Violence, Law, and Justice in a Global Age

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On Sunday, 23 September 2001, the novelist Barbara Kingsolver wrote in the *Los Angeles Times*:

> It's the worst thing that's happened, but only this week. Two years ago, an earthquake in Turkey killed 17,000 people in a day, babies and mothers and businessmen. . . . The November before that, a hurricane hit Honduras and Nicaragua and killed even more. . . . Which end of the world shall we talk about? Sixty years ago, Japanese airplanes bombed Navy boys who were sleeping on ships in gentle Pacific waters. Three and a half years later, American planes bombed a plaza in Japan where men and women were going to work, where schoolchildren were playing, and more humans died at once than anyone thought possible. Seventy thousand in a minute. Imagine. . . .
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> There are no worst days, it seems. Ten years ago, early on a January morning, bombs rained down from the sky and caused great buildings in the city of Baghdad to fall down – hotels, hospitals, palaces, buildings with mothers and soldiers inside – and here in the place I want to love best, I had to watch people cheering about it. In Baghdad, survivors shook their fists at the sky and said the word "evil." When many lives are lost all at once, people gather together and say words like "heinous" and "honor" and "revenge". . . . They raise up their compatriots' lives to a sacred place – we do this, all of us who are human – thinking our own citizens to be more worthy of grief and less willingly risked than lives on other soil.[1]

This is an unsettling and challenging passage. When I first read it, I felt angered and unsympathetic to its call to think systematically about September 11 in the context of other disasters, acts of aggression, and wars. A few days later I found it helpful to connect its sentiments to my own strong cosmopolitan orientations.

Immanuel Kant wrote over two hundred years ago that we are "unavoidably side by side." A violent challenge to law and justice in one place has consequences for many other places and can be experienced everywhere.[2] While he dwelt on these matters and their implications at length, he could not have known how profound and immediate his concerns would become.

Since Kant, our mutual interconnectedness and vulnerability have grown rapidly. We no longer live, if we ever did, in a world of discrete national communities. Instead, we live in a world of what I like to call "overlapping communities of fate" where the trajectories of countries are heavily enmeshed with each other. In our world, it is not only the violent exception that links people together across borders; the very nature of everyday problems and processes joins people in

multiple ways. From the movement of ideas and cultural artifacts to the fundamental issues raised by genetic engineering, from the conditions of financial stability to environmental degradation, the fate and fortunes of each of us are thoroughly intertwined.

The story of our increasingly global order – "globalization" – is not a singular one. Globalization is not a one dimensional phenomenon. For example, there has been an expansion of global markets which has altered the political terrain, increasing exit options for capital of all kinds and putting pressure on polities everywhere.[3] But the story of globalization is not just economic: it is also one of growing aspirations for international law and justice. From the UN system to the EU, from changes to the laws of war to the entrenchment of human rights, from the emergence of international environmental regimes to the foundation of the International Criminal Court, there is also another narrative being told – a narrative which seeks to reframe human activity and entrench it in law, rights, and responsibilities. In the first section of this essay, I would like to reflect on this second narrative and highlight some of its strengths and limitations. Once this background is sketched, elements of the legal and political context of September 11 can be better grasped.

Reframing Human Activity: International Law, Rights, and Responsibilities

The process of the gradual delimitation of political power, and the increasing significance of international law and justice, can be illustrated by reflecting on a strand in international legal thinking which has overturned the exclusive position of the state in international law and buttressed the role of the individual in relation to, and with responsibility for, systematic violence against others.

In the first instance, by recognizing the legal status of conscientious objection, many states – particularly Western states (I shall return to the significance of this later) – have acknowledged there are clear occasions when an individual has a moral obligation beyond that of his or her obligation as a citizen of a state.[4] The refusal to serve in national armies triggers a claim to a "higher moral court" of rights and duties. Such claims are exemplified as well in the changing legal position of those who are willing to go to war. The recognition in international law of the offences of war crimes, genocide, and crimes against humanity makes clear that acquiescence to the commands of national leaders will not be considered sufficient grounds for absolving individual guilt in these cases. A turning point in this regard was the judgment of the International Tribunal at Nuremberg (and the parallel tribunal in Tokyo). The Tribunal laid down, for the first time in history, that when *international rules* that protect basic humanitarian values are in conflict with *state laws*, every individual must transgress the state laws (except where there is no room for "moral choice," i.e., when a gun is being held to someone's head).[5] Modern international law has generally endorsed the position taken by the Tribunal, and has affirmed its rejection of the defense of obedience to superior

orders in matters of responsibility for crimes against peace and humanity. As one commentator has noted: "since the Nuremberg Trials, it has been acknowledged that war criminals cannot relieve themselves of criminal responsibility by citing official position or superior orders. Even obedience to explicit national legislation provides no protection against international law."[6]

The most notable recent extension of the application of the Nuremberg principles has been the establishment of the war crimes tribunals for the former Yugoslavia (established by the UN Security Council in 1993) and for Rwanda (set up in 1994).[7] The Yugoslav tribunal has issued indictments against people from all three ethnic groups in Bosnia, and is investigating crimes in Kosovo, although it has encountered serious difficulty in obtaining custody of the key accused. (Significantly, of course, ex-President Slobodan Milosevic has recently been arrested and brought before The Hague war crimes tribunal.) Although neither the tribunal for Rwanda nor the Yugoslav tribunal have had the ability to detain and try more than a small fraction of those engaged in atrocities, both have taken important steps toward implementing the law governing war crimes and thereby reducing the credibility gap between the promises of such law, on the one hand, and the weakness of its application, on the other.

Most recently, the proposals put forward for the establishment of a permanent International Criminal Court are designed to help close this gap in the longer term.[8] Several major hurdles remain to its successful entrenchment, including the continuing opposition from the United States (which fears its soldiers will be the target of politically motivated prosecutions) and dependency upon individual state consent for its effectiveness.[9] However, it is likely that the Court will be formally established (with or without the US) and will mark another significant step away from the classic regime of state sovereignty – sovereignty, that is, as effective power – toward the firm entrenchment of the "liberal regime of international sovereignty" as I refer to it, sovereignty shaped and delimited by new, broader frameworks of governance and law.[10]

The ground now being staked out in international legal agreements suggests something of particular importance: that the containment of armed aggression and abuses of power can only be achieved through both the control of warfare and the prevention of the abuse of human rights. For it is only too apparent that many forms of violence perpetrated against individuals, and many forms of abuse of power, do not take place during declared acts of war. In fact, it can be argued that the distinctions between war and peace, and between aggression and repression, are eroded by changing patterns of violence.[11] The kinds of violence witnessed in Bosnia and Kosovo highlight the role of paramilitaries and of organized crime, and the use of parts of national armies which may no longer be under the direct control of a state. What these kinds of violence signal is that there is a very fine line between explicit formal crimes committed during acts of national war, and major attacks on the welfare and physical integrity of citizens in situations that may not involve a declaration of war by states. While many of the new forms of

warfare do not fall directly under the classic rules of war, they are massive violations of international human rights. Accordingly, the rules of war and human rights law can be seen as two complementary forms of international rules which aim to circumscribe the proper form, scope, and use of coercive power.[12] For all the limitations of its enforcement, these are significant changes which, when taken together, amount to the rejection of the doctrine of legitimate power as effective control, and its replacement by international rules which entrench basic humanitarian values as the criteria for legitimate government.

How do the terrorist attacks on the World Trade Center and the Pentagon fit into this pattern of legal change? A wide variety of legal instruments, dating back to 1963 (the Convention on Offences and Certain Other Acts Committed on Board Aircraft), enable the international community to take action against terrorism and bring those responsible to justice. If the persons responsible for the September 11 attacks can be identified and apprehended, they could face prosecution in virtually any country that obtains custody of them. In particular, the widely ratified Hague Convention for the Suppression of Unlawful Seizure of Aircraft (1970) makes the hijacking of aircraft an international criminal offence. The offence is regarded as extraditable under any extradition treaty in force between contracting states, and applies to accomplices as well as to the hijackers. In addition, the use of hijacked aircraft as lethal weapons can be interpreted as a crime against humanity under international law (although there is some legal argument about this). Frederic Kirgis has noted that the statute of the International Criminal Court "defines a crime against humanity as any of several listed acts 'when committed as part of a widespread or systematic attack directed against any civilian population. . . .' The acts include murder and 'other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health."[13]

Changes in the laws of war, human rights law, and other legal domains have placed individuals, governments, and non-governmental organizations under new systems of legal regulation – regulation which, in principle, recasts the legal significance of state boundaries. The regime of liberal international sovereignty entrenches powers and constraints, and rights and duties in international law which – albeit ultimately formulated by states – go beyond the traditional conception of the proper scope and boundaries of states, and can come into conflict, and sometimes contradiction, with national laws. Within this framework, states may forfeit claims to sovereignty, and individuals their right to sovereign protection, if they violate the standards and values embedded in the liberal international order; and such violations no longer become a matter of morality alone. Rather, they become a breach of a legal code, a breach that may call forth the means to challenge, prosecute, and rectify it.[14] To this end, a bridge is created between morality and law where, at best, only stepping stones existed before in the era of classic sovereignty. These are transformative changes which alter the form and content of politics, nationally, regionally, and globally. They signify the enlarging normative reach,

extending scope, and growing institutionalization of international legal rules and practices – the beginnings of a "universal constitutional order" in which the state is no longer the only layer of legal competence to which people have transferred public powers.[15]

In short, boundaries between states are of decreasing legal and moral significance. States are no longer regarded as discrete political worlds. International standards breach boundaries in numerous ways. Within Europe, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the EU create new institutions and layers of law and governance which have divided political authority; any assumption that sovereignty is an indivisible, illimitable, exclusive, and perpetual form of public power – entrenched within an individual state – is now defunct.[16] Within the wider international community, rules governing war, weapon systems, terrorism, human rights, and the environment, among other areas, have transformed and delimited the order of states, embedding national polities in new forms and layers of accountability and governance (from particular regimes such as the Nuclear Non-Proliferation Treaty to wider frameworks of regulation laid down by the UN Charter and a host of specialized agencies).[17] Accordingly, the boundaries between states, nations, and societies can no longer claim the deep legal and moral significance they once had; they can be judged, along with the communities they embody, by general, if not universal, standards. That is to say, they can be scrutinized and appraised in relation to standards which, in principle, apply to each person, each individual, who is held to be equally worthy of concern and respect. Concomitantly, shared membership in a political community, or spatial proximity, is not regarded as a sufficient source of moral privilege.[18]

The political and legal transformations of the last fifty years or so have gone some way toward circumscribing and delimiting political power on a regional and global basis. Several major difficulties remain, nonetheless, at the core of the liberal international regime of sovereignty which create tensions, if not faultlines, at its center.[19] I shall dwell on just one aspect of these here.

Serious deficiencies can, of course, be documented in the implementation and enforcement of democratic and human rights, and of international law more generally. Despite the development and consolidation of the regime of liberal international sovereignty, massive inequalities of power and economic resources continue to grow. There is an accelerating gap between rich and poor states as well as between peoples in the global economy.[20] The human rights agenda often has a hollow ring. The development of regional trade and investment blocs, particularly the Triad (NAFTA, the EU, and Japan), has concentrated economic transactions within and between these areas.[21] The Triad accounts for two-thirds to three-quarters of world economic activity, with shifting patterns of resources across each region. However, one further element of inequality is particularly apparent: a significant proportion of the world's population remains marginal to these networks.[22]

Does this growing gulf in the life circumstances and life chances of the world's population highlight intrinsic limits to the liberal international order or should this disparity be traced to other phenomena – the particularization of nation-states or the inequalities of regions with their own distinctive cultural, religious, and political problems? The latter phenomena are contributors to the disparity between the universal claims of the human rights regime and its often tragically limited impact.[23] But one of the key causes of the gulf lies, in my judgment, elsewhere: in the tangential impact of the liberal international order on the regulation of economic power and market mechanisms. The focus of the liberal international order is on the curtailment of the abuse of political power, not economic power. It has few, if any, systematic means to address sources of power other than the political.[24] Its conceptual resources and leading ideas do not suggest or push toward the pursuit of self-determination and autonomy in the economic domain; they do not seek the entrenchment of democratic rights and obligations outside of the sphere of the political. Hence, it is hardly a surprise that liberal democracy and flourishing economic inequalities exist side by side.

Thus, the complex and differentiated narratives of globalization point in stark and often contradictory directions. On the one side, there is the dominant tendency of economic globalization over the last three decades toward a pattern set by the deregulatory, neoliberal model; an increase in the exit options of corporate and finance capital relative to labor and the state; an increase in the volatility of market responses, which has exacerbated a growing sense of political uncertainty and risk; and the marked polarization of global relative economic inequalities (as well as serious doubt as to whether there has been a "trickle down" effect to the world's poorest at all). On the other side, there is the significant entrenchment of cosmopolitan values concerning the equal dignity and worth of all human beings; the reconnection of international law and morality; the establishment of regional and global systems of governance; and growing recognition that the public good – whether conceived as financial stability, environmental protection, or global egalitarianism – requires coordinated multilateral action if it is to be achieved in the long term.

September 11, War, and Justice

If September 11 was not a defining moment in human history, it certainly was for today's generations. The terrorist violence was an atrocity of extraordinary proportions. It was a crime against America and against humanity; a massive breach of many of the core codes of international law; and an attack on the fundamental principles of freedom, democracy, justice, and humanity itself, i.e., those principles which affirm the sanctity of life, the importance of self-determination, and of equal rights and liberty.

These principles are not just Western principles. Elements of them had their origins in the early modern period in the West, but their validity extends much

further than this. For these principles are the basis of a fair, humane, and decent society, of whatever religion or cultural tradition. To paraphrase the legal theorist Bruce Ackerman, there is no nation without a woman who yearns for equal rights, no society without a man who denies the need for deference, and no developing country without a person who does not wish for the minimum means of subsistence so that they may go about their everyday life.[25] The principles of freedom, democracy, and justice are the basis for articulating and entrenching the equal liberty of all human beings, wherever they were born or brought up. They are the basis of underwriting the liberty of others, not of obliterating it. Their concern is with the irreducible moral status of each and every person – the acknowledgment of which links directly to the possibility of self-determination and the capacity to make independent choices.[26]

The intensity of the range of responses to the atrocities of September 11 is fully understandable. There cannot be many people in the world who did not experience shock, revulsion, horror, anger, and a desire for vengeance, as the Kingsolver passage acknowledges. This emotional range is perfectly natural within the context of the immediate events. But it cannot be the basis for a more considered and wise response.

The founding principles of our society dictate that we do not overgeneralize our response from one moment and one set of events; that we do not jump to conclusions based on concerns that emerge in one particular country at one moment; and that we do not rewrite and rework international law and governance arrangements from one place – in other words, that we do not think and act too hastily and take the law into our hands. Clearly, the fight against terror must be put on a new footing. Terrorists must be brought to heel and those who protect and nurture them must be brought to account. Zero tolerance is fully justified in these circumstances. Terrorism does negate our most elementary and cherished principles and values. But any defensible, justifiable, and sustainable response to September 11 must be consistent with our founding principles and the aspirations of international society for security, law, and the impartial administration of justice – aspirations painfully articulated after the Holocaust and the Second World War – and embedded, albeit imperfectly, in regional and global law and the institutions of global governance. If the means deployed to fight terrorism contradict these principles and achievements, then the emotion of the moment might be satisfied, but our mutual vulnerability will be deepened.

War and bombing were and are one option. President Bush described the attacks of September 11, and the US-led coalition response, as a "new kind of war"; and, indeed, the attacks of the September 11 can be viewed as a more dramatic version of patterns of violence witnessed during the last decade, in the wars in the Balkans, the Middle East, and Africa. These wars are quite different from, for example, the Second World War. They are wars which are difficult to end and difficult to contain, where, typically, there have been no clear victories and many defeats for those who champion the sanctity of human life, human

rights, and human welfare. There is much that can be learned from these experiences that is relevant to the situation now unfolding.

The contours of these "new wars" are distinctive in many respects because the range of social and political groups involved no longer fit the pattern of a classical interstate war; the type of violence deployed by the terrorist aggressors is no longer carried out by the agents of a state (although states, or parts of states, may have a supporting role); violence is dispersed, fragmented, and directed against citizens; and political aims are combined with the deliberate commission of atrocities which are a massive violation of human rights. Such a war is not typically triggered by a state interest, but by religious identity, zeal, and fanaticism. The aim is not to acquire territory, as was the case in "old wars," but to gain political power through generating fear and hatred. War itself becomes a form of political mobilization in which the pursuit of violence promotes extremist causes.

In Western security policy, there is a dangerous gulf between the dominant thinking about security based on "old wars" – like the Second World War and the Cold War – and the reality in the field. The so-called Revolution in Military Affairs, the development of "smart" weaponry to fight wars at long distance, the proposals for the National Missile Defense program, were all predicated on outdated assumptions about the nature of war – the idea that it is possible to protect territory from attacks by outsiders. The language of President Bush, with its emphasis on the defense of America and of dividing the world between those "who are with us or against us," tends to reproduce the illusion, drawn from the experience of World War II, that this is a war between simply "good" states led by the United States and "bad" states. Such an approach is regrettable, and potentially very dangerous.

Today, a clear cut military victory is very difficult to achieve because the advantages of supposed superior technology have been eroded in many contexts. As the Russians discovered in Afghanistan and Chechnya, the Americans in Vietnam, and the Israelis in the current period, conquering people and territory by military means has increasingly become a problematic form of warfare. These military campaigns have all been lost or suffered serious and continuous setbacks as a result of the stubborn refusal of movements for independence or autonomy to be suppressed; the refusal to meet the deployment of the conventional means of interstate warfare with similar forces which play by the same set of rules; and by the constantly shifting use of irregular or guerrilla forces which sporadically but steadily inflict major casualties on states (whose domestic populations become increasingly anxious and weary). And the risks of using high-tech weapon systems, carpet bombing, and other very destructive means of interstate warfare are very high, to say the least.

The risks of concentrating military action against states like Afghanistan are the risks of ratcheting up fear and hatred, of actually creating a "new war" between the West and Islam, a war which is not only between states but within every community in the West as well as in the Middle East. No doubt, the terrorists always

hoped for air strikes, which would rally more supporters to their cause. No doubt they are now actively hoping for a global division between those states that side with America and those that do not. The fanatical Islamic networks that were probably responsible for the attacks have groups and cells in many places, including Britain and the United States. The effect of the US-led war might very well be to expand the networks of fanatics, who may gain access to even more horrendous weapons, to increase racist and xenophobic feelings of all kinds, and to increase repressive powers everywhere, justified in the name of fighting terrorism.

An alternative approach existed, and might even be salvaged in some respects, although the longer the bombing goes on, and the longer the forces of the US and its allies have to remain in place to secure foreign lands, the less optimistic one can be. An alternative approach is one which counters the strategy of "fear and hate." What is needed, as Mary Kaldor and I have argued,[27] is a movement for global, not American, justice and legitimacy, aimed at establishing and extending the rule of law in place of war and at fostering understanding between communities in place of terror. Such a movement must press upon governments and international institutions the importance of three things.

1. There must be a commitment to the rule of law not the prosecution of war. Civilians of all faiths and nationalities need protection, wherever they live, and terrorists must be captured and brought before an international criminal court, which could be either permanent or modeled on the Nuremberg or Yugoslav war crimes tribunals. The terrorists must be treated as criminals, and not glamorized as military adversaries. This does not preclude internationally sanctioned military action both to arrest suspects and to dismantle terrorist networks – not at all. But such action should always be understood as a robust form of policing, above all as a way of protecting civilians and bringing criminals to trial. Moreover, this type of action must scrupulously preserve both the laws of war and human rights law. Imran Khan put a similar point forcefully in a recent article:

> The only way to deal with global terrorism is through justice. We need international institutions such as a fully empowered and credible world criminal court to define terrorism and dispense justice with impartiality. . . . The world is heading towards disaster if the sole superpower behaves as judge, jury and executioner when dealing with global terrorism.[28]

The news (in October 2001) of an increasingly intense pattern of extra-judicial, outlaw killings (organized, targeted murders) on both sides of the Israeli-Palestine conflict compounds anxieties about the breakdown of the rule of law, nationally and internationally. This only leads one way; that is, toward Hobbes' state of nature: the "warre of every one against every one" – life as "solitary, poore, nasty, brutish, and short."

2. A massive effort has to be undertaken to create a new form of global political legitimacy, one which must confront the reasons why the West is so often seen

as self-interested, partial, one-sided, and insensitive. This must involve condemnation of all human rights violations wherever they occur, renewed peace efforts in the Middle East, talks between Israel and Palestine, and rethinking policy towards Iraq, Iran, Afghanistan, and elsewhere. This cannot be equated with an occasional or one-off effort to create a new momentum for peace and the protection of human rights. It has to be part of a continuous emphasis in foreign policy, year-in, year-out. Many parts of the world will need convincing that the West's interest in security and human rights for all regions and peoples is not just a product of short-term geopolitical or geo-economic interests.

3. There must be a head-on acknowledgment that the ethical and justice issues posed by the global polarization of wealth, income, and power, and with them the huge asymmetries of life chances, cannot be left to markets to resolve. Those who are poorest and most vulnerable, locked into geopolitical situations which have neglected their economic and political claims for generations, will always provide fertile ground for terrorist recruiters. The project of economic globalization has to be connected to manifest principles of social justice; the latter need to reframe global market activity.

To date the US-led coalition, in pursuing, first and foremost, a military response to September 11, has chosen *not* to prioritize the development of inter-national law and UN institutional arrangements (point 1); and *not* to emphasize the urgency of building institutional bridges between the priorities of social justice and processes of economic globalization (point 3), although one or two coalition politicians have made speeches acknowledging the importance of this question. Peace in the Middle East has been singled out as a priority by some coalition leaders, but there is little sign as yet that this is part of a broader rethink-ing of foreign policy in the Middle East, and of the role of the West in interna-tional affairs more generally (point 2). These are political choices and, like all such choices, they carry a heavy burden of possibility and lost opportunity.

Of course, terrorist crimes of the kind we witnessed on September 11 may often be the work of the simply deranged and the fanatic and so there can be no guarantee that a more just world will be a more peaceful one in all respects. But if we turn our back on this challenge, there is no hope of ameliorating the social basis of disadvantage often experienced in the poorest and most dislocated coun-tries. Gross injustices, linked to a sense of hopelessness born of generations of neglect, feed anger and hostility. Popular support against terrorism depends upon convincing people that there is a legal and pacific way of addressing their griev-ances. Without this sense of confidence in public institutions and processes, the defeat of terrorism becomes a hugely difficult task, if it can be achieved at all.

Kant was right: the violent abrogation of law and justice in one place ricochets across the world. We cannot accept the burden of putting justice right in one dimension of life – security – without at the same time seeking to put it right

everywhere. A socio-economic order in which whole regions and peoples suffer serious harm and disadvantage independently of their will or consent will not command widespread support and legitimacy. If the political, social, and economic dimensions of justice are separated in the long term – as is the tendency in the global order today – the prospects of a peaceful and civil society will be bleak indeed.

Islam, the Kantian Heritage, and Double Standards

The responsibility for the pursuit of justice does not just fall on the West. It is not simply the US and Europe that must look critically at themselves in the aftermath of September 11; there is a chronic need for self-examination in parts of Islam as well. The Muslim writer, Ziauddin Sardar, wrote recently:

> To Muslims everywhere I issue this fatwa: any Muslim involved in the planning, financing, training, recruiting, supporting or harbouring of those who commit acts of indiscriminate violence against persons . . . is guilty of terror and no part of the *ummah*. It is the duty of every Muslim to spare no effort in hunting down, apprehending and bringing such criminals to justice.
>
> If you see something reprehensible, said the Prophet Muhammad, then change it with your hand; if you are not capable of that then use your tongue (speak out against it); and if you are not capable of that then detest it in your heart. The silent Muslim majority must now become vocal.[29]

Iman Hamza, a noted Islamic teacher, has spoken recently of the "deep denial" many Muslims seem to be in. He is concerned that "Islam has been hijacked by a discourse of anger and a rhetoric of rage."[30] The attacks of September 11 appear to have been perpetrated in the name of Islam, albeit a particular version of Islam. It is this version of Islam which must be repudiated by the wider Islamic community, who need to reaffirm the compatibility of Islam with the universal, cosmopolitan principles that put life and the free development of all human beings at their center.

Hugo Young made the same point rather bluntly in *The Guardian* recently:

> the September terrorists who left messages and testaments described their actions as being in the name of Allah. They made this their explicit appeal and defence. Bin Laden himself, no longer disclaiming culpability for their actions, clothes their murders and their suicides in religious glory. A version of Islam – not typical, a minority fragment, but undeniably Islamic – endorses the foaming hatred for America that uniquely emanates, with supplementary texts, from a variety of mullahs.[31]

Accordingly, it is not just enough for the West to look critically at itself in the shadow of September 11. Muslim countries need to confront their own ideological extremists, and reject without qualification any doctrine or action which encourages or condones the slaughter of innocent human beings. In addition, they

need to reflect on their own failings to ensure minimum standards of living, and a decent, free, and democratic life, for all their citizens. As Bhikhu Parekh, Chair of the Commission on the Future of Multi-ethnic Britain, put it, Muslims must "stop blaming the West for all their ills" and must grapple with the temptation to locate all the main sources of their problems elsewhere.[32]

September 11 can be linked to a new, integrated political crisis developing in West Asia. The crisis has been well analyzed by Fred Halliday:

> in several countries, there has been a weakening, if not collapse, of the state – in the 1970s and 1980s in Lebanon, more recently in Afghanistan and Yemen. . . . It is in these countries, where significant areas are free of government control, or where the government seeks to humour autonomous armed groups, like al-Qaeda, that a culture of violence and religious demagogy has thrived. . . . This is compounded by the way in which the historically distinct conflicts of Afghanistan, Iraq and Palestine have, in recent years, come to be more and more connected. Militants in each – secular nationalist (Saddam) as well as Islamist (Osama bin Laden) – see the cause of resistance to the West and its regional allies as one.[33]

Hence, Osama bin Laden's first target was the government of Saudi Arabia, to which he later added the governments of Egypt and Jordan (and the Shi'ite Republic of Iran). Only later did he formally connect (via a declared *fatwa* in 1998) his war against these governments to the United States, which he came to see as the key source of, and support for, the corruption of Islamic sovereignty in the Middle East.[34]

The fundamental fissure in the Muslim world is between those who want to uphold universal standards, including the standards of democracy and human rights, and want to reform their societies, dislodging the deep connection between religion, culture, and politics, and those who are threatened by this and wish to retain and/or restore power to those who represent "fundamentalist" ideals. The political, economic, and cultural challenges posed by the globalization of (for want of a better shorthand) "modernity" now face the counterforce of the globalization of radical Islam. This poses many big questions, but one in particular should be stressed; that is, how far and to what extent Islam – and not just the West – has the capacity to confront its own ideologies, double-standards, and limitations. Clearly, the escape from dogma and unvindicated authority – the removal of constraints on the public use of reason – has a long way to go, East and West. The Kantian heritage should be accepted across the Islamic world as well.

It's a mistake to think that this is simply an outsider's challenge to Islam. Islam, like the other great world religions, has incorporated a diverse body of thought and practice. In addition, it has contributed, and accommodated itself, to ideas of religious tolerance, secular political power, and human rights. It is particularly in the contemporary period that radical Islamic movements have turned their back on these important historical developments and sought to deny Islam's contribution to both the Enlightenment and the formulation of universal ethical codes. There are

many good reasons for doubting the often-expressed Western belief that thoughts about justice and democracy have only flourished in the West.[35] Islam is not a unitary or explanatory category.[36] Hence, the call for cosmopolitan values speaks to a vital strain within Islam which affirms the importance of rights and justice.

Concluding Reflections

It is useful to return to the passage with which I started this essay. It makes uncomfortable reading because it invites reflection on September 11 in the context of other tragedies and conflict situations, and asks the reader to step outside of the maelstrom of September 11 and put those events in a wider historical and evaluative framework. Uncomfortable as this request is, we have to accept it if we are to find a satisfactory way of making sense of the eleventh. To begin with, as the passage suggests, it is important to affirm the irreducible moral status of each and every person and, concomitantly, reject the view of moral particularists that belonging to a given community limits and determines the moral worth of individuals and the nature of their freedom. At the center of this kind of thinking is the cosmopolitan view that human well-being is not defined by geographical and cultural locations, that national or ethnic or gendered boundaries should not determine the limits of rights or responsibilities for the satisfaction of basic human needs, and that all human beings require equal moral respect and concern. Cosmopolitanism builds on the basic principles of equal dignity, equal respect, and the priority of vital need in its preoccupation with what is required for the autonomy and development of all human beings.

Cosmopolitan principles are not principles for some remote utopia; for they are at the center of significant post Second World War legal and political developments, from the 1948 UN Declaration of Human Rights to the 1998 adoption of the Statute of the International Criminal Court. Many of these developments were framed against the background of formidable threats to humankind – above all, Nazism, fascism, and the Holocaust. The framers of these initiatives affirmed the importance of universal principles, human rights, and the rule of law when there were strong temptations to simply put up the shutters and defend the position of some nations and countries only. The response to September 11 could follow in the footsteps of these achievements and strengthen our multilateral institutions and international legal arrangements; or it could take us further away from these fragile gains toward a world of further antagonisms and divisions – a distinctively uncivil society. At the time of writing the signs are not good, but we have not yet run out of choices; history is still with us and can be made.

NOTES

Two sections of this essay have been adapted from my previous writings. The first section draws on some material developed at much greater length in my "Law of states, law of peoples," *Legal*

Theory 8, no. 2 (2002). The second section draws on my "Violence and justice in a global age" and, with Mary Kaldor, on "What hope for the future? Learning the lessons of the past." Both these pieces were made available initially through OpenDemocracy.net. I would like to thank Mary Kaldor for allowing me to draw on our joint essay and to adapt some of the material for this new piece.

1. Barbara Kingsolver, "A pure, high note of anguish," *Los Angeles Times*, September 23, 2001.

2. Immanuel Kant, *Kant's Political Writings*, ed. and intro. Hans Reiss (Cambridge: Cambridge University Press, 1970), 107–8.

3. See David Held and A. McGrew, D. Goldblatt, and J. Perraton, *Global Transformations: Politics, Economics and Culture* (Cambridge: Polity,1999), chs. 3–5; and Held and McGrew, eds., *The Global Transformation Reader* (Cambridge: Polity, 2000), ch. 25.

4. See J. Vincent, "Modernity and universal human rights," in A. McGrew and P. Lewis, eds., *Global Politics* (Cambridge: Polity, 1992), 269–92.

5. A. Cassese, *Violence and Law in the Modern Age* (Cambridge: Polity, 1988), 132.

6. Y. Dinstein, "Rules of War," in J. Krieger, ed., *The Oxford Companion to Politics of the World* (Oxford: Oxford University Press, 1993), 968.

7. Cf. C. Chinkin, "International law and human rights," in T. Evans, ed., *Human Rights Fifty Years On: A Reappraisal* (Manchester: Manchester University Press, 1998); *The Economist*, "A Survey of human rights," December 5, 1998.

8. Cf. J. Crawford, "Prospects for an international criminal court," in M.D.A. Freeman and R. Halson, eds., *Current Legal Problems 1995*, 48, pt. 2, collected papers (Oxford: Oxford University Press, 1995); J. Dugard, "Obstacles in the way of an international criminal court," *Cambridge Law Journal* 56 (1997); and M. Weller, "The reality of the emerging universal constitutional order: putting the pieces together," *Cambridge Review of International Studies* (Winter/Spring 1997).

9. Chinkin, "International law and human rights," 118–19.

10. See below and Held, "Law of states, law of peoples," *Legal Theory* 8, no. 2 (2002) for a fuller account.

11. Mary Kaldor, "Reconceptualizing organized violence," in D. Archibugi, D. Held, and M. Köhler, eds., *Re-imagining Political Community: Studies in Cosmopolitan Democracy* (Cambridge: Polity, 1998) and *New and Old Wars* (Cambridge: Polity, 1998).

12. See Kaldor, *New and Old Wars*, chs. 6 and 7.

13. F. Kirgis, "Terrorist attacks on the World Trade Center and the Pentagon," *http://www.asil.org/insights/insigh77.htm* (September, 2001).

14. See Jürgen Habermas, "Bestiality and Humanity: A War on the Border between Legality and Morality," *Constellations* 6, no. 3 (1999).

15. J. Crawford and S. Marks, "The global democracy deficit: an essay on international law and its limits," in Archibugi et al., *Re-imagining Political Community*, 72; Weller, "The reality of the emerging universal constitutional order," 45.

16. Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Cambridge: Polity, 1995), 107–13.

17. See Held et al., *Global Transformations*, chs. 1 and 2.

18. C. Beitz, "Philosophy of international relations," in the *Routledge Encyclopedia of Philosophy* (London: Routledge, 1998), cf. his *Political Theory and International Relations* (Princeton: Princeton University Press, 1979); Thomas Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989), "Cosmopolitanism and sovereignty," in C. Brown, ed., *Political Restructuring in Europe: Ethical Perspectives* (London: Routledge, 1994), and "An egalitarian law of peoples," *Philosophy and Public Affairs* 23, no. 3 (1994); Brian Barry, "Statism and nationalism: a cosmopolitan critique," in Ian Shapiro and L. Brilmayer, eds., *Global Justice* (New York: NYU Press, 1999); and see below.

19. See Held, "Law of states, law of peoples."

20. UNDP, *Globalization with a Human Face: Human Development Report 1999* (New York: Oxford University Press, 1999).

21. G. Thompson, "Economic globalizalization?," in Held, ed., *A Globalizing World?* (London: Routledge, 2000).

22. Thomas Pogge, "Economic justice and national borders," *Revision* 22, no. 2 (1999): 27; see UNDP, *Human Development Report 1997* (New York: Oxford University Press, 1997) and *Globalization with a Human Face*; Held and McGrew, *The Global Transformation Reader*.

23. See Pogge, "Economic justice and national borders"; A. Leftwich, *States of Development* (Cambridge: Polity, 2000).

24. See Held, *Democracy and the Global Order*, pt. 3.

25. Bruce Ackerman, "Political liberalisms," *Journal of Philosophy* 91, no. 7 (1994); and see Amartya Sen, *Inequality Reexamined* (Oxford: Clarendon, 1992) and *Development as Freedom* (Oxford: Oxford University Press, 1999).

26. Martha Nussbaum, "Kant and cosmopolitanism," in James Bohman and M. Lutz-Bachmann, eds., *Perpetual Peace: Essays on Kant"s Cosmopolitan Ideal* (Cambridge, MA: MIT Press, 1997).

27. Held and Mary Kaldor, "What hope for the future? Learning the lessons from the past," OpenDemocracy.net (2001).

28. Imran Khan, "Terrorists should be tried in court," *The Guardian*, October 12, 2001.

29. Ziauddin Sardar, "My fatwa on the fanatics," *The Guardian*, September 23, 2001.

30. Quoted in Hugo Young, "It may not be PC to say," *The Guardian*, October 9, 2001.

31. Ibid.

32. Bhikhu Parekh, Interview, *The Guardian*, October 11, 2001.

33. Fred Halliday, "No man is an island," *The Observer*, September 16, 2001.

34. Karen Armstong, "The war we should fight," *The Guardian*, October 13, 2001.

35. Amartya Sen, "Humanity and Citizenship," in J. Cohen ed. *For Love of Country* (Boston: Beacon, 1996) , 118.

36. See Fred Halliday, *Islam and the Myth of Confrontation* (London: I.B. Tauris, 1996).