

The International Human Rights Movement: Part of the Problem?

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There is no question that the international human rights movement has done a great deal of good, freeing individuals from great harm, providing an emancipatory vocabulary and institutional machinery for people across the globe, raising the standards by which governments judge one another, and by which they are judged, both by their own people, and by the elites we refer to collectively as the "international community." A career in the human rights movement has provided thousands of professionals, many of them lawyers, with a sense of dignity and confidence that one sometimes can do well while doing good. The literature praising these, and other, accomplishments is vast. Among well-meaning legal professionals in the United States and Europe—humanist, internationalist, liberal, compassionate in all the best senses of these terms—the human rights movement has become a central object of devotion.

But there are other ways of thinking about human rights. As a well-meaning internationalist and, I hope, compassionate legal professional myself, I thought it might be useful to pull together in a short list some of the questions that have been raised about international human rights by people, including myself, who worry that the human rights movement might, on balance, and acknowledging its enormous achievement, be more part of the problem in today's world than part of the solution. This Essay offers an incomplete and idiosyncratic list of such questions that might be of interest to the human rights practitioner.

I should say at the outset that the arguments I have listed are hypotheses. I have stated them as succinctly as I can, at the risk of their seeming conclusive or overly polemical. In fact, although some of them seem more plausible to me than others, to my knowledge none of them has been proven—they are in the air as assertions, worries, polemical charges. They circulate in the background of conversations about the human rights movement. And even

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~~people (and animals) who are, if anything, more typical in the complexity of their ethical and political posture, and renders the broader political culture less articulate about, and less able to engage, suffering that is embedded in or understood to express a more ambivalent constellation of characters.~~ But this vocabulary also exacts a cost from those who fit most easily into its terms. No number of carefully elaborated “rights” is sufficient to recover a complex sense for a “violatee’s” human possibility and ambivalent experience. Differences among “victims,” the experience of their particularity and the hope for their creative and surprising self-expression, are erased under the power of an internationally sanctified vocabulary for their self-understanding, self-presentation and representation as “victims” of human rights abuse.

Even bad for advocates. To come into experience of oneself as a benevolent and pragmatic actor through the professional vocabulary of legal representation has costs for the human rights advocate, compared with other vocabularies of political engagement or social solidarity. Coming into awareness of oneself as the representative of something else—heroic agent for an authentic suffering elsewhere—mutes one’s capacity for solidarity with those cast as victims, violators, bystanders, and stills the habit of understanding oneself to inhabit the world one seeks to affect. This claim is often put in ethical or characterological terms: human rights promotes emancipation by propagating an unbearably normative, earnest, and ultimately arrogant mode of thinking and speaking about what is good for people, abstract people, here and there, now and forever. This is bad for people in the movement—it can demobilize them as political beings in the world while encouraging their sanctimony—as well as those whose sense of the politically possible and desirable is shrunk to fit the uniform size.

D. Human Rights Particularizes Too Much

Emancipating the “right holders.” The specific way human rights generalizes is to consolidate people into “identities” on the basis of which rights can be claimed. There are two issues here: a focus on *individuals* and a focus, whether for individuals or groups, on *right-holding identity*. The focus on individuals and people who come to think of themselves as individuals blunts articulation of a shared life. The focus on discrete and insular right holding identities blunts awareness of diversity, of the continuity of human experience, of overlapping identities. Together these tendencies inhibit expression of the experience of being part of a community.

Again we find two types of claims. For some, the key point is that human rights reduces and distorts a more promising *real* experience, of more shifting, less bounded identities, at times fused with a general will or co-participating in identities and social arrangements for which one will turn out to have no corresponding right or privilege. For others, the point is that compared to other vocabularies, human rights renders those who use it inar-

articulate about and less capable of solidarity and open-ended possibility. Either way, the human rights movement intensifies the sense of entitlement in individuals and groups at great cost to their ability to participate in collective political life and to their understanding of own lives as part of a more diverse community.

Strengthening the state. Although the human rights vocabulary expresses relentless suspicion of the state, by structuring emancipation as a relationship between an individual right holder and the state, human rights places the state at the center of the emancipatory promise. However much one may insist on the priority or pre-existence of rights, in the end rights are enforced, granted, recognized, implemented, their violations remedied, by the state. By consolidating human experience into the exercise of legal entitlements, human rights strengthens the national governmental structure and equates the structure of the state with the structure of freedom. To be free is . . . to have an appropriately organized state. We might say that the right-holder imagines and experiences freedom only as a *citizen*. This encourages autochthonous political tendencies and alienates the "citizen" from both his or her own experience as a person and from the possibility of alternative communal forms.

Encouraging conflict and discouraging politics among right-holders. Encouraging each person and group wishing to be free to tally the rights he/she/it holds in preparation for their assertion against the state reduces inter-group and inter-individual sensitivity. In emancipating itself, the right holder is, in effect, queue jumping. Recognizing, implementing, enforcing rights is distributive work. Encouraging people to imagine themselves as right holders, and rights as absolute, makes the negotiation of distributive arrangements among individuals and groups less likely and less tenable. There is no one to triage among rights and right holders—except the state. The absolutist legal vocabulary of rights makes it hard to assess distribution among favored and less favored right holders and forecloses development of a political process for tradeoffs among them, leaving only the vague suspicion that the more privileged got theirs at the expense of the less privileged.

"Refugees" are people too. For fifty years the human rights movement, and the legal departments (often in opposition to the "humanitarian assistance" departments) of the great international institutions have struggled for legal recognition of the status of "refugee," helping to generate millions of people who think of themselves as "refugees," and whose status has often been so certified by one or another institution in the human rights family. Formalizing a status of disconnection from the state of "origin," the "host" state and the state in whose location one seeks "settlement," has taken an enormous toll on everyone's ability to think about and affect either the causes or consequences of refugee status. It is a status defined by its detachment from both. The thirty year stillborn effort to codify a "right to asylum" as an entailment of refugee status illustrates the difficulty of addressing solutions as matters of legal entitlement. Illustrates it so strikingly that we should ques-

tion whether the effort to define the identity and rights of “the refugee” is more part of the problem than the solution.

E. Human Rights Expresses the Ideology, Ethics, Aesthetic Sensibility and Political Practice of a Particular Western Eighteenth- through Twentieth-Century Liberalism

Tainted origins. Although there are lots of interesting analogies to human rights ideas in various cultural traditions, the particular form these ideas are given in the human rights movement is the product of a particular moment and place. Post-enlightenment, rationalist, secular, Western, modern, capitalist. From a pragmatist point of view, of course, tainted origins are irrelevant. That human rights *claims* to be universal but *is really* the product of a specific cultural and historical origin says nothing—unless that specificity exacts costs or renders human rights less useful than something else. The human rights tradition might itself be undermined by its origin—be treated less well by some people, be less effective in some places—just as its origin might, for other audiences, accredit projects undertaken in its name. This is the sort of thing we might strategize about—perhaps we should downplay the universal claims, or look for parallel developments in other cultural traditions, etc.

The movement’s Western liberal origins become part of the problem (rather than a limit on the solution) when particular difficulties general to the liberal tradition are carried over to the human rights movement. When, for example, the global expression of emancipatory objectives in human rights terms narrows humanity’s appreciation of these objectives to the forms they have taken in the nineteenth- and twentieth-century Western political tradition. One cost would be the loss of more diverse and local experiences and conceptions of emancipation. Even within the liberal West, other useful emancipatory vocabularies (including the solidarities of socialism, Christianity, the labor movement, and so forth) are diminished by the consolidation of human rights as the international expression of *the* Western liberal tradition. Other costs would be incurred to the extent the human rights tradition could be seen to carry with it particular down sides of the liberal West.

Down sides of the West. That the emancipations of the modern West have come with costs has long been a theme in critical writing—alienation, loss of faith, environmental degradation, immorality, etc. Seeing human rights as part of the Western liberal package is a way of asserting that at least some of these costs should be attributed to the human rights tradition. This might be asserted in a variety of ways. If you thought secularism was part of what is bad about the modern West, you might assert that human rights shares the secular spirit, that as a sentimental vocabulary of devotion it actively displaces religion, offering itself as a poor substitute. You might claim that the enforcement of human rights, including religious rights, downgrades religion to a matter of private and individual commitment, or otherwise

fantasy about the modern/liberal/capitalist west. The insistence on more formal and absolute conceptions of property rights in transitional societies than are known in the developed West is a classic example of this problem—using the authority of the human rights movement to narrow the range of socio-economic choices available in developing societies in the name of “rights” that do not exist in this unregulated or compromised form in any developed western democracy.

At the same time, the human rights movement contributes to the framing of political choices in the third world as oppositions between “local/traditional” and “international/modern” forms of government and modes of life. This effect is strengthened by the presentation of human rights as part of belonging to the modern world, but coming from some place outside political choice, from the universal, the rational, the civilized. By strengthening the articulation of third world politics as a choice between tradition and modernity, the human rights movement impoverishes local political discourse, often strengthening the hand of self-styled “traditionalists” who are offered a common-sense and powerful alternative to modernisation for whatever politics they may espouse.

F. Human Rights Promises More than It Can Deliver

Knowledge. Human rights promises a way of knowing—knowing just and unjust, universal and local, victim and violator, harm and remedy—which it cannot deliver. Justice is something that must be made, experienced, articulated, performed each time anew. Human rights may well offer an index of ways in which past experiences of justice-achieved have retrospectively been described, but the usefulness of this catalog as a stimulus to emancipatory creativity is swamped by the encouragement such lists give to the idea that justice need not be made, that it can be found or simply imported. One result is a loss of the habit of grappling with ambivalence, conflict and the unknown. Taken together, belief in these various false promises demobilizes actors from taking other emancipatory steps and encourages a global misconception of both the nature of evil and the possibilities for good.

Justice. Human rights promises a legal vocabulary for achieving justice outside the clash of political interest. Such a vocabulary is not available: rights conflict with one another, rights are vague, rights have exceptions, many situations fall between rights. The human rights movement promises that “law”—the machinery, the texts, the profession, the institution—can resolve conflicts and ambiguities in society by resolving those within its own materials, and that this can be done on the basis of a process of “interpretation” that is different from, more legitimate than, politics. And different in a particularly stultifying way—as a looser or stricter deduction from a past knowledge rather than as a collective engagement with the future. In particular, the human rights movement fetishizes the judge as someone who functions as an instrument of the law rather than as a political actor, when

this is simply not possible—not a plausible description of judicial behavior—given the porous legal vocabulary with which judges must work and the likely political context within which judges are asked to act.

Many general criticisms of law's own tendencies to overpromise are applicable in spades to human rights. The absoluteness of rules makes compromise and peaceful adjustment of outcomes more difficult. The vagueness of standards makes for self-serving interpretation. The gap between law in the books and law in action, between legal institutions and the rest of life, hollows promises of emancipation through law. The human rights movement suggests that "rights" can be responsible for emancipation, rather than people making political decisions. This demobilizes other actors and other vocabularies, and encourages emancipation through reliance on enlightened, professional elites with "knowledge" of rights and wrongs, alienating people from themselves and from the vocabulary of their own governance. These difficulties are more acute in the international arena where law is ubiquitous and unaccompanied by political dialog.

Community. The human rights movement shares responsibility for the widespread belief that the world's political elites form a "community" that is benevolent, disconnected from economic actors and interests, and connected in some diffuse way through the media to the real aspirations of the world's people. The international human rights effort promises the ongoing presence of an entity, a "community," which can support and guarantee emancipation. This fantasy has bad consequences not only when people place too much hope in a foreign emancipatory friend that does not materialize. The transformation of the first world media audience, as that audience is imagined by the media, into "the international community" is itself an astonishing act of disenfranchisement. We might think the loss as one of "real" politics—such as that available in the context of a legislature, or at the national level. But even if we conclude that these are also fantastic—vocabularies of emancipation and oppression and opportunities for their expression—they are more useful vocabularies, more likely to emancipate, more likely to encourage habits of engagement, solidarity, responsibility, more open to surprise and reconfiguration.

Neutral intervention. The human rights vocabulary promises Western constituencies a politics-neutral and universalist mode of emancipatory intervention elsewhere in the world. This leads these constituencies to unwarranted innocence about the range of their other ongoing interventions and unwarranted faith in the neutral or universalist nature of a human rights presence. They intervene more often than they might otherwise. Their interventions are less effective than they would be if pursued in other vocabularies. Effective or not in their own terms, these interventions-without-responsibility-or-engagement have unfortunate consequences that are neither acknowledged nor open to contestation.

Emancipator as emancipation. Human rights offers itself as the measure of emancipation. This is its most striking—and misleading—promise. Human

rights narrates itself as a universal/eternal/human truth and as a pragmatic response to injustice—there was the holocaust and then there was the genocide convention, women everywhere were subject to discrimination and then there was CEDAW. This posture makes the human rights movement *itself* seem redemptive—as if doing something *for human rights* was, in and of itself, doing something *against* evil. It is not surprising that human rights professionals consequently confuse work on the movement for emancipatory work in society. But there are bad consequences when people of good will mistake work on the discipline for work on the problem.

Potential emancipators can be derailed—satisfied that building the human rights movement is its own reward. People inside the movement can mistake reform of their world for reform of the world. What seem like improvements in the field's ability to respond to things outside itself may only be improvements in the field's ability to respond to its own internal divisions and contradictions. Yet we routinely underestimate the extent to which the human rights movement develops in response to political conflict and discursive fashion among international elites, thereby overestimating the field's pragmatic potential and obscuring the field's internal dynamics and will to power.

Think of the right to development, born less in response to global poverty than in response to an internal political conflict within the elite about the legitimate balance of concerns on the institutional agenda and to an effort by some more marginal members of that elite to express their political interest in the only available language. The move from a world of "rights" to "remedies" and then to "basic needs" and on to "transnational enforcement" reflected less a changing set of problems in the world than a changing set of attitudes among international legal elites about the value of legal formalism. The result of such initiatives to reframe emancipatory objectives in human rights terms is more often growth for the field—more conferences, documents, legal analysis, opposition and response—than decrease in violence against women, poverty, mass slaughter and so forth. This has bad effects when it discourages political engagement or encourages reliance on human rights for results it cannot achieve.

G. ~~The Legal Regime of "Human Rights," Taken as a Whole, Does More To Produce and Excuse Violations than To Prevent and Remedy Them~~

Treating symptoms. ~~Human rights remedies, even when successful, treat the symptoms rather than the illness, and this allows the illness not only to fester, but to seem like health itself. This is most likely where signing up for a norm—against discrimination—comes to substitute for ending the practice. But even where victims are recompensed or violations avoided, the distributions of power and wealth that produced the violation may well come to seem more legitimate as they seek other avenues of expression.~~

status to compete with disciplines of private law, it raises the bar for other pro-bono activities that have not been as successful in establishing themselves as disciplines, whose practices, knowledge and projects are less systematic, less analogous to practice in the private interest. Professionalization strengthens lawyers at the expense of priests, engineers, politicians, soothsayers and citizens who might otherwise play a more central role in emancipatory efforts. At the same time, professionalization separates human rights advocates from those they represent and those with whom they share a common emancipatory struggle. The division of labor among emancipatory specialists is not merely about efficient specialization. We need only think of the bureaucratization of human rights in places like East Timor that have come within the orbit of international governance—suddenly an elaborate presence pulling local elites away from their base, or consigning them to the status of local informants, attention turning like sunflowers to Geneva, New York, to the Center, to the Commission. To the work of resolutions and reports.

Downgrades the legal profession. Sometimes the concern here is for the legal profession itself. The human rights movement degrades the legal profession by encouraging a combination of overly formal reliance on textual articulations that are anything but clear or binding and sloppy humanitarian argument. This combination degrades the legal skills of those involved, while encouraging them to believe that their projects are more legitimate precisely because they are presented in (sloppy) legal terms. Others have argued that human rights offers the profession, particularly at its most elite sites, a fig leaf of public interest commitment to legitimate the profession's contributions to global emiseration in its daily practice, in part by making all other legal fields, and particularly commercial legal fields, seem outside politics by contrast. For this, the sloppiness of human rights practice is itself useful—marking a line between the political redemptive profession and the apolitical workaday world of other legal professionals.

Encourages false solidarity. Of course there are many different types of people in the human rights movement and bureaucracy—different generations, different nationalities, different genders. To be a male human rights lawyer in Holland in your thirties is to live a different life altogether from that of a female human rights lawyer in Uruguay in her sixties. The human rights vocabulary encourages a false sense of the unity among these experiences and projects. As a vocabulary for progressive elite solidarity, human rights is particularly ham-handed, making it more difficult to articulate differences in the projects of male and female Palestinian human rights lawyers, Americans and Nigerians, etc.

Promotes bad faith. One thing these professionals do share, however, is a more or less bad faith relationship to their professional work. Every effort to use human rights for new purposes, to “cover” new problems, requires that they make arguments they know to be less persuasive than they claim. Arguments about their representative capacity—speaking for a consensus, a

victim, an international community—and about the decisiveness of the vocabularies they invoke. Professional bad faith accumulates the more the movement tries to torque its tools to correct for its shortcomings—to address background conditions that affect the incidence of abuse as if they were themselves violations, for example. We need only think of the earnest advocate re-describing torture or the death penalty or female genital mutilation as a problem of “public health” to feel the movement’s characteristic professional deformations at work.

Speaking law to politics is not the same thing as speaking truth to power. The human rights professional’s vocabulary encourages an overestimation of the distinction between its own idealism and the hard realpolitik motivations of those it purports to address. Professional human rights performances are, in this sense, exercises in de-solidarization. One intensifies the “legal” marks in one’s expression as if one thought this would persuade an actual other person who one imagines, paradoxically, to inhabit an altogether different “political” world. In this, the human rights intervention is always addressed to an imaginary third eye—the bystander who will solidarise with the (unstated) politics of the human rights speaker because it is expressed in an apolitical form. This may often work as a form of political recruitment—but it exacts a terrible cost on the habit of using more engaged and open ended political vocabularies. The result is professional narcissism guising itself as empathy and hoping to recruit others to solidarity with its bad faith.

Perils of “representation.” The professionalization of human rights creates a mechanism for people to think they are working “on behalf of” less fortunate others, while externalizing the possible costs of their decisions and actions. The representational dimension of human rights work—speaking “for” others—puts the “victims” both on screen and off. The production of authentic victims, or victim authenticity, is an inherently voyeuristic or pornographic practice that, no matter how carefully or sensitively it is done, transforms the position of the “victim” in his or her society and produces a language of victimization for him or her to speak on the international stage. The injured-one-who-is-not-yet-a-victim, the “subaltern” if you like, can neither speak nor be spoken for, but recedes instead before the interpretive and representational practices of the movement. The remove between human rights professionals and the people they purport to represent can reinforce a global divide of wealth, mobility, information and access to audience. Human rights professionals consequently struggle, ultimately in vain, against a tide of bad faith, orientalism and self-serving sentimentalism.

Irresponsible intervention. The people who work within the human rights field have no incentive to take responsibility for the changes they bring about. Consequences are the result of an interaction between a context and an abstraction—“human rights.” At the same time, the simultaneously loose and sanctified nature of the vocabulary and the power of the movement itself opens an enormous terrain for discretionary action—intervening here and

not there, this way and not that, this time and not that time. There is no vocabulary for treating this discretion as the responsible act of a person, creating intense psychic costs for human rights professionals themselves, but also legitimating their acts of unaccountable discretion. Belief in the nobility of human rights places blame for whatever goes wrong elsewhere—on local politicians, evil individuals, social pathologies. This imposes ethical, political and aesthetic costs on people in the movement—but also on those elsewhere in the elite who must abide them, and in those who, as the terrain of engagement and the object of representation, become the mirror for this professional self regard.

1. ~~The Human Rights Movement Strengthens Bad International Governance~~

Weakest link. Even within international law, the modes of possible governance are far broader than the patterns worn by human rights professionals. The human rights movement is the product of a particular moment in international legal history, which foregrounded rules rather than standards and institutional rather than cultural enforcement. If we compare modes of governance in other fields we find a variety of more successful models—a standards/culture based environmental regime, an economic law regime embedded in private law, and so forth. The attachment to rights as a measure of the authenticity, universality, and above all as the knowledge we have of social justice binds our professional feet, and places social justice issues under the governance of the least effective institutional forms available.

Glean hands. More generally, international governance errs when it imagines itself capable of governing, “intervening” if you will, without taking responsibility for the messy business of allocating stakes in society—when it intervenes only economically and not politically, only in public and not in private life, only “consensually” without acknowledging the politics of influence, only to freeze the situation and not to improve it, “neutrally” as between the parties, politically/economically but not culturally, and so forth. The human rights movement offers the well-intentioned intervener the illusion of affecting conditions both at home and abroad without being politically implicated in the distribution of stakes that results, by promising an available set of universal, extra-political legal rules and institutions with which to define, conduct and legitimate the intervention.

Fantasy government. International governance is often asked to do globally what we fantasize or expect national governments to do locally—allocate stakes, constitute a community, articulate differences and similarities, provide for the common good. The human rights movement, by strengthening the habit of understanding international governance in legal rather than political terms, weakens its ability to perform what we understand domestically to be these political functions. The conflation of the law with the good encourages an understanding of international governance—by those within and without its institutions—which is systematically blind to the bad con-

~~liberate emancipatory political energies frozen by the current legislative process and party structure, or will harness those political possibilities to the human rights claims of de-politicized individuals and judges. The point of an ongoing pragmatic evaluation of the human rights effort is precisely to develop a habit of making such assessments. But that human rights promotion can and has had bad consequences in some contexts does seem clear.~~

Strengthens repressive states and anti-progressive international initiatives. In some places, human rights implementation can make a repressive state more efficient. Human rights institutions and rhetoric can also be used in particular contexts to humanize repressive political initiatives and co-opt to their support sectors of civil society that might otherwise be opposed. Human rights can and has also been used to strengthen, defend, legitimate a variety of repressive initiatives, by both individuals and states. To legitimate war, defend the death penalty, the entitlements of majorities, religious repression, access to (or restriction of) abortion, and so forth. The recent embrace of human rights by the international financial institutions may serve both functions—strengthening states that will need to enforce harsh structural adjustment policies while co-opting local and international resistance to harsh economic policies, and lending a shroud of universal/rational inevitability to economic policies that are the product of far narrower political calculations and struggles. As deployed, the human rights movement may do a great deal to take distribution off the national and international development agendas, while excusing and legitimating regressive policies at all levels. These difficulties are particularly hard to overcome because the human rights movement remains tone-deaf to the specific political consequences of its activity in particular locations, on the mistaken assumption that a bit more human rights can never make things worse. This makes the human rights movement particularly subject to capture by other political actors and ideological projects. We need only think of the way the move to “responsibilities” signaled by the Universal Declaration on Human Responsibilities of 1998 was captured by neo-liberal efforts to promote privatization and weaken the emancipatory potentials of government.

Condemnation as legitimization. Finally, in many contexts, transforming a harm into a “human rights violation” may be a way of condoning or denying rather than naming and condemning it. A terrible set of events occurs in Bosnia. We could think of it as a sin and send the religious, as illness and send physicians, as politics and send the politicians, as war and send the military. Or we could think of it as a human rights violation and send the lawyers. Doing so can be a way of doing nothing, avoiding responsibility, simultaneously individualizing the harm and denying its specificity. Thinking of atrocity as a human rights violations captures neither the unthinkable or the banal in evil. Instead we find a strange combination of clinically antiseptic analysis, throwing the illusion of cognitive control over the unthinkable, and hysterical condemnation, asserting the advocate’s distance from the quotidian possibility of evil. Renaming Auschwitz “geno-

cide" to recognize its unspeakability, enshrining its status as "shocking the conscience of mankind" can also be a way of unthinking its everyday reality. In this sense, human rights, by criminalizing harm and condensing its origin to particular violators, can serve as denial, apology, legitimation, normalization, and routinization of the very harms it seeks to condemn.

III. CONCLUSION

So that is the list. As I said at the outset, some of these worries seem more plausible to me than others. I would worry about some of these costs more than others. The generation that built the human rights movement focused its attention on the ways in which evil people in evil societies could be identified and restrained. More acute now is how good people, well-intentioned people in good societies, can go wrong, can entrench, support, the very things they have learned to denounce. Answering this question requires a pragmatic reassessment of our most sacred humanitarian commitments, tactics and tools.

Whatever has been the history of human rights, we do not know its future. Perhaps these difficulties will be overcome, avoided. But we will not avoid them by avoiding their articulation, discussion, assessment—by treating the human rights movement as a frail child, in need of protection from critical assessment or pragmatic calculation. At this point these remain suspicions, intuitions, hunches, by people who have seen the human rights movement from one or another point of view. Each person involved in international human rights protection will have his or her own view about which, if any, of these doubts are plausible and worth pursuing. As a profession, it would be good to have a more open conversation about worries of this sort, and to think further about how they should affect our understanding of the human rights project as a whole.