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SOVEREIGNTY AS PRIVACY

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Only domestic tyrants are safe, for it is not our purpose in international society (nor, Mill argues, is it possible) to establish liberal or democratic communities, but only independent ones.

Michael Walzer¹

The domestic life of domestic tyrants is one of the things which it is the most imperative on the law to interfere with.

¹ Michael Walzer, *Just and Unjust Wars: a moral argument with historical illustrations* (United States: Basic Books, 1992, second edition).

I. INTRODUCTION

Scenes of human cruelty and suffering in the post-Cold War world seem as ubiquitous as they are distressing. In contemporary international political discourse and practice, the various calamities that culminate in state or communal violence, along with recent military interventions such as those by the North Atlantic Treaty Organization (NATO) in the former Yugoslavia, have reinvigorated debate about the legitimacy of intervention in world politics.

The new humanitarianism and accompanying interventionist ethic have been met by disapproval from proponents of the ‘international society’ or ‘English school’ tradition of international theory, forged most prominently by Martin Wight and Hedley Bull. ‘International society’ theorists generally seek to endorse an international order resting on the principles of state sovereignty and nonintervention. The rule of nonintervention undergirds a central freedom that states may claim in international society – their freedom from external intrusion into their domestic affairs. Because international society and law accord positive moral value to this kind of freedom, ‘intervention’ is a term “fraught with connotations of illegality and immorality.”³ Hedley Bull has asserted that intervention, or “dictatorial or coercive interference, by an outside party or parties, in the sphere of jurisdiction of a sovereign state, or more broadly of an independent political community ... is generally believed to be legally and morally wrong: sovereign states or independent political communities are thought to have the right to have their spheres of jurisdiction respected, and dictatorial interference

² John Stuart Mill, *Principles of Political Economy [and Chapters on Socialism]* (Oxford: Oxford University Press, 1994).

³ Lori Fisler Damrosch, “Politics Across Borders: Nonintervention and nonforcible influence over domestic affairs” *The American Journal of International Law* Vol. 83 (1989):1-50 at p. 12.

abridges that right.”⁴ R.J. Vincent also observes that, “If the members of international society are taken to be sovereign states acknowledging each other’s rights to rule in their own domains, then it follows that intervention – the attempt to subject another state to one’s will – is illegitimate as an infraction of sovereignty: if sovereignty, then nonintervention.”⁵ The normative vocabulary and logic of sovereignty and nonintervention assume a public/private construct in international relations that serves to demarcate a distinction between the public and private lives of states or, more generally, political communities, a central purpose of which is to afford states and their citizens an arena of freedom from external interference.

The norm of sovereignty thus functions like the idea of privacy to shield the internal or self-regarding domain of the relevant unit from non-consensual external intrusion. A communitarian account, such as Michael Walzer’s interpretation of communal integrity and freedom, is also suggestive of a comparison between sovereignty and privacy. In his discussion of the Melian dialogue, for example, Walzer characterizes the Melian argument against the imperialist Athenian generals as a moral claim for the “right to be let alone.”⁶ This choice of words echoes the depiction of privacy by U.S. Supreme Court Justices Warren and Brandeis in 1890 as “the right to be left alone.”⁷

⁴ Hedley Bull ed., *Intervention in World Politics* (Oxford: Clarendon Press, 1986), pp. 1-2.

⁵ R.J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986), p. 113. Stanley Hoffmann also writes, “International society, for some centuries now, has been founded on the principle of sovereignty; in other words, the state is supposed to be the master of what goes on inside its territory, and international relations are relations between sovereign states, each one of which has certain rights and obligations derived from the very fact of statehood. If one accepts the principle of sovereignty as the corner-stone of international society, this means ... that intervention, defined as an act aimed at influencing the domestic affairs of a state, is quite clearly illegitimate.” See Hoffmann, “The Problem of Intervention,” in Bull, *Intervention in World Politics*, p. 11.

⁶ Walzer, *Just and Unjust Wars*, p. 5.

⁷ Samuel D. Warren and Louis D. Brandeis, “The Right to Privacy” (1890), reprinted in *Philosophical*

Anita Allen has characterized privacy as denoting limited accessibility or inaccessibility, as well as freedom from coercive outside interference.⁸ The notion of sovereignty shares with the idea of privacy these characteristics of restricted accessibility, and freedom from unsolicited external intervention.

How does a communitarian perspective – statist in the case of Bull and Wight and non-statist in the case of Walzer – understand the normative basis for state privacy in international society? What images of the state and international society does their justification assume? How, if at all, are the normative justifications for state privacy linked to individual privacy claims? How does one's conception of privacy rights, of individuals or states, affect one's understanding of the morality of intervention in domestic and international realms?

II. THE STATE AS A PRIVATE HOME

While the depiction of sovereignty as privacy implies an analogy between the state and the individual, one can think of another collective unit – the family – that has enjoyed a similar moral claim to privacy. International theorists have tended to leave unexamined this more compelling and pervasive domestic analogy, between the family and the state. Indeed, familial terms and symbols abound in the domain of the political, national and international. It is common in some parts of the world for people to refer to their native country as the 'motherland' or 'fatherland,'; the founders of republics as 'fathers'; and fellow citizens, revolutionaries and/or ethnic compatriots as 'brothers' and 'sisters'. Historically, colonialists have likened indigenous peoples to children who needed the

Dimensions of Privacy: An Anthology Ferdinand David Schoeman ed. (Cambridge, UK: Cambridge University Press, 1984), Chapter 4.

⁸ Anita Allen, *Uneasy Access: Privacy for Women in a Free Society* (Totowa, New Jersey: Rowman & Littlefield Publishers, 1988).

paternal guidance of colonial masters to direct their entry into civilization. Robert Jackson, in his recent re-statement of the 'international society' tradition notes explicitly, "States, like houses, are human constructs: they are built on a piece of land to provide a home for certain people who become the resident population."⁹ Likening political communities to family homes draws on elusive concepts that seem to convey a bundle of unspecified but intuitively understood meanings. What exactly does the use of the language of home and family life convey about the idea of political community?

One function of the metaphor is to capture the exclusive and private nature of political communities. If "being in a private place is a central part of what it means to be 'at home',"¹⁰ it is also a central, if neglected, feature of the sovereign state. Contemporary western societies typically envision the home as "a secure space where a person is not answerable to outsiders ..., captured in the characterisation of the home as a 'castle'." A home of one's own is "valued as a place in which the members of a family can live in private, away from the scrutiny of others, and exercise control over outsiders' involvement in domestic affairs."¹¹ International relations scholars might recognize in this depiction of a private family home the prevailing image of the sovereign state. As collective units the state and the family share a similar conceptual history as 'private spheres,' with rights to privacy understood in terms of communal integrity and freedom from external interference.¹² Arguments

⁹ Robert Jackson, *The Global Covenant: Human Conduct in a World of States* (Oxford: Oxford University Press, 2000), p. 29.

¹⁰ Graham Allan and Graham Crow, *Home and Family: Creating the Domestic Sphere* (London: MacMillan Press Ltd., 1989), p. 4.

¹¹ *Ibid.*, pp. 6 and 4.

¹² Of course, exploring this analogy does not involve any attempt to equate or identify political relations with personal familial relations. Gordon Schochet helpfully reminds us of the difference between an identification and an analogous comparison: "an identification requires a total transference of meaning from one entity to the institution for which it is being used as a symbol. A comparison or simile, on the

about intervention in international relations thus share normative affinities with debates in liberal societies about intervention in the family.

While comparing the family and the state in this way seems obvious, the comparison is also perplexing, because in domestic politics and theory, and especially in liberal theory, the state is known as the quintessentially public actor or realm, while the family is cast as the paradigmatically private sphere. The image of the state as a public actor has been adopted seemingly unproblematically in the international realm. The family/state analogy exposes a different face of the state. As Hilary Charlesworth has noted, the state conceived as a private sphere appears in a distinction drawn in the realm of public international law, found in Article 2(7) of the Charter of the United Nations, which distinguishes between matters of international (public) concern and issues belonging to a national or domestic (and private) jurisdiction: “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any states or shall require the Members to submit such matters to settlement under the present Charter.”¹³ While the state, in relation to its own citizens and society, may comprise the public realm, an emblem of the universal, in relation to other states and international society, it constitutes a private realm, a repository of all that is particular to its members.

other hand, leaves open the questions of the ways in which the two entities or institutions are alike and different. It allows, and even invites, debate about how well and how much a particular symbolic explanation fits.” See Gordon J. Schochet, *Patriarchalism in Political Thought: The Authoritarian Family and Political Speculation and Attitudes Especially in Seventeenth-Century England* (Great Britain: Basil Blackwell, 1975), p.146.

¹³ Quoted in Hilary Charlesworth, “Worlds Apart: Public/Private Distinctions in International Law” in *Public and Private: Feminist Legal Debates* Margaret Thornton ed. (Australia: Oxford University Press, 1995), p. 244.

The family/state analogy has enjoyed prominence in the historical development of the concept of the state and its sovereignty. Writing in the sixteenth century Jean Bodin asserted, “the well-ordered family is a true image of the commonwealth, and domestic comparable with sovereign authority.”¹⁴ Both families and states involve an authority structure which imposes distinct rights and obligations on its members that non-members do not share. The historical and philosophical development of the state and sovereign authority in the West owes much to the models provided by the family and parental authority. Exploring this historical connection between conceptions of the political authority of sovereigns and mainly paternal authority in the household can provide insight into the conventional interpretation of statehood and sovereign authority.

Perhaps the most well-known articulation of paternal political thought can be found in Robert Filmer’s *Patriarcha*, written tellingly at a time and in a society where the patriarchal image of political authority was coming under increasing attack. Filmer’s work represents an entire tradition of political thought that derived political obligation from a conception of familial obligation.¹⁵ Identifying political power with paternal power, Filmer argued that “all the duties of a King are summed up in an universal fatherly care of his people.”¹⁶ As Gordon Schochet has noted in his study of patriarchal political thought in seventeenth century England, “the simple requirement to ‘Honour thy father and thy mother’ was expanded to include loyalty and obedience to the king and all magistrates, as well as to masters,

¹⁴ Jean Bodin, *Six Books of the Commonwealth* M.J. Tooley trans. (Oxford: Basil Blackwell, 1955), p. 6.

¹⁵ See Schochet, *Patriarchalism in Political Thought*, for an in-depth treatment of the history, development and main themes of patriarchal conceptions of political obligation.

¹⁶ Robert Filmer, *Patriarcha: A Defence of the Natural Power of Kings against the Unnatural Liberty of the People* in *Patriarcha and Other Political Works of Sir Robert Filmer* Peter Laslett ed. (Oxford: Basil Blackwell, 1949), p. 63.

teachers, and ministers.”¹⁷ Kings were the metaphorical fathers of their subjects; the nature of public political power and authority, and private paternal power and authority were inextricably linked.

Filmer believed that all human relationships were subject to the law of God, which ultimately and alone provided the original basis for the legitimacy of both monarchical and paternal rule. Thus Filmer assumed that fathers and kings were bound by the law of God and nature to seek the preservation of their families or kingdoms. Clearly, Filmer’s moral image of God informed his idealized conceptions of earthly political and personal rule. In arguing “for the superiority of Princes above laws,” he placed any hopes for remedies against the abuse of royal authority in the realm of the divine. Similarly, he put the subject of how a patriarch managed relations within his own household beyond the scope of political regulation: “The Father of a family governs by no other law than by his own will, not by the laws or wills of his sons or servants. There is no nation that allows children any action or remedy for being unjustly governed.”¹⁸ Bodin also conceived of paternal authority in absolutist terms: not only should each household have only “one head, one master, one seigneur,” but parents should also have “that power of life and death over their children which belongs to them under the law of God and of nature.”¹⁹ Neither Filmer nor Bodin conceived of families or states to be private in a morally atomistic sense, since both were ultimately bound by the law of God. Yet their theories of paternal rule clearly entailed a public authority structure that refrained from interfering

¹⁷ Schochet, *Patriarchalism in Political Thought*, p. 6.

¹⁸ Filmer, *Patriarcha*, p. 96.

¹⁹ Bodin, *Six Books of the Commonwealth*, pp. 10 and 12. Bodin notes critically “that the paternal power of life and death was gradually restricted by the ambition of the magistrates, who wished to extend their own jurisdiction over all such matters.” (p. 13)

within the private domain of the patriarchal household. Similarly, Bodin's theory of sovereign rule also entailed international forbearance from interfering in the private domain of a sovereign prince.

Contemporary western liberal societies continue to consider the realm of the family as a paradigmatically private sphere: "Family life has been singled out in the modern world as that realm in which the particular concerns, interests and needs of individuals are dominant and from which political and other public matters are largely excluded. The family has often been conceived as a private refuge from the exacting demands of civil society and the *res publica*."²⁰ The family constitutes a "haven in a heartless world,"²¹ a primary source of personal and collective identity and fulfillment, and home is "the only setting where intimacy can flourish, providing meaning, coherence, and stability in personal life."²² The moral evaluation of the family and home as deserving of the status of a 'private sphere' relies on an ideal image of the domestic realm as a source of protection for individuals from the often harsh and cold dealings of the outside world. Familial relationships, under this view, contrast with those found in the world of commerce and politics; while the bond between family members develops out of love, mutual affection and natural empathy, relationships between individuals in society are marked at best, by the cold virtue of justice, mutual disinterest and cooperation, and at worst, by domination and exploitation, mutual distrust and conflict. Bodin's advocacy of an absolutist conception of parental power and authority within the household clearly relies on an idealization of

²⁰ Stanley I. Benn and Gerald F. Gaus, "The Liberal Conception of the Public and the Private, in *Public and Private in Social Life* (London, Croom Helm, 1983), p. 54.

²¹ Christopher Lasch, *Haven in a Heartless World: The Family Besieged* (New York: Basic Books, Inc., 1977).

²² Elizabeth Pleck, *Domestic Tyranny: The Making of Social Policy Against Family Violence from Colonial Times to the Present* (New York: Oxford University Press, 1987), p. 8. Pleck's book challenges this ideal image of family life.

family and home life, for he held “that the natural affection of parents for their children is incompatible with cruelty and abuse of power.”²³ The home, ideally conceived, merits noninterference because it is the harbour for social relationships that are qualitatively different from those that can be attained in the wider public context. Because familial relations are typically guided by positive mutual care and concern, their qualitative superiority renders public regulation and interference in the family home unnecessary and undesirable.

Somewhat ironically, these positive images and functions attributed to the private familial community also inform communitarian interpretations of public national and political communities. As Krishan Kumar has observed, one’s country, “when conceived as the homeland, is explicitly modeled on an idealized version of the private realm of the household or family.”²⁴

In recent decades the designation of the realm of domesticity as a private sphere has been deeply contested, most prominently by feminists, who point to the double-edged nature of family privacy, which “can signify deprivation as well as advantage.”²⁵ While the norm of privacy has aspired to protect family relations from conformist public pressures and totalitarian public policies, the designation has also had the effect of rendering the domestic realm non-political, unworthy of public attention and regulation. One issue that has made the privacy of the family morally problematic, and brought public intervention in the family to the fore of social policy agendas in western countries, is domestic violence. The conventionally organic images of the family and home life make it difficult to

²³ Bodin, *Six Books of the Commonwealth*, p. 14.

²⁴ Krishan Kumar, “Home: the promise and predicament of private life at the end of the twentieth century” in *Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy*, Jeff Alan Weintraub and Krishan Kumar eds. (Chicago: University of Chicago Press, 1997), p. 208.

²⁵ Allan and Crow, *Home and Family: Creating the Domestic Sphere*, p. 5.

conceive of family homes as dangerous situations themselves from which individuals may need protection. Families may be places where people develop and maintain their most intense bonds of intimacy and community with others, yet research shows that “more than anywhere else in society, the family is the site of murder, child abuse and assault.”²⁶

Feminist scholars have criticized the construction of families as private spheres for its effect has been to hide some of the most depraved acts of inhumanity and injustice from public view: “by classifying institutions like the family as ‘private’ ... the public/private distinction often serves to shield abuse and domination within these relationships from political scrutiny or legal redress.”²⁷ The invisibility accorded internal family relations by the legal and social rights of families to privacy has historically translated into an immunity from public moral standards and accountability. Judith DeCew notes, for example, that the old rape shield laws in the United States deprived women of the legal ability to charge their husbands with rape, since marriage was assumed to confer consensual sex automatically between husband and wife.²⁸ Feminists who recognized the disproportionately adverse impact of this invisibility on women have thus been united in rejecting conceptions of family privacy which support the exclusion of family issues, especially those relating to women’s oppression, from the political agenda.²⁹

²⁶ Quoted in *Family Violence in a Patriarchal Culture: A Challenge to Our Way of Living* (Ottawa: Church Council on Justice and Corrections, Canadian Council on Social Development, 1988), p. 9.

²⁷ Jeff Weintraub, “The Theory and Politics of the Public/Private Distinction,” in *Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy*, Jeff Alan Weintraub and Krishan Kumar eds., p. 29.

²⁸ Judith Wagner DeCew, *In Pursuit of Privacy: law, ethics, and the rise of technology* (Ithaca, N.Y.: Cornell University Press, 1997), p. 177.

²⁹ See, for example, Carole Pateman, “Feminist Critiques of the Public/Private Dichotomy,” in *The Disorder of Women* (Stanford, CA: Stanford University Press, 1989), pp. 118-140.

Efforts to make domestic violence a public and political issue rather than a private problem of particular families have met with resistance mainly because of what one scholar, Elizabeth Pleck, has called “the Family Ideal,” encompassing “ideas about family privacy, conjugal and parental rights, and family stability.”³⁰ Indeed, not long ago in western social history, domestic abuse was largely considered “a private family matter to be worked out within the family.”³¹ If one doubts the strength of the ‘family ideal,’ it is sobering to remember that in the western world, organizations for animal protection, such as the Society for the Prevention of Cruelty to Animals (SPCA), were formed before counterparts dealing with child protection. Pleck is most likely right to argue that this was not so much an indication that society cared less about children than animals, but that child rescue faced special normative barriers because it “involved interference in the fundamental unit of the family,”³² conceived as a private sphere with rights to autonomy and immunity from external interference.

Just as those who study domestic violence find the ‘family ideal’ a consistent barrier to social reform, recent international attempts to deal with intrastate violence have come face to face with the ‘state ideal,’ involving a set of ideas about state privacy, sovereign rights, and national integrity. Comparing the history of western experiences in reform against domestic violence and recent international efforts to deal with intrastate violence, it becomes clear that both have faced similar normative barriers due to the conception of families and states as private spheres. Indeed, as Craig

³⁰ Pleck, *Domestic Tyranny*, p. 7.

³¹ Captain Robert L. Snow, *Family Abuse: Tough Solutions to Stop the Violence* (New York: Plenum Trade, 1997), p. 283. Snow, who has worked as a police officer in the United States since the 1960s, is perhaps more keenly aware than most people of how the idea of the family and home as a private sphere has been used by ‘domestic tyrants’ against police officers and other agents of state intervention in situations of family violence.

³² Pleck, *Domestic Tyranny*, p. 79.

Calhoun has observed, “suggesting that international recognition [of new states] should be linked to democratic institutions or ... condemning domestic human rights abuses are as problematic within [a certain conception of the] division of public and private as attempts to intervene in families on behalf of the rights of children or spouses have been.”³³

The historic reluctance of states and international organizations such as the United Nations to intervene in issues considered to belong to the domestic jurisdiction of states parallels the past reluctance of domestic law, the police and court systems in western societies to intervene in what were perceived to be ‘private’ family disputes. In the late 1800s courts in Canada ruled, with relation to spousal assault, that it was better “to draw the curtain, shut out the public gaze and leave the partners to forgive and forget.”³⁴ Just as the doctrine of nonintervention served to hide inhumanity, cruelty and injustice within families from public scrutiny and redress, the same doctrine underpinning the Cold War international order barred states and other international actors from intervening, forcibly or non-forcibly, to alleviate human suffering even on a massive scale, especially when such suffering was confined within state boundaries and resulted from the exercise of sovereign power. The dominant interpretation of international law maintained the invisibility of the suffering of victims of intrastate violence.³⁵ As Oliver Ramsbotham and Tom Woodhouse have observed, humanitarian issues and concerns were unmentionable in the relations between states:

³³ Craig Calhoun, “Nationalism and the Public Sphere,” in Weintraub and Kumar, *Public and Private in Thought and Practice*, p. 99.

³⁴ Ontario Medical Association, *Reports on wife assault* (Ottawa: National Clearinghouse on Family Violence, 1991), p. 1.

³⁵ See, for example, J.L. Brierly, “Matters of Domestic Jurisdiction,” *British Yearbook of International Law* 6 (1925):8-19.

A general conclusion on state reaction to massive human rights violations during the cold war era would have to be that the normal response was to do nothing. Not only were instances of forcible intervention rare, but even formal protest and the initiation of collective measures through recognized human rights procedures were seldom, and even then, only reluctantly invoked.³⁶

Michael Akehurst similarly records that in the Cold War era, most states condemned 'humanitarian intervention' as illegal. Even states that intervened against a government responsible for mass atrocities chose to justify their interventions on non-humanitarian grounds.³⁷ In international law and society, sovereign leaders possessed something like the ring of Gyges; when turned outward in the glare of international politics, their actions were public and visible, but when turned inward in their domestic jurisdictions, their conduct became private and hence, invisible.³⁸ State leaders could thus enjoy the reputation of being vanguards of the public interest or the common good in international society while, in their internal relations, being "indecent without shame, cruel without shuddering, and murderous without apprehension of fear of exposure or punishment."³⁹ Domestic tyrants could feel at home in the world of public states and private humanity.

It is, of course, not only those who commit active brutality who use the rhetoric of sovereignty as privacy to claim an unassailable moral right to be free from intervention. More disturbingly perhaps, potential intervenors — those who have the capacity to intervene effectively to halt grave

³⁶ Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Oxford: Blackwell, 1996), p. 56.

³⁷ Michael Akehurst, "Humanitarian Intervention," in Bull, *Intervention in World Politics*, pp. 95-99. Akehurst notes, for example, that India initially justified its military intervention in Pakistan in 1971 on humanitarian grounds, but subsequently changed its explanation in the Official Records of the United Nations Security Council. (p. 96)

³⁸ Plato, *The Republic of Plato*, Allan Bloom trans.(New York: Basic Books, 1991, second edition), pp. 37-38, (II, 359c-360d.

³⁹ Philip P. Hallie, *The Paradox of Cruelty* (Middletown, Connecticut: Wesleyan University Press, 1969), p. 108.

acts of inhumanity — have also used the rhetoric of sovereignty and nonintervention to avoid moral responsibility. Canadian General Roméo Dallaire, Commander of the UN Assistance Mission for Rwanda (UNAMIR), encountered this use of sovereignty as a normative argument against intervention in the days preceding the Rwandan genocide of 1994: “The RTLM [a radio station in Rwanda] was inciting people to kill, it was explaining how to kill, telling people who to kill, including whites, including me... When you have an instrument of propaganda inciting people to crimes against humanity, the international community could have targeted it. I had responses that, given the sovereignty of the country involved, we couldn’t.”⁴⁰ The normative logic of the Westphalian international order, captured by Vincent’s equation, ‘if sovereignty, then nonintervention,’ accounts for the historical inattention of international society and law to contexts of intrastate violence, which remained private tragedies, much like domestic familial violence within western societies until recent decades.

III. FREEDOM, FORCE AND INTERVENTION

Sovereignty as privacy in domestic and international legal and social institutional arrangements functions to project a vision of the private national realm as an autonomous, distinct and largely desirable collective reality. If the autonomy, distinctness and moral value of sovereign political communities are morally idealistic and sociologically inaccurate, the idea of sovereignty as privacy will have little relevance as a conception that can help us to explain, understand or justify contemporary international realities.

⁴⁰ Quoted in Scott Straus, “Dallaire relates horror of genocide,” *The Globe and Mail*, Feb 26, 1998, A14.

International society theorists generally offer another moral function of sovereignty as privacy, which is to promote a vision of the international public realm as one of tolerant communal diversity. This is evident in Jackson's recent work, in which he attempts to vindicate the society of states that was born in the seventeenth century and that has endured through dramatic changes such as the scientific and industrial revolutions, and two world wars. Drawing from the conservatism of Michael Oakeshott and the value pluralism of Isaiah Berlin, Jackson defends a non-teleological and anti-monist conception of international society. There is no singular directing doctrine that everyone must follow, and there is no single commanding authority that everyone must obey, and this, according to Jackson, is the way it ought to be. In prudential terms, the global covenant that has established a pluralist anti-paternalistic international society constitutes a practical institutional adaptation to the facts of human diversity and human imperfection. At the same time, Jackson asserts that the pluralist architecture of international society ultimately serves the moral value of freedom. Like Michael Walzer, Jackson draws from the liberalism of John Stuart Mill to argue that the political independence of states is the condition for the exercise of individual agency. An international society so conceived, according to Jackson, is the most morally defensible political "arrangement to uphold human equality and human freedom around the world."⁴¹

The sovereign individual and the sovereign community

Michael Walzer's attempt to justify a communal entitlement to integrity and nonintervention is most theoretically sophisticated. He is careful not to confine this entitlement to states or governments. He departs from 'international society' theorists in asserting that the "real subject of [his] argument is

⁴¹ Jackson, *The Global Covenant*, p. 43.

not the state at all but the political community that (usually) underlies it.” The legitimacy of any state depends on “the ‘fit’ of government and community, that is, the degree to which the government actually represents the political life of its people.”⁴² While international society theorists have generally privileged the state in their account of international order and morality, Walzer privileges the historical communities of men and women whose claims can sometimes trump the claims of the state, especially when that state can no longer be seen as an authentic expression of the political community that underlies it.

Walzer uses an “individual/community analogy” to develop his account of a state’s right to self-determination, understood not as a substantive vision of political freedom, but simply as freedom from external intervention. Drawing on Mill’s arguments, Walzer asserts that “the members . . . of a single political community, are entitled collectively to determine their own affairs.”⁴³ This right of communities to self-determination “derives its moral and political force from the rights of contemporary men and women to live as members of a historical community and to express their inherited culture through political forms worked out among themselves.”⁴⁴ The right of individuals as members of a political community to exercise collective self-rule logically entails a rule of nonintervention by non-members.

Although the ideas of communal self-determination and nonintervention seem pre-eminently organic and communitarian, it is the liberal idea of the sovereign individual, derived from an atomistic conception of individuals as self-directing beings, that provides the model for Walzer’s conception of

⁴² Walzer, “The Moral Standing of States: A Response to Four Critics,” *Philosophy and Public Affairs* 9, 3 (1980):209-229 at p. 214.

⁴³ Walzer, *Just and Unjust Wars*, p. 87.

⁴⁴ Walzer, “The Moral Standing of States,” p. 211.

the sovereign community.⁴⁵ Just as the recognition of individual privacy affords individuals a sphere in which they may exercise their agency without external scrutiny or intervention, the recognition of state sovereignty, according to Walzer, establishes “an arena within which freedom can be fought for and (sometimes) won. It is this arena and the activities that go on within it that we want to protect, and we protect them, much as we protect individual integrity, by marking out boundaries that cannot be crossed, rights that cannot be violated. As with individuals, so with sovereign states: there are things that we cannot do to them, even for their own ostensible good.”⁴⁶ Walzer’s conception of state sovereignty as privacy draws on a liberal interpretation of privacy as conferring on individuals an inviolable sphere for self-regarding activity. Adapting this conception of individual privacy to the state supports an interpretation of the sovereign state as an inviolable arena for collective self-determination, entailing such rights as political autonomy and territorial integrity.

Although Walzer’s justification for state privacy and hence, the rule of nonintervention between states, relies heavily on the normative force of individual privacy claims, he argues that the communal right to privacy applies to liberal and illiberal regimes alike: “*domestic tyrants* are safe, for it is not our purpose in international society (nor, Mill argues, is it possible) to establish liberal or democratic communities, but only independent ones.” It is the individual/community analogy that provides the basis for this assertion: “The members of a political community must seek their own freedom, just as the individual must cultivate his own virtue. They cannot be set free, as he cannot be made virtuous, by any external force.” Walzer seems to value individual rights to autonomy, and to

⁴⁵ On the sovereign individual, see John Stuart Mill, *On Liberty*, in *On Liberty with The Subjection of Women and Chapters on Socialism* (Cambridge: Cambridge University Press, 1989), pp. 1-116.

⁴⁶ Walzer, *Just and Unjust Wars*, p. 87.

adopt an instrumental view of political community in arguing that it is *individual* rights that “are violated when communal integrity is denied, even if the denial is benevolent in intention.”⁴⁷ Yet respect for communal integrity and autonomy does not always translate into a respect for individual integrity and freedom. The conception of privacy as decisional autonomy becomes especially problematic when translated to a collective, for the question arises as to whose decisional autonomy ought to be respected. It is not clear how communal privacy can consistently claim any moral force if it fails to respect the model of individual privacy upon which it is based, and from which it draws its normative appeal. Walzer’s desire to defend communal integrity and self-determination sometimes makes him lose sight of their instrumental, rather than intrinsic, moral significance.

Justifying intervention and nonintervention on the basis of preserving communal autonomy leads Walzer to the thorny subject of evaluating the authenticity of communal identities and boundaries. As Walzer concedes, “it isn’t always clear when a community is in fact self-determining, when it qualifies, so to speak, for nonintervention.” The case of secession is difficult because “evidence must be provided that a community actually exists whose members are committed to independence and ready and able to determine the conditions of their own existence.”⁴⁸ The problems with identifying inauthentic political communities or a lack of ‘fit’ between a political community and its government also partly explain why Walzer legitimizes ‘humanitarian intervention’ only in the most egregious cases of mass atrocity.⁴⁹ It would seem more direct, however, to argue that intervention is justified, not because practices such as enslavement or massacre reveal the lack of

⁴⁷ Walzer, *Just and Unjust Wars*, pp. 94 and 87.

⁴⁸ *Ibid.*, pp. 89 and 93.

⁴⁹ Another reason is that Walzer equates intervention with the use of military force, a conflation I examine below.

an authentic political community, which is notoriously difficult to determine, but because such practices are morally intolerable affronts to common human interests in individual integrity, agency and dignity.

Walzer seems to imply this line of argument in his assertion that a government “engaged in massive violations of human rights” cannot appropriately appeal to the principle of communal self-determination. “That appeal,” according to Walzer, “has to do with the freedom of the community taken as a whole; it has no force when what is at stake is the bare survival or the minimum liberty of (some substantial number of) its members.”⁵⁰ If gross human rights violations invalidate a government’s claim to self-determination, the moral barrier against intervention is also thereby negated. Consequently, in such situations, the moral burden of proof must clearly *shift*, from external actors who might intervene, to the internal actors who must provide reasons other than self-determination (which has no force) to defend their claims to nonintervention. It is not *always* the case, then, as Walzer claims at the beginning of his discussion of intervention, that the “burden of proof falls on any political leader who tries to shape the domestic arrangements or alter the conditions of life in a foreign country.”⁵¹

Walzer does acknowledge that political communities are not like eggs neatly separated by an egg-box called international society.⁵² He concedes that in most cases of intrastate violence, “history presents a tangle of parties and factions, each claiming to speak for an entire community, fighting with one another, drawing outside powers into the struggle in secret, or at least unacknowledged, ways.”

⁵⁰ Walzer, *Just and Unjust Wars*, p. 101.

⁵¹ *Ibid.*, p. 87. Of course, intervenors would still have to justify their chosen means of intervention.

⁵² On the egg-box conception of international society, see R.J. Vincent, *Human Rights and International Relations*, pp. 123-125.

Yet in subscribing to the myth of the sovereign community, he aims to uphold a mythical ideal of separation between international and domestic structures of power, norms and authority. Thus he argues that in situations of intrastate violence such as a civil war, the role of the international community is to aim at “holding the circle, preserving the balance, restoring some degree of integrity to the local struggle.”⁵³ This is a strange prescription if we think of civil war through the family/state analogy, since it seems to suggest that external parties ought to let members use force to determine the terms of their relationship. In the name of preserving the sovereign community, Walzer seems to be arguing that intrastate violence should be considered a private communal matter to be worked out within the community, much as family violence used to be considered “a private family matter to be worked out within the family.”⁵⁴ He may very well be right that the use of force by third parties is likely to have a counterproductive effect on the distressed inhabitants of a divided state. Yet restoring integrity to the local struggle clearly requires more of outsiders than adopting a strict policy of nonintervention, or a policy of counterintervention to preserve the military balance of local forces. Restoring the physical integrity and moral agency of those in the local struggle, which is essential for any kind of self-determination, individual or collective, would actually require the international community to work towards a cessation of the violence.

The defence of communal privacy in Jackson’s and Walzer’s work is more clearly morally problematic when viewed through a family/state rather than individual/state analogy.⁵⁵ With such an

⁵³ Walzer, *Just and Unjust Wars*, pp. 96 and 97.

⁵⁴ Snow, *Family Abuse*, p. 283.

⁵⁵ In a later work, Walzer indeed draws on the family/state analogy to support the right of members of one state to divorce. He writes, “The argument [against legitimizing the break-up of states] is very much like that of a Puritan minister in the 1640s, defending the union of husband and wife against the new doctrine of divorce... The problem, then as now, is that justice, whatever it requires, doesn’t seem

analogy in mind, Mill himself might also have reached different conclusions about nonintervention in a state's internal affairs, since it was he who wrote in relation to family violence, "The domestic life of domestic tyrants is one of the things which it is the most imperative on the law to interfere with."⁵⁶

Intervention and the use of force

Walzer's preoccupation with protecting an image of the sovereign community lies behind his seeming endorsement of the peculiar argument that "the citizens of a sovereign state have a right, insofar as they are to be coerced and ravaged at all, to suffer only at one another's hands"⁵⁷ rather than at the hands of foreigners. The unjustified use of force by a state against its own population, however, seems no less wicked than the unjustified use of force in other people's countries. In both cases, it is the unjustifiability of the use of force, rather than the interventionary nature of the latter case, that warrants condemnation. This is not to argue that the grievousness of the unjustified use of force by foreign powers is somehow lessened since it is comparable to the unjustified use of force within a state; it is to argue that the latter deserves the same moral reproach as the former.

Furthermore, if it is the use of force itself that is morally problematic, the use of force by national liberation movements must be seen as part of the moral problem. Walzer, however, like

to permit the kinds of coercion that would be necessary to 'hold their noses together.' So we have to think about divorce, despite its difficulties." See Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame, Indiana: University of Notre Dame Press, 1994), p. 67.

⁵⁶ John Stuart Mill, *Principles of Political Economy*. Mill actually justifies foreign rule as a form of tutelage for 'barbarians,' although "the universal rules of morality between man and man" must apply to civilized and barbarous peoples alike. See Mill, "A Few Words on Non-Intervention" in *Essays on Equality, Law, and Education* (Toronto: University of Toronto Press and Routledge Kegan Paul, 1984), p. 119. We can be rid of nineteenth-century civilizational prejudices and discard the categorization of whole societies as 'barbarian,' but Mill's justification for intervention against barbarism can surely be applied to scenes of barbarity within the contemporary 'civilized' world.

⁵⁷ Walzer, *Just and Unjust Wars*, p. 86.

many who opposed the U.S. military intervention in Vietnam, tends to romanticize intrastate violence in the context of a national liberation struggle. An authentic political community, he argues, is one that can pass the test of self-help, defined in terms of its capacity to wage “a large-scale military struggle for independence.” At the same time he asserts that a “legitimate government is one that can fight its own internal wars.”⁵⁸ It is not clear, however, why the preponderant military strength of a nationalist movement would necessarily add to its moral claim to self-determination or political independence, any more than why a state’s preponderant military control would justify its suppression of a nationalist movement. For example, would Quebec have a greater moral claim to secession if the Quebec nationalist movement were to mount a large-scale military struggle against the Canadian federal government? Or would the Canadian federal government have a greater moral claim to keeping Quebec within Canada because it is able to control secessionist forces through military means? A negative response to both of these questions shows the moral flaws in Walzer’s arguments, and leads to a recognition that force cannot determine the rightness of any moral claim, within or between nations and states. In fact, those who resort to the use of force, whether they be states or national liberation movements, tend to undermine significantly the force of their moral claims.

It becomes apparent in Walzer’s later replies to criticisms of *Just and Unjust Wars* that the kind of freedom for political communities that he endorses is not so much freedom from intervention as freedom from military coercion. In a footnote, he admits that in supporting a rule of nonintervention, he does not “mean to rule out every effort by one state to influence another or every use of diplomatic and economic pressure.”⁵⁹ Similarly, the high threshold Walzer places on the level

⁵⁸ Ibid., pp. 90 and 101.

⁵⁹ Walzer, “The Moral Standing of States,” p. 223, footnote 26.

of human rights violations necessary to justify intervention stem clearly not so much from the unjustifiability of intervention for humanitarian concerns as from the unjustifiability of the use of force as a means to carry out such interventions.⁶⁰ It is important to remember then that Walzer's *Just and Unjust Wars* is primarily about the just and unjust use of force, which is important to, but not exhaustive of, the larger topic of just and unjust interventions.

Walzer has continued to conflate the issues of intervention and the use of force in his later writings. He begins an article on 'humanitarian intervention' with the well-known question: "To intervene or not?" then indicates his real concern, noting that "the use of force in other people's countries should always generate hesitation and anxiety."⁶¹ Walzer's restrictive interpretation of intervention conforms with most theoretical and practical definitions of intervention in the international relations literature.⁶² Jackson explicitly notes that in his discussions of intervention in world politics he is employing "the classical concept of intervention," which consists of "external armed encroachment on the sovereign jurisdiction of a state."⁶³ One should be careful, however, not to conflate the problem of intervention with the problem of the use of force. The interventionary aspect of an activity,

⁶⁰ Walzer, *Just and Unjust Wars*, pp. 101-108. As Charles Beitz has noted of Walzer's argument, "it is the military character rather than intervention itself that is problematic" and "the argument against military force has nothing to do with communal integrity." Charles R. Beitz, "Nonintervention and Communal Integrity," *Philosophy and Public Affairs* 9,4 (1980):385-391 at p. 389.

⁶¹ Michael Walzer, "The Politics of Rescue," *Dissent* (1995):35-41 at p. 35.

⁶² For example, Hedley Bull includes coercion into his definition of intervention. See Bull, *Intervention in World Politics*, p. 3. Adam Roberts also defines humanitarian intervention as "military intervention in a state, without the approval of its authorities, and with the purpose of preventing widespread suffering or death among the inhabitants." See Roberts, "Humanitarian war: military intervention and human rights," *International Affairs* 69, 3 (1993):429.

⁶³ Jackson, *The Global Covenant*, p. 251.

the fact that it is done ‘in other people’s countries,’ is distinguishable from the activity itself – in this case, the use of force.

Forceful measures should generate ‘hesitation and anxiety’ whenever they are considered, such as in domestic relationships, by parents in the disciplining of children, in national politics, by nationalist movements or by the state against civil unrest, as well as in international politics, by states or the international community against another state or political community to effect a change in its internal affairs. In all these cases and levels, the proverbial moral issues related to the use of force apply. Is the use of force prudent, proportional and likely to be effective in terms of a defined goal? The use of force is contentious for the same categories of reasons in all these cases, even though only the last is an incontrovertible case of intrusion by an outside party. The concerns of prudence, proportionality and utility are intrinsic to the moral problem of the use of force in general, whether it be for humanitarian purposes or not, and whether it be interventionary in nature or not, and can be distinguished from the moral issues that are intrinsic to the problem of intervention, military or otherwise. Thinking of intervention in only military terms invariably leads to a consideration of the moral issues related to the use of force in general, rather than the moral issues connected to the issue of intervention.

The question both Walzer and Jackson address, then, is ‘to use force or not?’ and not ‘to intervene or not?’ The conflation of these two issues in international theory and practice has meant that governments have been able to claim a much stronger social convention against all types of intervention than is supported even in international law. Indeed, state officials commonly consider any type of unsolicited comment on, or interference in, the internal jurisdiction (political, economic and cultural) of one state by another state or outside party to be unjustifiable violations, in varying degrees

of subtlety, of a state's sovereignty and the rule of nonintervention. It is, however, a mistake to advance a general doctrine against intervention, because of the problems associated with a specific and extreme type of intervention. Many situations may justify some kind of interventionary response, while ruling out military intervention. Crucial opportunities to engage in preventive and non-military actions, before a crisis explodes or escalates to the level of mass atrocity, are missed when the concept of intervention and the use of force are conflated.

Family/state disanalogy

While the family/state analogy provides a compelling way to analyze intervention as a moral problem in domestic and international politics, there is one main area of disanalogy that is worth exploring.

The main area of disanalogy is between the state as a public enforcer in relation to the family, and the various actors that comprise international society as a public sphere in relation to each state. Most states have overwhelming coercive capacity, and tightly structured legal and political systems, giving them more effective control over citizens and families, than international society as a public domain, with diffuse military capabilities and looser legal and political institutions, has over member states – not to mention global non-state actors. Because of the relatively underdeveloped state of international mechanisms for the use of force, it is unlikely that agents of international society will be able to intervene in cases of intrastate violence as easily as agents of the state (police, social workers, etc.) can in the case of family violence.

Yet one should be careful not to exaggerate the significance of this difference in coercive capacity. It does not seem that the coercive power of the state can alone or even significantly account for the changes in norms that have occurred in western societies about the proper scope and limits of

parental authority, and the legitimacy of public intervention in families, in the last three centuries.

Indeed, in the twentieth century, even when state power was quite capable of forcibly intervening in families, the normative interpretation of family privacy supported a public and social policy of nonintervention in intrafamilial relations. The question of intervention is thus not determined solely by capabilities, but more fundamentally by normative understandings of the public/private distinction. In world politics, similarly, the battle over ideas and attitudes about the moral basis, scope and limits of sovereign authority is at least as important as the battle over material resources and capabilities. Even if international society acquired the capacity to intervene effectively in intrastate relations, without an altered normative understanding of state sovereignty as privacy, it is unlikely that a change in coercive capacity alone will alter the norm of nonintervention.

The preoccupation with military capabilities also privileges the state as an actor in world politics, for it is states that currently possess the most organized concentration of military force. The focus on states, however, reaffirms the subordinate status of other actors, such as the individual men and women whose victimization ultimately provides the justification for 'humanitarian intervention,' as well as those non-governmental organizations and international institutions that may possess greater capacities and legitimacy to engage in more effective types of intervention to address humanitarian concerns. Just as there are other options besides calling the police in response to familial violence and abuse of parental authority, there are options other than military force as well for confronting intrastate violence and abuse of sovereign authority which we may attack with more imagination given a sounder understanding of the moral basis for intervention. Clearly, however, in the case of family violence, as well as state terror and violence, one will not be predisposed to legitimizing other kinds of intervention

or thinking about how to intervene if one accepts the view that a family or state, by virtue of its private or sovereign status, is acting within its rights.

International intervention to address intrastate violence at this time perhaps more closely resembles intervention by non-state persons in cases of child maltreatment. In both cases, “where [social respect for] privacy is high, the degree of social control will be low.”⁶⁴ In both contexts, the absence of a common overarching authority to fix a common definition of maltreatment means that pluralistic standards can vie for legitimacy. That is, the intervenor often has a different standard than the allegedly abusive party. Thus Bull argues that the lack of international consensus on the basic concept of ‘human rights’ makes it a shifty and unreliable source for justification of intervention.⁶⁵ It is interesting to note, however, that substantive debate in international politics about human rights is seldom heard when sovereignty as privacy is understood as an alienable right of statehood. Domestically, for example, a parent faced with a stranger intervention might be more likely to say, ‘Mind your own business,’ than argue that her actions were justified. Similarly, states, when faced with international criticism over human rights, have seldom attempted to argue that their treatment of their citizens conforms with a certain interpretation of human rights, or can be justified by other moral considerations. Rather than making these types of arguments, the merits of which can be debated, abusive parents and sovereigns often appeal to the rhetoric of privacy or sovereignty, asserting not so much that they are justified in their conduct, as that the intervenor has no right to interfere in a private affair.

⁶⁴ Phillip W. Davis, "Stranger intervention into child punishment in public places," *Social Problems* 38,2 (1991):227-246.

⁶⁵ Bull, *Intervention in World Politics*, p. 193.

The latter type of argument is not enough. It may be undisputed that an act occurred in a sovereign jurisdiction of a state, or that those acted upon belong normally to the domestic jurisdiction of the state. Whether the act should be a private or public concern, however, depends on substantive normative arguments that involve more than a determination of whether the act was committed in a private or public sphere or relationship. It seems to me a good idea to encourage more open and direct international debate and discussion about human rights. To argue, however, that sovereignty as privacy confers an automatic or inviolable right of nonintervention can only pre-empt that debate.

The difference between families and states as collective units, and the differences between the societies in which they are embedded, do not detract from the general utility of the family/state analogy. The use of this analogy has illuminated the moral problem of intervention as an intrusion of the privacy of a collective unit. It leads to an examination of the normative value of state privacy, compelling the question: what is sovereignty as privacy for? For state sovereignty to constitute a normative argument against intervention, we have to examine the particular moral goods, goals and interests that it is intended to uphold or foster, and weigh them against the normative arguments favouring intervention. Thus in the case of the state in international society, just as in the case of the family in domestic society, there may exist morally compelling reasons for intervention which outweigh or transcend the moral considerations favouring nonintervention in any given situation.

IV. COSMOPOLITAN VULNERABILITIES AND THE PROBLEM OF PATERNALISM

The dual role of privacy as a vehicle for oppression as well as liberty in domestic relations has led political theorists to re-examine the question of how to conceive of the moral value of privacy in domestic society.⁶⁶ Due to the moral inadequacy of liberal and communitarian accounts of privacy,

⁶⁶ See, for example, Patricia Boling, *Privacy and the Politics of Intimate Life* (Ithaca, NY: Cornell

some feminists argue that no coherent and morally viable distinction can be made between public and private. In this vein, Catharine MacKinnon has called for the abolition of the distinction as a normative construct because it underpins the morally bankrupt notion of privacy.⁶⁷ Similarly, Frances Olsen has argued that given the mutual interconnection of the private family and the public state, the idea of state intervention in the family as a moral problem is a myth that obscures substantive debates about ethics and social policy.⁶⁸ As Annabelle Lever has described this line of thought, “once one grants the claim that the personal is political, it is hard to see what the public/private distinction could be referring to, or what could possibly be the point and justification of privacy rights.”⁶⁹ Ruth Gavison, however, argues that jettisoning the public/private distinction altogether would lead to a total denial of the values of privacy and intimacy, which most people, including women, would find problematic.⁷⁰ Clearly, although feminists have been united in condemning traditional patriarchal liberal and republican conceptions of the public/private construct, they disagree over how to reconceive it, or whether it has any use at all.

These controversies can be translated with equal force to the issue of state privacy in international society. If international and domestic norms and structures are mutually interconnected, some might argue that it is difficult to articulate a coherent conception of the public/private construct at

University Press, 1996).

⁶⁷ See Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989).

⁶⁸ See Frances E. Olsen, “The Myth of State Intervention in the Family,” *Journal of Law Reform* 18, 4 (1985):835-864.

⁶⁹ Annabelle Lever, “Feminism, Democracy and the Public/Private Distinction,” APSA paper, unpublished manuscript.

⁷⁰ Ruth Gavison, “Feminism and the Public/Private Distinction,” *Stanford Law Review* 45, 1 (1992):1-45 at p. 36.

the international level. Is there no meaningful way to conceive of such a distinction that can support some conception of state privacy vis-à-vis international society? To salvage any morally defensible interpretation of state privacy, we must return to conceptions of individual and family privacy.

What is privacy for? What moral interests does it protect? Feminist theorists have argued that privacy justifications modelled on the paradigm of private property, or the idea of the family as a natural entity, have served to maintain both the exclusion of women from public life and their entrapment in imposed gender roles within families.⁷¹ According to Jean Cohen, privacy should be reconceived as a social right of individuals to protection of the “territories of the self,” which include “decisional autonomy, bodily integrity, inviolate personality.”⁷² To function in society as a person capable of personal or political freedom, individuals require personal privacy rights that “protect the constitutive minimal preconditions for having an identity of one’s own.” Through such rights, “one is able to maintain a sense of selfhood, of agency, and of personal identity.”⁷³ Personal privacy rights are crucial to individual identity, agency, and therefore accountability. Respect for these claims allows individuals to have not only private lives but also public ones. As Goffmann has observed, bodily integrity and decisional agency are intrinsic to selfhood, the basis on which individual persons distinguish themselves from others, as well as interact and connect with them.⁷⁴ Elaine Scarry has

⁷¹ See Jean L. Cohen, “Rethinking Privacy: Autonomy, Identity, and the Abortion Controversy” in *Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy*, Jeff Alan Weintraub and Krishan Kumar eds., pp. 133-165 at pp. 141-143.

⁷² Cohen, “Rethinking Privacy,” p. 162. The concept of “territories of the self” comes from Erving Goffmann, “Territories of the Self,” in *Relations in Public* (New York: Harper, 1971), pp. 28-41.

⁷³ Cohen, “Rethinking Privacy,” pp. 153 and 158.

⁷⁴ Goffmann, “Territories of the Self,” p. 38.

argued that torture, or a willful attack on bodily integrity and decisional agency, unmakes not only the private individual self but also the public social world of which the individual was a part.⁷⁵ Personal privacy so construed affords individuals the capacity to enjoy both freedom as self-direction and freedom as relationship with others.

The justification for protecting personal privacy claims, especially bodily integrity and decisional agency, is explicitly articulated in a cosmopolitan ethical perspective.⁷⁶ Cosmopolitan humanitarianism's dedication to preventing and alleviating human suffering is inspired by an acknowledgement of the natural equality of human vulnerability. Denied security from this vulnerability, individuals lose their selves. Judith Shklar's condemnation of cruelty clearly also derives from a concern for the integrity and agency of the person. Ultimately, cruelty destroys more than bodily integrity; by reducing individuals "to mere reactive units of sensation," it undermines individual personhood and agency.⁷⁷ Hobbes, in acknowledging the physical and mental atomism of individuals in his political philosophy, asserted that public power could not demand an obligation on the part of its subjects to submit to violations of bodily integrity:

⁷⁵ Elaine Scarry, *The Body in Pain: the making and unmaking of the world* (Oxford: Oxford University Press, 1985), pp. 45-51.

⁷⁶ For a development of this argument, see my "The one and many faces of cosmopolitanism," *The Journal of Political Philosophy* 8, 2 (2000):244-267.

⁷⁷ Judith N. Shklar, *Ordinary Vices* (Cambridge: Harvard University Press, 1984), p. 5.

... there [are] some Rights, which no man can be understood by any words, or other signes, to have abandoned, or transferred. As first a man cannot lay down the right of resisting them, that assault him by force, to take away his life; because he cannot be understood to ayne thereby, at any Good to himselfe. The same may be sayd of Wounds, and Chayns, and Imprisonment ...⁷⁸

To Hobbes, persons have no obligations to submit to another's violence that threatens their bodily integrity, whether that other agent be public or private. His political philosophy sought ultimately to guarantee persons security with respect to their natural vulnerabilities, which is a key precondition for agency.

Respect for personal privacy claims not only protects individuals with respect to their natural vulnerabilities, but also places limits on disparities in people's social vulnerabilities. It is clear especially to historically oppressed groups such as the poor, women and minorities that society creates different levels of social vulnerability between individuals and groups. The difference between natural and social vulnerability is that the latter is entirely socially constructed. For example, children may be naturally vulnerable physically and mentally because of immature biological development, but they may also be placed in a position of social vulnerability when they are denied personal privacy rights, or when parents are considered to have absolute control over their welfare. Similarly, what made black slaves vulnerable in American society was not their innate or biological capacities, but social, political and legal rules that placed them in absolute subjection to their owners. Public norms can thus create and sustain differentiated and unequal social vulnerabilities that may at the extreme deprive some members of security with respect to their natural vulnerabilities. Justice in public and private contexts requires equal protection for individuals' equal natural vulnerabilities to violations of bodily integrity and decisional agency.

⁷⁸ Thomas Hobbes, *Leviathan* (Markham: Penguin, 1986), Part I, Chapter 14, p. 192.

According to a cosmopolitan perspective, when personal privacy as defined here is violated, the consent of sovereign authorities no longer constitutes a normative barrier to the delivery of assistance to the victims. The moral burden of justification shifts from those who seek to intervene, to those who claim to have a right to be free from intervention.⁷⁹ Thus, the normative worth of sovereign consent is lost when sovereign conduct violates the obligations to protect personal privacy claims upon which its own authority is based, in the same way that parental consent loses its relevance when the issue is the protection of children being abused by their parents, or spousal consent becomes a non-moral concern in attempts to give assistance to an abused spouse.

Jackson characterizes interventions, that by his definition occur without sovereign consent, as paternalistic.⁸⁰ This concern in the new age of humanitarianism is not unfounded, especially when one remembers all the good civilizing intentions that buttressed the theory and practice of colonialism. As a former student of African politics, Jackson is perhaps more appreciative than most of the moral achievement represented by the establishment of a global society of juridically equal and independent states. Such a society represents a refutation of the ‘standard of civilization’ that was used historically as a test of admission into the European society of states, and that, in practice, legitimated exclusion and discrimination of non-European peoples and civilizations. Perhaps preoccupied with the ghost of colonialism, Jackson rigidly defends the normative prohibition against intervention, and affirms the moral importance of sovereign consent as a criterion for legitimate international intervention.

⁷⁹ The lack of sovereign consent may certainly present problems of practicality and efficiency, which are no doubt greater for intervenors entering a hostile environment.

⁸⁰ According to Jackson, “A solicited intervention, strictly speaking, is not an intervention at all because it is not an interference in state sovereignty.” See *The Global Covenant*, p. 253.

Yet I am reminded of television images from the spring of 1994 of Rwandan Tutsis with their arms raised as if in surrender, appealing to a western camera crew to help them escape certain slaughter at the hands of Hutu extremists. Would it have been paternalistic for other states or the UN to intervene to rescue them from becoming victims of genocide? If human freedom and equality form the ultimate moral bases for international society, the rules of state sovereignty and non-intervention are clearly imperfect instruments for achieving these moral aims; too often, they serve as perverse instruments for undermining them. Jackson acknowledges that a *laissez-faire* liberal international society leaves ample room for illiberal and even tyrannical domestic regimes, but he relies, like Walzer, on an inaccurate sociological reality of insulated political communities, with an idealistic view of ordinary men and women winning their freedom by themselves. The hard question of how states can be held accountable for abuses of sovereign power is one that is disappointingly absent in Jackson's discussion, despite recent developments in international society and law towards a conception of retributive justice for victims of state violence. Clearly, the protection of personal privacy claims demands intervention and nonintervention on different occasions. If the moral function of privacy is not just to pose a barrier to external intrusion, but to protect the bodily integrity and decisional agency of its subjects, then public, external or international intervention may be required to protect such interests. Nonintervention in the face of violations of bodily integrity or decisional agency would hardly contribute to the cause of *human* freedom and equality.

V. CONCLUSION

In international society the interpretation of sovereignty as privacy by scholars and practitioners is currently undergoing a significant normative shift. In some ways, this shift does not constitute a dramatic discontinuity in the moral foundation of world order, as theorists of international

society have historically admitted normative exceptions and limits, in theory and practice, to the internal liberty of states conceived as a moral good. It is important to remember that the Westphalian conception of sovereignty developed in a context of universals: princes advanced claims for more autonomy for states in an environment of common religious and cultural links. Bodin, a proponent of ‘absolute’ state sovereignty, clearly viewed state sovereignty in a greater moral and religious context. While he defined sovereignty as “that absolute and perpetual power vested in a commonwealth,” he stressed that if “we insist however that absolute power means exemption from all law whatsoever, there is no prince in the world who can be regarded as sovereign, since all the princes of the earth are subject to the laws of God and nature, and even to certain *human* laws common to all nations.”⁸¹ Vattel similarly championed state sovereignty in its role as a protector of international pluralism, yet he also justified intervention in cases of “intolerable persecution and evident tyranny.”⁸² As Andrew Hurrell has noted, the protection of the autonomy of any particular community has been constantly balanced against “the protection of certain minimum standards of human rights and by the need to uphold the overall structure of coexistence.”⁸³ At the genesis of the concept of the state and sovereignty as privacy, the freedom from intervention that states could enjoy as a moral claim in international society and law was not thought to be morally absolute, theoretically or practically.

⁸¹ Bodin, *Six Books of the Commonwealth*, pp. 25 and 28. Later, when discussing property rights, Bodin asserts that princes who take the property of others err, for doing so is “the law of the jungle, an act of force and violence. For as we have shown above, absolute power only implies freedom in relation to positive laws, and not in relation to the law of God.” (p. 35.)

⁸² Andrew Hurrell, “Vattel: Pluralism and Its Limits,” in *Classical Theories of International Relations*, Ian Clark and Iver Neumann eds. (New York, St. Martin’s Press, 1996), p. 244.

⁸³ Ibid.

The argument of this paper is not that states can make no moral claims to sovereignty as privacy. Indeed, the idea of the abuse of authority (sovereign or parental) implies the possibility of legitimate authority. Intervention to stop the abuse of authority clearly does not undermine in any way the legitimate use of that authority, nor does it necessarily challenge the legitimacy of those in the particular state or family who are vested to exercise that authority. Furthermore, intervention against abusive governments does not undermine the concept of the state as a political institution, but serves to reinforce the moral foundations of the state and sovereign authority.

Nor should the arguments in this paper be read as justifications of recent military interventions for humanitarian purposes. The problem of the use of force is not my primary concern here; rather I would like to see a conceptual separation of this issue from that of communal integrity and intervention.

The main conclusion of this paper is that no morally defensible conception of community, statist or non-statist, can deny a cosmopolitan recognition of common human vulnerabilities derived from our mortal coil, and of common human potentialities derived from our capacity for reasoned agency. Intervention, understood as “an interposition by an outside party with a view to effecting some alteration in the original situation,”⁸⁴ is not itself problematic when it is part of a response to protect individuals’ personal privacy claims, upon which any morally defensible public order, domestic or international, rests. While it is true that there “is no simple equation between universalist conceptions [of morality like cosmopolitanism] and the advocacy of *forcible* intervention,”⁸⁵ adopting a cosmopolitan ethical perspective clearly does entail an interventionary, if tolerant, disposition.

⁸⁴ Ramsbotham and Woodhouse, *Humanitarian Intervention in Contemporary Conflict*, p. 113.

⁸⁵ *Ibid.*, p. 48, italics mine.

International society theorists have been concerned that by acknowledging the cosmopolitan basis of an ethical world order, one undermines the very foundations of a society of states. Hedley Bull put it rather provocatively: “Carried to its logical extreme, the doctrine of human rights and duties under international law is subversive of the whole principle that mankind should be organised as a society of sovereign states.”⁸⁶ Indeed, if we think about the fate of the family as a social institution in the West, the rise of liberalism in western domestic polities has led to the social demise of patriarchal families. Yet while the patriarchal conception of paternal authority within the family has fallen into disrepute in liberal times, the family as a private social unit remains, and certain forms of family have gained a legitimacy that was denied to them in a patriarchal framework. Thus just as families as collective social units have changed, but also survived the decline of absolutist conceptions of paternal authority in the household, states as collective political units may also survive the decline of absolutist conceptions of internal sovereign authority. A society of states, then, may also change and remain.

⁸⁶ Bull, *Anarchical Society*, p. 152.