HUMAN RIGHTS AS SWORDS OF EMPIRE

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[T]he transition from a nation-state world order to a cosmopolitan world order brings about a very significant priority shift from international law to human rights. The principle that international law precedes human rights which held during the (nation-state) first age of modernity is being replaced by the principle of the (world society) second age of modernity, that human rights precede international law. As yet, the consequences have not been thought through, but they will be revolutionary.

Ulrich Beck

It is the very universalistic core of democracy and human rights itself which forbids its universal propagation by fire and sword.

Jürgen Habermas

The US-led war of aggression against Iraq displays, for at least the fourth time since 1990 (the first three occasions being the Gulf War, the NATO intervention in Kosovo and the American attack on Afghanistan), the ‘revolutionary’ nature of the developments afoot in the transition from the ‘first’ to the ‘second age of modernity’. Yet any transition that may be underway is neither an historical necessity nor a clean break with the past. Rather, it is shaping up to be a contradictory and contested set of processes, since the politics of the ‘first age of modernity’ are intertwined with those emerging in its ‘second age’. In emphasizing that cosmopolitanism has brought with it the ‘military humanism of the West’, Beck saw it as ‘founded on an uninterrogated world monopoly of power and morality’. But in making this argument he seemed to run together three
distinct stances toward the relationship between international law and human rights: noninterventionism, cosmopolitanism, and what can only be called imperialism (however ‘benign’) – i.e. a situation where a self-appointed hegemonic power ‘defends’ human rights abroad by engaging in ‘military humanism’.

We wish to suggest that justifications for the most recent Gulf war fall predominantly into the third category, resting on a predatory rhetorical commitment to a cosmopolitan conception of human rights that is, in fact, wielded in the service of an imperialist project, rather than what Jürgen Habermas calls an ‘egalitarian universalism’.3 The dangers people face under these conditions are, of course, ‘asymmetrical’ – who faces what dangers is deeply important. Yet reliance on a cosmopolitan conception of human rights as ideological cover for imperialist world politics also poses universalistic risks, undermining not only the norm of nonintervention so central to the international legal architecture of the ‘first age of modernity’, but also the nascent development of cosmopolitan conceptions of law and human rights of the ‘second age’.

It is remarkable in this respect that it is not just the neo-conservative hawks in the Bush administration and right-wing think tanks who justified this war against Iraq partly with reference to liberty, democracy and human rights for all, but also liberals like Jean Bethke Elsaint, Christopher Hitchens and Paul Berman among many others.4 These ‘liberal hawks’ have argued that ‘pre-emptive’ war and ‘regime change’ are legitimate insofar as the war is aimed at countering real threats to human life and liberty, and that even forceful, unilaterally pursued ‘regime change’ may be a duty for those who enjoy freedom. But they have also seen this cosmopolitan aim as a duty falling pre-eminently on the United States.

This essay asks how is it that liberals justify military humanism in the name of protecting freedom, human rights and democracy, even when it is pursued unilaterally by a self-appointed imperialist power. We will focus on the justifications put forward by Michael Ignatieff, the Director of the Carr Center for Human Rights Policy at Harvard University, whose prominent writings in the New York Times Magazine in the run-up to the war and during it exemplify the ‘military humanism’ that Beck diagnosed.5 In self-consciously embracing both the ‘military humanism’ currently espoused by many advocates of human rights and American imperialist politics, Ignatieff starkly reveals the dangers that reside in liberal nationalist conceptions of world politics and human rights when these are articulated by a self-appointed hegemonic power. While cosmopolitan justifications of military intervention may have played a prominent role elsewhere (pre-eminently in Europe during the war on Kosovo, and perhaps more generally in human rights organizations), in the USA liberals have been wont to appeal to a cosmopolitan military humanism in support of an imperialist republican nationalism. This point is important, because the implications of the liberal hawks’ justification for the American-led war on Iraq, like their neo-conservative counterparts, are deeply inconsistent with cosmopolitan principles in the crucial dimensions of morality, legality and politics; because they threaten to erode multilateral institutions like the UN, and to legitimize ‘regime change’ and
‘pre-emptive war’ by an imperial power. We will argue that even if the US could accurately be viewed as a republican Empire morally motivated to spread democracy and human rights abroad it could not do so morally, without undermining the development of international law in a cosmopolitan direction, and without further entrenching imperialism, which stands as one of the greatest impediments to human rights and democracy today.

Our analysis is premised on a ‘critical cosmopolitanism’ that we think is required to underpin any genuinely universal respect for, and protection of, human rights and popular sovereignty. But this position is deeply suspect in the eyes of many on the Marxist Left, as seen for example in the recent writings of Tariq Ali, Perry Anderson and Peter Gowan. We endorse their criticisms of ‘military humanism’ undertaken by imperialist powers but in the second part of this essay we shall suggest that to develop anti-imperialist, pro-human rights and democratic politics today requires us not to dismiss international law and institutions. And in order to develop a critical cosmopolitanism of this kind we also need to avoid the ‘instrumentalism’ that is evident in Left critiques of the UN and of human rights. Rather, human rights and transnational institutions like the UN can be crucial arenas of struggle – as Marxists used to say – made more, not less, pertinent by the emergence of an imperialist power bent on self-legitimation and unilateral assertion in every instance that suits it.

INTERROGATING IGNATIEFF’S ‘I DON’T KNOW’

The United Nations lay dozing like a dog before the fire, happy to ignore Saddam, until an American president seized it by the scruff of the neck and made it bark. Multilateral solutions to the world’s problems are all very well, but they have no teeth unless America bares its fangs …. The 21st century imperium is a new invention in the annals of political science, an empire lite, a global hegemony whose grace notes are free markets, human rights and democracy, enforced by the most awesome military power the world has ever known.6

Who wants to live in a world where there are no stable rules for the use of force by states? Not me. Who wants to live in a world ruled by the military power of the strong? Not me. How will we oblige American military hegemony to pay ‘decent respect to the opinions of mankind’? I don’t know. When the smoke of battle lifts, those who support the war will survey a battle zone that will include the ruins of the multilateral political order created in 1945 …. To support the war entails a commitment to rebuild that order on new foundations.7

Long seen as a principled left–liberal, Michael Ignatieff ‘plumped’ – a term he has borrowed from Isaiah Berlin – in favour of the attack on Iraq just prior to its commencement. Coming out in support of the war after due anguish, and against his friends (including those ‘left–wingers who regard American imperialism as the root of all evil’),8 he insisted that support for the war did not make him or anyone else an ‘apologist for American imperialism’, and stated what was, for him, the
key principle: ‘The problem is not that overthrowing Saddam by force is “morally unjustified”. Who seriously believes 25 million Iraqis would not be better off if Saddam were overthrown?’ The ‘consequential’ justification that 25 million Iraqis will be liberated clearly overrides, he argued, the ‘deontological’ one that ‘good consequences cannot justify killing people.’ This is how Ignatieff believes the moral issue should be answered — regime change undertaken, in effect unilaterally by the US and British administrations, is morally justified by the cosmopolitan aim of liberating the Iraqi people.9 But as if recognizing that the moral justification for the war was not as straightforward as he initially asserted, he went on to argue that while it was unfortunate that the debate about Iraq became a debate about American power, rather than about the human rights of oppressed peoples, the events of September 11, 2001 had fundamentally altered the security threats to which the world must respond; and that those who failed to recognize this were blindly ‘wishing they could still live in the safety and collective security of the world that existed before 9/11.’10 Arguing against the world-wide anti-war movement and world public opinion, he suggested that while the fact that the world did not support the US-led war posed a problem, a principle is not wrong because people disagree with it (nor right because they agree).11 Having asserted, then, the moral rightness of this war, the only remaining question, he suggested, is whether the risks are worth it; whether it is a prudent move. By implication, since he supported the war, the answer must be yes.

Much of this echoed Ignatieff’s long-standing position that human rights considerations in the contemporary period have made judgments about war and the use of force complicated, as seen in his support for the military interventions in Bosnia and Kosovo, and his insistence that these interventions demanded radical rethinking along cosmopolitan lines. In repeating many times the banal phrase that Saddam Hussein ‘really is awful’, and in later asserting that his regime not only had ‘just about the worst human rights record on Earth’ but was also ‘in possession of weapons of mass destruction’,12 he also posed the cosmopolitan question: by what moral authority does a brutal regime claim unfettered sovereignty? He reiterated the case for American Empire as the best hope for installing stability, nation-building, and encouraging human rights, free markets and democracy around the world. Yet from another point of view his candid admission that the war would be fought at the price of leaving the multilateral political order in ruins did seem to fly in the face of his prewar support for military humanism on the basis of multilateralism. In 2000 he had claimed unconditionally that the Security Council ‘should remain the ultimate source of legitimacy for the use of military force’ — although this might require ‘crushing force’ by ‘combat capable warriors under robust rules of engagement’ directed by ‘a single line of command to a national government or regional alliance’;13 and as late as 2002 he had argued that the US must respect international legal norms with regard to any military actions and ‘should accept international accountability for its actions’.14 But Ignatieff’s ‘muscular’ conception of human rights15 seemed to prepare the way for his unequivocal support for the war and his insistence that
Iraq’s continuing violations of UN Security Council resolutions meant that the whole international community should ‘walk the walk’ with the American Empire.\textsuperscript{16}

Ignatieff admitted well before the war that the idea of an Empire’s burden, American imperial power at work under what he views as the ‘official moral ideology of Empire – i.e. human rights’, was far removed from that which had been sought by liberal cosmopolitan human rights activists and lawyers ‘who had hoped to see American power integrated into a transnational legal and economic order organized around the UN …. [Rather] a new international order is emerging, but it is being crafted to suit American imperial objectives.’\textsuperscript{17} He also recognized that while Europe was more inclined toward a multilateral order that might hope to limit American power, ‘the Empire will not be tied down like Gulliver by a thousand legal strings’.\textsuperscript{18} And yet he ‘plumped’ in favour of American Empire, showing, with each new article, greater confidence in the American imperial project, since it is, as Ignatieff put it, quoting Melville, an Empire that views itself as bearing ‘the ark of the liberties of the world’.\textsuperscript{19}

This admittedly ‘imperial project’ will require bringing actual stability to the ‘frontier zones’ – and this must be done, Ignatieff insists, ‘without denying local peoples their rights to some degree of self-determination’.\textsuperscript{20} Thus Ignatieff’s realist acknowledgement that ‘empire lite’ is still empire (i.e., that ‘the real power in these [frontier] zones … will remain in Washington’ and will involve protecting ‘vital American interests’) is married to his insistence that achieving human rights rests on republican duty which itself requires the Empire as midwife: ‘The case for empire is that it has become, in a place like Iraq, the last hope for democracy and stability alike.’\textsuperscript{21}

How should we evaluate this position? On the one hand, Ignatieff recognizes the realpolitik of the situation – the horrors visited on the Iraqi people under Saddam Hussein, the fumbling, the weaknesses and the complicity of the UN system, the enormous power that the US wields, and the fact that the American invasion would be oriented to American interests. On the other hand, he has shown a stunning disregard for the lack of evidence, even before the war, of weapons of mass destruction or of any link between the Iraqi regime and Al Qaeda before he ‘plumped’ for war. He did not discuss, so far as we can find, the human rights issues implicit in civilian casualties. Nor did he address issues having to do with environmental contamination and the other ruthless ‘side’ effects that war was sure to produce. Surely a liberal human rights scholar favouring the war should have addressed these issues. The most that can be said is that he relied on his emerging philosophical position that we must act on the ‘lesser evil’.\textsuperscript{22} But even here, he did not soberly address questions crucial to calibrating this equation, nor the requirement of ‘proportionality’ in the use of force in ‘just war’ theory, nor the enormous normative problems posed by asymmetric warfare (by which we mean the responsibility that must attend the power to produce ‘shock and awe’ or, as Ignatieff puts it, using ‘crushing force’ against an ‘enemy’ with far inferior military might).
Even months after the officially declared end of war, no weapons of mass destruction and no links with Al Qaeda have emerged. But insecurity and instability in the world have surely been increased, as clear-headed commentators across the political spectrum acknowledge, not just by increased hatred for Western (and particularly American) power and arrogance, but also by cluster bombs left over for Iraqi children to find, the pollution of Iraqi towns and drinking water, ongoing guerrilla warfare, and so on. Add to this that civilian casualties produced during the ‘official’ war have been estimated by a British and US group of independent experts to range between five and ten thousand, while the US Defence Department spokesperson says the Pentagon has not looked into the question of civilian deaths because it was focused on ‘defeating enemy forces rather than aiming at civilians.’ And now, Paul Wolfowitz admits that the WMD justification for war was ‘settled on’ by the American administration ‘for bureaucratic reasons’, while Donald Rumsfeld concedes that WMD may never be found. Finally, in a remarkable breach of his usual diplomatic demeanour, Hans Blix has admitted that the ‘bastards’ in the US administration viewed the UN as an ‘alien power’ and ‘leaned on’ the weapons inspectors to produce more damning reports while initiating a smear campaign against him.

But beyond all of this, which hardly needs rehearsal for any critical observer of the war and its aftermath, we need to consider the implications of the liberal hawks’ justification for war in terms of the categories of morality and legality. What are we to make of a liberal intellectual of Ignatieff’s stature recommending bypassing and potentially undermining fundamental norms of international law and resting his support so squarely on the moral case for war waged by a ‘moral’ republican Empire? Even if we were to assume that the US actions were genuinely motivated by and aimed at achieving the liberation of the Iraqi people from oppression, the purported moral argument for unilateral intervention fails on two crucial counts.

First, as Ignatieff recognizes, imperialism threatens republicanism. As an imperial power takes on the role of GloboCop, emphasizing military, police and secret spying power, the more does it risk, as Habermas points out, ‘endangering its own mission of improving the world according to liberal ideas.’ This is obvious from such facts as the illegal detention of ‘enemy combatants’ at Guantanamo Bay (and the US Supreme Court’s refusal to consider its unconstitutionality), the detention of ‘illegal aliens’, the ill-treatment of US citizens suspected of ties to terrorist groups, and the treatment of prisoners in Afghanistan and outside Baghdad Airport. Second, as Ignatieff acknowledges, following Thomas Jefferson and the Declaration of Independence, morality requires that we pay ‘decent respect to the opinions of mankind’. Ignatieff’s moral argument – who can believe that 25 million Iraqis would not be better off without Saddam Hussein? – implies a universal right to be free from oppression, and some version of this may indeed be defensible as a universal moral principle. But the problem is not just that imperialism violates it, which it does by undercutting the republic’s commitment to the rule of law both at home and abroad, but also that the basic
moral principle and the universalistic core of human rights should not be ‘confused’, as it is here, with the ‘imperial demand that the political life-form and culture of a particular democracy …is to be exemplary for all other societies’. Again, while Ignatieff is careful to call for an avoidance of the ‘narcissism’ of earlier empires – i.e. the delusion of earlier empires that their colonized aspired only to be ‘versions of themselves’ – his support for this war under these unilateralist conditions cannot avoid ‘narcissism’ or, more forthrightly put, an imperialist imposition of a false universalism.

Paying ‘decent respect to the opinions of mankind’ requires an egalitarian universalism that breaks with a liberal nationalist conception of republicanism and an imperial vehicle for its expansion. This is so for many reasons, but the core moral reason is that no ‘republican’ imperialism – even that of the American ‘republic’ – can break from its provincial, particular perspective. An egalitarian universalism, on the other hand, as Habermas says, ‘insists on the de-centering of each specific perspective; it requires the relativization of one’s own interpretive perspective from the point of view of the autonomous Other.’ It is only in this way that even a ‘good hegemon’ could know whether the actions it justifies as in the best interest of others is in fact equally ‘good for all’.

We may summarize the moral problem as follows: The problem is that one party, even a ‘good hegemon’, cannot morally assume a moral duty unilaterally. ‘Plumping’ for war without taking into account the voices of all those others who also have interests at stake is immoral. Assuming a moral duty morally requires that those affected are genuinely involved in shaping the contours of the response to oppression, mutually and reciprocally. To do so would require, at a minimum, global political public spheres aimed at formulating a response that takes into account everyone’s point of view. Second, and consequently, even a ‘good hegemon’ bases its justification (as Ignatieff admits) on the ethnocentric ground of liberal nationalism – aimed at securing US safety, possibly at the expense of others and, very importantly, spreading the US’s particular interpretation of human rights and democracy abroad. This is why unilateralism is morally unacceptable. This is also why, as Habermas says, the ‘multilateral formulation of a common purpose is not one option amongst others – especially not in international relations.’

This suggests why Ignatieff’s ‘liberal hawk’ position in support of unilateralism poses a moral danger. But it also poses grave dangers to international law and the future of human rights. Ignatieff implied that the war might be legal when he suggested that Iraq’s continuing violations of Security Council resolutions might legitimate war. This runs contrary to the views of the great preponderance of respected legal scholars, including the International Commission of Jurists which has condemned the invasion of Iraq as an illegal war of aggression, finding there is no ‘plausible legal basis for this attack.’ The most recent war on Iraq has illustrated, once again, the ease with which an illegal war can be waged while threatening the legal norms by which nations previously agreed to abide. This poses significant dangers for international law, both in its noninterventionist
orientation, characteristic of the ‘first age of modernity’, and in its development toward a cosmopolitan order in the ‘second age’.

In supporting this war Ignatieff also seemed to suggest that the international legal norms of nonintervention and national sovereignty of the post-World War II era, the ‘first age of modernity’, have run their course, when he acknowledged that the war would be waged on the ‘ruins of the multilateral political order’.35 This is a dangerous derogation from the nonintervention principle because it violates the rule that the legitimate authority to decide whether Iraq was in violation of agreements to such an extent that intervention was warranted is the Security Council, not the hegemonic power. Dispensing with the legitimating authority of the UN, Ignatieff seems to see no reasonable alternative to the sovereign power of an imperial hegemon pursuing, as he admits, liberal nationalism, self-interest and an American conception of human rights. Such a shift not only violates the principle of nonintervention, but also endorses the Bush Doctrine of the right to wage ‘pre-emptive war’ against any entity the US deems hostile to its interests – a doctrine that threatens to undermine not just the norms of nonintervention but also the further development of norms of egalitarian universalism.

Ignatieff clearly sees the path stretched out before us but shows little concern for its perils: ‘[a] new international [legal] order is emerging, but it is being crafted to suit American imperial objectives. The empire signs on to those pieces of the transnational legal order that suit its purposes ... while ignoring or even sabotaging those parts ... that do not.’36 He claims he is neither apologizing nor rationalising but rather stating the reality of international law in an age of empire. The American Empire is not to be constrained by multilateral concerns. International institutions that can be controlled and commandeered are to be retained, those that would require an egalitarian framework and fail to guarantee American dominance are to be discarded. Ignatieff offers essentially no juridical foundations for military humanism but merely approves as obvious the burden America is said to carry – a duty to breach bothersome legal trivialities in defence of human rights and freedoms. ‘Americans are multilateral when it is to the advantage of the United States, unilateral when they can get away with it. It is a vision in which world order is guaranteed by the power and might and influence of the superpower, as opposed to the spreading influence of international law.’37 This serves as an apt description of American foreign policy, but if Ignatieff is critical of this vision the reader may be forgiven for failing to notice.

International law failed in the lead-up to the invasion of Iraq. It failed the American imperial leadership that attempted to use international legal norms to frame their intent in legally justifiable rationales. It failed the leaders of France, Germany and Russia who played by the old rules while others rewrote the rulebook. It failed the people of Iraq who were powerless to face aggressors from within and without. And it failed the international rallying cry of concerned world citizens that defiantly and peacefully marched in numbers never before seen in opposition to an unjust war. All this because the international legal norms of the ‘first age of modernity’ were unable to constrain an imperial power
determined and strong enough, in Habermas’s words, to ‘break the civilizing bounds which the Charter of the United Nations placed with good reason upon the process of goal-realization.’

Habermas maintains that the neo-conservatives associated with the Bush Doctrine confront international law ‘with a quite revolutionary perspective [asserting that] … when international law fails then the politically successful hegemonic enforcement of a liberal world order is morally justifiable …’ even when it is formally illegal. What is remarkable, as we have emphasized, is that this is at least as characteristic of liberal hawks like Ignatieff as it is of the American neo-conservatives. Still, this seems perplexing. For why would one committed to human rights and democracy, as Ignatieff surely is, but as Bush and Co. clearly are not, recognize yet fail to undertake a consideration of the ‘revolutionary consequences’ attendant to this war aimed at pre-emption and ‘regime change’ and threatening the sole, however flawed, international institution available today to deal with such challenges? With the ratification of the UN Charter after World War II, states formally agreed to ‘give up their sovereign right to go to war’. Since this war is premised on re-establishing that right perhaps it would be better to call this a ‘restoration’ rather than a ‘revolution’. The liberal hawks, not unlike the neo-conservatives, have thus supported a war that is not only unjust and illegal but one that threatens to imbricate regressive norms in international law. Michael Glennon has stated, regarding the Kosovo intervention by NATO, that if ‘power is used to do justice, law will follow.’ But this logic works equally in reverse: if power is used to do injustice, unjust law will follow.

And need we even say that this was not likely a ‘one off’ war? Plenty of commentators have made it clear that it is the first in a series of such wars — as Ignatieff implies when he claims that ‘[i]mperial ruthlessness requires optimism as a continued act of will.’ The empire must remain vigilant against all that would stand in the way of its advance. Imperial ruthlessness, however, seems also to require an elusive villain (Osama Bin Laden, Saddam Hussein, take your pick) that can be stalked across borders. A well-oiled public relations machine, replete with politicians to add accountability, embedded journalists to add ‘integrity’ and public intellectuals to add weight, lays the groundwork for war without end.

We do not mean to suggest that Security Council approval for multilateral military force would have wholly addressed the lack of legitimacy of the ensuing intervention. We recognize the undemocratic, not to mention the undeliberative, nature of the Security Council and see that the bullying and bribery of the Bush administration further undermined any possibility of achieving a legitimate decision taken by equals. But in ‘plumping’ for unilateral war, Ignatieff was also plumping for future forms of unilateralism, and plumping against multilateralism under international law and international institutions, pre-eminently the UN. A hegemonic unilateralism is primed to step into the void between the discarded norms of the ‘first age of modernity’ and the (still to be conceived) cosmopolitan norms and institutions of the ‘second age’. The key question is whether an international law justification for war should be replaced with ‘empire’s law’, provided
by the ‘unilateral global politics of a self-empowering hegemon’.43 We think the answer is clear: it should not. As Eric Hobsbawm notes: ‘few things are more dangerous than empires pushing their own interest in the belief that they are doing humanity a favour.’44

THE CASE FOR CRITICAL COSMOPOLITANISM

Habermas, then, is right – there is no acceptable alternative to the further development of a cosmopolitan legal order where all voices receive equal and reciprocal recognition.45 He is also right that the countries of the ‘Old Europe’ and others that held out against overwhelming American pressure before the war did not – as so many American commentators contended – undermine the UN or relegate it to insignificance.46 On the contrary, it is that sort of resistance that may save the international legal architecture. Of course, resisting American domination, and saving and then transforming international institutions like the UN, will be no mean feat under conditions of American imperialism. The Security Council’s unanimous capitulation to the US in the ‘reconstruction’ era reveals this all too starkly.47

There are obviously no clear or easy answers to offer to the question of how to resist American domination, how to maintain international institutions and how to resist the perversion of nascent cosmopolitan norms and transnational institutions capable of fulfilling them. Can Europe help offset a determined American imperialism? Can the emerging global public sphere as witnessed, for example, in the World Social Forum and the massive anti-war movement, do so? We don’t know. Clearly these are all sites for anti-imperialist struggle. But we also believe that we need to develop a critical cosmopolitanism as well, and this requires that we confront a crucial question: How can we even think, let alone enact, cosmopolitan commitments and institutions under imperialist conditions? To put it in Habermasian terms, how can we mediate in a democratic and progressive way between ‘facts and norms’ – between the facts of imperial power and the normative demand for a cosmopolitan system of governance, including a commitment to human rights, that may allow the development of an egalitarian, rather than an imperialist, universalism?

One thing is clear. This cannot be achieved through positions like Ignatieff’s or the complicity of intellectuals and officials in Europe and elsewhere who, after resisting the war, have turned their minds to ‘transatlantic relations’ after the war and have begun to speak in terms of attempting to influence the US from a position within the empire. Rather, we must undertake at least a preliminary defence of the sort of critical cosmopolitan orientation that we believe should be developed in the face of the pointed criticisms that cosmopolitanism and international legal institutions have received from some of the strongest voices on the Left. Cosmopolitanism is, of course, very contested territory – internally as well as externally – and we do not claim to speak for most versions of it. We view the project of developing a critical cosmopolitanism as a significant departure from other versions, particularly that which Peter Gowan has termed the ‘new liberal
cosmopolitanism’, let alone analyses like Ignatieff’s.⁴⁸ Rather than enter into a
discussion of the protracted debates over cosmopolitanism, we wish to focus on
these critics’ treatment of the UN, the international legal norm of noninterven-
tion, and human rights.

Tariq Ali is one of the main authors who raises questions about the sorts of
institutions, pre-eminently the UN, that cosmopolitans tend to believe should
not be razed but rather reformed. Ali views the UN as the ‘United Nations of
America’, a ‘disposable instrument’ of American power and policy.⁴⁹ Citing with
stinging, if over-generalized, accuracy the delivery of the UN in the post–Cold
War period into ‘American hands’, he suggests that appealing to the UN to
constrain the US is ‘like expecting the butler to sack the master’. Recognizing
the deep division between the US and many of its usual allies over the latest war
on Iraq, Ali still sees no reason to appeal to the UN. He argues that any anti-
imperialist project must look elsewhere – to struggles within the Middle East
itself, to resistance in Iraq and in the heart of American Empire, and to global
anti-imperialist struggle – citing the World Social Forum as one space for develop-
ing campaigns, for example, to close down American military bases.⁵⁰ Since
the war, Ali argues, the UN Security Council has recognized the occupation of
Iraq, approved its ‘re-colonization’ by the US, and ‘provided retrospective sanc-
tion to a pre-emptive strike’. We agree with this final point. But we are dismayed
at the implication of his argument that at least the League of Nations ‘had the
decency to collapse after its charter was serially raped’.⁵¹

Perry Anderson presents a similar analysis. He argues that opponents of the war
require principles for opposition to the war, not just prudential reasons, but he
suggests that the standard principled reasons offered for valuing the UN and inter-
national law will not do since they treat these as if they were ‘a salve against the
Bush Administration’. Anderson argues that this is ineffective, that we require an
alternative position that, among other things, recognizes that the UN is not impar-
tial (thereby echoing Ali’s line that it is a mere ‘butler’), that its structure is
‘politically indefensible’ and that, since the end of the Cold War at least, it has
functioned primarily as ‘a screen for American will’,⁵² ‘as much an arm of the State
Department as the IMF is of the Treasury’.⁵³ Anderson does recognize that some
elements of the UN – its ‘secondary affiliates’ – ‘do good work’, while the General
Assembly ‘does little harm’. Still, he argues that the Security Council bears no
prospect of reform and suggests that ‘the world would be better off – a more
honest and equal arena of states – without it.’⁵⁴ Finally, and very importantly, he
suggests that human rights are the ‘jemmy in the door of national sovereignty’.⁵⁵

Much of this is echoed by Peter Gowan, but he goes further to critically assess
cosmopolitan justifications for interventionism as well. Gowan characterizes the
global governance institutions as ‘lightly disguised instruments of US policy’ and
cites the UN as ‘striking’ in this regard.⁵⁶ He also provides a compelling critique
of the ‘new liberal cosmopolitans’ who refuse to attend to US global dominance,
and who applaud the US as the party in the ‘international community’ with the
capacity to pursue global justice, insisting that it has shed its ‘egoistic national
interest’.57 He criticizes them for supporting military intervention in the interest of human rights as a step toward the realization of liberal principles over power. On balance, Gowan argues that the humanitarian interventions that have so inspired the liberal cosmopolitans, and have in turn been inspired by their arguments for cosmopolitan justice, provide instead ‘a model of power-projection that virtually inverts this description’. And he correctly observes that the new liberal cosmopolitanism is fixed within a ‘liberal-individualist corset [that] does not fit the world as it is: it fails to strap American power into its prognosis of a supra-state order.’58 Finally, Gowan argues that with humanitarian interventions, as well as other forms of globalization, we are witnessing an ‘asymmetrical pattern of change in the field of state sovereignty’ with the erosion of most states’ sovereignty in favour of ‘exceptional prerogatives’ for the US.59

We agree with much of this analysis, starting with the recognition that the UN Security Council is no impartial arbiter. As we have also argued, it functions in a context of American hegemony and imperialism that has enormous consequences for its ability to function independently. We also agree with the critique of the ‘new liberal cosmopolitans’ who fail to distinguish between an imperialist and an egalitarian universalism. But we want to raise three questions. What about the norms of international law and nonintervention? What about human rights? And why not consider developing norms of cosmopolitan law and justice viewed as part of a long-term anti-imperialist struggle against American power and domination and in favour of addressing the problems of the UN, multilateralism and human rights, rather than either relegating them to the ‘dustbin of history’ or side-stepping them, as these analyses appear to do?

The norm of nonintervention, so central to the international juridical architecture of the ‘first age of modernity’, receives conflicting treatments in these analyses. On the one hand, Anderson and Ali agree that this is the pre-eminent norm to be adhered to in the hopes of resisting the asymmetrical and imperial sovereignty associated with the military missions justified by cosmopolitan conceptions of human rights.60 On the other hand, they also argue that given the instrumental character of the Security Council, in particular, and perhaps of the UN in general, we would be better off without it. But to endorse its collapse in the name of being ‘more honest’ is a serious mistake. The problem with it is revealed by Alan Dershowitz’s cynical use of this kind of argument to support the creation of ‘judicial torture warrants’ in the US. His reasoning is not that we should encourage torture but rather, if states are going to engage in it, which being a realist he recognizes states will, it should be done ‘honestly’ and openly. Anderson and Ali are no doubt disgusted by this, but their notion that without the Security Council international politics might offer a more ‘equal arena of states’ clearly threatens to slip us into a Hobbesian war of all against all, sending us back prior to the ‘first age of modernity’. The collapse of the Security Council would mean the collapse of the only institution that is formally oriented to enforcing the rules of the UN Charter, which pre-eminently embodies, to date, the norm of nonintervention and the principle of equal state sovereignty.
When Tony Blair’s policy advisor, Robert Cooper, and Michael Ignatieff agree that we must accept a new imperialism based on unilateralism, in which hegemonic states are now free to ignore international law, deciding upon the need for military force and wielding it in the name of security, nation-building and human rights outside the UN system when it suits their purposes;61 and when this appears to reiterate the major themes in the US’s National Security Strategy;62 then it is time, we suggest, to reconsider the Left critique of cosmopolitanism. Its disregard for the institutional embodiment of the international law of the ‘first age of modernity’ effectively condones erasing the legal limits against intervention. Not only is this unwise in the extreme, but it also contradicts these critics’ commitment to nonintervention.

Nonintervention is advanced by these authors as an antidote to the imperialist manipulation of human rights; they want to stave off the assault on the sovereign equality of states that they see being perpetrated by those who make the case for military intervention in the name of human rights. So, for Anderson, the war on terrorism is seen as merely a ‘temporary bypass on the royal road leading to “human rights and liberty” around the world’. The latter provide the ‘permanent possible ideals that a hegemony requires’. Human rights are not, then, just a ‘jemmy in the door of national sovereignty’, but also an ideology that masks force, providing a basis for consent to and direction of an imperialist project. Thus does Anderson condemn human rights, under these conditions, as part of the ‘arrogance of the “international community”’.63 We agree that dangers come with abandoning the principle of nonintervention in the name of human rights. We agree that human rights can be mobilized ideologically as part of a hegemonic project. But the position adopted by Anderson and Ali goes so far as to threaten the very core of human rights themselves.64

It is crucial to maintain the norm of nonintervention, that seeks to protect not just peace, but also the equal sovereignty of nation-states, while also acknowledging the protection of human rights as another key norm emerging in the ‘second age of modernity’. A critical cosmopolitanism should develop a position that links a commitment to nonintervention to a commitment to human rights and makes an exception to the nonintervention principle to the extent that systematic human rights abusers would forfeit the right to sovereign equality. Of course, we agree that sovereign equality is violated by empowering a hegemonic state to intervene. This lies at the heart of our critique of the ‘liberal hawks’. But, if the judgment were made under procedurally just, multilateral conditions aiming at egalitarian universalism, the ‘expansion of international justice’ would not abolish international law. Those who think it would are making the mistake of rejecting the principle of egalitarian universalism, and equating international law with a faulty conception, a merely formal conception, of sovereign equality. In other words, respect for equal sovereignty should not be extended to states that are judged, by fair processes, to be massive human rights abusers. For that merely formal conception of sovereign equality, while having the virtue of avoiding the real problems of ‘apparently’ cosmopolitan politics (‘military humanism’ under-
written by and in the interest of imperial power chief among them), would ride roughshod not only over human rights but also over *popular sovereignty*. It would mean that any state, simply by virtue of being a state, deserves equal recognition. This is a position that must be rejected by a democratic Left. Furthermore, it violates the principle of the ‘self-determination of peoples’. And, ultimately, a merely formal view of equal sovereignty would violate the normative meaning of international law, which refers back to the ‘law of the people’.

As against the Left critics of cosmopolitanism, then, we would go this far with the cosmopolitans: the nonintervention principle cannot be upheld as unassailable. But we reject the position of the ‘liberal hawks’ who really rely on a republican imperialism, and also that of the ‘new liberal cosmopolitans’ who, ultimately, would do the same. And we also want to resist, therefore, the sort of cosmopolitan position that suggests that humanitarian intervention should not be the prerogative of the UN since it is unreliable – or stated more directly, that it is a ‘prerogative of the West’. We reject this, as should be clear by now, because the determination to follow a moral principle cannot be made morally by a single set of interests, because it not only breaches international law but threatens to develop regressive new principles in international law, and because it fuels imperialism. It is not moral or legal. It is, rather, an imperialist universalism.

Cosmopolitans are regularly accused of being either dangerously utopian or militaristic. We have agreed that some analyses that travel under the banner of, or close to, cosmopolitanism are dangerous and we agree that many are utopian. But this is not a characteristic of cosmopolitans alone. While we, too, are deeply troubled by the descriptions of the necessity for ‘combat capable warriors’ and ‘lethality’ in the name of human rights (descriptions that call up images of Arnold Schwarzenegger far more than Lady Liberty), and while we share the Left critics’ position that military humanism as it is now practised expands rather than constrains imperialism (always one of the chief enemies of human rights), do the critics really think that international judgments should not be made, and that multilateral forces should never be deployed, say, in Rwanda or in the Congo today? Is it clear headed anti-utopianism and anti-militarism, or is it just negligence to avoid discussing what to do about situations in which literally millions are dying? It is not enough to stand back and criticize the West’s, and particularly the USA’s, complicity and responsibility for fuelling these wars. Civil wars and ethnic violence are also major enemies of human rights today and, as Daniele Archibugi says, asserting sovereignty and noninterference alone ‘does nothing to protect the victims of violence inside states.’ Human rights-based intervention must be considered a legitimate, and pressing, topic for the Left where it might aim at preventing massive human rights abuses on the scale of genocide and prepare the way for a future in which more peaceful and deliberative problem solving procedures are possible.

But a critical cosmopolitanism would, of course, engage other alternatives as well – ones that are aimed at *avoiding* military intervention, including the development of international policing, international tribunals and the like and, as with
intervention, the aim behind these would be an egalitarian universalism rather
than an imperialist project of extending ‘Western justice’. To even imagine these,
however, requires a different orientation on the part of the Left than that
discussed above.

All of this makes crucial the final question we have posed regarding the possi-
bility of pursuing the development of cosmopolitan norms and institutions as part
of an anti-imperialist strategy, in part by addressing the problems of the UN,
multilateralism and human rights instead of rejecting them. We have no inten-
tion of falling into a naive utopianism by failing to take power into account. We
fully recognize the importance of the distinction Peter Gowan makes between
two types of cosmopolitanism, the ‘new liberal cosmopolitanism’ (of which he
is rightly unremittingly critical) and ‘democratic cosmopolitanism’ (as found in
Daniele Archibugi’s work) which has the virtue of attempting to envisage a
‘global polity’ that would be capable of bringing under global majority control
the ‘rich minority of states and social groups’. And we also recognize, with
Gowan, that even ‘democratic cosmopolitan’ positions will always suffer from
crucial weaknesses if they limit their attention to the institutions of politics, and
principles for their reform, without attending to the ‘Herculean popular agency’
that would be necessary in order to realize even these goals. Gowan is right: any
attempt to constitute cosmopolitan solidarity would have to ‘confront the social
and economic relations of actually existing capitalism’, particularly when a
‘complacent cosmopolitanism’ fails to grapple with the real, imperialist project
of which US hegemony is a core part.68

This is where a critical cosmopolitanism should begin. But to address the
problem of agency means avoiding instrumentalist conceptions of the political architec-
ture of international governance. Treating the UN (as a key feature of global
governance) as an ‘instrument’ – as ‘butler’ to ‘master’ (Ali), an ‘arm of the US
State Department’ (Anderson), or a ‘lightly disguised instrument of US policy’
(Gowan) – may suffice for polemical purposes, but not for political analysis. It
betrays an inadequate and largely un-theorized conception of power, with inter-
national institutions treated as so captured by capitalist and military power that
they function merely as brittle, compliant and ‘disposable instruments’. To be
sure, democratic cosmopolitan analyses often display a kind of instrumentalism
as well, insofar as they treat international institutions as ‘neutral instruments’ that
may be readily reformed this way or that, and fail to take into account the obsta-
cles to that project that exist both within and without those institutions.69

We suggest that in order to avoid these instrumentalist pitfalls we should
develop a relational cosmopolitan analysis of international organizations and the
global public sphere, employing concepts that draw on the lessons learned in the
earlier Marxist debates on the theory of the state to analyze the limits and possi-
bilities of transformative struggles under conditions of the new imperialism.70
Such theories will need to be reworked to account better for the relations of
gender and race, and the changed context of globalization and imperialism – and
the ways in which international institutions differ from capitalist state institutions.
But to be able to address the gap between the ‘facts’ of imperial power and the conditions for the generation of legitimate ‘norms’ we might do well to begin by developing a more nuanced analysis of international institutions, global political public spheres and cosmopolitan principles like human rights. The analysis needs to be advanced in relational terms because only in this way can we see them appropriately as ‘arenas of struggle’ – expressing an institutional materiality premised on the unequal balance of class forces as well as a wide array of popular and progressive movements. Such an analytical reorientation may be capable of revealing, in addition to the sedimented materiality of imperialist and state interest inside these institutions and public spheres, the fissures that may represent openings for democratic and transformative transnational political struggles. In this way we may also be able to begin to address the conditions for that ‘Herculean popular agency’ whose necessity Gowan properly emphasizes, while opening analyses up to confront the obstacles that both capitalist social relations and imperialism pose.

Such an analysis will need to assess the possibilities for struggles to democratize the international institutions like the UN, and attend to the struggles that would be required to change national states – including the imperial state – so as to link up these struggles with an emerging global public sphere in order to bring about transformative change at the international level. This analytical reorientation may allow us, finally, to value international law at the same time as we criticize and struggle against its shortcomings, to critically, and not just rhetorically, express outrage at imperialist violations of it. The point is to recuperate human rights politics as part of a critical cosmopolitan project aimed explicitly against imperialism, but also in favour of strengthening the relationship between human rights and popular sovereignty. It is only in this way that we may begin to counterpoise human rights against Empire.

NOTES


2 Jürgen Habermas, ‘What Does the Felling of the Monument Mean?’, http://slash.autonomedia.org/analysis/03/05/12/1342259.shtml. This is a translation of ‘Was bedeutet der Denkmalsturz?’ in Frankfurter Allgemeine Zeitung, 17 April 2003, p. 33.

3 On egalitarian universalism, see Habermas, ‘What Does the Felling of the Monument Mean?’ Here we develop the distinction between an imperialist liberal nationalism and cosmopolitanism that Habermas has proposed and apply it to the liberal hawks’ analysis. See ibid., and Habermas, ‘Letter to America’, *The Nation*, 16 December 2002, http://www.thenation.com/doc.mhtml?i=20021216&s=habermas.

4 See Jean Bethke Elstain, *Just War Against Terror: The Burden of American power*


9 Ignatieff, ‘I am Iraq’.

10 Ignatieff, ‘Friends Disunited’.


15 This was the term Doris Buss coined to characterize the hawks’ position at a Carleton University Anti-War Roundtable on 24 March 2003.

16 Ignatieff, ‘Time to Walk the Walk’.


19 Ibid., p. 24.


24 David Usborne, ‘WMD Just a Convenient Excuse for War, Admits Wolfowitz’, Independent, 30 May 2003. Also see Paul Krugman who suggested in the New York Times that if the claim that Saddam ‘posed an immanent threat …was fraudulent, the selling of the war is arguably the worst scandal in American political history…’. ‘Standard Operating Procedure’, New York Times, 3 June 2003. The only surprising thing about Senator Robert Byrd’s argument that ‘[w]e were treated to a heavy dose of over-statement concerning Saddam Hussein’s direct threat to our freedoms’ is how few in Congress seem to have been scandalized. ‘The Truth Will Emerge’, http://byrd.senate.gov/byrd_speeches/byrd_speeches_2003may/2.html.
26 Helena Smith, ‘Blix: I was Smeared by the Pentagon’, Guardian, 11 June 2003.
27 Habermas, ‘What does the Felling of the Monument Mean?’ para. 36.
29 Habermas, ‘What does the Felling of the Monument Mean?’, para. 41, emphasis added.
32 Habermas, ‘What Does the Felling of the Monument Mean?’, para. 43.
33 Ibid., para 47.
35 Ignatieff, ‘Friends Disunited’.
36 Ignatieff, ‘Barbarians at the Gate?’. 
37 Ignatieff, ‘Time to Walk the Walk’.
38 Habermas, ‘What Does the Felling of the Monument Mean?’, para. 10.
39 Ibid., para. 8. Habermas addresses his view of the differences between NATO intervention in Kosovo and the 1991 Gulf war, both of which he supported, and the US’s most recent war against Iraq, of which he is deeply critical, in ‘Letter to America’. On Kosovo, also see Habermas, ‘Bestiality and Humanity: A War on the Border between Legality and Morality’, Constellations, 6(3), 1999.
42 Ignatieff, ‘Barbarians at the Gate?’, p. 6.
43 Habermas, ‘What Does the Felling of the Monument Mean?’, para. 34. We borrow the characterization of this as ‘empire’s law’ from Trevor Purvis’s comments at the Carleton University Anti-War Roundtable on 24 March 2003.
48 Peter Gowan, ‘Neoliberal Cosmopolitanism’, New Left Review, 11, 2001, p. 84. Some would place Ignatieff in this category but we believe that Ignatieff’s position is better described as a republican imperialism, even if it does exhibit many of the features that Gowan ascribes to the ‘new liberal cosmopolitans’.
50 Ibid., pp. 16-18.
Ali, ‘Business As Usual’.


Anderson, ‘Casuistries of Peace and War’.


Peter Gowan, ‘Neoliberal Cosmopolitanism’, *New Left Review*, 11, p. 84.

Ibid., p. 81.

Ibid., p. 91.

Ibid., p. 85. David Chandler’s ‘International Justice’ develops the theme of the erosion of sovereign equality and presents an extended critique of the assault that human rights cosmopolitanism has perpetrated on norms of nonintervention and the sovereign equality of states that provided the juridical, if seldom the substantive, anchor for the ‘first age of modernity’.

In this they echo Chandler in ‘International Justice’.

For this analysis of Blair, see David Chandler, ‘Imperialism May be Out, But Aggressive Wars and Colonial Protectorates are Back’, *Observer*, 14 April 2002 www.observer.co.uk/worldview/story/0,11581,684308,00.html (accessed April 18, 2003).


It also threatens to return us to the sterile debates over rights and human rights between Leftists in the 1970s and 1980s over whether the Left should be ‘for’ or ‘against’ constitutional and human rights and the rule of law. See Amy Bartholomew, ‘Should A Marxist believe in Marx on Rights?’, *Socialist Register 1990*, London: Merlin, 1990.


See Karl–Otto Apel ‘On the Relationship Between Ethics, International Law and Politico–Military Strategy in Our Time: A Philosophical Retrospective on the Kosovo Conflict’, *European Journal of Social Theory* 4(1). This also signals our disagreement with Gopal Balakrishnan’s assessment that the ‘new Habermas’ is ‘an essentially establishment philosopher’ and that the ‘turn towards discourse ethics allows a curtain of mystifying euphemism to be drawn across the enormity of contemporary imperialism’. ‘Overcoming Emancipation’, *New Left Review*, 19, 2003, p. 124.

Gowan, ‘Neoliberal Cosmopolitanism’, p. 93. The idea of ‘complacent

69 These analytical shortcomings are mirrored, as well, in the respective positions around human rights.


71 Dryzek, Deliberative Democracy and Beyond.