The federal system established by our Constitution preserves the sovereign status of the States in two ways. First, it reserves to them a substantial portion of the Nation's primary sovereignty, together with the dignity and essential attributes inhering in that status. ... They are not relegated to the role of mere provinces or political corporations, but retain the dignity, though not the full authority, of sovereignty.²

This ticket, offered in the most pristine interpretation of the spirit of the schmooze, is a very preliminary exploration of the nexus between claims for respecting the dignity of the individual, and those for respecting the sovereignty of the “nation state.” I want to demonstrate not only that the latter is derived from the former (a view generally accepted), but that the dignity of the individual is itself constituted by and must be embraced within the concept of national sovereignty; a more controversial suggestion.

During the closing decades of the twentieth century, two simultaneously complementary and divergent revolutions occurred in the intellectual mindset of humanities scholars of the West. In the first, the entitlement to “human rights” came to be viewed and articulated not as the general philosophical, aspirational or moral abstract claims of the members of a political community, but as the specific and enforceable legal claims of particular individuals against that political community. As with any legal claim, those rights could be enforced, if necessary, through the coercive channels and institutions of the community. Moreover, the appropriate community was that of international society constituted as a cosmopolitan legal order. Concurrently, the traditionally accepted arbiter of legal order, the “nation state,” far from continuing to be eulogized as the purveyor or guarantor of physical security came to be viewed as the primary threat to human rights. Among the arenas within which the contestation took

¹ Professor, University of Maryland School of Law. The author reserves all copyright interests and asks that if cited or otherwise made use of, it should be noted that this is a draft essay.
place were attempts to delegitimize analogies of the personality or attributes of the individual and those of the state. Where classical scholars had embodied the virtues of the state in such personal attributes as the desire for honor, courage, respect, power, and dignity, human rights proponents viewed the state as a parasitic leviathan whose tentacles existed to destroy the individual. The claim that sovereignty might embody any virtue, or that a state’s assertion of a “right to sovereignty” might be entitled to respect seemed particularly outrageous.

But the first decade of the twenty-first century has witnessed a groping back towards a Hobbesian view of the nation state. Primary concern has returned to the physical security of the citizen, and her protection from external barbarians. In this new world, there are intimations that all is not entirely well in the domain of human rights as coercively enforceable transnational legal rights, at least when the claimants of those rights are not seen as fully integrated members of the national political community. Might this return to a classical view in political philosophy also entail a revision of the moral philosophy of the relationship of the dignity of the individual and the legal conception of the sovereignty of the state? That, at heart, is the issue that I explore in this essay.

My claim is that there are reinforcing strands between and among conceptions of dignity and of sovereignty; of human rights and of the self-determined state. Rather than viewing the relevant choice in terms of whether to prefer a sovereignty-grounded security-driven nation state-centered international system, or a dignity-grounded human rights-based cosmopolitan oriented order of civil societies, I aim to show that the assumed conflict is in fact chimerical. The nation state is no more parasitic (let alone exploitative) with regard to the exercise of human rights by its citizens than the individual is secure in those rights within a cosmopolitan-generated and propagated rights-based legal order. I shall do so by exploring concepts of dignity and of sovereignty as applied both to individuals and to nation states. In the process, I want to suggest that the individual cannot meaningfully exist as an atavistic participant in a cosmopolitan legal order, however “civil” that order may be. Paradoxical, as it may seem, the full realization of the human rights of individuals require acknowledging that they derive their claim to being human from and value the respect for, pride in and the according of dignity to their distinctive claims of difference by others. These claims of distinctiveness exist as corporate assets that are most fully (although by no means exclusively) realized in the membership of the individual as the citizen of a particular nation state. For such individuals, the nation state is the standard bearer of that sense of affiliation, and provides the most fulfilled setting for obtaining the requisite recognition of respect, honor, pride and dignity.

My exploration and arguments are advanced in the following stages: First, I delineate the boundaries of the discussion. Within that framework, I next relate claims for the respect of the dignity of the individual to those of popular sovereignty as they are advanced within the Western liberal tradition. Third, I explore the intersection of popular sovereignty and that of national sovereignty. Finally, I explain why respect for individual dignity necessarily requires honoring – and indeed promoting – the
sovereignty of the state. Here, I return to the clichéd debate over “universalism” and “relativism” (but hopefully with some fresh take).

I. DIGNITY, HUMAN RIGHTS AND SOVEREIGNTY: Disjunctures in Disciplinary Discourse

One of the consequences of framing human rights claims as enforceable legal rights (a development that as I have argued elsewhere, and which Samuel Moyn exhaustively demonstrates in his recent book) did not emerge until the second-half of the 1970s, was a dramatic reshaping of arguments about the nature of human rights. The move was from a doctrine grounded in a belief about the effectiveness of persuasion to one that wholeheartedly embraced the efficacy of the coercive implementation of norms. The dignity driven conception of human rights that underpinned not only the philosophical discourse of the subject, but its prior legal framework were replaced by a sanctions oriented regime. Where concepts of “dignity” as manifested in the “freedom” and “equality” of the rights-bearer had been the dominant concerns of human rights proponents as late as the 1960s, the focus by the 1980s had shifted to the use of sanctions as a means for coercing compliance with human rights norms. Identifying the violator, rather than of the rights-bearer became the moving force in human rights discourse. Legitimating the application of coercion in that discourse often required de-emphasizing the claim to dignity that the violator otherwise may have. In an interesting quirk in the argument, opinion-shapers of the shift initially sought to align the use of the Criminal Law tool of sanctions with the philosophical grounding of human rights claims in assertions of the dignity of the rights-bearer. Thus it was originally argued that “naming and shaming” were both appropriate and effective sanctioning tools because the wrongdoer had an interest in avoiding the calumny that flowed from being held responsible for the destruction of the dignitary rights of the victim. As human rights claims increasingly became subject to judicial framing, justifications on dignitary grounds went out of the equation, and although the existence of the rights continued to be justified on plausible normative grounds, the emphasis became

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4 See Roland Burke, DECOLONIZATION AND THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS (2010). There is of course disagreement as to the identity of proper rights-bearers. I take up the discussion of the issue in Parts II, below.

5 Cf. Amartya Sen, HUMAN RIGHTS AND THE LIMITS OF LAW, 27 Cardozo L. Rev. 2913, 2925 (2006) (“the fact that monitoring of violations of human rights and the procedure of ”naming and shaming“ can be so effective (at least, in putting the violators on the defensive) is some indication of the reach of public reasoning when information becomes available and ethical arguments are allowed rather than suppressed.”)
one of pragmatic effectiveness. Deterrence and retribution, the standard justifications of coercive law enforcement supplanted appeals to norms. Legal rules and their administrative structures in turn became the primary vehicles for the discourse of human rights, even among moral and political philosophers. This up-ended traditional underpinnings of human rights claims which were based on the idea of the person as ultimately not reducible to her functions as means for the uses of others. The person had an inherent dignity that at core could not be subverted on purely exigent efficiency grounds.

The idea of human rights has been attributed to numerous societies and civilizations, and the term, in its particulars, clearly embody quite different meanings for these societies at their varied times. But for a term to be deployed so readily to envelope the many societies that purportedly embraced it, the concept must embody some relational conceptions that can travel – however transformed – across time and space. We can thus speak of “the good life,” “happiness,” “justice” (or, for that matter “rule of law”) as ultimate ends even though in the realization of their particulars, each one of them will be framed substantially differently across time and space. And so in one society, the “good life” may well flow from the abundance of wealth and material resources, while in another it may come from longevity of life or possession of wisdom. We can conveniently (and perhaps correctly) obscure these particulars and realities by asserting that a society prices or promotes “the good life,” or “good health.” In-so-doing, we privilege and substitute a generic concept for the myriad of conceptions in which the concept, if it is to be consequential, must be conceived. In the case of human rights, the travel across time and space has been possible only because, as

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6 The reasons for the change are not difficult to fathom, but their discussion here would detract from the thrust of this paper. I explore some of them in a contribution to a forthcoming collection of essays.


7 See e.g. Seyla Benhabib, Another Cosmopolitanism, Robert Post (ed.) (2006).

8 For example, some have located the foundations of human rights in the pre-classical Greece Persian Empire of Cyrus the Great. Others have situated the founding moment in the philosophy and practices of Classical Greece. More recently, it has been situated in the European middle ages of the Italian renaissance period; and of course in the European enlightenment thinking of the second-half of the eighteenth century. Other possible creational moments can just as easily be assigned to the post-1848 national revolutions in Europe, the years between World War I and World War II in Europe, and of course the post-World War II arrangements that accompanied the creation of the United Nations System. Again, I shall elide discussion of these competing historical arguments, but it is not accidental that whatever period one chooses, the claim for human rights as a historical matter seems bound up with war and revolution, particularly in Europe. I shall take up the significance of this observation in Parts III and IV below.
Moyn suggests, it is as much the product of the imagination (what he calls a utopian vision), as it is of a concrete reality. “Vision” may be good – perhaps essential – in the purely philosophical sphere, but when the power of the state, acting through the coercive force of law enforcement is employed to realize the asserted objective, academic abstractions alone should not suffice.

Prior to the second-half of the twentieth century, human rights discourse was primarily the sphere of philosophers (and the occasional social actor) to undertake. The ideas were abstract, and as long they were the preserve of those with minimal “hard” power, it remained highly academic. It might be trotted out as justification for a failed revolution, especially if lots of lives were lost and much property destroyed, but it was never seriously taken as the basis for practical governance. It justified violence in the name of the interests of the freedom and equality of the members of one collective vis-à-vis others (so-called self-determination),. By the 1970s, for a variety of reasons, we encounter the transformation of human rights from being viewed as a tool available for the collective assertion of shared legal rights and norms within a national society against the rest of the world, to the view that they are primarily (if not exclusively) intended to regulate the relationship of the individual vis-à-vis other members of the national society. Confrontation thus replaced “solidarity” as the appropriate relationship within the national polity. Under this framework, whatever succor used to be provided by national solidarity was now to be furnished by cosmopolitan civil society which used its access to the international system to assure that national governments towed the line. This framework had at least one significant advantage over what had preceded. Philosophical norms could be more readily translated into uniform legal rules.

II. OF INDIVIDUAL DIGNITY AND POPULAR SOVEREIGNTY: On The Western Liberal Tradition

Although significantly contested today, the idea of human rights as the collectivized object of national solidarity is in fact Western in origin. By the second half of the seventeenth century, Christianity had failed as the earthly successor to the Roman Empire. The legal institutions it had developed as a temporal power were being contested. Claims of “natural law” were being transcended by claims of “natural rights.” Into this setting emerged a new class of secularists. They rejected claims of some divine origins of society or its governance. Society, they argued, was no more than the means by which human beings sought to associate with each other and to organize their lives. The governance of a society was therefore a human creation which human beings are able to and continuously do modify to meet human needs. Human beings thus create laws to govern their society, and these laws are dictated by human needs, no divine inspiration or some abstract concept of what is just or what is right. These secularists who had gained ascendancy as
the primary purveyors of western intellectual thought by the close of eighteenth century, we’ve come to call “liberals.”

As a practical matter, liberalism’s conceptions of human rights were developed in concrete and quite specific environments. The North American colonies of England, waging not only a war for independence, but attempting the creation of new societies outside of the European terrains drew much of their inspiration from the then emerging liberal thoughts. Concurrently, a revolutionary atmosphere in France that sought to do away with the ossified ancien régime of the French monarchy was greatly influenced by liberal philosophers that included within its ranks some very prominent French thinkers. Two aspects of liberal thought were central to the development of human rights in both societies. First, because states were constituted by persons, rather than the other way around, such persons were entitled to exercise certain basic or innate rights. At core, these rights were the rights of citizens (or, perhaps more accurately, of persons within the territorial limits of the state), and could not be arbitrarily abridged by the state. Broadly defined, these were rights of freedom, and of equal treatment by the state. (And as I shall show shortly, explicit in the French Declaration, but also implicit in the American experiments was the right of “fraternity” or of political association). Secondly, to guarantee that the state did not engage in arbitrary treatment, these rights were best spelled out in written documents, so that all might know what they are. Not surprisingly, different societies and different states might provide for quite different rights. What legitimated the right was not some notion of “natural law” or “natural right,” but that the members of the state had crafted them and posted them as notices for all to be aware of. Similarly, there was nothing inherently “natural” or “universal” about the enforcement of the rights. Much tends to be made about the “unalienable rights” language in the American Declaration of Independence, and the caption of the “Declaration of the Rights of Man and Citizen” given to the French revolutionary document, but nothing in the practices of both suggests an extraterritorial universalist claim for the reach of these rights. Indeed, such a claim would have undermined the philosophical grounding of those claims in the ideology of liberalism. In any event, for almost the next two centuries, “human rights,” like any other set of legal claims were articulated and enforced by nation states under their territorial laws, except to the extent that they, through consent, incorporated international or transnational law into their domestic legal orders.

At the core of the justification for the associational right of persons to construct and deconstruct societies into states, to overthrow legal orders or monarchies, and to create and choose among rights had to be some conception of the idea of the person. Here, liberalism could not break away (as it could not elsewhere) entirely from a millennium of European history, and of Christianity, both of which had much of their philosophical roots in the Stoic philosophers of Classical Greece. Essentially embracing a limited conception of Natural Rights theories, liberalism endowed the individual with some of the attributes hitherto reserved to gods or to their divine representatives on Earth, kings and priests. The individual possessed free will, and had inherent authority to convey as...
little or as much of her rights as she chose to the collective. The state, as the embodiment of the collective could act only with the consent of the individual. Moreover, to assure that the collective acted in compliance with the terms of its creation and that it did not act ultra vires and withdraw from some or all of its members reserved or innate rights, a constitution that spelled out the powers of the collective was deemed necessary. It was thus said that “sovereignty” belonged to the “people,” who ceded as much as little of it to the state.

Under liberalism, then, dignity was bound up in the idea of sovereignty. The person was sovereign in two ways. First, she possessed attributes that could not be stripped by other individuals (or by the state) without her consent. Second, the authority of the state existed solely by virtue of the consent of the individual. The rights of the individual thus provided the core of the legitimacy of the state. For this very reason, when the state acted on behalf of its members, that action was entitled to deference because the action was seen as suffused with the majesty of the collective will. State sovereignty and the protective cuckoo of sovereign immunity were no longer explained as the emanations of the divinity of god’s representative on Earth, but of the aggregation of the dignitary values of its members. According respect to the state was thus an acknowledgement that it was the embodiment of the rights of its citizens.

III. HUMAN RIGHTS, SOVEREIGNTY AND THE STATE: The Post-World War II Order

Liberalism’s legal framework had replaced the jurisprudence of Natural Law with that of Legal Positivism. Laws were legitimate not because they were mandated by divine justice or “reason” (however derived), but simply because they were duly promulgated by an authorized state. As such, laws could only legitimately regulate persons and things that were subject to the authority of the promulgator. The International Human rights framework constructed in the wake of World War II was grounded squarely on a jurisprudence of legal positivism. The Universal Declaration of Human Rights enumerated the governing norms; but it was explicit that the norms – directed as they were to individuals, states and civil organizations, alike – were not legal undertakings. The legal obligations in International Human rights are found in the treaties or covenants consented to by the member states of the United Nations system. With one exception (The Convention on the rights of the Child which was not adopted until 1990), the treaties are explicit that their scope is the territorial jurisdiction of the signatory state. Moreover, each of the treaties (including, one would think rather improbably) the Genocide Convention left enforcement primarily to the judicial or administrative mechanisms of the signatory state. To the extent the international system had any

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9 I have elaborated on this argument elsewhere. See Chibundu supra N. 3.
10 States of course are free to apply their laws to their nationals, even when such nationals act outside of the boundaries of the state. The idea is implicit in liberalism’s contractarian view of the relationship of the individual and the collective. Nothing in international law alters that relationship.
role in the enforcement process, this was allowed only in proceedings against states by other states, and under highly restricted conditions. In short, none of the coercive mechanisms that have characterized and come to dominate human rights discourse within the last generation was provided for (or, for that matter, arguably contemplated) by the foundational documents of the International Human Rights regime.

The beginnings of the change in approaches to International Human Rights enforcement may be dated to the second-half of the 1970s. They accelerated in the 1990s, and may be said to have reached their apogee by 2000. The reasons for those changes were straightforward and reinforcing. In the first place, whatever may have been the expectations of the Western Liberals who had spearheaded the crafting of the International Human Rights documents, they were initially more skillfully employed by non-Westerners – especially the members of the Non-Aligned Movement – to criticize colonialism, and to agitate for decolonization under the banner of “the self-determination of peoples.” ¹¹ The process of decolonization, including the waging of the various wars in South-East Asia -- by the Western powers, had more or less run its course by 1975; enabling the governments of and interest groups of the West to return to the human rights debate without being subjected to facially plausible claims of hypocrisy. This was especially true in the United States where the rights of Russian Jews to unrestricted emigration from the former Soviet Union became a battle cry of the Cold War. Secondly, by the 1970s, whatever initial hopes, expectations or patience Western liberals may have entertained for the newly emerging countries of the “Third World” had dissipated. Rather than being democratic protectors of human rights within their national territories, most of these former colonies of West European powers had turned into one party dictatorships that often suppressed political opposition or silenced the media through repressive measures that violated the norms of International Human Rights. The Western non-governmental organizations that were emerging to promote human rights often found themselves in confrontation with these “petty” dictators. Thirdly, the second-half of the 1960s was, in the internal politics of Western societies, the most turbulent since before World War II. In the United States, conflicts over the civil rights of blacks and the rights of women had become mainstays of the politics of the society. In Europe, 1968 had been a particularly tumultuous year, as students, labor unions and other marginalized groups within those societies clamored for greater participation in the body politic. Two consequences of these conflicts were instrumental in transforming the International Human Rights discourse. One of them was that the apparent successes of the marginalized groups demonstrated the continuing vitality of equality as a mobilizing creed in Western societies. The other was the role played by judges in obtaining the sought-for equality. That role was particularly evident in civil rights litigation in the United States.

¹¹ For a detailed account of this argument, see Burke, supra N. 4.
Thus, as the 1970s drew to a close, non-governmental organizations in the United States employing arguments grounded in the equality of persons went before Congress and the Courts to argue that International Human Rights norms provided an enforceable legal mechanism for correcting the violations of human rights abroad. The abuse of executive power disclosed by the Watergate investigations and the ascendancy to office as president of Mr. Jimmy Carter created fertile soil for the reception of these arguments. With the passage of the Jackson-Vanik Amendment, the United States Congress put itself on record as willing to employ claimed violations of International Human Rights as the basis for the country’s foreign policy. The creation under the Carter Administration of a Human Rights Division within the State Department gave executive branch imprimatur to a more activist position on the enforcement of International Human Rights. But it was the courts that most radically altered the enforcement understanding.

The core of the doctrine was formulated in Filartiga v. Pena Irala. In a civil suit brought under the grant of jurisdiction to a Federal District Court to adjudicate claims by aliens for violation of international law (the “Alien tort Statute”), and in which the Plaintiff, a Paraguayan, sought to collect money damages from a Paraguayan Government official for alleged torture that occurred in Paraguay, the United States Court of Appeals for the Second Circuit held that the case could be adjudicated in the United States because torture was a violation of International Human Rights Law. In the process, the Court brushed aside two otherwise seemingly significant barriers to its holding. On the substantive question of the meaning of international law (or “law of nations”) covered by the jurisdictional grant, the Court simply pointed out – in common law fashion – that there is no disputing that torture is a violation of international law, much the same way that piracy was at the time of the enactment of the Alien Tort Statute. On the issue of Congress’ authority under international law to grant jurisdiction to U.S. courts to adjudicate putatively unlawful conduct that occurred entirely outside of the United States between and among foreigners and having no obvious effect or connection to the United States (other than the presence of the parties after the fact in the United States), the Court invoked the doctrine of “universal jurisdiction” which permits countries to criminalize such activities as piracy and the slave trade regardless of where they took place.

Armed with these pronouncements, proponents of International Human Rights in the United States litigating on behalf of foreign plaintiffs claiming damages for injuries that they allegedly sustained from the unlawful activities of government officials and/or their corporate collaborators sought and obtained broader and broader decisions on the reach of the power of United States courts to

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12 Analogs of the Jackson-Vanik Amendment exist in virtually every trade arrangement that the United States has with economically weak countries, such as the various tariff-free preferential arrangements with African, Caribbean Central and South American countries or group of countries. The primary movers for the insertion of these provisions have been the Labor Unions and their Congressional friends, lending credence to the suggestion that they have essential become another trade protection measure. Congress was also to resort to International Human Rights arguments in the 1990s and first decade of the twenty-first century to enact the “Torture Victims Protection Act,” to create “antiterrorism” waivers from the Foreign Sovereign Immunities Act, and to justify the imposition of sanctions on disfavored (or so-called “pariah”/“rogue”) states.

13 630 F.2d 878 (2d Cir. 1980).
remedy those injuries. Allegations of “genocide,” “mass killings,” “rape,” “forced labor,” “false arrest,” “kidnapping,” “theft,” “unlawful confiscation of property,” “extortion,” “environmental degradation” and “cultural genocide” (and others) have been entertained as plausible grounds for litigation in United States courts. In the context of the subject of this essay, two significant structural limitations that are built into the capacity of United States courts in the adjudication of these claims must be pointed out. In the first place, the “private attorney general” role being played by the foreign plaintiffs cannot extend to the criminal prosecution of the wrongdoer. So, whatever socio-cultural reasons or lessons that are attached to the bifurcation between criminal guilt and civil liability will have to be taken into account in mulling the utility of the enforcement of International Human Rights norms in United States courts. Secondly, doctrines of official immunity, particularly that of the “Foreign Sovereign Immunities Act” has tended to insulate the state itself (and not infrequently its head of state) from being held directly liable. In some ways, this is a rather odd outcome given the traditional view that international law regulates the behavior of the state, and that the state is accountable for the wrongful act of its officials. These limitations on U.S. Courts, however, do not necessarily apply to West European courts.

For much of the 1980s, The Filartiga decision appeared as just another illustration of the tendency of courts in the United States to assert “exorbitant” jurisdiction. Events in Europe in the 1990s, and the emergence of a new international legal order rendered the U.S. jurisdictional claims, if anything, quite modest. The collapse of Communism, symbolized in the “fall” of the “Berlin Wall,” removed the core threat that had loomed large over Western Europe since the end of World War II. It also precipitated tribal was that Europe had not experienced since World War I. “Democracy,” “human rights,” “the rule of law” – especially of “international law” – seemed to offer a way out, at least for proponents of an international civil society. Prodded by such “civil society” activists, and spearheaded by the smaller countries, the European judiciary, through its “investigating magistrates” found in International Human Rights Law and the doctrine of “universal jurisdiction” a means for calling violators and dictators to account for their activities within and without Europe. Here, Criminal Law, rather than Civil Litigation provided the thrust. Shorn of concern for its own physical safety, Europe once more engaged in its “la mission civilisatrice.” But this was a Europe that lacked much of the self-confidence of leadership. While it possessed the material resources it was, for historical reasons, less surefooted about the moral underpinnings of the new crusade. For that and for the necessary backbone, it looked to the United States. Its legal rules, however, were sufficiently capacious that less historically-shackled American lawyers could seek to use those rules and their institutional supports to press claims that could not be prosecuted in United States courts. And so during the 1990s, and the first-half of the first decade of the twenty-first century, Europe became an active forum for the articulation of a cosmopolitan perspective on the solidarity values of human rights law enforcement. Borrowing from its own experience, it pushed hard for the creation and empowerment of supranational adjudicatory bodies whose decisions would be binding and enforceable. And these efforts culminated in the coming into being of the International Criminal Court under the Rome Treaty.
IV. SOVEREIGNTY AS DIGNITY: Why It Matters

Given continuing controversies over the means for implementing International Human Rights laws (most recently brought to the fore in public attention by an ICC warrant for the arrest of the sitting President of Sudan), an accounting of the costs and benefits would seem obvious. Measuring returns in this area of course is no simple matter. It may well be that a single redeemed soul is worth the expenditure of all the treasures on Earth, but Western civilization – at least in its modern liberal incarnation – gauges value by other means. The efficacy of enforcement may of course be judged by the extent to which the measures have succeeded in paring down incidents of human rights violations; but here, one encounters the realities of a multi-factored world in which there is not only difficulty in establishing causal linkages, but even in making meaningful correlations. What can be said with some degree of certainty is that success, if at all, has been highly equivocal. For many human rights proponents, however, the sought-for goal has been framed less in terms of deterrence than of retribution. The battle cry has been to do away with “impunity”; i.e. the unacceptability of letting the guilty go free. The apparent assumption is that satisfaction of this yearning for simple vengeance is owed to the cosmopolitan order (or “international community”), since there is never any attempt to locate sensibilities about impunity in any particular environment, including that in which the wrongdoer perpetrated his wrongdoings. Entirely ignored in this demand is any evaluation of the social cost that may accrue to the political community whose leadership is being called to account under the doctrine of doing away with impunity. Ignoring or wishing away those costs may have made sense in the 1990s, but recent events render such blissful indifference no longer tenable.

One can adduce several reasons for the changed environment. These might include, for example, that costs can be deferred only for so long, or that the policies of the west in the war against terrorism have laid bare contradictions that the rhetoric of human rights had long hidden, or that the monetary costs of the war, along with poor fiscal management has undermined much of the economic edifice that legitimated neoliberalism and held up the authority of the West to instruct the rest of the World not only on economics, but on politics and especially human rights. It is indisputable, however, that the state, far from receding to the background, has reemerged as the linchpin of international society, and that liberal democracies in the West are encouraging and funding that reemergence. Nor, can one overlook the fact that China, a country many of whose political institutions do not fit into the prescribed Western model, but whose economic performance receives acclaim from within and without the West, increasingly is being viewed as providing an alternative framework for national development and international cooperation. However sound such beliefs or analyses may appear to outsiders, there’s no disputing the fact that the so-called “third world” states have begun to show the sort of truculence to following the West’s lead in
human rights matters that had become more or less abandoned in the 1990s have now reasserted themselves. The virtually unanimous opposition of African countries to the execution of the I.C.C. warrant for the arrest of President al-Bashir of Sudan is a telling indicator of a more pervasive problem. For, one of the real costs of a coercive approach to the enforcement of human rights, is that having a country’s leader in chains – justifiably so or otherwise – is a humiliation suffered not by the leader alone, but by the larger society. That cost may have compensating benefits, or it may be that it can be imposed through might; but the cost is nonetheless there, and it must be taken account of in the balance of arguments.

One way of doing so in the past was simply to pooh-pooh the idea that the concept of sovereignty embodied the idea of dignity, and that it mattered to states – or, more accurately, their citizens – whether their sovereignty was being trampled upon. For those of us in the West, such a claim was preposterous because it seemed so out of tune with the modernity of a cosmopolitan and “globalizing” world order as to be positively ancient. But the return of conflicts over religion, our increasing exposure to the continuing force of such other archaic notions as “martyrdom” and national pride, not only at sporting events, but over slurs and depictions remind us that even ancient virtues may have continuing validity for many in a post-industrial world. In any event, it is no longer debatable, whether in the promotion of human rights, the only sensibilities worth taking account of are those of the opinion-makers in the West. If the wars in Afghanistan, the Balkans and Iraq (not to speak of the remote ones in Africa), and their substantial costs both to those societies and the West teach much of lasting significance, that surely includes the reality of genuine complexities in attempts to define (let alone obtain) clear-cut international human rights objectives within an environment of competing civil and religious strife. The so-called “responsibility to protect” which seemed to have been universally accepted in 2000 at the apogee of the west’s domination of international military, economic and political power, has turned out to be a mirage easy to invoke for the rhetorical slap down of such pariahs as the military junta in Myanmar or the old man of Harare, but apparently irrelevant when protesters are being violently crushed in Thailand or Kyrgyzstan. But these of course are not new. They are in fact replays of the politics of the Cold War, except that no one bothered then to pretend that they were driven by such pure motives as altruism.

As we enter the second decade of the twenty-first century, the following two conditions would seem to summarize where we are. First, we are more or less at the end of those circumstances that brought about the activist enforcement phase of International Human Rights Laws. The phase of the neoliberal world view as the exclusive arbiter of international is more or less at an end. Having failed to demonstrate that it alone possesses the truth (or, to paraphrase its heraldry, that its triumph over communism represented “the end of history”), it will have to return to competing with other ideologies for ordering the world’s future. Secondly, the shift of emphasis in International Human Rights Law (brought about in no small part by neoliberal scholars and activists) from a vision
of those rights as the group claims of the dependent and the weak made on their behalf by the state, to their recognition as specific individual legal rights to be asserted against the government of the state – strong or weak -- is here to stay. The question of the future is the extent to which the second can thrive in the environment of the first. The neoliberal enforcement approach in the 1990s, it can fairly be said, was not simply universalistic, but paternalistic as well. The West provided the adjudicatory tribunals because its institutions were seen as both able and willing to roll up its sleeves and do the required drudgework. Even in those instances where it was considered important that local faces be integrated into the process (as in the “special” courts for Sierra Leone and Cambodia, the dispositive roles were essentially assigned to representatives of the West. Unless human rights proponents are willing to overcome this predisposition, and cogently entertain the possibility that non-Westerners may genuinely be interested in viewing human rights claims through their own cultural lenses, interpreting them in the dialects of their own legal cultures, and enforcing them through their own institutions, however underdeveloped and seemingly ineffective, there is the risk that whatever gains may have been obtained through coercive enforcement may be abandoned. The Third World is filled with acres of abandoned and decaying monuments that were initially paid for and run by the West. The clear lesson of those now useless edifices is that an idea, however great or grand the conception, withers unless the “natives” make it their own. The current challenge for proponents of the universality of human rights in the West is how to retreat from a conception of the idea as one that requires philosophical persuasion rather than judicial coercion. That is a lot to ask of one used to exercising power and who continues to possess significant if not overwhelming resource advantages over the rest. But in some ways, Mr. Soros reported gift of a hundred million dollars to Human rights Watch for human rights work in the non-Western world has thrown down the gauntlet; and how Human rights Watch responds to the challenge will be an early barometer of the interactions between and among dignity, sovereignty and human rights in the post-neoliberal world order.