

Trusteeship: A Response to Failed States?

by

William Bain

University of British Columbia
Department of Political Science
C472-1866 Main Mall
Vancouver, British Columbia V6T 1Z1
(604) 822-3969
gamecock@interchange.ubc.ca
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On November 1, 1994, the United Nations Trusteeship Council voted to suspend operations after Palau, the last remaining trust territory, attained independence. Similarly, only a handful of non-self-governing territories, most of which are marginal in size, location, and importance, remain subject to the principles of trusteeship enshrined in Chapter XI of the United Nations Charter. Indeed, out of the events of decolonisation the sovereign state emerged as the supreme form of political organisation in international society; and in this post-colonial international society, dominions, colonies, protectorates, condominiums, mandates, trust territories, principalities, and free cities have all but vanished. To the person who is less familiar with these historic forms of political association, trusteeship is likely to appear as a remote and obscure practice of the past. We now live in what is truly a universal society of states. And in that respect, the purpose of this chapter is quite different from preceding chapters. There are no declarations of colonial policy to interpret and the international law of trusteeship has for the most part fallen into disuse. Rather, I propose to ask: is there a place for trusteeship in contemporary international society? Thus, I want to interrogate the characteristics of failed and unjust states, the claims attached to emerging standards of international legitimacy that centre on human rights, democracy, and free market economy, and the implications of legal and moral arguments that might justify forcible intervention in Kosovo. It will become evident that trusteeship is a sustainable practice in international society in so far as states, and the people residing in them, regard themselves as being associated, not merely as a society of states, but as a universal society of peoples joined in the pursuit of shared and common ends.

The false promise of independence

Just before the Constituent Assembly of India adopted the state's newly drafted constitution, B.R. Ambedkar reminded his colleagues of the implications of sovereign statehood: '[i]ndependence is no doubt a matter of joy. But let us not forget that this independence has thrown on us great responsibilities. By independence, we have lost the excuse of blaming the British for anything going wrong. If hereafter things

go wrong, we will have nobody to blame except ourselves.’¹ In these brief and unusually insightful words we are able to detect the supreme dilemma of decolonisation: independence held out the promise of emancipation, but entailed a frightening risk of failure. This promise of emancipation, of deliverance from poverty, ignorance, and oppression, is intelligible in theories that regard states as public arrangements which afford groups of human beings an opportunity to pursue and, if they are successful, to live the good life. Independence endowed a group of people with the right to build a state of their own, a state directed toward the realisation of ends that are of their own choosing and not those of their neighbours or of colonial masters. Indeed, the history of our world is, in the main, a study in difference; for anyone who pays attention to what distinguishes human relations from events in the natural world will realise that human beings deliberate about how they should live their lives. Human beings make choices, which are usually flawed and imperfect in some way, in relation to widely divergent beliefs about what is thought to be right, good, and desirable; and the ends they cherish, those related to tradition, knowledge, religion, language, family, and their neighbours rarely, if ever, constitute a perfect and harmonious whole. Thus, what may be valuable, pleasurable, advantageous, sublime, or virtuous to one person may be none of those things to someone else. And it is independence, and all the responsibilities it entails, that permits human beings to strive for ends that are distinctly their own.

The events of decolonisation confirm that achievement of independence did not always result in emancipation. But in order to understand fully the false promise of independence, it is necessary to remind ourselves of the principal reason for withholding or delaying the granting of independence. The problem with independence, as Margery Perham understood it, was that most colonial territories lacked nearly all the attributes of coherent and viable communities, the most important being the existence of an idea of community—civic, natural, or otherwise. Colonial societies were typically politically weak, economically immature, socially divided, and their populations ignorant of the obligations of citizenship and unfamiliar

¹ Hon. B.R. Ambedkar, *The Constituent Assembly Debates: Official Report*, vol. 11, 14-11-1949 to 26-11-1949, (New Delhi: Lok

with the workings of modern government. And it is this general condition of backwardness that hindered colonial development and which presented the greatest obstacle to the granting of independence.² Thus, for Perham, and others who wished for the orderly transformation of empire, the granting of independence could not be separated from an estimate of ability. Conducting the affairs of state, they assumed, required a type of wisdom and experience that is acquired slowly and only in the practice of doing things. Even the most sympathetic voices in support of colonial independence, such as Arthur Creech Jones, maintained that the extension of ‘political freedom is an indifferent objective if the economic basis for the operation of that freedom is not properly laid.’³ For independence to mean anything, for it to contribute something valuable, it must be subjected to a test of competence. And to the incapable, incompetent, and immature, that is, those people who are not adequately prepared for the responsibilities of independence, the best for which they can hope is a graded status under the watchful eye of a supervising trustee. To proceed any other way would be to embark upon an uncertain journey fraught with danger; for if the colonies were ‘cut loose,’ Perham warned, ‘they would presumably be set up as very weak units under an experimental world organization.’⁴

The hazards of which Perham spoke did not fail to impress Ambedkar who proved to be prophetically correct when he also warned his colleagues in the Constituent Assembly that, with independence, ‘there is a great danger of things going wrong.’⁵ Indeed, one of the distinctive features of post-colonial international society is the problem of failed states, that is, states in which evidence of the good life is largely, if not totally, absent. However, the category ‘failed states’ is less inclusive than one which would include all destitute states: poverty, disease, and lack of education are not by themselves sufficient to make a state a failed state. Civility is no less a duty of the poor, the ill, and the ignorant than of

Sabha Secretariat), 980.

² Margery Perham, *The Colonial Reckoning*, (London: Collins, 1961), 26.

³ Arthur Creech Jones, ‘The Labour Party and Colonial Policy 1945-51,’ *New Fabian Colonial Essays*, Arthur Creech Jones, ed., (London: Hogarth Press, 1959), 25.

⁴ Margery Perham, ‘Education for Self-Government,’ *Colonial Sequence, 1930-1949*, (London: Methuen & Co, 1967), 267.

⁵ Ambedkar, *The Constituent Assembly Debates*, 980.

the rich, the well, and the enlightened.⁶ Rather, failed states disclose a particular mode of violence which, according to K.J. Holsti, is typically not initiated by formal declarations of belligerents, prosecuted according to established and accepted codes of international conduct, and concluded by negotiated settlements. These so-called wars of the third kind obliterate the distinction between civilian and soldier, and, consequently, visit disproportionate destruction upon the innocent and the unarmed. Wars of the third kind are predominantly an affair of attrition, terror, and psychological actions against civilians; for they ‘involve civilians as both combatants and victims, [and] their main legacy after killing and maiming is the waves of refugees they create.’⁷ Thus, in failed states, authority, right, and law count for little as disputes are settled according to the dictates of necessity and the unbridled assertion of power. The activity of politics is an elusive and all too infrequent engagement; in public life, tolerance, compromise, and accommodation usually give place to absolutism, coercion, and violence. Failed states are, then, in the words of Jackson, states that ‘cannot or will not safeguard minimal *civil* conditions for their populations: domestic peace, law and order, and good governance.’⁸ And in the absence of these conditions of civil association, daily life in failed states is frequently marked by gross human rights abuses, war crimes, genocide, civil war, mass starvation, mutilation, and slavery.

It is certainly true that Sierra Leone, Liberia, Rwanda, Congo, Somalia, Sudan, Angola, Cambodia, Burma, and East Timor have been, in recent years, places of profound civil disorder and extraordinarily dangerous places to live. But conditions in these societies should not be confused with being peculiarly African or Asian: the atrocities committed in Bosnia-Herzegovina and Kosovo ought to divest us of the idea that the moral and material achievements of Western civilisation have rendered Europe immune to this sort of wanton destruction. However, questions pertaining to the existence and survival of failed states are most clearly intelligible in a normative shift that precipitated decolonisation and, subsequently, became

⁶ Robert Jackson, *The Global Covenant: Human Conduct in a World of States*, (Oxford: Oxford University Press, 2000), 295.

⁷ K.J. Holsti, *The State, War, and the State of War*, (Cambridge: Cambridge University Press, 1996), Chap. 2.

entrenched in the law of international society. Failed states, and the patterns of violence to which they give rise, are sustained in a rather perverse way by the constitutive norms of international society: the rights of political independence, territorial integrity, non-interference and legal equality help ensure the survival of what are otherwise unviable states.⁹ Prior to decolonisation, membership in international society depended upon a state's ability and willingness to provide order and to dispense justice domestically, and to fulfil the obligations of statehood internationally. Thus, only civilised states were entitled to membership in international society; for barbarians, who know nothing but passion and violence, were thought to be incapable of respecting the law of nations. The mind of the barbarian was incapable of such an effort. It is for this reason that John Stuart Mill asserts that barbarians are not entitled to the rights of nations: they are fit only to be conquered and to be subjugated to foreign rule.¹⁰ James Lorimer similarly argues that barbarian and savage societies, inasmuch as they are unable to perform the duties of statehood, are entitled only to partial or human recognition because they cannot be trusted to perform the duties of civilised nations. These societies, he argues, are populated by child-like races, and 'the right of undeveloped races, like the right of undeveloped individuals, is a right not to recognition as what they are not, but to guardianship—that is, to guidance—in becoming that of which they are capable, in realising their special ideals.'¹¹

This practice of the past is evident in the Charter of the United Nations: Article 4(1) stipulates that membership in the United Nations shall be comprised of states that are 'able and willing'¹² to carry out the obligations of the Organisation. However, this criteria of membership is today little more than a legal

⁸ Jackson, *The Global Covenant*, 296

⁹ For a detailed explication of this argument see Robert Jackson, *Quasi-States: Sovereignty, International Relations and the Third World*, (Cambridge: Cambridge University Press, 1990).

¹⁰ John Stuart Mill, 'A Few Words on Non-Intervention,' *Essays on Politics and Culture*, Gertrude Himmelfarb, ed., (Glouster, MA: Peter Smith, 1973), 377-78.

¹¹ James Lorimer, *The Institutes of the Law of Nations: A Treatise of the Jural Relations of Separate Political Communities*, (Edinburgh: William Blackwood and Sons, 1883), 101-133, 157.

fiction: decolonisation rendered all tests of ability and competence morally unsustainable. The most important statement of this normative shift is found in United Nations General Assembly Resolution 1514 (XV), which proclaims that the subjection of people to alien rule constitutes an offence to fundamental human rights and that the denial of self-determination represents a serious impediment to the achievement of world peace. Thus, in an explicit rejection of the standard of ability, the resolution also declares: ‘inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.’¹³ International acceptance of this normative shift, Jackson argues, signalled the emergence of an international society that was highly tolerant of domestic disorder, injustice, misrule, and violence—what at one point in international history was referred to as barbarism. Independence became a categorical right, a right that also resulted in the creation of a class of states that were entitled to full and unqualified membership in the society of states, but lacked working institutional arrangements, relied disproportionately upon international assistance, and whose existence was underwritten by the moral justification of self-determination. The triumph of self-determination also resulted in a curious inversion of the political theory of Thomas Hobbes. Some states could not be considered places of refuge and safety; indeed, life in these states was scarcely distinguishable from the state of nature. Thus, for the citizen of a failed state, ‘the state of nature is domestic, and civil society is international.’¹⁴

That some states more closely resemble a state of nature, places that are oppressive and which are unable or unwilling to effect peaceful and just arrangements of social intercourse, raises important questions about how international society ought to be rightly constituted. The law of contemporary international society is well equipped to deal with domestic disorder that threatens the general peace; but in lieu of a threat to international peace and security, a situation that would oblige the Security Council to act, how shall

¹² Charter of the United Nations, in *United Nations, Divided World*, Adam Roberts and Benedict Kingsbury, eds., (Oxford: Clarendon Press, 1993), 502.

¹³ ‘Declaration on the Granting of Independence to Colonial Countries and Peoples,’ *Basic Documents in International Law*, Ian Brownlie, ed., (Oxford: Clarendon Press, 1983), 300.

we best respond to the problem of failed states? Should the society of states be responsible for conditions within failed states? Or should the populations of failed states be left to themselves to work out the arrangements of public life, for better or worse? One possible response to these questions is to accept that a universal states system may be a great deal less permanent than it may otherwise appear. Christopher Clapham argues that understanding failed states must involve something more than conceiving the world as being composed solely of sovereign states; for this image, while intellectually consistent, does not adequately come to grips with states that are most conspicuous to the extent they disclose economic decay, armed opposition, domestic brutality, and armed insurrection. In these states, governmental legitimacy, as it is understood in the West, is but a myth; governments do not act as if they are authorised by the people to act on their behalf, but as personal enterprises operated on their own behalf and that of their supporters. Thus, these states are rather indicative of a type of statelessness that coexists with sovereign statehood, just as Africa's tribal society coexisted with European international society prior to its global expansion.¹⁵

Mervyn Frost proposes a rather different response to the problem of failed states, one that does not accept the 'reality' of statelessness, but which is tied up in the conditions of recognition and its bearing on individual freedom. Human freedom, he argues, depends on recognition by similarly free human beings. The same can be said of states: '[a] self-respecting free state is one that is recognized as such by other such states.'¹⁶ Thus, failed states may not meet all the criteria of statehood, they may not be able to fulfil their domestic or international obligations, but they should be recognised as members of international society so that they may be guided in their development as 'fully competent' members. The activity of recognition consists in learning a practice; and in international society that practice is concerned with becoming an autonomous state, that is, a community that is fundamental to the well-being of its citizens. And if the

¹⁴ Jackson, *Quasi-States*, 169.

¹⁵ Christopher Clapham, *Africa and the International System: The Politics of State Survival*, (Cambridge: Cambridge University Press, 1996), 7-13, 274.

autonomy of one state depends on the autonomy of all others, then international society cannot afford to be indifferent to the plight of failed states; its members cannot view the problems of failed states as being disconnected from their own; nor can failed states be left to sort out their problems on their own. Rather, Frost argues that steps must be taken so that failed states do not make mistakes in the future. Failed states must be educated, they must be tutored and guided in the aspects in which they are deficient, '[j]ust as social workers attempt to educate inadequate parents to the responsibilities of parenthood.'¹⁷

Neither Clapham nor Frost consider questions of trusteeship, but their respective arguments speak to issues that may be used to re-establish the legitimacy of trusteeship; for the events of post-colonial international society seem to have vindicated the views of Margery Perham rather than those of Kwame Nkrumah. Trusteeship may very well have a place in a world that is tolerant of statelessness; and treating failed states as communities that are in need of guidance and education is entirely consistent with the practice of trusteeship. Indeed, Ronald Robinson argued in 1965 that '[t]he problems of trusteeship were the problems of power, of the responsibilities of the strong toward the weak. The unequal distribution of political and economic power in the world, which was the fundamental basis of colonialism, has not been suddenly abolished by the accession of most colonies to political independence.'¹⁸ This view is no less true today than it was at the onset of decolonisation. Independence, and its central assumption that self-determination is a fundamental prerequisite of peace, security, and welfare, has been for some states just as dangerous as Ambedkar feared. It is for this reason that Peter Lyon suggests that pronouncements of the death of trusteeship may have been premature: the weak and disadvantaged peoples of the world continue to be disproportionately affected by persistent disorder, warfare, human misery, and acute shortages of

¹⁶ Mervyn Frost, 'What Ought to be Done about the Condition of States?' *The Condition of States: A Study in Normative Political Theory*, Cornelia Navari, ed., (Milton Keynes: Open University Press, 1991), 195

¹⁷ Frost, 'What Ought to be Done about the Condition of States?' 195; Mervyn Frost, *Ethics in International Relations: A Constitutive Theory*, (Cambridge: Cambridge University Press, 1996), 146-55; and Jackson, *The Global Covenant*, 300-1.

¹⁸ Kenneth Robinson, *The Dilemmas of Trusteeship: Aspects of British Colonial Policy Between the Wars*, (London: Oxford University Press, 1965), 93.

welfare. And while Lyon acknowledges that any attempt to revive the legitimacy of trusteeship will certainly evoke unhappy memories of colonialism, he maintains nonetheless that ‘a UN trusteeship would almost certainly be an improvement on the anarchical condition of the several quasi-states the world has now.’¹⁹ This defence of trusteeship raises the obvious question: is contemporary international society in some way conducive to the revival of trusteeship?

The new international legitimacy

Providing an answer to this question requires the examination of an emerging notion of international legitimacy—a development no less significant than the problem of failed states—that is interpreted in terms of conformity to standards related to human rights, democracy, and free market economy. An account of this new standard of legitimacy is most ambitiously put forward by Francis Fukuyama in his provocative volume, *The End of History and the Last Man*. Fukuyama’s reading of history suggests that fascism, communism, and variants of neo-Marxism have been proven to be dead-ends and that capitalism and liberal democracy have prevailed in the global market place of ideas. Capitalism is now the world’s only viable mode of economic activity. And the victory of capitalism is made inevitable by its hand-maiden, modern natural science; for only capitalism is capable of producing the wealth, prosperity, and technological advances that are necessary to satisfy human desires. Indeed, Fukuyama notes, in a thought that is evocative of T.B. Macaulay’s famous deprecation of Hindu and Arabian knowledge, that ‘Islamic “science” was incapable of producing the F-4 fighter-bombers and Chieftain tanks required to defend Khomeini’s Iran from ambitious neighbours like Iraq.’²⁰ Modern natural science is also the ‘mechanism’ that ‘guides us to the gates of the Promised Land of liberal democracy,’ however, it is democracy’s ability to satisfy man’s yearning for recognition as a man, free and equal to all others, which

¹⁹ Peter Lyon, ‘The Rise and Fall and Possible Revival of International Trusteeship,’ *The Journal of Commonwealth and Comparative Politics*, 31.1 (1993): 105-7.

establishes it as the ‘only coherent political aspiration that spans different regions and cultures around the globe.’²¹ The liberal state is a universal association; and membership in this association is accorded on the basis of being recognised as a human being as opposed to a member of a particular group. And it is because the liberal state embodies values that not only recognise, but also protect the dignity of human personality, what we normally call human rights, Fukuyama argues that the ‘modern liberal democratic world...is free of contradictions.’²²

This absence of contradiction confirms that capitalism, liberal democracy, and human rights have triumphed over all rival forms of political, economic, and social organisation. The implication of this triumph for world affairs is immediately apparent. Fukuyama argues that the same universal and homogeneous state, that is, the liberal state, which abolishes relations of inequality within societies, should abolish relations of inequality between them as well. Democracies, by their nature, are not inclined to question each other’s legitimacy that is conferred in a mutual act of recognition not unlike what Frost describes. Moreover, they share in common a love of equality and fundamental rights, and, hence, they are not disposed toward domination and aggrandisement. Fukuyama summarises this characterisation of democratic societies by saying that it ‘is not so much that liberal democracy constrains man’s natural instincts for aggression and violence, but that it has fundamentally transformed the instincts themselves and eliminated the motive for imperialism.’²³ In other words, the onward march of liberal democracy will ultimately see the end of imperialism, and all other forms of domination and exploitation, as a force in world affairs. And in a world in which democracy flourishes, human beings will be free to think, communicate, innovate, and create; they will be able to realise their material desires and to satisfy their need for

²⁰ Francis Fukuyama, *The End of History and the Last Man*, (New York: Avon Books, 1993), xv-xvi, 76, 90; and Thomas Babington Macaulay, ‘T.B. Macaulay’s minute on education,’ *The Correspondence of Lord William Cavendish Bentinck, Governor-General of India, 1828-1835*, C.H. Philips, ed., (Oxford: Oxford University Press, 1977), 1406-7.

²¹ Fukuyama, *The End of History and the Last Man*, xiii, xv.

²² Fukuyama, *The End of History and the Last Man*, 139.

²³ Fukuyama, *The End of History and the Last Man*, 263.

recognition. Thus, Fukuyama concludes that '[t]he peaceful behavior of democracies further suggests that the United States and other democracies have a long-term interest in preserving the sphere of democracy in the world, and in expanding it where possible and prudent.'²⁴

The sort of world that Fukuyama anticipates is most firmly entrenched in Europe, that is, a new Europe that has moved beyond a dark past of totalitarianism and total war. The idea of the new Europe, the values, principles, and codes of conduct that order relations within the European family of nations, is evident in a series of agreements and declarations, the most important of which follow from the Helsinki Final Act of 1975. At Helsinki, the thirty-five states agreed to a set of principles related to questions of security, disarmament, and economic, scientific, environmental, and humanitarian co-operation, which included a re-statement of their respect for sovereign equality, the non-use of force, territorial integrity, and the peaceful settlement of disputes. Of particular significance, although not from the standpoint of innovation, is their pledge to promote and encourage human rights and fundamental freedoms, 'all of which,' they declared, 'derive from the inherent dignity of the human person and are essential for his free and full development.'²⁵ The intent and meaning of this pledge is further elaborated in the Document of the Copenhagen Meeting of 1990, which proclaims that 'pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character.'²⁶ Indeed, the idea of the new Europe assumes, as does Fukuyama, that human rights and democracy are fundamental and necessary conditions of peace; for 'respect for human rights and fundamental freedoms and the development of societies based on

²⁴ Fukuyama, *The End of History and the Last Man*, 245, 280.

²⁵ 'Final Act of the Helsinki Conference,' *Basic Documents on Human Rights*, 3rd edn., Ian Brownlie, ed., (Oxford: Clarendon Press, 1992), 393-5.

²⁶ 'Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990,' *Basic Documents on Human Rights*, 3rd edn., Ian Brownlie, ed., (Oxford: Clarendon Press, 1992), 455.

pluralistic democracy and the rule of law are prerequisites for progress in setting up the lasting order of peace, security, justice and cooperation that they seek to establish in Europe.²⁷

However, it is in the Charter of Paris of 1990 that the idea of the new Europe comes into full view. In this declaration, signatories reaffirm their commitment to the principles enshrined in the Helsinki Final Act and they undertake to work toward realising a family of like-minded nations who share in common a fundamental respect for sanctity of human personality. They regard democracy, which is legitimised by the will and the consent of the people, as being founded on respect for the human person and the rule of law. Only democracy can be expected to safeguard freedom of expression, tolerance of minorities, and equality of person. Thus, states party to the Charter pledge to ‘build, consolidate and strengthen democracy as the only system of government of our nations.’²⁸ Democracy is thought to be no less important to the achievement of material prosperity and welfare: economic progress is an impossibility where individual human beings are not free and autonomous. And since economic liberty is of such basic importance, adherents to the Charter pledge also that ‘economic co-operation based on market economy constitutes an essential element of our relations and will be instrumental in the construction of a prosperous and united Europe.’²⁹ Therefore, the idea of the new Europe presupposes the assumption that in the absence of democratic institutions and free economic intercourse, social and economic progress remains a distant and remote aspiration. Indeed, the Charter of Paris is justified principally by the belief that a Europe built upon human rights, democracy, and economic liberty is destined to be a Europe whole, free, and prosperous.

Although European states have moved furthest along the road of Fukuyama’s universal history, the principles that constitute the new Europe are in evidence elsewhere in international society. For example, both the Organization of American States and the Organization of African Unity have adopted regionally

²⁷ ‘Document of the Copenhagen Meeting,’ 455.

²⁸ ‘The Charter of Paris for a New Europe, 1990,’ *Basic Documents on Human Rights*, 3rd edn., Ian Brownlie, ed., (Oxford: Clarendon Press, 1992), 474.

specific treaties pertaining to the promotion of human rights. Moreover, the OAS has resolved that any ‘irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected government in any of the Organization’s members states’ is to all members a matter of direct concern.³⁰ However, the universalisation of the principles of the new Europe is most clearly discerned in the now fashionable theory of human security. The United Nations Human Development Report of 1994 first popularised the term *human security* by suggesting:

Human security is a child who did not die, a disease that did not spread, a job that was not cut, and ethnic tension that did not explode in violence, a dissident who was not silenced. Human security is not a concern with weapons—it is a concern with human life and dignity.³¹

The Commission on Global Governance invokes the idea of human security to suggest that ‘the international community needs to make the protection of people and their security an aim of global security policy.’³² On this view, security should be founded on the sanctity of human dignity; that is, the idea of security consists in something more than protecting states from external threats: security properly understood refers to a people-centred approach that includes chronic threats such as hunger, disease, repression, and grave disruptions of ordinary life. The rights of states, then, are justified solely by the benefit they confer to the governed and by their continuing consent and democratic representation. Indeed, the Commission seems to accept the central premise of the Charter of Paris: promoting and protecting human rights is the ‘first responsibility of government.’³³

Considered as a moral theory, human security differs in several important ways from the theory of national security which, in the twentieth century, dominated both the theoretical and practical understanding of security in the relation of states. Human security entails a commitment to democratic development, and

²⁹ ‘The Charter of Paris,’ 481.

³⁰ ‘Representative Democracy,’ Resolution Adopted at the Fifth Plenary Session of the Organization of American States, June 5, 1991, AG/RES. 1080 (XXI-O/91).

³¹ United Nations Development Programme, *Human Development Report, 1994*, (New York: Oxford University Press, 1994), 22.

³² Report of the Commission on Global Governance, 70-71.

to ensuring quality of life and equity for all human beings; it also recognises the elementary importance of ‘human rights and fundamental freedoms, the right to live in dignity, with adequate food, shelter, health and education services, and under the rule of law and good governance.’³⁴ Thus, above all else, human security is concerned with the protection of the individual; for the ethics of human security do not allow us to remain detached from, or indifferent to, human suffering on account of deeply ingrained injunctions against interfering in the domestic affairs of sovereign states. The rights of states must not be permitted to impede action intended to secure safety of people; and the justification of national security must not be accepted, as it has been historically, as a reason for pre-empting human rights, fundamental freedoms, and the principles of democracy. Indeed, the moral claim of human security seeks to establish the principle that national security is not an end in itself.³⁵

The new international legitimacy, expressed either as the idea of Europe or as a universal theory of human security, supports the revival of trusteeship to the extent that it is expressive of an authentic and accepted standard in international society. In a world where membership and participation in international society is legitimised by the consent of the governed, respect for human personality, and economic liberty, states that offend these principles enjoy a rather tenuous status. Failed states, which are typically bastions of misery, terror, and tyranny, cannot be regarded as moral communities that embody something worth preserving. They are not repositories of the good life and therefore cannot claim the rights of an autonomous community. Thus, failed states are in need of some form of remedial action: they are unfit to direct their own affairs and therefore require guidance and education in the habits of being a legitimate member of international society. But to reach this conclusion is not necessarily significant. Diplomacy, sanctions, aid arrangements, and cultural exchanges may be all regarded as means with which to educate

³³ ‘The Charter of Paris,’ 475.

³⁴ Notes for an Address by the Honourable Lloyd Axworthy, Minister of Foreign Affairs, to the 51st General Assembly of the United Nations, New York, New York, September 24, 1996, 3-7.

recalcitrant and destitute states. However, these practices are accommodated fully by contemporary international society in a way that the use of force is not. Indeed, the conditions under which force may be used as an instrument of remedial action remains to be answered.

The duty to interfere?

The legitimate use of force in contemporary international society is conventionally limited to two conditions: self-defence and collective self-defence.³⁶ But the injunctions contained in Article 2 of the United Nations Charter, which strictly proscribe the use of force in the relations of states, have come up against efforts to expand these conditions to include humanitarian intervention, or humanitarian war. The justification of this proposed revision is readily intelligible in the principles of the new international legitimacy: the rights of states are justified by the benefit they confer on ordinary citizens as opposed to the advantages they confer on governments. It is in this context that Kofi Annan, the Secretary-General of the United Nations, cautions against interpreting restrictions on the legitimate use of force too narrowly:

The Charter, after all, was issued in the name of the “the peoples”, not the governments, of the United Nations. Its aim is not only to preserve international peace—vitaly important though that is—but also “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person.” The Charter protects the sovereignty of peoples. It was never meant as a licence for governments to trample on human rights and human dignity. Sovereignty implies responsibility, not just power.³⁷

The substantive claim of this argument supposes that genocide, ethnic cleansing, and other crimes of humanity cannot be allowed to stand on account of the inviolability of international boundaries. Indeed, Annan argues that it is often the case that the most tragic humanitarian crisis cannot be remedied short of

³⁵ Government of Canada, Department of Foreign Affairs and International Trade, *Human Security: Safety for People in a Changing World*, (Ottawa: Department of Foreign Affairs and International Trade, 1999), 5-6.

³⁶ Jackson, *The Global Covenant*, 252; and Michael Walzer, *Just and Unjust Wars: A Moral Argument With Historical Illustrations*, (New York: Basic Books, Inc., 1977), 58-72.

³⁷ Kofi Annan, ‘Secretary-General Reflects on “Intervention” in Thirty-Fifth Annual Ditchley Foundation Lecture,’ United Nations Press Release, June 26, 1998, SG/SM/6613, 3.

forcible intervention.³⁸ This stark reality has fuelled an intense debate that centres on the question: in circumstances of grave humanitarian crisis is there a clear duty to interfere on behalf of humanity? British Foreign Secretary Robin Cook answers this question in the affirmative by reverting to the paternal language of trusteeship: ‘when faced with an overwhelming humanitarian catastrophe, which a government has shown it is unwilling or unable to prevent or is actively promoting, the international community should intervene.’³⁹

In no other place has this proposition been put to a sterner test than in the context of NATO’s intervention in Kosovo. United Nations Security Council Resolution 1244 (1999) established an international presence in Kosovo, under the supervision of the United Nations, whose responsibilities include maintaining law and order, protecting human rights, performing basic administrative functions, and ‘[o]rganizing and overseeing the development of provisional institutions for democratic and autonomous self-government.’⁴⁰ Thus, Resolution 1244 transfers supreme civil authority in Kosovo from the Federal Republic of Yugoslavia to the United Nations sanctioned international presence and, thereby, transforms Kosovo into an international protectorate. In other words Kosovo is, in all but name, a trust territory. Indeed, Strobe Talbott, the American Deputy Secretary of State, described Kosovo as a ‘ward of the international community’: ‘[i]t goes about the business of rebuilding itself under the day-in, day-out protection and supervision of a consortium of global and regional organizations.’⁴¹ Our purpose in examining the case of Kosovo is not to comment on the desirability, prudence, efficacy, or likely consequences of humanitarian intervention; rather we want to interrogate the moral dialogue of the event in an attempt to discern normative movement, if any, in international society that may justify a revival of

³⁸ Annan, ‘Secretary-General Reflects on “Intervention”’, 5.

³⁹ Robin Cook, ‘Guiding Humanitarian Intervention,’ Speech by the Foreign Secretary, American Bar Association Lunch, QE II Conference Centre, London, Wednesday 19 July 2000.

⁴⁰ United Nations Security Council Resolution 1244 (1999), Adopted by the Security Council at its 4011th Meeting on 10 June 1999, S/RES/1244 (1999).

trusteeship. We want to ask if intervention in Kosovo discloses a justification which is sufficiently persuasive that it alters or even overturns the post-colonial constitution of international society that destroyed the legitimacy of trusteeship.

One way of investigating this question is in the tradition of legal positivism. Legal positivism regards international law as being ‘rooted in the practices of international society—in the customs and agreements acknowledged by states as governing their relations with one another—and that its rules can be determined by examining evidence of actual diplomatic practice and not by deduction from basic principles of natural law.’⁴² Thus, international law is the creation of state activity: it is the result of social practice and expression of consent. Justifying intervention in Kosovo on these grounds is, at once, difficult because it did not satisfy conventionally accepted criteria for the lawful use of force. Intervention in Kosovo clearly did not satisfy the condition of self-defence; nor did NATO act with the authorisation of the Security Council. It would seem, then, that the use of force constitutes a violation of the Charter of the United Nations, and particularly Article 2(4), which obliges all states to ‘refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.’⁴³ Indeed, NATO did threaten to take ‘whatever measures are necessary’ if its demands in respect of the situation in Kosovo were not met; and Javier Solana, the Secretary-General of NATO, then presented the Yugoslav government with a ‘final warning’ urging Yugoslavia to heed the demands of the international community. Yugoslavia protested to the Security Council, saying that NATO’s demands ‘represent an open and clear threat of aggression against the Federal Republic of Yugoslavia’ and ‘flagrantly violates the principles enshrined in the Charter of the United Nations, particularly Article 2, paragraph 4, thereof, and it undercuts

⁴¹ Strobe Talbott, ‘The Balkan Question and the European Answer,’ Address at the Aspen Institute, Aspen, Colorado, August 24, 1999, 5.

⁴² Terry Nardin, ‘Legal Positivism as a Theory of International Society,’ *International Society: Diverse Ethical Perspectives*, David R. Mapel and Terry Nardin, eds., (Princeton: Princeton University Press, 1998), 18.

⁴³ ‘Charter of the United Nations,’ *United Nations, Divided World*, Adam Roberts and Benedict Kingsbury, eds., (Oxford: Clarendon Press, 1993), 501.

the very foundations of the international legal order.’⁴⁴ This complaint is not entirely devoid of merit. NATO’s demands included acceptance of the principle that a final settlement for Kosovo should proceed ‘on the basis of the will of the people.’⁴⁵ Given the well-known political aspirations of the Kosovar Albanians, this language could not be interpreted to mean anything other than a threat to the territorial integrity of Yugoslavia.

Yugoslav complaints, though certainly not their conduct, did secure some support from members of the international community, not the least from Russia and China whose opposition precluded all hope of obtaining Security Council authorisation. Russia regarded NATO’s action ‘as a challenge to the current system of international relations’ and called on the alliance ‘to take immediate action to halt military operations.’⁴⁶ Members of the Rio Group expressed their ‘anxiety’ about NATO’s air attacks against Serbian targets and their regret that ‘recourse to the use of force in the Balkan region in contravention of the provisions of Article 53, paragraph 1, and Article 54 of the Charter of the United Nations, which state “...no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.”’⁴⁷ Likewise, the Movement of Non-Aligned Countries recalled the Security Council’s responsibility for the maintenance of international peace and security and ‘call[ed] for an immediate cessation of all hostilities.’⁴⁸ However, despite these condemnations, Adam Roberts is right in arguing that NATO’s conduct does not constitute an unambiguous violation of international law as Security

⁴⁴ Javier Solana, Letter dated 30 January 1999 from the Secretary-General of the North Atlantic Treaty Organization addressed to the President of the Federal Republic of Yugoslavia, Security Council, 2 February 1999, S/1999/107, 3-5; and Zivadin Jovanovic, Letter dated 1 February 1999 from the Minister for Foreign Affairs of the Federal Republic of Yugoslavia addressed to the President of the Security Council, United Nations Security Council, 2 February 1999, S/1999/107, 2.

⁴⁵ Rambouillet Accords, Interim Agreement for Peace and Self-Government in Kosovo, United Nations Security Council, 7 June 1999, United Nations Security Council, 7 June 1999, S/1999/648, 85.

⁴⁶ Declaration adopted by the Inter-Parliamentary Assembly of States members of the Commonwealth of Independent States concerning military operations by the North Atlantic Treaty Organization (NATO) in the territory of the Federal Republic of Yugoslavia, United Nations Security Council, 22 April 1999, S/1999/461, 3.

⁴⁷ Communiqué issued on 25 March 1999 by the Rio Group, United Nations Security Council 26 March 1999, S/1999/347, 2.

⁴⁸ Statement on the situation in Kosovo, Federal Republic of Yugoslavia, issued on 9 April 1999 by the Movement of Non-Aligned Countries, United Nations Security Council, 21 April 1999, S/1999/451, 2.

Council Resolutions 1199 and 1203 may be read to provide some legal support for intervention in Kosovo. The Security Council, acting under Chapter VII of the Charter, demanded in Resolution 1199 that security forces cease all action directed against the civilian population in Kosovo and it alluded to ‘further action and additional measures’ should Yugoslavia fail to fulfil its international obligations. In Resolution 1203 the Security Council established NATO’s direct interest in the situation in Kosovo by recognising the NATO Air Verification Mission.⁴⁹ Roberts adds that the Security Council’s rejection, by a vote of 12 to 3, of a Russian draft demanding an immediate cessation of the use of force did not render NATO’s action plainly illegal. However, a failed draft resolution, he concedes, ‘is not a strong basis for arguing the legality of a military action.’⁵⁰

Military action in Kosovo may also find legal support in principles of general international law. Roberts argues that developments in international humanitarian law, which have occurred since the adoption of the Charter in 1945, may provide a basis for military intervention. In this respect the Genocide Convention of 1948 is of particular interest inasmuch as signatories agree that genocide constitutes ‘a crime under international law which they undertake to prevent and to punish.’⁵¹ But the suggestion that violations of the Genocide Convention, and other instruments of international humanitarian law, are sufficient to set aside provisions of the Charter pertaining to the use of force is not itself free of ambiguity. Any right of intervention derived from international humanitarian law should be considered in relation to Article 103 of the Charter, which states that in the event of a conflict between obligations of the Charter and other international agreements, the obligations of the former shall prevail.⁵² International humanitarian law, including the Genocide Convention, does not exist apart from other parts of international law and nor does it

⁴⁹ United Nations Security Council Resolution 1199 (1998), Adopted by the Security Council at its 3930th Meeting on 23 September 1998, S/RES/1199 (1998); and United Nations Security Council Resolution 1203 (1998), Adopted by the Security Council at its 3937th Meeting on 24 October 1998, S/RES/1203 (1998).

⁵⁰ Adam Roberts, ‘NATO’s “Humanitarian War” Over Kosovo,’ *Survival*, 41 (1999): 105-6.

⁵¹ ‘Convention on the Prevention and Punishment of the Crime of Genocide, 1948,’ *Basic Documents on Human Rights*, 3rd edn., Ian Brownlie, ed., (Oxford: Clarendon Press, 1992), 31.

stand above the principles enshrined in the Charter. The Convention establishes conditions of individual criminal responsibility, not a right of intervention. Indeed, Article 8 of the Convention states that parties may call upon the ‘competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide.’⁵³ However, enforcement action authorised by the Security Council, the only such competent organ, would be based on a threat or breach of the peace and not on the principle of individual responsibility.⁵⁴

While NATO may find some justification for its intervention in Kosovo, it does not seem as if positive international law is a promising place in which to pursue a revival of trusteeship. That two permanent members of the Security Council declined to support what resulted in the establishment of an international protectorate in Kosovo suggests little change in a global normative order that has, since decolonisation, placed the value of self-determination above the value of providing good government. The same can be said of the mainly non-Western states that expressed considerable unease with the prospect of altering accepted conventions pertaining to the legitimate use of force. At best, all that can be said of a possible revival of trusteeship, in light of the current state of international law, is that it is tentative, deeply contested, and very much in doubt. This conclusion is all the more convincing when it is considered that Article 78 of the Charter expressly forbids the application of the trusteeship system ‘to territories that have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.’⁵⁵ Indeed, the conduct of states in respect of the situation in Kosovo is insufficiently consistent to suggest that a uniform and accepted practice has emerged to challenge the presumption against trusteeship in international society.

⁵² ‘Charter of the United Nations,’ 527.

⁵³ ‘Convention on the Prevention and Punishment of the Crime of Genocide, 1948,’ 32.

⁵⁴ Hans Kelsen, *The Law of the United Nations: A Critical Analysis of Its Fundamental Problems*, (London: Stevens & Sons, 1951), 49-50.

⁵⁵ ‘Charter of the United Nations,’ 521.

The law of humanity

This conclusion is rendered less certain when intervention in Kosovo is investigated in the context of the natural law tradition. Advocates of intervention are apt to take refuge in the idea of what Robin Cook calls ‘overwhelming humanitarian catastrophe,’ an idea similar to Michael Walzer’s notion of ‘supreme emergency’—a situation in which ordinary rights and duties may be overridden in response to an unusual or horrifying danger.⁵⁶ This idea may justify the establishment of an international protectorate in Kosovo in so far as it appeals to an authentic higher law: the law of humanity. This law derives its moral claim from the Grotian dictum: ‘[t]he last and most far-reaching reason for going to war to help others is the common tie of humanity, which even alone may be sufficient.’⁵⁷ For Grotius, a trait peculiar to all human beings is their desire for society, albeit society of a certain sort. Human beings strive for a peaceful and organised life; they seek arrangements that afford free use of life, limb, and liberty. But these arrangements collapse into strife and conflict when human beings pursue advantage at another person’s expense. A good society cannot be sustained when people are subjugated to the purposes of others or when the property of one person is seized arbitrarily for the satisfaction of another. Rather, Grotius argues the idea of society assumes that human beings, unlike animals, are inclined to accept restraints on their desires, passions, and ambitions so that their fellow creatures may benefit equally from the arrangements of public life. Thus, for Grotius, society is properly understood as an association of human beings that is concerned with the realisation of common advantage: ‘the end of society is by a common and united effort to preserve to everyone his own.’⁵⁸ And preserving the value of this common enterprise is something for which it is right to wage war;

⁵⁶ Cook, ‘Guiding Humanitarian Intervention,’ 3; and Walzer, *Just and Unjust Wars*, 251-68.

⁵⁷ Hugo Grotius, *De Jure Belli ac Pacis*, Louise R. Loomis, trans., (Roslyn, NY: Walter J. Black, Inc., 1949), 262.

⁵⁸ Grotius, *De Jure Belli ac Pacis*, 4, 26.

for human beings that are subjected to oppression that is ‘odious to every just man’ cannot be denied the ‘right of all human society.’⁵⁹

The use of force in Kosovo is most convincingly justified in the context of this right of war. Indeed, the common tie of humanity appears to be far more important in accounting for NATO’s action than any question of territory or material wealth. Without exception, members of the alliance pleaded their case by arguing that the war in Kosovo constituted, first and foremost, a determined and principled defence of values that are sacred to all human beings. Vaclav Havel interprets this defence of values to mean that human beings cannot remain indifferent to the suffering of strangers. Human rights, he argues, must be defended before all other interests, for they consist in something more valuable than the rights that attach to states.⁶⁰ Thus, we cannot pretend that the fate of others is unrelated to our own: the suffering of fellow human beings imposes an obligation to act, not as we are willing, but as we are able. The value of humanity is, in all cases, superior to the claims of states; and in this respect, NATO’s war in Kosovo may be regarded as unpopular, but it is manifestly just. And so, in a telling remark, Havel abandons the law of nations for the higher calling of humanity:

the Alliance has not acted out of licence, aggressiveness or disrespect for international law. On the contrary, it has acted out of respect for the law, for the law that ranks higher than the protection of the sovereignty of states. It has acted out of respect for the rights of humanity, as they are articulated by our conscience as well as by other instruments of international law.⁶¹

It is in these words that we are able to detect the moral reasoning of the natural law tradition and, thereby, the fundamental character of the law of humanity. For Havel, right conduct in international society cannot rest solely on the obligations of positive law: the rightness of an act must be also judged in relation to the dictates of human conscience. On this view, the law of humanity may enjoy recognition in formal

⁵⁹ Grotius, *De Jure Belli ac Pacis*, 263.

⁶⁰ Vaclav Havel, Address of His Excellency Vaclav Havel, President of the Czech Republic to both Houses of Parliament in the House of Commons Chamber, Ottawa, on Thursday, April 29, 1999, Government of Canada, Department of Foreign Affairs and International Trade, 11 August 1999, 4.

⁶¹ Havel, Address to both Houses of Parliament, 5.

instruments of international law, but its ultimate authority is justified by independent judgements that are subject to the test of reason. The person who acts in accordance with the law of humanity proceeds on the conviction that their actions must be in harmony with their conscience. In other words, the law of humanity 'identifies justice with moral standards that are independent of the practices of actual communities, with the result that justice becomes an alternative to law and subversive of it.'⁶²

Perhaps the most peculiar and advantageous quality of the law of humanity is that it justifies actions that might be otherwise regarded as illegal and, therefore, immoral. Thus, when confronted with this form of moral argument, the Yugoslav claim that NATO's use of force in Kosovo constitutes a 'flagrant violation' of the principles contained in Article 2 of the Charter of the United Nations Charter begins to lose coherence. Armed with the law of humanity, members of NATO were able to admit that they had offended accepted standards of conduct in international society while at the same time maintain the justice of their action. For example, when asked if the use of force in Kosovo required authorisation the of Security Council, US Secretary of State Madeleine Albright replied: '[w]e do not believe that we need Security Council authorization for this, and feel that NATO, which now has 19 countries, operates on a consensual basis. It has the responsibility of carrying out this kind of an attack against somebody who has a record of doing ethnic cleansing and has specifically chosen people because of their religion.'⁶³ Likewise, Canadian Foreign Minister Lloyd Axworthy argues that the decision to intervene was not motivated by any direct threat to a NATO member: systematic violence directed against Serbia's Albanian minority and the threat this action presented to the values and beliefs of the alliance justified the use of force. And while he concedes freely that Security Council authorisation would have been preferable to unilateral action, he maintains that the international community cannot acquiesce to human suffering and oppression because 'certain members of the Council could not reconcile yesterday's assumptions about sovereignty with today's

⁶² Nardin, 'Legal Positivism as a Theory of International Society,' 27.

⁶³ Madeleine K. Albright, Interview with the Middle East Broadcasting Corporation, Washington, DC, March 25, 1999.

imperatives of human emergency.’⁶⁴ Rather, he submits that the use of force in Kosovo ‘symbolizes how human security has become a focus of attention and concern for the international community.’⁶⁵

In every respect the law of humanity confirms the superiority of human rights and fundamental freedoms over the rights and duties of classical international society: political independence, territorial integrity, non-interference, and non-use of force. Indeed, the supreme value of humanity suggests to British Prime Minister Tony Blair that ‘the principle of non-interference must be qualified in important respects. Acts of genocide can never be a purely internal matter.’⁶⁶ Robin Cook is no less sure of the superiority of the law of humanity: ‘the threat of veto by two of the Permanent Members made Security Council action [in Kosovo] impossible despite majority support for our cause. But, under these exceptional circumstances, we were still justified, in every respect, in intervening as we did through NATO.’⁶⁷ But the law of humanity consists in something more than an affirmation of human rights and fundamental freedoms that may, in circumstances of grave humanitarian emergency, justify derogation from accepted rules of conduct in international society. At the end of the nineteenth century, Sir Henry Maine argued that the law of nations, inasmuch as it is founded on principles of natural law, is binding on all men in all times. However, he observes that the relations of European international society is subject to an additional law:

the Christian nations of Europe, and their descendants on this side of the Atlantic, by the vast superiority of their attainments in arts, and science, and commerce, as well as in policy and government; and, above all, by the brighter light, the more certain truths, and the more definite sanction which Christianity has communicated to the ethical jurisprudence of the ancients, have established a law of nations peculiar to themselves.⁶⁸

⁶⁴ ‘Kosovo and the Human Security Agenda,’ Notes for an Address by the Honourable Lloyd Axworthy, Minister of Foreign affairs, to the Woodrow Wilson School of Public and International Relations, Princeton University, Princeton New Jersey, April 7, 1999, 2.

⁶⁵ ‘Kosovo and the Human Security Agenda,’ 3.

⁶⁶ Tony Blair, ‘Doctrine of the International Community,’ Speech by the Prime Minister to the Economic Club of Chicago, Hilton Hotel, Chicago, USA, Thursday, 22 April 1999, Foreign and Commonwealth Office, London, 7,

⁶⁷ Cook, ‘Guiding Humanitarian Intervention,’ 2.

⁶⁸ Henry Sumner Maine, *International Law*, (London: John Murray, Albemarle Street, 1894), 33.

To be civilised in this period of international history was to be recognised as a subject of this public international law of Europe. At the beginning of the twenty-first century, this relation of natural law and positive law seems to be reversed. The public international law of Europe is now the universal law of international society. And the test of civilisation is no longer informed by membership in a society of states, but in a global human society in which the law of humanity reigns supreme. Thus, the law of humanity also expresses a particular notion of the good society.

The law of humanity expresses the good society in the Grotian understanding of the term: society is an unified enterprise that is concerned with securing common advantage. It is this idea of unity that prefigures Tony Blair's claim: '[w]e are witnessing the beginnings of a new doctrine of international community.'⁶⁹ In this world, democracy is on the march; security is conceived in terms of liberty, the rule of law, human rights; and prosperity is ensured by the expansion of free trade. These changes, he insists, are both far-reaching and fundamental. Indeed, he argues, in language that reminds us of Francis Fukuyama's claims, that '[w]e cannot refuse to participate in global markets if we want to prosper. We cannot ignore new political ideas in other countries if we want to innovate. We cannot turn our backs on conflicts and the violation of human rights within other countries if we want still to be secure.'⁷⁰ The world is moving, perhaps irreversibly, toward a condition of mutual dependence. States can no longer afford 'go to it alone,' for isolation is sure to result in poverty and insecurity: '[w]e are all internationalists now, whether we like it or not.'⁷¹ There is no real alternative in sight.

The voice of Fukuyama and the principles of the new international legitimacy are even more pronounced in the corresponding American idea of the good society, an idea that is premised on the grand Wilsonian aspiration of making the world safe for democracy. Strobe Talbott describes European political

⁶⁹ Blair, 'Doctrine of the International Community,' 3.

⁷⁰ Blair, 'Doctrine of the International Community,' 3.

⁷¹ Blair, 'Doctrine of the International Community,' 3.

life in darker times as resembling a ‘musty, sprawling laboratory in the base of a gothic castle, where mad scientists were experimenting with competing yet similar political monstrosities—two in particular: fascism and communism.’⁷² But out of these catastrophic experiments emerged a concert of European democracies who subscribe to a common creed that rests on the principles of tolerance, justice, and respect for human dignity. These are the values that the United States must defend against modern-day barbarism; for ‘we have a moral responsibility,’ Clinton asserts, ‘to oppose crimes against humanity and mass ethnic and religious killing and cleansing where we can.’⁷³ Thus, Strobe Talbott proposes the American answer to the Balkan question and other problems of a similar sort:

A state should let its people choose their leaders through elections, it should derive strength and cohesion from the diversity of its population, and it should protect the rights of minorities, especially those of the ultimate minority—the individual citizen. In short, to be successful and strong, to survive and prosper, a state should be a liberal democracy.⁷⁴

Indeed, the value of democracy is founded on the belief that a society that respects the rights of minorities and the rule of law domestically will respect the rights of the weak and to refrain from the illegitimate use of force internationally. Therefore, it seems as if this notion of the good society, as does the doctrine of international community, blurs the moral distinction between domestic and international society: we are truly a universal family of peoples joined in the pursuit of common and mutual advantage.

In this sort of world the revival of trusteeship is a distinct and, indeed, morally sustainable proposition. The law of humanity presupposes the assumption that the exercise of political power should benefit those persons who are subject to it. It assumes as well that when political power is abused, the members of international society are entitled, individually and collectively, to intervene on behalf of humanity and against barbarism. Thus, a society that falls into a state unconscionable tyranny shall be

⁷² Talbott, ‘The Balkan Question and the European Answer,’ 3.

⁷³ William Jefferson Clinton, Remarks by the President at United States Air Force Academy Commencement Ceremony, United States Air Force Academy, Colorado Springs, Colorado, The White House, Office of the Press Secretary, June 2, 1999, 7.

⁷⁴ Talbott, ‘The Balkan Question and the European Answer,’ 1.

instructed and supervised in becoming a good society, one whose public arrangements correspond with the law of humanity. And in that respect, we have returned to where we began this investigation of the idea of trusteeship: the thought of Edmund Burke. It bears repeating that Burke believed that the possession of political power imposed a special type of obligation: 'all political power which is set over men, and that all privilege claimed or exercised in exclusion of them, being wholly artificial, and for so much a derogation from the natural equality of mankind at large, ought to be some way or other exercised ultimately for their benefit.'⁷⁵ For Burke, the East India Company's rights of political dominion and commercial monopoly were justified by the benefit they conferred on the native inhabitants of India; and in the absence of such a benefit he approved of parliamentary interference in the Company's affairs. The moral claim of Burke's indictment of the East India Company has been used historically to interfere in the affairs of people on account of endemic warfare, chronic disorder, despotic government, offensive religious custom, mutilation, cannibalism, slavery, and a multitude of other defects. In contemporary international society, interference in the affairs of others is justified increasingly on account of disrespect for human rights, democracy, economic liberty, and the rule of law.

Trusteeship and the justification of international society

If trusteeship is to have a future in international society, then there is reason to reflect on how that society is justified morally. We began this chapter with a discussion of independence and its claim that groups of people are entitled to pursue in their own territorial jurisdiction, without interference from outsiders, ends that they have chosen for themselves as opposed to ends that have been chosen for them. The theory of independence assumes that the good consists in many ideas and things. Thus, states are conceived as moral communities in their own right. Against this argument we encounter the claim that the rights of statehood are justified solely to the extent that they are instrumental to the realisation of a society

⁷⁵ Edmund Burke, 'Speech on Mr. Fox's East India Bill, December 1, 1783,' *The Works of the Right Honourable Edmund Burke*, vol. II, (Boston: Little, Brown, and Company, 1899), 439.

that is good in a certain way, that is, a society that conforms to universal standards pertaining to human rights, democracy, and economic liberty. These conflicting claims raise important questions about the justification of international society. Is international society justified by the value of a political community being able to pursue a notion of the good life that is distinctly its own? Or, alternatively, is international society justified by the pursuit of shared ends that are common to all? Theorists who identify themselves with the international society approach to international relations have attempted to engage these questions in terms of two contending moral ideas: pluralism and solidarism. It is in the context of these two ideas that we want to reflect on the future of trusteeship.

The ethics of pluralism are intelligible in a form of political association in which human beings are associated in recognition of mutual rules of conduct. Michael Oakeshott understands political association of this sort as consisting in the idea of *societas*—an association of persons or groups of persons who understand themselves as being ‘joined in the acknowledgement of the authority of a practice and not in respect of a common substantive purpose.’⁷⁶ Thus, the *societas* expresses a mode of civil association. This type of association does not prevent human beings from seeking ends in co-operation and in the company of others; they may, by an act of consent, join with others to pursue one end to the exclusion of another. However, membership in the association does not in any way depend on valuing, or even acknowledging, a particular end. Rather, the idea of *societas* postulates human beings as being joined in mutual recognition of law and their conduct as being justified in relation to the obligations of this law rather than by the realisation of some particular end. For, Oakeshott this criterion of membership expresses:

⁷⁶ Michael Oakeshott, *On Human Conduct*, (Oxford: Clarendon Press, 1996), 242.

an association, not of pilgrims travelling to a common destination, but of adventurers each responding as best he can to the ordeal of consciousness in a world composed of others of his kind, each the inheritor of the imaginative achievements (moral and intellectual) of those who have gone before and some joined in a variety of prudential practices, but here partners in a practice of civility the rules of which are not devices for satisfying substantive wants and whose obligations create no symbiotic relationship.⁷⁷

It is this idea of political association that best conveys the character of Hedley Bull's notion of international society. A society of states, he writes, 'exists when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions.'⁷⁸

Robert Jackson argues that this society of states is historically a pluralist arrangement in two important respects: (1) it is an association composed of multiple political communities that is based on the values of sovereign equality, territorial integrity, and non-intervention; and (2), it is an arrangement in which the citizens of these communities are entitled to determine their own domestic values and to pursue them in their own way.⁷⁹ These normative arrangements speak to a world that is distinguished by difference. They suggest that the ends of life remain unsettled and that the values of one community may be incommensurable with those of another. Thus, international society is not constituted or organised in the interest of any one member or group of members; nor is it classically understood as being directed toward the achievement of anything apart from the requisite conditions, namely peace and order, that are required to sustain its integrity. Located at the heart of this notion of society is an ethic of pluralism: 'the conception that there are many different ends that men may seek and still be fully rational, fully men, capable of understanding each other.'⁸⁰ Therefore, these arrangements of international society are justified by the preservation of difference; for the constitutive norms of the association, sovereign equality, territorial integrity, and non-intervention, impart no intrinsic value beyond the extent to which they provide the basis

⁷⁷ Oakeshott, *On Human Conduct*, 243.

⁷⁸ Bull, *The Anarchical Society: A Study of Order in World Politics*, (New York: Columbia University Press, 1977), 13.

⁷⁹ Jackson, *The Global Covenant*, 178-79.

of mutual coexistence in the pursuit of difference. Indeed, the definitive moral justification of this conception of society is not disclosed in the shared purposes of its member states...but in their acknowledgement of formal rules of mutual accommodation.’⁸¹

A world constituted as a *societas* of states cannot accommodate the practice of trusteeship. The values of sovereign equality, territorial integrity, and non-interference cannot be reconciled with a practice that is based on inequality and interference. Trusteeship presupposes, by definition, a relationship of unequals; it is a practice that assumes that some people are incompetent in such a way that they do not understand their situation. And on account of their incompetence they are regarded as being unable to choose for themselves. Someone must choose for them. In contrast, international society is a voluntary association composed of legal equals that conduct their relations according to the principle of consent. The procedural language of a *societas* of states is not one of coercion, but is indicated in a vocabulary that includes: ‘compromise,’ ‘accommodation,’ ‘agreement,’ ‘negotiation,’ ‘persuasion,’ ‘understanding,’ and ‘restraint.’ Thus, orderly and peaceful relations in international society depend on the principle that promises must be kept—*pacta sunt servanda*.⁸² Persons and communities that are judged to be incompetent are excluded from these arrangements; for they cannot consent to, and nor can they be expected to honour, arrangements that they do not understand. Conversely, it is a mistake to argue that a state, legally equal to all others, can consent to a condition of tutelage. To do so is to confuse the characters of sovereignty and trusteeship. Whereas a sovereign state is answerable to no higher authority and may direct its affairs in any way it chooses so long as it does not violate the rules of the association, a ward is dependent on a trustee and is therefore not similarly free to choose the direction in which it will move. Samuel La Selva frames the crucial distinction that distinguishes the relation of trustee and ward when he argues: ‘[i]f the condition of

⁸⁰ Isaiah Berlin, ‘The Pursuit of the Ideal,’ *The Crooked Timber of Humanity*, Henry Hardy, ed., (London: Fontana Press, 1991), 11.

⁸¹ Terry Nardin, *Law, Morality, and the Relations of States*, (Princeton: Princeton University Press, 1983), 309.

⁸² James Crawford, *The Creation of States in International Law*, (Oxford: Clarendon Press, 1979) 79; and James Mayall, *Nationalism and International Society*, (Cambridge: Cambridge University Press, 1990), 37.

slavery cannot be enforced, if an individual can cease to be a slave whenever he chooses, he is not slave at all.’⁸³ In like manner, if the idea of trusteeship is to have any meaning, a sovereign state cannot consent to being a ward if it is able to terminate that status by its own choosing.

The post-colonial *societas* of states is, against the claims and justifications of trusteeship, strictly anti-paternal. For human beings who desire to be the author of their own actions, there is great value in experiencing the adventure of choosing, an adventure that fundamentally entails the risk of failure. Thus, a pluralist international society assumes that individual communities are the best judges of their own welfare. This is the moral claim that underpinned decolonisation. Collectively the peoples of Asia and Africa declared: ‘We do not wish for any special treatment. We do not wish to be protected; we want to be allowed to make our own mistakes, and to work out our own salvation, as you did.’⁸⁴ This idea follows from the belief that moral goodness resides in the ability of ‘each man to decide things for himself, to make his own choices, to determine the directions in which his own happiness lies and to move in those directions.’⁸⁵ And in a world in which human beings aspire to be the author of their own actions, they must be permitted to succeed and to fail in their efforts. Without the possibility of failure the value and meaning of liberty and self-determination are rendered incoherent. For if we understand the essence of being human as involving the direction of one’s own affairs, that is, being self-determining, then to manipulate human beings toward ends that they do not see or cherish is to ‘deny their human essence, to treat them as subjects without wills of their own, and therefore to degrade them.’⁸⁶ To treat human beings this way is to engage them paternally, that is, in a mode of conduct that Immanuel Kant described as ‘the greatest despotism imaginable.’⁸⁷ It is for this reason, and not cynical indifference to the tragedy of human cruelty and

⁸³ Samuel V. LaSelva, ‘Selling Oneself Into Slavery: Mill and Paternalism,’ *Political Studies*, 35 (1987): 215.

⁸⁴ Quoted in Margery Perham, ‘Some Problems of Indirect Rule,’ *Journal of the African Society*, 34 (1935), 13.

⁸⁵ Michael Oakeshott, *Morality and Politics in Modern Europe*, Shirley Robin Letwin, (ed.), (New Haven: Yale University Press, 1993), 60.

⁸⁶ Isaiah Berlin, ‘Two Concepts of Liberty,’ *Four Essays on Liberty*, (Oxford: Oxford University Press, 1969), 136-37.

⁸⁷ Quoted in Berlin, ‘Two Concepts of Liberty,’ 137.

suffering, that pluralist international society is highly tolerant of domestic failure and intolerant of international conditions that may impede or prevent communities from living their collective lives.

If international society is properly understood as a *societas* of states, it is also true that it discloses evidence of the corresponding idea: *universitas*. Oakeshott understands *universitas* as a form of corporate association: ‘persons associated in respect of some identified common purpose, in the pursuit of some acknowledged substantive end, or in the promotion of some specified enduring interest.’⁸⁸ Law in this type of association is not justified by the achievement of mutual coexistence and nor it is directed toward the restraint of power. On the contrary, law is endowed with a purpose and it is justified only so far as it is instrumental to the realisation of this purpose. Thus, a *universitas* of states is not concerned with the preservation of difference, but with the promotion of unity; for membership entails an undertaking to promote the purpose for which the association is constituted. Indeed, for Oakeshott, ‘a *universitas* is a many associated in the pursuit of a substantive enterprise, and its ruler (if any) is related to this enterprise in some such manner as that of its custodian, guardian, director, or manager.’⁸⁹ Conceived in these terms, international society may be thought of as a remedial engagement or as an arrangement of spiritual salvation. Hence, the arrangements of international society may be justified in so far as they lead to the reform of failed states or to the mutual constitution of human freedom and individuality. But irrespective of the end for which a *universitas* of states is constituted and justified, it is an association of the many that speaks with one single unified voice.⁹⁰ The solidarist ethics of a *universitas* of states embraces all realms and all peoples: international society discloses a true end.

⁸⁸ Oakeshott, *On Human Conduct*, 203.

⁸⁹ Oakeshott, *On Human Conduct*, 204, 218.

⁹⁰ Oakeshott, *On Human Conduct*, 205.

Vaclav Havel suggests this idea of association when he declares: ‘our fates are merged together into one single destiny.’⁹¹ The ethics of solidarism understands the pluralist society of states as being destined to evolve into a *cosmopolis*: a great society of humanity. Thus, we might think of a solidarist world as a great symphony of peoples all working in unison from the same score. In a world justified by solidarist ethics, the practice of trusteeship may very well enjoy a rather secure place. Indeed, the obstacles that render trusteeship morally dubious in pluralist international society disclose a different character in a *universitas* of states. The values of political independence, territorial integrity, and non-intervention cannot be regarded as authoritative injunctions against interference; for, in a solidarist world, their value derives from their instrumental relation to the realisation of ends shared by all. Likewise, it is no longer possible to criticise interference on the grounds that Kant denounced it: the claim that treating equals unequally degrades human personality collapses. Thus, the idea of *universitas* implies a right of intervention in cases where members deviate from the common ends of the association. This argument is, no doubt, the one with which NATO attempted to justify its intervention in Kosovo. It must also be said that there is nothing incoherent, logically or morally, about constituting and justifying international society as a *universitas* of states so long as its members agree on the ends for which they will strive in common.

Human beings may very well one day agree upon ends that are, without qualification, universally valid for the entire human family; however, the discourse and practice of contemporary international society suggests that in important respects the ends of life remain unsettled. That there continues to be considerable debate and disagreement over the proper ends of world affairs seems to confirm that our world is still one distinguished by difference. This proposition leaves us with one very important question that is related to the relationship of solidarism and the practice of war. Of all the justifications of a society of states, however it may be constituted, the preservation of peace is probably the most fundamental and the most enduring. But in a world where the fundamental ends of life remain unsettled, persons who are determined to act as if

⁹¹ Havel, Address to both Houses of Parliament, 1.

international society consists in a *universitas* of states are more likely to engender moral crusading than to promote peace. The disposition of moral crusading is to engage the world without qualification and restraint; that is, to identify particular aspirations with those of the entire world. This is the disposition that we encounter in Madeleine Albright's declaration on the eve of NATO's intervention in Kosovo: 'Now that the Cold War is over, we have the opportunity to extend those blessings to the rest of Europe, including the Balkans. And we have learned that we cannot hope to guarantee these benefits for ourselves if others do not have them as well.'⁹² We encounter it as well in the words of Tony Blair:

No longer is our existence as states under threat. Now our actions are guided by a more subtle blend of mutual self interest and moral purpose in defending the values we cherish. In the end values and interests merge. If we can establish and spread the values of liberty, the rule of law, human rights and an open society then that is in our national interests too. The spread of our values makes us safer.⁹³

The moral crusader seeks to repress difference, not because difference necessarily contributes to disorder or insecurity, but because it is identified with error. And short of agreement on the ends of life, the values of which Albright and Blair speak more closely approximates the re-emergence of the standard of civilisation than new standards of international legitimacy that are universally accepted and common to all.

Moral crusading has certainly left a lasting imprint on the history of international society; for that history is rife with people who are so impressed with their own achievements that they assume that their habits, customs, traditions, and values constitute the standard of perfection for all. There are times when human beings love some thing more than life itself; they love an idea too much, or they love a group of their own kind too exclusively, that they are willing to justify cruelty and oppression for the sake of their cause.⁹⁴ If we are to have any hope of achieving a world that is reasonably peaceful, secure, and prosperous, we must

⁹² Madeleine K. Albright, Remarks and Q&A Session at the U.S. Institute of Peace, Washington, DC, February 4, 1999, Office of the Spokesman, US Department of State, February 4, 1999, 1.

⁹³ Blair, 'Doctrine of the International Community,' 6.

⁹⁴ Berlin, 'Historical Inevitability,' 102; and Herbert Butterfield, *History and Human Relations*, (London: Collins, St. James's Place, 1951), 49.

practice in our relations with others the virtues of moderation, compromise, temperance, and modesty, even when we confront people, ideas, and ways of life that we find detestable and quite alien to our own. Indeed, we may be well advised to remind ourselves of the great hazards that accompany all wars: '[t]he unleashing of armed force is the most perilous international activity that states or alliances or international society as a whole can engage in. It is obviously dangerous: there is always a very real possibility that it can make things worse.'⁹⁵ And it is for this reason, no less than the offence that paternalism inflicts on human dignity, that any revival of trusteeship should be approached with only great caution and circumspection.

⁹⁵ Jackson, *The Global Covenant*, 281.