

This article is downloaded from



<http://researchoutput.csu.edu.au>

It is the paper published as:

Author: N. Dobos

Title: A state to call their own: Insurrection, intervention, and the communal integrity thesis.

Journal: Journal of Applied Philosophy **ISSN:** 0264-3758

Year: 2009

Volume: 27

Issue: 1

Pages: 26-38

Abstract: Many reasons have been given as to why humanitarian intervention might not be justified even where rebellion with similar aims would be a morally legitimate option. One of them is that intervention involves the imposition of alien values on the target society. Michael Walzer formulates this objection in terms of a people's right to a state that 'expresses their inherited culture' and that they can truly 'call their own'. I argue that this right can plausibly be said to extend sovereignty to at least some illiberal governments, and therefore to impose at least some moral constraints on humanitarian intervention. The problem for Walzer is that this right cannot form the basis of a constraint that applies to foreign intervention exclusively. Once the details of Walzer's argument are teased out, it becomes apparent that civil war and revolution must be equally restricted by this right. Hence a people's prerogative to be governed in accordance with familiar traditions cannot coherently be invoked to show.

URL: <http://dx.doi.org/10.1111/j.1468-5930.2009.00469.x>,
http://researchoutput.csu.edu.au/R/-?func=dbin-jump-full&object_id=13035&local_base=GEN01-CSU01,

Author Address: ndobos@csu.edu.au

CRO Number: 13035

A State to Call Their Own: Insurrection, Intervention, and the Communal Integrity Thesis

Ned Dobos

“Given an illiberal or undemocratic government, citizens are always free to rebel”, writes Walzer, “whether they act on that right or not, and whether they believe themselves to have it or not.”¹ This follows naturally from Walzer’s stance on political obligation, (the duty to obey directives issued by one’s government). An individual can only be obliged to obey a state whose authority he has consented to, and consent can be registered validly only within a liberal democratic setting:

It is not enough that particularly striking acts of consent be free; the whole of our moral lives must be free so that we can freely prepare to consent, argue about consenting, intimate our consent to other men and women... Civil liberty of the most extensive sort is, therefore, the necessary condition of political obligation and just government. Liberty must be as extensive as the possible range of consenting action – over time and through political space – if citizens can conceivably be bound to a strict obedience.²

If we do not owe it to our government to comply with its commands, we cannot be obliged to refrain from resisting when the state attempts to induce our compliance. Thus, insofar as the subjects of illiberal states are under no political obligation according to Walzer, it stands to reason that they are “always free to rebel”. I take it that this is the prevailing attitude towards insurrection. Few would object morally to an oppressed people rising up against their authoritarian rulers in an effort to win the freedoms taken for granted by the citizens of liberal democracies.

But the same cannot be said for the view that all illiberal states are legitimate targets of foreign intervention. For the likes of Fernando Teson and Charles Beitz, a state must

honour the full complement of human rights and liberties, or be liberal democratic, in order to enjoy the protection that sovereignty affords.³ (Call this *cosmopolitan interventionism*). But most philosophers and jurists—and indeed the international community—seem to think it necessary to:

isolate from the full range of internationally ratified human rights the subset of rights whose neglect or violation is so morally perturbing or reprehensible that no state within whose boundaries they go unrespected could justifiably invoke its claims to sovereignty, should it ever choose to do so, against corrective intervention from without.⁴

On this view, a special set of “sovereignty-trumping” rights needs to be identified and set apart. John Rawls, for example, argues that moral immunity against intervention is conditional upon a state’s respect for a narrowly circumscribed range of “human rights proper”, including the rights to personal security, to the means of subsistence, to liberty from slavery, and to equal treatment under the law.⁵ Abuses of this “special class of urgent rights” can permissibly be redressed through foreign intervention, but the same cannot be said for freedom of speech and religious practice, freedom of association, the right to an education, and democratic suffrage.⁶ For one government to violently coerce another into honouring *these* rights is, apparently, contrary to the spirit of liberalism.

In a similar vein, Walzer argues that armed intervention is a legitimate option only where it is necessary to prevent large scale abuses of the most basic human rights, in the form of massacre, enslavement, or ethnic cleansing. States limited to “ordinary oppression”, although liable to rebellion, retain their sovereign immunity against outside intervention. Walzer builds his case around the right of “contemporary men and women” to “express their inherited culture” through their political institutions.⁷ It is because foreign intervention can be presumed to violate this right in all but the most exceptional circumstances that it is morally prohibited.

In what follows, I hope to show that a people's right to a state that expresses their culture can plausibly be said to extend sovereignty to at least some illiberal governments, and therefore to impose at least some constraints on humanitarian intervention. A number of Walzer's staunchest critics have mistakenly denied this. The real problem for Walzer is that this right cannot form the basis of a constraint that applies to foreign intervention *exclusively*. Once Walzer's argument is fleshed out, it becomes apparent that civil war and revolution must be equally restricted by this right, leaving us with two options. The first is to concede that any illiberal government which enjoys sovereign immunity against outside intervention also has a right against its subjects that they not violently resist its authority – effectively denying that citizens are “always free to rebel” in the absence of liberal democracy. The alternative is to persist with the dominant view that every undemocratic regime is fair game for rebellion, but to admit that all such regimes are also morally liable to foreign intervention, thus accepting cosmopolitan interventionism. Either way, the right to a state that reflects familiar traditions cannot be invoked to support sharply contrasting positions on insurrection and intervention. The more general conclusion to be drawn from this is that a government forfeits its sovereign immunity against coercion and regime change at the hands of foreign powers by committing rights violations that justify its own subjects in taking up arms against it.

I

What outsiders perceive as oppression might in fact be a state governing its people “in accordance with their traditions” says Walzer. Where this is the case, there is a bond or “fit” between the rulers and the ruled that outsiders are forbidden to upset.⁸ To compel a government that enjoys some such fit to change the way that it governs, or to violently depose it, is to deny its subjects their right to a state that embodies their customs and values, and that they can truly “call their own”.⁹

In fact foreign intervention is ruled out as long as we can *presume* that a fit obtains, according to Walzer, and this is a presumption that he thinks we must make in almost all cases. Ordinarily,

foreigners are in no position to judge the reality of that union [fit], or rather, they are in no position to attempt anything more than speculative denials. They don't know enough about its history, and they have no direct experiences and can form no concrete judgments, of the conflicts and harmonies, the historical choices and cultural affinities, the loyalties and resentments, that underlie it.¹⁰

For this reason we must act “as if” every illiberal government fits with its people, and honour the principle of non-intervention. In the event of massacre, ethnic cleansing, or enslavement, however, the lack of fit becomes “radically apparent”.¹¹ We can be sure that this is not simply a state governing its people in accordance with their traditions. The right to a culture-expressing government then drops out of play, (since the target state can no longer be presumed to fulfil this right), sovereignty is stripped of its moral underpinning, and the barrier to foreign intervention is lifted. This is Walzer's “communal integrity” thesis in a nutshell.

Unfortunately Walzer's account of “fit” is somewhat light on detail. At times he seems to be saying that a state fits with its people as long as it governs them in accordance with their customs and traditions. But this cannot be all there is to it. It is, after all, possible for the members of a historic nation to grow averse to their inherited culture, or at least to its political manifestation. A government that continues to force it down their throats regardless cannot gain any kind of moral standing by so doing, irrespective of how intrinsically valuable Westerners happen to find the culture being perpetuated.

For there to be a morally significant union between the rulers and the ruled, the former must also enjoy the allegiance of the latter. Walzer does acknowledge this, at least implicitly. The presumption of fit, he says, is based on the presumption that a people will defend their state against foreign encroachment, proving that they value it enough to fight and to die for it.¹² “Fit” should thus be understood to refer to a bond whereby a state expresses the inherited culture of its people and enjoys their allegiance because of it. This

is the kind of relationship that is to be presumed to exist in all societies except for those marked by “crimes that shock the moral conscience of humankind”.

But we still need to determine precisely whose allegiance is to be presumed. As I see it, it is either that of every citizen unanimously, or that of a significant proportion of the citizenry. If a state enjoys the unanimous support of its people, it clearly has a claim against interference from without. This much is uncontroversial. But this is not something that can ever be reasonably presumed. National cultures and traditions are almost always contested. Where some citizens see an expression of the national soul, others will see nothing but oppression and corruption, or even a perversion of their inherited culture. Those who feel that their government accurately embodies their national identity may very well remain loyal to it despite being abused and neglected. Many of those tortured to death at the behest of Ivan the Terrible are said to have died praying for the Tsar. Centuries later prisoners incarcerated in Communist Russia’s gulags would become frantic with grief upon hearing the news of Stalin’s death.¹³ But it is safe to say that in any illiberal society, one will also find disgruntled citizens who deny that the state expresses their culture, who feel no allegiance towards their government, and who would welcome foreign troops that arrive to depose it, or at least to force a change in its behaviour.

By “fit”, Walzer must therefore mean the allegiance of a significant proportion of the citizenry. Several passages in “The Moral Standing of States” lend support to this reading. Writes Walzer: “For as long as *substantial numbers* of citizens believe themselves bound and are prepared, for whatever reason, to fight [to defend their state against foreign encroachment]”, intervention is prohibited.¹⁴ This is obviously compatible with there also being “substantial numbers” of citizens who would *not* be prepared to defend their state, and who would welcome the thought of the Marines or the SAS barging in to remove it from power.

In light of this there are a couple of important things to note. Firstly, it is not “the people” of the target society collectively who are wronged by foreign intervention; it is those

particular men and women who are party to the presumed fit.¹⁵ It would clearly be absurd to say that a state or coalition that prosecutes a humanitarian intervention wrongs those who are pleading for its assistance. Secondly, far from exaggerating the strength of the presumption of fit, Walzer actually seems to understate it. The majority of Walzer's critics have argued that the absence of fit is "radically apparent" in a much wider range of cases than Walzer acknowledges. David Luban, for instance, insists that "what [Walzer] calls 'ordinary oppression' can make the lack of fit apparent enough."¹⁶ But once "fit" is properly understood, it seems to me that *not even* genocide is sufficient to rebut its presumption.

In *Hitler's Willing Executioners*, Daniel Goldhagen paints a picture of Nazi Germany in which the people and the party fit one another more snugly than most historians have let on.¹⁷ Goldhagen claims that an "eliminationist" anti-Semitism had evolved into "an axiom of German society" by the time Hitler came to power—eliminationist because it was conducive to a particular kind of solution to *Die Judenfrage* ("the Jewish problem").¹⁸ His claim is essentially that the Nazi persecution and attempted extermination of the Jews were policies that mirrored and expressed the regnant culture of the day. The book is replete with examples of ordinary Germans enthusiastically supporting and even participating in the implementation of anti-Semitic policies. And Goldhagen is adamant that this was much more than a symptom of Nazi propaganda. As early as 1921, under the Weimar Republic, a police situation summary revealed that "the mood for Jewish pogroms is spreading systematically in all parts of the country".¹⁹

Goldhagen also cites the collective passivity of the German people in the face of the Holocaust as proof of his contention. The common exculpation that they were too afraid to speak out is dismissed out of hand. There were, after all, other Nazi policies that the people were clearly not too afraid to resist. Between February 1936 and July 1937, the records show that 192 mass protests against Nazi economic policies were staged. And Hitler's assault on Christianity was resisted tooth and nail.²⁰ What little criticism the assault on the Jews did attract was motivated not by principled disapproval of the eliminationist program, says Goldhagen, but by other worries. For instance, those who

publicly condemned the terror of *Kristallnacht* emphasised its *wastefulness* above all else—the vast amount of perfectly good property that it left in ruins. Some of the criticism was even driven by anxiety about the all-powerful Jews some day taking revenge against Germany.²¹

Goldhagen may well have overstated the extent and the intimacy of the fit between the German people and the Nazi regime, as many critics of his work have since charged. But the important point for my purposes is just that the occurrence of genocide failed to make it “radically apparent” that the state did not enjoy the allegiance of substantial numbers of its citizens. The same can be said for China between the years 1966 and 1969, during which scores of people were tortured, displaced for the purposes of “re-education,” killed, and reportedly even cannibalised in the name of the Cultural Revolution.²² Popular involvement in the state sanctioned atrocities was unprecedented. Jonathan Glover goes so far as to suggest that “the crushing repression which drove so many to mental breakdown or suicide was carried out *by nearly everyone*.”²³ Far from exposing a rupture in the relationship between the Chinese people and their state, the mass basic rights violations that characterised these years only served to confirm the public’s loyalty towards Chairman Mao.

Research conducted in what was Yugoslavia in the mid 1990’s suggests that “substantial numbers” of Serbs probably remained loyal to their government throughout its attempts to expel the ethnic Albanian population from Kosovo. A 1993 survey revealed that more than 50 per cent of Serb respondents believed that “all Albanians are primitive and uncivilized”. The following year a poll showed that only 52 per cent of Serbs found the idea of sharing a country with Albanians tolerable, some of whom seem to have responded with a very minimal conception of sharing in mind: only 33 per cent said that they were willing to socialize with Albanians. Yet as little as 1.9 per cent favoured autonomy for the province, with 41.3 per cent supporting “strict state measures” to bring Kosovo into line.²⁴

Walzer's critics have been adamant that human rights abuses need not reach genocidal proportions for the presumption of fit to be rebutted. But in fact not even genocide constitutes conclusive evidence for the absence of fit. Interpreted as the allegiance of "substantial numbers" (which is the only interpretation that has any purchase on reality), the presumption of fit turns out to be even more resilient than Walzer is willing to acknowledge, withstanding not only "ordinary oppression" but also "crimes that shock the moral conscience of humankind".

II

If Walzer is to maintain that intervention to prevent mass murder is justified, it seems he must concede that it is justified *despite* the fact that it can be presumed to divest substantial numbers of people of a state that expresses their culture and enjoys their allegiance. But then a difficult question arises. If the right to a state that "fits" is not absolute, why can it not be legitimately transgressed in defence of an even wider range of rights? Indeed, why not for the sake of every right that is now recognised under international law, a la cosmopolitan interventionism?

Walzer's exaltation of political community as "conceivably the most important good", in virtue of its enabling people to "share a way of life, developed by their ancestors, to be passed on to their children", gives us some indication as to how he might answer.²⁵ I suspect Walzer would say that a right should be honoured unless its infringement is necessary to defend more important or more fundamental rights, and that not all internationally ratified human rights do enjoy moral priority over (or even parity with), the right to a state that expresses one's culture.²⁶

A plausible argument to this effect can perhaps be made. Take for example the right to democracy. The UN Covenant on Civil and Political Rights extends to every citizen the right "to vote and to be elected at genuine periodic elections which shall be by universal and equal adult suffrage and shall be held by secret ballot."²⁷ This right can be infringed either selectively or universally. A state that holds multi-party elections in which some

citizens are singled out and denied the right to participate is guilty of the former kind of infringement. A case in point is South Africa under apartheid, where the leadership posts were hotly contested but 70 percent of the governed were refused the right to vote. On the other hand where there is no contestation for power—there being only one party that either refuses to subject itself to elections, or that holds elections in which it runs unopposed—the right to democracy is infringed universally, or denied to *all* of a society's people.

What makes this right important? One common answer is that democracy is somehow essential to individual autonomy. In order to be personally self-determining we must be in a position to exercise some control over the political decisions that significantly impact on our lives.²⁸ But the importance of democracy in this respect should not be overstated. William Talbott drives the point home with a thought experiment:

Suppose I told you that from now on, decisions about how to live your life would be made by the vote of a group made up by you and 99,999 other people, with each person's vote of equal weight. Would the fact that you had a vote in your life's decisions give you a sense of personal autonomy?²⁹

Perhaps suffrage is important for one's sense of self-esteem? The right to participate in politics on an equal footing with one's peers could be seen as a communal acknowledgment of individual worth, sending the message that one is regarded as a person whose opinions and choices are important and worthy of consideration.³⁰ It follows that anyone denied suffrage is refused recognition as an equal, potentially inducing a loss of self-respect.³¹

Now where a government violates the right to democracy selectively, those targeted are denied something that is afforded to their peers. This may very well precipitate a loss of self-esteem. But where the right is infringed universally the argument is less convincing. Being denied the right to vote in a country where everyone else is also denied this right is

unlikely to damage one's standing in the eyes of others and to wound his sense of self-esteem in the same way.³² One might respond by pointing out that even in these cases, the denial of suffrage might induce a loss of self-respect by damaging one's standing in the eyes of his or her *international* peers. But even so, being governed in accordance with one's traditions is arguably of equal if not greater importance in this regard. Yael Tamir observes that:

when individuals are able to identify their own culture in the political framework; when the political institutions reflect familiar traditions, historical interpretations, and norms of behaviour, individuals come to see themselves as the creators, or at least the carriers, of a valuable set of beliefs.³³

Accordingly, if a community receives a message from the outside world that its culture and traditions are unacceptable, its members may come to adopt a depreciatory image of themselves.³⁴

But we must not forget that democracy has instrumental as well as intrinsic value. It gives citizens a way of safeguarding their fundamental interests against abuse and neglect at the hands of their government. While both democratic and non-democratic countries have experienced sudden declines in food supply in recent history, the former have managed to avoid famine while the latter have not. In the early 1980's, Zimbabwe and Botswana, both democracies, experienced significant falls in food production (of 38 and 17 per cent respectively). In each case famine prevention policies were quickly implemented and famine was averted.³⁵ At the same time famine gripped Sudan and Ethiopia, whose food supply had dropped a relatively modest 11-12 per cent. China, a per capita rich country, was the site of the worst famine in history between 1958 and 1961, during which thirty million people are estimated to have died of starvation and malnourishment. India, a comparatively poor country, and a democracy, has never undergone such a crisis.

Nobel Prize winning economist Amartya Sen attributes this trend to the political incentives generated by elections, multiparty politics and investigative journalism. Despots do not have to suffer the political consequences of failing to prevent famines. Elected leaders do. From this, Sen draws the conclusion that “participatory opportunities as well as civil rights and liberties are ultimately crucial for economic rights *and even for survival*”.³⁶ Democracy impacts negatively on state repression via the same dynamics. There is a vast amount of research showing that, as democracy increases, political imprisonment, torture, disappearances, and even mass killings tend to decrease.³⁷

Does this tip the scales in democracy’s favour? Picture an undemocratic country where some citizens are loyal to the despotic regime while others want free and fair elections, even if this means that outsiders have to install democratic institutions by force. There may be nothing intrinsic about democracy that makes the claim of the latter group stronger, but couldn’t they appeal to the instrumental value of elections to bolster their case?

The answer obviously depends on their numbers. If those in favour of forced democratization make up the majority, then the answer is yes. If they represent a small minority, on the other hand, it is difficult to see how suffrage would be of any protective value to them. In fact, if the minority happens to be resented by the majority, democratisation can actually instigate or intensify their persecution. Leaders that are subject to popular elections must maintain the support of the masses, and sometimes the most effective way of doing this is to turn against a detested minority group.

The first elected Rwandan president following independence in 1962, Gregoire Kayibanda, used the widespread resentment of Tutsis to his political advantage. Philip Gourevitch notes that for Kajibanda, “stirring up the Hutu masses to kill Tutsis was the only way he seemed able to keep the spirit of the revolution alive.”³⁸ In December 1963, 14,000 Tutsis were massacred by Hutu mobs in the southern province of Gikongoro. Kiyabanda’s successor, Major General Juvenal Habyarimana, would similarly stir up anti-Tutsi sentiment while in power. His assassination triggered the 1994 genocide. Amy

Chua points out that before 1957, when the movement for Hutu majority rule began, “there had never been any recorded episode of systematic violence between Hutus and Tutsis.”³⁹

In Yugoslavia, the communist dictatorship of Marshal Tito had kept ethnic tensions in check for more than three decades. But democratisation brought to power demagogues that pandered to the people’s ethnic hostilities. The Serbs elected Slobodan Milosevic, while in Croatia Franjo Tudjman’s nationalist Croatian Democratic Union—“a party basically defined by its hatred of both the ethnic Serbs living in Croatia and their cousins in Serbia”—won a landslide victory. With overwhelming popular support, both persecuted the minorities living within their borders.⁴⁰

Where those in favour of democratisation represent a small minority, then, suffrage is unlikely to be of any instrumental value to them. In such cases, the rights of those who are party to the presumed fit could plausibly be said to outweigh the rights of those who are not. And if a right must be respected unless its infringement is necessary to defend more important rights, it follows from the preceding discussion that cosmopolitan interventionism is false. Intervention is not justified for the sake of any and every human right that appears in the international legal lexicon. A people’s prerogative to be governed in accordance with their traditions can be invoked to extend sovereignty to at least some illiberal states, and therefore to impose at least some constraints on humanitarian intervention.

But there is a caveat. If we take this route, we will be forced to deny that citizens are “always free to rebel” in the absence of liberal democracy.

III

Once the details of Walzer’s argument are teased out, it becomes clear that “fit” can only refer to something that exists between a government and, at most, a significant proportion of its citizens. But this understanding of fit leaves at least some citizens outside of the

relationship who are, no less than foreigners, in a position to subvert or disrupt it, and thereby to deny their compatriots a state that expresses their inherited culture.

Some of the civil wars that pitted the left against the right illustrate my point. Russia's transition to communism came only after three years of fierce resistance from the anti-Bolshevik "White Movement", with conservative monarchist Ivan Ilyin as its main ideologue. Among the objectives of the movement was to see Russia built upon institutions and principles that were distinctly Russian and congruent with the country's early history—in particular Tsarism and Orthodox Christianity—rather than upon the internationalist and cosmopolitan ideology of its adversaries. It seems fair to say that the eventual triumph of the Reds denied substantial numbers of Russians a state that embodied their national identity.

The Spanish Civil War, described by one historian as "The War of Two Spains", tells a similar story.⁴¹ On one side of the divide were supporters of the existing Republican government, who saw themselves as carrying on the tradition of Spanish liberalism dating back to the Cadiz Cortes legislative assembly of the early 1800's.⁴² From their point of view the Republic's institutions, policies, and secularising reforms were giving expression to Spain's *true* identity, which was modern and progressive. On the other side of the divide was an alliance of Spanish Fascists (the Falange), and members of the "Carlist" (or traditionalist) movement, devoted to "Dios, Patria, Rey": God, Country, and King. In the eyes of the Carlists, what Republicans were propagating was nothing but "cultural Bolshevism". The *real* Spain was that of Ferdinand and Isabel: monarchist, patriotic, and above all Catholic.⁴³ On this occasion the nationalists got their way and secured a state that fit them, but only by dispossessing their Republican countrymen of a state that embodied Spanish identity as *they* had envisaged it.

Civil war and revolution can thus also deprive substantial numbers of people of a state that expresses their culture. Now, if it is only permissible for foreign armies to do this when it is necessary to defend more important rights, then why should the same not apply to rebels?

Walzer might say that because rebels are themselves victims of the oppression being resisted, or because they belong to a group that is being persecuted, they enjoy more moral leeway than foreigners that are in the business of defending *others* from peril.

It seems to be widely accepted that the prudential constraints on war—and in particular the principle of proportionality—demand more of humanitarian interveners than they do of rebels.⁴⁴ Consider a state that goes to war after being unjustly invaded. It is foreseen that this will lead a neighbouring country to bolster its arsenal after witnessing the benefits of having a strong military, which is in turn expected to set off an arms race and eventually war between that state and another neighbouring country. Even if the outcome of this series of events is death and carnage that far outweighs the benefits of the initial defensive war, Thomas Hurka rightly observes that this would not make the war immoral. The attacked state is still free to defend itself against aggression. It cannot be required to surrender its independence in order to keep its neighbours from quarrelling.⁴⁵

If this can be said for states resisting foreign aggression, it can equally be said for subjects resisting the persecution of their governors, for they too are engaged in a war of self-defence. And this is very much in line with our intuitions. A rebellion might contribute to instability and incite conflict elsewhere in the world, but this cannot consign the victims of severe oppression to passivity. The upshot of this is that oppressed subjects are entitled to discount (though perhaps not to entirely overlook) some of the *mediated* consequences of rebellion when making judgments about proportionality—those consequences that are brought about via the interceding agency of other parties.

Yet some of the most common objections to the practice of humanitarian intervention are based entirely on its mediated consequences. An objection that has become routine is that intervention begets more intervention, often with dubious motives, thus jeopardizing “international peace and stability”. One formulation of this argument runs as follows. By acting in violation of Charter and treaty law, states change what the law requires.

Prevailing norms, expressed through the actions and attitudes of states, rise to the level of

customary international law, which overrides the written law. Therefore by engaging in unauthorised humanitarian intervention, forbidden by the UN Charter, states contribute to the erosion of this legal prohibition by developing a customary law that contravenes it.⁴⁶ This in turn makes other states more likely to wage war for political and economic gain using the pretence of “humanitarian intervention”.

Those looking to defend humanitarian intervention against such objections have tended to attack the empirical premise: that intervention jeopardises international peace and stability. Allen Buchanan, for example, suggests that we exaggerate the efficacy of international law on state behaviour if we think that the erosion of the legal prohibition against intervention makes states more likely to engage in it.⁴⁷ What is *not* denied is the proposition that the impact of a humanitarian intervention on international stability can be decisive when determining whether or not it is justified. It seems to be assumed by all parties to the debate that *if* there were a demonstrable causal connection between humanitarian intervention and international war and unrest, then all things considered, a policy of non-intervention ought to be maintained, even where intervention would otherwise be a legitimate option.

But if this is right, then a foreign intervention to defend severely oppressed subjects can be ruled out entirely on the basis of mediated consequences, or by how other states in international society can be expected to react. Since the same is not thought applicable to rebellion, there is, on the prevailing view, an asymmetry in the stringency of the proportionality condition. And this, it seems, is at least partly a function of the rebel being engaged in self-defence, while the humanitarian is defending others.

Walzer might say that, for similar reasons, rebels are entitled to deprive their countrymen of a state that fits in circumstances where humanitarians do not have this prerogative. But I am not convinced that self-defenders enjoy more moral leeway than other-defenders. To the extent that our intuitions lend support to this view in connection to the prudential constraints, they may need to be revised. As a rule, “if it is all right for a person to bring about a certain situation, then it is all right for that person to enlist the freely given help

of others in bringing it about.” James Rachels rightly identifies this as “a general principle of moral reasoning”.⁴⁸ If this principle is sound, it seems to me that we are left with two options. We can maintain that citizens are “always free to rebel” in the absence of liberal democracy, but then cosmopolitan interventionism cannot be coherently resisted: If oppressed subjects need not appeal to “more important rights” in order to justify denying their countrymen a state that embodies their national identity, then neither must foreigners acting on their behalf. On the other hand, if we insist that foreign intervention is only justified when it is necessary to defend rights that are more important than the right to a state that fits, then the same goes for rebellion. But insofar as this excludes some internationally ratified human rights, it follows that oppressed subjects are not “always free to rebel” in the absence of liberal democracy after all. They are free to rebel only when their oppression reaches a certain threshold, or when a certain subclass of their rights come under attack.

IV

Of course none of this should be taken to suggest that intervention is justified *all things considered* wherever rebellion is. Even where the means employed and the ends sought are similar, a foreign invasion can be expected to provoke stiffer resistance than a local uprising, augmenting its costs and potentially impeding its success. Thus inter-state war can fail to satisfy the prudential constraints (proportionality, likelihood of success) where intra-state war would fulfil them. Humanitarian intervention might also conflict with the domestic obligations of the state that prosecutes it, depending on how one conceives of the social contract that binds a government to its people. According to what Buchanan calls the “discretionary association” view, citizens empower their government to act as an agent or trustee *for the sole purpose of promoting their interests*. We each submit to the authority of our government and relinquish a portion of our earnings in tax in return for this service. The contract says nothing about using public resources to render assistance to foreigners.⁴⁹ Therefore humanitarian intervention involves a state violating the fiduciary rights of its taxpayers.

It might also be said to violate the rights of the military personnel deployed. Martin Cook describes the “implicit moral contract” between a state and its armed forces as follows:

The military contract obliges military personnel to run grave risks and to engage in morally and personally difficult actions. They do these things on the basis of the implicit promise that the circumstances under which they must act are grounded in political leadership’s good faith judgment that the defense of sovereignty and integrity of the nation (or, by careful extension, the nation’s vital interests) require their action.⁵⁰

The crucial point here is that soldiers implicitly agree to fight and die only for their country and its vital interests. A government that uses military force to defend human rights beyond its borders thus tramples on the rights of its own armed servicemen and women in the process.

Clearly, then, there are many factors that can potentially make humanitarian intervention impermissible even where rebellion is acknowledged to be a legitimate option. But the fact that an intervention might deprive substantial numbers of people of a state that they can “call their own” is not one of them. The right at the centre of Walzer’s argument simply cannot do the work he employs it for: it cannot support sharply contrasting positions on insurrection and intervention. We must either deny that citizens are “always free to rebel” in the absence of liberal democracy, or else deny that a subset of “sovereignty-trumping” rights needs to be isolated. Either some illiberal states are morally immune from the violent resistance of their subjects, or all illiberal states are legitimate targets of foreign intervention.

NOTES

¹ Walzer, M. (1980) 'The moral standing of states: A response to four critics', *Philosophy and Public Affairs*, 9.3, p. 215.

² Walzer, M. (1970) *Obligations: Essays on Disobedience, War, and Citizenship*, (New York: Simon and Schuster), p. xii.

³ Teson, F. (1995) 'The Rawlsian theory of international law', *Ethics and International Affairs*, 9, p. 91, and Beitz, C. (2001) 'Human rights as a common concern', *The American Political Science Review*, 95.2, pp. 269-83.

⁴ Evans, M. (2002) 'Selectivity, imperfect obligations, and the charter of humanitarian morality', in Alexander Moseley and Richard Norman (eds.), *Human Rights and Military Intervention*, (Aldershot: Ashgate), p. 135.

⁵ Rawls, J. (1999) *The Law of Peoples*, (Cambridge MA: Harvard University Press), p. 80, n. 23.

⁶ *Ibid.*, p. 79.

⁷ Walzer, 'The moral standing of states', p. 211.

⁸ *Ibid.*, p. 212.

⁹ *Ibid.*, p. 226. For the sake of argument I am granting that foreign intervention necessarily compromises a people's right to a state that fits them. But it is worth pointing out that this is contentious. An intervening force might simply put a stop to a genocidal rampage and withdraw, without fundamentally disturbing the prevailing political order.

¹⁰ *Ibid.*, p. 212.

¹¹ *Ibid.*, p. 214.

¹² *Ibid.*, p. 213.

¹³ Myerson, D. (2000) *Blood and Splendor: The Lives of Five Tyrants, from Nero to Saddam Hussein*, (New York: Harper Collins), pp. 84-5 and 168.

¹⁴ Walzer, 'The moral standing of states', p. 213.

¹⁵ The innocent civilians killed, maimed, and made homeless are obviously wronged as well, but these individuals are not wronged simply in virtue of the fact that their state is being subjected to coercive interference.

¹⁶ Luban, D. (1980) 'The romance of the nation state,' *Philosophy and Public Affairs*, vol. 9, no. 4, p. 395.

¹⁷ Goldhagen, D.J. (1996) *Hitler's Willing Executioners: Ordinary Germans and the Holocaust*, (New York: Knopf).

¹⁸ *Ibid.*, p. 29.

¹⁹ Quoted in Goldhagen, p. 82.

²⁰ *Ibid.*, p. 118.

²¹ *Ibid.*, p. 101-02.

²² Mabry, M. (1993) 'Cannibals of the Red Guard: smuggled out of China, evidence of atrocities', *Newsweek*, January 18.

²³ Glover, J. (1999) *Humanity: A Moral History of the Twentieth Century*, (London, Jonathan Cape), p. 292. Emphasis added.

-
- ²⁴ Nikolic, L. (2003) 'Ethnic prejudices and discrimination: the case of Kosovo', in Florian Bieber and Zidas Daskalovski (eds.), *Understanding the War in Kosovo*, (London; Portland: Frank Class), pp. 55-6.
- ²⁵ Walzer, M. (1983) *Spheres of Justice: A Defense of Pluralism and Equality*, (New York: Basic Books), p. 26; Walzer, M. (2000) *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd Edition, (New York: Basic Books), p. 254.
- ²⁶ Allen Goldman has explicitly put this forward as a standard for legitimate humanitarian intervention. Goldman acknowledges that a people's right to express their culture through their political arrangements is "important and fundamental", but adds that it is annulled or overridden when this liberty is used "to oppress and violate equally or more fundamental rights." Goldman, A. (1982) 'The significance of national boundaries', *Midwest Studies in Philosophy*, 7, p. 443.
- ²⁷ United Nations Covenant on Civil and Political Rights, Article 25. Quoted in Franck, T. (1995) *Fairness in International Law and Institutions*, (Oxford: Clarendon Press), p. 110.
- ²⁸ Beitz, C. (1992) 'Procedural equality and democratic theory', in John Arthur (ed.), *Democracy: Theory and Practice*, (Wadsworth: Belmont, California), p. 227.
- ²⁹ Talbott, W.J. (2005) *Which Rights Should Be Universal?*, (Oxford: Oxford University Press), p. 140.
- ³⁰ Lively, J. (1975) *Democracy*, Oxford: Blackwell, pp. 134-35. See also Beitz, 'Procedural equality', p. 227.
- ³¹ Miller, D. (1978) 'Democracy and social justice', *British Journal of Political Science*, 8, pp. 1-19.
- ³² See Jones, P. (1994) *Rights*, (Basingstoke: Macmillan), Chapter 13.
- ³³ Tamir, Y. (1993) *Liberal Nationalism*, (Princeton: Princeton University Press), p. 72.
- ³⁴ For more on this point, see Kymlicka, W. (1995) *Multicultural Citizenship: A Liberal Theory of Minority Rights*, (Oxford: Clarendon Press) p. 89, and Peetush, A.K. (2003) 'Cultural Diversity, Non-Western Communities, and Human Rights', *The Philosophical Forum*, 34.1, pp. 1-19.
- ³⁵ To describe Zimbabwe in the 1980's as a democracy is perhaps to use the term too loosely. While elections were held and the judicial system did function independently, the Mugabe regime regularly invoked its "emergency powers" to detain political opponents and to restrict civil liberties. 'Zimbabwe', in George Thomas Kurian (ed.), *Encyclopedia of the World's Nations*, vol. 3, New York: Facts on File Inc., 2002, p. 2438. Botswana, however, is considered to be a fully free nation in terms of civil and political rights, having "conformed to the fundamental principles of the rule of law, political democracy, and respect for human rights since independence" in 1966. See 'Botswana' in George Thomas Kurian (ed.), *Encyclopedia of the World's Nations*, vol. 1, New York: Facts on File Inc., 2002, pp. 268-9.
- ³⁶ A Sen, A. (1999) *Development as Freedom*, (Oxford: Oxford University Press), p. 187.
- ³⁷ Davenport, C. and Armstrong, D. (2004) 'Democracy and the violation of human rights: a statistical analysis from 1976 to 1996', *American Journal of Political Science*, 48.3, pp. 538-54; Henderson, C. (1991) 'Conditions affecting the use of political repression', *Journal of Conflict Resolution*, 35, pp. 120-142; Mitchell, N.J. and McCormick, J.M. (1998) 'Economic and political explanations of human rights

violations', *World Politics*, 40, pp. 476-498; Poe, S. and Tate, C.N., (1994) 'Repression of personal integrity rights in the 1980's: a global analysis', *American Political Science Review*, 88, pp. 853-72; Zanger, S. (2000) 'A global analysis of the effect of political regime changes on life integrity violations, 1977-1993', *Journal of Peace Research*, 37.2, pp. 213-33.

³⁸ Quoted in *Ibid.*, p. 167.

³⁹ *Ibid.*, p. 170.

⁴⁰ As Chua puts it: "Tito's Yugoslavia was a bomb waiting to explode. And the bomb was detonated by—democratization. *Ibid.*, p. 173.

⁴¹ See Beevor, A. (2006) *The Battle for Spain: The Spanish Civil War, 1936-39*, (London: Weidenfeld and Nicolson), part II.

⁴² Holgiun, S. (2002) *Creating Spaniards: Culture and National Identity in Republican Spain*, (Madison: The University of Wisconsin Press), p. 169.

⁴³ *Ibid.*, p. 17.

⁴⁴ The term "prudential constraints" is taken from Coady, C.A.J. (2008) *Morality and Political Violence*, Cambridge; New York: Cambridge University Press, chapter 5. Some would say that this as a misnomer. Prudence is often treated as essentially a matter of self-interest, while the requirements of success, proportionality, and last resort, are moral constraints on war-making that are concerned with its consequences for all affected. As Coady points out, however, one can exercise prudence with respect to the interests and wellbeing of others, and more generally, prudence is concerned with "the judicious, feasible and efficacious implementation of moral principles and virtuous injunctions as well as plans and objectives." Coady (2008), *Morality and Political Violence*, p. 89. In any case, readers who disagree with this usage are invited to substitute "prudential constraints" with any of the other labels given to these conditions, such as "precautionary principles" or "consequentialist conditions."

⁴⁵ Hurka, T. (2005) 'Proportionality in the morality of war', *Philosophy and Public Affairs*, 33, p. 47.

⁴⁶ While it is the predominant view amongst legal scholars and jurists that the Charter prohibits intervention without a UN mandate, it is important to point out that this is not unanimously accepted. See for instance Teson, F. (2005) *Humanitarian Intervention: An Inquiry into Law and Morality*, (Ardsley N.Y: Transnational Publishers).

⁴⁷ See Buchanan, A. (2003) 'Reforming the law of humanitarian intervention', in J.L. Holzgrefe (eds.), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, (Cambridge: Cambridge University Press).

⁴⁸ See James Rachels, *The End of Life: Euthanasia and Morality*, Oxford: Oxford University Press, 1986, p. 86.

⁴⁹ Buchanan, A. (1999) 'The internal legitimacy of humanitarian intervention', *The Journal of Political Philosophy*, 7.1, pp. 71-87.

⁵⁰ Cook, M.L. (2000) 'Immaculate war: constraints on humanitarian intervention', *Ethics and International Affairs*, 14, p. 62.