

# Ending Tyranny in Iraq

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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 war. Operation “Iraqi Freedom” had four phases: military deployment and preparation; initial attack; capture of Baghdad and overthrow of the regime; and reconstruction and peacekeeping. In every phase except the last, the Anglo-American alliance (the Coalition) had remarkable success.<sup>1</sup> The first three phases—that is, the international war proper—lasted from March 19, 2003 until April 14, 2003. These were 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 amid virulent insurgent violence.<sup>2</sup>

The war in Iraq has reignited the passionate humanitarian intervention debate. President George W. Bush 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.

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 against 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 realities that the international community has to face.<sup>3</sup> These criticisms have arisen

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<sup>1</sup> See Marc Kusnetz et al., *Operation Iraqi Freedom* (Kansas City, Mo.: Andrews McMeel, 2003), p. xii. This is the account of the war by NBC News.

<sup>2</sup> In addition to the NBC News account, a useful source is M. L. Sifry and C. Cerf, eds., *The Iraqi War Reader: History, Documents, Opinions* (New York: Touchstone, 2003).

<sup>3</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* 97 (July 2003), p. 553.

against the background of a growing distrust of American power and the anxieties created 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 regime. 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>4</sup>

There are four claims that have been advanced by those who argue that the war in Iraq cannot be justified as humanitarian intervention:

*Claim 1:* The war cannot be justified as humanitarian intervention because it is always prohibited to wage war for human rights; that is, the doctrine of humanitarian intervention is invalid.

*Claim 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.

*Claim 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.

*Claim 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.

I deal only briefly with the all-important claim 1, the general justification of humanitarian intervention. I will assume that sometimes it is justified to intervene militarily for humanitarian reasons (as was

the case in Kosovo).<sup>5</sup> I do, however, outline a version of the doctrine of humanitarian intervention that I defend more fully elsewhere. I then respond to claims 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 a humanitarian intervention.

## THE HUMANITARIAN INTERVENTION DOCTRINE<sup>6</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:

- a justifiable intervention must be aimed at ending tyranny or anarchy;
- humanitarian interventions are governed, like all wars, by the doctrine of double effect (that is, the permissibility of causing serious harm as a side effect of promoting some good end, coupled with

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<sup>4</sup> I believe that the war was *legally* justified as well. For a full discussion of the legal aspects, see Fernando R. Tesón, *Humanitarian Intervention*, 3rd ed., revised and updated (Ardsley, N.Y.: Transnational, forthcoming 2005).

<sup>5</sup> I address this question fully in Téson, *Humanitarian Intervention*.

<sup>6</sup> This section is a very brief summary of Téson, *Humanitarian Intervention*, ch. 5.

an adequate theory of costs and benefits);

- in general, only severe cases of anarchy or tyranny<sup>7</sup> qualify for humanitarian intervention;
- the victims of tyranny or anarchy must welcome the intervention; and,
- 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>8</sup> They do not automatically determine legitimacy. Conversely, if the intervention does not satisfy any one principle, that is a *reason* for 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 facts ought to incline our judgment against legitimacy, but they ought not be treated as decisive for that judgment. We must consider those facts in light of the urgency of ending tyranny in particular cases.<sup>9</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 cannot be justified on humanitarian grounds either because it 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 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), rather than trying to rescue the Iraqis from Hussein's rule.<sup>10</sup> This objection may take the form described in claim 2—that Coalition leaders did not *say* they were intervening for humanitarian reasons—or

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<sup>7</sup> I write “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>8</sup> See Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1978), pp. 24–45.

<sup>9</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, 2001), pp. 33–35; International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: IDRC, 2001), pp. 31–37; and Stanley A. McChrystal, “Memorandum to the President: Chairman, Joint Chiefs of Staff,” in Alton Frye, ed., *Humanitarian Intervention: Crafting a Workable Doctrine* (New York: Council on Foreign Relations Press, 2000), pp. 61–70. The more flexible approach in the text is better suited to the complexities, similarities, and differences of various situations.

<sup>10</sup> See, e.g., Harold Hongju Koh, “On American Exceptionalism,” *Stanford Law Review* 55 (2003), pp. 1521–23; Richard A. Falk, “What Future for the UN Charter System of War Prevention?” *American Journal of International Law* 97 (2003), pp. 596–97; Michael Walzer, *Arguing about War* (New Haven: Yale University Press, 2004), p. 149; Gareth Evans, “Humanity Did Not Justify This War,” *Financial Times*, May 15, 2003, p. 15; and Jerome Slater, “Can the War with Iraq Be Justified?” *Buffalo News*, February 16, 2003, p. H1.

the form of claim 3—that they did not really *intend* the war to be humanitarian but had other, nonhumanitarian, 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 even to starting to discuss 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 *before or at the time of the invasion*: the intervener must *say* that he is acting for humanitarian reasons (claim 2); or, whatever he says, he must actually *have* a humanitarian intent (claim 3).

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.<sup>11</sup>

### *Distinguishing Right Intent from Right Motive*

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>12</sup> If a government's preeminent reasons or motives are nonhumanitarian, 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.

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 distinc-

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<sup>11</sup> Contra Falk, "What Future for the UN Charter System of War Prevention?" pp. 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? An analogy may help. 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.

<sup>12</sup> For a summary of this position, see Oliver Rambotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Cambridge: Polity Press, 1996), p. 43. See also ICISS, *The Responsibility to Protect*, pp. 35–36.

tion between *intention* and *motive*.<sup>13</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>14</sup> The action was an act of rescue. I intended to rescue the person, I committed to doing it, and I did it. 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, then, implies not only desire to do something but commitment to doing it. This involves believing that the act is under the agent's control. If I intended to rescue someone but failed to do so, say because I didn't put in 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>15</sup> The important point here is 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 Mill to the theory of action was to show that intention is more important than motive in evaluating action (as opposed to evaluating persons). The concept of inten-

tion fulfills a double role: it allows us to *characterize* the act,<sup>16</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.

<sup>13</sup> See John Stuart Mill, *Utilitarianism*, ed. Roger Crisp (Oxford: Oxford University Press, 1998), p. 65, n. 2. 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. . . . 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>14</sup> The discussion in the next two paragraphs owes to Michael Ridge, "Mill's Intentions and Motives," *Utilitas* 14, no. 1 (2002), p. 54.

<sup>15</sup> After this article was written, Terry Nardin kindly sent me his "Introduction," in 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" ("Introduction," in Nardin and Williams, eds., *Humanitarian Intervention*).

<sup>16</sup> On the various definitions of action and its relation with intent and causation, see George Wilson, "Action," *Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Stanford, Calif.: Metaphysics Research Lab, 2002); available at plato.stanford.edu.

Criminal law distinguishes intention from motive in a similar way.<sup>17</sup> Criminal law tends to ignore motives in establishing criminal liability. Thus, a crime gives rise to liability even if the agent had a good motive; and conversely, a noncriminal 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 itself 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>18</sup> then the intervention is humanitarian (and thus eligible under the doctrine), even if its *motive* is self-interested or otherwise nonhumanitarian.<sup>19</sup> This distinction is crucial, for if we fail to make it, governments can never have altruistic motives. They always have motives very different from the intention of 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.

Public debate on intervention falls prey to a semantic ambiguity. In the sentence “The United States invaded Iraq *because* it wanted

to neutralize the threat posed by Iraq's weapons of mass destruction,” the word “because” is ambiguous: it may mean intention or it may mean motive. Once we dissolve the ambiguity we can say that the liberation of Iraq was motivated by the American desire to disarm Iraq, and, when it turns out that the weapons are not there, we are accordingly free to praise the *act* of intervention while criticizing *the government* who intervened for erring or lying.

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, 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

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<sup>17</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), pp. 635–750. A useful summary is Wayne R. LaFave, “Motive,” in *Substantive Criminal Law*, 2nd ed. (Eagan, Minn.: West, 2005), section 5.3. The question is complex, as motive sometimes bears on the definition of the crime (think of hate speech crimes). In these cases, however, we can perhaps say that criminal punishment aims at finding *persons* blameworthy. The performance of an act is a necessary condition for that blameworthiness, as a liberal criminal law does not punish mere motive. (I am indebted to Marcelo Ferrante on this point.)

<sup>18</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>19</sup> I ignore here the issue of 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.

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 nonaltruistic) 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 nonaltruistic 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 nonhumanitarian motives. They usually advance cynical interpretations of the intentions of the interveners and are thus able to find the “real” reasons (selfish power politics, for example) 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 (which usually have self-

interested motives) sometimes nonetheless do 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 toward the rebuilding of a 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.

### *Evaluating Intentions*

Intention (but not motive) is, then, relevant to characterizing the action. Intention is a definitional element of the action. But intention, unlike motive, is also relevant, as Mill said, in *evaluating* the action morally. This is relevant for humanitarian intervention. A government that topples a repressive regime with the intent of imposing *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, for example, an event that some authors (notably Nicholas Wheeler) characterize as humanitarian intervention.<sup>20</sup> Vietnam toppled the murderous Pol Pot regime 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 to liberate the victims of severe tyranny.

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<sup>20</sup> See Wheeler, *Saving Strangers*, pp. 78–110.

It may be objected that, on my own account, intent is superfluous, because the only important factor, once we discard motive, is the humanitarian *outcome*. This view may be reinforced by recalling that the source of the intention/motive distinction, John Stuart Mill, was a utilitarian, so for him, arguably, outcomes were paramount. This view is certainly possible, and indeed the humanitarian outcome (people *getting rid* of the tyrant) is central in my account. I think the concept of intent, however, ought to be retained. Consider the example of the Falkland Islands war. There the United Kingdom defeated the tyrannical Argentine military regime and recovered possession of the islands. As a result of this defeat, Argentina's illegitimate leaders were so humiliated that the only thing for them to do was to relinquish power to civilians. Democracy then ensued in Argentina. Yet while many people would regard the British action as justified (on grounds of self-defense, for example), they would not call the British action humanitarian, and properly so. While the restoration of democracy and human rights in Argentina was a humanitarian outcome, *neither the motive nor the intention* of Prime Minister Margaret Thatcher included freeing the Argentines. The liberation of Argentina was a relatively remote consequence of the war. In contrast, in Iraq the Coalition intended to depose Hussein, as a means to something else (disarming Iraq, or neutralizing the enemies of the United States, or democratizing the region; see below). In addition, insisting on right intent is necessary to devise a workable operational definition of humanitarian intervention in international law and ethics; otherwise actions could not be judged when they are contemplated, since we would have to wait for all the consequences of the action to unfold.

Still, 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 all political institutions, including international law, should enable human flourishing and 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 intention of 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 of legitimacy are whether the intervener used 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." Even if the government has a just cause (for example, removing tyranny), "that war may be rendered unlawful by a wicked intent."<sup>21</sup> The Millian distinction I advance, however, differs from the distinction between *just cause* and *right intent* proposed by just war

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<sup>21</sup> R. W. Dyson, ed., *Aquinas: Political Writings* (New York: Cambridge University Press, 2002), p. 241.



theorists. For them, right intent seems equivalent to Mill's motive. The following formulation of the requirement of the just war conception 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>22</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 is too demanding. It 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, even less controversially, 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 unjust. Instead, I argue that we might disapprove of the leader's motives and still judge the action itself to be just.

Someone may retort that, in fact, we do often make moral judgments based on the agent's motives, so it is false to claim that they are morally irrelevant. Thus, for example, the reply goes, deposing a tyrant simply to steal his wealth is morally wrong. But this misses the distinction between judging actions and judging persons. 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 moral disapproval of the *agent*, not the action. 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 to 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. 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, there is one qualification: both Mill and Aquinas agree that if the intent is "wicked" (Aquinas) or "atrocious" (Mill), as when the "liberator" intends to visit equal or harsher treatment on the "liberated," the act cannot be considered justified—the intervention cannot be defined as humanitarian.

#### WHY THE INTERVENTION IN IRAQ WAS JUSTIFIED: NARROW AND GRAND STRATEGIES

Because critics of the war in 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 Hussein, committed to doing it, did it, and moreover, committed itself to helping Iraqis reconstruct their rav-

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<sup>22</sup> Mona Fixdal and Dan Smith, "Humanitarian Intervention and Just War," *Mershon International Studies Review* 42 (1998), p. 286.

aged society on the basis of a liberal constitution, human rights, democracy, and creating the conditions for economic recovery. If the intention was to depose 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 *agents*. Let us assume, for the sake of argument, that President Bush and Prime 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>23</sup> But the fact that the leaders who decree the intervention are unprincipled is independent of whether the *act* is justified.<sup>24</sup> 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 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 on humanitarian grounds. 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>25</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* us toward intervention. The removal of 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>26</sup> During reconstruction, the emphasis on human rights and democracy intensified, and culminated

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<sup>23</sup> See Falk, “What Future for the UN Charter System of War Prevention?” p. 597.

<sup>24</sup> Someone may insist that the way justifications enter the public domain have a bearing on the correctness of intervention. I am not persuaded by this objection because, in my view, typical public deliberation suffers from serious pathologies that undermine its epistemic credentials. See Guido Pincione and Fernando R. Tesón, *Deliberation, Democracy, and Rationality* (New York: Cambridge University Press, forthcoming).

<sup>25</sup> See Michael Ignatieff, “Why Are We in Iraq? (And Liberia? And Afghanistan?)” *New York Times Magazine*, September 7, 2003, pp. 38ff.

<sup>26</sup> See, e.g., George W. Bush, “State of the Union,” January 28, 2003; available at [www.whitehouse.gov/news/releases/2003/01/20030128-19.html#](http://www.whitehouse.gov/news/releases/2003/01/20030128-19.html#); 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, p. A13; George W. Bush, “Address to the Nation,” March 19, 2003; available at [www.whitehouse.gov/news/releases/2003/03/20030319-17.html](http://www.whitehouse.gov/news/releases/2003/03/20030319-17.html); and 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).

with the Coalition's organizing elections in Iraq and the president's second inaugural address on January 20, 2005.

From these facts it is possible to detect not one but two related yet distinct humanitarian rationales for the war in Iraq. The first can be described as the *narrow* humanitarian justification. This I categorize, in accordance with the discussion above, as *the intention to depose Hussein 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 Hussein 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>27</sup> If things go well, the country will have, for the first time in its history, a liberal constitution that will hopefully 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>28</sup> Surely these events must count in any evaluation of the war under humanitarian intervention principles.

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 regime). This is the grand plan that apparently underlies American strategy after the September 11, 2001, attacks, 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 regimes in Afghanistan and Iraq is part of that strategy. The strategy also includes the successful resolution of the Israeli-Palestinian conflict, as well as promoting liberal reforms in other Arab countries, both friend (such as Egypt and Saudi Arabia), and foe (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 was to enhance the security of the United States by promoting liberal reforms in the Middle East and elsewhere.<sup>29</sup>

President Bush clearly articulated the grand strategy in his second inaugural address.<sup>30</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

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<sup>27</sup> See "Democracy Stirs in the Middle East," *Economist*, March 5, 2005, p. 9.

<sup>28</sup> See "Grudging Respect," *New Republic*, March 21, 2005, p. 7.

<sup>29</sup> Someone could perhaps call the "grand strategy" an intention, but I think it is more accurately described as motivation. For 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 still be liberated.

<sup>30</sup> The text of the address can be found in "There Is No Justice Without Freedom," *Washington Post*, January 21, 2005, p. 24; available at [www.washingtonpost.com/wpdyn/articles/A23747-2005Jan20.html](http://www.washingtonpost.com/wpdyn/articles/A23747-2005Jan20.html). I quote from there.

tyranny in the world.” In this conception, values and interests converge, since “the survival of liberty in our land increasingly depends on the 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. 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. But that does not automatically mean that its application to this particular case is justified.<sup>31</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; alternatively, it may be unsuccessful. As Michael Walzer has reminded us, justified wars (and political strategies that include wars) must have reasonable chances of success.<sup>32</sup> 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.

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, 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 regimes.<sup>33</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 U.S. policy that it will not support repressive regimes.<sup>34</sup> Yielding to popular pressure, Syrian troops have left Lebanon after twenty-nine years of occupation. In Egypt, President Mubarak announced important political reforms. Saudi Arabia held its first election in its history (although flawed for lack of women’s vote).<sup>35</sup> In Iraq itself, there are conflicting signs about whether the insurgency may be picking up or winding down,<sup>36</sup> and 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

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<sup>31</sup> Cf. Kant’s distinction between pure and impure duty. See Robert B. Loudon, *Kant’s Impure Ethics* (Oxford: Oxford University Press, 2000), p. 9.

<sup>32</sup> Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), pp. 109–26.

<sup>33</sup> See the discussion in Fernando R. Tesón, *A Philosophy of International Law* (Boulder, Colo.: Westview Press, 1998), ch. 1.

<sup>34</sup> See “Special Report, Middle East: Something Stirs,” *Economist*, March 5, 2005, pp. 24–26; Neil MacFarquhar, “Unexpected Whiff of Freedom Proves Bracing for Mideast,” *New York Times*, March 6, 2005, p. 1.

<sup>35</sup> See Todd S. Purdum, “For Bush, No Boasts, but a Taste of Vindication,” *New York Times*, March 9, 2005, p. 10.

<sup>36</sup> Compare John F. Burns, “On Iraq’s Street of Fear, The Tide May Be Turning,” *New York Times*, March 21, 2005, p. A1, with John F. Burns and Eric Schmitt, “Generals Offer Sober Outlook on Iraqi War,” *New York Times*, May 19, 2005, p. A1.

possibility that the grand strategy may not have been as reckless as they thought.<sup>37</sup> In Palestine, the death of Yassir Arafat, the promise of pullout by Israel, and the recent meetings between President Bush and the Israeli and Palestinian leaders may offer a glimmer of hope for this most intractable of conflicts.

One last point about intent. A critic may claim that removing 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 to secure basic human rights in Iraq. Because (among other things) the United States apparently did not properly 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. Be that as it may, I agree that had the Coalition merely wanted to remove Hussein and then remained utterly indifferent to what happened to the Iraqi people, the intervention's humanitarian character would have been in doubt. Imagine that the Coalition, after removing Hussein, would have turned the country over to an equally vicious (but pro-Western) ruler. Such action would have shown "atrocious" or "wicked" intent and would have deprived the intervention of any humanitarian character, for the reasons Mill and Aquinas gave. 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 Hussein. They could have done that simply by removing him and then leaving the country—indeed, in that way they would have saved Coalition lives and billions of dollars. That they remained in Iraq partly in pursuit of national interest means that they had a nonaltruistic (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 a vicious dictator, plus removing him, plus not allowing this act of liberation to be *destroyed* by behavior driven by any nonhumanitarian 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.

Having established that the war in Iraq satisfies the first principle of the humanitarian intervention doctrine I outlined earlier, that a justifiable intervention must be aimed at ending tyranny or anarchy, I turn to examine the intervention under my other principles. The war in Iraq, I will conclude, fares reasonably well. I will concentrate on three criticisms of the war: that the Iraqi regime, bad as it was, did not qualify as a 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>38</sup>

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<sup>37</sup> Even in France, where defending the war is quite a risky business, some voices have started wondering. See Guy Sorman, "Et si Bush avait raison?" *Le Figaro*, February 26, 2005, p. 10.

<sup>38</sup> Space constraints prevent me from discussing here an important additional question: whether the costs of the intervention were morally acceptable. I address the point in Tesón, *Humanitarian Intervention*, ch. 10.

## WHY IRAQ WAS A CASE OF SEVERE TYRANNY

Supporters of humanitarian intervention agree that the bar for intervention should be set high.<sup>39</sup> One would have thought that if ever a government met that standard, Hussein's regime did. Many critics of the intervention grudgingly concede that at least this requirement was met. During his twenty-four-year rule, Hussein presided over a state of terror.<sup>40</sup> In addition to suppressing all civil and political liberties, Hussein murdered around 100,000 Kurds in 1988; killed about 300,000 Shia after the 1991 war; buried about 30,000 in a single grave; murdered around 40,000 marsh Arabs; caused millions of people to flee; and tortured many hundreds of thousands, perhaps millions, between 1968 and 2003.<sup>41</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.

In a report released in January 2004 and widely echoed in the media, however, Kenneth Roth, executive director of Human Rights Watch, argued that the war in Iraq cannot be justified as humanitarian intervention because the regime was not tyrannical enough at the time of the invasion.<sup>42</sup> Roth gives several arguments (including lack of humanitarian intent, which I already discussed), but his main one is that "the scope of the Iraqi government's killing in March 2003 was not of the exceptional and dire magnitude that would justify humanitarian intervention." For Human Rights Watch, only countries where there are *ongoing or imminent* atrocities qualify as targets for intervention. 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 Hussein didn't seem to be committing any new atrocities, intervention to remove him at the moment the Coalition did could not be justified on humanitarian grounds.

Of course, if the perpetration of ongoing atrocities were a *sine qua non* requirement of the legitimacy of intervention, then by definition the intervention in Iraq would not qualify. But 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 crumbling Nazi regime kept exterminating Jews until the very last moments of the war. Under the theory endorsed by Human Rights Watch, Hitler could not have been legitimately removed, on humanitarian grounds alone, once there would have been no more Jews to save. The Pakistani military would have been better off finishing its job of exterminating Bengalis quickly in order to block any argument for the humanitarian legitimacy of India's action. And Slobodan Milosevic should have done the same thing in Kosovo in 1999. And, as I

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<sup>39</sup> See, e.g., ICISS, *The Responsibility to Protect*, pp. 31–32.

<sup>40</sup> The regime'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: University of California Press, 1998), esp. chs. 1 and 2.

<sup>41</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 regime. See the work of the Iraq Memory Foundation at [www.iraqmemory.org](http://www.iraqmemory.org).

<sup>42</sup> Ken Roth, "War in Iraq: Not a Humanitarian Intervention," Human Rights Watch World Report 2004; available at [hrw.org/wrzk4/3.htm](http://hrw.org/wrzk4/3.htm).

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>43</sup> This is exactly the right standard for Iraq as well. Rulers like Hussein remain proper targets of intervention even after they have committed their worst crimes, and pervasive, violent, cruel, and continuous oppression made Iraq a good candidate for humanitarian intervention. 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 forever. Yet under the Human Rights Watch standard, the most *efficient* mass murderers are immune to intervention.<sup>44</sup>

## HOW IRAQIS WELCOMED THE INTERVENTION

There is solid evidence that the great majority of ordinary Iraqi citizens have seen the overthrow of Hussein as a blessing, the best thing that has happened to them during their lifetimes.<sup>45</sup> In fact, some Iraqis may still find it difficult to believe that Hussein

will not return to power—such is the level of trauma produced by the tyrant’s pervasive repressive methods.<sup>46</sup>

Critics, however, are not convinced. They claim that the *armed 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>47</sup> For these critics, in order for the intervention to be legitimate, it (and subsequent liberal reforms) must be accepted by the Iraqi population. The more insurgency there is, the less justifiable the war was in the first place, because even if the Coalition intended to liberate the Iraqis, continued

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<sup>43</sup> Independent International Commission on Kosovo, *Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000), p. 4; emphasis added.

<sup>44</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 regime certainly met the standard of severe tyranny I propose.

<sup>45</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,” *New York Times*, July 9, 2003, p. A21. See also Stephen Morris, “Why We Had to Fight—Iraq 366 Days Later,” *Weekend Australian*, March 20, 2004, p. 28; Daniel Byman, “Constructing a Democratic Iraq: Challenges and Opportunities,” *International Security* 28, no. 1 (2003), pp. 47–78; and Nancy Gibbs, “When the Cheering Stops: Jubilation and Chaos Greet the Fall of the Saddam Regime,” *Time*, April 21, 2003, p. 40.

<sup>46</sup> Paul Berman, “Silence and Cruelty,” *New Republic Online*, June 17, 2004, contends that Iraqis had suffered “psychological demolition.”

<sup>47</sup> See, e.g., Jeffrey Gettleman, “Anti-U.S. Outrage Unites a Growing Iraqi Resistance,” *New York Times*, April 11, 2004, p. 14. There was, of course, *ex ante* anxiety and suspicion at the occupation, which expressed the legitimate desire of the great majority of Iraqis that the Coalition leave once it could plausibly do so. But these sentiments are perfectly severable from the *welcome* by the great majority of the Iraqis of their liberation. My discussion here addresses only the claim that the *insurgency alone* is evidence of the Iraqi will not to be liberated.

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 of ending tyranny.

Critics are right that if the insurgency wins, the entire 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 because that ferocity is indication of popular support. But this, of course, does not follow. First, the evidence is inconsistent with the claim that the insurgents enjoy broad popular support.<sup>48</sup> Moreover, it is implausible to think that the great majority of the people would, irrationally, support those who wish to restore the tyrant (or someone like him). Second, unless the tyrant is so powerful that victory is simply impossible, it is wrong to pin the justification of the war on the ferocity of the enemy. The reason is that the Iraqi resistance is a *criminal enterprise*. Its purpose is to restore the brutal rule of Hussein in Iraq (or something like it) and, more generally, to defeat the forces of democracy and human rights and install totalitarian, premodern political structures. These insurgents are, most likely, either the accomplices in Hussein's past atrocities or allies in the terrorist war against the Coalition and the West; therefore, *their* opposition to intervention does not count. Dictators and their henchmen do not have defensive rights against interventions aimed at removing them.<sup>49</sup> 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 the 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 APPROVAL OF THE INTERNATIONAL COMMUNITY

A frequent criticism of the war is that the United States failed to enlist international support, in particular from sister democracies.<sup>50</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>48</sup> The evidence suggests that the insurgency is dominated by the disempowered Sunni minority, but also that not all Sunnis are sympathetic to it. See Liz Sly, "Sunni Political Front Takes Shape," *Chicago Tribune*, May 22, 2005, p. C9.

<sup>49</sup> See Fernando R. Tesón, "Self-Defense in International Law and Rights of Persons," *Ethics & International Affairs* 18, no. 1 (2004), pp. 87–91.

<sup>50</sup> See, e.g., James P. Rubin, "Stumbling into War," *Foreign Affairs* 82, no. 5 (2003), pp. 46–68.



My own view is that, when intervening for humanitarian reasons, it is *preferable* to have the support of the community of democratic states.<sup>51</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>52</sup> There are, broadly, three positions. The first is the view that humanitarian intervention is legitimate only when authorized by the UN Security Council.<sup>53</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 UN Security Council is inadequate as the guardian of human life and freedom. First, the right of veto is morally arbitrary, because it gives disproportionate power to some states, and because it means that humanitarian intervention will never be available against permanent members or their friends. Second, the right to veto increases the chances of inertia and inaction in the face of tyranny or anarchy. 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 of its *good* features.<sup>54</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 regime. And, usually, several of the nonpermanent 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 illegitimate regimes.

International lawyers, however, insist on the need for Security Council authorization.<sup>55</sup> Part of the explanation for this insistence is a misplaced faith on *process*. Lawyers like process, any process. Maintaining the

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<sup>51</sup> Thus, I am generally favorable to the proposal by Allen Buchanan and Robert O. Keohane, "The Preventive Use of Force: A Cosmopolitan Institutional Proposal," *Ethics & International Affairs* 18, no. 1 (2004), pp. 1–22, although they view approval by democratic states as a constraint, and not just as a desirable practice.

<sup>52</sup> See, inter alia, ICISS, *The Responsibility to Protect*, pp. 47–55; Wheeler, *Saving Strangers*, pp. 40–48; Ramsbotham and Woodhouse, *Humanitarian Intervention in Contemporary Conflict*, pp. 157–62; and Mark S. Stein, "Unauthorized Humanitarian Intervention," *Social Philosophy and Policy* 21, no. 1 (2004), pp. 14–38.

<sup>53</sup> This is the position held by a majority of legal scholars.

<sup>54</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 only recommends increasing "the democratic and accountable nature of the body." See *A More Secure World: Our Shared Responsibility—Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change* (New York: United Nations, 2004), p. 80.

<sup>55</sup> See, e.g., Michael Byers and Simon Chesterman, "Changing the Rules about Rules? Unilateral Humanitarian Intervention and the Future of International Law," in J. L. Holzgrefe and Robert O. Keohane, eds., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (New York: Cambridge University Press, 2003), 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*, p. 177; and Thomas M. Franck, "Interpretation and Change in the Law of Humanitarian Intervention," in Holzgrefe and Keohane, eds., *Humanitarian Intervention*, p. 204.

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 related to the credentials of those who participate. There is no 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 established procedures, even defective ones, yield important benefits because they impose at least minimum order on an international society marked by anarchy.<sup>56</sup> I do not evaluate here 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 weapons of mass destruction had been in Iraq, and the United States had decided to abide by process and not invade to remove the weapons, only to suffer an attack by terrorists armed by Hussein. 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, such as the French, which led the effort to block authorization. In short:

authorization by the Security Council is, like voting in the UN General Assembly, a mere *semblance* of process. Not only does it lack moral legitimacy; it does not even secure order, let alone justice.<sup>57</sup>

Humanitarian intervention, therefore, should in principle be approved or supported by a democratic alliance or coalition.<sup>58</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 will, one would hope, 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

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<sup>56</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*, 2nd 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, eds., *Order and Justice in International Relations* (New York: Oxford University Press, 2003), pp. 24–48.

<sup>57</sup> Eric Posner and John Yoo have suggested that the UN is increasingly used as a forum to oppose U.S. efforts to use force and that it hampers in various ways the advancement of international law. Eric Posner and John Yoo, "Where's the Old Bolton When We Need Him?" *Los Angeles Times*, April 19, 2005, p. B13. 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>58</sup> Buchanan and Keohane, in "The Preventive Use of Force," pp. 16–22, propose a two-stage system that includes Security Council action, under the assumption that reforming the Security Council is unrealistic.

governments must act without approval. 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>59</sup> Perhaps the innovative mechanisms proposed by Allen Buchanan and Robert Keohane can create the right incentives that would avert the dangers attendant on unauthorized action.<sup>60</sup> But in any case, the argument that humanitarian intervention is sometimes acceptable even without authorization should be available to citizens of democratic societies.

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* have accepted it had the United States and its allies succeeded in twisting the arm of the council members to go along? If Hussein was not a proper target of humanitarian intervention, then he 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>61</sup>

Be that as it may, it would have been better for the Coalition to secure the support of sister democracies. 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.

## CONSERVATIVES, LIBERALS, OR PROGRESSIVES?

The grand strategy that encompasses the war in Iraq and the commitment of the United States to promoting global freedom is not the simple product of militaristic, radical conservatives, as many have said, even if, 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 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 support the war in Iraq.<sup>62</sup> The vision of ridding the world of tyrants has been part of at least a segment of conservative thought (neoconservatism, for example), liberal-internationalist aspirations, and liberal-left humanitarian principles. Furthermore, promoting freedom and democracy is in everyone's interest in the

<sup>59</sup> ICISS, *The Responsibility to Protect*, pp. 54–55.

<sup>60</sup> See Buchanan and Keohane, "The Preventive Use of Force."

<sup>61</sup> Like the ICISS, Human Rights Watch correctly sees this problem, and Ken Roth stops short of suggesting in his essay, "War in Iraq," that lack of approval invariably means unlawfulness.

<sup>62</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.

West, regardless of political affiliation. Yet large segments of world opinion have been unwilling to find anything positive in the Iraq effort. The protest movement that swept the globe 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>63</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.<sup>64</sup> 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 has consistently uncovered in the Iraqi desert.<sup>65</sup>

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>63</sup> Berman, "Silence and Cruelty."

<sup>64</sup> Space limitations prevent me from addressing the question of the *costs* of the Iraqi war. I discuss it in Tesón, *Humanitarian Intervention*, ch. 10. While of course the death of innocents in the war is regrettable, I believe the war has generally complied with the strictures of the doctrine of double effect. For a general discussion, see Fernando R. Tesón, "The Liberal Case for Humanitarian Intervention," in Holzgrefe and Keohane, eds., *Humanitarian Intervention*, pp. 93–129.

<sup>65</sup> For two recent findings, see Sabrina Tavernise, "End of the Line for Families of Baghdad's Missing: The City Morgue," *New York Times*, May 20, 2005, p. 10; and Robert F. Worth, "Iraqis Find Graves Thought to Hold Hussein's Victims," *New York Times*, April 15, 2005, p. 8.