# The Specter of Violence that Haunts the UDHR: The Turn to Ethics and Expertise

Vasuki Nesiah

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## I. INTRODUCTION

The ratification of the Genocide Convention just a day before the ratification of the Universal Declaration of Human Rights (UDHR) is a potent reminder of how intimately the backdrop of war and mass atrocity haunts the UDHR and the mobilization of the human rights framework in post-conflict situations. This paper focuses on human rights in the shadow of war by examining international interventions advancing rights through peace building and democracy promotion initiatives in post-conflict regimes.[1] From Timor to Cambodia, Afghanistan to Liberia, Sierra Leone to Nepal, we see the role of the international community in 'nation building' and peace processes, advancing rule of law and democracy promotion programs. This paper does not examine the impact of the human rights regime on culture; rather, it examines the 'culture'[2] of human rights inter-ventions themselves and, in particular, interventions in post-war contexts. I suggest that the backdrop of genocide, war, or other

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1. The specter of violence plays a key role in many areas of human rights. For instance, contemporary discourse on Islam and women's rights in the human rights literature often foregrounds the threat of violence in ways that have shaped the trajectory of human rights interventions on that issue. However, this paper is confined to a claim about the constitutive role of violence in defining rights promotion in the post-conflict world. It does not discuss the role of violence in relation to human rights more generally.

2. I use "culture" to refer to a reading of certain symptomatic elements (in particular, the role of expertise and the role of ethics) in the assemblage of rules, norms, and practices that constitute this sub-field of human rights work.

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forms of mass violence have been invoked and interpolated to develop a particular culture, or style of interventions regarding rights and democracy promotion, that is characterized by two related turns—the turn to ethics and the turn to expertise. The specter of mass violence functions to legitimate and shape this style of intervention at the expense of a closer interrogation of what is authorized in the name of rights in the shadow of war.

The rest of this paper proceeds by first describing the work done by the representation of the violence of conflict and post-conflict societies. The following sections describe the human rights and democracy promotion paradigm and flesh out the turn to expertise on the one hand, and ethics on the other. I wrap up with some concluding thoughts on the UDHR and the specter of mass violence that haunts rights within the history of international intervention.

Illustrative references to the representation of violence in Sri Lanka and Sri Lanka's experience with the post-conflict industry emerge as a thread running through this paper. From 2002 to 2006 a peace process facilitated by the Norwegian government produced a ceasefire that interrupted the war between the Government of Sri Lanka and the militant group, the Liberation Tigers of Tamil Eelam. That period saw the country flooded by human rights and democracy promotion initiatives that are key dimensions of the post-conflict interventions. While this paper does not conduct a comprehensive case study of Sri Lanka, human rights and democracy promotion initiatives in the country recur as reference points in different sections of this paper.

## II. THE WORK OF VIOLENCE IN HAUNTING HUMAN RIGHTS DISCOURSE

Histories of the UDHR inevitably have as a foreground the historical setting in which it emerged. In the wake of World War Two, the declaration was an affirmation of humanism in the wake of mass murder on an unprecedented scale. Mass violence defines the threat to which human rights and democracy promotion interventions respond and also creates the normative and practical urgency that propels these interventions.

For many, violence, human rights violations on the body, has a rapacious capacity to devour "the political." Violence is a thing apart, an uncontrolled and uncontrollable phenomenon that destroys the possibility of law, reason, and the realm of the political. Mahmud

Mamdani argues that the modern political sensibility has a two-pronged view of violence. On the one hand, there is the violence of the French and American revolutions or of the World Wars that emerges as rational violence, violence that can be celebrated as the sacrifice of life for a higher cause.[3] Here violence is seen as the engine of history, embedded into the story of progress.

On the other hand, there is another dominant story about violence and this is the story of violence that is beyond explanation. The internecine conflicts in Africa and South Asia are invariably placed in this category.[4] The Sri Lankan author Michael Ondaatje describes the war in Sri Lanka, the very real history of violence of the insurgency against which his novel *Anil's Ghost* is set, as something that can be likened to the random brutality of natural catastrophes: "Pompeii. Laetoli. Hiroshima. Vesuvius. Tectonic slips and brutal human violence provided random time-capsules of unhistorical lives."[5] This violence defies a progress narrative and cannot be situated in a march to higher order principles that will redeem, rather than condemn, the brutality of conflict. Rather, a country scarred by this kind of 'unthinkable' violence is a failed state that has interrupted history's march; it is a political *terra nullius* that requires external intervention to restore a model of governance that allows its people to march forward into history rather than be weighed down by primordial conflicts. This is the backdrop for the dominant terrain of human rights work in post-conflict contexts. This is the threat against which human rights and democracy promotion is erecting its armor.

The production of a country such as Sri Lanka as a conflict zone on the international radar screen has many different markers. Most obviously, today it enters the pages of the global media primarily through the narrative of war—stories of suicide bombs and aerial attacks, militant terrorists and war-mongering politicians. In academia, Sri Lanka became, at various points, the paradigmatic reference point for the anthropology of violence,[6] the sociology of terrorism,[7] or political science case studies of conflict resolution and

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3. Mahmood Mamdani, *Making Sense of Political Violence in Postcolonial Africa*, IDENTITY, CULTURE AND POL., Dec. 2002, at 1, 5.

4. *Id.* at 2.

5. MICHAEL ONDAATJE, ANIL'S GHOST 55 (2001).

6. *See* Pradeep Jeganathan, *'Violence' as an Analytical Problem: Sri Lankanist Anthropology After July, '83*, NĒTHRĀ Q. J., July–Sept. 1998, at 9.

7. Thus the study of Sri Lanka helps to credentialize a range of 'noted terrorism experts'

its failures.[8]   In the corridors of the U.N., Sri Lanka's past prominence in policy debates regarding human development indices gave way to its reemergence in new discussions regarding humanitarian emergencies, war crimes, and the responsibility to protect. Concomitantly, Sri Lanka was descended on as a field operation for conflict-resolution focused NGOs and International NGOs (INGOs). International donors began to channel their Sri Lanka funds to activities that fall within a peace-building rubric and development projects were launched under the auspices of mantras to 'conflict sensitivity.'   Moreover, struggles over justice and citizenship get channeled into the terrain of humanitarianism and human rights as these domains garner increasing traction as buttressing efforts to raise the barricades against the onslaught of violence.  Across these many spheres, Sri Lanka gets interpolated through the echo of battle noise: a conflict zone has been produced.

As violence, or the threat of violence, becomes the meta-narrative through which Sri Lanka becomes 'known,' the work of human rights takes a form that reflects the long reach of the catastrophic violence that birthed the UDHR.  That haunting of the UDHR by the ghosts of genocide is recreated every time the UDHR's doctrinal, normative, and institutional progeny are invoked in Sri Lanka, Afghanistan, Sierra Leone, Timor Leste, and indeed in the numerous contexts where violence emerges as the lens through which that country gains visibility on the international radar screen.  These are the contexts where the international community says that in this bloody battleground, at this tragic moment, the human rights framework is urgent, necessary, and our only lifeline.

In haunting human rights in this way, I argue that violence performs a ground clearing operation that sanctions a particular culture of intervention.  Violence produces contexts of conflict, heaving, seething grounds of incendiary clashes where violence over determines any intelligible ideological claims or political reference

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such as Rohan Gunaratna, Head of the International Center for Political Violence and Terrorism Research in Singapore, Peter Chalk, Senior Political Scientist of the RAND Corporation in the United States, and Gérard Chaliand, former Director of the European Center for the Study of Conflicts in France.

8. *See, e.g.*, CREATING PEACE IN SRI LANKA: CIVIL WAR AND RECONCILIATION (Robert I. Rotberg ed., 1999); Bidisha Biswas, *The Challenges of Conflict Management: A Case Study of Sri Lanka*, 8 CIVIL WARS 46 (2006).

points. In other words, these are ideological *terra nullius* where international intervention is not political in any sense that violates sovereignty or democratic self-determination. Rather, just as the 16th and 17th century international law doctrine of *terra nullius* opened land peopled only by the 'savages' of yesterday for colonial occupation by European powers, the land occupied by violence was free for international intervention. Intervention itself is then rendered apolitical and, in fact, like the European occupations of the previous centuries, brings regions mired in the still waters of their hellish present into historical time and the promise of progress. The legitimacy of intervention is premised on the intertwined ethics and pragmatics that are intervention's co-travelers; just as colonialism would bring land classified as *terra nullius* into productive use recognized by European states, international intervention would draw countries overrun with violence into the community of nations so that they too can conjoin their futures with a universal progress narrative. Such countries are not just failed states,[9] but places where there has been a failure of norms and standards for the respect of rights and the rule of law. This underscores the urgency to act but it also defines the task—namely to institutionalize rescue politics in these tumultuous environments. This is why human rights and democracy promotion are not about ideology but about humanitarianism. Just as the Red Cross sees itself as offering politically neutral humanitarian aid, these international interventions to promote rights, democracy, and the rule of law are normative security blankets that help protect and heal us from the ravages of mass violence. The most interesting and important dimension of this picture, for the purpose of this paper, is less the moral condemnation of the racist or imperial hubris in this narrative, but more a tracking of how representation that traffics in violence profits the production of legitimacy for intervention.

## III. THE TURN TO EXPERTISE AND ETHICS

What is the nature of the international intervention that enters the post-conflict environment to fight violence? I would argue that there are two dimensions to interventions that are empowered by the backdrop of violence that should be highlighted. The first is the turn

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9. "Failed States" is a term of art in the good governance and development literature that has very specific indicators regarding economic performance and administrative functions. It is used more loosely in the wider conflict/post-conflict literature to refer to states mired in long term conflict; this paper refers to the latter, more colloquial usage.

to expertise, and the second is the turn to ethics.  If the turn to ethics gets manifested in efforts to promote a human rights culture, the turn to expertise gets manifested in the professionalization of human rights.  The next few pages elaborate on both of these dynamics.

## A. *Expertise: The Corporatization of Politics*

In the context of mass violence, much of the focus of international intervention has been on developing expertise in the science of transition that would engender a political order that respects rights and promotes democracy.  The project is seen as a pragmatic and non-political effort to fight the turbulence of violent conflict through the promise of a democratic order that is a prequel to democratic politics.  As one commentator puts it, "[t]he idea of transitional governance may be seen as a pragmatic stepping-stone in a democracy-building process."[10]  Thus the field itself has developed best practices, good governance models, and methodologies for implementation.[11]  It has indicia of success that establish objective benchmarks and target criteria.[12]  Good governance in relation to the body politic is modeled on the domain of assessment that is the habitus of corporate governance.[13]

Another dimension of this trajectory is that democracy promotion becomes a matter pertaining to the science of politics rather than politics itself; Bhuta situates this as a deeply modern "machine

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10. Naazneen H. Barma, *Brokered Democracy-Building: Developing Democracy Through Transitional Governance in Cambodia, East Timor and Afghanistan*, 8 INT'L J. ON MULTICULTURAL SOCIETIES 127, 127, 139 (2006), *available at* http://www.unesco.org/shs/ijms/vol8/issue2/art1 (last visited Apr. 1, 2009).

11. *See* U.N. Dev. Programme, *Governance for Sustainable Human Development*, at 2–3 (1997), *available at* http://www.pogar.org/publications/other/undp/governance/undppolicy doc97-e.pdf.

12. Linz and Stepan describe the indices as follows: 1) *behaviorally*, when no significant actors attempt to create a nondemocratic regime or turn to violence or secession; 2) *attitudinally*, when a strong majority of public opinion believes that democratic procedures and institutions are the best way to govern their collective life; and 3) *constitutionally*, when governmental and non-governmental forces alike are subjected to and habituated to conflict resolution within the specific laws, procedures, and institutions laid out by the new democratic process.  Juan J. Linz & Alfred Stepan, *Toward Consolidated Democracies*, J. DEMOCRACY, Apr. 1996, at 14.  This is a great example of what Nehal Bhuta calls an "Archimedean Law-Giver" in *Against State-Building*, 15 CONSTELLATIONS 517, 518 (2008).

13. To the point where even the incentive structure for leadership models itself on corporate bonuses; thus, over the last few years a fund has been established to make dollar payouts to African leaders who transfer power and resist corruption.

dream" that embodies what Hans Morgenthau found to be "a defining characteristic of modern liberalism."[14]  Bhuta quotes Morgenthau's 1940 lecture at the New School for Social Research situating this as the trajectory of a "political philosophy" born out of the conviction that it "was justified in light of reason and was, therefore, beyond the reach of historical change . . . ."[15]  What this leads to, for Morgenthau, is the dangerous and self-deceiving understanding of *politics as technology*, a mode of political being that forgets its own historical determinacy and engages with all politics, everywhere, as if political and social spaces were homogeneous.[16]  From the domain of economics to the domain of law, this vision gets augmented when exported; empowered by the backdrop of violence, it gets augmented further when exported to post-conflict contexts; cleansed of any historical reminders of path dependence, it gets exported as formula.

The dominant voice of human rights promotion in post-conflict environments is the voice of expertise, and if there is a dominant culture, it is the culture of technocratic state craft that Bhuta describes so powerfully.  Thus, different kinds of rights are accompanied by different subfields of what we may term 'rights technocrats' who have expertise on the relevant legal doctrines and best policy practices—the best labs where these questions have been worked out under different conditions.  Thus across a spectrum of issues there science has been channeled into a mobile industry of professionalized global expertise that can then be exported to new markets.  We are steered to Germany for models on proportionate representation and multi-party democracy, to Canada or Switzerland for case studies on federalism, to South Africa for transitional justice processes, to Northern Ireland for police reform initiatives and so on.  Thus international engagement in the Sri Lankan peace process involved field trips to 'model countries' to study the best formulas for federalism, language policy, transitional justice and institutional reform.  In fact, Sri Lanka is not alone.  For instance, across the

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14. Bhuta, *supra* note 12.  Bhuta notes, *id.* at 535 n.7, that he takes the phrase "machine dream" from Philip Mirowski's book on the history and epistemology of economics, PHILIP MIROWSKI, MACHINE DREAMS: ECONOMICS BECOMES A CYBORG SCIENCE (2002).

15. Bhuta, *supra* note 12, at 519 (quoting HANS J. MORGENTHAU, SCIENTIFIC MAN VERSUS POWER POLITICS 3 (Midway prtg. 1974) (1946)).

16. As will be seen *infra*, this envisioning of political space as Euclidean and homogeneous was an essential characteristic of both liberal justifications of empire, and is a necessary presumption of more contemporary theories of modernization, rational choice and institutional design.

world, local elites from dozens of countries deemed as 'conflict zones' have been shipped out to Canada or Switzerland to study federalism and concomitantly experts from these countries have then visited conflict environments and convene seminars on rights promotion, develop draft constitutions, and clarify appropriate international norms and standards for entrenching minority rights provisions through a federal framework. Pluralism here is not about politics, but about knowledge.

Significantly, this is not an old fashioned clunker of an industry that is exporting a single ready-made model. Rather it has an agility that accompanies its mobility, a theory of the 'social' that accompanies its' science.[17] Thus the project of reproducing a variant of these constitutions in a country like Sri Lanka becomes a project of translation, adding a local accent that 'vernacularizes' expert know-ledge.[18] A generation ago, many post-colonial critics were urging greater focus on "the local" or lamenting formulaic rule of law projects that disregarded context. Today, there are few contexts where international intervention is not already foregrounding the local. In this sense 'the machine dream' has been tweaked with local color. From the U.N. to INGOs, there is widespread reference to the importance of folding local context and customary law into these nation-building efforts for rights and democracy promotion projects to be sustainable. Attention to local context in "getting the law right" becomes a critical "part of helping rebuild the State," according to the United Nations Development Program's Rule of Law Team Leader Sue Tatten in discussing interventions in Sudan.[19] She says:

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17. Kerry Rittich notes that attention to the 'social' has become appropriated in dominant approaches to rule of law development by institutions such as the World Bank. Kerry Rittich, *The Future of Law and Development: Second Generation Reforms and the Incorporation of the Social*, 26 MICH. J. INT'L L. 199, 227 (2004).

18. The language of 'vernacularizing' human rights was introduced by Sally Merry to argue that human rights are never exported without being transformed by local struggles. *See* Sally Engle Merry, *Legal Pluralism and Transnational Culture: The Ka Ho' okolokolonui Kanaka Maoli Tribunal, Hawai'i, 1993*, *in* HUMAN RIGHTS, CULTURE AND CONTEXT: ANTHROPOLOGICAL PERSPECTIVES 28 (Richard A. Wilson ed. 1997). The term 'vernacularization' evocatively captured how the human rights framework travelled. Merry saw this as a positive process of local appropriation that pluralizes the trajectories that emanate from the Universal Declaration. However, it can also be a process of appropriation of the local, of 'going native' in ways that advances the hegemony of the rights framework over all alternative discourses of justice.

19. United Nations Development Programme Newsroom, New Seeds of Justice Sown in Southern Sudan (June 14, 2007), http://content.undp.org/go/newsroom/2007/june/new-seeds-

"[p]eople need to know that they will be able to resolve their disputes in a way that's impartial and equitable according to Southern Sudanese standards."[20]  In the case of Sudan, the UNDP decides that 'vernacularizing state building means keeping both options open, the formal court system and the customary law courts, but adapting the way the latter works so that it is in line with constitutional principles and protects human rights.  In other words, the invocation of the local is not a counter to the regime of best practices and universal standards, but one that gets seamlessly folded into that regime.[21]  The most important issue here is not the extent to which local knowledge or interests are incorporated, but about how the project of 'going native' becomes assimilated into what Bhuta describes as "the Archimedean law-giver," as the authoritative figure in relation to any of these constitutional projects.[22]

Democracy itself emerges as a matter of expertise regarding the management of state institutions and political processes in ways that can overshadow any focus on the dynamic of political interests and choices regarding resources and ideologies.  In fact, in some cases, this authorizes a foundational and arbitrative role for professional expertise regarding the architecture of rights-promoting societies that can argue for the delimiting of democracy itself.  For instance, the international community debated how election rules in Afghanistan should be shaped in order to prohibit the Taliban from running for elected office.  In Gaza, the democratic elections that saw Hamas emerge as the people's choice was seen to have produced results that were inimical to the management of political order and rights promotion.  This position was not advanced as ideological opposition to Hamas; rather, it was the judgment of experts in rights and

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of-justice-sown-in-southern-sudan.en (last visited March 24, 2009).

20. *Id.*

21. Clearly, even those who see rule of law and rights promotion in the most technical terms also have a discourse about 'vernacularizing' their interventions and are keen to incorporate a consumable package of 'culture' as part of the check-list of technical elements needed to advance rule of law projects.  For instance, Rosa Brooks, a Georgetown human rights lawyer involved in rule of law projects in Iraq, applauds military JAG officers in Iraq "speaking fluent Arabic," saying that that one "lesson" to keep in mind is that we should "[k]now the culture and the language well."  Rosa Ehrenreich Brooks, *Panel 1: Establishing the Rule of Law*, 33 GA. J. INT'L & COMP. L. 119, 134 (2004).  Describing the enormity of the challenge, she notes that "building the rule of law in post-conflict societies is . . . much harder than getting those rovers up to Mars, because you are dealing with human beings and not machines."  'Culture' is needed to grease the wheels of 'the machine dream.'  *Id.* at 133.

22. Bhuta, *supra* note 12, at 518.

democracy.

My interest in this context is not the specificities of global Israeli-Palestinian politics, but the power of the discourse of expertise in democratic rights in authorizing some democratic choices and delegitimating others. The modality of political thinking promoted here has been described by Wendy Brown as a "neo-liberal political rationality, a rationality that exceeds particular positions on particular issues."[23] As Brown notes, this is not just about the market—in fact the economy may not even be the primary focus[24]—but about "extending and disseminating market values to all institutions and social actions."[25] In that sense it is not contradictory for the rights and democracy promotion regime to oppose the results of democratic decision making in Gaza. This is a discourse grounded in a notion of political rationality that is embedded in specific models of political order so that some political choices (such as those of the Gaza population in electing Hamas) can be seen as objectively irrational. Rights and democracy promotion is about the tutelage of post-conflict citizens to create ownership of the background rules that will allow 'rational' choices, and discourage 'irrational' ones. It is in this sense that Brown notes that neo-liberal political rationality can defeat liberal democracy. The political subjectivity engendered by the rights and democracy promotion interventions is one that exercises neo-liberal rationality rather than one that is open to a multiplicity of political rationalities.

The authoritative role of rights and democracy promotion initiatives in shaping the architecture of political life is not unrelated to the political economy of the post-conflict industry. In keeping with trends over the last decade, budget figures for the last year show that "democratic governance remains the largest priority area," accounting for over 40% of "UNDP's overall expenditures."[26] The UNDP is not alone on this—rights and democracy promotion is a

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23. WENDY BROWN, *Neoliberalism and the End of Liberal Democracy*, *in* EDGEWORK: CRITICAL ESSAYS ON KNOWLEDGE AND POLITICS 37, 37 (2005).

24. Although in some cases the 'market' orientation of political decision may be precisely the test for the rationality of the choices made. For example, advancing a political rationality that knits neo-liberal market choices to progress, the U.S. State Department was also ambivalent or even hostile to democratic elections in Bolivia and Venezuela.

25. BROWN, *supra* note 23, at 40.

26. U.N. DEV. PROGRAMME, ANNUAL REPORT 2007: MAKING GLOBALIZATION WORK FOR ALL 20–27 (2007), http://www.undp.org/publications/annualreport2007/IAR07-ENG.pdf.

policy and budgetary priority for the wider donor community. It is also a priority for institutions such as the World Bank that were not perceived to have a mandate that is directly focused on political systems as such, but nevertheless see rights promotion as an integral part of the development project in post-conflict environments.

Moreover, some elements of the international human rights regime such as the right to property are seen as particularly important in advancing the rule of law and development. For instance, the *Commission on Legal Empowerment of the Poor,* co-chaired by Mary Robinson, Hernando De Soto, and Madeline Albright, has been urging the human rights community to do more in advancing universal property rights as a critical inheritance of the UDHR.[27] Influenced by De Soto and like-minded economists, the World Bank has been urging Sri Lanka to advance universal property rights by taking the legislative steps necessary to grant property rights to small farmers in Sri Lanka. Significantly, the World Bank first made the proposal in 1996, but it took full flower and got translated into draft legislation *only* in the context of the peace process six years later, when it took root within the wider framework of nation building and post-conflict development. The context of 'transition' heralded by the peace process lubricated many of the Bank-sponsored reforms in the name of nation building. The Sri Lankan peace process is not atypical here in the doors it opens to pro-market reforms in the name of poverty alleviation and human rights. For instance, seeking to address a variety of post-conflict contexts, a Danish Foreign Ministry paper urges that there is a "correlation between conflict and poverty and their integral link to human rights performance" in urging interventions that go beyond the traditional human rights focus on abuses suffered by civilians to treat these contexts as "fragile states" that require "reconstruction."[28] Seeking to marry ethics and exper-tise, the paper urges "a meta-analysis of human rights data across fragile states to identify strategic and tactical factors relevant to nation building."[29] Thus from South Africa to Iraq, De Soto's proposals for property rights have gained traction with the World

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27. *See, e.g.*, Mary Robinson, *Taking Stock of the Human Rights Agenda 60 Years On*, 24 MD. J. INT'L L. 1, 6 (2009).

28. Derek G. Evans, Human Rights and State Fragility 3 (Mar. 2008), *available at* http://www.odi.org.uk/PPPG/politics_and_governance/publications/HRFS_Evans_frame work_paper.pdf.

29. *Id.*

Bank and other international actors in the wake of 'transitions' and nation-building efforts that take place against the backdrop of violence and the foregrounding of human rights.

Interestingly the groups targeted by the property rights initiative such as the agricultural workers who are part of the *Sri Lankan Movement for National Land and Agricultural Reform* or the South African shack dweller's organization, *Abahlali baseMjondolo* have opposed initiatives to grant full property rights, arguing that the right to alienate property would soon lead to dispossession, given the context of large-scale debt and wide socio-economic disparities.[30] Even when gift wrapped with the UDHR, these groups see that short term ownership will inevitably lead to long term alienation; thus the extension of rights emerges for them as part of the hegemonic order rather than a counter-hegemonic initiative.  In contexts of deep inequality these groups see the right to full title leading to commodification and dispossession.  Yet from the stand point of the new market oriented rationality that these transitional reconstruction projects are seeking to engender, perhaps the perspective of these agricultural workers and squatters reflects a subjectivity produced by a still stunted modernity.  It is a perspective that stands in tension with the rule of law and rights promotion effort.  One U.S. State Department official describes the work of rights and democracy promotion as creating subjects who will make different kinds of choices about the very fabric of their society.[31]  From international civil society initiatives, such as the Robinson-de Soto commission, to multi-lateral institutions such as the World Bank, to donor countries such as the U.S., there are a range of international efforts promoting rights and democracy as integral to goals such as development or peace.  In this landscape, human rights are embedded into a sweeping political rationality that is hegemonic rather than embattled, the discourse of management, not resistance.

## B. Ethics: The Pre-emption of the Political

The turn to ethics is distinct from the turn to 'expertise' but it may function in ways that are complementary in the post-conflict context.

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30. *See* Vasuki Nesiah & Nanthikesan, *Betting on Dispossession*, LINES, Aug. 2003, http://www.lines-magazine.org/Art_Aug03/Vasuki.htm.

31. Bhuta, *supra* note 12.

By "ethics" I refer to international initiatives invested in the advancement of norms of victim-centered human rights against the backdrop of genocide, war, and conflict. Human rights are not just a discourse of law and rules; alongside the discourse of instrumental rationality, highlighted in the discussion of expertise, is a discourse that speaks of global moral responsibility. The backdrop of genocide has been invoked from Sudan to Cambodia to urge international action to protect victims and provide redress.

In recent years, explicit invocations of the ethical in international political discourse in U.N. corridors, NGO workshops, national policy initiatives, and such has spawned a range of different initiatives (from the international ad hoc tribunals to the Responsibility to Protect) that have been advanced in the name of an ethical imperative to act. This has had a directly regulative arm that has pulled different countries into courtroom dramas and military interventions in pursuit of those guilty of violence. It has also had an indirectly regulative reach through a plethora of initiatives aimed at norm diffusion, hoping to develop a culture of rights and democracy that will trump a culture of violence. The focus on building a liberal culture in post-conflict environments has many dimensions, but I would like to highlight two dominant platforms that are wrapped in the turn to ethics talk: firstly the liberal peace thesis, and secondly the discourse on women as victims of war.

The ethical vision of the liberal peace thesis that is dominant in the post-conflict human rights and peace-building literature is the argument that peace (both international and domestic) is promoted, and civil war averted, with an embrace of liberal democracy.[32] The overarching model of rights and pluralism that has been advanced by international actors in relation to the Sri Lankan peace process reflects two dominant characteristics of rights promotion discourse within this framework. Loosely grouped, these include a juridical–political discourse of multi-ethnic citizenship and minority rights on the one hand,[33] and a normative and public policy foundation for tolerance, conflict resolution, and co-existence on the other.[34] The

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32. *See* R. J. Rummel, *Democracy, Power, Genocide, and Mass Murder*, 39 J. CONFLICT RESOL. 3 (1995).

33. Thus, as noted earlier, much of the intervention has been focused on bringing in constitutional expertise from outside and taking political leaders to Canada and Switzerland on pluralism field trips.

34. For instance, many of the initiatives in this context were aimed at bringing together

promise is that norms injected through liberal constitutionalism and married to liberal pluralism in the public sphere can establish institutions that promote and protect tolerance and engender interethnic reconciliation. As Turner argues, "[l]iberal peace assumptions litter the policy documents of the UN, the international financial institutions and Western governments" in ways that have justified a range of interventions to promote liberalism, from diplomacy to sanctions and military intervention.[35] Within this framework, mass violence operates as a free-floating signifier that cleanses international intervention of any political implications for the distribution of resources. Staging intervention on a tableau of human rights makes it part of a universal progress narrative. Here intervention is merely the responsibility to act; it is the heeding of the ethical call. As Spivak notes, here the "idea of human rights . . . may carry within it a kind of Social Darwinism: the fittest must shoulder the burden of righting the wrongs of the unfit" such that "the breaking of the new nations" can be conducted "in the name of their breaking-in into the international community of nations."[36]

The ethical turn within post-conflict interventions cannot be reduced to an imperialist impulse; in fact, the field itself may be driven by largely altruistic impulses—be they at the individual level[37] or at the level of political institutions and dynamics of the international community. However, the ethical turn captured in the embrace of the liberal peace thesis may be premised on assumptions regarding rights and collective identities under electoral democracy that are fundamentally mistaken. For instance, translating a peace process into a human rights framework may entrench essentialized identities and simplify social relations. Sieder and Witchell argue that this was the impact of the Guatemalan peace process on Mayan

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different groups of people from the South and the North; from workshops for women entrepreneurs from the North and South, to interfaith dialogues amongst Sri Lanka's religious leaders, the effort was to build the associative ties that engender solidarities within a liberal normative habitus.

35. Mandy Turner, *Building Democracy in Palestine: Liberal Peace Theory and the Election of Hamas*, 13 DEMOCRATIZATION 739, 742 (2006).

36. Gayatri Chakravorty Spivak, *Righting Wrongs*, *in* HUMAN RIGHTS, HUMAN WRONGS 164, 169, 171 (Nicholas Owen ed., 2003).

37. As David Kennedy notes, many human rights practitioners may seek to "do well while doing good." David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 101, 101 (2002).

justice claims; it superimposed a normative framework and an institutional process that channeled those claims (through 'human rights' idioms such as multiculturalism) in ways that transformed them.[38]  In some cases this process made them more vulnerable to abuse by powerful social groups because the concerns that became entrenched in the peace process and attendant rule of projects do not respond to local power relations, and even distracted from struggles that would have addressed and challenged those social structures.[39]

Peace processes can subscribe to the myth of neutral constitutions and electoral arrangements and occlude their impact on distribution and social hierarchy.  For instance, in the Sri Lankan context, periods of violence and civil war were not just a "random time-capsule" or unexpected "tectonic slips;" rather, there were several ideological or material features of the preceding periods of "normal" politics that enabled that "slip."  One of the ideological blinders that occluded the visibility of those enabling conditions was the humanist myth of violence as wholly 'other' to the domain of 'normal' liberal politics. Coming to terms with the specific scars and tears of the civil war requires that we trace back through history to identify the characteristics of "normal" politics that were enabling conditions of violence and unpack received mythologies about a previous era when Sri Lanka was touted as a "model democracy."  That was not an era of ethical innocence but years where violence was contained only to fester, derailed only to be deferred; normal politics was characterized by constitutionalized anti-minority discrimination.  Rather than electoral democracy functioning to halt majoritarianism, the ballot box amplified the arithmetic reach of tyranny by the majority.[40] Violence may well emerge as the repressed underside of the electoral logic.  This is not an argument against liberal democracy but merely the argument that an easy discourse of communal harmony and

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38.  *See* Rachel Sieder & Jessica Witchell, *Advancing Indigenous Claims Through Law: Reflections on the Guatemalan Peace Process*, *in* CULTURE AND RIGHTS: ANTHROPOLOGICAL PERSPECTIVES 201 (Jane K. Cowan et. al. eds., 2001).

39.  *Id.*

40. For instance, David Scott notes that the Donoughmore Constitution rejected an ethnically structured electoral system as fuelling moribund communal solidarities and instead opted for the 'unencumbered' vote that would operate on the ostensibly neutral arithmetic of electoral majorities and minorities.  Thus it naturalized the logic of 'number' in ways that, in effect, rewarded numerical majorities as being on the side of rationality, progress, and democratic modernity.  Ironically, however, this became the very enabling condition of majoritarianism discussed by David Scott in REFASHIONING FUTURES: CRITICISM AFTER POSTCOLONIALITY (1999).

reconciliation contained by the liberal peace thesis can generate a dangerous amnesia regarding the deprivations and exclusions that catalyzed political alienation and militarism in the first place.

The 'ethical turn' in post-conflict interventions is also characterized by a potentially problematic discourse on victims and perpetrators. For instance, one prominent dimension of 'ethics talk' focusing on conflict victims is the production of women as victims, as captured in the 2008 passage of Security Council Resolution 1820 on Sexual Violence.[41] Amongst other concerns, the particular focus on sexual violence and the restriction of women's subjectivity in conflict to bodies that have suffered that injury[42] privileges bodily integrity injuries such as sexual violence, rather than any more complex socio-political analysis of these conflicts. Only the meta-narrative of victimhood has brought women onto the international post-conflict radar screen and allowed them to participate in the 'promise' of the international law and policy interventions of tribunals and Security Council resolutions. This may provide a classic instance of Wendy Brown's analysis of 'wounded attachments.'[43] As Brown notes, investment in an identity of injury can curb our political imagination and limits our ability to stake out more transformative political claims. Rather than engagements that subvert the naturalized priorities of post-conflict justice, the victim paradigm seeks inclusion within its framework. Rather than expose the biases inherent in universalized thresholds of "shock the conscience" international crime, it seeks representation of sexual crimes within that pantheon of privileged rights violations. Thus when Ban ki-Moon "announced plans to shortly appoint a Messenger of Peace tasked *entirely* with advocacy for ending violence against women,"[44] we should see the "entirely" as a description of the limit of victim politics, rather than an expansive recognition of its

41. For a more extended discussion, see VASUKI NESIAH, 1325 AND A NUMBER OF UNCOMFORTABLE ALLIANCES IN SOUTH ASIAN FEMINISMS (forthcoming) (on file with author).

42. For instance, when the Category One crimes of the post-genocide trials in Rwanda classify rape in the same 'box' as murder—it may actually accentuate women's experience of victimization from rape as a fate equivalent to death.

43. *See* Wendy Brown, *Wounded Attachments*, 21 POL. THEORY 390 (1993).

44. *See* Press Release, Security Council, Security Council Demands Immediate and Complete Halt to Acts of Sexual Violence Against Civilians in Conflict Zones, Unanimously Adopting Resolution 1820, U.N. Doc. SC/9364 (June 19, 2008) (emphasis added).

significance.    More generally, the mobilization of the victim–
perpetrator dichotomy that is so crucial to dominant approaches to
transitional justice simplifies complex histories where victims can
also be perpetrators.[45]    Relatedly, as Mamdani has argued in the
context of apartheid South Africa, the relationship between victims
and beneficiaries of human rights violations may provide us a better
map to the histories of atrocity that post-conflict societies need to
confront.[46]

The preceding discussion has highlighted the liberal peace thesis
and the discourse on women's victimization as some of the dominant
accompaniments to the ethical turn in international post-conflict
interventions.    Taking a step back, we should also look more
fundamentally at the work done by this turn to ethics talk in the first
place.  What does it mean to contest violence through a call to the
international community's ethical responsibilities?    We need to
examine how human rights and democracy promotion initiatives
depict the terrain that justifies their intervention.    For instance,
invoking U.N.-speak for describing "the tectonic slips and brutal
human violence" of these environments, one author describes "post-
conflict countries" as "the least favorable environments in which
democracy can take hold and flourish . . . home to populations with
sociopolitical cleavages that have led to and become hardened by
violent civil conflict."[47]  This is the cue for the international com-
munity to enter bearing rights, with the ghost of genocide looking
over its shoulder, to seed the democratic promise.  Thus, the author
goes on to say: "[y]et the international community, led by the UN,
acts on the belief that a democratic political system is best suited to
managing political conflict and presumes to be able to build
democratic institutions in these post-conflict countries."[48]    The
framing of human rights through the foregrounding of this backdrop
of violence shapes post-conflict interventions as the indispensable,
politically neutral ingredient to engage with, and overcome,
incendiary violence and its accompanying brutalities.  Socio-political

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45. See, for example, Mamdani's elaboration of the historical processes in relation to the
Rwandan genocide in MAHMOOD MAMDANI, WHEN VICTIMS BECOME KILLERS:
COLONIALISM, NATIVISM, AND THE GENOCIDE IN RWANDA (2002).

46. *See* Mahmood Mamdani, *Amnesty or Impunity? A Preliminary Critique of the Report
of the Truth and Reconciliation Commission of South Africa*, 32 DIACRITICS 33 (2002).

47. Barma, *supra* note 10, at 128.

48. *Id.*

interests are removed from both ends of this story—violence is seen to over-determine politics in the contexts of intervention, while the discourses of human rights over-determine the politics of the intervention.

It is worth noting that this is not merely a discourse of contemporary human rights practice, but even more significantly the broader script within which the UDHR emerges as a driving force of history. Analyzing the Declaration's effort to condemn, police, and prohibit cruelty, Talal Asad notes that it is a founding premise of the modernist conception of the human that "the extension of rights" is "crucial for the elimination of cruelty."[49] The post-conflict environment is not political in any way that is not reducible to the cruelties of uncontrolled violence; therefore, international interventions in the name of rights that combat violence are by definition legitimate. It may be our norms pitted against their practices,[50] but, following Asad, we also note that the story of the Universal Declaration is both a story of what it means to be human and a story about the progressive prohibition of the inhuman.[51] By representing politics in the environment in which it intervenes as another dimension of inhuman violence, the whole field is evacuated of the usual reference points of sovereignty or self-determination that would otherwise frame our analysis of international intervention. Instead these ethical wrappings deter critique and defer to the promise of progress.

## IV. CONCLUSION

Some see the current phase of international intervention in post-conflict environments as simply the new phase of a long tradition going from colonial governance to the mandate system to contemporary territorial administration. However, today the 'international' is peopled not by colonizers in the old model but the U.N., INGOs, donor governments, and local elites. While, undoubtedly, 'empire' plays a role in the geo-political imperatives and enabling conditions of these interventions, we cannot reduce these inter-

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49. Talal Asad, *On Torture, or Cruel, Inhumane and Degrading Treatment*, *in* HUMAN RIGHTS, CULTURE AND CONTEXT: ANTHROPOLOGICAL PERSPECTIVES 111, 112 (Richard A. Wilson ed., 1997).

50. *See* WENDY BROWN, REGULATING AVERSION: TOLERANCE IN THE AGE OF IDENTITY AND EMPIRE (2006).

51. Asad, *supra* note 49, at 111.

ventions to manifestations of 'empire' anymore than we can reduce the UDHR to an updated version of the charter of the British East Indian Company. From Sri Lanka to Zimbabwe, political leaders have invoked colonialism and protested invocations of human rights as means of defending their abuse of power and running interference with transnational solidarities that may reflect the UDHR's best promise. Undoubtedly, the UDHR has provided an important touchstone for many disenfranchised communities seeking a signpost or shield in the struggle for justice in the context of war and civil conflict. Without diminishing that legacy, this paper has sought to highlight the underside of mobilizing UDHR's humanist promise to depict the terrain of violence. Intervening in a context where there will be many celebrations of UDHR's positive legacy, this paper has sought to follow a more neglected line of inquiry by tracking how the representation of violence by human rights, rule of law, and democracy promotion initiatives fuels a new currency for intervention that may generate a more troubling yield.

Mobilizing the representations of violence and cruelty is not without antecedents in other spaces and places in ways that aim towards different ends but with parallel dynamics. For instance, representations of Peruvian indigenous communities as marked by violence, cannibalism, and terror functioned as a "phantasmic social force" enabling structures of domination that were invoked by the Europeans in forcing the Putumayo region into commodity production.[52] More contemporaneously, the depiction of the urban ghetto as marked by "crime, pathology, and moral decay" has been an enabling factor in empowering the state to deploy a violent police presence and heightened criminalization of the everyday.[53] Whether in these contexts, or in the post-conflict environments with which this paper has been preoccupied, the "iconography of evil . . . is indissolubly welded to images of paradise and the good,"[54] which, in our case, is the extended arc of rights, rule of law, and democracy

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52. *See* MICHAEL TAUSSIG, SHAMANISM, COLONIALISM, AND THE WILD MAN: A STUDY IN TERROR AND HEALING (1987).

53. *See* Henry A. Giroux, *Racism and the Aesthetic of Hyper-real Violence:* Pulp Fiction *and Other Visual Tragedies*, 1 SOC. IDENTITIES 333 (1995), *available at* http://archive.freire. mcgill.ca/385/1/racism_and_the_aesthetic_of_hyper-real_violence.pdf (last visited Mar. 26, 2009).

54. I borrow my language from Taussig to highlight the parallel with the way he links European depictions of the violence of the other with the celebration of the self. TAUSSIG, *supra* note 52.

that are the progeny of UDHR.  These contrasting representations are "indissolubly welded together" in making the case for intervention all the more urgent and the promise of redemption all the more salutary. At the same time, our understanding of their structural links is sundered so that the discourse of violence, terror, and failed states generates a structural "distance and moral privilege" that places the international community "outside of the web of violence and social responsibility."[55]   And so the story goes—if not for the intervention of the post-conflict industry, things fall apart.

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    55. Again, I borrow my language from Giroux to highlight the parallel with the way the depiction of urban violence helps distance dominant society from its enabling conditions. Giroux, *supra* note 53, at 334.