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Beyond the Law of Peoples: Revisiting the No Cosmopolitan Conception of Human Rights

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Abstract

Western discussions of human rights have led to the coalescence of two distinct positions regarding the fundamental, inalienable liberties that citizens should be able to enjoy as a matter of principle. The first, commonly known as the cosmopolitan perspective[1], asserts that one set of basic human rights is valid for all societies. The other claims that citizens of different societies may possess different sets of human rights, albeit ones that any thoughtful person would acknowledge to be essentially decent and appropriate to the cultural and historical circumstances of the community at hand. Among a great many prominent cosmopolitan theorists, David Held stands out as the most consistent and vociferous champion of a universalist conception of human rights. Arguably the most influential proponent of distinct packages of rights for various social milieux is John Rawls, whose controversial notion of the Law of Peoples explicitly calls on liberal societies to tolerate, if not actually respect, alternative ways in which a minimal cluster of basic rights might be articulated.[2] This paper demonstrates first that these two, generally opposed poles of the debate over human rights have moved much closer to one another than one might expect. Second, this paper outlines a pair of arguments that can be combined to offer a viewpoint that differs profoundly from the two conventional positions, one that not only proposes a foundation for human rights that is even more minimalist (and thus more radical) than the Law of Peoples, but also urges us to make a clear demarcation between the civic and moral components of human rights. Finally, the paper offers empirical evidence that an attitude of tolerance for distinct packages of human rights tends to promote interstate peace. This implies that a lack of respect for cross-cultural variations in human rights sets the stage for interstate war.

Keywords: Law; Human Rights; West world; Citizens.

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1. Charles Beitz, "Social and Cosmopolitan Liberalism", *International Affairs* 75, no. 3 (1999): 515-529.
2. Charles Beitz, "Rawls's Law of Peoples", *Ethics* 110, no. 4 (2000): 669-696.

Introduction: Contemporary cosmopolitanism

Early statements of the proposition that a single set of human rights should be enjoyed by all persons proposed a wide variety of such rights. These include the right to life, to own property, to hold and express opinions, to believe in and practice a religion, to be protected from physical torture and cruel punishment, to enjoy equal treatment under the law, to be brought to trial before an impartial judiciary, to have privacy in the home and in family matters, and to be allowed to form civic associations, most notably trade unions. Between June 1945 and July 1998, twenty international conventions were drawn up to formulate a universal body of human rights. These initiatives ended up codifying more than 35 distinct rights.[3]

Given this state of affairs, even the most ardant supporters of the cosmopolitan position have had to recognize three major difficulties. First, the number of purported human rights has grown so large that it is almost impossible to enforce adherence to all of them. The very incapacity of the international community to guarantee such a large number of rights significantly undermines the effectiveness, if not the overall legitimacy, of human rights campaigns. Second, the list has lost whatever coherence it once exhibited, and now includes a wide range of items that bear little relation to each other. In other words, there appears to be little potential for the various human rights that have been proposed so far to coalesce and build in any particular direction over time. Third, the lengthy list of universal human rights provides a pretext for external intervention in almost any country, in the name of upholding or restoring some right or another. In Held's words, “the spreading hold of the regime of liberal international sovereignty has compounded the risks of arrogance in certain respects. This is so because in the transition from prince to prime minister or president, from unelected governors to elected governors, from the aristocratic few to the democratic many, political arrogance has been reinforced by the claim of the political elites to derive their support from that most virtuous source of power--the demos. Democratic princes can energetically pursue public policies--whether in security, trade, technology, or welfare--because they feel, and to a degree are, mandated so to do.[4]”

Consequently, Held proposes a shorter, more concise list of general rules that might provide the foundation for an improved set of cosmopolitan human rights. The list contains seven “paramount principles”:

3. David Held, “Law of States, Law of People”, *Legal Theory* 8 (2002): 10-12.
4. Held, “Law of States, Law of People”, 21.

1) Equal worth and dignity;

2) Active agency;

3) Personal responsibility and accountability;

4) Consent;

5) Reflexive deliberation and collective decision-making through voting procedures;

6) Inclusiveness and subsidiarity; and

7) Avoidance of serious harm and the amelioration of urgent need.

Taken together, he argues, "these are principles that can be universally shared and can form the basis for the protection and nurturing of each person's equal interest in the determination of the institutions that govern his or her life."[5]

Held insists that the seven principles reflect universal values, which are most closely congruent with the ideals of western liberalism. "To conceive of people as having equal moral value," he observes, "is to make a general claim about the basic units of the world comprising persons as free and equal beings. This broad position runs counter to the common view that the world comprises fundamentally contested conceptions of the moral worth of the individual and the nature of autonomy. It does so because, to paraphrase (and adapt) Bruce Ackerman (1994), there is no Islamic nation without a woman who insists on equal liberties, no Confucian society without a man who denies the need for deference, and no developing country without a person who yearns for a predictable pattern of meals to help sustain his or her life projects.[6]"

Yet it appears that at least some of the seven principles might be practiced in ways that run counter to liberal precepts. Held notes that the second principle "connotes the capacity of human beings to reason self-consciously, to be self-reflective, and to be self-determining. It involves the ability to deliberate, judge, choose, and act upon different possible courses of action in private as well as public life. It places at its center the capability of persons to choose freely, to enter into self-chosen obligations, and to enjoy the underlying conditions for the relfexive constitution of their activities.[7]" He remarks in a footnote to this passage that "the principle of active agency does not make any

5. Held, "Law of States, Law of People", 24.
6. Held, "Law of States, Law of People", 25.
7. Held, "Law of States, Law of People", 25.

assumption about the extent of self-knowledge or reflexivity. Clearly, this varies and can be shaped by both unacknowledged conditions and unintended consequences of action." In other words, thoughtful people might well choose to adopt a different set of political and social objectives and procedures from the ones that are entailed by western liberalism. And making such a choice is their unimpeachable right.

Held's discussion of the third principle goes even further in this direction: The principle of personal responsibility and accountability "can be understood to mean that it is inevitable that people will choose different cultural, social, and economic projects and that such differences need to be both recognized and accepted.[8]" It is vital for individuals and collectivities alike "to be aware of and accountable for the consequences of [their] actions, direct or indirect, intended or unintended, that may restrict or delimit the choices of others--choices that may become highly constrained for certain groups who have had no role in or responsibility for this outcome." But so long as "close attention [is given] to those groups of people who become vulnerable or disabled by social institutions from fully participating in the determination of their own lives," actors are free to select whatever course of action suits them the best.

Principle 5) is elaborated in an equally open-ended fashion. Held[9] argues that although "it might seem that, ideally, collective decisions should follow from the 'will of all,' ...a legitimate public decision is one that results [instead] from 'the deliberation of all,' [and so] needs to be linked with voting at the decisive stage of collective decision-making and with the procedures and mechanisms of majority rule." He goes on to say that voting must take place in a way that guarantees the "position" of minorities.[10] I take this to mean that any form of majority rule by means of regular elections represents an acceptable way to structure a society's political system, so long as the interests of minorities are protected. Principle 6) further stipulates that, in the words of Thomas Pogge, "the authority to make decisions of some particular kind should rest with the democratic [sic] political process of a unit that (1) is as small as possible but still (2) includes as equals all persons significantly ...affected by decisions of this kind."[11]

8. Held, "Law of States, Law of People", 26.
9. Held, "Law of States, Law of People", 27.
10. Held, "Law of States, Law of People", n.2.
11. Thomas Pogge, "Cosmopolitanism and Sovereignty", In *Political Restructuring in Europe: Ethical Perspectives*, edit. C. Brown. (London: Routledge, 1194a), 109.

One can imagine many sorts of political arrangements that fully satisfy these criteria. Held[12] appears to recognize this, and ends his discussion by arguing that the first three principles do not lay the groundwork for any specific kind of political order, but rather "[set] down the fundamental organizational features of the cosmopolitan moral universe. [emphasis added]" Principles 4), 5) and 6) then determine whether or not a particular political system can be considered "legitimate".[13] In this way, the possibility is opened for external observers to join local citizens in deciding whether or not a society's existing political institutions and practices are illegitimate. Nevertheless, Held[14] cautions that "it should not be concluded from this that the meaning of the seven principles can simply be specified once and for all. For while cosmopolitanism affirms principles that are universal in their scope, it recognizes, in addition, that the precise meaning of these is always fleshed out in situated discussions; in other words, that there is an inescapable hermeneutic complexity in moral and political affairs that will affect how the seven principles are actually interpreted, and the weight granted to special ties and other practical-political issues." He concludes, citing Juergen Habermas (1996), "This cosmopolitan point of view builds on principles that all could reasonably assent to, while recognizing the irreducible plurality of forms of life."[15]

The Law of Peoples redux

John Rawls's notion of the Law of Peoples has sparked considerable scholarly debate, not least on the grounds that it seems to pose a direct challenge to the cosmopolitan position. Rawls begins by asserting that a reasonable conception of international justice must include not only liberal democratic societies, but also "nonliberal but decent" ones. The latter consist of "societies whose basic institutions meet certain specified conditions of political right and justice (including the right of citizens to play a substantial role, say through associations and groups, in making political decisions) and lead their citizens to honor a reasonably just law for the Society of Peoples."[16]

Liberal democratic societies espouse principles of justice that are familiar to advocates of cosmopolitan human rights. Most important, what Rawls calls "free and democratic peoples" are obligated "to honor human rights," as well as "to

12. Held, "Law of States, Law of People", 30.
13. Held, "Law of States, Law of People", 31.
14. Held, "Law of States, Law of People", 31.
15. Held, "Law of States, Law of People", 31-32.
16. John Rawls, *The Law of Peoples* (Cambridge Mass.: Harvard University Press, 1999), 3 n.2.

observe a duty of non-intervention" and "to observe certain specified restrictions in the conduct of war".[17] It is even incumbent upon liberal democratic societies to contravene the fundamental duty of non-intervention whenever they find themselves confronted with "grave violations of human rights[18]". On the other hand, Rawls asserts that no society has the right to "protest [its] condemnation by the world society when [its] domestic institutions violate human rights, or limit the rights of minorities living [within it]. A people's right to independence and self-determination," he continues, "is no shield from that condemnation, nor even from coercive intervention by other peoples in grave cases."[19]

What seems to put Rawls outside the cosmopolitan consensus are two further claims. First, Rawls argues that it is not individual persons but "peoples" who constitute the primary agents in the theory of world justice. Whatever rights agents possess therefore inhere in broad collectivities, not individual human beings. Liberal democratic peoples, for instance, are guaranteed "a certain fair equality of opportunity," "a decent distribution of income and wealth," some minimal form of gainful employment, "basic health care" and "public financing of elections and ways of assuring the availability of public information on matters of policy."[20] Notice that these rights are framed in such a way that no particular individual is assured of enjoying them. They represent the kind of phenomena that Emile Durkheim calls "social facts".

Second, Rawls insists that it is a fundamental component of international justice that liberal democratic societies tolerate the existence and furtherance of certain kinds of non-liberal societies. This point is implicit in the nature of liberalism: "If all societies were required to be liberal, then the idea of political liberalism would fail to express due toleration for other acceptable ways (if such there are, as I assume) of ordering society."[21] In particular, Rawls argues that liberal democratic societies must demonstrate tolerance for societies that are "decent, though not liberal" in character.[22] Decent societies come in two forms. The first and more important possesses a "decent consultation hierarchy."[23] This means (a) that the society's "system of law must be such as to impose bona fide moral duties and obligations (distinct from human rights) on all persons within

17. Rawls, *The Law of Peoples*, 37.
18. Rawls, *The Law of Peoples*, 37.
19. Rawls, *The Law of Peoples*, 38.
20. Rawls, *The Law of Peoples*, 50.
21. Rawls, *The Law of Peoples*, 59.
22. Rawls, *The Law of Peoples*, 63.
23. Rawls, *The Law of Peoples*, 63.

the people's territory[24]" and (b) that "there must be a sincere and not unreasonable belief on the part of judges and other officials who administer the legal system that the law is indeed guided by a common good idea of justice."[25]

In addition, decent hierarchical societies (c) enjoy a "system of law [which] secures for all members of the people what have come to be called human rights." Such rights include "the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly)."[26] Three things convince advocates of the cosmopolitan position that this conception of human rights stands at odds with their own. The first is Rawls's supplemental comment that "liberty of conscience may not be as extensive nor as equal for all members of society: for instance, one religion may legally predominate in the state government, while other religions, though tolerated, may be denied the right to hold certain positions. I refer to this kind of situation as permitting 'liberty of conscience, though not an equal liberty'."[27] The second is his statement that "a decent hierarchical society's conception of the person ...does not require acceptance of the liberal idea that persons are citizens first and have equal basic rights as equal citizens. Rather it views persons as responsible and cooperating members of their respective groups. Hence, persons can recognize, understand, and act in accordance with their moral duties and obligations as members of these groups."[28] The third is the rather off-hand remark that a decent hierarchical society's "system of law must follow a common good idea of justice that takes into account what it sees as the fundamental interests of everyone in society."[29]

Rawls in fact describes the features of a "decent consultation hierarchy" in terms that highlight its differences vis-a-vis liberal democratic institutions. "Associations, corporations and estates" rather than indivicual citizens are the actors that exercise the right to express political opinions.[30] Government officials and judges are obligated to listen to dissenting voices "and to give a

24. Rawls, *The Law of Peoples*, 65-66.
25 Rawls, *The Law of Peoples*, 66.
26. Rawls, *The Law of Peoples*, 65.
27. Rawls, *The Law of Peoples*, 65 n.2.
28. Rawls, *The Law of Peoples*, 66.
29. Rawls, *The Law of Peoples*, 67.
30. Rawls, *The Law of Peoples*, 72.

conscientious reply," but are not required to follow the expressed wishes of the people.[31] Citizens are permitted "a measure of liberty of conscience" in accordance with "traditional doctrines," but are not granted "full and equal liberty of conscience" with regard to "religious or philsophical doctrines".[32] Nevertheless, Rawls stipulates that "a decent hierarchical society meets moral and legal requirements sufficient to override the political reasons [liberal democratic societies] might have for imposing sanctions on, or forcibly intervening with, its people and their institutions and culture."[33] This implies that the definitions of human rights in the two societies diverge only at the margins. It is therefore not surprising that Rawls concludes by remarking that any nonliberal but decent society "has a common good idea of justice that assigns human rights to all its members."[34]

Others have perceived the convergence between the cosmopolitan position and the Law of Peoples, and have attempted to bridge the gap. Andrew Kuper notes that Rawls bases his analysis on the presumed rights of peoples as a whole, not on "principles for respecting persons as free and equal citizens with constitutional democratic rights."[35] He then reminds us that the (collective) rights of peoples and the (individual) rights of persons do not necessarily coincide.[36] Next, he points out that highlighting the former at the expense of the latter entails a move away from liberalism, and stipulates that "the respect for persons captured by the idea of ethical toleration ...must be the cornerstone of a consistent global liberal regulatory framework."[37] From here it is only a short step to arguing that "Rawls has confused the putative value of common national sympathies with their moral primacy for establishing political institutions. The effect is to give peoples or nations a veto on what identities and bonds persons may take to be of predominant political significance."[38] Kuper concludes by asserting that the individual right of free expression represents the key ingredient that is missing from Rawls's account, and that if this right is reintroduced, one ends up with "a cosmopolitan Law of Persons" in place of the Law of Peoples.[39]

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31. Rawls, *The Law of Peoples*, 72.
32. Rawls, *The Law of Peoples*, 74.
33. Rawls, *The Law of Peoples*, 83.
34. Rawls, *The Law of Peoples*, 88.
35. Andrew Kuper, "Rawlsian Global Justice: Beyoond the Law of Peoples to a Cosmopolitan Law of Persons", *Political Theory* 28, no. 5 (2000): 643.
36. Kuper, "Rawlsian Global Justice", 646.
37. Kuper, "Rawlsian Global Justice", 652.
38. Kuper, "Rawlsian Global Justice", 655.
39. Kuper, "Rawlsian Global Justice", 667.

John Tasioulas takes a similar tack. After indicating a number of criticisms of Rawls's decision to grant priority to (collective) peoples over (individual) persons, he underscores the fact that for Rawls "human rights retain a universal force, in that even outlaw states are required to abide by them and are in principle properly subject to coercive intervention if they do not."[40] What is problematic about Rawls's account is thus not a lack of universalism, but rather the comparatively "austere list" of rights that Rawls chooses to recognize.[41] Tasioulas attempts to rectify this shortcoming by adding just enough other rights to provide individuals with "certain minimal conditions of a good life.[42]" The precise enumeration of these additional rights is left to subsequent debate, but it is clear that once an acceptable schedule of such rights is drawn up, Rawls's project will become indistinguishable from the cosmopolitan position.

An Alternative View of Human Rights

So despite their prima facie antagonism, the sophisticated form of cosmopolitanism advanced by David Held and the notion of the Law of Peoples formulated by John Rawls end up converging in important respects. Little effort appears to be required to bridge the narrow gap that continues to separate the two viewpoints. In fact, it is likely that with the demise of the originator and staunchest defender of the Law of Peoples, such a reconciliation will be accomplished in relatively short order.[43] Nevertheless, it is possible to outline an alternative perspective that remains true to the spirit of Rawls's project, in the sense that it eschews the triumphalist attitude which asserts that western liberalism offers the only basis for an effective and legitimate system of human rights. The alternative brings together (1) James Griffin's ingenious effort to construct a foundational account of human rights that is truly universal, yet owes little to western liberal principles, and (2) Juergen Habermas's pivotal distinction between the moral and juridical character of such rights.

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40. John Tasioulas, "From Utopia to Kazanistan: John Rawls and the Law of Peoples", *Oxford Journal of Legal Studies* 22, no. 2 (2002a): 381.

41. Tasioulas, "From Utopia to Kazanistan", 381.

42. John Tasioulas, "Human Rights, Universality and the Values of Personhood: Retracing Griffin's Steps", *European Journal of Philosophy* 10, no. 1 (2002b): 96.

43. Thomas Pogge, "An Egalitarian Law of Peoples", *Philosophy and Public Affairs* 23, no. 3 (1994b): 195-224; Chris Naticchia, "Human Rights, Liberalism and Rawls's Law of Peoples", *Social Theory and Practice* 24, no. 3 (1998); Farid Abdel-Nour, "From Arm's Length to Intrusion: Rawls's 'Law of Peoples' and the Challenge of Stability", *The Journal of Politics* 61, no. 2 (1999); Buchanan, Allen. "Rawls's Law of Peoples: Rules for a Vanished Westphalian World." *Ethics* 110, no. 4 (2000) & David Fagelson, "Two Concepts of Sovereignty: From Westphalia to the Law of Peoples?" *International Politics*, no. 38 (2001).

Griffin points out that existing lists of purported human rights exhibit little or no compelling underlying logic, and instead tend to reflect the political purposes of those who advocate particular candidates.[44] In place of these heterogeneous lists, he proposes to construct a "substantive account" of the basic rights to which human beings are entitled, simply by virtue of being human. His proposal runs as follows: "Human rights can ...be seen as protections of one's human standing, one's personhood. And one can break down the notion of personhood into clearer components by breaking down the notion of agency. To be an agent, in the fullest sense of which we are capable, one must (first) chose [sic] one's own course through life--that is, not be dominated or controlled by someone or something else (autonomy). And one's choice must also be real; one must (second) have a least a certain minimum education and information and the chance to learn what others think. But having chosen one's course one must then (third) be able to follow it; that is, one must have at least the minimum material provision of resources and capabilities that it takes. And none of that is any good if someone then blocks one; so (fourth) others must also not stop one from pursuing what one sees as a good life (liberty)."[45] This argument lays the groundwork for a number of fundamental human rights, including "a right to life (without it, personhood is impossible), to security of person (for the same reason), to a voice in political decision (a key exercise of autonomy), to free expression, to assembly, and to a free press (without them, exercise of autonomy would be hollow), [and] to worship (a key exercise of what one takes to be the point of life)."[46]

But Griffin does not claim that this particular list of human rights is the only one that might legitimately be composed. The conception of personhood upon which these rights rest owes much to the values of the European Enlightenment. "Why restrict the basis for human rights to Western European concerns for the individual?" he asks. "Why not be open to the possibility that other cultures may have their own rather different route to human rights? This openness need not dampen hopes for their universal standing," he replies. "We should have to wait and see. Perhaps there would turn out to be overlap in the lists of human rights that different cultures produced, resulting in some universal and some culture-bound rights."[47] He then suggests one way in which this procedure might work

44. James Griffin, "First Steps in an Account of Human Rights", *European Journal of Philosophy* 9, no. 3 (2001a): 306-307.
45. Griffin, "First Steps in an Account of Human Rights", 311.
46. Griffin, "First Steps in an Account of Human Rights", 311.
47. Griffin, "First Steps in an Account of Human Rights", 323 n.12.

out: “A theocractic [sic] culture might put a high value on autonomy, because no acts in that culture would be of value, not even the surrender of much of one's individual freedom of choice, unless they were autonomous.” In other words, what precisely comprises personhood can be expected to vary from one community to another, and it is the specific notion of personhood that is characteristic of each one that lays the foundation for the package of human rights that is appropriate for that community. Whether or not broader patterns of generally-accepted human rights emerge out of these discrete packages is an empirical matter, which should not be stipulated in advance.

Moreover, personhood is not the only foundation upon which human rights should rest. A second basis is one that Griffin calls “practicalities”.[48] “What we are after,” Griffin explains, “are the existence conditions for a human right. Its existence must depend, to some extent, upon its being an effective, socially manageable, claim on others.” The notion of practicalities thus “covers a heterogeneous group of considerations. Some are global considerations about human nature and the workings of society. Some are the local conditions of a particular society: where a society is now affects what it should do next.”[49] This implies that there is no sensible definition of human rights in the abstract, only descriptions of the various ways that universal values get expressed in actual societies. In this fashion, we can avoid the intractable problem that “pure values, such as the values of personhood, unmixed with the tangle of considerations I mean by practicalities, yield only highly indeterminate norms,” and finally come up with sets of useful rules for evaluation and action.

One important consequence of Griffin's analysis is that the number of human rights that are required in order to preserve and maximize personhood turns out to be relatively few. “The considerable values that rights protect do not include our being able to satisfy any wish, even whim, that happens to cross our minds; rather, they protect our being able to form our own conception of a good life and then to pursue it. So liberty, on what seems to me the preferable narrow conception, protects only what is, in this way, central to our personhood.”[50] Tasioulas rightly observes that even though the list of basic human rights may be short for any given society, the composite list of rights for all societies is likely to be quite long, since it “not only affirms a plurality of substantive goods as relevant to the justification of human rights norms, it also

48. Griffin, “First Steps in an Account of Human Rights”, 315.
49. Griffin, “First Steps in an Account of Human Rights”, 316.
50. Griffin, “First Steps in an Account of Human Rights”, 320.

acknowledges the possibility of a diversity of equally eligible routes from the values to the norms."[51] Still, Griffin's perspective has the double advantages of reducing the overall number of fundamental human rights, while heightening the degree of coherence among the rights that end up making the list.

But just what sort of things are human rights? At the deepest level, such rights are usually conceived in two different, potentially contradictory ways. On one hand, they represent moral norms, which enjoy "normative legitimacy".[52] This implies that human rights "regulate matters of such generality that moral arguments are sufficient for their justification. These arguments show why the implementation of such rules is in the equal interest of all persons qua persons, and thus why they are equally good for everybody."[53] On the other, "human rights are juridical by their very nature." This means that they share "the fate of all positive law; they, too, can be changed or be suspended, for example, following a change of regimes."[54] More important, since they are juridical in nature, "it is part of the meaning of human rights that they claim the status of basic rights which are implemented within the context of some existing legal order, be it national, international, or global."[55]

In most circumstances, the dual nature of human rights poses few practical difficulties, despite the tricky philosophical problems that are raised by this kind of dualism. But if the moral component of human rights gains predominance over the juridical component, things can go badly wrong. In particular, once human rights start to take on a moral coloration, there is an incentive for agents who are (or claim to be) driven by moral imperatives to seize the initiative and take steps to enforce adherence to such rights as a matter of moral duty. Habermas expresses the problem as follows, quoting Carl Schmitt: "moral humanism dangerously abstracts from the natural order of the political, the supposedly unavoidable distinction between friend and foe. Because it subsumes 'political' relations under the categories of 'good' and 'evil,' it turns the enemy into 'an inhuman monster that must not only be repulsed but must be totally annihilated.' And because the discriminatory concept of war can be traced back to the universalism of human rights, it is ultimately the infection of

51. John Tasioulas, "Human Rights, Universality and the Values of Personhood: Retracing Griffin's Steps", *European Journal of Philosophy* 10, no. 1 (2002b): 94.
52. Juergen Habermas, *The Inclusion of the Other* (Cambridge, Mass.: MIT Press, 1998), 190.
53. Habermas, *The Inclusion of the Other*, 191.
54. Habermas, *The Inclusion of the Other*, 190.
55. Habermas, *The Inclusion of the Other*, 192.

international law by morality that explains the inhumanity of modern wars and civil wars perpetrated 'in the name of humanity'."[56]

Moreover, once the various moral issues that surround the matter of human rights begin to provide "a moral legitimation under the cover of a sham legal legitimation for an intervention which is in reality nothing more than a struggle of one party against the other," the politics of human rights are likely to become "inverted into a human rights fundamentalism".[57] The best way to avoid such a disastrous outcome would be to recognize that "human rights should not be confused with moral rights"[58] Habermas himself comes to the conclusion that the only solution to the overall problem is to work toward "a cosmopolitan transformation of the state of nature among states into a [global] legal order." This strategy could well succeed, but appears at the moment to be excessively utopian.

56. Habermas, *The Inclusion of the Other*, 198.
57. Habermas, *The Inclusion of the Other*, 200.
58. Habermas, *The Inclusion of the Other*, 201.

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