equivalent of the defense of the "Free World" in the preceding period. What this analogy conveys is that the Cold War was won by the West, not by democracy. Although Western liberals were raised to believe that the victory of the former should lead to the triumph of the latter, the record of the international community during the 1990s indicates that they can only maintain such faith at a deep psychological cost: purists will probably be driven to despair, while pragmatists will end up as the lapdogs of their governments. Yet if liberals abandon the belief that they won the Cold War, and thus endeavor to expose the nefarious consequences of pragmatic reconciliation as they once opposed the crimes committed in the name of the "Free World," they can look forward to a life of anger and frustration. This may not be so great either – but in the short run it beats despair, and in the long run it could prove more satisfying than complacent subservience.

NOTES

1. The Chilean Commission on Truth and Reconciliation was indeed the first one of its kind. It was created in 1990 by President Aylwin, the first elected President after sixteen years of military dictatorship.

2. Though they were later pardoned by President Carlos Menem, a number of Argentinian officers, including the heads of the junta that ruled Argentina between 1976 and 1983, were tried and convicted for abductions, systematic torture, and murder, under the presidency of Raúl Alfonsín.

Millennial Visions: Human Rights at Century's End

Ruti Teitel

The years since World War II have witnessed enormous expansion in the human rights domain. It has become institutionalized and normalized. So, for example, after years of debate on the matter in the United Nations, the ad hoc tribunals at The Hague appear to have spurred plans for the establishment of a permanent International Criminal Court, which is likely to become a reality by the century's end.[1] Beyond this, human rights law has manifestly expanded, merging with other areas of law and extending its normative reach.

In the face of ongoing political horror, what is the point of this new direction in human rights law? Of what value is the normalization of a concept of human rights? The case of the International Criminal Tribunal for the Former Yugoslavia (ICTY) well illustrates international law's highly limited potential for effective response to gross violations of individual rights, particularly in the absence of a functioning domestic legal order. The postwar momentum for a new international legal system to instantiate a Nuremberg-style international criminal justice emphasizes individual rights in a global order.

But this momentum should not blind us to the plain fact that an international legal system cannot, by itself, protect deracinated individual rights. For even as contemporary developments in human rights law reflect a millennial urge, there is also a sense in which the current moral climate and even the buildup of international criminal law is also antimillennial, for it evidences both persistent human rights abuses and the general impotence of the international community. Indeed, the exemplary experience of the ICTY demands that we recognize the importance of the role

of the nation-state in protecting individual rights, even if the courts of a nation-state apply the international law of human rights. Full vindication of individual rights under international law presumes a working state with liberal institutions that reflect the rule of law.[2]

Responses to the worst human rights violations of the last half century—to totalitarian oppression, to apartheid, to the political executions and disappearances of the national security state in Latin America, to ethnic cleansing in the Balkans and throughout Africa—have created a veritable human rights culture. This culture focuses less on the punishment of transgressive behavior than on establishing a broader discourse of rights. Human rights are largely procedural. Whereas human rights are often conceived of as coming "after the fact," as "trumps"[3] that check the outcomes of political processes, contemporary practices suggest that human rights come into the picture much earlier, as a form of discursive engagement within the broader public domain. International human rights has come to offer nothing short of a global language by which to represent violations of human dignity.[4] It is a language that carries great normative force. Indeed, "rights talk" has increasingly been offered as performative, as remedy.[5]

The discourse of international human rights has become a medium for the condemnation of local abuses, regardless of how these abuses may otherwise be characterized or rationalized within domestic political schemes. Rights talk can affect local dialogue and in this way structure domestic political developments. This role of rights talk is most evident in the recent wave of liberalizing transformations, where the language of international human rights has served to inspire and galvanize a liberal opposition and an imagination of hope. In this way, the ideals of an international legal order have come to permeate the workings of domestic legal systems.

International human rights are puzzling if we attempt to understand them within the traditional paradigm of conventional rights enforced within a nation-state by an effective judiciary. But if we imagine them instead as a form of discourse, we can see how they may substitute a humanizing language for the vicious expressions of identity politics.[6] Of course this language of human rights also has its risks. It is atomized, and the sites of its authoritative articulation are often distant from local political and historical

circumstances. The discourse of international human rights thus can invoke only thin conceptions of rights, detached from domestic convictions of political justice. The discourse offers threshold forms of due process, symbolizing the liberal potential of equal protection of the laws.

Ultimately, we can imagine two distinct conceptions of international human rights law, one thin and the other thick. The thick view would construct rights so as to create an abiding politics capable of transforming diverse peoples into a stable, democratic, and pluralistic liberal state. This ambition lies far beyond the present status and capacity of human rights law. The thin view is largely procedural, and it is associated with a transitional jurisprudence.[7] It points prospectively toward, but does not itself constitute, a more plenary justice.

Contemporary international institutions such as the ICTY exemplify the impetus toward the normalization of international criminal human rights law. They gesture toward a millennial view of international justice and of the rule of law, but themselves proffer only a thin and symbolic image of that fulfillment, one which lacks historical context and political authority. The danger of such gestures is that they reduce justice to a principle applied ex post facto and without necessary ancillary humanitarian intervention. Normalization of a permanent human rights culture ought not to be predicated on a utopian legalism that outstrips the international community's capacity to respond practically and effectively to extreme degradation and dehumanization. International processes and institutions should instead constantly remind us that the thick notion of radical transformation through law remains a messianic vision and, at this the end of the bloodiest of centuries, beyond our reach.

Notes

1. United Nations, *Rome Statute of the International Criminal Court*, July 17, 1998, A/Conf. 183/9 (1998).

2. See Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, rev. ed., 1969), 33–94.

3. See Ronald Dworkin, "Rights as Trumps" in Jeremy Waldron, *Theories of Rights* (New York: Oxford University Press, 1984).

4. See Judith N. Shklar, *The Faces of Injustice* (New Haven: Yale University

Press, 1990) (on representations of injustice and rights as distinguished from fortune and misfortune).

5. A contemporary illustration is U.N. Secretary General Kofi Annan's admission, if not apology, to Rwanda for the United Nations' failure to intervene to avert the genocide despite knowledge of it. See press release S6\SM\6545 AFR\54 (May 4, 1998).

6. On the increasing linguistification more generally, see Judith Butler, *Excitable Speech: A Politics of the Performative* (New York: Routledge, 1997).

7. See Ruti Teitel, "Transitional Jurisprudence: The Role of Law in Political Transformation," *Yale Law Journal* 106 (1997): 2009.

Contributors

David Cohen is Professor in the Departments of Rhetoric and Classics at the University of California at Berkeley. He is author of *The Athenian Law of Theft; Law, Violence, and Community in Classical Athens*; and *Law, Society, and Sexuality: The Enforcement of Morals at Classical Athens.*

Michel Feher is a founding editor of Zone Books and author of *The Age of the International Community.*

Owen M. Fiss is Sterling Professor of Law at Yale Law School. He is author of *Troubled Beginnings of the Modern State, Liberalism Divided*, and *The Irony of Free Speech.*

Richard Goldstone is a Justice of the Constitutional Court of South Africa. He was the Chief Prosecutor of the United Nations International Criminal Tribunals for the former Yugoslavia and Rwanda.

Carla Hesse is Professor of European History at the University of California at Berkeley. She is author of *Publishing and Cultural Politics in Revolutionary Paris.*

Michael Ignatieff is author of *The Needs of Strangers, Blood and Belonging: Journeys into the New Nationalism,* and *Warrior's Honour: Ethnic War and the Modern Conscience.*

Robert Meister is Professor of Politics and Legal Studies at the University of California at Santa Cruz. He is author of *Political Identity: Thinking Through Marx* and *After Evil* (forthcoming).