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# EUROPEAN UNIVERSALISM

The Rhetoric of Power

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I

Whose Right to Intervene?  
Universal Values Against Barbarism

The history of the modern world-system has been in large part a history of the expansion of European states and peoples into the rest of the world. This has been an essential part of the construction of a capitalist world-economy. The expansion has involved, in most regions of the world, military conquest, economic exploitation, and massive injustices. Those who have led and profited most from this expansion have presented it to themselves and the world as justified on the grounds of the greater good that such expansion has had for the world's populations. The usual argument is that the expansion has spread something variously called civilization, economic growth and development, and/or progress. All of these words have been interpreted as expressions of universal values, encrusted in what is often called natural law. Therefore, it has been asserted that this expansion was not merely beneficial to humankind but also historically inevitable. The language used to describe this activity has been sometimes theological and sometimes derived from a secular philosophical worldview.

Of course, the social reality of what happened has been less glorious than the picture offered us by the intellectual justifications. The disjuncture between reality and justifications has been

felt acutely, and expressed in multiple ways, by those who paid the biggest price in their personal and collective lives. But the disjuncture has also been noted by various intellectuals whose social origins were in the dominating strata. Hence, the history of the modern world-system has also involved a continuing intellectual debate about the morality of the system itself. One of the first and most interesting of such debates occurred quite early, in the context of the Spanish conquest of much of the Americas in the sixteenth century.

In 1492, Christopher Columbus, after a long and arduous trip across the Atlantic Ocean en route to China, landed on several islands in the Caribbean Sea. He did not find China. But he found something unexpected that today we call the Americas. Other Spaniards soon followed in his path. Within a few decades, Spanish conquistadores had destroyed the political structures of the two largest empires of the Americas—the Aztec and the Inca. Immediately, a motley band of their followers laid claims to land, and sought to use the labor of the populations in these empires and elsewhere in the Americas forcibly and ruthlessly to profit from this appropriated land. Within a half century, a large part of the indigenous population had been destroyed by weapons and disease. How large a part has been a matter of dispute, both in the sixteenth century and the post-1945 years. But most scholars today believe it was an extremely large part.\*

\* Bartolomé de Las Casas wrote the *Brevísima relación de la destrucción de las Indias* (1994) in 1552. It was a devastating account that aroused public opinion in Spain at the time. An English translation appears as *The Devastation of the Indies: A Brief Account* ([1552] 1974). The post-1945 discussion of acute population decline is quite extensive. One major work, which launched a good deal of the recent discussion, is that of Sherburne F. Cook and Woodrow Borah (1971).

A canonical figure of the time was Bartolomé de Las Casas. Born in 1484, he came to the Americas in 1502, and was ordained a priest in 1510, the first to be ordained in the Americas. He was initially favorable to and participated in the Spanish system of *encomienda*, which involved the assignment (*repartimiento*) of Amerindians as forced labor to Spaniards managing agricultural, pastoral, or mining properties. But in 1514, he had a spiritual “conversion” and renounced his participation in the *encomienda* system, returning to Spain to commence his life’s work of denouncing the injustices wrought by the system.

Las Casas sought to influence both Spanish and Church policy by participating in many commissions, and writing memos and books. He moved in high circles, being received and even favored at times by Emperor Charles V (King Charles I of Spain). There were some initial successes for the cause he espoused. In 1537, Pope Paul III issued the bull, *Sublimis Deus*, in which he ordained that Amerindians could not be enslaved and could be evangelized only by peaceful means. In 1543, Charles V edicted the *Leyes Nuevas*, which enacted much of what Las Casas had proposed for the Americas, including the end of further concessions of *encomiendas*. Both the papal bull and the royal decree, however, encountered considerable resistance from the *encomenderos* along with their friends and supporters in Spain and the Church. Eventually, both the papal bull and the *Leyes Nuevas* were suspended.

In 1543, Las Casas was offered the bishopric of Cuzco, which he refused, but he then accepted the lesser bishopric of Chiapas in Guatemala (today located in southern Mexico). As bishop, he insisted on a strict enforcement of the *Leyes Nuevas* by mandat-

ing that confessors require of encomenderos the penitence of restitution to the Amerindians, including their liberation from the obligations of *encomienda*. This interpretation expanded somewhat on Charles V's decree, which was not intended to be applied to those *encomiendas* that had been previously granted, and in 1546, Las Casas abandoned the bishopric of Chiapas and returned to Spain.

Las Casas was now encountering a systematic attempt by opponents to refute his arguments theologically and intellectually. One key figure in this effort was Juan Ginés de Sepúlveda. Sepúlveda's first book, *Demócrates primero*, written in 1531, was denied the right of publication. But Sepúlveda persisted. And in 1550, Charles V convened a special juridical panel of the Consejo de Indias to meet in Valladolid, to advise him about the merits of the Sepúlveda–Las Casas controversy. The panel heard the two men successively, but it seems the Junta never gave a definitive verdict. When Charles V was succeeded on the throne a few years later by his son Philip, the Las Casas viewpoint lost all traction with the court.

All that we have today are the documents that the two contestants prepared for this debate. Because these documents posed clearly a central question with which the world is still concerned today—Who has the right to intervene, and when and how?—it is worth reviewing their arguments carefully.

Sepúlveda wrote a second book specifically for this debate: *Demócrates segundo* ([1545?] 1984). It bears the subtitle, *About the Just Causes of the War Against the Indians*. In it, he made four different arguments in defense of the policies of the Spanish government, as interpreted and carried out by the *encomenderos*. He brought to bear as evidence a long series of references to the

established intellectual authorities of the time: in particular, Aristotle, St. Augustine, and St. Thomas Aquinas.

Sepúlveda's first argument was that Amerindians are "barbarians, simple, unlettered, and uneducated, brutes totally incapable of learning anything but mechanical skills, full of vices, cruel and of a kind such that it is advisable they be governed by others." The second contention was that "the Indians must accept the Spanish yoke, even if they don't wish to, as rectification [*enmienda, emendentur*] and punishment for their crimes against divine and natural law with which they are tarnished, especially idolatry and the impious custom of human sacrifice."

The third reason was that the Spaniards are obliged by divine and natural law to "prevent the harm and the great calamities [the Indians] have inflicted—and which those who have not yet been brought under Spanish rule continue today to inflict—on a great number of innocent people who are sacrificed each year to idols." And the fourth argument was that Spanish rule facilitates Christian evangelization by allowing Catholic priests to preach "without danger, and without being killed by rulers and pagan priests, as has happened three or four times."\*

\* These quotations are all from the summary by Las Casas ([1552] 2000, 6–8) of Sepúlveda's arguments. The summary is entirely fair, as can be seen by going to Sepúlveda ([1545?] 1984). The index compiled by Angel Losada for this edition of Sepúlveda contains the following entry: "War against the Indians—Justifications: (1) natural servitude, 19–39; (2) eradicate idolatry and human sacrifices, 39–61; (3) free innocent people from being sacrificed, 61–63; (4) propagation of the Christian religion, 64" (152). The index is briefer than Las Casas's summary, but it is essentially the same. Reading Sepúlveda's wordy text, especially on the first two arguments, adds little to the summary as a statement of his views.

As one can see, these are the four basic arguments that have been used to justify all subsequent “interventions” by the “civilized” in the modern world into “noncivilized” zones—the barbarity of the others, ending practices that violate universal values, the defense of innocents among the cruel others, and making it possible to spread the universal values. But of course these interventions can only be implemented if someone has the political/military power to do so. This was the case with the Spanish conquest of large parts of the Americas in the sixteenth century. However strong these arguments were as moral incentives for those who did the conquering, it is clear that they were greatly reinforced by the immediate material benefits the conquests brought to the conquerors. Ergo, anyone who was located within the conquering community and wished to refute these contentions was faced with an uphill task. Such a person had to argue simultaneously against both beliefs and interests. This was the task Las Casas set himself.

To the first argument that there are people who are naturally barbarous, Las Casas responded in several ways. One was to note the multiple, and quite loose, ways in which the term barbarous was used. Las Casas said that if someone is defined as barbarous because one engages in savage behavior, then we could find such people in all parts of the world. If one is considered barbarous because one's language is not written, the language could be written, and on doing this, we would discover it to be as rational as any other language. If we restrict the term barbarous to mean truly monstrous behavior, however, then it must be said that this kind of behavior was a quite rare phenomenon, and was in fact constrained socially within all peoples to more or less the same degree.

What Las Casas objected to in Sepúlveda's argument was the generalization to an entire people or political structure of behavior that was that of a minority at most—a minority the likes of which one might as easily find in the self-defined more civilized group as in the group considered to be barbarous. He reminded the reader that the Romans had defined the ancestors of the Spaniards as barbarous. Las Casas was putting forward an argument of the rough moral equivalence of all known social systems, such that there is no natural hierarchy among them that would justify colonial rule (Las Casas [1552] 2000, 15–44).

If the argument about natural barbarism was abstract, the one that the Indians had committed crimes and sins that should be rectified and punished was much more concrete. In this particular case, the claim centered around idolatry and human sacrifice. Here, Las Casas was dealing with questions that aroused quite rapidly the moral repugnance of sixteenth-century Spaniards, who could not understand how anyone could be allowed to be idolatrous or engage in human sacrifice.

The first issue that Las Casas raised was jurisdiction. He pointed out, for example, that Jews and Muslims inhabiting Christian lands might be required to obey the laws of the state, but could not be punished for following their own religious precepts. This was a fortiori true if these Jews or Muslims were living in lands other than those governed by a Christian ruler. Jurisdiction of this kind could only extend, he maintained, to a Christian heretic because a heretic was someone who had violated a solemn pledge to adhere to the doctrines of the Church. If the Church did not have jurisdiction over non-Christian residents in Christian lands, it was therefore all the more unreasonable to argue that the Church had jurisdiction over those who

had never even heard of its doctrines. Consequently, idolatry might be judged by God, but it was not subject to the jurisdiction of a human group external to the group that practiced it.

Of course, we might today consider Las Casas's argument to be the advocacy of moral relativism, or at least legal relativism. It was subject then, as now, to the attack that this view demonstrated indifference to the suffering of innocents, who were the victims of these practices contrary to natural law. This was Sepúlveda's third, and strongest, contention. And Las Casas treated it prudently. First of all, he insisted that an "obligation to liberate innocents . . . does not exist when there is someone more suitable to liberate them." Second, he said that if the Church had confided the task of freeing the innocents to a Christian sovereign, "others should not take actions in this regard, lest they do it petulantly." But finally, and most important, Las Casas put forward the argument that one must be careful to act in accordance with the principle of minimal damage:

Although we recognize that the Church has the obligation to prevent the unjust death of innocents, it is essential it be done with moderation, taking care that a greater harm not be done to the other peoples which would be an impediment to their salvation and make unfruitful and unrealized the passion of Christ. (1552) 2000, 183)

This was a crucial point for Las Casas, and he illustrated it with the morally difficult issue of rituals in which the slaughtered body of children were eaten. He started by noting that this was not a custom among all Indian groups, nor were many children sacrificed among those groups who engaged in the practice.

But this would seem to be an evasion of the issue, were not Las Casas to face up to the reality of a choice. And here, he argued the principle of minimal damage:

Furthermore, it is incomparably a lesser evil that a few innocents die than that the infidels blaspheme against the adorable name of Christ, and that the Christian religion be defamed and hated by these people and others who learn of this, when they hear that many children, elderly, and women of their race have been killed by the Christians without a reason, as part of what happens in the fury of warfare, as has already occurred. (187)

Las Casas was implacable against what we would today call collateral damage: "it is a sin meriting eternal damnation to harm and kill innocents in order to punish the guilty, for it is contrary to justice" (209).

He came up with a final reason why it was not licit for the Spaniards to punish Indians for the sins the Indians might be committing against innocents. It is "the great hope and presumption that such infidels will be converted and correct their errors . . . [since] they do not commit such sins obstinately, but certainly . . . because of their ignorance of God" (251). And Las Casas ended the discussion with a peroration:

The Spaniards penetrated, certainly with great audacity, this new part of the world, of which they had never heard in previous centuries, and in which, against the will of their sovereign, they committed monstrous and extraordinary crimes. They killed thousands of men, burned their villages, took their cattle,

destroyed their cities, and committed abominable crimes with no demonstrable or specific excuse, and with monstrous cruelty against these poor people. Can such sanguinary, rapacious, cruel and seditious men be truly said to know God, to whose worship they exhort the Indians? (256)

The answer to this question led straight to the one given by Las Casas to Sepúlveda's last argument: facilitating evangelization. Men can only be brought to Christ through their free will, never by coercion. Las Casas acknowledged that Sepúlveda made the same statement, but Las Casas asked whether the policies that Sepúlveda was justifying were compatible with the concept of free will:

What greater coercion can there be than that brought by an armed force that opens fire with harquebuses and bombardments, the horrible din of which, even if it has no other effect, makes everyone breathless, however strong they are, especially those who are unacquainted with such weapons and do not know how they work? If the clay pots pop off with the bombardments, and the ground trembles, and the sky is clouded by thick dust, if the old, the young, and the women fall down and the huts are destroyed, and everything seems shaken by the fury of Bellona, would we not truly say that force is being used to get them to accept the faith? (296)

Las Casas believed that war was not a way to prepare souls to suppress idolatry. "The gospel is spread not with lances, but with the word of God, with a Christian life and the action of reason" (300). War "engenders hate, not love, for our religion. . . . The

Indians must be brought to the faith with meekness, charity, a saintly life and the word of God" (360).

If I have spend so much time spelling out the arguments of two sixteenth-century theologians, it is because nothing that has been said since has added anything essential to the debate. In the nineteenth century, the European powers proclaimed that they had a civilizing mission in the colonial world (Fischer-Tiné and Mann 2004). Lord Curzon, Viceroy of India, expressed this ideological perspective well in a speech he gave at the Byculla Club in Bombay on November 16, 1905, to a group composed largely of British colonial administrators:

[The purpose of the empire] is to fight for the right, to abhor the imperfect, the unjust or the mean, to swerve neither to the right hand nor to the left, to care nothing for flattery or applause or odium or abuse . . . but to remember that the Almighty has placed your hand on the greatest of His ploughs . . . to drive the blade a little forward in your time, to feel that somewhere among those millions you have left a little justice or happiness or prosperity, a sense of manliness or moral dignity, a spring of patriotism, a dawn of intellectual enlightenment, or a stirring of duty, where it did not before exist. That is enough. That is the Englishman's justification in India. (cited in Mann 2004, 25)

This justification was no doubt somewhat less convincing to the Indian people than it seemed to Lord Curzon and the colonial administrators he was addressing, since Curzon's successors had to quit India less than a half century later in 1948. Perhaps Curzon's Englishmen had not left enough justice, happiness, or prosperity. Or perhaps they had stimulated too much manliness,

moral dignity, and patriotism—the latter on behalf of the wrong country. Or perhaps the intellectual enlightenment that the British colonial administrators promoted allowed the likes of Jawaharlal Nehru to draw different conclusions about the merits of British rule. Or perhaps, most devastating of all, the Indian people agreed with Mahatma Gandhi's famous quip in response to a reporter's question: "Mr. Gandhi, what do you think of Western civilization?" "I think," replied Gandhi, "it would be a good idea."

The second half of the twentieth century was a period of massive decolonization throughout the world. The immediate cause and consequence of this decolonization was an important shift in the dynamics of power in the interstate system resulting from the high degree of organization of the national liberation movements. One by one, and in a cascading sequence, the erstwhile colonies became independent states, members of the United Nations, protected by the doctrine of noninterference by sovereign states in the internal affairs of each other—a doctrine enshrined both in evolving international law and the United Nations Charter.

In theory, this should have meant the end of interference. But of course it didn't. To be sure, the justification of Christian evangelization was no longer available to legitimate imperial control, nor was that of the religiously more neutral concept of the civilizing mission of colonial powers. The rhetorical language now shifted to a concept that came to have new meaning and strength in this postcolonial era: human rights. In 1948, the United Nations had erected as its ideological centerpiece the Universal Declaration of Human Rights, which was ratified by almost every member of the United Nations. It did not constitute interna-

tional law but rather incarnated a series of ideals to which the member nations committed themselves in principle.

Needless to say, there have since been repeated, widespread, and egregious acts that constituted violations of the declaration. Because most governments have grounded their foreign policy in a so-called realist view of interstate relations, almost no intergovernmental action has been undertaken that could be said to reflect this concern with human rights, although the violation of the declaration has been regularly invoked as propaganda used by one government to condemn another.

The virtual nonexistence of intergovernmental concern with human rights questions led to the emergence of many so-called nongovernmental organizations (NGOs) to fill the void. The NGOs that assumed the burdens of direct action to sustain human rights throughout the world were of two main varieties. On the one hand, there was the kind represented by Amnesty International, which specialized in publicizing what it considered illegitimate and abusive imprisonments of individuals. It sought to mobilize the pressure of international public opinion, directly and via other governments, to induce changes in the policies of the accused governments. And on the other hand, there was the kind represented by Doctors Without Borders, which sought to introduce direct humanitarian assistance in zones of political conflict, without accepting the mantle of neutrality that had long been the principal strategic shield of the International Red Cross.

This nongovernmental activity had a certain limited degree of success and consequently spread, especially beginning in the 1970s. In addition, this human rights thrust received an impetus by some new activities at the intergovernmental level. In 1975,



the United States, the Soviet Union, Canada, and most of the countries of Europe met together at the Conference on Security and Cooperation in Europe (CSCE) and signed the Helsinki Accords, which obliged all the signatory states to observe the Universal Declaration of Human Rights. Since there was no enforcement mechanism for this accord, however, a nongovernmental Western structure, the Helsinki Watch, was created to assume the task of putting pressure on the governments of the Soviet bloc to observe these rights.

When Jimmy Carter became president of the United States in 1977, he asserted that the promotion of human rights would be a centerpiece of his policy, and extended this concept beyond its application in the Soviet bloc (where geopolitically the United States had little purchase) to the authoritarian and repressive regimes in Central America (where geopolitically the United States had considerable purchase). Yet Carter's policy did not last long. Whatever impact it had in Central America, it was essentially revoked during the subsequent presidency of Ronald Reagan.

In this same period, there were three important direct interventions in Africa and Asia, where one government took action against another, using as its argument that the country being attacked was violating humanitarian values. First, in 1976, a Palestinian guerrilla group hijacked an Air France plane with many Israelis aboard and flew it to Uganda, with the complicit accord of the Ugandan government. The hijackers demanded the release of certain Palestinians in Israel in return for releasing the Israeli hostages. On July 14, 1976, Israeli commandos flew into Entebbe airport, killed some Ugandan guards, and rescued the Israelis. Second, on December 25, 1978, Vietnamese troops

crossed the Cambodian border, overthrew the Khmer Rouge regime, and installed a different government. And third, in October 1978, Idi Amin of Uganda attacked Tanzania, which counterattacked, its troops eventually reaching the Ugandan capital, overthrowing Idi Amin, and installing a different president.

What is the same in these three instances is that the justification from the intervenors' point of view was human rights—defense against hostage taking in the first case, and undoing extremely vicious and dictatorial regimes in the latter two cases. Of course, in each case, we could discuss the strength and veracity of the charge, and the degree to which no more lawful or peaceful alternative existed. We could also debate the consequences of each of these actions. But the point is that the intervenors argued and believed that they were acting in ways that maximized justice, and therefore were morally justified in natural law, if not legally justified in international law. Furthermore, the intervenors all sought and received considerable approbation not only from their own communities but from elsewhere in the world-system, on the grounds that only the violent means used could have eradicated the patent evil that they asserted was occurring.

What we were seeing was a historical reversion of theorizing about the moral and juridical codes of the world-system. For a very long period, going more or less from the long sixteenth century to the first half of the twentieth century, the Sepúlveda doctrine—the legitimacy of violence against barbarians and the moral duty to evangelize—predominated, and the Las Casas objections represented a distinctly minority position. Then, with the great anticolonial revolutions in the middle of the twentieth century, and especially in the period 1945–70, the moral right of

the oppressed peoples to refuse the paternal oversight of the self-styled civilized people came to have ever greater legitimacy in the world political structures.

Perhaps the high moment of the collective institutionalization of this new principle was the adoption by the United Nations in 1960 of the Declaration on Granting Independence to Colonial Countries and Peoples, a subject that had been totally evaded in the original United Nations Charter written a mere fifteen years earlier. It seemed that Las Casas was at last having his views adopted by the world community. But no sooner was this validation of the Las Casas perspective made official doctrine than the new emphasis on the human rights of individuals and groups became a prominent theme of world politics, and this began to undermine the right to reject paternal oversight. The human rights campaign essentially restored the Sepúlveda emphasis on the duty of the civilized to suppress barbarism.

It is at this moment that the world saw the collapse of the Soviet Union and the dethroning of Communist governments throughout east/central Europe. These events might still be thought to fit within the spirit of the United Nations' declaration on the right to independence. The subsequent breakup of Yugoslavia into its constituent republics, however, led to a series of wars and quasi-wars, in which the struggle for independence became linked to policies of "ethnic purification." The constituent republics of the erstwhile Socialist Federal Republic of Yugoslavia all had long had a clear ethnic focus, but each also had important national minorities. Thus, when they divided up into separate states, a continuing process over a number of years, there was considerable internal political pressure within each of them to reduce or remove entirely ethnonational minorities

from the new sovereign states. This led to conflicts and wars within four of the former Yugoslav republics: Croatia, Bosnia, Serbia, and Macedonia. The story of each was rather different, as were the outcomes. But in each, ethnic purification became a central issue.

The continued high level of violence, including rapes and slaughters of civilians, led to calls for Western intervention in order to pacify the region and guarantee a semblance of political fairness, or so it was argued. Such interventions occurred most notably and particularly in Bosnia (with three ethnicities more or less of the same size) and Kosovo (a largely Albanian region of Serbia). When Western governments hesitated, intellectuals and NGOs in these countries stubbornly pressured their states to intervene, and the states eventually did so.

For various reasons, this nongovernmental pressure was strongest in France, where a group of intellectuals founded a journal called *Le Droit d'Ingérence* [*The Right to Intervene*]. While these intellectuals did not cite Sepúlveda, they used secular arguments that pushed in the same direction. They too insisted that "natural law" (although they may not have used this locution) required certain kinds of universal behavior. They too insisted that when such behavior did not occur, or worse still when opposite kinds of behavior prevailed in a certain zone, the defenders of natural law not only had the moral (and of course political) *right* to intervene but the moral and political *duty* to intervene.

At the same time, there were a number of civil wars in Africa—Liberia, Sierra Leone, Sudan, and above all Rwanda, in which there was a mass slaughter of Tutsi by Hutu, without any meaningful intervention by foreign troops. Rwanda, Kosovo, and various other zones of acute human drama became the sub-

ject of much retrospective debate about what might or might not have been done, or what ought to have been done, to safeguard human life and human rights in these zones. Finally, I do not need to remind anyone of the degree to which the U.S. invasion of Iraq in 2003 was justified as necessary to rid the world of a dangerous and vicious dictator, Saddam Hussein.

On March 2, 2004, Bernard Kouchner gave the twenty-third annual Morgenthau Memorial Lecture at the Carnegie Council on Ethics and International Affairs. Kouchner is perhaps the world's most prominent spokesperson today for humanitarian intervention. He is the founder of Doctors Without Borders; the coiner of the phrase "*le droit d'ingérence*"; at one time a cabinet minister in the French government charged with human rights concerns; subsequently the Special Representative of the UN secretary-general in Kosovo; and, in his own words, someone who has "the added reputation of having been Mr. Bush's only supporter in France." It is therefore of some interest to hear what, on reflection, Kouchner considers to be the place of humanitarian intervention in international law:

There is an aspect of humanitarian intervention that has proved rather difficult to implement: I refer to the tension between state sovereignty and the right to interfere. The international community is working on a new system of humanitarian protection through the UN Security Council; yet globalization clearly does not herald an end of state sovereignty, which remains the bulwark of a stable world order. To put it another way: we cannot have global governance or a UN system without the sovereignty of states.

The international community must strive, in the pattern of

the European Union, to resolve this inherent contradiction: how can we maintain state sovereignty yet also find a way to make common decisions on common issues and problems? One way to resolve the dilemma is to say that sovereignty of states can be respected only if it emanates from the people inside the state. If the state is a dictatorship, then it is absolutely not worthy of the international community's respect. (2004, 4)

What Kouchner offered us was the twenty-first century's equivalent of evangelization. Whereas for Sepúlveda, the ultimate consideration was whether a country or people were Christian, for Kouchner, the ultimate consideration was whether or not they were democratic (that is, not living in a state that was a "dictatorship"). Sepúlveda could not deal with, and thus totally ignored, the case of countries and peoples that were Christian, but nevertheless engaged in barbaric acts violating natural law, such as Spain and the Inquisition. What Kouchner could not deal with, and thus totally ignored, was the case in which a country or people that has strong popular support might nonetheless engage in barbaric acts against a minority, such as what happened in Rwanda. Actually, of course, Kouchner was in favor of outside intervention in Rwanda, not because it was a dictatorship, but because he considered the acts barbaric. The talk of a dictatorship as a general principle was a fig leaf for this concern, applying in some cases (say, Iraq), but certainly not, in all cases in which Kouchner and others thought it morally imperative to intervene.

Suppose, facing the "inherent contradiction" of which Kouchner spoke—that between the sovereignty of states and common decisions on human rights—we applied the Las Casas

principles—his four answers to Sepúlveda—to the situations in Kosovo or Iraq. The first question with which Las Casas dealt was the presumed barbarity of the other against whom one is intervening. The first problem, he said, is that it is never totally clear in these debates who are the barbarians. In Kosovo, was it the Serbs, the government of Yugoslavia, or a particular group of people headed by Slobodan Milošević? In Iraq, was it the Sunni Arabs, the Baath party, or a particular group of people headed by Saddam Hussein? The intervenors moved murkily among all these targets, seldom clarifying or making distinctions, and always arguing the urgency of the intervention. In effect, they were claiming that they would somehow sort out the apportionment of guilt later. But of course later never comes. For a murky opponent allows one to assemble a murky coalition of intervenors, who severally may have different definitions of who are the barbarians, and therefore have different political objectives in the process of the intervention.

Las Casas insisted on sorting all this out in advance. For he argued that true barbarity is a rare phenomenon, normally constrained by the social processes of every social group. If that is so, one of the questions we need always to ask, when faced by a situation among others that we define as barbaric, is not only why did the internal process break down but also the degree to which it did in fact break down. Of course, engaging in such an analytic exercise tends to slow one down, which is the major argument invoked against doing it. There is no time, say the intervenors. At each moment, the situation deteriorates further. And this may well be true. But a slower pace may save one from making grievous mistakes.

The analysis deriving from the Las Casas principle presses us

also to engage in a comparison. Are the countries and peoples that are intervening also guilty of engaging in barbaric acts? And if so, are these acts so much less serious than those found among the target countries and peoples such that they justify the sense of moral superiority on which any intervention is based? Certainly, since evil exists everywhere, this kind of comparison could be paralyzing, which is the major assertion against it, and which may also well be true. Yet the attempt at comparison can also serve as a timely brake on hybris.

There is the second Sepúlveda principle: the obligation to punish those who commit crimes against natural law, or as we would say today, crimes against humanity. Some acts may outrage the sense of decency of honest people organized in that nebulous, almost fictive character known as the “international community.”\* And when that happens, are we not obliged to punish such crimes? It is to this argument that Las Casas opposed three questions: Who defined them as crimes, and were they so defined at the time they were committed? Who has jurisdiction to punish? Is there someone else more fit than we to engage in the punishment, if punishment is merited?

The question of the definition of the crimes, and by whom, is of course a central debate, today as in the past. In the Balkan conflicts of the 1990s, there were undoubtedly crimes committed by most people’s definitions, including the definitions of the political leaders of the region. We know this because the contending political leaders on all sides accused each other of crimes, and in-

\* See the marvelous, and rather acerbic, commentary on the international community by Trouillot (2004, 230): “I think of [the international community] as a sort of Greek chorus of contemporary politics. No one has ever seen it, but it is singing in the background and everyone is playing to it.”

deed the same kind of crimes—ethnic cleansing, rapes, and cruelty. The problem that faced outsiders to the region was which crimes to punish, or rather, how to weigh the relative responsibilities of all the sides.

The intervening outsiders in fact engaged in two kinds of actions. On the one hand, they engaged in first diplomatic and then military action to stop the violence, which in many cases meant siding with one faction or the other in particular situations. This involved at the best a judgment of the relative weight of the crimes, in some sense. On the other hand, the outsider intervenors set up special international judicial tribunals that sought to punish particular individuals, and to select such individuals from all sides of the conflicts.

In the aftermath, in the most spectacular trial following the events, that of Milošević, the heart of Milošević's defense was not merely that he was innocent but that the international criminal tribunal had not indicted various persons from the intervening powers who he charged were guilty of crimes as well. Milošević asserted that the courts were the tribunals of the strong indicting the leaders of the militarily weaker and not courts of justice. So, we had two questions: Were the alleged crimes true crimes or were they merely accepted general behavior? And if they were true crimes, were all the criminals being brought to justice, or only those who were of the country that was the object of the intervention and not those of the country that engaged in the intervention?

The question of jurisdiction was of course central to the debate. On the one side, those who insisted on the right and duty to intervene asserted that establishing the international tribunals was an advance in international law. But juridically, there was

the question not only of the procedure by which such a court was established but the narrow geographic definition of its potential jurisdiction.

And finally, there was the issue of whether there were alternative ways of handling the crimes, or alternative handlers. In effect, in the early 1990s, the United States was arguing that the proper handlers were the Europeans—that is, the West Europeans—on the grounds that the Balkans were in Europe and were indeed potential members of the European Union. But the Europeans hesitated, for political and military reasons, to assume this burden without the active support of the United States, and ultimately it was the North Atlantic Treaty Organization (NATO) that assigned itself the task. But it was NATO and not the United Nations primarily because the Western countries feared, probably correctly, that Russia would veto any resolution of the Security Council that singled out an action against Serbia and exempted the other parties to the conflict.

The same questions emerged, with even greater clarity, when it came to the intervention in Iraq by the United States in conjunction with a so-called coalition of the willing. The United States attempted to get Security Council endorsement for its military action. But when it was clear that the United States would get only four out of fifteen votes for an enabling resolution, it withdrew its proposed resolution and decided to move on its own without UN legitimation. The *Las Casas* question then became even more relevant: By what right did the United States assume jurisdiction in this arena, especially since a large number of the countries of the world openly opposed its actions? The U.S. government's answer was twofold. On the one hand, it argued self-defense on the grounds that the Iraqi government posed an

imminent threat to the United States and the world, on the basis of its supposed stock of weapons of mass destruction and its presumed readiness to share these weapons with nonstate "terrorists." This argument subsequently fell to pieces in light of postinvasion knowledge that such weapons were not in the possession of the Iraqi government, and because of widespread disagreement with the contention that had Saddam Hussein had such weapons, he would have been willing to distribute them to nonstate "terrorists."

In view of the weakness of this case, the U.S. government fell back on the claim that Saddam Hussein was an evil man who had himself committed crimes against humanity and therefore eliminating him from power was a moral good. And at this point, the question not only of the truth of these assertions but even more of the jurisdiction comes to the fore, as well as whether the moral crimes of Saddam Hussein were the true motive of the outside intervention, given the previous support of the U.S. and other governments for Saddam Hussein at moments in time when he committed precisely the acts that were the basis of the accusation.

Once again, in this situation as in most, the strongest case for the interventions was the defense of the innocent—the innocent Bosnian Muslims who were being raped and slaughtered, the innocent Kosovars who were being evicted from their lands and chased across borders, and the innocent Kurds and Shiites who were being oppressed and killed by Saddam Hussein. What do we learn from the third Las Casas answer to Sepúlveda? Las Casas insisted on the principle of "minimal damage." Even if all the allegations were absolutely correct, would the punishment do more harm than it prevented? The principle of minimal

damage is the Las Casas translation to collective social phenomena of the ancient adjunction in the Hippocratic oath to doctors: "Do no harm!"

In the case of the Balkan conflicts, one might perhaps maintain that there has been minimal damage. The active violence was vastly reduced. On the other hand, the ethnic cleansing was not erased or reversed to any great extent; rather, its results were more or less institutionalized. There was no (or only minimal) restitution of property or the right to residence. And the Serbs in Kosovo certainly felt that they were worse off than before. One can raise the question of whether the situation would have ended up in the same place even without the outside intervention. But one cannot make a strong case that the situation was made significantly worse.

One can make that case, however, in regard to the intervention in Iraq. To be sure, Saddam Hussein and the Baath party were no longer in power and could not continue the kinds of oppressive acts in which they had previously engaged. Yet the country suffered from a significant number of negatives that were not true before the outside intervention. The economic well-being of the citizens was probably less. The everyday violence had massively increased. The country became a haven for precisely the kind of militant Islamists against whom the action was presumably directed and who were not really able to operate within the country before the intervention. And the civil situation of Iraqi women became considerably worse. At least one hundred thousand Iraqis were killed and many more severely wounded since the intervention. One might certainly have invoked the principle of minimal damage here.

The final Sepúlveda argument was the right and duty to

evangelize, and the presumed obstacles to that posed by the Amerindians. The equivalent in the twenty-first century is the right and duty to spread democracy. This has been one of the principal contentions of the U.S. and U.K. governments, particularly invoked by U.S. neoconservative intellectuals and Prime Minister Tony Blair. Las Casas insisted that it was meaningless to evangelize by force, that conversion to Christianity had to come from voluntary adherence from within the person converted, and that force was counterindicated.

The same argument was adduced in critiques of the interventions in the Balkans and Iraq insofar as they were justified on the basis that they promoted democracy. It was a question of how one measures conversion to democratic values. For the intervenors, it seemed to mean essentially the willingness to hold elections in which multiple political parties or factions could participate with a minimal degree of civility and the ability to campaign publicly. This was a very limited definition of democracy. Even at this minimal level, it was far from certain that this had been achieved with any lasting power in either region.

If, however, one meant by democracy something more extensive—genuine decision-making control by the majority of the population in the governmental structure, the real and continuing ability of all kinds of minorities to express themselves politically as well as culturally, and an acceptance of the continuing need and legitimacy of open political debate—it seems quite certain that these are conditions that must mature internally from within different countries and regions, and that outside intervention is in general counterindicated, for it associates the concept with outside control and the negatives brought about by the intervention.

The question—Whose right to intervene?—goes to the heart of the political and moral structure of the modern world-system. Intervention is in practice a right appropriated by the strong. But it is a right difficult to legitimate, and is therefore always subject to political and moral challenge. The intervenors, when challenged, always resort to a moral justification—natural law and Christianity in the sixteenth century, the civilizing mission in the nineteenth century, and human rights and democracy in the late twentieth and twenty-first centuries.

The case against intervention has always come from two sources: the moral doubters among the strong peoples (those invoking the Las Casas arguments), and the political resisters among those against whom the intervention is aimed. The moral case of the intervenors is always sullied by the material interests of the intervenors that are being served by the intervention. On the other hand, the moral doubters always seem to be justifying actions that, in terms of their own values, are nefarious. The case of the political leaders of the people against whom the intervention is aimed is always challenged as reflecting the narrow interests of these leaders and not of the people they are leading.

But all of this ambiguity comes within the framework of accepting the values of the intervenors as universal ones. If one observes that these universal values are the social creation of the dominant strata in a particular world-system, however, one opens up the issue more fundamentally. What we are using as a criterion is not global universalism but European universalism, a set of doctrines and ethical views that derive from a European context, and aspire to be, or are presented as, global universal values—what many of its espousers call natural law. It justifies

simultaneously the defense of the human rights of the so-called innocent and the material exploitation engaged in by the strong. It is a morally ambiguous doctrine. It attacks the crimes of some and passes over the crimes of others, even using the criteria of what it asserts to be natural law.

It is not that there may not be global universal values. It is rather that we are far from yet knowing what these values are. Global universal values are not given to us; they are created by us. The human enterprise of creating such values is the great moral enterprise of humanity. But it will have a hope of achievement only when we are able to move beyond the ideological perspective of the strong to a truly common (and thus more nearly global) appreciation of the good. Such a global appreciation requires a different concrete base, though, a structure that is far more egalitarian than any we have constructed up to now.

We may approach such a common base one day—even one day soon. That depends on how the world emerges from the present transition from our existing world-system to a different one, which may or may not be better. Yet until we have weathered this transition and entered into this more egalitarian world, the skeptical constraints on our impulsive moral arrogances that Las Casas preached will probably serve us better than the self-interested moral sureties of the Sepúlvedas of this world. Constructing world legal constraints on crimes against humanity has little virtue if these constraints are not as applicable to the powerful as to those whom they conquer.

The Consejo de las Indias that met in Valladolid did not report its verdict. Hence, Sepúlveda won. It is still not reporting its verdict, and as such, Sepúlveda is still winning in the short run. The Las Casas of this world have been condemned as naive, as

facilitators of evil, as inefficacious. But they have nonetheless something to teach us—some humility about our righteousness, some concrete support of the oppressed and persecuted, some continuing search for a global universalism that is truly collective and therefore truly global.