essential cultural homogeneity. More precisely, it is the attempt to sell new and culturally differentiated goods -- some material, some ideological, some cultural -- to a market saturated with homogeneity ... In ... the sense of Yugoslavia, the United States has no such past; cultural diversity in the United States is not really *cultural* diversity, but rather cover for demanding *political* conformity -- the political conformity of the 'diversity' agenda. The political abuses and risks are real enough, but solely as politics ... America has no premodernity and no tribes. The United States is [a case] ... in which tribalism is invented ... invented by government and bureaucracy, and recently so. Groups, group entitlements, and group power are created by the bureaucracy in the interest of creating client groups to manage and serve. It is as foolhardy a politics in the United States as it has proved to be in India or Sri Lanka. But it is not culture or civil society; it is politics and the state. More precisely, it is the state filling the empty space once occupied by civil society, and filling it with the *simulacra* of civil society, politicized forms and no content." Kenneth Anderson, "Illiberal Tolerance: An Essay on the Fall of Yugoslavia and the Rise of Multiculturalism in the United States," 33 *Virginia Journal of International Law* 385 (Winter 1993), at 425-427.

something left to the state, to someone else, to an abstraction. No, Ignatieff takes personal responsibility for the security and rights of all in the *place* that secures him those things, and it does him credit.

Not everyone wants to be cosmopolitan, however, and not to be cosmopolitan does not condemn one to an ethic of viciousness and war crimes or even, for that matter, narrow-mindedness. Patriotism, among the elites Ignatieff chooses to champion, is seen as little other than the happy face of murderous nationalism, but about that they, and he, are wrong, and wiser thinkers, such as Jean Bethke Elshtain,⁵⁸² Michael Walzer,⁵⁸³ George Orwell,⁵⁸⁴ John Lukacs,⁵⁸⁵ Jamin Raskin,⁵⁸⁶ or Rene Char, are right. Consider Char, the Surrealist poet turned Resistance fighter, writing in his diary after hiding from the SS in a little, unc cosmopolitan French village, but one in which no one gave him away, even at great risk to their lives:

⁵⁸² See, e.g., Jean Bethke Elshtain, *Public Man, Private Women: Women in Social and Political Thought* (Princeton UP 1981); Jean Bethke Elshtain, *Women and War* (NY Basic Books 1987).

⁵⁸³ See, e.g., Michael Walzer, "Spheres of Affection," in Martha Nussbaum and Joshua Cohen, *For Love of Country: Debating the Limits of Patriotism* (Boston Beacon Hill Press 1996), at 125-127; Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (NY Basic Books 1983), at 31-63; Michael Walzer, *Obligations: Essays on Disobedience, War, and Citizenship* (Cambridge Harvard UP 1970), especially at 203-228.

⁵⁸⁴ "When some of [Orwell's] old friends ... questioned his support of the war, he tried to make it clear that he was not surrendering his left-wing beliefs simply because he wanted to defend his country. He explained his view of this matter in 'My Country Right or Left' ... 'Patriotism has nothing to do with conservatism ... To be loyal both to Chamberlain's England and to the England of tomorrow might seem an impossibility, if one did not know it to be an everyday phenomenon." Michael Shelden, *Orwell: The Authorized Biography* (NY HarperCollins 1991), at 318.

⁵⁸⁵ "One of the essential differences between Hitler and Churchill was this: the former was a nationalist, the latter a patriot. (During the last one hundred years these words have become regrettably confused, perhaps especially in American usage, where we speak of a superpatriot when what we mean is a supernationalist.) ... When Dr. Johnson said that 'patriotism is the last refuge of a scoundrel', he meant nationalism, a word that did not appear in the English language until more than sixty years after his departure from the world ... patriotism is essentially defensive, while nationalism is aggressive, and ... the former is deeper rooted than the latter. Patriotism is not a substitute for a religious faith, whereas nationalism often is. It often fills the spiritual and even emotional needs of uprooted men." John Lukacs, *The Duel: 10 May-31 July 1940: The Eighty-Day Struggle Between Churchill and Hitler* (NY Ticknor and Fields 1991), at 50.

⁵⁸⁶ [cite to Jamin Raskin on patriotism]

"I held to these people by a thousand confident threads of which not one would break. I loved my kind wildly that day, well beyond sacrifice."⁵⁸⁷

Moreover, as Walzer has pointed out, cosmopolitanism too has its risks of violence, terror, and atrocity:

"The crimes of the twentieth century have been committed alternatively, as it were, by perverted patriots and perverted cosmopolitans. If fascism represents the first of these perversions, communism, in its Leninist and Maoist versions, represents the second. Isn't this repressive communism a child of universalizing enlightenment? Doesn't it teach an antinationalist ethic ...? A particularism that excludes wider loyalties invites immoral conduct, but so does a cosmopolitanism that overrides narrower loyalties. Both are dangerous."⁵⁸⁸

My fear, then, of the "muscular" liberal internationalism that Ignatieff, in his later books,⁵⁸⁹ has embraced with something like the religious fervor of the converted,⁵⁹⁰ is that he seems to think

⁵⁸⁷ Rene Char, *Leaves of Hypnos* (1943-44) (NY Grossman 1973), at no. 128. It is always important, however, to balance off the heroic mythmaking about the Resistance that pervaded postwar France with a more realistic appraisal; see, e.g., H.R. Kedward, *In Search of the Maquis: Rural Resistance in Southern France 1942-1944* (Oxford UP 1994).

⁵⁸⁸ Michael Walzer, "Spheres of Affection," in Martha Nussbaum and Joshau Cohen, eds., *For Love of Country: Debating the Limits of Patriotism* (Boston Beacon Hill 1996), at 126-127.

Russell Berman makes a similar point when, in defending against the charge that local, national, non-cosmopolitan social structures have a tendency to atrocities and violence, which a cosmopolitan sensibility tends to erase: "[W]ithout exculpating all communitarian structures, one can certainly point out some of the many instances where it was by no means populist communitarianism but liberal progressivism that led to massacres: the expansionist settlement of the American West or imperialism in Vietnam. Even where a regionalist rhetoric was occasionally deployed, as in National Socialism, the real political history was hardly one of a genuinely federalist decentralization but rather a matter of rapid concentration of power in the center. It is simply not the case that a centralization of political power -- trust the 'federal' government -- combined with expansive consumerist culture is a likely agenda to improve on the alleged backwardness of local communities." Kenneth Anderson, Russell A. Berman, Tim Luke, Paul Piccone, and Michael Taves, "The Empire Strikes Out: A Roundtable on Populist Politics," 87 *Telos* 3 (Spring 1991), at 20-21.

⁵⁸⁹ I.e., Michael Ignatieff, *The Warrior's Honor: Ethnic War and Modern Conscience* (NY Henry Holt 1997); and Michael Ignatieff, *Virtual War: Kosovo and Beyond* (NY Henry Holt 2000).

⁵⁹⁰ As a religious person, I empathize with the sentiment of conversion; when it comes to conversion in politics, however, I recommend Burke: "I don't like that part of your letter wherein you say you had the Testimonies of well doing in your Breast, whenever such motions rise again endeavour to suppress em." The young Edmund Burke to his Quaker friend Richard Shakleton, November 1, 1744. Conor Cruise O'Brien, *The Great Melody: A Thematic Biography and Commented Anthology of Edmund Burke* (1992), at 25 (spelling as in original) (Burke expressing distrust of those confident of the "inner light" and of their own virtue).

that if only a new empire could be invented -- a combination of the arms of NATO and the convictions of Human Rights Watch -- we could indeed move to a post-nationalist stage, and cosmopolitanism would no longer need the security of the nation-state. It would finally be free to seek its universal destiny or, at least, the internationalized bourgeoisie would finally be free to pursue its international interests and impose its international ideals. Can this really be thought an attractive proposal?

And finally, we might add, security of the kind necessary to cosmopolitanism is the privilege of those who can take a *democratic* nation-state for granted. Democratic sovereignty at the level of the nation-state is not without its problems. This Essay has endorsed it without setting out a full theoretical and practical defense, as well as an acknowledgment of its weaknesses. What this Essay has sought to do is attack the foundations of its principal contemporary competitors. If, at the conclusion of this attack, democratic sovereignty appears still to be standing, that for the moment is enough.⁵⁹¹

END

⁵⁹¹ This Essay is dedicated to Claudio Grossman, Aryeh Neier, and Henry Steiner, friends and mentors over many years, committed advocates and activists in the field of international NGOs and international human rights; the world is a better place thanks to them -- notwithstanding, alas, that they are likely to disagree with very large parts of this Essay. It is dedicated as well to the memory of Peter Cicchino (1960-2000), friend and colleague, someone who would have expressed his also considerable disagreements with this Essay with grace, acuity, and gently insightful humor. "The memory of the righteous is a blessing." Proverbs 10:7.