

**HUMANITARIAN INTERVENTION**  
**AS A NORMATIVE OVERLAY ON THE USE OF FORCE**

DAVID MCILWAIN

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I hereby confirm the contents of this thesis are my own work and have not been submitted to any other institution.

A handwritten signature in purple ink, appearing to read 'D. McIlwain', with a horizontal line extending to the right.

David McIlwain

8 October 2014

## **ABSTRACT**

This thesis explores humanitarian intervention as a normative overlay on the use of force. Advocates of humanitarian intervention prefer to frame the idea as an emerging norm of state behaviour in international politics. However, in reframing the idea as a 'normative overlay', many of the shortcomings of the 'norm' approach become clear. This normative overlay has its own historical sources and must be examined in conjunction with the events it would normatively legitimate. Accordingly, I challenge the teleology of the view that humanitarian intervention is the culmination of moral progress and demonstrate its sources in contingent historical and intellectual developments from the 1960s onwards. I then apply this understanding of humanitarian intervention to the decade of the 1990s to reveal the dissonance between the normative overlay and historical instances of intervention in that decade. I argue that these incongruities reflect a number of stresses that have developed from the clash of a range of international norms with this normative overlay on intervention. I conclude that while the normative overlay lacks the power to constrain and direct state behaviour in significant ways, the impulses of global justice and human rights enforcement which it represents have destabilising and antidemocratic implications for international politics.

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## Introduction

The goal of this thesis is to present the idea of humanitarian intervention in a more accurate context and in doing so to reveal the tensions and contradictions involved in applying a normative language to political actions and historical events.

There are two main approaches to the analysis of humanitarian intervention. The first would grant the doctrine a status in the reality of international politics and analyse those military operations which have been rhetorically associated with it. This is the direction taken by the constructivist international relations scholar Martha Finnemore when she writes that there is ‘no reason to be Procrustean and force every intervention into a single classification ... If states say they are intervening to save lives and their militaries act accordingly, then I count that a humanitarian intervention’ (2003: 12).

Applying this description to the empirical record yields a number of difficulties. What statesmen and women say and transnational norm entrepreneurs hear is often disputed and deceptive. Both wish to justify some action to themselves and others and discover in this a perverse similarity. The poet W.B. Yeats noted this resemblance between activist and actor:

The rhetorician would deceive his neighbours,  
The sentimentalist himself...<sup>1</sup>

While international rescue appears to be either inchoate or *ad hoc*, the normative overlay of ‘humanitarian intervention’ has acquired a resonance of its own. Recognising this, the second approach to the analysis of humanitarian intervention places more emphasis on the normative constructions of the norm entrepreneurs themselves. This is my approach in this thesis. I will examine the disparity between the various historical events which find their way under Finnemore’s definition. In this approach it is this ‘normative overlay’ that becomes the more relevant consideration. Like an old overhead projector slide, a normative outline of ‘humanitarian intervention’ has been superimposed over the contour map of historical events. Where the map and the overlay seem to match, norm entrepreneurs celebrate the ‘consistency’; where the two diverge they express great frustration and indignation. Little can be learnt from these cycles without a close analysis of the history and context of the overlay itself.

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<sup>1</sup> ‘Ego Dominus Tuus’, lines 50-51 (Yeats [1919] 1992: 156)

The structure of this thesis reflects this basic analogy of normative superimposition and it is therefore of critical importance to explain how a norm differs from this more novel concept of a 'normative overlay'. As illustration of the power of norms in international politics, Nicholas Wheeler resorts to the domestic analogy of a dinner party where it is the norm that the host does not insult the guests (2000: 5). Let us call this 'context A'. Now the reason that 'context A' is not particularly illuminating is that the interests of the host would be expected to coincide with what the norm demands on many occasions, leaving it impossible to know whether norm or interest is the dominant motive. In any case, the assumption would be that the prior action of inviting the guests suggests a personal interest in the success of the party.

Let us imagine a second context. In 'context B' the husband has insisted on guests whom his wife cannot stand. In this case the wife's civil conduct at the party may be more due to the structural feature of interdependence within the system of a marriage than any normative context provided by the social rules associated with dinner parties. Once again it is more or less impossible to tell which consideration is primary and this is a problem that would become only more acute if this example was decontextualised into the pattern or illustration of a norm. To insist that the norm was the primary motivating factor may be to misinterpret events and provide merely a normative overlay to interested behaviour. It is important therefore, to add a third more notorious example, this time from the perspective of a dinner party guest. This is 'context C'. The Danish nobleman and astronomer Tycho Brahe is said to have died from a burst bladder brought about by heavy drinking at a royal banquet where Brahe at least felt it was the norm to remain seated while his king was seated. Whether the tale is true or not, it provides an instance of a truly powerful norm functioning in a context in which is able to be distinguished from alternate motivations and considerations and in which the actor has presumably endured great pain to avoid breaking the norm. It is my contention that the majority of interventions in the 1990s exist in 'context A'. For this reason I have adopted the term 'normative overlay' rather than 'norm', except in instances where an alternative perspective is being presented.

In the first part of the thesis I aim to locate the idea of 'humanitarian intervention' in historical context as one aspect of the rise of a global morality. This liberal, cosmopolitan discourse sees the protection of human rights as a global and moral concern rather than a social and political concern. Those who assume such a stance in international politics I will refer to as 'cosmopolitan'. This has the advantage of very often coinciding with self-descriptions.

The middle part of the thesis follows humanitarian intervention through the decade in which it was most discussed and invoked – the 1990s. It is the main thrust of this thesis that ‘humanitarian intervention’ has failed to achieve the characteristics of a norm and constitutes only a ‘normative overlay’ on the actions of states. This section scrutinises the disparities between this normative overlay and intervention events of the 1990s and in more recent times.

The final part of the thesis explores the stresses and tensions developing in the normative overlay. I argue that these are primarily a result of the sources of the idea of humanitarian intervention in global morality. I will demonstrate that the society and the state provide the most appropriate location for the protection of human rights, strongly suggesting a greater role for politics. I conclude that the normative overlay of humanitarian intervention is under considerable strain due to the mistake of attempting to conceptualise and enforce human rights at the global level as part of a normative project.

## **Methods**

Humanitarian intervention constitutes a normative argument about state behaviour. Assessing a normative argument is a deductive exercise proceeding from the content of the argument to its logical consequences. These general conclusions are then employed to evaluate the argument in terms of its intuitive plausibility. There are likely to be problems which are not discernible by abstract reasoning alone and thus the necessary counterpart to the deductive method is an examination of empirical premises via the resources of the wider social sciences, especially history. An additional consideration is the internal consistency or coherence of the normative argument. This must also be tested rationally and empirically, with any contradictions teased out and scrutinised (Glaser 1995: 22). Finally, if the normative argument has ambitions beyond ideal theory, its potential for political legitimacy must be assessed in terms of its likelihood of achieving democratic consent and attracting other necessary forms of power.

Throughout this essay I distinguish between ‘politics first’ and ‘ethics first’ approaches to political theory. The politics first approach is based in an acknowledgment of the fundamental role that power plays in politics and is further grounded in the basic recognition that political decisions, as opposed to individual decisions, require a consequentialist logic. In political theory from the politics first perspective, legitimacy does not derive from the idea behind a decision, but the process from which the decision emerges. Because it is set in contrast with

idealistic visions, the politics first approach may also be referred to as ‘realist political theory’.

That means, roughly speaking, that [political theory] must start from and be concerned in the first instance not with how people ought ideally (or ought ‘rationally’) to act, what they ought to desire, or value, the kind of people they ought to be, etc., but, rather, with the way the social, economic, political, etc., institutions actually operate in some society at some given time, and what really does move human beings to act in given circumstances (Geuss 2008: 9).

The opposing ethics first approach does not permit distinctions between individual decisions, perhaps made on the basis of notions such as ‘conscience’ or ‘will’, and political decisions. Liberal, rights-based forms of cosmopolitanism are archetypal ethics first approaches to political theory.

In the middle section of this thesis I will employ the method of case studies. It is not envisaged that these will form a narrative of 1990s interventions capable of unanimity across extremely contested historical terrain. Rather the aim of the case studies is to expose the deficiencies and incongruities of alternate narrative approaches which would discover a norm running through events of the 1990s. Such a task may be approached with ‘structured, focused comparison’ (George 1979), a method designed for application in a small number of cases and involving the structuring of similar questions to be asked of each case. This avoids singular and isolated historical analogies. This is a particularly appropriate approach for the examination of a norm, a concept that requires consistency across a number of cases for the establishment of a pattern of socially reinforced behaviour.

Throughout the survey of historical instances of intervention in the 1990s the implicit question is, ‘To what degree does the normative overlay fit the events?’ And where this overlay is imperfectly fitted to events, ‘How and why have cosmopolitans responded to incongruities?’ Following that, ‘What are the consequences of these responses, normatively and empirically?’

## **Sources**

Proponents of what are called ‘humanitarian interventions’ would prefer to view the idea as a culmination of the long moral progress to civilised norms of behaviour. Yet the inevitability inherent in teleological explanations removes ideas from history, separating them from their generational and cultural milieu. It is necessary to trace the humanitarian intervention back to



the family of cosmopolitan ideas that began to circle around Atlantic liberalism as it was steadily consumed by a globalising human rights discourse in the 1970s. In fact, it is possible to see its outlines emerging even earlier than this, beginning with divisions in the anticolonialist movement at the time of Biafra. This alternate narrative does not provide the reassurance of teleology. It implies more contemplation of how fortuitous advantages are often cycled into future liabilities.

This story must begin with human rights. Hagiographers have often sought to present a ‘church history’ of the human rights movement stretching back to the Universal Charter in the 1940s, or even further to the Enlightenment. During the long economic boom in the West and the phase of postcolonial nation-building in the Third World the human rights discourse was less oppressed than ignored. In these postwar years the human rights discourse experienced the oblivion to which it would consign rival discourses and ideologies with increasing efficiency from the 1970s onwards. The rise of celebrity dissidents in Eastern Europe and the election of a moralist President in the United States means that the rise of human rights to prominence can be dated precisely to the year 1977 in which a breakthrough occurred (Moyn 2010).

The idea of humanitarian intervention had much the same rise as human rights. Geopolitics lost their salience to policymakers after the Cold War and this period of doctrinal lassitude in the United States provided a number of interventions upon which the normative judgment in the word ‘humanitarian’ could be overlaid by the cosmopolitan supporters of ‘globalist human rights’.

I use this term ‘globalist human rights’ to contrast with alternate understandings including ‘statist’, ‘contextualist’ and ‘translocal’ human rights. This practice follows the four ideal types used to classify positions the human rights debate of the 1990s (Koerner 2004). It is historically sound to extend this terminology back to the breakthrough of the late 1970s, and I will do so while strictly following the revised definitions below:

GLOBALISM

*Human rights are enforced in global structures based on mandatory rules down to the level of the individual.*

STATISM

*Human rights are entrusted to states in the form of citizenship amid the precedence of sovereign political rules.*

CONTEXTUALISM

*Human rights are an issue of national policy based on norms created and shared at the social level.*

#### TRANSLOCALISM

*Human rights are situated in global structures but are negotiated and encouraged in a consensual manner.*

Adapted from the 'four polar types' provided by Koerner (2004: 64)

It is tempting to move from these definitions to the assumption that a large part of the story of humanitarian intervention is reducible to the replacement of the statist and contextualist understandings of human rights with their globalist and translocal counterparts. However, this must be reconciled with the fact that these earlier manifestations of human rights were barely perceptible in the international politics of their time. The trail of humanitarian intervention must be followed through the *zeitgeist* of the postwar years where it was stifled by the Third World movement with its discourse of anticolonialism and then further marginalised as the Vietnam War cast a long psychological shadow over intervention and the use of force.

Despite these obstacles, the cosmopolitan impulses behind humanitarian intervention would eventually achieve a partial and contingent victory over anticolonialism, antimilitarism and 'nation-statism'. The following section emphasises the historical context in which cosmopolitans experienced the growing primacy of their paradigm and how this influenced the formation of the idea of humanitarian intervention between African decolonisation and the end of the Cold War.

#### **Without Borders: Rights-Based Humanitarianism**

The immediate postwar decades were a hopeful time in many parts of the world. Anticolonialists were still encouraged by the possibilities of the nation state and collective nation-building seemed to offer a certain path towards the material and political development enjoyed in the Western countries. The high water mark of the Third World movement may have been the Bandung Conference of 1955 where the postcolonial states determined to band together to position the collective right of national self-determination ahead of other human rights (Moyn 2010: 108). At the beginning of the 1960s the entry of a large number of African states to the United Nations tipped the balance in favour of the 'South', as the Third World grouping was known in the world organisation. In the American academy, modernisation theory still maintained an almost unquestioned consensus, reflecting the

confidence of postcolonial states in their own collective development. Few perceived how fragile this order of things was until the late 1960s when events in West Africa produced some of the first tremors.

The centrepiece of anticolonialism was soon to be confronted by a contradiction. Self-determination had been the liberal principle which the postcolonial peoples had wielded against their imperial masters. Now a war in Nigeria presented the incongruous claim of self-determination against a postcolonial state itself. Like the other newly independent states in Africa, Nigeria aspired to shape a nation from within the colonial borders it had been left by the British Empire. Yet nowhere was this a more difficult task than in this ethnically diverse and religiously divided country. In 1967 the Igbo people of the Niger Delta region launched a rebellion with the aim of establishing their own state to be called 'Biafra'. Within much of the Third World movement and among Western governments there was support for Lagos against this insurgency. The same generalisation cannot be pronounced on the civil societies in Western states where some generational differences were already perceptible. The youth in Western Europe represented the more individualised society that was in the stages of a cultural rebellion of its own in the late 1960s; they did not believe that colonial history could justify unequal standards of justice and declared instead for global standards of justice which would require a forceful humanitarian response to the crisis in Biafra.

This transformative wind would be felt first by the humanitarian agencies. The Red Cross was already operating in the Nigerian warzone under its policy of neutrality. This approach had served the organisation well throughout its history, often ensuring access to politically sensitive spaces. Yet there was a problem latent within this commitment which events would bring to prominence. Neutrality meant that the noncooperation of local authorities could stall a humanitarian mission. With the increasingly radical climate of Western public opinion such a stoppage now occurred. Intending to force the Igbo leadership into negotiations, Lagos suspended humanitarian airlifts in early 1968. With a public relations campaign on behalf of the rebels running in the background, the humanitarian agencies came under pressure to make their own move in response and were soon contemplating a more partisan approach in defiance of the Nigerian state. Oxfam was the first to resume airlifts and the Red Cross was following this example by August 1968 (Allen and Styan 2000: 829).

This was momentous in the history of humanitarianism: an important exception for Red Cross and a permanent change of direction for Oxfam. It would, however, come too late to prevent a rift within the Red Cross where some staff now began to voice public discontent.

Bernard Kouchner, a French Red Cross doctor, accused the agency of making its workers complicit in the humanitarian crimes of Biafra. This accusation may be regarded as the founding moment of the rival organisation Kouchner and other disaffected colleagues formed in 1971. Existing alongside its estranged parent the Red Cross, Doctors Without Borders would become emblematic of a 'new humanitarianism' which followed a rights-based path to global justice rather than undertaking the needs-based mission of international charity. Doctors Without Borders was dedicated to political activism while the Red Cross would continue to represent the commitment to neutrality (Duffield 2001: 75-107).

This rights-based humanitarianism is an important antecedent to the idea of humanitarian intervention. While in international politics, sovereignty would continue to cap the collective achievement of self-determination from the colonial powers, an individual moral discourse of globalist human rights was already making inroads in Western civil societies. Enjoying their nongovernmental status, the new humanitarian agencies found themselves at the forefront of this ideational process. This agenda would also stand to perversely benefit as the postcolonial nation-building projects became increasingly crippled with debt from the middle of the 1970s. Looking further ahead, the end of the Cold War could be interpreted as removing the geopolitical barriers which had prevented Western states from acting in the manner of agencies like Doctors Without Borders. Amid these waves of euphoria the more sombre political role of states in the welfare of their own citizens was pushed to the side. Yet each triumph stored a tension which would eventually express itself as a stress in the normative overlay of humanitarian intervention.

Even in these early years as the first generation of anticolonial leaders still ruled in many Third World states, some Western activists were already looking ahead to Western state-led interventions. Richard Lillich, a cosmopolitan international lawyer, argued that the context provided by the Nigerian Civil War 'would have been ideal for collective humanitarian intervention of the nineteenth century type' if only the United States and other Western states would not hide behind the noninterventionist tenor of the UN Charter (Lillich 1969: 212). Coming less than a decade after Nigeria had been granted independence, Lillich's activism demonstrated how rapidly the discourse of anticolonialism was being displaced by the globalist understanding of human rights. Not content with the interventionist spirit he had injected into humanitarianism, Bernard Kouchner would also add his voice to the cause of Western state-led intervention.

In arguing for Western state interventions, Kouchner first mounted an assault on what he

believed was an undue Western sentimentality and guilt that was interfering with the application of proper standards of justice throughout the Third World (Allen and Styan 2000: 833). According to Kouchner, the healthier position was to assess these societies by the standards demanded in the West and then act. This explicitly involved a right and duty to intervene when and where necessary (Ramsbotham and Woodhouse 1996: 23). These ideas amounted to a radical doctrine, but one that would jostle its way to the centre of the globalist human rights discourse. While Kouchner had parted with the organisation in the meantime, his views would be further legitimised into the mainstream of international politics with the awarding of the Nobel Peace Prize to Doctors Without Borders in 1999.

### **A theory of evil: Rights-Based Just War Theory**

The Vietnam War had a profound cultural and psychological effect on the United States and the West more generally. With the end of the long boom and the coming of age of the baby boomers, this period had already been destined for political significance. The draft hung over many in this generation and violent images were broadcast back to those at home. By the early 1970s a collective trauma had formed into the more tangible outlines of an influential antimilitarist discourse, undermining confidence in the military as an instrument of foreign policy. This was obviously the very opposite of an establishment line of thought and antimilitarism failed to secure any stable representation in electoral politics. This was certainly the case in the United States, where after the McGovern campaign of 1972 even the Democrats came to see the discourse as divisive and potentially explosive (Mandelbaum and Schneider 1978: 88). In these years a man of the Left, Michael Walzer, took up a position spanning criticism of the Vietnam intervention and support for war as an instrument of justice.

Walzer was a political theorist and social activist who began to research a book which he hoped would both vindicate his opposition to the Vietnam War and restore faith in war as a possible instrument of justice. He would do this by reviving the ancient Catholic tradition of Just War in a secular context as a rights-based theory. *Just and Unjust Wars* (1992) was first published in 1977, the year of the globalist human rights breakthrough. It was a thorough and thoughtfully argued study of the role of morality in war, in which its author argued against both the amoral strictures of political realism and the ‘clean hands’ approaches of pacifism and antimilitarism. Walzer modernised the theological aspects of Just War and drew on the canonical authors of the tradition relatively sparingly. There was nevertheless continuity

between the moral stance to be found in these older sources and Walzer's own outlook which was strongly infused with transcendent notions of justice and evil. Walzer offered an early indication of this in his passionate case for the justice of the Second World War in the very first issue of *Philosophy & Public Affairs*. The war against Hitler was a cause which went beyond the political:

In the choice between Nazi victory and resistance through war (when victory is possible), there is human degradation and enslavement on the one side and dignity, courage, and solidarity on the other. Here it is not possible simply to count. One relies on moral intuitions which can be defended and articulated, it seems to me, only in terms of a theory of evil (Walzer 1971: 10).

From this excerpt it is possible to sense a tension between the pragmatic and transcendent aspects of a just war that is almost cosmically sanctioned yet fought 'when victory is possible'. Nuances such as these would become points of debate with critics who shared Walzer's moral indignation but not his eclectic moral intuitions. Walzer had clearly stated that his revision of Just War theory was based on human rights but he did not deem it necessary to provide any metaphysical foundations or further political elaboration of these rights. This was consistent with his methodological determination to avoid abstraction in convincing his audience of already held moral inclinations. In the manner of a Gramscian social critic, Walzer was adept at 'rearticulating ideas already in the culture, bringing to the fore what was already latent' (Mulhall and Swift 1992: 142). The ambiguities resulting from this method would have important implications in the context of the shift that was occurring in the human rights discourse towards the globalist understanding at the time of the appearance of *Just and Unjust Wars*. Globalist human rights were the focus for a group of liberal cosmopolitan critics of Walzer's criteria for intervention.

Applying the globalist understanding of human rights, four main critics came to argue that Walzer's overall presumption of nonintervention was indefensibly statist and could not sustain its basis in human rights (Beitz 1979a, 1979b, 1980; Doppelt 1978, 1980; Luban 1980a, 1980b; and Wasserstrom 1978). The cosmopolitans approached the question with the assumption that there could be no intrinsic moral value in the state; states were at best only occasionally instrumental in securing human rights. This challenged Walzer's theory of distinct internal and external aspects of legitimacy, meaning that cosmopolitans felt they could assess the legitimacy of a state and its government from the outside with great confidence. Walzer had argued that the internal situation of a government and its people was not readily accessible to foreigners who lacked the day to day experience of these other

societies, their histories and group emotions (1980: 212). Mirroring a larger debate on justice in analytic philosophy, the critics showed greater faith in rational detachment from local contexts while offering that, where local knowledge was required, this could just as easily be derived from external sources. 'There are, after all, experts, experienced travellers, expatriates, scholars, and spies; libraries have been written about the most remote culture' (Luban 1980a: 395). Where Walzer had erected the principle of national self-determination as a central pillar of his overall argument, the cosmopolitan critics argued that it was no more than an ambivalent and minor concern. It was not obvious to cosmopolitans what the right required, what peoples were eligible for it or why offences against it mattered (Beitz 1979b: 119). Any greater priority for self-determination such as it had enjoyed in the anticolonial era would assuredly threaten the globalist understanding of human rights.

When intelligent people talk at cross purposes for extended periods it is likely that they are labouring under divergent definitions. Walzer's commitment to the process of politics explains his heavy emphasis on self-determination, and this was not shared by the philosophers among his critics for whom the process of deriving rational principles of justice held a greater attraction. Yet Walzer's innate grounding in morality brought with it a globalism of its own. He had in fact constructed a *via media* to negotiate between what he saw as the aporia of global justice and national self-determination and politics at the social level. In this conception, the collective right of national self-determination was indeed prior to globalist human rights. While human rights could not trump the process of nation-building, the abuse of certain vital human rights signified that the process of nation-building had itself collapsed, and this could nullify the self-determination objection (Walzer 1992: 101). In this minimal globalist understanding of human rights only a handful of rights actually reflected a global moral understanding beyond the more specific shared moral meanings to be found within societies. The cause of distinguishing this subtle formulation from the more strident position of the critics was not helped by Walzer's decision to delineate these minimal globalist moments of just intervention with a phrase from the cosmopolitan international lawyer Hersch Lauterpacht. Walzer deemed intervention appropriate in cases that 'shock the moral conscience of mankind' (*ibid.* 107).

In using the word 'conscience' to limit the cases for consideration, Walzer had in fact opened the door to the expansion of his position. It may be easier to demolish a dam wall than to drill a controlled hole in it, but 'conscience' was an unwise tool for the job. Those who speak in terms of conscience tend to speak more expansively; the critics found that their

own consciences could justify a wide range of interventions. Their level of analysis was not collective self-determining politics at the social level but individual morality at the global, and therefore Walzer's minimalism could only appear inconsistent: 'If individual rights are so important, why should not each and every violation shock the conscience?' (Wasserstrom 1978: 543). Non-cosmopolitan critics also questioned whether moral intuition could be used to circumscribe a theory of nonintervention. For assassination and torture were at least as shocking in moral terms, despite occurring at the level of the individual (Slater and Nardin 1986: 90). Yet while his moral language was open to reinterpretation, Walzer's formulation clearly excluded rational and ideological theories of intervention. Except in the minimum number of abuses capable of raising legitimate global political action, the state retains an intrinsic value as 'the arena within which self-determination is worked out and from which, therefore, foreign armies have to be excluded' (Walzer 1980: 210).

This confidence in self-determination would begin to waver when faced with the many violent crises of the early 1990s (Walzer 1995). However, for the time being Walzer and his critics continued to speak in non sequiturs. Walzer persisted in emphasising the intrinsic social justice behind his insistence on the primacy of national self-determination. Meanwhile the critics set about enlarging the minimal globalism of Just War into the maximal position of liberal cosmopolitanism:

A more consistent position would be that the only states that deserve this protection are those that respect the human rights of their citizens. States that fail this test would appear to be legitimate targets of reform intervention (Beitz 1979b: 413).

The principles of political reform are rationally derived and ideological: exactly those that Walzer had tried to exclude from the question of intervention with the immediacy of the appeal to conscience. This reflected the distinction between external and internal legitimacy that had been dismissed from consideration by the cosmopolitan critics. Walzer saw that revolution was an exercise of self-determination as intervention was not. For this reason intervention could not be justified simply because revolution might be appropriate, even if this internal aspect of legitimacy could be judged externally, as Walzer doubted. Political institutions belonged to social level where pluralism had a chance of achieving some consensus on procedure, not at the global level where epistemologically uncertain principles of justice had been derived prior to events. It would only be through the indigenous development of political intuitions that contextual appropriateness and ultimate acceptance



and legitimacy might be found. This was the argument that had suggested John Stuart Mill's classic essay on nonintervention and Walzer hints at another powerful argument in his exegesis of Mill.

Whether he fully realises the point or not, in quoting Trotsky's maxim that '[t]he liberation of the working class can come only through the workers themselves' (1992: 88), Walzer touches on the additional aspect of spontaneity. The communist revolutionary wishes revolution to come about as the result of historical forces rather than through the actions of a political vanguard: what is spontaneous and inevitable acquires an immediate legitimacy; what is planned and contingent does not. It is always possible that intervention may pre-empt local political developments of a favourable character that are likely to be unforeseen and perhaps impossible to predict, a point Walzer would make with reference to the case of Nicaragua where David Luban's call for intervention had proven premature (Walzer 1980: 219).

It is clear that Walzer's argument on intervention in *Just and Unjust Wars* occupies a special place between the restrictive positions based on self-determination and non-use of force and the permissive stances derived from the globalist understanding of human rights. The Walzerian position may be described as one of statist human rights with minimal globalist exceptions. Nevertheless, in his use of vehement moral language, his challenging of the antimilitarist discourse and subsequent re-ignition of the humanitarian intervention debate, Walzer had anticipated much of the cosmopolitan cause.

### **Morality of the globe: Rights-Based Cosmopolitanism**

The rights-based realignments of humanitarianism and Just War theory had emerged from iconic wars in the Third World. In contrast, rights-based cosmopolitanism was more the result of intellectual developments in the upper reaches of the American East Coast Ivy League universities. Liberal cosmopolitanism was one among the many areas of political inquiry that had been stimulated by the publication of John Rawls' Kantian theory of the social contract (1971). Similar to the unwitting role Michael Walzer had played in undergirding a cosmopolitan theory of intervention with human rights, Rawls, as an avowed social level theorist, would witness his understanding of the Western rights tradition undergoing substantial reinterpretation towards the globalist understanding of human rights.

However, the initial significance of Rawls to cosmopolitanism was not so much in the reinvigoration he had provided to the rights tradition but rather in the seductive and elegant methodology of *A Theory of Justice* which soon attracted emulation and extension by theorists of global justice.

A Princeton doctoral thesis was the basis of the earliest and most comprehensive cosmopolitan political theory (Beitz 1979b). *Political Theory and International Relations* included an argument for a global difference principle, reapplying Rawls' social level methodology globally to every human individual. Another third of Charles Beitz's book was devoted to contesting Walzer's social level arguments for the autonomy of states, a preoccupation that would continue to ensure that the question of intervention was at the forefront of cosmopolitan concerns in the following decades. This also had the effect of encouraging the increasing intercession of the previously divergent discourses of global justice and the justice of war, creating a fault line that would run right through the topic of humanitarian intervention (Nardin 2006: 454). While of unmistakably Rawlsian intellectual heritage, Beitz's theory was perhaps more in connection with the *zeitgeist* of the period than Rawls, coinciding with the disembedding of the rights tradition from its statist foundations. The globalist understanding of human rights came to predominate in the late 1970s, heralding a wider movement 'from the politics of the state to the morality of the globe' (Moyn 2010: 43).

Much as the rights-based humanitarian agencies had flourished in their separation from the restraints and responsibilities of geopolitics in the context of the Cold War, the globalist understanding of human rights would flourish at a distance from politics. A morality based on the individual had a strong intuitive appeal at a time of political and economic stagnation in the Soviet Union and increasing cynicism and division in the West. The liberal nature of the human rights discourse would also seal its ascent at the end of the Cold War, a period which then became one of tremendous growth for rights-based cosmopolitanism. This was the favourable climate in which a number of important cosmopolitan works first appeared. A former student of Rawls, Thomas Pogge, published a landmark theory of Rawlsian egalitarianism at the global level (1989). Despite close contact with Rawls himself at Harvard, Pogge remained unconvinced of the necessity of the social level for justice, and took the position that human welfare could be achieved at the global level given a just institutional architecture.

Rawls social level position on justice had meanwhile been advanced in a contextualist

direction by Michael Walzer's *Spheres of Justice* (1983). Walzer's concept of 'complex equality' was perhaps too nuanced and anthropological to compete with other theories at the height of a fashion for clear Rawlsian philosophical frameworks based on imitations of neoclassical economic models, a methodological problem that suggested larger difficulties for non-global level arguments in the 1980s amid the rise of cosmopolitan thinking. Although rights-based cosmopolitans claimed to share the overwhelming concern with social welfare, they rejected the social level theorist's assertion that the solidarity required for wealth redistribution had been brought about and underpinned by the cohesion of patriotism fostered by states. David Miller, who shared Walzer's contextualist leanings, would make perhaps the clearest version of this argument against cosmopolitan justice (1988), while Rawls himself devoted one of his final works to the topic, the writing of which may have been prompted by interactions with his student Pogge (Pogge 2012). In Rawls' *The Law of Peoples* (1999) principles of a global covenant are chosen by representatives of peoples in a state system, thereby explicitly refuting the cosmopolitan insistence on global level justice derived from individuals in the original position. Cosmopolitans responded to these criticisms by arguing that the prospects of securing 'global redistributive justice' did not rely on anything so morally arbitrary as nationality, nor would enforcement require the drastic and unfeasible step of a world state. Instead, wealth and resource redistribution could come about through the construction of horizontal layers of global regulation and institutional arrangements, such rights being 'better upheld through liberal legalism than through sympathy' (Weinstock 1996: 92). Only isolated cosmopolitans made the case for a world state to achieve this outcome (Nielsen 1988). This belief in the capabilities of legal arrangements short of state structures would store a crisis of legitimacy into the idea of humanitarian intervention, later requiring many ingenious arguments to circumvent. The state was a gestalt and thus '[s]peaking law to politics [was] not the same as speaking truth to power' (Kennedy 2002: 121).

While cosmopolitanism planned increasingly elaborate institutional solutions for the globe, neoliberal globalisation was fraying the social fabric and the existing institutions of states. As the economic and financial process gathered pace after the Cold War, social level theorists and statisticians in political economy warned that the removal of capital controls and the financialisation of economies had made it more difficult to tax and collect wealth for redistribution as social services and welfare (Rodrik 1997; Mishra 1999). From this perspective, the state functioned as an increasingly embattled social defence from the inequalities of global capitalism. With their globalist methodology, no such threat was

perceived by most cosmopolitans, and despite their interests in social welfare they did not come to the aid of national sovereignty. On the contrary, there is a celebratory tone to the cosmopolitan literature of the early 1990s as the forces of globalisation brought about their preferred level of analysis.

Electronic communications and media have fostered conscious and unconscious identification among all of humanity. Convenient and accessible transportation has facilitated mass movements of people and, consequently, the increasing de-linkage (psychologically and physically) of populations from territory (Chopra and Weiss 1992: 104).

Globalisation was also fragmenting and impoverishing many communities while drawing into the marketplace others that had grown accustomed to the certainties of central planning. This would contribute to a rash of ethnic and sectarian rivalries and conflict, making talk of electronic communications and mass movements appear in a more sinister light. Some of these societies would become the targets of intervention in the 1990s.

Throughout the ideological and economic upheavals of this period, cosmopolitans maintained their focus on the issue of national sovereignty. Far from being the guarantor of an important social solidarity, sovereignty was understood to be the major impediment to implementation of global redistributive justice. In the event of crimes against humanity, sovereignty interfered with the legitimacy of intervention and limited the prospects of global law enforcement (Pogge 1992a). Cosmopolitans also believed that the imperatives of economic interdependence required the imagination of new forms of political community, culminating in a 'cosmopolitan democracy' (Archibugi and Held 1995). While offering the assurance that globalisation would one day be tamed by a global Third Way political order, this deliberative system relied on an array of nonexistent institutions and thus found it impossible to keep pace with the very real forces of economic and financial globalisation.

In theorising a global progression of morality beyond the state, cosmopolitans were often neglecting the social progress that had been made possible by the state. There was in fact nothing to prevent the simultaneous cultivation of both patriotic citizenship and cosmopolitan sentiment (Bowden 2003). However, there was a very real danger that in pointing out the inadequacies of patriotism alone, the cosmopolitans might precipitate a crisis of sympathy at the social level before any institutions were ready to intercede at the level of the global. These issues would lead to frustration as the cosmopolitan normative overlay failed to closely match the pattern of interventions in the 1990s.

## **Stages**

The cosmopolitan interest in the idea of humanitarian interventions would centre their attention on US foreign policy in the 1990s. This association with the superpower of the era would bring both elation and frustration throughout a 'long decade' beginning and ending with war in Iraq. It is controversial to suggest a link between the normative overlay cosmopolitans had provided to US interventions of the 1990s and the invasion of Iraq in 2003. Yet this Iraq War has an important place in this narrative precisely because it was one of the points at which cosmopolitans began to seriously examine the incongruities of their normative vision; some turning back and others continuing to offer the normative overlay of humanitarian intervention.

The decade can be divided into three stages reflecting the contemporary discourse of intervention. From the establishment of safe havens in Northern Iraq to the Battle of Mogadishu 'a kind of euphoria' existed about the possibilities of armed intervention in humanitarian contexts (Hoffmann 1995: 32). The perception of disaster in Somalia created a lull at the midpoint of the decade which frustrated cosmopolitan advocates of normative consistency. After Bosnia and Rwanda, a sense of impotence may have been influential in securing a forceful response to the situation in Kosovo where NATO actions would eschew international law and attempt to derive their legitimacy from cosmopolitan humanism and rights-based global justice. Kosovo was then followed by war in Iraq. While Iraq is distinguished from the interventions of the 1990s, its importance to the story lies in the cosmopolitan reaction to the neoconservative project and its variant normative overlay.

As something of a postscript to these events, the cases of Libya and Syria provide an opportunity to assess the cosmopolitan stance on the rebranding of the humanitarian intervention norm as 'Responsibility to Protect' (R2P). Libya was the first significant mission conducted according to this new language, and while some suggest it may signify the revival of 'classic humanitarian intervention' (Pattison 2011), the civil war in Syria suggests that the cosmopolitan normative overlay continues to represent an unreality.

### **A kind of euphoria: Iraq and Somalia**

It was apparent at the end of the Cold War that the United States had emerged from the long

confrontation strategically and militarily preponderant. This perception of American power was only enhanced by the success of arms in the Gulf War. And yet while the defeat of Iraqi forces had been swift and efficient, the war would lead to further responsibilities. Although this collective security action against Iraq had not set out to unseat Saddam Hussein, the American president had taken to the Voice of America amid the fighting on 15 February 1991 to encourage the Iraqi people to topple the dictator themselves:

There is another way for the bloodshed to stop: and that is, for the Iraqi military and the Iraqi people to take matters into their own hands and force Saddam Hussein, the dictator, to step aside and then comply with the United Nations' resolutions and rejoin the family of peace-loving nations (cited in Katzman 1998).

Whether or not this appeal was instrumental in the uprisings that followed, George Bush was seen to have linked himself and the US effort to the fate of Iraq's restive peoples, most significant among them the Kurds and Shiites.

The Gulf War had already been a media event and in its aftermath news coverage kept the fate of the Kurds on the US agenda after Saddam Hussein began reprisals against them in March 1991 (Jakobsen 1996: 208). UN Security Council Resolution 688 was adopted on 7 April 1991, reflecting inchoate globalist human rights amid issues of international peace and security. These tendencies were apparent even within the same sentence:

The Security Council... [d]emands that Iraq, as a contribution to remove the threat to international peace and security in the region, immediately end this repression and express the hope in the same context that an open dialogue will take place to ensure that the human and political rights of all Iraqi citizens are respected (UN 1991).

The resolution did not, however, endorse a full blown intervention and this led President Bush to emphasise the 'overwhelming' humanitarian concern that made a policy of intervention 'consistent with' resolution 688 (quoted in Chesterman 2001: 198), allowing a mission that secured the establishment of humanitarian safe havens and no fly-zones in to protect the Kurds of Northern Iraq.<sup>2</sup> Both the resolution and Bush's interpretation would lead to contention between cosmopolitans who declared a significant breakthrough for their normative agenda (Wheeler 2000: 139-71) and pluralist defenders of the norm of sovereignty who viewed the resolution and the US response as peculiar to the geopolitical circumstances (Roberts 1993: 437). The most emphatic cosmopolitan assessments of the events in Northern

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<sup>2</sup> A later operation 'Southern Shield' established no-fly zones for the protection of Southern Shiite Arabs, many of whom were sheltering in marshlands.

Iraq presented the world ‘perched on the brink of a new era’ in which ‘humanitarian imperatives will override domestic jurisdiction’ (Chopra and Weiss 1992: 117). Others more cautiously heralded a new stage in humanitarianism, ‘albeit controversial and still indistinct’ (Ramsbotham and Woodhouse 1996: 84). It is clear that cosmopolitans understood the mission in Northern Iraq to represent the beginning of a pattern which would be normatively applied over Western state actions in the future.

However, in the euphoria of the successful operation in Northern Iraq, cosmopolitans may have overestimated the agency of their own normative framework. Disappointment and frustration would appear later in the decade as state behaviour failed to match the extent of this normative overlay, proving it to be contingent and nonlinear in its development. Cosmopolitans could not direct policy decisions and had to be content to bandwagon on the actions of the great powers framed in their preferred normative language of justification and legitimacy. This left them vulnerable to the charge that they were simply providing apologia for events over which they had little or no influence. This in turn was the real normative significance of the selectivity involved in deciding when and where to intervene.

In their textbook chapter on humanitarian intervention, Alex Bellamy and Nicholas Wheeler define the problem of selectivity as ‘failing to treat like cases alike’ (2011: 514). From the early 1990s onwards, many humanitarian disasters were overlooked by potentially intervening powers while those that were chosen tended to coincide with strategic or other interests. This was entirely consistent with previous human experience but incongruous with expectations created by discussion of humanitarian norms. This selectivity was particularly obvious in the case of Iraq where the Kurds had been subject to Saddam Hussein’s brutality in the 1980s. At that time, Iraq had been allied with the United States against Iran. While the norm may have been nonexistent in the decade of the 1980s, it was not possible to dismiss the case of Turkey with this same observation. As a NATO alliance member, Turkey has long been notorious for its treatment of its large Kurdish minority without attracting intervention. Whether the end of the Cold War had indeed signified a momentous shift in international norms was difficult to establish amid such geopolitical variables. Despite this, cosmopolitans were committed to the view that norms, rather than strategic interests or balances of power, were the primary drivers of these changes in behaviour towards the Kurds and this gave the problem of selectivity its salience.

Those cosmopolitans who perceived a weakness in a formulation that was blind to geopolitics challenged what they termed the ‘motives-first’ interpretation of humanitarian

intervention. This is the position of Wheeler who endorses the argument that ‘the true test is whether the intervention has put an end to human rights deprivations. That is sufficient to meet the requirement of disinterestedness’ (Fernando Tesón cited in Wheeler 2000: 38). Compared with Finnemore’s definitive motives-first statement—‘If states say they are intervening to save lives and their militaries act accordingly, then I count that a humanitarian intervention’ (2003: 12)—this actions-first definition substantially extended the normative overlay backwards and forwards in time, potentially allowing any felicitous turn of events to assume the normative clothing of humanitarian intervention. It does not, however, alter the significance of the problem of selectivity.

The case of Northern Iraq also renewed debate around the perennial topic of sovereignty. Baghdad’s sovereignty over the North of the country had demonstrably been overridden by Operation Comfort (with a successive mission of that name lasting until 1996 and allowing the Kurds to establish what now appears to be a semi-permanent autonomy). An alternative to the perspective provided by the cosmopolitan overlay viewed the sovereignty of those areas to be related to the external aggression against Kuwait rather than the internal repression of the Kurds and Shiites within Iraq. According to established practices of international law, an act of aggression in the international system implies a loss of sovereignty to collective security actors who are entitled to defeat the aggressive state by crossing its borders. This aspect of the situation made it impossible to determine whether the humanitarian actions in Northern Iraq constituted a breach of sovereignty in conformity with a new norm as Iraq was yet to recover equal sovereignty in the aftermath of its act of international aggression against the established norms of the state system (Jackson 1993: 593). If it is granted that it was the external aggression that removed or weakened the sovereignty of the state of Iraq, then the humanitarian operations no longer represented the shift towards globalist human rights and the overriding of sovereignty that cosmopolitans believed they were witnessing in the case, and indeed what the normative overlay of humanitarian intervention demanded that they find in the case.

The question of normative framing aside, the success of both the collective security action and the humanitarian mission would enhance the prospect of future interventions. And yet both events had coincided with, rather than confronted, powerful geopolitical and psychological concerns in the state system which were influential in structuring and constraining US foreign policy. These tensions had not disappeared and would in fact soon resurface in events at the Horn of Africa where, after some years of civil conflict, the state of



Somalia had collapsed into anarchy in 1991.

With Security Council approval and the sending of twenty-four thousand US soldiers to Somalia, cosmopolitans again believed they were experiencing a breakthrough for their normative vision. Security Council Resolution 794 had indeed broken new ground in invoking the use of force under Chapter VII for the delivery of humanitarian aid in the face of clan violence and warlord resistance (Wheeler 2000: 200). Once again, the resolution contained language of ‘international peace and security’ but even defenders of sovereignty agreed that this was merely *pro forma* – there was no way of construing the situation as a threat to global, or even regional stability (Roberts 1993: 154). The lack of a government in Somalia had nullified concerns on the Security Council over sovereignty. With these advantages of clarity and legitimacy, the mission in Somalia might have been a textbook example of action in accordance with an emerging norm of humanitarian intervention.

But it ended in disaster; once on the ground and in the midst of a developing situation overconfidence and mission creep became apparent and things soon took ‘a turn for the worse’ (Tesón 2005: 301). US forces became engaged in costly urban combat in Mogadishu while hunting a recalcitrant warlord in early October 1993. These battles culminated in the loss of a Black Hawk helicopter and the subsequent decision to withdraw US military personnel from Somalia. While US casualties appeared relatively minor in the context of warfare, the humanitarian nature of the mission had not prepared the American public to expect such a level of danger. According to unofficial CIA estimates, US forces may have killed between seven and ten thousand Somalis during combat which resulted in thirty-four of their own fatalities (Maynes 1995: 98). Reinforcing Walzer’s warning about the difficulty of securing local knowledge, the US had relied on only three dozen civil affairs specialists rather than the three hundred envisaged in the original plans, and with even this initial number standing in contrast to the thousand that had been sent into Kuwait (Clarke and Herbst 1996: 77). These facts expressed the limited and contingent commitment of the US in Somalia, perhaps bringing to mind some words Hamlet scripted for the Player King:

What to ourselves in passion we propose,  
The passion ending, doth the purpose lose.<sup>3</sup>

The ‘CNN effect’ was emblematic of the ‘short termism’ that represented one aspect of

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<sup>3</sup> *Hamlet*, Act 3, Scene 2 (Shakespeare 1992: 53)

this failure. In the atmosphere of post Cold War euphoria, the role of round the clock TV news media in shaping American public opinion was constantly discussed. A study of the Somalia case from this angle concludes that media coverage, combined with perceived 'good chances of success', did indeed influence the decision to intervene (Jakobsen 1996: 209). Yet this media generated sympathy was an expression of moral outrage rather than enduring solidarity and had quickly evaporated when confronted with the patriotic sentiments aroused by battle deaths and mounting material costs.

Despite the dramatic failure of the mission, Somalia had demonstrated that costly moral actions could find their way onto the agenda of states. For this reason, constructivists point to the intervention in Somalia as an example of the particular explanatory power of their paradigm (e.g., Finnemore 1996, 2008). At the same time, it was apparent that a stress was developing in the fabric of the normative overlay of humanitarian intervention in regard to the use of force. Cosmopolitans termed this 'Somalia Syndrome' and lamented its influence. Somalia Syndrome meant 'drawing the wrong lessons ... [leading] to abandoning international norms against genocide and war crimes' (Weiss 1995: 173). In a similar vein, the cosmopolitan Bernard Kouchner responded to events by expressing his rage at what he perceived to be an illegitimate sentiment which had undermined humanitarian commitments to Somalia. Kouchner claimed that the US had been 'crazy' to expect that it would be possible to fight a 'war without prisoners, a war without dead people' (cited in Allen and Styan 2000: 838).

Cosmopolitans assumed that soldiers participating in humanitarian interventions ought to be ready to lay down their lives for humanity, but US policy in Somalia had shown this to be a dubious assumption where a state has to send its own soldiers to die for such a general goal. Compared the deficit of global solidarity that this suggested, the issue of state sovereignty represented a relatively minor obstacle for cosmopolitans. Cosmopolitans had been emphatic about the problems posed by this legal norm, going so far to as to claim that sovereignty was entirely responsible for setbacks to universal enforcement of globalist human rights.<sup>4</sup> Now even more clearly than in the convoluted situation of postwar Iraq, the anarchy of Somalia had provided an experimental case with the removal of the sovereignty variable. This 'experiment' revealed solidarity to be the more pressing issue, something that E.H. Carr had anticipated in the context of world peace movements:

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<sup>4</sup> 'One word explains why the international community has difficulty countering violations: 'sovereignty'' (Chopra and Weiss 1992: 95).

It is the embryonic character of this common feeling between nations, not the lack of a world legislature, and not the insistence of states on being judges in their own cause, which is the real obstacle in the way of an international procedure of peaceful change (1939/1989: 220).

Humanitarian intervention had provided a normative overlay on the use of force and Cosmopolitans reasoned this to be legitimate as this use of force was available for the protection of globalist human rights. Force did not then imply a particularist and interested agenda but a universal rescue service. That these missions were proving to be dependent on a fragile foundation of international charity, emotive media coverage and other more traditional strategic motives left cosmopolitans precariously situated between apology for limited and mixed operations of great powers and frustration over those cases which received no intervention. In the middle part of the decade, events in Central Africa and the Balkans would bring frustration to the fore, raising the question that if the normative overlay of humanitarian intervention was sufficient to *endorse* great power decisionmaking with cosmopolitan justifications, why could it not *direct* that great power decisionmaking in specific cases? Perhaps this overlay and human rights rationale merely papered over the usual ‘heterogeneity of values’ that had been more accurately accounted for under the Cold War rubric of ‘defence’, while at the same time offering an expansion of justifications for the imposition of these values on the wider world (Babic 2003: 46).

### **Drawing the wrong lessons: Bosnia and Rwanda**

NATO intervention in Bosnia and Herzegovina became a *cause célèbre* for advocates of humanitarian intervention in the 1990s. Despite cosmopolitan preoccupation with solidarity with the distant, in the case of Bosnia it was the proximity of Western Europe that was seen to add to the injustice of nonintervention. After the Yugoslav National Army granted the UN humanitarian access to Sarajevo in June 1992, Western journalists also gained entry to the city. Here some of them would come to believe they had discovered the mirror of themselves. This added a perceived ideological solidarity that would make cosmopolitan campaigning on behalf of Bosnia all the more vociferous. According to cosmopolitan scholar and activist Mary Kaldor who visited the city at this time, Sarajevo was still home to people ‘who kept alive civic multicultural values’ (2012: 12). Parts of the city were islands of civilisation

surrounded by the encroaching forces of nationalist barbarity.<sup>5</sup>

The sentimental narrative of globalist human rights is based on identification with victims (Kennedy 2002: 111), and in Bosnia the victims appeared to be the Muslims who possessed the weakest and most disorganised military forces.<sup>6</sup> After the Western decision to recognise the sovereign independence of Bosnia, it became possible to present the new state as the victim of international aggression. The Bosniaks, as they were called from 1993 onwards, now came to be understood in humanitarian discourse primarily as an innocent people under siege from barbaric nationalists rather than participants in an ethnopolitical conflict. Yet the conflict may have developed from the security dilemma created by the demise of the Yugoslav federation (Posen 1993), a situation predicated on the climate of terror derived from memories of the Second World War which had been rekindled by what, in a subversion of a constructivist coinage, might be termed 'nationalism entrepreneurs'. Although moderates on all sides attempted to counter this narrative, structural forces proved to be overwhelming.

In this ethnopolitical conflict, ethnic cleansing and other forms of violence targeting civilians were considered integral to war aims even though atrocious in moral terms. The more subtle advocates of intervention made use of this distinction, arguing that the differences between nationalist and ideological civil wars suggested that intervention in nationalist conflicts could be effective. In contrast with intervention in ideological wars such as Vietnam which were rightly regarded as quagmires, in nationalist conflicts 'foreign troops can make a tremendous difference to the local balance of forces and, unlike in ideological counterinsurgencies, outsiders can reliably tell friend from foe' (Kaufmann 1996: 64). However, adopting this approach would seem to imply the abandonment of cosmopolitan aspirations in the interests of achieving a resolution of the violence in political rather than moral terms. For these efficiencies can only be secured under the provision that intervening forces 'aim at saving lives and establishing defensible territorial settlements, *not at reassembling shattered multiethnic states*' (*ibid.* emphasis added). Cosmopolitans rejected this view. While recognising the tactical nature of the targeting of civilians, Kaldor was representative of the majority of cosmopolitans in refusing to countenance the recognition of

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<sup>5</sup> '...it is possible to find islands of civility in nearly all the war zones... There are groups that defend humanistic values and refuse the politics of particularism' (Kaldor 2012: 117).

<sup>6</sup> It is also possible that Kaldor and others may have interacted with cosmopolitan Muslim intellectuals in Sarajevo who, unlike their cosmopolitan Serb and Croat counterparts, had no opportunity to decamp to cities such as Belgrade and Zagreb when the fighting began. These intellectuals remained in Sarajevo lending a cosmopolitan legitimacy to the cause of their own side in the interests of personal and national survival – a hypothesis suggested by Aleksandar Pavković in conversation on 29 August 2014.

any population transfers or the possibility of redrawn borders and partitions in the interests of a solution to the conflict (2012: 61).

Again taking a middle path but tending towards the cosmopolitan positions, Michael Walzer expressed his support for intervention on the side of Bosniak nationalists, arguing that bombing the Bosnian Serbs and arming their enemies might push the conflict towards settlement.<sup>7</sup> He argued that this would be a morally acceptable course of action ‘however bloody it turned out to be’ because the situation had reached such a level of crisis it could hardly now be worsened by outside involvement (1995: 58). Cosmopolitans required a more progressive narrative than this and pursued it at the cost of increasingly utopian formulations. Intervention was now morally required because Bosnia had become a conflict that persisted without political purpose and had moved beyond the realm of political violence into the terrain of ‘moral atrocity’ (Tan 1995: 41). While in practice intervention would mean support for the Bosniaks, this would have to be presented in normatively appropriate terms. Any political settlement based on partition or separation of the warring groups was to be avoided in favour of the general reestablishment of the pre-war levels of tolerance that perhaps still remained in some parts of Sarajevo. Accordingly, Wheeler insisted that an ‘international protectorate’ should have been created in early 1992, establishing a space in which ‘different political groups could arrive at a lasting settlement’ (2000: 250). Kaldor similarly imagined that once intervention forces had defeated the nationalists, local cosmopolitans would be able to reassert the values of multicultural harmony from which territorial solutions would ‘easily follow’ (2012: 126). That national identity might be a permanent political interest, reinforced by the security dilemma apparent in Bosnia, is clearly an idea that cosmopolitans could not accept.

While war continued in Bosnia, another crisis was developing in Central Africa. Violence had previously flared between the Tutsi and Hutu ethnic groups in Burundi in 1972, events which, according to the normative overlay on the history of intervention, Cold War politics had consigned to the obscurity of an internal matter (Ramsbotham and Woodhouse 1996: 21). Whether changes in norms or media technology were the more decisive, or whether indeed the media were attempting the role of norm entrepreneurs, the massacres in Rwanda in 1994 were presented to the world in vivid imagery and stark moral terms. Over a three month period between April and July of that year hundreds of thousands of Rwandans were

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<sup>7</sup> Leading perhaps to a ‘level killing field’ – a term attributed to Douglas Hurd (Wheeler 2000: 253).

murdered, often at the hands of neighbours. At the global level, cosmopolitans identified a bystander effect – one Kantian cosmopolitan even drawing an analogy between the lack of international reaction to the genocide and the case of Kitty Genovese, the New York woman who was notoriously murdered in the midst of dozens of onlookers (Davidovic 2008: 142).

At the same time, Rwanda signified a shift in the cosmopolitan emphasis away from reliance on purely ethical arguments. Having seen the extent to which prudential concerns had undermined the case for intervention in Bosnia, cosmopolitans now chose to present Rwanda to be both an ethically and logistically straightforward case of intervention. Because of the primitive weapons being employed in the murders, cosmopolitans could argue that only limited level of force was required. As Weiss acknowledged, Somalia was typical of a case in which ‘only modest military force is necessary but insecurity is widespread’ (1995: 185). In psychological terms, it is common to find an ‘optimistic bias’ and an ‘illusion of control’ among advocates of military action (Kahneman and Renshon 2007: 37). However, the popular perception that a few thousand foreign troops might have saved hundreds of thousands of lives seems a highly optimistic assessment (Kuperman 2001; Wertheim 2010). It is likely that an effective rescue effort would have required a longer term military occupation in the form of a trusteeship. Indeed, some felt that the significance of Somalia and Rwanda was that ‘the idea that all the new postcolonial countries can sustain durable state institutions is exposed as a myth’ (Clarke and Herbst 1996: 82). With similar reasoning, Walzer was now moving steadily towards something more reminiscent of Kaldor’s cosmopolitanism, arguing in favour of political trusteeships for societies like Bosnia and Rwanda where ‘few of the locals—at least, the locals with power—can be trusted’ (1995: 57-58). Such plans represented a worrying development from the perspective of self-determination while enjoying very limited levels of support from those states that would bear most of the burden of a long term commitment. It was clear that another tension was developing in the normative overlay of humanitarian intervention: the problem of long term outcomes and the reality that national self-determination meant tolerating the positions of nationalists who had been involved in the violence.

### **In harmony with our conscience: Kosovo and Iraq**

By the end of the 1990s the pendulum had again swung back towards interventionism. Madeline Albright had become US Secretary of State at the beginning of 1997. Her

preoccupation with the Yugoslav War had set her at odds with Boutros Boutros-Ghali in her previous posting as Ambassador to the UN. Now she was determined that US military preponderance would be made to tell against President Slobodan Milošević of Serbia. As the province of Kosovo descended into a low level civil conflict in 1998, the opportunity presented itself to answer criticisms of inaction over Bosnia and Rwanda. This would also involve learning the lessons of Somalia and avoiding the commitment of ground troops. These motivations also coincided with something of an identity crisis for the post-Cold War NATO. Perhaps due to the absence of a negative rationale for continued military alliance, there was talk of establishing a positive role for the organisation as a force for liberal values (Solana 1999). However, this new *raison d'être* was met with a familiar geopolitical barrier. While Russian power neared an all time low in the late 1990s, its veto on the Security Council still threatened the international legality of any NATO military action, a factor that would reveal fundamental tensions in the cosmopolitan normative overlay of events.

Bombing of Serbia began in March 1999 and continued for seventy-eight days. Because the war lacked the international legality of a Security Council resolution, ingenious arguments were advanced to provide a greater legitimacy to the actions of the NATO alliance. The Kosovo Commission would endorse the equivocation, retrospectively concluding that the intervention was 'illegal but legitimate'. A number of cosmopolitan international lawyers have also concluded that illegality is a separate issue from illegitimacy (Cassese 1999: 25-26; Chinkin 1999: 843-44; Falk 1999: 853). Those who assert that the war was legitimate tend to offer a counter narrative presenting the Russian veto power as a remnant of illegitimate Cold War *Realpolitik*. In geopolitical terms, Moscow feared that the 'Kosovo pattern' would be applied to Chechnya or other ethnic conflicts in the Russian Federation: today the Balkans, tomorrow the Caucasus (Baranovsky 2000: 115). This point also revealed a change in cosmopolitan arguments from the mid-1990s. Then it had been imagined that Russia might have to take up a role in 'a world order in which the great powers through benign spheres of influence assumed larger responsibilities in some parts of the world but not in others' (Maynes 1994: 11). Another cosmopolitan proponent of intervention had asserted on the eve of the First Chechen War that Russia 'may be the only plausible intervenor' in 'non-Russian parts of the former Soviet Union' (Weiss 1994: 141). Now it appeared that the legitimacy of cosmopolitan ideas had created its own sphere of influence which extended into the Balkans and was the preserve of liberal state actors.

The most significant argument for cosmopolitan prerogative emerged from the direction of

identity. In addition to questioning the legitimacy of the Security Council veto, cosmopolitans argued that global morality had moved beyond the existing state-centric international law. European public intellectuals argued that an unwritten cosmopolitan law had superseded an outmoded and moribund law based on states (Habermas 1999; Havel 1999).<sup>8</sup> From such a point of vantage, NATO's actions could be portrayed as a refreshing departure from the old statist preoccupations with balances of power towards the new globalist values of human rights (Koskenniemi 2002: 161). The fact that no member state of the defensive alliance found its territory threatened was offered as proof of a disinterested commitment rather than evidence of expansion (Solana 1999: 114). In this context, Kosovo may have provided a paradigm example of how 'an act that is inconsistent with international law can be interpreted either as a violation of it or as a first step in its revision' (Goldsmith and Posner 2005: 198). This in turn was reminiscent of the general trend that the Finnish international lawyer Martti Koskenniemi (1989) had identified in an international law that has been frequently pulled to the extremes of apology and utopianism. With its disparate motivations and justifications, the case of Kosovo was particularly vulnerable to this interpretation.

In the Kosovo War realist apologia for actions of the great powers had become fused with utopian advocacy of the globalist understanding of human rights, and it would arguably require the 2003 invasion of Iraq to separate the two once more. Yet perhaps it is unnecessary to determine whether a state or international lawyers are rhetorically justifying *Realpolitik* or appealing to the individual conscience, as both approaches ultimately undermine the normative force of international law. The normative overlay of cosmopolitan legitimacy may have facilitated actions in Kosovo but there was no evidence that it could direct great power policy or restrain the means of intervention. Those who believe in the power of norms reject the traditional positivist scepticism about international law. 'Law constrains or it is a travesty to call it law' as Philip Allot has written, 'Law transcends the power of the powerful and transforms the situation of the weak or it is a travesty to call it law' (cited in Chopra and Weiss 1992: 112). Yet it could equally be said that *norms constrain or it is a travesty to call them norms*. Norms constitute the situation of state actors 'embedded within a normative context structured by rules' in which 'their constraining power derives from the social disapproval breaking them entails' (Wheeler 2000: 4-5). By the end of the 1990s it was apparent that the normative overlay of intervention could be used to endorse and excuse the

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<sup>8</sup> Though Havel's foundation for human rights is less than progressive when he asserts that, 'while the state is a human creation, human beings are the creation of God' (1999: 33).



actions of great powers, yet it was difficult to point to an instance where it had directed or constrained them.

Similarly, the ambiguous and emotive language employed by cosmopolitans has been more effective at endorsing and excusing that directing and constraining. Walzer's 'conscience' formulation was enacted and extended in Kosovo with predictably vague and self-serving results. Reading Václav Havel's assertions in favour of globalist human rights on the Kosovo issue, Jeremy Moses alights on this word *conscience* – 'the definition of which has long been the self-appointed domain of 'civilised' international lawyers' (cited in Devetak 2007: 158). In appropriating 'conscience' over Kosovo, cosmopolitans could do no wrong. If notions of liberalism, civilisation and legitimacy were constitutive of the actors comprising NATO, then their actions were legitimised by their very identity in international politics. This brings to mind Richard Nixon's response to David Frost's question about presidential illegality: 'when the president does it that means it's not illegal'. However, unlike Nixon's defence which relied on a dubious and contestable interpretation of the US constitution, in the appeal to conscience, cosmopolitans asserted their own moral superiority on a higher, metaphysical plain:

I am deeply convinced that what we do, whether it be in harmony with our conscience – the ambassador of eternity – or in conflict with it, can only finally be assessed in a dimension that lies beyond that world we can see around us (Havel 1999: 33).

The derivation of contrary positions from similar, though perhaps less exalted, moral intuition could be dismissed as lacking the appropriate basis in cosmopolitan identity which was now the legitimate starting point for thought and action in international politics. This was portrayed as moral progress, both inevitable and unstoppable, so that those who presented a counter discourse were as Canute attempting to hold back the waves: 'Not everyone welcomes the evolution of such broad global jurisdiction at the expense of state sovereignty, but a trend is unmistakable' (Franck 1999: 858).

Yet Kosovo had also damaged the cause of intervention and exposed division among its supporters. Wheeler warned of 'the contradiction which opened up between the means of intervention and a positive humanitarian outcome' due to the use of bombing rather than risking ground troops in an invasion (2000: 284). This again demonstrated that globalist human rights lacked a foundation of global solidarity strong enough to support the likelihood of military casualties and that other cosmopolitan norms were insufficiently powerful to fill

the gap. Applying the normative overlay of humanitarian intervention to such cases led to an intimate and dangerous association with the means of great power warfare, including its reliance on high altitude bombing. Thus, Kaldor considered the bombing to be politically ‘counterproductive’ and in contrast to Habermas, emphasised the polarising effects of the war on international opinion (2012: 142). Meanwhile, at least one of the original critics of Walzer, David Luban, now admitted to being somewhat chastened by events in Kosovo: ‘Fighting for human rights proves to be far more precarious, both practically and philosophically, than friends of humanitarian intervention would like to admit’ (2002: 80).

The 2003 invasion of Iraq is a disputed event in relation to humanitarian intervention. Cosmopolitans have criticised the tendency of some critics to conflate cosmopolitanism with the neoconservative project that is often identified as the normative vision responsible for the war (Beardsworth 2011: 65). In addition to the liberal internationalist resemblances between cosmopolitans and neoconservatives, the normative overlay of humanitarian intervention had left cosmopolitans insufficiently wary of the use of force. It is accordingly a complicated task to distinguish their vision from neoconservative projections on the Middle East. Making this even more complicated is the fact that some cosmopolitans offered their full support for the war as a humanitarian intervention (Tesón 2005: 392) while the growing consensus that mixed motives could happily coincide with humanitarian outcomes made it understandable that many would perceive Iraq to be similar to earlier interventions and subject to the same normative overlay. Some of those who had flirted with neoconservatism pointed to this continuity between Bush’s unilateralism and interventions of the 1990s (Fukuyama 2005: 130). Those cosmopolitans who did come out against war in Iraq were now constrained in their arguments due to support for a Kosovo War which had also flouted the UN Charter. Thus, it is indisputable that cosmopolitans broke ranks on Iraq—as indeed they had begun to do in the aftermath of the Kosovo conflict—casting serious doubts on their ability to provide consistent policy advice for cosmopolitan states, rather than apology for selected actions of the great powers.

Illustrative of these difficulties was the position of Jürgen Habermas. In an overwritten piece with a silent Jacques Derrida, Habermas described the preparations of war in the weeks before the invasion in terms of the ‘spectacle’ of relief agencies mustering in expectation of ‘the civilized barbarism of coolly planned death’ and then the eerie illumination of Baghdad’s skyline once the campaign of began (Habermas and Derrida 2003: 291-92). Like the bombs

highlighting the night sky, Habermas believed that the war in Iraq was illegitimate because it betrayed its particularist origins when set against the Kantian vision of a liberal cosmopolitan order. In this sense, the surgical sterility of superpower warfare was a largely irrelevant consideration. Habermas would later argue that perceptions about of the Iraqi dead might have been radically transformed by the identification of a world authority as the legitimate actor behind the violence, implying perhaps that it might then be seen as *iusta et recta dominatio*.<sup>9</sup> It was not American destructive capability that was the concern but the particularist identity, for the ‘power asymmetry would take on a different significance if it reflected not the super-powerfulness and the powerlessness of the warring parties, but the police power of a world organisation’ (Habermas 2004).

### **Demonstrate consistency: Libya and Syria**

The political upheaval of the Arab Spring carried with it the prospect of violence and renewed US military involvement in the Middle East. As North Africa erupted in protest in 2011, the regime of Muammar Qaddafi quickly came under pressure, leading to civil war and calls for intervention to avert atrocities. Qaddafi made explicit threats against his people and following this, African states and the Arab League began to support the case for intervention, leaving the UN Security Council in acquiescence. Resolution 1973 was the most important piece in perhaps the most logistically uncomplicated case for US military action since the Gulf War in 1991.

Libya has been described, even by cosmopolitans, as an exceptional case for the new formulation of ‘Responsibility to Protect’ (R2P) (Bellamy 2011; Bellamy and Williams 2011). In his speech outlining the intervention to the American public on 28 March 2011, President Barack Obama also made the exceptional circumstances clear:

We had a unique ability to stop that violence: an international mandate for action, a broad coalition prepared to join us, the support of Arab countries, and a plea for help from the Libyan people themselves. We also had the ability to stop Qaddafi’s forces in their tracks without putting American troops on the ground (cited in Kildron 2012: 36).

Both terrain and troop positions were favourable for the style of mission preferred by a military that had learnt the tactical lessons of Somalia and improved on the technologies

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<sup>9</sup> Alberto Gentili’s description of the legitimacy of the Roman imperial order, created by a process of just wars (see Panizza 2010: 67).

available during the Kosovo War. Nevertheless, the mission creep that resulted in regime change appears to have destroyed Security Council support in the short to medium term for actions under this rebranded form of the cosmopolitan normative overlay.

It is only in comparison with other potential cases such as Syria, that the Libyan case assumes its full significance. Convinced of the importance of normative consistency and conscious of the blow that would be dealt to R2P by another period of inaction, cosmopolitans advocated intervention in Syria without regard for the characteristics of that conflict. Weiss, who had first warned of ‘Somalia Syndrome’ in the mid-1990s, now argued that the Libya operation was in danger of becoming an ‘aberration’, suggesting that the momentous step of intervention in Syria might be justifiable in terms of avoiding such a perception (2012: 324). This pointed to a problem that had been lingering in the background of the cosmopolitan project, namely, the likelihood that the normative overlay of events would be reified into an additional motive for action. Others, including the UN Secretary General, feared that sentiment was swinging towards nonintervention after Libya (Morris 2013: 1265). However, even a brief analysis of the Syrian situation reveals the limits of decontextualised normative arguments inherent in the normative overlay of humanitarian intervention and R2P.

The norm entrepreneurs of R2P preferred to present both Libya and Syria as part of an ongoing moral narrative. However, beyond the normative questions, comparison of Libya and Syria reveals many more points of difference than similarity. The US would not be able to secure a Security Council resolution on Syria, meaning that any action would be internationally illegal – both in the conventional sense of breaching existing documents of international law and presumably also in the less tangible Habermasian sense of drawing widespread condemnation and protest from ‘global civil society’. Russia, an ally of President Assad, possesses veto power on the Security Council. The Syrian government also has the support of Iran and its regional network of terror groups, including Hezbollah. Compared with Libya, government forces are at least four times as numerous in Syria, while all sides are radicalised by sectarian divisions. Furthermore, any expansion of the conflict would further inflame the region and immediately be exploited for propaganda purposes by various parties.

In this context, the US has been urged to intervene to ‘demonstrate consistency and refute allegations of operating on a double standard’ (Buckley 2012: 88). Yet the American public is aware that, contrary to the urgings of cosmopolitans, a Syrian intervention would have more in common with the Iraq War than the Libyan operation (Kahl and Lynch 2013: 50).

Was this another instance of ‘failing to treat like cases alike’ (Bellamy and Wheeler 2011: 514) as the problem of selectivity would have it, or was it a failure to treat unlike cases as unlike under the pressure of conforming to the normative overlay of events?

Applying the cosmopolitan normative overlay to the interventions of the 1990s reveals such significant incongruities—both in terms of selectivity and heterogeneity of motives and values—that it is difficult to conclude that the operation of cosmopolitan norms really shaped this long decade of intervention. This aspect must be distinguished from the question of whether the normative overlay has facilitated and encouraged interventionist state behaviour. The ideational resources of cosmopolitanism were clearly more prominent when coinciding with great power actions than when in disagreement with them. This suggests that the normative overlay of humanitarian intervention is on balance more often the overlay on great power actions than the norm of a new cosmopolitan paradigm in statecraft. Related to this point is the observation that historically embedded and generational lessons based in understandings of constitutive identities and material realities have continued to trump rationally derived and philosophical formulations. Though its own sources are contingent and historical, cosmopolitans have continued to imply that the normative overlay can be applied consistently and decontextually to events. This paradoxical stance reflects great stresses in the cosmopolitan project.

### **Stresses**

While cosmopolitans are not necessarily or exclusively social constructivists, they are nevertheless reliant on the language of norms. Marginalised by the atomistic forces of capitalism and liberalism, norms are nevertheless recognisable in domestic societies and this has been extended by analogy to the interactions of states. Although such international norms are conceded by most schools of international relations, constructivists place a particular emphasis on the power of norms to explain and direct state behaviour and constitute identities. Constructivists argue that the timing of the emergence of norms is often determined by transnational activists whom they term ‘norm entrepreneurs’. However, there is also a level of contingency and attrition involved in this process. ‘Deliberate efforts to promote particular norms may work—or they may not. Norm entrepreneurship is usually necessary, but it is

never sufficient' (Florini 1996: 375). Constructivists are necessarily idealists who do not consider the material context of these ideational transformations in the behaviour of states. This is a natural fit with the Kantian heritage of cosmopolitans and the cosmopolitan norms of constructivism rely on a teleological understanding of liberal ideas (Finnemore and Sikkink 1998). This implies a global liberal tendency that generates additional cosmopolitan norms while nourishing and expanding existing ones. This concept is examined in greater detail below. New norms are transmitted and adopted above and between states, with the states themselves expected to be the primary agents that will function as normsetters in international politics.

While this explanatory framework carries the risk of tautology and reification, it also leads to the potential for a conflict of norms. I concluded the previous section by arguing that the events of the 1990s demonstrated that humanitarian intervention was more often a normative overlay on events than a norm which constructed them. Putting aside this distinction between norm and overlay to explore the issue from the cosmopolitan perspective, the norm of humanitarian intervention consists of humanitarianism fused with the use of force. As Martha Finnemore acknowledges, [a]ny policy decision of consequence is taken within a dense web of normative claims that often conflict with one another and create serious ethical dilemmas for decision makers' (2008: 198). The use of force constitutes the most serious of these conflicts as violence is clearly neither morally progressive nor consistent with the global liberal teleology presented by constructivists.

Cosmopolitans have responded to the normative problem of violence in two ways. One response is to *relativise* the violence. This approach consists of emphasising the utilitarian nature of political decisions in a manner more characteristic of political realism. A second and much more commonplace strategy is to work towards the *legitimisation* of the violence through the creation and recognition of cosmopolitan authority. This second approach relies on the 'legitimet' definition of violence in which the actions of a legitimate authority are not considered to be violence as such, even when they are physically forceful and coercive. The term 'violence', in this definition, is reserved for 'a reference to an illegal or illegitimate use of force' (Coady 1986: 4). In turn, this legitimisation of violence raises political questions, especially in the abstraction of legal structures from political communities, a move that is likely to lead to a dissonance in the general normative trend towards democracy at the social level. This tension with democracy at the social level is exacerbated by changes at the global level where the norm of free market capitalism increasingly structures the global system. The

stresses created by these distortions and incongruities in the cosmopolitanism normative overlay are the subject of this final section.

### **Going down in flames: the Norm of Non-Use of Force**

Constructivists assert that there are five main cosmopolitan principles favouring the selection and adoption of norms in the contemporary transnational environment, including, ‘universalism, individualism, voluntaristic authority, rational progress and world citizenship’ (Finnemore and Sikkink 1998: 907). Together these principles reflect a long term tendency for ‘moral progress’ which constructivists regard as evident in the formal abolition of slavery and the ending of political forms of colonialism and which, crucially for the topic of humanitarian intervention, ‘could predict the demise of international war in the future’ (*ibid.*). Constructivist cosmopolitans view the emergence of humanitarian intervention in terms of this normative teleology. However, the means of foreign policy are also subject to normative constraints (Björkdahl 2002: 23), and it is possible that norms which are conducive to the enforcement of globalist human rights will flounder on the systematic use of force that this enforcement involves. While the cosmopolitan moral teleology may ultimately rely on an eschatological vision of a world without violence of any kind, it must nevertheless, as John Maynard Keynes remarked in a not dissimilar context, ‘count the costs of the struggle’ (cited in Waltz 1979: 137). Thus, the problem of violence places a particular stress in the cosmopolitan normative overlay of humanitarian intervention.

Constructivists have shown some awareness of this problem. For instance, Martha Finnemore writes that humanitarian intervention is ‘often in tension with other values we hold dear ... and when coupled with military force, these tensions are greatly exacerbated’ (2008: 198). Other cosmopolitans have realised that the principles and ideals of Kantianism, such as the pursuit of ‘perpetual peace’, in the normal course of events might lead cosmopolitans to condemn the practice of humanitarian intervention, especially ‘given the basically antithetical relationship between military action and civic freedom’ (Smith and Fine 2008: 46).

One cosmopolitan has suggested an original solution to the normative clash involved in the use of force. Richard Beardsworth argues for a concept derived from the unlikely source of classical realism. Following the realist political logic of the ‘lesser evil’—a language he dislikes for its ontological implications—Beardsworth holds that a concept of ‘lesser violence’

could be adapted into a theory of humanitarian intervention with the resulting fusion of cosmopolitan idealism and political realism amounting to a 'cosmopolitan realism' (2011: 97-104). This has the advantage of acknowledging that while the aims of missions under the normative overlay of humanitarian intervention have been in many cases at least partially ethical, their means inevitably involve power and the use of force. According to classical realism, contemplation of the aporia of justice and power is an essential aspect of the wisdom required for political action. In the context of humanitarian intervention, the political actor faces a dilemma which may be expressed most starkly in terms of 'saving lives by killing people' (Pavković 2004: 161). While it may be the job of propagandists to frame the decision to intervene in terms of saving rather than killing, the political actor must consider the tragic nature of the decision and try to make certain that more lives will be saved than killed.

Any move towards cosmopolitan realism is complicated by the reality that mainstream cosmopolitanism is already firmly established within the 'ethics first' paradigm. This ethical approach to international relations denies there is any substantive difference between political and individual ethics or between domestic and international ethics (Beitz 1979b). In strong contrast with this view, political realism understands power to be the primary consideration in the political realm, as distinguished from individual conduct, leading to a 'politics first' approach. A more moderate statement of this position is found in the ethical tradition of 'dirty hands' (see Walzer 1973). Neither Walzer's position of 'dirty hands'<sup>10</sup> nor the realist position of 'lesser evil' seems compatible with the ethics first approach of cosmopolitans, just as they would not be appropriate as guides for individual conduct in which utilitarian calculus is usually unnecessary. The classical realist Hans Morgenthau imagines the compromise of justice by power in political decisionmaking to be a conciliation which is essentially 'nothing more than a *modus vivendi*, uneasy, precarious, and even paradoxical' (Morgenthau 1945: 18). With their Kantian intellectual heritage and ethical concerns, cosmopolitans may prefer to frame humanitarian intervention as a perfect duty of moral law (Bagnoli 2004; Davidovic 2008), an alternative which does explicitly equate the requirements of statecraft with the standards of individual conduct. After the Rwandan genocide, Susan Rice swore that 'if I ever faced such a crisis again, I would come down on the side of dramatic action, going down in flames if that was required' (cited in Calabresi 2011). What Rice describes epitomises the ethics first approach of acting ethically without thought for the consequences. Such a

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<sup>10</sup> Although Walzer would clarify in *Just and Unjust Wars* that such formulations, similar to the Catholic doctrine of 'double effect', were too permissive for judgements in wartime (Wheeler 2000: 36, note 60).



perspective is a poor fit with the considered judgments of the realist framework Beardsworth has adopted.

The ethics first approach, which cosmopolitans like Susan Rice personify, appears to be more compatible with another method of avoiding the dilemma of humanitarianism and the use of force. This involves the legitimisation of the violence, bringing humanitarian intervention under the category of cosmopolitan law enforcement (Habermas 1999, 2003; Kaldor 2012). More involved versions of this argument project forward to the formation of a cosmopolitan police force able to act with military force around the world. It would be trained in a variety of skills beyond the current expectations of either police or military and most crucially, 'the international soldier/police officer [would risk] his or her life for humanity' (*ibid.* 139). Some cosmopolitans envision a future in which cosmopolitan militaries assume a place at 'the forefront of the movement concerned with seeing in a more just, equitable and humane world, [becoming] a kind of global social movement for peace and security' (Elliott and Cheeseman 2002: 55). The legitimist approach to violence is compatible with the ethics first outlook on international politics in a way that Beardsworth's realist approach is not. However, it is based on the assumption that the normative dissonance of violence is dispelled by the existence of authority, a position which comes with strong conservative implications and which also present a poor fit with cosmopolitan thinking. After all, the legitimist view of violence has long been condemned by activists and protesters at the social level (Coady 1986: 4), and it may be no more benign at the global level. Such a force would monitor and patrol a worldwide jurisdiction and in the absence of a world state, which amounts to the separation of the functions of the polis. This raises the additional problem of rights, democracy and the location of rights and redress in territorial political communities. The idea of humanitarian intervention brings these problems into the sharpest relief as consideration of the employment of violence must necessarily meet a higher threshold of legitimacy and accountability than other potential exercises of global authority.

### **Being impartial: the Norm of Democratic Self-Determination**

The Universal Declaration of Human Rights was envisioned by at least some of its framers to be a contextualist and statist document. It may have represented a statist guide for some Western societies, especially those which had collapsed into totalitarianism in the interwar period. However, human rights would have to await the retreat of intellectual Marxism before

assuming a full place in European discourse (Judt 2007: 565). Human rights were understood to be contextualist in relation to non-Western societies where newly emergent postcolonial political communities could not be expected to instantly and painlessly complete a process it had taken many upheavals for the West to bring near to stability. Thus, contemporary decisionmakers were aware of the dangers of what amounted to a course of political shock therapy for the new states. Sitting on the General Assembly's Social, Humanitarian and Cultural Affairs Committee in October 1950, René Cassin and Eleanor Roosevelt both concurred with views of the Belgian delegate who declared that in 'imposing these rules on them [i.e., postcolonial states] at once, one ran the risk of destroying the very basis of their society' (cited in Moyn 2010: 96). Human rights were originally conceived as a general direction for political development within indigenously formed and contextually appropriate political orders. There was in fact no obvious alternative but to view the Charter in these social and thus statist terms. Viewed in the globalist terms of today, it becomes, in the analysis of philosopher John Searle, 'a profoundly irresponsible document because its authors did not reflect on the logical connection between universal rights and universal obligations, and they mistook *socially* desirable policies for basic and *universal* rights' (cited in Fotion 2011: 701; emphasis added).

As the Third World development state faltered in the 1970s, the normative discourse of human rights went from strength to strength. Today the socially disembedded, globalist understanding of human rights is the dominant one. Yet this has not altered the fact that the civil freedoms of liberalism, as the very basis of human rights thinking, are inconceivable outside of a political community. Nowhere is this more apparent than in the very construction of rights issues themselves. It is worthwhile citing Luban's influential decontextual description of globalist human rights: 'Human rights accrue to people no matter what country they live in and regardless of history and traditions' (1980a: 396). This is a position that has clearly had profound consequences when pronounced, as Luban had done, in the context of humanitarian intervention. While negative rights requiring only forbearance might potentially exist as social constructions outside of a political order, the right to enforcement of a negative right is in fact a positive right (Wenar 2011). In turn, the state's action of enforcement raises further political questions of redress and accountability.

These political aspects are not readily separable from the legal system as they combine to form the gestalt of a political community in which both the legal and political systems, in addition to other important factors such as civil society, combine together to form the state.

To add a layer of complexity to this, the apparatus of the state remains neutral in respect to the processes of law and politics, intervening only to safeguard their functioning and it is only from within this system that a distinction between a state and its politics can be made. This means that ‘those excluded by the political processes of the day can still resort to state organs and institutions’ (An-Naim 2008: 5). Similarly, those who believe themselves unduly affected by the state apparatus can appeal to politics or the legal system.

In understanding these crucial distinctions, both Walzer’s notion of internal legitimacy and the, at first glance, counterintuitive concept of statist human rights become clear. To take an everyday example of this process, let us imagine an old man with a negative right to silence against a group of revellers at three o’clock in the morning. He calls the police and invokes a positive right to enforcement of the negative right to silence. After the experience of having their party disturbed, the young revellers lobby and campaign politically to overturn relevant bylaws in what they believe to be an increasingly urbanised neighbourhood that ought to be more tolerant of noise. Replication of this system at the global level is at the same time essential for the legitimacy of cosmopolitan schemes and frustrated by the absence of sovereign authority and global solidarity.

A world state could theoretically provide the political order required for negative and positive rights and their political and legal negotiation. Indeed, it has been argued that the support for this world state is the only consistent position available to cosmopolitans (Dufek 2013). Even so, only a handful of committed cosmopolitans actually advocate a world state or believe it to be inevitable (Nielsen 1988; Wendt 2003; Cabrera 2010). A more typical cosmopolitan response to the problem of positive rights is provided by Pogge (1992a), who attempts to demonstrate the systemic infringement of negative rights by existing international institutional arrangements. From this argument it would follow that ‘the more privileged participants in an institutional scheme’ violate a negative duty whenever human rights abuses are ‘enforced or tolerated’ in the scheme from which they benefit (*ibid.* 92), ultimately justifying a doctrine of ‘institutional humanitarian intervention’. In a similar vein, Pogge (2003) has suggested that an ‘institutional understanding of human rights’ could preempt many of the circumstances leading to interventions.

The first half of this movement towards institutional human rights suggests the statist understanding of human rights in its demands for the just organisation of *society*; here Pogge appears to acknowledge that human rights indeed require political location to flourish and are thus more suited to the politics first approach. But Pogge follows this with a reemphasis of

the globalist understanding in his assertion that these ‘institutional’ human rights are moral claims against *any* institutional order (and the supporters of that order) that imposes upon any individual in any other location (*ibid.* 99). This is a less radical understanding of human rights than Luban’s globalist definition cited above, a point which Pogge himself points out (*ibid.* 107, note 15), yet the problem of political community remains. Global institutions and interdependence are not nearly as salient as Pogge assumes and in relation to humanitarian intervention the most relevant question to be asked of his formulation is, does it sufficiently legitimise the violence of armed interventions or reduce the democratic deficit of their context?

Aspects of the democratic deficit are more explicitly addressed by advocates of ‘cosmopolitan democracy’. These theorists envisage a process of rational deliberation conducted in neutral spaces within disinterested identities achieving an ethic of impartiality.

Being impartial here means being open to, reasoning from, and accessing all points of view (especially those in urgent need); it does not mean simply following the precepts of self interest, whether based on class, gender, ethnicity and nationality (Held 2004: 109).

In the words of Ortega y Gasset, this approach makes the *a priori* assumption of ‘the previous submission of force to methods of reason’ (cited in Waltz 1979: 113). Kaldor’s idea of identifying and advancing the interests of the local cosmopolitans is another variant of this proposal. Those whose allegiances are primarily to rational ideas would be advantaged in a process of cosmopolitan deliberative democracy where their interests are automatically legitimised above those with non-rational attachments. To Kaldor, cosmopolitans comprise of an intellectual and cultural elite and ‘[e]ven if they are a small minority, they are often the best source of proposals’ (2012: 132). One obvious drawback in this type of plan is that the local supporters of globalist human rights are likely to be too numerically insignificant to support political settlements for whole societies (Hirst 2001: 86). Similarly, intervention is rarely reconciled with impartiality when achieving a lasting peace means choosing who rules (Betts 1994). Elevating cosmopolitans implies the acceptance of a substantial democratic deficit and this is inconsistent with self-determination and thus hardly conducive to the legitimisation of violence.

In fact, the legitimist definition of violence has come under great normative strain even in democratic societies. Herbert Marcuse reminds us of the resentment towards the legitimist violence of authorities in the antimilitarist atmosphere of Vietnam War era America:

Thanks to a kind of political linguistics, we never use the word violence to describe the actions of the police, we never use the word violence to describe the actions of the Special Forces in Vietnam. But the word is readily applied to the actions of students who defend themselves from the police, burn cars or chop down trees (Herbert Marcuse cited in Coady 1986: 4).

While the antimilitarist discourse that formed the historical background for Marcuse's statement has since declined, the ideas and tensions it brought to the fore are latent in society. A process such as deliberative democracy would find it difficult to manage such divisions even at the non-global levels. Disputes between groups are likely to be even more prevalent at the global level where they are usually conducted in the absence of patriotic or nationalist solidarity. When radical normative shifts have been achieved it has usually come about amid the passionate protest and campaigning of those whose interests are most radically affected and these groups often identified in national, sexual or racial terms. In the absence of the formation of politically significant cosmopolitan identity groups, any form of cosmopolitan democracy without a world sovereign or global fellow feeling comparable to that which has been successfully fostered by the state would be a fragile and precarious venture not well equipped to legitimise the violence of any form of military intervention.

### **Cheap solidarity: the Norm of Free Market Capitalism**

In his survey of the relationship between cosmopolitanism and the Universal Charter of Human Rights, Samuel Moyn notes that 'the withering of local, costly solidarity' of the type associated with the welfare state correlates with 'the afflatus of distant, cheap solidarity' (2014: 382), characteristic of the normative overlay of humanitarian intervention. Might a free marketplace at the global level have a causal role in this relationship? Answering this question satisfactorily would require a separate study. However, it is possible even in this short section to note the clash of values inherent in the correlation.

Philip Cerny declares it a paradox that despite the evolution and growth of states to meet the challenge of neoliberal globalisation, the new market dependent situation of political communities 'hinders the capacity of state institutions to embody the kind of communal solidarity or *Gemeinschaft* which gave the modern nation-state its deeper legitimacy, institutionalized power and social embeddedness' (1997: 252).

The period of the states he describes compares unfavourably with the long economic boom which had been the defining characteristic of postwar years in Western countries. The Second

and Third Worlds also enjoyed sustained levels of growth in these years. For more than two decades, the Bretton Woods settlement underpinned the management of markets embedded at the social level, leading to mutually agreed benefits between capital and labour (Ruggie 1982). By the late 1960s this highly successful system of social level, welfare capitalism had begun to come under strain in the West (Wallerstein 2000), and in the early 1980s, the reverse of this process was observable as the *social* welfare state was replaced with the *global* ‘competition state’ (Cerny 1997). Over the same period, Second World communism faltered and the Third World development state became another casualty of this shift to global markets, suffering the loss of what minimal social services had been provided in the anticolonialist nation-building phase of earlier, more optimistic decades.

From this context it is possible to speculate whether these structural forces may have influenced the most experienced thinker on humanitarian intervention. Michael Walzer appears to have changed his position on intervention in the early 1990s. In his original minimal globalist understanding at the time of *Just and Unjust Wars*, an exception to nonintervention was justified in cases where ‘the source of the inhumanity is conceived as somehow external and singular in character: a tyrant, a conqueror or usurper, or an alien power set over against a mass of victims’ (Walzer 1995: 56). This pattern Walzer claimed to have observed in East Pakistan, Uganda and Cambodia where there was a salvageable political community held under tyranny. But as he went on to doubt, ‘what if the trouble is internal, the inhumanity locally and widely rooted, a matter of political culture, social structures, historical memories, ethnic fear, resentment, and hatred?’ (*ibid.*). The existence of a powerful norm of global free markets prompts the additional step—one not taken by Walzer—of asking whether in fact the structural forces of global capitalism may be responsible for the changes Walzer notices emerging from more immediate and obvious causes at the social level.

Adding weight to the relationship Moyn observes is the fact that cosmopolitans appear to be far more accepting of the ‘collateral damage’ of capitalism at the global level than human rights abuses inflicted in the process of nation-building at the social level. Thus Tesón, who is ready to endorse the invasion of states on the basis of disrespectful abuses, stands behind the bald generalisation that ‘free trade helps the world’s poor’ (2005: 51). Meanwhile Beardsworth is satisfied with the pie cutting metaphor of neoclassical economics, pointing out that ‘if at the level of the economy, there is no growth, then there are no questions of redistributive justice’ (2011: 141). Globalisation is therefore in the interest of the poor who

require growth before their share of redistribution is apportioned to them. Ultimately, however, both Beardsworth (2011) and David Held (2004)—the two cosmopolitans who have done most to defend their tradition from charges of complicity with neoliberalism—converge on the idea of a reformulation of ‘embedded liberalism’ at the global level. As they correctly observe, it is the lack of a regulatory framework rather than the intrinsic nature of markets which has led to problems of underdevelopment and inequality in the age of global capitalism (Held 2004: 50-52; Beardsworth 2011: 155). Nevertheless, they see the answer to this problem in greater regulation at the global level rather than a return to social level markets in which regulations could be fully enforced and negotiated within a vibrant and democratic state and political order. The cost of refusing the state a role in this process is the high utopianism of Beardsworth’s demand for global regulatory regimes ‘that come close to the force of domestic government intervention *without the power of enforcement*’ (*ibid.* 151; emphasis added).

If the problems of ‘failing states’ are in any way structural, then an examination of the current world system must be prior to any questions of military intervention. Without the conditions for endogenous growth at the social level, social failures are decontextualised when analysed in isolation from systems factors. There is not the space here for an extended review of this debate in the political economy literature. Suffice to say that if the norm of free markets is to operate underneath the overlay of humanitarian intervention, then it may be expected to contribute to the poor fit between this normative perspective and the reality of suffering in the world.

## **Conclusion**

I have argued that, in the absence of a norm of humanitarian intervention with the power to constrain and direct state behaviour, it is more accurate to speak of a normative overlay on interventions. ‘Humanitarian intervention’ is a normative label applied decontextually rather than the descriptive term for an event to be identified in history. Throughout the 1990s a failure to perceive this distinction directly increased the frustration of those who advocated a consistent enforcement of globalist human rights with the use of force.

In the final section I surveyed some of the major tensions and stresses in the normative

overlay. These would become even more apparent if a norm of humanitarian intervention was successfully adopted in international politics. From the consequences of interventions under the normative overlay it is possible to foresee that a consistently applied norm of humanitarian intervention would be significantly more destabilising and antidemocratic.

The normative overlay has severe limitations as a guide for policymaking. Both the extensive scope for action it provides and the consistency it demands are not well calculated to appeal to democratic decisionmakers. As an ideal for transnational activists, the pattern of state behaviour outlined by the overlay necessarily involves a collision with other normative struggles and activists will be forced to choose between competing ideals in the future. But it will no longer be possible to use the cosmopolitan conscience to justify the choice of humanitarian intervention.

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