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The Taliban's 'other' crimes

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ABSTRACT *This paper explores possible legal responses to the Taliban's 'other' crimes—those inflicted against Afghans during Taliban rule. This criminality largely has been rendered invisible by virtue of the international community's focus on punishing the Taliban's support of transnational terrorists, in particular al-Qaeda. This invisibility is problematic given that carefully constructed prosecutions of these 'other' crimes could play an important role in post-conflict reconciliation and national reconstruction in Afghanistan. Such reconciliation and reconstruction can legitimise a representative post-conflict state and curb terrorist recidivism.*

Thus far, public discussion of criminal accountability and military justice for the Taliban overwhelmingly has been limited to the 11 September attacks. But what about the Taliban's 'other' crimes?

Giving succor to extremist terrorists, in particular al-Qaeda, is only one of many abuses allegedly committed by the Taliban (Rashid, 2001: 73–74, 78).[1] Others include:

- forced deportation;
- massacres;
- torture;
- extrajudicial executions;
- disappearances among prisoners;
- persecution of Shia Muslims;
- politicide;
- gender crimes and sexual violence, institutionalised through sexual apartheid (Verdirame, 2001: 734);
- crimes against cultural property;[2]
- war crimes committed during the autumn 2001 international armed conflict;
- narcotics trafficking.

The international community chose not to intercede in Afghanistan while many of these tragic events were taking place. This passivity persisted despite awareness of Taliban abuses. In retrospect, it appears that early intervention to protect suffering Afghans might have hindered the symbiotic growth of al-Qaeda and Taliban power. This, in turn, may have gone some way to preventing al-Qaeda's terrorist attacks.

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Taliban also have been victims of human rights abuses. Many of these took place during the Taliban's ouster from power in the fall of 2001, but some occurred throughout many years of internecine conflict in Afghanistan. These abuses, too, call out for justice. To be sure, the modern history of Afghanistan is one of systemic violence. As such, Taliban violence is part of a violent whole. However, although it is important to recognise the collective and reciprocal nature of violence, this does not erase the importance of individual accountability.

Some of these abuses by and of Taliban may constitute violations of customary international law. Many constitute gross human rights offences, namely serious violations of international humanitarian law and international human rights law that, in turn, qualify as crimes under international law. This implies that such conduct could be classified as criminal at the time it was committed, even though some of the abuses—in particular crimes against women—may have formed part of the officially 'legal' framework of the Taliban state.

Full justice for all victims therefore requires criminal prosecutions additional to those initiated for the Taliban's support of al-Qaeda. True accountability would oblige the Taliban to answer to these 'other' charges in addition to complicity in the 11 September attacks.

Who judges? And where?

Who should prosecute these alleged crimes? Where should they be adjudicated? A number of options present themselves.

US federal courts constitute one possible venue for criminal proceedings. Collaterally, there is a possibility of civil lawsuits for monetary damages involving breaches of the law of nations (undertaken, for example, under the US federal Alien Tort Claims Act). Given the difficulties that inhere in enforcing any actual damage award against individuals, civil claims could be limited to providing victims with symbolic justice. However, sovereign immunity would attach to the state of Afghanistan which the US, given its support of the transitional Karzai regime, would fully support on grounds of comity.

In both the criminal and civil cases, prosecutions for the Afghan violence could be tacked onto pre-existing prosecutions for the 11 September attacks or could proceed independently. In the criminal case, jurisdiction would have to be established on a universal basis, given that US courts will not have territorial jurisdiction to adjudge crimes committed by Afghans in Afghanistan; nor do any of the other traditional bases for jurisdiction (such as nationality or passive personality) appear to apply.[3] Universal jurisdiction entitles a state to initiate proceedings in respect of certain serious international crimes, irrespective of the location of the crime, and irrespective of the nationality of the perpetrator(s) or the victim(s). Generally, but not necessarily, the offender is present in the prosecuting state (at least for the issuance of the arrest warrant or summons). In some cases, international treaties specifically create universal jurisdiction among ratifying states to prosecute breaches of that treaty wherever these may be committed or, alternately, to extradite to a state more closely connected to the breach that is willing to prosecute. By way of illustrative example: the Con-

vention Against Torture, an important international treaty, was the basis upon which the UK House of Lords held that General Pinochet of Chile could legally be extradited to Spain.

Other national courts—in particular in Belgium and Germany—have been somewhat more active than their UK counterparts in exercising universal jurisdiction to criminally prosecute extraterritorial human rights abuses. There is, therefore, a possibility that these courts could adjudicate Taliban crimes committed against Afghans.

The planned US military commissions appear unable to exercise universal jurisdiction over the Taliban's 'other' crimes. Nor is such adjudication within the scope or intended purpose of such commissions.

Another option is a transnational or international tribunal, perhaps operating under the aegis of the United Nations. This tribunal could be established by Security Council resolution or by expanding the jurisdiction of the pre-existing *ad hoc* tribunals for Rwanda or, more likely, the former Yugoslavia. Prosecutions for the Taliban's 'other' crimes could proceed in conjunction with international terrorism prosecutions or through an independent series of prosecutions.

This article posits that proceeding independently is crucial insofar as it characterises domestic Taliban abuses as crimes in their own right and as disconnected from and preceding the 11 September tragedy. Although the US can assert a strong interest in domestically prosecuting al-Qaeda operatives committing attacks within the USA (and European nations may assert an interest regarding al-Qaeda members operating within their jurisdictions), it seems that the place with the greatest interest in prosecuting Taliban leaders for their overall historical pattern of criminality is Afghanistan itself. This would militate against prosecuting the Taliban's 'other' crimes in US or Western European fora, or as tacked onto the jurisdiction of a special international tribunal focused on transnational terrorism. These considerations, in turn, point to the benefits of a fifth possible forum, namely domestic Afghan courts. Such entities could exercise jurisdiction through the territorality or nationality principles over crimes committed in Afghanistan against Afghans. These proceedings could be undertaken by Afghans in the *jirgas* (traditional dispute resolution bodies), criminal courts, or through UN-assisted initiatives. UN-assisted local initiatives have been employed with considerable success in Kosovo and East Timor and differ from *ad hoc* UN tribunals (which have been located away from the site of the violence and are not staffed by representatives of either the victim or aggressor groups).

Of course, Afghanistan's lack of centralised institutions, along with its understandable distrust of outsiders and of domestic governmental interventions, problematise the implementation of any state-based judicial initiatives. However, there is a duty to account for serious infringements of human rights. Balancing this duty with the *realpolitik* of Afghanistan suggests room for thoughtfully designed institutions.

Toward cosmopolitan, polycentric proceedings

Three questions should inform any consideration of the relative strengths and weaknesses of each of these judicial approaches. First, what would be the

meaning of such proceedings for Afghans? Second, what role can prosecutions play in transitional justice and nation building in Afghanistan? Third, what is the ability of such prosecutions to transcend justice in Afghanistan and touch upon community building at the global level, where Muslim perspectives systematically are perceived as marginalised?

This article posits that these considerations suggest a cosmopolitan international tribunal or UN-assisted proceedings located in Afghanistan. By cosmopolitan is meant a tribunal in which varying legal traditions and personages meet as equal strangers with a view to producing a harmonised jurisprudence.[4] This means that each personage is to become comfortable in the individual and harmonised traditions. Cosmopolitan prosecutions offer the opportunity to link precepts of international human rights law to those of Islamic law, so as to make both accessible to Western as well as Islamic audiences. On an operational level, this cosmopolitanism entails involving Afghan jurists and inclusively invoking Afghan custom, Islamic law and public international law. Through such a process of integration international norms can be layered sedimentarily upon local law in a manner that heightens legitimacy. These prosecutions might also serve as an opportunity to bridge gaps between the Muslim and Western communities.

One important advantage that a UN-assisted tribunal in Afghanistan has over an international tribunal (or other options) is the role local prosecutions might have in the process of nation building in Afghanistan, as set out in the Bonn process. Domestic prosecutions standing alone would have to be undertaken through an essentially destroyed judicial infrastructure. International assistance, whether through the sharing of technology and personnel, capacity building, or financial resource transfer, is necessary to establish a viable national and local judiciary in Afghanistan. Such a judicial system could facilitate a return to the rule of law. Robert Rotberg (2002: 139) wisely points out that 'citizens will not support reconstruction efforts until they are certain that legal redress will be available. A functioning court system should be among the first political institutions to be reborn.' Trials of the Taliban could play a catalytic role within the political settlement among Afghanistan's ethnic groups, particularly if coordinated with trials of the Northern Alliance and other forces for alleged war crimes in the conflict that prompted the downfall of the Taliban in November 2001 (and also during Afghanistan's previous internal conflicts, during which the Northern Alliance also was accused of war crimes). Local proceedings could be more meaningful to local people and could thwart the culture of impunity that has marked much of modern Afghan history. They could foster truth-telling and the construction of a historical narrative that could guide the building of an inclusive post-conflict Afghan state. To be sure, some good may arise from holding any type of proceeding anywhere, particularly if the alternative is the impunity that arises when there is no proceeding at all. However, holding trials locally and through familiar modalities will probably accomplish more good and have more meaning than holding proceedings far away through distant modalities.

On a broader note, it is important to learn from other experiences the international community has had in redressing mass violence. Rwanda presents a compelling example. As is well known, Rwanda's Hutu government attempted to

wipe out the country's Tutsis in the spring of 1994. Some 800 000 people (10% of the Rwandan national population) were murdered. In Rwanda there has been extensive reliance on retributive criminal justice. This reliance is operationalised through implementation of criminal trials to prosecute individuals accused of genocide. The trials operate at three levels: domestically (where 115 000 detainees are incarcerated pending prosecution, some for seven years already), internationally at the International Criminal Tribunal for Rwanda (which has about 55 genocidal leaders in custody), and extraterritorially through foreign national trials (in Belgium, for example). My research indicates that this exclusive reliance on retributive justice has incapacitated many detainees (and thereby has promoted some short-term national security goals) and has led to some external imposition of individual guilt, but has failed to produce shame, responsibility, or contrition among these detainees (and, palpably, among the Hutu population at large). This, in turn, weakens prospects for national reconciliation and ethnic power sharing, both of which, I posit, are necessary for peace and long-term stability in Rwanda (Drumbl, 1998, 2000). Were legal responses to be more pluralistic and polycentric, however, reconciliation could more readily be attained. This is why I have argued in favour of restorative justice initiatives in Rwanda, whether at the level of traditional justice (which the Rwandan government, at long last, is beginning to implement domestically), truth commissions, public inquiries, or restitution. Although there is an important place for criminal trials in the aftermath of mass atrocity, the effectiveness of these trials is optimised when they are placed within an overarching matrix of diverse, albeit legal, responses. Similar logic ought to apply to redressing systematic human rights abuses and mass violence in Afghanistan. Retributive justice proceedings, even if wonderfully cosmopolitan and undertaken seamlessly through hybrid international–domestic tribunals, may simply not, on their own, attain the important goals of reconciliation, atonement, forgiveness, apology and reconstruction. As such, it will be important to consider how the legal response to mass violence in Afghanistan can be diversified.

Appropriate legal standards: How to judge?

International involvement in adjudicating domestic Taliban conduct reflects a movement that upends an important cornerstone of traditional international law. This cornerstone is the legal construction of state sovereignty, which essentially immunises a state from review regarding conduct undertaken within its own borders against its own nationals. The notion of state sovereignty underpins the Charter of the United Nations and reflects an ideology that Gerry Simpson calls 'Charter liberalism' (2001: 541). According to Simpson, 'the point of this approach is to treat all states equally, to allow them each the same rights afforded to individuals in a liberal society (ie domestic jurisdiction, equality, non-intervention) and to, if not celebrate, at least tolerate the diversity produced by these norms' (2001: 541). After all, one of the core values of the international legal order is the 'equal claim to integrity of all states regardless of their political or social ideology' (Friedmann, 1968: 151). International prosecution of fundamentally domestic affairs—as reflected in the *ad hoc* tribunals for Rwanda and

the former Yugoslavia, the attempted prosecutions in Cambodia, and (potentially) the new International Criminal Court—is a contemporary development which Simpson labels 'liberal anti-pluralism' (2001: 541). This latter approach challenges Charter liberalism by actively distinguishing among states based on their internal characteristics and prioritising the rights of individuals over the inviolability of the state (Simpson, 2001: 541). Matters traditionally falling within the zone of Charter liberalism are becoming exposed to review by the international community. Increasingly, a state's internal affairs are subject to external examination. In fact, according to the liberal anti-pluralist, the status of a state hinges upon its respect for certain individual rights and processes; as such, sovereignty is not formally self-evident, but is based upon participation in a rights-based value system. Sovereignty is to be earned, not assumed. States that elect not to adhere to these norms are stripped of their sovereignty, are deemed to be outlaws and are subject to international review, whether military or juridical. The existential equality of all states, therefore, is challenged.

However, according primacy to the rights of individuals is by no means a value-neutral exercise. It is in fact a judgemental exercise. Although a complicated and contested point, many observers perceive 'rights' as a Western term, driven by Western politics, manipulated for foreign policy purposes, albeit now globalised through international law (Baxi, 2002: 24). 'Overall, human rights discursivity was and still remains, according to the narrative of origins, the patrimony of the West' (Baxi, 2002: 24). In this vein, prosecutions of Taliban officials for *in situ* crimes brings to the forefront the reality that, by and large, many Western legal norms[5] may be viewed with scepticism among certain constituents of the Islamic world (An-Na'im, 1990; Westbrook, 1993: 823; Hilmy, 2000: 15). To be sure, it is not possible unassailably to generalise about what the Muslim world thinks about international legal norms, but it is possible to conclude that important—and in many cases growing—constituencies within the Muslim world do experience a dissonance between their lives and these norms.

This dissonance emerges in part from tangible conceptual differences between Islamic and Western legal norms, which in a number of ways represent different ontologies for living, functioning and conceptualising the world (An-Na'im, 2001: 725). Islamic figures 'have pointed out that the Western separation of church and state, of secular and religious authority, is alien to the jurisprudence and political thought of the Islamic tradition' (Ignatieff, 2001: 103). Whereas modern Western political movements—liberalism, communism and fascism—to varying degrees separate religion from politics, the Islamic *Weltanschauung* expressly links the two.

Moreover, dissonance may also be related to the fact that 'Islam does not have a tradition of complex theorizing about the international system' (Murden, 2002 187), largely because the international community consists of the *umma* (Islamic believers) and others.[6] The international community is not deconstructed into states. On the other hand, public international law, which emerged following the peace of Westphalia and the birth of the nation-state in Western Europe, is predicated upon precisely this sort of deconstruction. Many of the Muslim 'nation-states' that exist today initially were created by European colonial powers

or were the 'fiefdoms of local elites anxious to use the modern state for their own benefit' (Murden, 2002: 188). Although these states eventually constructed some legitimacy, this legitimacy is not unchallenged. In fact, it is vigorously under siege, not least from influential religious and fundamentalist movements that refuse to accept formal divisions within the *umma.* Sohail Hashemi observes that 'the ideal of a united Muslim world remains—however inchoate—a central aspect of the normative framework of Islamic activism' (1996: 24).

Even among Muslim observers who do not challenge the concept of the nation-state itself, dissonance is prompted by geopolitical tensions and misunderstandings, along with local cultural beliefs (through which many Islamic precepts are filtered, such as in Afghanistan). Muslim states have, in the past, criticised the 'West for the way it used its universal human rights to judge and condemn others' (Murden, 2002: 156). At the summit of the Organization of the Islamic Conference held in Doha in November 2000, participants 'called for the universality of human rights not to be used as a pretext to intervene in the internal affairs of states and undermine their national sovereignty' (Final Communiqué, 2000, point 113).

As such, more important than the exact nature of the differences and overlap between Western and Islamic legal norms is the fact that many individuals in Islamic societies may resent the universalisation of Western norms through the vehicle of international law (Ignatieff, 2001: 103) and the ideational software of globalisation (Murden, 2002: 17). As Michael Ignatieff compellingly points out: 'Human rights doctrine is now so powerful, but also so unthinkingly imperialist in its claim to universality' (2001: 102). Universal, after all, connotes something quite different than global. According to Baxi (2002: 96):

> Globalization of human rights consists in those practices of governance by the dominant states that selectively target the enforcement of certain sets of rights or sets of interpretation of rights upon the 'subaltern' state members of the world system. Such practices need no ethic of 'universality' of human rights; these constitute an amoral exercise of dominant hegemonic power.

Regardless of the precise etymology of that which presently constitutes international human rights law,[7] the corpus of this law is perceived by many in the Muslim world as decidedly Western in flavour, yet brazenly imposed on all. The imposition of universal, and purportedly neutral, human rights standards may be perceived as a normative political manifestation of Western hegemony. This imposition is layered upon the fact that Muslim nations have been historically excluded and currently remain largely excluded from the formulation of international law and institutions (although they remain the objects of this law and these institutions). This sense of exclusion is particularly poignant given that there are over one billion Muslims worldwide; Muslims constitute a majority in over 40 states (Murden, 2002: 185). Murden notes that, by the middle of the twenty-first century, Muslims will probably constitute over one-third of the world's population (2002: 205).

On the other hand, there is nothing to gain from entirely dismissing the normative force of international human rights law and the institutions that implement that law. Such a rejection may undermine the international rule of law,

and also lead to impunity for aggressors, frustration for victims, and dissolve accountability for unspeakable crimes against humanity. Entirely dismissing this apparatus assumes that oppression is part of the cultural software of those communities where oppression occurs. No human being wants to be oppressed, hurt or killed. Entirely dismissing this apparatus also assumes there can be no room for overlap between the international and the local, between the secular and the religious, between the West and the rest. It is doubtful that there is no overlap, nor opportunity for transcultural consensus. Perry (1998: 70–71) and Drinan (2001: x–xii) offer the example of the 1993 Vienna Declaration on Human Rights, adopted by consensus by 172 states, to repudiate the argument that endeavouring to bridge gaps between international human rights, local lives, and religious pluralism is a lost cause.

However, the use of what might be perceived as outsider 'rights' (in whose name many abuses have been committed)[8] to vindicate oppression may not be the most effective manner in which to build social norms within afflicted states. As such, although I argue in favour of diverse legal responses that include prosecuting the Taliban for crimes internal to Afghanistan, I underscore the importance of undertaking such prosecutions in a cross-civilisational manner. In the past, international legal encroachments on state sovereignty have often been undertaken in a high-handed and aloof manner, superimposing international rights upon local lives; consequently they have externalised meaning and created friction. I have argued elsewhere that this has, to some extent, been the case in Rwanda and the former Yugoslavia (Drumbl, 2000). Should international intercession in favour of human rights be mediated through local practices, then there is an opportunity to build meaning through a process of accretion.[9] I draw inspiration from Upendra Baxi (2002: 26):

> The future of human rights is serviced only when theory and practice develop the narrative potential to pluralize the ordinary metanarratives of the past of human rights beyond the time and space of the European imagination.

Building meaning and avoiding high-handedness is of great importance in the Afghan case. Accordingly, the institutions that adjudge the Taliban's 'other' crimes should be carefully constructed. They should include Islamic judges and Islamic prosecutors, along with judges and prosecutors versed in international criminal law and processes, and also local customary law. The law that is to be applied should be local Afghan law as filtered through Islamic law, upon which international human rights norms are applied. To be sure, such a process of harmonisation will be easier in some areas (for example, the criminality of murder and persecution) and more rippled in others (the criminality of sexual apartheid). However, the mere fact that there may be differences in the process of harmonising competing understandings of legality and illegality, of good and bad, does not lead to the conclusion that the entire process is frivolous or useless. It may be daunting, but that is quite another matter.

Responsibility beyond individual guilt?

Taliban officials are responsible for their own conduct. But the web of responsi-

bility for why Afghanistan statehood became so failed that the Taliban could enter, dominate, govern and exploit extends beyond the borders of Afghanistan. There is a need for a searching review of the conduct of the great powers and of international institutions during the emergence of the Taliban and its consolidation of power. Although not a case of individual criminal liability, these broader phenomena facilitated the Taliban's grip on power. They need to be assessed in order not to be repeated either in Afghanistan or elsewhere.

In 1979 the Soviets illegally and brutally invaded Afghanistan to prop up a faltering communist regime. Militant Islamic fundamentalists, called the *mujahedeen*,[10] vigorously fought the Soviets. During the 1980s, the USA began to support *mujahedeen* operations, initially through weapons purchases (Rashid, 2001: 129). The CIA committed its support to 'recruit radical Muslims from around the world to come to Pakistan and fight with the Afghan Mujaheddin … Between 1982 and 1992 some 35 000 Muslim radicals … would pass their baptism under fire with the Afghan Mujaheddin' (Rashid, 2001: 129–130). Zbigniew Brzezinski, a former US National Security Adviser, opined in the early 1990s: 'What was more important in the world view of history? The Taliban or the fall of the Soviet Empire? A few stirred-up Muslims or the liberation of Central Europe and the end of the Cold War?' (cited in Rashid, 2001: 130).

For nine years the invading Soviet forces were subject to dogged resistance by the *mujahedeen*. From one to two million Afghans were killed, an astonishingly high number; 50 000 Soviet troops perished. One-third of the Afghan population fled the country. But, as soon as the Afghans drove out the Soviets, the USA lost interest in Afghanistan, its principal foreign policy goal (Soviet containment) having been achieved (Goodwin, 2001). This created a deep sense of frustration, betrayal and disappointment among Afghans. Afghans look upon their casualties in the war against the Soviets 'as an unrewarded gift to the West' (Elliott, 1999: 160). They see themselves as having expedited the demise of the Soviet Empire, but then just having been left to rot in their ruined country (Rashid, 2001: 208–209).

Immediate withdrawal of foreign attention following the Soviet exodus created a sense of *anomie* that facilitated the rise of the Taliban (who largely entered the country from *madrassas*[11] in Pakistan). With the dissolution of the communist government in Afghanistan in 1992, fighting became extensive. The Taliban stepped into this power vacuum and culture of war. In fact, the Taliban's grip on power in Afghanistan derived from a society with a starkly negative view of the outside world, thanks to Soviet invasion, followed by Western and other foreign intervention in support of the *mujahedeen*, and then the abandonment of the *mujahedeen* after the Soviets withdrew.

Assessing the role of foreign powers in creating the dire circumstances in which Afghanistan currently finds itself is necessary if justice is to be perceived as legitimate and capable of (re)constructing social norms. It may be easy and obvious for victims to blame Taliban officials for their egregious crimes (and undoubtedly they are blameworthy), but the social and historical context that contours the Taliban in its own way facilitated the commission of such systemic human rights abuses. However, individual and selective criminal trials—even if conducted cross-civilisationally in the Afghan judicial system—are not equipped

to ferret out this broader institutional and transnational responsibility. Individual, and necessarily selective, trials do little to address complex collective realities. In fact, institutional, organisational and governmental responsibility may be masked by findings of individual, deviant guilt. From the perspective of the victims of state violence, this means that only a very simple form of justice has been meted out. In other words: by finding the savage abusers guilty, the discussion is putatively closed. 'The criminal law works in this very fashion, to separate, demarcate, and purify us—sweep away from sight, sound, and smell—things that, within its own conceptual system, can only appear as "filth"' (Osiel, 2001: 157).[12] But is this catharsis not premature? If international leaders create or assist such proceedings, they may self-servingly create or assist the silencing of their own agency in violence. In order to guard against such outcomes, serious thought should be given to joining *in situ* legal proceedings with a commission of inquiry that unpacks institutional, foreign and international involvement in the rise to power of the Taliban and radicalisation of certain elements of Afghan (and Muslim) society. This is a concern not just for Afghanistan, but also for many post-conflict societies in the developing world.[13] This also presents a challenge to the legal academy's fairly narrow notion of 'guilt', to be contrasted with the broader notion of 'responsibility'.

Conclusion

The Taliban's 'other' crimes, committed systematically over a number of years, should not be overlooked. Giving succor to terrorists is only one part of the Taliban's litany of criminality. In avenging its victimisation, the West in general, and the USA in particular, should not brush aside the many other victims. It would be unfair for the West to exercise primacy and exclusivity over captured Taliban officials to try them only for the 11 September attacks. Doing so might perpetuate the 'insider' and 'outsider', 'familiar' and 'other' dynamic that characterises much of the West's relationships with the rest of the world. Instead, Western needs for justice should be co-ordinated with those experienced by others. Only then would the Taliban face a thorough accounting. The accounting would be all the more thorough if undertaken through diverse and poly-centric methods that include retributive trials as well as restorative truth-telling mechanisms, accompanied by transnational inquiries to expose the many factors inducing the Taliban's initial acquisition—and subsequent abuse—of power.

Notes

[1] Additional information is available at US Department of State, 106 Congress, *Country Reports on Human Rights Practices for 1998—Volume II*. J Comm. Print, 1999, pp 1847–1848; and United Nations Security Council Resolution 1378, 14 November 2001, S/RES/1378 (2001), adopted at the 4415th meeting.

[2] Well known examples include the ancient Bamiyan Buddhas and *objets d'art* in the National Museum in Kabul and the Herat Museum. International law does not criminalise the destruction of cultural property outside armed conflict (ie as a war crime), although there may be some room to classify such destruction as a crime against humanity. See Ratner and Abrams (2001: 109–110).

[3] The Alien Tort Claims Act permits a foreigner to sue in US federal court for a violation of the law of nations committed by anyone regardless of where that violation occurred. This statute therefore expressly accords broad, universal jurisdiction for the purpose of such civil claims.

[4] To be sure, this is not the only possible definition. But it is the one this paper adopts. A more pejorative understanding of 'cosmopolitan' is also possible, whereby the term is taken to signify internationally mobile, aloof elites that are not grounded in any particular cultural context.

[5] 'What is important to understand about the emergence of Western hegemony after the Cold War, though, is that it was far more than just a pax Americana. The United States was primus inter pares, but Western Europeans were also a major force in extending Western hegemony to … the rest of the world' (Murden, 2002: 7).

[6] 'The division between believers and nonbelievers remained the definitive understanding of international relations' (Murden, 2002: 187).

[7] A rich literature addresses the extent to which international human rights law may represent the 'universalisation' of Western legal values. For an overview, see Perry, 1998, Drinan, 2001.

[8] 'The West seeks to impose standards of right and justice which it has all along violated in its conduct towards Islamic societies and states' (Baxi, 2002: 112).

[9] This, in turn, would promote pluralistic and inchoate initiatives such as UNESCO's recent Universal Declaration on Cultural Diversity (2 November, 2001).

[10] The name means 'those who struggle', but is often translated in the West as 'holy warriors'.

[11] Religious schools.

[12] Citing Douglas (1966: 2–5).

[13] El Salvador and Nicaragua are examples. Georgetown University law professor Robert F Drinan observes that massive foreign involvement 'substantially altered the political structure of these, leading to internal conflicts in which human rights abuses were committed, only to be followed by governance by entities that furthered such abuses' (2001: 89–90).

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