

J. Angelo Corlett

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Race, Rights, and Justice



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at the very least, the absence of significant forms of injustice³ between peoples or societies and the respect for “human rights.”⁴ This much is held by Rawls⁵ and David Miller,⁶ respectively, and perhaps most, if not all others,⁷ concerned with global justice. And it is this common point of agreement concerning global justice, ambiguous and vague though it may be, that I seek to exploit in this chapter regarding a particular context of global conflict. Indeed, perhaps this chapter can provide a modicum of clarification to this notion as it was discussed in Chapter 4 in terms of the possibility and desirability of a system of international law.

More specifically, I seek a plausible solution via continuing humanitarian intervention into the complicated problems engulfing the people of Colombia concerning the Colombian civil war of about four decades. I attempt to do this not by delimiting its discussion to how “illicit” drugs effect adversely United States citizens and their government’s alleged “war” on drugs, but by looking at the overall moral status of the problem beyond (but nonetheless including) the narrow confines of U.S. society. My analysis of the problem sees it as a complex one, and one which requires the respect of Colombian sovereignty, but only insofar as indigenous (U’wa) sovereignty is reestablished and protected. It raises important issues, then, for international law insofar as international legal institutions, whatever their practical and principled merits, must be concerned with the sovereignty of indigenous peoples globally.

The U.S. government has intensified its efforts in addressing the manufacturing and distribution of “illicit” drugs such as cocaine and heroin in Colombia. The U.S. has consistently provided substantial aid to the Colombian government in order to combat the drug cartels, which are protected

³ For philosophical discussions of matters related to the injustices of war crimes and whether or not and, if so, how they ought to be handled by way of international legal contexts, see A. Jokic, Editor, *War Crimes and Collective Wrongdoing* (London: Blackwell Publishers, 2001).

⁴ Carol Gould, *Globalizing Democracy and Human Rights* (Cambridge: Cambridge University Press, 2004); James Nickel, *Making Sense of Human Rights* (Berkeley: University of California Press, 1987); Rhonda K. M. Smith and Christien van den Anker, Editors, *The Essentials of Human Rights* (London: Hodder Arnold, 2005).

⁵ Rawls, *The Law of Peoples*.

⁶ David Miller, “Against Global Egalitarianism,” *The Journal of Ethics*, 9 (2005), pp. 55–79.

⁷ A representative sampling of those engaged in discussions of global justice and its implications for international law are found in *The Journal of Ethics*, 9 (2005), pp. 1–300. Still others include Bernard Boxill, “Global Equality of Opportunity and National Integrity,” *Social Philosophy & Policy*, 5 (1987), pp. 143–168. Also see, Ian Shapiro and Lea Brilmayer, Editors, *NOMOS: Global Justice* (New York: New York University Press, 1999); Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2nd Edition (Ithaca: Cornell University Press, 2003).

by a coalition of rebel forces (primarily the FARC and the ELN) that have taken hold of and controlled substantial amounts of Colombia's land mass. And this approval and delivery of substantial U.S. humanitarian aid (partly in the form of military aid) to Colombia is made despite Colombia's well-publicized record of human rights violations. Perhaps this reportage is what has alarmed the U.S. government into taking executive and congressional action, which provides the Colombian government with several military helicopters, other military equipment, as well as several more troops to fight what it officially refers to as the "war" against the cocaine cartels. Colombia's drug cartels, as many know, are collectively the world's greatest manufacturers and distributors of cocaine, and are the largest exporters of cocaine to the U.S. Yet the war against drugs in the Colombian case just is a war against the rebel forces, making the U.S.'s intensified assistance in the war on drugs in Colombia an act of taking sides in the civil war there, despite U.S. governmental declarations to the contrary.

Former Colombian president Andres Pastrana welcomed U.S. involvement along these lines as part of "Plan Colombia," as his many visits to lobby the U.S. government for military assistance indicate. And current Colombian president Alvaro Uribe seeks to continue basically along the same lines. Unsurprisingly, rebel leaders continue to threaten an increase in violence in Colombia whenever there is further U.S. military intervention. But is such U.S. intervention morally justified? If so, then an additional question with which to struggle is whether or not there is a moral duty to intervene. What are the conditions under which international law ought to recognize a *right* of third-party states to intervene militarily into the affairs of other countries, as in the case of Colombia? And under what conditions might there be a moral *duty* of third-party states to do so? Finally, whether or not there is a moral justification and/or a moral duty to intervene in Colombian affairs, is it the case that the *U.S.* ought to do so any more than, or even as much as, it already has?

The Morality of Humanitarian Intervention⁸

Rather than simply appealing to self-interest or working within the confines of overly biased politics, what is needed is a set of moral guidelines for the

⁸ "Humanitarian intervention" is defined as third-party (typically state) intervention into the affairs of one or more states in order to provide assistance to a significantly politically oppressed group whose basic human rights are disrespected (consonant with John Rawls' sixth principle, below). Such intervention might take nonviolent or violent forms, depending on what is necessary to achieve the liberation of a violated people. For a historical account of the notion, see Terry Nardin, "The Moral Basis of Humanitarian Intervention," *Ethics and International Affairs*, 16 (2002), pp. 57-72.

justification, right, or duty of third-party states to intervene into the affairs of other states or groups within states. Such intervening parties are often, but need not be, third-party states. These guidelines should not be uninformed by empirical realities, though they can be expected to require us to think beyond the confines of what we normally believe to be possible or right (all things considered) in complicated matters such as we find in Colombia.

Following John Stuart Mill, Michael Walzer argues that, in light of rights to sovereignty and, more specifically, self-determination, humanitarian intervention is sometimes justified or permitted on moral grounds on the condition that "... intervening states must demonstrate that their own case is radically different from what we take to be the general run of cases, where the liberty or prospective liberty of citizens is best served if foreigners offer them only moral support."⁹ Even when the moral case for humanitarian intervention or counterintervention can be made, the point of the former is to balance out the powers between the opposing parties, and the goal of the latter is not to win the conflict, but to rescue.¹⁰ Moreover, humanitarian intervention is justified, avers Walzer, "when it is a response (with reasonable expectations of success) to acts 'that shock the moral conscience of mankind.'"¹¹ Furthermore, he argues:

... states can be invaded and wars justly begun to assist secessionist movements (once they have demonstrated their representative character), to balance the prior interventions of other powers, and to rescue peoples threatened with massacre. In each of these cases we permit or, after the fact, we praise or don't condemn these violations of the formal rules of sovereignty, because they uphold the values of individual life and communal liberty of which sovereignty itself is merely an expression.¹²

The basic "formula" here, according to Walzer, is one of a moral prerogative or permission, not a requirement or duty, but it is one with certain constraints.¹³ Although it is true that having a moral justification or permission to do something is hardly the same as having a moral right to do so, moral justification can serve as a basis of moral rights.

Given Walzer's views on humanitarian intervention, it is clear that should the U.S. continue to intervene into the affairs of Colombia at this time, the

⁹ Michael Walzer, *Just and Unjust Wars*, 3rd Edition (New York: Basic Books, 2000), p. 91.

¹⁰ Walzer, *Just and Unjust Wars*, p. 104.

¹¹ Walzer, *Just and Unjust Wars*, p. 107.

¹² Walzer, *Just and Unjust Wars*, p. 108.

¹³ A critical discussion of Michael Walzer's ideas on these and related matters is found in *Ethics and International Affairs*, 11 (1997), pp. 1–104.

U.S. would be in violation of Walzer's notion of morally justified or rightful intervention. First, the U.S. military assistance in question is designed, not to balance out the powers of the Colombian government against rebel forces, but to win the conflict. Second, neither the revolution in progress nor the production and distribution of cocaine are acts that shock the conscience of humankind. Third, though violence in various forms has plagued Colombians for decades (thousands of Colombians have died due to the civil war), *widespread massacre* or the like is not threatened in the region. However, some of the massacres that have occurred seem to have been the responsibility of rightist paramilitaries (the AUC), sometimes in conjunction with Colombian armed forces. So if U.S. intervention is based on its responding to the massacres, it ought to be aimed, not merely at the drug cartels and the FARC, but also at the rightist-paramilitaries whom the Colombian government has refused or failed to bring to justice.

Perhaps there is a stronger case to be made for the moral justification or right of the *United Nations* to intervene, namely, in order *to establish and maintain the sovereignty of the indigenous U'wa nation* from which the Colombian government forcibly stole millions of acres of land. This land theft is surely a violation of human rights (if, indeed, there are human rights). And it is incorrect for Walzer to think that only massacres qualify as those justifying humanitarian intervention. After all, the coercive theft of millions of acres of lands from American Indian nations has long proven to be just as effective in wiping out American Indian populations, as the history of the Americas indicates. This fact, along with the additional fact that there have been murders by the FARC of some U.S. citizen advocates of the U'wa nation,¹⁴ points toward *intervention on behalf of the U'was against both the Colombian government and the FARC*.¹⁵

This leads to a revision of Walzer's position on the moral justification of or right to humanitarian intervention. It would seem that unless we supplement Walzer's analysis, it would remain excessively conservative in that existing states such as the U.S. would be in moral positions to carry on their affairs as if they were not outlaw states. In light of this moral problem of "dirty hands," I argue that *humanitarian intervention is only morally justified to the extent that the party on behalf of whom the third-party intervener desires to intervene is not itself unjust in some significant way, and the intervener state is not guilty of significant and unrectified evil*. So the fact that massive acreage was usurped by the Colombian government from the U'was and that

¹⁴ Ana Arana, "Murder in Colombia," salon.com (14 December 1999).

¹⁵ At least, this would seem to hold true unless and until either of these groups distances itself from its perpetrated injustices of substantial natures.

such a human rights violation has gone unrectified stands in the way, morally speaking, of Colombia's hypocritically requesting intervention from the U.S. (a country which itself has committed some of the worst unrectified human rights violations in human history). It seems that the scenario is one akin to a small time carpetbagger asking the king of carpetbaggers for a helping hand in defending what land she has stolen but nonetheless deems to be "her own"! Thus the U.S. is not morally justified in continuing to intervene militarily (e.g., it does not have a right to intervene) in the affairs of Colombia because its hands are not only dirty, morally speaking, but filthy with the stains of unrectified genocide and race-based slavery. Perhaps another country (or coalitions of countries) not riddled with a history of oppressive violence and unrectified evils would qualify as a legitimate intervener into the complicated Colombian situation.

A significantly stronger position than Walzer's on humanitarian intervention is that articulated most recently by Rawls. As noted in Chapter 3, Rawls argues that there are eight principles of justice for free and democratic peoples:

1. Peoples are free and independent, and their freedom and independence are to be respected by other parties;
2. Peoples are to observe treaties and undertakings;
3. Peoples are equal and are parties to the agreements that bind them;
4. Peoples are to observe a duty of nonintervention;
5. Peoples have a right to self defense, but no right to instigate war for reasons other than self defense;
6. Peoples are to honor human rights;
7. Peoples are to observe certain specified restrictions in the conduct of war, and lastly;
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political regime.¹⁶

Based on the eighth principle of international justice, Rawls proffers three "guidelines" for carrying out the "*duty* of [humanitarian] assistance," which I take to be what Rawls means to count as (or at least include) humanitarian intervention. First, "a well-ordered society need not be a wealthy society."¹⁷ The aim of the duty of assistance in the Law of Peoples within an international community of states is to "realize and preserve just (decent) institutions. . . ." ¹⁸ Second, the political culture of the society is "all-important,"

¹⁶ Rawls, *The Law of Peoples*, p. 37.

¹⁷ Rawls, *The Law of Peoples*, p. 106.

¹⁸ Rawls, *The Law of Peoples*, p. 107.

and the mere dispensing of funds in humanitarian intervention does not always suffice to rectify severe injustices (“though money is often essential”).¹⁹ Third, the aim of humanitarian intervention is to “help ‘burdened’ societies to be able to manage their own affairs reasonably and rationally and eventually to become members of the Society of Well-Ordered Peoples.”²⁰ But it is also important to recognize that whether or not a state that is the subject of humanitarian intervention should depend in part on whether it is a legitimate state and whether the cause of intervention is just. For example, if there is intervention into the affairs of a state that has an illegitimate government, then special care must be taken to not adversely affect the innocent persons of that society insofar as that is possible. And in any case, a proportional intervention must be effected based on the facts of how bad the situation is for those innocent persons in the society targeted for intervention: “The general rule is that the coercion used in the operation and the consequent harm done by it have to be proportionate to the importance of the interest that is being served, both in terms of the intrinsic moral weight of the goal and in terms of the extent to which that goal is served.”²¹

One thing to notice about the notion of humanitarian intervention embedded in Walzer’s and Rawls’ respective analyses is that, for all they say, humanitarian intervention can include military or nonmilitary intervention, violence or nonviolence.²²

Furthermore, it seems that in order for a state to be justified in engaging in humanitarian intervention, it itself must be a legitimate state. At the very least, this means that unless it “meets certain minimal standards of justice, it ought not to be regarded as a primary member of international society.”²³ It is rather unclear that the U.S. satisfies such conditions in light of its lengthy history of human rights violations and refusal to rectify them. While many in the U.S. would think this a radical claim, it is quite clear to millions of others

¹⁹ Rawls, *The Law of Peoples*, pp. 108–109.

²⁰ Rawls, *The Law of Peoples*, p. 111.

²¹ Fernando Tesón, *A Philosophy of International Law* (Boulder: Westview Press, 1998), p. 64.

²² For a critique of both Walzer’s and Rawls’ respective positions, see Richard W. Miller, “Respectable Oppressors, Hypocritical Liberators: Morality, Intervention, and Reality,” in Deen Chatterjee and Don Scheid, Editors, *Ethics and Foreign Intervention* (Cambridge: Cambridge University Press, 2003), pp. 215–250. My general argument in this chapter runs counter to Miller’s proposal for a real-world understanding of how even outlaw states can be morally justified in intervening in the affairs of other states to address serious forms of injustice.

²³ Allen Buchanan, *Justice, Legitimacy, and Self-Determination* (Oxford: Oxford University Press, 2005), p. 6.

globally that the U.S. is hardly a morally legitimate state in that it fails basic standards of justice. And while it is true that the U.S. stands as somewhat of an example of democratic reform, it is the perpetrator of some of the most evil acts in human history, acts that remain to this day unrectified.²⁴ And if it is true that unrectified evil is still evil, then it is far from obvious that the U.S. is a morally legitimate state, despite the protests to the contrary that are likely to be forthcoming from its most ardent supporters.

So if it is true that a legitimate state is one that is a reasonably just state and not an outlaw one, and if it is true that a duty or right to humanitarian intervention accrues only to states that are legitimate in the requisite sense, then the U.S. has neither a duty nor a right to humanitarian intervention in general, and not into Colombian affairs in particular. And if the assumption “that all states must wield equal political power in the making, application, and enforcement of international law”²⁵ is dubious, then surely unjust states such as the U.S. ought not to be given the status of equality in the making and enforcement of international law in light of its repeated record of unrectified human rights violations. Among other things, this would seem to imply that the U.S. has no moral right to intervene into the affairs of other countries or nations because of its morally filthy hands.

While some might argue that this is too strong a judgment against the U.S. in that it would rule out, on moral grounds, its participation along side allied forces in the defeat of Nazi Germany in World War II without which the allied forces might not have defeated the Nazis, the best that can be said of the U.S. here is that it is only as morally justified in engaging in such affairs as it has rectified its own severe injustices. The U.S. may have done some good in defeating Nazi Germany, but it did so without having a right to such intervention. Perhaps the most that can be said of the U.S. in such cases is that it has a moral *privilege*, not a right, to engage in such behavior on the assumption that the other conditions of humanitarian intervention are satisfied. This would appear to suggest a moral duty of all societies in the Society of Peoples to keep their moral hands sufficiently clean so that they may duly qualify as those who have rights and perhaps even duties to intervene in world affairs for the sake of justice, much in the same way as a good Samaritan society would.

²⁴ J. Angelo Corlett, *Race, Racism, and Reparations* (Ithaca: Cornell University Press, 2003), Chapters 8–9.

²⁵ Buchanan, *Justice, Legitimacy, and Self-Determination*, p. 6. Like most Westernized thinkers, Buchanan assumes that the U.S. is a legitimate state, providing absolutely no argumentative support for such a bold assumption and in light of its, on balance, unrectified evils perpetrated on both its own citizens and the citizens of other states and societies.

The U.S., then, has no moral right to intervene into the affairs of other countries or nations at this time. I use the locution, “at this time,” of course, because should the U.S. rectify its evils, it would then qualify as a candidate for legitimate intervention. If the U.S. has no moral right to intervene in Colombian affairs at this time, then it surely has no moral duty to do so. For generally there cannot be a moral duty where there is no moral right or justification. Thus it seems clear that the U.S. ought not to continue to intervene in Colombian affairs. Indeed, the U.S. ought to cease its military and economic support of Colombia. Thus given the above principle of humanitarian intervention I set forth, the U.S. is unqualified, morally speaking, to intervene in *any* country’s affairs, much less Colombia’s. It lacks sufficient moral standing to engage in humanitarian intervention of this sort.

However, even if the U.S. saw a way to rectify its evils, there is further reason why the U.S.’s further intervention into Colombian affairs is problematic, mostly speaking, as we shall see. But these points, and related ones, require substantial defense.

Even if the U.S. has no right to or *duty* of humanitarian intervention into Colombian affairs, should the U.S. engage in humanitarian intervention in Colombia, say, as a moral prerogative? No doubt the U.S. has a dual purpose in wanting to intervene: the official one is to win the “war on drugs,” while another is the unstated cold war excuse for battling communism or any significant movement against U.S. capitalistic profiteering. For the drug cartels enjoy the protection of their coca crops by Marxist (FARC and ELN) guerillas, longtime rebels in the region against the Colombian government. But there is also the protection and proliferation of the substantial profits of Occidental Petroleum (a Los Angeles, CA-based oil company) at stake, which might be the most compelling interest of the U.S. in Colombia at this time when the oil company’s major pipelines are being sabotaged by rebel forces, costing Occidental Petroleum millions of dollars in lost profits. This raises the issue of whether or not the U.S. ought to expend taxpayer’s monies to support private enterprises without so much as even raising the issue with its citizenry. But let us set aside this more global philosophical concern in order to concentrate our attention on whether or not the U.S. is justified in intervening militarily in Colombia’s affairs.

However tempting it might be for those who despise drug abuse, it is not obvious that the U.S. should continue to intervene militarily in the affairs of Colombia at this time. For if it is a further condition of humanitarian intervention (on my analysis) that the citizens of a country voluntarily, knowingly, and intentionally request²⁶ that a third-party country assists it in

²⁶ Fernando Tesón, *Humanitarian Intervention* (Dobbs Ferry: Transnational Publishers, Inc., 1988), pp. 119f.

its battle against a foe, then it might be permissible for the third party to intervene, given that certain other conditions are satisfied. But simply because the Colombian government requests military assistance from the U.S. does not necessarily make the intervention justified, or dutiful for at least the following reasons. First, even though there is reportage that up to “70 percent of all Colombians approve of U.S. assistance,”²⁷ it is unclear that the citizenry of Colombia truly support the measure. For the Colombian government has for decades been suspected of turning its back on human rights violations against some of its own citizens perpetrated by rightist-paramilitary groups (often associated with the Colombian military): kidnapping and murdering thousands of Colombian and U’wa dissenters, acts of violent intimidation against the general populace, etc.²⁸ So it is far from obvious that the majority of Colombians truly support their government in a voluntary way. Moreover, that Colombian citizens are subject, like U.S. citizens, to tremendously large doses of propaganda from all sides makes it difficult to know whether or not the Colombians could knowingly or intentionally consent to third-party intervention of any kind. Furthermore, it is rather possible that Colombians are not univocal in their support of any particular political structure, and for whatever reasons. Unless the Colombians themselves as a people (and by a strong majority) support U.S. intervention, say, to protect their government, then the intervention amounts to little more than U.S. imperialism.

²⁷ Ana Arana, “Dead, I Can’t Do Anything,” salon.com. Accessed in 2000.

²⁸ Such violence by rightist-paramilitary groups is not unknown to either the Colombian Government or its military wing, and it is perpetrated against thousands of citizens who are suspected of being in any way supportive of the leftist rebels (Benjamin R. Howe, “Out of the Jungle,” *The Atlantic Monthly*, May 2000; also see “9 Killed in Paramilitary Attack,” *Chicago Tribune*, 14 May 2000; “Nine Dead in Colombian Massacre,” *Associated Press*, 12 May 2000. Moreover, “On the morning of June 24, the Colombian army entered the territory of the indigenous U’wa in northern Colombia and attacked members of the tribe that were protesting the oil exploration on their traditional lands by Los Angeles-Based Occidental Petroleum.” Followed by a similar attack on 11 February 2000, the Colombian military continues to be used by its government to violate its own 1991 Constitution which makes it illegal to work in indigenous territory without permission of the indigenous people [Gary M. Leech, “The Case of the U’wa,” *Colombia Report*, 9 July (2000)]. Thanks to the terrorist efforts of FARC and ELN on many innocent Colombian citizens, Colombia is one of the kidnapping capitals of the world. Perhaps it is understandable how a revolutionary group might kidnap certain political leaders or such in Colombian Government for strategic purposes. However, it is difficult to comprehend how it can justify the kidnapping of thousands of persons many of whom are innocent citizens (including children!) of the state it hopes to depose in order to raise funding for their war effort. Apparently, the FARC and ELN draw insufficiently accurate moral distinctions between combatants and noncombatants in their quest for a new regime. For a most eloquent account of some such kidnappings, see Gabriel Garcia Marquez, *News of a Kidnapping* (New York: Alfred Knopf, 1997).

For in such a case, the U.S. would intervene, “not to advance the forces of democracy or liberal government, but to assist the side that will favor their own political, military, or economic interests. In such cases, foreign intervention . . . is morally wrong.”²⁹

Furthermore, it is not clear that the U.S. citizens support such a measure either. Some question the degree of the proposed further intervention, others are concerned that further involvement of any degree would eventually lead the U.S. into “another Vietnam” situation. As widespread Colombian support for U.S. intervention would signal, other conditions obtaining, a permission or justification for U.S. intervention, it would not straightaway amount to a duty of the U.S. to do so. If this is so, then it is important that the U.S. citizenry support strongly such a measure, that is, if there is no *strong* duty of intervention in this case.

However, even if there were widespread *Colombian* support for humanitarian intervention into the quagmire there, it does not necessarily follow that such support would be for *U.S.* intervention. Perhaps *Colombians* would prefer to enjoy the support of alternative countries, the European Union, or the United Nations instead, realizing upon due reflection that U.S. support for foreign countries has often led to political, economic, and cultural consequences that are intolerable for Colombians and other South American countries.³⁰ For perhaps *Colombians* would support certain kinds of intervention, but not others. Perhaps, for instance, *Colombians* would want the kind of intervention that would eliminate or render rather manageable the cocaine cartels while leaving virtually untouched the rebel forces. This would be difficult, since, again, the rebels occupy, for all intents and purposes, the coca fields of the cartels. But perhaps there are ways in which “search and destroy” missions by Colombian special military forces can identify and dismantle the cartels without doing much damage to the rebel forces so that the political struggle in Colombia can take place without the tainting of cartel influences. So the matter of humanitarian intervention regarding the Colombian crisis is complicated, and it is wrong for the U.S. to simply assume the position of being the guardian of the Americas by imposing itself onto the Colombian situation as if it has a self-proclaimed right to do so. As I have argued, such a right might accrue, but only to the extent that U.S. intervention is the kind that a strong majority of Colombians want, not simply what can be struck as a deal between U.S. and Colombian politicians, even well-intentioned ones.

²⁹ Gerald Doppelt, “Walzer’s Theory of Morality in International Relations,” *Philosophy and Public Affairs*, 8 (1978), pp. 12–13.

³⁰ Ingrid Betancourt, *Until Death Do Us Part* (New York: Ecco, 2002).