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### Liberty, Statehood and Sovereignty: Walzer on Mill on Non-intervention

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# Liberty, Statehood and Sovereignty: Walzer on Mill on Non-intervention

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**The purpose of this paper is to critically assess Michael Walzer's use of John Stuart Mill's text 'A Few Words on Non-Intervention' in his seminal work *Just and Unjust Wars*. Although point by point, I think Walzer's reading of Mill is largely sound, I will argue that the specific narrative into which Walzer orders these points places a highly tendentious spin on the original text. More precisely, Walzer's way of articulating the negative aspects of Mill's argument—the general presumption against intervention—obscures the many positive reasons that may be seen to follow in favor of intervention from the text. Surprisingly, perhaps, from a closer reading of Mill is likely to emerge a picture of international political morality that is closer to Walzer's present views on the subject than Walzer himself might like to admit.**

KEYWORDS: Walzer, Mill, intervention, sovereignty, human rights.

## Walzer and Mill in Context

First published 25 years ago, Michael Walzer's book *Just and Unjust Wars* has withstood the test of time remarkably well; almost amazingly so for a work that attempts to resuscitate a medieval-sounding philosophical vocabulary—that of *justum bellum*, or Just War—in the heyday of cold war political realism. However, on one topic Walzer's book is very much a child of its time. Its chapter on interventions, although trading critically on an argument developed by John Stuart Mill almost 120 years earlier, clearly reflects the political climate of the 1970s in its all but total defense of the inviolability of national boundaries. My

purpose in these pages is to look into the textual basis of Walzer's appropriation of Mill, and to use this discussion to gain leverage on the contemporary debates on statehood and the foundations of sovereignty.

It is not primarily philological interests that have motivated me to write this paper: the renewed controversy concerning the legal, political and moral permissibility of interventions warrant a similarly renewed look at Mill's text, guided by the premonition that he has both genuine insights and a refined vocabulary to offer. It is my thesis that the last 30 years or so have witnessed a process of momentous change in our thinking about the foundations of liberty, statehood and sovereignty in general, and consequently about the moral permissibility of interventions in particular. Mill's article, I will try to show, is of particular importance in that it allows us to embrace perspectives from either end of this conceptual shift within a single theoretical framework.

## The Legalist Paradigm

The argument of 'A Few Words on Non-Intervention' (1859a) resists easy summary: it is neither very systematic nor very exhaustive (nor, to be fair to Mill, is it likely that he intended it to be such). However, Walzer's rendition is really in no better shape. His reading of the article is highly selective and by no means amounts to a full-blown exposition. Furthermore, it is not always clear which of the many viewpoints he cites he actually means to attribute to Mill, and, to top it off, it is not always clear which of these views he would himself end up endorsing, were we to pressure him on the point.

Walzer situates his discussion of interventions, and thereby also Mill, in a larger discussion of what he famously refers to as 'the legalist paradigm' (roughly, the notion that the only legitimate use of military force is that of self-defense following a prior act of territorial aggression by another state). The legalist paradigm—at least in its non-refined versions—serves as Walzer's argumentative foil more or less throughout his book, but it is not quite clear where he would place Mill with respect to it. He seems initially to place Mill directly in line with such a view, but later to credit him with having introduced some, though not enough, revisions into the paradigm. At any rate, it is to clarify one of the grounding intuitions behind the legalist paradigm that Walzer moves directly to Mill's argument about what constitutes a self-determining community. Here Walzer finds Mill arguing for a central plank in the legalist paradigm, namely that we must take care not to confuse the *self-determination* of a community with the *political freedom* of the community's members. In international affairs, the former, not the latter, is the yardstick by which we judge an actor's legitimacy. On this view, any dictator can pass as head of a sovereign state regardless of his status among his subjects. Legitimacy abroad does not require legitimacy at home—indeed conflating the two would amount to something of a category mistake.

To underpin this notion, Walzer credits Mill with framing 'the stern doctrine of self-help': while we may, and indeed should, sympathize with a people's struggle for freedom from their tyrant, we must recognize that this freedom can only be gained by the people itself. Specifically, we must recognize, our moral sympathies

notwithstanding, that we cannot help them win their freedom, for that would rob them of their self-determination. As Walzer puts it:

A state is self-determining even if its citizens struggle and fail to establish free institutions, but it has been deprived of self-determination if such institutions are established by an intrusive neighbor. The members of a political community must seek their own freedom, just as the individual must cultivate his own virtue. They cannot be set free, as he cannot be made virtuous, by any external force (1977: 87).

## The Domestic Analogy

The logic behind this argument is all too familiar, but requires closer scrutiny nonetheless. In this case, the argument draws heavily on what is often called the ‘domestic analogy’; i.e. the expectation that our commonsensical intuitions about what constitutes good conduct in the intra-national sphere will provide a reliable guide to good conduct in the international sphere as well. Thus: ‘As with individuals, so with sovereign states: there are things we cannot do to them, even for their own ostensible good’ (Walzer 1977: 89). Walzer is quick to trace this back to the moral psychology that Mill so famously expounded in *On Liberty* (which, not incidentally perhaps, was published the same year as ‘A Few Words’). And, *prima facie*, it is hard to deny that this seems like a plausible framework—perhaps the only plausible framework—in which to ground an unrevised legalist paradigm for international affairs. From this point of view, we may conclude (at least Walzer draws the conclusion for us) that the problem with intervention is not merely that it may have no legal backing; rather, it is strategically askew from the start: ‘[Mill] doesn’t believe that intervention fails more often than not to serve the purposes of liberty; he believes that, given what liberty is, it *necessarily* fails’ (ibid.: 88). If we follow Mill’s lead, then, we must conclude that:

Self-determination [...] is the right of a people ‘to become free by their own efforts’ if they can, and nonintervention is the principle guaranteeing that their success will not be impeded or their failure prevented by the intrusions of an alien power (ibid.).

Walzer, apparently, does not endorse this view, although he is far from denying that it harbors a grain of insight. Rather he takes the fact that we can draw such consequences from what appeared to be healthy premises to indicate that the legalist paradigm is in need of serious modification.

The narrative recounted above is not altogether unpersuasive, nor, as I indicated, entirely without textual warrant. But shouldn’t our intuitive warning signals go off just a bit when we attribute to a philosopher whose whole reputation is based on an unrelenting and passionate defense of the rights of the individual, what appears to be a *carte blanche* to any old domestic tyrant so long as he keeps within his territorial bounds? Shouldn’t the demands of interpretative charity make us think twice before implicitly attributing to a liberal (and not just any liberal,

mind you) the quasi-Machiavellian credo that *you have no rights that you have not won for yourself*? I think we should, and I think a closer look at Mill's argument will reward us for doing so.

The first indication that something is amiss surfaces when reviewing the domestic analogy that Walzer attributes to Mill. Like most instances of analogical reasoning, the domestic analogy presumably functions as what we might call an 'intuition pump'.<sup>1</sup> That is, it is a philosophical device for extending one set of familiar and largely accepted intuitions to new sets of circumstances. Now, the first thing to keep in mind in employing such analogies is that our inferences actually preserve, rather than contradict, the intuitions with which we set out. Otherwise, the analogy would plainly not hold. How does the domestic analogy fare in this regard? Not very well, it seems. For although it might provide some striking slogans, the analogy that Walzer foists on Mill is flawed from the start. Or, more precisely: it will appear plausible only if nested into a larger disanalogy, a disanalogy that remains unacknowledged. For the claim that sovereign states in the international sphere enjoy rights analogous to those enjoyed by individuals in the communal sphere (indeed, that the state possesses these rights only as a direct consequence of individuals possessing them) is held somehow to entail the notion that, in the international sphere, individuals cease having rights, except whatever rights are in fact granted them by their government. In the case of domestic tyranny, these rights will amount to little more than what was described above as 'the right to self-determination', i.e. the right not to have one's rights reinforced by a foreign power acting to protect one from the domestic oppressor that took them away. Although, apparently, the rights of the individual is the primitive category (in the sense that states only have rights by analogy or by mandate from their people), when it comes to international affairs, the state is free, on its rights, to remove the rights that its rights derive from. This seems a strange doctrine, and luckily for us who believe that international order and supra-national surveillance of human rights can coexist, it is not a doctrine propounded by Mill. Instead, it is tempting to speculate that Walzer has projected his own communitarian presuppositions on to Mill's liberalism.<sup>2</sup> The two perspectives, needless to say, constitute an uneasy mix.

## Intervention, Non-intervention and Self-interest

Contrary to the impression that might follow from Walzer's rendition of the argument, Mill does not move straight into his account of self-determination and

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<sup>1</sup> I borrow the term from Daniel Dennett.

<sup>2</sup> The *locus classicus* of Walzer's communitarianism is his *Spheres of Justice* (1983). In *Just and Unjust Wars*, this communitarianism is nicely brought out in statements like 'We need to establish a kind of *a priori* respect for state boundaries; they are, as I have argued before, the only boundaries communities ever have' (1977: 90). The liberal cosmopolitan will of course want to know whatever happened to the universal community of mankind.

political freedom. Indeed, that perspective seems rather peripheral to his stated concern. Instead, Mill frames his general argument for non-intervention in terms of an analysis of the rhetoric of English statesmen of his time. He considers the English practice of not interfering in the internal affairs of other countries laudable and a 'genuine novelty in the world'. But, he claims, this admirable *practice* is not reflected in the *rhetoric* of English politicians. For what we hear is most often the 'shabby *refrein*' that 'we did not intervene, because no English interest was involved' (1859a: 158). This leads Mill to underscore the point that the whole doctrine of non-intervention needs to be reconsidered in moral terms. Indeed, he asks, has the principle ever really been considered on such terms at all?

The critical question, then, is what distinguishes a genuinely *moral* principle of non-intervention from the merely pragmatic resolve, as professed by English statesmen, not to interfere where no English interest is directly involved? It is in order to outline the moral basis of non-intervention that Mill ventures into the passages cited by Walzer: Mill's point is that enlightened states should refrain from intervening out of respect for the moral-political autonomy and integrity of the people concerned. Such a stipulation cannot, however, form the basis of a rock solid *principle* of non-intervention. Rather, it is the founding moral insight establishing what we might call the *general presumption against* intervention. This general presumption weighs against any state looking—politically, economically, militarily or in any other way—to influence the political institutions of another state, be it toward or away from democracy. It clearly places the burden of proof on the side of any state seeking to pursue such imperialist ambitions.

From this perspective, non-intervention would not seem to require any special justification—it is just the other side of the coin of sovereignty. What needs to be figured out, then, is what moral and legal restraints pertain to the exercise of sovereignty, so that breach of these restraints would suspend the right to protection under the principle of non-intervention. In particular, we need to consider what happens to the theory and practice of intervention when sovereignty is essentially tied up, as in the legalist paradigm, with the exercise of self-determination. Mill steadfastly maintains that aggressive war, whatever its stated purpose, is criminal. But, he adds, displaying a prescience that would seem almost uncanny following the many virulent controversies over the intervention-issue last decade:

[T]here assuredly are cases in which it is allowable to go to war, without having been ourselves attacked, or threatened with attack; and it is very important that nations should make up their minds in time, as to what these cases are. There are few questions which more require to be taken in hand by ethical and political philosophers, with a view to establish some rule or criterion whereby the justifiableness of intervening in the internal affairs of other countries, and (what is sometimes fully as questionable) the justifiableness of refraining from intervention, may be brought to a definite and rational test (1859a: 166).

Walzer suggests three cases where 'the ban on boundary crossing is subject to unilateral suspension' (1977: 90). These are, roughly:

- Cases of civil war, secession or national liberation
- Cases of counter-intervention

- Cases of massacre, enslavement, genocide, etc.

The first two of these cases turn essentially on the issues of self-determination, statehood and sovereignty as discussed above, whereas the last makes such talk, in Walzer's words, 'seem cynical and irrelevant' (ibid.). Furthermore, both Mill and Walzer stress, in line with what was said above, that none of these cases should be construed as providing exceptions to the general rule of non-intervention. Rather, we should see them as 'negative demonstrations of its reasons' (Mill 1859a: 176, Walzer 1977: 90). In other words, should we decide to intervene on the background of any of the three situations cited above, we do not thereby set aside the concern for an international order consisting of sovereign, self-determining communities, even if only temporarily. On the contrary, we act in response to higher order dictates exactly to defend such communities.

However, Walzer accuses Mill of only discussing 'the first two of these cases, secession and counter-intervention, though the last was not unknown even in 1859' (Walzer 1977: 90). This is not quite true, as a closer reading of Mill will reveal:

A case requiring consideration is that of a protracted civil war, in which the contending parties are so equally balanced that there is no probability of a speedy issue; or if there is, *the victorious side cannot hope to keep down the vanquished except by severities repugnant to humanity*, and injurious to the permanent welfare of the country. In this exceptional case it seems now to be an admitted doctrine, that the neighbouring nations, or one powerful neighbour with the acquiescence of the rest, are warranted in demanding that the contest shall cease, and a reconciliation take place on equitable terms of compromise (1859a: 172, my emphasis).

Mill, then, is not oblivious to the factor of massive human rights violations, even if he accords relatively little space to them. This may be because he thinks they present little or no challenge to a theory of non-intervention. Where massive human rights abuses occur, the concern with self-determination does not enter the picture.<sup>3</sup> On the whole, Mill does not seem interested in the easy cases or 'admitted doctrines'—he wants to pursue the difficult, dilemmatic or downright unsolvable cases. In other words, the fact that he does not spend a lot of time on a given hypothetical scenario does not mean that he deems it unimportant, or thinks that we might not at one point find ourselves in that scenario. It is rather that he sees their solutions as so obvious as not to merit any closer discussion. His summary dismissal of most questions usually posted under the heading of intervention is good to bear in mind in this regard:

The other cases which have been mentioned hardly admit of discussion. Assistance to the government of a country in keeping down the people, unhappily the most frequent case of foreign intervention, no one writing in a

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<sup>3</sup> Walzer reveals a similar sentiment when he writes that '[w]hen a government turns savagely upon its own people, we must doubt the very existence of a political community to which the idea of self-determination might apply' (1977: 101).

free country needs take the trouble of stigmatising. A government which needs foreign support to enforce obedience from its own citizens, is one which ought not to exist; and the assistance given to it by foreigners is hardly ever anything but the sympathy of one despotism with another (Mill 1859a: 171–172).

This is of course the case—paradigmatically exemplified by the US involvement in Vietnam—which Walzer, writing in the 1970s, thinks we need to be reminded of.<sup>4</sup> This difference in focus may help explain why the two authors would seem to be talking past each other at this point. For Mill considers that ‘the case of a people in arms for liberty’ is the only one which ‘theoretically at least, is likely to present conflicting moral considerations’ (1859a: 171). This is where our moral sympathies will most often outrun our legal possibilities, and it is here, therefore, that work needs to be done to clarify the implications of the non-intervention principle. It is in connection with the question of secession that the all-important grounding notions of liberty, statehood and sovereignty are all up for grabs.

## Secession from Native or Foreign Suppression?

In Mill’s view, the applicability of the non-intervention principle to the case of secession hinges on whether the ‘yoke’ in question is of native or foreign origin, and—if native—whether it is materially dependent on foreign support to uphold its reign. ‘When the contest is only with native rulers,’ he writes, ‘and with such native strength as those rulers can enlist in their defence, the answer I should give to the question of the legitimacy of intervention is, as a general rule, No’ (1859a: 173). The proviso of generality is absolutely crucial, though, for it is here that we open for rethinking in light of evidence of ethnic cleansing and other massive human rights abuses.

But, continues Mill, ‘the case of a people struggling against a foreign yoke, or against a native tyranny upheld by foreign arms, illustrates the reasons for non-intervention in an opposite way; for in this case the reasons themselves do not exist’ (ibid.: 176). There is, in other words, a categorical difference between these two cases, in that in the latter case the ban on intervention has already been breached by one or more parties. Reciprocity is the cornerstone of the international order, and the principle of non-intervention provides no exception: its universal observance is the supporting condition. As Mill puts it: ‘Intervention to enforce non-intervention is always rightful, always moral, if not always prudent’ (ibid.).

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<sup>4</sup> Walzer’s words from the preface to the first edition of the book should be kept in mind here: ‘I did not begin thinking about wars in general, but about particular wars, and above all about the American intervention in Vietnam. Nor did I begin as a philosopher, but as a political activist and partisan.’ All in all, the Vietnam War provides an important backdrop to understanding the contemporary reception of Mill’s argument. It was the first volume of Richard A. Falk’s *The Vietnam War and International Law* (1968) that brought Mill’s text out from a century of near total obscurity, introducing it to its contemporary readership in a highly charged political atmosphere. Against this backdrop, it is certainly understandable, if ultimately disagreeable, that Mill’s text has largely been read through a highly specific pair of spectacles.



But are we always in a position to draw the line between the two cases with the requisite degree of clarity? What degree and what kind of ‘presence’ of a foreign power in one state’s internal conflict will justify a counter-intervention by a third (or indeed a fourth) party? And who is to judge on the validity of insurgent claims to be a distinct community from the start, so that what is at stake is not separation as such, but a struggle to drive back intruding forces—a struggle, presumably, meriting assistance through counter-intervention? As Walzer points out:

[T]he ban on boundary crossings is not absolute—in part because of the arbitrary and accidental character of state boundaries, in part because of the ambiguous relation of the political community or communities within those boundaries to the government that defends them. Despite Mill’s very general account of self-determination, it isn’t always clear when a community is in fact self-determining—when it qualifies, so to speak, for non-intervention (1977: 89).

However, does Walzer’s injunction to ‘*always act so as to uphold communal autonomy*’ (ibid.: 90) bring us any closer to a general criterion for adjudicating self-determination? Hardly. I think Mill’s call for prudential judgment above should not be neglected. We should expect neither legal nor moral criteria to absolve us from the need to exhibit reasoned judgment based on our knowledge of the facts of every single case.

Philosophers more inclined to legal positivism will not be impressed with this appeal to sound judgment, and will think it merely betrays a desperate attempt to cover up the embarrassing failure to uncover more trustworthy precepts—precepts unequivocally codifiable in the shape of rules. But this is to overstate the case. Even in an ideally ‘transparent’ world, rules will not apply themselves. In our actual world, constituted by an immense complexity in relations of power and influence, this is of course all the more true. Still, Mill may have had more than merely negative reasons for pitting prudence against morality and justice in this way. For although it might initially seem counterintuitive, this distinction permits us to dissolve an apparently exclusive but nonetheless false dilemma; namely that of choosing between ‘strict stand-offishness’ (Walzer’s words) and world police-style aggressive intrusionism as the norm governing the practice of intervention.<sup>5</sup> As Walzer would have it:

Civil war poses hard problems, not because the Millian standard is unclear—it would require a strict stand-offishness—but because it can be and routinely is violated by degrees. Then it becomes very difficult to fix the point at which a direct and open use of force can plausibly be called a counter-intervention (1977: 96).

<sup>5</sup> For a useful and critical summary of recent resorts to the ‘slippery slope’ (or ‘sliding scale’)-argument applied to the question of interventions, see Semb 2000. Walzer himself dismantles a parallel line of thought, albeit in a different context, in *Just and Unjust Wars*, 228–232.

Is it so obvious, however, that Mill's self-help test would dictate 'a strict stand-offishness' with regard to internal conflicts? If the Millian standard really is 'routinely violated by degrees'—and experience would suggest that it is—do we not open for corresponding measures to counter the foreign influence in the conflict?<sup>6</sup> And if we do not, is that because we fear that it is logically impossible to keep the door only 'half open', so to speak: that, once we have opted to counter-intervene in one such conflict, we must, on pains of inconsistency, intervene in all? Walzer himself gives a perfect example of why this need not be so—in other words, of how prudential considerations may provide footholds along the supposedly sliding scale from complete non-interventionism to its complete opposite: for we hardly need rules to tell us that, for instance, a US counter-intervention in Hungary in 1956, given the overshadowing threat of nuclear war, would have been 'morally as well as politically irresponsible' (1977: 95)—sound judgment will do just fine. Although it might not have seemed that way to Walzer at the height of the cold war, there is no *a priori* reason why it should be impossible to articulate a fine grained set of distinctions to cover the kinds and degrees of unlawful foreign presence in a conflict, together with a correspondingly fine grained set of appropriate measures of counter-intervention, from economic and diplomatic pressure to full-scale military counter-invasion.<sup>7</sup>

Although much contested in recent meta-ethical literature, the call for prudence (often couched in terms of the Aristotelian *phronesis*) in practical moral judgment serves as a useful reminder of the inadequacy of rules, by themselves, to govern the moral domain. Prudence—if we allow that there is such a thing—would permit us to negotiate between the extremes of an absolutism of rules and a relativist situationism in a coherent fashion, thus making way for a moral theory that more adequately reflects our experience of the real world. Mill's appeal to good judgment, then, counsels us to look beyond the either/or tendency of so much moral theorizing. It assigns a higher priority to *real needs* than to the rules supposedly giving expression to these needs. Thus, while by no means dispensing with rules, this approach allows us to rank our obligations within any given scenario, not, however, according to further rules or criteria, but rather in view of the urgency of the needs prompting them. In short, it allows us to acknowledge the dilemmatic and conflicting character of moral obligations while at the same time acknowledging the reality of these obligations.

## Intervention and Colonization

With these considerations in mind, we are now in a better position to assess Mill's so-called 'self-help' test and to look more closely at how the theme is developed in his article. Central to Mill's thoughts on non-intervention is the English experience

<sup>6</sup> Remember that Mill counts a foreign yoke 'every government which maintains itself by foreign support' (1859a: 173). In other words, it seems that far less than physical military presence is required for the concept of counter-intervention to apply.

<sup>7</sup> For a useful typology of interventions (ranging from 'Conflict prevention/resolution' to actual 'Enforcement') set in a general discussion of Mill's text, see Mortimer 1995: 18–23.

of colonization. However, its precise role and function in the argument is not easy to discern. We should not allow ourselves to be tempted into explaining *away* rather than explaining Mill's justification for the colonization of those he infamously refers to as 'barbarians', however much this might have been an integral part of the moral–political outlook of mid-19th century intellectuals. While we are rightly dismayed at reading lines such as

A civilized government cannot help having barbarous neighbours: when it has, it cannot always content itself with a defensive position, one of mere resistance to aggression. After a longer or shorter interval of forbearance, it either finds itself obliged to conquer them, or to assert so much authority over them, and so break their spirit, that they gradually sink into a state of dependence upon itself (1859a: 168–169)

we should not be deterred from assessing the argument closely, rather than dismissing it out of hand. Here is how Walzer summarizes Mill's views:

Mill believed there are incompetent peoples, barbarians, in whose interest it was to be conquered and held in subjection by foreigners. 'Barbarians have no rights as a *nation* [i.e. as a political community] ...'. Hence utilitarian principles apply to them, and imperial bureaucrats can legitimately work for their moral improvement (1977: 89n).

While Mill's view is a sitting duck for the contemporary commentator, this is no excuse for quoting him out of context:

To characterize any conduct whatever towards a barbarous people as a violation of the law of nations, only shows that he who so speaks has never considered the subject. A violation of great principles of morality it may be; but barbarians have no rights as a *nation*, except a right to such treatment as may, at the earliest possible period, fit them for becoming one. The only moral laws for the relation between a civilized and a barbarous government, are the universal rules of morality between man and man (1859a: 168).

While Mill claims that the law of nations does not automatically compel us to recognize a 'barbarous government', this does not entail that we should not recognize the rights of *its people* to proper treatment. Quite the contrary, on Mill's view it is precisely because we recognize such rights—as dictated by the 'universal rules of morality between man and man'—that we move to intervene on their behalf. The motive for intervening (or colonizing; the wording at this point doesn't really matter) may be dual in kind, but the aim is one: to provide the people in question with a tolerable government—tolerable for the neighboring states (in the sense of not aggressing on their territory) but also, and importantly, tolerable for the people in question. It is, then, with a view to establishing conditions that will lead this country to become a nation proper—a self-determining community protected by the general presumption against intervention—that intervention may be justified.

I ask the reader to understand that I do not write this to downplay the generally chauvinist tenor of Mill's writings, nor to condone the actual practices of colonization (English or otherwise) that history has witnessed in bygone days or, for that matter, in our own time. Rather, my aim is to bring to light an often overlooked undertow to Mill's thoughts on the matter. In stark contrast to the legalist paradigm referred to earlier, Mill seems here to be well on his way to developing what we might call a qualitative notion of sovereignty. That is, sovereignty is not uniquely determined by *de facto* statehood but is (or should be) co-determined by the extent to which the state in question is willing and able to protect the life and liberty of its citizens. Mill's argument thus parallels in interesting and somewhat surprising ways the argument from 'state failure' invoked in recent years to justify interventions.<sup>8</sup> Here the sentiment is that statehood is partly defined by certain incumbent duties; notably those of preserving the liberty of its citizens and the security of the surrounding states. If a state falls egregiously short of fulfilling either of these duties, the international community is justified in treating it as a 'failure'; i.e. to momentarily set aside its claim to sovereignty while work is done to improve conditions.

Admittedly, it may seem patently absurd to call on the vocabulary of colonization to develop such a point.<sup>9</sup> But the example of colonization also acquires a crucial negative significance in Mill's writings, by providing a possible justification for *not* intervening. For if we intervene on behalf of a seceding party in a civil conflict, and we have no assurance that the party in question, if successful in their contest, will have a popular base broad enough to erect a legitimate and lasting government, we must recognize that the duty falls on us—the interveners—to provide such a government. On Mill's view, this is effectively the same as to colonize them.<sup>10</sup>

In cases, therefore, where our moral sympathies would urge us to intervene, but legal and political considerations would force us to think twice, prudential considerations are called upon. The rule of thumb is that contained in the 'stern doctrine of self-help'. Although still entangled in the moral psychology of freedom, the general presumption against intervention now acquires another, distinctly more pragmatic facet. Sufficiently hedge-claused, the self-help test becomes the first indicator of whether there is a popular base broad enough in the country that they will manage to erect a lasting government after fightings have ceased. If they do, it is likely that they will prevail in the contest without outside assistance. If they don't, what claim do they have to rule the country in the first place?

<sup>8</sup> The concept was used with particular force with regard to the interventions in Rwanda and Somalia. For a useful introduction to the concept of a 'failed state', as distinguished from merely 'inept' or 'incompetent' ones, see Lucas Jr 2001: 27–48, esp. 31–34.

<sup>9</sup> Not to all, of course: some commentators will insist that the vocabulary of colonization is exactly right, and that the alleged humanitarian motives of the 'new interventionism' is merely the emperor's new clothes.

<sup>10</sup> Commenting on the English experience in Oude, where England had disposed of one tyrannical regime, only to let another take its place, Mill writes: 'During [a] period of half a century, England was morally accountable for a mixture of tyranny and anarchy, the picture of which, by men who knew it well, is appalling to all who read it. The act by which the government of British India at last set aside treaties which had been so pertinaciously violated, and assumed the power of fulfilling the obligation it had so long before incurred, of giving to the people of Oude a tolerable government, far from being the political crime it is so ignorantly called, was a criminally tardy discharge of an imperative duty' (1859a: 170).

## Human Rights and Conflict: the Case of Slavery

In an article entitled ‘The Contest in America’ (1862), written just two years after ‘A Few Words on Non-Intervention’, Mill discusses the American Civil War and the moral status of slavery. Although the article does not, strictly speaking, address the question of intervention, it still provides us with an interesting introduction to how Mill thinks human rights should figure in our prudential judgments regarding conflict and international affairs.<sup>11</sup>

The immediate backdrop for the article is provided by the so-called ‘Trent-incident’, in which the United States seized a British ship carrying two confederate commissioners. The British saw this, probably rightly so, as a blatant violation of the freedom of the seas, and promptly backed their demands for apology and restoration with the threat of armed attack. Mill wrote the article as the situation had just been peacefully resolved and with the explicit aim of soothing the tempers of his countrymen. The question is whether it would have been morally right of the British to wage war on America (irrespective of its legal defensibility), when America was already at civil war and any attack from the British would almost certainly have shifted the balance of power in favor of the rebel South. The answer, according to Mill, must be a resounding ‘No’. The institution of slavery involves such gross violations of human rights, Mill contends, that no rightful cause on the British side would have excused such an intrusion, albeit indirect, into the American Civil War.

Interestingly in light of this paper’s topic, Mill poses the principled question of whether it would have been proper to treat the Rebel case as an instance of ‘the sacred right of insurrection’, so that ‘the North, in resisting it, are committing the same error which England committed in opposing the separation of the original thirteen colonies’ (Mill 1862: 196). Mill pleads with us that he has ‘sympathized more or less ardently with most of the rebellions, successful or unsuccessful, which have taken place in my time’. But the case of the confederate South is different:

[...] I certainly never conceived that there was sufficient title to my sympathy in the mere fact of being a rebel; that the act of taking arms against one’s fellow citizens was so meritorious in itself, was so completely its own justification, that no question need be asked concerning the motive [...] Secession may be laudable, and so may any other kind of insurrection, but it may also be an

<sup>11</sup> Perhaps I should add here that, while Mill was no ‘rights oriented liberalist’ in the modern sense, his reservations about rights as moral concepts is often overstressed. Despite his professed allegiance to utilitarianism, I do not think Mill would adhere to the Benthamite contention that rights-talk is ‘nonsense upon stilts’. Mill was certainly no believer in any comprehensive doctrine of *natural rights*, but on the whole I think it is more plausible to read him not as dismissing rights-talk altogether, but rather as questioning the idea that rights can play any *foundational* role in moral theory. Rights must be grounded in something deeper, namely utility. That said, there is no reason why the concept of a right, even an inalienable right, should not figure in moral discourse, for instance as a convenient shorthand for more complex moral commitments. Thus, ‘I forego any advantage which could be derived to my argument from the idea of abstract right as thing independent of utility. I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as progressive being’ (Mill 1859b: 69–70).

enormous crime. It is the one or the other according to the object and the provocation. And if there ever was an object which, by its bare announcement, stamped the rebels against a particular community as enemies of mankind, it is the one professed by the South. Their right to separate is the right which Cartouche or Turpin would have to secede from their respective countries, because the laws of those countries would not suffer them to rob and murder on the highway (ibid.: 196–197).

Interestingly, then, while Mill upholds the right to secession (and, indeed, hails it as ‘sacred’) he maintains that strict moral criteria pertain to the foundation of a sovereign state from its inception. If the principles on which a would-be sovereign state proposes to build its constitution are blatantly immoral, the right to secession falls away. But if we concede this point, we must surely proceed to ask if it can really be right that once a state’s sovereignty has been established, we are to stop asking questions as to the morality of its conduct towards its own citizens. This seems to be the strange fallout of Walzer’s views on assistance to secessionist groups. For we acknowledge the belligerent rights of such groups only to the extent that they enlist broad popular support and can demonstrate territorial control. However, once their territorial claims have been established and their claim to sovereignty ratified, the question of their internal support and policies toward dissenting minorities is no longer a concern of ours (Walzer 1977: 96). This is the broadly legalistic view of statehood and sovereignty that Walzer subscribes to and in support of which he also tries to enlist John Stuart Mill. As I have argued in this paper, it is not clear that Mill does hold such a view,<sup>12</sup> nor, I would argue, is it really clear that Walzer can consistently do so.

For when push comes to shove, how are we to fix this problematic interaction between our concern for human rights and our concern for an international system composed of sovereign states regulated by the principle of non-intervention? ‘A legitimate government is one that can fight its own internal wars’, proclaims Walzer (1977: 101) in *Just and Unjust Wars*. He is quick to add, however, that if only this government fights its internal wars effectively enough, for instance by employing methods of ethnic cleansing, its legitimacy is recalled. At some point, then, the legalist paradigm ceases to control the domain of international action, and, as Mill also emphasized in the passages cited above, humanitarian concerns re-enter the picture with full force. In order to decisively absolve it of any legal connotations, Walzer fixes this point at ‘acts which shock the moral conscience of mankind’, and adds that ‘the reference is to the moral convictions of ordinary men and women, acquired in the course of their everyday activities’ (ibid.: 107). The reference is well taken, but one may well wonder whether it is too little, too late. Can we not expect that ‘the moral conscience of mankind’ is

<sup>12</sup> In ‘The Contest in America’ Mill goes a long way toward claiming that if the North did not take on the war against the rebel South, the duty to wage such a war would soon enough fall on the European powers: ‘Suppose that the North should stoop to recognize the new Confederation on its own terms, leaving it half the territories, and that it is acknowledged by Europe, and takes its place as an admitted member of the community of nations. It will be desirable to take thought beforehand what are to be our future relations with a new power professing the principles of Attila and Genghis Khan as the foundation of its Constitution’ (1862: 202).

shocked by many of the acts of everyday brutality routinely committed by regimes readily recognized as legitimate under international law, not to mention acts committed during internal wars fought by governments to demonstrate their legal legitimacy as defined by Walzer above?

International moral commitment may turn out to be dilemmatic at heart; it may well be that we can never finally balance the scales between our concern for self-rule and our concern for human rights. But I am still inclined to ask whether Walzer's purposes would not have been better served by bringing humanitarian concerns into the theoretical discussion at an earlier point, if for nothing else but to have our ordinary moral convictions prepared beforehand for the shock of being gainsaid by the doctrines of international law at the really critical point. This way we can at least hope to develop a comprehensive and critical moral discourse on the merits and limitations of international law.

International law will hopefully always remain a touchstone in regulating and legitimizing international action. But in the light of the foregoing evidence, there is every reason to ask whether we can really hope to whittle a coherent *moral* doctrine from the ragbag of historical happenstance and political power play that is international law. When confronted with the dilemma of humanitarian intervention, this is brought down on us with particular acuity, for here humanitarian and legal concerns would seem to decisively part ways.

## Conclusion: From Intervention to Humanitarian Intervention

Indeed, from a contemporary perspective it will perhaps seem as if what has been said so far has really only been an overdrawn prologue to the real issue, namely that of humanitarian intervention. Reviewing his book in the preface to the 3rd edition in 2000, Walzer writes that 'it doesn't seem as dated as I had hoped, in the mid-1970s, it would be by now [...] New wars echo old ones, much as they always have' (1977[2000]: xi). But, he adds:

There has been one large and momentous shift in both wars and words. The issues that I discussed under the name of 'interventions' [...], which were peripheral to the main concerns of the book, have moved dramatically into the center. It isn't too much of an exaggeration to say that the greatest danger most people face in the world today comes from their own states, and the chief dilemma of international politics is whether people in danger should be rescued by military forces from outside (ibid.).

Although Walzer does not explicitly admit to a change of heart with regard to the principles governing the question of intervention, there is little doubt that his present views on the matter betray more than a mere change of emphasis. For it is quite clear from Walzer's more recent writings on the subject that, in his mind, the question of intervention has been effectively transformed into one of *humanitarian* intervention.

In today's world, Walzer now maintains, resorting to the legalist paradigm in the face of man-made humanitarian disasters such as ethnic cleansing and the like is no longer a morally defensible option. While multilateral initiatives (ideally, of course, UN Security Council Resolutions) surely remain a desideratum, we cannot (or, more precisely, *they* cannot) in most cases wait for such initiatives to crystallize. The danger is imminent, and if unilateral initiatives are what it takes to prevent massacres from happening, then so be it: we should be all the more thankful to the actor who is willing to take on the responsibility. We should not consign a people under clear and present danger to waiting for Godot.<sup>13</sup>

In our present world-political climate, then, following the downfall of the cold war-world order with its well-founded suspicions over stated motives, it would seem as if the practical problem of intervention is the diametrical opposite of the one highlighted by Walzer in 1977. Back then, the problem was that states were all too eager to intervene, and would presumably use any available pretext for doing so (and in the process further their own economic advantage, extend their sphere of influence, etc.). In such a situation the legalist paradigm is obviously a valuable tool for barring unjustified access to the intervention vocabulary. Today, however, our problem is that states are insufficiently willing to intervene. Adopting a legalist stance on intervention today will more often bear witness to an attempt at writing off one's moral responsibilities than to championing a truly just and peaceful world order.<sup>14</sup> Nor is there much reason to think that developments in international law will one day give us the resources to enforce a duty of humanitarian intervention: given the perilous consequences that such interventions must inevitably impose on a state's forces, intervention must for all foreseeable future remain an 'imperfect duty'—a 'duty that doesn't belong to any particular agent' (Walzer 1977[2000]: xiii).

The contemporary reticence surrounding interventions can also be witnessed, according to Walzer, in how states actually conduct whatever interventions they undertake. The hesitancy to expose one's own soldiers to danger risks canceling out any real effectiveness the intervention might be expected to have.<sup>15</sup> Similarly with how the goals of intervention are conceived: while Walzer forwarded the 'quickly in, quickly out'-criterion as an absolute imperative in 1977 (and the only real test exposing states whose interventionism was fueled by imperialist ambitions), today his main complaint is that the intervening state is in most cases all too eager to withdraw its forces. Sometimes such a withdrawal will have disastrous, yet easily foreseeable consequences: Walzer mentions 'Rwanda, Uganda, Kosovo, and others', as cases

where the extent and depth of the ethnic divisions make it likely that the killings will resume as soon as the intervening forces withdraw. If the original

<sup>13</sup> Indeed, as Walzer sardonically remarks in a recent article: '[T]here can't be many people in the world today who would willingly entrust their lives to the UN police' (2002: 32).

<sup>14</sup> As Walzer forcefully states in his latest preface: 'Imperial aggrandizement isn't the issue; fortunately or unfortunately, most of the countries that cry out for intervention are not the objects of imperialist ambition. The danger is moral indifference, not economic greed or power lust' (1977[2000]: xvi).

<sup>15</sup> The high altitude bombing during the Kosovo campaign would be one obvious symptom of this hesitancy.



killers don't return to their work, then the revenge of their victims will prove equally deadly. Now 'in and quickly out' is a kind of bad faith, a choice of legal virtue at the expense of moral and political effectiveness. If one accepts the risk of intervention in countries like these, one had better accept also the risks of occupation (Walzer 2002: 35).

Still, though, Walzer maintains that the threshold for employing military means to humanitarian ends must be very high: 'we are best served', he writes, 'by a stark and minimalist version of human rights here: it is life and liberty that are at stake' (ibid.: 30). He adds later that 'the new regime doesn't have to be democratic or liberal or pluralist or (even) capitalist. It doesn't have to be anything, except non-murderous' (ibid.: 36). In short, he warns us against pursuing 'the legal logic of rights' in international affairs, because 'intervention is a political and military process, not a legal one, and it is subject to the compromises and tactical shifts that politics and war require' (ibid.). Political and moral dilemmas abound in the arena of international action, and we may have good reasons to fear that 'the legal logic of rights' may not make adequate room for the prudential considerations required to face these dilemmas.

Although it is probably still too early to draw the final lessons, we may safely suppose that the shifts undergone by Walzer's thoughts on intervention are indicative of more than merely one philosopher's change of mind. Rather, we should see them as reflecting long-term and large-scale developments in our thoughts on statehood and sovereignty in general, and about the status of transnational arguments about human rights in particular. Writing today, it is hard not to feel that Walzer's present thoughts on the matter constitute a definite improvement on his 1977 views. My only complaint—admittedly an academic one—is that he has not revised his reading of Mill to suit. For in Mill, as I have presented him in these pages, we can find in germinal form many of the considerations that have brought us from the former to the latter view. In Mill we find a thinker with a highly developed sensitivity to what I have called the dilemmatic commitment to human rights and communal self-determination. Self-rule—freedom from external interference—is a good of the highest order, yet the international community cannot stand idly by when massive human rights abuses unfold. While Mill is generally very hesitant to recommend that military means be put to humanitarian ends—itself a paradox of sorts—some situations may present us with no choice. So while non-intervention remains, luckily, the default setting in international affairs, the very same ideals that in most cases commit us to honor the principle, will in some extreme situations force us to break with it. In other words, where massive human rights abuses occur, the burden of evidence will have shifted: it is now non-intervention, rather than intervention, that stands in need of justification.

More abstractly, I would urge that Mill's aim in writing 'A Few Words on Non-Intervention' is not, as Walzer would have it, to provide, as it were, an ethical extension of the legalist paradigm. Mill's aim was rather to disentangle from each other ethical and legal concerns as these figure in our thoughts on liberty, statehood and sovereignty. In recent years, Walzer seems to have turned toward much the same perspective, as can be witnessed from his warning not to choose legal virtue over moral and political effectiveness. The lesson is sharply formulated, and surely has significant potential for generalization.

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