Seyla Benhabib

The legitimacy of human rights

In recent years, the language of human rights has become ubiquitous around the world, shaping such nascent transnational institutions as the International Criminal Court, and justifying international interventions to halt genocide.[1]

Yet there is wide-ranging disagreement among philosophers and jurists about the nature and scope of supposedly universal human rights. Some argue that human rights constitute the "core of a universal thin morality" (Michael Walzer), while others claim that they form "reasonable conditions of a world-political consensus" (Martha Nussbaum). Still others narrow the concept of human rights "to a minimum standard of well-ordered political institutions for all peoples"[2] (John Rawls), and caution that there needs to be a sharp distinction between this minimum standard and the much longer list of rights that the United Nations enumerated in its Universal Declaration of Human Rights (UDHR) of 1948.

Such disagreements inevitably raise doubts about what, precisely, should count as a human right. Walzer, for one, suggests that a comparison of the moral codes of various societies may produce a set of standards, a "thin" list of human rights, "to which all societies can be held – negative injunctions, most likely,

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1 I first developed the themes discussed in this essay in my Presidential Address to the American Philosophical Association, Eastern Division, in December 2006. See Seyla Benhabib, "Another Universalism: On the Unity and Diversity of Human Rights," *Proceedings and Addresses of the American Philosophical Association* 81 (2) (November 2007): 7 – 32. A longer version of this essay will appear as the Lindley Lecture of the University of Kansas at Lawrence.

2 For an interesting critique of Rawls along these lines, see Alessandro Ferrara, "Two Notions of Humanity and the Judgment Argument for Human Rights," *Political Theory* 31 (10) (2003): 1 – 30; here 3ff.

rules against murder, deceit, torture, oppression, and tyranny."[3] But this way of proceeding would yield a relatively short list. "Among others," notes Charles Beitz, "rights requiring democratic political forms, religious toleration, legal equality for women, and free choice of partner would certainly be excluded."[4] For many of the world's moral systems, such as ancient Judaism, medieval Christianity, Confucianism, Buddhism, and Hinduism, Walzer's "negative injunctions against oppression and tyranny" would be consistent with great degrees of inequality among genders, classes, castes, and religious groups.

Certainly, the most provocative proponent of limiting human rights to "a minimum standard of well-ordered political institutions for all peoples" has been John Rawls. Rawls lists the right to life (i.e., to the means of subsistence and security); to liberty (i.e., to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to personal property; and to "formal equality as expressed by the rules of natural justice" (i.e., that similar cases be treated similarly)[5] as the basic human rights.

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The rights to liberty of conscience and association are pared down in *The Law of Peoples* such as to accommodate "decent, hierarchical societies," which grant *some* liberty of conscience to other faiths but not *equal* liberty of conscience to minority religions that are not state sanctioned. Article 18 of the UDHR, by contrast, which guarantees "the right to freedom of thought, conscience, and religion" (including the right to change one's religion and "to manifest one's religion or belief in teaching, practice, worship, and observance"), is much more egalitarian, and uncompromising vis-à-vis existing state religions, than is Rawls's right to "nonegalitarian liberty of conscience."

Most significantly, unlike Article 21 of the UDHR, which guarantees everyone "the right to take part in the government of his country, directly or through freely chosen representatives," and which stipulates that "the will of the peoples shall be the basis of the authority of government,"[6] the Rawlsian scheme has no basic human right to self-government.

Given that the UDHR is the closest document in our world to international public law, how can we explain this attempt on the part of many philosophers to restrict the content of human rights to a fraction of what is internationally agreed to – at least on paper?

I am not precluding the possibility that these documents themselves may be philosophically confused, produced as a consequence of political compromis-

3 Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame, Ind.: University of Notre Dame Press, 1994). It is unclear to me what a human right against "deceit" would imply. Does it mean a right not to be lied to? This is a moral claim, not a human right.

4 Charles Beitz, "Human Rights as a Common Concern," *American Political Science Review* 95 (2) (June 2001): 272.

5 John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), 65. The earlier list in the 1993 article of the same title presented a slightly different formulation: included here as human rights were "the elements of the rule of law, as well as the right to a certain liberty of conscience and freedom of association, and the right to emigration." John Rawls, "The Law of Peoples" [1993], in John Rawls, *Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 1999), 529 – 562; here 554.

6 See ibid., 553 – 554; Rawls, *The Law of Peoples*, 79 – 80.

es – as was the UDHR, which was the subject of continuous negotiations between the United States and the Soviet Union.[7] Yet it is at least necessary to consider seriously the "discrepancies between the best philosophical account of human rights and the international law of human rights."[8]

The UDHR and the succeeding era of international rights declarations reflect the moral learning experiences not only of Western humanity but of humanity at large. The World Wars were fought not only in the European continent but also in the colonies, in the Middle East, Africa, and Asia. The national liberation and anticolonization struggles of the post – World War II period inspired the principles of self-determination enshrined in these rights documents.

The UDHR's preamble states that the "peoples" of the United Nations Charter affirm their faith in "the dignity and worth of the human person and in the equal rights of men and women."[9] All persons, "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status," are entitled to dignified treatment regardless of "the political, jurisdictional, or international status of the country or territory to which a person belongs."[10]

The UDHR was followed by the 1951 Convention on Refugees,[11] the 1966 International Covenant on Civil and Political Rights,[12] the International Covenant on Economic, Social and Cultural Rights of the same year,[13] and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which entered into force in 1981.[14] Most significantly, in 1948,

7 Cf. Joannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia: University of Pennsylvania Press, 1999).

8 James Griffin, "Discrepancies between the Best Philosophical Account of Human Rights and the International Law of Human Rights," The Presidential Address, *Proceedings of the Aristotelian Society* 101 (2001): 1 – 28.

9 Universal Declaration on Human Rights, G.A. res. 217A (III) (December 10, 1948) [hereinafter, "UDHR"], Preamble, para. 5.

10 Ibid., art. 2.

11 Convention Relating to the Status of Refugees, G.A. res. 429 (V) (entered into force April 22, 1954).

12 International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force March 23, 1976). As of 2007, 152 countries were state parties.

13 International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force January 3, 1976).

14 The Convention on the Elimination of All Forms of Discrimination Against Women, G.A. res. 34/180, December 18, 1979 (entered into force September 3, 1981), available at http://www.un.org/womenwatch/daw/cedaw/econvention.htm [hereinafter, "CEDAW"]. These provisions are, of course, augmented by many others. See Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, G.A. res. 40/144, annex, 40 U.N. GAOR Supp. (No. 53) at 252, U.N. Doc. A/40/53 (1985); Convention on the Reduction of Statelessness, 989 U.N.T.S. 175 (December 13, 1975) (requiring that nations grant nationality rights, under certain conditions, to "persons born in its territory who would otherwise be stateless"); Declaration on Territorial Asylum, G.A. res. 2312 (XXII), 22 U.N. GAOR Supp. (No. 16) at 81, U.N. Doc. A/6716 (1967).

the UN General Assembly adopted the Genocide Convention, which made genocide and acts related to it a crime whether in times of war or peace between nations.[15]

These public law documents have introduced a crucial transformation in international law. While it may be too utopian to name them steps toward a world constitution, they are certainly more than mere treaties among states. They are global public law documents, which, along with many other developments in the domain of *lex mercatoria* (law of commercial transactions), are altering the international domain. They are becoming constituent elements of a global civil society. In this global civil society, individuals are rights-bearing not only in virtue of their citizenship within states but, in the first place, in virtue of their humanity. Although states remain the most powerful actors, the range of their lawful activity is increasingly limited. We need to rethink the law of peoples against the background of this emergent and fragile global civil society, which is always being threatened by war, violence, and military intervention. These transformations in law have consequences for how we understand cosmopolitanism.

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Along with *globalization* and *empire*, *cosmopolitanism* has become one of the buzzwords of our time. *Moral cosmopolitanism* espouses a universalistic morality that views each individual as being worthy of equal moral concern and respect. Our obligations to kin, family, and country, it is argued, do not supersede our obligations to distant strangers. From a moral point of view, particularistic attachments, deriving from our rootedness in certain linguistic, cultural, religious, and other communities, have no privileged claims upon us.

Cultural cosmopolitans emphasize that all cultures learn and borrow from one another constantly. We should be open to the dizzying multiplicity, variety, and incongruity of the world's cultures. The Herderian view of cultures as coherent and centered wholes, each with a unique perspective on the world, is wrong empirically and normatively, argues the cultural cosmopolitan. Rather, we should acknowledge and embrace a decentered, multiply situated, and hybrid conception of culture as well as identity.

Legal cosmopolitanism is distinct from both positions, while sharing with moral cosmopolitanism the view that each and every person deserves equal moral respect and concern. For legal cosmopolitanism, such a moral attitude needs to be translated into actual doctrine and practice protecting the lives of individuals in the world community. Beyond this, legal cosmopolitanism is agnostic as to whether, as a matter of morality as opposed to law, the needs of distant strangers must *always* take precedence over our more particularistic attachments. For legal cosmopolitans, it is likewise not necessary to endorse one or another view of culture and the self.

15 Convention on the Prevention and Punishment of the Crime of Genocide, Adopted by Resolution 260 (III) A of the U.N. General Assembly, December 9, 1948: hyyp://www.hrweb.org/geal/genocide.html. There were also developments throughout the postwar period that extended the various Geneva Conventions protecting combatants, prisoners of war, and civilian noncombatants from mistreatment during conditions of armed conflict alone to civil wars as well, including the actions of sovereign states against particular groups upon their territory. It is significant then that since World War II, crimes against humanity, genocide, and war crimes have all been extended to apply not only to atrocities that take place in international conflict situations, but also to events within the borders of a sovereign country.

The most important objections to legal cosmopolitanism are twofold: What sense does it really make to defend such a position, when to be a rights-bearing person means first and foremost to be a member of a sovereign polity in which one's "right to have rights" (Hannah Arendt) is protected? Furthermore, how is legal cosmopolitanism to be reconciled with the diversity of the world's governments and regimes, which consider the individual as a being embedded in definite moral, religious, ethical, and linguistic contexts? Doesn't legal cosmopolitanism amount to a justification of moral interventionism – even moral imperialism? Certainly, much of the recent reticence in contemporary discourse about the justification of human rights can be traced back to their instrumentalization for political ends by some, and to the fear on the part of others that the robust language of human rights can usher in moral imperialism.

In a recent article Joshua Cohen helpfully distinguished among two kinds of "minimalism" about human rights. The first is "substantive," the second "justificatory."[16] *Substantive* minimalism concerns the content of human rights, and is, "more broadly, about norms of global justice." *Justificatory* minimalism, by contrast, is about how to present "a conception of human rights, as an essential element of . . . global justice for an ethically pluralistic world – as a basic feature of . . . 'global public reason.'"[17]

This is an important distinction. The attractiveness of justificatory minimalism flows out of a concern with finding an "overlapping consensus" in the international domain that would not be based on comprehensive worldviews and doctrines, which often are exclusionary or sectarian in outlook. Instead, such a global overlapping consensus would need to be "freestanding" in Rawlsian language. In a world where the concept of human rights has been much used and abused to justify all sorts of political actions and interventions, such caution is certainly welcome. A "freestanding" global overlapping consensus is intended to enhance the prospects of world peace by assuring that the terms of agreement be acceptable to all peoples.

Yet this laudable concern with liberal toleration and peaceful coexistence may also lead to liberal indifference and, even more, to an unjustified toleration for the world's repressive regimes. Are we caught then between the Scylla of moral imperialism and the Charybdis of moral indifference?

The strategy for dealing with both sets of problems is a better understanding of how cosmopolitan legal norms function. For this purpose, I want to introduce the concept of democratic iterations. By *democratic iterations* I mean complex processes of public argument, deliberation, and exchange – through which universalist rights claims are contested and contextualized, invoked and revoked, posited and positioned – throughout legal and political institutions as well as in the associations of civil society.[18]

A democratic iteration is never merely an act of repetition. Every iteration in-

16 See Joshua Cohen, "Minimalism about Human Rights: The Most We Can Hope For?" *The Journal of Political Philosophy* 12 (2) (2004): 192.

17 Ibid.

18 See Seyla Benhabib, *Another Cosmopolitanism*, ed. Robert Post (Oxford and New York: Oxford University Press, 2006), 45ff. See also Frank Michelman, "Morality, Identity and 'Constitutional Patriotism,'" *Denver University Law Review* 76 (4) (1999): 1009 – 1028.

volves making sense of an authoritative original in a new and different context. The antecedent thereby is reposited and resignified via subsequent usages and references. Meaning is enhanced and transformed; conversely, when the creative appropriation of that authoritative original ceases to have meaning for us, then the original loses its authority upon us as well.[19]

Through such iterative acts a democratic people who consider themselves bound by certain guiding norms and principles reappropriate and reinterpret these, thus showing themselves to be not only the *subjects* but also the *authors* of the laws. Natural rights doctrine assumes that the principles that underlie democratic politics are impervious to transformative acts of will, while legal positivism identifies democratic legitimacy with the correctly posited norms of a sovereign legislature. By contrast, democratic iterations signal a space of interpretation and intervention between context-transcendent norms and the will of democratic majorities. On the one hand, the rights claims that frame democratic politics must be viewed as transcending the specific enactments of democratic majorities in specific polities; on the other hand, such democratic majorities *re-iterate* these principles and incorporate them into the democratic will-formation process of the people through contestation, revision, and rejection.

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This is obviously an idealized account of political legitimacy. Naturally, if the conversations that contribute to democratic iterations were not carried out by the most inclusive and equal participation of all those whose interests are affected, or if these deliberations did not permit the questioning of the conversational agenda, then the 'iterative' process would be unfair, exclusionary, and illegitimate.

Democratic iterations take place in overlapping communities of conversation between members of what can be called the 'demotic community' (i.e., all those who are formal citizens and residents of a jurisdictional system) and other more fluid and unstructured communities, which can include international and transnational human rights organizations such as Amnesty International; various UN representative and monitoring bodies; global activist groups such as Médecins Sans Frontières; and the like.

Ultimately, democratic iterations are not concerned with the question, 'Which norms are valid for human beings at all times and in all places?' but rather with questions such as, 'In view of our moral, political, and constitutional commitments as a people, and our international obligations to human rights treaties and documents, what decisions can we reach that would be deemed both just and legitimate?' As such, democratic iterations aim at democratic justice.[20] They mediate between a collectivity's

19 I offer democratic iterations as a model to think about the interaction between constitutional provisions and democratic politics. It may be possible to extend democratic iterations as a model for the *pouvoir constituant*, the founding act as well. In this essay, I am assuming that democratic iterations are about ordinary as opposed to constitutional politics, though I am claiming that ordinary politics can embody forms of popular constitutionalism and can lead to constitutional transformation through accretion. See Rawls's final reflections in his "Political Liberalism: Reply to Habermas," *The Journal of Philosophy* 92 (3) (March 1995): here 172ff. Thanks to my student Angelica Bernal for her observations on this problem.

20 See Ian Shapiro, *Democratic Justice* (New Haven: Yale University Press, 1999).

constitutional and institutional responsibilities, and the context-transcending universal claims of human rights and justice to which such a collectivity is equally committed.

Without the right to self-government, however, exercised through proper legal and political channels, we cannot justify the range of variation in the content of basic human rights. To be sure, the juridical, constitutional, and common law traditions of each human society, as well as the history of their sedimented interpretations and internal debates, will shape the legal articulation of human rights. For example, while equality before the law is a fundamental principle for all societies observing the rule of law, in many societies, such as Canada, Israel, and India, this is considered quite compatible with special immunities and entitlements that accrue to individuals in virtue of their belonging to different cultural, linguistic, and religious groups.[21] There is, in other words, a legitimate range of variation even in the interpretation and implementation of such a basic right as that of equality before the law.

But the legitimacy of this range is crucially dependent upon the principle of self-government. Freedom of expression and association, therefore, are not merely citizens' political rights, the content of which can vary from polity to polity; they are crucial conditions for the recognition of individuals as beings who live in a political order whose legitimacy they have been convinced of with good reasons. Only when this condition has been fulfilled, can we also say that there is legitimate 'unity and diversity' in human rights among well-ordered polities.

At the same time, only under a system of self-government can the contextualization and interpretation of human rights be said to result from public and free processes of democratic opinion- and will-formation. Such contextualization, in addition to being subject to various legal traditions in different countries, attains democratic legitimacy insofar as it is carried out through the interaction of legal and political institutions with free public spaces in civil society. When such rights principles are appropriated by people as their own, these principles lose their parochialism as well as the suspicion of Western paternalism often associated with them.

To illustrate this with another example: In subscribing to a norm such as equality for women under the terms of the CEDAW agreement, a sovereign polity does not derogate its right to interpret this norm in accordance with its own constitutional and legal traditions. The United States rejected the Equal Rights Amendment. In the United States, gender equality is, in most cases, protected by Title IX clauses. Countries such as France and Germany, by contrast, have accepted more extensive *parité* clauses, which have obliged political parties to seek to populate at least half of the nominated positions within the party structure with women candidates. This variation in the range of interpretation of a cosmopolitan norm such as equality before the law for women falls within the democratic prerogative of sovereign polities, and is part of their process of democratic iterations.

When states subscribe to various international human rights conventions, a dynamic process is set into motion in civil society and the public sphere. These provisions give rise to a public language

21 For further elucidation, see Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton, N.J.: Princeton University Press, 2002), chap. 5 in particular.

of *rights articulation* and *claims-making* for all sorts of civil society actors, who range from compliance-monitoring NGOs to women's groups, church groups, advocacy associations, and the like. This new language of public claims-articulation circulates in the unofficial public sphere, and can, and often does, impact further institutional reform and legislation.

Democratic iterations can thus explain how legal cosmopolitanism can be reconciled with the right to self-government of individual polities. In fact, my argument is stronger than this: only in a democratic polity can the varying range in the articulation of rights principles as concrete legal norms be viewed as legitimate. Democratic self-government provides the essential context within which cosmopolitan norms, which articulate moral principles, assume flesh and blood as justiciable claims that the consociates of a polity guarantee to one another. Thus, the diversity of human rights articulation in law is not incompatible with the universalism of human rights declarations. Self-governing peoples engage in creative iterations of abstract cosmopolitan principles.

Yet if this is so, have I not offered an understanding of legal cosmopolitanism that would harshly judge many of the world's existing regimes: in Rawlsian terms, not only outlaw states but "decent, hierarchical" peoples as well? Doesn't this argument, which links – all too tightly, some will claim – legal cosmopolitanism with democratic governance, lead to such a demanding concept of legitimacy in the international arena that it can pave the way for political imperialism? This is not an objection that I take lightly at all, but, in my opinion, it is one that is based upon the misidentification of the addressees of cosmopolitan discourse.

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When the constituent addressees of global public reason are identified as *worldviews* rather than as individuals and as peoples with complex histories who ascribe to such moral theories and worldviews, what results is a *methodological holism*. Clashes of interpretation and even breaks in tradition within such outlooks are minimized; and an overly coherent picture of a particular moral, religious, or even scientific worldview is presented. A Rawlsian would argue that, without such a simplification, the representation of these positions would be overly complex; but with this kind of oversimplification, the Rawlsian position ends up abstracting from the *lived history* of traditions and worldviews to such a radical extent that it underestimates points of overlap between worldviews and the liberal tradition, and among these worldviews themselves.[22] Rawls has also made it amply clear that in proceeding in such fashion he wishes to avoid normative cosmopolitanism by insisting that peoples, construed along such idealized devices of representation, and not individuals, are the agents of justice in a global context.

To understand how wrongheaded this form of argumentation is, take a country like Turkey. Ninety-nine percent of its population is Muslim. If we wished to represent this country in terms of the religious beliefs of its citizens, we would be completely mistaken. Much like the rest of the world, since the sixteenth and seventeenth centuries, Ottoman Turkey has encountered modernity, and struggled with the compatibility of Islam and modernity, in a process that has left nei-

22 For an extended discussion of the problem of "methodological holism" in Rawls's work, see Seyla Benhabib, "*The Law of Peoples*, Distributive Justice, and Migrations," *Fordham Law Review* LXXII (5) (April 2004): 1761 – 1787.

ther the Turkish understanding of modernity nor that of Islam unchanged. Many arguments about human rights, equality, and democratic representation have been part of the political vocabulary of reform and transformation since the early nineteenth century. How can a Rawlsian methodology even account for such complex transformations of worldviews?

In case it is argued that Turkey is a special case because of its close and sustained encounter with the West for many centuries, take a country like Malaysia: at the present an authoritarian form of Islamic orthodoxy rules in this country. But Malaysian history exhibits Buddhist, Confucian, and liberal secular thinking. These traditions often constitute resources for dissidents to draw upon in opposing the regime. How is this complex history to be represented in a 'law of peoples'? I fear that it is not represented at all. The assumption that, in reasoning about global human rights, the relevant subjects to be considered are comprehensive worldviews simply reduces peoples and their histories to a holistic counterfactual, which then results in the flattening out of the complex history of discourses and contestations within and among peoples.

Far from exhibiting liberal tolerance, this approach in my mind displays liberal ignorance. It leads us to assume that individuals from other cultures and traditions have not entertained throughout their histories similar kinds of debates and concerns about human rights, justice, and equality as we have in ours. It ignores that there have been complex cultural conversations throughout human history, and that secular Enlightenment liberal ideas have themselves been part of the cultural discourse of many peoples and traditions of the world since the inception of Western modernity. By not giving this complex conversation its due, the minimalist approach preaches liberal tolerance but results in liberal indifference.

Basic human rights, although they are based on the moral principle of the communicative freedom of the person, are also legal rights, i.e., rights that require embodiment and instantiation in a specific legal framework. As Ronald Dworkin has observed, human rights straddle that line between morality and justice; they enable us to judge the legitimacy of law.[23] The core content of human rights would form part of any conception of the right to have rights as well: these would include minimally the rights to life; liberty (including to freedom from slavery, serfdom, forced occupation, as well as sexual violence and sexual slavery); some form of personal property; equal freedom of thought (including religion), expression, association, and representation. Furthermore, liberty requires provisions for the "equal value of liberty" (Rawls) through the guarantee not only of socioeconomic goods – including adequate provisions of basic nourishment, shelter, and education – but also through the right of self-government.

There is still one crucial objection that I need to face: In appealing to civil society and the public sphere as the privileged arenas for norm-articulation and democratic iteration, isn't one ignoring the frequent cases of such grave human rights abuses that intervention via the use of military force may be essential to maintain any allegiance to legal cosmopolitanism? After all, Article 51 of the

23 See the classical essay by Ronald Dworkin, "Taking Rights Seriously" (1970) in *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1978), 184ff.

UN Charter permits war of self-defense in cases of occurrence of armed attack against a member-state or a member of such an organization as NATO, while the Genocide Convention obliges states to undertake military action to prevent genocide, slavery, and ethnic cleansing – provided the UN Security Council authorizes such actions.

As most students of international affairs admit, however, we are now poised on a slippery slope, when judges seem to be creating law, while statesmen are clamoring for the need to make new laws in this arena.[24] The grounds for humanitarian intervention are expanding into "the obligation to protect" (Kofi Annan). Who the responsible parties for such an obligation to protect would be is unclear. If it is the United Nations who is responsible, then in fact we will need to revise the current practice of considering military intervention on behalf of the United Nations legitimate only when authorized by the permanent members of the Security Council. The obligation to protect and the veto power of the five permanent members of the Council are pulling the United Nations in opposite directions with no clear resolution in sight.

These are uncharted waters in the international arena. On the whole, I am opposed to the creeping interventionism behind the formulation of the obligation to protect, placing my hope for as long as possible, and for as long as necessary, upon the forces of civil society and civilian communities instead to spread cosmopolitan norms and move all societies closer together to compliance with the UDHR. My commitment to global civil society actors in this arena should not be mistaken for neoliberal antistatism. Within the boundaries of existing polities, the state is the principal public actor that has the responsibility to see to it that human rights norms are both legislated and actualized. However, in the international arena, there is a range of cross-border and transnational actors and groups that are the principal agents of spreading legal cosmopolitanism.

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Yet, when, why, and under what conditions military intervention to stop massive human rights violations is justifiable remains a question in political ethics. However, particularly when states are considered the unique agents of intervention, and when intervention means the use of military force, *only* the prevention of genocide, slavery, and ethnic cleansing can justify such acts. Regime change is not justified. As members of a global community, there are myriad other ways in which we can work across borders to spread democracy, civil society, and a free public sphere. The range of activities of global citizens goes much beyond military intervention and the use of force.

There is need for a new Law of Humanitarian Interventions that is clearer about the conditions under which intervention by the United Nations in the affairs of a country is justified. As recent interventions (as well as failure to intervene in Rwanda and Darfur) prove, the Genocide Convention and the UN Charter alone are not adequate for this task in guiding the world community. But these

24 See J. L. Holzgrefe and Robert O. Koehane, eds., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge: Cambridge University Press, 2003); for a general overview, cf. also Michael W. Doyle, "The New Interventionism," in *Global Justice*, ed. Thomas W. Pogge (London: Blackwell, 2001), 219 – 241. For the view that judges are creating law in this domain, see Allison Marsten Danner, "When Courts Make Law: How the International Criminal Tribunals Recast the Laws of War," *Vanderbilt Law Review* 59 (1) (January 2006): 2 – 63.

will remain hard choices that will always entail the exercise of political judgment. As Allen Buchanan asked several years ago, "Is illegal international legal reform . . . possible through unauthorized interventions?"[25] Such questions impose upon citizens, leaders, and politicians the burden of history. Philosophy can neither guide us all the way in such deliberations, nor can it guarantee that our good intentions will not be destroyed by contingent events and turn into their opposite. Nor should it do so.

Nevertheless, as Kant observed,[26] there is a distinction between the "political moralist," who misuses moral principles to justify political decisions, and a "moral politician," who tries to remain true to moral principles in shaping political events. The discourse of human rights has often been exploited and misused by political moralists; its proper place is to guide the moral politician, be they citizens or leaders. All that we can offer as philosophers is a clarification of what we can regard as legitimate and just in the domain of human rights themselves.

25 See Allen Buchanan, "From Nuremburg to Kosovo: The Morality of Illegal International Legal Reform," *Ethics* 111 (4) (July 2001): 673–705.

26 Immanuel Kant, "Perpetual Peace: A Philosophical Sketch," trans. H. B. Nisbet, in Hans Reiss, ed., *Kant: Political Writings*, 2nd ed. (Cambridge: Cambridge Texts in the History of Political Thought, 1994), appendix II, "On the Agreement between Politics and Morality According to the Transcendental Concept of Public Right."