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# Imprints

Brian Barry

Darrel Moellendorf,  
Christopher Bertram and  
Saladin Meckled-Garcia

Stephen de Wijze

Interview

Symposium on the Justice  
of War in Afghanistan

The Limits of  
Reasonableness

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Barry

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*IMPRINTS* aims to promote a critical discussion of socialist ideas, freed from theoretical dogma but committed to the viability of an egalitarian and democratic politics. We take for granted that most societies in the world are characterised by class oppression, but that class division does not exhaust the unjust inequalities to which their peoples are subject.

Contributions are invited on topics such as the theory of history, the normative foundations of politics and the philosophical foundations of social inquiry; and on social inequality, political practice and institutional change. The criteria for the acceptance of papers include analytical power and empirical rigour; no school of thought or intellectual tradition is excluded, although we are committed to the view that the world remains a rationally intelligible place.

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Interview:

## Liberal Egalitarianism, Impartiality and Multiculturalism: An Interview with Brian Barry

*You are one of the best known and most staunch defenders of liberal egalitarianism on the contemporary scene. What led you to political philosophy, and liberal egalitarianism in particular? Are there any specific concerns you think of as animating all of your work?*

If you look at my work as a whole, I think that it could best be described as a sustained attempt to think about politics. This has involved a rather disparate set of inquiries, unified if at all, by a sense that getting the right answers mattered. A good deal of it has turned around theories of democracy and power, and most of the ideas discussed have not been produced by political philosophers. There has usually been some normative bottom line, because important theoretical issues are unlikely not to have some implications for the justification or criticism of institutions. But the normative work involved has often consisted primarily of exposing the buried – and frequently implausible –

normative premises underlying the theory in question. I have also, of course, written books that would be more conventionally described as political philosophy, but I regard *Theories of Justice* and *Justice as Impartiality* as only the first steps towards the critique of institutions. *Culture and Equality* diverted me from my intentions there, and (as usual) became a bigger book and a more time-consuming project than I originally envisaged. I felt, however, that it was a job that needed doing, and, since nobody else seemed to be doing it, I decided I had better do it myself. Most of it is devoted to the discussion of questions about the way in which the law should relate to cultural diversity and in that sense I regard it as one aspect of the project of drawing specific conclusions from egalitarian principles. Perhaps due to a lack of imagination, I cannot conceive of any alternative to egalitarian liberalism that is worth paying attention to, apart from cultural relativism of some kind. The core of *Culture and Equality* is a demonstration of the unrecognised pervasiveness of cultural relativism among contemporary political philosophers and its obnoxious consequences in providing aid and comfort to oppressors and exploiters all over the world.

*You are well known for arguing that liberal institutions should not be defended using strategies which aim to remain neutral between different conceptions of the good ('How not to defend liberal institutions'). Yet you have also argued that reasonable people ought to adopt a sceptical attitude towards their own beliefs, given that they cannot convince others to accept them through the free use of reason ('Justice as Impartiality'). But it might be argued that the latter view makes a neutralist defence of liberal institutions the obvious option in political justification. Could you say something about each of these positions, and the relationship between them?*

As I said in *Culture and Equality*, liberal institutions can indeed be supported by appealing to an ideal of autonomy. But I wish to maintain (as I argued there) that they can be justified independently as necessitated by some simple ideas about what equal treatment requires. To that extent, I repudiate the position taken in 'How not to Defend Liberal Institutions'. For example, to say that people should not be punished for converting from the religious beliefs in which they were brought up can be based on an argument for the equal treatment of all religious (and non-religious) believers. It does not require any view



about the desirability or otherwise of people accepting their religious beliefs as giving meaning to their lives without worrying too much about competing attractions. Of course, if you want to say that making alternatives available to people entails giving a value to autonomy, then liberal institutions must rest on the value of autonomy. But this seems to me a very weak sense of the word, since it really just means denying that preventing people from deviating from one single set of beliefs has priority over the demands of equal treatment.

*You have recently argued that a commitment to equality should lead us to be suspicious of multiculturalism. What is your argument for this view? How do you respond to people, like Will Kymlicka, who argue that multiculturalism is demanded by our commitment to equality?*

In many instances, equal treatment does have to take account of cultural diversity, as I argued in chapter 2 of *Culture and Equality*: indirect discrimination is precisely the imposition of requirements (about clothing or hairstyle, for example) that cannot be shown to be necessary. But Kymlicka's view is that, as long as some group of people satisfy his criteria for a 'nation', they have an overriding right to do whatever they like. This clearly rests on the same premises as cultural relativism: the exaltation of culture over equality.

*Given your suspicion of multiculturalism, how does your commitment to equality accommodate what might be termed the 'new politics of identity' as found in, for example, the women's movement, black movement, gay movement, and disability movement? These movements affirm and celebrate the differences between people rather than the ways in which they are the same. Do you think such movements are attractive from an egalitarian perspective?*

As long as they stick to celebrating, that is surely not incompatible with liberal institutions, which allow for all kinds of group activities as long as engaging in them is voluntary. Anti-discrimination measures should address direct and indirect discrimination against members of all the groups you mention, of course, and extra resources should go to those who suffer from disadvantages in the ability to achieve standard goals (my examples in chapter 4 of *Culture and Equality* were the disabled and inner-city African-Americans). However, if the 'politics of identity'

is understood as requiring the political recognition of groups such as those you mention, it is liable to lead to inequity and oppression. Multiculturalists are quick enough to seize on the dangers of a politics of national identity, which presupposes a homogeneity of ideas and aspirations that does not exist and legitimates the imposition of some people's notions of this identity on others. But the 'politics of identity' within countries has exactly the same potential for some people to claim to speak on behalf of the group as a whole and impose their own agenda.

*In Culture and Equality you discuss the role of the family and education a great deal. These issues were bread-and-butter to the great political theorists of the past – Locke, Kant, Rousseau, Mill, etc. Why do you think these issues have been neglected for so long by contemporary liberal theorists – and what explains the sudden re-emergence of discussion about them?*

There are no first-rate anglophone political philosophers between Mill and Rawls, and he was very well aware in *A Theory of Justice* of the relation between education and equality of opportunity. If Alan Ryan would like to insert Dewey between them, fine, but let me then point out that he was centrally concerned with education. Since 1971, I do not think that the issue raised by Rawls has been neglected. But multiculturalism has, of course, expanded the agenda, which accounts for chapter 6 of *Culture and Equality* and several books on the same theme. How far parents should be able to determine what their children learn is a crucial aspect of this. As far as I can tell, most American states do not even check on school-age children to see if they are attending a school, and still less do they ensure that private schools are educationally acceptable or that, if the children are not attending any school, 'home schooling' is meeting basic standards. I would like to see American political philosophers taking more interest in the issues that this raises for the future viability of their society, and spending less time obsessing about the content of the curriculum of the state schools.

*Turning to politics and policy, some commentators think that Britain's Labour government is pushing at the boundaries of the feasible set of egalitarian policies; others that it is pursuing Thatcherism with a human face. These two beliefs are, in fact, consistent, as long as you hold a sufficiently pessimistic view of what is feasible. Which, if either, do you*



*have more sympathy for, and if it is the latter what do you think a more egalitarian government could be doing differently?*

The ratio between the income of (size-adjusted) households at the ninetieth percentile of the income distribution and the tenth percentile lies between 2.6 and 2.9 for the Nordic countries, and stands at 3.2 for Germany, the Netherlands and Belgium. It is 3.5 for France and in Britain it is 4.6. Inequality in Britain has increased sharply in the last twenty years while it has increased only a little or not at all in these other countries. It has political causes such as the weakness of the unions, the low minimum wage and the miserably low levels of state cash benefits in relation to the median income. The other countries, which have per capita GDPs around that of Britain, also have better health care, better schools and better public services generally (including, needless to say, public transport). Their workers have shorter hours and more time off for family responsibilities. Coming to Britain from one of them feels a bit like going to a third world country – and this is hardly surprising since the economic path followed by Britain is much the same as that of an IMF ‘structural adjustment’ programme. There is really no question that Britain could be a far better country to live in for a majority of the population and especially for those below fifty per cent of median income – a category almost abolished in a number of other countries. When Blair was asked if it wasn’t odd that he had more in common with Berlusconi than with the leaders of other western European countries, he is reported as having responded with the usual garbage about left and right not making a difference any more. In fact, the difference between being pro-equality and anti-equality is exactly the same as it ever was. The point is simply that Blair is anti-equality, and in fact goes around boasting of it.

*On a specifically policy-oriented front, you have changed your mind about the desirability of unconditional basic income from a liberal egalitarian perspective. In ‘Equality, Yes, Basic Income, No’ (1992) you argued that basic income should be eschewed by egalitarians, whereas in ‘The Attractions of Basic Income’ (1997) you offer a plethora of reasons for thinking that basic income is one of the ways forward for egalitarians. Could you explain what led to this change of mind, and*

*why you have overcome your earlier reservations about basic income qua egalitarian policy?*

I continue to believe that a basic income is not required by considerations of justice (as argued by Philippe Van Parijs in *Real Freedom for All*). But a basic income would give a boost to low incomes across the board and give people more control over their lives, among other advantages. These advantages could be obtained to some degree by a basic income well below subsistence level. As its level increased, it would be possible to see if it had any serious tendency to produce a significant number of people who engaged in neither paid employment, nor caring for children and elderly or infirm relatives, nor socially valuable unpaid work. Alternatively, basic income could be introduced (as Tony Atkinson has proposed) in the form of a ‘participation income’, which would make it conditional on some useful activity or other for the able-bodied not in paid employment. However, this would be open to a good deal of bureaucratic arbitrariness and corruption, so it seems to me unwise to get into it unless the scale of abuse of an unconditional basic income proves unacceptable.

*How do you think liberal egalitarians should respond to the war in Afghanistan? Do you believe that political philosophers have a duty to construct theories fit to address problems found in the real world, such as that of how to establish a stable and just government in a country populated by different and conflicting ethnic groups, such as Afghanistan?*

I believe that the importance of universalistic principles (for which human rights of the usual kind are a good shorthand) cannot be overestimated in third world countries. I gather that in Latin America, anyone who talks about abuses of human rights among indigenous peoples is liable to be told that that’s all out of date and has been refuted by Taylor and Kymlicka. Similar claptrap is already being talked in some circles about the impermissibility of international pressure to improve the position of women in rural Afghanistan.

*Reflecting on the tone of your (famous) review of Nozick’s Anarchy, State and Utopia, you wrote that sometimes an ‘emotional’ response is the only honest ‘intellectual’ response. Since then you have become famous for your ‘robust’ comments on both friends (Jerry Cohen, Rawls,*



*etc.) and enemies (Gauthier, Walzer, recently Berlin and various multiculturalists). What drives your style? Is it intellectual outrage, a desire to say it as you see it, or is it more a preference for philosophy with a critical edge? Have you ever regretted anything you have written because of its tone?*

*Anarchy, State and Utopia* still strikes me as the equivalent of the lucubrations of somebody who believes he is a poached egg and then draws from it conclusions such as that he should sit on slices of buttered toast. Jerry Cohen's heart was in the right place in seeking to show that being a poached egg might have other implications. In the end, however, he simply pointed out that there was no reason for believing one was a poached egg in the first place, and I don't see how (short of not reviewing the book – an option I have sometimes taken) I could not have said that I thought the ingenuity expended along the way could have been more fruitfully directed. As far as the other people you mention are concerned, I believe that their ideas have implications that lead directly to oppression and in a number of cases death (either by deprivation or violence) and that some of them probably have actually contributed to those results, though primarily by providing justification for things that governments, ethnic leaders and so on were inclined to do anyway rather than by directly instigating them. The only reason I can think of for not attacking them as effectively as possible is that it might be counterproductive by creating sympathy for them. I don't know if I have ever done so, but I would certainly regret that.

*What are you working on now?*

I recently completed a response to a number of critics of *Culture and Equality* for a book, *Multiculturalism Reconsidered*, that Paul Kelly is editing and Polity Press is publishing. I am polishing up a short book for the same publishers entitled *Why Social Justice Matters*, which lays out the egalitarian liberal position presupposed but only incidentally argued for in *Culture and Equality*. I feel fairly confident that the word 'multiculturalism' does not appear in it, and it would be an understatement to say that I have no plans for returning to the topic. I suppose that I might be tempted if somebody found anything fundamentally new to say about it, but the books on the subject

published since I finished writing *Culture and Equality* in early 2000 do not suggest that there is any imminent threat of this happening. A quite different kind of project, which involves no normative political philosophy though it does have normative implications, is an essay about the kind of knowledge produced by political science and its usefulness as a basis for offering well-grounded advice. This is going to be the substance of a British Academy Centennial Lecture to be delivered in May 2002 at Glasgow University.

Symposium:

## Is the War in Afghanistan Just?

Darrel Moellendorf

THE US led military response to the 11 September terrorist attacks is yet another in a series of post-Cold War conflicts that has divided the left.<sup>1</sup> In days gone by it was relatively easy to gain consensus among people and parties of the left against US intervention in various parts of the world. Typically such intervention sought to rollback electoral or military advances by democratic or socialist forces. In the political

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\* This symposium on September 11<sup>th</sup> and the war in Afghanistan consists of three papers. Although the papers by Christopher Bertram and Saladin Meckled-Garcia were originally drafted as responses to an initial piece by Darrel Moellendorf, Moellendorf has revised his paper in the light of their responses and they have also revised in the light of his. The accounts for oddities of cross-reference. Bertram and Meckled-Garcia have not responded to one another's papers, which are each directed at Moellendorf's.

<sup>1</sup> An earlier version of this paper was presented at a Hoernlé research seminar in the Philosophy Department of the University of the Witwatersrand. I am grateful to participants for the many helpful comments. I would also like to thank the editors of *Imprints* for giving me this opportunity to think through my confused thoughts on the war in the context of a lively debate, Christopher Bertram and Saladin Meckled-Garcia for their thought provoking responses and for allowing me to revise in light of their own papers, and Thad Metz, Michael Pendlebury, and Kok-Chor Tan for advice on an earlier draft.

dynamic of the Cold War, the US could be counted on invariably to be on the wrong side. With the Gulf War, the invasion of Haiti, the war against Serbia, and now the war in Afghanistan, that apparently solid left-wing anti-war consensus has crumbled.

Part of the difficulty in gaining leftwing consensus on post-Cold War conflicts is that there is no general agreement on the left about the considerations that determine the justice of war. This is only part of the problem since there may be room for reasonable disagreement about the application of the criteria of the justice of war. Agreement on the criteria, however, does provide at least the hope of productive discussion on the morality of war. I shall defend what I take to be the correct considerations and apply them to the war in Afghanistan. Although these considerations cast some doubt on the justice of the war, I believe that several of the particular judgements that have to be made in coming to an overall assessment are necessarily on much less firm ground than is desirable, and that the question of the justice of resorting to war is distinct from the question of whether once war was begun the moral balance was in favour or against it. My focus will be on the justice of resorting to war in this case, or on matters of *jus ad bellum*, rather than the justice of the conduct of the war, or matters of *jus in bello*. Questions of the justice of conduct are of obvious importance in a moral assessment of any war, but space does not permit extending this discussion to those issues. And in any case, the question of the justice of resorting to war is the more fundamental one for it addresses not merely the means by which the war is prosecuted but whether it should be, or should have been, initiated at all.

### I. *Jus ad bellum*

I maintain a middle position that not all wars are permissible, say, for reasons of national interests, and that not all wars are morally objectionable. I would imagine that this middle ground has widespread intuitive appeal, but the real job is in setting out the requirements of justice that define it. The necessary criteria, I believe, are just cause, reasonable likelihood of success, proportionality and last resort.

Why are these the necessary conditions for the justice of war? The starting point is that because war causes all manner of intended and unintended suffering, there is a general presumption that it is wrong. A



war that is not a response to an injustice, or that is likely to fail, or that creates more injustice than it corrects, or that could have been avoided is one that cannot defeat the presumption against causing suffering.

Would these conditions taken together provide sufficient reason to resort to war? If in the absence of alternatives resorting to a war reasonably calculated to improve a significant injustice is not justified, then it is difficult to imagine when resorting to war would ever be justified. Of course, one response to this is to claim that this merely shows that it is difficult to imagine when resorting to war really is justified. In other words, the presumption against causing suffering is a very strong one.<sup>2</sup> Clinching the argument against this pacifist perspective is not possible here, and perhaps not at all.<sup>3</sup> One thing that might be done, however, is to imagine situations real or not terribly ideal in which all of the above conditions are met and the wrong that could not be rectified without going to war is very grave. Pacifists can still bite the bullet, as it were, in these cases, but not without allowing a great deal of preventable injustice. This provides some reason to believe that the criteria taken collectively provide a sufficient condition for resorting to war to be just.

The doctrine of *jus ad bellum* guides our judgements of whether resorting to war in the given circumstances is just. From what time frame should information be drawn when assessing this matter? We can imagine two responses: One holds that in judging the justice of a war all information is relevant, both that which could have been known prior to the initiation of hostilities and that which could only have come to light afterwards. For after all, what we want to know is an objective matter: In light of all the relevant evidence and considerations, was it just to go to war. Knowing this may provide some guidance for the future. Alternatively, any evaluation of the justice of a war, if it is to offer a moral evaluation of the actions taken by the belligerents, and those who opposed the initiation of the war, must be restricted to the considerations

<sup>2</sup> A defence of this view can be found in Robert Holmes, *On War and Morality* (Princeton: Princeton University Press, 1989).

<sup>3</sup> I discuss the pacifist position at greater length in *Cosmopolitan Justice* (Boulder: Westview Press, 2002), chp. 7.

that were available to them prior to the beginning of the war. One cannot hold war-makers responsible on the basis of considerations that could not have been known at the time. To ask whether a war is just within these constraints on information, then, is to seek an answer that is relevant to assessing the moral responsibility of the prosecutors of the war. This is my interest in what follows.

## II. Anti-imperialism

There is a view that traditionally has had considerable credence on the left that goes roughly like this: All wars by imperialist powers are to be opposed because by the nature of imperialism they are either (a) lacking in just cause, or (b) compromised by bad intentions even where just grounds exist, or (c) politically too dangerous for the future even though satisfying all the criteria for *jus ad bellum*.

The claim that an imperialist war lacks just cause is not apparent *a priori*. For according to standard views of imperialism the relationship between a war by an imperialist state and injustice is contingent. Classical accounts of imperialism take it to be the export of capital from developed states to less developed ones.<sup>4</sup> The criticism of imperialism on these accounts is that it tends to produce competing economic interests in colonising states, and the defence of these interests typically requires state military action. Assuming this account, it would remain an empirical matter in any given case of war whether the war fulfilled the criteria of *jus ad bellum*. Perhaps an imperialist state may act on reasons other than the protection of the economic interests of its powerful citizens; or perhaps for some reason these interests coincide with justice in a given situation. Post-war accounts of imperialism often take it to involve financial or trade arrangements that cause the development of the developed economies at the expense of the underdevelopment of the

<sup>4</sup> Cf. Nikolai Bukharin, *Imperialism and World Economy* (London: Merlin Press, 1976); Rudolf Hilferding, *Finance Capital* (London: Routledge and Kegan Paul, 1981); J.A. Hobson, *Imperialism: A Study* (London: James Nisbet and Co., 1902); and V.I. Lenin, *Imperialism: The Highest Stage of Capitalism, Collected Works*, vol. 19, (Moscow: Progress Publishers, 1964) and Rosa Luxemburg, *The Accumulation of Capital* (London: Routledge and Kegan Paul Ltd., 1963).



less developed economies.<sup>5</sup> Even if some version of the underdevelopment thesis is true, it does not follow that all wars by imperialist powers are all-things-considered unjust. Perhaps a war may do nothing to overthrow imperialist economic relations, but results in the replacement of a dictatorship with institutions of parliamentary democracy. In general, a criticism on the basis of just cause has to rest on more than the observation that it is prosecuted by an imperialist state.

What of the other two disjuncts of the anti-imperialist position stated above? Suppose the anti-imperialist shows that, despite just grounds for war, the state's intentions are suspect. Notice that this criticism involves a very different concern than the four criteria I offered above. Each of the four is objective in the sense that it does not ask us to enquire about the state-of-mind of the war-makers. But perhaps we should. Perhaps we should worry that an otherwise just war is a pretext for insidious intentions. This I think is problematic, misguided and unnecessary. It's problematic because states are corporate bodies and therefore may have multiple and perhaps even conflicting intentions. Saladin Meckled-Garcia believes that the intentions of a war-making state can be inferred by its past actions with respect to international law, various (unstated) influences on policy, the attitudes of the branches of government and the wider political culture and the state's behaviour both in international bodies and with respect to other states. I see no reason to suppose that any of this material is going to provide the basis for a reliable inference about a single intention of a state. As with real persons, many and diverse intentional accounts may go some ways toward explaining actions. But more problematic is the possibility of multiple and even conflicting intentions among policy-makers who agree on the action to be taken. The phenomenon of internal conflict is familiar enough in real persons, but it is multiplied many times in the case of corporate bodies.

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<sup>5</sup> The classic texts in underdevelopment theory are Paul A. Baran, *The Political Economy Of Growth* (Harmondsworth: Penguin Books Ltd., 1978), Arghiri Emmanuel, *Unequal Exchange* (London: Monthly Review Press, 1972), Andre Gunder Frank, *Capitalism And Underdevelopment in Latin America* (New York: Monthly Review Press, 1969) and Immanuel Wallerstein, *The Capitalist World-Economy* (Cambridge: Cambridge University Press, 1979).

Worrying about the intentions of war-making states is any case misguided because the intentions of the government are irrelevant to the justice of its actions. Suppose that a state instituted a basic income grant as a means to co-opt growing unrest among the impoverished. This does not affect the justice of the policy although it should make those concerned with justice doubtful about what more to expect from the government in the absence of a struggle.

Additionally, worrying about the intentions of war-making states is unnecessary because the three criteria of just cause, reasonable likelihood of success and proportionality in combination sort out those wars that are likely to serve the ends of justice within moral constraints from those that are not. Consider two possible replies. The first is that these criteria are blind to insidious intentions, assuming for the sake of argument that such intentions can be reliably inferred. I maintain nevertheless, as in the example of the provision of the basic income, that consideration of state intentions is unnecessary to an evaluation of the justice of its policy. The second is that good intentions will provide additional assurance that the ends of justice are served. If, however, intentions are only important in the service of just ends, then we have all the necessary considerations we need with the criteria of just cause, reasonable likelihood of success and proportionality. If a war is unlikely to succeed or to be proportional, being the result of good intentions will not make it any more likely. If it is to succeed or be proportional, considering the intentions is unnecessary. Nor, contrary to the claims of Meckled-Garcia, is assessing the intentions of belligerents necessary to identify the existence double standards. Double standards among belligerents exist when any of the four criteria that I have endorsed are selectively required or enforced.

Meckled-Garcia also asserts that the criteria that I endorse do not state which consequences are important when considering the justice of war. This is false. The considerations raised by the above the criteria are primarily focused on the likely consequence of the war, not the intentions of the war-makers. And that, I believe, is as it should be.

The remaining element of the above-characterised anti-imperialist position appeals to the possible precedent effect of supporting a war that satisfies the criteria of *jus ad bellum*. There are two problems with this criticism: First, it confuses the force of moral principles with the force of politics. Whether or not a justified principle will later be used to



rationalise unjust practices depends upon whether or not those who oppose injustice will later have the political means and will to prevent it. This is a matter of voting, lobbying and organising. It has nothing to do with the content of a principle. Additionally, the moral judgement that underlies this concern is troubling, for it tells us to ignore a present injustice – perhaps a great one – even when correcting it is reasonably likely to succeed because of the *possibility* that corrective action will rationalise uncertain future injustices. If we took that principle seriously we would be paralysed with respect to the possible correction of all manner of present injustices since with any action-guiding principle there is the possibility that it could be misused. In sum, the anti-imperialist critique of a war should address the criteria of *jus ad bellum* that I supported in section I.

### III. Just cause and sovereignty

The traditional criterion of just cause holds that just cause for war exists if and only if either the territorial integrity or political sovereignty of a state has been violated or there is a credible immanent threat of such a violation.<sup>6</sup> This statist conception of just cause has no place in a theory

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<sup>6</sup> Consider article two of the United Nations Charter: '2(4) All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations.' Leland M. Goodrich, et al., *Charter of the United Nations*, 3rd edition (New York: Columbia University Press, 1969), p. 60. In fairness, there is a very extensive debate in the literature about whether 2(4) would sanction unilateral interventions that do not violate territorial integrity and political sovereignty but promote justice. For representative samples of the negative answer cf. Michael Akehurst, 'Humanitarian Intervention,' in Hedley Bull (ed.) *Intervention in World Politics* (Oxford: The Clarendon Press, 1984), pp. 95-118; and Ian Brownlie, 'Humanitarian Intervention', in John Norton Moore (ed.) *Law and Civil War in the Modern World* (Baltimore: The Johns Hopkins University Press, 1974), pp. 217-228. For representative samples of the affirmative answer cf. Richard B. Lillich, 'Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives', *Law and Civil War in the*

of the justice of war, and is anathema to egalitarian politics. For it shields all manner of correctable injustice that might occur within a state, just as invoking the privacy of the family shields all manner of injustice that might occur within domestic relations.

Taking justice for individuals seriously requires replacing the traditional criterion of just cause with one that is sensitive to injustice. A better criterion would be that intervention into the affairs of other states is just only if the intervention is directed towards advancing justice either in the basic structure of the state or in the international effects of its domestic policies.<sup>7</sup> Much could be said about this criterion, but here I would like to limit my comments to a short discussion of the injustices that provide justified grounds for resorting to war.<sup>8</sup> Not all domestic injustices provide the necessary grounds, only injustices to the basic structure do. This provides room for the politics of democratic self-government to address domestic policy injustices. But since those affected by international injustices typically have no voice in domestic democratic self-government, an international injustice that is the effect of domestic policy may be a just cause for resorting to war. This criterion then is sensitive both to democratic self-governance and to existing injustice. It strikes a balance between holding that any act of a state, in virtue of being an act of self-determination is protected, and that any injustice that a state commits is a justified ground for war.

### IV. The war in Afghanistan

How well does the war in Afghanistan measure up against the criteria of *jus ad bellum* that I advocate in sections I and III? I shall discuss the war in light of each of the four criteria.

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*Modern World*, pp. 229-251; and Fernando R. Tesón, *Humanitarian Intervention*, 2nd edition (Irvington-on-Hudson, N.Y.: Transnational Publishers, Inc., 1997).

<sup>7</sup> The concept of the basic structure is set out by John Rawls. He takes the basic structure to be 'the way in which the major social institutions distribute fundamental rights and duties and determine the division of political advantages for social cooperation.' Among major social institutions Rawls includes 'the political constitution and principal economic and social arrangements.' John Rawls, *A Theory of Justice*, revised edition (Cambridge: Harvard University Press, 1999), p. 6.

<sup>8</sup> For a longer discussion of this principle see my *Cosmopolitan Justice*, chp. 5



*Just cause*

Looked at one way the application of the criterion of just cause seems pretty straightforward. A state that gives refuge to terrorists who plan and execute foreign attacks that intentionally result in the deaths of more than two thousand civilians of other states is certainly one whose domestic policy results in serious international injustices. Additionally, the states whose citizens died in such attacks have a duty to protect the security of their citizens, which duty justifies pursuing those who carried out the attacks both to prevent them from carrying out further attacks and to deter others from trying something similar. Hence, one could claim that preventing and deterring future attacks on civilians is a justified cause of war.

There are, however, several criticisms of the justice of the cause of the war in Afghanistan that require consideration. I wish to examine four.

*1. The strength of Islamic fundamentalism in the region is the product of US cold war policy.*

There are well-documented accounts of the provision of aid to Islamic militants by the CIA in an effort to turn back the Soviet invasion of Afghanistan and to cause trouble for the Soviet Union more generally.<sup>9</sup> It is unclear whether bin Laden actually benefited from this aid.<sup>10</sup> In any case, the larger movement of which he is a part certainly did benefit. So, it is highly plausible that the strength of Islamic fundamentalism in that area is a product of US policy. In a sense, then, the current threat to the security of US civilians is in part the result of the certain activities of the US government.

Although the role of the US government in creating the present security threat is an indictment of its Afghanistan policy (and perhaps its Cold War policy more generally), it does not provide the basis for rejecting the existence of just cause for the war in Afghanistan. The

<sup>9</sup> For a recent example see Peter Popham's 'Taliban is a "monster hatched by the US"', *Independent*, 17 September 2001.

<sup>10</sup> 'Osama bin Laden: The Truth about the world's most wanted man', *Independent*, 16 September 2001.

argument that it does would seem to be the following: Since the US government is in very significant ways responsible for the threat to US (and other) civilians, it has no right to attempt to destroy the threat. But this is nonsense. Consider an analogy. Due to the negligence or recklessness of the tourist guides, a group of tourists are brought under attack by armed bandits. It in no way follows that these guides have no right to protect the tourists from the bandits. On the contrary, it would seem an additional moral failure if the tourist guides did not try to protect the tourists from a threat the guides themselves are in part responsible for. I see no reason why the same reasoning does not apply in the case of the terrorist threat from Islamic fundamentalists.

*2. The real intent of the war-makers is to secure strategic oil reserves.*

One criticism of the war is that the purported cause of the war to defeat terrorism is a pretext for the war's real intention, namely to access strategic oil reserves in central Asia.<sup>11</sup> According to this view, the war is really naked imperialism dressed-up as self-defence. Insofar as this is a criticism of the intentions of the US and its allies it is (for the reasons argued above) weak: Intentions are difficult to ascribe to governments; they are no help in assessing the justice of policy; and enough work can be done by determining whether the war is reasonably likely to be successful and proportional in the pursuit of a justified cause. So, if the war is reasonably likely to offer security from terrorism without creating significant injustices, it might be justified even though it may also open up central Asian oil reserves to Western imperialism.

In any case it seems implausible that the prevention of terrorist attacks is not the main intent of the US leadership. If an agent has mixed intentions for an action, the 'real' or primary one must exist even if the secondary ones don't exist. Additionally, to claim that one has an intention requires some evidence of the disposition to act on it. Hence, the advocate of the criticism of this section has to give evidence that the US had a willingness to engage in warfare in pursuit of Central Asian oil even in the absence of the terrorist attacks. To the best of my knowledge,

<sup>11</sup> Although not subscribing to the exclusivity of imperialist intentions, George Monibot argues for the motivational importance of central Asian oil reserves in 'America's Pipe Dream: The war against terrorism is also a struggle for oil and regional control', *Guardian*, 23 September 2001.



no one who defends this criticism has been able to offer such evidence. The objection seems to be no more powerful than the claim that the intentions of the US and its allies are mixed.

### 3. *Terrorism is a justified countermeasure to terrorism.*

Terrorist actions can be defined as violent actions that involve intentionally and successfully killing or severely harming non-combatants.<sup>12</sup> According to this definition the two attacks of 11 September on the World Trade Centre are terrorist actions. The attack on the Pentagon may not be; and if the fourth plane was headed for the White House and the commander-in-chief it also may not be. There is some ambiguity with respect to these last two attacks because although the targets of these attacks may have been military ones, they nonetheless involved using passengers merely as means to effect the destruction of military targets. It might be objected that this definition of terrorism is too broad, for what makes an action terrorist is that its perpetrators also intend to cause terror. I see no reason for this additional requirement. Although we call violent acts against non-combatants resulting from their intentional targeting *terrorist* because they typically cause terror, their moral import is less the terror caused, and more the physical harm done to non-combatants and their property. So, regardless of whether these acts in fact cause terror they are typically wrong in virtue their intentional harm to innocents.

The objection of this section may be put as follows: Terrorism is not always wrong because the principle of non-combatant immunity is conditional. It constrains a warring party only if its enemy observes it.<sup>13</sup> The US and other Western states are instrumental in the execution of policies that intentionally target non-combatants in, for example, Iraq where UN sanctions cause the death of some 40,000 children under five each year, more than 15 times as many people who died in all four

<sup>12</sup>See also C.A.J. Coady, 'The Morality of Terrorism', *Philosophy*, vol. 60, no. 1, (1985), pp. 47-69.

<sup>13</sup>For a defence of the conditional nature of non-combatant immunity see George I. Mavrodes, 'Conventions and the Morality of War', *Philosophy and Public Affairs*, vol. 4, no. 2 (1975), pp. 117-131.

attacks on 11 September.<sup>14</sup> These deaths are not spectacular, nor are they the subject of around the clock CNN coverage, but they are just as final as those on 11 September. This lack of regard for non-combatant immunity on the part of the US justifies intentionally targeting non-combatants on US soil.

One might try to reject this argument on the grounds that trade sanctions do not intentionally target non-combatants. Rather sanctions target regimes; their goal is to topple regimes or at least change their policies. The problem with this response is that it allows too much. For it maintains that an activity does not intentionally target civilians if its goal is to topple regimes or at least change their policies. According to this view smashing aeroplanes into busy city buildings also may not intentionally target non-combatants. In fact, in both cases civilians are intentionally targeted as a means to affecting the policies of regimes.

The real problems with the argument lie elsewhere. First, even if one accepted the conditional nature of the principle of non-combatant immunity, it would only justify terrorist attacks sanctioned by those states that are the victims of the terrorism supported by Western states. Second, and most importantly, there are good reasons to think that the principle of non-combatant immunity is not as weak as the argument requires. Perhaps there are conceivable circumstances in which the principle has exceptions, but I have difficulty imagining realistic circumstances in which it has exceptions. The presumption in favour of non-combatant immunity is much higher than the argument requires, even if it is not quite indefeasible.

The standard reasons in favour of the principle of non-combatant immunity are twofold. One is opposition to using persons merely as a means. The other is that intentionally targeting civilians dramatically increases the misery of war. Perhaps cases are imaginable in which just the opposite is true. The possibility of such cases gives some reason to doubt the complete indefeasibility of the principle, at least if one allows that consequences matter. Still, the two reasons provide a very strong presumption in favour of the principle. And in the absence of arguments that honouring such a principle would result in catastrophic consequences, the principle stands. In the case of the 11 September

<sup>14</sup>John Mueller and Karl Mueller, 'Sanctions of Mass Destruction', *Foreign Affairs*, 78:3, May/June, 1999, p.49.



attacks there is absolutely no reason to believe that the terrorist attacks were to prevent such consequences – indeed they wrought horrific consequences. So, the criticism fails.

*4. There is insufficient evidence to establish Osama bin Laden's responsibility.*

This criticism of the claim that the war in Afghanistan satisfies the criterion of just cause accepts the general terms of the argument that just cause exists for the effort to prevent and deter further attacks of terror. The devil, the criticism maintains, is in the detail. The Bush administration has not been very concerned to make public evidence that would establish Osama bin Laden's or Al Qaeda's responsibility for the 11 September attacks. It has failed in this regard to take seriously the democratic requirement of justifying the war to the population, even if most of the population and press were generally not in the mood to demand a justification. Prime Minister Blair, on the other hand, has been especially eager to make the case, releasing a document summarising the evidence against bin Laden and Al Qaeda in October just prior to the beginning of the war, and an updated version later in November.

Of the two documents released by Blair, the earlier is the more important since what is at issue is whether there was sufficient evidence of the responsibility of bin Laden and Al Qaeda prior to the beginning of the war. The document claims to provide sufficient evidence of this and of the capacity for further attacks.<sup>15</sup> On a question as important as whether going to war is just, it would be unreasonable to adopt a stance that simply gave the British government the benefit of the doubt. One has to examine the evidence.

The case is made on the basis of several categories of evidence, including (1) historical evidence to establish a motive and a will for terrorist attacks against the US, (2) similarities between the 11 September attacks and previous attacks for which there is good evidence implicating bin Laden and Al Qaeda and (3) alleged actions and

<sup>15</sup> *Responsibility For The Terrorist Atrocities In The United States, 11 September 2001*, 4 Oct. 2001. Available at [www.pm.gov.uk/news.asp?NewsId=2686](http://www.pm.gov.uk/news.asp?NewsId=2686).

pronouncements directly implicating bin Laden and Al Qaeda in the 11 September attacks.

The evidence under the first two categories is much stronger than that under the third. With respect to motive, the document cites quotations by bin Laden, now in the public domain, to the effect that Muslims have a religious duty to terrorise Americans as a reprisal for the US presence in the Middle East.<sup>16</sup> It also contains public statements by bin Laden praising the 1993 attack on the World Trade Centre as well as the attacks on US troops in Somalia in 1993 and on the US embassies in Kenyan and Tanzanian in 1998.<sup>17</sup>

The document also cites testimony and admissions linking bin Laden and Al Qaeda to the embassy bombings, the attack on the *USS. Cole* and a failed attempt on Los Angeles International Airport. One of the persons apprehended in the attack on the embassy in Kenya, Mohamed Sadeek Odeh, admitted personal involvement, and identified three others who intelligence authorities claim are members of Al Qaeda or Islamic Jihad. This later claim, however, has no independent confirmation and is therefore of questionable value in making a case against Al Qaeda.<sup>18</sup> Additionally intelligence reports claim that Odeh phoned a number in Yemen requesting money, and that that number was also used to contact bin Laden on the same day.<sup>19</sup> Stronger evidence is to be found in the statement of Khaflan Khamis Mohamed, arrested for the bombing of the embassy in Tanzania. Mr. Mohamed admitted membership in Al Qaeda.<sup>20</sup> Assuming Mr. Mohamed's statement is credible, it is implausible that Al Qaeda would be behind only one of two embassy bombings on the same day. The surviving member of the two-person bombing-party on the embassy in Kenya, Al 'Owali, identified the two commanders of the attack on the *USS. Cole* as participants in the east African embassy bombings.<sup>21</sup> So, there would appear to be a plausible

<sup>16</sup> *Ibid.*, secs. 22 and 54.

<sup>17</sup> *Ibid.* However, in this regard it is noteworthy that although the document claims that bin Laden has taken responsibility for the Somalia and embassy attacks, it does not adequately substantiate that claim. See the claim is made at sec. 4.

<sup>18</sup> *Ibid.*, sec. 47.

<sup>19</sup> *Ibid.*, sec. 46.

<sup>20</sup> *Ibid.*, secs. 47-48.

<sup>21</sup> *Ibid.*, sec. 58.



evidentiary trail connecting Al Qaeda to the *USS. Cole* attack. Additionally, Ahmed Ressam, arrested crossing the border from Canada into the US with over 100 lbs. of bomb-making material admitted both to planning to set-off a bomb at Los Angeles International Airport and to having received training in Al Qaeda camps.<sup>22</sup>

The above evidence seems to demonstrate a will by Al Qaeda members to attack US sights, and a number of attempts to do so on fairly large scale although the scale pales in comparison to that of the 11 September attacks. The testimonials and admissions do not directly implicate bin Laden. The unconfirmed intelligence report of the phone call to him provides a fairly slender thread. However, since it is generally agreed that he is the leader of Al Qaeda, he can be implicated in conspiracies to attack the various targets through his leadership role. As the document states, there are additional similarities between the earlier attacks and the attacks of 11 September, namely the involvement of suicide missions, the coordination of attacks on the same day, the absence of warning and the existence of long-term planning.<sup>23</sup>

The third category, comprising evidence of actions and pronouncements directly implicating Al Qaeda members and bin Laden in the 11 September attacks, is generally weak. The document cites seven pieces of evidence in this regard:<sup>24</sup>

- (i) The positive identification of at least three of the hijackers as associates of Al Qaeda.

The media has provided speculation about the identities of these three, but no independent confirmation of the claim.<sup>25</sup>

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<sup>22</sup>Ibid, sec. 55.

<sup>23</sup>Ibid. sec. 5.

<sup>24</sup>Ibid, secs. 61-62.

<sup>25</sup>For an example of some of the speculation see Julian Borger, Giles Foden and Richard Norton-Taylor, 'Does it make him guilty of terror attacks?', *Guardian*, 5 October 2001 and Chris Blackhurst, 'Missing: Crucial facts from the official charge sheet against Bin Laden', *Independent*, 7 October 2001.

- (ii) The existence of a concerted propaganda campaign justifying attacks on Jewish and US targets prior to 11 September.

This existence of an anti-US and anti-Jewish propaganda campaign has been independently confirmed in the press, but not one threatening attacks.<sup>26</sup>

- (iii) An assertion by bin Laden, prior to 11 September, that he was preparing for a major attack on the US

There is no further detail or evidence provided to support this claim. There was a rumour circulating in the media that bin Laden had tipped-off his mother just prior to the attacks. The veracity of this rumour has been challenged by independent media sources.<sup>27</sup> However, Abdel-Bari Atwan, editor of the Al-Quds al-Arabi newspaper, claims that bin Laden's followers warned his newspaper by telephone of a major attack three weeks in advance of 11 September.<sup>28</sup>

- (iv) A warning to bin Laden associates to return to Afghanistan prior to 11 September.

I have found no independent confirmation of this claim in the media.

- (v) Statements by bin Laden associates prior to 11 September providing the date of the attacks.

This also does not appear to have independent confirmation.

- (vi) The identification of one of bin Laden's closest associates as responsible for the attacks.

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<sup>26</sup>Ibid.

<sup>27</sup>Ibid.

<sup>28</sup>'US suspects Osama bin Laden', *Business Day*, 12 September 2001.



No further detail or evidence is provided to support this claim. There has been some speculation in the media about who this might be, but no independent confirmation.<sup>29</sup>

- (vii) Evidence of a 'very specific nature' relating the guilt of bin Laden and his associates that is too sensitive to release publicly.

A worry that greater detail may compromise security sources may be the reason for the lack of detail. Apparently greater detail has withstood the scrutiny of the leaders of the two main opposition parties in Britain.<sup>30</sup> The impression this makes is likely to depend upon how predisposed one is to believe the proclamations of the government, the leaders of the ruling party, and the leaders of the main opposition parties; and any determination of whether one should be so predisposed would of necessity involve the examination of a number of historical cases.

The sort of examination referred to above, however, may be unnecessary. If the evidence provided under the first two categories discussed above is sufficient to establish that bin Laden and Al Qaeda are the probable causes of the 11 September attack, and if probable cause is the correct standard against which to measure the evidence, then a further examination of the evidence under the third category need not detain us.

What does the evidence of the first two categories establish? It establishes that bin Laden and Al Qaeda have the motivation and the will to carry out the 11 September attacks. This alone makes them suspect. The case is strengthened, however, by the resemblance of the 11 September attacks to previous attacks for which there is strong evidence of bin Laden's and Al Qaeda's responsibility. This still does not make it probable that they were responsible, for there may be other organisations with similar motives, capabilities and manners of attack that are at least as likely to have committed it. The final reason to believe that bin Laden and Al Qaeda are probably the cause is that there do not appear to be

<sup>29</sup> See Borger et al. and Blackhurst for some of the speculation.

<sup>30</sup> 'The evidence would not convict in court – but it does justify a limited war,' *Independent*, 5 October 2001.

other non-state agents with the same combination of motives and capabilities. Much of the British government's case necessarily rests on this point, and complete confidence in it would require a thorough examination of known terrorist organisations.<sup>31</sup> But it seems a plausible point. Hence, it appears probable that bin Laden and Al Qaeda are responsible for the 11 September attacks.

The remaining matter is the degree of proof required in order to establish just cause in the pursuit of suspected threats to security. In cases of requests for extradition, under US law the standard is probable cause, which can be established by hearsay evidence and evidence not admissible in criminal matters.<sup>32</sup> Proof beyond a reasonable doubt is not required to make the case for extraditing someone to stand trial. Although there was no extradition treaty between the US and Afghanistan, the US's demand to handover bin Laden for trial was similar to the kinds of demands that are subject to the standard of probable cause in extradition treaties. Given the nature of the demand, it is reasonable to require nothing more than probable cause in this case.

It might be objected that before beginning a war greater certainty than probable cause should be required because it is in the nature of wars to cause great suffering especially to innocent persons.<sup>33</sup> There are several problems with this view. First, it would be inappropriate to require a showing of criminal guilt prior to a criminal trial. If this standard were to be required, there would be no reason to require a trial. In any case, a showing of guilt beyond a reasonable doubt must be the product of a process that fairly weighs the claims of the adversaries. Certitude beyond a reasonable doubt cannot properly be expected in the absence of a trial. Second, if probable cause is the appropriate standard in a request to handover bin Laden and to dismantle Al Qaeda camps, then it would be inappropriate to require a higher standard in formulating a response to the failure to handover. Finally, a worry of eventual further attacks from those who were responsible for the attacks on 11 September seemed

<sup>31</sup> *Responsibility For The Terrorist Atrocities In The United States, 11 September 2001*, sec. 69.

<sup>32</sup> Jordan Puast, et al., *International Criminal Law* (Durham, NC: Carolina Academic Press), p. 320.

<sup>33</sup> One call for proof can be found in Chris Blackhurst's, 'Missing: Crucial facts from the official charge sheet against Bin Laden.'



justified. Requiring a higher standard than probable cause would allow those who were the probable cause of that attack and who were quite possibly planning other attacks to remain free to do so, perhaps indefinitely.

To summarise, on the basis of only some the evidence provided by the British government and independently confirmed, Osama bin Laden and Al Qaeda can reasonably be thought to be the probable causes of the 11 September attacks; and this suffices to defend the justice of the cause of the war against the criticism that there is insufficient evidence of responsibility.

#### IV. A reasonable likelihood of success

The criterion of reasonable likelihood of success traditionally stipulates that wars can be justified only if the cause pursued is reasonably likely to be achieved. Assuming the war is justified only if it pursues a just cause, if the means of war are unlikely to achieve the end, then the war is unjust. In the case of the war in Afghanistan the just cause is to prevent and deter future attacks against US and other civilians. There are reasons to doubt the likelihood of success in this pursuit by means of a war.

One reason has to do with the nature of the enemy. By all accounts Al Qaeda is a highly decentralised organisation with autonomous cells in a large number of countries, perhaps as many as 34.<sup>34</sup> Thus, there is reason to worry about the organisation of reprisal attacks from multiple locations. These quite probably would require long-term planning. It may be responded that taking out the training camps in Afghanistan will prevent the education of additional terrorists. This, however, does nothing to prevent attacks from those who are already trained and operating in other countries.

Another reason to doubt the likelihood of success is that the deterrent force of the war is probably severely limited. The idea behind deterrence is that if there is a credible threat that the cost of certain kinds of actions

<sup>34</sup> 'Bin Laden active in 34 nations', *Business Day*, 14 September 2001 and Maurice Tamman, 'Al Qaeda's web remains a threat, experts warn', *The Atlanta Journal Constitution*, 12 December 2001.

is on the increase, the motivation to act in that manner may be lowered. The cost in this case is supposed to be death in warfare. It is, however, doubtful that death in warfare would be seen as a prohibitively high cost for members of terrorist organisations who are willing to engage in suicide missions. On the contrary, a military campaign may rather increase resentment within some quarters of Islam, thereby increasing the motivation for terrorist attacks. Admittedly, any speculation about the motives of *possible* terrorists will be more or less *a priori*. This is one of many uncertain judgements that we are stuck with in forecasting the likely responses to the war.

Perhaps the deterrence claim has greater force with respect to governments that may be considering allowing international terrorists refuge within their borders. If the war serves to deter other governments in this way, it may indirectly have some deterrent effect on members of terrorist organisations, insofar as other governments may be more willing to police them. Terrorists might nonetheless operate clandestinely within the borders of a state.

Even if the war's preventive and deterrent effects are doubtful one might still wonder whether not going to war would be worse still. Perhaps, if the US did not go to war it would be as if it were declaring its impotence in protecting against terrorist threats and this would bring even more attacks than going to war. So, even if war is not likely to succeed in increasing security, it may be more likely than the alternatives; and perhaps this is enough to satisfy the moral requirement of likelihood of success.

Suppose that the claim about probabilities is true in this instance. Is the re-interpretation of the moral requirement plausible? It amounts to taking the criterion of likelihood of success in comparative terms: An option would satisfy the criterion even if its success were improbable because it is still more probable than the alternatives. In this case the high probability of great suffering caused by war, particularly in the attacked country, would be discounted against a low probability of success in increasing security for citizens in the attacking country. This view requires one to accept something like Christopher Bertram's claim that states may weigh the interests of citizens differently from those of non-citizens. That claim, however, would permit wars simply in virtue of their service to citizens' interests without any consideration of global justice. The danger of justifying wars of naked self-interest is one reason



to think that states should not give different weight to different persons' interests depending on their citizenship status. If states should not do this, it is hard to see how a war that is likely to fail and likely to produce a great deal of suffering in another state can be justified on the basis of the interests of the citizens of the warring state.

The claim that states may not weigh the interests of persons differently on the basis of their citizenship is compatible with the claim that states may have special responsibilities to their citizens. A state may be primarily responsible for the security interests of its own citizens, although responsible for the security interests of non-citizens if their state fails to protect them.<sup>35</sup> But unless a state may merely discount the interests of non-citizens, it may not engage in a war that is likely to fail simply because it is more likely than other alternatives to succeed in the pursuit of a just cause.

A more promising response to the doubts about likelihood success is to re-interpret the criterion with an additional requirement. One might claim that a war that is more likely than other options to succeed *and* that is not reasonably likely to fail meets the criterion, at least in cases where the cause presents a grave danger. This version of the criterion does not require weighing peoples' interests unequally since a likely loss is not to be pursued at the expense of the interests of non-citizens. Such an interpretation may be necessary if the European war against Nazi Germany is to be found to be just prior to the entrance of the Soviet Union.

I have some sympathy with the relaxing of the constraint of likelihood of success to this limited degree. In the case of the war in Afghanistan it would require showing that resorting to war was more likely to succeed than other alternatives. Non-belligerent means were being pursued. UN Security Council Resolution 1373 required extensive counter terrorist efforts of member states. Intelligence and police operations were underway and showing some success in Europe. The financial assets of Al Qaeda were being frozen. Diplomatic efforts with Afghanistan to have bin Laden tried might have born some success.

<sup>35</sup>See Robert E. Goodin, 'What Is So Special About Our Fellow Countrymen?', *Ethics*, vol. 98, no. 4, (1988), pp. 663-686.

However, the most difficult matter to be handled peacefully probably would have been the destruction of Al Qaeda training camps in Afghanistan since the Taliban seemed to rely on the assistance of Al Qaeda to maintain control over the country. Because we are dealing with empirical and counterfactual forecasts with few analogies to past experience, there is room for reasonable disagreement. Certainly diplomatic efforts to achieve the destruction of the training camps would have been worth the effort, but it is hard to be very optimistic about how successful they would have been. There is a basis then for believing that the war satisfies the re-interpreted criterion of reasonable likelihood of success.

Even if there are grounds for believing that the war meets the (re-interpreted) criterion of reasonable likelihood of success in the short-term. Over the long-term the effort to reduce terrorism of which the war is a part is much more likely to fail if the war serves to build additional resentment against the US. Perhaps the war may succeed in the short-term, but produce a longer-term failure. Once again we are engaged in speculative forecasts. It would seem that resentment could be limited to some degree if three policy restrictions were observed. First, counter-terrorist wars should seek multi-lateral legitimacy. Second, they should scrupulously observe the requirements of *jus in bello*. And third they should be accompanied by a more just US foreign policy. With respect to the latter, consider US support for the sanctions against Iraq and the policies of Israel. Even if we assume that there is a just cause for intervention against Iraq in the pursuit of deterring its manufacture of weapons of mass destruction, the means of sanctions are massively disproportionate. These sanctions have killed more non-combatants than all use of weapons of mass destructions combined.<sup>36</sup> Additionally, the US has remained steadfastly solicitous of Israel despite its direct and indirect involvement in a host of human rights violations, including the forced removal of Arabs, the occupation of territories, the destruction of Palestinian residences, the massacres in Lebanon, and the torture of detainees.<sup>37</sup> If the US continues to aid Israel as it pursues these policies, resentment against the US may continue to grow among those affected;

<sup>36</sup>John Mueller and Karl Mueller, 'Sanctions of Mass Destruction.'

<sup>37</sup>For one account of the causes of US solicitude towards Israel see Noam Chomsky's *The Fateful Triangle* (Boston: South End Press, 1983), chp. 2.



and this would provide significant motivation for terrorism. Given President Bush's penchant for unilateralism and bi-lateral US support for Israel and the sanctions against Iraq, it's difficult to be optimistic about the war's contribution to the long-term effort to reduce terrorism.

### V. Proportionality

A judgement of proportionality depends in large part upon a judgement of just cause and likelihood of success. Is going to war (within the constraints of *jus in bello*) likely to result in less overall injustice? This depends in part on whether the cause is just and success is likely. The additional consideration introduced by proportionality concerns the overall moral costs of success.<sup>38</sup>

Whether the war in Afghanistan meets the requirement of proportionality would appear to depend on whether it meets the requirement of reasonable likelihood of success. If it is likely to fail, it is not likely to result in a net gain for justice. One might respond that the war satisfies proportionality independently of likelihood of success. For if it was reasonably likely to cause the collapse of the Taliban, a brutally unjust regime, this might be counted as a gain for justice, and perhaps a reason to think that proportionality could be satisfied independently of reasonable likelihood of success in combating terrorism.

The problem with this view is that it was not at all clear just prior to the war that a new regime would offer much improvement on the injustices of the Taliban. Human rights groups such as Human Rights Watch were warning the US against alliances with many of the Northern Alliance leaders who were blamed for several attacks on civilians, summary executions, rampages and widespread rapes.<sup>39</sup> Prior to the US military response the Revolutionary Association of the Women of Afghanistan were sceptical of its results and equally critical of the

<sup>38</sup> I did not clearly see the manner in which consideration of proportionality incorporates considerations from just cause and likelihood of success in *Cosmopolitan Justice*, p. 120.

<sup>39</sup> 'Rights Group Cautions Against US Siding with Afghans Tied to Abuses', *The Los Angeles Times*, 7 Oct. 2001.

Taliban and the Northern Alliance.<sup>40</sup> So, at the time, there was reason to doubt that the collapse of the Taliban would improve the situation much. Therefore, proportionality could not be satisfied independently of reasonable likelihood of success.

### VI. Last resort

The criterion of last resort requires that reasonable measures be taken to seek the achievement of the just cause of the war through non-violent means. It does not require that belligerents take all conceivable measures, no matter the time spent or the opportunities lost. Last resort in this case, then, should be understood as the last resort for preventing and deterring additional terrorist attacks.

The several weeks between the terrorist attacks of 11 September and the initiation of the aerial campaign offered ample time to pursue a diplomatic solution that may have prevented the war. Since the US did not have an extradition treaty with Afghanistan, there is reason to believe sensitive bilateral diplomacy would be required in order to achieve the extradition of those believed to be responsible for the attacks. In fact, however, the US never sought bilateral discussions with the Taliban. They were content merely to work with the Pakistani intermediary. Of course, Pakistan, and not the US, had diplomatic relations with the Taliban, but this need not have prevented the US from seeking discussions.

Any contention that bilateral discussions were certain to fail seem facile in the face of the horrors that war unleashes.<sup>41</sup> Moreover, there is some evidence that the Taliban may have been in the mood for compromise. There were reports of defections in their ranks;<sup>42</sup> and they

<sup>40</sup> 'Taliban should be overthrown by the uprising of Afghan nation', RAWA statement on the US strikes on Afghanistan, 4 Oct. 2001, <http://rawa.false.net/us-strikes.htm>.

<sup>41</sup> There was no way to know at the time how many Afghani civilians would die as the result of the war, and there are still no firm estimates in the public record, but some Médecins San Frontières workers estimate the dead to be between 2,000 and 3,000. See Ian Taylor, 'Afghans are dying, but who's counting?', *Mail and Guardian*, 15-21 Feb. 2002.

<sup>42</sup> 'Another way of winning', *Guardian*, 6 Oct. 2001.



had shown signs of willingness to make concessions. Immediately preceding the aerial campaign they expressed a willingness to talk about having bin Laden tried in Afghanistan or even a third country;<sup>43</sup> they released British journalist Yvonne Ridley;<sup>44</sup> and they offered to release 18 foreign aid workers.<sup>45</sup> The biggest sticking point probably would have been the dismantling of Al Qaeda training camps. But an appropriate regard for the moral costs of war requires making even improbable attempts to prevent it where the costs of doing so are not prohibitive. Since US made no attempts at bilateral diplomacy, it seems reasonable to conclude that the war in Afghanistan is not a war of last resort.

### VII. Before and after the beginning

I have argued that the war in Afghanistan meets the criterion of just cause. Whether it satisfies the criterion of reasonable likelihood of success is less clear, but this looks plausible in the short-term at least if the criterion is re-interpreted. However, any confidence in the long-term success of the effort to reduce terrorism of which the war is a part would certainly be strengthened if the war were not largely a unilateral effort, if it were conducted justly, and if it were accompanied by a more just US foreign policy. In the absence of these, the war is less likely to bring long-term security and may generate additional resentment. The war's satisfaction of proportionality depends upon its satisfaction of reasonable likelihood of success. Finally, the war was not one of last resort. Since the four criteria are necessary conditions of the justice of war, resorting to war was unjust. Still, some restraint in the moral condemnation of the war may be in order.

Unlike an assessment of just cause, assessments of reasonable likelihood of success, proportionality, and last resort require extensive empirical speculation concerning what might have happened if a different policy had been pursued and what still might happen as a result of the chosen policy. Facing up to this, I think, requires accepting that

<sup>43</sup> Taliban 'will try Bin Laden if US provides the evidence', *Guardian*, 5 Oct. 2001.

<sup>44</sup> 'British journalist to freed by Taliban', *Independent*, 6 Oct. 2001.

<sup>45</sup> 'Taliban's last-minute offer fails to halt inevitable', *Independent*, 8 Oct. 2001.

there is probably room for reasonable disagreement. Once one accepts that the cause of a war is just, any further criticism of the war has to be tempered by the fact that remaining judgements are not about matters in which a great degree of certainty can be had.

Additionally, a judgement that resorting to war was unjust does not entail that it should have been halted once it began and before it had been given a reasonable chance to achieve its objectives. Bertram thinks that this is a 'weird' claim. I think that there is a simple, but important, moral reason for this: Once one engages upon an unjust course of action, one acquires responsibility for events set in motion that would not otherwise have occurred. This responsibility may require seeing through a course of action that it would have been better not to have started. There are three reasons to think that once the war had been started the second best course of action may have been to give it time to meet its objectives within the constraints of the just conduct of war. First, since the cause is just, the achievement of its goal would be a moral good. Second, if the war only fails with respect to last resort, there may be no way after war has begun, and before the Taliban's military defeat is immanent, to reconstruct the negotiating opportunities lost by going to war. Third, in entering an on going civil war, the US and its allies owed a duty to those who had come to rely on them for survival. Pulling-out of the war may well have left many people exposed to hostility. These reasons would not entail that the war should have been pursued indefinitely if it had become clear that its objectives could not be met. If it is clear that a war cannot succeed in its cause, then it should be halted in a manner that honours the responsibilities the belligerent party has assumed in engaging in the war.

In the end my conclusion is an uncomfortably mixed one: Resorting to war in Afghanistan may have been unjust although I concede that the reasons for believing this do not offer the kind of certainty of belief that we would like to guide our actions. Moreover, once the war began it may have been the lesser of two evils. One larger moral of this story is that when a cause is just, the left's evaluation of the war should be both sensitive to the amount of speculation that is necessarily involved in much of the remaining evaluation of the war and flexible enough to consider the important moral change that an unjust war may bring about.



Symposium:

## Afghanistan: A Just Intervention

Christopher Bertram

THE ATTACKS in New York and Washington on 11 September 2001 were terrible events, they were also acts of barbarism. The deaths (and the manner of the deaths) of so very many people on the ground, in the buildings, and on the airliners were atrocious. Many of those who died were of course those who responded out of feelings of duty or altruism to the initial event. In attacking New York, the Islamofascists of Al Qaeda attacked one of the most cosmopolitan cities in the world, a city of immigrants (both now and historically) and a city which many great cultural and artistic figures have made there home (DaPonte, Gershwin, Charlie Parker, Auden, Warhol - reader: make your own list). Moreover, it was an attack mounted by people who hate the United States of America not only (and probably not even mainly) for its inequality or its acts of injustice in the world or for its place in an unequal international order, but rather *because* of its democracy, its pluralism, its sexual libertinism, and all the other things that the left ought to *like* about the United States.

### The reaction of the left

By and large, the left discredited itself by its reaction. In Britain the *New Statesman*, rhetorically answered its own question about whether the victims of September 11<sup>th</sup> were innocent with a 'yes and no', as if somehow some of them were deserving of their fate.<sup>1</sup> Britain's leading left environmentalist, the columnist George Monbiot, failed dismally to rise to the moment, and in his initial reaction to the events centred on them providing an opportunity for Tony Blair to approve a nuclear reprocessing plant.<sup>2</sup> Some on the left, have gone even further, appearing to urge backing for the radical Islamists. Certainly, that is the implication of a piece by Andrew Chitty in *Radical Philosophy* which states that 'the attacks are a continuation and escalation of a war for the colonial subjugation of the Middle East that has been fought more or less continuously since World War II between the USA and its proxy state Israel on the one hand, and their locally based opponents on the other.' Chitty sees the anti-war movement as torn between those opposed to all violence and aggression and genuine anti-imperialists. He states that the anti-imperialist impulse pulls 'towards a positive defence of the Taliban and Osama bin Laden, as the current representatives of Middle Eastern resistance to imperialist power, in their war against the USA and its proxies'.<sup>3</sup>

Why then, did the British left react in such a manner? Partly, it did so because of an ingrained *cultural* anti-Americanism. Another reason was the historical memory of unjust American action in Vietnam, Chile and many other places.<sup>4</sup> Some, like Chitty, were perhaps, moved by US

<sup>1</sup> 'In buildings thought indestructible', *New Statesman*, 17 September 2001.

<sup>2</sup> George Monbiot, 'The Need for Dissent', *Guardian* 18 November 2001. Monbiot's column on that day started with the sentence: 'If Osama bin Laden did not exist, it would be necessary to invent him.'

<sup>3</sup> Andrew Chitty, 'Moralism, Terrorism and War: A Reply to Martin Shaw' in *Radical Philosophy* 111 (January-February 2002).

<sup>4</sup> One may reasonably ask how far back one should go in holding the modern US to account. Many critics seem happy to include in their roster of shame, acts that are now half a century old, taking us more than a quarter of the way back to Waterloo and predating the Anglo-French intervention at Suez. This, and the manifest bad faith involved in redescribing humanitarian actions involving the US in the



support for Israel. Others see US-backed sanctions against Iraq as responsible for much suffering or simply employ vaguer and more generalised criteria about the injustice of the international order and America's putative responsibility for it. Historically, there is much justice in these complaints about the United States.<sup>5</sup> But the moral stakes are now very high and many of the 'facts' deployed by the left in recent debates are, at best, of dubious character.<sup>6</sup> (They are the kind of 'facts' that support conclusions people have already reached.) Lurking in the debate have also been assumptions about international wealth and poverty half-remembered from the writings of the dependency school (Andre Gunder Frank, Samir Amin *et al.*) that would hold the United States almost uniquely responsible for patterns of global poverty and inequality.

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Balkans as 'really' being motivated by imperialist aims, ought to raise serious questions about the credibility of Pilger, Monbiot, Chomsky and those who follow their lead.

<sup>5</sup> For a remarkable assault on the way in which US foreign policy has pursued stability (in the interests of business) at the expense of democracy and human rights and has maintained corrupt local elites in power, see Ralph Peters, 'Stability, America's Enemy', in *Parameters: US Army War College Quarterly*, Winter 2001-02, Vol. XXXI, No. 4, pp. 5-20. I should not need to add here that my belief that the United States was justified in making war in Afghanistan does not imply support or endorsement for *whatever* the US might seek to do under the label of a 'war against terrorism', but sad experience debating these issues does necessitate such a clarification.

<sup>6</sup> Take, for example, the alleged infant deaths as a result of UN sanctions against Iraq, where do the very high numbers come from? No doubt there are different bases for different calculations, but one popularly cited number is arrived at by projecting advances in cutting infant mortality that were achieved during the 1980s, through to the 1990s. One does not have to be a very sophisticated statistician to see that there are problems with the assumptions behind such a procedure! This is not to say that the Iraqi sanctions case is not one where there is much to be said against US (and UN) policy. The policy has indeed caused great suffering and unnecessary death, although not on the scale alleged by many left-wing commentators. For a balanced assessment of the evidence see Matt Welch, 'The Politics of Dead Children: Have Sanctions Against Iraq Murdered Millions', in *Reason* (March 2002).

The left should have done much better than this. Certainly, there are and have been unfairnesses and grave injustices in the international economic order, but the poverty of say, Algeria or Nigeria also owes a great deal to economic mismanagement by local elites. The underdevelopment of much of the Arab world, despite access to capital by the barrel-load, speaks volumes about the cultural (and religious) obstacles to development.<sup>7</sup> The Saudi royal family have used their wealth to fund elite consumption and to promote the puritan sectarianism that found such murderous expression on September 11th; the poverty of many of their people should hardly be laid exclusively at the door of the United States.

It is also worth adding to the reasons for the left's hostility the fact that a Republican administration was in power at the time of the attacks, and, moreover, one headed by a President, George W. Bush, whose alignment with Big Oil and whose unilateralist attitudes rightly arouse the hostility of anyone who cares about social and global justice. Since September 11<sup>th</sup>, the Bush administration, with its absurd 'axis of evil' rhetoric and its underwriting of Ariel Sharon, has confirmed this negative opinion. But unpalatable though the Bush administration may be, the question of which party is in the White House is, strictly speaking, *irrelevant* to the issue of whether the United States is justified in using military force to respond to such an attack. If Clinton, Gore or even Ralph Nader had been in the Oval Office, the issues of justice and injustice would arise in exactly the same way.

### Just cause

Darrel Moellendorf's discussion of the justice of the Afghan war is thoughtful and well-informed. There is much with which I agree. He argues, rightly, that even economically dominant powers with tainted histories have the right to defend themselves against murderous attack. I endorse wholeheartedly, the straightforward statement of 'just cause' in relation to the Afghan war that he gives on p. 116 above:

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<sup>7</sup> This point was recently underlined by the United Nations Development Programme's *Arab Human Development Report*, available in full at <http://www.undp.org/rbas/ahdr/english.html>.



A state that gives refuge to terrorists who plan and execute foreign attacks that intentionally result in the deaths of more than two thousand civilians of other states is certainly one whose domestic policy results in serious international injustices. Additionally, the states whose citizens died in such attacks have a duty to protect the security of their citizens, which duty justifies pursuing those who carried out the attacks both to prevent them from carrying out further attacks and to deter others from trying something similar.<sup>8</sup>

Despite his belief that this one of the traditional *jus ad bellum* conditions, was met, Moellendorf argues that two of the other conditions – that war should be a last resort, and that there should be a reasonable probability of success – were not. Consequently he argues that recourse to war was not justified (a third condition, proportionality, is treated by him as basically derivative of the first two).<sup>9</sup> I shall argue that he is mistaken on both counts and that he applies these conditions in a mechanical way that fails to take sensible and realistic account of the conditions. I cannot agree, though, with his idiosyncratic conclusion that it was wrong for the United States to go to war but right to continue once started. On the contrary, I would argue that the United States had every right to go to war when it did.<sup>10</sup>

<sup>8</sup> Though he goes on, of course, to address various possible responses to this straightforward claim.

<sup>9</sup> Since many opponents of war in Afghanistan have themselves advocated or endorsed revolutionary war and violence in the past (or even in the present), it is at least fitting that – should they wish to endorse Moellendorf's criteria – they should ask themselves whether they were or are met in the cases where *they* would favour resort to armed force. One might, for example, wonder whether, when the *second* intifada was begun, it met either the 'last resort' or 'reasonable prospect of success' criteria. The point here is intended to be methodological rather than *ad hominem*. Principles such as these do not wear their meaning plainly on their face: we need to think about how we might apply them, and apply them consistently, across a range of specimen cases in the light of what we think it plausible to say in those cases. Here, as elsewhere, we are aiming at reflective equilibrium.

<sup>10</sup> My response here is aimed very much at the detail of Moellendorf's argument and, more tangentially, at those who opposed the war on the generalised 'anti-

## Context

One difficulty that confronts discussions of the justice of the war is that of perspective. On the one hand, the matter is often discussed purely from the standpoint of an impartial moral calculus, so critics of the war ask rhetorically whether Afghan lives are worth less than American lives? (Of course, the answer is that they are not.) This misses the fact that states have special responsibilities to defend and protect the interests of their own citizens and are under an obligation not to weigh the interests of their own citizens equally with those of others.<sup>11</sup> Not only that, but they are under a duty to be responsive to the political community that they purport to represent. To be sure, the obligations of statesmanship are to steer a people away from imprudent and immoral action,<sup>12</sup> but we should not minimise the pressures and indeed the obligations on politicians representing a political community that rightly perceived itself to have been wounded and endangered. The point of mentioning these considerations is that discussion, particularly on the justice of American action, should focus not just on what it would be *best* for the United States to do, it should also aim to define an area of permissible (and even, more broadly, of excusable) action. It is reasonable to suppose that the United States has a permission and a

'imperialist' grounds that Moellendorf himself rejects. Accordingly, I shall have nothing specific to say here to those who adopt a broader pacifist position. My remarks are directed to those who believe that war is sometimes justified but who doubt whether it was justified in this case.

<sup>11</sup> I have left the foregoing sentence in the unsatisfactory form in which it stood in the draft to which Darrel Moellendorf had access. In the final version of his paper he is rightly critical of what I carelessly say here. Where states have *obligations* to non-citizens those obligations are not of lesser importance than those to citizens: a state's obligations to its domestic creditors, say, do not take precedence over its debts to foreigners. Nevertheless, states have a special responsibility to defend and protect their own citizens, and do not have this responsibility – at least not to the same degree – with respect to non-citizens. So, for example, a British citizen illegally detained in China would rightly engage the concern of the British Government. The government of Senegal, say, would not be morally engaged by that British person's fate in China in anything like the same way.

<sup>12</sup> On the idea of the statesman, see John Rawls, *The Law of Peoples* (Cambridge MA, Harvard University Press, 1999) pp. 97–8.



discretion to act in ways that are not over-tightly circumscribed by our consideration of what is best (or indeed what is prudent).<sup>13</sup>

If consideration of the constraints on US leaders is missing from Moellendorf's discussion, so too is much account of the *Afghan* background to the conflict (although he very effectively dismisses the silly suggestion that the United States was morally disbarred from action by its earlier backing for the anti-Soviet Mujahadeen). The Taliban was a monstrously oppressive regime that took to extremes traditional anti-women practices of the region (and the religion), that engaged in widespread murder, torture and ethnic cleansing, that committed wholesale destruction of artistic and religious artefacts, and many other crimes. Moreover, this was a regime that was leading the people of Afghanistan into the prospect of mass starvation. Of course, I could go on, but I need not, because all of these matters were the subject of petitions circulated on the Left and among human rights groups before September 11<sup>th</sup>. It is interesting to consider what, exactly, it was that the leftist signatories of those petitions wanted to happen. Perhaps they hoped that the Taliban would take heed, would listen to reason and would stop? Perhaps they wanted someone (who?) to take (what?) action against the Taliban?<sup>14</sup> The point of raising these issues now is not to suggest that the state of Afghanistan before September 11<sup>th</sup> would on

<sup>13</sup>I take it this is the distinction expressed by Martin Shaw when he writes: 'The US had a right to wage war against the perpetrators of the terrorist massacre in New York and Washington and their allies, but it was not right to do so.' 'A Bombing Campaign Too Far' on OpenDemocracy.Net, 28 February 2002. My judgement, contrary to Shaw's is that the United States both had a right and was right to exercise it.

<sup>14</sup>There are clear parallels here with attitudes on the left to events in the former Yugoslavia before and after NATO involvement. The Milosevic regime had engaged in ethnic cleansing and mass murder in Croatia and Bosnia on a scale unprecedented in Europe since the Second World War and looked set to repeat their actions in Kosovo where ethnic-Albanians had earlier mounted a ten-year campaign of non-violent resistance. Once NATO was involved many self-styled 'anti-imperialists' not only changed their views on what should happen, but also of what the earlier facts had been. There is no space here to speculate on the psychological mechanisms at work in such people.

its own necessarily have justified intervention,<sup>15</sup> but rather, since Moellendorf seeks to rely upon a threshold argument against the justice of going to war, to point out that the background of injustice and oppression should be taken into account in assessing the reasonability of the decision. Put bluntly my suggestion is this, that since the background situation was such that the morality of intervention *anyway* was at any rate arguable, the weight of the moral evil of war that Moellendorf feeds into his employment of the *jus ad bellum* criteria is inappropriate. It is simply irrational to focus on the anticipated evils of war without any consideration of the prospective goods (or the evils thereby prevented).<sup>16</sup>

Since the *jus ad bellum* criteria are there to prevent recourse to the great evil of war except where strictly necessary, it also seems odd that Moellendorf abstracts from the *jus in bello* considerations. The moral badness of war is principally a consequence of its destructive and life-destroying nature. If it were possible to wage effective warfare without doing significant harm to others, then the threshold set by *jus ad bellum* would be much lower than it is. As things are, the threshold ought to be sensitive to the expected violence and intensity of the conflict. All loss of life in war is regrettable, and especially that of non-combatants. Some have sought to argue that US action would be illegitimate unless there could be a guarantee that there would be *no* civilian casualties.<sup>17</sup> Given the nature of war, that seems far too great a reasonable obstacle to set. By contrast, if a war could not be fought except with the inevitable deaths of many many thousands of innocents, only an emergency of the

<sup>15</sup>Though it might have. Some people, such as Nick Cohen of the *Observer* have opposed the Afghan war even though they supported the Kosovo intervention. But it is arguable that human rights violations in Afghanistan, especially against ethnic and religious minorities, were, if anything, worse than those in Kosovo. In the light of which one might reasonably return the commonly-asked rhetorical question and ask whether the human rights of Afghans count for less than those of Europeans.

<sup>16</sup>A point of comparison that springs to mind here is the Vietnamese invasion of Cambodia in 1979. The Vietnamese certainly had just cause (that of self-defence). Given the evil that was the Pol Pot regime, it would seem perverse to apply either the 'last resort' or the 'reasonable prospect of success' criteria as strictly as would be appropriate where military action against a less barbaric regimes were being contemplated.

<sup>17</sup>This has been the constant theme of UN human rights commissioner Mary Robinson.



gravest moral nature could justify recourse to military force. The Afghan war seems to lie between these two extremes. Although there have been many (always too many) deaths from misdirected bombs, those deaths have been far fewer than anticipated (or claimed) by opponents of the war, and the US has been measured in its use of force.<sup>18</sup> The point here is that *to the extent* to which the US could anticipate minimising the evil effects of war, the *jus ad bellum* considerations invoked by Moellendorf may be interpreted with a lower degree of stringency.

It also seems right to observe that since Moellendorf draws a distinction between the initiation of the war and acts that are part of the war once initiated, it is somewhat artificial to single out the commencement of bombing by the US as the *moment* of initiation. In the first place, there was a war *already* going on within Afghanistan, one joined and not initiated by the US but which has been shortened appreciably by US action. In the second, why should we single out *that* moment as the beginning of hostilities rather than, say, September 11<sup>th</sup>, or the attack on the USS Cole, or the bombings of the US embassies in Africa? So it is not completely clear that the *jus ad bellum* criteria are appropriately invoked at the point Moellendorf wants to invoke them, though I am happy to grant that they are.

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<sup>18</sup>One estimate of civilian deaths in Afghanistan widely cited by that anti-war has been is about 4,000 according to data compiled by Marc Herold, a professor of economics at the University of New Hampshire (see Howard Zinn, 'The Others', *The Nation*, 11 February 2002). Other estimates have put the civilian deaths as low as a few hundred. Herold's figures have been subjected to devastating rebuttal by Jeffrey C. Isaac, 'Civilian casualties in Afghanistan: the limits of Marc Herold's 'comprehensive accounting'', OpenDemocracy.Net, 14 March 2002 and by Iain Murray, 'Casualties of the Press', [www.techcentralstation.com/1051/defensewrapper.jsp?PID=1051-350&CID=1051-030402A](http://www.techcentralstation.com/1051/defensewrapper.jsp?PID=1051-350&CID=1051-030402A). A more measured view than Herold's is provided by Carl Conetta, 'Operation Enduring Freedom: Why a Higher Rate of Civilian Bombing Casualties', Project on Defense Alternatives, at [www.comw.org/pda/0201oef.html](http://www.comw.org/pda/0201oef.html). Conetta estimates the civilian deaths directly attributable to US bombing at up to 1300. All of this is not to say that the US conduct of the war is beyond criticism on *jus in bello* grounds. On the contrary, the continued use of high altitude bombing since the fall of the Taliban has protected military personnel at the expense of needless civilian casualties.

### Last resort

Moellendorf suggests that the criterion of last resort had not been met because the United States failed to pursue a diplomatic solution with sufficient tenacity.<sup>19</sup> In particular, he criticised US reliance on Pakistan as an intermediary with the Taliban. This view has little merit. First, there were good reasons to seek the mediation of Pakistan, the Taliban were largely the creation of the Pakistani intelligence services and it may reasonably be supposed that if *they* could not persuade the Taliban of the need to surrender bin Laden then nobody could. Second, the Taliban had proved immune to international pressure on other matters (such as religious toleration and the destruction of the Bamiyan Buddhas) and there was little reason to believe that they would be more yielding in this case. Third, many of the Taliban and their sympathisers in the Islamic world appear to have believed that the attacks on the Twin Towers were orchestrated by Mossad. This suggests that even the most rationally compelling evidence of Bin Laden's involvement would not have been accepted by them, since they plainly did not and do not apply ordinary standards of reason and evidence to such matters. Fourth, and this is the decisive point, it is clear that the Taliban regime depended for its hold on the country on the support of Bin Laden and his group (who were responsible for the assassination of Northern Alliance commander Massoud on 9 September 2001). The Taliban and the Al Qaeda forces in Afghanistan were mutually interdependent forces. The chief reason for supposing that the Taliban would not surrender Bin Laden is simply that they *could not* do so without bring about their own destruction.

It is also clear that the crisis before the bombing started was having an adverse effect on the delivery of humanitarian aid. There comes a time when it is no longer rational to engage in further diplomatic efforts, even given a small chance of those efforts securing their objectives. Delaying military action would have prolonged a standoff that would have meant many *more* Afghans dying from famine, deaths which would certainly

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<sup>19</sup>Claims about 'last resort' are often appealed to by opponents of US (and Israeli) policy on the grounds that acts of terror are the only means available to resist much greater power. On the 'last resort' criterion forming part of an apologia for terrorism see Michael Walzer, 'Excusing Terror: The Politics of Ideological Apology' in *The American Prospect*, vol. 12, issue 18.



have been blamed on the United States by many in the Muslim world (not to mention those under the baleful influence of Noam Chomsky).

### Reasonable prospect of success

Moellendorf also suggests that the criterion of reasonable prospect of success was not met. Clearly, there is a difficulty in applying this criterion, since military and political success, like, say, flatness, admits of degrees. If the aim of the war is the complete elimination of terrorism anywhere on the planet for all time, then it is plainly not going to be achieved. Suppose, then, we advance the more modest aims of significantly disrupting the Al Qaeda network, of damaging their prestige, of deterring at least some future attacks, and of deterring other states from hosting their activities. Those aims seem eminently achievable and indeed have partly been realised already. There is evidence that many of those - especially in Pakistan - who rallied to the Al Qaeda cause after September 11<sup>th</sup> have come to think less of the demagogues who incited them in the light of the swiftness of the Taliban collapse. (Imagine how Al Qaeda's prestige would have mounted in such circles if the United States had seemed unable to react for a long period after September 11<sup>th</sup>.) Moellendorf argues, on more-or-less *a priori* grounds, that religiously-inspired suicide bombers are unlikely to be deterred by the prospect of death. This seems a questionable argument. First, if the prestige of fanatical groups is damaged there will be fewer attracted to the cause in the first place, and consequently a smaller pool from which suicide bombers can be drawn. Second, while the *a priori* argument may support Moellendorf, the *a posteriori* one does not. The most recent historical experience of religiously-inspired suicide bombers is the Japanese *kamikaze*. Not only have there been few (or even no?) instances of suicide attacks by Japanese pilots since 1945, even before the end of the war the Japanese military found it very difficult to recruit them. The high-point of suicide bombing was the Battle of Okinawa, which was won by the Americans and which effectively sealed the fate of Japan. Once Okinawa was lost, the supply

of *kamikaze* nearly dried up.<sup>20</sup> No doubt, given Al Qaeda's decentralised structure, its cells will continue to organise in many countries. But they have been deprived of Afghanistan as a base from which to organise and train and that is a significant blow to them. There are other parts of the world where state control is weak - Somalia, the Democratic Republic of the Congo, parts of Peru - but for various reasons those places are likely to be much less hospitable to them than Afghanistan was. Areas where states are in effective control are likely to be even less welcoming than they were before: local elites are not going to want to share the fate of the Taliban.

Given the outcome to date of the Afghan war, there does seem something a little weird about Moellendorf's application of the 'reasonable probability of success' criterion. We are being asked to judge, retrospectively (and knowing at least something about the outcome), whether the antecedent condition or reasonable probability of success was met. Of course there are cases where an action turns out successfully even though it was not rationally or morally justified at the time it was undertaken. Thus the person who puts the firm's Christmas club money on the (reportedly lame) Laughing Boy in the 3.30 at Doncaster at odds of 100-1, may reasonably be condemned, even if the horse wins. But it is pretty far fetched to assimilate the US action in Afghanistan to that kind of case. The US plainly believed that it could achieve success, that was not a patently unreasonable belief and events have largely vindicated the judgement of US planners.

Clearly, in the brief space available to me I have not been able to cover all the issues. But the main case against Moellendorf's position should be clear: both the criteria of last resort and that of reasonable

<sup>20</sup>I derive this point from Victor Davis Hanson, 'Dying to Kill: Suicide versus Democracy', *National Review Online*, 18 January 2002. I utterly reject the gung-ho militarism endorsed by Davis Hanson in many of his writings, but the point he makes here seems valid.



prospects for success have been met in Afghanistan. I believe that they were met in any case. But in the case of Afghanistan they have been met all the more easily since their purpose is to avoid needless recourse to war. In Afghanistan this moral evil must be weighed against the atrocious character of the regime that was in place there.

Symposium:

## International Justice, Human Rights and Security After 11<sup>th</sup> September

Saladin Meckled-Garcia

**I**S there any connection between injustices in the world order and the destruction of innocent lives in the heartland of its largest military power? There should be unease in answering this question, not only because tracing an easy route from global injustice to planes flying into the World Trade Centre is morally shallow, but also because the easy route is not the only one. Those supporting the US offensive in Afghanistan, and consequently US actions there, have ridiculed the simple linking of injustice and atrocity to make us more comfortable about the war. The atrocity was committed by people with odious views and intentions, no such views can be the result of prior actions by the US, the argument goes, and even if they were, this does not obliterate the fact that they are wrong and wicked. Fail, then, to support the war because of an assessment of prior US foreign policy and you fall into grievous, even immoral, error. Fail to support the war, and you fail to support justice, in the form of justified retribution against the murderers of September 11<sup>th</sup>. Oppose the war because of sensitivity to the complex causes behind it, we are told, and you either support the attacker's



fanatical intentions, or at the very least excuse their actions by maintaining 'the Al-Qaeda death squads were trying to utter a cry for help for the woes of the world.'<sup>1</sup> Instead we are urged to focus on the immorality of the act, and the just war to be won.

My aim here is twofold. Firstly, I want to dissent from this easy dichotomy by sketching a view on the 11<sup>th</sup> September events that neither simplistically links genuine grievances to the atrocity, nor falls into the obscuring, and ultimately unhelpful, language of good and evil, or liberty versus the oppressive ideals of the perpetrators. Instead, I argue, placing the attacks in the historical and social context of US foreign policy will show that retaliatory military responses will only underline the causes of these events rather than addressing them.

On the evidence, the 11<sup>th</sup> September attack was indeed instigated by intolerant, fanatical, and militarily inclined religious groups. More interesting is why these groups exist, why they have the support they do, and why (of all the 'liberal' places in the world) the United States has been a regular target. No adequate explanation of these facts lies in simple attributions of bad thought, religious backwardness, or for that matter their target's liberal constitution. 'Us good, them bad' analyses are damagingly simplistic precisely because their absolutist terms are obscuringly complex causes.<sup>2</sup> If only irrational evil is at work, then expunging such a cause by whatever means seems a reasonable course of action. Accepting different causes opens the way for considering alternative responses.

Radical Islam's success, confidence and appeal should be understood against a background of successive defeats and betrayals of secular alternatives in the middle-east. The theocratic reflex has not always been a significant force, and is not the natural result of prejudice or ignorance. On the contrary, the most significant regional political movements of the twentieth century were not motivated by religious ideals. A highly

<sup>1</sup> Christopher Hitchens, Minority Report, 'The Ends of War', *The Nation*, December 17, 2001.

<sup>2</sup> 'America was targeted for attack because we're the brightest beacon for freedom and opportunity in the world.' G. W. Bush, *Presidential Address to the Nation*, Oval Office, Washington D. C., 11<sup>th</sup> September, 2001.

secular government of national liberation in Iran was deposed by a corrupt US-backed regime. The revolution which overthrew that regime was only eventually hijacked by Khomeini and his clerics.<sup>3</sup> A wider national liberation movement was pursued by the pan-Arabist (not pan-Islamist) presidency of Nasser in Egypt.<sup>4</sup> The Palestinian campaign for national liberation encompassed Muslims, Christians and leftists alike, and whilst Lebanon suffered deep conflicts between its religious communities, no significant movement with religious *ideals* (as opposed to localised community interests) emerged before Israel's incursion in 1982, and subsequent US actions there.<sup>5</sup> The US sponsored Baath party coup that toppled Kassem in Iraq, was also pan-Arabist, and Syria's ruling elite, though coming from a religious minority, had no religious programme.<sup>6</sup> In Afghanistan itself the pro-Soviet secular regime of Najibullah was undermined and then defeated by the Islamist Mujahedeen movement, itself financed by the US and its allies in Pakistan and Saudi Arabia.

Radical Islam has grown on the back of failure, corruption, repression and, crucially, external destabilisation of the very movements offering secular answers to the region's problems. Islamic 'resurgence' movements unite programmes of regional liberation with 'purist' claims of religious identity, both in rhetoric and action. Radical principles give expression, and offer solution, to grievances, which include humiliation

<sup>3</sup> The popular nationalist government of Mohammed Mossadegh came to power in Iran in the 1950s, on a programme of nationalisation of oil interests. It was subsequently toppled by the Shah and the army, with covert support from the CIA. See for example, Sepehr Zabih, *The Mossadegh Era: Roots of the Iranian Revolution*, Chicago, Lakeview Press, 1986. For extracts from the relevant CIA documents, see James Risen, 'How a Plot Convulsed Iran in '53 (and in '79)' *New York Times*, 19 April, 2000.

<sup>4</sup> Nasser united Syria and Egypt as the 'United Arab Republic', in 1958. Britain, France and Israel attempted to militarily remove him in 1956 after he had nationalised the Suez canal.

<sup>5</sup> Only after Israel's invasions, and sponsoring of proxy militias in the south, do Islamic Jihad, Islamic Amal, and Hizbollah, emerge as significant forces with popular support.

<sup>6</sup> On US involvement in the coup against Kassem, and their support for Saddam's eventual leadership of the Iraqi Baath, see Said Aburish's, *Saddam Hussein: The Politics of Revenge*, New York, Bloomsbury Publishing, 1999.



by Israeli, and US interventions in the Middle East.<sup>7</sup> Local tyrants who prioritise alliance with US political and economic interests higher than the local population's, are attacked as the enemy within.<sup>8</sup> To this is added great resentment at the presence of the US military bases in the region, a continual reminder of overwhelming external coercion at the service of those the US favours.<sup>9</sup> A reminder too of the bombing by the US in Lebanon, Libya, Iraq and Sudan, often with frightful consequences for the civilian population.<sup>10</sup> At the same time victory against the Shah in Iran, defeat of Russia in Afghanistan, devastating strikes against the US marines in Beirut, expulsion of Israel from south Lebanon, street-level support for Palestinian aspirations, and actions in Bosnia and Chechnya, have given radical Islam serious credentials. US intervention has also empowered these groups. 'Afghani' insurgents were trained, armed and aided by the US in a successful provocation of Russia into what would become 'its Vietnam War'.<sup>11</sup> These same

<sup>7</sup> The US gave Israel the 'green light' to invade Lebanon, resulting in more than 17,000 dead, and used its navy to bombard the Druze and Shia militias on behalf of the Christian Phalange government, Israel's proxy government. Retaliation came with suicide bombers destroying the US Marines' Beirut headquarters, killing 241. The marines subsequently abandoned Lebanon. Robert Fisk, Chapter 14, *Pity the Nation*, 3<sup>rd</sup> Edition, Oxford, Oxford Paperbacks, 2001.

<sup>8</sup> See Fred Halliday's 'Fundamentalism and Political Power' in his *Two Hours That Shook the World: September 11th, 2001 Causes and Consequences*, London, Saqi Books, 2001, and Tariq Ali's superior 'One Hundred Years of Servitude' in his *The Clash of Fundamentalisms*, London and New York, Verso, 2002.

<sup>9</sup> The United States currently has a military presence in 100 out of the 189 countries of the UN, William Arkin, 'US Air Bases Forge Double Edged Sword', *Los Angeles Times*, 6 January 2002.

<sup>10</sup> The bombing of Sudan's only pharmaceuticals plant, terminated the production of 50% of Sudan's medicines, with considerable cost in human life resulting. In spite of unassailable evidence that it was just a pharmaceuticals plant, no apology was ever issued.

<sup>11</sup> Zbigniew Brzezinski, National Security Adviser to president Carter at the time, disclosed this aim of US funding for the Mujahedeens, and that it commenced before the Russian invasion, Interview in *Le Nouvel Observateur*, 15-21 January, 1998.

insurgents, have gone on to destabilise Egypt, Algeria, Bosnia, Chechnya, Pakistan and Kashmir.<sup>12</sup>

Articulating the deeply felt injustice at US prioritisation of its national interests over the lives, welfare and rights, of non-US citizens, allows Islamist movements to recruit countless educated middle class young men and from poorer sectors, just as nationalist movements did in the past. Bin Laden's declared aims are testimony to this 'liberationist' edge: removal of what he takes to be corrupt regimes which rule the Arabian peninsula, use of the region's oil reserves for the local population, removal of the 'infidel' from the holy places (i.e., US military bases), ending the suffering of the Iraqi population of bombing and sanctions and the injustices suffered by the Palestinians at the hands of Israel.<sup>13</sup>

Against this background, repressing these groups militarily compounds the causes of September 11<sup>th</sup> rather than addressing them. Military action only serves to reassert an international order which, with some justification, is seen to embody selectivity and double standards. In an order based on the right of the strong, rather than justice and impartiality, and in lieu of alternatives, movements for radical religious renewal will proliferate and seek mileage from confrontations with the leading power in this order. Thus, applauding the acts that lead to the partial liberation of Afghans would seem desperately short-sighted. Whilst positive, these effects are 'collateral', given that liberation was not the motive of the war, nor its declared aim, nor the priority of those prosecuting it, and not obviously the reason support was given to the Afghan military allies,<sup>14</sup> or the US friendly interim government.<sup>15</sup> A wider analysis of the war places such gains in a worrying context.

<sup>12</sup> Evidence has just emerged that the US used Islamists to arm Bosnian Muslim groups during the war in Yugoslavia, 'Intelligence and the War in Bosnia, 1992-1995', *Srebrenica Report*, Netherlands Institute for War Documentation,, Netherlands, Amsterdam, Boom Publishers, 2002.

<sup>13</sup> Al Qaeda's founding statement, as do subsequent interviews, singles out US actions in Iraq, support of Israel against the Palestinians, and military presence in the peninsula, as the central motives for attacking the superpower, Fred Halliday, 'Founding Statement of Al Qaeda' *Two Hours That Shook the World: September 11th, 2001 Causes and Consequences*.

<sup>14</sup> Northern Alliance atrocities have involved the rape, torture, and murder of thousands of innocent Afghans, yet 'not a single Afghan commander has been held



### Principles of just war

Darrel Moellendorf's valuable article in this symposium makes, I believe, two mistakes. Firstly, his assessment of the US response to the 11<sup>th</sup> September attacks uncritically employs a distinction between just recourse to war (*jus ad bellum*) and the conduct of war (*jus in bello*), and secondly he claims it is problematic and misguided to employ considerations of motivation in assessing the act of military intervention itself. The recourse to, vs. conduct of, war distinction, whilst sometimes useful, is not strictly sustainable even if we were to limit the former to just cause. The question, of 'just cause to what?' refers us to the appropriate pursuit of a goal, given its aims. The aimed at discernible goal changes with different means employed to pursue it. Thus 'achieving peace' by bombing civilians would characterise a different aim than seeking peace by opposing an invading army. This is a different, and wider, question than proportionality of response. It is rather about characterising a response. Thus, an aim which cannot be, or is not likely to be, pursued appropriately by the relevant agent is not a just aim. The further question of motivation is important because knowing the aims and purposes behind an action will help us to better characterise that action, including the form of its pursuit and irrespective of the descriptions offered by the agent. The Third Reich had many virtuous characterisations for its aims in the *Sudetenland* in Czechoslovakia, in fact the excuse was to protect a German minority from persecution—putatively a just cause, yet in the light of prior actions the intention was clearly not virtuous. Motivation also relates to a further

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accountable for violations of international humanitarian law.' 'Background report on Afghanistan', *Human Rights Watch*, October 2000.

<sup>15</sup> Both the US friendly president of Afghanistan, Hamid Karzai, and Washington's emissary to Kabul, Zalmay Khalilzad, previously worked for the US oil company UNOCAL. Note also how important, strategically, the US views oil matters in the region, e.g., *US Government Energy Information Factsheet on Afghanistan*, December 2000. UNOCAL is currently subject to a campaign including court actions by Amnesty International USA, in connection with human rights abuses in Burma, *Doe v. Unocal*, Court of Appeals, 9th Circuit, 3 December, 2001.

question: who is in a legitimate position to judge just cause, and pursue a course of action?<sup>16</sup>

For Aquinas just war required just cause, legitimate authority and just intention, on the part of the agent.<sup>17</sup> Legitimate authority is crucial to a judgement of the action in Afghanistan. It is plausible to assert that, in international relations, authority cannot come from the policy processes, democratic or otherwise, which take place within one nation. For an action, and who undertakes it, may have repercussions for all states. I will argue that, in the case of Afghanistan, the aims of the action were impugned by the form of action (the aim as a whole) and by the agent. The action was flawed because it contributed to an order in which disparities and selectivity at the service of self interest is the working norm, and the agent is the current chief promoter of an order which significantly contributed to the causes of the 11<sup>th</sup> September events. I am assuming here that an order in which humanitarian abuse is punished or ignored (or protected) depending on the interests it serves, is an unjust order. In that judgement the authority of the agent matters. Accountability of institutions and agencies is as important for international justice as it is for local justice. Yet it does not exist at the international level, and is certainly not present with respect to the action in Afghanistan. The US as the principal world agent, I will show, is not subject or accountable to any non-national institutions, nor to the substance of impartial principles of international conduct. Yet, whilst serving its national interests, it dramatically influences the lives of other communities with actions, including war, over which they have no say.

### The 'pattern': US foreign policy strategy

Here I propose a thesis to be tested in the following sections. It is in the light of its veracity that intervention in Afghanistan should be judged. The thesis is that the overriding 'pattern' of US foreign policy

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<sup>16</sup> Cf. Allen Buchanan's discussion of norms established by the NATO Kosovo intervention 'From Nuremburg to Kosovo: The Morality of Illegal International Legal Reform', *Ethics*, Vol. 11, No. 1, pp. 673-705, July 2001. Buchanan's discussion, however, is in terms of 'law' rather than 'norms'.

<sup>17</sup> Thomas Aquinas, Second Part of the Second Part, Question 40, *Summa Theologica*, Christian Classics, June 1981.



interventions is one of serving national interests and, where these call for it, the interests of allies. In doing so, US foreign policy has not paid heed to nor recognised just principles of international law, humanitarian rules of engagement, or, for that matter, any other external constraint. All military actions, then, should be assessed against a background where the world's largest military and economic power, freely pursues this policy pattern.

The chief contrast in international relations crystallised by the 11<sup>th</sup> September events is between humanitarianism and security.<sup>18</sup> Security has been prevailingly prioritised, be it in domestic or foreign policy, and at the expense of civil and human rights.<sup>19</sup> The military action in Afghanistan is itself presented as a security measure: uprooting the organisations and personnel that threaten US, and world, security. But the security versus humanitarianism contrast is only a more exacerbated expression of the balance of US national interests versus other constraints on foreign policy. The ostensive policy rationale may change, but the foreign policy pattern has remained constant across many administrations. This is to further national interests directly or by supporting a local ally, militarily or otherwise, whatever their humanitarian record. This policy does not distinguish between states and insurgency movements. Thus the support for the contras in Nicaragua, mujahedeen in Afghanistan and Bosnia, and collaboration with the KLA in Kosovo, is consistent with support for Israel and Saudi Arabia. The policy is theorised in the Weinberger Doctrine on military intervention.<sup>20</sup> The first principle of this doctrine is simply to only commit troops when

<sup>18</sup>The UN Commission on Human Rights recently failed to adopt measures to secure human rights in the 'fight against terror'. The resolution was defeated after Mexico withdrew its support, under pressure from the United States. 'UN Commission fails to uphold human rights in fight against terror', *Amnesty International*, Public Statement, AI Index: IOR 41/014/2002, News Service No: 76, 26 April, 2002.

<sup>19</sup>On the US domestic front see Ronald Dworkin, 'The Threat to Patriotism', *New York Review of Books*, 28 February, 2002.

<sup>20</sup>'The Uses of Military Power', Remarks Prepared for Delivery by the Hon. Caspar W. Weinberger, Secretary of Defence, To the National Press Club, Washington DC, Weds., Nov. 28, 1984.

it serves the national interest or the interest of an ally. The modification, in practice, of this doctrine has been to minimise engagement of US troops proper through employment of safer options such as high altitude bombing, whilst working with allies, or local proxies, on the ground.

It is a classic feature of US military aid and assistance that constraints of a humanitarian nature on a military ally and its forces are, at best, cosmetic. One significant current example of this is US involvement and financing of the activities of the Colombian military forces. Ample evidence exists that these forces, being backed by the US in what is presented as a campaign against drugs, collaborate with, finance and arm, paramilitary groups involved in gross human rights violations.<sup>21</sup> Yet the US has provided the Colombian military with over \$1 billion over the last two years and \$60 million this May.

It is hard to see how priority for human rights or humanitarianism, means US alliance, trade with and armament of Saudi Arabia.<sup>22</sup> Still less official silence over Suharto's invasion and massacres in East Timor, or whilst pro-Indonesian militias continued to commit atrocities there.<sup>23</sup> This priority does not fit with continued use of US military technology,

<sup>21</sup>'The Ties that Bind: Colombia and Military-Paramilitary Links', *Human Rights Watch*, Vol. 12, No. 1 (B), February 2000; 'Colombia: Stop the massacres. Stop the military aid', *Amnesty International*, AI Index AMR 23/11th 0/2001 - News Service Nr. 181, 11th October, 2001.

<sup>22</sup>Saudi Arabia prohibits political parties, and unions, decapitates or mutilates prisoners and imposes draconian constraints on the movements, dress and freedom of women. Yet, it was made a member of the UN Human Rights Commission in May 2000, sells the US the equivalent of 1.5 Million barrels of low price oil, and spends the equivalent of 10 Million dollars on US weapons, a day.

<sup>23</sup>Between 1975 and 1998, the Indonesian army was responsible for the deaths of between 100,000 and 200,000, East Timorese. In spite of the 'Indonesia Report on Human Rights Practices for 1997', US Department of State, Released by the *Bureau of Democracy, Human Rights, and Labor*, January 30, 1998, detailing abuses, the US still managed to supply Indonesia with 1 billion dollars worth of military equipment between 1992-97. This figure is drawn from US Department of Defense, Defense Security Assistance Agency, Fiscal Year Series as of September 1981 and Foreign Military Sales, Foreign Military Construction Sales, and Military Assistance Facts, annual, various years, 1982 through 1996. See also, Press Release: 'East Timor: The World Must Act Or Be Complicit In The Killing', *Human Rights Watch*, New York, September 5, 1999.



or aid, by Israel to subject a civilian population in Palestine.<sup>24</sup> It does not sit easily with support and military aid for Turkey, responsible for the past and present cruel oppression of its Kurdish population, at the expense of fundamental human rights.<sup>25</sup> Nor can priority for humanitarian concerns mean virtual silence over massive, and ongoing, crimes against humanity committed by Russia in Chechnya, including a war which left 30,000 people dead.<sup>26</sup> The pattern asserted, then, is of punishing abuses of enemies only and ignoring those of friends, even across the life of one regime, Iraq being the perfect example.<sup>27</sup>

<sup>24</sup> Earlier this year, the US Senate overwhelmingly passed the fiscal year 2002 *Foreign Operations Appropriations* bill granting \$2.04 billion in military aid and \$720 million in economic aid to Israel. Total aid given to Israel by the US between 1949 and 2001 is \$94,966,300,000, according to American-Israeli Co-operative Enterprise (AICE), without conditions. More than US aid to the whole of sub-Saharan Africa for the same period.

<sup>25</sup> *Human Rights Watch World Report, 2001: Turkey; Human Rights Watch World Report 1999: Turkey.*

<sup>26</sup> Both Amnesty International and Human Rights Watch continue to regularly record 'disappearances' and human rights abuses by the Russians in Chechnya. The death toll for ongoing offensives is in the thousands. *Russia acting in Chechnya: Human Rights Watch, 'The 'Dirty War' in Chechnya: Forced Disappearances, Torture, and Summary Executions,' Human Rights Watch Report, vol. 13, No 1(D), March 2001; Russia acting in Chechnya: Human Rights Watch, 'Last Seen . . . : Continued 'Disappearances' in Chechnya', A Human Rights Watch Report, Vol.14, No. 3 (D), April 2002.*

<sup>27</sup> When Iraq invaded Iran (1980) the US blocked UN Security Council resolutions condemning the invasion, removing Iraq from its international list of nations supporting terrorism, whilst fully aware of Iraq's slaughter of Kurdish rebels in 1975. Iraq used chemical weapons in 1984, nevertheless the US strengthened diplomatic relations. In 1988 Saddam Hussein was responsible for the murder of thousands of Iraqi Kurds, yet the US strengthened economic ties. Only when Iraq left the US fold by invading Kuwait, thereby threatening oil markets, did the US turn against it with the aim of punishing the unauthorised transgression. 'Access to Persian Gulf oil and the security of key friendly states in the area are vital to US national security ... The United States remains committed to defending its vital interests in the region.' President George Bush (senior),

### International law and impartiality

A just international order is one with impartiality in the application of principles, be they principles of security or of humanitarianism. However, in many key respects the US has been unwilling to abide by any external authority, failed to accept international justice can be superior to its national interests, ignored the authority of principles it itself applies in justifying its foreign policy interventions. Here the double standards critique brings into relief the principles of operation, or norms, which are at play in international relations.

The most recent, and obvious, of these cases is the unwillingness of the US, both at the level of government and at the level of legislature, to countenance any form of international law which it cannot control. That is, a refusal to accept any external legal order as binding, however impeccable its moral and legal operational principles. The US administration originally signed up to the International Criminal Court, which would try war crimes and crimes against humanity, but refused to ratify it without assurances, essentially that US personnel would not be within the courts jurisdiction.<sup>28</sup> Yet, in spite of increasing assurances of the pedigree of the court, the new administration has not only refused to ratify it, but also saw a law passed forbidding co-operation with the court, and then moved to withdraw even the limited approval it had originally given.<sup>29</sup> Clearly, the US favours ad hoc courts, such as the Hague tribunal currently trying war crimes in the Federal Republic of Yugoslavia. Given that such tribunals have to be approved by the UN security council, are therefore subject to US veto, have NATO acting as

*National Security Directive* Number 54, 15 January 1991, outlining the aims of the Gulf War.

<sup>28</sup> See *A Selective US Vision of Justice*, Human Rights Watch World Report 2000.

<sup>29</sup> US legislators had originally included a clause giving the president the power to intervene, using 'all means necessary and appropriate', to secure the release of any US citizen held by the ICC, and to punish those who co-operate with the court (now known as the 'Hague invasion clause'), in the *American Servicemembers' Protection Act* (2001). Whilst this clause was removed, the legislation remains anti-ICC. The final withdrawal of approval took place with a letter to the United Nations on 6<sup>th</sup> May, and statements by members of the administration made it clear that attempts to assert ICC jurisdiction over US citizens would be considered illegitimate, 'US withdraws from treaty on International criminal Court', *The Washington Times*, 7 May, 2002.



a *de facto* police force, and providing funds, it is unlikely that any US personnel or allies could ever come to trial in one of them. Add to this that the tribunal only now, long after Kosovo has left the public eye, begins considering indicting members of the Kosovo Liberation Army for ethnic cleansing and war crimes in Kosovo. This is in spite of their attacks on Serbs and Roma, creating a refugee crisis among these communities, and numerous complaints from NGOs.<sup>30</sup> More importantly, consider any charges against NATO powers such as the bombing of a civilian television station, and resulting civilian deaths are ruled out of the tribunal's jurisdiction.<sup>31</sup>

Even on substantive issues of principle, the US operates an exception to the rule norm. Continued sanctions and military actions against Iraq are premised on its failure to allow in weapons inspectors. Specifically Iraq failed to give inspectors access to any place at any time, including all government buildings, archives, presidential residences, and the military unit responsible for the security of the president. This was the crucial sticking point for the US, and the basis for proposed future military action. Yet the US Senate passed an act implementing the 'Chemical Weapons Convention' into US law in 1997, with a significant amendment.<sup>32</sup> This stipulates that the president of the United States can

<sup>30</sup>The KLA is responsible for atrocities before during and after the NATO bombing, and has connections with Islamist groups. 'The Kosovo Liberation Army: Does Clinton Policy Support Group with Terror, Drug Ties? From 'Terrorists' to 'Partners'', *US Senate Republican Policy Committee*, 31 March, 1999; 'K-For is failing to stop KLA atrocities', *The Guardian*, 4 August, 1999; 'FRY (Kosovo): End deliberate attacks on Serb civilians', *Amnesty International Press Release*, AI Index EUR 70/003/2001, News service Nr. 29, 16 February 2001.

<sup>31</sup>When the television station case was brought before the European Court of Human Rights, it too ruled that NATO actions were outside of its jurisdiction, and a case on behalf of Yugoslavia against the US presented to the International Court of Justice, was deemed outside of that court's jurisdiction because to exercise jurisdiction this court needs the parties consent. The US had placed reservations when it signed the relevant conventions under which the case was brought, thereby placing it outside the jurisdiction of the court, 'Legality of Use of Force' (Yugoslavia v. United States of America), ICJ, 2 June 1999.

<sup>32</sup>*Chemical Weapons Convention Implementation Act*, May 1997.

deny requests to inspect 'any facilities in the United States' he deems to pose a threat to the national security interests of the country.<sup>33</sup> The military drive against Iraq, regardless of the current humanitarian disaster being suffered by its civilian population has even led to undermining the work of the organisation set up by the Chemical Weapons Convention itself, with the US leading a move to oust its president for attempting to bring Iraq into the fold.<sup>34</sup>

US spearheaded sanctions have degraded the civil, social, and health infrastructure of Iraq to the degree that the country suffers an ongoing 'humanitarian crisis' (according to UNICEF and the WHO) especially with respect to infant mortality.<sup>35</sup> The Iraqi population's condition is far worse than that before sanctions, ten years ago.<sup>36</sup> No significant evidence exists that the lack of aid or existing medical resources in Iraq are due to

<sup>33</sup>Section 307, 'Chemical Weapons Convention Implementation Act' 1997.

<sup>34</sup>The US accused Jose Bustani of 'mismanagement' but provided no documentary proof, at the OPCW meeting where it led a vote to oust him as head of the organisation, with votes 48 to 7 (and 43 abstentions). The reasons given for ousting Bustani, incidentally, conflict directly with the provisions of the convention, as he himself protested at the meeting. It later transpired that US opposition to Bustani actually lay in his attempt to persuade Iraq to join the convention. 'US ousts director of chemical arms body', *The Guardian*, 23 April, 2002.

<sup>35</sup>The UNICEF survey on child mortality in Iraq, 1999, shows that mortality in children under five has doubled since the last survey ten years ago: UNICEF Executive Director Carol Bellamy said 'the findings reveal an ongoing humanitarian emergency', 'Iraq surveys show 'humanitarian emergency'', *UNICEF Newslines*, Wednesday, 12 August 1999.

<sup>36</sup>The severity of Iraq's humanitarian situation stems from the massive and swift degradation of the country's civilian infrastructure, aggravated by over 10 years of economic and trade isolation. Overall health conditions of the population remain poor—well below the 1990 levels; environmental health hazards continue unrelieved. Food availability and consumption fall short of requirements impacting the nutritional status of large part of the population. Chronic malnutrition is widespread, especially among the growing children.' W. Kriesel, Executive director of the WHO office of the European Union, 'Health Situation in Iraq', report presented to the hearing 'Iraq and the International Community' of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, *WHO reports*, Brussels, February 26, 2001.



distribution of available aid, in fact evidence is to the contrary.<sup>37</sup> Thus the unproved excuse that a larger part of the blame for those dying in Iraq lies with Saddam Hussein, rings quite hollow. Especially when we consider (a) the disproportionate nature of the sanctions, (b) the fact that international law has not been observed on these matters,<sup>38</sup> and (c) that the reason for the sanctions (failure to comply with UN weapons inspectors from UNSCOM) can plausibly be seen as a pretext when one considers that UNSCOM was accused by one of its own members of complicity in espionage for the US, and in provocations leading to its pulling out from Iraq.<sup>39</sup>

A further good indicator of US attitudes to international justice is the sheer number of times it has either been in a minority (often a minority of one or two), in the UN General Assembly, or has vetoed ethically important resolutions on the Security Council. It is the highest vetoer of Security Council resolutions from 1956 to the present, vetoing condemnations of Apartheid South Africa, calls for recognition of human rights in the Palestinian Occupied Territories, a resolution condemning attacks on the Nicaraguan embassy in Panama during a US offensive there, and even a resolution calling on all states to observe international law. The US followed this up with a vote against a general assembly resolution, again calling for states to observe and comply with international law, which it ignored after losing 93-2 (supported solely by Israel).

<sup>37</sup> One piece of contrary evidence is the statement of Ashraf Bayoumi, who headed the World Food Programme Observation Unit in Iraq until May 1998, see 'Two Hiroshimas, Twenty Lebanons', by Amira Howeidy, *Al Ahram*, Weekly edition, 24 - 30 December 1998.

<sup>38</sup> Graf Hans von Sponeck (Former UN Humanitarian Co-ordinator for Iraq), 'It is an outrage that you repeat fabricated disinformation' *The Guardian*, 4 January, 2001.

<sup>39</sup> Julian Borger, 'Ex-monitor says UN tricked Saddam to prompt bombing', *The Guardian*, 30 March, 1999.

### The conduct of war

The United States is a prominent user of cluster bombs and has refused to sign the anti-personnel mines convention. Nor is its humanitarian record good in the prosecution of war. There is the now, but belatedly, known massacre of fleeing Iraqi soldiers and civilians on the road to Basra,<sup>40</sup> its attack on Nicaraguan diplomatic buildings and personnel when it invaded Panama, its ignoring the ruling of the International Court of Justice (World Court) that the US employed unlawful use of force and contravened the principle of non-intervention against Nicaragua, its killing of large numbers of civilians in Somalia, and the repeated vetoing of resolutions calling for UN observers in Palestine,<sup>41</sup> just to mention a few examples. Its intervention in Somalia involved extra-judicial killings, where a US gun ship killed 54 tribal leaders holding a meeting on 13<sup>th</sup> July 1993. US troops also killed 200 civilians who turned on them, enraged by effects of fighting in Mogadishu on the 9<sup>th</sup> September, and a further 300 on the 3<sup>rd</sup> October.<sup>42</sup>

If human rights are to have any moral significance whatsoever, then in calculations of humanitarian loss it is wrong to put the interests of one's own citizens over the human rights of others. To be sure, governments have special duties to their own citizens, but these duties are circumscribed by anyone's and everyone's human rights. In this light the decision to employ a well-worn tactic, of high altitude air bombardment with powerful ordnance, whilst sponsoring a proxy militia on the ground, with no humanitarian restraints, as the US did in Afghanistan, is not conscionable. It is aimed not at minimising risk of casualties, but at minimising risk of US casualties, at the expense of higher human cost on the ground. Furthermore, the fact that the US

<sup>40</sup> Seymour Hersh, 'Overwhelming Force, What happened in the final days of the Gulf War?', *The New Yorker*, 22 May, 2000;

<sup>41</sup> In 2001 alone the US vetoed two such resolutions, one calling for UN observers and the other for UN monitors, March and December 2001, respectively.

<sup>42</sup> James Mayall, ed., *The New Interventionism: United Nations experience in Cambodia, former Yugoslavia and Somalia*, Cambridge, Cambridge University Press, 1996, p. 192. UN troops in Somalia were astonishingly cruel against the civilian population, including acts of torture. In contrast to the US, Canada has tried its soldiers for such criminal acts.



government itself refuses to compile lists of Afghan civilian casualties also speaks against attributing to it any humanitarian concern.<sup>43</sup>

US actions over Kosovo, held up as an exemplary intervention, do not bode well for the immediate consequences in Afghanistan. NATO bombed from high altitude using cluster bombs and depleted uranium tipped missiles in Serbia, hitting clinics, hospitals, schools, refugee camps, a prison, civilian buses, a passenger train crossing a bridge, apartment blocks, a state television station, and a chemical plant which then released deadly poisonous chemicals into the atmosphere and river courses, all with horrific consequences for men, women, children, the elderly and the infirm.<sup>44</sup>

### 'Humanitarian intervention'

The NATO action in Kosovo is also presented as exemplary humanitarianism, an exception to the pattern described above. However, careful scrutiny of the events leading up to the NATO bombing, the action itself, and the consequences, shows this pattern assert here too. The government in Belgrade was involved in negotiations, which had led to interim agreements over partial autonomy for Kosovo and the

<sup>43</sup> Even on conservative estimates, Afghanistan shows a higher rate of civilian loss than the intervention in Kosovo, Carl Conetta 'Operation Enduring Freedom: Why a Higher Rate of Civilian Bombing Casualties', *Project on Defense Alternatives*, Briefing Report 11<sup>th</sup>, Cambridge MA, The Commonwealth Institute, 24 January 2002.

<sup>44</sup> 'Yugoslav Town Bathed in Blood', *Associated Press*, 6 April, 1999; 'The victims: At sites of NATO Accidents, Scent of Death, Sound of Fury', *New York Times*, 13 April, 1999; 'Charred Corpses Litter Site of Attack', *The Times*, 16 April, 1999; 'Cluster bombs may be what killed refugees', *Los Angeles Times*, 17 April, 1999; 'Refugee Serbs Blame NATO in Camp Bombing', *Los Angeles Times*, 22 April, 1999; 'Consigning their future to death', *The Guardian*, 22 April, 1999; 'NATO acknowledges bombing Serb town', *Associated Press*, 28 April, 1999; 'Families Blasted in Just Another Mistake', *The Independent*, 29 April, 1999; 'NATO admits Hit Bus, Raids Go On', *Reuters*, 2 May, 1999; 'War in The Balkans - Nato calls the bombing of a hospital collateral damage. I call it a tragedy', *The Independent*, June 1, 1999.

presence of observers. Yet the talks were presented as scuppered by Belgrade's intransigence, the crisis in the Kosovo portrayed as genocidal, and the only solution offered was bombing.

The demands placed upon the Milosevic regime before the US decided end talks and pursue a bombing campaign reveal a different pattern. The regime was not only to remove all state security from Kosovo, relinquishing the province, but also to permit unlimited entry, movement and stationing of NATO troops throughout all Yugoslavia, with free use of all infrastructure and complete immunity for those troops from prosecution for any action.<sup>45</sup> Furthermore, astonishingly, the agreement contains a requirement that the 'economy of Kosovo shall function in accordance with free market principles.'<sup>46</sup> A provision 'second guessing', to say the least, democratic decisions by the population. Both conditions are provocative, whilst no other, intermediate, offer presented by NATO, and military intervention the stated price of failure accept it. The subsequent bombing was sold as averting genocidal ethnic cleansing taking place in Kosovo. However, whilst atrocious crimes had taken place on the part of the Serbian security forces, the most significant fact is that the indictment against Milosevic could not be brought for genocide or even conspiracy to

<sup>45</sup> '(6a.) that NATO shall be immune from all legal process, whether civil, administrative or criminal. (b.) Its personnel,...immune...in respect of any civil, administrative, criminal or disciplinary offences which may be committed by them in the FRY...(8.) NATO personnel shall enjoy, together with their vehicles, vessels, aircraft and equipment, free and unrestricted passage and unimpeded access throughout the FRY, including associated airspace and territorial waters. (10.) The authorities in the FRY shall facilitate, on a priority basis and with all appropriate means, all movement of personnel, vehicles, vessels, aircraft, equipment or supplies, through or in the airspace, ports, airports or roads used. No charges may be assessed against NATO for air navigation, landing or takeoff of aircraft, whether government owned or chartered. Similarly, no duties, dues, tolls or charges may be assessed against NATO ships. (11) Nato is granted the use of airports, roads, rails and ports without payment of fees.' 'Appendix B: Status of Multi-National Military Implementation Force', *Rambouillet Agreement, Interim Agreement for Peace and Self-Government in Kosovo*.

<sup>46</sup> 'Economic Issues', *Rambouillet Agreement, Interim Agreement for Peace and Self-Government in Kosovo*.



commit genocide in Kosovo.<sup>47</sup> Germany's foreign office and regional Administrative Court documents from that time are more telling. They show that, whilst publicly declaring the Yugoslav government to have, and be carrying out, genocidal intentions, this leading member of NATO privately believed nothing of the sort.<sup>48</sup> What is clear is that the bombing led to intensified attacks on Kosovan-Albanians precipitating their forced expulsion by Serb forces.<sup>49</sup> The cost of the bombing action did not stop there. At least 500 Serbian civilians were killed in NATO bombing raids, some of these by cluster bombs.<sup>50</sup> The KLA, notorious for their criminality, got a free hand to engage in ethnic cleansing of their own causing a refugee crisis of Serbians and Roma, and went on to try to destabilise Macedonia.<sup>51</sup> This is all capped by current political conditions in Kosovo: a de facto protectorate, with executive orders

<sup>47</sup>Controversy surrounds the extent of crimes in Kosovo. Some evidence is extensively reviewed in (the late) Daniel Pearl, with R. Block, article 'Despite Tales, the War in Kosovo Was Savage, but Wasn't Genocide', *The Wall Street Journal*, 31 December, 1999. Even satellite pictures produced to prove the appearance of 'mass graves' have since been disputed, given they also show buildings mysteriously appearing in the space of days, 'Nato Photos of Kosovo Mass Graves are Fake: Report', *Agence France-Presse*, 31 March, 1999.

<sup>48</sup>High Administrative Courts had access to and used Foreign Office Reports. The Upper Administrative Court at Münster: 'Events since February and March 1998 do not evidence a persecution programme based on Albanian ethnicity', 24 Feb. 1999 (Az: 14 A 3840/94, A); 'Ethnic Albanians in Kosovo have neither been nor are now exposed to regional or countrywide group persecution in the Federal Republic of Yugoslavia.' 11<sup>th</sup> March, 1999 (Az: 13A 3894/94, A). NATO bombing began 24<sup>th</sup> March 1999. Foreign office and court documents reproduced in *Junge Welt*, 24<sup>th</sup> April 1999. Courts dealing with asylum claims might be expected to underplay events in Kosovo, yet the courts were citing official Foreign Office reports.

<sup>49</sup>*Under Orders: War Crimes in Kosovo*, Human Rights Watch, 2001.

<sup>50</sup>*Civilian Deaths in the Nato Air Campaign*, Human Rights Watch, Volume 12, Number 1 (D) February 2000.

<sup>51</sup>Large graves of Roma and Serbs have been reported, plus over 100,000 displaced just among the Roma. *Roma Rights*, Bulletin of the European Roma Rights Centre, Budapest, several issues, 2000-2001.

issued by a UN Special Representative, with ultimate veto powers over any initiative, including democratic elections and the actions of any elected government in the region.<sup>52</sup> Those elections that have taken place have been very carefully patrolled, with every ministry having one UN representative overseeing their work, and with powers of veto. The international presence in Kosovo has extra-judicial powers and immunities, which rule out any accountability for actions on their part.<sup>53</sup> Clearly 'humanitarianism' here does not include full democratic self-rule.

Compare this to recent events in Palestine. *Prima facie* evidence of human rights abuses and war crimes atrocities by the Israeli Defence Forces in the refugee camp of Jenin, and all over the West Bank, is abundant. Yet the US administration called Israeli prime minister, Ariel Sharon, 'a man of peace', and strengthened its commitment to arm and finance Israel.<sup>54</sup> Human rights organisations, the UN, and governments have joined in deploring IDF actions, which destroyed homes and killed civilians.<sup>55</sup> The IDF denied access to ambulances, medical workers and the press, for 11 days, and then to a United Nations Commission of Inquiry, approved by the UN Security Council. Among the reasons given for refusal, was that the commission would do things 'such as interrogating soldiers and officers who took part in the fighting,' when 'No country in the world would agree to such a thing.'<sup>56</sup> In spite of these actions, carried out all over the West Bank, causing a significant death toll and destroying civilian infrastructure, no similar concerns were

<sup>52</sup>'Federal Republic of Yugoslavia (Kosovo): Amnesty International calls for an end to executive orders of detention', *Amnesty International*, AI Index: EUR 70/017/2001, 3 August 2001.

<sup>53</sup>'Kosovo: Amnesty urges accountability in KFOR', *Amnesty International*, AI INDEX: EUR 70/01/00, 6 January 2000.

<sup>54</sup>'United State Calls Sharon 'Man of Peace'', *Reuters*, Washington, 11<sup>th</sup> April, 2002.

<sup>55</sup>'Israel/OT: Nothing to hide? Amnesty International head calls on Israel to co-operate with UN inquiry', *Amnesty International*, AI Index: MDE 15/063/2002, News Service No: 76, 29 April, 2002; Human Rights Watch, *Report: Jenin: IDF Military Operations*, Vol. 14, No. 3 (E), May 2002.

<sup>56</sup>Israeli communications minister, Reuven Rivlin, quoted in 'UN in crisis meeting as Israel snubs mission', *The Guardian*, April 29, 2002.



expressed by the US leadership, and no question was raised about its relationship with Israel, which was strengthened by a supportive resolution in congress.<sup>57</sup> The death toll at Jenin alone is currently set at 52, including the old, women and children, and the infirm, yet the trigger for the hard stance against Milosevic on Kosovo was the killing of 45 men in Racak by Serb forces. The urgency in the Kosovo case, and the lack of it in the Palestinian one, would seem best explained by the strategic aims identified above as 'the pattern'. In one case the US seeks to militarily defeat an administration seen as unfriendly and unyielding on excessive demands, in the other it turns a blind eye to war crimes committed by an ally. The US foreign policy pattern I have described, then, emerges even in 'humanitarian' cases.

### Selectivity and justice

Moellendorf's analysis tries to accommodate the above double standards critique. However, the status what purpose of his identification of double standards is left unclear. His three chosen tests for the justice of war are supplemented by the thought that if these tests are selectively employed then we have double standards. But no conclusion is drawn from this, and no conclusion about justice can be drawn from *that* understanding of double standards at all. To do so would be to add an extra test, to the three Moellendorf has already recommended as *sufficient*.

Selectivity, it should be stressed, does not, by itself, establish an action as unjust (as in selective acts of charity). The appropriate double standards, or selectivity, critique is that it indicates an unjust norm is being reinforced. Acting to enforce unjust norms may have some positive consequences, but the overall repercussions are negative. And it is here that Moellendorf's criteria do not really take into account consequences. For he includes the consequences of the action on face value, and not their contribution to a wider norm. Punishing enemies and rewarding friends, through selective interventions employing the

<sup>57</sup> Evidence also exists that the US actually blocked the UN inquiry mission, 'Jenin Inquiry: Sharon puts Washington on the spot: US blocked UN mission, says Israeli leader', *The Guardian*, 8 May, 2002.

language of humanitarian concern, is one such norm. The humanitarian presentation, in this context, must be seen as purely instrumental, and indicates the likely form of action. It will reinforce a world order in which human rights abusers can expect immunity so long as they are careful about their alliances. A Bush spokesman recently underlined this norm by declaring the trade embargo on Cuba will continue because 'trade with Cuba doesn't benefit the people of Cuba. It's used to prop up an oppressive regime.'<sup>58</sup> Nevertheless, undemocratic Saudi Arabia, oppressive Turkey, and the military dictatorship in Pakistan, are rewarded with arms sales and aid.

### The war in Afghanistan

Given the international norms which the Afghan war reinforces, only one kind of justification can remain, and that is self-defence, but with respect for human rights. Yet, how the war could represent true self-defence, as opposed to retribution, is not clear. The aims were unclear, the way that a military action favouring one side of a civil war in a war torn region could prevent, as opposed to inspire, hijackings and attacks in the US is also unclear, and purely in defensive terms it is unconscionable and irresponsible. Destabilisation of the region could ensue, by pushing insurgents into Pakistan and vividly reasserting the norm of punishment and reward I have described above. To serve the military priorities, devastating humanitarian effects of the campaign were underplayed, or ignored, including the use of cluster bombs.<sup>59</sup> Aid reaching the country has been increased, but primarily as a strategic, and secondary, part of the military effort: securing a friendly local administration. It must, then, be judged as 'collateral' as civilian casualties are judged by the military. They must also be balanced against the loss of life resulting from the offensive. A huge catastrophe was predicted as a result of the war. Yet information on that front has significantly not been forthcoming, similarly with information on civilians killed by military actions, which according to reasonable

<sup>58</sup> 'Bush rejects Carter's call to end ban', *The Independent*, 16 May, 2002.

<sup>59</sup> 'Cluster Bombs in Afghanistan', *Human Rights Watch Backgrounder*, October 2001



estimates is high.<sup>60</sup> The US insisted that their action should not come under the auspices of the UN, and through the security council obtained full discretion in Afghanistan, in the name of 'self-defence', thereby contravening the UN charter.<sup>61</sup>

Politically, in line with 'the pattern', the US immediately chose a local ally, the Northern Alliance, on the ground ignoring completely their humanitarian record, and the likely consequences of giving them power, armaments and aid. The same warlords whose civil war paved the way for the Taliban, and who were responsible for massacres and mass rape, were once again invited to unite, with the US as power broker.<sup>62</sup> Relations with highly repressive and undemocratic regimes in the region have been strengthened, and criticism of these regimes, such as the dictatorship in Uzbekistan, muted. The norm of selective, unregulated, and unaccountable military action, serving aligned interests, has thus been reinforced, and underlined by the fact the action has been pursued with the rhetoric of extra-judicial killings.<sup>63</sup> With regular reports of fighting amongst the warlords in the interim coalition government all the signs are that once US troops leave, it will crumble into a renewed civil war, with civilians again the losers.

<sup>60</sup> Early indicators were of an emerging humanitarian catastrophe, yet astonishingly after February reports and figures dry up, 'Aid workers say Afghans now fleeing 'hunger belt'', *The Scotsman*, 22 February, 2002; 'Campaign Against Terrorism: Graveyards outgrow villages in Afghan starvation belt', *The Independent*, 4 February, 2002.

<sup>61</sup> Article 51 of the UN charter specifies that states have a right to individual or collective self-defence, until such a time as the security council can take measures to act on behalf of such states. The US, with allies, passed resolution 1368 and 1373, emphasising an 'inherent' right to self defence, interpreting this as licence to continue its military actions in Afghanistan indefinitely, with no security council intervention.

<sup>62</sup> 'Afghanistan: International responsibility for human rights disaster', *Amnesty International*, AI-index: ASA 11th /009/1995, 29<sup>th</sup> November, 1995; 'Military Assistance to the Afghan Opposition', *Human Rights Watch Backgrounder*, October 2001.

<sup>63</sup> 'Rumsfeld wants Bin Laden dead as allies' net tightens', *The Guardian*, 22 November, 2001.

## Conclusions

Declaring war on the forces behind the 11<sup>th</sup> September attacks should mean declaring war on the order that made those attacks possible and conceivable. The bombarding of yet another group into battlefield submission, and the extra-judicial killing of its leaders, certainly do not address these causes. The bombs only fall on current manifestations of those forces, along with innocent civilians, and reinforce unjust international norms. Both will have destabilising effects on local and wider regions, and have had terrible humanitarian consequences. The effects are already being felt as Islamists dangerously provoke nuclear-armed India in Kashmir, and nuclear-armed Pakistan is fearful of repressing them domestically. The solution is not, then, to look at what unaccountable military alliances can do. For these very reasons they do not have the authority to act. A just international order would address the principal causes. Often we are presented with crises for which intervention is the only option, when the events and history leading up to those crises, with its preventable turns, has been ignored. In Somalia, for example, the breakdown leading to the rule of the warlords was largely due to Barre's rule, itself aided and armed by powers such as the US. The current order is one analogous to Hobbes' state of nature: dominance by potent nations is more effective than weak international institutions, which are themselves subject to pressures, influences and intrigues from the powerful. In that context, Kant's advice is better: the primary obligation is to leave the state of nature and establish a just system of constraints.<sup>64</sup> This means pressing the cause of judicial due process, impartiality in international law, restraints on superpowers and weak states alike, accountability, transparency, and alternative forms of achieving humanitarian goals. It is also to beware that humanitarian

<sup>64</sup> '... lawless external (brutish) freedom and independence from coercive laws is a state of injustice and of war, each against each, which a man ought to leave in order to enter into a politico-civil state,' Immanuel Kant, 'Man ought to leave his ethical state of nature and become a member of an ethical commonwealth', Book Three, Division One, II, *Religion Within the Limits of Reason Alone*. Kant had a different story to tell about international law. However, the grounds for making that difference, which are echoed in J. Rawls', *The Law of Peoples*, Cambridge MA, Harvard University Press, 1999, are themselves questionable.



discourse can be used to disempower, and invoked for ulterior purposes. To ask, then, how the United States and its allies should retaliate is to mistake the problem for the solution.

Article:

## The political limits of reasonableness

Stephen de Wijze

It started with a young Hasidic man by the name of Yitzi Namkin who was openly homosexual ... Homosexuality, I explained was no longer considered a mental illness by the DSM-IV ... Nor was it something that could just be removed by a psychiatrist as if it were a planter's wart. I could tell that my defence of Yitzi Namkin put me in the same boat as Yitzi. We were both now, in the Rabbi's eyes, 'sick trash'. And that I would take the word of DSM-IV above the word of God nearly drove Rabbi Sternglantz to the point of physical violence. (David Feuer)

There is a God. We have got rid of filth ... Now a person won't come back home, sit in his living room and flip between sex channels.... (National Religious Party Member of the *Knesset*, Yigal Bibi, when the *Knesset* voted against allowing sex channels on Israeli TV.)

To all our fellow citizens we say: Abortion is an assault on human dignity, an act of violence against both mother and child and the whole human family. Legal protection for unborn human life must be restored in our nation. As the Second Vatican Council also reminded us 'Whatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia, or wilful self-destruction ... all these things and



others of their like are infamies indeed. They poison human society, but they do more harm to those who practice them than those who suffer from the injury. Moreover, they are a supreme dishonour to the Creator'.<sup>1</sup>

### The question

Could a deeply religious person and a secular humanist agree on what would be reasonable values and practices within a just society? Or to put it another way, would it be possible for a pornographer and a devoutly religious Jew/Christian/Muslim to find a form of political association which would allow each to pursue their conceptions of the good life without blocking the aspirations of the other? If, as seems inevitable, there are irresolvable clashes between cherished values, this raises serious doubts over whether it is possible to achieve an inclusive and widely endorsed political framework to ensure justice and stability in a pluralist society. Recent liberal political theorists, most notably those who advocate a version of 'justice as impartiality' such as Brian Barry and the John Rawls in his later work in *Political Liberalism*, have offered approaches which heavily depend on a widely accepted normative idea of 'the reasonable'. This approach stands in marked contrast to other liberal attempts based on either a notion of *mutual advantage* or *reciprocity*.<sup>2</sup> In Rawls's case, 'the reasonable' becomes so

<sup>1</sup> The first quote is from David Feuer's essay 'Let There Be Light!' in *Granta* 74, Summer, 2001, p.185. The second quote is taken from the *Jewish Chronicle*, August 3, 2001, p2, and the 3rd quote is an extract from Statement of the *National Conference of Catholic Bishops* – November 12, 1997.

<sup>2</sup> *Justice as Mutual Advantage* is premised on the assumption that society consists of rationally self-interested individuals seeking social cooperation to attain desired goals which are impossible without such cooperation. *Justice as Reciprocity* agrees that egoistic motives play a part in motivation but importantly there is also the desire to conform to the rules of the social structure because they are fair and proper. See Gibbard, A., (1991) 'Constructing Justice' in *Philosophy & Public Affairs*, Vol. 20, pp. 264-279, on how different assumptions about human motivation provides a useful way of categorising theories of justice.

important that it even replaces appeals to truth as the standard for judging conceptions of the good. 'The reasonable' serves to underwrite public reason providing the moral and pragmatic impetus (replacing the motivational reason of self-interest) for diverse groups of citizens to establish inclusive principles of justice that can be willingly endorsed by free and equal citizens. In short, 'the reasonable', serves as the crucial theoretical tool by which citizens in a pluralist democratic society can ensure civility within conflict.

### The problem

However, as critics of this approach are keen to point out, if this theoretical lubricant of group and individual friction is itself deeply flawed, then this particular enterprise of finding inclusive principles of justice is fatally undermined. As can be expected, critics (internal and external) raise serious doubts about the efficacy of such a notion given the nature of deep disagreements found in pluralist societies.<sup>3</sup> Either 'the reasonable' is a notion that lacks coherence and substance, or its purported neutrality between different groups is a sham. While claiming to be widely inclusive, 'the reasonable', on closer examination, embodies the standard liberal values of individuality and autonomy, relies on an untenable distinction between the public (political) and private, and assumes a notion of the individual self which is deeply at odds with how non-liberals perceive themselves and their community. Its appeal, it seems, must at best be severely limited to those who endorse a liberal moral doctrine (and perhaps not even that).

Other critics raise concerns about the consistency and coherence of existing definitions of 'the reasonable' used by theorists such as Rawls and Barry. Either the definition is too strong (or too weak) for its intended purpose or it turns out to collapse under the weight of its own inconsistencies. Still others argue that it is incoherent to insist on reasonableness rather than truth as the foundation for a conception of justice for this simple reason; if we have good reasons to adopt a

<sup>3</sup> For a taste of such critiques see Caney, S. (1995) 'Anti-perfectionism and Rawlsian Liberalism' in *Political Studies*, Vol. 43, No2. June, pp 248-64 and Wenar, L. (1995) 'Political Liberalism: An Internal Critique', in *Ethics*, 106, October, pp.32-62.



particular conception of justice then 'those reasons show (or make) this the true theory of justice'.<sup>4</sup> Consequently, a notion of 'the reasonable' can no more facilitate the development of inclusive principles of justice within a pluralist society than liberal theories motivated by self-interest or explicitly based on Kantian or Utilitarian principles.

These and other criticisms require careful responses which I cannot pursue here. This paper addresses a particular concern, namely, whether a notion of 'the reasonable' could be justified to a very wide range of citizens (liberal or otherwise) as the central normative concept for organising a just political community without it being perceived as an unwanted and biased imposition. If it is possible to show why world views as diverse as the devout Muslim and the secular humanist pornographer would both endorse a political notion of 'the reasonable', then this will go a long way to demonstrate that despite the deep conflicts endemic to a pluralist society, it is nevertheless possible to offer an inclusive political framework that ensures civility and justice.

I shall argue, then, that there is a minimal coherent definition of 'the reasonable' and that its content is derived from, and justified by, the latent values found in a shared democratic public political culture. These values are necessarily part of every democrat's conception of the good and they can provide the requisite basis for defining a common understanding of what it is to be reasonable in the political domain. The justification of such a notion cannot claim to be universal, ahistorical or neutral between all and every moral doctrine. Unavoidably, some groups will perceive this notion of 'the reasonable' as sectarian, nothing short of a secular liberal attempt to impose, by stealth and deception, modernist values based on the glorification of Reason. The exclusion of such doctrines will be unavoidable and in some cases tragic<sup>5</sup>. However, the

<sup>4</sup> Raz, J. (1990) 'Facing Diversity: The Case of Epistemic Abstinence' in *Philosophy & Public Affairs*, Vol. 19, p.15.

<sup>5</sup> Some exclusions will be tragic cases because although we recognise that they have coherent and consistent moral doctrines, these world views claim privileged access to the truth and insist that they would lose their meaning and identity if they made any significant compromises in the search for political community. These cases show that there will always be a tragic limit to the common meaning that can be

point to stress here is this. Every conception of justice with any substance (and therefore critical bite) must exclude some views of human flourishing, and one based upon a political notion of 'the reasonable' is no exception. However, I shall argue that this approach is far better than its rivals at accommodating the widely divergent groups within a democratic pluralist society. A conception based on 'the reasonable' offers a means of establishing political legitimacy and justice that should resonate with all democrats (liberal or otherwise) while overcoming the instability inherent in pragmatic solutions based on a tenuous *modus vivendi*. For those non-democrats who reject a notion of reasonableness, the hope is that they will come to see the virtues of adhering to a notion of 'the reasonable' with its many pragmatic benefits. However, if this proves impossible, then the issue becomes whether the practices of such groups ought to be tolerated or suppressed.

#### Justifying 'the reasonable': the ideal of democratic governance

The concern of this paper is with justifying a political notion of reasonableness understood as a higher order concept with its own normative and epistemological content. The normative dimension is best characterised as the 'particular form of moral sensibility that underlies the reason to engage in fair co-operation as such, and to do so on terms that others as equals might reasonably be expected to endorse'.<sup>6</sup> Here we find willingness among citizens to realise and accept that their own cherished principles may be harmful to others, *from their opponents' point of view*, and that this stands as a possible valid objection to them. Reasonableness requires that we enter the world of others as equals and be prepared to propose and accept fair terms of co-operation provided they reciprocate in kind. 'The reasonable', then, when used to underpin a conception of justice, seeks to provide the *motive* for developing and abiding by principles which no citizen could reasonably reject. But equally important, the notion of reasonableness (when understood as the

achieved concerning key values in social life. For an extensive discussion of this issue see Moon, J. (1993) *Constructing Community: Moral Pluralism and Tragic Conflicts* (Princeton: Princeton University Press), pp. 7-11.

<sup>6</sup> Rawls, J. (1993) *Political Liberalism* (New York: Columbia University Press), p. 51.



bedrock upon which political community ought to be built) provides the *justificatory force* to support political principles which acknowledge irresolvable disagreements, yet also requires that they be managed without the use of force or violence.

It is important to stress that for political theorists, 'the reasonable' is a technical term to be understood within a specific problematic; namely the achievement of political order in the face of conflicting practices, values and lifestyles. Against this background, 'the reasonable' enables the possibility of several theoretical manoeuvres to facilitate the development of an agreement (or as Rawls would put it, 'overlapping consensus') on principles of justice. It serves as a criterion of inclusion and exclusion, the shared normative moral motivation to seek justice despite difference, and the justificatory basis for principles that need not evoke a particular notion of the truth.<sup>7</sup> The stress on inclusivity, civility, mutual recognition and accommodation enables 'the reasonable' to facilitate a widespread acceptance of a political framework for social cooperation in several ways. Firstly, reasonableness' strong pragmatic emphasis offers an approach for achieving a moral political association which minimises the zero-sum conflicts resulting from competing doctrines that present themselves as having a monopoly on the truth. Secondly, 'the reasonable' is a notion that strives to achieve a practicable balance between legitimate state interference, and the right of individuals or groups to pursue their own conception of the good within a political framework they themselves have endorsed through an open process of public reason. Thirdly, 'the reasonable' does not endorse a sceptical or relativist view of truth in the face of pluralism. Rather, it embraces fallibilism so enabling citizens with conflicting values to participate in a great political project based on shared normative values.

<sup>7</sup> For a detailed discussion of these roles, see de Wijze, S. (2000) 'Reasonableness, Pluralism and Justice: A Pragmatic Approach' in G. Calder et al. (eds). *Liberalism and Social Justice: International Perspectives*, (Aldershot: Ashgate, 2000), pp. 69-85.

### Reasonableness and democratic values

The possibility and effectiveness of 'the reasonable' being able to fulfil the roles outlined above lies in the contingent fact that it exists as a central part of all moral doctrines that have integrated and cherish the values and importance of *democratic* governance. Here we must distinguish between a *concept* and *conception* of democracy.<sup>8</sup> The former refers to a system of politics where citizens enjoy equal rights to participate in, and exercise control over, their political lives through a publicly recognised set of institutions and procedures. The *concept* of democracy, then, 'can be identified by the particular source of legitimate authority it establishes'<sup>9</sup>, one where political power always remains a derived authority given by way of delegation from the citizens. A *conception* of democracy, on the other hand, refers to the many different theories of democracy, those involving rival claims about how much, and in what form, such a system is most efficacious and sustainable.<sup>10</sup> I shall take it as given that there is a very widespread contemporary commitment to a *concept* of democracy as the only form of governance that confers political legitimacy in the early twenty-first century. As Shapiro points out, despite the many problems, failures, and ambiguities found in a democratic system of government, it is still an idea that 'has won the day in the sense that it has no serious political competitor in the modern world'.<sup>11</sup> Even those groups that advocate anti-democratic

<sup>8</sup> Throughout this discussion, I will be referring to an ideal concept of democracy rather than a non-ideal type understood as a set of political institutions found all over the world today. Non-ideal democracies are typically characterised by guarantees of freedom of press, speech, association, the rule of law, equal adult suffrage and frequent elections which are procedurally (if not substantially) fair. They are often compared with non-democratic forms of government which lack the characteristics outlined above.

<sup>9</sup> Leader, S. (1996) 'Three Faces of Toleration in a Democracy', in *The Journal of Political Philosophy*, Vol. 4, p. 49.

<sup>10</sup> See Beetham, D. (1992) 'Liberal Democracy and the Limits of Democratization' in *Political Studies* Special Issue (ed.) David Held, 'Prospects for Democracy', Vol. XL, p. 40.

<sup>11</sup> Shapiro, I. (1996) *Democracy's Place* (Ithaca: Cornell University Press), p. 3.



ideals, such as neo-fascists, and some fundamentalist and nationalist movements, still 'find it expedient to appeal to a democratic idiom'.<sup>12</sup>

In the search for a definition of the democracy, it is instructive to begin with Rousseau. Rousseau argues that the desire and justification for democratic governance arise out of the need for rational persons within a society to find a way of protecting life and property consistently with the preservation of liberty and equality. What is more, democracy is not merely a decision procedure but (through his idea of the 'General Will') is to be understood as a way of taking decisions informed by specific values common to all citizens.<sup>13</sup> This view is the core of most contemporary attempts to offer an ideal concept of democracy. Consider, for example, Ronald Dworkin's endorsement of what he calls the 'Partnership Conception' of democracy compared with the simplistic 'Majoritarian Ideal'.<sup>14</sup> Dworkin argues that a 'Partnership Conception' has three dimensions, namely popular sovereignty, citizen equality, and democratic discourse. This tripartite idealisation outlines the centrality of the common social values of freedom and equality that requires both fair procedures and the means for all citizens to participate substantially in the democratic life of the society.

### Democracy: preconditions, implications and rationale

When one marries Dworkin's ideal, echoed by Habermas, Rawls and others, with the fact of reasonable pluralism, the concept of democracy offers an adversarial procedure to enable serious political and social conflict to be resolved by an agreed set of rules. If this is correct then the concept of democracy entails both a recognised procedure and a set of

<sup>12</sup>For example, fundamentalist groups in the United States who attack 'liberal elites' believing that they are acting on God's orders, still seek *political* legitimacy as agents of a 'moral majority'. Such appeals, Shapiro insists, 'reflect a grasp of what might be described as democracy's non-optional character'. See Shapiro, I (1996), p. 3.

<sup>13</sup>Rousseau, J.J. (1968) *Social Contract* (Harmondsworth: Penguin Books).

<sup>14</sup>See Dworkin, R. (2000) *Sovereign Virtue* (Cambridge, Massachusetts: Harvard University Press), pp. 356-365.

substantive values in its *preconditions*, *implications* and *rationale*.<sup>15</sup> Let us begin with the *preconditions*. Firstly, an open and efficient democracy implies a minimal, but not insignificant degree, of *political freedom* coupled to *rights of suffrage*. For citizens to elect their rulers and show consent or otherwise for their policies and performances requires freedom to ask questions, enter debates, request explanations of their politician's views and actions, and finally, freely choose without fear one candidate (or political party) rather than another. Citizens must be able to participate in public reason, and this requires a public political culture informed by the values of tolerance, rule of law, and freedoms of conscience, association and speech (to some minimal degree at least). This is the reason why it should come as no surprise that, for the most part, history shows that 'the struggle for democracy and the struggle for fundamental liberties have been one and the same'.<sup>16</sup> Secondly, if the democratic process is to be open and fair then it requires concomitant socio-economic rights to give substance to the rights of participation. As Cohen points out, there will be considerable controversy over what fairness requires in these circumstances. Some 'proposals might range from a requirement of *equal influence*, to an *assured minimum* value of political rights guaranteed, for example, by providing public support for education or decent welfare minima'.<sup>17</sup> However, it is clear that whatever the precise account of fairness requires, some level of enabling socio-economic rights are implied by the preconditions for an ideal democratic process. Thirdly, if citizens are to freely consent to the

<sup>15</sup>This view stands in contrast to the purely procedural view, argued for by Dahl, R. (1997) 'Procedural Democracy' reprinted in R.E. Goodin & P. Pettit (eds.) *Contemporary Political Philosophy - An Anthology* (Oxford: Blackwell, 1997) and Hampshire, S. (1989) *Innocence and Experience* (Cambridge MA: Harvard University Press), who insist that in the face of pluralism, the legitimacy of democracy as a fair adversarial process for resolving serious social and political conflict requires the exclusion of all substantive values. My discussion of the derivation of substantive political liberal values from the ideal of democracy draws heavily on Cohen, J. (1994) 'Pluralism's Proceduralism', in *Chicago-Kent Law Review*, Vol. 69, pp. 589-618.

<sup>16</sup>Dunn, J. (1993) *Western Political Theory in the Face of the Future* (Cambridge: CUP), p. 91.

<sup>17</sup>Cohen, J. (1994), pp. 602-603.



outcomes of a democratic process even when this requires a compromise of cherished values, such a system must uphold and protect certain fundamental interests and rights for all, but especially for those who hold minority or unpopular conceptions of the good. Here is where certain liberal ideas and values become intertwined and underwrite a democratic process, such as that of the liberal principle of political legitimacy. The democratic process requires a commitment to finding solutions to social conflict by compromise, mutual agreement and arbitration (provided others reciprocate in kind). Force is ruled out as a legitimate way of pressing our claims on others and here the notion of reasonableness becomes an indispensable tool for deciding which conceptions of the good ought to be included or excluded in the political process.

This brings us to the endorsement of substantive values that are supported by the *implications* of an ideal democratic process. The political liberal value of citizens as *equals* is endorsed by thinking of the 'democratic process as one kind of institutionalised process of reason giving'.<sup>18</sup> Such a process requires openness and universal fair access to political institutions if citizens are to obtain a fair hearing, one that enables them to articulate and defend practices and ideas central to their own moral doctrines. This being the case, democracy becomes a procedure that embodies the ideas of intrinsic political equality and this implies the right of all citizens to equal consideration. Any deviation from this norm requires the state to furnish justificatory reasons that the very citizens, who would be subject to this departure, could not reasonably reject.

Finally, certain values can be derived from the very *rationale* of the democratic process. Recall that one of the central reasons for adopting a democratic process is that it offers a way to resolve social and political conflict without resorting to force and oppression. To this end it is always reasonable to insist that everyone living under such a system enjoy full and equal inclusion in the political process, one that guarantees a fair hearing. This demand to be heard arises out of 'basic interests in expression and recognition'<sup>19</sup> which are fundamental

<sup>18</sup> Cohen, J. (1994), p. 610.

<sup>19</sup> Cohen, J. (1994), p. 613.

prerequisites for any reasonable notion of fairness and a first line of defence against the great evils of pain, suffering, misery, starvation and humiliation. The right of expression is needed for the articulation of concerns and feelings that influence or alter the conduct of others. Public recognition is an acknowledgement of equal standing and is tied to the issue of self-esteem and self-respect. Consequently, if one is committed to the rationale of a democratic process, then *ipso facto*, one is also committed to political equality (the recognition of the universal right to expression) and the substantive values of equal opportunity and fair distribution (the public recognition of every citizen's equal standing and worth).

A public political culture, then, which has these democratic values, contains within it a notion of the 'reasonable' in the ways outlined in previous sections. Reasonable citizens who hold reasonable moral doctrines will endorse and practice the great political values of co-operation, compromise, tolerance and civility, towards those with whom they have deep disagreements about the good life provided others reciprocate in kind. Reasonableness, then, enables the resolution of conflict through democratic procedures which do not seek to impose solutions on others using force. When a resolution is not possible, reasonableness requires that the conflict be managed in a way that enables the peaceful and stable continuation of a just political community.

There is one final point which needs to be stressed here. In every democratic public political culture there exists both democratic and anti-democratic aspirations and values. The discussion above assumed that democratic values would take precedence over strong counter trends which may resonate more deeply with illiberal and anti-democratic moral doctrines. This indeed may not occur. But for the purposes of this paper I shall assume the dominance of democratic values since I am concerned here with justifying reasonableness to moral doctrines once they have already endorsed democracy as an integral part of their conceptions of the good. However, it does need to be clearly admitted that where democratic ideas are struggling for ascendancy, or when they are absent from the public political culture, the notion of reasonableness



I am outlining may do no more than hold out a vision for which to strive.<sup>20</sup>

### Reasonableness and neutrality

*Reasonable practices – who decides?* I now return to the question of what can be said to those moral doctrines who perceive the notion of 'the reasonable' outlined above as sectarian. Non-liberal democrats may have deep concerns over who decides which specific practices and values require toleration. Who, for example, decides that the practice of abortion or the existence of pornography must be tolerated while slavery and racism are beyond the pale? For a devout Catholic, both the practice of abortion and the existence and toleration of pornography undermine the very fabric of her moral existence. For these persons non-cooperation with respect to allowing abortion or tolerating pornography could be understood as a moral duty, a virtue to be praised in the same way as resisting slavery or racism is a virtue. What is the difference between these examples? To argue that slaves, persons of colour, Jews, and

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<sup>20</sup>There is another concern which I need briefly mention here. A set of values based on the *contingent* fact of a particular public political democratic culture seems to be either a very weak basis upon which to base crucial and fundamental values, or it seems as if there is an 'end of history' claim suggesting that democratic values are the apotheosis of political development. However, neither account of the status of democratic values above are problematic for a notion of 'the reasonable'. Contingent values need not be weak or subject to rapid change. Democratic values forged over a long period through traumatic events are unlikely to change unless a similar period of time elapses with further deeply traumatic events. As for the 'end of history' concern, it is a misunderstanding to think that democratic values are now fully developed or that they are static and unchanging. Over time they will undoubtedly be refined. As we learn more about ourselves, other species, artificial intelligence etc. our understanding of how to organise our political lives will alter. However, the important point is this; the issue here is whether it is possible to achieve a just political community in the face of ineliminable and conflicting pluralism through the wide acceptance of the ideal of democracy with its attendant value of reasonableness. (I am grateful to Hillel Steiner for discussions on this point.)

women have equal rights with all other persons, while an embryo or foetus does not because it is merely a ball of cells entirely misunderstands the deep concerns among some groups concerning when personhood begins. And making a decision by fiat, one that excludes the right to life for a foetus will be strongly resented and resisted by anti-abortionists. Similarly, the view that adults have a right to view pornography in public or private is to fail to understand, from some moral doctrines' perspectives, the inherent evil of that activity. So it seems that this political notion of 'the reasonable' when faced with the cases of abortion and pornography, sides with a particular liberal view of the world that elevates the values of autonomy and individuality above all others.

It seems to me that two responses to the above concerns are apt here. Firstly, the use of 'the reasonable' attempts to show what is possible *once citizens accept* that there is a need to find a means of social co-existence despite the fact of deep moral differences. As democrats, all citizens have incorporated into their moral doctrines the virtue of resolving conflicts by peaceful methods. To do this requires that those deep differences concerning the acceptability of abortion or the right to view pornography must be understood as arising from reasonable disagreement between reasonable citizens. Consequently, if there are groups within a democratic society who find that they cannot compromise on the issues of abortion or pornography, that for them no reasonable moral doctrine could hold such views, then they *ipso facto* exclude themselves from the project of seeking a political community with those who disagree with them on these issues. But then they face the alternatives to seeking a peaceful democratic solution which are, as we have learnt from the calamitous religious wars that racked Europe during the 16<sup>th</sup> and 17<sup>th</sup> centuries, very bleak indeed. While compromises can be shabby and always deliver less than what each side wants, its cardinal virtue is that it is the lesser evil to suppression, violence and civil war. Furthermore, compromise is also a virtue in pluralist societies as it reinforces the recognition of the other as a person or group to be respected, trusted and engaged with, within a mutual and common ideal of justice.

Secondly, it is important to stress that the issues of abortion and pornography differ from slavery and racism in this crucial respect. Certain political values inherent in the public political culture of a



democracy have become settled after long conflicts over many hundreds of years. These values are needed if the project of peaceful co-existence is to be at all possible. One crucial presupposition is that all competent adults must be free and equal political actors in order to participate in the political structures and life of the society. However, the conflicts pertaining to the permissibility of abortion or pornography are issues that can remain disputed and still allow for successful democratic governance. Indeed, it is the hope that the democratic resolution or management of just these kinds of deep differences will be the best way to enable peace and justice rather than enduring and debilitating conflict. In the vexed case of abortion, for example, it needs to be settled that although there will be great differences between those who are pro and anti, the only legitimate way to deal with this disagreement and achieve one's aims is through democratic public procedures and laws that everyone in the society is able to endorse. A compromise must be reached which enables both sides to partially achieve their aims (for example, abortions are allowed but only in the first trimester or abortion is permissible if and only if the mother's life is in jeopardy). In such a society, individuals and groups remain free to pursue their aims and objectives but through persuasion, argument and lobbying. Reasonableness, then, requires that both sides settle for something less than their optimal position so that they can achieve a still greater good, a just and stable political community in a pluralist society.

*Non-democrats and the limits of political community* – What ought to be done with non-democrats who entirely reject a notion of reasonable disagreement? Here we face the problem of moral doctrines who do not, and in some cases cannot, take a critical stance *vis à vis* their own conception of the good. Such doctrines reject the axiomatic subjectivist and historicist perspective on beliefs that are engendered by 'critical-objective' modes of thought dominant in contemporary western political philosophy.<sup>21</sup> For some religious devotees the divine law (found in the

Koran or the Torah or the Bible) cannot accept a distinction between political and non-political any more than they can accept a fallibilist approach to their own claims to truth. Such doctrines closely integrate political, social and economic life so that all these domains are interpreted strictly through a particular set of exclusionary values. Any notion of reasonableness that is wedded to the central idea that belief systems are subjective creations of the human mind would be rigorously resisted as an unacceptable surrender to the false values of secular humanism. Consequently, a notion of reasonableness derived from a democratic public political culture would be anathema for them.

When faced with this kind of impasse, even the best attempts to achieve political community must fail. As no compromise is possible, the resolution of some deep conflicts will require coercion and the imposition of values. Unfortunately, there can be no social life without cost and in these cases we recognise that although certain moral doctrines have coherent, consistent, stable and much cherished visions of human excellence they are irreconcilable with the values of democratic governance. Certain peaceful fundamentalist religious conceptions of human excellence spring to mind, as do moral doctrines that vigorously reject any suggestion that it is possible to separate political and personal values. Those supporters of 'the reasonable' do seek to be as inclusive as possible but their core values are also non-negotiable. They too, in the end, are members of fighting creeds. They must necessarily exclude those doctrines whose values would prevent or undermine the goal of an inclusive and just political coexistence.

However, a political notion of 'the reasonable' should appeal to a significant number of persons from a very wide range of moral doctrines (liberal and otherwise) living in a democratic society. I believe that the pessimism found among political theorists concerning the appeal of 'the reasonable' beyond liberal moral doctrines is misplaced. Almost all religious, cultural and ethnic groups who support the values of democratic governance find a way of integrating a notion of reasonableness into the set of values that constitute their moral doctrine. Political reasonableness takes advantage of a certain intellectual loose-jointedness in their conceptions of the good. Most non-liberal moral doctrines in a democratic society accept the fact of reasonable

education. She identifies one of the deep reasons why all politics will have an unavoidably tragic dimension to it.

<sup>21</sup>See Stolzenberg, N.M. (1993) "He Drew A Circle That Shut Me Out": Assimilation, Indoctrination, and the Paradox of a Liberal Education', *Harvard Law Review*, Vol.106, pp. 581-667. Stolzenberg's article offers a searching and sympathetic account of fundamentalist complaints against liberal forms of



disagreement (for pragmatic if not normative reasons) and are prepared to compromise in order to achieve a just and stable political framework.

A final point. The entire enterprise of justifying reasonableness in order to find a way to accommodate difference by compromise and the acceptance of second best, may strike the more ambitious reader as a 'philosophy of middle age', as lacking the will and imagination to 'pursue a purer and brighter vision'.<sup>22</sup> However, the dismal history of the last century shows the endless and debilitating conflicts rooted in a different strategy of imposing 'the truth' in pluralist societies. Although 'the reasonable' is neither universal in its appeal nor neutral between all moral doctrines, it does strive to be fair between committed democrats. Herein lies its appeal to more than simply liberals and secular humanists. It holds out the hope that we can live with, and celebrate difference, without succumbing to the discord and strife that will inevitably result from a collision of cherished but incompatible values. A political notion of 'the reasonable' offers a plausible way of circumventing and/or managing such difficulties, and despite its limits, we should embrace it as a viable strategy for achieving an alternative to 'both politics as holy war and politics as the embrace of non-judgemental, unqualified pluralism'.<sup>23</sup>

<sup>22</sup> See Moon, J. (1993), p. 220.

<sup>23</sup> Macedo, S. (1995) 'Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls?' in *Ethics*, Vol.105, p. 470.

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## Contributors to this issue

**Brian Barry** is Professor of Political Science at Columbia University and author of many books and articles in political science and political philosophy, most recently *Culture and Equality* and *Why Social Justice Matters* (Polity Press, forthcoming).

**Darrel Moellendorf** is leaving his position as Associate Professor in the Philosophy Department at the University of the Witwatersrand and is taking up the position of Associate Professor in the Philosophy Department and Director of the Ethics Institute at San Diego State University. His book, *Cosmopolitan Justice* was published this year by Westview Press.

**Christopher Bertram** is a member of the *Imprints* editorial committee. He is currently finishing a study of Rousseau's *Social Contract* to be published by Routledge. His interests include issues international justice and problems of public justification.

**Saladin Meckled-Garcia** is Rubin Research Fellow in Human Rights at the School of Public Policy, University College, London and a member of the *Imprints* editorial committee. He is engaged in research on the ethical foundations of human rights, as well as the policy consequences of adopting different views of these foundations.

**Stephen de Wijze** teaches political theory at the University of Manchester and is currently working on a book concerning John Rawls and political liberalism.