

# **Rethinking Ethical Foreign Policy**

**Pitfalls, possibilities  
and paradoxes**

**Edited by  
David Chandler and  
Volker Heins**



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# Rethinking Ethical Foreign Policy

Contemporary foreign policy is increasingly perceived to be about values rather than interests as traditionally conceived. Once marginal, ethics are today held to play a central role in foreign policy.

This new book goes beyond current debates which locate the limitations to ethical foreign policy in the strategic and economic interests of nation-states. Rather than counter-posing interests and ethics, trying to find 'hidden agendas', or emphasizing the double standards at play in ethical foreign policy, this text brings together leading international theorists in order to develop a critical understanding of the rise of ethical foreign policy and to analyse the limits of ethical policy-making on its own terms. The book comprises three clear sections that explore: theoretical issues, techniques and tactics of ethical intervention, and the geography/space of ethical intervention. The authors deal with the limits of 'ethical foreign policy' both in the light of the internal dynamic of these policies themselves and with regard to the often unintended consequences of policies designed to better the world.

Presenting a range of theoretical approaches to the study of ethical foreign policy in the US, UK and Europe, this topical book will be of strong interest to students and researchers of International Relations, Politics, Law and Philosophy.

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# Introduction



# 1 Ethics and foreign policy

## New perspectives on an old problem

*Volker Heins and David Chandler*

This book is concerned with ways in which political leaders and policy-makers in the post-cold war era have claimed to infuse their actions with moral considerations that go beyond, and help to re-define, the national interest of their respective countries. These claims have materialized in armed humanitarian interventions, human rights conditionalities in foreign aid allocation, changes in military ethics or voluntary attempts to repair the harm caused by predecessor governments. What exactly is controversial about such claims and ambitions? After all, few thinkers today would doubt the very possibility of sustained – and politically relevant – collective moral action in modern society. Almost everybody believes in morally inspired social movements that achieve some good at least sometimes. What remains controversial is the extent to which *governments* can transmogrify into moral actors in international society. Perhaps there is something inherent in states as representatives of particular, territorially delimited political communities which makes it inevitable that they will continue to play their part as *monstres froids* in a dangerous world.

For most writers the moral coldness of the state varies, depending on the extent to which the state perceives its moral duties as restricted to the territorial political community or as extending *beyond* these arbitrary, socially constructed, territorial bounds to encompass humanity more broadly. The relationship between ethics and politics is less conflictual as long as it plays out within a given political community bound together by mutual obligations. In a tradition that reaches from Hobbes to Hegel to Gramsci and Charles Taylor, the ‘ethical’ has actually been *identified* with the ‘political community’ and even with ‘hegemony’ (Taylor, 1979: 84–95; Durst, 2005). The politics of introducing a strong moral dimension into *international* affairs suggests that the nature of global community has either been



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transformed with recent geo-political changes, including processes of globalization, or it suggests that our territorially bounded communities of fate can be reimagined or imagined differently once we rethink the meanings and dichotomies between ‘man’ and ‘citizen’ (see, for example, Falk, 1995; Linklater, 1981; Booth, 1991). Rather than a ‘realist’ sphere of anarchy, where the conflicting interests of separate political communities bounded by the sovereign state are seen as the fundamental fact, it is argued that in our modern globalized world, political communities are no longer restricted by the territorial boundaries of the sovereign state.

The dispute over the values and meaning of ethical foreign policy is thereby not essentially a normative one of what it means to be ‘ethical’. The point at issue is, rather, the boundary-drawing of the sphere in which moral action is held to be possible. The political question is to what degree political/moral community extends beyond the borders of the territorial state. Communitarians or realists argue that community is co-determinous with the boundaries of the state and therefore the government’s ethical or moral duties are restricted to the needs of the citizens of the state. At the other end of the spectrum, ‘Kantian’ international or cosmopolitan liberals would argue that we live in a global political community where ethical policy-making should put the interests of humanity in general in centre place. Between these two extremes of communitarian and cosmopolitan variants of ethical foreign policy lie a wide range of ‘sliding scale’ hierarchies of solidarity, denoting the sense of graduations of strength of political community which are reflected in views of the state’s differentiated international duties, shaped by a balance of self-interest and the needs of others.

#### **The realist critique and its limits**

From a strictly ‘realist’ point of view, the ambition to devise an ethical foreign policy, a policy declared to be based on the interests of others rather than on self-interest, is based on a false understanding of the ‘realities’ of international politics. Therefore, it can only be a self-deception – a chimera – to imagine self-interest in terms of ethical universals, or designed for the deception of others. This can either be a genuine error, expressed by those with universalist aspirations, or an act of manipulation and duplicity, an attempt to pursue national interests through ideological disguise. Far from being monolithic, the realist critique of ethical foreign policies can be set out succinctly in four different propositions:

- 1 Ethical foreign policies are bound to be ineffective and *quixotic*. They ignore the reality of politics without being harmful or beneficial to anybody.
- 2 Ethical foreign policies *weaken* the state and are harmful to the national interest. They ignore both the reality of politics and the consequences of this ignorance.
- 3 Ethical foreign policies are part of a smart *ideological* manoeuvre. They benefit the national interest by pretending to transcend it and by making everybody believe in this transcendence.
- 4 Ethical foreign policies are part of the problem they pretend to solve because they produce *immoral* behaviours and consequences.

These propositions about ethical foreign policies as quixotic, weakening, ideological or immoral recur across a wide range of realist texts. Max Weber, for example, regarded First World War pacifism as a quixotic attitude. In line with *proposition 1*, he characterized anti-war activists such as Rosa Luxemburg less as public enemies than as political dreamers to be confined to a ‘zoo’ (Weber, 1988: 441). Similarly, when in 1997 Britain’s then Foreign Secretary Robin Cook made the announcement to introduce a new ‘ethical dimension’ into foreign policy, some commentators called him not a threat to his country’s interest, but a ‘buffoon’ with no sense of reality (Harris, 2001). In academia today, it is first of all John Mearsheimer (2001: 22–7) who disdains the moralistic rhetoric of American foreign policy-makers without claiming that this rhetoric has been particularly harmful to the national interest.

Of course, many more realists are convinced that moral considerations actually weaken and damage the pursuit of vital state interests (*proposition 2*). In Chapter 53 of the first book of his *Discourses*, Machiavelli already warned against the disaster that looms when people are deceived by ‘a false appearance of good’ – *una falsa immagine di bene* (Machiavelli, 1960: 249). Hans Morgenthau and others thought of President Wilson’s legalistic internationalism as both causally effective and disastrous in its consequences for post-First World War stability in Europe (see Kuklick, 2006: 75). The distinguished US diplomat and historian George Kennan believed that liberal democracies were ill-equipped to follow a rational foreign policy because of the moralizing and debilitating effects of public opinion on decision-makers. Democracy, he concluded, is in danger of edging toward extinction like prehistoric

dinosaurs which were equally unable to anticipate threats from their changing environment (Kennan, 1977: 6).

Other realists have seen the moral sensibilities of the public as a tool for power politics. For them, deceiving people into believing that politics serves a moral good can be a successful power-enhancing strategy. During the cold war, official humanitarian aid was highly politicized by the governments providing it, as US President Nixon openly stated in 1968: ‘the main purpose of American aid is not to help other nations but to help ourselves’ (cited in de Waal, 1997: 65). Along these lines, writers such as Carl Schmitt and E.H. Carr would have subscribed to *proposition 3*. Schmitt (1974: 72) did not see the American ‘humanitarian ideology’ as a virus slowly weakening the real power of the US, but – from his ultra-conservative point of view – as a sadly effective weapon. Carr (2001: 136) concurred when he called the invocation of utopia and ‘international morality’ a ‘convenient weapon’ of the powerful.

Both authors also shared the perspective summarized in *proposition 4* according to which the injection of morality into foreign policy is detrimental to morality itself. ‘Whoever invokes humanity wants to cheat’, Schmitt famously declared, implying, of course, that cheating is unethical (Schmitt, 1976: 54; see also Carr, 2001: 152). Schmitt’s argument illustrates the apparent irony that many realists pretend to safeguard basic standards of moral conduct by taking morality out of politics. The flipside of this attitude consists in taking politics out of morality. Thus, during the cold war untainted ethical action was clearly associated with the non-governmental sphere. Humanitarian non-governmental organizations (NGOs) gained a radical edge as they seemed to put the interests of people above the strategic concerns of the East/West divide by providing aid against the wishes of Western governments. Agencies such as Oxfam or Save the Children became popularly identified by their youthful pro-Third World appeal. The high-point of this type of NGO humanitarianism came with the Live Aid campaign to raise funds for the Ethiopian famine of 1984. Relief NGOs – including prominent US groups such as CARE or World Vision (see Heins, 2005a: 376–81) – did not (or, in the US case, no longer) seek to link Western aid to any kind of political conditions but wanted to assist the global poor exclusively on the basis of need.

We believe that none of these ‘realist’ criticisms that aim at keeping the worlds of morality and politics apart is completely off the mark. In various respects, however, the contributors to this volume differ from the realist research programme. First, in contrast to

*proposition 1*, they contend that the development and implementation of ethical foreign policies have real consequences, very much unlike the attempt of Don Quixote to fight against the turning sails of windmills. The following chapters demonstrate the reality of 'ethical dimensions' in foreign policy which have either led to new *mandates* of state agencies including the armed forces or to certain *restraints* on institutional policies and practices affecting non-nationals. Neither the effects nor the overall context in which these new mandates and restraints are set have been much researched so far.

Second, we doubt that morally inspired foreign policies are necessarily harmful to the national interest. The main reason is that the 'national interest' has ceased to be a constant and self-evident guidepost for sovereign decision-making (Chandler, 2004: Ch. 3; Finnemore, 1996). It is far from being as static and knowable as realist writers have always assumed (Kennan, 1954: 103). Rather, the 'national interest' has assumed characteristics of the 'public opinion' which was looked down on by realist scholars as an 'ever changing entity to be continuously created and recreated by informed and responsible leadership' (Morgenthau, 1985: 168). Realism itself is a 'vocabulary' or an 'outlook' on politics rather than an empirical thesis on real-world politics (Kuklick, 2006: 73, 88). In fact, many examples from recent history show that there is no way of insulating a robust national interest from various other legal, moral or reputational considerations which are, in turn, subject to multiple influences. This is true even in situations of emergency, in which we would expect the national interest to 'override' all other concerns (see, for example, McGreal, 2005; Ignatieff, 2004).

Third, we claim that ethical foreign policies are more than an ideological smokescreen used to divert attention from the true nature of state behaviour. Conversely, the false certainty of prevalent explanations about what drives foreign policy has diverted attention from the study of 'ethical' policy dimensions. We hasten to add that often ethical foreign policies do, indeed, benefit the states that are pursuing them, if only by raising what has been called their 'moral prestige' (Löwenheim, 2003) in international society. Yet this does not imply that 'ideology' is a useful concept in this context. Ethical foreign policies are based, rather, on 'ideas' that can be categorized like other ideas influencing foreign policy decisions as principled beliefs, causal beliefs and worldviews (Goldstein and Keohane, 1993).

Fourth, none of the authors of this volume would agree with Schmitt's hard-boiled cynicism which led him to suspect that the

invocation of our common humanity is just a dirty trick played on us by liberal imperialists. From this, however, we cannot draw the opposite conclusion that a humanitarian *idealpolitik* does always have beneficial effects. Over the last decades, liberals as well as radicals found evidence to support the argument that there is an intimate affinity between grandiose idealism and violent ruthlessness in politics (see, for example, Schlesinger, 1972; Brittan, 1988; Adorno, 1978: 88). Other authors have pointed to the morally induced harm done by bona fide foreign policies that sometimes prolong wars, exacerbate power asymmetries, empower unaccountable intermediaries or demoralize supposed beneficiaries (see Lischer, 2005; Pupavac, 2005; Lu, 2006).

### **The rise of ethical foreign policy**

What are the forces behind the rise of an ‘ethical dimension’ in the foreign policy of liberal democracies? Many accounts describe this trend as demand-driven in the sense that new policies are explained in terms of problems arising from the environment of ‘failed states’ and the increasing needs of populations in the developing world. We offer instead a ‘supply-side’ account that focuses, first, on shifting sensibilities among Western publics, and second, on the new search for a sense of global mission spurred by political elites who suffer from a ‘crisis of meaning’ (Läidi, 1998) after the end of the cold war and the disappearance of historical enemies.

Shifting public sensibilities, spawned by intergenerational value changes, have led to the demise of public philosophies which, for a long time, either justified or obscured the suffering of strangers who oftentimes were victims of traditional foreign policies. Following Weber, sociologists have used the term ‘secular theodicies’ to denote powerful systems of meaning that helped us to explain the apparently senseless suffering of ordinary people as having some kind of hidden meaning within the God-given order of things (Vidich and Lyman, 1985). With a proper secular theodicy in place, certain kinds of suffering are still deplored but may at the same time fit into some rational worldview, because they seem relevant in the light of an intelligible cause or purpose. Western societies offered narratives such as Marxism, Malthusianism or Modernization theory – to name the most important ones – which helped people to make sense of the global scale of misery, injustice and inequality without giving up on the belief in an achievable common good. The rise of groups such as Doctors Without Borders in France, for example, who were able

to sensitize the public to the harmful consequences of decisions and non-decisions taken by foreign policy elites, can be traced to the loosening grip of Marxism as an all-explaining narrative in the public mind (Heins, 2005a). Most citizens are clearly less inclined today than a hundred years ago to accept famines as necessary checks on population growth, or dictatorship and boundless exploitation as a necessary stage towards liberation. Rather, they tend to call for humanitarian interventions if foreign governments fail to provide minimum protection for their own citizens.

However, the growing media and public attention to the plight of others is very different from the politics of solidarity in the past as well as from the extended commitment of the United States to Europe in the aftermath of the Second World War (Ripsman, 2005). The popular appeal of 'ethical' policy-making reflects a broader cynicism with politics and politicians. Whereas, during the cold war, the geo-political struggle gave political meaning and significance to civil conflicts and to military action, in the post-cold war era it is less easy to understand civil, regional or political conflict in political terms of left and right. The traditional framework for understanding, assessing and responding to conflict situations has disappeared. If it can be said that the cold war over-politicized the popular view of the international sphere, it can be suggested that in the current period it is difficult to see any 'political justification' beyond the individual tragedies of violence and social disruption. This shift in how we perceive conflict situations abroad, has been aptly described in the 'New Wars' thesis, which suggests that the 'new wars' of today are qualitatively different to those of the past precisely because they lack any legitimate political claims (Kaldor, 1999). Once political legitimacy is no longer seen to exist, conflict merely appears as a series of abuses or 'crimes' committed by the morally 'evil' against the morally 'good' and innocent. The immediate situation of the victims, the crimes of 'human rights abuse' are then held to be all that matters. This notion of 'universal victimhood' is projected onto distant world regions as well as sometimes back into history (Levy and Sznajder, 2005).

There would appear to be little doubt that the desire to bring more ethics into foreign policy stems from the broader inability of traditional political frameworks to make sense of the world. This shift is captured well by one of the most original thinkers in this area, Michael Ignatieff (here quoting the disillusion of Don McCullin, a British war photographer):

But what are my politics? I certainly take the side of the underprivileged. I could never say I was politically neutral. But whether I'm of the Right or the Left – I can't say . . . I feel, in my guts, at one with the victims. And I find there's integrity in that stance.

(Ignatieff, 1998: 23)

Ignatieff astutely notes that this approach is a 'weary world away from the internationalism of the 1960s' when there was a political cause at stake and conflict and interventionism could be supported or opposed on the basis of Left and Right. Today, he states 'there are no good causes left – only victims of bad causes' (1998: 23). Once political change in non-Western states is seen to be a flawed and pointless exercise, the only sympathy is for victims: 'the twentieth-century inflection of moral universalism has taken the form of an anti-ideological and anti-political ethic of siding with the victim; the moral risk entailed by this ethic is misanthropy' (1998: 25). The paradox is that the 'ethical' activists risk 'misanthropy' because they see little that is positive in the societies in which they work – only passive victims and evil or dangerous abusers.

To some extent, and quite ironically, this dramatic change in moral consciousness in Western publics has been reinforced by the new opportunities opened up by the Soviet Union's implosion and the greater possibilities for external interference and intervention in the affairs of non-Western states. The continuous expansion of Western power and the build-up of increasingly asymmetric capabilities of intervention favoured the emergence of a perspective from which massive human suffering anywhere in the world is blamed on Western authorities' failure to 'do something'. Global rights are held not merely to impose negative restraints upon the state to avoid causing harm but positive obligations to provide protection on a transnational scale. Non-intervention is synonymous with 'allowing' nasty things to happen. The availability of precision weapons, stealth bombers and unmanned combat aircraft adds to this sense of global obligation.

While the turn against grand narratives which claim to 'make sense' of the misery of others in the light of some desirable end-state has led to a flurry of institutional innovation, mostly in the field of non-governmental activism, it has certainly failed to rally majorities in Western countries behind 'ethical' agendas. The rejection of traditional political frameworks of perceiving the world has, so

far, not nurtured any deeper concern with humanity's future or a desire for active engagement on the international stage. Opinion polls regularly show that a majority of Americans, similar to Europeans, consider improving the global environment, combating world hunger, democratizing other nations and protecting weaker nations against aggression 'somewhat important', while the protection of jobs, securing the energy supply or fighting terrorism regularly top the list of popular foreign policy goals (Chicago Council on Foreign Relations, 2004). The data support the claim that there is indeed something of a 'community of moral feeling' (Dewey, 1983: 63) which connects segments of Western publics to people in other countries. Yet this moral feeling alone cannot explain the trend towards adding an 'ethical dimension' to foreign policy.

It is, therefore, our contention that in order to reconstruct the rise of ethical foreign policies, changing ideas of *leaders* are more important than shifts in the moral consciousness of society. Ethical foreign policy cannot be explained without understanding the moral void left by the end of the cold war which allowed Western nations to generate a strong sense of mission and a dramatic representation of their meaning in history. The cold war framework served to minimize the contemporary domestic crisis of meaning. Domestic policy decisions, whether in education, health, transport or policing, appear to be short-term or knee-jerk responses bereft of any long-term aims. Without an ideological context, policy is liable to be reversed or undermined at the first sign of funding difficulties or problems in implementation. Rather than 'modern' politics, where the state had a political programme or project which promised to transcend the present, to take society forward, today, governments are caught in a 'postmodern' malaise. There appears to be no vision or project that can give government a sense of mission or purpose. In this context, domestic policy-making is caught in the 'everlasting present' where legislation is passed to deal with crisis-management and policy-making is contingent on events rather than shaped by government (Chandler, 2004: 67).

The lack of confidence of Western establishments in any great project first became visible in the US after the end of the Vietnam War. The end of moral certainty in the justness of the projection of US power meant that American intervention abroad could no longer find legitimacy in a convincing 'vision of the future'; instead, it was 'reduced to managing the present' (Coker, 2001: 157). The same lack of confidence can be detected in Europe, in spite of public intellectuals



dreaming of the European Union's global mission in the twenty-first century (Heins, 2005b). Governments without a political project that gives meaning to their action, lack coherence and credibility.

Ethical foreign policies, which seek to promote the needs of non-citizens, appear to be a reflection of the exhaustion of modern politics. They highlight that political elites have given up on the project of taking their own societies forward. The politics of progress has always been one of enlightened self-interest; it was understood that without self-interests collective interests cannot be formed, as evidenced by the collective struggle for trade unions, for the extension of suffrage, for representation, and for self-government. Today, the exhaustion of politics is reflected in the difficulties which political elites have of projecting any idea of collective purpose, of a common collective interest of their citizens, encapsulated in an 'idea of the state' (Buzan, 1991).

For the advocates of a post-national ethics the displacement of the 'Self' by the 'Other' is seen as a step forward to a new cosmopolitan order (see, for example, Falk, 1995; Archibugi and Held, 1995; Linklater, 1998; Dillon, 1996; Habermas, 1999, 2001; Ranciere, 2004). In a more sceptical vein, the essays published in this collection contextualize or seek to question this view that the discourses of 'ethical' foreign policy actually reflect the extension of political community beyond the boundaries of the territorial state. However, we do not suggest that aporias and contradictions in this liberal interpretation can be used to give credence to realist interpretations that the limitations of ethical policy-making are to be found in the study of the influence of economic interests or hidden agendas of power. Rather, our critique of, and understanding of, ethical foreign policy seeks to go beyond both liberal and realist approaches, based on an understanding that rather than demonstrating the extension of political and, by implication, moral community, ethical foreign policy reflects the disaggregation and implosion of political projects per se. This policy appears to us as largely neither ethical, nor, on its own terms, a genuine foreign policy. The linguistic terms of ethical foreign policy, or of interventions to 'uphold values', speaks immediately of a certain defensiveness and illegitimacy. A genuinely ethical or value-based foreign policy would not need to speak so artificially. It appears that 'ethics' are called on to cast political actors in a legitimate light. The power-prestige of the past, when no government believed its policies were 'un-ethical' just because it pursued national interests, is being replaced by a new kind of moral prestige that is still generated in the international

arena in order to serve as a basis of legitimacy for domestic politics (Collins, 1986). The outcome can only be the undermining of the coherence of both ethical and political claims.

Because the impulse to place 'Others' at the centre of politics is driven by a weakening of political community, rather than an extension of our sense of common humanity, ethical foreign policy is, in fact, an anti-foreign policy. The anti-foreign policy of 'values' tends to sideline regional experts who have worked in foreign office departments for years and know the languages and the context – in the same way as military and intelligence expertise is disregarded (so clearly evidenced over Iraq). While the specialists often warn against moralistic, black and white or good against evil portrayals of social and political crises, it is central government coteries of advisers and policy-planners that tend to force the issue (see Kampfner, 2004). Many ethical interventions tend to unreflectingly marginalize traditional foreign policy concerns such as international or regional stability, and pay little regard to the post-conflict consequences of 'ethical' activism in world regions we might have moral feelings about without, however, really *knowing* them (see, with regard to Iraq, Stewart, 2005; Record, 2003).

We wish to suggest that, rather than being genuinely 'Other'-regarding, the discourse of ethical or value-based foreign policy refers to policy-making that, perhaps counter-intuitively, stems from an essentially narcissistic or self-regarding frame of reference. In a world of 'victims', the 'rescuer' shines all the brighter. Value-led foreign policy is the area of foreign policy-making where governments have the luxury to really focus upon lofty ideals. This is, in effect, the only area of government activity where it is hoped that a sense of shared values or the sense of purpose and mission, lacking domestically, can be inculcated. This narcissistic drive behind the ethical projection of power means that ethical practice can usually have a freer rein where there are fewer genuine interests and responsibilities at stake; where there is less concern about the consequences on the ground. Far from being a narrow self-interested projection of power it seems that value-led interventions are often driven by a lack of both clear interests *and* of a well-defined sense of moral duty. This makes the projection of power abroad an arbitrary and ad hoc one, driven by contingencies rather than ambitious plans. Instead of turning the 'vague universalism of liberal democracy' (Niebuhr, 1959: Ch. 11) into a more robust and thought-out endeavour, ethical foreign policy seems to make universalism even vaguer.

## **This book**

This book is divided into three sections. Part I, 'Geographies of ethical intervention', considers the development and consequences of ethical foreign policy regimes for leading states and international institutions. It seeks to explore how the shift to ethical framings in the projection of regime and institutional identity takes different forms and considers, in particular detail, the US, Britain, Germany and the United Nations (UN). The three chapters alert us to the dangers of understanding the implications of ethical foreign policy-making in abstraction from the specific historical and geographical contexts of today. Part II, 'Theoretical issues', seeks to engage with discussions on how to measure and account for claims that states and international institutions act in ethical ways. The three chapters engage with different interpretations of what it might mean to be a 'force for good in the world', drawing on Bentham and Kant's differing approaches to ethical foreign policy activism, analysing various approaches within political theory which frame the European Union as a normative actor, and displacing the 'community of judgement' to consider the perceptions of various ethical interventions from the point of view of Bosnian recipients. Part III, on the 'Techniques and tactics of ethical intervention', contains four chapters that discuss different ethical foreign policy practices and, in the course of which, draw out a number of frameworks, dynamics and networks involved in the social construction and elision of 'ethical practices'. Issues covered concern poverty reduction and the UN Millennium Development Goals, the establishment of truth commissions as an aid to peace and reconciliation, the practice of targeted killing and precision bombing, and the moral concerns that arise with trusteeship and the international administration of post-conflict states.

In Chapter 2, Alex Gourevitch draws out the limits of American ethical foreign policy and counter-poses an analysis of inter-war Wilsonian idealism to the neo-Wilsonianism of the Clinton and Bush administrations. Wilsonian diplomacy sought to respond to the radical political challenges of the early twentieth century and, in so doing, projected a forward-looking universal vision of US purpose. Today, the US establishment is a fearful and inward-looking one, more orientated to managing the problems of the present than planning towards the future. Gourevitch argues that the loss of vision has resulted in neo-Wilsonian ethics which seek to use high-blown rhetoric to cover a lack of purpose. Paradoxically, it is this lack of

an ethical project, the US's inability to articulate its political purpose in universal terms, that has led to ethical or idealist declarations, rarely backed by coherent policy-planning. It is the political weakness of the world's remaining military superpower that gives rise to today's policy idealism, in the form of declaratory, short-termist and ad hoc policy-making which has increasingly destabilized international relations.

Volker Heins, in Chapter 3, draws out the similarities and distinctions between British and German 'ethical' foreign policies in the period covering the Kosovo and Iraq wars. Developing the themes raised in Gourevitch's chapter, Heins highlights the 'legitimation crisis' facing Western political elites today and focuses in particular on how two countries, similarly placed in the international order and both governed by centre-left parties, used ethical foreign policy to cope with issues of domestic legitimacy. In the UK, Blair used the wars over Kosovo and Iraq to stress the government's ethical responsibilities to 'freedom and human rights' and Britain's international 'moral leadership'. In Germany, the Kosovo war was used to renegotiate Germany's illegitimate past, recasting German power in a legitimate moral light. However, Schröder opposed the Iraq war on the ethical basis of resisting militarism and US power. While both states used the international arena to project an ethical vision of themselves, Heins argues that the forms of building 'moral prestige' vary with changing domestic contexts, as manifested in the opposing policies taken by Britain and Germany over the Iraq war.

In the final chapter of this section, Philip Cunliffe analyses the impact of the shift towards ethical foreign policy on the UN and specifically on UN peacekeeping missions. He analyses the apparent paradox of UN Security Council resolutions promising intervention for humanitarian and human rights purposes and the disappointing results of these interventions, often understood by commentators as a result of the 'lack of political will'. What is it about ethical policy-making frameworks, such as those that commit the UN to new and more complex peacekeeping tasks, that seems to prevent them being taken forward with adequate resources and international commitment? Focusing in particular on the use of Third World troop contributions, Cunliffe argues that the disjunction between Western words and commitments lies in the nature of ethical interventions which are motivated more by the desire to appear ethical than any positive desire to resolve international problems in regions that lack geo-political importance. He suggests that interventions where no

interests are at stake will inevitably be more subject to uncertainties and a lack of sustained commitment and clear goals.

The three chapters in Part II start with Peter Niesen's insights into the debate over the policy divisions between US unilateral and European multilateral approaches. He suggests that to understand this policy division in terms of which side is the most ethical would be a mistake. Using the work of Enlightenment theorists Bentham and Kant on foreign policy, he suggests that the 'divided West' can be understood to be a product of disagreement over political means rather than ethical ends. In agreement with the authors in Part I, Niesen suggests that both the US and Europe have sought to project their power internationally in the form of ethics rather than of political interests. He explores the interrelationships between ethics and power which allow both the powerful and the less powerful to project similar aspirations through widely differing means. In this way the chapter highlights that while the ethical ends of disarmament, democracy and human rights can serve the interests of power and the status quo as well as the interests of the less powerful, the means chosen can be more divisive, with Kantian cosmopolitanism placing restrictions on power, while Bentham's imperial ethics gives might the stamp of righteousness.

In Chapter 6, Ian Manners discusses what exactly it might mean to say that the European Union is a normative power in world politics. Following an overview of the contemporary discussion within European studies, he outlines differing political theory-based approaches, linking classical and critical theories to contemporary frameworks of debate. Manners links classical approaches to contemporary theories of EU integration by drawing out the current relevance of the overlapping approaches of communitarian political theory, cosmopolitan normative international relations theory and supranational EU studies approaches. The chapter concludes with a substantial treatment of postmodern theorizing, particularly focusing on the work of Elbe, Baudrillard, Derrida and Kristeva, and highlights the normative implications of postmodern political ethics for capturing the lack of essence or fixity of the EU project.

Concluding this section, Isabelle Delpla's chapter focuses on the moral judgements of the recipients of international interventions through a case study of Bosnia. Based on extensive fieldwork across Bosnia, she argues that while there does exist a discrepancy between the judgements of Bosnians and those of the Western advocates of ethical intervention in the region, this should not be seen as a crude donor/recipient divide. Her field research leads to the conclusion that

recipient views differed, depending on their experience of international aid; those who had more engagement with internationals during the war, for example, in Sarajevo, were frequently more cynical and perceived the intervention more negatively. While the war-time experience, particularly of humanitarian aid was a generally negative one, she argues that experience of post-war international interventions is more mixed. Programmes deemed to be patronizing or to be promoting donor interests, such as those around civil society development, democratization and reconciliation, provoked negative responses. However, international programmes such as the inter-governmental International Commission on Missing Persons and The Hague War Crimes Tribunal were seen in a much more positive light and as restoring, rather than detracting from, the moral agency of recipients.

Part III of the book focuses on concrete foreign policies with a clear ethical dimension. In the first chapter in this section, David Chandler considers the transformation of Western government and international financial institutions' approaches to Africa, away from the interest-based impositions of structural adjustment and towards ethical approaches of 'empowering' Africa, through 'African leadership', 'country ownership', poverty reduction and building the capacity of the African state. He suggests that the shift away from the focus on the capacity and power of the Western Self to the needs and demands of the African Other reflects the lack of confidence and legitimacy of Western power, disorientated in the post-cold war world where the frameworks of geo-political interests and traditional projects of development no longer constitute or frame policy goals. The inability of Western states and institutions to assert power in a meaningful way has led to a denial of Western capacity and influence over the continent, making the assertion of power take the ethical forms of empowerment, capacity-building and the pretence of country-ownership. Chandler argues that these ethical forms, in fact, hide more invasive assertions of power and the internationalization of the African state, as new mechanisms seek to informalize international regulation and avoid the open assertion of coercive conditionality.

In Chapter 9, Michal Ben-Josef Hirsch charts the rise of the role of truth commissions through a study of the transitional justice epistemic community. Most treatments of truth commissions focus on the interest-based needs of newly democratic states and the use of these commissions to establish the new regime's legitimacy and accountability and make a clear break with the past, as well as curb domestic opposition and accommodate previous elites. Hirsch,

instead, looks at the ‘supply’ side of the equation, charting the work of a specific network of academic scholars and legal experts who have advanced the ideas and institutional forms that have facilitated the new field of transitional justice. She highlights the centrality of the South African Truth and Reconciliation Commission in the mid-1990s, in both establishing this epistemic community and as a testing ground for their ideas which challenged purely legal and judicial approaches by claiming that the telling and acknowledgement of truth could be valuable in its own right as a therapeutic tool vital for reconciliation. In the process, truth commissions have been transformed from pragmatic mechanisms, which compromised the law for reasons of political expedience, to ethical policy tools which empower the powerless and give moral and ethical legitimacy to participating regimes.

The subject of the following chapter, by Ariel Colonomos, is that of the ethics of precision bombing and targeted killing. In the cold war when international intervention was heavily circumscribed by international law, extra-judicial killings, such as those of the Israeli government’s *Shin Bet*, were considered to be illegal under international law and lacked the stamp of ethical approval. Colonomos highlights that in today’s new international context, when there is little clarity over the authorization or justification of the international use of force, targeted killing or the use of precision bombing is increasingly seen in an ethical light. Our ethical gaze appears to have shifted away from the arguments of *ius ad bellum* (just cause of war) and towards debate on *ius in bello* (just ways of fighting war). In this context, especially that of ethical wars, fought not in the interests of national survival but for ethical reasons of preventing human rights abuse, killing the enemy has become increasingly difficult to justify to domestic audiences (as have losses of one’s own troops). As war increasingly becomes more about declarations than actions (as Cunliffe argues in Chapter 4), targeted killing and precision bombing take on an ethical dimension lacking in previous contexts.

Trusteeship and international transitional administrations, increasingly held to be necessary in response to state failure and civil conflict, are the subjects of the concluding chapter of the book by William Bain. He argues that the genuine ethical dilemmas of external rule have been evaded by those who take the moral high ground, arguing either for Western intervention to prevent human rights abuses, or against it on the grounds of moral opposition to imperialism. For Bain, arguments that trusteeship or external oversight is

necessary on functional or utilitarian grounds of human rights expediency overlook the ethical need to address the question of 'is it right?' He suggests that this is not a question of the motive or intentions of the states or international institutions that seek to administer post-conflict or 'failed' states but, rather, of their moral justification for so doing. The denial of sovereign rights to self-government, for Bain, brings into question the ethical claim to be promoting or safeguarding the human rights of those concerned as the rights to political autonomy and political equality are an essential part of the human rights canon. He suggests that the inability to resolve this ethical dilemma has led Western states to seek to deny the implications of trusteeship through attempts to redefine sovereignty in terms of responsibilities rather than rights. He argues that the ethical contradictions that spring from international attempts to 'do good in the world' should be squarely faced rather than elided.

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Part I

# Geographies of ethical intervention



## 2 Neo-Wilsonianism

### The limits of American ethical foreign policy

*Alex Gourevitch*

#### Introduction

Although during the cold war the US was identified with the most ruthless *realpolitik*, in the post-cold war world the US has been associated with the rise of a neo-Wilsonian turn towards ethical foreign policy (e.g. Blackton, 2003; Hendrickson, 2004; Gelb *et al.*, 2005/06). Both President Clinton and President Bush have taken idealistic and proselytizing approaches to international affairs (e.g. Simon, 1996; Cox, 2000; Bacevich, 2005; Washington Post, 2005). This ethical turn is seen alternatively as the latest iteration of a millenarian national tradition (e.g. Lieven, 2004), an imperial ideology concealing ulterior national interests (e.g. Gowan, 2003; Cohen 2004), a risky, irrational and even morally dangerous concession to moral ideals over security demands (e.g. Bacevich, 2005), or as a welcome exploitation of an opportunity created by the end of the cold war (e.g. Ignatieff, 2001).

The aim of this chapter is to suggest that none of these claims is adequate either as an analysis or an appraisal of the neo-Wilsonian moment. Neo-Wilsonianism is not, as some would have it, the blossoming of a newly liberated moral consciousness at the heart of superpower. But nor is it what the familiar right-wing realist or left-wing anti-imperialist critics believe it to be. In one way or another, these assessments fail to develop their critical position in relation to the historically specific character of neo-Wilsonianism. A closer look suggests neo-Wilsonianism does not transcend realist pessimism so much as institutionalize a *lowering* of expectations and *narrowing* of political horizons. That is to say, where realism elevates security to an ethical goal because it is a precondition for the enjoyment of domestic liberties, neo-Wilsonianism has made the preservation of bare life its ultimate aim. Moreover, where realism

maintains some future-oriented, strategic orientation in relation to the general goal of maintaining national security, neo-Wilsonianism does not even aim for a future condition of stability, let alone emancipation. It is concerned merely with managing moral emergencies that arise spontaneously in the present. This lowering and narrowing of horizons reflects a new ethic that, even more than realism, is guided by a deeply anti-utopian outlook on the uses and aims of political power.

To establish this claim, this chapter begins with a brief discussion of how Wilsonian diplomacy emerged out of the crisis of moral and political authority that the First World War and the Russian Revolution produced. It then contrasts this with how neo-Wilsonianism is a product of a moral impasse brought on by the decline of ideologico-political conflict. Where Wilson was faced with the need to answer the ideological and political challenge of communism and radicalized labour movements amid European wartime paralysis, neo-Wilsonians are faced with guiding, exercising and justifying their power in the absence of political enemies, and general disenchantment with political ideologies. As a product of these post-political circumstances, neo-Wilsonian diplomacy is not expansive and future-oriented, but takes a self-effacing and short-termist form.

### **The First World War and the Wilsonian alternative**

Woodrow Wilson was a world-historical figure. As the historian A.J.P. Taylor notes, ‘until 1880 the United States counted for little’ (1971: xxxi), while Germany, France and England dominated militarily and economically. However, by 1913 the US was a major power. It produced more steel than the other industrial countries combined, about half the world’s iron and accounted for thirty-five per cent of the manufacturing output of the great powers.

Economic heft did not immediately translate into moral authority. Until the First World War, Europe, especially Germany, remained the centre of Western civilization. In spite of Germany’s relative weakness as a competitor, half as strong in manufacturing and iron and weaker still in steel, the US exalted the German military and constitutional regime as an ideal towards which to aspire. The American ruling class ‘saw German liberals and conservatives as fellow leaders . . . Germany was, in many ways, a model for the United States to follow’ (Jenkins, 2005: 241). Until war broke out, Woodrow Wilson himself ‘unambiguously wished that the United States would become more like Germany than England’, and shared the views of many of

his contemporaries in admiring 'Prussia's statism, administration, and its unequal suffrage' (Oren, 1996: 291, 264).

While relations with Europe, and Germany in particular, were not tension free, it was the First World War that wrought a decisive change in international relations. Each of Europe's great powers expected a quick victory and thought 'war would stave off their social and political problems' (Taylor, 1971: 529). But if war staved off domestic problems for the first two years of war,

after three years of terribly bloody conflict a great part of Europe was increasingly troubled, profoundly altered materially, and many prewar political intellectual verities were losing their ability to constrain people's daily behavior or win their habitual assent to a larger consensus.

(Kolko, 1994: 122; also Mayer, 1967: 1-61)

In Russia, this inability to win 'habitual assent' led to the communist revolution, making the spectre haunting Europe a reality, and changing the global view of the war. The old certainties were destroyed.

Nowhere was this bonfire of the verities more visible than in the transformation from what the historian Arno Mayer has called the 'Old Diplomacy' of balance of power, secret treaties, and imperial annexation to the 'New Diplomacy' of open diplomacy, democracy and universal rights (1967: 8). The New Diplomacy repositioned the global relations of political power and moral authority. Lenin had been the first to seize on the moral crisis of the old order, exploiting his position as leading the only consistent and principled opposition to the First World War. In the middle of continental crisis, Trotsky's publication of the tsar's secret treaties on 17 November 1917 further destabilized Europe's shaky regimes, and became a defining act in the rising demand for democratic control over foreign policy (Mayer, 1967: 278-9).

By the end of 1917, the West needed an answer to the Bolshevik's New Diplomacy because, as one historian argued, the First World War had produced the situation where 'millions of bayonets were in search of an idea (ideology)' (Guglielmo Ferrero, cited in Mayer, 1967: 33). Yet Europe's ruling classes were paralysed. It was into this political and moral vacuum that Wilson stepped, as the leader of the one other great power untainted by the war, and as the only power with the resources to back its claims. According to Mayer, Wilson and his advisers 'drafted the Fourteen Points in full



awareness of the Allied crisis' (1967: 353), and he goes so far as to suggest that Wilson's 'primary audience was not the United States but abroad, in Russia, Austria-Hungary, Germany, France and Great Britain' (1967: 362). In spite of European reluctance to embrace openness and democracy, 'wartime necessity eventually compelled the Allied war cabinets to declare their verbal adherence to the New Diplomacy' (1967: 332). It was in this context that Wilson suddenly 'reclassified Russia as a modern democracy and Germany a pre-modern autocracy' (Jenkins, 2005: 240; also Oren, 1996: 264). Wilson 'combined his war message with a summons to a crusade for democracy' in which 'American diplomacy immediately took on an idealistic and proselytizing dimension' (Mayer, 1967: 344). This gave moral sanction to American intervention in the war, and led Wilson to support revolution in Germany against the Hohenzollern monarchy (Mayer, 1967: 378).

Although commonly seen as purely 'idealistic', in context, Wilsonian diplomacy was a 'realistic' response to the political crisis. To be sure, Wilsonianism was, at least for a moment, also the form that the first, self-conscious assertion of American power over Europe took. But it was also a response to a kind of compulsion. 'For after 1914, faced with what an eminent liberal historian called "the world crisis" (Elie Halevy), bourgeois liberalism was entirely at a loss' (Hobsbawm, 1987: 332). Liberal authorities *had* to respond to mass democratic demands, and offer a new ideological alternative. Even within the US the pressure of radical, working-class forces had become significant enough that some kind of response was necessary (Jenkins, 2005). Promoting democratic control of foreign policy and self-determination was a major way of stitching together the fraying moral authority of liberal capitalism on more democratic foundations. Beginning with Wilson, the US became the new standard bearer for this bourgeois liberalism. Wilson was, in a certain sense, *forced* to be utopian and propose a more democratic set of international (League of Nations) and domestic institutions.

The use of American power to promote rights and democracy was, in this context, a conservative strategy of transformation. A certain degree of morally informed diplomacy was necessary to forestall more dramatic changes, as well as a way of promoting specifically American interests against European rivals. This was as true in 1917, with Wilson's promotion of democratic revolution in Germany, as it was of American sponsorship of decolonization in the 1960s and 1970s. The deployment of radical notions such as democracy and self-determination went hand-in-hand with redefining them in less radical

terms. Where in the nineteenth century democracy had been more associated with socialism, Wilson, as one of the first rulers of a great power to endorse and advocate it, 'cleansed democracy of its class connotations' (Oren, 1996: 267). Wilson's exportation of democracy was part of this process of making democracy safe for liberalism. It was only the existence of real alternatives that gave Wilson's ethical diplomacy this specifically politico-ideological dimension. In the French scholar Zaki Laïdi's words, the global clash of alternatives gave the period between 1917 and 1989, especially the cold war, the character of an 'ideological combat between two universal and competing value-systems' (1998: 15).

### **Neo-Wilsonianism as anti-utopia**

Wilsonian ethics introduced a new way of conducting foreign policy. As the critic Christopher Coker notes, 'power had to be exercised for a purpose, preferably a grand design . . . Ethics become ideological and future-oriented . . . And it was as a power of the future that America saw its role in an ethical (that is, historically sanctioned) light' (2001: 153). As such, the US actively sought to impose its will on other societies, and to redesign them according to this vision. However, as Coker goes on to note, the US has lost this future-orientation: 'America is no longer engaged in great projects. It no longer finds legitimacy in a vision of the future; instead, it has been reduced to managing the present' (2001: 157). This loss of political vision appears like a sudden, post-cold war shift, but it emerges out of a punctuated historical process. Paradoxically, the effort to reconstitute political authority in the absence of a forward-looking political project takes an ethical form.

This transformation of American foreign policy was already visible with President Carter. Between the Second World War and the early 1970s, the European economies had been rebuilt, with the US dropping from about half of global manufacturing in the late 1940s to about a third thirty years later. Reform in the Soviet Union and détente with China saw a thawing of the cold war. Together, this weakened the economic and political rationale for American hegemony. The Vietnam War brought these underlying trends to the surface. Just as the First World War had called into question Europe's Old Diplomacy, the Vietnam War called into question the Pax Americana both abroad and at home. The upheavals of 'the sixties', the resignation of Nixon and Ford's lame duck presidency added to this legitimization crisis.

Coming to power at the tail-end of these events, Carter was aware of the precariousness of the situation he inherited. In a speech arguing for the use of American power for moral and 'humane purposes', Carter said: 'The Vietnamese war produced a profound moral crisis' (1977: 8). In condemning the 'intellectual and moral poverty' of prior foreign policies, Carter acknowledged the need for new ethical principles underpinning American rule. The problem was not merely the mass's disaffection but elite disorientation, which Carter called the 'covert pessimism of sons of our own leaders' (1977: 5). Carter knew that he could not invoke 'that inordinate fear of Communism which once led us to embrace any dictator who joined us in that fear', not least because Vietnam and détente had called the anti-communist, containment ideology into question (1977: 4). His appeal to a foreign policy of human rights and democracy, therefore, was an alternative way of addressing the 'crisis of confidence' and 'covert pessimism'.

Carter was not the only politician alive to the political potential of human rights as a means to restoring moral purpose and ruling class coherence. The journalist Kirsten Sellars has documented that as early as 1973 politicians saw ethics as a way of 'responding to the breakdown of the foreign policy consensus during the Vietnam war' with President Ford backing the human rights provisions in the Helsinki conference in 1975 (2002: 114–15). More striking is the endorsement of Carter's aforementioned speech by hard-bitten realists like Jeanne Kirkpatrick and Henry Kissinger. Before becoming Reagan's foreign policy adviser, Kirkpatrick argued 'one important consequence of Carter's re-emphasis of human rights has been to break the antiestablishment monopoly on moral rhetoric' (Kirkpatrick, 1977: 22). In a commentary on the same speech, Kissinger endorsed Carter's attempt 'to give the American people, after the traumas of Vietnam and Watergate, a renewed sense of the basic decency of this country, so that they may . . . remain actively involved in the world' (Kissinger, 1977: 60). No doubt, Kissinger and Kirkpatrick, among others, found much to criticize in Carter's foreign policy. But their concessions to Carter's stance reflected an underlying desire to re-establish moral authority in a situation where the greatest threat to political legitimacy seemed less to be revolutionary challenges as disenchantment and withdrawal from the status quo.

Yet if Carter's ethical turn was a response to the softening of cold war tensions and the withering of ideological conflict, it was

still not a post-ideological ethical foreign policy. Although he was often criticized for ignoring the way ethical pursuits might distract from strategic necessities, or unwittingly strengthen allies (Kissinger, 1977: 62; Kristol, 1977: 69), Carter was never so unstrategic. It is well known that Carter used the Helsinki Accords to morally bludgeon the Soviet Union, while picking those countries, like authoritarian client states in Central America, ‘unimportant enough to be hectorated about human rights’ (Sellars, 2002: 130). The ideological function of human rights, therefore, was to restore the moral authority of liberal institutions, by advocating and strategically supporting political and civil rights against the USSR, which promoted social and economic rights. The broader vision informing Carter’s promotion of democracy and human rights was to restore the moral foundations of liberal institutions still potentially threatened by left-wing alternatives.

### **After the cold war: American ethics for an anti-utopian world**

Under Carter, ethical foreign policy began to take the character of shoring up American moral authority in the *absence* of an enemy against which to contrast its own vision of the future. This became fully expressed in the post-cold war world. In the post-political international environment, the US has had difficulty not only representing its interests as universal, but at identifying and pursuing these interests.<sup>1</sup> General Wesley Clark, military adviser to President Clinton and NATO Supreme Allied Commander in Europe during the bombing of ex-Yugoslavia, wrote in his memoirs: after winning the cold war ‘we lost not only our old adversary – the Soviet Union – but also our strategy and purpose in world affairs’ (2001: xxxi). Likewise, Condoleeza Rice, just prior to becoming President George W. Bush’s National Security Advisor and then Secretary of State, wrote in *Foreign Affairs* that ‘The US has found it exceedingly difficult to define its “national interests” in the absence of Soviet power’ (2000: 45). That is to say, it is not so much that the US has not pursued economic interests – which are evident in various multilateral and bilateral trade treaties, as well as informal agreements (e.g. telecommunications standards, see Krasner, 1991). In fact, it is precisely the decline of radical challenges to liberal capitalism that has made the pursuit of interests relatively unproblematic, but for that reason, without the need for political management. Rather, the general anxiety about national interest reflects an inability to develop an

overarching principle that coheres and directs the activity of *political* actors and bestows their actions with legitimacy. In a way, the crisis of confidence of which Carter spoke was never resolved so much as deferred, to re-emerge with full force in the post-cold war world. Across the American political spectrum, this disorientation and anxiety has been seen as the need for moral regeneration. Neo-conservatives such as William Kristol and Robert Kagan discussed the need for ‘the remoralization of America at home’ (1996: 31). In *The New Republic* it was argued that Americans needed to be willing to exercise ‘noble virtues’ such as ‘courage, sacrifice, and generosity’ without which it becomes difficult ‘to vindicate the principles that give sense and substance to our lives’ (Berkowitz, 1999). In this casting about for new legitimating principles ‘American politicians explain their actions . . . [in] the language of ethics more and more’ (Coker, 2001: 148).

This is a new ethics. It is the ethics of a period that has made sense of itself as the victory of moderation and anti-utopianism over fundamentalist and totalitarian challenges. Even during the cold war, the ideological foundations of ‘democracy and human rights’ was anti-totalitarian. This anti-totalitarian ideology equated fascism and communism, and recast liberal institutions as bulwarks against the dangers of utopian excess. American liberalism itself was rewritten as an anti-utopian ethic, which Judith Shklar famously called a ‘liberalism of fear’ (1998). As the political philosopher Corey Robin notes, the anti-utopianism of this new ‘liberalism of terror’ reached so far as to create a new vision of the individual, as a ‘fragile self’ in need of protection from fear and cruelty, rather than as a self-actualizing being, in need of the social resources and political space to realize its potential (2004: 108). This liberalism aimed not so much at a positive vision of a new future as at warding off destructive visions of transformation. Moral conflict was reinterpreted from the relative notion of good and evil historical alternatives to the absolute evil of the timeless dangers of utopian visions.

If under Carter this pessimism about political possibilities was still not fully expressed, in the post-cold war world it emerged as an explicit, official self-understanding. For example, in a 1995 speech to the liberal establishment, Zbigniew Brzezinski, National Security Advisor under Carter, defended the new emphasis on human rights in these terms:

the eventual collapse of the Soviet totalitarian model validated the basic premise of our focus on human rights: that a system

of total political compulsion, aiming not only at social reconstruction but even at the ideological molding of the human being, was not only morally wrong but historically doomed to fail.

(1995: 12)

In other words, human rights and democracy are not positive ideals of a society yet to come, but are means of preventing transformative visions from terrorizing vulnerable individuals. Former Defense Secretary Robert S. McNamara and his co-author James Blight take an even longer view of the ‘lessons of a tragic history’. In a book entitled *Wilson’s Ghost: Reducing the Risk of Conflict, Killing, and Catastrophe in the 21st Century*, they reinterpret Wilsonian idealism in the light of the great illusions of the twentieth century and discover an anti-utopian moral imperative: ‘radically to reduce the carnage of the previous period’ (2003: 10).

Many share this view. The influential liberal intellectual, Michael Ignatieff,<sup>2</sup> holds the overriding moral imperative of the post-cold war world to be to ‘put cruelty first’ (2001), which means preventing ethnic cleansing and genocide. In 1999, Bill Clinton justified the bombing of ex-Yugoslavia on the grounds of preventing ‘atrocities’ and stopping Milosevic’s ‘vicious campaign of ethnic cleansing’ (Clinton, 2000: 195).<sup>3</sup> Many liberals are quick to draw links between this and the fight against Islamic fundamentalism, which they identify with ‘utopianism and apocalyptic fervor’ and include in ‘the 20th century’s lineage of totalitarianism’ (Malone, 2006). The liberal public intellectual Paul Berman defends 1990s’ humanitarianism and the war on terror on the grounds that they replace ‘grand ideological structures’ with the ‘sovereignty of the victim’ and the belief that ‘if you’re following the dictates of an ism, sooner or later you are going to be disastrously wrong’ (quoted in Malone, 2006). Many conservatives and especially neoconservatives, too, have been strongly informed by the view that evil is a product of political ideologies that seek to remould individuals. They see it as America’s continued duty to defend rights and democracy everywhere from the tyrannical impulses of ‘fundamentalist’ regimes (Beckerman, 2006). Likewise, George W. Bush has repeatedly invoked both the Taliban’s brutal treatment of women, and Saddam Hussein’s massacre of Kurds and Shia as justification for the invasion of Afghanistan and Iraq. For example, Bush ‘spent almost the entirety of an October 2005 speech drawing connections between Nazism, communism and this new totalitarianism’ (Beckerman, 2006). When he speaks of the

‘spread of freedom’, freedom is here equated with the elimination of fear, and tyranny with fundamentalisms of all varieties. These are links many liberals hasten to draw.

In other words, neo-Wilsonianism, in its liberal and conservative variants, has not reflected the final realization of a ‘peace dividend’, in which a more idealistic and utopian vision of diplomacy has been liberated from the realist chains of security imperatives. The emphasis among American politicians on ensuring the security of the individual, rather than on bringing forth untapped creative potentials, suggests an inability to transcend the survivalism that marked realism itself. Security is still the essential, moral goal, but now it is the security of the physical individual, not the institutions of liberal capitalism. As distant as George W. Bush’s ‘war on terror’ might first appear from the humanitarianism of Clinton, it is linked by this common view of its ethical basis. Bush has extended the moral logic Clinton established: the prevention of cruelty as the fundamental ethical impulse of a society that equates utopian visions with dystopian outcomes. As Corey Robin notes, the common ground here is a ‘sad, dystopian . . . recognition that state tyranny and the cruelty of fanatics’ (2004: 118) could become a new way of justifying American power and defending the fraying moral authority of post-cold war politicians. The war on terror has only made more explicit the way freedom is now equated with survival, or freedom from fear.

Even democracy itself is justified on the ground that it provides individuals procedural guarantees against brutal dictators, rather than that it is the way citizens collectively reshape their societies. A bipartisan bill, introduced in 2005, to make democracy promotion an official part of American foreign policy bore the unmistakable imprimatur of this anti-utopian ethical consciousness. When asked what kind of democracy the congressmen were talking about, Representative Tom Lantos (D-Mateo), one of the bill’s co-sponsors, said:

The use of the term ‘democracy’ must undergo a dramatic transformation in dealing with countries like Iraq, Afghanistan or many other countries in the world . . . When you define the goal in more realistic terms – less brutality, fewer killings, fewer gulags, a society that’s somewhat more open and tolerant – that’s not just a plausible long-term policy, but the only long-term policy for the US.

(Marshall, 2006)

In other words, Iraqis, Afghans and really the whole Third World should lower their expectations (i.e. be ‘more realistic’) when thinking about democracy: forget about collective liberty, think of it more as a barrier against the worst forms of cruelty. While cast as ‘democracy for them’, this defining down of democracy as ‘fewer killings’ also alters expectations back at home. It is an attempt to bring the domestic understanding of democracy in line with the survivalist, security-obsessed mentality of its promoters.

The reason for emphasizing this anti-utopian aspect of American ethical policy is to show how distinctive its features are and how closely related it is to the post-political contours of the post-cold war era. In a sense, America’s leading thinkers and practitioners have made a virtue out of necessity: turning the very collapse of forward-looking, future-oriented political struggles and disenchantment with totalizing world views into a good thing. Critical analysis must confront neo-Wilsonianism on these grounds, rather than see it as just another instance of the timeless problems of idealism in foreign policy.

### **The consequences of neo-Wilsonianism**

Neo-Wilsonianism has not been without its detractors, but most have preferred to retail either a form of right-wing or left-wing realist critique that is based on an ahistorical conception of ethical foreign policy.

#### *The critics*

In a defence of realism against the post-cold war rise of idealism, the conservative political scientist Andrew Bacevich has written:

As the events of the post-cold war era have reminded us, idealism – whether the left liberal variant that emphasizes humanitarian interventionism or the neoconservative version that urges using American power to promote American values – provides no escape from the moral pitfalls of statecraft. If anything, it exacerbates them. Good intentions detached from prudential considerations can easily lead to enormous mischief, both practical and moral.

(Bacevich, 2005)

Bacevich points to two long-standing realist critiques of ethical foreign policy, both of which have been aimed at neo-Wilsonianism.



The first argument is that neo-Wilsonianism is at best an empty gesture and at worst a dangerous distraction from real national interests.<sup>4</sup> William Kristol offered such a critique of Clinton's 'liberal internationalist' diplomacy: in its ethics and economics 'replaces politics' (Boynton 2005). Similarly, realist critics have branded George W. Bush a utopian fanatic, committing hundreds of thousands of troops to an irrational war against Iraq while ignoring real national interests regarding terrorism and China (Art *et al.*, 2004). In a criticism of 'utopian' neoconservatives, Brent Scowcroft, National Security Advisor to the first President Bush, said 'what the realist fears is the consequences of idealism', especially 'that the invasion [of Iraq will] make the Middle East a lot worse' (Goldberg, 2005; also Scowcroft, 2002).

The second concern is that ethically driven diplomacy often fails to appreciate the complexity of the situation, and therefore leads to more bloodshed rather than less. This 'road to hell is paved with good intentions' scenario was undoubtedly the case in Somalia, where foreign aid ended up fuelling the civil war and intensifying the conflict (Maren, 1997), and where 'efforts to feed the starving culminated with besieged US forces gunning down women and children' (Bacevich, 2005). Similar examples are adduced to indict Kosovo, East Timor and now, given the chaos in Afghanistan and Iraq, the two most recent wars.

A variation of this ethical-perversity criticism is not so much based on lack of local knowledge, but on the fact that humanitarian justifications dehumanize the enemy. This criticism, most famously articulated by the Nazi legal theorist Carl Schmitt, has been rehabilitated as a critique of the way the US has seen conflict in black-and-white terms and created moral justification to annihilate those constituted as enemies of humanity. Such critics have shown that the bombing of Belgrade, including dropping cluster bombs and hitting civilian targets, fit this pattern, as did the general tendency of the US to view Serbs as vicious killers, and Croats, Bosnians and Kosovars as innocent, helpless victims (Johnstone, 2005). Similar arguments could be made regarding the dehumanization of the Taliban, the subsequent killing of thousands of Afghan civilians during the Afghanistan war and general indifference to Iraqi deaths (e.g. Unknown News, 2005; Rall, 2003).<sup>5</sup>

Finally, there are those who see in the American invocation of universal values 'the new paradigm rationale for imperial intervention' (Hagopian, 2000). The new ethical turn is a means by which the US instrumentalizes the higher moral legitimacy of human rights

to run roughshod over international law while wishing to subject all others to those laws (Koskeniemi, 2002; Cohen, 2004; Krisch, 2003). This is especially clear in the use of military force in places such as Kosovo and Iraq (Cohen, 2004), but also even in earlier interventions in Somalia, Haiti and Rwanda (Branch, 2005). America's 'new liberal cosmopolitanism' (Gowan, 2003: 51) is an ideological 'consensus across the Clinton and Bush administrations' beneath which actual diplomacy is 'wholly dedicated to the calculations of power politics' (Gowan, 2003: 53). That national interests are concealed under the form of a universal ideology is clear in the hypocritical deployment of humanitarian forces in places where the US possesses interests (Iraqi oil, Balkan military bases), the refusal to deploy in places of marginal strategic significance (Rwanda) and exemptions from moral requirements for strategic allies (Israel, Egypt, Saudi Arabia and Pakistan). The lack of consistency according to moral criteria is evidence of an underlying consistency in terms of imperial calculations.

There are partial truths in each of these three broad criticisms, and each can marshal facts to support their claims. But they are directed towards the abstract problem of ethical foreign policy. As such, they attack something of an artificial construction, especially insofar as they oversell the utopian or transformative nature of the endeavour. In failing adequately to relate the specific character of neo-Wilsonianism to its particular style and consequences, they undermine their own analysis and weaken their critical purchase.

### *Crisis management and the eternal present*

Realists may be right that ethical diplomacy tends to be gestural and dangerously ignorant of facts on the ground, an argument they use to explain the chaos in Iraq, but the consequences of neo-Wilsonianism arise not so much from a starry-eyed idealism as from its preoccupation with managing the present over planning the future. The interventions in Kosovo, Afghanistan and Iraq were hastily arranged and ad hoc, not just in terms of logistics but of predefined, long-term aims. Clinton's decision to intervene in Kosovo evolved with little premeditation and contained no concrete plans beyond driving the Serbs out of Kosovo (McCormick, 2000; Rubinstein *et al.*, 2000: 165–73). Similarly, there 'had not even been a barebones war plan for Afghanistan' two months before the invasion, let alone a plan for reconstruction (Woodward, 2004: 5). And the absence of a (realistic) plan for the reconstruction of Iraq has been the subject

of much debate in the US. This contrasts starkly with the fact that, as early as 1941, Roosevelt and a team of officials began planning the reconstruction of Germany. It is only *after* the invasion of Iraq that President Bush created the Office of the Coordinator for Reconstruction and Stabilization, whose main function is to plan state-building.

Neo-Wilsonianism *does* lack a strategic vision, not only in the sense of lacking a clear conception of the national interest, but in the broader sense of lacking any future orientation at all. As Christopher Coker puts it, 'the ethics of world order have been superseded by those of crisis management' (2001: 165). This crisis-management orientation is part of the general narrowing of an ethical vision. The moral awareness of statesmen is defined by a nearly exclusive attention to moral emergencies arising almost spontaneously in the present, rather than informed by a desire to defend existing institutions or recast society in the light of some vision of a new, transformed future. One might say realism, too, is not future oriented, because it is based on a tragic view of the limits of human action and the inability to supersede the structural imperatives of the international system. But if for realism international affairs is defined by recurrence and repetition, it nonetheless contains a principle – the management of power relations in the national interest – by which to relate each action to every other action and plan for the (tragically recurring) future.

For neo-Wilsonianism, however, ethical diplomacy is cast in terms of punctuated acts of forestalling atrocities and overthrowing dictators. Indeed, the language of 'prevention', though most famously articulated in President Bush's doctrine of 'pre-emptive war', was already a central part of the humanitarian vocabulary (Rubinstein *et al.*, 2000; McCormick, 2000). The immediacy and urgency of humanitarian crises was an argument commonly used to support various interventions in places such as Rwanda and Kosovo, and the use of American power in such situations generally (Walzer, 2004). Indeed, human rights debates have centred on the question of just what counts as a moral emergency, demanding extra-judicial justice (e.g. Teson, 2003; Ignatieff, 2001). American lawyers and politicians consistently defended legally questionable interventions precisely on the grounds of their moral exceptionality (Byers and Chesterman, 2003). Furthermore, neo-Wilsonianism has not developed anything like an institutional vision of a new world order analogous to Wilson's 'community of power' enshrined in the League of Nations, or a recast UN.

Punctuated crisis-management has consequences not only abroad but at home. No doubt the chaos in Afghanistan and Iraq, as well as the endless occupation of Kosovo, are partially a consequence of interventions that had no plan, though they would likely have been problematic even with a plan. But equally significant is the way crisis-management affects democratic control of foreign policy at home. Any discussion about the merits of a specific issue becomes difficult if it is cast as the need to take immediate action. This affects not only the politics of any particular issue, but the broader character of political debate. As Zaki Laïdi has said, a politics devoted to crisis-management leaves little time for the development of a real social vision: ‘the nature of immediacy and emergency is to asphyxiate every day a little more of [politicians’] political imagination, their ability to set out a path, a way, a project’ (1998: 107). Neo-Wilsonianism is less a conscious and forward-looking form of *action*, as it is a series of unplanned and uncoordinated *reactions*. At worst, it functions to paper over the *lack* of vision among the American establishment.

These domestic consequences are generally overlooked in the discussions of neo-Wilsonianism because its superficially ‘ethical’ form, rather than its anti-utopian content, tends to be the centre of analytic attention. It is also overlooked because of the tendency in much international relations theory and commentary to insulate discussions of foreign policy from domestic politics. In fact, they are two sides of the same coin. The intervention in other societies not only constitutes a suspension, or at least distortion, of the process of self-determination over there, but reflects and reinforces a similar weakness and short-circuiting of that same historical process within American society. We can already see here what I shall discuss in greater detail below: the inversion of the original Wilsonian paradigm. Where Wilson saw self-determination abroad and democratic control of foreign policy at home as two sides of the same coin, neo-Wilsonianism transforms its ethical understanding to both justify intervention abroad and constrain domestic political debate.

### *Saving others to save ourselves*

This double effect is equally a consequence of the way American ethical foreign policy is cast as action for the benefit of others, not national self-interest. In a contrast between Reagan’s *realpolitik* and post-cold war diplomacy, the conservative Robert Merry has argued:

the first real neo-Wilsonian was George H. W. Bush, who sent 28,000 troops into Somalia on a purely humanitarian mission utterly devoid of any argument that American interests were involved. That truly was an unprecedented action and reflected the essential Wilsonian impulse to employ American power on mankind's, as opposed to Americans', behalf.

(Gelb *et al.*, 2005/06: 14)

This opposition between self-interest and concern for others has been a consistent feature of neo-Wilsonianism. Wesley Clark recalls of 'military action against Yugoslavia' that 'we were never allowed to call it a war' (2001: xxxvii). To call it a war would have made it seem too much a projection of American power instead of like an aid mission for Kosovars. Its ethical character depended on the effacement of those exercising power. During the invasion of Iraq, US soldiers were forced to take down an American flag draped over a statue of Saddam and replace it with an Iraqi one. President Bush has defended the war on the grounds that it is to 'help the Iraqi people build a new Iraq with a constitutional, representative government' (Bush, 2005). Subsequently, administration officials have even argued that the security of others is the key to 'our own' security. Writing in the *Washington Post* in December 2005, Secretary of State Condoleezza Rice argued that democracy promotion was in the national interest because 'attempting to draw neat, clean lines between our security interests and our democratic ideals does not reflect the reality of today's world' (2005). In this sense, neo-Wilsonianism borrows its authority from representing and defending the needs of people 'over there', not directly pursuing the interests of constituencies ethical statesmen actually represent. Indeed, America's ethical statesmen have become much more concerned, to the point of obsession, with the state of democracy elsewhere, but relatively indifferent to its domestic fate.

Moral authority, then, is thus built not merely on saving others, but on a kind of self-effacement. This is distinct from original Wilsonianism, in which the assertion of American national interests was not seen to be so directly in conflict with the promotion of universal ideals. Wilsonian diplomacy took the form of presenting a particular interest – American hegemony and the spread of American liberal institutions – as universal. The ethical – 'what is good for me' – was also moral – 'what is good for all'. For all the claims of a new American nationalism (Lieven, 2004), however, neo-Wilsonianism builds its moral authority not on the universalization

of a national vision but on an opposition between acting for the Self and acting for the Other.

The reason for this Other-orientation is similar to the tendency towards crisis-management. Recall that the post-cold war landscape has been one in which American statesmen have had extreme difficulty orienting themselves. They experience deep frustration with domestic politics. Clinton's first initiative – healthcare reform – failed badly, after which he lost control of Congress, made conservative concessions on welfare, crime and immigration in the mid-1990s and by the late 1990s was paralysed by a major scandal. President Bush similarly lost control of the Senate within a year of taking office and produced no major domestic initiative besides a tax cut. Despite the fact that both Presidents entered office with little knowledge of foreign affairs, they rapidly came to rely almost exclusively on international diplomacy to raise their stature. Yet they did so in a context of political isolation (on Clinton, see McCormick, 2000; on Bush, see Thomas and Wolffe, 2005 and Gourevitch, 2005) and, as we have seen, in a moment when American national interests have been increasingly difficult to define. It has, then, been much easier to claim to be acting in the interests of others than in the interests of those whom they really represent.

Striking this dramatic moral pose has, in fact, been a strategy of avoidance that makes a virtue out of necessity. On the one hand, by directing attention towards others, it avoids difficult, political engagement with domestic political problems. On the other hand, it transforms this inability to act decisively at home into an ethical commitment towards others.

Yet the more this neo-Wilsonianism claims to be about others, the more it reveals itself as an attempt to rediscover the (American) self. As Corey Robin notes, 'there [is] a deep vein of narcissism running throughout' Clinton-era humanitarianism (2004: 122) as 'liberal activists hoped to do elsewhere what they could not do at home' (2004: 128). The pages of the hawkish, liberal magazine *The New Republic* argued that 'coming to the aid of individuals abroad may become critical to respecting ourselves at home' (Berkowitz, 1999). Similarly, President Bush has seen 'confronting this enemy [as] a chance for him and his fellow baby boomers to refocus their lives and prove they have the same kind of valor and commitment their fathers showed in World War II' (Keen, 2001). Influential neo-conservatives William Kristol and Robert Kagan argued 'The remoralization of America at home ultimately requires the remoralization of American foreign policy' (1996: 31). During both the Clinton

and Bush administrations, a tacit sense of moral disorientation at home led to the attempt to strike a confident ethical pose abroad, one whose main purpose was somehow domestic moral regeneration. In particular, the international sphere seems to be the domain in which floundering presidents appear to be able to reconstitute some sense of moral purpose, and try to secure a degree of political legitimacy.

This has real consequences for how diplomacy is conducted. Despite their ostensible Other-orientation, international acts are taken first and foremost as gestures designed to play well at home. There is a hypersensitivity to domestic public opinion, even as such opinion seems to become more mercurial and difficult to measure. This explains a number of features that have called the ethical commitment of both Clinton and Bush into question. For example, despite Clinton's expressed commitment to saving Kosovars, he was unwilling to commit ground troops to the intervention because he feared Americans would be unwilling to countenance American deaths. Even more, he and Clark made sure to fly bombing missions well above the reach of Serbian anti-aircraft fire, even though this led to less precision and therefore more civilian deaths, due to stray bombs or mistaken targets (such as a refugee convoy) (BBC, 1999; Clark, 2001). Clinton almost obsessively followed American public opinion polls and, in many ways, stumbled his way through his Yugoslavia strategy based on day-to-day effects on national opinion (McCormick, 2000).

Likewise, despite his rhetorical dismissal of polling, Bush has been remarkably sensitive to public opinion. Due to domestic criticisms, he changed Iraqi-reconstruction authority three times in the first six months. Moreover, he has seen the Iraqi intervention as *the* measure of his presidency. Not only did he see the 2004 presidential election as a referendum on the war (VandeHei and Fletcher, 2005), but he has attempted to use the reflected glow of subsequent elections in Iraq to bolster flagging numbers in the US. Even as Bush continues to proclaim his commitment to Iraqi reconstruction, as of this writing he has taken moves reminiscent of Clinton's bombing strategy for ex-Yugoslavia: slowly draw down US soldiers and substitute in more airpower, thereby reducing the risk of troop death (Hersh, 2005). Bush's conduct in Iraq suggests that the immediate symbolic value of international gestures plays the central role in his diplomatic considerations.

This concern with how ethical diplomacy plays at home is a further reason for the short-termist character of neo-Wilsonianism,

and further reveals the way in which the 'Other' is instrumentalized for the 'Self's' political purposes. American statesmen, anxious about their status at home and without a real political vision to offer, seek to fashion an image for themselves abroad. The consequence is a foreign policy subject to unpredictable and rapid fluctuations in aims and conduct. The point is not so much that ethical foreign policy actually has unethical consequences, as some realist critics make out. Indeed, far more civilians were killed during the 'real war' firebombings (not to mention nuking) of Japan and Germany, or invasion of Vietnam, than in the more 'ethical' interventions of the post-cold war. In those wars, the confrontation of two sides asserting their own projects led to a bloody dialectic of escalation.

Furthermore, as some left-wing critics argue, it is not that it is hypocritical, in the sense that it conceals real interests, or is only deployed when it serves American interests (in Iraq but not Rwanda). Rather, it is that neo-Wilsonianism is not a true ethical vision. It is not an all-encompassing vision of institutional, social and personal transformation or reinvention. Not only is it that America's emphasis on helpless others springs from the absence of a coherent national project or anxiety of the self, but the diplomacy itself is guided by this indirect use of the international for political purposes. What is more, this displacement of a domestic crisis of moral authority to the international sphere serves to distract attention from an inner political stagnation that statesmen find so difficult to address.

Ethical foreign policy even alters the terms of political accountability. In a kind of reversal of the original Wilsonian understanding of foreign policy and democracy, ethical diplomacy becomes the means by which presidents elevate themselves above democratic controls, even as they remain ever attentive to domestic opinion. Indeed, although much attention has been given to the violation of international law by recent American presidents in the name of higher moral principles, less has been made of the way it has been used to bypass constitutional constraints and congressional control. Since the congressional debate on invading Iraq in 1991, there has been no explicit congressional authorization of the use of force for ethical, or any other, purposes (Fisher, 1997). Instead of claiming democratic authorization, presidents have preferred moral legitimacy. Clinton, for example, said of the Haiti intervention:

this is what I believe is the right thing to do. I realize it is unpopular. I know it is unpopular. I know the timing is unpopular.



I know the whole thing is unpopular. But I believe it is the right thing.

(Fisher, 1997: 1270)

Invoking the needs of voiceless, helpless others is a way US presidents have silenced the voices of those who might actually exercise democratic power to limit the actions of their own politicians. It is almost an attempt by statesmen to escape the grubby, disenchanting sphere of domestic politics altogether. Where Wilson's 'New Diplomacy' was, at least nominally, about expanding public control over foreign affairs, neo-Wilsonianism is about raising the president's public image while nonetheless placing his decisions on a non-political, moral plane. Indeed, when coupled with the language of moral emergency, ethical diplomacy has the character of casting various acts as striking political decisions while simultaneously trying to suppress or eliminate all of the political elements – conflict, debate and assertions of interest.

## Conclusion

Neo-Wilsonianism must be assessed on its own terms. It may appear to be inconsistent with its own principles, either in the sense of inconsistently applying them ('what about Rwanda?'), or in the sense of doing more harm than good, or in the sense that it is driven by self-interests rather than true Other-orientation. But it is the specific character of the new ethical orientation that deserves criticism. The problem with the Other-orientation of neo-Wilsonianism is not merely the effect it has had on others, but the way in which presidents have used intervention in the affairs of others to reconstitute a moral authority they have difficulty acquiring at home. This not only disrupts processes of self-determination abroad, but further weakens the ties of democratic accountability binding American statesmen and their citizens. Where Wilson saw the birth of democratic self-determination, both in terms of public control of foreign policy in the West, and non-intervention/anti-imperialism elsewhere, neo-Wilsonianism has operated to erode these very same principles, practically and ideologically.

Moreover, critics have either oversold neo-Wilsonianism's utopian qualities, or reduced them to ulterior motives and interests. As a result, they have overlooked the material consequences of a crisis-driven diplomacy, and have ignored the significance of a diplomacy

that projects this anti-utopian ideology internationally. The narrowing of ethical horizons is a general feature of post-cold war politics, but acutely expressed in American diplomacy because it is in the international sphere that neo-Wilsonian statesmen have made a special effort to re-establish their political authority. The problem is not with ethical concerns in foreign policy per se, but with the anti-utopianism of neo-Wilsonianism in particular. This anti-utopianism suffers from a paradoxical, double problem. On the one hand, it is a profoundly limited ethical vision that substitutes the prevention of the worst forms of cruelty and elimination of the most vicious tyrants, for a real vision of global democratic transformation. On the other hand, it is not strategic enough, failing to develop a consistent set of future-oriented, diplomatic objectives. In a way, neo-Wilsonianism lacks both boldness and prudence.

## Notes

- 1 For a further discussion of the national interest in post-cold war American politics, see Gourevitch (2007).
- 2 Ignatieff is now an MP in his native Canada. However, as a professor at Harvard and regular author in the *New York Times*, he was highly influential in the US, and a strong barometer for liberal American public opinion.
- 3 It is worth noting that at times during the 1990s the initiative to exercise 'moral leadership' in Yugoslavia came from Prime Minister Blair and German statesman Joschka Fischer, with Clinton appearing to lag behind. See Volker Heins' 'Crusaders and Snobs' in this volume.
- 4 See Kennan's 'Morality and Foreign Policy' (1985/86) and Schlesinger's 'National Interests and Moral Absolutes' (1972) for conservative and liberal expressions of these sentiments.
- 5 It is worth noting that American public opinion about each of these events, but especially Kosovo and Iraq, was, and continues to be, seriously divided. For example, during Kosovo, it was a narrow section of the public, mainly liberal elites, that was convinced of the universal justice of its cause. Some conservatives openly supported the Serbs, with at least one Republican congressman giving a speech at the Serbian Unity Congress including references to Serbian support of Allies during the Second World War. Meanwhile, much of the public was simply indifferent to what was going on, rather than convinced of the inhumanity of the Serbs. According to Wesley Clark, General Colin Powell counselled Clark that 'the American people never got involved in the Kosovo campaign; it wasn't their war' (Clark, 2001: xx). The Schmittian critique therefore is more telling against liberal hawks, than the general public. See Heins' 'Crusaders and Snobs' for evidence that the ethical-perversity critique is even more telling against segments of British and German public opinion.

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### 3 Crusaders and snobs

## Moralizing foreign policy in Britain and Germany, 1999–2005

*Volker Heins*

#### Introduction

Foreign policy is becoming a moral enterprise when it aims at deterring or catching war criminals, excluding authoritarian governments from arms transfers and foreign aid, committing troops to peace-keeping missions or toppling tyrannical regimes. All these activities can be observed in the post-cold war period. This trend towards a politico-ethical interventionism neither signals a return to imperialism nor can it be fully explained in terms of an emerging transnational civil society which some believe is thriving on the growing sensitivity of Western middle classes to new ‘global’ problems and the human suffering induced by them.

An alternative point of departure is Habermas’s early theory of Western governments facing ‘legitimation problems’ caused by mounting difficulties in effectively governing modern societies and justifying both their action and inaction (Habermas, 1975). According to this view, democracies are more stable than ever but ‘steering problems’ abound in virtually all domestic policy areas. States that once re-ordered entire continents are now hard pressed to fix their healthcare systems and the pension schemes for their ageing, disaffected populations, or to honour commitments they made only a few years ago. Habermas argued that in order to cope with such problems and to maintain a functional equilibrium, governments would need to tap deep into the symbolic resources and cultural traditions of society. He also believed that the strategic use of meaning resources would lead to their depletion, since meaning cannot be bent to serve systemic purposes without being destroyed. From the twin assumptions that existing sources of traditional meaning (such as deference to the state, emotional attachment to political ‘father

figures', a sentimentally charged national past) are slowly drying up while 'there is no administrative production of meaning' (Habermas, 1975: 70), Habermas concluded that Western democracies were heading towards a serious 'legitimation crisis'.

Without going into further detail, I would like to salvage only one element from the body of this otherwise not very convincing theory. In my mind, Habermas was right in highlighting the domestic malaise of Western governments and in predicting that this malaise leads to the search for new sources of legitimacy and meaning. Three decades later, David Chandler has argued that a possible source of a new sense of purpose and identity for Western states has been found in moralizing foreign policy. Here is a field which, unlike most domestic policy areas, offers a rare opportunity to demonstrate a capacity to act boldly and in the name of worthy goals which, in turn, elicits popular support and a distinct 'idea' of the state (Chandler, 2003). Contra Habermas, whose dichotomy of language-based meaning versus functional system requirements evinces a crypto-realist view of the state, and following Chandler, I do not see why the strategic mobilization of socio-cultural resources and norms is necessarily a self-defeating process. Rather, I argue that political and cultural elites can, in fact, take the initiative in strengthening or renewing the moral authority of the state by including normative ideas, such as the promotion of human rights, in self-consciously interventionist foreign policy agendas. This may occur either in a routine fashion as part of 'profane' politics, or during episodes of conflict and strain when moral norms and values are invoked like 'sacred' symbols in order to renew the codes that constitute the political community (see, for example, Alexander, 1988).

The need for buttressing the moral authority of governments in the face of often insurmountable governance problems, the lack of mobilizing visions and increasingly disaffected domestic constituencies is common to all advanced democracies. All Western statesmen and stateswomen share the feeling, expressed recently by the French President, of living through a profound identity crisis, a *crise de sens* (Chirac, 2005). However, the kind of elite response to this situation varies from country to country. In the search for a principle of variation in the adoption of ethical foreign policies, there is some prima facie evidence that the relative position within the international hierarchy of states plays a role. Small and relatively powerless democracies such as Belgium, Denmark or the Netherlands are obviously less ruthless in world politics and show more enthusiasm



for principled humanitarian ideas than the US which has to juggle many priorities simultaneously, including some that are difficult or impossible to reconcile.

However, size is not the only principle of variation. This becomes clear when we look at *middling powers* such as Canada, Japan, France, Britain or Germany. These countries wield *some* power in world affairs while leaving the provision of global collective goods, such as international security and stability, to the American hegemon. They can also do *some* good in the world, although they are more easily misled than small states into overrating both their real power and their ability to become global moral champions. A closer look reveals that there are also significant national differences regarding the sensitivity of policy-makers in those countries to the moral dimension of foreign policies. French foreign aid programmes, for example, are not primarily designed as an instrument to alleviate poverty or foster democracy. In fact, according to a recent study, France is the only major aid donor that shows a statistically significant correlation between aid allocation and the *lack* of democracy in recipient countries which are eligible only because they are French-speaking former colonies (see Rioux and Van Belle, 2005; on France, see also MacLeod, 2004).

Thus, it is important not to overstate the case of ethical foreign policy. Notwithstanding the reality of ethical interventionism in recent foreign policies, developments in this field are both limited and uneven. To use Charles Tilly's terminology, a 'universalizing' comparison aiming to establish that foreign policies follow essentially the same rule of becoming more and more 'ethical' would not lead anywhere. In this chapter, I follow, rather, an 'individualizing' strategy, the point of which 'is to contrast specific instances of a given phenomenon as a means of grasping the peculiarities of each case' (Tilly, 1984: 82).

In what follows, I provide a brief comparison of how and to what effect the centre-left governments of Tony Blair in Britain and Gerhard Schröder in Germany have injected a strong dose of morality into highly consequential, action-oriented foreign policy discourses. My purpose is to turn to these two cases for hints as to why countries which occupy a similar position within the international hierarchy of democratic states, and which are governed by seemingly like-minded governments, choose utterly different ways of coping with domestic legitimization problems by emphasizing a new global *idealpolitik*. I begin with a brief overview on New Labour's much-touted

ethical foreign policy from the Kosovo intervention to the war in Iraq. This overview will then be used as a model against which some peculiarities of the less well-known foreign policy discourse of the former Social Democratic-Green government in Berlin can be defined. In conclusion, I will highlight the main differences between British 'crusaders' and German 'snobs' and draw some conclusions about the empirical and normative limitations of both.

### **Foreign policy as *ideapolitik*: Britain's New Labour experience**

Since 1997, when former British Foreign Secretary Robin Cook fired the opening salvo in the continuing debate by proposing to introduce 'an ethical dimension' into foreign policy, the discourse clearly bears a British trademark. This brand of ethical foreign policy has drawn considerable attention from analysts, critics, followers and detractors alike (see, for example, Harris, 2001; Williams, 2002; Chandler, 2003; Curtis, 2004; Wheeler and Dunne, 2004; Fairclough 2005; Porteous, 2005). Therefore, I restrict myself to a brief outline of the most salient features of this political and discursive innovation. Three of these features stand out: first, Blair's stress on values and his uncertainty about what constitutes the national interest; second, the rejection of the internal/external distinction between the domestic and the international, which is at the core of New Labour's foreign policy morality; and third, the affirmation of the top-down distinction between leadership and people.

New Labour's foreign policy was unusual in the way moral ideas drove many of the decisions taken during those crises, sometimes against domestic opponents who invoked the national interest to avoid any military involvement. This is particularly evident in the series of armed interventions in Kosovo, Sierra Leone, Afghanistan and Iraq. The origins of the ideas and feelings that animated the prime minister and some of his closest collaborators can be found in a blend of the utopianism of the 1960s 'culture wars' with elements of English nonconformist evangelism and the more recent wave of communitarianism. 'Twenty years ago we would not have been fighting in Kosovo. We would have turned our backs on it', Blair remarked in April 1999, implying that he wished to distance himself from the old 'we' of British nationalism (Blair, 1999). Thus, New Labour's international ideology did not support a strong a priori sense of national selfhood based on unquestioned traditions and memories, although it is safe to say that it depended upon and

nurtured a certain nostalgia for lost greatness. Chancellor Gordon Brown, in particular, made some unfortunate comments about the empire no Briton should feel sorry about (see Kearney, 2005). But nostalgia – the longing to return to an idealized never-never land – is no substitute for a predefined national self-interest which, in fact, was absent as a prime motive behind the more spectacular foreign policy decisions of the Blair government. Armed interventions were not about strengthening the national Self against a foreign Other, but rather about proving oneself by liberating, rescuing or supporting others. Clare Short, the International Development Secretary in Blair's Cabinet, summarized this attitude when she justified her tepid support for the Iraq war by pointing to the need to end the *suffering* of the Iraqi people. 'I can't claim to be a responsible member of the UK government', she argued, 'if we're willing to see the UN endlessly humiliated and the people of Iraq endlessly suffer' (quoted in *The Independent*, 23 February 2003).

The second feature of British foreign policy under Blair was the discursive erasure of the domestic/international distinction. Principled beliefs regarding the needs of strangers played an increasingly crucial role. More important, though, were *causal* beliefs about the impossibility of containing developments and threats emerging in geographically distant places. The 1990s sociology of 'globalization' and the imaginary of the borderless world had a real impact on New Labour's foreign policy. Furthermore, the distinction between the inside and the outside of the nation-state was blurred by the way in which domestic policy formulas have been projected internationally. The best example is 'zero tolerance', a shorthand for recent US-style anti-crime policies which entered the New Labour vocabulary in 1997 (see Freedon, 2005: 196). Blair's foreign policy can be interpreted as recontextualizing the 'tough on crime' message from urban police work to international politics where it has been applied to warlords and dictators who are perceived through this discourse as if they were inner-city gang leaders. The notion of sovereign equality is replaced by a new cleavage between 'evil dictators' (Blair, 1999) who are to be stripped of their sovereign prerogatives, and 'partners' in the common enterprise of stabilizing countries at risk (Prime Minister's Strategy Unit, 2005).

Catchphrases such as 'with opportunity must come responsibility' have undergone a similar recontextualization. Thus, the opportunity/responsibility linkage has been translated from debates about domestic welfare state reforms in a broad range of conditionalities and no longer threat-based so-called 'post-conditionalities' (Harrison,

2001) in foreign aid programmes. These programmes are designed not only to help populations in need but also to change their behaviour and ways of thinking.

The picture is incomplete without a third element: New Labour's strong notion of leadership vis-à-vis public opinion at home and abroad. For realists, Britain's introduction of an 'ethical dimension' into foreign policy is a twofold anomaly. First, the very idea of infusing other-regarding, postnational ideas into world politics is considered either quixotic or dangerous. Second, what is more astounding is that the principal source of moral ideas was not the general public – often seen by realists as a hotbed of ever-changing moral emotions – but the leadership itself. Since his arrival in office, Blair was aware that 'public opinion is rarely if ever aroused by foreign crises, even genocidal ones, in the absence of political leadership' (Kampfner, 2003: 63). Hence, the irony that New Labour reasserted the elitist element of the British political tradition which stresses strong decisive leadership at the expense of public deliberation (Doig and Phythian, 2005). In addition, there is a more specific notion of 'moral leadership' which has to be exercised wherever the needless suffering of strangers can be ended. Blair's main criticism of his conservative predecessor John Major was precisely that during the unfolding crises in former Yugoslavia his government wasted the opportunities to exercise 'moral leadership' (see Seldon, 2004: 392). On a number of occasions and with varying success, moral leadership – which sometimes included ample use of New Labour's formidable publicity machine (Vickers, 2000) – was also exercised with regard to the US governments of both Bill Clinton and George Bush Junior. During the Kosovo crisis, the Blair government was seriously worried that the US would 'wimp out' and even in the run-up to the Iraq war, there are some hints that Blair was rather a 'bulldog' than a 'poodle' with regard to the US (see Seldon, 2004: 402, 570–2).

Does all this justify the designation of New Labour's foreign policy as a moral 'crusade'? My answer is yes as long as the term is employed in a heuristic rather than a literal sense. In fact, by making such a comparison, which learns from recent research on the real Crusades (Alkopher, 2005), we may be able to enrich our understanding of current ethical interventionism. In this light, a crusading ethical policy can be characterized by three distinctive attributes. First, such a policy is always an attempt at making the rather arcane subjects of foreign policy a matter of popular debate and excitement. Second, like the historical Crusades, international ethical policies today are

not just about liberating or rescuing the Other – ‘the millions who die in Africa and elsewhere’, ‘the innocent’ (Blair, 2005) – but even more about redefining the collective Self under circumstances of diminished and uncertain national interests. Third, ethical policies use moral norms not to solve conflicts but define and enable them on an international scale. They are about material politics as well as about sense-making. These policies are embedded in a discourse designed to give ‘new meanings and functions’ (Alkopher, 2005: 719) to wars and conflicts, and thereby allow certain interventions to count as righteous, at least in those societies where they have been thought out.

### **‘More devoted to liberty and democracy’: the Schröder government**

The cases of both post-Second World War Germanies are, of course, very different from Britain. The most striking difference is that until recently those two German countries were run by functioning states that were lacking full sovereignty. With regard to the pre-1990 Germanies, George Kennan’s dichotomy between robust national ‘interests’ and changeful ‘moral sensibilities’ (Kennan, 1985/86: 211) is useful, but only in a non-realist sense. In both Germanies after the war, moral sensibilities actually helped to redefine and shape what was left of an identifiable national interest. This was true for the German Democratic Republic which was founded on an invented tradition of antifascism, and it was largely true for the new political elites in West Germany as well. Here, it is worth recalling the prescient observation made by the American journalist Theodore White on the members of the parliamentary council, who had been handpicked by the occupying powers to draft the West German Constitution in 1948–49:

These German delegates had been screened, rescreened, de-Nazified and purified by every intelligence agency of the occupation before being allowed to come here. But not only that. It was as if the Anglo-American presence of the occupation, particularly the American presence, had magnetized and drawn out from the wreckage of German politics a collection of waifs, strays, victims, outcasts and resisters to Hitler’s politics *more devoted to liberty, republicanism and democracy even than ourselves.*

(White, 1978: 313–14; emphasis added)

Over the decades, this curious moral surplus developed from an observational *fact* into a powerful, confidence-boosting *self-concept* of the formerly vanquished society. Parts of the mechanism that drove this transition have been described by the historian Wolfgang Schivelbusch, who showed how defeated societies tend to transform and re-evaluate their military defeats into a sense of moral superiority which is then turned into a new source of identity claims (Schivelbusch, 2004).

At least in the Federal Republic, however, this process was severely hampered and delayed by the deeply perplexing sense of *shame* that afflicted significant segments of German society after the Holocaust and the genocidal war in Eastern Europe. Shame is different from the humiliation that always accompanies the experience of loss on the battlefield, because it implies a cognitive element. A shamed person recognizes herself or himself as inadequate, inferior and diminished. The same holds true for political communities. It is for this reason that shame precludes the swift transformation of military defeat into moral superiority. Maybe that is also why Schivelbusch has, in fact, skipped the case of post-*Second* World War Germany which does not fit easily into his theory. There was no equivalent in Germany after 1945 to the myths of the 'Lost Cause' or the *revanche* that helped the American South after the Civil War or the French following their defeat in the Franco-Prussian War to regain their self-confidence. In America, the 'culture wars' of the late 1960s and 1970s demolished long-standing certainties about the innate superiority of this particular country (Chandler, 2004: 66–71), while Germany's culture wars targeted and 'shamed' remnants of Germany's still half-denied Nazi past, and helped to block any return of post-defeat myths of Lost Cause, imminent revenge or superior German *Kultur*. Given the absence of such psychological exit routes, West Germany developed a political culture that discredited the pronoun 'we' and any strong notion of a national Self in favour of a high-minded cosmopolitanism. Using a very broad brush, one might argue that after 1990 Germany did not face the challenge of how to infuse morality into politics; conversely, it sought to determine how to operationalize the high moral standards of the national civic culture by using its newly regained sovereign power.

This is a nutshell version of how Germany became one of the founding members of what has been mockingly called the 'Party of Heaven' in world politics. Walter Russell Mead characterizes this group of states, which also includes Canada, by its unwavering belief in international institutions as embryonic forms of a benevolent,

peace-making world government (see Mead, 2004: 65). To the extent that this belief drives political decisions in the international field, it gives shape to a specifically German (or Canadian, etc.) way of doing ethical foreign policy. Until recently, feelings of moral superiority did not play much of a role in this field. German elites felt morally superior only towards the former elites of Nazi Germany. Identity was largely defined in *temporal* terms, based on the difference between the present and the ominous, highly charged past. Of course, leaders in East and West Germany also felt mutually superior vis-à-vis each other, but the spatial categories of East and West were derived from political considerations and were, in any case, weaker than the shared repudiation of the past.

After the end of the cold war and the reunification of Germany, the Kosovo intervention in 1999 was crucial in the way in which questions of moral authority and national or 'European' identity were played out publicly. Admittedly, for Chancellor Schröder and his Social Democratic-Green coalition which had come to office only a few months before the Kosovo intervention, this war represented a situation of confluence between moral values and circumstance rather than an unambiguous case of the primacy of principled beliefs over interests. Some quarters of the foreign policy establishment had favoured secessionist tendencies in the Federal Republic of Yugoslavia since the early 1990s, and had occasionally complained about unsupportive governments in Washington (see Küntzel, 2000).

Still, the participation of the German Air Force in an armed humanitarian intervention was a clear break with the pacifist tradition of postwar Germany. British leaders such as Robin Cook compared the Kosovo situation in 1999 to the Spanish Civil War (Vickers, 2000: 62) in order to win over the anti-interventionist left. By contrast, German Foreign Minister Joschka Fischer – until the end of 2004 by far the most popular politician in Germany – went much further when he likened the looming ethnic cleansing in Kosovo to a 'second Auschwitz' (quoted in C.O. Meyer, 2004: 14) that had to be stopped at any cost and by whatever means. Until then, the memory of the Nazi past had always been employed to argue *against* any involvement of German soldiers in military interventions. The Kosovo episode prompted a complete reversal of this attitude. Now the decontextualized memory of the Holocaust was used to legitimize a humanitarian intervention which, in turn, fulfilled a strong, guilt-driven desire for finally 'fighting on the right side' (Joschka Fischer, quoted in *Die Woche*, 23 April 1999).<sup>1</sup> The government thus participated in the effort to reinstate a fresh conception

of German identity within Europe that was defined, as always, in relation to difference. The enemy – the Milosovic regime – was located and targeted in geographical *space*, although many Germans, including government officials, felt like hitting another evil regime located in their own *past*. Defence Minister Rudolf Scharping candidly admitted to seeing in Yugoslavia nothing but the mirror-image of Germany's own history, stating that 'in light of our own ideals, we are obliged to make sure that in Europe the ugly face of the wars of the first half of this century and of the past won't determine our future' (Scharping, 1999). The government's increasingly interventionist attitude towards Yugoslavia's internal conflicts was not only about international ethics, but also about the significance of a German leadership that is no longer shameful.

Following the massacre of 11 September 2001 in the US, a very different picture has emerged. Two aspects are worth mentioning. First, the German decision to contribute troops to the US-led war against Afghanistan was different from the Kosovo decision because it was no longer backed by any reference to the Nazi era and possible moral imperatives resulting from that past. Second, joining the anti-terror alliance went hand in hand with what I have called the 'moral non-alignment' (Heins, 2002) with regard to the US. Not only conservatives openly ridiculed Bush's and Blair's missionary rhetoric of liberating the world. When al-Qaeda struck in New York City and Washington, the love for all things American – which was widespread in old West Germany – had long since been replaced by a much more critical view of the US which only now began to permeate governmental discourses.

In spite of their ethical component – and contrary to what Chandler (2003) would expect – the Kosovo and Afghanistan episodes were not well suited to generate much moral authority for the German government that was bedevilled by enormous domestic problems. This is because these ethical interventions were accomplished in a manner that reminded German elites of their reluctant dependence on American organizational skills and political resolve as well as sheer firepower. Over Kosovo and Serbia, the German Air Force flew only 436 out of a total of over 37,000 sorties, and fired only around one-thousandth of the missiles (see Menzel, 2004: 264). Unlike other governments, German decision-makers downplayed their contribution to the liberation of the Afghan people from a grotesque and callous regime. Until today, state television broadcasts from Afghanistan report on the poor performance of the 'US army' and the bleak future of the country as if Germany had not



committed more than 2,000 soldiers to the same country and therefore contributed to whatever lies ahead for people in this region (see, for example, Heinze, 2005). From the domestic perspective of Germany's political elites, 'Kosovo' and 'Afghanistan' were unsatisfactory campaigns because they did not allow them to finally *redeem the moral surplus* that was formerly attributed to them by their Allied guardians. Only the Iraq crisis opened up an opportunity to bolster the moral authority of the government by demonstrating the assured consciousness of now being 'more devoted to liberty, republicanism and democracy' than those who formerly upheld these values against powerful forces in continental Europe.

### **Non-intervention and the 'snobbish dimension' in foreign policy**

In the summer of 2002 when the Bush administration geared up for war in Iraq, public opinion turned against the US in many parts of Europe. However, political elites responded to this changing public mood in different ways. As is well known, Chancellor Schröder made the German opposition to the looming war a centrepiece of his re-election campaign. In those months, government spokespersons systematically turned 'differences of opinion' among NATO member states into something close to a 'religious war' (Kohler, 2003) of incompatible ethical worldviews. Characterizing his stance as a 'principled position', Schröder ruled out German participation in military action against Iraq even under a UN Security Council mandate (see Harnisch, 2004: 74). The effect of this rhetoric on the public was quite remarkable. A weak and embattled Chancellor with a poor record on a number of pressing problems at home managed to win national elections in September 2002 by galvanizing the support of his party and crucial sections of an otherwise disaffected electorate. For a moment, he even seemed to energize the German polity or even the European Union with a much sought-after sense of purpose.

In those heated days, party leaders called the opposition to Schröder 'unpatriotic' (quoted in *Frankfurter Allgemeine Sonntagszeitung*, 26 January 2003) in the same way as elsewhere warmongers might have used this term against dissenters. During the election campaign in the late summer of 2002, Schröder had already announced his intention to follow a new 'German Way' in foreign policy. After being re-elected, he earned standing ovations when he

declared before the parliamentary group of his Social Democratic Party, that he had obligations ‘only toward the [German] people, not toward other countries and governmental leaders’ (quoted in Seibt, 2003). When the invasion started, Schröder gave a public address on state television, in which he criticized the coalition forces by drawing on the moral analogy between the Iraq invasion and the Allied war effort against the German Reich sixty years earlier. This analogy was sometimes used by American and British commentators as well, but Schröder gave it a new dramatic twist. ‘The bombs are falling’, he stated, and ‘those among you who are older than me know what war means. You have experienced it, you have survived it’ (Schröder, 2003).

Insinuations such as these seemed to pinpoint the injustice of the current American-led war by referring to the experience of former German victims of that same nation.<sup>2</sup> Here, as always, the use of war memories was both inclusive and exclusive. It was inclusive to the extent that it was meant to bolster a certain spirit of cultural superiority born out of military defeat and civilian suffering. But it was also exclusive because others – younger generations and distant countries never ravaged by war – would never be in the know about what war really means. Though surely not inspired by universalist ideals, this new governmental discourse added an ‘ethical dimension’ to German foreign policy that had no tangible effect on the outside world apart from demonstrating that Germany was not only independent but was bent on seeking what the Chancellor called the ‘emancipation’ of Continental Europe from America (see Vinocur, 2003). The impact of this exercise in ethical non-interventionism was reinforced by a media coverage that tended to belittle the human rights situation in pre-war Iraq. In the first months of 2003, major German news channels represented the British government as hardly better than the Iraqi government of Saddam Hussein and, even, as slightly worse than the much-criticized US administration of George W. Bush.<sup>3</sup> Only *after* the fall of Saddam, Heidemarie Wieczorek-Zeul, Development Minister and Deputy Chair of the Social Democratic Party, gave a public speech in which she declared that ‘the task at hand is now to liberate the Iraqi people from dictatorship and foreign rule’ (quoted in *Frankfurter Allgemeine Zeitung*, 12 May 2003). Needless to say, this remark did not signal any active support for the insurgency against the occupying powers in Iraq. Here again, the government remained faithful to a position of robust ethical non-intervention.

Most commentators have concluded that Schröder's policy on Iraq and the UN cannot be explained purely as a short-term manoeuvre to win national elections. Political expediency was only one aspect among several broader changes affecting the domestic sources of foreign policy in Germany. These changes include the generational change which brought protagonists of the 1960s 'culture wars' to power, the intractable economic crisis partly caused by the way the reunification process was mishandled, and the search for a new *identity* of Germany within a changing hierarchy of states (see Forsberg, 2005; Timmins, 2006; Maull, 2006). Thus, the governmental discourse during the Iraq crisis made visible the tug and motion of an important undercurrent in German foreign policy. This undercurrent may slowly undermine Germany's long-standing approach of post-national restraint by introducing a 'snobbish dimension' to her handling of international crises. Insofar as this attitude of moral snobbery is directed against former victors over Germany, such as the US in particular, it should be seen as a much delayed and toned-down version of Schivelbusch's post-defeat sense of moral superiority.

I am using the term 'snobbery' in a precise sense to indicate that foreign policies are not always about maximizing the benefit of the nation in a utilitarian sense. The perceived status or 'rank' in international society matters as well. Some countries, such as France, are strongly concerned with *maintaining* their rank as a power that counts (see MacLeod, 2004) while others, such as Germany, develop snobbish attitudes because they feel *under-ranked*. Snobs are 'social climbers' who are embarrassed by their lowly upbringing and obsessed with status and appearances. Ignoring their old friends and close relatives, snobs spend a good deal of energy trying to get admitted to the exclusive enclave of upper-class life (see Shklar, 1984). Bearing this image in mind, it is illuminating that the liberal historian Hans-Ulrich Wehler prominently criticized Schröder's 'Kaiser-Bill-like megalomania' (quoted in Rauscher, 2005; see also Seibt, 2003). Referring to the last German Emperor's inflated sense of self-importance, Gunther Hellmann, a well-known political scientist at Frankfurt University, also used the 'Kaiser Bill' analogy to characterize Germany's stubborn attempt to become a great power again, if only symbolically by bidding for a permanent seat on the 'exclusive' UN Security Council (Hellmann, 2004). What policy analysts have called the increased 'self-centredness' (Harnisch, 2004: 79) of German foreign policies fits into the category of snobbery as well as the tendency of the Schröder government to neglect 'family' relationships within international society. Germany has 'de-

Europeanized' (Hellmann *et al.*, 2005) some of her foreign policies in recent years by disregarding the interests of her central European allies and smaller EU member states which were eschewed in favour of cozing up to big players such as Russia and China. Meanwhile, public intellectuals close to the government explicitly claimed Europe's moral superiority towards America which was no longer seen as a 'bigger brother' within the same family of nations (T. Meyer, 2004: 134–45; see Heins, 2005).

## Conclusions

Moral ideas are not purely exogenous factors in foreign policy-making. Changes inside and outside Western societies have blurred the distinction between national 'interests' and the 'moral sensibilities' of both elites and the wider public (Kennan, 1985/86). Given certain circumstances, moral sensibilities influence the ways in which national interests are perceived and hence the political decisions taken to further those interests. This is true for great powers, but also for lesser powers such as Britain and Germany which have recently practised two very different approaches to what has been called the 'project of a moralization of world politics' (Honneth, 1997: 157).

In this chapter, I have outlined an individualizing comparison of foreign policy approaches which leads me to modify David Chandler's thesis that Western governments attempt to compensate for the moral vacuity and ineffectiveness of much of contemporary domestic politics by claiming to have a moral interest in intervening abroad on behalf of others. While this is generally true, foreign policy activism can take very different forms, depending on the political culture and the history of the respective nation. New Labour has used memories of the past to recreate a new idea of British 'greatness' based on a politics of militant ethical interventionism. During the Iraq crisis, Germany's government took a different route in responding to the inability to generate moral authority in domestic politics by *abstaining* from overt intervention abroad and by *advertising* this abstention in the most clamorous way to the public.<sup>4</sup> Chandler is right when he highlights the intractable difficulties in forging a coherent national interest in domestic politics, but he is wrong when he suggests that ethical intervention is the only way out. The German case proves that sometimes *noisy non-intervention* can achieve the same goal. The 'snobbish' obsession with symbolic action in conjunction with global ambition can be likened to the

vainglorious political style typical of the Wilhelmine era: 'The great gesture replaced the great deed, or rather the two merged into one' (Schivelbusch, 2004: 196).

In both cases of foreign policy activism, it is not so much the desire to *deflect* public attention from domestic politics as the need to *redefine* the national interest and the ethical content of the political community that has driven policy discourses and decisions. Ethical interventionism and noisy non-intervention are both ways of invoking 'sacred' symbols able to re-establish a sense of unity within the political community. Both governments were successful in making the formerly arcane practices of foreign policy a matter of popular debate. This success was the consequence of a more fundamental achievement: elites in both countries succeeded in representing the situation in Kosovo before 1999, the events of 9/11, the situation in Iraq before the invasion or the decision of the US to topple Saddam Hussein not as mere facts, but as something 'impure' that threatened to 'pollute' the imagined core of society (see Alexander, 1988). Both Schröder and Blair turned well-chosen facts into stirring moral symbols able to generate authority. For Blair the regime of Hussein was itself a symbol of evil, whereas for Schröder it was just a fact to be accepted. Conversely, German politicians and intellectuals symbolized the US as an 'evil' force, and sacralized the German 'no' to Bush as an act of European self-liberation from the United States of America.

In all of this, keeping a sense of proportion is important. Syndromes such as British imperial nostalgia tempered by cosmopolitanism or German great power ambitions combined with Kantian universalism are alike in that they are boasted by powers which in the profane world of facts are *declining*. Here, the figures for Germany are even more telling than those for Britain. Germany's share of the global GDP has fallen from 4.8 per cent in 1981 to 4.0 per cent for the *reunified* Germany twenty years later. The same is true for budget figures for defence and foreign aid which have declined as share of the federal budget, and even for Germany's ageing population, which is predicted to shrink dramatically in the coming decades (see Hellmann, 2004, 2005). New Labour can at least claim credit for having always been aware of its limited ability to shape global affairs, whereas only the media fell for the hype of Britain as moral superpower (see Williams, 2002: 63). In Germany, by contrast, it was the government itself that vastly overrated its own power to play a crucial role in international affairs, and the media even reinforced this governmental hubris.

Most importantly, and contrary to what we might have expected, neither Blair's nor Schröder's gamble to punch above their weight on the international stage has paid off for more than a short while. In Britain, Blair was re-elected in May 2005 mainly for lack of a credible alternative, with the moral authority of the government falling to new depths. In Germany, the strange juxtaposition of global ethical pretension and lack of effectiveness turned the public mood against the Schröder government. The number of Germans who believe that there is such a thing as a 'successful' German foreign policy declined from 50 per cent in 2002 to 24 per cent in 2005. In the same period, the rate of Germans who believe that the standing of the country in international society is deteriorating went up steeply (Allensbach Institute of Public Opinion Research, quoted in Hellmann, 2005).

From this we learn that governments do not gain much mileage from foreign policy activism, regardless of whether this activism favours armed interventions in the name of liberal values or noisy non-intervention in the name of ethical resistance against the 'uncouth' American nation (Markovits, 2006). The main reason is that both Britain and Germany are ethical dwarfs sitting on the shoulders of the allegedly not-so-ethical American giant from where they wave their tiny hats. The German dwarf has sincerely declared its 'independence' from the US<sup>5</sup> – a move that has satisfied short-term electoral ambitions and the deeper emotional needs ingrained in the German 'culture of defeat' without having had any impact on the real world. Britain's government has also failed to buttress its moral authority by moralizing foreign policy. There are two main reasons for this. The first is that at least the armed version of ethical interventionism can only be successful in conjunction with America, which leads to a widespread feeling of dependence and loss of accountability. The second reason is that in the case of Iraq, the 'Iraqi people' have sent extremely disturbing messages back to its 'liberators', thereby raising doubts whether Britons and Iraqis share the same notion of liberty (see Rayment, 2005). In this case, at least, the Other on whose behalf the intervention was undertaken hardly contributes to a reinvigorated sense of the national Self.

## Notes

- 1 Unlike Daniel Levy und Natan Sznaider, I do not believe that the global decentring and decontextualization of the Holocaust memory facilitates ethical foreign policies by establishing human rights as 'the new measure

for a global politics' (Levy and Sznajder, 2002: 100). I rather fear that 'Holocaust' and 'genocide' are gaining currency as hackneyed accusations in a world with very few shared memories. Political leaders have recently used these terms to describe Israel's policy toward the Palestinians (Mahmoud Ahmadinejad, President of Iran, in February 2006), a brief siege of the town of Falluja in Iraq (Ghazi Ajil al-Yawer, a member of the US-appointed Iraqi Governing Council, in April 2004) and the whole idea of the US-led Operation Iraqi Freedom (Nelson Mandela, former South African president, in January 2003). Of course, these commonplaces are used because speakers know that they *resonate* with *some* sections of humankind.

- 2 A recent new debate on the 'German victims' of the Allied powers has not been initiated at the right-wing margins of society, but is coming out of the liberal centre of the political spectrum and is echoed by a broad range of opinion leaders. Hans-Ulrich Jörges, deputy chief editor of the liberal weekly *Stern*, has called the entire bombing campaign of the Allies 'since 1943' a 'crime' ('Presseclub', *ARD TV channel*, 13 February 2005).
- 3 See the findings of the German media research institute *Medien Tenor*, quoted in *Frankfurter Allgemeine Zeitung*, 14 April 2003, p. 42. More recently, the negative image of Britain and the US has rubbed off on the assessment of the first elections in the new Iraq. While Iraqis stunned the world by turning out in high numbers to vote in free elections for an interim government in January 2005, German news media were even more sceptical than the Arab media. See the report 'European Journalists Do Not Believe in Iraqi Election', 30 January 2005, available at: <http://www.mediatenor.com/articles.php> (accessed 1 April 2005).
- 4 I am saying 'overt intervention' because at the time of writing some news reports claimed that the German intelligence service helped the US identify bombing targets in the early stages of the Iraq war in 2003 (see 'German Agents Said to Aid US in War', *New York Times*, 14 January 2006).
- 5 Schröder's opposition to the Iraq war has been called a 'European declaration of independence' by Erhard Eppler, a well-known senior Social Democrat. Egon Bahr, the grand old strategist of the *ostpolitik*, credited Schröder for having 'launched Europe on the path to self-determination' (quoted in Palmer, 2005: 27). Here, the use of terms such as 'declaration of independence' and 'self-determination' that are imbued with memories of anti-colonial struggle and major human rights covenants signal a discursive process of ritual purification and sacralization.

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## 4 Poor man's ethics?

### Peacekeeping and the contradictions of ethical ideology

*Philip Cunliffe*

#### **Introduction**

In this chapter I want to examine the contradictions of the new 'ethical ideology'<sup>1</sup> of world affairs by focusing on the contribution of developing countries to UN peacekeeping operations.<sup>2</sup> Peacekeeping has come to be seen as one of the integral parts of the new-found orientation in post-cold war politics towards normative, humanitarian issues – practices such as intervening in conflicts to prevent the spread of war, ameliorate human suffering through guaranteeing the provision of aid convoys, and so on. In the decades since the end of the cold war, the UN's growing appetite for manpower, for 'Blue Helmets' to man increasingly larger and far-flung field operations, has been met by forces contributed from developing countries.<sup>3</sup> The burden of soldiering and policing in UN peacekeeping, historically dominated by the great and European middle powers, has been almost entirely replaced by developing and poor countries. This dramatic and sustained diversification of UN peacekeeping contributors has coincided with the development of post-cold war ethical ideology. So what light, if any, does peacekeeping activism by the South shed on ethical ideology in world affairs?

The basic thrust of the argument in this chapter is that Southern activism in peacekeeping illustrates one of the intrinsic limitations of ethical ideology as such. I will illustrate this by arguing that ethical ideology is characterized less by any instrumental orientation towards its purported goal (say, delivering aid to a refugee population in a conflict zone), than by the ostentatious demonstration<sup>4</sup> of benevolence. In other words, by its very nature, in ethically oriented activity, actually fulfilling one's self-styled normative proclamations, is less important than the fact of having exhibited compassion.

The argument below proceeds as follows. I begin by briefly outlining the evolution of ethical ideology in world affairs and the role that peacekeeping has played in this development. I then consider the gradual but inexorable expansion of developing countries' involvement in peacekeeping operations, which correlates with the ascendance of ethical ideology. I then move to consider the shortfall between the rhetoric of ethical ideology and its practical implementation, something usually discussed in the international relations literature utilizing the vocabulary of 'the failure of political will'. I argue that the 'failure of political will' in various humanitarian operations (or indeed, in the failure to launch particular operations), is not, as commonly perceived, a *contingent* feature of such operations, but is, rather, a *systematic* phenomenon. I will argue that instead of seeing the 'failure of political will' as an external foil to the new normative aspirations of the 'international community', the two tendencies (failure of political will and enhanced normative aspirations), should be thought of as aspects of the same phenomenon. In other words, the inability to realize the new ethical aspirations of the 'international community' is a function of their very existence – the very condition of such normative aspirations is the absence of the will to achieve them.

### The rise of ethical ideology

Certain scholarly words, after long confinement in dictionaries and in academic prose, have the good fortune, or the misfortune . . . of sudden exposure to the bright light of day . . . The word ethics, which smacks so strongly of philosophy courses . . . which evokes Aristotle . . . has today taken centre stage.

(Badiou, 2002 [1998]: 1)

Badiou has written how, with the end of the cold war, the 'world was deeply plunged in "ethical" delirium' (Badiou, 2002: liiv). The remarkable events in world politics between 1989 and the early 1990s – the implosion of the Warsaw Pact and the USSR, the unification of Germany, the end of apartheid in South Africa – all encouraged the idea that a new age of international relations had dawned. It was widely believed that international interdependence and cooperation would increase, that military force was becoming increasingly redundant as a tool of foreign policy, and that as ideological polarization declined, so the scope and domain of international law and international organizations could expand. The UN's machinery of collective action would, consequently, be strengthened.

Yet the simple fact that the UN was no longer being fettered by the manacles of superpower rivalry is insufficient to explain the scope and depth of the new reach accorded to the UN, as Michael Barnett illustrates: 'If the end of the cold war helps explain the UN's resurgence, it does not account for why the UN has departed from its traditional concern with interstate dispute resolution to involve itself in nation building' (Barnett, 1995: 88). To explain the new-found, all-embracing nature of UN activity requires us to examine the new-found ethical approach that was brought to bear on relations between states – an ethical approach that was primarily embodied in human rights law.

The epochal political changes inaugurated by the end of the cold war were registered in international law that saw the positivist conception of international law recede before a quasi-revival of natural law, embodied in the form of human rights. Traditional natural law held that a system of law existed independently of either customary or positive law, and was derived from God and accessible through the universal faculty of reason. By contrast, the 'new natural law' was largely derived from the 'universal' nature of the hortatory proclamations affirmed in the various pacts and covenants on human rights that almost all states had subscribed to as members of the UN, at varying stages in the cold war. What did this novel approach to international and human rights law entail? The conventional wisdom was that international law was concerned primarily with states' rights and particularly those rights associated with ideas of state sovereignty and its upshot, non-intervention. Traditionally, human rights were taken to fall not under law between states, but within municipal law. This distinction was increasingly blurred in the post-cold war era, as human rights surged forward in international politics.

Badiou attributes the appeal of the new-found fetishization of human rights both to its immediacy (informed by the minimalistic desire to end human suffering (Badiou, 2002: 4)) and to its ready-made existence (Badiou, 2002: 33) – existing in actual international declarations, invoking human rights did not require the manufacture of an entirely new political ideology. The fact that human rights was both immediate and extant provided a counterpoint to the more evolutionary doctrines of historical progress associated with the political struggles of the cold war. This transformed understanding of human rights informed the politics of the 'new interventionism'. The *locus classicus* of UN Security Council authorization for the use of force after the cold war is Security Council Resolution 678

of 29 November 1990, which authorized 'all necessary means' to deter Iraqi aggression. Though Resolution 678 was cast in terms of punishing aggression and defending state sovereignty within the UN Charter, perversely this very same resolution became the model for Council authorizations from 1991 onwards that redefined traditional notions of non-intervention. Through these mandates and the actions that followed them, the Council collectively and the Western states individually were seen to be creating a new doctrine of military intervention in a state, without the approval of its authorities, and with the purpose of alleviating widespread suffering or death among its inhabitants. The emergence of a series of military operations explicitly supported by a humanitarian rationale was thus matched by, first, a shift in the understanding of state sovereignty from one of 'sovereignty as authority' (territorial supremacy) to one of 'sovereignty as responsibility' (respect for a minimum standard of human rights), and second, an expanded definition of what constituted a 'threat to international peace and security' (Welsh, 2004: 2). Due to both of these moves, violations of human rights inside the domestic jurisdiction of a state were transformed into a matter of international concern. Consequently, the UN was seen as empowered to legitimately authorize international action to address the putative security threats posed by humanitarian crises (Welsh, 2004: 2).

Internal armed conflicts, humanitarian crises and 'disruption to democracy' were three new categories that were now taken to constitute a 'threat to international peace and security'. UN Secretary General Boutros Boutros-Ghali has said, 'Despite the provision in the Charter that the [UN] Organization should not intervene in domestic matters, Member States find it more and more difficult to regard any conflict as domestic or internal' (Boutros-Ghali, cited in Chesterman, 2003: 128). All of this represented a major transformation of the understanding of security in international politics, as described by Michael Pugh:

Peacekeeping and humanitarian missions came in from the margins of the former bipolar system to occupy a more central role in the management of disorder as leading states redefined their security interests after the Cold War. But more than this, the evolution of PSOs [peace support operations] and the integration of humanitarian intervention and humanitarianism have reflected and reinforced the structure of the system and promoted the globalization of a particular ideology of good governance.

(Pugh, 2002: 228)

## The role of peacekeeping in the New World Order

Peacekeeping was critical to these transformed conceptions of norms and security. As Bellamy and Williams (2004) indicate, the UN Brahimi Report<sup>5</sup> effectively endorses Mary Kaldor's vision of contemporary peacekeeping as a species of 'cosmopolitan law-enforcement':

peacekeeping could be reconceptualized as cosmopolitan law-enforcement. Since the new wars are . . . a mixture of war, crime and human rights violations, so the agents of cosmopolitan law-enforcement have to be a mixture of soldier and policemen. I also argue that a new strategy of reconstruction, which includes the reconstruction of social, civic and institutional relationships, should supplant the current dominant approaches . . .

(Kaldor, 1999: 10–11)

The demands of 'cosmopolitan law-enforcement' has driven a dramatic growth in both the number and size of peacekeeping operations, as well as transforming the actual activities of peacekeepers themselves. In the period 1945–87, the UN undertook thirteen peacekeeping operations. In this period peacekeeping was conceived as a third-party role in a violent conflict, wherein the 'peacekeeper' attempted to pacify a conflict by operating in a neutral way, with the consent of the belligerent parties, and using force strictly in self-defence. The object of this so-called 'traditional peacekeeping' was to ensure the implementation of pre-agreed ceasefires and military or political agreements, through e.g., interposing lightly armed forces into a 'cordon sanitaire' between the belligerents' forces; supervising the withdrawal of belligerent forces, helping to repatriate prisoners of war – in short, to act as a plate-glass window between opposing armed forces. As such, peacekeeping was seen as a function of diplomacy.

From 1988 to 1997, twenty-eight new peacekeeping operations were mounted, including missions that tackled such long-standing disputes as those in Cambodia, Namibia, Angola and Central America, as well as new crises in Africa (Liberia, Rwanda, Sierra Leone, Somalia) and Europe (the Caucasus and former Yugoslavia). Increasingly, confronting communal rather than inter-state conflicts led to new operational tasks that ranged from traditional peacekeeping to 'multidimensional peacekeeping' – the latter embracing tasks ranging from conducting elections, through civil administration and the repatriation of refugees, to the military protection of humani-

tarian convoys. These practical changes brought about the need for conceptual clarification. In his *Agenda for Peace* (1992), then UN Secretary-General Boutros Boutros-Ghali argued for a new conception of peacekeeping that went far beyond the consensual, impartial and interpositionary role of monitoring ceasefires or patrolling buffer zones. Correspondingly, the notion of consent had to change, as was indicated by Boutros-Ghali's redefinition of peacekeeping as 'the deployment of a UN presence in the field, *hitherto* with the consent of all parties concerned' (emphasis added, para. 20). These transformations were reflected in the institutional practices of the UN. On 31 January 1992, the Security Council convened for the first time ever at the levels of heads of state and government, with the members of the Council noting the 'new favourable international circumstances' that had empowered the Council to fulfil more effectively its primary responsibility for the maintenance of international security (Chesterman, 2003: 128). This laid the ground for a much more active and intrusive Security Council:

On every conceivable measure, the Security Council has played a far more active role since 1990. At the most basic level, it simply did more. Between 1946 and 1989 it met 2,903 times and adopted 646 resolutions, averaging fewer than 15 a year; between 1990 and 1999 it met 11,183 times and adopted 638 resolutions, an average of about 64 a year. In its first 44 years, 24 Security Council resolutions cited or used the terms of Chapter VII [regarding the use of force]; by 1993 it was adopting that many such resolutions every year. The Council also came to demonstrate an extraordinarily broad interpretation of its responsibility to maintain international peace and security.

(Chesterman, 2003: 121)

Some commentators have argued that the increasing invocation of Chapter VII of the UN Charter which entails the process of determining what constitutes a 'threat to international peace and security' is increasingly more of a formal, hollow, rather than a meaningful and substantive, hurdle to authorizing the use of force. But as Chesterman observes, 'a more fundamental difficulty in establishing the limits to this concept [of what constitutes a threat to international peace and security] is the apparent link between such determinations *and the political willingness to take measures in response to particular situations*' (emphasis added, Chesterman, 2003: 21). Unable to discern any principle underlying the scatter-gun invocation of Chapter



VII by the Council, Chesterman argues that the ‘plasticity of the Council’s mandate to take enforcement actions appears reducible primarily to the political will of those states prepared to act’ (Chesterman, 2003: 161).

We shall return to this issue of ‘political will’ shortly, but before we do, let us consider the agents of this newly invigorated UN. Understanding peacekeeping as the collective product of a fragmented, decentralized states system requires understanding the process of ‘force generation’, in UN-speak. This, in turn, requires understanding the question of agency, how states ‘produce’ peacekeeping operations through their contributions. As Laura Neack notes, ‘[e]xpanded scope or not, the UN cannot function without the *voluntary compliance and full and committed participation of its members*’ (emphasis added; Neack, 1995: 181). So for all the frenetic activism of the Security Council, who are the current agents of ‘cosmopolitan law-enforcement’? The two, ostensibly contradictory, elements that run parallel here are the ‘Security Councilisation’ of the UN in the post-cold war period – i.e. increasing prominence and weight to the great powers – and the enhanced role of developing countries in supplying the manpower for UN peacekeeping.

As UN field operations have expanded, so too has the organization’s appetite for manpower – an appetite that has been at least partially met by a dramatic diversification of contributors to peacekeeping. Peacekeeping scholar Paul F. Diehl notes that the vast increase in troops and police forces in UN operations partly expresses the extent to which peacekeeping interventions have grown more coercive in the post-cold war period (Diehl, 2000: 353). The number of peacekeeping contributors exploded from the cold war figure of 26 contributing nations in 1988 to 76 in 1994 – 41 of whom had never previously participated in such operations (Findlay, 1996a: 2). In the same period, another 21 states became first-time participants in peacekeeping operations beyond the UN aegis.<sup>6</sup> Bobrow and Boyer (1997) further observe that while there were 32 ‘activist’ contributors to peacekeeping during the 1945–88 period, the figure for the 1988–96 period is over double the cold war figure, standing at 44 ‘activist’ contributors (Bobrow and Boyer define ‘activist’ as involvement in 20 per cent or more of peacekeeping cases, in at least one period (Bobrow and Boyer, 1997: 731)).

Bellamy *et al.* argue that the UN’s ‘retreat from peacekeeping’ in the 1996–99 period, flowing from the failure to halt atrocities in the Rwandan and Bosnian conflicts, was as dramatic as the expansion of peacekeeping in the 1988–93 period (Bellamy *et al.*, 2004: 84).

Yet what is striking about the diversification of peacekeeping contributors is how enduring it has been beneath the ebb and flow of peacekeeping in the post-cold war era. Thus, while the *numbers* of UN peacekeepers deployed worldwide have fluctuated since the end of the cold war, and while the contribution rankings have shuffled over the years,<sup>7</sup> the overall *diversity* of contributors to peacekeeping has remained at a persistently higher level than during the cold war. For example, in 1993, over 70,000 UN peacekeepers were deployed globally. But following the deaths of US troops in Somalia in 1993 and the widely perceived failure of the UN to halt atrocities in Rwanda and Bosnia, the absolute number of UN peacekeepers dropped to 20,000 in 1996 (Bellamy *et al.*, 2004: 84). Yet the number of states *contributing* to peacekeeping operations in April 1997 (71) was still not less than the number of contributors as of 1993 (Bobrow and Boyer, 1997: 731). It is inevitable that such a sustained and dramatic diversification of peacekeeping has yoked in developing country contributors, who do, after all, constitute the overwhelming majority of states. This trend has been sustained well into this first decade of the twenty-first century.

Reflecting on the revitalized role of the UN in the aftermath of the invasion of Iraq, Mats Berdal argues that the most striking sign of such revitalization since May 2003 is 'the dramatic growth of UN peace operations . . . nearly all of which have taken place in Africa . . . These are large-scale and multidimensional missions' (Berdal, 2004: 84). Berdal goes on to note that part of the 'challenges posed by the realities on the ground' to these new operations

is the fact that Western armed forces have made no direct contribution to the new UN operations, with the principal troop contributors all coming from developing countries . . . They . . . suffer from inadequate resources and capabilities of the kind required in less than permissive environments.

(Berdal, 2004: 93)

Figure 4.1 illustrates the average annual number of peacekeepers contributed from developing countries, in proportion to the average annual number of forces contributed from developed countries, to UN peacekeeping operations from May 2001 to the end of 2005.<sup>8</sup>

Troops from developing countries have been fighting *de facto* wars in some of the most crisis-ridden areas of the world, notably the Great Lakes region of Africa, as described by one journalist:

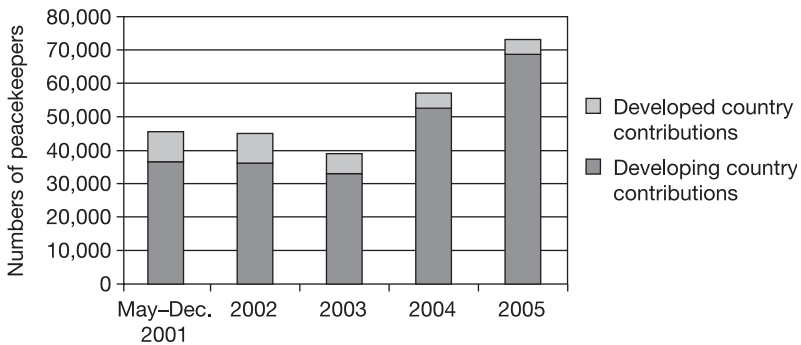


Figure 4.1 Average number of peacekeepers deployed in UN peacekeeping operations per annum, May 2001–December 2005

Peacekeepers in armoured personnel carriers, facing enemy sniper attacks as they lumber through rugged dirt paths in the eastern Ituri region, are returning fire. Attack helicopters swoop down over the trees in search of tribal fighters . . . In [the Democratic Republic of] Congo, most of the peacekeepers are Indians, Pakistanis, Bangladeshis and Nepalese. As they root out insurgents who prey on Ituri's population, UN soldiers in the east have at their disposal tanks, armoured personnel carriers, Mi-25 attack helicopters, mortars and rocket-propelled grenade launchers – all of which are getting heavy use. [It is] the largest and most robust of the 18 UN peacekeeping operations around the world.

(Lacey, 2005)

Reports of similarly intense fighting have repeatedly emerged from Haiti, where the UN MINUSTAH operation has fought pitched battles with forces loyal to the ousted president, Jean-Bertrand Aristide.<sup>9</sup>

So, we have the parameters of our contradiction here: on the one hand, the enhanced normative aspirations of world politics, embodied in the 'activism' of the Security Council; and, on the other, the fact that operations administered by the UN are left to those with fewer resources and capabilities to implement the UN's very own aspirations. The irony of this situation has attracted criticism from Nirupam Sen, India's eloquent ambassador to the UN, who highlighted the lack of resources that afflicts UN operations:

That there are only some member-states that possess these [enabling] capabilities [i.e., materiel, resources for peacekeeping] is axiomatic. It is ironic, however, that since the mid-1990s it is these states that have substantively reduced their contribution of troops and materiel to UN operations, particularly in Africa. We agree with the Secretary General that for peace-keeping to be successful, it must be an expression of truly international commitment to peace and security. For too long, the burden of peace-keeping has been borne by the developing countries . . . initiatives being advanced by the [European Union] . . . must not and cannot be a substitute for the enhanced participation of the developed world in UN peace-keeping operations.

(Sen, 2005a)

Other elements of this disjuncture between the Council and the troop-contributing states include the 'failure of consultation' between the Council and the Southern contributors – as when the Council failed to consult with the countries contributing to the UN operation in Sierra Leone, about the change in the operation's mandate from Chapter VI to Chapter VII – an incident that was likened to 'cutting off the arm' of the Council.<sup>10</sup> Another diplomat characterized this disjuncture as the 'blood/money trade-off',<sup>11</sup> whereby the developing world puts forward the manpower (blood), and the developed world the material resources.

It is interesting to note that coverage of developing country contributions to peacekeeping in the Western press usually assumes that developing countries are motivated by purely financial considerations. Selfless altruism is reserved only for the West, it seems. There are two immediate reasons to be sceptical of imputing purely mercenary motives to developing country peacekeepers. First, financial rewards are frequently delayed (up to twelve months and more) and uncertain, given the regular shortfalls in the UN budget. Second, in many respects, financial remuneration serves as a 'palliative', rather than a direct cause of contribution to peacekeeping, according to a Secretariat official.<sup>12</sup> Besides which, whatever immediate reasons of *realpolitik*, that developing countries may have to contribute to peacekeeping operations, none of these move us any closer to resolving the contradiction that we have observed here, between the normative aspirations of the Security Council, and the fact that Western states are unwilling to rise to the challenge of their own rhetoric.

Clearly, there is a relationship between the changed nature of post-cold war international relations and the ‘theory and practice of peacekeeping’, as indicated by Bellamy *et al.*:

As contemporary international society’s most sustained attempt to manage violent conflict, understanding the theory and practice of peacekeeping sheds significant light upon important trends and developments in global politics. In particular, it provides important insights into both the codes of conduct that states have collectively devised to cope with living in an ‘anarchical society’ and the relationship between the great powers and the maintenance of international peace and security.

(Bellamy *et al.*, 2004: 1)

Yet the relationship is far from being self-evident. Tardy observes that:

states face a paradox in that while peace operations have become for many of them a major activity of the armed forces, one can also observe a general reluctance of (western) states to see peace operations as a full category of military operations, and to draw the consequences of such a choice.

(Tardy, 2004)

It would be easy enough to relate ‘peace operations’ to the normative evolution of the states system after the end of the cold war, but, as Tardy suggests, peace operations may express a *will not to intervene as much as anything else* (Tardy, 2004: 3). Citing both Mats Berdal and Alan James, Pugh confirms Tardy’s claim that expecting the forces involved in ‘peace support operations’ to be flexible and able to escalate and de-escalate along a spectrum of force, from ‘traditional peacekeeping’ to de facto war-fighting, enables political leaders and diplomats to avoid hard choices about devising UN mandates, institutionalizing the use of force, thereby encouraging false hopes of a military solution (Pugh, 2002: 217).

Pugh sees these ‘tactics of avoidance’ as part of a broader practice of what he terms ‘semi-detached engagement’. He finds further evidence for this ‘semi-detached engagement’ in the way in which crises in the developing world have been managed from afar, as humanitarian relief has increasingly come to substitute for development aid, placing states in a ‘kind of suspension’ (Pugh, 2003: 220).

Diehl provides further support for Pugh's and Tardy's description of Western states' chariness: 'There has been a definite trend in peacekeeping away from full host-state consent', he writes, and yet there has also been much equivocation and ambivalence, as the experience of Somalia still weighs heavy:

Thus, we might expect to see host-state consent continue to be an important variable in future peacekeeping operations, but there is by no means an inexorable march away from state sovereignty or movements towards a primary role for peacekeepers in failed states.

(Diehl, 2000: 347)

Commentators consistently abut this ambiguity, or what could be termed the failure of 'political will'. The unwillingness to tackle a situation directly or decisively is frequently identified as the millstone around the neck of humanitarian aims in world politics. Indeed, so frequently is this barrier invoked that it has even become a barrier to deeper analysis, as suggested by conflict resolution theorists Oliver Ramsbotham and Tom Woodhouse: 'Critiques of peacekeeping and other activities of the UN system point variously to organisational, bureaucratic, financial, logistical and other weaknesses, often also wrapped up in the all-embracing banality, "lack of political will"' (Woodhouse and Ramsbotham, 2005: 150).

Woodhouse and Ramsbotham are certainly right in their observation of this tendency to dissolve all problems into the simplistic explanation of a 'failure of political will'. Yet it is not the fact that this 'failure of political will' is unreal, but rather that it is a category that needs to be unpacked and mediated in relation to particular issues and crises. What I want to suggest here is that the 'failure of political will' identified by Woodhouse and Ramsbotham is more than simply the failure to live up to noble ideals or imperialist hypocrisy on the part of great powers. Rather, the lack of will expresses the contradictions of ethical ideology per se. It is to these contradictions that we now turn.

### The contradictions of ethical ideology

What I want to suggest is that the lack of political willpower identified by Woodhouse and Ramsbotham is the *precondition* of the normative, transformed security agenda. Or, to read the equation the

other way, the normative security agenda systematically produces the lack of political willpower needed to fulfil its own goals. The very nature of the new security and human rights agenda is such that it is less demanding of the political commitment required to forge success. Mary Kaldor's notion of cosmopolitan law-enforcement, for example, is based on Charles Jones's notion of cosmopolitanism as being impartial, universal, individualist, egalitarian, diverse and multi-cultural (cited in Woodhouse and Ramsbotham, 2005: 150). But the idea of a 'cosmopolitan foreign policy' pursued in the interests of others, rather than based on self-interest, entails that policy is necessarily more mediated, more contingent and arbitrary, and less necessitous. In action oriented towards normative ends, efficacy and outcome is deprioritized in favour of the *demonstration* of normative concern. This is visible in the institutional practice of the Security Council at the UN and has also been flagged up by India, which has excoriated the Council for its shallow grand-standing:

The increasing resort to new and fanciful thematic issues [e.g. 'Women in Armed Conflict'] as the crowning glory of non-Permanent member presidencies [of the Security Council] will need to be rationalised and restricted . . . The need for the Council to spend wasteful time on thematic issues, better left to other UN bodies, is also questionable.

(Sen, 2005b)

Former UN Secretary-General Boutros-Ghali also recounts the contradiction between the grandiloquent proclamations of the Council, and the failure to live up to them:

For the first time, I said, the United Nations might be involved in a self-contradictory operation [in Bosnia]: peacekeeping required complete impartiality toward the parties and peace enforcement against one party. Public pressure was rising, and the Security Council was anxious for action. The Council, I said, 'is becoming like the General Assembly; it is *using phrases and making demands that it knows cannot be implemented*, in order to please public opinion'.

(emphasis added, Boutros-Ghali, 1999: 42)

What I want to suggest is that the 'rhetoric' of ethical ideology does not merely embellish ulterior, imperialistic motives (for example, securing energy resources). Rather, the demonstrative aspect of ethical

ideology exhausts the substance of ethical ideology itself. In ethically oriented action, there is less necessity to practically securing any putative normative goal, be that ending human rights violations or delivering food aid. As compassion is the most important element of ethical ideology, this sets a lower bar to the fulfilment of one's goals. Elevated and ossified into ideology, compassion does not need to successfully alleviate human suffering or permanently resolve conflict in order to achieve its desired effect. It is the 'pious discourse' of ethics, in the words of Badiou, that is the actual purpose of ethics itself (Badiou, 2002: 23). It is into this gap, I argue, between the soaring aspirations of ethical ideology and its arbitrary, haphazard implementation, that the peacekeeping efforts of developing countries need to be understood. In this sense, developing countries in their peacekeeping efforts, are not so much the mercenaries or *askaris*<sup>13</sup> of a new imperialism, as the embodiment of the 'bad faith' of ethical ideology. Ethical goals can be left to others to fulfil – to poorly armed, oftentimes poorly trained soldiers from poor countries. Actually alleviating human suffering is secondary, an afterthought, to the ethical conscience, whose substantial activity consists in the paroxysm of being 'seized by' compassion, to paraphrase the notoriously ambiguous language of UN Security Council resolutions.

Taken to its logical extreme, absolutizing ethics as the overriding principle of world order becomes self-defeating. This is seen not only in the sense that ostentatious compassion has no relation to ensuring that the needs of the object of compassion are practically addressed, but also in that the 'ethical conscience' constantly tries to de-centre itself. The need to affirm the purity of motive in ethical activity comes to undermine the actual alleviation of human suffering. This can be illustrated with reference to two examples of developing country peacekeeping operations, both in Africa. The first is the Nigerian-led Ecomog (or 'Military Observer Group of the Economic Association of West African States') interventions in West Africa that have been retroactively sanctioned under the terms of Chapter VII by the Security Council (Liberia: 1990–92; Sierra Leone: 1997–98). The fragile *normative* legitimacy of the Nigerian interventions in West Africa has repeatedly been flagged up and consistently seen to be *polluted* by Nigeria's hegemonic aspirations: 'the multilateral, but Nigeria-dominated, force is more a classic study of competing national interest in the West African sub region than . . . a case study in regional peacekeeping' (Mortimer, in Howe, 2005: 181).



Yet ironically, it is arguable that it is precisely Nigeria's national interests in regional stability that have been the precondition of its 'staying power' in the region:

Nigeria 'stayed the course' and contrasted favourably with the international timidity displayed toward Somalia, Rwanda and elsewhere. ECOMOG undoubtedly saved thousands of [Leoneans] who may otherwise have been killed during punishing attacks by [rebel forces] in 1990 and 1992. The US government (which over ten years contributed about 100 million dollars to ECOMOG) has praised the largely Nigerian forces' *'patient determination and commitment . . . to bring peace and security to Liberia'*.

(emphasis added, Howe, 2005: 181)

Nigeria's intervention came at the cost of \$4 *billion* and 600 fatalities in action. Yet in one situation, peacekeepers from outside the region were seen by some as inimical to achieving normative goals. In the case of Darfur, African peacekeepers were seen as integral to mounting a legitimate intervention. Given the political and diplomatic fissures opened up by the war in Iraq, it is striking how rapidly a consensus asserted itself across the political spectrum over the necessity of intervention in Sudan. Writing under the headline 'Enough imperial crusades', the radical leftist philosopher Peter Hallward cast a sceptical eye over the claims of defending the Sudanese refugees' human rights, noting that Sudan was colonized in the nineteenth century under the moral banner of the 'war against slavery'. Faced with this legacy of Western intervention, however, Hallward's solution to Sudan's ills is 'certainly not passive resignation'. Instead, Hallward advocated 'fund[ing] the immediate and forceful deployment of African [Union] peacekeepers', parallel to the Western promotion of the African Union (AU), to enable it to become 'an effective and independent political actor, capable of brokering equitable political solutions to the long-standing conflicts that western intervention, almost always, has only helped provoke' (Hallward, 2004). If, as the *New York Times* would have it, '[t]he war in Iraq has hopelessly muddied the waters on the legitimacy of intervention', (BBC News, 2004) then judging by Darfur it seems that it has not thrown the question of the fundamental legitimacy of military intervention into doubt. Rather, the post-Iraq question-mark is over

*who* is doing the intervening. Skin colour, it seems, makes all the difference between ethical intervention and an 'Anglo-American imperial crusade'. What concerns us here is the fact that, across the political spectrum and throughout the world, African peacekeepers were seen as necessary to restore legitimacy to intervention in the internal affairs of states, as Western claims to be upholding human rights norms were seen as less legitimate in the aftermath of the invasion of Iraq. In Darfur, ethical ideology had been well-served; both purity of motive and benign concern have been amply demonstrated in the complete failure of the African Union to bring any durable sort of peace or stability to the province.

It was observed earlier in this chapter that it was the *immediacy* of ethical claims that made them so appealing in the aftermath of the cold war and its teleological doctrines of progress. Yet there is very little substantive meaning to an ethics that has no goal beyond merely ameliorating the worst effects of crisis, as argued by Zaki Laïdi:

The end of utopia has brought the sanctification of emergency, elevating it into a central political category. Thus our societies claim that the urgency of our problems forbids them from reflecting on a project, while in fact it is their total absence of perspective that makes slaves of emergencies. Emergency does not constitute the first stage of a project of meaning: it represents its active negation.

(Laïdi, 1998: 11)

National interest is seen to destabilize and undermine normative policies, yet normative outcomes can never be guaranteed without a concept of self- (national) interest. The very nature of the 'ideal-type' normative activity – the absence of political necessity or strategic imperative, the fact that it is ethical, humanitarian, an act of charity – places the relative weight of the act onto the appearance of activity, over the actual outcome of the activity. The structure of the normative act entails that the outcome is less significant than the gesture of having attempted to act. Fulfilling humanitarian concerns entails a much lower bar for the successful exercise of power. The transformation of the international political landscape has given an opening to weaker powers to enter the field as actors of a different sort – no longer the anti-colonialist Non Aligned Movement, but, rather, as the bad conscience of the West.

## Conclusion

In this chapter I have sought to construct a preliminary framework through which to theorize some of the contradictions of contemporary international security, as manifested through Southern activism in peacekeeping. It was argued that the gap between the normative aspirations of the new international security agenda and the political will to fulfil them, structures the contribution of developing countries to peacekeeping operations. This exposes a deeper fault-line in 'ethical ideology' – namely, the fact that normative foreign policy is not goal-oriented, but, rather, aimed at demonstrative activity. In this sense, the argument advanced in this chapter was primarily a logical one, exploring the contradictory and self-undermining nature of ethical activity as such. As the purpose of ethical ideology is to exhibit compassion, rather than secure any particular outcome, it makes sense that so much apparently 'normative' activity of the UN can be left to those least able to deal with it. This logical argument does not, of course, predict that Southern peacekeepers would be deployed in every human rights crisis. There are many 'intervening variables', in political science jargon, that will intercede between the impulse to act ethically in any particular situation, and what the concrete ethical activity will actually turn out to be. In this chapter, Southern activism in peacekeeping was used to illustrate the contradictions of ethical ideology. Needless to say, this contradictory nature of ethical ideology will play out differently in different circumstances; how it does so is a question for further empirical research, as provided in the other chapters in this volume. Suffice to say here, the fact that the normative security agenda has broadened participation in collective security reflects the diminished importance attached to achieving an actual outcome in collective security.

## Notes

- 1 I take this phrase from the French philosopher Alain Badiou's polemical essay against the prevailing understanding of ethics, *Ethics: An Essay on the Understanding of Evil* (2002). The substance of the argument in this chapter is inspired to a great degree by the incisive and logical critique of 'ethical ideology' that Badiou advances in this essay.
- 2 The definition of peacekeeping is a slippery and tedious issue. For the purposes of the argument here, I shall define peacekeeping in a conventional, generic sense as used in popular and public discourse: an activity that includes the deployment of UN forces in violent conflicts and that subsumes other activities that fall under the category of 'peace support measures' in the UN-lexicon: collective security, crisis management,

conflict resolution, humanitarian intervention, peacemaking, peace-building, and so on. I shall also focus mostly on UN peacekeeping, as opposed to those operations organized by regional organizations.

- 3 The definition of 'developing country' is not a clear-cut issue, given the lack of a coherent political definition of the 'Third World' in the absence of a 'First' and 'Second' world, and rapid economic growth in China and India. Any classification schema has an arbitrary element to it, depending on the question that one is pursuing. Considerations of time and space prevent a detailed justification of my classification, so for my purposes in this chapter, I shall take 'developed country' to mean those states that are members of the G7 group of countries, Australia and New Zealand, Norway, those states that were members of the European Union prior to the recent expansion of the European Union into eastern Europe, and the Republic of Korea. I shall take the 'global South' and 'developing countries' as synonymous.
- 4 In using the word 'demonstration', I do not mean to imply that there is an audience that determines or influences the content of 'ethical ideology'. As many commentators have pointed out, the relationship of, say, human rights concerns, to public demands or opinion, is ambiguous at best (see, *inter alia*, Chandler, 2002: 223). In other words, the existence of an audience is incidental to ethical ideology; the ultimate 'target' of ethical activity is oneself (on this, see Chapter 2 'Does the Other exist?' in Badiou's *Ethics* (2002)). Here, the word 'demonstration' is used to highlight the difference between the originating impulse to act and fulfilling one's proclaimed goals.
- 5 'Brahimi Report' is shorthand for the Report of the Panel on United Nations Peace Operations (2000), whose Chairman was the Algerian Lakhdar Brahimi.
- 6 Specifically, in the 1994 US-led multinational force in Haiti, and various OSCE, ECOWAS and CIS peacekeeping deployments (Findlay, 1996b: 6).
- 7 During mid-1994, for example, France and Britain ranked as the second and fourth largest contributing nations, respectively. Others among the 'top ten' contributors included Pakistan, India, Jordan, Bangladesh, Malaysia and Egypt (Risse-Kappen, 1997: 272).
- 8 Figures based on statistics accessed from UN website: <http://www.un.org/Depts/dpko/dpko/contributors/>. 'Peacekeepers' are defined as soldiers, military observers and civilian police forces.
- 9 'Earlier this week, 200 UN peacekeepers waged an eight-hour gun battle against heavily armed men in Cite Militaire, killing four of the assailants. Thirty-three other gang members were apprehended and turned over to the Haitian authorities, said MINUSTAH.' United Press International, 18 November 2005. 'UN troops were forced to leave an observation point in a slum in the Haitian capital of Port-au-Prince because of heavy fire from gang members, a spokesman for the international peacekeeping force said Thursday' - 'Gangs' heavy fire forces UN peacekeepers out of Haitian slum'. Xinhua Net, 18 November 2005. Accessed at: [http://news.xinhuanet.com/english/2005-11/18/content\\_3796871.htm](http://news.xinhuanet.com/english/2005-11/18/content_3796871.htm).
- 10 Confidential interview with author.
- 11 Confidential interview with author.

12 Confidential interview with author.

13 *Askari* was the generic term for troops recruited by imperial powers from their colonies before decolonization.

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**Part II**

**Theoretical issues**





## 5 The ‘West divided’?

### Bentham and Kant on law and ethics in foreign policy<sup>1</sup>

*Peter Niesen*

#### Introduction

In a recent book, Jürgen Habermas has diagnosed a rift between two contemporary views of foreign policy, manifested in the perspective of the US government and those of its allies, on the one hand, and those of the remaining European states on the other. In the wake of the Iraq war, he sees the ‘West divided’ between a unilateralist perspective committed to implementing ethical values and a multilateralist perspective committed to furthering international law. In this chapter, I want to give this thesis some historical depth by spelling out some political and philosophical background to what appear to be related perspectives in two earlier writers in the liberal tradition. I will first sketch Habermas’s distinction, then move on to give a comparative presentation of what appear to be two of its eighteenth-century paradigms in the writings of Bentham and Kant. In order to bring out their positions on a wide and characteristic range of questions, I discuss their work under the two headings of ‘ideal theory’ and ‘non-ideal theory’. This is, of course, an anachronistic distinction to project onto Bentham and Kant, introduced into political theory by John Rawls. But although neither in Kant nor in Bentham do we find distinct segments of their work arranged to correspond to the distinction between ideal and non-ideal theory, their ideas on foreign policy can be usefully organized into those covering the relations among ‘well-ordered’ states and those covering the relations between ‘well-ordered’ and ‘non-well-ordered’ societies, the latter being either non-state peoples or extreme forms of ‘rogue’ or ‘outlaw’ states. I close by asking what light, if any, the agreements and differences between Bentham and Kant can throw on today’s constellation.

## The divided West

In the main essay of his 2004 collection *Der gespaltene Westen* (The Divided West), Jürgen Habermas asks whether today there remains a chance for a ‘constitutionalization of international law’ (Habermas, 2004: 113). By a ‘constitution’ of international law, Habermas means a highest-order legal framework for international political action, geared to the functional regimes of international security and human rights. Such a ‘cosmopolitan constitution’ is meant to be a halfway house between a permanent, but loose, contractual mode of co-ordination among states and a fully fledged world republic, equipped with the competence to assume control of further policy areas. Although a cosmopolitan constitution of international law is thought to express a permanent commitment of its constituting members – states and individuals – to a just and peaceful world order, it is not meant to provide for world-government any more than for a global monopoly of force. Habermas goes on to sketch what he takes to be the two main contemporary Western approaches to foreign policy, only one of which is compatible, in his view, with the constitutionalization of international law. On the one hand, Habermas sees the strategy of the US as that of an imperial power fuelled by the wish to see a ‘liberal world ethos’ implemented. On the other hand, he sees the outlook of a variety of multilateralist actors concerned with the legal development of a cosmopolitan world order. Habermas asks whether the latter strategy is about to be replaced by the former and whether the ‘juridification [*Verrechtlichung*] of international relations ought to be replaced by their ethicization determined by a superpower’ (Habermas, 2004: 115).

It is important not to confuse Habermas’s distinction between an ethics-oriented and a law-oriented perspective with the traditional one between a self-interested or ‘realist’ and a moral or ‘idealist’ perspective on international law. Habermas leaves no doubt that both perspectives, that of liberal ethics as well as that of cosmopolitan law, arise from within nations that share a commitment to democracy and human rights. He characterizes both approaches as normative and presents both perspectives as, in a sense, universalist movements: one advocating and pursuing the export of liberal values, the other advocating the implementation of predictable, transparent, omnilaterally legitimized rules. Although Habermas does see that the first strategy serves the national interest of the US, at least as interpreted by their current government, he stresses that it does take on an ethical meaning at the same time:

This president does in good conscience implement the national geopolitical and security interest in a unilateral way, in the name of the ethos of a new liberal world order, because he recognizes in it American values, extended to the global scale.

(Habermas, 2004: 180)<sup>2</sup>

Also, Habermas is clear that both perspectives should be measured by a common consequentialist yardstick: that international peace and security prevail and that democracy and human rights be promoted on a global scale (Habermas, 2004: 115).

Habermas identifies the first strategy, the one currently employed by the US, by two main criteria. The first criterion is a procedural one, namely, unilateralism in foreign policy, especially the disposition to carry out unilaterally conceived military interventions. The second criterion builds on the procedural one, but is substantive. It lies in being prepared to wage pre-emptive military strikes, if need be in violation of international law as it stands today. The combination of both criteria characterizes the US foreign policy as 'imperial'. The opposing strategy is oriented to 'rationalizing' the application of force on a global scale through its juridification, through building up a legal community of formally equal parties and through gradually extending legal empowerment from its members to the level of the legal community. It interprets the UN Charter as an institutional framework whose members need no longer conceive of themselves as merely contracting parties to international regulations, but as constituting members of a cosmopolitan political condition. As opposed to the first strategy's ethical imperialism, the second Western perspective on foreign policy today pursues a legal omnilateralism.

## **Bentham and Kant**

When comparing Bentham's and Kant's positions on foreign policy, the simplest approach would appear to be the deductive method of stating their diverging fundamental moral principles – one utilitarian, the other deontological – and see what kind of political conclusions can be derived from them. However, this would not plausibly account for the substantial agreement that I will argue exists between both theories. Also, as for both authors political theorizing demands complex evaluations of principles, institutions and actions, a deductive approach might be positively misleading, especially if faced with the multi-layered and complicated cases arising in international

politics. I propose, therefore, to adopt a dual perspective. I first want to focus on the main normative suggestions of both authors, especially on the institutional arrangements they design. We will see that for both authors, those institutional forms are meant to take care of the central problems of international politics, and that both authors are in manifest agreement on many questions of law, policy and judgement. Second, I then move on to look at their views of some particular instances of global conflict. The examples I draw on will be colonialism (more precisely the subjection of non-state peoples) and military intervention. Those conflicts arise not in an arena of international actors more or less complying with an institutionalized legal order, but at the margins of international politics, and they concern dealings between stable nation states and weak, chaotic, tyrannical or dangerous societies. Still, my claim is that such conflicts can serve to elucidate the authors' overall motives as well as their institutional suggestions can. My interpretative conclusion in this section will be that Kant and Bentham, despite their massive differences in questions of principle, are in manifest agreement on important structural issues of foreign policy. However, when we look at their views on foreign policy at the periphery of international law, we can diagnose a split between them: while Kant argues mostly for egalitarian restraint, Bentham's position turns out to be compatible with the support of hegemonic relations and an interventionist approach.

### *Ideal Theory: areas of agreement*

Bentham and Kant are contemporaries of the late eighteenth century. Both authors produce their main works on foreign policy within an overlapping period of twelve years. They share the disgust of many European thinkers at the end of a century marked by cabinet wars within Europe as well as ongoing violent colonization processes, and can be said to share an 'Enlightenment consensus against war' (Conway, 1989: 99). Kant holds that 'morally practical reason pronounces in us its irresistible veto: there is to be no war' (Kant, 1996b: 491) and Bentham declares that '[w]ar is mischief on the largest scale' (Bentham, 1843a: 544). Both authors belong to a European tradition of legalist thinkers who attempt to realize peace through law, and both start out from the failure of the natural law tradition to provide for this.

Kant published his essay *Toward Perpetual Peace* in 1795 and systematically integrated his views on international law into his

*Doctrine of Right* in 1797. Bentham's almost eponymous *Plan for an Universal and Perpetual Peace* was conceived between 1786 and 1789.<sup>3</sup> Kant and Bentham did not encounter their respective relevant writings, but both designs concur in many aspects – not least in their constructive suggestions, of which four are particularly pertinent here: (1) their commitment to the generation of positive international law and 'federative' international institutions; (2) their pleas for disarmament; (3) their pleas for the transparency and publicity of foreign policy; and, finally, (4) their opposition to colonial politics.

(1) The codification of international law on the basis of the confederal structure of a league of nations is meant to end the state of nature among nations. Setting up authorities to develop and harmonize international law is supposed to end the perennial interpretative conflicts among states about what natural law requires or entitles them to do. The federative structure of an international law-making body is understood by both authors to be constituting an 'intergovernmental' authority, that is, an entity, contractually created and maintained, that does not assume powers and competences on its own and can, in principle, 'be dissolved at any time' (Kant, 1996b: 488). In the perennial debate about the feasibility and desirability of a 'Universal Republic', both authors settle for the 'negative surrogate' of a league of nations (Kant, 1996a: 328; Bentham, 1843a). Bentham and Kant both argue for the installation of a permanent congress; in Bentham's view, this diet should also be equipped with a court, presided by a single judge, but subject to the decisions of the congress sitting as an appellate court (Nys, 1911: 879) – thereby, the 'supranational' element of a central court would presumably be kept in charge by the states' representatives. Still, what should not be underestimated is the autonomous supranational dynamics of international lawyers working at the congress, whose main task is spelling out the body of valid international law in a clear and coherent way and transforming it into a code – a task Bentham no doubt thought himself qualified to execute. The federative congress, in both authors, is expected to make collectively binding decisions, but should not be empowered to enforce those decisions. Bentham briefly toys with the idea of neutral enforcement, through contingents deployed by the member states and authorized by the court, but soon gives up this idea (Bentham, 1843a: 540). For both, the most promising mechanism of securing compliance with international law lies not with armies and administrations, but with the weak pressure executed

by a global public. Both authors thus concentrate on the generation of legal determinacy, not effectivity in implementation. This is in harmony with their shared view that genuine differences of opinion as to what the law is, as opposed to *mala fides*, do constitute a main cause of international conflicts.

(2) Disarmament: both Kant and Bentham argue for replacing standing armies by militia armies, as they have experienced that the mere existence of standing armies will breed bellicose temptation. Kant's position is more radical than Bentham's, since he is prepared to abolish standing armies altogether, while Bentham is more moderate (Kant, 1996a: 318; Conway, 1989: 95). Part of the appeal of both designs results from the fact that both authors see peace as obligatory and at the same time rational. Both authors acknowledge that a battery of normative arguments for peaceful relations is available; still, they believe that in general, in the context of democratic government, the self-regarding motivations of rational devils will suffice to bring about such relations. Both attempt to draw on the self-interest of citizens in cases where ethical dispositions in the population cannot be mobilized.

(3) Publicity: both Kant and Bentham reveal their shared Enlightenment credentials most characteristically when treating of the benevolent impact that publicity will have on all matters political, be they domestic or international. Proposition XIV in Bentham's *Plan* advocates doing away with the customary secrecy in all operations of 'the foreign department'. All stages of negotiations with foreign powers and, of course, the resulting treaties in their entirety, should be exposed to the light of publicity (Bentham, 1843a: 554). To this Kant adds that the legitimacy of all policies on peace and war can be put to the test by exposing them to publicity (Kant, 1996a: 347). But publicity, for Kant, is not just an epistemic criterion by which to tell right policies from wrong, it is a social fact about late eighteenth-century global society. Distant events no longer happen in isolation of each other since communicative relations have been established that straddle the globe, with the result that '[t]he community of the nations of the earth has now gone so far that a violation of right on one place of the earth is felt in all' (Kant, 1996a: 330). Here, Bentham is more sceptical, not about the actual extent of global communication, but about its impact: 'Mankind are not yet arrived at that stage in the track of civilization . . . For the

citizens of other civilized nations, we have not so much feeling as for our negroes'. He adds, alluding to the trial of Warren Hastings, that 'a single murder committed in London makes more impression than if thousands of murders and other cruelties were committed in the East Indies' (Bentham, 1843a: 555, 557).

(4) Anti-colonialism: both authors have been classified with that minority position in the history of ideas labelled 'Enlightenment Anti-Imperialism' (Muthu, 2003: 4, 122; see also Pitts, 2003), which defines itself by its rejection of European expansionism and exploitation of indigenous peoples. Anti-colonialism is a stable motive in Kant's writings. He notes that in their extra-European settlements, European states

counted the inhabitants as nothing. In the East Indies (Hindustan), they brought in foreign soldiers under the pretext of merely proposing to set up trading posts, but with them caused oppression of the inhabitants, incitement of the various Indian states to widespread wars, famine, rebellions, treachery and the whole litany of troubles that oppress the human race.

(Kant, 1996a: 329)

Kant's immediate concern is with the original conquest of territories for colonization, while Bentham is more interested in the emancipation of existing colonies. He advises the citizens of revolutionary France, a state holding colonies in the face of its commitment to democracy and human rights, that an emancipation of their colonies would be backed by a variety of reasons: 'Justice, consistency, policy, economy, honour, generosity, all demand it of you' (Bentham, 2002: 291). His most important arguments for colonial emancipation concern the prevention of war, the cutting of losses for the mother country's economy and the avoidance of cruelty. Retaining overseas colonies heightens the likelihood of wars, as has amply been demonstrated in recent European history. Closed trade relations are less prosperous than free world trade, as can be shown from the heightened commercial exchange that is being conducted with the newly emancipated 'Anglo-American United States'. Last, colonial domination tends to produce atrocities that, because of their geographical distance to the mother country, could not be remedied or rectified even if a disposition to help existed – as demonstrated by the protracted London court case against Warren Hastings, former Governor-General of Bengal.



In addition to their parallel institutional and policy suggestions, both authors identify the same causal mechanisms that appear to lead to resiliently peaceful relations between states: free domestic institutions, free trade and free global communication. In both authors, we find variants of the ‘democratic peace’ hypothesis, for which the central argument is one of self-interest. Both compulsory military service and the inevitable raising of taxes will incline a self-governing people against bellicistic adventures (Kant, 1996a: 323; Conway, 1989: 96). In order to drive this point home, Bentham suggests that a significant reduction of taxes should be introduced at the very moment a league of nations is established (Bentham, 1843a: 553). Free commerce is a central element in bringing about peace for Bentham, who advises strongly against treaties granting commercial preferences. Kant is more ambivalent, as he recognizes that international debt can play a major role in motivating predatory wars. An unregulated financial market can be ‘used by the powers as an instrument of aggression against one another’, an instrument the invention of which Kant blames on an ‘ingenious commercial people’ and its ‘dangerous power of money’ (Kant, 1996a: 319). Still, it is ‘the spirit of commerce, which cannot coexist with war and which sooner or later takes hold of every nation’ (Kant, 1996a: 336). Finally, publicity plays not just an epistemological role and global communication is not just an empirical social fact. Publicity is also a causal factor for the rationalization of foreign policy, in inducing governments to join a debate committed to the standards of international law. Prudence will sufficiently entice them not to opt out of such a debate. Governments will not dare to publicly

disown all allegiance to the concept of a public right (this is especially noticeable in the concept of the right of nations); instead, they give it all the honour due it, even if they should think up a hundred pretexts und subterfuges to evade it in practice.

(Kant, 1996a: 343)

Bentham also holds that the provision of unlimited publicity can contribute to compliance with international law. Where the public circulation of the norms brought forth by an international congress and the verdicts of an international tribunal can be secured, their administrative implementation may become unnecessary (Bentham, 1843a: 552). Although the power to disseminate decisions and opinions in all member states would constitute an infraction of sovereignty on the part of those member states, such infraction appears to be minor when compared with the coercive implementation of

those decisions. Thus, while in the absence of a legal constitution of international relations, compliance with the demands of international law cannot be ensured, publicity nevertheless exerts pressure on governments to adhere to its norms and standards.

Summing up some preliminary results of the comparison between Bentham's and Kant's accounts of how foreign policy should in general be conceived, it can be said that both rely on international law to rule out aggressive wars. They pursue a common project of a positive law of nations, a project displaying core institutional features: a permanent congress or diet for the resolution of conflicts over entitlements, institutions with powers of making binding decisions, yet lacking coercive powers, and a free public sphere that allows for the discovery of violations, the distribution of information and argument, and the exhortation of governments. With the gradual reduction of armies and colonial possessions, incentives for waging wars will vanish. Both authors share the belief that this institutional set-up will suffice to guarantee peace and international security if aided by the combination of various common factors: intra-state democracy, free trade among nations and unfettered public communication.

### *Ideal Theory: disagreements arise*

However, already in their 'ideal' conceptions of foreign policy, in their work on the foundations and central questions of international law, rifts appear between Kant and Bentham. For Kant, a federalism of free states cements the sovereign equality of all nations, great or small, as 'moral persons' (Kant, 1996a: 318). Bentham, on the other hand, takes pains to demonstrate to his British audience that one advantage of a strong conception of positive international law, disarmament and de-colonization is that it appears fully compatible with upholding hegemony in international relations. He argues that colonial emancipation, as required from a normative perspective on foreign policy, does not automatically withdraw colonies from the sphere of influence of the British Empire. On the contrary, after emancipation the 'mother country would desire to see her children powerful, . . . and the colonies would fear the loss of that tutelary authority which gave them internal tranquillity against external foes' (Bentham, 1843b: 57). A similar hegemonic backdrop to egalitarian legal positions emerges from Bentham's plans for disarmament. Although he envisages a reduction of standing armies to roughly equal size among the great European powers, he does not apply the same argument to naval forces. The remaining force of the British

navy, after disarmament talks, should be proportional to the force of the other sea powers, i.e. France, Holland and Spain: '[P]erhaps England might allow to all together a united force equal to half or more than its own' (Bentham, 1843a: 550). Note that this suggestion is not inconsistent with Bentham's argument that disarmament will prevent war. One could argue that the likelihood of war will not be raised by states having powerful armies or navies, but by the fact that more than one state has a powerful army or navy.<sup>4</sup> The same could be said for colonial wars. One could argue that they do not result from the fact that European states have colonies, but that more than one European state has colonies. Bentham's politics of international law, though committed to omnilateral agreements and equal entitlements, is not aimed at an equalization of global influence. It is at least compatible with the strengthening and enlargement of the British sphere of influence. These examples serve to show that strongly overlapping positions on centrally important questions of international law can mask deep differences in perspective, as they can serve egalitarian as well as hegemonic interests.

### *Non-ideal Theory: differences in perspective*

In order to develop this point, I now turn to a discussion of the periphery of international law in Bentham and Kant, or their 'non-ideal' conceptions. Here, foreign policy finds no guidance in the stable relations of a European concert of powers as an empirical backdrop to international law, nor is it concerned with cases in which legal and political categories can be applied more or less unthinkingly to standard cases. Neither are we dealing with conditions of regular compliance, nor do our intuitions provide a priori guidance. It is in this area of international politics that we find manifest oppositions between Bentham and Kant.

Neither Bentham nor Kant have a 'non-ideal' theory systematically or fully worked out and delineated from their core theories of international relations, and neither author uses the contrast between 'well-ordered' and 'non-well-ordered' societies. My ambition here will not be to give a complete account of the relations between well-ordered and non-well-ordered societies in either Bentham or Kant, but to draw on what I take to be clear cases of such relations. Therefore, my account will have an impressionistic quality that uses concrete examples as well as more theoretical reflections in both authors. First, I will take up the question of colonialism and decolonization. In a second step, I will look at military interventions.

### *Colonialism and de-colonization*

For both authors, it is exclusively states that qualify as subjects of international law – both comment that any broader conception of a law of nations will breed misunderstandings (Kant, 1996b: 482; Bentham, 1996: 296). Both know, however, that statehood in the Westphalian sense, which is presupposed in their conception of international relations and institutions, cannot be presumed to exist all over the world. Despite that knowledge, neither author makes a sustained attempt to integrate the existence of non-state peoples into global public law. It is clear that such peoples cannot appeal to the entitlements of sovereign states, yet it is equally clear that their claims are not negligible from a normative point of view. This generates hard questions for both Bentham and Kant.

Talking about the colonization of the territory of non-state peoples, Kant does not doubt for a moment that the motives of European conquest lie in imperiousness and greed. Still, he asks whether such conquest can be justified. One possible justification would be to argue that, faced with a non-state people, we should be 'authorized to found colonies, by force if need be, in order to establish a civil union with them and bring these human beings (savages) into a rightful condition' (Kant, 1996b: 417). Although such a people clearly live in a 'state of nature', and although Kant elsewhere asserts the supreme normative requirement of leaving the state of nature and assuming a rightful condition, he rejects this strategy. In his view, it makes use of impermissible means. Thus, 'it is easy to see through this veil of injustice (Jesuitism), which would sanction any means to good ends. Such a way of acquiring land is therefore to be repudiated' (Kant, 1996b: 418). An *ex post facto* moral justification that points towards the beneficial introduction of a lawful civil condition 'cannot wash away the stain of injustice in the means used for them' (Kant, 1996b: 490). This is to say that in the case of a colonized people, there can be no retrospective healing of, no reconciliation with a condition brought about by violence. The benefits of the rightful condition do not cancel the original act of violence by which it was brought about.

Bentham is a life-long vociferous opponent of colonialism. Still, he is almost consistently prepared to admit one exception to obligatory de-colonization, namely, in the case of British India.<sup>5</sup> In his speech addressing revolutionary France he suggests that France should give up her possessions in India and hand them over to the British. 'If it is determined they [the Indian population, PN] must have

masters, you will then look out for the least bad ones that could take them: and after all that we have heard, I question whether you would find any less bad than our English company' (Bentham, 2002: 311).

India is no arbitrary exception. The de-colonization processes Bentham advocates in North and South America have one thing in common: they concern settler colonies populated with large percentages of a white and Creole population. In their case, colonial government, no matter how beneficent and effective, would amount to a civil rights violation (see Niesen, forthcoming). The Indian subcontinent, on the other hand, is the paradigm case of a colony with an almost exclusively indigenous population (Campos Boralevi, 1984: 132). That the distinction between settler colonies and colonies with a largely indigenous population plays a role is also borne out by Bentham's hesitant advice to Spain to 'Rather conquer Barbary' after getting rid of its American possessions (Bentham, 1995: 187 – '[M]ind I do not absolutely recommend it to you'). But it is clear that Bentham needs an additional normative argument for retaining India as a British colony, not least if he wants to overcome his own objections to colonial rule in the Indian case. His main argument draws on the fact that there is a power vacuum in India following upon the defeat of Tipu Sahib, allegedly the last domestic candidate capable of dominating and controlling the territory. In the wake of this, a withdrawal of Britain would presumably lead to a situation that we, today, have learned to identify as that of a failed state. Faced with such an alternative, the colonial relationship can be described as one of straight exchange – the British providing statehood, the Indians paying for it: 'It is in Hindustan alone, that men pay in wealth for that security which before they never knew: a better bargain on both sides was never made' (Bentham, 1843b: 58). In this argument, Bentham does not at all rely on the justifications of a colonial 'mission' familiar from Christian authors, and also stressed by later Utilitarians such as James and John Stuart Mill. His concern is exclusively with the security and stability of statehood. Under a credible threat of 'anarchy, murder, and pillage', de-colonization is not to be recommended (Bentham, 1843b: 56).

### *Military intervention*

The second and final test case within non-ideal theory concerns intervention into 'outlaw' (Rawls, 1999) or 'rogue' states. If we look at Kant's *Perpetual Peace*, his position is one of absolute restraint. As a precondition to a rightful state between nations, Kant famously

lists the prescription that '[n]o state shall forcibly interfere in the constitution and government of another state' (Kant, 1996a: 319). This veto is formulated as a 'preliminary article' toward the realization of perpetual peace, preparing the ground for the introduction of a 'federalism of free states'. Kant's intention, in ruling out legal interventions, is not least to protect fledgling democracies from the pressures of their authoritarian neighbours; he means to cover the French revolutionary governments, including the 'scandal' of the French *terreur*. The only exception he allows for is the outbreak of a civil war, with both parties laying claim to the whole of a state's territory (*ibid.*). However, in his definitive work on law both domestic and international, the *Doctrine of Right*, Kant does allow for interventions of a particularly controversial type, that of pre-emptive strikes. The cases he is thinking of are those of a neighbouring state rapidly and massively arming itself (§ 56), or giving ample evidence that the course of its politics is incompatible with the idea of the development of a peaceful international order (§ 60). Not only are states severally entitled to take military measures against such opponents, they are entitled to '*unite* against such misconduct' (Kant, 1996b: 484, 487, my emphasis, PN). The difficulty here is to explain how Kant can claim that a lesser state can be harmed by the increase in destructive potential of another state, or by actions incompatible with bringing about an internationally just and peaceful order, and therefore be entitled to an unprovoked aggression against this state (Cavallar, 1999: 100). Does this not contradict his entire argument for peace through law (Pinzani, 1999: 246)? An answer to that question needs to take into account that Kant, in the passages referred to from the *Doctrine of Right*, is talking about the state of nature between nations, the very state that the project *Toward Perpetual Peace* is meant to overcome. A state of nature is defined by being a state of latent war, and therefore preventive strikes can be conceived of as a means consistent with the *ius in bello*. Contrasting this view with his earlier work on perpetual peace, we ought to read Kant as arguing, in the *Doctrine of Right*, that pre-emptive war is legitimate although it will not contribute to bringing about stable and permanent peaceful relations and may well obstruct this goal. In a state of nature between states, actions can be judged from two perspectives – from the perspective of whether they are legitimate in themselves (as use of a state's natural entitlements) and whether they can be seen as steps into the direction of a rightful order. There is no contradiction between holding that pre-emptive strikes are legitimate and at the same time incompatible with the further goal of achieving a

rightful international condition. A state is within its rights to ignore its stringent, but non-coercive, duty to enter a rightful condition.

However, a much harder question, one which Kant does not give us any indication how to answer it, is how the rightful condition envisaged in *Toward Perpetual Peace* would look and which entitlements of natural law would survive a transition to this condition. The logic of Kant's position is that only in a rightful condition will 'provisional' entitlements of states be transformed into 'peremptory' entitlements (Kant, 1996b: 487). But he does not say which entitlements those will be. We have no direct evidence of whether preemptive strikes against states amassing vast means of destruction, or against enemies of the international order, would or would not be permitted under positive international law generated by a Kantian league of nations. In my view, two interpretations are open with regard to that question. For both interpretations, it is a matter of course that the norms and decisions generated by a federation of states would constitute higher order law, which would be able to 'trump' natural law as well as the domestic law of all states, but they diverge on the question of what those norms will provide for. The first interpretation stresses Kant's commitment to state sovereignty. Ingeborg Maus has pointed out that the protection of state sovereignty in Kant's thought is intimately connected with the protection of intra-state processes of democratization, which would be destabilized under the continual threat of military intervention (Maus, 2002). Under this interpretation, it would make sense to hold that in a rightful condition of international law as envisaged by Kant, the entitlement to pre-emptive strikes would be entirely abolished. There is a precedent for such an assumption in that Kant's peace project clearly involves the illegalization of aggressive wars. Analogously, one might assume that Kantian peremptory international law would absolutely protect states against interventions based on the argument from a massive increase in destructive potential, or on the argument from sabotage of the idea of international law. Further, it could be argued that such peremptory anti-interventionism follows from the fourth preliminary article of *Toward Perpetual Peace* quoted above. If Kant is right that refraining from all intervention is a necessary precondition of peace, then it is difficult to see how a federation meant to guarantee peace could contemplate a more interventionist programme.

The other interpretation open to us rests on stressing Kant's commitment to legislative proceduralism and legal positivism. The regulation of inter-state relations in a league of nations would require

omnilateral agreement, but this agreement could run either way – either towards a more restrained legislation ruling out pre-emptive strikes, or to a more interventionist legislation in either of the two paradigm cases mentioned. This interpretation stresses that what is important in overcoming ‘provisional’ natural entitlements either way is the formation of a united general will (Kant, 1996b: 416) – yet this requirement does not prejudice the issue in any substantive way. What this interpretation does prejudice is that all entitlements to take action will be taken out of the hands of the states involved. It would be incompatible with Kant’s design if the decision about the permissibility of waging pre-emptive war remained with the states involved, as overcoming indeterminacy on states’ entitlements is the central task of international legal institutions. Whether central authorization to pre-emptive strikes is compatible with the pacific character of a federation of states is a difficult question, but the point here is that any such authorization would be subject to a radical reorientation in the epistemology and implementation procedure of justified strikes.<sup>6</sup> This second interpretation underlines the procedural and legal positivist reorientation of foreign policy in Kant’s vision of positive international law. What is important, under the second interpretation, is that military interventions be subject to central omnilateral regulation in principle (at the stage of setting norms) and subject to centralized legal interpretation in any applied case. Epistemic authority about entitlements and violations would no longer reside with the states.

Bentham approaches the problem of military intervention, on a concrete occasion, in a more pragmatic fashion. In 1822, he had met Hassuna D’Ghies, a diplomat from the sheikdom of Tripoli. Immediately, he set out to draft a constitutional charter for Tripoli, focusing on the prevention of arbitrary infringements of citizens’ liberty by the government. The new order was to guarantee wide-ranging personal freedoms, set up a representative assembly and install a daily newspaper as the motor of liberal social change (Bentham, 1990). But how to bring about the adoption of such a constitution? In draft letters to John Quincy Adams, then US secretary of state and later president, Bentham woos the US’s support in staging a liberal putsch. In those letters, Bentham portrays Tripoli as a future rogue state under an ostensibly ‘monstrous’ heir to the throne, whose ‘equal in cruelty is scarcely to be found in any page of history’.<sup>7</sup> He does not claim that the government of Tripoli will constitute a danger for the population of Britain or other nations (although he does bring up acts of piracy in the Mediterranean in



order to enlist the help of the Americans; see Bentham, 1990: 174). Tripoli, in Bentham's view, will constitute an outlaw state, though not along the lines discussed above, as a potential international aggressor. The problem Bentham identifies lies in it terrorizing its own citizens – in contemporary language, gross (future) violations of human rights.

Bentham predicts that the liberal revolution induced in Tripoli might cause a domino effect: the despotic regimes of Tripoli's Western neighbours, those of Tunis, Algiers, and Morocco, might all fall in a fit of revolutionary enthusiasm if the design should prove successful. The reason Bentham approaches the US, of all states, with his design is easy to see: 'Yours is the only State . . . upon earth from which [not] the smallest danger to national independence might . . . be received. Your constitution admits not of conquest. Your constitution admits not of distant dependencies'. Bentham is aware of the problem that the constitutional order of the US will not allow the executive to fund a military expedition in bypassing the legislative. Because he feels a necessity to proceed in secret in order not to jeopardize the success of the intervention, he implores Adams not to have recourse to Congress. In order to finance the expedition, therefore, one would need to find an 'ostensible reason capable of covering the true one', i.e. another war, another project in the same area, that could motivate the expense of sending gunboats (Bentham, 1990: 174). In the end, the liberal revolution in Tripoli did not get off the ground. D'Ghies left London and commenced a career in Tripoli. The draft letters to Adams were not sent.

### **Conclusions: rethinking the divided West**

From our comparison of the work of two classic thinkers on foreign policy, a nuanced picture has emerged, with some points relevant, some other points irrelevant to today's constellation. We have seen that Bentham and Kant share a general view of what would be a desirable structure for the regulation of foreign policy. Both authors advance the cause of codification and positivization of international law, in a sense much stricter and more precise than is currently thought required in the debate on international 'legalization' (Abbott *et al.*, 2000). A shared body of norms and institutions, however, is compatible with those norms and institutions assuming variable meanings for the various actors involved. As the original agreement between Kant and Bentham indicates, such rules make sense both from an egalitarian perspective and from the asymmetric perspective

of a hegemonic actor securing her global interests. Progress made in the pacification of international relations, in disarmament or in de-colonization, will not necessarily run against the interests of a superior power. First, it is clear that its economic potency will prosper under stable and predictable guarantees for international trade. Omnilateral disarmament spares expenses. Large-scale de-colonization is in the interest of modernizing a formal empire to an informal one capable of extending 'tutelary authority' to its clients. Second, strong international institutions will stabilize rather than threaten her asymmetrical position and afford advantages (as in keeping a vastly superior naval force), but also certain exceptions (as in the case of taking over and retaining India in the face of worldwide de-colonization). Thus, the Western, liberal tradition in international law is divided from its inception, but it is divided not between a law-oriented and an ethics-oriented perspective. It is divided between two interpretations of the jointly preferred type of legal order, an order that will not necessarily do away with the privileges of a hegemonic power or place strict limitations on its exceptional status.

The important limit to such an exceptional status is that it must not be exercised in clear violation of the law of nations, at least as long as we remain within the sphere of well-ordered societies, in the central realm of international law. Making progress in international juridification is, therefore, also saddled with risks for a single hegemonic power. Omnilateral decisions in a permanent congress will restrict its room for manoeuvre in accordance with international law. Also, its commitment to solving conflicts through international law, a commitment prominently and, if Kant is correct, necessarily displayed in the self-presentation of states in a global public sphere, may lead to an at least argumentative 'self-entrapment' (Risse, 2000: 28) – a rhetorical bind that puts great powers under a justificatory requirement that, again according to Kant, can be discharged in genuine or fraudulent ways.

At the margins, Kant's and Bentham's positions appear more clearly divided. Kant rejects colonial conquest even under the best of intentions as incompatible with international law's ban on violent means. Although his official doctrine commits him to understanding the situation of a non-state people as that of a state of nature, he makes clear that in this case, the people would be normatively privileged to remain in that state. Bentham, on the other hand, justifies Britain's ongoing occupation of India by envisaging a return of the state of nature – of 'anarchy, murder, and pillage' – upon its withdrawal. The two cases cannot be directly compared, because

Kant's argument concerns not starting, and Bentham's argument concerns not ending, colonial occupation. There may well be a significant normative distinction between conquering and not withdrawing from a conquered non-state population. But it is clear that for Bentham the presumed fact that the Indian population will be better off in overcoming an anarchic state, even by the means of colonial domination, is sufficient justification for ongoing colonial dominance and the perpetuation of international inequality. For Kant, on the other hand, in spite of the centrality in his account of a duty of overcoming a state of nature, this is insufficient. If we look at today's situation of failed states, Bentham's policy recommendation would presumably be, *ceteris paribus*, in favour of an occupation designed to bring security to the population, while in Kant we find no support for such a suggestion. Kant's more restrained perspective may appear less attractive here. Still, it should be pointed out that Bentham's description of the situation projects security interests into the Hindustan population that can be discharged only under a European-type government. Quite apart from the substance of his position, his argument for Britain remaining in India does not depend on consulting the indigenous population about their wishes; his approach therefore seems to instantiate the unilateral export of a liberal ethos.

While Kant takes seriously the non-violence principle at the basis of international law, he admits that there will be exceptions to a ban on inter-state violence in the state of nature. Under certain conditions (tremendous destructive potential; sabotage of the very idea of international law), pre-emptive strikes will be legitimate means of foreign policy. States are within their rights to employ such means, though in contrast to Bentham (who does so advise in the humanitarian case), Kant does not positively recommend it. We saw that there is room for interpretation as to whether under a rightful condition, pre-emptive strikes in such cases would be necessarily ruled out or may return as a result of omnilateral agreement to such a norm and its neutral application – but there is no room for interpretation that under such a rightful global condition, the decision about pre-emptive strikes would be taken out of the hands of the actors involved and thereby given into the hands of a central legislative and judicatory agency. However 'pacifist' or 'interventionist' the results of the empirical legislative processes should turn out to be, there can be no doubt about Kant's commitment to an empowerment of central international institutions and to doing away with the unilateral epistemic authority that characterized the entitlement to pre-emptive strikes in the state of nature. In this, Kant shares

the project of those contemporary actors, identified by Habermas, oriented at 'constitutionalizing' international law.

Bentham, at least in his private political involvements, is not generally averse to propagating unilateral military interventions. His involvement with D'Ghies is a clear case, and probably one of the earliest cases, of advocacy for humanitarian intervention with the avowed aim of liberal regime change, with the added complication that Bentham's plan concerns a pre-emptive humanitarian intervention. Kant, as a defender of pluralist, regime-neutral international law, both in the state of nature and under a league of nations, does not provide for regime change through intervention; furthermore, he does not contemplate humanitarian intervention, be it pre-emptive or based on human rights violations that have already occurred (see Cavallar, 1999: 86–93, for a development of Kant's views). It is clear that Bentham's projected putsch is incompatible with retaining a purely hegemonic perspective, as it goes squarely against existing international law. Unfortunately, we have no evidence of whether Bentham thought his approach to pre-emptive humanitarian intervention could be seen as a generalizable innovation in foreign policy, illegal without a doubt, but perhaps juridifiable, thus capable of being incorporated into future positive international law.<sup>8</sup> In the case in point, it is clear that for moral-political reasons, Bentham is prepared to have both international law and US constitutional law violated. This position no longer qualifies as hegemonic, but should be classified as imperial. The Tripoli adventure, therefore, does accurately reflect the other side within the 'divided West': a powerful actor who bases her foreign policy on an exclusively ethical motivation, the purity of her motives being ensured by the values enshrined in a progressive domestic constitution (yet paradoxically one that is being violated at the same time by the activity in question).

Kant's critique of interventions in *Toward Perpetual Peace* is meant to serve the development of international politics towards an ideal situation guaranteeing peace, republican government and human rights. Every line of Bentham's Tripoli adventure betrays that he is no less oriented at realizing republicanism and individual security on a global scale. Kant's critique of military interventions in his *Perpetual Peace* makes clear that he takes intervention into sovereign states, no matter how they look from the perspective of natural law, not to make a rational contribution to the long-term achievement of the goals of international law. Bentham does not reflect on this question when dreaming up a liberal Tripoli, though he has made his overall commitment to a well-ordered international

condition abundantly clear. Part of the conclusion of our comparison thus has to be that both authors propagate two distinct ways of getting from an international state of nature to a rightful condition characterized by inter-state peace and intra-state justice. Their disagreements lie both in their distinct views of the permissible means and of the causally appropriate means for such a development. However, it would be misleading to take this to mirror our current controversy between two Western perspectives on foreign policy, one ethically imperialist, one legally omnilateralist. It would be belittling the controversy to see the West merely divided between different views of the means of furthering security and individual rights on a global scale, as this would not take account of the legal innovations and transformations that have been successfully entrenched between Kant and Bentham's day and ours.

The major change is that today, our discussion is not oriented towards natural law, and not only, as in the last paragraph, oriented at reaching an ideally just and peaceful state, but takes place against the backdrop of positive international law – an imperfect positive legal condition that derives from the actual implementation of Bentham's and Kant's institutional ideal. No non-disruptive participant of today's political debates can claim that military action anywhere in the world today takes place in a 'state of nature' and ought to be evaluated as such; neither can such action be evaluated merely in virtue of its appropriateness as a means of reaching a more satisfactory global political reality. Whether or not we understand the UN Charter as a 'constitution' of international law, it is undeniable that certain policy choices have been outlawed, irrespective of their normative status in natural law or their potentially benign contributions to global security or human rights. This is true not only for conflicts at the centre of international law. Virtually all states are members of the UN and leaving the organization has not been a live option for some time, neither for those propagating sanctions nor for those threatened by them. Thus, there is no longer a periphery of international law, much less do there exist relations governed by natural law.

In this situation, it may be misleading to concentrate on the content of the foreign policy options supported by either Bentham or Kant. Some of those have proved more successful than others in our contemporary legal framework. Of course, as the normative core of the UN Charter is its ban on violence, pre-emptive strikes are of questionable legality (Bothe, 2003). On the other hand, humanitarian interventions motivated by grounds not dissimilar to Bentham's

planned Tripoli expedition, and inconceivable from Kant's point of view, have been commissioned by the Security Council. There has been disagreement as to the right way of proceeding with failed states, while interventions with the avowed aim of regime change are considered acceptable only by a minority of scholars (Krisch, 2005). But taking a position on these substantive questions has *not* divided the West. The central disagreement is not so much about whether interventions in those cases will be justified, but about how we would find out whether they are. Here, it is clear that the West *is* divided into two camps, one claiming unilateral epistemic access to the rightness of foreign policy options and deriving entitlements to unilateral action from it, the other decentring its first-person normative authority in foreign policy conflicts and delegating it to the common institutions of international law. The latter option was not available to Bentham or Kant, as those institutions did not exist. Both, in their institutional designs here presented as their 'ideal' theory, prepare the ground for doing away with the kind of epistemic unilateralism that we still find in their work in the remnants of 'non-ideal' theory: in natural international law in the case of Kant, but also in purely teleological argument about the right way of reaching an ideal end state in the case of Bentham. The remaining distinction between two ways of conceiving foreign policy, therefore, does not turn on the substantive question of how interventionist should foreign policy be today, but on the procedural question of which institutional actors are going to reflect and decide on it. While the unilateralist answer is the mark of a liberal ethos that chimes with imperial implementation, the omnilateralist answer remains loyal to a permanent and improving egalitarian rightful condition. The important division of the West, therefore, lies not in giving incompatible substantive answers to hard questions, but in sticking to incompatible procedural commitments.

## Notes

- 1 This essay was written when I was a visiting affiliate of the Bentham Project, Faculty of Laws, University College London. I am grateful to Philip Schofield, the director of the project, and to the Fritz Thyssen foundation for their generous support of my stay.
- 2 When Habermas uses the terms 'ethos' and 'ethics', he not only opposes them to 'legal' ways of thinking, 'ethos' and 'ethics' also carry an added charge of merely communitarian validity. Their normative status is derived from the entrenched way of life of a given collective, while 'moral' views attempt to take up and withstand criticism articulated on the basis of other ways of life. In order to reduce complexity, I ignore this distinction between 'ethics' and 'morality' in this chapter.

- 3 Although Bentham's essays published as 'Principles of International Law' have been controversially collated from various different manuscripts and published only posthumously, this section title is authentically his (see Hoogensen, 2005: 40–54).
- 4 Herfried Münkler makes such an argument in his *Imperien* (Münkler, 2005).
- 5 The exception from the exception is Bentham (1843a: 548 fn.). Bentham argues both in 1793 and 1829 against the subsumption of India under the general anti-colonial argument (Bentham, 2002: 310–11, 314). In other writings against colonies and colonialism (e.g. Bentham, 1843b), it is plain that Bentham treats only of settler colonies (see Campos Boralevi, 1984, and Niesen, forthcoming).
- 6 Of course, under Kant's understanding of a league of nations as a loose federation, dissident states, whether on the giving or receiving end of a projected pre-emptive strike, would then be within their natural rights to leave the federation and draw on their newly revalidated natural entitlements (Kant, 1996b: 488). This remaining opt-out possibility is what separates Kant's idea of positive international law from what Habermas calls its 'constitutionalization', which does not envisage the possibility of dissolution.
- 7 For the letters, see Bentham (1990: 145–80). For details of the scheme see the editorial introduction by Philip Schofield in Bentham (1990: xxvi–xxxvi) and L.J. Hume (1980). The passages quoted without reference in this and the next paragraph are from MS transcripts provided by the Bentham Project of UCL xxiv. 410, accessed at data-archive.co.uk in 2/2003.
- 8 For a comprehensive contemporary discussion of the merits of this strategy, see Buchanan, 2001.

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# 6 European Union, normative power and ethical foreign policy<sup>1</sup>

*Ian Manners*

## Introduction

All studies and theories of the European Union (EU) in world politics are normative. By this I mean, echoing Cochran (1999: 1), that all those engaged in the study of the EU in world politics cannot avoid normative assumptions regarding evidence, interpretation and significance in their research. In this chapter I will interrogate what I mean when I argue that the EU represents a normative power in world politics, if all other studies are also normative. I will thus explicate my understanding of what it means to be ‘normative’ in the context of rethinking ethical foreign policy.

In 2000 I chose the term ‘normative’ with care, hence a brief discussion of terminology is in order. Based upon my research into symbolic and normative discourses and practices within the EC/EU during the 1990s, I used the phrase ‘normative power’ as a response to the relative absence of normative theorizing and to promote normative approaches to the EU (Manners, 2000). As I have discussed elsewhere, I saw the ‘normative’ power of the EU as being distinct from the pre-existing European ideal types of ‘civilian’ vs. ‘military’ power (Manners, 2002: 236–8; Manners, 2006a: 186; Manners and Whitman, 2003: 387–91). Similarly, I sought to escape the US debate over the relative merits of Democratic Party ‘soft power’ vs. Republican Party ‘hard power’ in the pursuit of US national interests and foreign policy. The term ‘moral’ struck me as too closely related to ‘extraterrestrial’ (i.e. celestial) scripted codes, as Bill McSweeney suggested (McSweeney, 1998). Having witnessed the disagreements over the term ‘ethical’ to describe the foreign policy of the New Labour government after May 1997, it seemed to me inaccurate to describe the EU as an ‘ethical’ power, given the procedural rather than absolutist nature of European integration (see

Frost, 1999 and 2001; Herring, 1999 and 2002; Williams, 2002). This distinction between the procedural notion of a normative heading and the more absolutist nature of ethical policy runs through this chapter.

In just four points I am going to explain what I mean by being normative in the context of rethinking ethical foreign policy. First I will ask what is normative, i.e. what do we mean by normative? And what does the EU normative power literature say about being normative? Here, I will suggest that the search for meaning, or public philosophy, in the EU has overlooked the contributions of scholars who have already provided us with EU political theory. I shall then proceed by looking at two differing approaches to this EU political theory which I have termed 'classical' and 'critical political theory'. Within classical political theory I will focus on the tripartite differentiation of EU politics first put forward in the 1970s to distinguish between intergovernmental cooperation, supranational community and transnational processes. Then I will turn to more critical theories with a particular focus on the contributions of post-structural theory. Finally, I shall conclude by returning to my preference for a normative heading over claims of an ethical policy, shaped by the differing approaches of classical and critical political theory.

### **What is normative?**

'Normative' is the adjective derived from the noun 'norm', which signifies either the average or usual level of attainment or performance for an individual or a group; or and more usually in philosophical discussion, a standard, rule, principle used to judge or direct human conduct as something to be complied with.

(Honderich, 1995: 626)

[N]ormative IR theory takes as its subject matter the criteria of ethical judgement in world politics and seeks shared principles for extended moral inclusion and social reconstruction in international practice.

(Cochran, 1999: 2)

What do we mean by normative in the study of world politics? Following my opening discussion, surely all studies of the EU in world politics are normative, thus rendering my use of the term 'obscuring', if not obsolete? Drawing on Honderich and Cochran above, I would suggest that normative means to affirm how things

should be; to judge or direct human conduct; and to seek inclusion and reconstruction in international practice (see the discussion in Walker, 1994). For me, the reason for using the term 'normative' is not so much about the aims or means of study, but about academic honesty. When I say 'normative', I mean that I want to change things – human conduct and international practice. I do not accept either the way world politics is, or theories that seek to maintain the status quo. The way in which we seek to change or retain things permeates all the sciences (natural, social and humanistic) by shaping our fields of interest, adherence to theory, selection of data and interpretation of results. And I think we should be honest about this. As Heins and Chandler suggest in the introduction to this volume, claims of ethical foreign policy often raise questions about the genuineness of foreign policy and the narcissism of self-regarding 'rescuer' mentality. In this context I believe it crucial to argue that 'normative' does not mean the same as 'ethical' but is part of being honest about why and how foreign policy is conducted. Thus, for me, being normative in the study of the EU in world politics is about being honest about the advocacy for, and analysis of, foreign policy.

As I shall explore in the rest of this chapter, when I say that the EU has normative power in world politics, I mean that its existence, its commitments and its actions all, in some way, challenge the status quo of world politics. And I believe that these should be, and are, conducted in a more honest way than most actors in world politics. Obviously, these types of arguments are both controversial and contradictory – how can the EU be both 'normative' (i.e. not forceful) and 'powerful' (i.e. forceful)? How can the EU both change world politics by diffusion (i.e. the absence of assertion) and by action (i.e. by assertion)? And, finally, how can I argue both that the EU *is* normative and *should be* normative? With these questions in mind, I will explore the *normative* power of the EU in world politics in this chapter by turning to the contribution of the literature on being normative.

A number of scholars are increasingly asking similar questions about the normative power of the EU in a diverse range of policy areas from regional relations through the environment to global governance. For example, scholars have used the normative power approach in the area of relations with near neighbours (Adler and Crawford, 2004; Panebianco and Rossi, 2004; Juncos, 2005; Forsberg and Herd, 2005; Del Sarto and Schumacher, 2005; Kelley, 2006; Balfour, 2006). Similarly, in the area of EU environmental policy, Simon Lightfoot and Jon Burchell (2004a, 2004b, 2005),

John Vogler (2005), Paul Harris (2005), Anthony Zito (2005) and Susan Baker (2006) have all engaged with the question of whether EU policy reflects a commitment to sustainable development. Zaki Laidi has argued that EU normative power is the central component of taking seriously a European approach to global governance (Lamy and Laidi, 2002; Laidi, 2005a). Beyond specific policy studies, Kalypso Nicolaidis (2004), Thomas Diez (2004 and 2005), Andrew Linklater (2005), Helene Sjursen (2006b), Federica Bicchì (2006), Sibylle Scheipers and Daniela Sicurelli (forthcoming), have all engaged directly with the question of what is normative about the EU. These studies are now beginning to result in book-length volumes engaging with normative questions in the study of the EU in world politics (see Laidi, 2005b; Bretherton and Vogler, 2006; Sjursen, 2006a; Adler *et al.*, 2006; Lucarelli and Manners, 2006).

Of greater interest here is the scholarship that attempts to interrogate what exactly is, or could be, normative about the EU in world politics. Here we see five arguments made for why the EU might be normative: ‘self-binding’; ‘vanishing mediator’, ‘deliberation’; ‘reflexivity’; and ‘inclusion’. Helene Sjursen and Thomas Diez have both argued that it is the EU’s *self-binding* through law that makes it normative. Sjursen suggests that the ‘EU’s strong emphasis on international law and multilateralism’ gives us ‘an indicator of what a “normative” power might be’ (Sjursen, 2006b: 245). Similarly, Diez has suggested that the EU’s ‘formal commitment to international law’ involving a ‘self-binding’ to international norms is a distinguishing feature of being normative (Diez, 2005). This self-binding is reflected in the highest levels of ratified cosmopolitan international law in the world (Manners, 2006b: 28–31).

The longer-term effects of this self-binding through international law give rise to the argument made by Nicolaidis that the EU ‘would preferably not refer to itself in terms of power at all, but as an intervener, a global partner, a “vanishing mediator”’ (Nicolaidis, 2004: 117). Balibar takes Fredric Jameson’s *vanishing mediator* a step further by giving it the meaning of an ‘EUtopia’ or myth where the EU becomes the anti-systemic mediator – ‘a *transitory* institution, force, community . . . that creates the conditions for a new society by rearranging the elements inherited from the very institution that has to be overcome’ (Balibar, 2003: 334; Jameson, 1988). If the longer-term self-binding of the EU to international law occurs, then the expectation would be that the EU would become less, not more powerful. It would, in effect, increasingly vanish through its mediation. This is not to say that the EU, nor its member states, regions

and localities, would vanish as institutions, but that they would become less powerful as forces of change as they would become, quite simply, normal in the multi-layered processes of post-national politics.

Sjursen and Erik Oddvar Eriksen have set out a different path to a more normative EU, based on the ideas of *deliberation* found in Jürgen Habermas's theory of communicative action. Sjursen suggests that 'rights-based normative justifications' should inform EU policy, rather than communitarian cultural identity (Sjursen, 2002: 502, 508). Such rights-based normative justifications might include the EU's commitment to placing universal norms and principles at the centre of its relations with its member states and the world. For Sjursen

*Rights* refer to a set of principles that are mutually recognised. In other words, policy would be legitimized with reference to principles that, all things considered, can be recognised as 'just' by all parties, irrespective of their particular interests, perceptions of the 'good life', or cultural identity.

(Sjursen, 2002: 495)

Sjursen and Eriksen argue that deliberation in the EU provides a 'process of reason-giving' which is 'communicatively rational' in helping 'form a sphere in which deliberation about foreign policy takes place' and contributes to the 'formation of *communicative power*' in the international arena (Sjursen, 2006b: 244; Eriksen, 2006: 263–4).

In a similar, but different vein, a number of scholars contend that a normative EU should be one characterized by *reflexivity*, in particular by thinking about the ways in which the EU is constructed through its engagements with its 'others'. Diez has led the way in arguing that 'self-reflexivity' ensures that any temporal other, i.e. Europe's past, is potentially more normative than any geographical othering vis-à-vis non-European states (Diez, 2004). He goes on to call for 'a greater degree of reflexivity', both in the academic discussion about normative power and in the political representations of the EU as a normative power that would make 'normative power Europe' stand out (Diez, 2005). For Diez, reflexivity in different forms of othering, rather than constructing the other as existential threat, inferior, violating universal principles, or different, reduces the possibility of legitimizing harm (Diez, 2005: 628–9). By contrast, Sibylle Scheipers and Daniela Sicurelli argue that 'the EU is able to fulfil its role as a normative power in a successful and credible way even if it falls

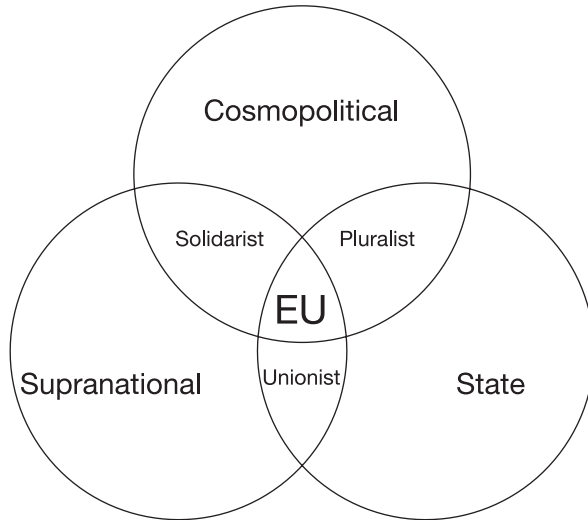
short of possessing a reflexive dimension' (Scheipers and Sicurelli, forthcoming). Through their analysis of the EU's policies towards the Kyoto Protocol and the International Criminal Court, Scheipers and Sicurelli emphasize the creation of a 'credible utopia' irrespective of reflexivity over questions of consistency or utopian goals.

In an interesting and potentially very constructive innovation, Federica Bicchì suggests 'limiting the category "normative power" to cases in which the EU's stance has been shown to be intentionally inclusive' (Bicchì, 2006: 287). Bicchì contrasts a normative EU, characterized by inclusivity and reflexivity, with a 'civilizing' and Eurocentric EU. By *inclusivity* Bicchì means the extent to which external actors affected by EU policies are permitted a role in that policy-making. In addition, 'reflexivity' means the EU capacity of critical analysis, reflection and adaptation of an external policy according to the effects of that policy on the 'target area' (Bicchì, 2006: 288). Bicchì is thus advocating a cosmopolitan interpretation of normative power Europe, in contrast to a communitarian interpretation of civilizing power Europe which is Eurocentric and unreflexive.

All of these five contributions regarding self-binding, vanishing mediator, deliberation, reflexivity and inclusion suggest that we are witnessing the beginnings of a stimulating debate over what is normative about the EU in world politics. In order to make wider sense of these contributions and the debate over normative power, I will now try to set out two different approaches to EU political theory which I call 'classical' and 'critical'.

### **Classical political theories**

Classical political theories can be drawn from the liberal/communitarian debate in political theory and the cosmopolitan/communitarian debate in normative International Relations (IR) theory (see Cochran, 1999). The distinction in the case of EU political theory is the innovation of a three-sided debate over the appropriate political community that EU policies in the world should seek to serve. Here, I will draw on three political perspectives suggested thirty years ago for studying European integration – states, supranational organizations and cosmopolitical formations. Located in her understanding of the processes shaping the 'growing economic and technological interdependence of the world' in the 1970s, the tripartite framework of Carole Webb distinguished between intergovernmental cooperation, supranational community, and transnational [cosmopolitical]



*Figure 6.1* Classical political theories

Source: Manners (2006b: 40).

processes (Webb, 1977: 22). I will briefly consider these three political processes and their emergence in the 1970s, in order to connect them to debates within classical political theory. Although the normative debates over EU external actions emerged during the 1990s, the 1970s is an important place to locate the three differing political processes because of the introduction of European Political Cooperation in 1970. The tripartite distinction between state, supranational and cosmopolitical processes can be illustrated as in Figure 6.1.

These three political processes can be traced back to classical political theory as formulated by Kant and Hegel. Cosmopolitan theory, grounded in the work of Kant, argues that humanity as a whole, or the rights of the individual within humanity, should provide the basis for political action (Brown, 1992: 23–51; Linklater, 1998; Held, 1996; Cochran, 1999: 21–51). Cosmopolitan political theory, as interpreted through the work of Rawls (1971), suggests that the EU's external actions will be shaped by concerns for humanity as a whole, or individual human rights. Here we can see the relationship between cosmopolitan political theory and transnational-cosmopolitical processes as developed by Webb and Strange (see pp. 124–5). By contrast, communitarian theory, grounded in the

work of philosophers such as Hegel, argues that political communities are, and should be, providing the basis for political action (Brown, 1992: 52–81; Frost, 1986 and 1996; Cochran, 1999: 52–77). Communitarian political theory, as interpreted through the work of Walzer (1983), suggests that the EU's external actions will be shaped by the concerns of European political communities. In this respect, communitarian theory makes two suggestions regarding the EU's external actions, one supranational and the other intergovernmental. First, supranational communitarian theory suggests that the EU's external actions will be shaped by the concerns of the EU as a whole (the 'European community'). Second, intergovernmental communitarian theory suggests that the EU's external actions will be shaped by consensus-seeking among the governments of the member-state communities.

### *State political theory*

Writing throughout the 1970s, Helen Wallace did more than any other European scholar to highlight the importance of understanding national governments in the study of the Communities (Wallace, 1971, 1973, 1977; Wallace and Edwards, 1976). Drawing on Wallace's work towards the end of the 1970s, Webb maintained that intergovernmental relations continued to be important determinants of European international relations (Webb, 1977). Developed beyond an explanation of European integration, we can see that the state perspective is an important way of theorizing the EU's external actions in world politics. Intergovernmental/state communitarian theory works from the basis that the most appropriate political communities for EU policies to serve are those of the constituent member states. Clearly, this leaves open the question of how these diverse communities aggregate their political identities and concerns through EU policy-making. Two obvious positions on how best to project the political concerns of states to the global level are those of working through the union (I term 'unionist') or beyond the union, similar to the 'pluralist' approach of the English School of IR theory (see Peter Lawler's (2005) discussion of 'classical internationalism' and Knud Erik Jørgensen's (2006) discussion of 'pluralist conceptions').

### *Supranational political theory*

Writing in the 1950s and 1960s, Miriam Camps stressed the importance of understanding a 'European Community' that was a 'living



experiment in creating new relationships among states and between peoples' (Camps, 1971: 678; see also Camps, 1964, 1965, 1966, 1968). Towards the end of the 1970s, reflecting on two decades of the 'community method', Webb suggested that supranational organization was 'thought to constitute the European Communities' distinctiveness in international politics' (Webb, 1977: 14). Looking outside of European integration theory, it can be suggested that the idea of supranational community is an increasingly important way of theorizing the EU's external actions in world politics. In contrast to state political theory, supranational communitarian theory argues that the most appropriate political community for EU policies to serve is that of 'Europe' as a whole. Similar to state communitarian theory, the question of what a 'European community' is, and how this community mobilizes and shapes EU policy is left open. Two differing positions on how best to take the political concerns of the supranational community to the global level are those of working with constituent member states ('unionist'), or engaging directly with the institutions of global governance and global society, similar to the 'solidarist' approach of the English School of IR theory (see Diez and Whitman (2002) on the intertwining of the EU and world society and Jørgensen's (2006) discussion of 'solidarist conceptions').

### *Cosmopolitical theory*

Again, as early as 1971, Susan Strange asserted that accelerating transnational processes in the form of international economic relations were 'out-distancing and out-growing the rather more static and rigid international political system' (Strange, 1971: 305). Strange led the way in advocating the importance of understanding economic interdependence and interaction in international politics, including in the 'new multistate community' of the EEC (Strange, 1971: 311; also Cooper, 1968). Strange's later work emphasized the 'extreme case' of the EU as an example of a shift of authority away from the state, as well as the importance of European societies rather than only firms in transnational competition (Strange, 1996: 171–9; 1998: 111–12). Webb's innovation in 1977 was to suggest that the interdependences and intensive networks created by the formation of the EC reflected transnational processes in the wider international system (Webb, 1977: 22). Moving away from mainstream European integration theory, Strange and Webb's transnational processes were increasingly important from the 1970s onwards, with 'rapidly

increasing opportunities for global communication, transportation, movement of finance and persons' contributing to the emergence of cosmopolitical formations such as 'global civil society' (Webb, 1977: 305; Kaldor, 2003; Lamy, 2004). Distinct from state and supranational communitarian theories, cosmopolitical theory argues that the most appropriate political community for EU policies to serve is humanity itself. Again, the question of *how* humanity is best served through EU external actions is left open. Two contrasting positions on how best to serve the cosmopolitical community can be seen in the distinction between the efforts of the supranational community (such as 'solidarism' through inter-regionalism) and the society of states (such as 'pluralism' through intergovernmental organizations).

### Critical political theories

Such a 'Europe' partially consisting of Nietzsche's 'good Europeans' would be one that (i) avoids nationalist and racist interpretations of existence; (ii) that refuses to fix the deeper meaning of the European idea and thus also remains open to those who currently remain outside the borders of the European Union; (iii) that would not seek to impose its freedom on others, but would equally not shy away from exemplifying this commitment to a deep experience of freedom; and (iv) that seeks to address the problem of the increasing globalization of the 'last man' through combating the refusal to cultivate, within existence, an important reflective depth.

(Elbe, 2003: 121)

As the quote from Stefan Elbe's study of Europe from a Nietzschean perspective illustrates, postmodern political theory has much to say about the EU as a normative power. Friedrich Nietzsche, Jean Baudrillard, Jacques Derrida and Julia Kristeva have all made important contributions to the question of the EU and normative theory (see Manners, 2006c). What Elbe's summation of Nietzsche's normative observations tells us is that postmodern theory has some interesting comments about what makes the EU normative, including ambiguous interpretations of existence; refusing articulations of an overarching idea of Europe; provoking and promoting a deep experience of freedom; and encouraging Europeanization through the emergence of 'good Europeans' who are capable of free and reflective thought (Elbe, 2003: 109–21). Elbe's reading of Nietzsche resonates with the work of Baudrillard, Derrida and Kristeva, who all argue for understanding and activating EU *différance* (to defer/to differ; see Derrida, 1982).

As Baudrillard observed in his exegesis of ‘America’ in 1988, ‘[f]or the European, even today, America represents something akin to exile, a phantasy of emigration and, therefore, a form of interiorization of his or her culture’ (Baudrillard, 1988: 75). As Baudrillard was later to reflect, both America and Europe (‘always with a serious delay in terms of modernity’) are victims of globalization which produces Europe as ‘a kind of by-product, a derived product of globalization’ (Sassatelli, 2002: 523). Baudrillard sees the EU as being in ‘a completely schizophrenic situation, something that exists in a kind of hyperspace, hyperreality’ because it has been created in ‘virtual terms’, somewhere between ‘European technocracy’, national ‘reduction of singularities’ and the destruction of ‘the universal as idea’ by the global (Sassatelli, 2002: 523–4). What I interpret Baudrillard to mean is that institutional Europe, the EU, needs to overcome the schizophrenia of European technocracy built on the feudal Europe of national singularities, in order to resist the destruction of the universal as idea by ‘the global’ (Sassatelli, 2002: 524). From a normative perspective, Baudrillard is fairly lucid in arguing that the EU runs the risk of developing into a ‘transnational pseudo-federation’ which re-particularizes culture, conscience and identity. By contrast, he appears to suggest that the EU should normatively pursue ‘the universal as idea’, including human rights and autonomy against ‘the global’, ‘commercial manipulation’, and particularities such as racism and religious, ethnic, linguistic nationalism.

Derrida’s European heading is similar to Baudrillard’s in that he seeks to navigate the EU in another direction – towards a respect for difference and for the universal:

it is necessary to make ourselves the guardians of an idea of Europe, *but* of a Europe that consists precisely in not closing itself off in its own identity and in advancing itself in an exemplary way toward what it is not, toward the other heading or the heading of the other, indeed . . . toward the other *of* heading, which would be the beyond of this modern tradition, another border structure, another shore.

(Derrida, 1992: 29)

Derrida’s argument, together with those on hospitality, cosmopolitanism and forgiveness (see Derrida and Dufourmantelle, 2000; Derrida, 2001) is that Europeans and the EU have a responsibility towards memory which must manifest itself as a cosmopolitan

response towards others (see Borradori, 2003: 169–72). Derrida argues that ‘what is proper for Europe would be . . . to advance itself as a heading for the universal essence of humanity’ (Derrida, 1992: 48) which involves nine duties on the way to the *other shore of another heading* (Derrida, 1992: 76–89):

- 1 ‘the *duty* to respond to the call of European memory, to recall what has been promised under the name of Europe’;
- 2 ‘this *duty* also dictates opening Europe . . . onto that which is not, never was, and never will be Europe’;
- 3 ‘the *same duty* also dictates welcoming foreigners in order not only to integrate them but to recognize and accept their alterity’;
- 4 ‘the *same duty* dictates *criticizing* a totalitarian dogmatism [communism] . . . [and] a religion of capitalism’;
- 5 ‘the *same duty* dictates cultivating the virtue of such as *critique, of the critical idea, the critical tradition*’;
- 6 ‘the *same duty* dictates assuming the European, and *uniquely* European, heritage of an idea of democracy’;
- 7 ‘the *same duty* dictates respecting differences, . . . but also the universality of formal law, . . . opposition to racism, nationalism, and xenophobia’;
- 8 ‘the *same duty* demands tolerating and respecting all that is not placed under the authority of reason’;
- 9 ‘this *same duty* surely calls for responsibility, for the responsibility to think, speak, and act in compliance with this double contradictory imperative’.

Finally, Kristeva psychoanalyses the practices of strangeness, subject and abject in her discussions of European integration and European community (see Kristeva, 1982, 1991, 1998 and 2000). Trained by Jacques Lacan, Kristeva uses psychoanalysis to understand ‘the creation of self as an internal psychological process’ in which ‘the other exists in our minds through imagination even when he or she is not physically present’ (Kinnvall, 2004: 753). Kristeva advocates recognizing that ‘the foreigner is within us’ and ‘by recognising *our* uncanny strangeness we shall neither suffer from it nor enjoy it from the outside’ (Kristeva, 1991: 191–2). For Kristeva ‘the ethics of psychoanalysis implies a politics: it would involve a cosmopolitanism of a new sort that, cutting across governments, economies, and markets, might work for a mankind whose solidarity is founded on the consciousness of its unconscious’ (Kristeva, 1991: 192).

Kristeva uses this understanding to argue for the coordination and reconciliation of strangeness and difference within a multinational EU:

We already have so many difficulties – but also so many advantages – coexisting in this multinational (and not supranational) country that Europe has become – even though it is made up of nations whose cultures have been close, religions similar, and economies interdependent for centuries!

(Kristeva, 1991: 194)

We are on our way towards building a European community, in spite of all the difficulties that we cannot ignore. In this often chaotic European assembly, . . . we try to promote a ‘type of society’ which is not exclusively that of ‘liberalism’, . . . Our insistence on this ‘cultural difference’ is . . . due to the fact that we have a different vision of freedom, one which privileges individual singularity over the economic and the scientific.

(Kristeva, 1998: 328–9)

[W]e Europeans are encountering a major challenge involving the values of civilisation, values that, for better or worse, we have succeeded in establishing and that will or will not be transmitted to the societies that come after us. For the economic-political differences refer not only to visions of society but, more precisely and in the last resort for me as a psychoanalyst, to very different conceptions of the *human person* or *subject*.

(Kristeva, 2000: 115)

Taking Nietzsche, Baudrillard, Derrida and Kristeva together encourages us to make some observations on the normative implications of postmodern political ethics. First, it seems clear that postmodern scholars believe in the idea of universality (Baudrillard’s ‘universal as idea’; Derrida’s ‘universal essence of humanity’) but are unequivocal in arguing that this is an open heading rather than a closed reality. For normative power Europe this observation seems nicely summed up by the ambiguity of the European project as a ‘journey to an unknown destination’ (Shonfield, 1973). In this manner it is normatively important that the finality of the EU is never fixed in time, space or our imaginations. Certainly, the ambiguous nature of the EU’s normative power seems to fulfil this open heading – is

normative power Europe instrumental or ideological? Is it an actor or a structure? Is it a union of citizens or states? Is the Constitution for Europe the first or final constitution?

Second, reflecting this understanding of ambiguity in the direction of universality, postmodern scholars share a commitment to an ambiguous interpretation of existence found in *différance*. This recognition of difference, alterity, foreignness and strangeness involves a cosmopolitan duty towards all, as well as opposing racism, nationalism, xenophobia and discrimination in all forms. For normative power Europe this observation seems to be captured by the idea of being 'united in diversity'; more so if this recognition of diversity involves a commitment to 'combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation' (Article 13 of the EC Treaty).

Third, following the first two observations, postmodern scholars refuse to articulate an overarching idea of Europe while ensuring that the responsibility of memory of what has been promised under the name of Europe. Taken together with the previous observation, Kristeva's notion of the foreigner within us reminds us that all Europe and its history is a product of the world – we are the foreigner within ourselves. For normative power Europe this observation emphasizes that the idea of Europe and its values are a continuing and contested process. As Romano Prodi's Reflection Group on 'The Spiritual and Cultural Dimension of Europe' made clear:

There is no essence of Europe, no fixed list of European values. There is no 'finality' to the process of European integration. Europe is a project of the future. With every decision, not only its zone of peace, its institutions, its political, economic and social order, but also its very identity and self-determination are opened for questioning and debate.

(Biedenkopf *et al.*, 2004: 12)

Fourth, and reflecting the ambiguity, difference and contestation of the previous observation, postmodern scholars argue for the exemplification, but not imposition, of freedom, democracy, human rights, rule of law, equality and solidarity. Nietzsche and Kristeva's 'deep experience of freedom'; Derrida's 'idea of democracy' and 'international law'; Baudrillard's 'universal value of human rights'; Nietzsche, Baudrillard and Derrida's equality and anti-discrimination; and Kristeva's 'vision of society' characterized by social solidarity, are all to be exemplified in normative power Europe.

Fifth, postmodern scholars all argue that if the EU is to be the embodiment of anything at all, then it should be the cultivation of 'reflective depth' (Elbe) and 'critical tradition' (Derrida). For normative power Europe this observation is possibly the most challenging of all, particularly as the combination of different national social-scientific fields, public spheres, languages and media has made common communication and reflection so difficult across the EU. The EU's attempt to achieve a 'European Research Area' (ERA) through the use of Framework Programme funding has exacerbated rather than resolved the problem of fragmented socio-scientific public spheres. Those programmes that are funded and networked in a pan-European sense inevitably represent extremely uncritical and low common-denominator areas of consensus. The achievement of critical reflective depth will remain the Achilles heel of normative development of the EU.

Last, there is no last. If postmodern scholarship teaches us anything at all, it is that there is no closure, finality or completeness to normative theory. The works and scholarship of Nietzsche, Baudrillard, Derrida and Kristeva are just the beginning of our understanding and interpretation of postmodern political ethics. This observation is crucial for ensuring that the study and reflection on what is normative about the EU's normative power continues *ad infinitum*.

### **Conclusion: normative heading over ethical policy**

Rethinking ethical foreign policy involves questioning the genuine extension of political community beyond the territorial state, as well as asking why foreign power projection has often become a less robust and poorly thought-out endeavour. By invoking the idea of EU normative power, I have attempted in this chapter to argue that being 'normative' in world politics involves constantly asking what do we mean by claims of being 'normative'? Whose political community is served by such claims? And how might we be critical of such claims of normativity?

As I have discussed, an increasing number of scholars across Europe (and beyond) are discussing what is normative about the EU in world politics. While this debate has yet to include far more people, we have seen discussions surrounding the anti-Iraq war movement, the European Social Forum and the anti-Constitutional Treaty movements regarding these questions. It is worth noting that these debates can sometimes degenerate into a culturalist anti-Americanism instead of reflecting critically on the manifold crises

of world politics (see the discussion in Heins, 2005). Importantly, arguments such as ‘self-binding’, ‘vanishing mediator’, ‘deliberation’, ‘reflexivity’ and ‘inclusion’ provide us with some means of judging normative power outside of the values systems of particular political communities.

My consideration of the three political communities of member states, supranational Europe and cosmopolitical world society illustrated that EU normative power is located within a three-sided debate over appropriate political community, rather than any clear-cut ethical justification. Any normative power should be one that encourages such an open debate, rather than closure. Hence, my preference in rethinking ethical foreign policy, at least in the case of the EU, is for a normative heading which encourages reflective depth in a critical tradition, over any illusory claims of ethical policy. Rethinking ethical foreign policy, at least in the case of the EU, should be located in normative discussions about policy-making and analytical honesty.

## Note

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# 7 Moral judgements on international interventions

## A Bosnian perspective

*Isabelle Delpla*

### Introduction

The idea that ethical foreign policy is a valid concept and not just wishful thinking supposes that moral judgements have relevance for foreign policy. To evaluate this relevance, one has to decide who is to judge what is ethical. According to a cosmopolitan ideal promoted by Kant, foreign policy should follow the same republican rules as domestic policy, thus avoiding in international relations immoral practices such as ruse, treachery, aggressive wars, and so on. Though legal and not moral in essence, those rules, established by contract and on a basis of equality and reciprocity among nations, set the norms for moral judgements concerning foreign policy. This paradigm, based on strict respect for the autonomy of nations and citizens, does not, however, entirely suffice to account for the contemporary ethical issues in foreign policy. Indeed, the dilemma of how and under what conditions to intervene has prevailed over the rule of non-intervention. With aid programmes in developing countries and humanitarian interventions by states, international organizations or non-governmental organizations (NGOs), the question has become: when, where, how, according to which criteria, in which domain and to whose benefit are agents to intervene in foreign countries? Such interventions take place in a context of inequality and without presupposing reciprocity. Hence, the criteria for evaluating them cannot consist solely of a contractualism common to all nations, but can vary from state to state, organization to organization or individual to individual. Once again, the question is: who is to judge?

A long-standing tradition in moral philosophy considers that moral predicates mainly apply to the intention of the agent who is to judge what is or is not ethical. Accordingly, a natural approach is to

focus on the agents of this foreign policy. This approach is both fundamental and an easy target for criticism. Considering the distance between the agents and the results of their foreign policy, which are accessible in their own country mainly through domestic media coverage, it is all too easy to see in an agent's moral intentions a mere 'pose', an indulgence in one's self-righteousness that treats distant strangers as little more than an occasion for displaying one's moral superiority or filling the existential vacuum and boredom in postmodern democracies (Ferry, 1996). Ethical foreign policy would then be, in the best case, merely an issue of internal affairs (Chandler, 2003), with little or no relation to the strangers at stake; in the worst case, it is a mask for power politics that can do harm to the objects of intervention. The well-known side effects of some interventions certainly demonstrate the moral limits of a foreign policy composed of good intentions. The prevalence of an ethics of conviction over an ethics of responsibility has been diagnosed as a major cause of the Dutch government's catastrophic policy in the fall of Srebrenica (NIOD, 2002). Likewise, in addition to states, NGOs and private actors can also favour criminal politics, as in the case of the humanitarian aid in Ethiopia in 1984 (Brauman, 1995). Such an observation can lead to banning morality from international relations; it can also lead to viewing foreign policy through its effects rather than its intentions. Plato used to say that it is not the shoemaker who is to judge what constitutes a good pair of shoes, but rather the person who wears the shoes. Likewise, I suggest that turning to the moral judgements of those who are the supposed target of ethical foreign policy might help to overcome the pitfalls of the agent's moral narcissism or the cynicism of the realist paradigm.

A focus on the reception of international intervention in Bosnia-Herzegovina seems at first sight to confirm a realist paradigm: the more individuals experience foreign interventions as supposed beneficiaries, the less they apply morals to those interventions. This is not, however, a general rule when one analyses factors giving rise to continuity, discontinuity or oppositions between the moral judgements of donors and those of the supposed beneficiaries. While there exists, on a general level in Bosnia, a discontinuity and even an opposition between the judgements of donors and of recipients, at the same time this observation should not be applied indiscriminately. If we consider two types of international interventions, humanitarian and judicial ones, from the point of view of Western countries, both could be considered as representing a moralization

of foreign policy and international relations. If, on the other hand, we turn to the point of view of beneficiaries, we are faced with a more complex picture. For humanitarian aid, there is a discontinuity or opposition of judgement between the (naive) donors (especially individual ones) and the recipients, whose experience has disabused them of a positive view of this type of aid. By contrast, however, this discontinuity has no equivalent for judicial intervention or for certain individual aid programmes, such as those for missing persons.<sup>1</sup>

### **Context of the fieldwork in Bosnia<sup>2</sup>**

Though a philosopher by training and discipline, I will base this study on empirical research carried out in Bosnia-Herzegovina between 2002 and 2005 and focused on the reception of international ethics (primarily in the form of humanitarian aid) and international justice (mainly via the International Criminal Tribunal for the former-Yugoslavia – ICTY).<sup>3</sup> I first carried out interviews with ordinary citizens who received humanitarian aid on an individual basis and with a few local employees of foreign and international NGOs. The bulk of this study dealt with victim associations (associations of civilian victims of war, associations of former camp inmates and especially associations of families of missing persons), with which I met in different parts of Bosnia, but primarily in Sarajevo. In 2005, I began ongoing fieldwork in the area of Prijedor concerning prosecution and defence witnesses who testified in The Hague Tribunal and a few convicted war criminals who returned to their hometown after serving their sentence. Infamous since 1992 for the camps of Omarska, Keraterm and Trnopolje, the municipality of Prijedor has been the target of special attention from The Hague Tribunal, leading to nineteen indictments and several trials of local figures (Wesselingh and Vaulerin, 2005).

These interviews, carried out using qualitative methods, focused on my interlocutors' personal experience of foreign interventions;<sup>4</sup> they manifest a wide diversity of experiences. Due to the mobility of the population and to the difference between their wartime and post-war situations, few people have dealt with the same humanitarian organizations from the same countries with the same purposes. Bosniacs (meaning Muslims as a nationality) who have returned to Prijedor are from there and have had nearly no experience of humanitarian aid in Bosnia during the war. By contrast, Sarajevo is host to many displaced persons from other parts of Bosnia, especially Srebrenica and Foca. Those who spent the war in enclaves



mainly experienced international interventions through the UN Protection Forces (UNPROFOR). After the war, most Bosnians (meaning all citizens of Bosnia, regardless of their nationality) encountered a widespread international presence, especially in Sarajevo. As for the ICTY, only associations of former camp inmates, associations of families of missing persons and Hague witnesses have experienced it directly. By contrast with people from Prijedor, ordinary Sarajevans have not been in direct contact with the ICTY, since the few trials concerning the Sarajevo siege were not those of local figures.

In all events, even when a war and its aftermath have attracted so much international attention, they should not be viewed through the lens of foreign interventions. Absent in the beginning of the war, international presence remained limited and distant for most Bosnians during the war. Likewise, in the post-war context, the prevalent experience is one of widespread injustice. War-time violence, destruction, suffering and impunity for war criminals are a much bigger part of Bosnians' lives than aid programmes or trials of war criminals.

With this as the background, I will delineate some prominent features in the cartography of moral judgements concerning foreign interventions. The first feature is a lack of distinction between foreign and international interventions. All institutions or individuals are categorized according to their country of origin: the action of 'Blue Helmets' is primarily linked to the foreign policy of the French government in Sarajevo or to that of the Dutch government in Srebrenica. Hence, the distinction between international, governmental and non-governmental organizations has hardly any relevance for Bosnians. The second feature, which is a consequence of the first, is a strong and widespread distinction between morals and politics. Politics, both national and international, is widely considered as the realm of filth and corruption, of hidden interests and manipulation. It is furthermore seen as the cause of the war in Bosnia. Political action is considered not only as immoral but also as belonging to a different realm than morality, the latter applying primarily to individuals and seldom to institutions. This opposition between politics and morals, prevalent in descriptions of wartime experience, is combined in the post-war context with the equally strong opposition between economics and morals. In this opposition, economics represents the pursuit of interest and morals the expression of disinterested motivations. In general, the way people describe their personal experience of international interventions can be analysed according to four main topoi: economical, political, moral and 'existential' (i.e. in terms of a loss of the meaning of life).

## **The dark side of receiving humanitarian aid**

In places where they received humanitarian aid during the war, Bosnians of all nationalities describe their experience of that aid as that of both necessity ('without that aid, we could not survive') and deprivation ('the aid was very little; we needed money on top of that') (Sarajevo, 4 May 2002: old, diabetic Serb woman; 11 May 2002: Bosniac woman, cook for the SFOR). People were spending their last resources to go to markets where they could buy . . . humanitarian aid. Daily experience was that of widespread stealing and misuse, mainly by armies and local intermediaries, and that of war profiteers enriching themselves. It was also humiliating for a population that was used to a comfortable standard of living to receive expired medicine and American rations from the Vietnam war: 'when you get cookies older than you', said a young Sarajevan, 'you know you are in trouble' (Sarajevo, 12 June 2002: male medical student). The feeling of having been 'a dumpster into which countries have tossed out their leftover reserves' (Sarajevo, 24 May 2002: Croat woman retired from the railroad company) is the experience of a fall in a human and social hierarchy. Such a fall is not an experience of dehumanization, such as the one described by prisoners in the camps; rather, it is a fall in a hierarchy of countries, peoples and cultures, where it is always possible to fall lower. It can frequently be heard that internationals who show Bosnians what electricity is believe they are in Africa and do not know that Bosnia is in Europe. Likewise, humanitarian aid represents the experience of a fall in social status, where Bosnian doctors become dependent on foreign nurses. In Bosnian society, where social status depends greatly on age and education, the power granted to young and relatively inexperienced foreigners is perceived as a reversal of social hierarchy and as the reign of incompetence. Such a social and human hierarchy is also a hierarchy in the value of life. Benefiting from a privileged status in terms of food, comfort and security, Blue Helmets were more protected than the locals and came to embody the hierarchy existing between those whose lives count and those whose lives do not.

This sort of gap leads to strong anger, denunciation and accusation of international politicians. While those in France who opposed the French policy of humanitarian intervention through UNPROFOR criticized a dangerous mix of morals and politics, Bosnians criticize this demilitarized humanitarian aid as a mere continuation of international politics by other means.<sup>5</sup> And Mitterrand's policy of favouring humanitarian aid is seen by Bosniacs as deliberately pro-Serbian

politics. The Dutch battalion in Srebrenica is deemed responsible for the disappearance of the Muslim men, either through personal inaction or because they represented the policy of foreign governments 'who wanted this genocide' (Vogosca, near Sarajevo, 10 July 2002: Association of Mothers of Srebrenica and Zepa Enclaves). Though, on an individual basis, Bosnians can praise a medical organization that saved their lives or the International Committee of the Red Cross (ICRC) whose presence improved their detention in camps, on a more general level, they tend to describe humanitarian aid as rife with corruption, manipulation and hidden interests. In other words, they describe humanitarian aid in the same terms as politics. Hence, they link the action of humanitarian agents to national agendas. Humanitarian aid is seen as a potential cover for spying and terrorist activities; it is interpreted according to various conspiracy theories. In line with a long-term geopolitical vision of the Balkans and Tito's Yugoslavia as the object of rivalries between superpowers, international politics is seen as embodying an attempt to destroy alternately Yugoslavia and the Serbs or Bosnia and the Muslims.

In the post-war period, the priorities of humanitarian aid have shifted from food to reconstruction and the return of refugees. Although the experience of this aid is no longer one of violence, it remains dominated by a feeling of relative disempowerment, as reflected in differences of status, standard of living and salary between internationals and locals. International aid is seen in post-war Bosnia as a matter of economic profit. According to a common opinion, internationals are there for good salaries and aid is a means of 'laundering money'. Confronted with such realities as the practice of linked aid, the competition among NGOs, the changing constraints imposed by institutional donors or the discrepancy between the generous promises in donors' conferences and the meagre results observable in practice, Bosnians have the feeling they are not so much the object of concern as a pretext for achieving other goals: 'They are making money off our plight; why don't they give it directly to us?' commented a member of the Association of Mothers of Srebrenica about the donations for their home town (Sarajevo, July 2002). Another summed up the situation by saying, 'two years ago everything was about return, now everything is about reconciliation; what's next? This is like fashion'. This feeling that foreign countries are pursuing their own agenda and not the greater good for Bosnians extends to the building of showy mosques in the Arabic style, when 'the money could have been used to repair roads'.

This dark picture is not, however, black and white. Such criticisms apply not only to international interventions, but also to war profiteers and to national and local politicians who take advantage of ordinary people while blaming internationals for their own failings. In fact, the denunciation of internationals is compatible with the belief that their departure might make things even worse. The bleak picture drawn above also reflects the general context of the loss of status both of the nation and of individuals. It is all the more difficult for Bosnians to be dependent on internationals for the fact that, before the war, they belonged to a country (Yugoslavia) that was considered the leader of the non-aligned movement, and the fourth-ranked military power in the world. Bosnians frequently chafe at the fact that travelling abroad and going to the seaside, which used to be ordinary for many of them, are now luxuries reserved for the happy few and for internationals. Another nuancing factor is the experience of local employees of international organizations who are confronted in their daily work not only with their own subordinate status as local employees (in comparison to internationals), but also with the various local obstacles impeding implementation of their organization's programme and with the resentment of other Bosnians for their relatively high salaries.

Regardless of the degree of nuance, such a picture leaves nearly no room for morals. In their negative form, morals are omnipresent since the denunciations so frequently heard in Bosnia presuppose an ethics of interventions according to which they are carried out for reasons of human concern and not calculation of interests. This underlying ethics of intervention is common both to naive donors and to naive recipients, who initially thought that the interventions in Bosnia aimed at saving their lives. In a positive form, moral predicates apply only to individuals whose kindness and humanity represent an exception in this realm of crude interests. Of those who were there to help, who stood by them in difficult times, be they Blue Helmets or doctors, one hears things said such as, 'Why were they here? I do not know; they had good heart', or 'They were ordinary people who wanted to help; they had nothing in the back of their mind' (Sarajevo, 19 April 2002: Bosniac military officer, refugee in Srebrenica during the war; Sarajevo, 13 June 2002: Bosniac former-employee of Doctors without Borders (MSF)). In this view of personal relations, kindness and honesty do not need a reason; a good heart stops the endless search for hidden interests. Such a view of morals as a matter of individuals with disinterested intentions is quite common inside and outside of Bosnia. What is more specific

to Bosnia is that such moral predicates are applied almost exclusively to individuals and not to institutions, since 'organizations cannot be moral, only individuals can' (Sarajevo, 23 May 2002: Serb woman, interior decorator). When NGOs are praised, it is most often because of the human qualities of their employees. Only local employees of international organizations express an interest for organizations as such. Thus, a former employee of MSF saw in this NGO 'a light in the darkness' that brought together people with good hearts. He also considered that this type of NGO, which remains independent of political parties and religious charities, had no equivalent in Yugoslavia and that its success was a matter of good organization and savoir-faire lacking among Bosnians, as he no doubt concluded from his failed attempt to launch a similar local NGO after the war.

There are pronounced discontinuities or oppositions between international and local judgements about humanitarian interventions. These discontinuities and oppositions are not, however, a matter of principle, paving the way to moral relativism, but rather a matter of experience and, hence, of temporality. There is a temporal lag between those who directly experience humanitarian interventions and those who see them from far away or from international headquarters. Accordingly, such oppositions during the events are compatible with convergences *ex ante* between the judgements of naive donors and naive recipients, but also *ex post* between the judgements of internationals and locals who have witnessed the concrete effects of those interventions on the ground. The UN report on the fall of Srebrenica describes without self-indulgence the incoherencies and failures of the UN mandate and operations that led to the 1995 tragedy in Srebrenica (UN, 1999). Similarly, the report of the French national Assembly on Srebrenica stresses that no international agent had ever considered the protection of the civilian population as a priority (André and Lamy, 2001). The report by the Netherlands Institute for War Documentation (NIOD) underlines the irresponsibility and lack of preparation of the Dutch government in the engagement of their troops (NIOD, 2002). More generally, the failure of UN policies in Srebrenica and Rwanda led to a refusal by Western countries to engage their troops in similar conditions.

In the post-war period, this pessimistic picture finds a favourable echo in journalistic, political and academic writings that describe the imperialism and neo-colonialism of humanitarian interventions (Ignatieff, 2002); the inefficacy of the international protectorate in Bosnia as leaving things unchanged (Chandler, 1999); the meagreness

of the results in Bosnia by comparison to the high degree of development in Croatia despite its receiving less international aid (BIRN, 2006); the privileges granted to internationals who bypass national rules (Coles, 2006); the opacity of NGO financing and the short-term-project format imposed on them by their donors (Stubbs, 2000); the attempt to use the programme for return to effect a reunification of Bosnia that internationals do not dare to carry out more directly through a change of institutions (Chayes and Minow, 2003). Whatever the level of agreement on the effects of these interventions, there remains stark disagreement about causes or motives: where internationals tend to speak of side effects, tragic errors and failures, Bosnians see malevolent, or even criminal, intentions.

Such an observation leaves little place for ethical foreign policy and seems to confirm a realist paradigm: moral norms are just (dangerous) illusions in foreign policy which is governed by interest. The realist paradigm, which banishes moral criteria from foreign policy, is certainly a powerful language for describing such a state of affairs. It is not necessarily, however, an adequate language for evaluating that state of affairs. It often reveals the disappointment of idealists who would have hoped for more effective interventions capable of stopping the bloodshed in Bosnia and reconstructing the country, in the same way that Bosnian cynicism towards international interventions is proportional to a deep feeling of abandonment and betrayed hopes.

I would argue that the picture sketched above should not be generalized for several reasons. First, it does not apply to all kinds of humanitarian or human-rights interventions. Bosnians occasionally praise aid organizations or NGOs for implementing good local programmes, promoting valuable ethical standards towards women, offering an alternative for citizens in a world of corrupted politics, or the like. A notable exception to the foregoing dark picture is the general respect shown to programmes for identifying missing persons. Furthermore, the exclusion of morals does not apply to international judicial interventions. Finally, though it contains several features widespread throughout Bosnia, this dark picture represents the point of view of Sarajevans and of those who were in other enclaves. It should not be generalized to all of Bosnia.

## **Two noticeable exceptions**

While DNA analysis for identifying the dead is an expensive device used on a massive scale by the International Commissions on Missing

Persons (ICMP), while millions of dollars are spent for the ICTY, I never heard in Bosnia that these institutions merely serve as a cover for economic interests in order to make money from Bosnian despair, that these resources would have been better used for other purposes (repairing roads, hiring the unemployed, etc.), or should have been directly given to the Bosnians.<sup>6</sup> In spite of the costs, there is no contesting of the money spent for the defence of the accused or the resources dedicated to the dead (who, 'after all, are just bones') (Sarajevo, 10 September 2004: young Bosniac man whose missing father had been identified). While programmes for the development of civil society, democratization or reconciliation are often perceived as foreign importations implemented to please the changing moods of donors, the idea that the identification of the missing or the judgment of war criminals are just imported, temporary fashions is absent. Likewise, the sense of having undergone a fall in the hierarchy of humanity is (nearly) absent where this type of intervention is concerned. Unlike for other forms of international presence, about which it is common to hear that internationals think they are in Africa and do not understand that Bosnia is civilized, I never heard it said that it is a shame that Bosnian matters are judged by African, South American or Chinese judges, or that Bosnians have fallen very low if they are benefiting from an International Criminal Tribunal and from DNA analyses carried out by an international organization. The experience of those interventions is, furthermore, not described as an experience of disempowerment: the types of judgements that are omnipresent concerning other interventions are all but absent in these cases. Though it is often heard that the Tribunal does not judge enough people, this amounts to a questioning of the efficiency of the institution rather than a rejection of its goals and values. The various criticisms addressed to those interventions do not alter their appreciation in moral terms or their capacity to represent existential values and moral norms.

### **The search for the missing**

Since the beginning of the conflict, the search for the dead and the missing has been the focus of different local, national and international agents: associations of families of missing persons, national commissions for missing persons, the ICRC, the ICTY, which contributed to finding the missing through its exhumation initiatives, particularly in Srebrenica,<sup>7</sup> and the inter-governmental ICMP, which was created in 1997. The ICMP has developed a forensic programme

of DNA identification, which has made it possible to use a genetic method on a large scale, and a civil society programme, which supports the families of missing persons and the associations to which they belong. Through this support and through direct pressure placed on governments, the ICMP, which defines its action not as humanitarian but as defending human rights, has contributed to official recognition of the status of missing persons in state law in 2005. Unlike the ICRC, which remains entrenched in a strictly neutral, humanitarian perspective and refuses to cooperate with the judicial logic of the ICTY, the ICMP does not separate its support for families and associations from the search for political and criminal responsibility. Hence, it has cooperated with the ICTY and contributed to the 2004 report on Srebrenica, by which the government of the Republika Srpska (RS) recognized the 1995 massacre (RS Report, 2004).

After the war, the families' excruciating uncertainty about the fate of the missing was made even worse by various rumours about hidden prisons where the missing were supposedly being kept. In a context where families felt abandoned, the women of Srebrenica threw tomatoes at local and national politicians and attacked the cantonal building and the ICRC headquarters in Tuzla. The ICRC soon found itself being bypassed, at least in the eyes of the Bosnians, by the ICMP's work. Concerning the task of identification, the traditional methods (by means of clothes, shoes and the like) were ineffectual when dealing with the displacement and reburial of bodies around Srebrenica, which had been carried out in an attempt to hide the massacre. Only DNA analysis was able to link a single name to bones that were sometimes scattered among several mass graves. Besides, genetic analysis revealed that 35 per cent of previous identifications made using traditional methods were incorrect, thus raising new doubts about the identity of dead persons who had already been identified and buried. In the midst of uncertainty and manipulation, DNA identification represents a criterion of certainty that sets new norms of trust and distrust. While families used to sign death certificates on the basis of identification by national authorities, they now wait for the DNA testing to do so. Families accept a truth warranted by national institutions only if they are confirmed by scientific procedures (Delpla, 2006b).

The ICRC has also seen its support to families bypassed because of its purely humanitarian logic. Neither a strictly humanitarian approach, focusing on the identity of the dead, nor an exclusively judicial one, focusing on the cause of death, can meet the expectations



of victims. Indeed, victim associations vehemently insist on the need both to identify the dead, in order to give them proper burial (Stover and Shigekane, 2004), and to bring the criminals to court. Hence, they have largely espoused the type of approach promoted by the ICMP, which, unlike the ICRC or the ICTY, does not separate support for families, identification of the dead and judicial cooperation. Though their demands are not framed in terms of human rights, these associations have, through the support of the ICMP, gained public prominence as having identifiable claims for rights. As a result, while a law on missing persons was eventually passed in 2005, no such official status has been afforded to former camp inmates, whose associations have not received any substantial support from international organizations.

More generally, the support and recognition granted to associations of families of missing persons by the ICMP stands in contrast with the treatment they receive from other local and international authorities. Accordingly, these missing-persons associations contrast with other NGOs. On the one hand, in international and local NGOs sponsored by international donors, it is usual to meet young individuals who are at ease speaking English. It is not unusual to meet Bosnian spokespersons who hold strong nationalist views in NGOs for reconciliation (Bessone, 2006) or who confess to having no interest in feminism when they are supposed to be promoting women's rights. On the other hand, Bosnian victim associations are run by individuals who are themselves former camp inmates, civilian victims of war or family members of missing persons; they hardly ever speak English and generally make do with a poorly equipped office.

Among Bosnian victim associations, a difference remains between associations for missing persons and other types of associations, in which the structures are inherited from the pre-war period. Following a strong sense of hierarchy, the floor of the latter is monopolized by the official representatives, who are most often men. By contrast, associations for missing persons are most often run by women, not out of feminist choice, but because most missing persons are men. In these associations, one can meet men and women of all ages and social statuses, expressing directly very different political or personal views. The support granted to them by the ICMP has promoted 'democratic' forms of expression coming from refugees from rural areas, women and ordinary citizens. This policy contrasts with the attitude of Sarajevans and members of the Bosnian elite who, after

paying lip service to the sufferings of women from Srebrenica, tend to see them as illiterate peasants who do not belong in an urban setting. The difference of approach between locals and internationals is clear in this case: while many Bosnians tend to see those women's public manifestations as a mere product of political manipulation, some internationals would tend to cast them as proof of women's empowerment in the Bosnian public sphere, where there is no place for women from rural areas speaking in their own voice.

The relative absence of criticism towards and/or the expression of praise for the ICMP by families and associations of missing persons must, of course, be analysed with their dependence on this organization in mind. Besides, the ICMP is only one partner in the process of searching for and identifying the missing: national commissions and the ICRC also play key roles.<sup>8</sup> Furthermore, the main concern of those families is to find the missing and bury their beloved. While families and associations integrate, in their painful search, certain norms of behaviour that are favoured by the ICMP, it would nevertheless be inappropriate to ascribe too much prominence to international intervention in their overall experience.

### **The ICTY as embodiment of international justice**

While burying the dead and testifying in their name can both represent fundamental moral duties, only the ICTY as an institution has come to be identified in Bosnia with certain values and goals. The judgment of war criminals and international criminal justice are massively related to The Hague Tribunal, also known simply as the 'Tribunal'. Though clearly identified as an institution, The Hague Tribunal is also evaluated from a moral perspective. The main characteristic of the reception of The Hague Tribunal is that it occupies a very specific place among Bosnians: it is one of the rare institutions that is described or experienced in moral terms and has overcome the strong divide between politics and morals. Unlike humanitarian aid, the Tribunal can be evaluated according to independent moral criteria. Furthermore, the categories of international law, such as the distinction between combatant and non-combatant, clearly frame the moral denunciation of war or the call for justice of victim associations.<sup>9</sup>

The Hague Tribunal is not, of course, exempt from interpretations in political terms. The view that the Tribunal is a political institution that merely masks power politics (primarily those of the

Americans) is quite widespread (mainly among Serbs in RS). This view is not, however, as widespread as it is concerning humanitarian aid. Furthermore, even when it is voiced, the view that the Tribunal is political is not incompatible with a moral description of one's experience of it as a witness. On the Bosniac side, where the ICTY finds broad support, it can be argued that, for the 'Party for Democratic Action' (SDA, the main Bosniac political party), support for the ICTY is part of a political strategy (especially in relation to the lawsuit for genocide against Yugoslavia). With few exceptions, however, most Bosniac victims support the ICTY not as part of a political calculation but as an expression of vital moral norms. They seek in the ICTY proof that evil cannot prevail and a means for restoring a moral order that the war shattered. Their relationship to the ICTY, though seen as distant, is a matter of moral faith and not of political calculation (Delpla, 2006a).

Not only does The Hague Tribunal meet certain moral expectations, but also one's personal relationship to it, mainly as a witness, is described largely in moral terms, which means that moral predicates are, in the case of the Tribunal, applied not only to persons (investigators, judges, etc.) but also to decisions and procedures. In accordance with studies showing that prosecution witnesses have moral reasons for testifying (Stover, 2004), most witnesses on both sides, whether for the prosecution or the defence,<sup>10</sup> went to The Hague to testify for moral reasons and describe their testimony both as requiring moral qualities and, for a majority of them, as bringing moral satisfaction. The relationship between direct experience and moral judgement in the case of the ICTY is the opposite of that of humanitarian aid. While humanitarian aid is deemed to be ethical by distant television viewers, it is no longer the case for direct beneficiaries. Among Bosnians I interviewed who had testified in The Hague, most Bosniacs kept or reinforced the favourable view they had of the Tribunal before going there, roughly a third of the Serbs kept negative prejudices about the Tribunal, and two-thirds either kept an already positive opinion of the Tribunal or, for the most part, describe their experience as one of losing prejudices against an institution that favourably impressed them.

This does not mean, however, that the categories structuring the denunciation of most types of international intervention do not apply to the ICTY. For instance, according to a view of morals as incompatible with economic interest, when the ICTY's procedures are interpreted in terms of trade-offs and bargaining (in the case of

guilty pleas), they cease to represent justice (Arnautovic and Hodzic, 2004). Bosnians of all nations, whether victims, witnesses or convicted criminals, all see in this sort of bargaining a mere calculation of interest without any moral significance.

More generally, the ICTY is evaluated against the background of a strong condemnation of international politics, which it leaves unchanged. Its credibility depends on its capacity to distinguish itself from such politics. This general rejection of international politics significantly affects the reception of the ICTY in Bosnia. Foreign politicians are held responsible for the war in Bosnia, to various degrees, especially for the siege of Sarajevo and the massacre of Srebrenica. Therefore, many Bosnians think that the ICTY should also judge those who are truly and primarily responsible for those crimes, citing the French, American and Dutch governments. Such a background partially explains some differences among Bosniacs: the more international forces were present during the war, as in Sarajevo and in Srebrenica (and unlike in Prijedor), the more victims denounce the international community and the less the ICTY is likely to fulfil their call for justice. The less the war took place under international control and the more international intervention has been considered as useful, the more the ICTY is likely to meet Bosnians' expectations. This is the case in Prijedor, where foreign journalists and international pressure led to the closing of the camps: the attitude of Bosniacs and Serbs towards the Tribunal is not complicated by the view that the ICTY should also judge international political figures. The opinion that the Tribunal should judge those who are most responsible for the war, to wit, international political leaders, while quite frequent among Sarajevans and Bosniacs from Srebrenica, is all but absent in Prijedor.

These regional differences, reflecting the way different Bosnians spent the war, have significant consequences in the general framing of one's existential and moral judgements. Bosniacs in general are very disappointed and often angry at the sentences pronounced in The Hague, which they deem too clement, especially in the cases of Dragan Erdemovic, a Croat soldier who was sentenced to five years in prison after pleading guilty to killing 70 Muslims in Srebrenica, and of Biljana Plavsic, a former Serb political leader who was sentenced to 11 years in prison. Those sentences are commonly interpreted by Sarajevans and by Bosniacs from Srebrenica according to this existential topos of the fall in the hierarchy of humanity. According to them, so few years for so many crimes, amounting to

only a few months or even days per victim, symbolize the worthlessness of Bosniac lives. The Bosniacs in Prijedor also stress such a disproportion between the crime and the punishment, but do not draw the conclusion that this disproportion shows that Bosniac lives count for nothing. This sort of observation, though based on subtle nuances, tends to show that the aforementioned feeling of existential worthlessness is more a reflection of the conditions under which those from enclaves spent the war alongside an international presence than it is the consequence of a long-term history in which Balkan peoples were mere pawns in international rivalries.

The difference between Prijedor on the one hand, and Sarajevo and Srebrenica on the other, is even more manifest if we compare historical and judicial truth. The ICTY has significantly contributed to establishing the facts about the Prijedor camps and the Srebrenica massacre. In both cases, in accordance with ICTY procedures, witnesses have played a significant role in the establishment of the truth. The ICTY narrative of the events in Prijedor, which is largely based on the accounts of victims and witnesses, remains much the same as accounts heard outside the courtroom. Conversely, there are significant differences between the narrative of events in Srebrenica according to the ICTY and that given by the victims and witnesses: while the ICTY only judges criminal responsibility, victims describe not only the Serb attack but also the failures and faults of the Dutch Blue Helmets (Suljagic, 2005). The truth that victims seek includes international responsibility, which remains outside the scope of the Tribunal's competence, opening a gap between the truth of the victim or the witness and that of the judge.

### **Concluding remarks**

Several factors contributing to the framing of moral judgements on international interventions can be derived from this consideration of Bosnian perspectives: among them, the experience of aid and wartime conditions; the comparison between international interventions and the national state; and the restoration of moral agency. Though there are discontinuities, even oppositions, of judgement between internationals and locals, but also among various Bosnians, concerning international aid, these differences do not open the way to moral relativism. They reflect, it is true, a long-term historical heritage of foreign presence and intervention in the region, and particularly a communist heritage of foreign and domestic politics, but other factors are central.

(1) These discontinuities primarily reflect differences of experience between donors and recipients, and among different types of recipients: the conditions in which one spent the war, with or without international presence, strongly determines the framework of one's existential and moral judgements. These conditions also determine when moral predicates do or do not apply to international interventions. Indeed, the interventions that are qualified in moral terms did not take place during the war, or only for a very short time and with visible results. Foreign journalists are considered as saviours by Bosniacs in Prijedor, but they are the target of the same criticisms as other internationals in Sarajevo, where the siege lasted more than three years. The institutions that benefit from a certain credibility were not present in Bosnia during the war. Besides, the loss of credibility is related both to people's war-time experiences and to the various negative outcomes they witnessed: stealing, misuse of aid and a lack of tangible results. The possible waste or misuse of money by the ICTY is distant enough to go unnoticed, but the way Bosnians judge the Tribunal varies with the number of arrests carried out in their municipality or region. Likewise, the results obtained by the ICMP in terms of identification seem to silence such criticisms.

(2) Another determining factor in the appreciation of international interventions is the comparison drawn by Bosnians between foreign interventions, on the one hand, and the functions of the state or the achievement of the communist regime, on the other. There is a common belief among Bosnians that one of the major failures of the communist regime was its concealment of mass graves and the inappropriate judgments of war crimes following the Second World War. It is noticeable that the ICMP and the ICTY fulfil functions that were not achieved by the communist regime. Besides, the more Bosnians consider that war crimes should be judged by national and local courts, the more they distrust the ICTY; conversely, the more they distrust the national judiciary system, the more they support the ICTY. By contrast, NGOs and international organizations are most often criticized when they mimic state functions, such as those of providing medical care or reconstruction, without providing jobs or long-term social benefits.

(3) Finally, the ICMP and the ICTY, which are both objects of positive moral judgements, also represent for Bosnians a way to fulfil certain moral duties and to restore their moral agency. Identifying the missing or judging war criminals are not matters of direct utility

or necessity, at least not in the way that food or shelter are; they do not bring any direct benefit to a person other than what they achieve. In the case of witnesses, testifying is a matter of choice and not of necessity. Though it should be compared with other situations inside and outside Bosnia before larger conclusions are drawn, an unexpected factor of continuity between the perspective of donors and that of recipients is that interventions are praised when they contribute to an affirmation of one's moral agency.

## Notes

- 1 The published work of some philosophers offers a good example of this naive view, according to which assistance equals saving strangers' lives (Singer, 1972; Unger, 1996). For a nuanced and positive account of the ethics of television viewers and NGO donors, see Boltanski (1993). Concerning the representation of the war in Bosnia and humanitarian interventions provided by the media in France and England, see Cohen (1996) and Gow *et al.* (1996).
- 2 The study on which this chapter is based would not have been possible without the friendly support of Aida Muratovic, Dzevad Osmanovic, Vedran Grahovac and Nenad Dejanovic. My warm thanks go to all those who kindly took their time to help this study, whether on a personal or more official level in the work of their associations.
- 3 I will mainly base this article on several studies on the reception of humanitarian aid (Delpla, 2003); on the attitudes of Bosnians towards return (Delpla, 2004b); on the reception of The Hague Tribunal (Delpla, 2004a, 2006a); and on the search for missing persons (Delpla, 2006b). For more detailed analysis and references, I refer the reader to these articles. The fieldwork focused on victim associations was carried out from April to July 2002 and in September 2004, mainly in the Sarajevo area. The study on Hague witnesses includes three neighbouring municipalities, Prijedor, which is located in Republika Srpska, Sanski Most and Kljuc, which are located in the Croat-Muslim federation.
- 4 Indeed, interviewing people on international interventions that they had not experienced amounted to gathering general opinions comparable to what can be found in the media. Qualitative work has limited additional value in this case. By contrast, a direct experience of those interventions leads to deeper insights that do not always reflect media coverage. This is particularly striking in the case of Serbs who testified in The Hague, whose views about the Tribunal significantly depart from those of the majority of Serbs as represented in polls. Besides, it is not rare for one to express opinions which are in contrast with one's actions, when, for instance, one displays nationalist signs while promoting tolerance and multiculturalism, or when one complains about the ICTY and yet is ready to go and testify for a first or second time. Moral judgements, which I analyse here, include both beliefs and practices and can therefore be different from opinions.

- 5 The expression 'humanitarian intervention' is here employed according to the French use, i.e. 'interventions to provide humanitarian aid' and not '(military) interventions to stop massive violation of human rights', according to a usage which has become prevalent in the US. Hence, in this chapter, humanitarian intervention remains distinct from military intervention, as was the case in Bosnia, where humanitarian intervention was presented as an alternative to a military intervention.
- 6 The most vocal criticisms of this type against the ICMP are expressed by Jasmin Odobasic, vice-president of the Federal Commission for Missing Persons. Likewise, it can be heard that the individuals working in the ICTY are only there for the money (lawyers, in particular). Those views remain very scarce.
- 7 The autopsies carried out by the ICTY research the causes of death and not primarily the identity of the victim. Most often, group identification is sufficient to prove war crimes, crimes against humanity or genocide if it shows that victims were children, women, or were all from the same nationality.
- 8 The search for, and exhumation of, mass graves is mainly the task of the national commissions. Many exhumations were carried out by the ICTY, primarily in Srebrenica. The ICRC remains a key agent in establishing lists of missing persons and in managing relations with families.
- 9 This does not mean that the categories of justice espoused by international promoters of the ICTY and those held by Bosnian victims and witnesses entirely overlap.
- 10 I have interviewed forty Bosnians who testified in trials held in The Hague in which the defendants were Serbs (except in two cases). Among the twenty-three witnesses who testified for the prosecution, twenty-two were Bosniacs and one was Serb; among the seventeen witnesses for the defence, sixteen were Serbs and one was Bosniac.

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**Part III**

**Techniques and tactics  
of ethical intervention**



# 8 The Other-regarding ethics of the 'empire in denial'

*David Chandler*

## Introduction

Until relatively recently, Western foreign policy as pursued by major states and international institutions was cohered by the project of furthering the national interest. National interests were conceived in terms of the geo-political framework of the cold war, in which development and financial aid were granted on the basis of the political allegiances of governing elites or on their ability to pay back loans from international financial institutions. In the 1990s, the policies of both national governments and international institutions underwent substantial changes. The pursuit of 'narrow' views of national and financial interest was transformed by the development of what were seen as 'ethical' policy-making frameworks. Broader, 'people-centred', security and development concerns came to the fore which questioned established foreign policy approaches and the structural adjustment policies of the World Bank and the IMF. Emphasis was, instead, placed on promoting the democracy, human rights, and social and welfare needs of other populations.

This chapter argues that, since the end of the 1990s, we have witnessed a convergence of both national foreign policy and international financial institutional frameworks, a new shared agenda, which has taken the human-centred developments of 'ethical foreign policy' to a new level of engagement with non-Western states, one where interest-based frameworks of understanding the international sphere no longer appear to have any firm purchase. Whether the issue of concern is post-9/11 security threats or the pursuit of the poverty and development agenda, the policies forwarded tend to focus on mechanisms of capacity-building and social empowerment, targeted at non-Western states and societies. The needs of non-Western states and societies would seem to have assumed centre

stage. Today, the language of ‘interests’ has been superseded by that of Other-regarding ethics which appears to have taken the politics of power and interests out of foreign policy.

For some commentators, the focus on the needs of others is, indeed, potentially empowering for non-Western states and their citizens, many of whom are currently excluded from the new globalizing order; for others, the language of capacity-building and empowerment merely hides the traditional practices of empire. This chapter analyses how Other-regarding practices constitute highly invasive forms of external regulation, but suggests that these practices cannot be fully understood merely as mechanisms designed to enforce the traditional self-interest of Western actors. Instead, the new centrality of the ‘Other’ in ethical foreign policy practices is considered as a central construct of Empire in Denial: the attempt by Western states and international institutions to deny the power that they wield and to evade accountability for its exercise.

### **From Schmitt to Lévinas: the primacy of the Other**

In 2005 it was not the war on terror which occupied the international summits and meetings of the European Union, the UN, the World Bank, the IMF, the G8 and the World Trade Organization, but the global causes of poverty reduction, debt cancellation and international aid. The focus on the UN’s Millennium Development Goals and the international campaign to ‘Make Poverty History’ has mobilized people, non-governmental organizations, governments and international institutions around an ethical foreign policy that has been much less divisive than that of humanitarian war and intervention. In Britain alone, ten million people bought white wristbands, while across the globe it is estimated that three billion people watched the Live 8 concerts (Hertz, 2005). It would seem that the international agenda had been transformed in a way that would have been unlikely according to traditional views of foreign policy priorities.

In traditional political understandings of international relations, the formulation of foreign policy was based upon the self-interest of states and the international sphere was one in which these interests were articulated (see, for example, the key texts of post-Second World War international relations theory, Morgenthau, 1993; Waltz, 1979; Bull, 1995). Conceptual frameworks for analysing foreign policy and international relations were based on clear conceptions of power politics, the interests of states, and calculations of geo-

political, strategic and economic interests. States were understood as the political subjects of international relations and to be acting on a rationalist understanding of their interests (Smith, 2001). The interests of states were, therefore, particularist and exclusivist ones, derived from their own societies, and potentially counter-posed to those of other states in a 'friend/enemy' framework which Carl Schmitt understood to be the essence of politics (Schmitt, 1976: 35). For Schmitt, it was the fear of the Other, the potential threat posed by the Other, which generated political community and constituted and legitimized political authority. There could be no international politics, no inclusive national Self without the excluded foreign Other (see Mouffe, 2005).

Today, the international sphere is no longer understood as constructed in the relationship of Self and Other. The Other has been transformed and is now increasingly represented as both the agent and object of foreign policy, while the Self has been greatly diminished. 'Our interests' or 'national interests' are no longer central to the construction or the legitimization of foreign policy practices. Where national interests appear in the speeches of Western leaders and in policy documents, they are generally constructed as secondary, achieved as the by-product of meeting the security and development needs of the Other. There is no longer a context of 'friend/enemy': the Other – the object of foreign policy – is more likely to be defined on the basis of needs. Even where the language of threats is used, the threat is not a traditional one but is framed in the context of unmet needs, the threat stemming from the weakness and incapacity of the Other (see, for example, Abrahamsen, 2005). Even more remarkably, the Other has increasingly assumed the role of the subject or agent of policy, with 'pro-poor' policy-making, African 'leadership' and 'country ownership' of World Bank and IMF poverty-reduction strategies.

The Other has become central to frameworks of international policy-making at precisely the point when Western leadership faces the collapse of obstacles to the spread of democracy and the market with the end of the cold war. Yet since 1989, it would appear that the victory of the West has been increasingly talked down. Rather than the possibilities that have opened up with 'The End of History' – the collapse of alternatives to Western hegemony – it seems that just at the point where the promissory notes are to be cashed, the game has changed (Fukuyama, 1989). The ideological mainstays of the cold war, the belief in the capacities for political and economic progress, have been increasingly undermined and disparaged. It is



not just that democracy and development have been reinterpreted and ambitions lowered to take into account the newly discovered constraints of global norms of good governance and the need for environmental and social sustainability – even the location of power and responsibility appear to have shifted. Rather than grasp the opportunities to positively reshape a new international order in the wake of cold war division, Western states and international institutions would appear to be embarrassed by their power and influence.

Rather than assert power in a confident fashion, the West's interaction with the non-Western world takes the form of a denial. It will be suggested below that Western denial of responsibility and accountability in relation to the non-Western world is resulting in the development of new mechanisms of intervention and regulation which separate policy-making power from political discussion and debate. Agency and responsibility are located increasingly in the Other – non-Western states and societies – while the power of Western states and international institutions is increasingly understated. In this context of denial and evasion, it would appear that Western states and international institutions have taken postmodern ethics to heart in their claims to be acting on the basis of their 'responsibilities to the Other' rather than being guided by self-interest (for example, Der Derian, 1995). The leading theorist of 'Other-regarding' ethics in the twentieth century was Emmanuel Lévinas who argued that legitimacy should be derived from our 'fear *for* the Other': that the rights of a subject derived from ethical responsibilities to the Other (Lévinas, 1989: 82). For Lévinas, ethics preceded politics and – in the formulation of putting responsibilities to the Other prior to the freedom of the Self – he inverted Schmitt's conception of foreign policy-making and political identity. As David Campbell notes: 'Lévinas's thought is appealing for rethinking the question of responsibility . . . because it maintains that there is no circumstance under which we could declare that it was not our concern' (Campbell, 1998b: 176). Putting responsibility before self-interest and ethics prior to politics fundamentally reworks traditional conceptions of foreign policy priorities.

Western states and international institutions appear less as external or coercive forces and more as facilitators, empowerers and capacity-builders. This form of ethical foreign policy has obfuscated the projection of Western power – making the projection of power appear as an act of empowerment rather than of domination – and, in the process, has transformed the appearance of the international sphere from one of power, coercion and contestation into one where it

appears that non-Western states have 'ownership' of policies that are externally imposed and where it is the poorest and most excluded sections of non-Western societies that are the agents of policy.

### **More needs, less interests and less accountability**

With the end of the cold war, questions were posed over the legitimization of Western hegemonic power in the international sphere. Security interests, so dominant in the cold war – in a clearly expressed struggle between two different superpower-led blocs with different ideological aims – waned as a justification for interventionist and regulatory frameworks through which the exercise of Western power could be articulated (see, for example, Laïdi, 1998). Problems of the articulation of a positive self-interest, as opposed to the expression of self-interest as a struggle for cold war survival, were difficult to address for Western political elites. Western governments and leading political parties had increasingly little connection with their own societies and were undergoing their own struggle to reconceive their political purpose and coherence in the wake of the crumbling political framework of Left and Right. In this context, a positive political programme that could allow Western elites to take political responsibility for their international dominance proved illusive.

In the cold war period, national interests in the West were fairly easily articulated against the security threat of the communist Other (Laïdi, 1998; Campbell, 1998a). A diverse range of values and aspirations were tied into this dichotomy of 'us' and 'them' and the underlying problems of articulating a positive collective vision (expressed clearly in the anti-Vietnam war protests and 'Culture Wars' from the late 1960s onwards) were ameliorated as long as the cold war framework held (see Coker, 2001). With the end of the cold war, it was much more difficult to both substantiate the basis of the common interests expressed in national foreign policy-making and the basis upon which any distinction could be made between an 'us' and a 'them'.

In the absence of the geo-political divide of the cold war, the foreign policy interests of Western political elites increasingly appeared as narrow ones of self-interest: the narrow political concerns of supporting political allies in other countries or the promotion of the interests of big banks and corporations in protecting their loans and investments. The everyday concerns and interests of foreign policy-makers appeared to be very distant from those of the public. Nevertheless, the international sphere became increasingly central to

the self-identity of Western governments. It was in relation to the international that political elites sought to address the question of mission and coherence that was increasingly problematic in the domestic sphere. In the 1990s, concerns of human rights and practices of humanitarian intervention, particularly in the Balkans, made international policy-making central to the process of defining the values of US and British governments. In the words of Michael Ignatieff:

when policy was driven by moral motives, it was often driven by narcissism. We intervened not only to save others, but to save ourselves, or rather an image of ourselves as defenders of universal decencies. We wanted to show that the West 'meant' something. (1998: 95)

It was the distance that the international sphere provided that enabled values and higher aims to be more easily articulated (see Morgenthau, 1993: 49). Governments could declare their commitments to ethical causes which appeared to remove the accusation of petty self-interestedness and restore a sense of larger purpose (see Chandler, 2003). At the same time, the distance involved meant that there was less accountability if ethical foreign policy interventions failed to achieve their aims. As Ignatieff described, the attraction of ethical foreign policy was that there was always the get-out clause, the moral exculpation of 'we tried but they failed' (1998: 99).

The experience of using foreign policy to achieve largely self-serving domestic ends – of outlining a larger purpose and mission to government – was a mixed one. The distance and mediations of the international sphere were not adequate to enable governments to entirely avoid responsibility for the consequences of their interventions. In fact, the attempt to argue that 'we tried but they failed' was met with demands that we should not 'allow' them to fail and that the ethical imperative of meeting the needs of Others should not be restricted by outdated views of international law and should extend beyond impartial aid provision or neutral peacekeeping and even beyond a limited commitment to the 'risk-free' use of armed forces which prevented the deployment of ground forces (see, for example, Kaldor, 1998; Ignatieff, 2000; Wheeler, 2000). The clear power imbalance between Western powers and non-Western states made it difficult to avoid 'mission creep' – the extension of overt forms of regulatory control. Yet the more international mandates

and remits were extended, the more the problems of matching ethical aspirations to results in practice were exposed. The 1990s' experience of Somalia, Bosnia, and then of Kosovo, demonstrated the problems of taking direct responsibility for the outcomes of international intervention (a lesson that was reinforced with the debacle of the Coalition Provisional Administration in Iraq).

The ethical discourse of the 1990s was still clearly a discourse of 'us' and 'them' and suggested that only a select group of interventionist Western states were ethical enough to safeguard the interests of others (see also, Held, 1995: 232; Shaw, 1994: 180–1; Kaldor, 1998). The political responsibility was firmly placed on the shoulders of the intervening powers who inevitably failed to live up to the expectations generated by the rejection of traditional interests for Other-orientated ethical values. The defensive shift away from attempts to articulate interests merely resulted in strengthening the critique that it was the narrow self-interests of Western powers that prevented greater consistency in the practice of ethical foreign policy. In the 1990s, ethical foreign policy practices, particularly humanitarian intervention, came under sustained criticism for not being ethical enough. Not enough concern was held to be expressed with regard to intervening and providing support to fragile societies prior to collapse and civil conflict, and neither was there felt to be adequate concern paid to post-conflict reconstruction and peace-building. These concerns were broadly articulated in the Brahimi report on UN peacekeeping reform in 2000 (UN, 2000) and in the ICISS *Responsibility to Protect* report, at the end of 2001, which called for greater attention to the 'responsibility to prevent' and the 'responsibility to rebuild' (ICISS, 2001).

Since the late 1990s, the ethical grounding of 'liberal imperialism' has been challenged from within (Cooper, 2002). It has been Western states and international institutions that have made the running in shifting away from the antagonistic and divisive ethics of the 'interventionist' 1990s. In the 1990s, selected concerns of human rights and selective practices of humanitarian intervention seemed to conflict with Western self-interest and highlight these self-interests as a limiting factor. Other-regarding ethics in the following decade have recast the relations of Self and Other. The promises and aspirations on the part of the Western states, donors and international institutions have become much more ambitious than the selective ethical goals of the 1990s. In the following decade, the ethical claims multiplied exponentially, to 'saving Africa', 'eradicating poverty',

‘combating HIV/AIDS’ and ‘promoting education/health/women’s equality/youth rights everywhere’. In this extension of the object of need – in fact, in the universalizing of this object – there is the appearance, at least, of a genuinely global agenda based on the needs of ‘common humanity’. Central to this has been the merging of the self-interested concerns of security and the Other-regarding concerns of development and poverty reduction. This has led to the expansion of the ethical focus to the needs of a generalized Other.

The merging of development and security can be seen in the origination and the mainstreaming of the conception of ‘human security’ in the 1990s. This concept was first used in the holistic paradigm of human development, formulated by Mahbub ul Haq within the UN Development Programme (UNDP) and given expression in the Human Development Reports, first issued in 1990, and given intellectual foundation by Nobel Laureate Amartya Sen (see, for example, Sen, 1999). The United Nations Development Programme’s (UNDP) *Human Development Report 1994* was the first major international document to articulate the emerging consensus on the merging of security and development: the shift away from security perceived as the protection of Self- (national) interest to the needs (economic, health, environmental, security, etc.) of the Other (UNDP, 1994: 22–5). In the late 1990s, the human security approach was increasingly mainstreamed by national governments and international institutions. In 2001, Sen chaired the International Commission on Human Security established by the UN. The 2003 commission report, *Human Security Now*, asserted that human security was not merely about meeting the security needs of the Other rather than the Self, but about empowering the Other (UN, 2003: 2). With the merging of security and development in the discourse of human security, the relations of power and interest are erased as the ‘freedom’ and ‘empowerment’ of the Other take centre stage. As Gordon Brown, the UK government’s Chancellor of the Exchequer, has argued: ‘A century ago people talked of “What we could do to Africa”. Last century, it was “What can we do for Africa?” Now in 2006, we must ask what the developing world, empowered, can do for itself’ (Brown, 2006).

It is ‘fear *for* the Other’ as much as ‘fear *of* the Other’ that is alleged to drive the foreign policy of ethics rather than interests. The common aspect is that of fear, but this should not blind us to the fundamental difference between foreign policies driven by a rational state subject to meet politically and ideologically cohered ends, and foreign policy in which the policy maker has disappeared as a rational

subjective actor and merely reacts to the threats of the Other, or acts only as facilitator and empowerer with no articulated and clear agenda or mission of its own. The less clearly articulated any foreign policy aims are the more needs and threats blur into an amorphous mass of Otherness.

This explains the prevalent approach where all problems are related to each other: poverty leads to human rights vulnerability and instability; insecurity from war or terrorism undermines economic development; and good governance, which safeguards human rights, helps prevent conflict and overcome obstacles to development (UN, 2005: 5–6). Everyone is exposed to these risks and, therefore, all actors (state or non-state) share the same interest in addressing them. Acting in enlightened self-interest, therefore, means acknowledging the needs of Others. Global cooperation means that 'every country's policies take into account not only the needs of its own citizens but also the needs of others' (UN, 2005: 6).

The greater, and more universal, the needs of the Other, the less focus there has been upon the Western Self. Rather than coercively highlighting particular examples, ethical projections of Western power have shifted to highlighting much more general problems, such as 'failed' and 'failing' states, poverty and exclusion. The Other has become generalized, less as a Schmittian threat, more as a generalized Lévinasian need; a need that is so great that no country can alone take the responsibility for acting upon this ethical imperative. With the extension of 'needs' both the interests of Western powers and their particular or individual responsibility or accountability have been eroded.

### **From external relations to partners in governance**

The ethical goals expressed in the mantra of development, security and human rights are writ large and express the ethical imperative of responsibility to Others while lacking a concrete, high-profile focus that could entail a risk of more awkward questions being posed of Western governments. It seems that there is a division of responsibility; while the declaration of these ambitious goals is the task of government leaders, often made at inter-governmental forums, the translation of these abstract goals into policy is taken out of the political sphere of international relations. At the country-to-country level there has been a marked shift in emphasis away from foreign policy-making, or the articulation of clear external interests, to partnership assistance in the form of technical and administrative advice and

expertise in state-building, strengthening, empowering and capacity-building non-Western state institutions.

It is the need to externally transform the governance of non-Western states which is the central theme that emerges from the global needs-based agenda. As UK Prime Minister Tony Blair's Commission for Africa report, *Our Common Interest*, states:

Africa's history over the last fifty years has been blighted by two areas of weakness. These have been capacity – the ability to design and deliver policies; and accountability – how well a state answers to its people. Improvements in both are first and foremost the responsibility of African countries and people. But action by rich nations is essential too . . . Without progress in governance, all other reforms will have limited impact.

(CFA, 2005: 14)

The UN 2005 Sachs report on the implementation of the UN Millennium Development Goals similarly argued that poor governance in non-Western states and the lack of state capacity were the key reasons for ongoing problems in meeting the Goals and suggested greater attention to capacity-building state institutions (UNMP, 2005: 43). External capacity-building would, therefore, build on the aid given to countries that qualify for assistance under the US Millennium Challenge Account, have been involved in the HIPC process, are engaged in the New Partnership for Africa's Development (NEPAD) African Peer Review Mechanism (APRM), or have World Bank and IMF approval under the Poverty Reduction Strategy Papers (PRSP) process. As the UN notes:

However well crafted on paper, investment strategies to achieve the Millennium Development Goals will not work in practice unless supported by States with transparent, accountable systems of governance, grounded in the rule of law, encompassing civil and political as well as economic and social rights, and underpinned by accountable and efficient public administration. Many of the poorest countries will need major capacity-building investments to put in place and maintain the necessary infrastructure and to train and employ qualified personnel. But without good governance, strong institutions and a clear commitment to rooting out corruption and mismanagement wherever it is found, broader progress will prove elusive.

(UN, 2005: 13)

Partnerships, with the goal of good governance and the capacity-building of non-Western states, are the framework through which the pursuit of ethical aspirations assumes the form of consensual mechanisms of the empowerment of Others. In this framework it is assumed that there are no political 'interests' involved, in the case of either Western states, donors and institutions or non-Western states. The Commission for Africa calls for 'a new kind of partnership', one that is no longer based on conflicting interests but technocratic management: 'In the past, contractual and conditional approaches were tried, and failed. What we are suggesting is a new kind of development, based on mutual respect and solidarity, and rooted in a sound analysis of what actually works' (CFA, 2005: 17).

In this regard it is often held that '[d]onors must change their behaviour and support the national priorities of African governments rather than allowing their own procedures and special enthusiasms to undermine the building of a country's own capacity' (CFA, 2005: 14). New approaches to good governance are held to stand 'in marked contrast to the approach of the 1980s and much of the 1990s, when aid was often . . . aimed primarily at advancing the interests of the donor (CFA, 2005: 94). Aid was often 'tied', coming with a requirement to buy goods or services from the donor country, which often led to aid being expended on unsuitable or high-cost outlays (CFA, 2005: 92). As UK Secretary of State for International Development, Hilary Benn, stated in 2005, the key concern of the UK government was to 'make a clean break from past practice which sought to enforce particular policy choices' (Benn, 2005: 1). The UK Department for International Development has particularly emphasized the importance of intervention to 'support policy leadership by developing countries without imposing our own views' (DFID, 2005: iii):

In recent years the UK has been moving away from traditional approaches to conditionality. We believe that it is inappropriate and has proven to be ineffective for donors to impose policies on developing countries. Instead, we believe that successful aid relationships must be based on mutual commitment and dialogue, transparency and accountability.

(DFID, 2005: 4)

The Monterrey summit and subsequent UN documents have been very quick to highlight that 'each developing country has primary responsibility for its own development' (for example, UN, 2005: 12).



'Country ownership' has been central to post-1990s calls for ethical people-centred policy interventions. As the Commission for Africa report claims in its introduction:

Our starting point was the recognition that Africa must drive its own development. Rich nations should support that, because it is in our common interest to make the world a more prosperous and secure place . . . But what is clear is that if Africa does not create the right conditions for development, then any amount of outside support will fail.

(CFA, 2005: 1)

The idea of African 'ownership' through international 'partnership' has been the motivating factor behind regional as well as national initiatives. In this regard, the New Partnership for African Development, established in 2001, has been widely welcomed by Western governments as 'the most significant thing that has come out of Africa . . . because it is an African made, African owned and African driven process' (Benn, 2003: 7). The US aid and development policies operate on a similar basis of promoting external engagement as a product of developing country-led partnership. Partnership is the key principle of the Millennium Challenge Account (MCA), established in 2004, and is heralded as one of the lessons learned from development aid over the past fifty years:

Operate as Partners: Working closely with the MCC [Millennium Challenge Corporation], countries that receive MCA assistance will be responsible for identifying the greatest barriers to their own development, ensuring civil society participation, and developing an MCA program. MCA participation will require a high-level commitment from the host government. Each MCA country will enter into a public Compact with the MCC that includes a multi-year plan for achieving development objectives and identifies the responsibilities of each partner in achieving those objectives.

(MCA, 2005)

In the past, the relationship of external donors and non-Western states was a contractual one between two or more 'partners'. Contractual relations at the level of state governments made the lending and grant conditions the subject of international relations, i.e., they were officially negotiated between independent contracting

subjects. This clarity and separation of international and domestic accountability has become increasingly blurred. Graham Harrison has used the term 'post-conditionality' to describe this blurring of the 'outside' and the 'inside' (2001):

post-conditionality [is] one aspect of the politics of adjustment, a more encompassing framework which is based on the ongoing power of the IFIs [international financial institutions] by virtue of the 'permanent crisis' of indebtedness . . . post-conditionality is . . . a useful characterization of a set of significant developments within donor-state relations, based on . . . forms of donor intervention which are not merely based on the threat of sanction which is at the heart of the conditionality mechanism.

(Harrison, 2001: 658)

Overt and clearly stated contractual relations between non-Western states and Western states and international institutions, such as those under the World Bank and IMF structural adjustment programmes, open the relationship to political accountability, bringing responsibility to bear on both the non-Western government and the bilateral or international donor. The Commission for Africa argues that:

We do not advocate a partnership where there is a narrow set of specific contracts between African countries and outside bodies. That risks becoming adversarial and unpredictable and does not show the trust and mutual respect which is vital for a deep partnership to work. Similarly a partnership based on heavy conditionality set by outsiders will fail. It too is destined to lose the solidarity which should bind a partnership together. The binding forces must be solidarity and mutual respect.

(CFA, 2005: 89)

Here, the informal mechanisms of post-conditionality are argued for on the grounds of trust and respect for the Other, but the Commission's report also suggests other grounds for avoiding the formal contractual relationship – the fact that 'excessive conditionality together with demands for constant reporting risk making African governments feel more accountable to foreign donors than to their own people' (CFA, 2005: 92). If non-Western governments 'felt' that they were more accountable to external actors and were highly conscious of their limited capacity to further the interests of

their societies against these external pressures, this was because the mechanisms of external pressure were clear. Under more informal mechanisms, where external pressures operate within the policy-making processes of the non-Western state, rather than at the level of sovereignty – where governments have to publicly confront external actors – political clarification of the role of external influence is prevented.

External intervention is exercised in ways that blur traditional understandings of external and internal interests. Donor engagement no longer confronts non-Western states solely as an external imposition but as internal capacity-building, through a much closer and more intimate engagement with governing institutions, especially Ministries of Finance. Harrison acutely observes that the orthodox internal–external distinctions are less useful and that the ‘national–international boundary has been rendered so much more porous’ (2001: 661). The extension of the ‘non-political’ technocratic ethics of the World Bank to the fields of good governance and state capacity-building has meant the depoliticizing of, and external regulatory intervention in, areas once considered to be the preserve of domestic regimes.

External regimes of governance have become internalized through state capacity-building in conjunction with debt reduction or increases in external aid in exchange for a more direct role for external actors in domestic policy processes. For example, in July 2005, the Paris Club of rich Western countries announced the biggest single debt relief in Africa’s history with a plan to exchange Nigeria’s foreign debt for the international regulation of its government’s spending. Central to this was the establishment of a key policy coordination role for Nigeria’s Millennium Development Committee. The committee, chaired by the president, Olusegun Obasanjo, internationalized the domestic policy-making process in Nigeria by including representatives of the World Bank and IMF along with representatives from international NGOs Action Aid and Oxfam (Elliott and Wintour, 2005). In the case of international development, capacity-building has often been focused on the Ministry of Finance. In Uganda and Tanzania, for example, the Ministry of Finance has received the lion’s share of external funding for administrative reform programmes which have focused both on ‘soft’ capacities, i.e. the administrative and technical skills training of personnel, and ‘hard’ capacities, i.e. information systems and technologies. This external support has enabled the Finance Ministry to become the most powerful sector of government in terms of capacity and influence

(the Ministries of the Interior, in contrast, lack computerized systems and access to reliable information) (Harrison, 2001: 664–6). It is the sectors of government that have been capacity-built which are, then, the main conduits for external influence, leading the negotiations with the international financial institutions and being the authorizing authorities for all project and programme funding regardless of the policy sector involved.

The process of capacity-building goes beyond the restructuring of government ministries to direct regulatory control over the policy-making process itself:

In fact, rather than conceptualizing donor power as a strong external force on the state, it would be more useful to conceive of donors as part of the state itself. This is not just because so much of the budgeting process is contingent on the receipt of donor finance, but also because of the way programmes and even specific policies are designed and executed . . . [D]onor sub-groups meet [with government officials] every fortnight or every month . . . ; there is a group for each major industry which receives donor funding . . . the purposes of which are to discuss policy progress, monitor the disbursement of funds, and consider further funding options. These meetings have become a routine part of the way the government works . . .

(Harrison, 2001: 669)

In this context, it is difficult to conceive of the institutions of many non-Western states as having a 'domestic' existence. The civil service is trained and assisted by external experts and produces reports not just for government ministers but also for external donors and international institutions and foreign states. The government ministries develop policy in close cooperation with external bodies and often with the policy aim of influencing these authorities to continue or to extend their assistance. The institutions and mechanisms of governance of non-Western states are often no longer in any sense separable from the international mechanisms of governance with which they are engaged.

As Harrison notes, the focus on good governance and non-Western state capacity as the key to development and security 'lays culpability for the general failure of adjustment on the states themselves, not on SAP [Structural Adjustment Programmes], or the nature of global economic change' (2001: 660). As Western governments and international institutions, then, have little responsibility for political

decision-making or accountability for outcomes, the everyday management of foreign policy and foreign development aid is a task of bureaucrats and administrative experts. And, if they fail, this does not reflect on the Western states and institutions involved. As Michael Ignatieff argues in his more recent work, with Simon Chesterman and Ramesh Thakur:

States cannot be made to work from the outside. International assistance may be necessary, but it is never sufficient to establish institutions that are legitimate and sustainable . . . international action should be seen first and foremost as facilitating local processes, providing resources and creating the space for local actors . . .

(Chesterman *et al.*, 2005b: 384)

For these authors the ‘key insight is that states cannot be made to work from the outside’ and they stress that ‘for international actors, this is a humbling conclusion’ which puts the emphasis on the local actors who must ‘seize responsibility – “ownership” in the present jargon’ (Chesterman *et al.*, 2005a: 9). The emphasis is on non-Western states to bear the accountability in the case of their failure to live up to the ambitious ethical claims made by Western states and international institutions.

The projection of Western power takes the form of a non-political discourse, where political interests are held to be subservient to the technical expertise of administration, focused on the objective of facilitating, empowering and capacity-building non-Western states. Most importantly, the desire to deny Western influence and agency means that non-Western state institutions are increasingly colonized by external policy actors as international institutions seek to informalize their role in policy-making. This creates artificial state institutions that have a much more attenuated relationship with their own societies, but also little influence with regard to policy-negotiations with external actors. The close liaison between international institutions and international NGOs and leading government ministries has been driven by the informalization of the regulatory process and the desire to avoid an open inter-governmental discussion of economic policy. It is this desire for evasion that would appear to be driving the shift from international to domestic discussion and the focus on state capacity, rather than any shift in the content of the policies or any desire to open up policy-making to wider consultation and involvement.

Despite the rhetoric of 'country ownership' there has been little change in the basic policy approach of international institutions, or, of course, in the power relations involved. All national PRSPs must first be screened by joint-staff assessments from the staff of the World Bank and IMF. The approval of PRSPs is the fundamental condition for securing credit extensions, grants and debt relief from other donors, as well as new credits under the IMF's Poverty Reduction and Growth Facility (PRGF) – the successor to the Enhanced Structural Adjustment Facility – and the World Bank's Poverty Reduction Support Credits (Rowden and Irama, 2004: 7–12). It would appear that the state capacity-building impetus stems from the need to present the process as one of partnership or poor state 'leadership' and 'country ownership' rather than Western imposition.

The shift from the projection of Western influence as a coercive external relation to a relationship of domestic partnership removes the emphasis on external accountability for policy and its outcomes. This has made state-building the central sphere of intervention for Western assertions of ethical purpose or mission and, in the course of this process, both the foreign policy-making of Western states and the political sphere of non-Western states have been increasingly reduced to narrow technocratic and administrative concerns. The governance sphere of non-Western states is both the target for Western Other-regarding interventions and the excuse for ethical rhetoric not being matched by reality.

### **The participatory imperative**

Power legitimated on the basis of the needs of the Other has resulted in new mechanisms and practices of legitimization. Many of these have sprung from the participatory imperative, the externally imposed need not just to claim 'country ownership' but also to demonstrate that the policies that are 'owned' are derived from the participation and consultation of those in need. Country-ownership, it appears, is not enough to distance policy-making in the West from the responsibilities of power. At the same time as non-Western states are becoming increasingly infiltrated by external agencies and core areas of governance internationalized, the ethical discourse of Western regulation stresses the 'opening up of new spaces for participation' and the increasing accountability and transparency of non-Western state policy-making. While good governance is increasingly being redefined as pro-poor accountability and efficiency, politics is increasingly displaced in non-Western states by externally framed spending

plans which insist on 'needs-based' and 'goal-orientated' policy-making. Ironically, the more artificial the 'partnership' between the international institutions and the non-Western state, the more the process of denial is extended, pushing the dynamic of capacity-building and empowerment into societies themselves.

In the past, the demand for public consultation and participation in policy-making was proclaimed by social movements that sought to challenge the interests of powerful elites and to forward popular interests. Today, it is Western states and international financial institutions that are leading the demand for the extension of participation in the political process, for transparency and for consultation. It is important to recognize that the participatory framework which is being institutionalized under external guidance has little connection with forms of political participation being generated from within non-Western states themselves. The shift towards participatory regimes of needs assessment, policy consultation and monitoring of implementation comes from external institutions seeking to legitimize their technocratic agendas ethically informed by the focus on those socially and economically excluded. As the UN Sachs report outlines, the integration of poverty reduction with the Millennium Development Goals necessitates the mapping out of needs according to locality and gender, followed by needs assessments which then have to be worked up into a framework of policy deliverables, the process from start to finish, depending on an accountable and efficient public administration which involves participation, 'especially by poor people' (UNMP, 2005: 36).

The 'Other-regarding' ethics of Empire in Denial insist that today's regulatory 'package is not to be applied in a top-down fashion', but instead be 'designed locally with strong participation' and even emphasizes 'the importance of culture in shaping development goals and instruments' (CFA, 2005: 95). Rather than an external influence on the affairs of non-Western governments, pro-poor intervention is couched in the language of empowerment, against the 'interests' of both Western 'experts' and non-Western governing elites and favouring the traditionally excluded voices of women and youth (CFA, 2005: 141). International NGOs, such as Oxfam, Save the Children and Concern International, have been heavily supported by bilateral donors, such as USAID and DFID, in their capacity-building work. Participatory poverty assessments (PPAs) and poverty and social impact analyses (PSIAs) are often held to inform policy practices and put the needs of 'the poor' to the forefront. As Jeremy

Gould and Julia Ojanen note: 'The legitimacy of post-SAP policies is being sought through the establishment of direct channels of communication between the policy elite and "the poor" – a sort of "fast-track" democracy based on localized forms of "participatory" and "consultative" interaction' (2003: 15).

The participatory framework, focused on consensus around technical 'pro-poor' approaches, ensures that little disagreement is possible. As David Craig and Doug Porter note:

PRSPs provide a unique framing of poverty apparently amenable to diverse, often conflicting interests – in their preparation, ministries of finance sit together with ministries of local government, education or social welfare, and bilateral donors and IFIs commune with representatives of local and international NGOs, engineering contractors and private entrepreneurs. But the PRSP aims to be far more than a forum for exchange about priorities; rather, in practice, PRSPs must be administered according to globally prescribed budget management and accountability arrangements through which available resources are, and are seen to be, converted into measurable changes in agreed indicators of need. PRSP re-framing of poverty, via the combination of poverty assessments, macro-planning and budgeting with debt relief, plurally-funded poverty alleviation approaches and decentralized governance is now a fact of life in the bulk of poor countries . . .

(2002: 10)

The context and the top-down nature of the participatory imperatives would have to be ignored for these schemes to be made out to be more than decorative measures. As discussed above, the framework is premised on the prior acceptance of a range of policies and reforms deemed necessary for debt sustainability and the acceptance that the debt-relief will be channelled into 'pro-poor' frameworks. The fact that these frameworks are then held to be decided by participatory mechanisms of decision-making seeks to obscure the relations of policy-making power. PRSPs are held to enhance 'country ownership' of economic and adjustment and reform programmes, but as Craig and Porter note, they are a means of ensuring the depoliticization of the policy process, taking poverty reduction outside the formal relations of government, through ring-fencing resources to particular needs in accordance with negotiated agreements (2002).



## Conclusion

Many commentators focus on the power relations behind the new 'consensual' approaches (for example, Pender, 2005; Fraser, 2005; Harrison, 2004; Abrahamsen, 2004). However, the question that this chapter has sought to address is not whether power relations exist but, rather, why the exercise of power is expressed in these specific practices; why the mechanisms of regulation take the form they do. In doing this it has engaged with the Other-regarding ethics that appear to be increasingly influential in shaping Western foreign policy. It has suggested that Western governments and international institutions find it difficult to justify and legitimize their power of regulation over non-Western states, especially where the power relations are so clearly unequal, as with Africa.

It is in response to the current crisis of confidence in Western authority and purpose that there has been a rethinking of Western development policies and a shift towards much more informal relations of regulation, which have enabled greater levels of interference in non-Western states but also enabled Western policy-makers to shift the burden of responsibility for policy outcomes.

The ethics of the Other have enabled the past problems to be rewritten as ones of non-Western state-governing capacity at the same time as denying accountability for present policy strictures. Paradoxically, the attempt to deny power and accountability has driven the extension of external mechanisms of regulation. The reason for this is that needs-based, as opposed to interest-based, legitimacy has depended on the engagement with and, essentially, the creation of the Lévinasian Other in order to legitimize the Western Self. In order for the Other to be given the task of 'policy leadership' it needs to be artificially given shape and externally capacity-built. This process, as considered above, cannot be contained easily. The capacity-building dynamic necessarily extends from the non-Western state to non-Western societies as the Other-regarding ethical imperative of intervention demands legitimacy. This dynamic is key to understanding the particular form that Western regulation and the projection of Western power often assumes today.

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## 9 Agents of truth and justice

### Truth commissions and the transitional justice epistemic community<sup>1</sup>

*Michal Ben-Josef Hirsch*

#### Introduction

In its 2001 End-of-the-Year magazine the *New York Times* listed ‘Designer Truth Commissions’ as one of the ideas that ‘capture the rhythm of the passing year and the opening of the new millennium’. As the *New York Times* noted, truth commissions proliferated so much so that now, ‘every nation emerging from dictatorship or war wants one’ and they are apparently becoming ‘a required part of any transition to democracy’ (Rosenberg, 2001: 66). Truth commissions are temporary truth-seeking bodies set up to investigate past records of human rights abuses that occurred over a period of time, rather than a specific event. They are officially authorized by the state and, upon completing their work, they produce a report (Hayner, 2001: 14). Over the last decade, truth commissions have become a common policy choice for newly democratic states emerging from repressive regimes or conflicts.<sup>2</sup>

While most people are familiar with the more well-known truth commissions such as those in Argentina, South Africa or more recently in Sierra Leone, many people are often surprised to learn that, to date, there have been dozens of cases. The ‘universe of cases’ of all truth commissions consists of forty-five commissions in various stages of operation.<sup>3</sup> Though truth commissions are not, by definition, associated with emerging democracies, we find that in practice they are: 41 of the cases have taken place in transitional societies. This ‘universe of cases’ also displays a clear temporal pattern: 19 of the truth commissions were created during the period of 1974–95, while 22 truth commissions were created only in the last decade.<sup>4</sup> What accounts for this growing worldwide prevalence

of truth and reconciliation commissions over the last decade? More significantly, why and how have truth commissions and their anticipated reconciliatory consequences come to be perceived as an 'essential' and even 'required' policy for states undergoing a transition into democracy?

The growing number of truth commissions has so far attracted wide public attention and resources. However, there have been only a few attempts to aggregate and either describe or explain the worldwide scope of this emerging phenomenon. Existing comparative studies focus mostly on regional patterns (Borneman, 1997; Christie and Cribb, 2002); yet in general, scholars studying truth commissions have been reluctant to offer generalizations, stressing the contingent nature of justice, truth and law (Teitel, 2000).

When it comes to explaining the motivations of states for having a truth commission, existing literature focuses on domestic 'demand-driven' explanations. Accordingly, state officials in newly democratic states respond to calls from domestic pressure groups and come to perceive this process as vital for the stability of their new regime. Truth commissions proliferated, according to these explanations, because they became the preferred means to curb domestic opposition and to establish the new regime's legitimacy and accountability (e.g. McAdams, 1997; Elster, 1998; Skaar, 1999; Christie and Cribb, 2002). According to these explanations, international factors and actors, such as international organizations or human rights advocates, are seen as merely responding to domestic demands rather than as shaping these demands (Barahona De Brito *et al.*, 2001).

In this chapter, I direct attention to the 'supply' side; that is, to the influence of international agents on the motivations of state officials to carry out truth commissions and on the decision-making process. I propose a 'supply' mechanism: a specific network of academic scholars and legal experts which advances and instigates the international spread of truth commissions. Accordingly, members of this epistemic community have become recognized experts and authorities in the newfangled domain of transitional justice. As such, they propagate the notion that reconciliation via the public procedure of truth commissions is an important, if not indispensable, stage in states' transition to democracy and in conflict resolution.

The epistemic community research programme calls for thick description and process-tracing as the methodologies best suited for identifying the causal relationship between the transitional justice epistemic community and the international proliferation and institutionalization of truth commissions (George and Bennett, 2005:

205–32). My process-tracing analysis relies on a detailed study of publications and statements as well as interviews with leading members of the epistemic community. In what follows, I use this information to trace the community's activities, including formal (e.g. conferences, advisory committees) and informal (e.g. personal ties) channels of communication, and to establish what values members of the community hold and how they link those values to practical policy prescriptions. Finally, I assess the epistemic community's cumulative effect on the internationalization and institutionalization of truth commissions.

I argue that members of this epistemic community have introduced new ideas about the goals of truth in transitional societies and they ascribed novel normative and practical rationalizations and justifications for the process of truth-seeking. Through this process, the eminence of truth and reconciliation commissions shifted from being merely a weaker compromising alternative for judicial justice to becoming an option infused with its own intrinsic and elevated values and goals. This process, in which these new ideas emerged, and became institutionalized, evolved in three stages that represent an ideational shift. At first, truth commissions were the result of political bargaining and were introduced in Latin America in the mid-1980s as a compromising solution instead of trials aiming for the stability of the new regime. Next, a debate between truth and justice framed the preparatory process and the actual operation of the South African Truth and Reconciliation Commission (TRC) in the mid-1990s. This debate consolidated the notion that the truth, though a compromise for judicial justice, has its own added value, including the notions that truth is therapeutic and vital for reconciliation. We are currently in the last stage, in which the ideas of reconciliation via truth-seeking are prominent and truth commissions are often suggested not only as a transitional device, but also as a tool for conflict resolution. At this point, truth commissions are considered regardless of trials and they are part of the policy agenda of major international organizations, including the UN.

Before discussing this process in more detail, the next section provides a brief theoretical account for my focus on epistemic community as the agency and mechanism accounting for this process. In keeping with this volume's shared theme, this chapter focuses on the rise of ethical dimensions in world politics and seeks to explore the forces behind this rise. My principal assertion is that local state officials do not make the decision to carry out a truth commission in an ideational vacuum. On the contrary, they operate in an

ideational international environment in which what is a 'good' or 'desirable' policy choice is clearly defined. Accordingly, the main goal of this chapter is to identify the international agents and the process that made truth commissions a 'good' and 'desirable' policy choice.

### **Ideational agency in international relations**

Much has been said about the recent surge of scholarly attention in international relations to non-material, or ideational and normative, phenomena in world politics. Thus far, this literature has focused primarily on establishing that 'ideas matter', i.e. that they have causal effects and influence in world politics (e.g. Hall, 1989; Goldstein and Keohane, 1993; Katzenstein, 1996; Finnemore, 1996a). This focus is not surprising as scholars sought to legitimize their claims and approach with reference to the predominance of Realist and Liberal approaches. By and large, scholars have engaged in meta-theoretical and epistemological debates that often lacked adequate empirical elaboration (Lapid, 1989; Adler, 1997; Checkel, 1997). Consequently, the ideational international relations literature remained somewhat underdeveloped in answering questions such as how ideas originate, how they evolve and are transmitted, and why ideas persist or change over time.

This gap is mostly apparent in the conceptualization, or lack thereof, of agency. As Constructivist scholars sought to reject rationalist monocausal explanations, they were unwilling to name the system, domestic politics or the individual decision-maker as the sole causal source of interests and behaviour. Consequently, we find a mix of all of the above levels of analysis in the Constructivist research agenda (Yee, 1996; Checkel, 1998). In addition, due to the emphasis on concepts such as culture, identity and intersubjective understandings, agency was often left out on purpose in order to set the stage and give attention to social structure, its components and its effects (Wendt, 1994; Finnemore, 1996b).

All the same, few alternative conceptualizations for ideational and/or normative agency have been brought forward. Initial attention in the study of the 'supply-side' or the international sources of ideational change focused on international organizations, mostly inter-governmental (IGO) ones. International organizations often have specific policy domains, their agenda is publicly known and both their internal activity and their interactions with states can be easily traced. International organizations may socialize or teach domestic elites to redefine their interests and to accept new political



goals and new values (Finnemore, 1993; McNeely, 1995). International organizations may also pressure and provide positive as well as negative incentives for states to accept these goals and values, which lead to changes in policy (Pevehouse, 2002). Whether one emphasizes their normative-based or interest-based influence, the main shortcoming of this agency in explaining the emergence of ideas is that often these organizations bandwagon rather than lead the ideational process. That is, they often do not originate new ideas, but rather join the process of ideational diffusion and, in fact, represent part of the process in which new ideas and policies are institutionalized.

Therefore, to account for earlier ideational entrepreneurship and activity, it has been suggested to study less institutionalized entities, focusing instead on transnational contacts, or networks. Accordingly, the constituting aspect of these networks is their shared normative values and the core of their activity is their frequent exchange of views, information and services via both formal and informal channels of communication (Risse-Kappen, 1994; Keck and Sikkink, 1998). Members of these networks are 'normatively aware' and they are actively seeking to amplify the 'generative power' of their normative agenda (Keck and Sikkink, 1998: 34). Membership may include international and domestic research institutes, NGOs, foundations, journalists, churches and agencies within regional and international organizations.

This broad membership criterion of ideational networks accounts for the merits as well as the main weakness of this agency conceptualization. On the one hand, it draws attention to the collective and decentralized nature of the process of normative change, a process that involves both domestic and international actors and is rooted in the interaction among them. This broad conceptualization is particularly useful for understanding innovation and change of universalistic normative ideas such as general principles of human rights. On the other hand, however, this framework seems less useful for identifying the ideational origins of more specific practices or policies and for issue areas where the normative consensus about how to achieve specific goals is not that clear. For example, we may all agree that human rights are normatively and universally good, yet there may be less agreement about the practical means to achieve this goal with regard to specific and, at times, conflicting human rights. It is precisely here that different groups within the network may have different policies in mind.

In order to explain the ideational origins of a specific policy or practice, yet at the same time retain the focus on normatively motivated and decentralized agency, and on the role of information and ideational exchange, I propose the epistemic community research programme as more suitable. 'An epistemic community is a network of professionals with recognized expertise and competence in a particular domain and authoritative claim to policy-relevant knowledge within that domain or issue-area' (Haas, 1997: 3). An epistemic community is a type of network, but it is more specific in terms of the issue-area around which it is organized, usually focusing on a specific policy domain. It is also relatively smaller in the scope of its membership and emphasizes more the expertise and influential role of specific individuals.

Like the broader idea of networks, members of an epistemic community share a set of normative beliefs, yet the focus here is on causal beliefs, that is, about the nexus between identifying problems, their prescribed solutions and desired outcomes (Keck and Sikkink, 1998: 1–2). An epistemic community enters into a dynamic of great uncertainty. As knowledge-based experts, members of the epistemic community identify problems and prescribe solutions, thereby helping to produce, select and legitimize ideational innovations as well as being part of the domestic and international organizations that practise and spread these innovations. Accordingly, the main mechanism for ideational change is the generation of new problem-solution prescriptions and their diffusion via information exchange and learning, as well as via their institutionalization within new and existing international organizations (Haas, 1997: 6, Table 1).

### **The transitional justice epistemic community: changing the meaning of truth**

The genealogy of truth commissions is essentially a process of change; that is, change in the practical and normative merits that are attributed to truth commissions. This section focuses on this process of change. I open with identifying the agency – the transitional justice epistemic community – accounting for this process. Next, I demonstrate how this community changed the meaning of the process of truth-seeking via truth commissions from a compromising alternative of trials into a significant tool for social reconstruction as well as an invaluable instrument for conflict resolution.

The broad transitional justice network is comprised of many domestic groups and local activists, as well as people and organizations

in the international arena that advocate, engage or study transitional processes in general. The epistemic community identified here is a specific group, at the core of this network.<sup>5</sup> Members of this more exclusive group include, for example, Alex Boraine, a law professor and the former Chair of the South African TRC; Pricilla Hayner, whose seminal study of truth commissions and her definition of truth commission are the most cited in the transitional justice literature; Jose Zalaquett, Law Professor and Chilean activist; Ruti G. Teitel, a law professor who has been credited with coining the term 'transitional justice', as well as Justice Richard J. Goldstone, Neil Kritz, Martha Minow and several others.

These community members share several characteristics. First, most of them are leading scholars and their knowledge credentials stem from their expertise in the field of international jurisdiction and human rights, with the exception of Hayner who is first and foremost an expert on truth commissions. Interestingly, the legal scholars and experts I interviewed, such as Justice Goldstone, Martha Minow and Ruti Teitel, all made it a point to note that though their expertise is in the legal field, they notably diverge from the majority of their colleagues. Accordingly, in spite and because of their expertise they are aware of the limits of the judicial approach and hence their advocacy for truth commissions.<sup>6</sup> Second, most members of this epistemic community hold not only theoretical expertise but also have first-hand experience of participating in and learning the lessons of truth-seeking processes (for example, Zalaquett in Chile, Boraine in South Africa and Hayner as a young intern in El Salvador). Finally, in interviews more than a few have noted that either directly or indirectly the memory of the Holocaust has shaped their view on the role of memory and historical truths in making justice.

The community's activity mostly takes place in workshops, in preparatory and advisory committees, and in academic conferences. The first of many was the 1988 conference titled 'States Crimes: Punishment or Pardon' organized by the Justice and Society Program of the Aspen Institute. Since then, an 'industry' – as it was termed by Justice Goldstone<sup>7</sup> – emerged of numerous conferences and workshops focusing on the normative and practical implications of transitions to democracy. Many of these yielded reports and edited volumes that outlined and supported the rationale for truth commissions. While these conferences account for the formal setting of the community's activity, there are also numerous informal channels of communication, including long-lasting personal friendships. In addition, when following up the career paths of some community

members, one finds that they often crosscut each other's past (for example, working at one point for the UN or being affiliated with the Law schools of Harvard and New York Universities).

This group of experts consolidated into an identifiable and distinct community only in the late 1990s following the South African Truth and Reconciliation Commission (TRC). Truth commissions, however, were already in practice since the mid- to late 1980s in Latin America. I turn now to these commissions in order to account for the earlier ideas that framed the meaning and goals of truth-seeking.

### *Truth as a compromise*

Following the Second World War and the judicial model of the Nuremberg and the Tokyo trials, there was vocal criticism of 'victors' justice' and focus on its feasibility only under very specific conditions not commonly available following a regime change (Teitel, 2003). Consequently, transitioning states in the 'second wave of democratization', such as Spain, Portugal and Greece, deliberately chose the approach of collective amnesia – 'the past is better left buried in the past'. Third-wave transitions opted for a middle of the way solution – namely, commissions of inquiry set to account and document the fate of the many who disappeared under the regimes of terror in Bolivia (1982), Argentina (1983), Uruguay (1985) and Chile (1990) as well as in Zimbabwe (1985), Nepal (1990) and others. Often these commissions were considered as a preliminary phase that would one day lead to trials.

The middle ground positioning of these commissions of inquiry was expressed in two main rationales, practical and political.<sup>8</sup> According to the practical logic, in situations where the repressive regime cut across the whole society it is impractical, both in terms of time and resources, to prosecute everyone. Still, it was widely accepted that doing nothing was morally wrong and, perhaps, equally unfeasible due to local vocal opposition. The political logic provided the positive rationalization for truth commissions as a means for maintaining and promoting stability. The focus here is on the need for achieving a political compromise – that is, balancing between popular calls for justice and the need to co-opt and tame members of the previous regime who are still holding the power over military and economic resources. In addition, it was argued that truth commissions would enhance the legitimacy, credibility and accountability of the new regime by placing it in clear negation to the previous repressive one.

A third theme that appeared for the first time in the 1988 ‘State Crimes: Punishment or Pardon’ conference was the idea that a recorded historical truth should be a ‘minimum obligation of states’. Jose Zalaquett, a human rights lawyer and one of the central architects and leaders of the Chilean commission, articulated the idea that, regardless of the chosen human rights policy to deal with past abuses, whether punishment or pardon, the *truth must be known*:

Without knowledge of the truth, a policy that leans towards severity would be tantamount to arbitrariness or revenge; on the other hand, a policy of clemency would be equivalent to granting impunity . . . The important thing is that the truth is established in an officially sanctioned way, in a manner that allows the findings to form part of the historical record of the nation and that establishes an authoritative version of the events, over and above partisan considerations.

(Zalaquett, 1989: 30–1)

This idea gained some more attention in the 1992 Salzburg Conference, which sought to learn from the transitional experience of Latin American and ex-Communist states. The conference’s discussions and the resulting three-volume collection still marked truth commissions as a compromising solution and as a somewhat weaker alternative to trials (Kritz, 1995). The guiding principles for having truth commissions as opposed to trials were still mostly practical and political. All the same, there was a noticeable voice to the normative principle of truth by its own merits. At this point, some of the members-to-be in the epistemic community were active; yet the community as such was at what may be termed a nascent stage, in which contacts between its members, as well as knowledge exchange, were only beginning.

### *Truth v. justice*

In May 1998, the commissioners and the staff of the South African TRC convened with scholars and experts for a conference discussing the morality of truth commissions.<sup>9</sup> This conference was the outcome of an ongoing dialogue that both informed and rationalized the activity of the South African TRC.<sup>10</sup> This dialogue was framed in terms of truth v. justice, consequently, elevating the truth-seeking mechanism from merely a second best to trials to an option that is equally evaluated relative to trials and that may, indeed, be both

practically and morally superior. This dialogue also consolidated the contacts and the activity of the epistemic community's members around normative as well as practical consensual knowledge.

The first salient theme that took hold focused on the psychological merits of the process of truth-seeking: the idea that truth commissions have healing or therapeutic qualities and that only by having their story heard and acknowledged can victims achieve the closure they need and deserve (Goldstone, 2000: 65). Moreover, the healing power of truth not only affects individual victims, but also fulfils the collective need for catharsis (Minow, 2000). In practice, this principle was introduced in the South African TRC via the process of public testimonies, which added an element of dramatic confrontation between victims and perpetrators that captured the imagination of many around the world (Allan and Allan, 2000).

The second theme was the idea that past atrocities are a collective social phenomenon and that naming perpetrators, even if the list is long, does not account for the structural and institutional elements of repression. Accordingly, trials are inadequate for these elements of repression. The truth-seeking process, on the other hand, is suitable for not only punishing individual criminals, but also for exploring the conditions and the context that sustained the repressive regime. In practice, this principle was followed in the South African TRC via the special hearings on social institutions (including political parties, businesses and labour organizations, religious organizations, the legal system, the health sector, prisons and the military) that facilitated directly or indirectly the human rights violations (Boraine, 2000: 145–87).

Third, the idea of deep reconciliation via truth-seeking processes gained saliency. In the specific context of the South African TRC this idea is mostly associated with the reconciliation theology of Archbishop Desmond Tutu and the concept of *Ubuntu* (humanness). Accordingly, to be humane implies the abandonment of any notions of hatred and revenge and the endorsement of reciprocal forgiveness. The truth-seeking process, which mutually acknowledges both victims and perpetrators, it was argued, does precisely that (Krog, 1998: 143; Battle, 1997).

The overarching conception that stemmed from the above ideas is the broadening of the democratizing effects that are associated with truth commissions. Accordingly, truth commissions may not only strengthen the accountability, legitimacy and stability of the new regime, addressing the institutional or formal structures of democracy; instead, truth commissions help constitute and advance

a 'true' democratic political culture (Asmal *et al.*, 1997: 215; Rosenberg, 1999). As the argument goes, truth commissions advance and are essential for democratization since they have multiple democratizing effects, including advancing the creation of a public sphere, via the deliberative dialogue over truth; fostering a culture of human rights by the shared commitment to norms that denounce human rights violations; promoting reconciliation, which is an element of democratic coexistence; and establishing a common historical narrative, which 'plays an important transitional role linking past to present. Transitional accountings incorporate a state's repressive legacy and by their very account draw a line that both *redefines the past and reconstructs a state's political identity*' (Teitel, 2000: 8, *italic added*).

In sum, the preparatory process and the actual operation of the South Africa TRC was a critical juncture in the ideational evolution of the normative and political merits that are associated with truth and reconciliation commissions. It is then during the conferences, and by the growing intellectual exchange among members of this emerging epistemic community that these unique merits were consolidated. As noted earlier, much of this intellectual exchange was framed in terms of a debate between truth commissions and trials: *truth v. justice*. Indeed, one of the most significant aspects of this debate was that truth commissions were positioned for the first time on equal grounds with their judicial alternative. Several arguments stressed the relative strengths of truth commissions in establishing justice. For example, truth commissions may be as efficient as trial for social punishment since they serve as a mechanism of 'punishment by shame'.<sup>11</sup> Moreover, they may be even superior to trials. While for most of the population the judicial process is too remote both in practice (taking place in big cities or even outside the country) and in essence (the judicial jargon and complex rules of the game), truth commissions provide a local and more comprehensible setting.<sup>12</sup>

Most significant in this process of elevating the truth-seeking mechanism was its association with restorative justice. Restorative justice is an approach that developed in the US's domestic criminal system focusing on the idea that a procedure of dialogue between victims and offenders is more suitable than trials for restoring the victim's sense of personal autonomy. This victim-centric approach also emphasizes the reintegration of offenders as a way to rebuild the community as well as to re-establish civic legitimacy and accountability (Dzur, 2003). This approach was incorporated into the debate over transitional justice mechanisms. It became a popular framework

for highlighting the practical merits of truth commissions as well as for advocating their morality (Kiss, 2000). By adopting this framework, members of the epistemic community, in fact, elevated the relative standing of truth commissions. The debate was no longer about the trade-offs between truth and justice; instead, it came to be a debate between two competing, yet equal, approaches for justice – restorative and retributive. Accordingly, truth commissions do not provide truth as a means for justice but rather embody the restorative approach that is morally equal, and in some aspects even superior, to the retributive judicial approach (Leebaw, 2003).

### *Truth and reconciliation*

Soon after the South African TRC completed its work and even before the report was released, observers have noted the global effects of the South African process (Rosenberg, 1999). The media publicity captured the attention of many around the world and there was growing popular as well as academic interest in truth commissions and in their potential effects. There was a growing demand to learn more about this process and soon the supply – namely, the activities of the epistemic community – caught up with many publications and conferences all around the world that reflected on the South African experience and mostly strengthened the themes already presented earlier (e.g. Villa-Vicencio and Verwoerd, 2000; Biggar, 2003). At this final stage, which we are currently in, two main ideas are dominant among community members: the hybridization of transitional justice mechanisms and the proposed application of truth commissions in processes of conflict resolution.

As was noted earlier, the debate between truth and justice elevated truth commissions and positioned them as equal to trials. Furthermore, these two options came to be understood as equal but different, that is, as coming to serve different goals in the democratization process. Consequently, a new consensus is emerging that both truth commissions and judicial mechanisms are necessary components of transitional justice. The current focus is not on whether to have truth commissions or trials, but on how to combine and sequence them while adapting to local conditions (Roht-Arriaza, 2004).

Deep reconciliation continues to be a main theme among community members and truth commissions' practitioners. Increasingly, a consensus is emerging that there should be more attention to 'life after the commission', that is, strengthening the reconciliatory process begun by the truth-seeking process. 'Rather than closing the subject,



a successful truth commission should open up the issue to facilitate a more free and public discussion and help spark a longer-term process of national healing and reconciliation' (Hayner, 2000: 355). In practice, recent truth commissions, such as the TRC in Sierra Leone, include specific provisions that call for the incorporation of the new narrative yielded by the commission into revised textbooks. They also recommend apologies and commemorative events as ways to solidify and strengthen the process of deep reconciliation.<sup>13</sup>

The focus on reconciliation also relates to the recent growing interest in truth commissions as a tool for conflict resolution. Accordingly, truth commissions may not only legitimate a new regime after the transition, but can also legitimate the political compromise that may bring about the regime change or peace. Moreover, a truth commission, as was the case in South Africa, can become part of the negotiation game and may advance a compromise.<sup>14</sup> Increasingly, there is a growing emphasis on the role of truth commissions in the process of negotiating a peace agreement to end conflicts, whether the conflicts are domestic or international (Hayner, 2000). For example, a forthcoming conference in the winter of 2006 at the International Center for Transitional Justice is aiming to bring together UN officials, peace negotiators from all around the world and leaders of peace-making NGOs to explore the role of truth in conflict negotiations and resolution. In addition, the International Institute for Democracy and Electoral Assistance (IDEA) marked truth commissions as one of the 'necessary' pillars for resolving conflicts (Bloomfield *et al.*, 2003). These examples illustrate a significant change in the scope of the settings in which truth commissions are considered to be an effective tool. That is, truth commissions, which were mostly a domestic affair within transitional states, are increasingly employed internationally to resolve conflict between states – for example, the joint Friendship Commission of East Timor and Indonesia and the proposal to incorporate a truth-seeking process to the Israeli–Palestinian peace negotiations.

In sum, the moral and practical applications and implications of truth commissions are far from being a fixed or settled matter. The epistemic community that emerged during and following the South African TRC changed the standing of truth commissions. From merely a compromising practicality with mostly political goals, truth commissions turned into a meaningful tool for social reconstruction, and are now in the process of becoming a vital tool for resolving conflict. So far I have focused on these ideas. In order to fully account

for the causal effect of these ideas on the worldwide proliferation of truth commissions, one needs to demonstrate that these ideas, indeed, resonate and have an effect on the decision of specific local state leaders to pursue a process of truth-seeking. It is beyond the scope of this chapter to take up this task in specific cases. Nonetheless, evidence for the nexus between members of the transitional justice epistemic community and local decision-makers is available. To conclude this section, I give a few examples of these links.

Both the formal settings (workshops and advisory committees) and the informal settings (personal meetings and contacts) of the community's activity are also the settings in which members of the epistemic community get together with local decision-makers and convey their rationales. For example, Alex Boraine reports on his meetings with leaders from Ghana and Sierra Leone before and during the process of negotiations.<sup>15</sup> He also reports on an informal meeting with US Senator George Mitchell (the facilitator of the Good Friday Agreement) and reports how the latter expressed interest and gradually came to endorse the idea of constituting a truth commission in the Northern Ireland conflict (Boraine, 2000: 410). Similarly, local political leaders and local NGO activists often mention reading books and publications by community members and note that this motivated them to invite community members to officially advise the transition process and facilitate a local truth commission.<sup>16</sup> These types of contacts constitute the channels by which community members 'supply' their ideas to local leaders and activists. The following section focuses on the institutionalization of these channels of supply.

### **The institutionalization of truth commissions**

Thus far I have established the characteristics and activity of the transitional justice epistemic community. I turn now to present the cumulative effect of the community's activity resulting in the internationalization and institutionalization of truth commissions. In the first place, the worldwide proliferation of truth commissions is in itself the most obvious indicator for the institutionalization of truth commissions. However, in order to avoid the tautological pitfall of referring to the behavioural manifestation of an idea as the measurement and indication for an ideational process, I propose alternative measures – namely, the establishment of a new organizational apparatus that fosters the ideas developed by the epistemic

community as well as the incorporation and embeddedness of these ideas into existing international organizations.

The first indication for the institutionalization of these ideas is the organizational apparatus, which the community built for itself – The International Center for Transitional Justice (ICTJ) in New York. Established in 2001, the ICTJ officially brings together many of the members of the epistemic community who hold various positions in the centre, in its Board of Directors, or as outside advisers. The ICTJ engages in extensive research on transitional justice in general and on specific country-aimed strategies. It offers in-country assistance in developing truth commissions' methodology and it conducts seminars, workshops and fellowship programmes for activists as well as for state officials from countries in transition to democracy, but also from countries in which the transitional stage hasn't yet begun. Since its establishment, the ICTJ has significantly increased its activity and this year is about to open three new offices in Brussels, Geneva and Cairo where the ICTJ aim to work with local elites in Middle Eastern countries in order to prepare the ground for future processes of democratic transition.<sup>17</sup>

The second indication for institutionalization is the embeddedness of ideas within existing organizational platforms. The basic assumption behind this notion of institutionalization is that once ideas are embedded in existing institutional frameworks they gain a 'taken for granted' perception: they are less a matter for broad public debate, thus becoming a norm. From that point on enters the socialization role of international organizations that either explicitly or implicitly pressure targeted actors to adopt this new norm.

Indeed, important NGOs and, more significantly, the UN adopted the principles associated with truth commissions as the transitional justice epistemic community developed them. Both Amnesty International and Human Rights Watch, the two largest human rights organizations, adopted truth-seeking onto their general policy statements (Kritz, 1995: Vol. 1, 217–19). More recently, the United Nation's Economic and Social Council published its *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*:

Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systemic violations, to the perpetration of those crimes.  
[Principle 2: The Inalienable Right to the Truth]

Societies that have experienced heinous crimes perpetrated on a massive or systemic basis may benefit in particular from the creation of a truth commission or other commission of inquiry to establish the facts surrounding those violations so that the truth may be ascertained and to prevent disappearance of evidence. [Principle 5: Guarantees to Give Effect to the Right to Know]

(Orentlicher, 2005)

These principles epitomize the notion that historical truth is a group-based human right and that truth commissions are the right way of attaining this right. They reaffirm the positive and invaluable role of truth commissions. Moreover, the UN's High Commission on Human Rights is expected soon to complete a 'tool kit' for democratic transition, including a general recommendation for truth commissions as well as the basic guidelines for the establishment of one.<sup>18</sup>

## Conclusions

The extent and the pace by which truth commissions proliferate provide a unique opportunity to observe change in the international normative environment in the making. This chapter proposed to understand this change as an agent-driven process in which members of the transitional justice epistemic community played a significant role in this process by reframing the problem-solution relations that rationalize truth commissions. Accordingly, they focused on the need for post-conflict reconciliation and identified the truth-seeking process as a restorative form of justice and the tool most suitable for collective social reconstruction. They prescribed a required solution – truth commissions – while providing the normative and practical justifications for this policy choice. In addition to their expert knowledge, members of this community actively engaged in incorporating this causal nexus and its normative logic into existing and new international organizations. As a result, these ideas were institutionalized and became a noticeable feature of our current international normative environment.

Truth commissions began their life in the mid-1980s as the compromising and weaker alternative to judicial prosecution. Their ascribed meaning began shifting before and during the South African TRC as part of the debate between justice and truth. Like any other

intellectual exchange, the discussion over truth commissions was never monolithic and members of the transitional justice epistemic community continue to debate over various alternatives and arguments. Nevertheless, a broad consensus did emerge around the notions that truth commissions are distinct from trials and that they fulfill a whole different set of goals that are morally equal if not superior to judicial conceptions of justice. Truth commissions are no longer the compromising alternative to trials but, rather, occupy their own separate and growing 'niche'.

The process described here highlights two aspects that are significant for our understanding of the international normative environment. First, it further supports the significance of two-level models for analysing international processes. As was mentioned earlier, previous explanations tend to focus on domestic demand to explain the spread of truth commissions. The role of international factors and actors usually came into attention only once the decision to carry out a truth commission was made. The process described here demonstrates that this picture was imprecise. In fact, the transitional justice epistemic community which reframed the goals of truth commissions, accounts for creating much of the growing demand for truth commissions. Later, the epistemic community accommodates this demand via its institutional apparatus. This conclusion does not imply that the epistemic community manipulates local decision-makers. On the contrary, this case demonstrates the importance of the interaction between demand and supply, that is, between local needs and international processes of normative innovation and ideational change.

Second, it establishes that the international normative environment is dynamic and that even relatively constant practices may have different meanings across time. While truth commissions have been employed for three decades, they have changed significantly in terms of the normative rationalizations attached to them and in terms of their ascribed goals. In this process truth commissions gained an elevated status and came to be a permanent feature of transitions to democracy. Currently, they are not only a tool for democratization but also perceived to be significant for the process of conflict resolution, thereby turning from a mostly domestic practice to increasingly being practised internationally. An additional significant outcome of this dynamic is the ideational change in the normative status of truth. While initially the truth-seeking process was considered as a means for other goals, the dynamic described above led to the elevation of the status of truth to the extent that currently it

has entered the human rights discourse. The 'inalienable right for truth' is without a doubt a novel notion that only now begins to emerge and is likely to further change the international normative environment.

## Notes

- 1 An earlier version of this chapter was presented at the British International Studies Association Annual Conference, Birmingham, UK, 16 December 2003. I would like to thank Boaz Atzili, James Patrick Boyd, Rachael Cobb, Joshua Cohen, Orit Gal, Claire Moon, Melissa Nobles and Stephan van Evera for their helpful comments.
- 2 Truth commissions are only one of several practices that address the pervasive negative social and political effects of past atrocities (usually involving human rights violations) committed by the state or in the name of the state (Teitel, 2000). These practices include: the restitution of property; reparations and compensation schemes; the prosecution of perpetrators; the revision of national-historical narratives; truth-seeking commissions; and official apologies as well as other forms of public recognition. In the last decade all these practices enjoyed growing attention. Although these practices are related, it is beyond the scope of this chapter to discuss them all or to elaborate on the broader context of the transitional justice field. This chapter singles out truth commissions since they gained the most publicity, were and still are highly controversial, and came to be most commonly prescribed.
- 3 There are several lists of truth commissions available. To compile my own 'universe of cases' I have consulted these lists and complemented them with newspaper reports as well as with the US Department of State Country Reports on Human Rights Practices. See Hayner, 2001; the Truth Commissions Project sponsored by the Program on Negotiation at Harvard Law School, the NGO Search for Common Ground in Washington, DC, and the European Center for Common Grounds in Brussels, [www.TruthCommission.org](http://www.TruthCommission.org); The Truth Commissions Digital Collection, part of the Margarita S. Studemeister Digital Library in International Conflict Management at the United States Institute of Peace, Washington, DC, [www.usip.org/library/truth.html](http://www.usip.org/library/truth.html); Daan Bronkhorst, *Truth Commissions and Transitional Justice: A Short Guide*, Amsterdam, the Netherlands, September 2003; the Bureau of Democracy, Human Rights and Labor, US Department of State, <http://state.gov/g/drl/rls/hrrpt/>. Newspaper articles were retrieved from the World New Connection <http://wnc.fedworld.gov/> and from the International Center for Transitional Justice's bimonthly newsletter <http://www.ictj.org/newsletter.asp>.
- 4 This number is larger if we include cases in which the option of having a truth commission is currently being discussed by high government officials and where some preparatory workshops have been taking place, as is the case in Columbia, Kenya, Ivory Coast, Afghanistan and Iraq.
- 5 To identify members I have surveyed citations numbers, participation in relevant conferences and workshops, and membership in boards of

- directors of NGOs that engage in transitional justice. Also, I asked my interviewees to name their fellow members.
- 6 Martha Minow, interview by the author, tape recording, 26 May 2005, Harvard Law School, Cambridge, MA; Justice Richard Goldstone, interview by the author, tape recording, 5 May 2005, Harvard Law School, Cambridge, MA; Ruti Teitel, interview by the author, tape recording, 6 April 2005, New York School of Law, New York, NY.
  - 7 Richard Goldstone, interview by the author, tape recording, 5 May 2005, Harvard Law School, Cambridge, MA.
  - 8 These rationales are elaborated in the report and proceedings of the 4–6 November 1988 conference at the Wye Center: *States Crimes: Punishment or Pardon*, Maryland: The Justice and Society Program of the Aspen Institute.
  - 9 This conference later, in 2000, yielded an edited volume by Robert Rotberg and Dennis Thompson. The articles in this volume, titled *Truth v. Justice*, focused primarily on the apparent negation between truth and justice and highlighted the potential compatibility between the two concepts.
  - 10 Most significant in this process were two earlier conferences organized in 1994 by Alex Boraine and sponsored by the Institute for the Study of Democratic Alternatives (IDASA). For the conferences discussions see Boraine *et al.* 1994; Boraine and Levy 1995.
  - 11 Martha Minow, interview by the author, tape recording, 26 May 2005, Harvard Law School, Cambridge, MA.
  - 12 Alex Boraine, interview by the author, tape recording, 16 June 2005, International Center for Transitional Justice, New York, NY.
  - 13 These ideas were the focus, for example, of the conference *Settling Accounts? Truth, Justice and Redress in Post-Conflict Societies*, Weatherhead Center for International Affairs, Harvard University, 2–3 November 2004.
  - 14 Alex Boraine, interview by the author, tape recording, 16 June 2005, International Center for Transitional Justice, New York, NY.
  - 15 Alex Boraine, interview by the author, tape recording, 16 June 2005, International Center for Transitional Justice, New York, NY.
  - 16 For example, noted by Mr Yudhoyono, a former Indonesian army general who fought against Timor rebels, ABC Radio Australia, <http://www.abc.net.au/ra/news/stories/s1435768.htm>, retrieved 26 August 2005.
  - 17 Priscilla Hayner, interview by the author, tape recording, 6 April 2006, International Center for Transitional Justice, New York, NY.
  - 18 Priscilla Hayner, interview by the author, tape recording, 6 April 2006, International Center for Transitional Justice, New York, NY.

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# 10 Precision in uncertain times

## Targeting as a mode of justification for the use of force

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### Introduction

War is constantly changing as are the 'ethics of destruction' (Thomas, 2001) that constrain the use of force by institutionalizing common understandings of what is ethically permissible in war and what is beyond the pale even in situations of emergency. Today, when Western armies wage war, they usually exercise more caution than during the great wars of the past. Their political and military leaders are more aware that minimizing one's casualties and reducing the number of dead civilians is a serious matter that must be taken into account. This trend has been well documented by political scientists (Thomas, 2001) and historians (Maier, 2005). Lawyers have, of course, also left their mark on this debate on the historical evolution of norms (Lewis, 2003). Sociologically, these new developments would tend to support the thesis of Norbert Elias on the process of civilization. However, one has to distrust teleological and enlightened visions formulated in vulgarized Kantian terms that would make us believe that a foreign policy driven by ideal principles is only a few steps away. This is wishful thinking.

Yet normative understandings have, indeed, evolved, and elites cannot ignore these developments that are crucial to understand, explain and assess the role of ethics and ethical justifications in foreign policy. Not being able to justify a war *ex ante* or *ex post* can severely degrade the reputations of great powers in particular. It is a very serious matter for a superpower such as the US when it has to justify its decisions and convince potential partner states to join the coalitions it chooses to lead. From a liberal perspective, being able to justify one's behaviour is part of American 'soft power' (Nye, 1990). Conversely, the inability to justify one's actions can affect future operations and dissuade potential allies. Various scholars

have pointed out that the 'quest for consent' (Brilmayer, 1997), which at least to some extent depends on the ability to 'listen' and 'to deliberate with others' (Ignatieff, 2005: 26), is itself a major historical phenomenon worth studying.

Thus, international relations theory has put considerable emphasis on two issues: reputation and legitimacy. Reputation, institutionalists would argue, has a significant role in international affairs and shapes states' behaviour (Keohane, 1984). According to constructivists, international relations can be interpreted as a social interaction between state and non-state actors in search of legitimacy. Legitimacy increases the player's social capital in the international system. There is an ongoing debate in recent scholarship over the extent to which reputation and legitimacy do have the function these two currents attribute to them. This theoretical debate also mirrors the transatlantic tensions between the US and its allies in continental Europe and reflects the interrogations over the future of American policy.

In its interpretation of norms, constructivism has paved the way for a new sociological interpretation that relies in part on its ability to integrate non-governmental actors in its explanatory model. Moral entrepreneurs try to orient governmental action by way of naming and shaming (Risse *et al.*, 1999; Drinan, 2002; Warner, 2006). Their aim is to affect states' action and ultimately build new norms (Finnemore and Sikkink, 1998) as potential benchmarks for further governmental decisions. Moral entrepreneurs have, in certain domains, obtained significant results in areas such as the ban on landmines or chemical weapons (Price, 1997), or reparations for historical injustices (Colonos, 2004b). In addition, my analysis follows the pragmatist tradition that stresses the role of democratic experimentalism and underlines the function of expertise (Adler and Crawford, 1991; Haas, 1992) and its moral uses in the public sphere.

Against this backdrop, I will present a brief survey and discussion of the fairly novel practice of 'targeted killings' (TK) of enemies defined as terrorists or unlawful combatants and the ethical discourse surrounding it.<sup>1</sup> The practice of TK was developed by Israel and has recently been adopted, although hesitatingly and on a very small scale, by the US as a way of fighting terrorist groups. This tactic aims to seek out and eliminate individuals considered to be a massive threat to the security of the respective countries. TK or *sikul memukad*, which means 'targeted prevention' in Hebrew, is interesting for a number of reasons. First, it resonates with a broad trend

in current bioethics and with widespread social attitudes directed against what is perceived as ‘unnecessary suffering’. Second, it indicates a certain trend towards paying more attention to the rules of war in an era in which empirical and legal barriers to war seem to have become less clear-cut than they used to be. Third, TK shifts our attention from self-given *mandates* for ethical interventions in fields such as peacekeeping, state-building or humanitarianism to ethical *restraints* regulating the use of force even in cases where appearances suggest otherwise. In spite of its obvious ruthlessness (and questionable legality), the tactic is designed to be seen as legitimate and not to jeopardize the Israeli government’s reputation both with its domestic public and vis-à-vis other nation-states and non-state actors. I will conclude by asking the question of what the new targeting practices tell us about the relationship between force and ethics in current international society.

### **War and changing views on suffering**

War may still be hell, but it is not a state of nature where ‘anything goes’ (Thomas, 2001: 2; Ignatieff, 2004: 21). Since Vietnam, there has been a significant decrease in the number of casualties on both sides in major conflicts fought by Western powers. This includes both civilians and soldiers (Human Security Center, 2005). Both bomb tonnage dropped on fighting forces and others and civilian deaths have dropped dramatically. This is due to various factors, including norms as well as new and more precise ammunition that, in the words of a leading expert in the field, is ‘making it easier to be good’ (Thomas, 2001: 172).

It is, of course, ill advised to make a comparison between the Second World War and, for example, the first or second Gulf War. However, despite some major differences, comparing Vietnam to the first or the second Gulf War appears to be a plausible option (Thomas, 2001). Indeed, the risk of escalation in the case of the cold war was higher than in the context of the unipolar world that has followed the fall of the Berlin Wall because of the relative level of consensus between major powers prevailing since the 1990s. Yet the stakes at issue in South East Asia and in the Gulf are commensurate. The level of force is of similar magnitude. There is in both cases a great asymmetry between the US and its enemy. This comparison reveals a very relevant point. The level of military casualties is not only much lower in the second case, the US has considerably changed its behaviour

and its concern for its reputation. During the conflict in Vietnam, the US military used to count the number of Vietcong that American soldiers had killed, and officials even took pride in the high level of killings. The orientation of this debate has considerably shifted. The issue of casualties has now become very delicate. The US is not officially counting the number of the casualties in Iraq. The outcome of a body count is potentially risky for the government. Counting the dead is most often a way of shaming the state for its cruel and inappropriate behaviour. So, risk aversion as a major component of war making has a new meaning as it implies efforts to avoid one's own casualties and the minimization of civilian casualties within the population of one's enemies.

All this has to be seen in the larger context of how Western societies have reframed the problem of human suffering. In this respect, the 1990s were crucial. Demands by various groups for reparative justice became increasingly vocal. Class action lawsuits were undertaken against companies involved in the slave trade. The history of Vietnam was re-examined and claims for reparations are being filed by victims of the Agent Orange gas used during the war. The flow of claims for reparations, the transnational communication about painful past experiences and the inauguration of new monuments commemorating the victims of twentieth-century wars can be read as of a 'cosmopolitan memory' (Levy and Sznaider, 2002). The Holocaust Memorial Museum in Washington, DC commemorates both Jewish and non-Jewish victims of the Second World War. It also organizes events around the commemoration of those who have suffered from tragedies not related to the Second World War. This new global context has some influence on foreign policy leaders. It is symbolic and affects discourses, as continues to be the case with Germany vis-à-vis Israel. As in Kosovo, memory can also help to frame decision-making. Military intervention for humanitarian reasons has developed as a practice (Finnemore, 2004) and the memory of atrocities such as the genocide of the Jews during the Second World War or of slavery influences military decisions to intervene when genocidal crimes are being committed. This, of course, does not mean that Western powers have always behaved according to this principle, as the Rwandan disaster testifies. The widespread sense of remorse for having failed to respond to the 1994 Rwandan genocide is, itself, an indicator of the decontextualized memory of the Holocaust that hangs upon the West.

There is another societal dimension to this phenomenon. Painless wars parallel painless medicine. Bioethics and war seem to follow

similar paths. It is worth noting that there are several moral philosophers, such as Jonathan Glover (1977 and 2001) and Jeff McMahan (2002), who have previously written about bioethics but are now publishing on warfare and issues of just war (for a political science perspective on this connection, see Gross, 2006). Technology has evolved both in the fields of medicine and armaments. Modern life-saving techniques have reduced mortality dramatically among troops in Iraq relative to previous wars. As it is less and less difficult to cure people from severe sicknesses, it is all the more possible for Western armies to produce and use discriminatory weaponry. Precise missiles, 'smart bombs' in the context of 'surgical strikes', the use of drones and research on small nuclear devices are among the latest innovations in this field wherein armies demonstrate a clear willingness to target soldiers while attempting to avoid elevated numbers of civilian casualties. The use of new technology has helped to attain the goal of reducing collateral damage. We seem to have moved a step further. Non-lethal weapons are the ultimate response of armies and governments that would be all the more able to conduct what they label 'humane warfare' (Coker, 2001).

These epistemological concerns reverberate into the practice of international affairs. The French Minister of Foreign Affairs, a doctor and professor of medicine, has announced he wants to create an 'ethics committee' to handle the moral issues with which French diplomats may be confronted. In the US, a corporation of military doctors has emerged to draft their experiences in 'military ethics'. The Geneva conventions allow for the banning of weapons that cause more injury than is reasonable for their task of killing or maiming, which has led to the debates about land mines, chemical weapons and laser weapons (designed to blind people in war zones). The debate on 'unnecessary suffering' in wars echoes a well-known and documented concern in the fields of bioethics, animal rights and others. Health and mortality have become serious societal concerns. For instance, all over the world, safety measures have been strengthened on motorways and the number of casualties in car accidents has considerably decreased over the last ten years. Furthermore, governments are strongly criticized when they fail to preserve the lives of citizens affected by natural catastrophes such as heat waves and hurricanes. There is a strong interaction between medical ethics and (potential) just war codes (see, for example, Coupland, 1997; for a comparison between pre-cold war and post-cold war conflicts, see Human Security Center, 2005).

## Rules of war and options short of war

Just war theory is more a tradition than an analytical framework that reflects a normative consensus (Walzer, 2004). Just war criteria are more likely to be used if they are institutionalized in law. It is still highly unlikely that belligerents will act in accordance with every criteria of the just war tradition. If they take any of these rules into consideration at all, they are deeply selective when they do so. The Allied campaign against Germany during the Second World War is traditionally considered to be a paradigmatic model of a just war. Yet although the Allies behaved according to the *ius ad bellum* rules, they violated the *ius in bello* criteria of discrimination and their concern for the criteria of proportionality is also debatable, as illustrated by the bombing of Dresden (Garrett, 2004). The bombings of Hiroshima and Nagasaki, as well as Tokyo, in the campaign against Japan also brings into question the Allies' just conduct in war.

Today we face the opposite situation. Reasons for going to war are increasingly controversial and far away from the obvious case of Nazi Germany. The traditional *ius ad bellum* framework is at risk for several reasons. Humanitarian concerns, in particular, give rise to ill-defined possible reasons to intervene militarily. As the case of Kosovo clearly shows, consensus over this matter is hard to find at the UN and the Security Council is usually reluctant to authorize the waging of such wars. Meanwhile, as *ius ad bellum* conditions are not adequately met, Western powers pay more attention to the *ius in bello* rules. This is not only a reflection of the evolution of Western societies. It is also due to the ambiguities of the interpretation of the *ius ad bellum*, which argues that defensive war is the model of a just war without categorically ruling out offensive action (Colonomos, 2005). The decay of *ius ad bellum* is also a consequence of the lack of legitimacy and relevance of the UN and the Security Council (see Taulbee, 2001). Trying to act in accordance with the *ius in bello* framework is a way to compensate for the lack of attention paid to the *ius ad bellum*. It also reveals an attempt to change the rules of war. Western ad hoc coalitions led by the US do without a supra-national authorization, yet they elaborate their own ethical codes,<sup>2</sup> and rules of procedure and engagement that focus on the minimization of casualties and the avoidance of death.

The recent campaign in Iraq is an interesting example of this phenomenon. Although the US did seek the approval of the Security Council, it clearly stated that it could do without. The US-inspired



term 'severe consequences' that were threatened in the case of non-compliance with UN resolution 1441 before the war is, as John Murphy (2004) points out, a 'true masterpiece of diplomatic ambiguity'. There is, nonetheless, a general consensus among international lawyers on the fact that this should not be interpreted as an authorization given to the US to launch a war against the regime of Saddam Hussein and that 'anticipatory self-defense' was not a good reason to go to war (Dinstein, 2005: 14). The US has not respected the principles of *ius ad bellum* and it has not been able to give evidence of the existence of weapons of mass destruction that eventually would support the thesis of a 'pre-emptive' strike, thus the only source of justification of American action lies in a positive assessment of the consequences of the war. There is, therefore, a clear shift from the inadequacy of deontological and principled codes to a utilitarian and consequentialist framework.

As there is a growing debate between lawyers, ethicists, political scientists and practitioners over the nature of principles justifying the use of violence and as these antagonistic views also reflect major differences between cultural traditions and diplomatic clashes based on the pursuit of different agendas and national interests, there is a shift of the debate on the grounds of utility. Using figures and expertise based on field knowledge derived from the social sciences or medicine gives a lot of weight to the governmental or non-state actor who wants to make her or his case.

Objectifying responsibility is one of the new tasks of non-governmental activists and moral entrepreneurs who have well understood that such an issue is a crucial element of contemporary justice both in juridical terms and, most of all, *vis-à-vis* ethics. I now turn to an examination of three significant episodes that show the extent to which the avoidance of human suffering enters the rationale for the use of violence.

(1) The critique of economic sanctions has been primarily based on the negative assessment of their consequences. The case of Iraq is paradigmatic (Colonomos, 2004a; Cortright and Lopez, 1999). Iraqi sanctions have not only been politically ineffective but moral entrepreneurs, doctors and paramedics have argued that there has been a sharp increase in mortality as a result of the strong multilateral comprehensive embargo imposed by the UN from 1991 until the 2003 war (Garfield, 1999). When the Bush administration came to power in 2001, the US government clearly stated that it was not favouring

economic sanctions as a foreign policy tool, particularly for Iraq. In the absence of sanctions and in the context of terrorism, war appeared to be the only solution. This position does not only reflect the views of the administration. It would have been coherent on a consequentialist basis, and independent from their own political affiliations, for some moral entrepreneurs to back the war. Taking into account that neither the UN nor the US would have lifted the sanctions and that the oil for food programme was not fulfilling the needs of the population, in large part because the Saddam Hussein regime had manipulated the flows of income generated by the programme (Independent Inquiry Committee, 2005), war was potentially a less costly solution than pursuing the status quo. Despite their long-term disapproval of the Bush policy, experts such as Richard Garfield argued along such lines. Other scholars and public intellectuals supported the intervention on humanitarian consequentialist grounds (see Cushman, 2005).

(2) However, private groups, organizations and researchers were also active not just in criticizing the war politically but at gauging its impact on Iraqi civilians and others. Attempts to survey death and suffering among Iraqis includes both direct deaths caused by the conflict when American soldiers shoot at Iraqi combatants and indirect deaths, collateral damage and casualties due to diseases that have been fatal in the context of the war. A study published in October 2004 in the independent medical journal *The Lancet*, one of the most respected voices in this new field, used the above approach and has become very widely publicised, leading to official responses from the White House (Burnham *et al.*, 2004; see also Sewall, 2005). Especially in Western Europe, the media have repeatedly made reference to this work.

(3) Another prominent episode is constituted by the events in and around the West Bank town of Jenin where Israeli forces moved in on 3 April 2002 to capture Palestinian militants. Researchers at Amnesty International soon suspected a 'massacre' (BBC, 2002). Some critics even claimed that 'crimes against humanity' had been committed.<sup>3</sup> A Human Rights Watch team found that there had been destruction of homes. However, the previously circulated figures, of around 5,000 to 10,000 Palestinian casualties, were proven to be much exaggerated. Fifty-two Palestinians were killed, including twenty-two civilians (see Human Rights Watch, 2002). Significantly, these events had a major impact on the debate over the use of force

in Israel itself. Twenty-three Israeli soldiers died in the action, reversing earlier speculations over Israel's use of disproportionate force. This led to discussions about the norm of proportionality and discrimination. It also led to another debate in Israel over the scales of preferences as it is reflected in the literature published by ethicists and officials (Kasher and Yadlin, 2005). It has raised the question of how many of its soldiers is a democratic state ready to sacrifice in order to spare the lives of how many civilians of the political community it is fighting?

### **Targeted killings: a new ethics of destruction**

As prevention has become an issue in the realm of interstate wars, preventive action also becomes one of the major issues when modes of action during conflicts are being discussed. When they wage a 'war against terror', countries such as Israel, the US and potentially the United Kingdom have elaborated new methods of preventive action or are in the process of doing so. Fighting against terrorists is a hybrid form of combat. It brings together some elements of interstate war and police action and generates considerable legal and moral confusion. In its current form, international law is not able to deal with the issues that are being raised in the war against terror. There is a consensus within the international legal community that some of the means used by Israel and the US are unlawful. However, in some cases, as in TK, there are major moral and legal conundrums (see Cassese, 2003; Kretzmer, 2004).

Israel has initiated a policy of TK since the beginning of the second intifada in 2000. The idea was developed by the Israeli office in charge of homeland security, the *Shin Bet*. TK contrast with the previous policy of physical elimination of terrorist and/or PLO leaders involved in bombings or assassination of Israeli civilians and/or representatives. This has been the case when the Israeli government decided to put to death every member of the terrorist group that had killed the Israeli athletes in the 1972 Olympics in Munich – a storyline that has recently been fictionalized in a Steven Spielberg movie (on 'Munich', see Colonomos, 2006). When one of the organizers of the terrorist attack was killed in Lebanon, the hit man was disguised as a woman. Similar operations were carried out under cover when Israeli agents intervened in third countries. Although Israeli officials did not expressly deny their involvement in these actions, these operations were not part of a systematic framework of eliminating potential dangerous individuals. These assassinations were part of

a case-by-case punishment scheme. After attacks on its citizens or soldiers, Israel identified the perpetrators of these crimes or these strikes such that they would not go unpunished.

Israeli leaders develop a list of potential threats to the security of their citizens. The level of threat that each person poses is assessed on the basis of their past action and, most importantly, on the assessment of their capacity to take further action. They are, Israeli leaders argue, a future menace to the lives of Israelis and their action ought to be prevented. As such, they may be civilians, but not innocents or non-combatants in the sense of international humanitarian law. The term 'innocents' derives from *non nocentes*, that is, those who do no harm (see McMahan, 2002). Prevention includes physical elimination, the doctrine stipulates that killing is to be a measure of last resort. This last point is certainly debatable to the extent that the peculiarity of the policy of TK is precisely to give the army the authorization to kill potential threats by establishing death lists that are decided in perfect secrecy by the highest officials of the state and the army.

One of the most significant differences between the covert assassination of terrorists and/or PLO leaders that began after the creation of the Israeli state and the actual policy of TK lies in its normative dimension. TK is a set of rules that presupposes a code of conduct. Such a policy is codified in a state doctrine. Despite the fact that the High Court has been seized by plaintiffs who argue that such actions violate Israeli laws, TK benefit from considerable popular support. In contrast with issues such as torture or house demolitions,<sup>4</sup> the High Court has been reluctant to deal with TK.

Unlike earlier cases of planned killings, the Israeli army and government take public responsibility for TK. It is important to understand what responsibility means in this case. This is a positive form of responsibility. In the mindset of Israeli leaders, the Israel Defence Forces (IDF) are not responsible for the damages they might have caused to Palestinians when killing some of the members of their society; however, the IDF is fully responsible for the security of its own citizens. The obligation to protect one's citizens is positive, yet the justification of the means employed is relative and negative. Israelis argue that it is *not unacceptable* to perform TK. Indeed, the doctrine states that killing is a last resort. In the doctrine, TK are not about killing, they are a form of *anticipatory self-defence*.<sup>5</sup> Arresting an executioner – a 'ticking bomb' (*tsatsa metateket* in Hebrew) – is the first option to be considered. If that does not appear possible, physical elimination comes next.

Despite all these ambiguities and problems, TK have progressively developed since the year 2000 through a series of hits and misses. The practice is now more codified since the rules of engagement are more precise and the norm has progressively taken shape. 'Hit and miss' here means *both*: this process is dual, it is characterized by a hit-and-miss process both on the ground and at the normative level. Thus, norms and ethics do play a major role in the explanation of TK (and for that matter future preventive action) relative to their influence on traditional preventive wars. In both cases, a calculus prevails when strikes are being planned. Yet the variables are not the same. Preventive wars are decided on the basis of ratios of military strength (Levy 1987) whereas TK are decided on the basis of counterfactually elaborated casualty ratios. The essential parameter is the ratio of civilian casualties that could be spared at the price of a number of Palestinian civilian casualties that remains undetermined. Officials refuse to put a 'price tag' on the security of their civilians; however, this question is often raised in the public arena as well as during their closed meetings. An optimal result would be reached when a serious target who was about to commit or to facilitate a brutal terrorist attack was eliminated without causing any collateral damage.

It is rather difficult for Israeli leaders to win their case when they base the justification of TK on the principle of self-defence. Self-defence implies that the danger upon which the action is taken is 'imminent'. Therefore, self-defence could, at best, be invoked in the case of pre-emptive strikes. The best justification Israeli officials could provide is the efficiency of such measures. This point is often made by army or governmental leaders when it is shown that since this policy has been implemented the number of suicide attacks has sharply decreased (see also Byman, 2006). However, political scientists argue that the number of *attempted* attacks has increased (Kaplan *et al.*, 2005). Therefore, targeted killings do not seem to have a dissuasive effect on Palestinians who are willing to kill civilians. These same political scientists as well as other experts in the security community<sup>6</sup> argue that defensive measures such as the intelligence gathered during the 2002 military intervention in the territories or the separation fence (or 'wall') in the West Bank are the cause of the decrease in the number of successful terrorist attacks on Israeli soil. This decision clearly belongs to the tradition of an Israeli 'ethos of the offensive' (Maoz, 2005). A defensive approach vis-à-vis conflicts is not supported by public opinion, therefore prevention counterbalances the potential negative effects of a policy

based solely on the defensive, such as the gathering of intelligence or the building of the controversial separation fence.

Although the US has not developed such a doctrine, at least not yet, and does not pride itself with targeting a number of terrorists listed by its services, in 2002 it killed four presumed al-Qaeda members in Yemen by firing a missile from a drone. As the 'war on terror' continues, these measures that bring together elements of police action and military intervention raise new issues. Targets are treated as both criminals and soldiers. They are considered criminals to the extent that in the absence of war between states they have killed Israeli citizens, including soldiers, and/or are preparing themselves to target civilians. They are considered enemy combatants and soldiers so that they can be shot without evidence of an imminent threat. Utilitarianism would be the only ethical framework that would justify such action and validate the 'ticking bomb' framework. Yet their utility and their ability to maximize the greatest happiness of the greatest number of people is far from being proved, especially if Palestinians are part of the group that is taken into account when measuring such a level. At best, it could be counterfactually argued that inaction would be more costly than preventive killing (David, 2003). This ultimate argument is at the core of prevention and needs to be more thoroughly examined.

## **Conclusions**

Practices of precise targeting have an ethical dimension insofar as they aim at justifying the use of force. The growing number of ethicists in modern militaries indicates the importance attributed to the view from outside on military operations.<sup>7</sup> Israelis, Americans, and possibly others in the near future, focus on the avoidance of 'wanton destruction' and criteria of the minimization of 'unnecessary suffering'. Their code of ethics reflects a consequentialist and patriotic framework as opposed to deontological and cosmopolitan moral visions. Targeted killings or bombings are a utilitarian response to terrorism. This mode of action relies on a patriotic interpretation of consequentialism that presupposes a very specific scale of preferences. American or civilian lives ought to be protected with the greatest caution. Subsequently, the lives of the soldiers are not to be put at risk inappropriately. To the extent that these constraints are well integrated, the lives of the civilians who are members of the nation-states or political units that Israel or the US are fighting against are to be spared. The lives of enemy soldiers do not have

to be taken unnecessarily. This is important because it implies that instead of being directed against an undifferentiated Other, targeting negotiates a new balance between defending the political community and overcoming the indifference to non-members of that community.

Second, targeting reveals something about the normative deadlock of the international order. One recent event is a clear illustration of this lack of consensus and of this perplexity among lawyers. The Public Committee Against Torture, an NGO in Israel, filed a claim at the Israeli High Court after the post-Munich killings in 2002 in which the lives of fifteen civilians had been taken. After considerable time, the Court asked the prominent human rights lawyer and scholar Antonio Cassese – a member of the International Commission of Jurists (ICJ) and one of the key figures in the creation of the United Nations International Criminal Tribunals for Rwanda and the Former Yugoslavia – to make an assessment of TK. They were, of course, expecting him to denounce TK for being illegal. Cassese stated that TK are indeed not legal; however, he also mentioned that under certain conditions, where there is necessity and pre-emptive force is used as a last resort and is proportionate, then it is impossible to criticize such a decision on either political or moral grounds. Cassese expressed a similar opinion with regard to pre-emptive military interventions (Cassese, 2003). Unlike in the case of torture or house demolition, there is no consensus around the critique of preventive killings as there is no clear consensus around the critique of prevention *per se*. TK resonates with ethical assumptions made in other areas of life such as the precautionary principle (see Cameron and O’Riordan, 1994; Godard, 2003). But in spite of showing a concern for the life of innocents on *both* sides of the conflict, the tactic in its current form is not, and is unlikely ever to be, backed by international law.

One way of tackling this normative deadlock is to overcome the unilateralism of the preventive use of force. Various scholars (Buchanan and Keohane, 2004; Kaldor, 2004) have explored the possibility of multilateral preventive wars, whether they are security oriented or led by humanitarian considerations. As always, the discrepancy between law and ethics is one of the significant dimensions of this problem. According to the actual definition of self-defence, it is highly unlikely that a preventive war would be approved by the UN (Dinstein, 1988; Rodin, 2002). However, due notably to the failures of Rwanda, it could very convincingly be argued that preventive action could be ethically justified. A change in the codifi-

cation of prevention at the UN would, of course, have major consequences for the justification of prevention. Paradoxically, even if multilateralism is at the core of this project, such a change could also reinforce the US position and its temptation for prevention.

Third, it is worth noting that TK fared relatively well on the international marketplace of ideas. The tactic of targeted killing has not given rise to additional anti-Zionist protest on the international scene (see, for example, Nissenbaum, 2005). Toned-down versions have entered the training of police forces in many countries (see *Washington Post*, 2005). American experts are discussing the tactics in the context of the 'war on terror'. Targeted killings are part of a comprehensive preventive framework and echo many of the concerns that are increasingly integrated into the security frameworks of other countries such as the US. Prior to 9/11 and until August 2001 the US had severely criticized this Israeli policy.<sup>8</sup> In December 2001, the US vetoed a Security Council Resolution that would have condemned 'acts of terror' against Israelis and Palestinians. The draft would have condemned 'all acts of extra-judiciary executions, excessive use of force and wide destruction of properties'. Although Richard Boucher, the State Department spokesman, has continued to express the US condemnation of Israeli TK, the US once again exercised its veto power in 2003 when blocking a Security Council resolution that would have opposed the assassination of Arafat and which included a critique of Israel's TK policy. It has certainly become more difficult for the US to condemn such practices since the US is being criticized for carrying out the killing of presumed terrorists as happened in Yemen in 2002, in Pakistan and on its border with Afghanistan in 2005 and 2006 and in Iraq. There are even indications that TK is seen by some as compatible with the neo-Wilsonianism of the US (Mead, 2004) and its particular notion of 'coercive justice' (Elshtain, 2003).

## Notes

- 1 This chapter is based on research that has been funded by the CERI (Centre d'Études et de Recherches Internationales) and the CSSD (Centre d'Étude en Sciences Sociales de la Défense), both located in Paris.
- 2 Ethics is being taught at various army colleges. Military and philosophers also gather at annual conferences on international ethics where just war issues are extensively debated. The Joint Services Conference on Professional Ethics (JSCOPE) deserves particular attention (see the homepage at <http://www.usafa.af.mil/jscope/>).
- 3 See, for example, various articles published by the 'Observatoire de la presse sur la Palestine' at <http://www.presse-palestine.org/>.



- 4 Several methods of torture were outlawed by the High Court in 1999, therefore the number of claims and complaints addressed at the Israeli army by the Palestinians has been radically reduced. House demolitions have not been considered illegal by the High Court, though the policy of house demolitions has been abandoned by the Israeli army on the basis that there was no evidence that this measure had a deterrent effect.
- 5 Furthermore, prevention is part of Israeli military tradition and history. Israel already waged a pre-emptive war in 1967 against Egypt and a preventive strike in Iraq in 1981 when it bombed and destroyed the nuclear plant Osiraq.
- 6 Interview in Tel Aviv, Jaffee Center for Strategic Studies, July 2005.
- 7 Ethicists, professional philosophers or military with a philosophical background work for the army. This is, of course, also the case for jurists. The US and Israel employ thousands of lawyers, 1,500 of them working for the US Air Force alone.
- 8 See the briefing by State Department Spokesman Richard Boucher on 14 February 2001: 'I think we have made clear on the Israeli side that we oppose the targeted killings. We have made clear at various times other things that the sides have done that we don't want them to do. And we have done this periodically in the past'. Available at: <http://canberra.usembassy.gov/hyper/2001/0214/epf301.htm> (accessed 15 March 2006).

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# 11 Trusteeship and contemporary international society<sup>1</sup>

*William Bain*

The purpose of this chapter is to reflect on a predicament that arises in thinking about trusteeship as a remedy to the problem of failed and unjust states. These states thrive (rather perversely) in a world that cherishes the supreme value of political independence and, conversely, disapproves of all forms of political dependence. Injunctions against political dependence are intelligible in the principle of sovereign equality and in the law of decolonization, the most important statement of which, the Declaration on the Granting of Independence to Colonial Countries and Peoples, affirms the fundamental right of all peoples to self-determination and condemns subjection to alien rule as a 'denial of fundamental human rights' (Brownlie, 2002: 229). Today there are only a handful of dependent territories, nearly all of which are marginal in size and in importance, as the claim of decolonization has resolved questions about political association in favour of the sovereign state. Independence became a categorical right and dependence became a categorical wrong. But the good of political independence, the collective freedom that comes with sovereign statehood, comes with a necessary risk of failure. The independence afforded by sovereign statehood provides no guarantee of living well: the reward is in having tried (Jackson, 2000: 307, 373).

It is the consequences of failure, the absolute poverty, systematic human rights abuses and endemic war that are characteristic of failed and unjust states, which are said to rend the moral fabric of international society. For the conditions of life in these places of misery illuminate a tension between two contending, though not necessarily incommensurable, points of ethical evaluation. On the one hand, the value of political independence asks that we leave people free to seek their own collective conception of the good life; on the other hand, the value of common humanity asks that we assist these same people in realizing their goals and protect them

when they are in danger. We are thus left with a choice, one far more ambiguous and troubled than most scholars and practitioners of world affairs care to admit, which goes to the very heart of the problem of obligation in a world constituted by independent political communities. But the dilemma of this choice, and that of choosing well, is too often evaded by those who pretend as if no dilemma exists. It is far easier to proclaim the obsolescence of sovereignty or to dismiss the imperialism of (Western) human rights than to experience the profound intellectual and moral frustration that comes with all genuine dilemmas (Falk, 1985; Matua, 2002). However, ideological conviction and devotion to a cause are no substitute for the kind of thoughtful reflection that is required when our moral concepts and categories collide with events that stubbornly defy the straight and reassuring lines of reason. Making sense of the dilemma addressed in this chapter, navigating a course between the value of common humanity and the value of political independence, demands a great deal more intellectual effort than merely declaring allegiance to the rights of men or, alternatively, to the rights of citizens.

Some form of trusteeship is increasingly viewed as a beacon of hope in the struggle to chart this most precarious of courses, for it promises a way of redeeming the claims of humanity in a world dominated by the sovereign state. Indeed, experience in Kosovo and East Timor, while not without blemish, is frequently invoked by advocates of trusteeship as pointing the way forward to a more peaceful and just world. For example, Martin Indyk (2003), who was twice the American ambassador to Israel, argues that an American-led trusteeship in the Israeli-occupied West Bank and Gaza Strip is the only credible way of pacifying a seemingly intractable conflict. This renewed interest in trusteeship is often said to be emblematic of a 'new imperialism', one untainted by the excesses that discredited imperial projects in days past; trusteeship today is rather more indicative of a 'postmodern imperialism', as Robert Cooper (2002) calls it, which is 'acceptable to a world of human rights and cosmopolitan values'. But the notion that 'postmodern imperialism' can be distinguished sharply from 'modern imperialism' discloses a conceit, born of historical ignorance, intellectual hubris and misplaced moral certainty, which confuses more than it illuminates. The European empires that once spanned the globe were no strangers to the sanctity of human dignity or to the righteousness of cosmopolitan values; and in that regard, the district officer in Bengal or Nyasaland was no less devoted to the cause of the disadvantaged than the international administrator in Kosovo or East

Timor. Thus, when Lord Lugard, the chief architect of indirect rule in British West Africa, enjoined the colonial administrator to act as the 'guardian' of the native African's 'natural rights', he did not have in mind something that is fundamentally at odds with Cooper's post-modern imperialism (Lugard, 1929). The creation of conditions favourable to the enjoyment of those rights joins both imperial projects – new and old – in common purpose; and, as American stewardship of post-Baathist Iraq makes clear, failure to do so provides no proof of insincerity that distinguishes old from new.

A proper understanding of trusteeship is further obscured by those who call trusteeship by another name, all in the effort to immunize themselves from the moral opprobrium that so often goes with anything that can be tarred by the adjective 'imperial'. For example, the Independent International Commission on Kosovo (2001) proposes something called 'conditional independence', a type of sovereignty 'explicitly supervised' by the international community, which is somehow different from both a colonial dependency and ordinary sovereign statehood. Yet it is none too clear how conditional independence, the process of 'progressive devolution' of powers to the people of Kosovo in preparation for the goal of full independence, differs substantively from the progressive political organization of the British Empire in which non-white colonies were expected to 'grow up' and to take their place as self-governing dominions in a commonwealth of nations, united in common allegiance to the British Crown, just as Canada, Australia, New Zealand and South Africa had before them (Bain, 2003: 116–19). This fascination with the novel and new, an affliction to which practitioners succumb no less frequently than do academics, leaves the conceptual landscape of trusteeship barren and in want of distinguishing colour and discriminating relief. Unfortunately, though, most recent writing on trusteeship describes how trusteeship 'works' in this or that territory and, having accomplished that task, proposes how it can be made to 'work' better than it does at present. The political theory of trusteeship, the sort of relation it implies, the assumptions and claims that inform that relation, and most important of all, the moral justification upon which it all rests, remain largely unexamined.

These issues remain unexamined, in large part it seems, because once a declaration is made in favour of human rights, or another of humanity's great truths, no such inquiry is required. The urgent requirements of the practical problem, the demand that we must 'do something' when confronted with crisis, seem to suspend the need to grapple with the substance of our predicament. But I should hope

that the supreme test of a practical response – trusteeship – to a practical problem – the consequences of failed and unjust states – consists in something more than merely identifying what works. Indeed, to reduce the good of something to no more than a measure of efficacy is to render the moral life exceedingly thin and brittle. Trusteeship must work as well as make sense if it is to be accorded recognition as an accepted practice in contemporary international society. By that I mean that trusteeship must be reasonably useful in fulfilling its purpose and, at the same time, it must be grounded in a reasonably persuasive moral argument. For an affirmative answer to the question ‘does it work?’ cannot for long bear much weight if the question ‘is it right?’ is not also answered in the affirmative.

The first step in moving beyond the scholarship of technique, and thereby making sense of whatever place trusteeship might (or might not) enjoy in contemporary international society, involves understanding the particular type of legal and moral condition implied by a relation of trust. Only then can we meaningfully ask: how shall we respond when the consequences of failed and unjust states mock the justification of political independence? Thus, this chapter seeks to clarify the character of trusteeship in international society by interrogating the identity it imparts. The chapter proceeds by contrasting a relation of trust, which provides the basis of an unincorporated mode of human association, with a relation of contract, which provides the basis of a corporate mode of human association, or what is commonly understood as statehood. It then considers the difficulty, which stems from the nature of this identity, of providing a coherent moral account of trusteeship in a society of equals. In short, an unincorporated mode of association such as trusteeship, that is, a body that is ruled by a will that is alien to the body itself, runs counter to the good expressed by the value of political independence as well as the good expressed by the value of human rights. The chapter concludes by arguing that trusteeship offers an unsatisfactory way of responding to the problem of failed and unjust states.

### **Trust and identity**

The idea of trust is a peculiarity of medieval English property law that was devised at a time when land could not be conveyed by will to a designated heir, for in the event of death the disposition of real property, that is, immovable property such as land, was subject to rights enjoyed by the feudal lord: payment of a fee by an heir of full age (*relevium*), wardship of a surviving minor heir (*custodia*



*haeredis*), sale of the heir in marriage (*maritagium haeredis*), or reversion to the lord in the absence of an heir (*escheat*) (Maitland, 2003a). But land held in trust, which vests tenure in several joint owners, provided protection against the exercise of these rights. It is this principle of joint ownership, and the way in which it is conceived, that does the work in an arrangement of trust: ownership in law resides in a group of persons, the trustees, and ownership in equity rests in another group, the beneficiaries, which may include persons named as owners in law. Thus, ownership implied, not absolute possession, but a right in the use of the thing held in trust. This curious legal innovation, which belongs to neither the law of persons nor the law of things, avoided the liabilities of transfer by inheritance. An interest in land held in trust would, in the event of death, simply accrue to the surviving beneficiaries; and transfer by accretion, rather than by inheritance, erected a barrier through which the rights of the lord did not travel (Maitland, 2003a: 82–5; Runciman and Ryan, 2003: xxii–xxiii).

From this rather conservative beginning – protecting the wealth of the privileged – the trust has been adapted to serve more progressive ends. For instance, trusts have been used to establish conditions of religious liberty, to secure women in the ‘separate’ enjoyment of property and to pursue a specified purpose that is conceived as being beneficial to the public – the charitable trust. But what these outwardly different trusts share in common is a distinctive pattern of relations whereby some thing or some purpose is entrusted to a person (legal or natural) for the benefit of another person. The trust is in this respect a conspicuously plastic legal institution; it can change its dress, as Frederic William Maitland (2003a: 94–100) once put it, but maintain the essence of its identity (Buckland and McNair, 1952: 176–9). However, the pattern of relations informed by this identity, or what a social scientist might call the logic of trust, can carry us only part of the way in attempting to make sense of a relation of trust in international life, precisely because it can be moulded and adapted to meet so many different contingencies. The international manifestation of this identity suffers, as does so much else in international relations, for want of an independent authority empowered to interpret circumstances, clarify obligations and decide disputes; for a world composed of independent political communities is also composed of an equal number of independent judges. Thus, compared to the domestic law of trust, the international law of trust is rather tattered; we might even say that it stands as a shabby cousin to its domestic relative.

Despite this shabby appearance it is still possible to make out a coherent picture of trusteeship in international life. But the main outlines of this picture are discerned, not by drawing a straight line between the domestic and the international, but by interrogating the peculiar circumstances out of which trusteeship arose. So we must look to history, not to prove what we wish trusteeship to be, but to discern what trusteeship has been. The idea of trusteeship in international society is an artefact of a particular time and a particular place; and in that respect, it is an idea shot through with the assumptions and aspirations of the Enlightenment. It was the heady slogan of the Enlightenment, 'have the courage to use your own understanding!' (Kant, 1970a: 54), that pointed the way to a different conception of the good life and which prepared the ground in which trusteeship flourished. Original sin did not condemn man to a life of darkness. The world could be changed: defects could be remedied and superstition could be expunged. For the man who dares to know for himself is no longer a slave to appetite. Autonomous self-direction, rather than the word of the priest, would steer men clear of evil; and reason, rather than scripture, would emancipate men from ignorance. Thus, the enlightened man, the autonomous and reasoning individual, is the emancipated man; and armed with reason, properly employed and appropriately directed, enlightened man reigns as his own master.

But the notion of enlightened man – the man who had escaped what Immanuel Kant (1970a) described as a condition of 'self-incurred immaturity' – made a problem of unenlightened man, who, in the context of trusteeship, was the (non-European) subject of alien rule. Indeed, the consequences of a *self-incurred* condition of immaturity, as opposed to naturally determined or divinely ordained immaturity, were both profound and far-reaching. First, immaturity excluded unenlightened man from the goings-on of public life, or, to be precise, from activities normally associated with citizenship. Some manner of defect impeded self-direction: false religion, irrational law, or dubious knowledge prevented unenlightened man from seeing the true nature of things. Thus, the man who could not know for himself, or who lacked the courage to hazard the traffic of ordinary life, required the guidance of another. Second, immaturity could be overcome – that is, with proper instruction unenlightened man could be improved so that one day he could know for himself. This view presupposes that all men are equal, or at least potentially so; and from this condition of potential equality follows an obligation

to bring about unity within the human family through universal enlightenment. It is in this respect that unenlightened man is invested with a moral standing not unlike that of a child in Aristotle's *polis*, the virtue of whom 'exists only in relation to the progress of his development toward adulthood, and to whoever is his guide' (Aristotle, 1992: 96).

Taken together, conceptions of defect and possibilities of improvement prefigure the identity of trusteeship in international life. Trusteeship provides a way of conducting relations with people who are deemed to be incapable of taking part in the political life of international society. In other words, the thing held in trust, a particular territory and the population residing within it, is a non-person in international law. This notion of personhood, or lack thereof, is brought into focus in the context of the legal personality with which the sovereign state is invested. There are, of course, a number of difficulties in thinking of states as being analogous to persons. States do not live natural lives as do persons; they do not sleep, they do not suffer the effects of ill-health, and they do not succumb to the inevitable onset of old age that culminates in a natural death. Hence the image of the state-as-person inhabiting an international state of nature is necessarily limited in what it can tell us about international society (Bull, 1977: 46–51). There are also reasons to question the value of autonomy that is ascribed to the state-as-person, the most consequential of which stems from doubts about the legitimacy of particular states that stake a claim to autonomy. For example, Charles Beitz (1979: 180) may be counted among critics who reject the analogy of states and persons by arguing that '[t]he appropriate analogue of individual autonomy in the international realm is not national autonomy but conformity of a society's basic institutions with appropriate principles of social justice'.

But there is in these criticisms a danger of demanding more of the state-as-person analogy than it claims; in fact, they somehow miss the point. The analogy of states and persons informs no more than an aspect of group identity, which may involve a claim of absolute autonomy, though not necessarily so. For without the help of some notion of legal personality, which does rest on the state-as-person analogy, it is hardly possible to make much sense at all of a world composed of many different types of groups; for 'if there is to be group-formation', Maitland observes, 'the problem of person-ality cannot be evaded' (Maitland, 2003b: 67). Otherwise, we would be deprived of the basic concepts and categories that are required

to evaluate and to speak about world affairs; and, stripped of those concepts and categories, we are unable to offer mutually intelligible statements about which groups are entitled to make law, exchange promises and, crucially, rule themselves. We would be no more able to make authoritative statements about the moral quality of human conduct internationally; for the vocabulary of morality in world affairs depends to some considerable extent on shared understandings of authority and responsibility, and of the particular groups to which they pertain. But shorn of the discourse of personhood, it would be very difficult to say that one group enjoys the authority to wage war and others do not; likewise, it would make little sense to say that one group is responsible for an unmanageable debt that should and can be forgiven by another group. So to reject the state-as-person analogy altogether is to reject, too, the existing normative framework of international society, shortcomings and all.

The point of the analogy of states and persons is not to suggest that sovereign states are something like natural persons; they are corporate persons, or, to be more precise, they are corporations aggregate. Maitland (2003a: 13) describes the corporation aggregate as ‘an aggregation of head and body: not a head by itself, nor a body by itself; and it must be consonant to reason’. It is ‘consonant to reason’ in the sense that the essence of corporateness is disclosed in the permanent existence of the group. This condition of permanence does not mean that the membership of the corporation aggregate is forever fixed. Some members may resign their affiliation, others may forfeit their right of association, and still others may cease to be members in the event of death. So while it is true that the identity of particular members may change, the identity of the ‘body of members’, which along with the ‘head’ constitutes the corporation aggregate, remains unchanged. And as a permanently organized association, recognized in law, the corporation aggregate is personified as a subject of rights and duties. What is distinctive about the right-and-duty bearing corporation aggregate is that it is self-ruling; it possesses legislative authority, it can make contracts, it can sue and be sued, and, consequently, its agents and representatives can be held accountable for their actions (Maitland, 2003a: 116–17; 2003b: 68). In other words, the corporation aggregate, of which the sovereign state is but one example, enjoys a life of its own; an independent life for which a group of persons associate in respect of some purpose, according to their own design, and by their own lights.

In contrast, the trust in its international manifestation discloses a remarkably different identity from that imparted by the corporation aggregate. A thing that is held in trust is vested in a guardian; and that guardian is charged, as stipulated in a trust agreement, to act in the best interest of the beneficiaries of the trust. But these beneficiaries are not parties to the trust deed: they enjoy no authority to make representations in respect of terms, conditions, duration or purpose. Indeed, trusts in international society were instituted on behalf of people who were deemed to be incapable of knowing the law, incapable of rendering consent, and, therefore, incapable of self-government. Thus, the thing held in trust, a territory and a population, is an unincorporate body; and in that respect the trust, as Maitland (2003d: 57) explains, is ‘a liberal substitute for a law about personified institutions’. This unincorporate body is not invested with legal personality: it is not known to law and, therefore, it is a non-person. An unincorporate body cannot sue and it cannot be sued; nor are its members liable for their actions, even though they are the beneficiaries of the trust. Rather, it is the trustee, that is, the owner of the thing held in trust, which enjoys the benefits of agency and suffers the liabilities of dispute (Maitland, 2003d: 58). What is distinctive about the unincorporate body is that it is non-self-governing and that it enjoys no independent life of its own; for responsibility in respect of the unincorporate body held in trust lies with a party that is alien to the association itself. In other words, there is a head that administers the body but that head is not a part of the body so that it forms a corporate whole.

This distinctive characteristic of the unincorporate body, the separation of head and body, suggests a mode of human association that is fundamentally different from that suggested by the corporation aggregate. The idea of ‘good conscience’, rather than a relation of contact signified by an exchange of promises, grounds the trust of an unincorporate body. For the right enjoyed by the beneficiary of a trust is not established by contract, at least one between trustee and beneficiary; indeed, Maitland argues that there is great difficulty in arguing that a man should be compelled to perform a contract to which he is not a party. A non-self-governing association, one dispossessed of any legislative authority, lacks the wherewithal to contract with others. Thus, it is a test of ‘good conscience’, rather than rights generated by an exchange of promises, which is opposed to law in a relation of trust; and it is on account of this test alone that ‘[t]he trust is to be enforced against all whose conscience is to be “affected” by it’ (Maitland, 2003d: 54–5).

## In search of paradise

The international history of trusteeship has been rather more dominated by debates concerning matters of 'good conscience' than those concerning the justification of trusteeship itself. Indeed, for much of this history there was nothing dishonourable in holding overseas territories as colonies; nor was there anything disreputable about coveting places in the sun to exploit for the benefit of the metropole. What did garner a great deal of attention, more so than the right by which Europeans ruled distant reaches of the earth, was the way in which their colonial possessions were administered. For the progressive values of the Enlightenment, the same values that made a problem of non-European man, demanded that empire be justified by a higher calling. The unenlightened African or Asian could be improved; and the fact that he could be improved disallowed all arguments for withholding from him the benefits of 'true' knowledge, 'true' law, 'true' science, 'true' religion, 'true' politics and 'true' economy. Dominion imposed the awesome responsibility that power should be exercised for the good of the destitute and the disadvantaged. That it was not, so alleged Edmund Burke, vacated the East India Company's claim to rule; for the test of 'good conscience' held that the rights and privileges of dominion

are all in the strictest sense a *trust*; and it is of the very essence of every trust to be rendered *accountable*; and even totally to *cease*, when it substantially varies from the purposes for which alone it could have a lawful existence.

(Burke, 1999: 101; emphasis in original)

Thus, the test of 'good conscience' supposes that the right enjoyed by a trustee is always conditioned by the purpose for which the trust is established.

The argument from 'good conscience' resulted in the creation of increasingly elaborate arrangements of accountability to ensure the faithful administration of the trust and to provide remedies in case of a breach of that trust. Thus, Britain's great chartered companies, the East India Company included, found the conduct of their political as well as commercial affairs subject to the scrutiny of parliamentary supervision. New occupations in Africa, that is, those connected with the notorious partition of the so-called 'Dark Continent', were subject to principles introduced into international law through a succession of treaty agreements. And the League of Nations mandates

system instituted formal arrangements of accountability, which operated independently of particular colonial powers, in order to guard against miscarriages of justice of the sort that transpired in King Leopold II's ill-fated 'humanitarian' venture, the Congo Free State (Bain, 2003: Ch. 2–4). Of course, any assessment of the many attempts to bend the hand of trusteeship in international society to the demands of accountability must, in the end, yield an open verdict. These arrangements did not eliminate once and for all the selfishness, hypocrisy, insincerity, hubris and arrogance for which the administration of dependent territories and peoples is best remembered; and, as a matter of consequence, injustice did not cease to be a problem for those who were responsible for administering the 'sacred trust of civilization'. But it would be a mistake to dismiss these arrangements, no matter how imperfect they might have been, as crude rationalizations with which to disguise the pursuit of material interests. They are simply historical artefacts – evidence of human imagination, ambition, and, indeed, frailty – which are prone to the same degree of error that afflicts everything else the human hand touches.

But the problem posed by the resurrection of trusteeship in contemporary international society is not one of applying the test of 'good conscience'. Few people doubt the sincerity with which the UN goes about the day-to-day business of administering Kosovo. The great difficulty lies in providing a coherent moral account of the justification for establishing a trust in international society at all. It is at this point that the real dilemma of our predicament, navigating a course between the value of common humanity and the value of political independence, comes into full view. The pursuit of paradise, a world in which the truths of humanity vindicate life on earth, involves the commission of wrong. For in a world of sovereign states, each of which is equal in authority and jurisdiction, establishing new trusts involves nothing less than extinguishing someone's independence. It is certainly true that good may come of it; and thus we should not delude ourselves into thinking otherwise. Indeed, life in Kosovo today, at least for the majority of its population, is a great deal better than it was prior to the NATO-led intervention in 1999. And it may well be the case that the people of Haiti, Liberia or Sierra Leone, might benefit from being deprived of their independence and being made wards of an elusive 'international community'. But in extinguishing their independence, and the independence of other communities that experience first-hand the risks of collective freedom, we turn our backs on the moral claim

of decolonization – the idea that the subjection of people to alien rule ‘constitutes a denial of fundamental human rights’ (Brownlie, 2003: 229).

A loss of independence is a loss of independence, and not something else. So it will not do to protest by saying that there is no ‘true’ independence in poverty; that independence is not ‘real’ where there is oppression; or that there is no ‘actual’ independence in ignorance. There is considerable attraction in pretending that things are not as they are, if only because it eases our conscience in making choices we would otherwise not wish to make. Indeed, it relieves us of the vexing dilemma of having to choose in a world in which the ends of life cannot be reduced to, or reconciled with, a single value from which all others spring. So it is well worth remembering, as Isaiah Berlin (1969: 102, 125) was fond of saying, that ‘[e]verything is what it is’; and, furthermore,

if we understand how conflicts between ends equally ultimate and sacred, but irreconcilable within the breast of even a single human being, or between different men or groups, can lead to tragic and unavoidable collisions, we shall not distort the moral facts by artificially ordering them in terms of some one absolute criterion.

To suggest otherwise is to cut ourselves off from the substance of human conduct; for in place of deliberation and reflection, as well as the frustration and satisfaction that go with it, we find a premeditated blueprint that tells us what we should do without ever having considered the circumstances in which we are to do it. We must guard against the tendency to view trusteeship as a formulaic panacea with which to guide the world’s failed and unjust states to paradise; for the politics of ideology, expressed as devotion to the cause of human rights, is no better than the politics of ideology, expressed as devotion to the cause of self-determination, which gave birth to many of these states. They are two kinds of the same mistake.

What is most troubling about the resurrection of trusteeship in contemporary international society is that it issues offence to the value of human rights as well as to the value of political independence. For the man who is made a ward cannot be understood to be either fully a man or fully independent. Rather, the idea of trusteeship supposes that he does not understand his situation; that the conditions of happiness somehow evade his grasp; or that he simply



lacks the moxie to take on the challenges and adventures of human individuality and, therefore, to make a life for himself. Indeed, the man who is a ward is consigned to a life of obedience as he is compelled to be happy; for the activity of choosing the ends of life is a matter for someone else. The freedom of the ward consists, not in the moral and civil freedom that comes with self-mastery and self-government, but in the natural freedom that obtains between men outside of society (Rousseau, 1968: 64–5). Thus, the man who cannot choose for himself is excluded from the civil order of the state, the corporation aggregate, in which freedom, equality and independence are reserved to its citizens, that is, a particular group of persons who have come together in pursuit of some common purpose. Instead, he is dependent on a paternal government under which

the subjects, as immature children who cannot distinguish what is truly useful or harmful to themselves, would be obliged to behave purely passively and to rely upon the judgement of the head of state as to how they *ought* to be happy, and upon his kindness in willing their happiness at all.

(Kant, 1970b: 74; emphasis in original)

It is in this respect that trusteeship provides a most unsatisfactory passage through the shoals of contemporary world affairs. For trusteeship can satisfy neither the demands of political independence nor the demands of common humanity; rather, it asks that we deprive people of their independence and treat them as something less than thinking, choosing agents. Indeed, moral aspiration in this context has the perverse effect of obscuring or concealing what is, in fact, moral transgression which, hard as it may seem, is even more odious than the way in which the institution of sovereignty protects tyrants. Whereas the tyrant merely infringes upon a person's humanity, the paternalist denies it altogether. Thus, we end where we began, troubled by having to make a choice between the value of political independence and the value of common humanity. We can choose one or the other, but we cannot have both. What is sure, however, is that trusteeship can redeem neither. Hence the solution to our predicament, if it can be cast in those terms, lies, not in yet another redefinition or reformulation of sovereignty, the commission of another report, or the proclamation of new rights and responsibilities, but in the imperfect, yet tried, insights of political wisdom. For the wisdom that guides all successful political

conduct is revealed in knowing how much evil to tolerate in the pursuit of good. So in the attempt to purge the world of the evil for which failed and unjust states are responsible, we would do well to remember that

the great inlet by which a color for oppression has entered into the world is by one man's pretending to determine concerning the happiness of another, and by claiming a right to use what means he thinks proper in order to bring him to a sense of it.  
(Burke, 1963: 264–5)

## Note

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