

## Essays in Philosophy

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Volume 3

Issue 3 Rawls' "Law of Peoples" and International  
Terrorism

Article 2

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4-2002

# Terrorism and the Philosophy of History: Liberalism, Realism, and the Supreme Emergency Exemption

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### Recommended Citation

Fiala, Andrew (2002) "Terrorism and the Philosophy of History: Liberalism, Realism, and the Supreme Emergency Exemption,"  
*Essays in Philosophy*: Vol. 3: Iss. 3, Article 2.

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A Biannual Journal

Vol. 3, Special Issue, April 2002

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## Terrorism and the Philosophy of History: Liberalism, Realism, and the Supreme Emergency Exemption

Those who utilize terror techniques in attacks against liberal states are not constrained by liberal ideas about justice in war.<sup>1</sup> Indeed, many terrorists are intent on attacking liberalism itself because they view it as a rival "comprehensive doctrine."<sup>2</sup> One wonders then, whether liberalism should be constrained by its own principles in responding to such attacks. I will discuss this issue in relation to John Rawls' ideas of justice in war, as found in his recent *The Law of Peoples*. I will indicate that, although Rawls' attempts to articulate an idea of international law that is "political" in his sense (that is not tied to any particular comprehensive doctrine and yet reasonable for adherents of a plurality of such comprehensive doctrines), his idea is tied to a specific philosophy of history that is potentially incompatible with other philosophies of history. This can be seen in his discussion of the "supreme emergency exemption," which is an idea about the historical necessity of violating liberal principles of justice in war in order to defend liberal values from some overwhelming threat. This is problematic for political liberalism because an acknowledgement of supreme emergencies in history is only possible either from within a more substantive form of liberalism or from the perspective of political realism. In either case, invocation of a supreme emergency might then justify those who view liberalism as a rival comprehensive doctrine, which must be destroyed by any means necessary. I will suggest that the very idea of a supreme emergency exemption to rules of justice in war, even in the face of terrorism, runs counter to the spirit of the more substantive form of liberalism found in Kant. Kantian liberalism has no need for a supreme emergency exemption or, rather, it avoids this realist expedient by postulating an optimistic philosophy of history. Rawls' political liberalism, however, is, as Rawls admits, a hybrid that is both realistic and utopian. The realist component of political liberalism thus might allow a Rawlsian to support strong action against terrorists. However, the realist exemption to the principles of justice can only be invoked from within a philosophical interpretation of progress in history. Such a philosophy of history is thus a metaphysical supplement to the ideals of political liberalism, one that threatens to disrupt the possibility of overlapping consensus. A Kantian, for example, who would accept the basic principles of the Law of Peoples, would reject the supreme emergency exemption. After discussing this problem, I will conclude by arguing that currently terrorism does not constitute a supreme emergency.

### Political Philosophy and History

Political philosophy is an ambiguous enterprise.<sup>3</sup> It is concerned with questions of principles about justice and morality. But this concern is connected with the changing nature of historical actuality. The connection between theory and practice in political philosophy is often made by way of a philosophy of history. Christian thinking about political philosophy, for example, occurs within an eschatological view of history in which our concrete actions are crises to be judged in terms of the end of time. The political

philosophies of Machiavelli and Hobbes, the two most famous proponents of political realism, can be understood in terms of a cynical view of history as the repetition of self-interested action on the part of individuals. Kant's political philosophy—his advocacy of liberal values—is understandable in terms of his hopeful philosophy of history in which progress is being made toward the establishment of perpetual peace. Hegel's political philosophy—more conservative, perhaps, but still liberal—follows from his faith that modernity represents the completion of the development of the idea of freedom. Rawls' recent discussion of international law can also be understood in terms of a certain view of history. For Rawls, history contains discrete entities called "Peoples" who act as political agents in the development of a "Society of Peoples" and who will agree to principles of peaceful coexistence under the "Law of Peoples."

The idea of a philosophy of history is a notoriously slippery one, since it involves making teleological judgments about the future based upon past events. Kant discussed the problem of such teleological judgments in his third *Critique* in 1790, claiming that they were regulative ideals of reason. He applied this idea to history and politics in 1793 in his *Religion* book and in 1795 in *Perpetual Peace*. His interest in this venture in political philosophy and philosophy of history was to consider whether it is justified to hope for progress. He indicates that historical progress points toward the development of both liberal republican states and peace because liberal states do not go to war with one another, a claim that Rawls develops in *The Law of Peoples*. Kant's reflections in *Perpetual Peace* occur within a context of speculation about nature's plan for human endeavor. He states that nature herself indicates a "purposive plan of producing concord among men, even against their will and indeed by means of their very discord."<sup>4</sup> Kant recognizes that although this idea is "far-fetched in theory, it does possess dogmatic validity and has a very real foundation in practice."<sup>5</sup> The point is that hope for progress is not grounded in a mere description of the facts of history. Rather, hope functions as an ideal, which ought to guide practice.

Like Kant, Rawls is hopeful that peace will prevail. This is what makes Rawls' idea "realistically utopian" as he describes it throughout *The Law of Peoples*. He shares Kant's hope for progress in history as a practical ideal. However, Rawls goes beyond Kantian liberalism by incorporating a less sanguine and more realistic (in the Machiavellian and Hobbesian sense) view of progress in history. This has important implications for the way in which a Rawlsian might deal with the problem of terrorism.

One wonders whether the fact of terrorism undermines hope for the completion of the liberal political project. The fact of terrorism seems to indicate certain limits to the idea that international politics can become stable and peaceful based upon the Law of Peoples. Unless one adopts a philosophy of history in which reasonableness (as Rawls defines it) prevails, it seems that strife and instability will continue because those who are not invested in the society of liberal and decent peoples will resist it. Those who are disenfranchised by the liberal system will struggle against it. Those whose religion is antagonized by liberal values will rally against it. And perhaps most insidiously, those who are disposed to anarchism and antinomianism (here I think of McVeigh and Kaczynski) will be opposed to it.

Kant is willing to make utopian claims about the trajectory of history because his liberalism is tied to a more comprehensive view of human nature and morality. For Kant, the bin Ladens and Kaczynskis of the world are immoral and irrational. Kant's hope is that political peace will result as

we all make progress toward enlightened morality and rationality. It is unclear, however, how Rawls can ground his realistic utopia in a philosophy of history that is not in some sense tied to a comprehensive doctrine about morality and rationality. Hope for the triumph of the Law of Peoples is not strictly a "politically" liberal idea because it must appeal to a philosophy of history in which "reasonable" peaceful coexistence triumphs over unreasonable fundamentalist or anarchist resistance. Thus Rawls' liberalism remains genuinely utopian and must be evaluated from the point of view of a more "comprehensive" metaphysics of human being.<sup>6</sup> My point is not that Rawls is wrong about his hope but, rather, that his hope is more "comprehensive" than he wants to admit. He concludes, for example, with the following claim: "If a reasonably just Society of Peoples whose members subordinate their power to reasonable aims is not possible, and human beings are largely amoral, if not incurably cynical and self-centered, one might ask, with Kant, whether it is worthwhile for human beings to live on the earth."<sup>7</sup> The idea of "worthwhile" here clearly points beyond political liberalism toward a more comprehensive view, which claims that peace is good and that human beings ought to strive for it.

**Terrorism** In the present section I will define terrorism and in the next section I will weave connections between philosophy of history, justice and war, around the issue of terrorism. What is terrorism? This question has not been sufficiently analyzed by the pundits and politicians who are hyping the war on terrorism. However, this question is important for understanding the propriety of means taken to respond to terrorism. The RAND Corporation recently issued a prescient report, *Countering the New Terrorism*, focused on the issue of the definition of terrorism and a discussion of the best means to respond to terrorism. This report begins by recognizing that terrorists are known by the acts they commit. In other words, terrorists commit criminal acts including kidnapping, hijacking, and murder. Thus, "an act of terrorism was first of all a crime in the classic sense."<sup>8</sup> Although such acts are politically motivated, they are still criminal. Even if we accept the fact that the terrorist is at war with us, the terrorist's acts are, according to standard definitions of justice in war, war crimes. "Terrorist tactics, in most cases, violated the rules that governed armed conflict—for example, the deliberate targeting of noncombatants or actions against hostages."<sup>9</sup> Finally, it is important to remember that terrorism uses its activities (its crimes) as a means to the further end of creating fear in the target population. Indeed, the identity of the immediate victims of terrorism is usually irrelevant, and the pain and deaths caused by terrorism is merely a means for creating social anxiety.

The way in which we define terrorism will influence the way in which we understand the ethical limits to our response to terrorism.<sup>10</sup> As the RAND report indicates, if we deal with terrorism as merely a criminal matter, then law enforcement activities will be the only justified response. This raises certain practical difficulties, however, insofar as terrorism is an international problem involving international victims and perpetrators as well as targets involved in international activities such as airliners and embassies. Domestic law enforcement is constrained by the political reality of borders and treaties. On the other hand, if we define terrorism as an act of war, we run into other ethical and political problems such as a lowered burden of proof in establishing the culpability of the "enemy" and the ethical and political problems associated with a concern for justice in war. In more concrete terms, if Osama bin Laden and the others thought to be responsible for the September 11th attacks are "criminals" then we will have a difficult time apprehending and prosecuting them. If they are "enemies" engaged in war, then our pursuit of them will require that we pay attention to the importance of preserving some idea of *jus in bello*.

Terrorists are not merely pathological. They are political agents who utilize what I want to call a calculus of terror. This is the negative caricature of a utilitarian or hedonic calculus. The calculus of terror is designed to bring about certain ends. It is a rational decision procedure based upon the insight that terror disrupts social structures. The terrorist is not interested in causing pain per se: terror is not simply causing pain or killing. Rather, the terrorist is interested in using the threat of pain in order to antagonize a people and destabilize a social structure. Terrorism is evil insofar as it aims at destabilization and disruption. It is insidious in that it destabilizes and disrupts by creating an atmosphere or mentality of fear. It is significant, for example, that the September 11th terrorists succeeded in disrupting the lives of hundreds of millions of people in the Western world by the "mere" hijacking of four airplanes resulting in the deaths of over 3,000 people. In strictly utilitarian terms, terrorism is an economical means of political activity. In this sense, political agents who use terrorism are not pathological at all, but are quite rational: they know how to do cost-benefit analysis in order to maximize the results of their activity.

This discussion, of course, ignores the fact that religion is involved and that suicide bombers, such as have continued to terrorize Israel, are committed to a calculus that transcends the calculus of political advantage. This form of terrorism is caught up in an ideology that rewards the martyr's death in an afterlife and that valorizes the martyr in a culture of martyrdom. It is significant that suicide bombers actively embrace their deaths and that, for example, their family members view them as heroes. In this sense, however, we also see that terrorism (in its present Islamic manifestation) is not simply a belief in terror for its own sake. Rather, it is fostered by a belief in the value of struggle (jihad) and by what Rawls would call a "comprehensive doctrine" that is antithetical to the values of the just war tradition and the values of peace and stability found in Rawls' formulation of the Law of Peoples. Such a view comes from a philosophy of history that runs counter to the progressive ideal implicit in Rawls' account.

## **Philosophy of History, Justice in War, and Terrorism**

In the present section I will briefly discuss four rival theories about justice in war (there are more, of course; these specific theories are utilized for purposes of example) in order to show the connection between philosophy of history and political philosophy. I will also briefly suggest ways that each of these perspectives would understand terrorism.

**1. Realism.** From a realist perspective, war is a necessary expedient for preserving power. From this perspective, there are no limits in principle to the exercise of power. Rather, limits that we may impose upon ourselves in the conduct of war are mere expedients designed to preserve power during conflict and during the subsequent peace. This perspective follows from an analysis of history that emphasizes the rise and fall of those in power. This is an analysis, which Machiavelli, for example, undertook in both *The Prince* and the *Discourses*.<sup>11</sup> The Machiavellian analysis of history points to the fact that principles may be sacrificed in war. He concludes:

For where the very safety of the country depends upon the resolution to be taken, no considerations of justice or injustice, humanity or cruelty, nor of glory or of shame, should be allowed to prevail. But putting all other considerations aside, the only question should be, What course will save the life and liberty of the country.<sup>12</sup>

The point is that the goal of war is to preserve power and a way of life against those who are bent on disrupting power and destroying this way of life. The goal of self-preservation supersedes all other concerns. From this perspective, terrorism might be justified in the struggle against a political power that is viewed as a threat to one's way of life. In the same way that a no-limits war against terrorism might be justified as an attempt by the other side to preserve power and its way of life. History is replete with instances of terrorism utilized by individuals, factions, and indeed by states. History (on this interpretation) further shows us that the use of force and violence is occasionally necessary for those in power to preserve power and their way of life. As we shall see, this willingness to ignore principle of justice out of a concern for self-preservation haunts Rawls' discussion of the supreme emergency exemption.

**2. Christianity.** From the Christian perspective, war is part of the eschatological struggle between good and evil. One undertakes war, from this perspective, out of love, which wants to protect others from suffering.<sup>13</sup> In war, the Christian is obligated to restrain himself according to moral principles and war is undertaken with the goal of ending conflict and ensuring peace. As Augustine states: "What, then, men want in war is that it should end in peace."<sup>14</sup> War is an unfortunate necessity given the fact that in this world, there is no peace. This perspective makes sense when understood within the Christian philosophy of history, which distinguishes the city of man from the city of God. From the Christian perspective, human history is a struggle between good and evil, with the end of history itself understood in light of the final climactic battle of Armageddon. If the enemy is evil, one is justified in fighting against him. Indeed, as Augustine concludes in *The City of God*, the conclusion of history is the final judgment in which the evil will be punished and the good (those who fight against evil) will obtain final eternal peace. Within this understanding of war and justice in war, terrorism would presumably not be justified because it does not aim at peace. Although Augustine recognizes that rebels and bandits disturb the peace in order to bring about a different kind of peace, one of their own choosing, this contravention of peace is wickedness because it is prideful.

Even when wicked men go to war they want peace for their own society and would like, if possible, to make all men members of that society, so that everyone and everything might be at the service of one head. Of course, the only means such a conqueror knows is to have all men so fear or love him that they will accept the peace which he imposes. For, so does pride perversely copy God. Sinful man hates the equality of all men under God and, as though he were God, loves to impose his sovereignty on his fellow men. He hates the peace of God which is just and prefers his own peace which is unjust.<sup>15</sup>

From this perspective, which implicitly condemns Machiavelli, it would be justified to fight a war against those who disturb the peace by terrorism. However, this war must be conducted according to principles of justice and restrained by the Christian goal of peace.

**3. Kant.** From Kant's liberal perspective, war is to be avoided, although it is a necessary component in the development of history. Kant says that "Nature has chosen war as a means" of attaining its ends.<sup>16</sup> These ends include driving human beings apart so that they might diversify and expand and also pushing us together to form nations and states. This eventually leads to the development of republicanism and the drive toward perpetual peace. Kant thus enumerates articles of perpetual peace, which include the basic idea of restraint and justice in war. Notable is his 6th

article, which states that acts of "hostility" such as the use of assassins and poisoners should be prohibited because they undermine the mutual confidence necessary for future peace. "It must remain possible, even in wartime, to have some sort of trust in the attitude of the enemy..."<sup>17</sup> This indicates that terrorism would be prohibited as well as what Kant calls a "war of extermination" which could only conclude in "the vast graveyard of the human race."<sup>18</sup> Kant's philosophy of history and his political philosophy thus point beyond war and condemn those activities such as terrorism and genocide, which make a livable peace impossible.

**4. Hegel.** From Hegel's perspective, war was a necessary movement of spirit as it evolved. War was the result of conflicts within spirit as it struggled to actualize the idea that "all are free" in history. However, now that the modern idea of freedom has triumphed, Hegel states that there are certain limits to war, which are imposed by the idea of freedom. Now that states recognize each other as justified representatives of their people, "war is something which ought to come to an end."<sup>19</sup> Hegel concludes that "War accordingly entails the determination of international law that it should preserve the possibility of peace—so that, for example, ambassadors should be respected and war should on no account be waged either on internal institutions and the peace of private and family life, or on private individuals."<sup>20</sup> Hegel would thus condemn terrorism because war is a political mechanism for settling disputes between states. Hegel's philosophy of history holds that the idea of right has developed within interactions among and within institutional embodiments of the idea. Terrorists (who are not representatives of legitimate institutional bodies) are thus outlaws. States are represented by armies, which are the proper entities to conduct war. Moreover, war is to be guided by principles derived from the modern idea of right including respect for the property and life of non-combatants. Terrorism violates these ideas of right and departs from legitimate institutional embodiments of spirit. It should be considered criminal activity and be subject to punishment.

## Rawls and the Philosophy of History

In the above examples, we have seen that just war theory is tied to questions about philosophy of history. The concrete practical implications of a political theory are best understood within the context of a philosophy of history. Rawls' theory of international law and justice in war is no exception. This poses a difficulty for Rawls because his ideal social contract is supposed to be a model of the way in which reasonable beings would come to agreement about principles of justice, despite disagreement about metaphysical ideas about progress in history. Likewise, his view of justice in international relations attempts to avoid historical concerns by focusing on ideal agreement among "peoples" who are abstracted from their previous historical interactions. Nonetheless, Rawls wants to claim that his theory is tied to actuality insofar as it is "realistically" utopian. Rawls' discussion of the distinction between liberal and decent peoples, for example, recognizes that concrete historical differences among peoples are inevitable and ineradicable. However, Rawls maintains the hope (hence the utopian aspect of this theory) that liberal and decent peoples can come to agree about the Law of Peoples. This hope derives from an implicit philosophy of history in which diverse peoples will come to agreement about reasonable principles of justice. This process (what Rawls calls the second original position) is, I argue, less ideal and more historically situated than the analogous process that occurs in the first original position (the domestic social contract). This is so because the parties in the second original position are engaged in real political struggles that are guided by memories of past wars and fear of future war in a world

that is fortified and armed. As we shall see, Rawls acknowledges the importance of concrete historical facts both in his recognition of differences between liberal and decent peoples (as well as outlaw states and burdened societies) and in his discussion of the supreme emergency exemption to the principles of justice in war.

It would be easy to interpret Rawls' idea of a Law of Peoples, if it were simply a restatement of the more substantive liberalism of Kant, whose hope for moral progress is a postulate of practical reason. However, one wonders what could justify Rawls in such a hope, especially in light of recent events. Liberal optimism has been criticized, for example, by John Kekes who calls it "the liberal faith" or "the enlightenment faith." Kekes links this explicitly to what he sees as a naively optimistic philosophy of history and the inability of liberalism to deal with the problem of evil.<sup>21</sup> In *The Law of Peoples*, however, Rawls responds to this criticism by acknowledging atrocities such as the Holocaust while defending what he calls "reasonable hope."<sup>22</sup> Rawls discussion of hope has two prongs. On the one hand, hope is needed in order to combat evil forces, "otherwise, the wrongful, evil, and demonic conduct of others destroys us too and seals their victory."<sup>23</sup> On the other hand, hope is reasonable because the ideals of liberalism are already supported by liberal and decent societies. From this we can derive the basic idea of Rawlsian philosophy of history. Hope for progress toward international adoption of liberal values is supported by the idea that liberal values have triumphed in the past. This hope then serves as a mechanism for further progress in liberalization. Indeed Rawls bases this account on the historical fact that an international community of liberal societies has tended toward peace and stability. He states "absence of war between major established democracies is as close as anything to a simple empirical regularity in relations among societies."<sup>24</sup> He concludes that this historical generalization is the basic "hypothesis" that "underwrites the Law of Peoples as a realistic utopia."<sup>25</sup> Finally, he realizes that the hypothesis itself will serve to stimulate progress.

Thus our answer to the question of whether a reasonably just Society of Peoples is possible affects our attitudes toward the world as a whole. Our answer affects us before we come to actual politics, and limits or inspires how we take part in it. Rejecting the idea of a just and well-ordered Society of Peoples as impossible will affect the quality and tone of those attitudes and will determine our politics in a significant way.<sup>26</sup>

Thus Rawls admits that the progressive interpretation of history is itself a power stimulant toward further progress. We must believe that liberalization is possible in order to reasonably continue to support it.

Kant (and Hegel) made similar claims about progress in history. However, these claims were articulated within the context of a more broadly construed substantive liberalism that tied political progress to moral progress and general enlightenment. From the perspective of political liberalism, however, claims about progress are fallible generalizations, not metaphysical truths. All that Rawls' philosophy of history can conclude is that "a Society of Peoples is indeed possible."<sup>27</sup> He cannot conclude, however, that it is inevitable or necessary. This theoretical limit has important implications for the practical implementation of the Law of Peoples, as we shall see in the next section.

## **The Supreme Emergency Exemption**

One sees the limits of Rawls' philosophy of history in his discussion of the supreme emergency exemption. The very idea of a supreme emergency is derived from a philosophical account of history. A supreme emergency is one, which confronts a people with the impending fact of their own annihilation. The example, which Rawls borrows from Walzer, is Great Britain in the early 1940's. Certain historical facts are important for understanding this situation. At this time, Britain was the only liberal European state unconquered by the Nazis; the United States had not yet entered the war in support of Britain; and there was a credible Nazi threat to destroy the British government and way of life. If these facts were accurate, then the British would have been justified, under the supreme emergency exemption, in utilizing any means necessary to preserve their liberal society (including the deliberate targeting of non-combatants, sabotage, and other acts of "terrorism").

This idea, as it is discussed by both Walzer and Rawls, draws upon Winston Churchill's rhetorical flourish in which he called Britain's predicament in 1939 a "supreme emergency." The idea here is that the danger posed by Nazism was so great that it justified violations of the standard principles of *jus in bello*. As Walzer describes this, it is the "back-to-the-wall" argument: "when conventional means of resistance are hopeless or worn out, anything goes (anything that is 'necessary' to win)."<sup>28</sup> When a supreme emergency is recognized, we are thrown back upon the laws of necessity and, as Walzer indicates, "necessity knows no rule."<sup>29</sup> Walzer then indicates that one must make a concrete judgment about the necessity of action, about the immanence of the threat, and about the immensity of the danger. This judgment is, however, undertaken in the dark and Walzer calls it a "wager." We wager that the determinate crime of killing innocents can be justified in light of the immeasurable evil that would result if we did not act (an evil such as the triumph of Nazism).<sup>30</sup> Walzer's discussion of the supreme emergency indicates a point at which utilitarian reasoning mixed with a dose of political realism overrides other principles of justice.

Rawls' discussion of the supreme emergency exemption picks up on Walzer's idea in both substance and detail (including critiques of the allied bombing of Germany and Japan). Thus Rawls seems to indicate that he is, at the limit, a realist about history who is willing—in certain extreme emergencies—to sacrifice principles for pragmatics. Indeed, Rawls tackles the question of realism directly in *The Law of Peoples*, where he attempts to distinguish his point of view from a strain of realism, which stretches back to Thucydides. Rawls' argument with the realist who interprets history as ceaseless struggle and war (and who then justifies expedience in war at the expense of principle) amounts to a different interpretation of the facts of history. As we have seen, Rawls claims that progress toward peace is possible because liberal peoples do not willingly go to war with one another. The realist interpretation of history, in opposition to this, is not so sanguine about the prospects for perpetual peace.

The point here is that an interpretation of the historical facts—coming from a more general philosophy of history—is required in order to make the determination that a current crisis is a supreme emergency. How can we ever be sure that a current crisis is a supreme emergency? Could the British know for sure that a Nazi invasion was immanent or would be successful? Can we be sure that the terrorism of September 11th is part of a global pattern of violent anti-American activity that will stop at nothing to destroy us? Such questions point toward concrete empirical analysis but also toward philosophy of history. A realist would note that aggressive states continue to expand unless resisted and would view aggression as typical, while a Rawlsian would emphasize progress

toward a Society of Peoples and would view aggression as an exceptional and increasingly rare occurrence.

It is not surprising that a realist would allow for practical exemptions to the principles of justice in war. Indeed, the very idea of a supreme emergency points toward a realist interpretation of history, one that is willing to sacrifice principles to preserve the power that enforces those principles. If political liberalism is supposed to be principled and not merely pragmatic, however, it might be surprising that it is open to the idea of a supreme emergency exemption.<sup>31</sup> However, we must remember that Rawls describes his position as both "realistic" and "utopian." The realistic aspect of this utopia is precisely what opens the door to the supreme emergency exemption. From Rawls' point of view, the historical goal is the triumph of the Law of Peoples. For liberal peoples, the "long-run aim is to bring all societies eventually to honor the Law of Peoples and to become full members in good standing of the society of well-ordered peoples."<sup>32</sup> A supreme emergency undermines the possibility of the creation of a Society of Peoples. In this rare case, liberal ideals must be defended by any means possible.

This, however, seems to push Rawls in a direction that could undermine an overlapping consensus about the principles of justice in war. A Kantian liberal, for example, would agree to the terms of the Law of Peoples but would reject the idea of a supreme emergency exemption because the Kantian philosophy of history remains hopeful and the Kantian moral philosophy prohibits the deliberate violation of principles of justice. Likewise, a Buddhist would agree to the Law of Peoples but would reject the idea of a supreme emergency exemption because, in the words of the Dalai Lama, "violence begets violence. And violence means one thing only: suffering."<sup>33</sup> In both of these cases, a larger metaphysical view prohibits the deliberate violation of the principles of justice. Indeed Rawls recognizes this in his discussion of the Christian just war theory. He acknowledges that the Christian theory would reject the supreme emergency exemption.<sup>34</sup> The idea of the supreme emergency exemption, then, is controversial in a way that most of the rest of Rawls' just war theory is not. It is thus not clear why Rawls includes the supreme emergency exemption in his discussion. One explanation of this is that Rawls is afraid that his ideas would be too utopian without this realist exemption.<sup>35</sup> Another explanation is that Rawls is not fully committed to the hopeful view of history that he defends throughout the book. In either case, Rawls' just war theory is linked to a certain philosophy of history, which requires this realist exemption. This is troubling to the extent that it might undermine the possibility of overlapping consensus about the Law of Peoples among those who have alternative historical points of view.

## Conclusion

In conclusion, I wonder whether the present "war on terrorism" constitutes a supreme emergency, which would allow us to directly attack Afghani or other civilians. The rhetoric uttered by President Bush and others following the September 11th attacks did tend to sound the alarm of an all-out assault against our way of life. Almost immediately after the destruction of September 11th, our politicians and their media interpreters began speaking of America's "new war." These events were compared with the events at Pearl Harbor on December 7, 1941. We began preparing for war and soon we were dropping bombs on foreign soil, resulting in what one hopes is the "inadvertent" killing of innocent civilian life. Such inadvertent killing could be justified by a realist theory, by the Christian just war theory or by Rawls' just war theory. The realist, of course, allows killing in

pursuit of power. The traditional Christian point of view grudgingly accepts civilian casualties if they are indeed inadvertent (and thus the result of "double effect"). From Rawls' point of view such killings could be justified if they constituted a legitimate response to a supreme emergency. Rawls does not directly state whether the supreme emergency exemption would apply to terrorists, although we can presume that states that harbor terrorists could be categorized as outlaws. If the threat to our liberal way of life were severe enough, the supreme emergency exemption would justify deliberately targeting civilians. Kantian just war theory would not, however, allow such killing of civilians because it would violate the proscription against using persons as means toward further ends. It is important to note—in opposition to the rhetoric of our politicians and our pundits—that only in the case of a crass form of utilitarian realism would the killing of civilians be justified by looking at a balance sheet that shows that since "they" killed over 3,000, we are entitled to kill a few thousand of "them."

A Kantian would thus condemn the "war on terrorism" for its risks to non-combatants. I want to suggest further that in fact none of the civilian casualties caused in Afghanistan can be justified as a "war on terrorism," according to either the Christian or the Rawlsian points of view. This is because the "war on terrorism" is a metaphorical war and is not a real war. This "war" is not a conflict with another state. It is not even a conflict between "peoples," as Rawls defines this.<sup>36</sup> The terrorist networks that we are currently pursuing consist of small sets of private individuals without a geographical base and without the other trapping of political sovereignty. Thus the current "war on terrorism" is a metaphorical war. It is a "war" in the same sense that we have been engaged in a "war on drugs." This means that "war" in the present sense has been extended beyond its customary usage in traditional just war theory. The "war on terrorism," because it is not a war between peoples or states, should be understood as a law-enforcement concern and should be conducted within the limits established for law-enforcement including restraint of force, due process, and certain conventions about the burden of proof. This means that the bombing campaign against Afghanistan could not be justified solely on the basis of pursuing Osama bin Laden and his network.<sup>37</sup>

The rhetoric of war must be carefully guarded in order to avoid what Jonathan Glover has called "military drift."<sup>38</sup> We should always be careful about using the indiscriminate destructive force of modern warfare. And we must be judicious about using the rhetoric of war, lest we become too willing to sacrifice principles of justice for success in killing. The rhetoric of war tends to incline us toward a realist point of view where supreme emergencies loom. I do not deny that the events of September 11th were horrible. I do doubt, however, that they constitute a supreme emergency. One must note again that such judgments are always made within the context of a philosophy of history. An outright realist might indeed see September 11th as an act of war. For a Rawlsian, however the burden of proof that would invoke the supreme emergency exemption seems to be much higher: a realist exemption that would justify an all out war on terrorism could not yet be invoked. Indeed, if liberal states must resort to violence in response to terrorism, they must be careful not to sacrifice their liberal principles in the name of realism. Political liberalism's highest aspiration is for a reasonable pluralism in which those who adhere to divergent comprehensive doctrines can agree to certain basic principles of justice, which ensure stability and peace. An overzealous invocation of the realist supreme emergency exemption tends to devalue liberalism by making it appear as one comprehensive doctrine among many competing for power on the global stage. Liberal states such as the United States are often guilty of violating liberal principles in order to attain political ends in

the international arena. Such political maneuvers can further antagonize those terrorists who are opposed to liberal values and who fight against liberalism using terror tactics, which are useful from the perspective of political realism. A liberal response to terrorism (whether Rawlsian or Kantian) would demonstrate its commitment to liberal values by holding on to its utopian hopes for the triumph of progressive values, while resisting the urge to slip toward realism and a war on terrorism which itself becomes terrorist.

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### Notes

1. Although recent events tend to focus our interest on the September 11th attacks on the United States, we can include among terrorists not only Osama bin Laden but also Palestinian suicide bombers, the Irish Republican Army, Ted Kaczynski (the Unabomber), Timothy McVeigh, and others who utilize certain tactics designed to subvert domestic or international order by way of terror. What unites this diverse group is their tactics. As a recent RAND report defines terrorism: “Terrorist tactics, in most cases, violated the rules that governed armed conflict—for example, the deliberate targeting of noncombatants or actions against hostages” [Ian O. Lesser, et al., *Countering the New Terrorism* (Santa Monica, CA: RAND Corporation, 1999), v].
2. This seems to be the case with bin Laden but also, oddly enough, links him with Kaczynski and McVeigh.
3. Kant, *Perpetual Peace*, in *Kant: Political Writings* (Cambridge: Cambridge University Press, 1991), 108.
4. Kant, *Perpetual Peace*, in *Kant: Political Writings*, 109.
5. This paper thus connects to other critiques of Rawls, which indicate that his form of liberalism is not as non-metaphysical as it claims to be. For example, Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982).
6. Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), 128.
7. *Countering the New Terrorism*, v.
8. *Countering the New Terrorism*, v.
9. What follows is based upon *Countering the New Terrorism*, xii.
10. For example, Chapter 16 of *The Prince* or Chapters 40 and 41 of the *Discourses* [both in Machiavelli, *The Prince and The Discourses* (New York: The Modern Library, 1950)].
11. Machiavelli, *Discourses*, 528.
12. “For love’s sake (the very principle of the prohibition of killing), and not only for the sake

of an abstract justice sovereign over the political realm in separation from the private, Christian thought and action was driven to posit this single ‘exception’ (an exception only when externally viewed): that forces should be repelled and the bearers and close cooperators in military force should be directly repressed, by violent means if necessary, lest many more of God’s little ones should be irresponsibility forsaken and lest they suffer more harm than need be” [Paul Ramsey, *The Just War* (New York: Charles Scribner’s Sons, 1968), 150-151]

13. Augustine, *City of God*, 452.

14. Augustine, *City of God*, 454.

15. Kant, *Perpetual Peace* in *Kant: Political Writings*, 111.

16. Kant, *Perpetual Peace* in *Kant: Political Writings*, 96.

17. Kant, *Perpetual Peace* in *Kant: Political Writings*, 96.

18. Hegel, *Philosophy of Right* (Cambridge: Cambridge University Press, 1992), § 338.

19. Hegel, *Philosophy of Right*, § 338.

20. “The name for this pipe-dream is the Enlightenment Faith. It is the illusion of an epoch that stretches from Rousseau to contemporary liberalism. It is the secular equivalent of the religious faith of Christianity, which it is intended to replace. It is fueled by a groundless optimism that substitutes wishes for facts, refuses to face reality, ignores history, and radiates a moralistic fervor...” [John Kekes, *A Case for Conservatism* (Ithaca, New York: Cornell University Press, 1998), 211]. Kekes links his own “pessimistic conservatism” explicitly to the political realism of thinkers such as Thucydides, Machiavelli, and Hobbes (*A Case for Conservatism*, 90). For further discussion of the liberal faith, cf. Kekes, *Against Liberalism* (Ithaca, New York: Cornell University Press, 1997), Chapter 7.

21. Rawls, *The Law of Peoples*, 23.

22. Rawls, *The Law of Peoples*, 22.

23. Rawls, *The Law of Peoples*, 52.

24. Rawls, *The Law of Peoples*, 54.

25. Rawls, *The Law of Peoples*, 128.

26. Rawls, *The Law of Peoples*, 124.

27. Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 252.

28. Walzer, *Just and Unjust Wars*, 254.

29. Walzer, *Just and Unjust Wars*, 259-60.

- 30. I discuss the connections between Rawls, Walzer, and American Pragmatism in “Toleration and Pragmatism” in the *Journal of Speculative Philosophy* 16:2 (forthcoming).**
- 31. Rawls, *The Law of Peoples*, 93.**
- 32. The Dalai Lama, *Ethics for The New Millennium* (New York: Riverhead Books, 1999), 201.**
- 33. Rawls, *The Law of Peoples*, 103-105.**
- 34. This is suggested by Rawls’ discussion of utopianism in *The Law of Peoples*, pp. 6-7.**
- 35. Rawls’ idea of a “people” focuses primarily on “liberal peoples” who have common sympathies, a moral nature, and a representative government (Rawls, *The Law of Peoples*, 23-24). Terrorist networks may have common sympathies. But their illiberal tactics serve to undermine that claim that they have a moral nature. And they are not represented by any government.**
- 36. It might be justified on some other basis such as the fact that the Taliban regime was illegitimate and dangerous to the people of Afghanistan or to international stability. In this sense, the Taliban regime was an “outlaw state” in Rawls’ sense. This would be especially true, insofar as the regime could be distinguished from the people it governed. Rawls’ discussion of justice in war indicates that the prosecution of a war against such an outlaw state must be careful to distinguish between the regime and its people (Rawls, *The Law of Peoples*, 94-96). This consideration would then prohibit the indiscriminate bombing of civilian targets as a means for removing the regime.**
- 37. Jonathan Glover, *Humanity* (New Haven, Conn.: Yale University Press, 2000), 75.**