

# Just War Theory, Humanitarian Intervention, and the need for a Democratic Federation

John Davenport  
Fordham University

## Abstract

The primary purpose of government is to secure public goods that cannot be achieved by free markets. The Coordination Principle tells us to consolidate sovereign power in a single institution to overcome collective action problems that otherwise prevent the relevant public goods. There are several public goods that require such coordination at the global level, chief among them being basic human rights. This thesis is supported in three main steps. First, I consider Pogge's and Habermas's analyses as alternatives to Hobbesian conceptions of justice. Second, I consider the core conventions of international law, which are in tension with the primacy of state sovereignty in the UN system. Third, I argue that the just war tradition does not limit just causes for war to self-defense; it supports saving innocent third parties from crimes against humanity as a just reason for war. While classical authors focused less on this issue, the point is especially clear in 20<sup>th</sup> century just war theories, such as those offered by the American Catholic bishops, Jean Elshtain, Brian Orend, and Michael Walzer. Against Walzer, I argue that we add intractable military tyranny to the list of horrors meriting intervention if other *ad bellum* conditions are met. But these results requires us to reexamine the "just authority" of first resort to govern such interventions. The Coordination Principle implies that we should create a transnational federation with consolidated powers in place of a treaty organization requiring near-unanimity. But to be legitimate, such a global institution must also be directly answerable to the citizens of its member states. While the UN Security Council is inadequate on both counts, a federation of democracies with a directly elected executive and legislature could meet both conditions.

## **I. Introduction: Just War Theory and Global Government**

In December 2002, by an 82% margin, the Eastern Division of the American Philosophical Association (APA) passed a resolution against the Bush Administration's plans to go to war to oust the regime of Saddam Hussein in Iraq. The resolution was prescient in its

doubts about the alleged threat posed by Hussein's regime and about the disorder likely to follow from occupation. But the resolution's central normative principle reads: "Both just war theory and international law say that states may resort to war *only* in self-defense."<sup>1</sup> As we will see, this statement is wrong about the trend in international law and grossly misrepresents the just war tradition, especially in its contemporary forms. Whether intentionally or not, this Eastern APA principle ignores the problem of atrocities internal to nation-states and falsely implies a consensus against humanitarian intervention as a just cause for military action. On its face, for example, the APA principle would have forbidden any nation to intervene to stop the Rwandan genocide, or the slaughter in Kosovo, or the scorched earth tactics of the Janjaweed militias in Darfur. For intervention in none of these cases would count as wars of national self-defense.

More deeply, the APA resolution reflects tacit faith in the basic legitimacy of the Westphalian world order of sovereign nation-states under the weak treaty organization called the United Nations, together with other regional treaty bodies like NATO and the EU. For the resolution takes for granted the principle on which the UN was founded, namely that nation-states have virtually unlimited sovereignty over their "internal affairs." As David Luban argues in a famous exchange with Michael Walzer, the UN Charter implies that only wars of self-defense against aggression are legitimate, no matter how outrageous a regime is to its own people.<sup>2</sup> The APA resolution simply ignores such problems with the current UN Security Council framework, which was designed in the 1940s primarily to stop wars of foreign aggression. It also ignores the vital historical point that among democratic states, the decision to endorse this framework and

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<sup>1</sup>See the Eastern APA webpage: <http://www.apa.udel.edu/apa/divisions/eastern/> (last visited May 7, 2007). A similar resolution passed the Pacific Division of the APA in May 2003.

<sup>2</sup>David Luban, "Just War and Human Rights," *Philosophy and Public Affairs* 9 no.2 (Winter 1980); reprinted in *International Ethics*, ed. Beitz, Cohen, Scanlon and Simmons (Princeton University Press, 1985): 195-216, pp.197-99.

thus tolerate tyrannical regimes was only made because it appeared politically impossible to do better at the beginning of the Cold War. Following World War II, the NATO allies had to accept brutal dictatorships on the Security Council in hopes of getting them to accept the non-aggression pact. Harry Truman, Eleanor Roosevelt and their European counterparts would surely be astounded that sixty years later, in a dramatically changed world in which democracies valuing basic human rights now hold most of the military and economic power, leading intellectuals in these democracies continue to assume the adequacy of the UN's design and so endorse principles that, on their face, ban humanitarian intervention to stop crimes against humanity.

As this paper will argue, just war theory does regard such intervention as a just cause for war when it is the only way to stop systemic violations of the most basic human rights. But if so, we must ask, who are the legitimate authorities to wage such wars? Just war theory cannot solve this problem on its own; it must first be connected with other principles for determining what sovereign powers should belong to different actual and possible levels of government. I have outlined a system of such principles starting with the central idea in the federalist tradition:<sup>3</sup>

**The Coordination Principle (CP):** If G is an important public good that can only be achieved by coordination (through law or collective action with the force of law) organized at a certain level of government L, then this is a strong *prima facie* reason to give to governing institutions at level L primary sovereignty and enforcement powers over matters that have to be governed to achieve G: government at L should be established if it probably can be established and maintained without disproportionate harm or other injustices.

This principle, which is the converse of the Principle of Subsidiarity, is supported by the basic norms of instrumental reason. It requires a conception of public goods, such as the following:

**An Explanatory Definition of Public Goods:** G is a public good only if

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<sup>3</sup>John J. Davenport, "A Global Federalist Paper: Consolidation Arguments and Global Governance," *The Journal of Value Inquiry*, forthcoming 2008.

- (a) G is a state of affairs that is desired by many or all of the relevant parties, and/or that is objectively good for most or all of these parties [factual and/or normative premise];
- (b) G is unlikely to be consistently produced through competitive interaction of the parties who, in each free market decision, select options by a strategic assessment of which option best directly serves their private interests or maximizes their desire-satisfaction [supported by empirical evidence and by rational choice theory];
- (c) G can reliably be secured by collective action of all (or most) relevant parties organized through binding law or policy made by the unified sovereign authority of a government representing all the parties [empirical premise];
- (d) The coordination involves providing G *to* all (or most) of the relevant parties: G will be jointly enjoyed by all (or almost all) of the parties when it is secure for any. Thus the resulting good is not exclusive to some segment of the parties coordinated to secure G [conceptual premise].

Public goods can be prevented by competitive dynamics in at least two ways. First, if only some parties act together to secure G, the rest are free-riding on them; this gives those who are cooperating incentive to free ride as well, making G unsustainable. Second, if parties compete for components of G or pursue G through disorganized means, their separate efforts may prove mutually self-defeating. Either type of collective action failure leads to an outcome that is inferior to the public good that could have been secured through coordination.<sup>4</sup> By extension, a *global* public good is one that requires the collective action of all (or at least most) nations coordinated through law binding on them all at the transnational level.

With these definitions, we can apply the paradigm federalist argument for higher levels of government to the global level. A *consolidation argument* for transnational government is an

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<sup>4</sup>The concept of "collective action problems" includes both Prisoners'-Dilemma and Free-Rider problems, and other games (such as Chicken and Assurance) in which a suboptimal result ensues if each party chooses the option that, from his/her individual viewpoint, maximizes rationally expected satisfaction of his/her interests. For a helpful review of the literature, see Michael Taylor, "Cooperation and Rationality: Notes on the Collective Action Problem and Its Solutions," in *The Limits of Rationality*, ed. Karen Cook and Margaret Levi (University of Chicago Press, 1990), ch.6. New studies of these phenomena relevant to global governance appear each year; for example, see Katharina Holzinger, *Transnational Common Goods: Strategic Constellations, Collective Action Problems, and Multi-level Provision* (Palgrave Macmillan, 2008).

argument for creating a level of government above nation-states that would have *primary sovereignty* over those matters that it must control to sustainably secure global public goods that cannot be reliably realized by the competitive interaction of nations or by treaty organizations deriving their authority and powers entirely from statutory acts of their national parties.<sup>5</sup> It is the peoples of the different states (or their governments) who need these goods who must finally make this empirical judgment about the need for cooperation through an enforceable unified will, though expert opinion based on historical evidence and game theory should inform them. But if they judge that consolidating some of their national powers is necessary, then a democratic conception of legitimate sovereign power implies that the resulting transnational government must also be directly answerable to the new 'people' (or combined citizens of all its member states), whose original authority it unifies in exercising its enumerated powers. Of course, this is only possible for member states whose governments hold free multiparty elections.

Hence if the establishment of basic human rights is a global public good, it follows from the Coordination Principle that we ought to unify at the global level sufficient sovereign authority to enforce basic standards of decency in all nations – at least if this is feasible without disproportionate cost or other injustices. In my view, just war theory supports the major premise that gets this argument going. Here is a formulation that makes the connection explicit:

The Global Consolidation Argument expanded to include just war principles

1. There are various important public goods  $G_1, G_2, \dots, G_n$  that cannot be achieved in a stable or reliable way without coordination through law at the global level [factual premise];
  - 1a. These include at least a minimal list of human rights that are binding on all nations.  
[from (i) moral theories making demands stronger than Hobbesian contractualism;  
(ii) legal conventions defining war crimes and crimes against humanity;

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<sup>5</sup>I examine the structure of consolidation arguments in detail in Davenport, "A Global Federalist Paper."

(iii) the recognition of humanitarian causes as legitimate grounds for armed intervention in just war theory].

2. The Coordination Principle (CP) [normative premise]
3. The Democratic Principle of Legitimacy (DP) [normative premise]
4. There is strong *prima facie* reason to establish a government at the global level with the enumerated powers necessary for G1, G2, ...Gn. [from 1 & 2]
5. There is strong *prima facie* reason to establish a global government that is democratically answerable to all the citizens of the nation-states out of which its enumerated powers are consolidated [from 3 and 4].

The argument grows in strength as we add further transnational goods as premises 1b, 1c, and so on; but in this paper I'm concerned with human rights, whose status as global public goods is particularly contested. However, to support premise 1a, we do not have to rely exclusively on philosophical theories of just government that include human rights; we can also argue from the milestones in international law reached in the last hundred years. Just war theory serves as a bridge between pure moral theory and the emerging human rights paradigm in law because this tradition tends to recognize systemic rights violations as just causes for war. Note that this normative point does not rely on CP; the best interpretation of just war principles tells us directly to conceive just wars as part of a larger system for securing human rights to all persons. To satisfy *jus ad bellum* norms, we then have to determine which institutions count as legitimate authorities to declare and wage humanitarian wars aimed at stopping massive rights violations. CP and DP together then tell us how to answer *that* question: we have to ask whether these aims can be achieved by nation-states alone, or by some treaty organization, or whether a higher level of government is needed. Theories place legitimate authority solely in national governments, in regional security alliances, or in the UN Security Council face large observed and predictable coordination problems. If we apply CP to these problems and derive the need for a government

that can secure human rights through consolidating the war powers of nation-states, and we apply DP to this new institution, the result is a permanent federation of democracies that is as inclusive as requirement for free elections allows.<sup>6</sup> So if it is feasible, we should replace the Security Council with such a federation.

Thus just war theory and the question of humanitarian intervention are closely connected with the grounds for global governance, though this is often overlooked . To appreciate this link, it helps to begin with moral theories of justice on which just war theory depends. §II argues that conceptions of political justice more robust than Hobbesian egoism support recognition of human rights on which the sovereign authority of nation-states depends. §III considers the implicit reference to robust rights that limit national sovereignty in the most important covenants of international law, which are in deep tension with the UN framework. §IV presents a two-level model of just war norms, several of which cannot be specified without reference to conceptions of political justice extending to the global level. Thus the just war tradition's general support for rescuing victims of the worst atrocities (when other relevant conditions are met) is made coherent by interpreting *jus ad bellum* rules in connection with robust rights-based accounts of political legitimacy. §V shows near-consensus on this point in contemporary just war theory, with large exception of Michael Walzer. However, Walzer's allowances for humanitarian intervention still require us to face the coordination problems and legitimacy-deficits that dog all potential "just

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<sup>6</sup>I first defended this idea in a 2004 article, but similar proposals have been made by a number of political scientists. Senator John McCain took some of them up in a March 26, 2008 speech on foreign policy, in which he said: "One of [our] responsibilities is to be a good and reliable ally to our fellow democracies. We cannot build an enduring peace based on freedom by ourselves, and we do not want to. We have to strengthen our global alliances as the core of a new global compact -- a League of Democracies -- that can harness the vast influence of the more than one hundred democratic nations around the world to advance our values and defend our shared interests." Note that McCain's proposal is a treaty organization rather than a government with federated powers able to act on simple majority votes, and his league would apparently exist alongside the UN Security Council rather than replacing it. It is also unclear to what extent he thinks it should take up the burden of addressing humanitarian crises and the ethnic and secession struggles in which they often occur.

authorities" to govern such interventions other than a global federation of democracies. Building on Luban's arguments, §VI then critiques Walzer's conception of state sovereignty and cultural integrity in detail to show any viable conception of "self-determination" has moral preconditions, and that we should expand Walzer's list of just causes for humanitarian intervention to include certain forms of intractable tyranny. But if so, then only a pluralistic federation of democracies can discharge our collective duties victims of military dictatorship and crimes against humanity.

## **II. The Securing of Human Rights as Global Public Goods: Pogge and Habermas.**

Arguably, there are a number of global public goods, from the security of borders to steering power over the global economy, poverty relief and disaster aid, disease control and prevention of pandemics, and a sustainable biosphere.<sup>7</sup> But the most important category of public goods are those required by political justice, and basic rights of persons are now widely regarded as central to legitimate government, transcending all distinctions of ethnicity and nationality.<sup>8</sup> While the evidence in favor of public goods is always partly empirical (we observe or predict collective action problems resulting in suboptimal provision of widely desired or needed goods), the idea that human rights can only be secured as public goods is conceptual,<sup>9</sup> even if the content of rights is held to include empirically based needs for flourishing. The more robustly such rights

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<sup>7</sup>For example, see J.F. Rischard, *High Noon: Twenty Global Problems and Twenty Years to Solve Them* (Basic Books, 2002), and *Global Public Goods*, ed. Inge Paul, Isabelle Grunberg, and Marc Stern (UNDP/Oxford University Press, 1999). Essays in the latter collection recognize peace, security, and material assistance in disasters and distributive justice as global public goods, but say little about the good of safety from crimes against humanity.

<sup>8</sup>In "A Global Federalist Paper," I list nine categories of global public goods and explore in detail the first two: namely, security from aggression by hostile nations and security from terrorist groups capable of using weapons of mass and moderate destruction. The provision of human rights is third in my list.

<sup>9</sup>Note that technically, it is not rights themselves as ersatz requirements of political justice that are public goods; it is rather the *provision* of whatever the rights entitle us to (e.g. access to a jury trial) that count as public goods realizable only through law. Thus there is no implication that rights themselves consist in legal conventions.

are conceived, the more coordinative powers a government would need to give them legal force.

In addition to substantive disagreement over what human rights should be recognized, there are also variant metaethical accounts of what the notion of a "human right" means.<sup>10</sup> The point of such accounts is to come up with a semantic definition that can guide articulation of a substantive schedule of rights and its normative basis. Although most of the technical issues in the metaethical debate do not concern me here, it is important to outline what I mean in talking about human rights. I agree with Thomas Pogge that "human rights express ultimate moral concerns" that do not derive from moral obligations to obey positive laws; that such rights act as (qualified) trumps, usually "overriding other normative considerations;" and that they are universal in two respects: (i) they are rights *of* all human beings (or better, "persons"), who are in that sense equal, and (ii) they obligate "all human agents irrespective of their particular epoch, culture, religion, moral tradition or philosophy."<sup>11</sup> This final aspect of the concept is the most controversial in contemporary debates about cosmopolitanism, but as we will see, it is precisely the requirement of universal support that connects human rights to global public goods.

Pogge supports his view by critiquing four semantic accounts that do not adequately explain the demand for universal support of rights that are equally held by all persons. The first two views either overbroadly treat every moral claim "that every human being has against every other human being" as a human right, or they rights to claims against one's own government, whereas some rights are conceived as binding on all governments.<sup>12</sup> As Pogge recognizes, Jürgen Habermas means to solve this problem by treating human rights as virtual "basic or constitutional

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<sup>10</sup>See Thomas Pogge, "The International Significance of Human Rights," *Journal of Ethics* 4 (2000): 45-69, p.45.

<sup>11</sup>Ibid, p.46. There are also different kinds of rights (liberties or permissions to try, claim-rights, etc.).

<sup>12</sup>Ibid, pp.47-48.

rights" that "each state ought to set forth in its fundamental legal texts."<sup>13</sup> As Seyla Benhabib explains, on his view, the fundamental human right is the "right to have rights' understood as the claim of each human person to be recognized and protected as a legal personality by the world community."<sup>14</sup> This is something like a universal *moral right* to equal legal rights. But Habermas's view differs from the classical liberal and natural law traditions by denying that there are entirely "prepolitical" rights in a state of nature that are not in any sense a result of collective human agency. In other words, his account is constructivist; but the entitlement to legal rights is unavoidable whenever social cooperation is coordinated through the rule of law, whether national or cosmopolitan. For example, on this view, South Africa in the era of Apartheid was violating some of the normative commitments implicit in the justification of its legal order.<sup>15</sup>

Unlike pure moral norms that individuals can respect without establishing governments, basic rights require us to establish them in actionable legal form; yet they are distinguished from other legal norms by having a sufficient justification in moral argument (without other ethical, political, or pragmatic considerations). Thus, as Jeff Flynn explains, when they include basic rights in their national constitution, citizens are implicitly committed to the claim that such rights ought to be established "in any legal order."<sup>16</sup> In *Between Facts and Norms*, Habermas argues that there are five categories of basic rights that every constitutional order must provide in some

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<sup>13</sup>Ibid, p.49. Here Pogge only cites Habermas's essay, "Kants Idee des Ewigen Freidens" ("Kant's Idea of Perpetual Peace") where Habermas is trying to answer Carl Schmidt's critique of human rights as a basis for war. Yet as Jeffrey Flynn notes, Habermas's thesis that human rights make a validity-claim that is both moral and juridical runs throughout Habermas's recent work: see Flynn, "Habermas on Human Rights: Law, Morality, and Intercultural Dialogue," in *Social Theory and Practice* 29 no. 3 (July, 2003): 431-57, p.432.

<sup>14</sup>Seyla Benhabib, "Another Universalism: On the Unity and Diversity of Human Rights," Presidential Address to the Eastern APA (Dec. 2007), *Proceedings and Addresses of the American Philosophical Association* 81 no. 2 (April, 2008): 7-32, p.11.

<sup>15</sup>As Benhabib puts it, "You have a 'right,' that is, a moral claim to be recognized by others as a 'rights-bearing person' entitled to a legally instituted schedule of rights" (ibid, p.15).

<sup>16</sup>Flynn, p.434.

form to all its citizens (by interpreting and specifying the content of these rights according to their own history, cultures, and concrete situations); these unsaturated categories follow from the rule of law and the status of legal citizenship in positive law together with the "Discourse Principle," which defines the kind of warrant or justification that distinguishes the sense of both moral and legal norms.<sup>17</sup> We can view this as a transcendental deduction: the basic categories of rights are presupposed in any society in which sovereign power claims to rule through positive law (rather than singular commands) and to derive its authority from the rational consent of all affected parties.<sup>18</sup> Since rights to popular sovereignty share the same grounds as basic civil liberties on this account, Habermas's conception includes a strong version of the Democratic Principle of Legitimacy (DP), which I consider further in §VI.<sup>19</sup>

This account also tries to answer Pogge's objection that rights so conceived may only be formal or abstract legal entitlements with no tangible social value to some citizens who lack the material resources to use them.<sup>20</sup> The fifth category of rights in Habermas's list includes "equal opportunities to utilize the civil rights" specified in the first four categories, including the right to popular sovereignty.<sup>21</sup> Pogge also wonders if human rights can be fulfilled by cultural conditions

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<sup>17</sup>Jürgen Habermas, *Between Facts and Norms*, tr. William Rehg (MIT Press, 1996), ch.3, pp.122-23. On the Discourse Principle and its differentiation into the general "moral principle" and the "democratic principle," see pp.108-9. On the "unsaturated" nature of the universal rights required for any just constitution, see p.125.

<sup>18</sup>Habermas says that the "logical genesis of rights" derives from the "interpenetration of the discourse principle and the legal form," or rule of law (Ibid, p.121), and this derivation brings out "the internal relation between human rights and popular sovereignty" (p.123).

<sup>19</sup>This unification of democratic rights with other basic liberties makes Habermas's version of DP better than the theory of vertical social contract that Luban offers in "Just War and Human Rights," pp.202-6, which cannot *a priori* rule out just consent to dictatorship. The Habermasian unification is already found in 17<sup>th</sup> and 18<sup>th</sup> century American Whig / Federalist political philosophy, as explained in §VI below.

<sup>20</sup>Pogge, p.50.

<sup>21</sup>Habermas, *Between Facts and Norms*, p.123; and see pp.401-38 on "substantive legal equality."

and de facto distribution conditions without constitutional guarantees;<sup>22</sup> Habermas would reply that human rights are not *secured* in modern states employing the rule of law unless they are given concrete expression in the legal basic structure of these states.

But Pogge is correct in his final objection that Habermas leaves it unclear to what extent individuals or their national governments have "duties to promote the fulfillment of human rights in other countries or to help suppress human-rights violations by foreign governments."<sup>23</sup>

Habermas's 1990 essay, "Citizenship and National Identity," argues that "democratic citizenship need not be rooted in the national identity of a people"<sup>24</sup> understood as a group with thick cultural or even ethnic ties; this implies that democratic transnational federations are possible. But he does not argue that a wide federation of democracies is required to institutionalize basic rights. In a 1995 essay on Kant's *Perpetual Peace*, Habermas considers Kant's hope for a federation of enlightened republics, but then focuses on ways to reform the UN system and Security Council to make both more democratic<sup>25</sup> – despite the obvious fact that such reforms would never be approved by two-thirds of member states and all five permanent members of the Security Council, as the Charter requires.<sup>26</sup> He comes closest to calling for a global democratic system in his 1999 essay on the NATO intervention in Kosovo, where he again suggests that the "politics

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<sup>22</sup>Pogge, p.51. I will return to this objection in considering cultural relativist critiques in section V below.

<sup>23</sup>Ibid, p.52.

<sup>24</sup>Habermas, "Citizenship and National Identity," reprinted in *Between Facts and Norms*, p.500.

<sup>25</sup>Jürgen Habermas, "Kant's Idea of Perpetual Peace: At Two-Hundred Years Historical Remove," in *The Inclusion of the Other: Studies in Political Theory*, ed. Ciaran Cronin and Pablo De Greif (MIT Press, 1998): 165-202, p.183 and pp. 186-87.

<sup>26</sup>The ambiguity remains in Habermas's more recent essays. Although he often notes the importance of government steering power to counteract market forces, Habermas seems never to have recognized the fundamental importance of the Coordination Principle in arguments for differentiated levels of government – perhaps because this key insight of the *Federalist Paper* was never adequately thematized in the Critical Theory tradition.

of human rights" requires a "cosmopolitan legal order."<sup>27</sup>

Human rights possess the structural attributes of subjective rights [i.e. for each subject] which, irrespective of their purely moral content, by nature are dependent on attaining positive validity within a system of compulsory law. Only when human rights have found their home in a global democratic legal order, as have basic rights in our national constitutions, will we be able to work from the assumption that on the global level the addressees of these rights can simultaneously understand themselves as their authors.<sup>28</sup>

Yet he still seems to think that such a democratic order can be achieved by reforming the UN, and thus "without the monopoly on force of a world-state and without a world government."<sup>29</sup>

Pogge make a stronger cosmopolitan claim in his own conception of human rights, taking his cue from §28 of the Universal Declaration of Human Rights, which says that "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this declaration are fully realized."<sup>30</sup> Perhaps this simply requires that every state party to the UN Charter institute the rights listed in the Declaration (or the most basic subset of these) in its national laws, and that *if* international governing institutions exist, then they must not abridge such rights. But Pogge argues that it implies more: while people do not have an individual obligation to force unjust regimes to respect human rights, we do have a collective responsibility to "support institutional reforms towards a global order that would strongly support the emergence and stability of democratic, rights-respecting, and peaceful regimes..."<sup>31</sup> This is like

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<sup>27</sup>Jürgen Habermas, "Bestiality and Humanity: A War on the Border between Legality and Morality," *Constellations* 6 no.3 (1999): 263-72 [originally appeared as "Bestalität und Humanität," *Der Zeit* 29 (April 1999) 1, 6-7; tr. Stephen Meyer and William Scheuerman], p.267.

<sup>28</sup>Ibid, p.270; the final sentence refers to Habermas's democratic interpretation of Kantian autonomy.

<sup>29</sup>Ibid, p.268; and see p.270, where he says irenically that "UN institutions are on the way to closing the circle between the application of compulsory law and the democratic generation of law." This is incorrect on *both* sides: the UN generates virtually no law with real force; nor are its toothless deliverances generated democratically.

<sup>30</sup>See Pogge, pp.51-52.

<sup>31</sup>Ibid, p.55.

the difference between a duty to risk one's life directly to save a stranger from deadly threat, versus a duty to establish a police force that can protect the stranger. The critical import of this idea emerges, in Pogge's view, once we recognize the many ways in which our current world order emboldens potential dictators to establish *de facto* sovereignty and profit from it, makes it harder for stable transitions to democracy to occur, and results in entrenched poverty.<sup>32</sup>

However, the convincing evidence that Pogge gives for these points amounts only to an argument that *if* human rights ought to be secured for everyone, then it requires a different global order with full coordination to achieve this. To support the antecedent -- or show that §28 of the UDHR really states a collective obligation -- requires reasons to think that basic rights entail "global public goods" in my sense. To be clear, the issue concerns not the rights themselves as pure moral obligations, but what counts as *meeting* these obligations or adequately *protecting* these rights. Pogge needs the premise that human rights are less adequately protected the less widely the moral conception that explains them is publicly embraced and institutionalized: the public goods promoted by recognition of human rights in the laws of one's own nation are not fully realized without their universal juridification in the laws of all nations. If that is true, then morality requires something that the laws of separate states cannot fully provide to their citizens.

### **III. UN Statism versus the Core Conventions of International Law**

**Beyond Hobbesian Theories.** The problem Pogge has in establishing that there are basic rights that can be adequately secured only through global public goods appears in stark relief if we contrast his account with Thomas Hobbes's conception according to which morality reduces to norms of prudential reason. Given natural self-interested human desires, Hobbes's account

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<sup>32</sup>Ibid, pp.56-61.

supports the view that freedom from threats of invasion, terrorist attack, and weapons of mass destruction have become global public goods: since global coordination is necessary to secure borders and to control weapons trading, every agent has strong reason to surrender enough of his or her original sovereignty to a global government to achieve these ends. Thus Hobbesian reasoning supported the creation of the UN to protect borders, and it now supports strengthening this framework to protect against terrorist threats and the proliferation of chemical, biological, and nuclear weapons. Since it has only the derivative sovereignty of a treaty organization with no enforcement power of its own, the UN is unable to control problems such as global trafficking in weapons of moderate destructive capacity; so even a Hobbesian should favor the creation of a transnational sovereign that can get this job done.<sup>33</sup> In short, CP is implicit in Hobbes's explanation of how government is justified and legal rights established.

But beyond such goods involving security, citizens in some nation N that recognizes and protects other basic rights of their members (e.g. rights to religious liberty, or to own the fruit of their labor) will not have any reasons arising from material self-interest to transfer powers from their national government to a transnational institution in order to establish similar rights for citizens deprived of them by tyrannies, warlords, or illiberal theocracies -- especially if these regimes are reliably non-aggressive towards N. Each citizen of N has good Hobbesian reasons to support a national government that secures his or her basic rights, and to support transnational institutions that are also necessary to protect these rights from threats; but this may not require the global coordination of such rights for citizens of all other states.

On Hobbesian accounts, then, natural rights do not necessarily have to be secured in the form of *global* public goods: it is not true that their adequate provision for some requires their

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<sup>33</sup>See the full argument for these points in Davenport, "A Global Federalist Paper," pp.366-71.

adequate provision to all. Hobbesians will deny that global justice requires securing basic rights for distant strangers on whose reciprocal support we do not materially depend for the security of our own basic liberties and welfare.<sup>34</sup>

However, basic rights to life, free labor, civil liberties such as freedom from arbitrary assault and imprisonment, and freedom from discrimination on morally irrelevant grounds (such as race or religion) entail global public goods on more demanding moral theories which hold that each individual's moral standing has to be jointly or reciprocally recognized by *all others* to be respected in the way required by their inviolable value (according to natural law), or by the implicit commitments of acting on practical reason (for Kantian accounts), or in order to maximize collective human welfare (on some versions of utilitarianism): since such a mutual acknowledgment cannot arise as an aggregate result of consumer decisions in a free market, it requires coordination through public reason, expression in public norms, and enforcement by collective action. This sort of public status requirement for universally shared recognition implies that the goods to which a basic right entitles persons are not *fully* provided to anyone unless they are secured for everyone in the relevant legal orders for the moral reasons that ground the right. This is incompatible with treating basic human rights as binding only among peoples with certain cultural traditions or conceptions of good ends. The universal recognition thesis rejects such pluralist conceptions of human rights as subject to legitimate denial on a cultural basis.

**The UN Charter, International Legal Conventions, and Just War Theory.** Thus, once we move beyond Hobbesian egoism, there are several more demanding moral theories that

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<sup>34</sup>In *Crimes Against Humanity: A Normative Account* (Cambridge University Press, 2005), Larry May argues that Hobbesian theory supports state sovereignty only when a state is willing and able to protect its subjects' security and subsistence (p.12). I agree; but for Hobbes, the moral inadequacy of another state M according to the natural law is not a sufficient reason by itself for the government of N to intervene in M to rectify this inadequacy.

support the universal recognition thesis, which in turn implies that human rights can only be fulfilled in the form of global public goods. Rather than develop any of these moral theories here, I will argue that their conception of human rights a non-negotiable part of the basis of national sovereignty is supported by the core conventions of international law since World War I, and by closely related principles in just war theory. These two sources are interwoven, and both in turn depend on background conceptions of justice. Commitment to these conventions and to just war principles thus implies commitment to some conception of justice that interprets human rights as rights *to* certain basic goods that have a global public nature.

As we have seen, the basic question about the sufficiency of the current global order links with just war theory in this way: given the protection of state sovereignty over internal affairs in its Charter, if the UN counts as the only “legitimate authority” for declaring a just war,<sup>35</sup> then such a war can be fought to restore the *status quo ante* when existing borders have been violated, and to preempt imminent aggression, but *not* for humanitarian reasons such as stopping atrocities or resolving crises within the boundaries of particular states. Thus for the Security Council to send peacekeeping forces to help stop conflict internal to a recognized nation-state generally requires the voluntary invitation of the ruling regime in that state. Given the language of Chapter VII of the UN Charter, as John Lango has argued, the Security Council’s authority may also extend to authorizing preventative wars against regimes that possess weapons of mass destruction and pose imminent or grave threats to their neighbors, but again only for the purpose of defending existing national borders, governments, or their inhabitants against aggression.<sup>36</sup> Treating any serious atrocity committed by a government against some of its own peoples as a

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<sup>35</sup>For a helpful summary of this familiar doctrine, see John Lango, "Preventative Wars, Just Wars, and the United Nations," *The Journal of Ethics* 9 (2005): 247-68, p.252.

<sup>36</sup>Ibid, p.251.

threat to "international peace" is a way of justifying humanitarian intervention within the letter of the UN Charter while violating its spirit.<sup>37</sup> As Luban says, currently "International law and the international order are founded on the ultimacy of sovereign states."<sup>38</sup> The US Senate had previously rejected the League of Nations due to concerns that the League would erode national sovereignty, and communist dictatorships would not accept the UN without its statist principle; western framers of the UN accepted these conditions for solid reasons of prudence.

This does not mean that the framers endorsed Hobbesian limits to moral obligations. For before the UN was founded, moral horror at atrocities committed by governments inspired the development of human rights standards that deny states (or their peoples) any sovereign authority to murder, rape, and torture minorities or political opponents, or drive groups off their lands for gain. Even the League of Nations charter, which focused almost solely on maintaining peace between *de facto* states, banned slave trading and "traffic in women and children" and obliged members to "maintain fair and humane conditions of labour for men, women, and children."<sup>39</sup> Yet Luban is correct that "coercive protection of human rights" against national governments is in deep conflict with the current global framework. He notes that the 1945 Charter of the International Military Tribunal at Nuremberg, in addition to listing traditional war crimes, adds "crimes against peace" and "crimes against humanity" as wrongs that a government can commit against its own people, and denies that obeying "superior orders" or carrying out "acts of state"

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<sup>37</sup>Wilkins, Introduction to *Humanitarian Intervention*, p.9.

<sup>38</sup>David Luban, "Intervention and Civilization: Some Unhappy Lessons of the Kosovo War," in *Global Justice and Transnational Politics*, ed. Pablo de Greiff and Ciaran Cronin (MIT Press, 2002): 79-115, p.82. Habermas ignores this tension between the UN and the war crimes conventions both in "Bestiality and Humanity" (p.265) and throughout his recent work.

<sup>39</sup>*Charter of the League of Nations* (included in the Treaty of Versailles, 1919), Articles 22 and 23.

count as defenses when charged with these new crimes.<sup>40</sup> But, Luban claims, the Nuremberg Charter bows to statism by "restricting crimes against humanity to persecutions committed in execution of crimes against peace and war crimes."<sup>41</sup> This is actually not so clear in the original text of Article 6 (c):

**CRIMES AGAINST HUMANITY:** namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.<sup>42</sup>

Note that some of the listed acts can occur before war commences and still count as crimes; and since crimes against humanity themselves come within the "jurisdiction of the Tribunal," the "in execution of" condition seems to risk circularity. But the "Principles of the Nuremberg Tribunal" adopted by the International Law Commission of the UN in 1950 altered this definition to read "... on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime."<sup>43</sup> As Luban indicates, this wording tries to reconcile the Nuremberg Charter's innovations with the UN framework by implying that the limits imposed on state sovereignty in outlawing crimes against humanity apply only to states who initiate war against non-aggressor states. But this limitation has the absurd implication that if Hitler had never invaded any other nation, he could have carried out the Holocaust within Germany alone without committing a "crime against

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<sup>40</sup>Luban, "Intervention and Civilization," p.83.

<sup>41</sup>Ibid, p.83; also see Luban, *Legal Modernism* (University of Michigan Press, 1994), esp. 335-78.

<sup>42</sup>*Charter of the International Military Tribunal at Nuremberg*: see the Avalon Project of Yale Law School: <http://www.yale.edu/lawweb/avalon/imt/proc/imtconst.htm>. This definition of crimes against humanity is virtually identical to that in the Charter of the International Military Tribunal for the Far East (Tokyo Tribunal), Article 5 (c). The 1998 Rome Statute of the International Criminal Court (Arts. 5 - 7) distinguishes genocide from other "Crimes Against Humanity," putting it in a category of its own.

<sup>43</sup>Luban, "Intervention and Civilization," p.83.

humanity." In stark contrast, the 1948 UN Convention Against Genocide defines genocide or acts related to it as punishable crimes whether in time of war *or peace* between nations.<sup>44</sup>

Similarly, the various Geneva Conventions protecting combatants, prisoners of war, and civilian non-combatants from mistreatment were intended to prevent war crimes; they only have the authority of treaties (rather than a "perpetual union" or consolidation of sovereign authority), and they initially applied only during wars between sovereign states. However, the second 1977 Protocol to the four Geneva Conventions of 1949 extended these protections to people involved in civil wars. Moreover, these conventions are difficult to justify without appealing to the kind of moral norms that ground contemporary universalist conceptions of basic rights. Even the first Geneva Convention of 1864, which is a bare-bones treaty to protect wounded soldiers and neutral medical personnel, required generals to encourage local residents in theaters of war to help the sick and wounded by "the appeal made to their humanity, and of the neutrality which humane conduct will confer."<sup>45</sup> A Hobbesian might respond that preserving the life and health of wounded soldiers and non-combatant immunity can be explained as public goods on the basis of mutual self-interest. But why prohibit humiliation of prisoners or cruel modalities of combat such as poison gasses,<sup>46</sup> or outlaw all slave trading,<sup>47</sup> or absolutely prohibit orders to "leave no survivors" or to accept no surrender,<sup>48</sup> unless every individual person, regardless of nationality, is "an ultimate unit of moral concern" for everyone -- which Pogge calls the "central idea of moral

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<sup>44</sup>"Convention on the Prevention and Punishment of the Crime of Genocide," Art. I. Adopted by Resolution 260 (III) A of the UN General Assembly, December 9, 1948; see: [www.unhcr.ch/html/menu3/b/p\\_genoci.htm](http://www.unhcr.ch/html/menu3/b/p_genoci.htm) .

<sup>45</sup>"Convention for the Amelioration of the Condition of the Wounded in Armies in the Field" (Geneva, 22 August 1864), Art.5. See: <http://www.icrc.org/ihl.nsf>

<sup>46</sup>1928 Geneva Protocol to the Hague Convention of 1925.

<sup>47</sup>Geneva Slavery Convention of 1926, under the auspices of the League of Nations, and Protocol of 1953 to connect the Slavery Convention with the authority of the United Nations.

<sup>48</sup>First 1977 Protocol to the Geneva Conventions of 1949, Art. 48; see: [www.icrc.org/ihl.nsf/](http://www.icrc.org/ihl.nsf/).

cosmopolitanism."<sup>49</sup>

The 1977 Geneva Protocol on civil wars says:

All persons who do not take a direct part or who have ceased to take part in hostilities.... are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.<sup>50</sup>

This statement recognizes protection of innocent life along with and civil liberties as public goods. If individuals do not possess constitutive dignity, there is no categorical reason why that cannot be targeted indiscriminately despite being non-combatants, or used as human shields, or tortured etc. The prohibitions on such practices by the rules of just war presuppose a more fundamental conception of human dignity that must *at least* limit legitimate forms of sovereign power exercised by governments. So it is unsurprising that such developments in international law have led to a growing sense that the UN is also charged with protecting basic human rights within sovereign states. According to Allan Buchanan and Robert Keohane, the Security Council "now acknowledges as one of its chief goals...stopping large-scale violations of basic human rights," even though it usually fails to act for this goal.<sup>51</sup> As Luban notes, even without a clear legal basis, former Secretary-General Kofi Annan argued that "a state that fails to protect human rights forfeits at least part of its sovereignty," and therefore its sovereignty is not always violated by humanitarian intervention within its boundaries.<sup>52</sup>

Similarly, Habermas says that the NATO action in Kosovo was based on international

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<sup>49</sup>Thomas Pogge, "Cosmopolitanism and Sovereignty," in *Political Restructuring in Europe: Ethical Perspectives*, ed. Chris Brown (Routledge, 1994): 89-122, p.90.

<sup>50</sup>Second 1977 Protocol to the Geneva Conventions of 1949, Part II, Art. 4 §1; see: [www.icrc.org/ihl.nsf/](http://www.icrc.org/ihl.nsf/).

<sup>51</sup>Buchanan and Keohane, "The Legitimacy of Global Governance Institutions," *Ethics and International Affairs* 20 no.4 (2006): 405-38, p.423.

<sup>52</sup>Luban, "Intervention and Civilization," p.84; also see Annan, *The Prevention of Armed Conflict* (United Nations Publications, 2002).

law prohibiting crimes against humanity that dates from the "the war crimes trials in Nuremberg and Tokyo."<sup>53</sup> These limitations on national sovereignty were "necessary and correct answers to the morally significant experiences of this century, to totalitarian political ragings and the Holocaust."<sup>54</sup> As Benhabib also recognizes, the implication of these developments is revolutionary: whatever their technical legal status, these documents

are more than mere treaties among states. They are global public law documents which, along with many other developments in the domain of *lex mercatoria*, are ... constituent elements of a global and not merely international civil society.<sup>55</sup>

If that is correct, then the basic rights guaranteed by these documents cannot be provided merely at the pleasure of national governments. But then, what kind of transnational sovereign has the rightful authority to enforce them? Just war theory forces us to ask the same question.

#### **IV. The Just War Tradition Supports Humanitarian Intervention**

The moral thesis that all individuals have basic rights that must be recognized by any legitimate constitutional order finds even firmer support in the tradition of just war theory that underlies the Nuremberg Principles and the laws of war codified in the Geneva and Hague Conventions and related treaties. The "law of nations" as a body of common law is traditionally held to include just war norms, which clearly inform the definition of many war crimes in the conventions that have placed universal limits on state sovereignty.

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<sup>53</sup>Habermas, "Bestiality and Humanity," p.265. He adds that even without Security Council authorization, NATO had some legitimate authority to act in this emergency based on "the *erga omnes* binding principles of international law" (such as the prohibition on genocide). It took courage to say this to European critics of the NATO action, for it recognized that the flaws in the UN are extreme enough that when it cannot act to stop atrocities, "neighboring democratic states should be allowed to rush to provide emergency help as legitimated by international law" – as long as such measures are only seen as stopgaps on the way to a more legitimate global order (p.271). As he expected, ultraleftist critics have savaged Habermas for these bold statements.

<sup>54</sup>Ibid, p.268.

<sup>55</sup>Benhabib, "Another Universalism," p.22.

**Two Levels of War Norms.** Principles for initiating just war can be framed at both a metanormative and a normative level. At the metanormative level, the principles are unsaturated categories of norms that outline a general concept of justified or legitimate *bellum*, i.e. the use of coercive force against foreign nations, as authorized by a public authority rather than undertaken by private citizens.<sup>56</sup> As James Turner Johnson explains in a helpful historical analysis, there are some important differences between norms listed by classical just war theorists such as Augustine, Aquinas, Locke, and Grotius, and 20<sup>th</sup> century reconstructions by theologian Paul Ramsey in the 1960s, the US Catholic Bishops in 1983 and 1993 pastoral letters, and Michael Walzer's Rossian intuitive account.<sup>57</sup> But they all explicitly or implicitly include the following:<sup>58</sup>

- I. Principles defining the legitimate authorities (usually governments) with the sovereign right to declare and wage war for just causes or purposes.
- II. Principles requiring right intention: legitimate authorities can wage war only for just causes aiming to restore a just peace; thus those fighting a just war must offer reasonable terms of peace that make surrender and reconciliation possible.
- III. Principles defining just causes or grievances for which war may be waged.
- IV. Principles requiring that war be waged only as a last resort, when every reasonable alternative has been exhausted and the deadly threat is imminent or already in process.
- V. Principles requiring a reasonable prospect of success (at least when survival with dignity is likely following the alternative of surrender to the aggressor), and proportionality of the evils to be countered with the harms likely to be caused by war for these purposes.

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<sup>56</sup>See James Turner Johnson, "Just War, As It Was and Is," *First Things* 149 (January 2005): 14-24, p.16, col.2.

<sup>57</sup>James Turner Johnson, *The War to Oust Saddam Hussein* (Rowman and Littlefield, 2005), pp.23-41. See Michael Walzer, *Just and Unjust Wars* (Basic Books, 1977; 2<sup>nd</sup> ed. 1992); all my citations are to the second edition except when citing the Preface to the Fourth Edition (Basic Books, 2006).

<sup>58</sup>This is my summary, but see a similar list divided into six sets of principles in C.A.J. (Tony) Coady, *The ethics of armed humanitarian intervention* (US Institute for Peace, 2002), p.19, (online at [www.usip.org/pubs/peaceworks](http://www.usip.org/pubs/peaceworks)), and in "Terrorism, Just War, and Right Response," Proceedings of the Conference on the Ethics of Terrorism and Counterterrorism, Bielefeld, Germany (October 28-30, 2002). Also see the six principles tied to the domestic analogy in C.A.J. Coady, *Morality and Political Violence* (Cambridge University Press, 2008), p.63. Brian Orend lists six rules: "just cause, right intention, public declaration by proper authority, last resort, probability of success and proportionality" – see Orend, *The Morality of War* (Broadview Press, 2006), p.32.

- VI. Principles of discrimination protecting innocent third parties -- such as clergy and doctors, neutral aid workers, and civilian non-combatants -- from being directly targeted (especially if they are tending to casualties of war).
- VII. Principles requiring proportionality in the degree of violence used, i.e. requiring it to be narrowly tailored to do the least amount of damage possible to make the achievement of the legitimate war aims likely.
- VIII. Principles prohibiting morally horrendous modalities of combat and defining the just treatment of prisoners of war.

Categories I - V include *jus ad bellum* principles governing who may go to war and why, while categories VI - VIII include familiar *jus in bello* principles governing the conduct of war once initiated, with different proportionality principles in each division. Each category embraces more particular norms (for example, the Geneva prohibition on orders to kill surrendering opponents fit in category II). But as stated here, the principles are only abstract categories that become determinate norms when specified in light of a full conception of justice derived from some moral theory, e.g. Aristotelian virtue ethics, classical natural law, utilitarianism, Kantian or Rossian deontology, agapic ethics, Hobbesian social contract, etc. A normative conception of just war, with concrete norms for each of the eight categories, thus always involves a conception of what nation-states may do both for their own citizens and for people beyond their borders. Specific just war norms are not free-standing; rather, they are always part of a larger conception of justice that inevitably has implications for the basic structure of global society as well.<sup>59</sup> As Brian Orend says, "all talk of justice regarding war must revolve ultimately around legitimate governance,"<sup>60</sup> or what constitutes political legitimacy.

**No Limitation to Self-Defense in the Tradition.** In particular, different background

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<sup>59</sup>The converse is true as well: a complete conception of justice must include just war norms, much as it must include principles of criminal justice; as a result, any complete conception of justice will, directly and through specifying legitimate authorities and just causes for war, have implications for the basic structure of global society.

<sup>60</sup>Orend, *The Morality of War*, p.35.

conceptions of global justice will specify varying just causes for going to war and recognize a range of institutions as holding the sovereign authority to wage war. Classical and early modern accounts assumed that rulers of empires, city-states, and nations were the only authorities who could have “ultimate responsibility” for sustaining just political communities, and they stressed the defense of rightly ordered and peaceful societies against foreign attack as a legitimate use of force.<sup>61</sup> Augustine and Aquinas focused on “the recovery of that which has been wrongly taken, and punishment of evil” as the primary ends for just *bellum*. Thus they assimilated several causes for war to restorative justice, and conceived self-defense as including punishment of evil.<sup>62</sup> This reflected their conception of war as part of retributive justice in general (along with criminal justice) aimed at the promoting natural equity.<sup>63</sup> This idea persisted into the modern period.

As Terry Nardin has argued, the idea that rectifying wrongs is a just war aim naturally extended to protecting the innocent. In the early modern period, Thomas More argued that just causes for war include “liberat[ing] an oppressed people, in the name of humanity, from tyranny and servitude.”<sup>64</sup> The great Protestant jurist Hugo Grotius also asserts that “sovereigns have the right to punish any acts that ‘excessively violate the law of nature or of nations in regard to any persons whatsoever,’” even foreigners whose fate does not materially affect their own citizens.<sup>65</sup>

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<sup>61</sup>Johnson, *The War to Oust Saddam Hussein*, p.36.

<sup>62</sup>Johnson, “Just War, As It Was and Is,” p.16. Tony Coady notes that the classical Chinese philosopher Mo Tzu also allowed “altruistic wars” in some cases, and “indeed he favors some righteous wars of punishment” (see *The Ethics of Humanitarian Intervention*, p.21).

<sup>63</sup>Walzer notes that the idea of war to punish aggressors is “very old,” though it is vague because punishment can be for different ends (*Just and Unjust Wars*, p.62).

<sup>64</sup>Thomas More, *Utopia*, tr. Robert M. Adams, 2<sup>nd</sup> ed. (W.W. Norton & Co., 1992), Book II, “Warfare,” p.66; cited in Terry Nardin, “The Moral Basis for Humanitarian Intervention,” in *Just Intervention* (Georgetown University Press, 2003): 11-27, p.13.

<sup>65</sup>Nardin, “The Moral Basis for Humanitarian Intervention,” in *Just Intervention*, ed. Anthony Lang, Jr. (Georgetown University Press, 2003): 11-27, p.16, citing Grotius, *De jure belli ac paci* [*On the Law of War and Peace*].

Similarly, Luban asserts that 19<sup>th</sup> century, just war theory "permitted humanitarian intervention on behalf of oppressed peoples."<sup>66</sup>

Yet Augustine, Aquinas, and their modern successors focused on refuting the common idea that wars could be justified for the sake of building empires. This has created a mistaken impression, seen in the APA resolution, that just war theory has always opposed armed intervention for humanitarian purposes. In the development of modern conceptions of just war, emphasis was put on self-defense because European princes were so prone to starting wars for personal glory, material gain, colonial conquest, and the intolerant imposition of religious doctrines. For example, as Fred Dallmayr explains, in the 16<sup>th</sup> century School of Salamanca, "the Dominican Francisco de Vitoria...on all fronts challenged and contested the obstinacy of Spanish imperial policies." Like Bartolomé de las Casas, he "severely castigated the widespread practice of exploiting, expropriating, and even enslaving native populations in America..."<sup>67</sup> Vitoria was responding to manifest evils of massive proportions, both within Europe and in the new colonies, when he supported Erasmus's attack on "warmongering and military savagery." It is in *this context* that, "Following a long line of 'just war' theorists, Vitoria held that war could be waged only in self-defense or in retribution for inflicted wrongs."<sup>68</sup> But as Nardin notes, such retributive purposes also permitted a sovereign state to "defend the subjects of a tyrant from nefarious practices,"<sup>69</sup> even if humanitarian interventions were not likely in the 16<sup>th</sup> century -- except as an excuse for invasion. Like de las Casas, Vitoria was concerned that human sacrifice and

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<sup>66</sup>Luban, "Just War and Human Rights," p.200, n. 14.

<sup>67</sup>Dallmayr, *Peace Talks - Who Will Listen?* (University of Notre Dame Press, 2004), p.49.

<sup>68</sup>Ibid, p.51.

<sup>69</sup>Here I rely on a summary of Francisco De Vitoria's "Just Intervention Theory" presented by Bernardo Canteñs at the Eastern Division meeting of the APA (Boston, MA: Dec.28, 2004).

cannibalism were being used as a pretext for permanent and cruel occupation of Native American states in the new world;<sup>70</sup> they realized that the notion of humanitarian intervention could be abused for political propaganda. For this reason also, classical theorists were unlikely to promote humanitarian intervention, which could only have been carried out by particular states.

It was the same urgency to rein in wars of conquest that, a century later, led Hugo Grotius to focus on three justifiable causes of war in the law of nations (*jus gentium*), namely "defense, recovery of property (or belongings wrongfully taken), or punishment ... all of which, however, are reactive or defensive in response to an attack or violation of rights."<sup>71</sup> A century after Grotius, John Jay also focused his critique on wars for territorial gain:

It is too true, however disgraceful it may be to human nature, that nations will take to war whenever they have a prospect of getting anything by it, nay that absolute monarchs will often make war when their nations are to get nothing by it, but for purposes of objects merely personal, such as, a thirst for military glory, revenge for personal affronts, ambition or private compacts to aggrandize or support their particular families, or partisans.<sup>72</sup>

In this tumultuous period of timocratic nobles and princes in religious conflict, the possibility of a government -- let alone a league of nations -- declaring and prosecuting war for the sake saving innocent foreigners from atrocities, independently of any national interest in their fate, was barely imaginable and thus largely irrelevant to the discussion.<sup>73</sup> Thus in emphasizing self-defense, Vitoria, Grotius, and their followers in Enlightenment philosophy hardly meant to exclude the kind of humanitarian operation that, for instance, should have been undertaken by the world

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<sup>70</sup>Nardin, "The Moral Basis for Humanitarian Intervention," pp.14-15.

<sup>71</sup>Dallmayr, *Peace Talks*, p.56.

<sup>72</sup>*Federalist* No. 4; see Cooke, pp.18-19.

<sup>73</sup>As Walzer says, the legalist paradigm aims to rule out "Preventive wars, commercial wars, wars of expansion and conquest, religious crusades, revolutionary wars...." (*Just and Unjust Wars*, p.72). I know of no passage in the tradition that explicitly rules out intervention to preserve innocent civilians from mass slaughter or enslavement.

community to stop the Janjaweed militia from killing, raping, and burning the people and lands of Darfur. Rather, these scholars meant to present principled opposition to wars driven by glory-seeking, greed, colonial conquest, and religious hatred. This context is forgotten in the APA resolutions limiting just causes to self-defense.

**Theological Sources and the Domestic Analogy.** The APA principle even more egregiously misrepresents contemporary theories of just war, which, in spite of important differences, now virtually all recognize the need for humanitarian intervention in some range of cases. Ironically, while the UN system was entrenching the principle of unlimited national sovereignty over internal affairs, the just war tradition moved decisively towards explicit recognition of humanitarian reasons for war that are unrelated to the rescuing states' interest in their own security. As Johnson notes, starting from agapic principles, Ramsey concluded that "there are times when the obligation to defend the neighbor from harm justifies the use of force and *may even oblige it*."<sup>74</sup> Likewise, in their 1993 statement, the National Conference of US Catholic bishops recognized "massive violation of the basic rights of whole populations" as among just causes for initiating war, though they also endorse the UN as the legitimate authority to declare war.<sup>75</sup> In their original 1983 pastoral letter, the bishops held that just causes for war include the protection of innocent life, preserving conditions necessary for decent human existence, and securing basic human rights.<sup>76</sup> Similarly, in 1998, "the United Presbyterian Church

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<sup>74</sup>Johnson, *The War to Oust Saddam Hussein*, p.25 (my italics). The idea that humanitarian intervention is not only permitted but even obliged in especially heinous cases finds a legal basis in Article 1 of the Geneva Convention on the Crime of Genocide, which says that the contracting nations undertake "to prevent and to punish" genocide, even if they are not at war with the offending nation. See [www.unhchr.ch/html/menu3/b/p\\_genoci.htm](http://www.unhchr.ch/html/menu3/b/p_genoci.htm). Of course, this leaves it unclear how to coordinate a response to genocide if the UN fails to do so.

<sup>75</sup>Ibid, p.27 and pp.30-31.

<sup>76</sup> National Conference of Catholic Bishops, *The Challenge of Peace: God's Promise and Our Response*. A Pastoral Letter on War and Peace, §86 (a): see [www.osjspm.org/cst/cp.htm](http://www.osjspm.org/cst/cp.htm) (last visited May 1, 2005). Reprinted in *Catholics and Nuclear War*, edited by Philip J. Murnion (Crossroads, 1983), p. 277.

in the United States adopted a resolution that accepted the use of military force for humanitarian intervention" even if it serves no national interests.<sup>77</sup>

This turn by theological authorities is hardly surprising, since the permissibility of humanitarian intervention seems to follow from the norm -- common to Plato, biblical agapic ethics, classical natural law, and Kant and Ross's deontological ethics -- that innocent human persons should not intentionally be targeted, together with the secondary premise that someone who is aggressing against an innocent person is not innocent himself. It does not violate human dignity or use human life as a mere means for the victim to employ just as much force as necessary to defend her own life, limb, or property from such unjustified aggression, *or for bystanders* to defend this innocent victim in the same way. Most criminal codes reflect this norm: a jury will not convict someone if it is convinced that she had to shoot an axe-wielding attacker to stop him from swinging his blade into a child on a playground.<sup>78</sup> Where duty-to-aid laws have been adopted, some juries would even convict her for negligence if she did not shoot to stop such wanton aggression when she easily could have done so with little risk to herself or to others. Such legitimate killing would not technically be self-defense, but rather defense of an innocent third party. Similarly, the good Samaritan in Jesus's parable is regarded as a model of agapic love because he spent his own time and resources, without any demand for reciprocation, to rescue a victim who robbers had left to die. But had he arrived earlier, he could have displayed the same love by putting himself in between the robbers and the victim, or even drawing his own sword to

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<sup>77</sup>Johnson, "Just War, As It Was and Is," p.16, col.2.

<sup>78</sup>For a similar argument from such a "domestic analogy," see C.A.J (Tony) Coady, *The Ethics of Armed Humanitarian Intervention*, p.21. This does not mean, as Coady emphasizes, that just war theory should forget that humanitarian intervention is sometimes used as an inauthentic pretext (pp.22-23). However, this danger would be much reduced if humanitarian intervention were not left to national governments or their temporary coalitions, but rather to a pluralistic federation of democracies in which non-western peoples made up at least half the membership.

kill the robbers as a last resort, if there was clearly no other way to stop them from injuring and robbing an innocent man.<sup>79</sup>

By analogy, it has long been recognized that a rescuer state (A) may justly defend a victim state (B) against an invasion or occupation by an aggressor state (C) -- at least if the other conditions for just war are met.<sup>80</sup> It is a short step from this to the idea that a rescuer state could also defend innocent residents within state C against their own government's attacks or wanton killing and persecution by groups within C. Of course such analogies are notoriously tricky. However, this intuitive argument does not depend on the claim that states are like individual human actors in all the relevant respects; states are merely collectives of individuals, not higher corporate agents.<sup>81</sup> The argument is only that the reasons for extending self-defense to innocent third parties at the individual level also apply at the level of nations. If a sovereign people may defend itself, then it may also defend other innocent peoples. Thus, as David Rodin says "if national defense is grounded in protecting the lives and liberties of individual citizens," rather than on the fiction of a nation as a holistic entity desiring self-preservation, then the basis for national self-defense is "integrated with the emerging norm of humanitarian intervention."<sup>82</sup>

## **V. Contemporary Theories and the Coordination Problem.**

This shift in emphasis from classical and early modern theories is due both to the greater capacity of democracies to act today, coupled with the move from monarchist and classical

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<sup>79</sup>I'm indebted to a respondent for pointing out that this argument parallels Paul Ramsey's in *The Just War: Force and Political Responsibility*, int. Stanley Hauerwas (Rowman and Littlefield reprint, 2002), pp.142-43.

<sup>80</sup>Walzer includes this idea within the legalist paradigm: see *Just and Unjust Wars*, p.62.

<sup>81</sup>See David Rodin, *War and Self-Defense* (Oxford University Press, 2003).

<sup>82</sup>David Rodin, "Beyond National Defense," *Ethics and International Affairs* 18 no.1 (2004): 93-97, p.94.

contract conceptions of just government to more demanding teleological and deontological theories. As Habermas suggested, the movement beyond Hobbesian theories like Carl Schmidt's that ground "realist" arguments for the primacy of states was a psychological necessity for Western democracies in response to the genocides of the 20<sup>th</sup> century. Just war theory reflects this return to natural law and Kantian conceptions upholding the inviolable intrinsic value of each free rational agent. Since humanitarian intervention became a central issue in just war theory in the 1990s, a broad consensus has emerged that massive violations of basic rights are a just cause for intervention.<sup>83</sup> However, this emerging consensus still needs to recognize the full breadth of cases that are candidates for humanitarian intervention, and to see that the legitimate or responsible authorities for such intervention cannot be specified without considering global coordination. To explain these points, I will consider two recent accounts before turning to developments in Walzer's theory, which many regard as the leading contemporary theory.

**Elshtain.** In recent work, the implication that state sovereignty is limited by basic rights is drawn most forthrightly from a deontological conception of justice in Jean Elshtain's specification of just causes for war. She argues "that the government and citizens of one country may be called upon to protect citizens of another country, or a minority within that country, who are not in a position to defend themselves from harm."<sup>84</sup> In her view, the right to defend the defenseless from crimes against humanity follows from the principle of "equal regard" for all persons without distinction, which "underlies the Universal Declaration of Human Rights, just as

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<sup>83</sup>For example, see Brian Leppard, *Rethinking Humanitarian Intervention* (Penn State Press, 2002); Anthony Lang, ed., *Just Intervention* (Georgetown University Press, 2003); Dean Chatterjee and Don Scheid, eds., *Ethics and Foreign Intervention* (Cambridge University Press, 2003, 2006 pb). Note how close in time these nuanced works are to the unnuanced Eastern APA resolution.

<sup>84</sup>Jean Bethke Elshtain, *Just War Against Terror: The Burden of American Power in a Violent World* (New York: Basic Books, 2003), p.150.

it lies at the heart of our Declaration of Independence."<sup>85</sup> This conception of universal intrinsic dignity implies a duty to aid that can ground just wars:

I would argue that true international justice is defined as the equal claim of all persons to having coercive force deployed in their behalf if they are victims of one of the many horrors attendant upon radical political instability...<sup>86</sup>

In particular, Elshtain insists that "cultural difference" can never justify ignoring crimes against humanity. "To abandon beleaguered peoples," as Europe and the US did to the Tutsis in Rwanda and to Muslims in Bosnia, is "to give them less regard than they deserve as human beings."<sup>87</sup>

However, Elshtain says little about the responsibility of European nations or of other democracies in these cases (for example, the lateness of French intervention in Rwanda); she even implies that inaction and delays in Bosnia and Kosovo were primarily the fault of the Clinton administration. She offers no explanation of *who* should intervene beyond the suggestion that the US must lead such efforts in the world today. The inadequacy of such unilateralism is now all too clear: the recent atrocities she cites show that other leading nations will wait for Americans to shoulder the burdens of intervention, even while many of their leading intellectuals and politicians accuse US administrations of imperialist intentions. The lopsided American burden in Afghanistan, like the expectation that Americans should continue to be the main protector of South Korea, Taiwan, and Israel, look like a classic free-rider problem.<sup>88</sup> Cases like Rwanda, where no able nation intervened in time because they all waited for others to take the risk, are more like a "prisoner's dilemma:" each player prefers a given outcome, but each has an

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<sup>85</sup>Ibid, p.168.

<sup>86</sup>Ibid.

<sup>87</sup>Ibid, p.155.

<sup>88</sup>With the added irony that in this case, the free riders make a sport of painting the agent providing the service as vicious and hegemonic (as if to rationalize their free riding as a way of taking the moral high road).

interest in defecting from the course of action necessary for that outcome in hopes that the other will bear the costs. Thus no one acts in some cases, such as Darfur and Somalia, and the most suboptimal outcome results. In short, Elshtain's proposed enforcement of human rights requires the coordinated resources and efforts of many leading democracies across the globe: the US lacks the authority, credibility, and resources to be the world's unpaid policeman.<sup>89</sup> Following such a unilateralist policy is bankrupting the US and making us the primary magnet for hatred from extremist regimes and terrorist groups everywhere.<sup>90</sup>

**Orend.** Like Elshtain, Brian Orend argues that states' rights to sovereignty depend on securing the human rights of their citizens;<sup>91</sup> thus a state that is not "minimally just" to its own citizens loses the moral basis for its standing in international law, and it loses the authority required to declare war.<sup>92</sup> Orend cites the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS) in support of his claim that it is no violation of legitimate sovereignty to intervene in a state that fails to be minimally just to its own peoples.<sup>93</sup> Like Habermas, he thinks that NATO had just cause to intervene in Bosnia and Kosovo, given

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<sup>89</sup>Even when our intentions are purely humanitarian -- as they were in Bosnia, Kosovo, Somalia, and the near-invasion of Haiti -- the egregious actions of several American administrations during the Cold War has made it hard for most developing countries to believe that our intentions in new cases are non-imperialist. For further sympathetic critique of Elshtain's position, see Davenport, "Just War Theory Requires a New Federation of Democratic Nations," *Fordham International Law Journal* 28 no.3 (Feb.2005): 763-85.

<sup>90</sup>Walzer predicted the failed outcome of such an American unilateralist policy in a 1994 essay titled "The Politics of Rescue," reprinted in *Arguing About War*, pp.79-80.

<sup>91</sup>Brian Orend, *The Morality of War*, p.33. However, I disagree with Orend's suggestion that protecting rights is the "state's reason-for-being" in our era; rights are central among public goods that government exists to secure, but (following Pogge) we should not conceive all public goods as the objects of rights.

<sup>92</sup>Ibid, p.35. Presumably Orend means that such a state even loses the right to go to war in *self-defense* (if the opposing powers are just and are attacking this state in order to protect its citizens). For he argues that "it seems paradoxical to suggest an immoral form of governance has a moral right to arm and defend itself" (pp.36-37).

<sup>93</sup>Ibid, p.91. For the ICISS report and related documents, see <http://www.iciss-ciise.gc.ca/menu-en.asp> . Similarly, Brian Lepard concludes that "the sovereignty of states" is limited by its "fundamental ethical duties" to all its people: see Lepard, *Rethinking Humanitarian Intervention*, p.59.

the extent of the brutality involved, even without Security Council approval. These views clearly reflect the transnationalist ethic implicit in Nuremberg and the other major conventions discussed in §III above. However, Orend follows Walzer's view that intervention can be justified only in cases which "the domestic citizenry is not only desperate but doomed without international armed rescue," or where "self-help" and "self-determination" are impossible.<sup>94</sup> Only in such cases can we be sure that the risk of imperialism is outweighed by "*certain* massacre."<sup>95</sup> Note how demanding this condition is; for example, it would rule out intervention to stop ethnic cleansing in cases where the attendant prospect of mass murder is in doubt.

Orend argues against Walzer for the ICISS view that intervention requires both full commitment to defeating those causing the atrocities (with overwhelming force if necessary), *and* to the long process of rehabilitation and support of a new regime.<sup>96</sup> While I concur, given the high human and material costs of such intervention, it is perplexing that Orend still agrees with Walzer that

the duty to intervene forcibly in cases of humanitarian emergency is admittedly imperfect -- it picks out no specific country. The duty is, rather, borne at large by the international community. This does not, however, imply that only global agencies like the UN have the moral legitimacy to authorize and execute armed rescues....any state willing to take on the burdens of armed rescue is permitted to do so...<sup>97</sup>

This view attempts to treat humanitarian intervention as an extension of the old law of nations that any legitimate regime may rescue another innocent state from invasion. But in today's world, this model is clearly inadequate, especially if cases of extreme atrocity make intervention not

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<sup>94</sup>Ibid, pp.91-92, italics omitted.

<sup>95</sup>Ibid, p.92

<sup>96</sup>Walzer comes closer to this view in "The Argument About Humanitarian Intervention," *Dissent* 49 no. 1 (Winter 2002): 29-37, pp.34-35, where he recognizes the need for extended intervention.

<sup>97</sup>Orend, p.95; that is, they are permitted if all the criteria for just intervention are met.

merely permissible but rather *a duty*. We then have a problem of diffuse responsibility: since the UN is prevented by its weak structure from acting decisively, the dispersed duty falls on no state or group in particular, and each has strong incentives to wait in hope that others will take on the risks and costs. We get global versions of the Kitty Genovese scenario, in which at least thirty-eight people watched the victim be killed by stabbing over a 30-minute period and did nothing, assuming that others had called the police or that someone else would go down to the street to help her. The incentives not to intervene without guarantees of long-term support from other states become even worse as stronger *jus post bellum* duties of reconstruction are recognized.<sup>98</sup>

Without a clear prior consensus on criteria for responsibility and certainty of broad international support, inaction will always be the easier route. But there is no strong conviction that the strongest nation, or the nearest nation, or (worst) the previous colonial master should take the lead. For example, there is no global outrage that Australia or South Korea did not intervene when the government in Burma prevented aid to its cyclone victims, no criticism because Egypt and Kenya did nothing about Darfur, or that South Africa does little but talk while Zimbabwe dies. Again, our experience in Bosnia should be *decisive* in showing that proximity criteria will not solve the collective action problem. So, mirroring Habermas on Kosovo, Orend argues that "by default" the US acquired the authority to wage war against the Serbians in Bosnia.

The UN did get involved first, but its intervention was ineffective. The Europeans couldn't get their act together to perform sufficiently on their own, in spite of the fact that it was their own

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<sup>98</sup>For example, Walzer says that an African or European force not only should have intervened in Rwanda to stop the slaughter but also deposed the "Hutu power regime. And whoever was responsible for that overthrow would also have taken on, willy nilly, some degree of responsibility for the creation of an alternative government" (*Just and Unjust Wars*, 2006, Preface to the Fourth Edition, p.xi). Little wonder then that no single nation or small group wanted to intervene. It is no solution to the fear of quagmire to say that "The international community needs to find ways of supporting these forces" who stay for a long course (Walzer, "The Argument About Humanitarian Intervention," p.36, col. 1); since the quagmire in Iraq, strong democratic nations will be even more hesitant to respond to humanitarian emergencies without a *prior guarantee* of wide multilateral support. Only a federation with consolidated power to bind all member nations by majority vote could provide a reliable guarantee.

backyard....NATO and America may not have been the obvious choice but became the only one after the UN failed and Europe didn't materialize.<sup>99</sup>

This is the same error we found in Elshtain. First, "ineffective" is far too kind a euphemism for the UN mission that stood aside and let at least 8,100 Bosnian Muslims be slaughtered at Srebrenica and a thousand more fleeing from Potocari. Second, it is misleading to say that European nations "couldn't" intervene; taken together, their population, wealth, and military strength is similar to that of the US. Rather, they *wouldn't* intervene; they refused to risk their ground troops, which not only put an unfair onus on the US to stop a European atrocity, but also made it politically impossible for the Clinton administration to commit American ground troops as part of a multinational force. As a result, the only option was a bombing campaign from the air. Third, the proper conclusion to draw from this colossal failure of will and conscience in Europe is not that the US has the duty and authority to lead humanitarian interventions when all other strong democracies betray the victims of atrocities, but rather that together are in a collective action problem of global proportion that can only be solved as CP prescribes. As we have seen, that principle tells us to *consolidate* the decision making power that is necessary to coordinate the relevant public good – in this case, the basic right to be free from crimes against humanity. Given history since 1989, no rational observer could now doubt that necessity.

### **Walzer on Humanitarian Intervention: A Reformed UN or Democratic Federation?**

It is a measure of how far just war theory has moved away from the Westphalian model that much of the contemporary debate about Michael Walzer's influential *Just and Unjust Wars* has focused on whether, on nationalist grounds, he gives too much weight to the presumption of state sovereignty against action to stop unjust regimes. Elshtain and Orend have followed Luban in

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<sup>99</sup>Orend, p.100.

arguing that we should conceive state sovereignty as *derivative* from recognizing "socially basic rights" and providing (to some significant degree) the goods to which they entitle individual citizens:<sup>100</sup> for governments have no rights to authority or survival that are not derived from the rights of the peoples they exist to serve. Similarly, Allan Buchanan has argued that international law can only be made coherent on a moral foundation according to which state sovereignty depends on justice, rather than on the actual consent of other states.<sup>101</sup> These views go beyond Annan's doctrine to say that states that deny socially basic rights *forfeit* their claim to sovereignty, which is therefore not violated by the use of armed force to stop their abuses of power.<sup>102</sup>

While I will defend this position in §V, two preliminary points concerning Walzer's analysis provide important evidence for premises 1a and CP in my Consolidation Argument. First, despite his strong respect for state sovereignty, Walzer is still part of the growing consensus that just wars can be fought for humanitarian purposes and that the UN often fails to be the ideal authority to decide such cases. Second, like several of his critics, Walzer's efforts to explain how the authority to undertake humanitarian intervention should be organized are instructive failures: they show why a stronger and more centralized institution is needed.

Whether they agree with his conception of state legitimacy or not, most contemporary just war theorists agree with Walzer's point that "the presumption against intervention is strong,"

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<sup>100</sup>Luban borrows from Henry Shue the notion of "socially basic rights" to goods that we need to enjoy or exercise any other rights: see "Just War and Human Rights," pp.209-10.

<sup>101</sup>Allan Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford University Press, 2004, pb 2007); see pp.5-7 in the Synopsis.

<sup>102</sup>See Luban, "Just War and Human Rights," p.199. For this point, I'm indebted to an anonymous referee who also notes Nardin's argument that even the language of "intervention" may be inappropriate if it implies *de jure* sovereignty in governments that have forfeited it. However, the term "intervention" may be used simply to recognize the existence of a *de facto* state that will resist the effort, along with the likely fact that even the rescued will see the operation as an intrusion by others who are "alien" to their society. The idea that some violation of a presumptive right occurs in such cases will never go away until we live in a very different global order than our present one.

even when faced with crimes such as "massacre, rape, ethnic cleansing, state terrorism....," because intervention can be abused as a pretext for conquest.<sup>103</sup> There is also broad consensus that when atrocities arise from internal cultural problems (rather than from a tyrant by coup), it may be hard for an intervening force to get out quickly.<sup>104</sup> The risk of escalation drawing in other nations also favors non-intervention, since these large risk-weighted costs have to be outweighed by the goods likely to follow from humanitarian intervention. Walzer also remains skeptical of intervention for nation-building:

Except in extreme cases like that of Nazi Germany, [just war aims] don't legitimately reach to transformation of the internal politics of the aggressor state or the replacement of its regime. For ends of this latter sort would require a prolonged occupation and massive coercion of civilians.<sup>105</sup>

But Walzer revises the "legalist" paradigm of the Westphalian order to allow intervention "when the violation of human rights within a set of boundaries is so terrible that it makes talk of self-determination or 'arduous struggle' [self-help] seem cynical and irrelevant, that is, in cases of enslavement and massacre."<sup>106</sup> Later he adds mass deportation<sup>107</sup> and "politically induced famine and epidemic"<sup>108</sup> to this list of extreme crimes against humanity, as I'll refer to them collectively; these are in addition to political reasons for intervention such as colonial repression of liberation

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<sup>103</sup>Walzer, "The Politics of Rescue," reprinted in Walzer, *Arguing About War* (Yale University Press, 2004), p.68.

<sup>104</sup>Ibid, p.71. Surprisingly, Walzer excuses hesitation to act in Bosnia and Rwanda as a result of liberal fear of imperialism if an extended occupation is required (p.72). Such knee-jerk fears of imperialism proved unjustified in Bosnia, and as we have seen, Orend and the ICISS Report urge longer-term commitment in some cases.

<sup>105</sup>Walzer, *Just and Unjust Wars*, "Preface to the Second Edition," p.xvii.

<sup>106</sup>Ibid, p.90; also see p.101: "Against the enslavement or massacre of political opponents, national minorities, and religious sects, there may well be no help unless help comes from outside [the nation]."

<sup>107</sup>See Walzer's response to Luban, Doppelt, Wasserstrom, and Beitz: "The Moral Standing of States: A Response to Four Critics," *Philosophy and Public Affairs* 9 no.3 (Spring 1980): 209-29; reprinted in *International Ethics*: 217-37, p.226.

<sup>108</sup>Walzer, *Just and Unjust Wars*, pp.xvii-xviii.

movements and intervention by other states in a civil war.<sup>109</sup>

In sum, as James Johnson says, Walzer is "open to the use of military force for intervention in cases of grave humanitarian need;"<sup>110</sup> indeed he takes the "Nuremberg code" to imply that it is "morally necessary" to defeat regimes that perpetrate extreme crimes against humanity.<sup>111</sup> As we have seen, this is a fundamental departure from the original UN framework. But Walzer refuses to recognize that a duty to defend innocents from extreme crimes committed by their own governments cannot be met without establishing a global sovereign authority with an efficient decision-making system, with standing forces capable of intervening swiftly, and with little risk of escalation because of broad international basis and overwhelming strength.

This is a point of paramount importance; it explains the insufficiency of every alternative that Walzer proposes to meet his limited exceptions to the nonintervention principle. In *Just and Unjust Wars*, he focuses on cases in which a single nation or small group intervene to rescue victims of atrocities in neighboring states, and he suggests that humanitarian intervention must be unilateral or particularist, since one cannot wait for the UN or "the universal state:" "there is at present no institutional appeal; one appeals to humanity as a whole."<sup>112</sup> But then, as I responded to Orend, often *no* state will answer the appeal, or "humanity as a whole" will free ride on any who do. Merely saying that "any state capable of stopping the slaughter has a [moral] right, at least, to try to do so" is on a par with hoping to fund a public park by telling all residents that anyone who can pay part of the costs is welcome to contribute.<sup>113</sup> It also allows strong nations to

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<sup>109</sup>Walzer, "The Moral Standing of States," p.225; compare *Just and Unjust Wars*, p.94.

<sup>110</sup>Johnson, *The War to Oust Saddam Hussein*, p.33.

<sup>111</sup>Walzer, *Just and Unjust Wars*, p.106.

<sup>112</sup>Ibid, p.107.

<sup>113</sup>Ibid, p.108. Compare Walzer, "The Politics of Rescue," in *Arguing About War*, p.75: "anyone who can take the initiative should do so." Note that this diffuse permission cannot be framed as the categorical imperative

rationalize unilateral actions that a pluralistic federation would have checked: for example, Christopher Hitchens cited the Genocide Convention requirement on signatories to "prevent and punish" genocide as a possible justification for the American war to oust Saddam Hussein.<sup>114</sup>

In addition to this diffuse permission, Walzer sometimes favors the proximity criterion: humanitarian intervention is "probably best carried out by neighbors."<sup>115</sup> We have already noted problems with this idea. While Walzer is right that European nations should have taken the lead in Bosnia and Kosovo rather than leaving it to the US,<sup>116</sup> as perhaps ASEAN nations should take the lead on Burma and North Korea, this criterion lends itself to "sphere of influence" claims like the Monroe Doctrine that can promote injustice: when neighboring states have a bad history, it would often be better if other more distant nations led humanitarian interventions. For instance, if Iran had offered to rid us of Saddam Hussein in 2003, or if India now offered to help Pakistan against the Taliban, we would rightly wonder how counterproductive their assistance might prove. Nor are former colonial powers ideal candidates, since their intentions can so easily be misinterpreted. Walzer considers and rightly rejects the idea that the US should serve as "agent-of-last-resort" since it is allegedly the most powerful state.<sup>117</sup> Yet in a more recent essay, he returns to the power and proximity criteria, saying that the obligation should "fall on the most

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requires: in most cases, more than fifty leading nations from all parts of the globe *could* take the initiative, but morality cannot require them all to do what any *one* would have to do to stop the atrocities (that would be overkill). Rather, a *joint effort* or coordinated initiative is the universalizable maxim.

<sup>114</sup>Hitchens, "War in Iraq: Is it Just?" in Ethics and Public Policy Center *Conversations* 20, May 2003, p.3, col. 1. While I agree with Hitchens' view of Hussein, a war to end a genocide cannot start decades after the crime.

<sup>115</sup>Walzer, "The Politics of Rescue," p.69. In *Just and Unjust Wars* he supports this criterion with three moderately successful examples: Indian intervention in East Pakistan, Tanzania's entry into Uganda, Vietnam's decision to stop the Khmer Rouge in Cambodia ("Preface to the Second Edition," pp.xviii-xviii).

<sup>116</sup>Ibid, p.79.

<sup>117</sup>Ibid, pp.77-79. Walzer recognizes that this approach is often counterproductive since humanitarian interventions can then be portrayed by their opponents as mere American imperialism. I would add that we need to stop speaking as if the US is the only "superpower" in the world, given the potentials of the EU and ASEAN nations, to say nothing of China.

capable state, the nearest or the strongest."<sup>118</sup>

The problems here are a legion. In addition to their central failure to assure mutual support among states, such criteria may not even uniquely pick out any single state. Moreover, given the difficulty of mustering political will, the most "capable" agent in some cases would be a vigilante army of volunteers gathered from various states for this special purpose (a few rich idealists might very well muster such an army more quickly than NATO). If sufficient power is more important than authorization by "humanity," then it is not clear why the just authority to intervene needs to rest in governments at all. But for the just war tradition, that is a *reductio*.

The root of these problems is that Walzer's search for a criterion asks the wrong question: since he is not guided by CP and DP, he fails to deduce the arrangement that is optimal both with respect to coordinative reach and legitimacy. While it may have been hard to imagine better alternatives in the 1970s, today a broad federation of democracies that would transcend factional divisions and negative historical associations between states is at least sufficiently plausible to merit serious consideration. The fact that such a federation would be far more effective than the UN is morally important. In Walzer's own domestic analogy where there are no police to respond to a local emergency, "neighborly unilateralism" is justified as a temporary fallback;<sup>119</sup> but we'd think the villagers not only stupid but immoral if many such emergencies went by and they still had not established a police department decades after they could have banded together to do so. Nor would we look kindly on those who immediately dismissed the idea as too difficult.

In recent essays, Walzer considers alternatives both to the UN and to his early criteria for unilateral intervention, but again without grasping the problems of fair and effective coordination

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<sup>118</sup> Walzer, "The Argument About Humanitarian Intervention," p.32, col. 2.

<sup>119</sup> Walzer, "The Argument About Humanitarian Intervention," p.31, col. 2.

that CP addresses. In 2002, he argues that humanity would not necessarily be "better served by multilateral decision-making," since each state involved would act in its own interests, resulting in a bargain that "will reflect only a mix of particular interests which may or may not be better for humanity than the interests of a single party."<sup>120</sup> That is true in treaty organizations requiring near-unanimity where every party must gain every time or be forced back to the status quo by a single defection. But that is precisely why consolidated authority vested in binding majority rule is needed to prevent holdouts from putting their local interests ahead of the common good. In 2000, Walzer almost saw this responding to European unwillingness to back the demand for weapons inspectors in Iraq with force.<sup>121</sup> He calls for

a strong international system, organized and designed to defeat aggression, to stop massacres and ethnic cleansing, to control weapons of mass destruction, and to guarantee the physical security of all the world's peoples.<sup>122</sup>

He adds that such a system requires "that other states besides the United States take responsibility for the global rule of law" and be prepared to act with force.<sup>123</sup> For instance, nations like France, Germany, and Russia have to start doing their fair share.<sup>124</sup> This also applies to containment of tyrannical regimes: "If measures short of war are to work against evil or dangerous regimes, they have to be the common work of a group of nations. They require multilateral commitment."<sup>125</sup>

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<sup>120</sup>Ibid, p.22, col. 1. The same error is made in *Just and Unjust Wars*, p.107: "States don't lose their particularist character merely by acting together." That is true if they are acting only in a temporary alliance based on an overlap in each state's national interests, but not if they are consolidated in a federation that can transcend faction.

<sup>121</sup>See Walzer's editorials collected under the title, "Five on Iraq," in *Arguing About War*, p.145 (Sept. 2002). Luban notes the free rider problem created by American willingness to intervene when other nations are the lowest-cost responders: see Luban, "Intervention and Civilization," p.90. However, this criterion has its problems too, e.g. in creating incentives to avoid being (or being seen to be) the lowest cost potential responder.

<sup>122</sup>Ibid, p.155 (Jan. 2003).

<sup>123</sup>Ibid, p.156.

<sup>124</sup>Ibid, pp.157-59 (March 2003).

<sup>125</sup>Walzer, *Just and Unjust Wars*, Preface to the Fourth Edition, p.xiv.

But Walzer suggests no plan that counters the incentives to free-ride on other more willing nations (and to offer pacifist rationalizations for refusal to participate) that will always exist if each nation must consent every time for its resources to be involved in any enforcement of international law. As Alexander Hamilton teaches, commitment from all parties who stand to benefit over time from a decision-system cannot be ensured without a strong central authority, which in turn requires them to pass the relevant sovereign functions to an institution that can act by simple majority for most important purposes and back its decisions with force.

Yet Walzer skips this alternative of a federation of democracies in canvassing seven possible forms of global order from a "unified global state" to "international anarchy."<sup>126</sup> In his continuum, two steps towards diversity and pluralism from the globalist end of his spectrum we have "a federation of nation-states" with significant powers left at the national level, but with more enforcement power than the current UN.<sup>127</sup> He rejects this option because he thinks it would force non-democratic peoples to become democratic.<sup>128</sup> It is not clear why he ignores the option of a federation composed only of nations that are already democracies (imperfectly, but not merely in name), which could form further treaty-based systems with non-democratic states. Instead Walzer prefers "a UN with a military force of its own capable of humanitarian interventions and a strong version of peacekeeping," still requiring Security Council approval or perhaps supermajorities in the General Assembly.<sup>129</sup> This proposal does not solve the collective action problem caused by great power vetoes nor address the incentive that China has to block

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<sup>126</sup>See Walzer, "Governing the Globe," reprinted in *Arguing About War*: 171-91, pp.171-72.

<sup>127</sup>Ibid, pp.182-83.

<sup>128</sup>Ibid, p.184.

<sup>129</sup>Ibid, p.187. Like Habermas, Walzer simply ignores the impossibility of getting China to approve such amendments to the UN Charter.

any action that subjects state sovereignty to human rights tests, however minimal: it is a global analog of 18<sup>th</sup> century states rightist hopes merely to touch up the Articles of Confederation.

Like his anti-federalist colleagues in early American political thought, Walzer fears the danger that centralized power can be abused more than he fears the horrors resulting from its absence. So he prefers a diffuse system of "many agents," from the UN and regional coalitions to multiple NGOs, with "no assigned agent, no single responsibility" -- nowhere for the buck to stop.<sup>130</sup> For power consolidated in a global federation, he says, would amount to "tyranny without borders, a more 'total' regime than totalitarianism ever envisaged."<sup>131</sup> He expressed the same fear in 1992: "A global authority, claiming a monopoly on the legitimate use of force, would be no less threatening than an imperial state."<sup>132</sup>

However, this is an exaggeration attacking a straw man. Of course any power can be used for "reckless and cruel acts as well as wise ones,"<sup>133</sup> but democratic answerability and institutional checks and balances can minimize the potential for abuse. Anti-federalists who predicted that a strong US federal government would become a tyranny were proven wrong because the federal authority became directly answerable to the American public and enjoyed a robust division of powers. Walzer offers no reason why a similar structure could not work in a federation of democratic states. Consider the following provisional list of desiderata:

- (1) The Democratic Federation would be directly answerable to the combined people of all its member nations; its legislature and executive would be directly elected (perhaps with state-

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<sup>130</sup>Ibid, pp.189-90.

<sup>131</sup>Ibid, p.189.

<sup>132</sup>Walzer, *Just and Unjust Wars*, "Preface to the Second Edition," p.xxii.

<sup>133</sup>Walzer, "International Society: What is the Best We Can Do?" *Ethical Perspectives* 6 nos 3-4 (1999): 201-210, p.201. In this essay, which is a more explicitly communitarian version of "Governing the Globe," Walzer pessimistically denies that there is an institutional solution capable of producing coordination (p.201, col. 1).

appointed representatives in an upper house<sup>134</sup>).

- (2) Its consolidated power to declare and wage war to defend its members and other nations from aggression, and to respond in humanitarian emergencies<sup>135</sup> would be checked by a transnational judiciary with jurisprudence based on a charter of human rights;
- (3) Its courts, including a new International Criminal Court, would be answerable to its legislative and executive branches rather than free-standing.
- (4) Its constitution would include multiple insurances for authority retained at the national level and protections for cultural differences (perhaps even for group rights).<sup>136</sup>
- (5) While criteria for membership would be clearly spelled out, no nation would be forced to join by military action, economic sanction, or trade advantages; the growth of such a federation would be by self-determination among the peoples joining it across all continents.
- (6) While it would reserve full membership for states meeting basic democratic standards, it could offer associate membership to nations that Rawls would consider benign oligarchies or theocracies respecting rights more basic than the right to rational popular sovereignty.<sup>137</sup>

This looks nothing like Walzer's global menace; it is not an "empire" at all, nor does it aim to be a world government, since it tolerates nations remaining outside it (claiming no monopoly on all force). Yet along with its protections for diversity and pluralism, such a Democratic Federation would bring sufficient unity of will to stop crimes against humanity, crimes of war and territorial

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<sup>134</sup>Specifically, I'd propose that each member have from one to four senators representing their nation, depending on population – something between proportional representation and equality for the largest and smallest countries. But a fully detailed proposal is beyond the scope of this essay.

<sup>135</sup>More specifically, the proposal is that the Democratic Federation would be the authority of *first resort* for just wars; its failure to act would not rule out other agents taking initiative in extreme emergencies. In a subsequent paper, I hope to defend this idea in detail against rival proposals by those who hope to reform the UN.

<sup>136</sup>Contrary to Walzer's absurd assertion in "International Society" that a global government would necessarily repress all "public expression of cultural divergence" (p.203, col.2).

<sup>137</sup>Although I agree with Habermas against Rawls that the right to popular sovereignty is implied by the same sources of normativity that ground basic rights to life and liberty, I still agree with Rawls that freedom from genocide, slavery, and persecution are morally obligatory in a stronger sense than the right to democracy, which is not absolute: see John Rawls, *The Law of Peoples* (Harvard University Press, 1999), p.65. However, this does not mean that I endorse Rawlsian "moral minimalism" about human rights. See Benhabib's critique of Rawls and her argument that "the right to self-government" through "proper legal and political channels" is necessary to explain how basic human rights are legitimately institutionalized as legal rights with differing contents in different nations ("Another Universalism," p.20).

aggression, and transnational terrorist organizations. After perhaps two or three demonstrations of its effectiveness, the credible threat of overwhelming response would be enough by itself to deter attacks on peaceful nations, to discourage states from supporting terrorist groups, and to prevent acts of genocide, persecution, large-scale ethnic cleansing, and trafficking in human beings. These are all purposes that Walzer recognizes as legitimate checks on national sovereignty, and surely a world in which humanitarian interventions were rarely even needed because of such a deterrent would be far better than the diffuse system that Walzer suggests. To say that such a federation would still be totalitarian is an insult to all the victims of totalitarian violence over the centuries, for it would be formed to end totalitarian violence forever. It would act to protect the downtrodden, and speak for a large portion of humanity in doing so.

Most importantly, none of the listed functions require assimilating peoples to economic individualism, secularism, or consumerism. Doubtless critics of such a federation would accuse it of being imperialist and hegemonic (and western, capitalist, etc.) even though it would have to include many non-western states and remain neutral between capitalist and socialist economic and distributive policies from its start. But only those with a vested interest in tyranny would have good reason to fear the federation, because it would support national self-direction within the limits of basic rights. Still, the question remains how far such a federation, or any lesser group of democratic states, should go in resisting tyrannical regimes that are not presently threatening other nations or committing extreme crimes against humanity. In particular, we need to consider assisting internal efforts to overthrow dictatorships or form more democratic regimes. This issue can only be settled by considering rival conceptions of political legitimacy.

## **VI. Walzer vs. Locke and Habermas: Legitimate Self-Determination and Revolution**

Walzer's position is that governments that are in fact internally illegitimate to their people(s) because they do not "fit" their culture(s) must still be 'presumed' to be legitimate by foreign nations, who cannot judge such internal matters, as long as they are not committing the listed 'extreme crimes.' For example, he thinks George H.W. Bush was right not to aid the Iraqi insurgents who tried to overthrow Saddam Hussein following the first Gulf War.<sup>138</sup> In this, he is strongly influenced by John Stuart Mill's view that against home-grown tyrants, "the members of a political community must seek their own freedom," and his related idea that a people can be "self-determining" even if they do not choose "political freedom" or attempt and fail to establish a democracy.<sup>139</sup> For Walzer believes that only *home-grown* change made by internal actors can lead to a stable new government.

There is surely something to this empirical claim, on which much of Walzer's argument rests; democracy cannot just be artificially imposed without risking grave instabilities. Yet the claim is clearly overstated, for the reconstruction in Japan and Germany following WW. II show that liberal democratic culture *can* be fostered through deep and prolonged intervention. And there are other cases in which less dramatic foreign influence has shifted the balance in favor of progressives who lifted their peoples out of tyranny without erasing the original culture.

However, there is also a normative premise in Walzer's argument: on his communitarian view, the "integrity" of a nation's internal political processes is always a public good of central significance.<sup>140</sup> Given this, Mill is right that it should not be our purpose "to establish liberal or

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<sup>138</sup>Walzer, *Just and Unjust Wars*, "Preface to the Second Edition," p.xix-p.xx.

<sup>139</sup>Ibid, p.87.

<sup>140</sup>See Walzer, "The Politics of Rescue," p.69. Note that Walzer's non-intervention norm sounds like the *Star Trek* "Prime Directive" applied to all peoples not suffering from extreme crimes against humanity. While Gene Roddenberry seems to have conceived this principle on consequentialist grounds (e.g. the unintended consequences of paternalistic intervention), the need for exceptions to it was illustrated in many episodes. Moreover, Roddenberry imagines the entity refraining from intervention as a federation of democratic states.

democratic communities" even if this could be done; a just global order can only seek to promote "independent ones."<sup>141</sup> But this notion of "independence" or self-determination as merely "'the right of a people to become free by their own efforts,' if they can, without 'the intrusions of alien power,'"<sup>142</sup> is highly problematic. Luban argues that this "Pickwickian" notion "takes the legitimacy of states too much at face value" on the implicit belief that dictatorial government reflects the real needs and wishes of its people(s),<sup>143</sup> which itself is a patronizing view.

In reply, Walzer rejects Luban's dichotomy: it false that governments can be based only on democratic consent or coercion.<sup>144</sup> He insists that for many non-democratic regimes, other nations must presume that

...there exists a "fit" between the community and its government and that the state is "legitimate." It is not a gang of rulers acting in its own interests, but a people governed in accordance with its traditions. This presumption is the respect that foreigners owe to a historic community and to its internal life.<sup>145</sup>

This kind of fit explains why citizens of non-democratic nations will often be willing to fight against foreign armies who invade in order to free them from dictatorial government.<sup>146</sup> There are then two distinct standards of political legitimacy: the internal communitarian standard, and the international standard that looks at de facto power over a territory with minimal rights-limitations. This distinction has the crucial implication that perceived internal wrongs that can justify people(s) in rebelling against their government will not (unless they involve extreme

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<sup>141</sup>Walzer, *Just and Unjust Wars*, p.87.

<sup>142</sup>Ibid, p.88.

<sup>143</sup>Luban, "Just War and Human Rights," p.214. He also points to the borderline case of East Germany in the 1950s, where the government is largely imposed by foreign domination, though also at least partly home grown (215). In this case, Walzer can allow intervention on the grounds that cultural integrity has been violated.

<sup>144</sup>Ibid, p.215.

<sup>145</sup>Walzer, "The Moral Standing of States," p.220.

<sup>146</sup>Ibid, p.221.

crimes) justify foreign nations in aiding the revolution – as in the case of Iraq again. Instead Walzer thinks of revolutionary processes as part of the integral development of a culture that would be forced out of its 'natural' path by foreign intervention.

My goal in the next sections is to develop Luban's critique of Walzer's Millian account with insights from Habermas, Locke, and Buchanan. They help to show that Walzer is working from an inadequate conception of democratic consent, and that his own communitarian alternative becomes incoherent when applied to cases where an internal right to revolution exists.

**Lockean Limits to Self-Determination and the Symmetry Thesis.** Walzer's two-level account of state legitimacy is subject to at least four potent criticisms. The first is that, in trying to apply "self-determination" to any development process explained by a cultural narrative, it removes the moral preconditions of autonomy that ground the Lockean right to revolution. Although Locke understands the inherent authority that individuals have to govern themselves in a way that is neutral between a very wide range of personal goals and ways of life, he directly rejects Hobbes' doctrine that people may bargain for their lives by submitting to absolute monarchy. In the *Second Treatise of Government*, Locke argues that "Despotical Power" can never be justified through contract: since no one has "Arbitrary Power over his own Life, [he] cannot give another Man such a Power over it."<sup>147</sup> This means that no one can sell himself into slavery: the right to basic liberties is *inalienable*, except to the extent that criminal acts forfeit part of it. Innocent captives cannot bargain for their lives by agreeing to be slaves,<sup>148</sup> and so conquest can never give any rights over conquered people.<sup>149</sup> It follows that unlimited hereditary

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<sup>147</sup>John Locke, *Second Treatise of Civil Government*, ch.. XV, §172; in *Two Treatises of Government*, rev. ed., introduced by Peter Laslett (Mentor/Penguin, 1963), p.429.

<sup>148</sup>Ibid, p.430

<sup>149</sup>Ibid, ch. XVI, §176, p.432.

monarchy can never be legitimated by reference to conquest and surrender.

So central is this refutation of monarchy to all modern thought that we might call it the "Enlightenment Argument," and the norm on which it is based the "Enlightenment Principle:" *might alone can never make right*. This is the principle that Luban cites as basis for his view that state sovereignty depends on upholding socially basic rights.<sup>150</sup> It is embraced and developed in similar forms by Rousseau and Kant,<sup>151</sup> who defend Locke's doctrine that tyranny is rule for the ruler's private advantage without any justification by reference to the common good, and it makes no legitimate law at all.<sup>152</sup> Tyranny in this sense is not limited to absolute monarchs and military dictators; larger ruling groups also become tyrannical if power that is meant to serve the good of the whole people "is made use of to impoverish, harass, or subdue them to Arbitrary and Irregular demands..."<sup>153</sup> Crucially, it is only against tyranny in this sense, when long proven to the conscience of most citizens by a "long train of abuses," that citizens have a right to revolution.<sup>154</sup> We may fairly count any government that arbitrarily disposes of the "Lives, Liberties, or Fortunes of the people" as dissolved by its *de facto* rulers: there is then no legitimate sovereign at all. So in such cases, the people are free to form a new government.<sup>155</sup>

For Walzer, this poses an intractable dilemma. He wants to count as "self-determining" most states in which "the history, culture, and religion of the community may be such that

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<sup>150</sup>Luban, "Just War and Human Rights," p.201.

<sup>151</sup>See Rousseau's *Social Contract* ch. IV, and Kant's *Lectures on Ethics*, tr. Lewis Infield, int. Lewis White Beck (Hackett, 1963): "The Supreme Principle of Morality," p.43; compare Kant, *The Metaphysics of Morals*, "The Doctrine of Right," §30 (6:283).

<sup>152</sup>Locke, *Second Treatise*, ch. XIII, §199, pp.446-47.

<sup>153</sup>*Ibid*, ch. XIII, §201, p.448.

<sup>154</sup>*Ibid*, ch. XIII, §210, pp.452-53.

<sup>155</sup>*Ibid*, ch. XIX, §221, p.460.

authoritarian regimes come, as it were, naturally;"<sup>156</sup> for example, he cites the oligarchy that was established in Algeria following its war of independence.<sup>157</sup> But if Locke is right, then no self-perpetuating dictatorship embodies the self-governance of the people. On the other hand, if the inalienable value of liberty is not implicit in the exercise of personal autonomy, then individuals can legitimately sell themselves into slavery. Yet Walzer wants to say that a government that enslaves its own people on any grounds cannot "fit" their culture, and hence such a society does not count as self-determining.<sup>158</sup> So which is it? If Walzer gives any Enlightenment explanation of the thesis that "self-determination" cannot include voluntary submission to slavery (or to genocide and ethnic cleansing), then he will thereby also justify a right to freedom from oppressive dictatorship in general. Even if this is less than a full-blown right to democratic government, when its violation gives citizens an internal right to revolution, it will normally also give legitimate foreign governments just cause to help the revolutionaries rid their nation of despotical domination. For the conditions of total dictatorship are clearly discernible to foreigners (as we can see in North Korea, Burma, Tibet, Sudan, Zimbabwe, etc).

Yet Walzer insists that grounds for revolution and humanitarian intervention are asymmetrical, since they concern different levels of legitimacy: "It is not true that intervention is justified whenever revolution is; for revolutionary activity is an exercise in self-determination, while foreign interference denies to a people those capacities that only such exercise can bring."<sup>159</sup> On the contrary, the symmetry thesis that *just causes* for revolution and humanitarian

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<sup>156</sup>Walzer, "The Moral Standing of States," p.233.

<sup>157</sup>Ibid; though he terms this as a "hypothetical" case, he is clearly describing the actual history of Algeria.

<sup>158</sup>Ibid, pp.226-27; he even wants to stretch his criteria to include South African Apartheid as a kind of slavery, though it was obviously different than American chattel slavery. Taking that route quickly leads to Locke's notion of slavery as equivalent to living under any form of tyranny.

<sup>159</sup>Walzer, *Just and Unjust Wars*, p.89. Also see "The Moral Standing of States," pp.222-23, where Walzer

intervention are the same can be defended by noting that Walzer's plausible empirical reasons against intervention belong under the proportionality criterion instead. Suppose there is good evidence that in some set of instances, foreign help to a justified revolutionary movement may prevent the character development or cultural growth necessary for a healthy society following the struggle. Then that likely harm would weigh against the benefits of intervening (including avoiding the evils that would follow if the unaided revolution failed). We should treat these considerations just as we would evidence that the revolutionaries can probably succeed without help, or that the most feasible forms of assistance could undermine their perceived internal legitimacy (e.g. by appearing colonialist), or have other counterproductive consequences.

In sum, all such considerations properly concern *ad bellum* proportionality (category V) rather than just cause, and thus do not undermine the symmetry thesis, which does *not* say that sufficient internal reasons for citizens to start a revolution *all things considered* entail sufficient reasons for foreign powers to help them, all things considered. We should never intervene even when we have just cause if that would do more harm than good -- for example, if to attempt armed liberation of Tibet would risk nuclear war with China. The same goes if other *jus ad bellum* criteria are not met (e.g. if we could only aid justified revolutionaries by immoral means). Thus Lockean symmetry does not imply that atrocity and tyranny are sufficient by themselves to justify intervention to overthrow despotic government. Skeptics about humanitarian intervention often fall into this simple confusion.<sup>160</sup> Worse, they often fail to see that when just cause for

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reaffirms his view that justified revolution arising from internal processes actually *rules out* foreign intervention, as if aid would hijack the authenticity of the movement! Yet I challenge Walzer to name one case in which justified revolutionaries rejected as a violation of their rights any significant offer of foreign aid motivated by primarily by sincere belief in the justice of their cause (rather than by a desire to meddle or control the movement, etc.).

<sup>160</sup>For example, see Burleigh Wilkins, "Humanitarian Intervention: Some Doubts," in *Humanitarian Intervention*, 35-44, p.37.

humanitarian intervention is present but other criteria are not met, that is often due to collective action problems that a federation of democracies would overcome.<sup>161</sup>

This division of labor between just cause and proportionality criteria sustains a crucial moral point that Walzer obscures in portraying humanitarian intervention in cases of 'ordinary' tyranny as violations of a *basic right* to cultural integrity. On his view, the considerations against intervention are not contingencies affecting instrumental calculations in particular cases, as I've suggested, but rather matters of universal duties to respect non-liberal cultures. This brings me to the next basic problem in Walzer's account.

**Cultural Self-Expression or Pure Violence?** As we have seen, the conception of "self-determination" that Walzer employs is too *voluntarist* to ground the Lockean right to revolution. When stripped of the moral preconditions it involves on all Enlightenment accounts, self-determination includes any expression of thick cultural values and beliefs deeply embedded in traditional ways of life, no matter how unjust, cruel, or harmful they may be. Thus the exceptions for slavery, genocide, and ethnic cleansing become *ad hoc*.<sup>162</sup> But in addition, this conception is too thin to fit the communitarian intuitions to which Walzer appeals in defending the right to cultural integrity against intervention in illiberal states. It is certainly true that thick cultural values and religious traditions may often be at odds with liberal ideals, which is why Rawls makes room for "decent" non-liberal states in his conception of global justice.<sup>163</sup> Yet even if

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<sup>161</sup> For example, Luban and Walzer both say that in the Yugoslav conflict, the lack of political will in Europe and the US to commit enough ground troops for a sufficient time undermined the legitimacy of the eventual interventions: see Luban, "Intervention and Civilization," pp.80-82 and pp.85-86; also see Walzer, "The Politics of Rescue," pp.72-74. The conclusion to draw is not that intervention depends on the willingness of a single people to sacrifice their soldiers, but rather that a stronger multinational system is needed to muster the necessary will.

<sup>162</sup>For example, it is not implausible that the expulsion of Jews from Spain and the Spanish Inquisition were both authentic expressions of certain central elements of Spanish culture at the time (though one can always cite cross-currents in a complex culture to deny the integrity of any particular events, practices, or institutions).

<sup>163</sup>Rawls, *The Law of Peoples*, §§7-9. It should be noted that Rawls' list of extreme crimes that can justify

many practices we regard as violating equal civil liberties may be authentic expressions of such cultures, that does not hold for regimes of terror maintained by death squads, torture, secret police using advanced technologies, brainwashing, packing teenagers with explosives for suicide attacks, or using armies of orphans with machine guns to build diamond monopolies. These are instances of a social virus that has repeatedly hijacked cultures trying to build ways of life promoting human goods. Even the archaic honor codes that once cemented timocratic and feudal cultures is entirely lacking in such regimes.

Thus against Walzer, Ellis observe that it was obvious that the Soviet regime in Poland "did not properly represent the Polish people" even though many Poles worked for it.<sup>164</sup> As Luban puts the same point, often the "lack of fit between government and people" is quite apparent in "ordinary dictatorships" in which there are no extreme crimes, but

Each year, there are a few score executions, a few hundred tortures, a few thousand political imprisonments, a few million people behaving cautiously because they know that a single slip will bring the police. The police and the army believe that if the government falls, they are dead men; it is the bargain they accept to escape the poverty of their villages.<sup>165</sup>

Though written three decades ago, this description applies to Burma today, where the military is alienated from the rest of the people, just as it applies to the Dominican Republic under Trujillo's dictatorship from 1930 - 1961. In several other recent cases, the claim to internal support was either a complete sham or primarily expressed the corrupted priorities of some groups in the population willing to commit systematic crimes against other groups for vengeance, or for gain,

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humanitarian intervention is similar to Walzer's.

<sup>164</sup>Ellis, "War, Revolution, and Humanitarian Intervention," in *Humanitarian Intervention*, ed. Aleksander Jokic (Broadview Press, 2003): 17-44, p.24.

<sup>165</sup>Luban, "The Romance of the Nation-State," *Philosophy and Public Affairs* 9 no.4 (Summer 1980), reprinted in *International Ethics*: 238-43, p.241. In particular, this description shows that Walzer has been misled by the US experience in Vietnam to think that the police and army backing a dictatorship must be integrally connected with the rest of the population (see "The Moral Standing of States," p.229).

or to retain supremacy. Consider Pinochet's party in Chile; or supporters of Mugabe in Zimbabwe since the 1990s; or the reign of terror by the junta that ruled Haiti from 1991 to 1994 (ended by Clinton's threat of intervention). Similarly, imagine that the pseudo-communist drug warlords were to establish a new state out of the parts of Columbia that they control. It is simply absurd to suggest that foreigners must regard such total tyrannies as historical communities authentically shaping their cultures according to their own rich traditions and thick values. Of course, dictators usually try to portray themselves as guardians of an authentic culture, and respond to rights-based critiques with feigned pluralist indignation (describing such critiques as 'western imperialism'). But as Luban says, in fact "The government fits the people the way a boot fits a human face."<sup>166</sup>

In sum, if the strong presumption in favor of nonintervention is based primarily on "our commitment to self-determination,"<sup>167</sup> then the internal processes valorized under that label have to amount to more than pure violence or domination by some segments with no plausible cultural justification at all. If a dictatorship is "not a gang of rulers acting in its own interests, but a people governed in accordance with its own traditions,"<sup>168</sup> then some process of rational communication about thick values (which cannot be rational without some room for critical discourse) must be involved. Communitarian "civic friendship" in which "political development" in any Aristotelian sense<sup>169</sup> can occur requires at least this much, as Hannah Arendt teaches.<sup>170</sup> Rawls is making the

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<sup>166</sup>Ibid, p.242.

<sup>167</sup>Walzer, "The Politics of Rescue," p.68, p.81.

<sup>168</sup>Walzer, "The Moral Standing of States," p.225.

<sup>169</sup>Ibid, p.236.

<sup>170</sup>For example, see Arendt, *The Origins of Totalitarianism*, 2<sup>nd</sup> ed. (Meridian Books/World Publishing Co., 1958), ch.12 on the way totalitarianism destroys ongoing community and civic friendship in an almost purposeless nihilism in which power is exercised for its own sake. Also consider her claim that truth is required for the survival of human lifeworlds: see "Truth and Politics," reprinted in Arendt, *Between Past and Future* (Viking Press, 1961; Penguin pb. 1993).

same point when he describes legitimate associationist non-liberal states as embedding a "decent consultation hierarchy" in which laws are guided by a "common good idea of justice" that itself implies recognition of basic human rights short of equal representation.<sup>171</sup> Thus the concept of "self-determination" cannot be *entirely neutral* with regard to the contents determined;<sup>172</sup> as Anthony Ellis says, it does not apply when massive abuse of certain segments of the population becomes integral to that culture<sup>173</sup> – as for example in the practice of military rape in the Congo.

**Habermas and Democratic Legitimacy.** This brings us to the third central problem in Walzer's conception of sovereignty. It includes market conceptions of democratic self-rule that count the aggregation of consumer preferences unmodified by any critical discourse about values as the "self-determination" of a people. In particular, although Walzer is misled by Mill, he probably inherited this notion from President Woodrow Wilson's "Fourteen Points," which proclaimed a right of distinct ethnocultural communities to live according to their preferences, whatever their basis. As Allan Buchanan complains, this implies a "primary" right to secession at will, rather than a "remedial" right only, which allows destabilizing levels of fragmentation.<sup>174</sup> The same idea poses conceptual problems at the national level, as we see in Wilson's likely source -- the famous 19<sup>th</sup> century Democrat Stephen Douglas, whose doctrine of "popular sovereignty" said that the people of a new state should be able to exercise "self-determination" by

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<sup>171</sup>Rawls, *The Law of Peoples*, §9, esp. pp.71-73

<sup>172</sup>Nor is such neutrality requires by tolerance of pluralism, as Walzer implies in "The Moral Standing of States," p.225: on this point, see Rawls, *The Law of Peoples*, pp.65-66, citing Scanlon, "Human Rights as a Neutral Concern," in *Human Rights and U.S. Foreign Policy*, ed. Brown and MacLean (Lexington Books, 1979).

<sup>173</sup>Anthony Ellis, "War, Revolution, and Humanitarian Intervention," pp.22-23.

<sup>174</sup>Buchanan, *Justice, Legitimacy, and Self-Determination*, ch.8; he argues that on a comprehensive rights-based theory of legitimacy, there is no free-standing notion of "self-determination" from which a moral right to secede can be deduced. There is only a "remedial right" to secession as a last resort to stop rights-violations; moreover, the new government to be created by secession deserves recognition only if it guarantees equal rights for all, including minorities, within its territory (p.336). Thus "the right to secede unilaterally" is like the Lockean right to revolution (p.337).

voting for or against slavery.<sup>175</sup>

Like Lincoln, Habermas takes this thin notion of collective autonomy as main target in his solution to the 'tyranny of the majority' problem.<sup>176</sup> Habermas's explanation of collective self-determination in terms of deliberative ideals of justification on rational bases explains the logical connection between popular sovereignty and basic rights. Here in summary form is the principle that emerges from Habermas's analysis:

**The Democratic Principle of Legitimacy:** Any government at level L is legitimate only if (a) it can generally secure, to a sufficient extent, the most central public goods for the sake of which it exists; (b) it enjoys the consent of individual persons represented in this government, as informed by their concern for common goods and their educated practical reasoning and participation in ongoing and free debate in a public sphere including sufficient access to objective and impartial sources of information about goods and interests; (c) its actions, policies, and laws are generally in accord with the *moral presuppositions* of legitimate popular sovereignty (such as equal basic liberties).

Clause (c) supports Ellis's point that popular support for oppression of minorities, even short of enslavement or massacre, is no legitimate use of popular sovereignty at all, and hence confers no authority on a government that defends or institutionalizes such practices. The same goes for the use of original popular sovereignty in rebellion: as Ellis notes, when a new government is seeking to end repression, there is no right to rebel against it in order to maintain gross injustice against segments of the population.<sup>177</sup> This is the main reason why the Confederacy of southern states had no moral right to the revolution they attempted in the American Civil War. The same

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<sup>175</sup>This "public choice" model of majority rule, as it is also called, goes back to Senator John Calhoun's *Disquisition of Government*. It was enshrined in Douglas's Kansas-Nebraska Act of 1854, and was the target of Lincoln's critiques, beginning with his speech at Peoria four years before the Lincoln-Douglas debates of 1858

<sup>176</sup>Note Habermas's treatment to the "reflexive" right to political autonomy in *Between Facts and Norms*, pp.126-27: "If one introduces the system of rights this way, one can understand how popular sovereignty and human rights go hand in hand."

<sup>177</sup>Ellis, "War, Revolution, and Humanitarian Intervention," p.23.

applies to majority choice of permanent dictatorship (e.g. the last act of the Weimar Republic); for it follows from Habermas's analysis that the right to popular sovereignty itself is inalienable.

Clearly, Walzer cannot endorse any of these solutions to the fundamental problems of democratic theory, nor avoid an unlimited right to secession-at-will, unless he modifies his conception of self-determination to recognize its moral precommitments, some of which are already implicit in the communicative aspects of Aristotelian cultural integrity. Indeed, it is no longer evident that any but the most oppressed peoples can develop their cultures in relative isolation from other cultures in the internet age, or that we can identify cultures without networks of communication about values in which participation is partly voluntary. This brings us to the fifth major error in Walzer's account, which is also corrected by Habermas's arguments.<sup>178</sup>

Walzer's Millian treatment of secession and civil war leave him with the impossible task (given conflicting anthropological criteria) of determining which groups constitute *authentic peoples* – the very dilemma in which Wilson famously found himself at the peace conference after World War. I.<sup>179</sup> There is no value-neutral way to make these distinctions; even simplistic criteria such as shared religion, language, and ethnic identification often conflict, and can make Walzer's principles yield implausible implications. For example, they imply that France could not justly aid the American revolutionaries in 1776,<sup>180</sup> and that no nation could have helped Lincoln defeat the southern secessionists during the American civil war since the confederate states had

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<sup>178</sup>See in particular, "Popular Sovereignty as Procedure" and "Citizenship and National Identity," reprinted in *Between Facts and Norms*.

<sup>179</sup>See the masterful account of the conference and Wilson's dilemmas in Margaret Macmillan, *Paris 1919: Six Months that Changed the World* (Random House, 2001; pb 2003), esp. pp.11-13.

<sup>180</sup>Walzer says that "a small nation successfully mobilized to resist a colonial power but being slowly ground down in an unequal struggle" can be assisted (*Just and Unjust Wars*, p.94); but while this clearly applies to his example of Hungary in 1848-49, it is *much less* evident that the American colonists in 1776 were a distinct "people" from the British (or if you prefer, from the English, Welsh, and Scottish).

established *de facto* control over a wide part of US territory: "for once a community is effectively divided, foreign powers can hardly serve the cause of self-determination by acting militarily within its borders."<sup>181</sup> His principle allowing "counter-intervention" creates perverse incentives, e.g. covert encouragement of a weak foreign state to help a given tyrannical regime so that we can then legitimately act to help the liberation movement trying to overthrow that regime.

The basic problem is that Walzer's revised criteria for intervention require us to make no substantive judgment about *the merit* of the respective sides in a civil war, secession, or fight for independence from a colonial power unless the extremist possible crimes against humanity are occurring; but such neutrality runs counter to the human rights paradigm. The justice of the revolutionaries' cause is the *most relevant* issue for just war theory: it explains why we agree that helping Hungary against Austria, or the Spanish liberals against the fascists, or Lincoln against Davis, would have been just causes. This also holds when we clearly do have a distinct people, like the Basques, but the worth of their cause is obscure (at best) to most observers. No analysis of "self-determination" that is morally useful in assessing revolutions, secession crises, or claims for regional autonomy can be detached from all substantive judgments about the distinctness of peoples and the merits of different group claims -- however difficult such judgments may be in particular cases. This is the hard lesson that Wilson and his allies had to learn at Paris.

**Intractable Tyranny.** My objections to Walzer account have been largely conceptual, though empirically informed. But there is a fourth objection that concerns a pragmatic error in his Millian belief that the "popular mobilization" necessary to establish a "free government" will also be *sufficient* for it (at least if foreign governments are not aiding the dictatorship that is to be

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<sup>181</sup>Ibid, p.96. Yet significant outside aid for Lincoln could have dramatically shortened a very costly war, saved thousands of lives, and ensured the triumph of justice over slavery.

overthrown).<sup>182</sup> Given the historical evidence just of the last hundred years, this belief is clearly mistaken. As Luban says, Walzer just "dismisses the ability of sheer force to stifle the political process because force cannot prevail against the united community, while if the community is not united [against the dictatorship] intervention would be wrong."<sup>183</sup>

A game-theoretical understanding of collective action problems strongly supports Luban's point. Walzer and Mill fail to understand that successful tyrannies can close every route for political opponents to organize sufficiently to constitute a "united" opposition, or to inspire confidence in a critical mass of people sufficient to get a mass movement going: the oppressed are prevented from *coordinating*. We saw this dramatically in Hussein's Iraq, and still see it in Burma, North Korea, and Zimbabwe: revolution without outside military aid is virtually impossible against these regimes.<sup>184</sup> The American revolution of 1776 took place in much more congenial circumstances, yet the Americans still needed French help to succeed. Given these stark realities, it is morally simplistic to say that liberation from entrenched tyranny requires "local initiatives" to succeed on their own while the international community must "wait for the popular struggles."<sup>185</sup> The human cost of decades of inaction against such intractable tyrannies often outweighs the admitted risks of intervention, even if these tyrants are not intentionally causing mass famine, committing genocide, or engaging in ethnic cleansing.

We have more occasions to worry about almost hopeless resistance movements that

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<sup>182</sup>Walzer, "The Moral Standing of States," p.228.

<sup>183</sup>Luban, "The Romance of the Nation-State," p.243.

<sup>184</sup>There are plenty of fictional examples graphically illustrating the same point, such as the total control established by the regime in the movie *V for Vendetta*, or the way that hobbits are conquered through division and kept divided by Saruman's regime, as told in "The Scouring of the Shire" in Tolkien's *Return of the King* (a model study in the logic of military dictatorship).

<sup>185</sup>Walzer, "The Politics of Rescue," p.75.

cannot succeed against intractable tyranny without outside help than about fledgling revolutions losing their integrity or being prevented from developing their own virtues by overweening foreign assistance (like a hovering parent who will not let their kid deal with a schoolyard bully). In Walzer's words, they "value freedom enough to risk their lives for it,"<sup>186</sup> but that is not enough: they lack weapons and coordination. Nor can NGOs help them, since the most effective aid organizations are expelled or prevented from operating.<sup>187</sup> By contrast, a democratic federation could provide direct assistance to the opposition parties in Zimbabwe, to revolutionaries in Burma, and to friends of peace in the Palestinian territories. It could also do a better job of protecting NGOs, criminalizing the confiscation and obstruction of emergency aid, and developing a legal framework to govern NGO operations in the third world. Accidentally altering a culture's internal or authentic growth by influencing its revolutionaries should be *the least* of our worries when faced with today's intractable tyrannies and the massive poverty they cause. Again, this is not to say that intervention in all the cases I mention would be proportional to the risks, but only that this possibility must be considered.

For Walzer, intervention in these cases is ruled out even if it would easily meet the proportionality criterion. He does allow "forces of freedom" to be assisted if they clearly constitute a distinct people or "community" attempting secession or separation from a wider colonial state,<sup>188</sup> or if a fourth party has already intervened on one side of a civil war.<sup>189</sup> But these

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<sup>186</sup>Walzer, *Just and Unjust Wars*, Preface to the Fourth Edition, p.xvi.

<sup>187</sup>Ibid p.xviii: Walzer often places undue hope on the influence of NGOs. But NGOs are not currently answerable to any democratic system of global governance, and their potential to act as a voice for peoples in non-democratic nations depends on having some democratic forum in which that voice can help shape global policy.

<sup>188</sup>Walzer, *Just and Unjust Wars*, pp.90, 92-93. He should also see that just aid to such liberation movements may not depend, as Mill implied, on their opponents already having received aid from foreign nations (p.93).

<sup>189</sup>Ibid, p.93 (discussing Hungary in 1849), and p.97 (discussing the Spanish civil war). Now Walzer also allows greater "force short-of-war" against tyrannies that are not presently committing extreme crimes against

revisions to the legalist paradigm still require criteria for distinguishing peoples and cultures.

## VII. Conclusion: a Wider Scope for Humanitarian Intervention

**Broadening Walzer's List.** This fourfold critique of Walzer's account suggests that we broaden his just war theory of humanitarian intervention to recognize that governments grossly and systematically violate the basic rights of their citizens lose any claim to foreign recognition of sovereignty. This applies to intractable tyrannies that are not now committing extreme crimes against humanity such as the Rwandan genocide and ethnic cleansing in Bosnia. Thus we should recognize as just cause for intervention at least some of the following types of brutality that, in Walzer's words, shock the conscience of all civilized peoples:

- Programs of systematic rape, hostage taking, and persecution of civilian groups to repress political opposition [Bosnia, Sudan, Congo, Liberia, Haiti, etc.]
- Scorched earth tactics to destroy civilian homes and infrastructure [East Timor, Kosovo]
- War crimes against one's own citizens, such as using chemical or biological weapons on them [Hussein in Iraq], or forcing civilians to serve as human shields [Hezbollah in Lebanon].
- War crimes involving terrorism, such as intentionally targeting innocent civilians with rockets or suicide bombers or taking civilian hostages [Hezbollah, Hamas, Al Qaeda]
- Crimes against children, such as brainwashing youth to serve as child warriors, or tolerating massive child prostitution or child slave labor [Liberia, Congo, Somalia, Cambodia]
- Crimes against humanitarian aid efforts, such as attacking international relief workers; plundering charity stocks intended to relieve famine or provide for basic needs in times of crisis; causing mass death by preventing emergency relief [Somalia, Sudan, Burma];
- Massive repression of all liberties for one division of society to the point of total control by threats of extreme violence, e.g. honor killings, acid attacks, and removal of former rights to property and choice of career in the treatment of women [the Taliban, Syria, Yemen, etc.]
- Violent repression of political opponents by disappearance, torture, death squads, kidnapping

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humanity, either as a response to their evil or for preventative purposes: see Preface to the Fourth Edition, p.xv.

relatives, indefinite arrest, maimings [Liberia, Zimbabwe, Burma, Haiti, Syria, Haiti, Chile, Argentina, El Salvador, Libya, Communist regimes in Eastern Europe and many more]. This list is doubtless incomplete, but I believe it is sufficiently unified to avoid the danger of overreaching and finding just cause for intervention in every form of social inequity criticizable from a liberal point of view. It attempts to identify 'Orwellian' forms of tyranny that go well beyond simple departures from equal civil liberties, forcing large portions of the population to live in terror, manipulating and abusing people en mass, turning all semblance of thriving culture into a sham, corrupting preexisting cultures beyond recognition, and cutting people off from the most basic historical, social, and scientific information about the world. Although it is difficult to reduce to a simple formula, there is still a clear difference between a decent non-liberal state and a nihilistic nightmare in which  $2+2=5$  if that's what it takes to keep the secret police happy.

Brightening this line requires a full theory of basic human rights aided by a rich account of cultural goods, both of which lie beyond the scope of this paper. But my examples are sufficient to show that several kinds of atrocity and despotism that are not on Walzer's list are apt candidates for humanitarian intervention. If that is correct, then it is even more likely in light of CP that only a transnational order that combines both democratic legitimacy and the political and military strength of many nations with a wide variety of cultural backgrounds can respond rapidly and flexibly to the varied causes for armed intervention and, below that threshold, to grounds for other forms of political pressure short of military force. Such a federation would still give great weight to the criteria of proportionality and last resort (reasonably understood) and thus avoid the temptation to overreach. But without the unity of political will made possible by federation, the coordination necessary for successful intervention will rarely be achieved or sustained on fair terms, and the risks of unintended social harms from intervention are also increased.

**The Next Steps.** This paper has argued that enforcement of human rights is a global public good, and supported this contention by defending a version of just war theory that recognizes just causes for humanitarian intervention not only in crimes against humanity, but also in other wrongs of intractable tyranny. The evidence has shown that virtually the entire just war tradition, especially during the last sixty years, supports this much: just causes for war include not only national self-defense but also the prevention of massive atrocities anywhere. It makes no difference if the attacker has *de facto* authority over the victim; as Ellis argues, "We are not required to stand idly by while our neighbor murders his family, nor even while he buys the gun to do it, nor even while he sinks into the pathology that leads him to do it."<sup>190</sup> Moreover, in light of Locke's account of justified revolution and deliberative conceptions of self-determination, the just war tradition needs to recognize that intractable tyrannies whose harms stop short of extreme crimes against humanity may still be apt targets for humanitarian intervention.

But then the Consolidation Argument takes on greater force. The stronger the content of human rights that are considered basic to the legitimacy of any national state, and the wider the grounds for humanitarian intervention as a result, the more cogently the Coordination Principle supports the conclusion that only a federation of many nations can consolidate sufficient resources for these tasks. Given the Democratic Principle, only direct democratic representation of their peoples could give such a federation legitimacy across the world. I conclude that within the emerging human rights paradigm, only a federation of democracies from every continent representing diverse cultures can satisfy both demands. Although he arrived at it by a different route, this conclusion is similar to Buchanan's view that in place of "UN-based law," humanitarian interventions and secession crises should be decided by a "law-governed

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<sup>190</sup>Ellis, "War, Revolution, and Humanitarian Intervention," p.23.

regime...consisting of the most democratic, rights-respecting states."<sup>191</sup>

However, to complete the argument, more needs to be said to support the Habermasian version of DP against various cultural relativist and postmodernist critiques. The political feasibility of establishing the proposed federation must also be addressed in detail, which involves sketching out an institutional plan. Finally, this plan must be defended against other proposed alternatives, although I have already indicated the central problem with schemes for revising the UN Security Council. These are all tasks for further work.

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<sup>191</sup>Buchanan, *Justice, Legitimacy, and Self-Determination*, p.8. The differences between our proposals largely concern their institutional details; for example, Buchanan thinks a treaty-based organization requiring supermajority votes for intervention might be the best alternative (pp.450-53), whereas I think coordination requires a binding federation with the fewest possible restrictions on simple majority decision-making.