REX MARTIN

WALZER AND RAWLS ON JUST WARS AND HUMANITARIAN INTERVENTIONS

The continuing reflection on and incremental growth of the theory of just war has been an important feature of the post-World War II international order. In this chapter I want to compare two important contributions to this developing theory; my focus will be on John Rawls's theory of just war in his book *Law of Peoples* and on the theory of Michael Walzer.[1] Their theories are enough alike to warrant being treated together, as constituting something like a unified view of the subject. What makes them especially interesting is that each theory has made the notion of human rights central as the ground of justification (or justifiability) in just war theory (JWT). But the theories are sufficiently divergent to make fruitful an examination of their differences.

1. WALZER AND RAWLS ON JUST WARS

Both theorists argue that a country can justifiably go to war for two reasons: it can do so in self-defense or collective defense against aggression or it can do so in response to serious and unamendable human rights violations. In traditional JWT these two grounds are called "just cause." An important unifying idea undergirds these two grounds. For both Rawls and Walzer, the ultimate justification here is the defense of the human rights, of the inhabitants in a country, to life and liberty.

Accordingly, both urge that civilians (that is, noncombatants) can never be directly targeted and killed, certainly not as a matter of government or of military policy.

To this stringent doctrine of civilian immunity both Rawls and Walzer allow for one significant exception, that of "supreme emergency." Such an emergency would arise, and I cite Walzer on this, when a severe threat was both immediate and profound; here a deviation from the doctrine of civilian immunity is absolutely necessary in order to save a political community from annihilation, or its citizens from wholesale massacre or enslavement.[2] Even so, one main theme of Rawls's endorsement of the supreme emergency exemption is that it can be invoked only when doing so is absolutely necessary to the survival of a liberal constitutional

S. P. Lee (ed.), Intervention, Terrorism, and Torture: Contemporary Challenges to Just War Theory, 75–88.
© 2007 Springer.

democracy (or presumably of a decent nonliberal body politic), fighting in self-defense.[3] Rawls's restriction of the exemption to such societies as these is one that we do not find in Walzer's account.

On the question of the moral status of combatants their positions are again similar. Each argues for the mutual vulnerability of combatants on *both* sides in time of war. Walzer tries to rationalize this mutual vulnerability with the idea that combatants temporarily forfeit their human rights to life and liberty and take on, in their place, certain "war rights."[4] Rawls, to the contrary, emphasizes the idea of mutual self-defense against attack as the grounding justification for this mutual vulnerability. Here soldiers on each side are protecting themselves, in combat, from attacks by soldiers on the other side; and since the attacks from either side can be deadly, each side may use lethal force in self-defense.[5]

What I have said so far provides a very quick tour of the issues. Let us now take a second and closer look at traditional JWT. For the most part, traditional theory endorses the internationally established conventions on war, or some reasonable extension of those conventions. Walzer, for instance, treats most of these conventions as a given and tries to offer a rationale, a justification for them. But he does not endorse *all* the conventions; he does not endorse blockade or siege as valid instruments of war.[6] And some of the extensions that he deems reasonable – the supreme emergency exemption or the assumption of risk by combatants to avoid or reduce the risk of serious injury or death to noncombatants – have not found favor with all theorists of just war.

One important, indeed, central, feature of the traditional theory is mutual combatant vulnerability. Walzer tries to rationalize this, as we saw, with his doctrine of forfeit. But there is something deeper in what he is doing than meets the eye. It is not merely that *all* soldiers, soldiers on both sides, are *equally* vulnerable; it is also the extensive scope, the radical extent of that vulnerability. So long as their nations are in a combat or belligerency situation, a soldier on either side can kill any soldier on the other side (providing, for example, that those on the other side are not soldiers lying wounded on the field of battle or in the act of surrendering). This means that active-duty soldiers can be killed not merely when they are in combat readiness or actually fighting on the field of battle or when they are so deploying, but also while they are dancing or dining in a nightclub, heading off for furlough, or taking a bath. The rules of war, as endorsed in traditional just war theory, seem to allow such an extensive range of killing as justifiable.[7]

Walzer's doctrine of forfeit constitutes a drastic measure, admittedly. But such a far-reaching move as this is required, he thought, in order to

provide a rationale for the traditional just war doctrine of mutual combatant vulnerability, a norm which included *both* the idea that soldiers on each warring side are equally vulnerable (even if one side is the aggressor and the other a defender against aggression) *and* the idea that this vulnerability is quite extensive in times of warfare or belligerency.

Rawls's idea of emphasizing mutual self-defense against attack as the grounding justification would restrict the *extent* of vulnerability considerably (when contrasted with the case of forfeit just examined). In one plausible interpretation, the range of acceptable vulnerability might be restricted, under the standards of self-defense, to active deployment or readiness for combat on the field of battle or actual fighting. Whether it was Rawls's intention to do so or not, his notion of mutual self-defense would have a restrictive effect on the extent of vulnerability in traditional JWT and would prove, on this point as well as on others, to be distinctively different from the position Walzer has taken. Rawls's amendment (if we may call it that) to traditional JWT licenses a restriction on the *scope* or *extent* of the vulnerability of combatants but leaves intact the idea that combatants on both sides are *equally* vulnerable.

I have no doubt that a convention of war could be established, by international treaty, for example, that allowed for the *equal* vulnerability of combatants to lethal attack in time of war. And it is possible that this idea could win the assent of *conventional* morality. To a considerable extent it seems to have done so.

But I am not convinced that this endorsement would hold up, if we were to take seriously the *universality* of human rights – the idea that *all* people have them – and if we continue to insist on the importance of the aggressor/nonaggressor distinction (and on the attendant idea that one may forcibly defend one's human rights against aggression). I am not sure in such a case that we could justify the *equal* vulnerability of soldiers and other combatants as itself a general rule or norm. Justify it, that is, by reference to the standard of universal human rights and the propriety of defending such rights against violation by aggressors.

Consider. In World War II, the troops of Nazi Germany invaded France, the Netherlands, Denmark, Norway, and other countries and forcibly subjugated them. And they aimed to do the same with the Soviet Union (now Russia) and probably Britain. The Nazi troops were not defending the rights to life and liberties of people in those countries; they were violating those rights. These invasions and subjugations, and the violations that came in their train, were aggressive acts. From the perspective of human rights, as just described, those who defended against these invasions (assuming they stayed within the guidelines for conduct

in warfare) were defending human rights, not violating them, and they were acting properly in doing so.

International law, the internationally established law and usages of nations, and a justificatory motif like human rights are two different things, and they may not come to the same conclusions. I have not denied that there may be a moral justification (a conventional moral justification) of traditional JWT on the score of the mutual vulnerability of combatants – or, at least, that of their equal vulnerability. I am simply saying that an argument framed exclusively or principally in terms of human rights cannot provide that justification since *mutual* vulnerability (*equal* vulnerability) would not be acceptable as a sound or defensible conclusion to draw in such an argument – in, for example, the circumstances we have just envisioned in World War II. It may be, then, that this particular notion or rationale, the mutual and equal vulnerability of combatants, one of the main staples of traditional JWT, could not be sustained within a theory of human rights.

Now we come to an even greater difficulty. We have relied, in the idea of defending human rights, on the notion that rights can be protected by (among other things) killing soldiers on the other side (the aggressor's side). But these very soldiers themselves have, by hypothesis, a right to life. It is a right that can be given a strong moral justification (by human rights norms), and it is a right that the soldier retains even on active duty, in time of war. It seems paradoxical to say that one can protect rights from violation by *violating* rights.[8]

Let me add here that any supposed analogy between justified individual self-defense in law and morals, on the one hand, and the forcible defense of human rights in war (using lethal countermeasures to stop extremely dangerous or harmful assaults on life or liberty by invading, aggressor troops), on the other, is unlikely to work in the present case. In war we have nothing like the careful calibrations and the judicial and procedural protections that exist in a typical system of law enforcement and are designed to prevent justifiable infringements on rights, in matters of justified defense or of punishment for wrongdoing, from becoming unjustifiable violations of rights.[9] Indeed, in war there would likely prove to be wholesale violations of important rights.

This brings us to the crux. The appeal to the defense of human rights as a basis for killing or severely wounding soldiers in time of war will work, within the existing tribunal of human rights, on some occasions. It will work, for example, in cases of defending against an all-out and deadly assault by an invading army fighting on the side of the aggressor nation. Here the aim of that invasion is subjugation, which will involve

a drastic curtailment of the liberties of all the inhabitants of the country invaded, and that armed invasion will involve the loss of many civilian lives through "collateral damage," lack of due care, or intentional direct targeting.[10]

But no appeal to human rights will work, within that same tribunal, to justify the conduct of the *invading* troops when they violate the rights to life and liberty of the inhabitants there or even when they "defend" themselves by returning the fire of the troops on the other side who oppose them. This provides one salient way, then, in which an argument favoring the *equal* vulnerability of combatants would not satisfy the standards of a theory of human rights (and would not be acceptable there) even when it satisfies the standards of traditional JWT.

If these brief lines of argument have merit, there may well prove to be a fundamental incompatibility between the claims of human rights and their forcible defense, which informed the theory of just war of Walzer and Rawls, and the doctrine of the equal vulnerability of combatants, which both have endorsed. The idea of the equal vulnerability of combatants, taken as a supposed norm or reason for the conventions of war, a reason justified in turn by such notions as forfeit (Walzer) or mutual self-defense (Rawls), may turn out to be, then, one of the most problematic features of the just war doctrine we have been examining.

Let me be clear on the focal point of my claim to incompatibility here. Equal vulnerability (or, alternatively, the mutual vulnerability) of combatants can be taken to be an independent and overarching reason or rationale for the rules of war, and apparently was so taken by the two theorists we have been examining. It is this grounding *rationale* that I am saying is incompatible.

But the failure of mutual combatant vulnerability as a rationale does not tell against the actual conventional guidelines for warfare conduct, guidelines that are meant to be binding on both sides. Here soldiers on both sides are regarded as having been placed in harm's way by decisions that broke the peace (decisions made not by the soldiers, but by the leaders of nations), and the responsibility of soldiers is to fight in accordance with established guidelines for waging war.[11] These guidelines and adherence to them may be the best that humankind can accomplish in an imperfect, complicated, and confusing world where people again and again and in place after place have proven ready to go to war.

Nonetheless, there remains an incompatibility – a creative tension, if you will – between a theory of human rights and traditional JWT, specifically between a theory of human rights and the *rationale* of mutual combatant vulnerability offered by Rawls and Walzer. And, if we press

hard the notion that soldiers fighting on the aggressor's side have a right to life, a right that is not to be violated, this tension may extend even so far as to include the pragmatically established guidelines for waging war.

2. HUMANITARIAN INTERVENTIONS

One of the most important new ideas in just war theory is the idea that governments and others can justifiably respond forcibly to serious and unamendable human rights violations that are wholly internal to another country. This idea, though it is not universally held today, represents a growing international consensus. As such it is another important feature of the post-World War II international order.

There are in my view three main points to consider under the heading of humanitarian interventions: First, the various kinds of humanitarian intervention and the level of human rights violation required to trigger forcible military interventions. Second, the justification of such interventions. Third, the appropriate agent(s) who might legitimately undertake a forcible military intervention. We will be returning to each of these points as the argument progresses.

One of the really difficult concerns about human rights emerges when we note that, of the many conceivable justifying arguments for human rights, none of them is currently accepted or put into practice at a suitable level by literally all peoples. Not even the justification provided by a bedrock standard like the general benefit, the mutually perceived benefit, of a vast number of human beings now alive is uniformly accepted. Even *it* is not accepted in the concrete. In some given "crux" cases (e.g., the case of freedom of conscience in matters of religion), it is not accepted everywhere, not by all peoples or all governments. It is a difficult question, then, whether any of these justifying arguments offer suitable grounds for intervention, in particular, forcible intervention, against societies (against peoples) that do not accept these justifications and, especially, against societies who engage regularly or unamendably in practices that are seriously unacceptable in the light of these arguments.

Consider here (as examples of severe or grave violations of human rights) genocide and "ethnic cleansing," slavery, and warlord-induced famine and starvation, all of them cases from our own day.[12] Such severe violations merit "forceful" intervention, in Rawls's view, by which he means intervention "by diplomatic and economic sanctions, or in grave cases by military force."[13]

Here we must take care. I would suggest that both Walzer and Rawls would endorse "forceful" diplomatic and cultural and economic measures

against apartheid but *not* armed intervention.[14] And the same might be said as regards treatment of women and "hate" speech (speech much of which occurs under the heading of religious education). Rawls seems to reserve armed intervention solely for such matters as mass murder and slavery, where the offending state has not amended its ways under the pressure of diplomatic and economic and other measures.[15] And the same could be said of Walzer.

The kind of justification we are talking about in cases of *forcible* or armed intervention would have to rely on standards considerably stronger than a bedrock standard like mutual and general benefit or, for that matter, considerably stronger than the justifying standards Rawls himself invokes: that is, minimal protection against great evils, and protection of the necessary conditions of social cooperation.[16] We are talking here not merely about what justifies *any* given human right (or any right on a short list of quintessential human rights) but more especially about when, if ever, a particular human right should or could be enforced internationally by military action.[17]

I want to make a logical point here. If all the rights on a list of normatively justified human rights are justified by one and the same standard (e.g., mutual and general benefit) or a concurrent set of standards (e.g., by this standard *and* the two that Rawls invokes) and yet *some* rights on that list are *not* thought to be appropriately enforced by international military action, then a different standard for justifying forcible military intervention *other* than the one(s) already cited must necessarily be invoked.

Rawls clearly does think that some rights on that list are not appropriately enforced by international military action. Ending apartheid or the debased state of women, for example, would not be appropriately achieved by international military action in his view, nor should ending violations of due process of law in some societies be enforced in that way. Walzer is similarly cautious.[18]

So far as I can see, Rawls provides no standard for identifying specifically which violations of human rights, even when persisted in, rise to the level of making forcible military interventions suitable. In the end he seems to fall back on widely shared conventional judgments in this matter. And this is exhibited in Rawls's characteristic language in these cases: such violations as merit forcible intervention, he says, are "egregious" and "grave."[19] And the same could be said for Walzer when he speaks of acts that "shock the conscience of humankind."[20]

Rawls continues, "It may be asked by what right well-ordered liberal and decent [nonliberal] peoples are justified in interfering with an outlaw

state on the grounds that this state has violated human rights." His answer is instructive: "[such] peoples simply do not tolerate outlaw states"; their "refusal to tolerate those states is a consequence of liberalism and decency." In short, Rawls argues, if the political conception of liberalism is sound and the resultant political conception of a law of peoples embracing both liberal and decent nonliberal peoples is sound, then "these peoples have the right, under the Law of Peoples, not to tolerate outlaw states."[21]

Or, to put his point somewhat differently: liberal and decent peoples have agreed to the same list of human rights and have agreed, in a rough way, about levels of enforceability, and this gives them the right to forcibly intervene in certain cases. I would reply: this might provide an *explanation* for the stance and conduct of liberal and decent peoples here but it still amounts to a conventionalist rationale, not the called-for *normative* justification.

However, one could still say a word in support of Rawls's approach. The list of human rights agreed to by liberal and decent peoples has a definite, and rather complex, normative foundation. The human rights on that list are justified by deep and accredited moral standards.[22] Accordingly, these rights are capable of giving normative direction to the conduct and understanding of individual persons; and when these human rights are violated, persons acting on their own or in concert with others are entitled to do *something*. This much is clear.

Now, we may not have clear norms for when forcible action, in particular, action arising to the level of military intervention, is allowed or enjoined, e.g., in dealing with the so-called ethnic cleansing. But a normative ground for taking action to stop or reverse severe violations of human rights is in place throughout. Even so, a decision to take forcible action is a difficult one. It will probably involve loss of life and grievous injury to some of the soldiers involved in the rescue; it will probably involve similar injuries to the civilian population in the area of military operation (and such civilians are the very group these soldiers are coming to aid). Clearly then, even when the intervention is well and justifiably motivated (and carefully thought through), "political will" is required to see it to conclusion. When coalitions of nations are involved (something that is often desirable in order to gain the benefits of consultation and shared judgment and of effective coordination of effort), questions of "political will" become even more pressing. Given all these factors, a reliance on widely shared conventional judgments and on the informed "conscience of humankind" is both highly appropriate and necessary.

I cannot fault Rawls and Walzer for emphasizing the importance of this point. But the express account they give of the normative background in *justification* of intervention is inadequate and undeveloped.

Sometimes forcible military intervention to prevent grave violations of human rights is justified. This is probably the *consensus* view today (one in which Rawls and Walzer share). But it is not a unanimous view: a few, usually from an international law background, would deny it outright.[23] Let us stick, though, with the consensus view.

This immediately takes us to another matter for deep concern. Clearly, one of the most pressing problems for the international protection of human rights is that the United Nations (UN) by and large lacks enforcement mechanisms of its own. Accordingly, the UN must rely on existing nation-states for the foreseeable future.

There is, however, a considerable variety of views as to who has legitimate authority, as it is called in traditional JWT, to authorize an armed military intervention to protect human rights from grave violations. Some say that only the UN can legitimately authorize such interventions. Others say that either the UN or some regional international political authority (e.g., the European Union (EU)) can legitimately so authorize.[24]

And some (most notably Walzer, in his earlier writings) have argued the virtues, in extreme cases, of unilateral intervention (of forcible intervention by *one* nation within the borders of another to prevent or stop grave violations of human rights). Examples usually cited (from the last 30 years or so) are India in East Pakistan (now Bangladesh), Vietnam in Cambodia, Tanzania in Uganda, and (most recently) Nigeria in Sierra Leone.[25]

Rawls's stance on the matter of legitimate authority is not altogether clear. He suggests that to cope with the problem of such interventions the "Society of Peoples needs to develop new institutions and practices under the Law of Peoples to constrain outlaw states when they appear."[26] It is clear that this Society of Peoples, as Rawls calls it, is not as extensive as today's UN. It is, rather, simply the liberal peoples or, for that matter, the decent peoples (both liberal and nonliberal) acting in concert.[27]

But Rawls adds that this concerted action *can* be done "within institutions such as the United Nations or by forming separate alliances of well-ordered societies." These alliances, and perhaps the UN itself, constitute what Rawls calls a "confederative center."[28]

It would seem that Rawls, were these new institutions and practices to begin to emerge, would side with those who say that either the UN or some regional international political authority (e.g., the EU) can legitimately authorize armed military interventions to protect human rights from grave violations. But there seems to be no insistence on his part that

the UN, as currently constituted, *must* be involved; rather, "separate alliances of well-ordered societies" may do the job. It may well be, right now and for the foreseeable future, then, that Rawls thinks the problem of the international identification of the gravest threats to human rights, and the protection of human rights against these threats, can be most effectively dealt with by decent societies regionally, rather than globally.[29]

In sum, Rawls and Walzer have provided an answer to each of the main points concerning humanitarian interventions, raised at the beginning of the present section. Their first two answers (concerning the level of human rights violation required for military intervention and the justification of such interventions) are, perhaps, more conventionalist than many might have expected or hoped for. Rawls's third answer (concerned with legitimate authority) is not unexpectedly (given his Kantian proclivities) more confederative and regional than it is global and one-worldly. And Walzer's is more geared to the idea of a system of existing somewhat autonomous nation-states.

This summing up is, so far, merely a preliminary one, a summing up to date. I emphasize this because Walzer has amended his views on legitimate authority, and has taken a more internationalist direction in doing so.

In Walzer's recent book, *Arguing About War* (2004), he suggests, as an ideal, the value of what he calls "global pluralism." He conceives such pluralism as including a number of alternative centers (such as the UN and the EU), a dense web of social ties that cross state boundaries, and finally a number of institutions (such as the World Bank, the World Trade Organization, various nongovernmental organizations) that reflect these alternative centers and social ties. Global pluralism "maximizes the number of agents" who might engage in humanitarian interventions, but at the same time it identifies no single assigned agent that makes or must make the basic decision to intervene.[30]

Some have suggested, as we noted earlier, that the UN is the exclusive authorizing agency in matters of humanitarian intervention. But the UN charter has not explicitly assigned an authorizing role to the UN in this matter. More to the point, the UN as an institution has never unequivocally and categorically affirmed that it has the role of *exclusive* agent of authorization. And the UN has been notoriously reluctant to authorize or engage in such action. In sum, humanitarian intervention is not a role it has been conspicuous in supporting or performing, not even since the end of the Cold War. In light of these facts, it is difficult to make a case that the UN is or should be the *sole* legitimate authorizing agent for humanitarian intervention.[31]

Accordingly, an important idea lies behind the views of both Rawls and Walzer. It is the idea that there is a present and continuing need to *build*

international and supranational agencies to affirm and protect human rights. And one goal here is to build up agencies that can, in the extreme case, forcibly intervene in the internal affairs of a country to prevent the government there or some group there from severe, shocking, massive violations of human rights. Such massive violations often take the form of "ethnic cleansing" – forced migrations of large numbers of people from their homes, migrations that are meant to be permanent, migrations that are typically accompanied by large-scale and horrific acts of murder, rape, and pillage. But the sorts of violations of concern to the international community are not limited to these forced migrations.

The theories of Rawls and Walzer are part of this project of the internationalization of relief and rescue that I have been describing, but they are not UN-centric. Rawls (with his pacific regional confederations or leagues) and Walzer (with his overlapping and decentered array of agencies, both national and international) provide important alternatives to the view that the UN is the exclusive authorizing agency in matters of humanitarian intervention. But they are, I would emphasize, *international* alternatives, as distinct from merely national (or solely national) options.

In the case of a pressing need for intervention, two issues need to be kept paramount: Can genuine rescue be effected without massive and ultimately self-defeating costs? Can that effort be conducted in such a way as to build international agencies and international support for justifiable humanitarian intervention? Rescue by one nation of the citizens of another may sometimes be the only viable option. But that fact should not preclude or blunt the significance of the second question. It must always be kept on the table.

One may well conclude, as did Rawls and Walzer, that the UN is not the exclusive authorizing agency in matters of humanitarian intervention, and conclude as well that, in a given case, an intervention by an individual nation or by a coalition of nations is both legitimate and justified. Even so, it does not follow that one should conclude that the UN has no appropriate role to play in those humanitarian interventions that it has not authorized. Indeed, given current views about the unchallenged legitimacy of the UN, both as an idea and as an institution, it may well be that nations or coalitions which engage in such interventions should report to the UN their reasons for any such intervention, and should be open to UN supervision and review of their action then and subsequently, and (perhaps most important) should involve the UN and its agencies in the postwar reconstruction of the society in which the grave human rights violations that triggered the intervention had originally occurred.

The answers by Walzer and Rawls to the issue of humanitarian intervention may not satisfy everyone, but they are clear cut and carefully

considered. They merit close and critical attention. We must get beyond the point where we regard all rescues unauthorized by the UN as *illegal*.[32]

NOTES

1. See John Rawls, *The Law of Peoples with "The Idea of Public Reason Revisited"* (Cambridge, MA: Harvard University Press, 1999); and Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd edn (New York: Basic Books, 2000; 1st edn, 1977; 2nd edn, 1992).
2. See Walzer, *Just and Unjust Wars*, Chap. 16, for the discussion of supreme emergency (esp. p. 254); also pp. 268 and 326. See also Walzer's paper, "Emergency Ethics," printed in *The Leader's Imperative: Ethics, Integrity, and Responsibility*, ed. J. Carl Ficarrotta (West Lafayette, IN: Purdue University Press, 2001), pp. 126–139, and reprinted in Walzer, *Arguing About War* (New Haven, CT: Yale University Press, 2004), pp. 33–50.
3. See Rawls, *Law of Peoples*, pp. 98–105, esp. pp. 99, 102, 104–105.
4. For Walzer's idea of forfeit (of a radical loss) here, see *Just and Unjust Wars*, pp. 193, 264–265; for the taking on of certain "war rights," as he calls them, see *Just and Unjust Wars*, pp. 135–136, 145n, 219.
5. See Rawls, *Law of Peoples*, pp. 95–96.
6. See Walzer, *Just and Unjust Wars*, Chap. 10.
7. Walzer develops this theme graphically in a section entitled "Naked Soldiers"; see *Just and Unjust Wars*, pp. 138–143.
8. "But in warfare the combatants cannot respect one another's human rights. . . . Hence, war as a means for securing respect for human rights has the drawback that it necessarily involves not respecting them." A.J.M. Milne, *Human Rights and Human Diversity: An Essay in the Philosophy of Human Rights* (Albany, NY: State University of New York Press, 1986), p. 171.
9. For discussion of this important point, as it bears on legal punishment, see R. Martin, *A System of Rights* (Oxford: Clarendon Press, 1993), Chap. 9, Sects. 3–5, esp. pp. 228–236.
10. David Rodin has criticized the moral justification of the claim that a state has the right of self-defense in his book *War and Self-Defense* (Oxford: Clarendon Press, 2002). The argument I have been developing is based on a somewhat different claim: that a forcible defense by government of the human rights to life and liberty of its own citizens (or those of another country) is licensed by contemporary human rights norms.
11. See Rawls, *Law of Peoples*, pp. 94–96, and Walzer, *Just and Unjust Wars*, Chap. 3.
12. Rawls in effect singles out items from this very list: "mass murder and genocide" (*Law of Peoples*, p.79 and n. 23 on p. 80), "slavery and serfdom" (p. 79); he also mentions "apartheid" (n. 23 on p. 80). Walzer's emphasis is similar; he cites a government's "massacre or enslavement of its own citizens or subjects" as grounds for intervention and later adds "mass expulsion" ("The Moral Standing of States: A Response to Four Critics," *Philosophy and Public Affairs*, 9.3 [1980], pp. 217, 218).
13. See *Law of Peoples*, p. 80; also p. 90n.
14. By "cultural" interventions I have in mind such things as refusals to engage in sports competition or invitations, in scholarly exchanges and invitations, in TV and movie and artistic exhibitions or performances, and the like. These proved significant in the

international campaign against South African apartheid policies (e.g., the widespread boycott of South African rugby football). And economic sanctions and private-company-enforced standards were important also. Some of these interventions were governmental or inspired by government; others were strictly private or associational interventions.

15. See *Law of Peoples*, p. 81, and Rawls's discussion of the Aztecs in n. 6 on pp. 93–94. Some extremely weak, marginalized societies might be excluded, the text suggests, from Rawls's rather blanket assertion here about justified military interventions.
16. For the point about a minimum, see *Law of Peoples*, p. 67 (and p. 79 for the urgency of attending to a minimal satisfaction of human interests); see pp. 65, 68 for the point about social cooperation.
17. It should be noted that the standard of mutually perceived benefit would probably hold in the three severe and urgent cases (genocide, slavery, etc.). All persons (including those in the affected country) could reflectively decide that the avoidance of these particular injuries was beneficial to them. It is not so clear that it could be met in the second-tier cases (treatment of women, soul-curdling religious intolerance and invective, etc.) in every single case. It might be, but again it might not be. It is the latter cases (cases where it is not met) that forcible international intervention becomes especially problematic and difficult.
18. Indirect evidence of Rawls's view in the matter of apartheid is provided by Walzer who says "The enforcement of a partial embargo against South African apartheid is a useful if unusual example. Collective condemnation, breaks in cultural exchange, and active propaganda can serve the purposes of humanitarian intolerance, though sanctions of this sort are rarely effective." In a footnote to this passage, Walzer says "These examples . . . were suggested to me by John Rawls." See Michael Walzer, *On Toleration* (New Haven, CT: Yale University Press, 1997), pp. 21–22, 115. For Walzer's own views on the matter of interventions in response to apartheid, see "The Moral Standing of States," pp. 216–219.
19. See *Law of Peoples*, p. 94n for the first of these terms, and pp. 37, 81 for the second.
20. See Walzer, "The Argument about Humanitarian Intervention," *Dissent* (Winter, 2002), pp. 29–37, at p. 29; see also *Just and Unjust Wars*, p. 107, and *Arguing About War*, p. 69. The paper from *Dissent*, just cited, is reprinted as "Arguing for Humanitarian Intervention," in Nicolaus Mills and Kira Brunner (eds), *The New Killing Fields* (New York: Basic Books, 2002), pp. 19–35; the passage cited can be found there at p. 20.
21. See *Law of Peoples*, p. 81.
22. For discussion of this important point, see David Reidy's paper, "Political Authority and Human Rights," in R. Martin and David Reidy (eds), *Rawls's Law of Peoples: A Realistic Utopia?* (Oxford: Blackwell, 2006), pp. 169–188 and my paper "Rawls on Human Rights: Liberal or Universal?" in B.A. Haddock, Peri Roberts, and Peter Sutch (eds), *Principles and Political Order: The Challenge of Political Diversity* (London: Routledge, 2006), pp. 192–212.
23. See Allen Buchanan, *Justice, Legitimacy, Self-Determination: Moral Foundations for International Law* (Oxford, Oxford University Press, 2004), Part 4 ("Reform"). And Bruno Coppieters and Nick Fotion (eds), *Moral Constraints on War: Principles and Cases* (Lanham, MD: Lexington Books, 2002), pp. 32, 43, 251, 253, 255.
24. For good overview discussions on the question of legitimate authority, see the chapter by Bruno Coppieters ("Legitimate Authority") in *Moral Constraints on War*,

Chap. 2, pp. 41–58, esp. p. 50, and the chapter by Shi Yinhong and Shen Zhixiong ("After Kosovo: Moral and Legal Constraints on Humanitarian Intervention") in *Moral Constraints on War*, Chap. 13, pp. 247–263.

The case for exclusive UN authorization is discussed in both these chapters (in Chap. 2 at pp. 49, 50; in Chap. 13 at p. 231). See also p. xvii. And the case for the suitability of either UN or regional political authorization is discussed, in each chapter, at pp. 50, 256 respectively.

Interestingly, two of the authors in *Moral Constraints on War* (in separate chapters on Kosovo), though they differ on the justifiability of the NATO intervention there in 1999, agree in thinking that NATO lacked legitimate authority to do so. (See Chap. 11 by Carl Ceulemans, pro-NATO, at p. 226, and Chap. 12 by Boris Kashnikov, anti-NATO, at p. 244.) The two authors in Chap. 13 also regard the intervention, said by NATO to have been undertaken on humanitarian grounds, as "illegal" (p. 257).

25. For the advocacy of unilateral intervention here see Walzer, *Just and Unjust Wars*, preface to the 3rd edition, esp. pp. xiii-xvi, and Chap. 6, esp. pp. 105–108; and Walzer, "The Argument about Humanitarian Intervention," esp. pp. 31–33 (in *New Killing Fields*, pp. 23–27). See also *Moral Constraints on War*, p. 50 and n. 27 on p. 262. Walzer is willing to treat both unilateral interventions and those "authorized by regional alliances" as being on roughly the same footing (see "Kosovo" [*Dissent*, 1999] as reprinted in *Arguing About War*, p. 103). For a more recent and somewhat different view by Walzer, see the concluding paragraphs of the present chapter.
26. *Law of Peoples*, p. 48.
27. The only extended discussion Rawls offers is that of a confederation of liberal peoples (see *Law of Peoples*, pp. 42–43 and the important note on p. 43).
28. See *Law of Peoples*, p. 93, for both these quotes; see also p. 111.
29. This seems to be confirmed by what Rawls says (in *Law of Peoples*, pp. 112–113) about the gradual growth of initially rather narrow confederations (he calls them "cooperative institutions") of "mutually caring peoples." Rawls (following along the lines of Kant's *Perpetual Peace* [1795]) seems to think that these confederations, at least initially, will be composed of "neighboring states," and hence will be regional in character (*Law of Peoples*, p. 36; see also p. 43n).
30. See Walzer's "Governing the Globe" (2000) as reprinted in *Arguing About War*, pp. 171–191, at pp. 186–187, 189. This particular piece originated as Walzer's Multatuli Lecture (of 1999) at Leuven.
31. For Walzer's strong critique of the UN record here, see *Arguing About War*, pp. 77–78, 128.
32. Various versions of the present chapter have been presented, most recently at the meeting of the American Section of the International Association for Philosophy of Law and Social Philosophy (familiarly known as AMINTAPHIL) in Palo Alto, CA, November 2004; at North Carolina State University, Raleigh, NC, January 2005; at the University of Richmond, Richmond, VA, March 2005; and at a special symposium organized by the School of European Studies, at Cardiff University (UK), June 2005. I am grateful for many helpful comments from the audience in each of these cases and for detailed written comments by two members of the symposium panel in Cardiff – Peter Sutch and Nick Wheeler. The present chapter is a reworking of an earlier and somewhat different paper of mine published in *Journal of Social Philosophy* 36 (4) (2005), pp. 439–456.