



## **ENDING TYRANNY IN IRAQ**

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# ENDING TYRANNY IN IRAQ

Fernando R. Tesón<sup>1</sup>

## Introduction

As it did at least three times during the twentieth century, the United States (this time joined by its most reliable ally, the United Kingdom, and a few others) has once again deposed a brutal tyrant. The long and cruel rule of Saddam Hussein came to a close in 2003 after a short military operation. Operation “Iraqi Freedom” had four phases: military deployment and preparation; initial attack; capture of Baghdad and overthrow of the régime; and reconstruction and peacekeeping. In every phase except the last, the Anglo-American alliance (the Coalition) had remarkable success.<sup>2</sup> The first three phases, that is, the international war proper, lasted from March 19 until April 14, 2003. It was followed by a period of military occupation; the return of sovereignty to Iraq; and finally, an unprecedented democratic election in the country –all of it amidst virulent insurgent violence.<sup>3</sup>

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<sup>2</sup> See Mark Kusnetz et al., *Operation Iraqi Freedom* (Kansas City: Andrews McMeel, 2003) p. xii. This is the account of the war by NBC news.

<sup>3</sup> In addition to the NBC News account just cited, a useful source is M.L. Sifry and C. Cerf, eds., *The Iraqi War Reader: History, Documents, Opinions* (New York: Touchstone, 2003).

The war in Iraq has reignited the passionate humanitarian intervention debate. The American President surprised many observers in his second inaugural address when he promised to oppose tyranny and oppression; and this, in a world not always willing or ready to join in that fight. Humanitarian intervention is again on the forefront of world politics.<sup>4</sup>

Many have criticized the war, in all parts of the world. Much of the criticism challenges the twin assumptions made by Coalition leaders: that the United States had to neutralize the dangers posed by Iraq, and that the war can be justified as part of the war on terror. The legal arguments against the war have focused largely on self-defense and enforcement matters, in particular: whether the justifications given by the Coalition were genuine, given the fact that no weapons of mass destruction were discovered in Iraq; whether the war could be justified as enforcement of prior Security Council resolutions; whether preventive self-defense is admissible under international law; whether the war on Iraq can be justified as part of a reaction against the attacks of September 11, 2001; whether the Iraq war has severely undermined the system of the UN Charter; and whether the law of self-defense should be radically changed in the light of the new

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<sup>4</sup> The humanitarian intervention literature is so voluminous it has become unmanageable. Recent book-length treatments that include the ethical and theoretical issues include: J. L. Holzgrefe and Robert O. Keohane, eds., *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge, UK.; New York: Cambridge University Press, 2003); Jennifer Welsh, ed., *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004); Anthony F. Lang, ed., *Just Intervention* (Washington, D.C.: Georgetown University Press, 2003); Aleksandar Jokic, ed., *Humanitarian Intervention: Moral and Philosophical Issues* (Peterborough, ON: Broadview Press, 2003); Deen K. Chatterjee and Don E. Scheid, eds., *Ethics and Foreign Intervention* (Cambridge, UK: Cambridge University Press, 2003); Brian Lepard, *Rethinking Humanitarian Intervention* (University Park, PA: Pennsylvania State University Press, 2002); "The Responsibility to Protect," (Ottawa: International Development Research Centre, 2001). ("ICISS Report"); Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

realities that the international community has to face.<sup>5</sup> These criticisms have blended, in complicated ways, with a growing distrust of American power and with the uncertainties associated with a unipolar world hampered by new threats to peace and liberty.

In this essay I respond to a different criticism of the war: that it cannot be justified as humanitarian intervention. I will not, therefore, address self-defense or other possible justifications of the war unrelated to the abject human rights record of the deposed Iraqi régime. I argue that *the war was morally justified as humanitarian intervention*. In substantiating this claim, I will for the most part set aside legal and political questions and concentrate on the moral legitimacy of the intervention.<sup>6</sup>

The claim that the war in Iraq cannot be justified as humanitarian intervention can be understood in four different ways:

1) The war cannot be justified as humanitarian intervention because it is always prohibited to wage war for human rights, i.e., the doctrine of humanitarian intervention is invalid.

2) The war cannot be justified as humanitarian intervention because the Coalition leaders did not *offer* that justification but different ones. They did not *say* that the war was waged for humanitarian reasons.

3) The war cannot be justified as humanitarian intervention because Coalition leaders did not *intend* the humanitarian objective. They had a different intent: to suppress a security threat.

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<sup>5</sup> A survey of these arguments can be found in Dominic McGoldrick, *From "9-11" to the Iraq War 2003: International Law in an Age of Complexity* (Oxford: Hart, 2004); Karine Bannelier et al., eds., *L'intervention En Irak Et Le Droit International* (Paris: Pedone, 2004); and in "Agora: Future Implications of the Iraq Conflict," *American Journal of International Law*, vol. 97 (July 2003), p. 553.

<sup>6</sup> I believe that the war was *legally* justified as well. For a full discussion of the legal aspects, see my *Humanitarian Intervention*, 3<sup>rd</sup> ed. revised and updated, (Ardsley, NY: Transnational, 2005) (forthcoming).

4) The war cannot be justified as humanitarian intervention because the Coalition did not comply with *other* requirements established by the doctrine of humanitarian intervention.

In this article I deal only briefly with all-important question (1), the general justification of humanitarian intervention. I will assume that sometimes it is justified to intervene for humanitarian reasons (as was the case in Kosovo and elsewhere).<sup>7</sup> I do, however, outline a version of the doctrine of humanitarian intervention that I defend fully elsewhere. I will then address points (2), (3), and (4). I will examine the criticisms that humanitarian intervention principles cannot justify the war in Iraq because it was not really humanitarian, and the criticism that the war did not meet other requirements for legitimate humanitarian intervention. I conclude that, whatever its value as a defensive reaction against terrorism, the war was indeed justified as humanitarian intervention.

### **Summary of the Humanitarian Intervention Doctrine<sup>8</sup>**

I define humanitarian intervention as *proportionate help, including forcible help, provided by governments (individually or in alliances) to individuals in another state who are victims of severe tyranny (denial of human rights by their own government) or anarchy (denial of human rights by collapse of the social order.)* Humanitarian interventions are guided by the following principles:

- 1) *A justifiable intervention must be aimed at ending tyranny or anarchy.*
- 2) *Humanitarian interventions are governed, like all wars, by the doctrine of double effect.*
- 3) *In general, only severe cases of anarchy or tyranny<sup>9</sup> qualify for humanitarian intervention*

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<sup>7</sup> I address this question fully in my *Humanitarian Intervention*.

<sup>8</sup> This section is a very brief summary of Chapter 5 of *Humanitarian Intervention*.

- 4) *The victims of tyranny or anarchy must welcome the intervention.*
- 5) *Humanitarian intervention should preferably receive the approval or support of the community of democratic states.*

These principles should not be understood as strict necessary conditions for legitimacy. Rather, I suggest that they are principles in Ronald Dworkin's sense: if they apply, they *incline* our judgment toward approval of the intervention.<sup>10</sup> They do not automatically determine legitimacy. Conversely, if the intervention does not satisfy any one principle, that is a *reason* against condemning it, but it does not automatically render it wrong. For example, suppose a government contemplates intervening to stop genocide. Suppose further that it deceives public opinion, or refuses to seek authorization (if authorization is desirable or possible), or does not comply with the strictures of the doctrine of double effect. Those factors incline our judgment against legitimacy, but they do not force that judgment. We must consider those factors against the urgency of ending tyranny in particular cases.<sup>11</sup>

Here I do not attempt to defend this particular version of the doctrine. Rather, I wish to challenge the view expressed by many that, even if (some version of) the humanitarian intervention doctrine is accepted, the intervention in Iraq does not fare well,

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<sup>9</sup> I say "severe tyranny" to distinguish the standard from, on the one hand, "ongoing atrocities", and, on the other hand, "ordinary tyranny". The proposed standard is not as demanding as the former, nor so lax as the latter. See discussion below.

<sup>10</sup> See Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1978) pp. 24-45.

<sup>11</sup> Supporters of humanitarian intervention have generally treated guiding principles as *necessary* conditions for legitimacy, so that if one of the conditions is lacking the intervention would be illegitimate. See, e.g., Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000) pp. 33 ff; International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001) pp. 31-37; and Stanley A. McChrystal, "Memorandum to the President," in Alton Frye ed., *Humanitarian Intervention: Crafting a Workable Doctrine* (New York: Council on Foreign Relations, 2000), pp. 61-70. The more flexible approach in the text is better suited to the complexities, similarities, and differences of various situations.

either because the intervention was not really humanitarian, or because even if it was (intended as) humanitarian, it did not meet other requirements of the doctrine.

### **The Question of Right Intent: Intention and Motive**

Many commentators have dismissed the possibility of treating the intervention as humanitarian. Citing the shifting justifications that President George W. Bush and Prime Minister Tony Blair gave before, during, and after the war, they claim that the United States was “really” trying to find weapons of mass destruction (or “really” doing something else) and not trying to rescue the Iraqis from Saddam Hussein’s rule.<sup>12</sup> This objection may take the form described in (2) above –that Coalition leaders did not *say* they were intervening for humanitarian reasons, or the form (3) above –that they did not really *intend* the war to be humanitarian but had other, non-humanitarian, intentions. These critics may or may not have been ready to approve of the intervention had they been persuaded of its humanitarian nature, but, at any rate, *categorizing* the intervention as humanitarian is a preliminary step to even start discussing the issue of justification. For these critics, the fact that the United States is helping the Iraqis to build democratic institutions during reconstruction might be a good thing, but it is not enough to characterize the intervention as humanitarian and thus not enough to justify it retrospectively under the humanitarian intervention doctrine. They require one of the following things to occur *at the time of the invasion*: the intervener must *say* that he is

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<sup>12</sup> See, e.g., Harold Hongju Koh, "On American Exceptionalism," *Stanford Law Review* 55 (2003): 1521-23; Richard A. Falk, "What Future for the Un Charter System of War Prevention?" *American Journal of International Law* 97 (2003): 596-97; Michael Walzer, *Arguing About War* (New Haven: Yale University Press, 2004) p. 149; Gareth Evans, "Humanity Did Not Justify This War," *The Financial Times*, May 15, 2003.; and Jerome Slater, "Can the War with Iraq Be Justified?" *The Buffalo News*, February 16, 2003.

acting for humanitarian reasons ((2) above); or, whatever he says, he must actually *have* a humanitarian intent ((3) above) When the invader goes in, he must do it for a humanitarian reason.

These two versions of the objection can be joined into a single one: that the Coalition lacked humanitarian intent. This is because the first version, the *performative* theory of justification (that what matters is what governments *say* they are doing), while popular with international lawyers, is untenable. Simply put: governments, like individuals, may *lie* about why they are doing what they are doing, or they may be *mistaken* about why they are doing what they are doing and about which rule, if any, is available to justify their behavior. Words lack magical power, so whether the intervention is humanitarian cannot depend on the government saying so. This view involves, in addition, a fallacy. Suppose a government has two available justifications for a contemplated act. If it chooses to justify its behavior under one of them, it does not follow that the act cannot be justified under the rationale it did *not* choose to invoke. The justification is still valid, and if it applies it may justify the act even if the government did not invoke it. International lawyers make much of the fact that the Bush administration did not invoke a doctrine of humanitarian intervention for the war in Iraq. But this does not entail that the action cannot be so justified. Suppose I rescue someone held hostage by a villain and when asked to justify my action I say that I did it because I thought (unreasonably and mistakenly) that the villain was threatening my life. My act of rescue is still justified, even if I failed to invoke the right reasons, and even if the reason I invoked did not justify my behavior. Governments can be mistaken about the available justifications; more importantly, politicians have all kinds of reasons to prefer some



rhetoric over another –usually based on their calculations about how best to sell their policies to the public.<sup>13</sup>

But the question of *right intent* (as opposed to right rhetoric) as part of the definition of humanitarian intervention is important and deserves close examination. Most writers agree that a necessary condition for the justification of humanitarian intervention is that the interveners act out of humanitarian concerns, at least in part.<sup>14</sup> If a government's preeminent reasons or motives are non-humanitarian, the intervention will not be humanitarian, and should not be evaluated under the doctrine of humanitarian intervention, even if the doctrine is deemed valid. The use of force will be something else (self-defense, for example) and it should be judged accordingly. The claim by critics is that, to be eligible for justification under the humanitarian intervention doctrine, an act of intervention must include, if not exclusively, at least prominently a humanitarian motive.

Critics of particular interventions (such the war in Iraq) refuse to treat them as humanitarian if the interveners intended something *other* than liberating the oppressed, even if that other intent was morally permissible, such as disarming a dangerous enemy. The non-humanitarian intent may still be honorable, but the intervention will be judged by other principles, such as those governing self-defense or the war on terror, not under the doctrine of humanitarian intervention. Having a non-humanitarian intent, good or bad, is enough for the intervention *not* to count as humanitarian.

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<sup>13</sup> *Contra*, Falk, "What Future for the Un Charter System of War Prevention?" 596-97 Falk thinks that governments should not be allowed retroactively to invoke humanitarian reasons once they have initially chosen some other justification. But why? If the justification was available, why would the deficiencies in the rhetorical skills of politicians be dispositive?

<sup>14</sup>For a summary of this position, see Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Cambridge, UK: Polity Press, 1996) p. 43. See also "The Responsibility to Protect," (Ottawa: International Development Research Centre, 2001), pp. 35-36.

But what facts are we describing when we say that a government has or doesn't have right intention? To answer I introduce, following John Stuart Mill, a distinction between *intention* and *motive*.<sup>15</sup> Intention covers the contemplated act, what the agent wills to do. I see a person in distress, decide to rescue her, and do it.<sup>16</sup> The action was an act of rescue. I intended to rescue the person, I committed to doing it, and I did it. There is some question as to what exactly did I intend. For example, the intention may or may not cover the consequences of the act. If I intend to give my friend some news without realizing that the news will upset her, my act would have *not* been accurately described as "annoying my friend."<sup>17</sup> The way I understand it here, intention covers the willed act and the willed consequences of the act (it is controversial whether intention also covers foreseen but not willed consequences of the act.) Intention is, then, an agent aiming to do something. It implies not only desire to do something but commitment to doing it. This involves believing that the act is under the agent's control. The important point here is

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<sup>15</sup> See John Stuart Mill, *Utilitarianism*, ed. Roger Crisp (Oxford: Oxford University Press, 1998) p. 65, note 2. This note is so important that it is worth citing at length. Responding to a critic, Rev. Davies, Mill wrote:

I submit, that he who saves another from drowning in order to kill him by torture afterwards, does not differ only in motive from him who does the same thing from duty or benevolence; the act itself is different. The rescue of the man is, in the case supposed, only the necessary first step of an act far more atrocious than leaving him to drown would have been. Had Mr Davies said, "The rightness or wrongness of saving a man from drowning does depend very much"—not upon the motive, but—"upon the intention," no utilitarian would have differed from him. Mr Davies, by an oversight too common not to be quite venial, has in this case confounded the very different ideas of Motive and Intention. There is no point which utilitarian thinkers (and Bentham pre-eminently) have taken more pains to illustrate than this. The morality of the action depends entirely upon the intention—that is, upon what the agent wills to do. But the motive, that is, the feeling which makes him will so to do, when it makes no difference in the act, makes none in the morality: though it makes a great difference in our moral estimation of the agent, especially if it indicates a good or a bad habitual disposition—a bent of character from which useful, or from which hurtful actions are likely to arise.

<sup>16</sup> The discussion in the next two paragraphs owes to Michael Ridge, "Mill's Intentions and Motives," *Utilitas* 14, no. 1 (2002): 54

<sup>17</sup> See *Ibid.*

that there is a direct connection between my willing something, my commitment to doing it, and my doing it.

By contrast, a motive is a *further* goal that one wishes to accomplish with the intended act. I rescued the person in danger, I intended to do it, so mine was an act of rescue. But suppose I did it because I wanted to appear as a hero in the local newspaper. I had an ulterior motive. This motive is *not* part of the class of actions called “acts of rescue;” only the intention is. It makes sense for you to say that my act of rescue was good (it saved a life) but that I am not a particularly admirable person, since my motive was self-interested, not altruistic. A lasting contribution of John Stuart Mill to the theory of action was to show that intention is more important than motive in evaluating actions (as opposed to evaluating persons.). The concept of intention fulfills a double role: it allows us to *characterize* the act,<sup>18</sup> to say that the act belongs to a class of acts (such as acts of rescue); and it allows us, correspondingly, to *praise or criticize* the act under the moral principles that apply to that class of acts, acts of rescue. Of course, intention alone does not define the act: consequences also do. If I intended to rescue someone but failed to do so, say because I didn’t put enough effort, or I was clumsy or otherwise mistaken in my choice of means, then you could say, perhaps, that mine was not an act of rescue. Certainly you could say that my failed effort cannot be justified as an act of rescue.<sup>19</sup>

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<sup>18</sup> On the various definitions of action and its relation with intent and causation, see George Wilson, “Action”, in *Stanford Encyclopedia of Philosophy* (2003), <http://plato.stanford.edu/archives/win2003>.

<sup>19</sup> After this paper was written, Terry Nardin kindly sent me his excellent Introduction to Terry Nardin and Melissa Williams, eds. *Humanitarian Intervention*, NOMOS: Yearbook of the American Society of Political and Legal Philosophy, XLVII (New York: New York University Press, forthcoming, 2005), where he makes a similar point (although not relying on Mill.). I do not take sides on the question whether the motive is best defined as a desire, a disposition, or a feeling. (as Mill prefers). It is enough for purposes of my analysis that the agent does X, intending to do X, thinking that X will enable him later to reach outcome Y. Be that as it may, Nardin and I agree that “a humanitarian act is defined by its intention, not by its motive.” (id.)

The criminal law distinguishes intention from motive in this way.<sup>20</sup> The criminal law tends to ignore motives in establishing criminal liability. Thus, a crime executed with the right intent gives rise to liability even if the agent had a good motive; and conversely, a non-criminal act is not penalized just because the agent had a bad motive. But motive is often relevant to those administering punishment: a bad motive may lead the judge to punish more severely, while a criminal with a good motive may receive leniency. This is exactly in line with Mill's distinction between judging actions and judging persons: the bad motive of a criminal allows us to say that the *person* is particularly evil or objectionable, but does not affect the moral status of the *act* (its criminality under the law). And a good motive may lead us to praise the criminal, and perhaps be lenient with him, while still holding him responsible for the crime.

The distinction between intention and motive is crucial to the debate on humanitarian intervention, yet has unfortunately been overlooked by critics of the war in Iraq. If a government wages war with the *intention* to rescue victims of tyranny and does in fact liberate those victims,<sup>21</sup> then the intervention is humanitarian (and thus eligible under the doctrine), even if its *motive* is self-interested or otherwise non-humanitarian.<sup>22</sup> Critics are correct that in order for an intervention to count as humanitarian, the intervener must have, in part, a humanitarian intent. But then they analyze intent without

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<sup>20</sup> For a comprehensive treatment, see Martin R. Gardner, "The Mens Rea Enigma: Observations on the Role of Motive in the Criminal Law Past and Present," *Utah Law Review* (1993): 635. A useful summary is Wayne LaFare, *Substantive Criminal Law*, section 5.3. ("Motive"), 2<sup>nd</sup> ed., 2005 (available in Westlaw, 1 SUBCRL S 5.3).

<sup>21</sup> Just overthrowing the tyrant does not amount to liberating the victims. If I depose the dictator and then impose my own tyranny, or hand the government to the dictator's henchmen, then I have not liberated the victims. The act of liberating victims of tyranny is a conjunction of deposing the tyrant plus certain acts (facilitating the establishment of free institutions) and omissions (avoiding acts that frustrate liberation.) The difficulties of defining human action here are no greater than those that arise in other contexts.

<sup>22</sup> I ignore here the issue whether states can have intentions or motives. I assume that any account of state intent and motivation is reducible to propositions about individual intent and motivation.

distinguishing it from motive, and invariably take the latter as it were the former. They treat motive as identical with intention. Yet the distinction is very important for understanding and evaluating action, and it must be maintained, particularly in international relations. For consider: if we fail to make the distinction, governments can never have good motives. They always have motives other than ending tyranny; and, moreover, that is the way it should be. Governments owe a fiduciary duty to their citizens. They are bound to advance their interests internationally, so it would be *morally* wrong for them to care only about saving others. Moreover, political leaders have more personal motives such as incumbency.

Distinguishing between intention and motive allows us to make room for mixed motives. Suppose that in 1971 India stopped the genocide in Bangladesh *because* she wanted to achieve hegemony in the Indian subcontinent. That is a reason for the rest of the world to think less of the Indian government, or perhaps to do things to counter this alleged desire for hegemony, but it is not a reason to say that the intervention to save the Bengalis was not “really” humanitarian. Notice how linguistic ambiguity is at the source of the confusion. The word “because” above is ambiguous: it may mean intention or it may mean motive. Once we dissolve the ambiguity we can say that India intended to rescue the victims of an ongoing genocide and did so, but that the act of rescue was motivated by her desire to achieve superiority in the Indian subcontinent (if that was indeed the case.) And we are accordingly free to praise the *act* of intervention while criticizing *the government* who intervened.

The distinction between intention and motive in the theory of intervention parallels the one in criminal law, but they are not perfectly symmetrical. As we saw, the

criminal law is concerned with bad actions, either performed out of good motives (which may be cause for leniency), or bad motives (which may be cause for increased punishment), and, of course, it has nothing to say about morally neutral actions (that is, non-criminalized conduct) performed out of bad motives. In contrast, the intervention that I consider here is a *good* action (liberating people) performed out of a bad or non-altruistic motive (gaining power, or access to oil, or suppressing a threat). The logic is the same, however: just as we do not acquit someone who did a bad deed just because he had a good motive, so we do not condemn a government who did a good deed just because he had a bad (or merely non-altruistic) motive. And the relevance of bad motives for moral evaluation is the same in both cases: just as we think better of a criminal who acted out of a good motive (a robber that wanted to feed his family, say) and we punish him more leniently, so we criticize the political leader who helps people in need out of a desire to gain access to oil (a bad motive), or consider him less generous (without necessarily criticizing him) if he helps people in need out of a desire to suppress a threat (a non-altruistic but not necessarily bad motive). Yet the evaluation of the *agent* (and this is my main point) is *irrelevant* for the moral evaluation of the (intended and performed) *act*.

Many reject the doctrine of humanitarian intervention because they believe that interveners invariably have non-humanitarian motives. They usually advance cynical interpretations of the intentions of the interveners and are thus able to find the “real” reasons (selfish power-politics reasons) behind any action. But since governments always have some self-interested motive, it is always possible to *reinterpret* any action, no matter how apparently good or altruistic, as ill-motivated. These kinds of cynical claims are *unfalsifiable*: interveners always have bad motives, so no intervention is ever

humanitarian. But this is wrong. We intuitively feel that governments (who, by hypothesis, have self-interested motives) sometimes do nonetheless the right thing, and this is because we intuitively see the distinction between intention and motive. Even if (contrary to fact) the United States' motive in 1941 was to become a dominant superpower, it did the right thing in fighting the Axis. Or, to take an example outside of war, even if the United States' *motive* in implementing the Marshall Plan was to neutralize Soviet power, its *intent* (to donate money to ravaged Europe) was laudable, and so was the act. Once we understand the difference between intention and motive, the criticism based on lack of right intention (both of the humanitarian intervention doctrine and of the war in Iraq in particular) loses much of its appeal.

Intention (but not motive) is, then, relevant to characterize the action. Intention is a definitional element of the action. But intention, unlike motive, is also relevant, as Mill said, to *evaluate* the action morally. Suppose that John rescues Trevor who is held in slavery by Kevin. John's intent, however, is to hold Trevor in slavery himself. This is, of course, an immoral act, but the crucial point is that it *destroys* whatever goodness the original act of rescue could have had. John's initial act was not an act of rescue, because John's intent was not to rescue Trevor, but to succeed Kevin as the master. It would be inaccurate to say that John intended to rescue Trevor and just had an ulterior motive –to become the master himself. We say instead, with Mill, that John's act was *not* an act of rescue, "but only the necessary first step of an act far more [or as] atrocious." If we change the hypothetical to say that John rescued Trevor because he wanted Trevor to repay him a loan, we can say that John intended to rescue Trevor (it was an act of rescue), but that his motive was monetary gain. As Mill observes, realizing John's motive (loan

repayment) may lessen our estimation of John, but does not impugn the goodness of his action.

Again, this is relevant for humanitarian intervention. A government that topples a repressive régime in order to impose *its own* repression, or to otherwise exploit or subjugate the people, does not perform a humanitarian intervention. That is why I have doubts about Vietnam's 1979 intervention in Cambodia, an event that some authors (notably Nicholas Wheeler<sup>23</sup>) characterize as humanitarian intervention. Vietnam toppled the murderous Pol Pot régime only to impose its own harsh dictatorship. Lawful interveners need not be saints, but for an act to count as humanitarian intervention we should require at least the intent (in the sense explained) to liberate the victims of severe tyranny.

What the intervener *does* is the best evidence of its intention. There are of course many examples of aggressive state behavior cloaked in sanctimonious humanitarian language. Yet the central goal of all political institutions, including international law, is to allow human flourishing, to protect freedom, autonomy and dignity. Therefore, we should look at whether the intervention has furthered those goals, rescued the victims of tyranny, and restored justice and human rights. The humanitarian *outcome* should be a central factor in evaluating the intervention. As I indicated, politicians, even in democratic states, will never have pure humanitarian motives, because they have a fiduciary duty to their citizens, and because they have other selfish personal motives such as incumbency. It follows that in order to judge the legitimacy of intervention we must look at the situation as a whole. Two important indicators are whether the intervener used

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<sup>23</sup> See Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* pp. 78-110.



means consistent with the humanitarian purpose, and whether it helped the country to build free democratic institutions in the reconstruction stage.

The requirement of right intent as part of the justification of war has an old and venerable history as part of the just war tradition. St. Thomas Aquinas writes: “those who wage war should have a righteous intent: that is, they should intend either to promote a good cause or avert an evil.”<sup>24</sup> Even if the government has a just cause (for example, removing tyranny) “that war may be rendered unlawful by a wicked intent.” However, the Millian distinction I advance in this article differs from the distinction between *just cause* and *right intent* proposed by just war theorists. For them, right intention seems equivalent to Mill’s motive. The following formulation of the requirement of right intent is typical: “In war, not only the cause and the goals must be just, but also our motive for responding to the cause and taking up the goals.”<sup>25</sup> This definition suggests that under just war doctrine both intent and motive (in Mill’s sense) must be humanitarian or at least morally acceptable. Perhaps Millian intent (aiming to do something and doing it) is included in the notion of just cause. This view, however, is too demanding. The standard puts too much stock in the agent’s subjective state, and in doing so disallows many actions that are objectively justified under any plausible moral theory. Take this obvious case: a political leader decides to stop genocide in a neighboring country, or to defend that country against aggression, because he thinks that is the way to win reelection. If we require right *motive* and not merely right intent, that war would be unjustified.

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<sup>24</sup> R. W. Dyson, ed., *Aquinas: Political Writings* (Cambridge, UK: Cambridge University Press, 2002) p. 241.

<sup>25</sup> Mona Fixdal and Dan Smith, "Humanitarian Intervention and Just War," *Mershon International Studies Review* 42 (1998): 286.

Someone may retort that we often make moral judgments based on the agent's motives, so it is false to claim that motives are morally irrelevant. Thus for example (the reply goes) deposing a tyrant to steal his wealth is morally wrong. But this misses the distinction between judging actions and judging persons, already mentioned. The word "wrong" in the sentence "deposing a tyrant to steal his wealth is wrong" is ambiguous. It suggests that the action of deposing the tyrant was wrong *because* the motive was bad. But it is more plausible, I think, to say that the sentence confusedly conveys our disapproval of the *agent*. In order to judge whether the action (deposing the tyrant) was morally wrong, we need to look at all the facts. Suppose that I deposed a tyrant, called free elections, and helped install a democratic government that respects human rights—all of which I need, let us assume, to capture the tyrant's wealth. I think it is plausible to say that my act of liberating the country was objectively justified. The just cause for war was tyranny. My act intended to redress the wrong (as part of my plan to steal the tyrant's wealth), and did it. I ended tyranny. My motives were such, however, that you can justifiably criticize me, or penalize me in appropriate ways, or take steps to return the stolen wealth to the people from whom the dictator initially stole it. All of this is compatible with saying that the overthrow of the tyrant was justified. (Still, both Mill and Aquinas agree that if the intent is "wicked" (Aquinas) or "atrocious" (Mill), as when the "liberator" intends to visit equally harsh treatment to the "liberated," the act cannot be considered justified—the intervention cannot be defined as humanitarian.)

## Why the War in Iraq is Humanitarian: Narrow and Grand Justifications

Because critics of the war Iraq fail to distinguish between intention and motive, they hastily dismiss the Coalition's operation as a candidate for humanitarian intervention. Yet once we draw that distinction we can plausibly defend the intervention in Iraq on humanitarian grounds. The Coalition intended to topple Saddam, committed to doing it, did it, and moreover, committed itself to helping Iraqis reconstruct their ravaged society on the basis of a liberal constitution, human rights, democracy, and creating the conditions for economic recovery. If the intention was to depose Saddam Hussein and thus end tyranny, then the fact that the United States had an ulterior motive may be a reason to lower our "moral estimation" of the United States' government, as Mill says. Maybe it was a reason not to vote for George W. Bush. But it was definitely *not* a reason to conclude that the intervention itself "was not really" humanitarian, so that we are now precluded from evaluating the war under humanitarian intervention principles. We have to separate our reasons for judging *actions* from our reasons for judging *persons*. Let us assume, for the sake of argument, that President Bush and Primer Minister Blair did not really care about human rights in Iraq. Critics of the war have claimed that their failure initially to invoke the doctrine of humanitarian intervention means that the intervention was *unprincipled*, since the Coalition offered humanitarian reasons only after it failed to find weapons of mass destruction.<sup>26</sup> But the fact that the leaders who decree the intervention are unprincipled is independent of whether the *act* is justified. If the Coalition leaders were unprincipled (say, they were merely trying to find after-the-fact reasons that would vindicate them in the eyes of the public) then that is a reason to

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<sup>26</sup> See Falk, "What Future for the Un Charter System of War Prevention?" p. 597.

criticize *them* and eventually make them pay the political price for erring or deceiving. But it is not a reason to refuse to even consider whether *the intervention* was justified. It is bizarre to oppose the intervention in Iraq when it had the intent of deposing a horrific tyrant and did so, merely because the men leading the intervention had motives unrelated to the act of liberation.<sup>27</sup>

So far I have conceded, for the sake of argument, that the Anglo-American leaders were preeminently interested in suppressing security threats, and that the humanitarian motives, if any, were secondary. But this assumption is wrong. In reading the materials on the war, one is struck by the fact that, whatever else was going on, the war against Iraq had an unmistakable *humanitarian component*. Liberating Iraq was always part of the motivation for the invasion. The public debate made clear that, other things being equal, the fact that the target of military action was such a notorious tyrant *was a reason in favor* of the war. Removing tyranny is not always a sufficient reason for war, but it certainly *inclines* the result toward intervention. Removal of Saddam Hussein was central in the minds of political leaders throughout the whole exercise. It is true, as critics have pointed out, that Bush and Blair were slow in embracing the humanitarian rationale for the war. But they did so, before, during, and after the war.<sup>28</sup> On several occasions the Anglo-American leaders underscored the liberation of Iraq as a major objective of the war. This was not a mere *ex post facto* rationalization (although I don't

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<sup>27</sup> See Michael Ignatieff, "Why Are We in Iraq? (and Liberia? And Afghanistan?)," *The New York Times Magazine*, September 7, 2003.

<sup>28</sup> For President Bush, see his State of the Union, reprinted in "In the President's Words: 'Free People Will Keep the Peace of the World'," *New York Times*, February 28, 2003, p. A10; his statements to the press on the eve of the attack, "Threats and Responses: Excerpts from Joint News Conference 'Tomorrow is a Moment of Truth'" *New York Times*, March 17, 2003; his Address to the Nation, March 19, 2003, [www.whitehouse.gov/news/releases/2003/03/20030319-17.html](http://www.whitehouse.gov/news/releases/2003/03/20030319-17.html); and his speech in the Air Force Academy, *The Washington Post*, June 3, 2004, p. 14. For Prime Minister Blair, see, e.g., 149 Cong. Rec. H7059, H7060 (July 17, 2003) (address by the Right Honorable Tony Blair, Prime Minister of the United Kingdom).

think it would have been necessarily wrong to justify the war retroactively in that way.) During reconstruction, the emphasis on human rights and democracy intensified, and culminated with the Coalition's organizing elections in Iraq and the President's Second Inaugural Address on January 20, 2005 (discussed below.)

From these materials it is possible to detect, not one, but *two* related yet distinct humanitarian rationales for the war in Iraq. The first one can be described as the *narrow* humanitarian justification. This I categorize, in accordance with the discussion above, as *the intention to depose Saddam and the act of doing so*. This intention fits with the view of humanitarian intervention I proposed above: a war to rescue victims of tyranny. There is no question that the Coalition intended to do exactly this. It aimed to do it, it committed itself to doing it, and it did it. The removal of Hussein brought, in addition, prospects of freedom and democracy to the Iraqis. This direct intention was shown by numerous statements and actions by Coalition leaders, and it included the willingness to surrender Saddam for trial on charges of crimes against humanity. On January 30, 2005, eight million Iraqis voted freely in a successful election. Even before these recent developments, there were signs (concealed behind the understandable emphasis of the media on insurgent violence) that good things were happening in Iraq.<sup>29</sup> The country will have, for the first time in its history, a liberal constitution that will guarantee human rights and the rule of law. Most well-motivated observers have welcomed these developments, regardless of their political affiliation (witness the praise from liberal quarters.)<sup>30</sup> Surely these events must count in any evaluation of the war under humanitarian intervention principles.

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<sup>29</sup> See The Economist, "A Glimmering of Hope --Iraq, a Year On," *The Economist*, March 20, 2004.

<sup>30</sup> See "Grudging Respect," *The New Republic*, March 21, 2005. p. 7.

But an examination of the record discloses a second humanitarian rationale, which I will call the *grand* (and, because of its boldness, more disquieting) humanitarian *motive* for the intervention in Iraq (again, in addition to other motives such as disarming the régime.) This is the grand plan that apparently underlies American strategy after the attacks suffered by the United States in September 11, 2001, and can be summarized in one sentence: *Defeating the enemies of the United States requires promoting liberal reforms in the Middle East and, indeed, the entire world.* Removing the régimes in Afghanistan and Iraq are part of that strategy. The strategy also includes successful resolution of the Israeli-Palestinian conflict, as well as promoting liberal reforms in other Arab countries, both friends (such as Egypt and Saudi Arabia), and foes (such as Libya and Syria). With respect to the war in Iraq, the grand strategy is part of the motivation, not the intent, but it is no less humanitarian. This grand strategy is humanitarian in a broad sense, because it involves fighting tyranny by peaceful and (where required) military means. The intended act was to liberate the Iraqis, the motivation, to enhance the security of the United States by promoting liberal reforms in the Middle East and elsewhere.<sup>31</sup>

President Bush gave definitive form to the grand strategy in his Second Inaugural Address.<sup>32</sup> There he announced that it was “the policy of the United States to seek and support the growth of democratic movements and institutions in every nation and culture, with the ultimate goal of ending tyranny in the world.” In this conception, values and interests converge, since “the survival of liberty in our land increasingly depends on the

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<sup>31</sup> Someone could perhaps call the “grand strategy” an intention, but I think it is more accurately described as motivation. For consider: even if the security of the United States is not enhanced, and even if the Middle East or the rest of the world are not democratized, Iraq would have still been liberated. The intended act of liberating Iraq (as a means for the broader goal) would have been accomplished.

<sup>32</sup> The text of the address can be found in *The Washington Post*, January 21, 2005, p. 24. I quote from there.

success of liberty in other lands.” Peace and liberty are linked in Kantian fashion, for “the best hope for peace in our world is the expansion of freedom in all the world.” Critics were quick to point out that this speech evinced yet more aggressive purposes, such as invading Iran or Syria.<sup>33</sup> This criticism, however, overlooks the President’s cautionary remark that the promotion of global freedom “is not primarily the task of arms.”

The *doctrine* of the Second Inaugural Address, in its abstract form, is admirable. However, that does not automatically mean that its application to this particular case is justified.<sup>34</sup> One may reject it for two reasons. It may be conducted in impermissible ways, or it may simply fail. The grand strategy may violate the strictures of the doctrine of double effect by violating deontological constraints or imposing unacceptable costs; or it may be unsuccessful. As Michael Walzer has reminded us, justified wars (and political strategies that include wars) must have reasonable chances of success. It is far from clear that this strategy will succeed, and if it collapses, so will the humanitarian justification. Unfortunately, success is an integral part of the justification for war, even if it can only be determined *ex post*. Should the Coalition fail to liberate Iraq (narrow strategy), to democratize and pacify the Middle East, and to promote liberal democracy in the world (grand strategy), then the judgment of history on the whole effort will be, no doubt, less kind.

However, I would like to make two points in cautious defense of the grand strategy. First, the grand humanitarian rationale properly underscores the link between freedom and peace. It assumes (correctly, I think) that democracies are more peaceful,

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<sup>33</sup> See the summary of various reactions to the speech in Richard Cohen, "Onward and Upward And.," *The Washington Post*, January 25, 2005., available at [washingtonpost.com](http://washingtonpost.com).

<sup>34</sup> Cf. Kant’s distinction between pure and impure duty. See Robert B. Louden, *Kant’s Impure Ethics* (Oxford: Oxford University Press, 2000): 9.

and that the surer way to neutralize the enemies of the West is to help ordinary people in the Middle East get rid of their authoritarian régimes.<sup>35</sup> Second, as of this writing there are some indications that the grand strategy may be working. Events in Palestine, Lebanon, Saudi Arabia, Egypt, and Syria allow for (very cautious) optimism. Ordinary citizens in Arab countries have been emboldened by the announcement of the US policy that it will not support repressive régimes.<sup>36</sup> Yielding to popular pressure, Syrian troops have left Lebanon after 29 years of occupation. In Egypt, President Mubarak (who in the past has been skeptical of “democracy at the push of a button”) announced important political reforms. Saudi Arabia held its first election in its history (although flawed for lack of women’s’ vote).<sup>37</sup> In Iraq itself, there are some signs that the insurgency may be winding down,<sup>38</sup> but of course any enthusiasm would be premature, as history has taught us not to be too optimistic about that troubled region. Yet surely critics must concede at least the possibility that the grand strategy may not have been as reckless as they thought.<sup>39</sup>

One last point about intent. A critic may claim that removing Saddam Hussein does not yet turn the action into a humanitarian intervention. The Coalition should have intended, in addition, to establish a liberal democracy, or at least secure basic human rights in Iraq. Because (among other things) the United States apparently did not properly

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<sup>35</sup> See the discussion in my *Philosophy of International Law* (Boulder: Westview, 1998), chapter 1.

<sup>36</sup> See "Special Report, Middle East: Something Stirs," *The Economist*, March 5, 2005. p.24; Neil MacFarquhar, "Unexpected Whiff of Freedom Proves Bracing for Mideast," *The New York Times*, March 6, 2005.

<sup>37</sup> See , Todd S. Purdum, "For Bush, No Boasts, but a Taste of Vindication," *The New York Times*, March 9, 2005., p. 10.

<sup>38</sup> See John F. Burns, "There Are Signs the Tide May Be Turning on Iraq's Street of Fear," *Ibid.*, March 21, 2005.

<sup>39</sup> Even in France, where defending the war is quite risky business, some voices have started wondering. See Guy Sorman, "Et Si Bush Avait Raison?" *Le Figaro*, February 26, 2005. (The piece was published also in my native land, Argentina. See Guy Sorman, "Y Si Bush Tuviera Razón?" *La Nación*, March 8, 2005.)



plan for the reconstruction stage, the criticism goes, the intervention was not humanitarian but merely punitive. As a preliminary matter, it is far from obvious that it is wrong to depose a ruler guilty of atrocities in order to get him punished –say, by surrendering him to the International Criminal Court. But, be that as it may, I agree that had the Coalition merely wanted to remove Saddam and then remained utterly indifferent about what happened to Iraq, the intervention’s humanitarian character would have been in doubt. Imagine that the Coalition, after removing Saddam, would have turned the country over to an equally vicious (but pro-Western) ruler. Such action would not have been humanitarian, for the reasons Mill and Aquinas give. It would have shown “atrocious” or “wicked” intent and would have deprived the intervention of any humanitarian character. But, clearly, that was not the case, however imperfect the planning might have been. The United States is attempting (clumsily perhaps) to help the Iraqis rebuild their society along liberal lines and, despite ferocious insurgency, the enterprise may succeed. The United States and the United Kingdom never intended *only* to punish Saddam. They could have done that simply by removing him and then leaving the country --indeed, in that way they would have saved Coalition’s lives and billions of dollars. That they remained in Iraq partly in pursuit of national interest means that they had a non-altruistic (yet defensible) *motive*. But their staying means that they intended to go beyond punishment of the tyrant. So the humanitarian action is this: the intent to remove of a vicious dictator, plus removing him, plus not allowing this act of liberation to be *destroyed* by behavior driven by any non-humanitarian motive. By helping Iraq in the way I described (organizing elections, facilitating the liberal constitution, and fighting

the insurgents) the Coalition has satisfied the strictures of the humanitarian intervention doctrine.

### **The Degree of Human Rights Violations: The Human Rights Watch Critique**

Once established that the war in Iraq was humanitarian, I turn to examine the intervention under other principles that govern humanitarian intervention. The war in Iraq fares reasonably well. I will concentrate on three criticisms of the war: that the Iraqi régime, bad as it was, did not qualify as proper target of intervention; that the intervention was illegitimate because it was not welcomed by the Iraqis; and that the intervention was illegitimate because it lacked proper authority.<sup>40</sup>

Supporters of humanitarian intervention agree that the bar for intervention should be set high.<sup>41</sup> One would have thought that, if ever a government met that standard, Saddam Hussein's régime did. Many critics of the intervention grudgingly concede that at least this requirement was met. During his thirty-year rule, Saddam Hussein presided over a state of terror.<sup>42</sup> In addition to suppressing all civil and political liberties, Saddam Hussein murdered around 100,000 Kurds in 1988; killed about 300,000 Shia after the 1991 war; buried about 30,000 in one single grave; murdered around 40,000 marsh Arabs; caused millions of people to flee; and tortured many hundreds of thousands,

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<sup>40</sup> Space constraints prevent me from discussing here an important additional question: whether the intervention ran afoul of the doctrine of double effect. I defend the war against that criticism (and additional ones) in *Humanitarian Intervention*, chapter 10.

<sup>41</sup> See, e.g., "Iciss Report," pp. 31-32.

<sup>42</sup> The régime's brutality has been amply documented. The ever-present terror visited on Iraqis by the secret police and similar branches of the ruling Baathist Party are well described in Kanan Makiya, *Republic of Fear: The Politics of Modern Iraq* (Berkeley, CA: University of California Press, 1998), esp. Chapters 1 and 2.

perhaps millions, between 1968 and 2003.<sup>43</sup> His cruelty and ruthlessness are legendary, and even the harshest critics of the war do not challenge the propriety of committing him to trial for war crimes and crimes against humanity.

However, in a report released in January 2004 and widely echoed in the media, Ken Roth, Executive Director of Human Rights Watch, argued that the war in Iraq cannot be justified as humanitarian intervention because the régime was not tyrannical enough at the time of the invasion.<sup>44</sup> Roth gives several arguments (including lack of humanitarian intent, already discussed), but his main one is that “the scope of the Iraqi government’s killings was not of the exceptional nature that would justify humanitarian intervention.” For Human Rights Watch, only *ongoing* atrocities qualify as target for intervention. Saddam Hussein had perpetrated his major crimes before the war, and maybe intervention would have been justified then. But by 2003, his victims were in exile, in prison, or buried in mass graves. Since Saddam didn’t seem to be committing any new atrocities, intervention was unjustified to remove him at the moment the Coalition did.

Of course, if the perpetration of *ongoing* atrocities is a *sine qua non* requirement of the legitimacy of intervention, then by definition the intervention in Iraq would not qualify. However, the standard proposed by Human Rights Watch is inadequate. If it were correct, all that mass murderers would have to do to avoid being overthrown is to speed up the executions. One of the most terrifying facts of World War II was the speed and determination with which the Nazi crumbling régime kept exterminating Jews until the very last moments of the war. Under the theory endorsed by Human Rights Watch,

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<sup>43</sup> See, *inter alia*, Con Coughlin, *Saddam: King of Terror* (New York: HarperCollins, 2002); Louis Wiley, *Saddam’s Killing Fields* vol. 1, (videocassette) (Alexandria, VA: PBS Video, 1992). The Iraqis themselves are compiling millions of documents attesting to the horrors of the régime. See the *Iraq Memory Foundation*, at [www.iraqmemory.org](http://www.iraqmemory.org)

<sup>44</sup>“War in Iraq: Not a Humanitarian Intervention,” (Human Rights Watch, 2004), available at [hrw.org](http://hrw.org).

Hitler could not have been legitimately removed, on humanitarian grounds alone, once there would have been no more Jews to save from cremation. The Pakistani military should have finished its job of exterminating Bengalis really quickly in order to block any argument for the legitimacy of India's action. And Slobodan Milosevic should have done the same thing in Kosovo in 1999. Kosovo provides a very interesting refutation of Human Rights Watch theory. Serbia *accelerated* the ethnic cleansing after NATO's intervention had started.<sup>45</sup> Had Serbia consummated the genocide (the attempt for which Milosevic is currently being tried at The Hague), under the Human Rights Watch standard NATO's action would have been illegitimate (in fact, Milosevic attempted exactly that.) And, as I indicated above, it is far from obvious that removing a perpetrator of *past* atrocities in order to have him punished by the appropriate courts should not count as humanitarian intervention.

For those reasons, the bar should be set at the perpetration of *severe tyranny*, which includes not only consummated or ongoing atrocities, but also pervasive and serious forms of oppression. The Kosovo Commission, perceptively, saw that it was unreasonable to set a standard of ongoing killings for justification under the doctrine. The Commission declared that the intervention had been morally legitimate, not only because it had stopped ongoing ethnic cleansing, but because "it had the effect of liberating the majority of the population of Kosovo from a *long period of oppression under Serbian rule*."<sup>46</sup> This is exactly the right standard for Iraq as well: long period of oppression under Saddam's rule. Contrary to what Human Rights Watch claims, not only ongoing atrocities constitute just cause. Rulers like Saddam remain proper targets of intervention

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<sup>45</sup> See The Independent International Commission on Kosovo, *The Kosovo Report* (Oxford: Oxford University Press, 2000) pp. 88-92

<sup>46</sup> *Ibid.* p. 4. (my emphasis.)

even after they have committed their worst crimes. The kind of pervasive, violent, cruel, and continuous oppression exemplified by Saddam is a good candidate for humanitarian intervention. Those régimes do not have a right to exist and, under the appropriate circumstances (which obtained in Iraq), they can be removed, even if their most horrific crimes lie in the past (which I am not ready to concede, given the continued level of repression in Iraq.) The notion that all mass murderers have to do to remain safely in power is to stop murdering should be rejected. In fact, at some point mass killings *have to stop*. Hutus cannot continue axing Tutsis to death in Rwanda for ever. Yet under the Human Rights standard, the most *efficient* mass murderers are immune to intervention.<sup>47</sup>

### **Welcoming the Intervention**

There is solid evidence that the great majority of ordinary Iraqi citizens have seen the overthrow of Saddam Hussein as a blessing, the best thing that has happened to them during their lifetimes.<sup>48</sup> In fact, some Iraqis cannot even believe that Saddam will not return to power –such is the level of trauma produced by the tyrant’s pervasive repressive methods.<sup>49</sup>

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<sup>47</sup> I do not address here whether intervention is justified to spread democracy, or to establish liberal institutions in societies that suffer, not severe, but “ordinary” tyranny. The Iraqi régime certainly met the standard of severe tyranny I propose. It was certainly no “ordinary” oppression.

<sup>48</sup> This is particularly obvious when the Iraqis themselves (as opposed to critics of the war) are allowed to speak. See, e.g., Jalal Talabani and Massoud Barzani, "What Iraq Needs Now," *The New York Times*, July 9, 2003.. See also Stephen Morris, "Why We Had to Fight --Iraq 366 Days Later," *The Weekend Australian*, March 20, 2004.; “Constructing a Democratic Iraq: Challenges and Opportunities,” *International Security*, (Summer 2003), p. 47; “When the Cheering Stops: Jubilation and Chaos Greets the Fall of the Saddam Regime,” *Time Magazine*, April 21, 2003, p. 40. For the view from the U.S. Government, see Testimony of Deputy Secretary of Defense to the Senate Armed Service Committee, June 24, 2004, available in Lexis-Nexis

<sup>49</sup> Paul Berman reports that Iraqis had suffered “psychological demolition.” Paul Berman, "Silence and Cruelty," *The New Republic*, March 8, 2005.

Critics, however, are not convinced. They claim that the *resistance* in Iraq shows that the Iraqis did not want to be rescued, that the war was a unilateral act of the Coalition, insensitive and indifferent to the wishes of the Iraqi population.<sup>50</sup> For these critics, in order for the intervention to be legitimate, it (and the subsequent liberal reforms) must be accepted by the Iraqi population. The more insurgency there is, the less plausible the war was in the first place, because even if the Coalition intended to liberate the Iraqis, continued insurgency means that the Iraqis did not want to be liberated after all. The war (the objection concludes) was not *for them*. Fierce insurgency also portends something even worse: the failure of the whole enterprise.

Critics are right that if the insurgency wins, then the whole effort will be called into question, because everyone (especially Iraqis) will have a right to say that the outcome was not worth the cost. But it is a mistake to believe that the determination and ferocity of the enemy is the yardstick for the legitimacy of war. The claim seems to be that the fiercer the tyrant and his henchmen, the less justified we are in confronting them. But, unless the tyrant is so powerful that victory is simply impossible, this is wrong. The reason is that *the Iraqi resistance is a criminal enterprise*. Its purpose is to restore the brutal rule of Saddam Hussein in Iraq (or something like it) and, more generally, to defeat the forces of democracy and human rights and install totalitarian, pre-modern political structures. These insurgents were for the most part the accomplices in Saddam's past atrocities; therefore, *their* opposition to intervention does not count. *Dictators and their henchmen do not have defensive rights against interventions aimed at removing them.*<sup>51</sup>

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<sup>50</sup> See, e.g., Jeffrey Gettleman, "Anti-U.S. Outrage Unites a Growing Iraqi Resistance," *The New York Times*, April 11, 2004..

<sup>51</sup> See my essay "Self-Defense in International Law and Rights of Persons," in this Journal, vol. 18 (2004): 87.

The old notions of self-defense and sovereignty are useless here. When tyrants oppose a justified humanitarian intervention they are not defending the state; they are defending themselves, clinging to power. The Iraqi insurgents, then, are fighting an unjust war. They are not fighting for their homeland against the invader: they are fighting for the deposed tyrant against the Iraqi people and its allies. It follows that the ferocity and determination of their fight cannot be a reason to stop fighting them –unless victory is impossible. Surely the powerful German counter-offensive in Ardennes raised the costs of the war, but no one has suggested that the Allied effort was unjustified for that reason. One great insight of leaders such as Franklin D. Roosevelt and Winston Churchill was to understand that that war had to be fought, that the West’s commitment to freedom required the courage to fight, *especially* when the costs were high.

### **The Question of Authority**

A frequent criticism of the war is that the United States failed to enlist international support, in particular from sister democracies.<sup>52</sup> Unfortunately, this important institutional issue became yet another casualty of electoral politics in the United States. Critics of the administration treated the President as militaristic and unilateral, while Vice-President Cheney retorted that, under a Republican watch, America will never have to get a “permission slip” to defend its interests.

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<sup>52</sup> See, e.g. James P. Rubin, "Stumbling into War," *Foreign Affairs* (2003), available at [www.foreignaffairs.org](http://www.foreignaffairs.org)

My own view is that, when intervening for humanitarian reasons, it is *preferable* to have the support of the community of democratic states.<sup>53</sup> This did not happen in Iraq, but I think that, while lack of support was regrettable, it did not invalidate the intervention.

The question of proper authority is one of the most divisive topics in the humanitarian intervention debate.<sup>54</sup> There are, broadly, three positions. The first is the view that humanitarian intervention is legitimate only when authorized by the United Nations Security Council.<sup>55</sup> The second is the view that humanitarian intervention is legitimate only when approved or supported by the community of democratic states (whether or not the Security Council also approves it.) And the third one, which I defend here, is the view that, while approval by the community of democratic states (whether or not the Security Council also approves) is *preferable*, sometimes unauthorized intervention by democratic governments is morally justified. The war in Iraq is one such case.

The United Nations Security Council is inadequate as the guardian of individual freedom. First, the right of veto is morally arbitrary, because it gives disproportionate power to some states,<sup>56</sup> and because it means that humanitarian intervention will never be available against permanent members or their friends. Second, the right to veto increases

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<sup>53</sup> Thus, I am generally favorable to the proposal by Allen Buchanan and Robert O. Keohane, "Governing the Preventive Use of Force," *Ethics and International Affairs* 18, no. 1 (2004).

<sup>54</sup> See, *inter alia*, "The Responsibility to Protect," pp. 47-55; Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* pp. 40-48; Ramsbotham and Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* pp. 157-162; and Mark S. Stein, "Unauthorized Humanitarian Intervention," *Social Philosophy and Policy*, vol. 21, No. 1, (2004), p.14.

<sup>55</sup> This is the position held by a majority of legal scholars.

<sup>56</sup> See Buchanan and Keohane, "Governing the Preventive Use of Force," p. 16.



the chances of inertia, of inaction in the face of tyranny or anarchy.<sup>57</sup> Third, the Security Council suffers from serious deficits in moral legitimacy. The legitimacy problem I have in mind is *not* the lack of *governmental* inclusiveness, or poor regional representation. On the contrary: the fact that the West has disproportionate influence in the Security Council is one its *good* features.<sup>58</sup> The legitimacy problem is simply the fact that some of those who sit on the Council do not meet standard requirements of political legitimacy. One of the permanent members, China, is itself a highly questionable régime. And, usually, several of the non-permanent members are themselves illegitimate by any plausible measure. It is unacceptable that the decision whether to free people from tyranny or to veto any such decision, be left to tyrants.

International lawyers, however, insist on the need for Security Council authorization.<sup>59</sup> Part of the explanation for this insistence is a misplaced faith on *process*. Lawyers like process, any process. Maintaining the *forms* of law is important to them, so if there is any kind of international process in place that involves voting, for example, then to them only this process can yield legitimate decisions. But the moral currency of any process is surely parasitic on the credentials of those who participate. There is no

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<sup>57</sup> This can be seen clearly from the failure of the U.N. Security Council to authorize intervention in Rwanda and Kosovo. See the inconclusive discussion in "Iciss Report." pp. 53-55.

<sup>58</sup> Requiring democratic or human-rights credentials for members of the Security Council is *not* among the proposals for reform. The recent UN report on the matter recommends increasing "the democratic and accountable nature of the body." "A More Secure World: Our Shared Responsibility," (New York: United Nations, 2004). P. 80. It is unclear, however, if by democratic accountability the UN report refers to states (that is, that there should be more states represented) or individuals (that is, that governments in the Council should be more democratic.) At any rate, the report does not recommend improving the democratic credentials of members in the concrete proposals it advances in pp. 81-83.

<sup>59</sup> See, e.g. Michael Byers and Simon Chesterman, "Changing the Rules About Rules? Unilateral Humanitarian Intervention and the Future of International Law," in Holzgrefe and Keohane, eds., *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* pp. 181-84. Other legal scholars believe, more sensibly, that the Kosovo precedent introduced uncertainty regarding this requirement. See, e.g., Jane Stromseth, "Rethinking Humanitarian Intervention: The Case for Incremental Change," in Holzgrefe and Keohane, eds., *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* p. 177; and Thomas M. Franck, "Interpretation and Change in the Law of Humanitarian Intervention," in Holzgrefe and Keohane, eds., *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* p. 204.

value in the decision making process that took place, say, within the Taliban's inner "cabinet." A decision by the Taliban leadership to stone women alive for adultery is not legitimized by voting in the "cabinet." Procedures in the United Nations organs give the *illusion* of democratic legitimacy, but it takes little reflection to see that those procedures bear only a pale resemblance to genuine democracy. Decisions to assist victims of tyranny should not depend on the acquiescence of the rulers who at best do not represent their people, and at worst are tyrants themselves.

Someone may reply that following established procedures, even defective ones, has important benefits because they impose at least minimum order in an international society marked by anarchy.<sup>60</sup> I do not here evaluate this claim in its general form, but even conceding that sometimes orderly processes may yield important benefits in the sense claimed by "minimalist" scholars, I don't think that authorization of force by the Security Council falls in that category. For just imagine if the weapons of mass destruction *had been* in Iraq, and the United States had decided to abide by process and not remove the weapons, only to suffer an attack by terrorists armed by Saddam. What benefits does *that* kind of process yield? And critics cannot say, with the benefit of hindsight, that the weapons were not there after all, because no one knew that—especially governments, like the French government, who led the effort to block authorization. In short: authorization by the Security Council is, like voting in the UN General Assembly,

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<sup>60</sup> This minimalist view of order has a rich tradition. See e.g., Hedley Bull, *The Anarchical Society: A Study of Order in World Politics*, 2<sup>nd</sup> ed., (New York: Columbia University Press, 1977) pp. 3-21. For a reflection on the concept of order and its relation to justice, see Andrew Hurrell, "Order and Justice in International relations: What is at Stake?", in Rosemary Foot, John Lewis Gaddis, and Andrew Hurrell ed., *Order and Justice in International Relations* (Oxford: Oxford University Press, 2003) p. 24.

a mere *semblance* of process. Not only does it lack moral legitimacy: it does not even secure order, let alone justice.<sup>61</sup>

Humanitarian intervention, therefore, should in principle be approved or supported by a democratic alliance or coalition.<sup>62</sup> These are the governments that meet two requirements: they uphold the liberal values of respect and democratic legitimacy, and they are morally entitled to speak for the citizens who will bear the burden of the intervention. They are also those who, one would hope, will uphold liberal values in the reconstruction phase. An appropriate institutional design should reform the system of authorization to use force in the international system today.

Yet authorization may fail and the atrocities go unchecked. Much has been written about the problem of inaction in the face of severe humanitarian crises. Tragedies in Rwanda and Kosovo show that sometimes governments must act without approval.<sup>63</sup> Even the Report of the International Commission on Intervention and State Sovereignty, generally hostile to unauthorized intervention, could not exclude completely the possibility that sometimes unilateral action may be the only way to end a severe humanitarian crisis.<sup>64</sup> Perhaps the innovative mechanisms proposed by Buchanan and Keohane can create the right incentives that would avert the dangers attendant to unauthorized action. But at any rate, the argument that humanitarian intervention is

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<sup>61</sup> Eric Posner and John Yoo have suggested that the UN: (1) is increasingly used as a forum to oppose U.S. use of force, and (2) it hampers in various ways the advancement of international law. Eric Posner and John Yoo, "Where is the Old Bolton When We Need Him?" *Los Angeles Times*, April 19, 2005, p. 13. If, as I suspect, they are correct, the United States has a valid reason to ignore the UN when the United States is trying to do the right thing, as in Iraq.

<sup>62</sup> Buchanan and Keohane propose a two-stage system that includes Security Council action, under the assumption that reforming the Security Council is unrealistic. See "Governing the Preventive Use of Force," pp. 16-22.

<sup>63</sup> The Rwandan tragedy is the best-known. See Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2002) pp. 329-389. On the inaction in Kosovo, see *Kosovo Report* pp. 126-127

<sup>64</sup> See "The Responsibility to Protect," pp. 54-55.

sometimes acceptable even without authorization should be available to citizens of democratic societies. The defense of unilateral intervention (such as the interventions in Kosovo and Iraq) presupposes, as background, flawed existing structures, that is, the United Nations Security Council as the sole purported authority. If the democratic alliance were in place and functioning properly, the case for unilateral intervention would be weaker –although not completely inert, as even a democratic alliance might fail to do the right thing, as it happened in Iraq.

In the case of Iraq, the Security Council failed to authorize the action. But why would those who oppose the war in Iraq *on the merits* would have accepted it had the United States and its allies succeeded in twisting the arm of the Council members to go along? If Human Rights Watch believed that Saddam was not a proper target of humanitarian intervention, then it was not a proper target in *any case*. This is true especially if one is concerned with the morality of the war, and not just with formal procedures. One who believes the war in Iraq was immoral cannot change that judgment just because the Security Council voted to approve the invasion. He would have to say that the Council acted immorally.<sup>65</sup>

Be that as it may, it would have been better for the Coalition to secure the support of sister democracies --even in the face of the notorious lack of resolve that some European governments have shown in the face of post-Cold War threats to peace and freedom. However, given the nature of the Iraqi régime and the troubling relationship

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<sup>65</sup> Like the International Commission for Intervention and State Sovereignty, the Human Rights Watch Report correctly sees this problem, and stops short of suggesting that lack of approval invariably means unlawfulness.

(some think complicity<sup>66</sup>) of some democratic governments with that régime, this is a case where, in my view, the lack of support, while counting against the legitimacy of the intervention, does not invalidate it. One assumption of favoring approval by the community of democratic nations is that the interest of its members is normally to restore human rights, democracy, and the rule of law in troubled societies. Unfortunately, this was not the case here, and the Anglo-American leaders had to act virtually alone.

### **Concluding Thought: Conservatives, Liberals, or Progressives?**

The war in Iraq and the commitment of the United States to promoting global freedom are not the simple product of militaristic radical conservatives, as many have said (although, of course, the present administration is conservative.) I see this effort very differently. I interpret it as the natural continuation of an extraordinary idealistic, transformative, liberating impulse in the American Republic, one that ties historically the current effort in Iraq with Woodrow Wilson's pro-democratic doctrine, Franklin D. Roosevelt's conviction in fighting European fascism, Jimmy Carter's courage in putting human rights at the top of his foreign-policy agenda, Ronald Reagan's landmark victory against communist tyranny, and Bill Clinton's inspired leadership in Kosovo, Haiti, and elsewhere during the happier days of globalization. I believe all persons committed to liberal values in the broad sense, be they conservatives, liberals, or progressives, should

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<sup>66</sup> See generally Bill Gertz, *Treachery: How America's Friends and Foes Are Secretly Arming Our Enemies* (New York: Crown Forum, 2004)

support the war in Iraq.<sup>67</sup> The vision of ridding the world of tyrants has always been part of sound conservative thinking, liberal-internationalist aspirations, and liberal-left humanitarian principles. Furthermore, promoting freedom and democracy is in everyone's interest in the West, regardless of political affiliation. Yet large segments of public opinion have been unwilling to find anything positive in the Iraq effort. The protest movement that swept the world against the war in Iraq was one of the depressing sights of those difficult days. In the words of Paul Berman, one of the few men of the left with the courage and vision to understand the moral import of the war: "A truly large and powerful movement took to the streets...and this was not to denounce the terrible dictatorship, but to prevent an invasion from overthrowing the terrible dictatorship."<sup>68</sup> This public condemnation is, to my mind, incomprehensible: the murderer is the victim, the liberator is the criminal, and the real victims are never mentioned. And human rights organizations, sadly, had nothing to say about the liberation of millions of Iraqis (and Afghans) from decades of terrible oppression, or about the mass graves that the Coalition discovers almost weekly in the Iraqi desert.

Conservative, liberal, or progressive, we should not protect tyrants under the guise of defending peace. And above all, we should not neglect those who were supposed to be the rightful beneficiaries of the new global order: the world's vulnerable, those men, women, and children reduced to struggling for bare survival by the inhuman power that tyrants wield over them.

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<sup>67</sup> Thus I disagree with Suzanne Nossel, who claims that progressives must rescue liberal internationalism from "the Bush Administration's militarism" and "militant imperiousness." Suzanne Nossel, "Smart Power," *Foreign Affairs* 83, no. 2 (2004) p. 131.

<sup>68</sup> Berman, "Silence and Cruelty."