

## ARMS AND RIGHTS

### *Rawls, Habermas and Bobbio in an Age of War*

I N THE FINAL decade of the century that has just ended, three of the most distinguished political philosophers of the time turned their attention to the international scene. In the early nineties, each had published what could be seen as a culminating statement of their reflections on the internal life of Western liberal democracies: Jürgen Habermas's *Faktizität und Geltung* (1992), John Rawls's *Political Liberalism* (1993), and Norberto Bobbio's *Destra e Sinistra* (1994). There followed, focusing now on external relations between states, Habermas's 'Kant's Idea of Perpetual Peace: at Two Hundred Years' Historical Remove' (1995) and 'The Postnational Constellation' (1998), and Rawls's *Law of Peoples* (1999). Bobbio, who had started thinking about international relations much earlier, and anticipated many of their concerns in 'Democracy and the International System' (1989), produced more punctual interventions in these years, each arousing major intellectual debates.<sup>1</sup> The apparent alteration in attention of Rawls and Habermas, previously often reproached with lack of concern for global issues, was by contrast striking. In the background to a new set of preoccupations, on the part of all three thinkers, stretched the frieze of world history, as the end of the Cold War brought not pacification of relations between states, but military engagements of a frequency not seen since the sixties, in the Gulf, the Balkans, the Hindu Kush and Mesopotamia. Each philosopher sought to offer proposals appropriate to the time.

Of the three, it was Rawls who offered the most systematic outline of a desirable international order. *The Law of Peoples* extends the modelling devices of *A Theory of Justice* from a national to a global plane. How is international justice to be realized? Rawls argues that we should imagine

an ‘original position’ for the various peoples of the earth parallel to that for individuals within a nation-state. In it, these collective actors choose the ideal conditions of justice from behind a veil of ignorance concealing their own size, resources or strength within the society of nations. The result, he argues, would be a ‘law of peoples’ comparable to the contract between citizens in a modern constitutional state. But whereas the latter is specifically a design for liberal democracies, the scope of the former extends beyond them to societies that cannot be called liberal, yet are orderly and decent, if more hierarchical. The principles of global justice that should govern democratic and decent peoples alike correspond by and large to existing rules of international law, and the Charter of the United Nations, but with two critical corollaries.

On the one hand, the Law of Peoples—so deduced from an original position—authorizes military intervention to protect human rights in states that are neither decent nor liberal, whose conduct brands them as outlaws within the society of nations. Regardless of clauses to the contrary in the UN Charter, these may be attacked on the grounds of their domestic policies, even if they present no threat to the comity of democratic nations. On the other hand, the Law of Peoples involves no obligation to economic redistribution between states comparable to the requirements of a justice within democratic societies. The Difference Principle, Rawls explains, does not apply between peoples, since the disparities in their wealth are due not to inequality of resources, but principally to contrasts in culture. Each society is essentially responsible for its own economic fate. Better-off peoples have a duty of assistance to those that are historically more burdened by their culture, but this does not extend beyond helping them achieve the sufficiencies needed for a decent hierarchical order. A legal empyreum that conformed to these rules would have every chance of extending the peace that has reigned for more than a century between the world’s democracies to all corners of the earth. The Law of Peoples, inspired by the long experience of this silence of arms among liberal societies, configures a ‘realistic utopia’.

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<sup>1</sup> Bobbio’s essay first appeared in the revised third edition of *Il problema della guerra e le vie della pace*, Bologna 1989, and in English in Daniele Archibugi and David Held, eds, *Cosmopolitan Democracy*, Cambridge 1995, pp. 17–41. Habermas’s essays appeared in, respectively, *Die Einbeziehung des Anderen*, Frankfurt 1996, pp. 192–236, and *Die postnationale Konstellation*, Frankfurt 1998, pp. 91–169; and in English in *The Inclusion of the Other*, Cambridge, MA 1998, pp. 165–202, and *The Postnational Constellation*, Cambridge 2001, pp. 58–112.

Rawls explains at the outset of *The Law of Peoples* that the basic intention of his work was to offer a contemporary version of Kant's *For a Perpetual Peace: A Philosophical Sketch* of 1795. Habermas, proceeding from the same inspiration, sought more explicitly to update Kant, reviewing the posthumous fortunes of his scheme on the occasion of its bicentenary and, where necessary, adjusting it to present conditions. War could be abolished, Kant had believed, by the gradual emergence of a federation of republics in Europe, whose peoples would have none of the deadly impulses that drove absolute monarchs continually into battle with each other at the expense of their subjects—the drive for glory or power. Rather, interwoven by trade and enlightened by the exercise of reason, they would naturally banish an activity so destructive of their own lives and happiness. For well over a century, Habermas observes, history rebuffed this prospect. Democratic peoples showed they could be just as bellicose as autocratic princes. Instead of peace-giving trade, there came industrial revolution and class struggle, splitting rather than uniting society. The public sphere became prey to distortion and manipulation with the arrival of modern media. Yet since the close of the Second World War, Kant's vision has come to life again, as his premises have been fulfilled in altered conditions. Statistical research confirms that democracies do not war with each other. Within the OECD, nations have become economically interdependent. The welfare state has pacified class antagonisms. NGOs and global summits on population or the environment show that an international public sphere is taking shape.

But if Kant's diagnostic has today been vindicated, his institutional scheme for a perpetual peace has proved wanting. For a mere *fœdus pacificum*—conceived by Kant on the model of a treaty between states, from which the partners could voluntarily withdraw—was insufficiently binding. A truly cosmopolitan order required force of law, not mere diplomatic consent. The UN Charter, in banning aggressive wars and authorizing measures of collective security to protect peace, and the UN Declaration of Human Rights, laid some of the legal bases for one. But in continuing—inconsistently—to proclaim national sovereignty inviolable, the Charter had not advanced decisively beyond Kant's original conception. The transformative step still to be taken was for cosmopolitan law to bypass the nation-state and confer justiciable rights on individuals, to which they could appeal against the state. Such a legal order required force: an armed capacity to override, where necessary, the out-dated prerogatives of national sovereignty. The Security Council

was an imperfect instrument of this imperative, since its composition was open to question and its actions were not always even-handed. It would be better if it were closer in model to the Council of Ministers in the European Union, but—in this unlike the latter—with a military force under its command. Nevertheless, the Gulf War was evidence that the UN was moving in the right direction. The present age should be seen as one of transition between international law of a traditional kind, regulating relations between states, and a cosmopolitan law establishing individuals as the subjects of universally enforceable rights.

Bobbio's starting-point, by contrast, lay in Hobbes. For theorists of natural law, the passage from a state of nature to a civil union required two distinct contracts: the first, an agreement between warring individuals to form an association; the second, to submit to the decisions of an authority in case of disputes among them; a pact of non-aggression, and a pact for pacific settlement of conflicts. For Hobbes, neither were possible in relations between states. For them, peace could never be more than a temporary suspension of war, the inescapable condition of competing sovereign powers. This was an accurate description, Bobbio agreed, of the classical system of international relations, down to the twentieth century. But with the advent of the League of Nations, and then of the United Nations, for the first time a *pactum societatis* started to take shape between sovereign states. Still lacking, however, was any *pactum subiectionis* for the resolution of conflicts and the enforcement of rights. Democratic ideals plainly informed the UN's Declaration of Human Rights, and the representative equality of its General Assembly. But national sovereignty continued to frustrate the first, and the character of the Security Council to thwart the second. Transactions between the Great Powers still essentially determined the fate of the earth.

Yet now these coexisted with another and better framework. If it was wrong to idealize the UN, scepticism about it was also misplaced. The new system of international relations it half-embodied had not done away with a much older one; but nor had the latter succeeded in dispatching this more recent version. The two rubbed against each other—one still effective but no longer legitimate, the other legitimate but not yet effective.<sup>2</sup> For what was still missing from the contemporary interstate system was the juridical figure of the Third—Arbiter, Mediator or Judge—created by any pact of submission, of which Hobbes's Leviathan,

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<sup>2</sup> 'Democracy and the International System', pp. 22–31.

governing those who had voluntarily made themselves its subjects, had offered a compelling, if autocratic, intra-state model. Today, the abstract outline of such a Third could acquire democratic form as a cosmopolitan sovereignty based on the consent of states, empowered to enforce universal peace and a catalogue of human rights. The first condition of such a desirable order had already been perceived by Kant. It was the principle of transparency, abolishing the *arcana imperii* that had always characterized the foreign policies of democracies and tyrannies alike, under the pretext that affairs of state were too complex and delicate to broadcast to the public, and too dangerous to reveal to the enemy. Such secrecy could not but erode democracy itself, as innumerable actions—at home as well as abroad—of the national security services of contemporary states testified. Here a vicious circle was at work. States could only become fully democratic once the international system became transparent, but the system could only become fully transparent once every state was democratic. Yet there were grounds for hope: the number of democracies was increasing, and a certain democratization of diplomacy was visible. As Kant had once seen in general enthusiasm for the French Revolution a ‘premonitory sign’ of the moral progress of humanity, so today universal acceptance of human rights, formal as this still might be, could be read as a portent of a pacified future to come.<sup>3</sup>

### *Maryland, Rhineland, Piedmont*

The similarity of these constructions, arrived at independently, is all the more notable for the differing profiles of their authors. Biographically, the formative experience of each lay in the Second World War, but these years were lived in sharply contrasting ways. Rawls (1921–2002), who came from a wealthy family in Maryland and originally intended to become a Protestant minister, fought as an infantryman in the New Guinea and Filipino theatres of the Pacific War. The moral crises of the battlefield seem to have affected him deeply, changing a religious into a philosophical vocation. Returning home to pursue an academic career, he became the most widely read political thinker of his time with the publication, in the early seventies, of *A Theory of Justice*. Although framed entirely abstractly, Rawls’s work was at the same time consistently prescriptive, however ambiguous its practical implications might be. His intellectual horizon of reference could be described as quite narrow: principally, Anglo-American moral philosophy from the time of Victoria to

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<sup>3</sup> *Il terzo assente*, Milan 1989, p. 115 ff.

the Cold War, and an animating inspiration from Kant. Politically, Rawls described himself as a left liberal, and no doubt voted Democrat. But one of the most striking features of a thinker often admiringly described by colleagues as unworldly, was a complete abstention from any commentary on contemporary public affairs, throughout his life.

Eight years younger, Habermas grew up in a small Rhenish town under Hitler. His father joined the Nazi party in 1933, and Habermas himself briefly took part in defensive work with the Hitlerjugend at the end of the war. After discovering the realities of the Third Reich and breaking with Heidegger, who had been his first major influence, Habermas became the major philosophical descendant of the Frankfurt School, absorbing its distinctive transformations of Marx, and then in turn criticizing these in the light of American pragmatism and systems theory. Intellectually heir to the totalizing ambitions of German idealism, scarcely any major philosophical tradition has fallen outside the range of his interests, in which sociology—classical and contemporary—has also occupied a central place. As a political thinker, the pattern of Habermas's writing reverses that of Rawls, whom he has criticized for his inappropriately substantive intentions. His own political theory is purely procedural, abstaining from any programmatic proposals. On the other hand, Habermas has never hesitated to intervene politically on topical issues, adopting public positions on leading disputes of the day in Germany, as a citizen of the left. His *Kleine politische Schriften* now run to nine volumes, rivalling the number of Sartre's *Situations*. At the same time, he has never been involved in any political organization, keeping his distance from SPD and Greens alike.

A generation older, Bobbio (1907–2004) was born into a well-connected family in Turin which, like most of the Italian bourgeoisie, welcomed the March on Rome and Mussolini's dictatorship. After early work on Husserl, he turned to the philosophy of law. In his late twenties, friendship with intellectuals in the anti-fascist resistance led to brief arrest and release in 1935, after which he resumed a university career with a letter of submission to Mussolini, and intervention by an uncle acquainted with a leading hierarch of the regime. By the outbreak of the war he was a member of a clandestine liberal socialist circle, and in 1942 became one of the founders of the Partito d'Azione, the leading force of the independent Left in the Italian Resistance. Active in the Partito d'Azione until 1948, when it faded from the scene, Bobbio became the most eloquent

critical interlocutor of Italian Communism during the high Cold War. In 1966, when the long-divided Italian Socialists united again, he joined the reunified party, playing a major role both in its internal discussions and in public debates at large—after 1978, in sharp opposition to Craxi's leadership of the PSI. In 1984, on his retirement from the University of Turin, he was made a Senator for life, and in 1992 his name was canvassed as a candidate for President of the Republic.

If Bobbio's career was thus a much more intensely political one than that of Habermas, let alone Rawls, as a theorist he was less systematic or original—limitations he was the first to emphasize. Steeped in the philosophy of law, which he taught for most of his life, and taking his primary inspiration from Kelsen's positivism, from the early seventies he occupied a chair of political science. In both fields he displayed a notably richer historical sense of his disciplines than either the American or the German thinker. The most influential of his voluminous writings were concerned with the origins, fate and future of democracy, and its relations with socialism. In these, he drew equally on Constant and Mill, on Weber and Pareto, to confront the legacy of Marx. They are texts that vividly reflect the energy and variety of Italian political culture in the post-war period, thrown into sharp relief against the monochrome landscape of the United States or the Federal Republic. To that extent, Bobbio's thought was the product of a national experience without equivalent elsewhere in the West. But in one critical respect he was also at an angle to his country. From the early sixties onwards, Bobbio was preoccupied with global problems of war and peace that had little, if any, resonance in Italy—a subordinate state within the American security system, with no post-war colonies, and hardly a foreign policy worth speaking of, whose political class and electorate, famously polarized by domestic conflicts, took correspondingly little interest in affairs beyond their borders. Acutely concerned by the dangers of thermonuclear war between East and West, Bobbio devoted a series of his finest essays to inter-state relations in the atomic age, first collected as *Il problema della guerra e le vie della pace* in 1979, long before either Rawls or Habermas had got around to considering the plane of international politics.

### *Americana*

Service in America's war to regain the Pacific; a boyhood in Nazi Germany; underground resistance against fascism. It would be surprising if three

such distinct experiences were without trace in the work of those who went through them. Rawls and Habermas offer the most clear-cut contrast. From the beginning, there were critics—nearly every one also an admirer—of *A Theory of Justice* who were puzzled by its tacit assumption, never argued through as such, that the only relevant unit for its imaginary ‘original position’, from which a just social contract could be derived, was the nation-state. How could a Kantian constructivism, deducing its outcome from universal principles, issue into the design merely of a particular community? The categorical imperative had known no territorial boundaries. At the time, the restriction could appear anodyne, since Rawls’s two principles of justice, and their lexical order—first, equal rights to political liberty; second, only those socio-economic inequalities of benefit to all—presupposed conditions common to the wealthy capitalist countries of the West, with which his commentators were also essentially concerned.

With the publication of *Political Liberalism*, however, the extent to which Rawls’s preoccupations centred on just one—highly atypical—nation-state, his own, became clear. The whole problematic of this sequel, still couched in general terms, but now referring with diminishing compunction to strictly American questions or obsessions, revolved around the permissible role of religion in political life: an issue of small relevance in any major advanced society other than the United States. In the background, standard patriotic landmarks—the Declaration of Independence, the Bill of Rights, the Supreme Court, Lincoln’s Inaugurals, the New Deal—demarcate the space of reflection. Moving into less familiar terrain, *The Law of Peoples* unfolds the logic of such introversion. Given that in *A Theory of Justice* it is the rational choice of individuals that is modelled in the original position, why does the same procedure not obtain for the law of peoples? Rawls’s most impressive pupil, Thomas Pogge, deploring the conservative drift of his later work, has sought to extend its radical starting-point in just the way Rawls refuses, offering a vision of ‘global justice’ based on the application of the Difference Principle to all human beings, rather than simply the citizens of certain states.<sup>4</sup> The reason why Rawls declined this amplification goes to the unspoken core of his theory. For individuals in the original position to reach unanimous agreement on the two principles of justice, Rawls had to endow them with a range of information and a set

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<sup>4</sup> See *Realizing Rawls*, Ithaca 1989, pp. 9–12; ‘Priorities of Global Justice’, in Pogge, ed., *Global Justice*, Oxford 2001, pp. 6–23.

of attitudes derived from the very liberal democracies that the original position was supposed to generate—its veil of ignorance screening the fortunes of each individual in the social order to be chosen, but not collective awareness of its typical institutions.

In *The Law of Peoples*, this circular knowledge resurfaces as the ‘political culture’ of a liberal society. But just because such a culture inevitably varies from nation to nation, the route to any simple universalization of the principles of justice is barred. States, not individuals, have to be contracting parties at a global level, since there is no commonality between the political cultures that inspire the citizens of each. More than this: it is precisely the differences between political cultures which explain the socio-economic inequality that divides them. ‘The causes of the wealth of a people and the forms it takes lie in their political culture and in the religious, philosophical and moral traditions that support the basic structure of their political institutions’.<sup>5</sup> Prosperous nations owe their success to the diligence fostered by industrious traditions; lacking the same, laggards have only themselves to blame if they are less prosperous. Thus Rawls, while insisting that there is a right to emigration from ‘burdened’ societies, rejects any comparable right to immigration into liberal societies, since that would only reward the feckless, who cannot look after their own property. Such peoples ‘cannot make up for their irresponsibility in caring for their land and its natural resources’, he argues, ‘by migrating into other people’s territory without their consent’.<sup>6</sup>

Decorating the cover of the work that contains these reflections is a blurred representation, swathed in a pale nimbus of gold, of a statue of Abraham Lincoln. The nationalist icon is appropriate. That the United States owes its own existence to the violent dispossession of native peoples on just the grounds—their inability to make ‘responsible’ use of its land or resources—alleged by Rawls for refusal of redistribution of opportunity or wealth beyond its borders today, never seems to have occurred to him. The Founders who presided over these clearances, and those who followed, are accorded a customary reverence in his late writings. Lincoln, however, held a special position in his pantheon, as *The Law of Peoples*—where he is hailed as an exemplar of the ‘wisdom, strength and courage’ of statesmen who, unlike Bismarck, ‘guide their people in turbulent and dangerous times’—makes clear, and colleagues

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<sup>5</sup> *The Law of Peoples*, Cambridge, MA 1999, p. 108; henceforward LP.

<sup>6</sup> LP, p. 39.

have since testified.<sup>7</sup> The abolition of slavery clearly loomed large in Rawls's admiration for him. Maryland was one of the slave states that rallied to the North at the outbreak of the Civil War, and it would still have been highly segregated in Rawls's youth. But Lincoln, of course, did not fight the Civil War to free slaves, whose emancipation was an instrumental by-blow of the struggle. He waged it to preserve the Union, a standard nationalist objective. The cost in lives of securing the territorial integrity of the nation—600,000 dead—was far higher than all Bismarck's wars combined. A generation later, emancipation was achieved in Brazil with scarcely any bloodshed. Official histories, rather than philosophers, exist to furnish mystiques of those who forged the nation. Rawls's style of patriotism sets him apart from Kant. The Law of Peoples, as he explained, is not a cosmopolitan view.<sup>8</sup>

### *A transcendental union*

Habermas offers the antipodal case. In post-war Germany, reaction against the cult of the nation was stronger in his generation, which had personal memories of the Third Reich, than anywhere else in the West. Division of the country during the Cold War compounded it. Here there was little chance of taking the nation-state simply as an unspoken given of political reflection. For Habermas, the question was the opposite: what place could there be for the nation as a contingent community, whose frontiers were delimited by arms and accidents, within the necessary structure of liberal democracy? Since the *Rechtsstaat* embodies universal principles, how can it abide a particularistic core? Habermas offers two reasons, one theoretical and the other empirical. So far as the first is concerned, he observes that 'there is a conceptual gap in the legal construction of the constitutional state, that it is tempting to fill with a naturalistic conception of the people'—for 'one cannot explain in purely normative terms how the universe of those who come together to regulate their common life by means of positive law should be composed'.<sup>9</sup> As for the second, in historical practice the ideals of popular sovereignty and human rights were too abstract to arouse the energies needed to bring modern democracy into being. Ties of blood and

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<sup>7</sup> LP, p. 97. For Rawls's cult of Lincoln, see *inter alia* Thomas Nagel, 'Justice, Justice Thou Shalt Pursue', *New Republic*, 13 January 2000.

<sup>8</sup> LP, pp. 119–20.

<sup>9</sup> *Die Einbeziehung des Anderen*, pp. 139–40; *The Inclusion of the Other*, p. 115; henceforward EA and IO.

language supplied the extra momentum for the mobilization required, in which the nation became an emotional driving force akin to religion, as 'a remnant of transcendence in the constitutional state'.<sup>10</sup> Nationalism then bred imperialism far into the twentieth century, sublimating class conflicts into wars of overseas conquest and external expansion.

Today, however, two broad forces are weakening the political grip of the nation-state. On the one hand, globalization of financial and commodity markets are undermining the capacity of the state to steer socio-economic life: neither tariff walls nor welfare arrangements are of much avail against their pressure. On the other, increasing immigration and the rise of multi-culturalism are dissolving the ethnic homogeneity of the nation. For Habermas, there are grave risks in this two-sided process, as traditional life-worlds, with their own ethical codes and social protections, face disintegration. To avert these dangers, he argued, a contemporary equivalent of the social response to classical *laissez-faire* that Polanyi had traced in *The Great Transformation* was needed—a second remedial 'closure' of what had become a new, 'liberally expanded', modernity.<sup>11</sup> The European Union offered the model of what such a post-national constellation might look like, in which the powers and protections of different nation-states were transmitted upwards to a supra-national sovereignty that no longer required any common ethnic or linguistic substratum, but derived its legitimacy solely from universalist political norms and the supply of social services. It is the combination of these that defines a set of European values, learnt from painful historical experience, which can offer a moral compass to the Union.<sup>12</sup>

Such a European federation, marking as it would a historic advance beyond the narrow framework of the nation-state, should in turn assume its place within a worldwide community of shared risk. For 'the great, historically momentous dynamic of abstraction from the local to dynastic, to national to democratic consciousness' can take one more step forward.<sup>13</sup> World government remains impossible, but a world domestic policy does not. Since political participation and the expression of popular will, as Habermas puts it, are today no longer the predominant

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<sup>10</sup> *Die Normalität einer Berliner Republik*, Frankfurt 1995, pp. 177–9; *A Berlin Republic: Writings on Germany*, Lincoln, NE 1997, pp. 170–2; henceforward NBR and BR.

<sup>11</sup> *Die Postnationale Konstellation*, pp. 122–35; *The Postnational Constellation*, pp. 80–8; henceforward PK and PC.

<sup>12</sup> PK, pp. 155–6; PC, p. 103.

<sup>13</sup> PK, p. 89; PC, p. 56.

bases of democratic legitimacy, there is no reason to demand a planetary suffrage or representative assembly. The ‘general accessibility of a deliberative process whose structure grounds an expectation of rational results’ is now more significant and, in such forms as a role for NGOs in international negotiations, may largely suffice for the necessary progress. For a cosmopolitan democracy cannot reproduce the civic solidarity or welfare-state policies of the European Union on a global scale. Its ‘entire normative framework’ should consist simply of the protection of human rights—that is, ‘legal norms with an exclusively moral content’.<sup>14</sup>

Beyond the obvious contrast in their valuations of the nation, a wider difference of outlook is noticeable in Rawls and Habermas here. Habermas’s vision of the requirements of the time is more sociologically informed, offering a general account of objective changes in the contemporary world. Rawls, lacking such sociological imagination, appears—as Pogge notes—to have been blind to the implications of globalized capital markets for his account of the moral qualities that distinguish peoples in the tending of their natural assets. This is not a mistake Habermas could have made. On the other hand, unlike Rawls, here too he eschews any specific proposal for economic relations between rich and poor zones of the earth, even of the limitative sort advanced in *The Law of Peoples*. All that the community of shared risk involves is international enforcement of human rights. Here the two thinkers return to each other. For both, human rights are the global trampoline for vaulting over the barriers of national sovereignty, in the name of a better future.

### *Consensus of religion*

How are these prerogatives derived in the two philosophies? In *A Theory of Justice*, they are an unproblematic deduction from the device of the original position, as rights that hypothetical individuals would rationally select, *inter alia*, behind the veil of ignorance. This was an elegant solution, that avoided determination of the status of rights claimed in the real world. By the time of *Political Liberalism*, concerned to construct an overlapping consensus from a variety of existing ideological standpoints—so inevitably requiring more empirical reference—it was no longer sufficient. To show that such a consensus would comprise his principles of justice, Rawls was now obliged to argue that all major religions contained moral codes compatible with them. In *The Law of*

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<sup>14</sup> PK, pp. 162–6; PC, 108–11.

*Peoples*, the two lines of argument merge. Universal human rights are deducible from the choice that variant peoples, endowed as they are with differing faiths, would make if assembled together in an original position. Since they form a narrower set than the full range of liberal rights, decent as well as democratic societies will select them; symptomatically, Rawls's examples of the former are consistently Muslim.

Lacking a counter-factual artifice to derive them, Habermas is compelled to express a clearer view of human rights as they are actually invoked in the political world. Noting 'a certain philosophical embarrassment' surrounding them, he concedes that they cannot be taken as moral rights inherent in each human being, since they are 'juridical by their very nature'—that is, can exist only as determinations of positive law. Yet they are also 'suprapositive', for their justification—unlike that of other legal norms—can be exclusively moral, requiring no further arguments in support of them.<sup>15</sup> What then is the morality that legitimates them? Here Habermas directly rejoins Rawls. 'Does the claim to universality that we connect with human rights merely conceal a particularly subtle and deceitful instrument of Western domination?', he asks, 'or do the universal world religions converge on them in a core repertoire of moral intuitions?' There are no prizes for guessing the answer. 'I am convinced Rawls is right, that the basic content of the moral principles embodied in international law is in harmony with the normative substance of the great world-historical prophetic doctrines and metaphysical world-views'.<sup>16</sup>

Habermas's more sociological side, however, which remembers Weber, cannot let the matter rest there. After all, surely the doctrine of human rights is specifically Western in origin, rather than of pan-confessional inspiration? Adjusting his sights, Habermas meets this objection by explaining that 'human rights stem less from the particular cultural background of Western civilization than from the attempt to answer specific challenges posed by a social modernity that has in the meantime covered the globe'.<sup>17</sup> How, in that case, is it that the social challenges of modernity happen to coincide with the moral intuitions of antiquity—the Atomic and Axial ages unexpectedly melting into each other in the

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<sup>15</sup> EA, pp. 221–4; IO, pp. 189–91.

<sup>16</sup> *Vergangenheit als Zukunft*, Zurich 1991, p. 30; *The Past as Future*, Lincoln, NE 1994, pp. 20–1; henceforward VZ and PF. Rawls had explained that all major world religions were 'reasonable' doctrines capable of accepting his principles of justice: *Political Justice*, New York 1993, p. 170.

<sup>17</sup> PK, p. 181; PC, p. 121.

eloquence of UN prose? Habermas has a proviso ready to square this circle. The faiths that so harmoniously agree with each other, and with lay wisdom, are not ‘fundamentalist’, but aware that their own ‘religious truths must be brought into conformity with publicly recognized secular knowledge’, and so, ‘like Christianity since the Reformation’, are ‘transformed into “reasonably comprehensive doctrines” under the reflexive pressure generated by modern life circumstances’.<sup>18</sup>

With this gloss, the vacancy of the claim that human rights are validated by all world religions is laid bare. The slightest acquaintance with the Pentateuch, Revelations, the Koran or the Bhagavadgita—replete with every kind of injunction to persecution and massacre—is enough to show how absurd such an anachronistic notion must be. All that is really postulated by Rawls and Habermas is that, once religious beliefs are rendered indistinguishable from ‘public reason’ or ‘secular knowledge’, they can be enlisted like any other platitude as sponsors of whatever conventional wisdom requires. The fact that in the real world, transcendent faiths continue to represent contradictory ethical imperatives, waging ideological or literal war with each other, becomes an irrelevant residue: the domain of a ‘fundamentalism’ that is no longer even quite religion, properly understood.

In Habermas’s construction, something similar occurs to democracy. Once this is redefined as principally a matter of ‘communication’ and ‘consciousness’, political participation and popular will become residuals that can be bypassed in the design of a cosmopolitan legal order. Here too, the presiding concept ensures the desirable outcome—Habermas’s discourse theory functioning, like Rawls’s public reason, to neutralize democracy as once religion. For rather than a critique of the involution of classic democratic ideals in the dispersed and depoliticized representative systems of the West today, Habermas furnishes a metaphysical justification of it, in the name of the salutarily impersonal and decentred flux of communicative reason. The result is a political theory tailor-made for the further dissolution of popular sovereignty at a European level, and its vaporization altogether at a putative global level. To his credit, when writing on the actual European Union before his eyes, Habermas has sought to resist the logic of his own weakening of any idea of collective self-determination—calling, indeed, for more powers to the European

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<sup>18</sup> PK, pp. 191–2; PC, p. 128. Here too the reference—of ‘reasonably comprehensive doctrines’—is explicitly to Rawls.

parliament and the formation of European parties. But when, untempered by any comparable experience, he envisages a cosmopolitan order to come, the logic of his projection ends in a political wraith: democracy without democracy, shorn even of elections or voters.

### *Hiroshima's minatory shadow*

The intellectual framework of Bobbio's prospectus stands apart from these two. The reason for that is its quite distinct historical starting-point. Rawls and Habermas were moved to reflections on the inter-state system only with the end of the Cold War. Their theories are plainly responses to the new world order announced in the wake of the Gulf War. By contrast Bobbio's concerns, predating theirs by three decades, were a product of the Cold War itself. The dangers of a nuclear exchange were all but completely absent from the analytics of either the American or the German. But it was these which determined the Italian's approach to the international scene. The lesson of Carlo Cattaneo in the time of the Risorgimento, and of his teacher Aldo Capitini in the Resistance, had been that the elimination of violence as a means of resolving conflicts, represented by the procedures of democracy within states, required a structural complement between states. Liberty and peace, whatever the empirical gaps or torsions between them, logically belonged together.

In the late eighteenth and mid-nineteenth centuries, a considerable range of thinkers had believed that history was in the process of delivering their union. Kant or Mazzini were confident that the spread of republican governments would do away with war. Saint-Simon, Comte and Spencer thought that industrial society would make military conflict an anachronism. Cobden expected the growth of trade to ensure amity between nations. Bebel and Jaurès were sure socialism would bring lasting peace between peoples. All of these hopes, plausible as they seemed at the time, were dashed in the twentieth century. The barriers against mutual slaughter to which they had looked proved to be made of clay. Merchants did not replace warriors; peoples proved as truculent as princes; communist states attacked each other.<sup>19</sup> Yet now that nuclear annihilation threatened humanity, peace was a universal imperative as it had never been before. Bobbio had no time for Cold War orthodoxy. Deterrence theory was self-contradictory, purporting to prevent the risk

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<sup>19</sup> *Il problema della guerra e le vie della pace*, Bologna 1984, pp. 113–4, 143–6; henceforward PGVP; *Il terzo assente*, pp. 34–8; henceforward TA.

of atomic war by the very weapons that created it. The balance of terror was inherently unstable, preordained to escalation rather than equilibrium.<sup>20</sup> Disarmament treaties were welcome if secured, but did not constitute either a radical or a reliable alternative.

Moral solutions to the problem of war, however noble, were not more satisfactory than such instrumental ones, since they required an improbable transformation of humanity. The most credible path for putting an end to the nuclear arms race was institutional. If the roots of war lay in the system of states, logically two remedies were possible. If conflicts were generated by the structure of international relations, a juridical solution was indicated; if their causes lay in the internal character of the states making up the system, the solution would have to be social. In the first case, peace could be secured only by the creation of a super-state, endowed with a global monopoly of violence, capable of enforcing a uniform legal order across the world. In the second, it could come only by a transition to socialism, leading to a universal withering away of the state itself. A single Hobbesian sovereignty, or a Marxist *Sprung in die Freiheit*: such was the choice.<sup>21</sup> Without claiming that this meant the elimination of coercion, since by definition the state was always a concentration of violence, Bobbio held the sole realistic prospect for global peace to be Hobbesian. The menace of a nuclear conflagration could be laid to rest only by a universal state. Structurally, that could become a super-despotism, such as Kant had feared.<sup>22</sup> But, unlike Rawls or Habermas, Bobbio was prepared to contemplate this risk, because it was less than the danger of planetary destruction they ignored.

Once the Cold War was over, Bobbio became more concerned to furnish his Hobbesian framework with a Lockean foundation, by stressing the need for a democratic, rather than authoritarian, incarnation of the Absent Third—one always preferable, but now that the Soviet bloc had collapsed, increasingly possible. Nevertheless, the world government he advocated remained a much more centralized structure than Rawls's law of peoples or Habermas's cosmopolitan consciousness, and involved less idealization of its conditions. Even adjusted to post-Cold War circumstances, the link of any such authority to democracy was logically weaker, since its primary legitimation was pacification of inter-state relations rather than a mimesis of intra-state norms—not devices like the

<sup>20</sup> PGVP, pp. 50–5; TA, pp. 60–8.

<sup>21</sup> PGVP, pp. 83–6.

<sup>22</sup> PGVP, p. 116; TA, pp. 49–50.

original position or discourse theory replicated at international level, but a supervening logic at that level itself, in keeping with Bobbio's dictum, unthinkable for the other two, that 'it cannot escape anyone who views history without illusions that relations between rulers and ruled are dominated by the primacy of foreign over domestic policies'.<sup>23</sup>

### *Swords and paper*

So too human rights, though they eventually played a role in Bobbio's prescriptions for a peaceful international order very similar to their position in the agendas of Rawls and Habermas, were always seen in a quite different light. At no point does Bobbio suggest that they magically harmonize the moral intuitions of the world's great religions, or can be regarded as principles of natural law, or are general requirements of modernity. They were not less precious to him for that. But a realistic view of them is incompatible with their standard descriptions. There are no 'fundamental' natural rights, since what seems basic is always determined by a given epoch or civilization. Since they were first proclaimed, the list of human rights has typically been ill-defined, variable and often contradictory. Such rights continually conflict with each other: private property with civic equality, freedom of choice with universal education, and more. Since ultimate values are antinomic, rights appealing to them are inevitably inconsistent. No historical synthesis between liberal and socialist conceptions has yet been realized. Thus human rights lack any philosophical foundation. Their only warrant is factual: today, all governments pay formal homage to the UN Declaration of Human Rights. This empirical consensus gives them a contingent universality that is their real basis.<sup>24</sup>

Bobbio's account of human rights is thus a far cry from the deontological versions of Rawls or Habermas. It is radically historical. For Hobbes, the only right was to life itself—the individual could refuse to lay it down for the state. Since Hobbes's time, the list of rights claimed by citizens has been progressively extended: at first comprising liberties from the state, then liberties in the state, and eventually liberties through the state. The right to national self-determination, vehemently rejected by Habermas, belonged to these conquests. There was no end in sight to the dynamic of an 'Age of Rights'—today, rights to truthful information and to participation in economic power were on the agenda. But theoretical declamation

<sup>23</sup> TA, p. 94.

<sup>24</sup> PGVP (first edition), Bologna 1970, pp. 119–57.

was one thing; practical observance another. The new global ethos of human rights was resplendent only in solemn official declarations and learned commentaries. The reality was ‘their systematic violation in virtually all countries of the world (perhaps we could say *all* countries, without fear of error), in relations between the powerful and the weak, the rich and the poor, the knowing and the uninstructed’.<sup>25</sup>

Law, in turn, could not be viewed in the starry-eyed fashion of Habermas or Rawls. Wars and revolution—the exercise of external and internal violence—were often the source of legal codes. Legitimacy was typically conferred by victory, not the other way around. Once in place, laws could be compared to a damming or canalization of the powers of existing social groups. When the dykes break, an extraordinary law-making power tumbles forth, creating a new legitimacy: *ex facto oritur jus*. ‘Law cannot dispense with the use of force and is always founded in the last instance on the right of those who are strongest, which only sometimes, and contingently, coincides with the right of those who are most just’.<sup>26</sup> We are a long way from the premises of a Habermasian jurisprudence. Bobbio, though his accents could alter, never wavered from a basic fidelity to Hobbes’s maxim: *auctoritas sed non veritas facit legem*. The UN should be vested with powers to enforce the human rights it proclaimed. But the gap between its promises and performance remained wide. It had not secured the peace or friendship between nations that its Charter had invoked. Its main achievement to date was never envisaged by its founders—the impetus given by the General Assembly in December 1960 to decolonization, the greatest single progress of political emancipation in the second half of the twentieth century.<sup>27</sup> Like Habermas, Bobbio proposed no determinate programme for reduction of social inequalities on a global scale. But the strength of his feeling about these set him apart too. The real problem of the time, which the nuclear arms race prevented any of the rich nations from addressing, was death by famine in the poor countries of the South.<sup>28</sup>

### *War on outlaws*

If such were the principal differences of theoretical prospectus, what of the political responses of the three thinkers to the new landscape of violence after the Cold War? Rawls, coherent with the silence of a

<sup>25</sup> *Autobiografia*, Bari 1999, p. 261.

<sup>26</sup> PGVP, p. III; TA, p. 135.

<sup>27</sup> TA, pp. 108–9.

<sup>28</sup> TA, p. 181.

lifetime, made no comment on the *guerres en chaîne* of the nineties. But the logic of a sanction for them is written on every other page of *The Law of Peoples*. There the philosopher of justice not only offers a blank cheque for military interventions to protect human rights, without even specifying what authority, other than ‘democratic peoples’ at large, is empowered to decide them. He even exceeds State Department jargon with his talk of ‘outlaw’ states—a term inviting law-abiding nations to dispatch them still more swiftly than merely ‘rogue’ ones.

The political assumptions at work in such language can be found in such historical illustrations as the book offers. Although Rawls mentions no contemporary political events, he touches on enough past ones to reveal, in this area, a disconcertingly uncritical mind. The slaughter of the First World War was inevitable, because ‘no self-respecting liberal people’ could have accepted German demands on France in 1914.<sup>29</sup> The fire-bombing of Hamburg was justified in the Second World War, if not that of Dresden. Though the destruction of Japanese cities, culminating in Hiroshima and Nagasaki, was a great wrong, it represented simply a ‘failure of statesmanship’ on the part of Truman, who otherwise—loyalty oaths and suborning of the UN presumably to witness—was ‘in many ways a good, at times a very good president’.<sup>30</sup> An excellent guide to just wars is provided by a work explaining why Israel’s pre-emptive strike of 1967 was one.<sup>31</sup> Outlaw societies at one time included Habsburg Spain and Bourbon or Napoleonic France—but not Hanoverian or Victorian England, let alone Gilded Age America. Such miscreants are ‘unsatisfied’ powers. Nuclear weapons are essential to keep their modern counterparts in check.<sup>32</sup> Even Rawls’s coinage of the notion of ‘decent’, as distinct from democratic, peoples simply shadows the geography of the US security system. The imaginary Muslim society of ‘Kazanistan’ that Rawls conjures up to illustrate the notion can be read as an idealized version of Kuwait or Saudi Arabia—reliable clients whose traditional, if less than liberal, political systems are to be respected, while outlaws in their neighbourhood are removed. Equipped with such credentials, Operation Desert Storm might well be described as the Law of Peoples in real time.

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<sup>29</sup> LP, p. 48.

<sup>30</sup> LP, pp. 99–102; *Collected Papers*, Cambridge, MA 1999, p. 572.

<sup>31</sup> ‘I follow here Michael Walzer’s *Just and Unjust Wars*. This is an impressive work, and what I say does not, I think, depart from it in any significant respect’: LP, p. 95.

<sup>32</sup> LP, pp. 48–9.

Habermas was more explicit. The allied campaign to punish Iraq's brazen violation of international law in seizing Kuwait was an important step forward in the creation of a global public sphere. Although it was not fought under UN command, and was unaccountable to the Security Council, it invoked the UN and this was better than nothing: 'for the first time the United States and its allies were offered the objective possibility of temporarily assuming the (presumably neutral) role of police force to the United Nations'. Admittedly, the result was a hybrid action, since power-political calculations were not absent from its execution; but it was now plain that 'the enforcement of international law has to be carried out by an organized co-operation of the international community, not by some utopian (in the worst sense of the word) world government'. Moreover, and perhaps most importantly, the Gulf War was justified not merely by Iraq's annexation of Kuwait, but its menace to Israel, which posed 'the nightmare scenario of an Israel encircled by the entire Arab world and threatened with the most horrific kinds of weapons'.<sup>33</sup>

Since violations of international law had never hitherto troubled Habermas overmuch—when Turkey invaded Cyprus, Indonesia annexed East Timor, let alone Israel seized East Jerusalem and occupied the West Bank, there is no record of his being moved to comment on them—it seems clear that political feelings rather than legal arguments were the principal pressure behind Habermas's endorsement of Desert Storm. On the one hand, there was his self-declared, long-standing posture of loyalty to the West. For forty years he had held that Germany could only be purged of its malign past, and put all suspect notions of a *Sonderweg* behind it, by an 'unconditional orientation' to the West. This had been Adenauer's great achievement, which as a young man he had failed to understand, and which must remain the pole-star of the Federal Republic. After 1945, it was this orientation that had given Germans 'an upright posture'.<sup>34</sup> But there was also, after the Final Solution, and crucially, the special responsibility of Germany to Israel—a vulnerable democracy 'still obliged to act as an outpost of the Western world' in the Middle East. Since the founding of the Federal Republic, Habermas notes approvingly, 'solidarity with Israel has been an unwritten law of German foreign policy'; only anti-Semites could question it.<sup>35</sup> In the

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<sup>33</sup> VZ, pp. 19, 18, 23; PF, pp. 12, 11, 15.

<sup>34</sup> VZ, p. 64; PF p. 48; NBR, pp. 93–4, 108; BR, pp. 88–9, 102.

<sup>35</sup> VZ, p. 28; PF, p. 18; 'Letter to America', *The Nation*, 16 December 2002.

mixture of motivations for Habermas's support of the Gulf War, this was probably the most powerful.

### *Scruples*

Not a few admirers of Habermas, in Germany and outside it, were taken aback by this philosophical theorization of a war fought, on the admission of the US administration, essentially over the control of oil-wells. Signs of an uneasy conscience could be detected in Habermas himself, who was quick to express reservations about the military tactics employed to win the war, and even to concede that the claim to UN legitimacy for it 'served largely as a pretext'.<sup>36</sup> But such qualifications, calculated to disarm critics, only underline the crudity of his subsequent conclusion, sweeping principles away in the name of deeds. Dismissing the objection that negotiations for a peaceful resolution of the conflict had scarcely been exhausted, Habermas declared in the spirit of a saloon-bar *Realpolitik*: 'It is a little academic to subject an event of such brutality to a pedantically normative assessment after the fact.'<sup>37</sup>

The rhetorical movement of Bobbio's response to the Gulf War was uncannily similar. Operation Desert Storm, Bobbio explained as it rolled into action, was a just war of legitimate defence against aggression. Saddam Hussein, bidding to become a future emperor of Islam, was a great international danger. A sanguinary dictator at home, and an expansionist warlord abroad, he would multiply aggressions to the end of his days, if he were not checked now. Like Hitler, he was bent on extending the theatre of conflict ever further, as his raining of rockets on Israel showed.<sup>38</sup> Bobbio's position caused more of an uproar than Habermas's, in part because there was still a much stronger Left in Italy than in Germany, but also because he himself had been such an eloquent voice against the bellicosity of the Cold War. Criticism from friends and pupils, shocked by his apparent *volte-face*, came thick and fast. In the face of this, Bobbio too, having approved the principle of the war, took his distance from the practice of it. 'I readily acknowledge that in the course of the fighting the relationship between the international organism and the conduct of the war has become ever more evanescent, with the result that the present conflict more and more resembles

<sup>36</sup> VZ, p. 20; PF, p. 12.

<sup>37</sup> VZ, p. 22; PF, p. 14.

<sup>38</sup> *Una guerra giusta?*, Venice 1991, pp. 39, 22, 48, 60; henceforward GG.

a traditional war, except for the disproportion in strength between the two combatants. Has a great historical opportunity been lost?', he asked after five weeks of uninterrupted American bombing. Looking around him, he confessed 'our conscience is disturbed'. The war was just, but—a separate question—was it obligatory? If so, did it have to be fought in this way? Bobbio's reply was taxative. Just as with Habermas, it served no purpose to scruple after the fact. 'Any answer to such questions comes too late to change the course of events. Not only would it be irrelevant—"what is done, is done"—but it could appear downright naive, for no-one is in a position to say what would have happened if another path had been chosen to reach the same goal'.<sup>39</sup> The war might not have been necessary, or so bloody. But it was now an accomplished fact. What point was there in quarrelling with it?

### *NATO's moral order*

Eight years later, Habermas greeted Operation Allied Force with more emphatic applause. NATO's attack on Yugoslavia was necessary to stop the crimes against humanity of the Milošević regime—'300,000 persons subjected to murder, terror and expulsion', before their rescue by American air-strikes began. There was no basis for casting suspicion on the motives of this intervention, from which the United States stood to gain little. It was a humanitarian war that, even if it lacked a UN mandate, had the 'tacit authorization of the international community'. The participation of the Bundeswehr in the attack was the decision of a Red-Green coalition that was the first German government ever to be committed to a cosmopolitan legal order in the spirit of Kant and Kelsen. It expressed a public mood in the Federal Republic which was reassuringly similar to that in the rest of Western Europe. There might be some disagreements between the continental Europeans and the Anglo-Saxons on the importance of consulting the UN Secretary-General or squaring Russia. But 'after the failure of negotiations at Rambouillet', the US and member states of the EU proceeded from a common position.<sup>40</sup>

It was true, of course, that since human rights were only weakly institutionalized at the international level, 'the boundary between law and

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<sup>39</sup> GG, pp. 23, 90.

<sup>40</sup> 'Bestialität und Humanität: ein Krieg an der Grenze zwischen Recht und Moral', *Die Zeit*, 29 April 1999; in English as 'Bestiality and Humanity: a War on the Border between Law and Morality', in William Buckley, ed., *Kosovo. Contending Voices on the Balkan Intervention*, Grand Rapids, MI 2000, pp. 307–8, 312.

morality may blur, as in the present case'. Once authorization from the Security Council was denied, NATO could 'only appeal to the moral validity of international law'. But that did not mean Carl Schmitt's critique of the moralization of inter-state relations, as fatally radicalizing conflicts between them, applied. Rather, humanitarian interventions like the bombing of Yugoslavia were forced to anticipate the future cosmopolitan order they sought to create. Here there was a distinction between Washington and most European capitals. For the us, global enforcement of human rights supplied a moral compass for national goals. To that fruitful union of idealism and pragmatism, going back to Wilson and Roosevelt, Germans owed their own liberation, and it continued to be as vital as ever. 'The us has assumed the tasks of keeping order that are incumbent on a superpower in a world of states that is only weakly regulated by the UN'. But the moral imperatives it acted on needed to be institutionalized as legal norms with binding international force. Happily, the UN was on the road to closing the gap between them, even if the transition between power politics and an emergent cosmopolitan order still involved a common learning process.<sup>41</sup>

In the Balkans as in the Gulf, Habermas was careful to season his plea for war with provisos of conscience. On the one hand, collateral damage to the civilian population of Yugoslavia created a sense of disquiet: were the brutal military means used to rescue the Kosovars always proportionate to the compassionate end? There was reason to doubt it. On the other hand, what would happen if Operation Allied Force henceforth provided the model for humanitarian interventions at large? The West had been obliged to bypass the UN in this case: but that should remain an exception. 'NATO's self-authorization cannot be permitted to become a matter of routine'.<sup>42</sup> With this, ironically—in an essay whose title is taken from Schmitt's lapidary dictum 'humanity, bestiality', and is devoted to refuting it—Habermas ended by innocently illustrating the very theory of law he wished to refute. 'Sovereign is he who decides the exception', runs the famous opening sentence of *Political Theology*. Not norms, but decisions, argued Schmitt, were the basis of any legal order. 'The rule proves nothing, the exception proves everything. It confirms not only the rule but also its existence, which derives only from the exception'.<sup>43</sup> Kant or Kelsen, invoked by Habermas at the outset, offered no affidavits for

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<sup>41</sup> 'Bestiality and Humanity', pp. 313–6.

<sup>42</sup> 'Bestiality and Humanity', pp. 309, 316.

<sup>43</sup> Carl Schmitt, *Politische Theologie*, Munich and Leipzig 1922, p. 15.

America's war in the Balkans. To justify it, he unwittingly found himself driven to reproduce Schmitt. For sovereign, in effect, was the superpower that delivered the ultimatum of Rambouillet designed to furnish the occasion for war, and disseminated the myth of a hundred thousand dead to motivate it; and sovereign the philosopher who now explained that the exception anticipated the rule of the future.

Unlike Habermas, Bobbio had admired and corresponded with Schmitt. But in justifying the Balkan War, he had a greater authority in mind. Milošević was a tyrant like Saddam, who needed to be wiped off the face of the earth: NATO's attack on him should be regarded as a police action rather than an international war, and its means be proportional to its ends. It made no sense to speak any longer of just or unjust wars: all that could be asked was whether a war was legal or not, and effective or not. But today another kind of warrant existed. For as a superpower the United States had acquired a kind of 'absolute right that puts it completely outside the constituted international order'. In practice, America had no need of legal justification for its wars, for its record in defending democracy in the three decisive battles of the twentieth century—the First World War, the Second World War and the Cold War—gave its *de facto* pre-eminence an ethical legitimacy. Europeans owed their freedom to the United States, and with it an unconditional gratitude. Wilson, Roosevelt and Reagan had fought the good cause, defeating the Central Powers, Fascism and Communism, and so making possible the normal democratic world we now live in. Hegel's *Philosophy of Right* had understood such a role. In every period of history, one nation is dominant, and possesses an 'absolute right as bearer of the present stage of the world spirit's development', leaving other nations without rights in face of it.<sup>44</sup>

This far-reaching accolade was, once again, not without troubled afterthoughts; which were, once again, quieted with a further reassuring reflection. After seven weeks of bombing, Bobbio felt that Operation Allied Force had been incompetently executed, and produced a mess. Now expressing doubts that ethnic cleansing in Kosovo had started before the war, rather than being occasioned by it, he feared that a campaign to protect human rights was in the process of violating them. Yet this did not alter the war's general character, as an exercise of licit against illicit force. Habermas was right to maintain that international

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<sup>44</sup> 'Perché questa guerra ricorda una crociata', *L'Unità*, 25 April 1999.

law was becoming—however imperfectly—institutionalized as a set of enforceable rules, in one of the most extraordinary and innovative developments of its history. Humanity was moving across the frontier from the moral to the juridical, as his German colleague had seen.<sup>45</sup>

*‘Redeeming the irredeemable’*

By the time of the next Western military expedition, Bobbio had withdrawn from comment on public affairs. But in the Afghan war Habermas found vindication for his judgement of the trend of the time. Although the new Republican administration was deplorably unilateralist—even if European governments bore some responsibility for failing to sustain sager counsels in Washington—the coalition against terrorism put together by it was a clever one, and had acted with good reason to remove the Taliban regime. True, the staggering asymmetry in weaponry between the American armada in the skies and bearded tribesmen on the ground, in a country long victim of rival colonial ambitions, was a ‘morally obscene sight’. But now it was over, and there was no point in repining. For ‘in any case, the Taliban regime already belongs to history’. The UN was still too weak to fulfill its duties, so the US had taken the initiative, as in the Balkans. But with the UN-sponsored conference in Bonn to establish a new government in liberated Kabul, the outcome had been a happy step forward in the transition, which had begun with the establishment of no-fly zones over Iraq, from international to cosmopolitan law.<sup>46</sup>

A year later, Habermas was less serene. The new National Security Strategy of the Republican administration was provocatively unilateralist. The United States should not invade Iraq without the authorization of the United Nations—although the German government was also wrong in refusing such an invasion in advance, rather than declaring its unreserved respect for whatever the Security Council might decide. There might have arisen something whose possibility Habermas had never imagined, ‘a systematically distorted communication between the United States and Europe’, setting the liberal nationalism of the one against the cosmopolitanism of the other.<sup>47</sup> Once launched, Operation Iraqi Freedom confirmed these forebodings. On the one hand, the

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<sup>45</sup> ‘La guerra dei diritti umani sta fallendo’, *L’Unità*, 16 May 1999.

<sup>46</sup> ‘Fundamentalism and Terror’, in Giovanna Borradori, *Philosophy in a Time of Terror. Dialogues with Jürgen Habermas and Jacques Derrida*, Chicago 2003, pp. 27–8.

<sup>47</sup> ‘Letter to America’, *The Nation*, 16 December 2002.

liberation of a brutalized population from a barbaric regime was ‘the greatest of all political goods’. On the other, in acting without a mandate from the United Nations, the us had violated international law, leaving its moral authority in ruins and setting a calamitous precedent for the future. For half a century, the United States had been the pacemaker of progress towards a cosmopolitan order vested with legal powers, overriding national sovereignty, to prevent aggression and protect human rights. Now, however, neo-conservative ideologues in Washington had broken with the reformism of UN human-rights policies, in favour of a revolutionary programme for enforcing these rights across the world. Such hegemonic unilateralism risked not only stretching American resources and alienating allies, but also generating side-effects that ‘endangered the mission of improving the world according to the liberal vision’. Fortunately, the UN had suffered no really significant damage from this episode. Its reputation would only be injured ‘were it to try, through compromises, to “redeem” the irredeemable’.<sup>48</sup>

Such thoughts did not last long. Six months later, when the UN Security Council unanimously passed a resolution endorsing the American occupation of Iraq and the client regime it had set up in Baghdad, Habermas offered no word of criticism. Though saddened by the change of political scene in America—‘I would never have imagined that such an exemplary liberal country as the United States could be so indoctrinated by its government’—he now had no doubt that the Coalition Provisional Authority must be supported. ‘We have no other option but to hope that the United States is successful in Iraq’.<sup>49</sup>

The response by the two philosophers to successive wars waged by the West after the collapse of the Soviet bloc thus exhibits a consistent pattern. First, military action by Washington and its allies is justified on normative grounds, invoking either international law (the Gulf), human rights (Kosovo, Afghanistan), or liberation from tyranny (Iraq). Then, qualms are expressed over the actual way that violence is unleashed by the righteous party (Gulf, Kosovo, Afghanistan, Iraq), in a gesture of humanitarian punctilio. Finally, these in turn are casually minimized

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<sup>48</sup> ‘Verschliessen wir nicht die Augen vor der Revolution der Weltordnung: Die normative Autorität Amerikas liegt in Trümmern’, *Frankfurter Allgemeine Zeitung*, 17 April 2003; in English as ‘Interpreting the Fall of a Monument’, *Constellations*, vol. 10, no. 3, 2003, pp. 364–70.

<sup>49</sup> ‘Ojalá Estados Unidos tenga éxito en Iraq’, *La Vanguardia*, 4 November 2003.

or forgotten in the name of the accomplished fact. The tell-tale formula ‘*in any case*’, peremptorily ratifying the deed once done, says everything. The political complexion of such positions is clear enough. What is most striking about them, however, is their intellectual incoherence. No-one could suspect Bobbio or Habermas of an inadequate background in logic, or inability to reason with rigour. Yet here philosophy gives way to such a lame jumble of mutually inconsistent claims and excuses that it would seem only bad conscience, or bad faith, could explain them.

### *The best of states?*

Behind the dance-steps of this occasionalism—swaying back and forth between impartial principle, tender scruple and brute fact—can be detected a simpler drive shaping the theoretical constructions of all three thinkers. Rawls describes his Law of Peoples as a ‘realistic utopia’: that is, an ideal design that withal arises out of and reflects the way of the world. Habermas’s cosmopolitan democracy, a global projection of his procedural theory of law, has the same structure. Even Bobbio, in the past resistant to any such confusion between facts and values, eventually succumbed to his own, with sightings of a new *signum rememorativum* of historical development as humanity’s improvement. In each case, the underlying wish is a philosophical version of a banal everyday inclination: to have one’s cake and eat it. Against criticisms pointing to the disgraced reality of inter-state relations, the ideal can be upheld as a normative standard untainted by such empirical shortcomings. Against charges that it is an empty utopia, the course of the world can be represented as an increasingly hopeful pilgrimage towards it. In this *va-et-vient* between ostensible justifications by universal morality and surreptitious appeals to a providential history, the upshot is never in doubt: a licence for the American empire as placeholder for human progress.

That this was not the original impulse of any of these thinkers is also clear, and there is something tragic in the descent that brought them to this pass. How is it to be explained? Part of the answer must lie in a *déphasage* of thinkers whose outlook was shaped by the Second World War, and its sequels, in the new landscape of power after the end of the Cold War. Old age mitigates judgement of the final conceptions of Rawls or Bobbio. When he published *The Law of Peoples*, Rawls was already the victim of a stroke, and writing against time. When he pronounced on the Balkan War, Bobbio was over ninety; and no contemporary has written

so movingly of the infirmities of such advanced years, in one of the finest of all his texts, *De Senectute*.

But certainly, there was also long-standing blindness towards the global hegemon. In Rawls's case, veneration of totems like Washington and Lincoln ruled out any clear-eyed view of his country's role, either in North America itself or in the world at large. Regretting the us role in overthrowing Allende, Arbenz and Mossadegh—'and, some would add, the Sandanistas [*sic*] in Nicaragua': here, presumably, he was unable to form his own opinion—the best explanation Rawls could muster for it was that while 'democratic peoples are not expansionist', they will 'defend their security interest', and in doing so can be misled by governments.<sup>50</sup> So much for the Mexican or Spanish–American Wars, innumerable interventions in the Caribbean, repeated conflicts in the Far East, and contemporary military bases in 120 countries. 'A number of European nations engaged in empire-building in the eighteenth and nineteenth centuries', but—so it would seem—happily America never joined them.<sup>51</sup>

Habermas's vision of the United States is scarcely less roseate. Although undoubtedly culpable of lapses in such lands as Vietnam or Panama, Washington's overall record as a champion of liberty and law has been matchless—for half a century blazing the trail towards a disinterested cosmopolitan order. No exhortation recurs with such insistence in Habermas's political writing as his call to his compatriots to show unconditional loyalty to the West. The fact that Germany itself has usually been thought to belong to the West indicates the more specialized, tacit identification in Habermas's mind: intended are the Anglophone Allies who were the architects of the Federal Republic. If the United States looms so much larger than the United Kingdom in the ledger of gratitude and allegiance, this is not simply a reflection of the disproportion in power between the two. For Habermas, America is also a land of intellectual awakening in a way that Britain has never been. To the political debt owed General Clay and Commissioner McCloy was added the philosophical education received from Peirce and Dewey, and the sociological light of Mead and Parsons. This was the West that had allowed Germans of Habermas's generation to stand erect again.

Against such a background, endorsement of American military interventions in the Gulf, the Balkans and Afghanistan came naturally. At the

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<sup>50</sup> LP, p. 53.

<sup>51</sup> LP, pp. 53–4.

invasion of Iraq, however, Habermas balked. The reason he gave for doing so is revealing: in marching to Baghdad, the United States acted without the authorization of the Security Council. But, of course, exactly the same was true of its attack on Belgrade. Since violation of human rights was, by common consent, far worse in Iraq than in Yugoslavia, why was a punitive expedition against the latter fully justified, but not the former? The difference, Habermas explains, is that the Balkan War was legitimated ‘after the fact’, not only by the need to stop ethnic cleansing and supply emergency aid, but above all by ‘the undisputed democratic and rule-of-law character of all the members of the acting military coalition’—even if the us and uk had approached the necessary task in a less pure spirit than Germany, France, Italy or other European members of NATO. Over Iraq, however, a once-united ‘international community’ had split. The phrase, standard euphemism of every mendacious official broadcast and communiqué from Atlantic chancelleries, speaks for itself. The political confines of the community that stands in for the world are never in doubt: ‘today, normative dissent has divided the West itself’.<sup>52</sup>

Yet since, in Habermas’s own words, there can be no greater good than liberating a people from a brutal tyranny, why should prevention of ethnic cleansing or provision of aid—presumably lesser objectives—supply General Clark with philosophical credentials denied to General Franks? It is plain that the crucial *distinguo* lies elsewhere: in European responses to American initiatives. So long as both sides of the Atlantic concur, the ‘international community’ remains whole, and the UN can be ignored. But if Europe demurs, the UN is sacrosanct. So naively self-serving an assumption invites, in one sense, only a smile. What it points to, however, is the disintegration of a larger one. The West upheld in Habermas’s credo was always an ideological figure, an unexamined *topos* of the Cold War, whose assumption was that America and Europe could for all practical purposes be treated as a single democratic ecumene, under benevolent us leadership. The unwillingness of Berlin and Paris to rally behind Washington in the attack on Iraq undid that long-held construction, rendering an unconditional orientation to the West meaningless. In this emergency, Habermas fell back on European values, now distinct from somewhat less commendable American ones, as a substitute lode-star in international affairs. But, setting aside the work of lustration required to yield an uplifting common ethos out of Europe’s bloody past, or even its self-satisfied present, the new construct is as

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<sup>52</sup> ‘Interpreting the Fall of a Monument’, p. 366.

incoherent as the old. Not only does Europe, as currently understood by Habermas, have to exclude Britain, for undue similarity of outlook to the United States, but it cannot even encompass the continental states of the EU itself, a majority of whose members supported rather than opposed the liberties taken by the US with the UN Charter. So in a further geopolitical contraction, Habermas has been driven to advocate a Franco-German ‘core’ as the final refuge out of which a future and better EU, more conscious of its social and international responsibilities, may one day emerge, harbinger of a wider cosmopolitan order.<sup>53</sup>

But this is a *reculer pour mieux sauter* without self-criticism. Habermas still appears to believe, heedless of well-advertised findings to the contrary, that NATO’s attack on Yugoslavia—for him, a last precious moment of Euro-American unity—was warranted by Belgrade’s refusal to treat, and determination to exterminate. That the Rambouillet ultimatum was as deliberately framed to be unacceptable, furnishing a pretext for war, as the Austrian note to Serbia in 1914; that Operation Horseshoe, the plan for mass ethnic cleansing of Kosovo invoked by his Foreign Minister to justify the war, has been exposed as a forgery of the Bulgarian secret services; and that the number of Albanians in the region killed by Serb forces was closer to five than to the hundreds of thousands claimed by Western spokesmen—details like these can be swept under the ethical carpet as casually as before. For now Yugoslavia too, like the Taliban, ‘already belongs to history’. Even in Iraq, Habermas—in this like most of his fellow-citizens in Germany or France—objects only to the American invasion, not occupation of the country. The deed once consummated, it becomes another accomplished fact, which he wishes well, even if he hopes it will not be repeated.

### *Leviathan on the Potomac*

Bobbio’s embrace of American hegemony was quite distinct in origin. Unlike Habermas, he never showed any special attachment to the United States after 1945, or even much interest in it. Did he ever so much as visit it? No reference of any intellectual significance for him seems to have been American. His post-war sympathies went to Britain,

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<sup>53</sup> ‘Unsere Erneuerung—Nach dem Krieg: Die Wiedergeburt Europas’ (with Jacques Derrida), *Frankfurter Allgemeine Zeitung*, 31 May 2003; in English as ‘February 15, or What Binds Europeans Together: A Plea for a Common Foreign Policy, Beginning in the Core of Europe’, *Constellations*, September 2003, pp. 291–7.

where he inspected the Labour experiment and wrote warmly, if not uncritically, about it. During the high Cold War, he sought energetically to resist polarization between East and West, and when he became active in the peace movements of the seventies and eighties, he never put the United States on a higher moral or political plane than the USSR as a nuclear power, holding them equally responsible for the dangers of an arms race threatening all humanity. America, however, was ‘the more powerful of the two masters of our life and of our death’, and it was therefore all the more discouraging to hear maxims from Reagan that could only be compared to the motto Louis XIV had inscribed on his cannon: *Extrema ratio regis*.<sup>54</sup>

But when the unexpected happened, and Gorbachev lowered the Soviet flag, ending the Cold War with a complete American victory, there was in Bobbio’s outlook one tenacious idea that allowed him to make a radical adjustment to the new world order. He had always maintained that the most viable solution to the problem of endemic violence between states was the creation of a super-state with a monopoly of coercion over all others, as guarantor of universal peace. During the Cold War he envisaged this hitherto Absent Third ultimately materializing in the shape of a world government, representing a *de jure* union based on a multiplicity of states. But when, instead, one existing state achieved a *de facto* paramountcy over all others of a kind never seen before, Bobbio could—without inconsistency—adapt to it as the unpredictable way history had realized his vision. America had become the planetary Leviathan for which he had called. So be it. The Hobbesian realism that had always distinguished him from Rawls or Habermas made him, who had been far more critical of the international order as long as the Cold War persisted, ironically capable of a much more coherent apology for the US empire once the Cold War was over. Hobbes could explain, as they could not, why the *pax Americana* now so often required resort to arms, if a juridical order protected by a global monopoly of force was finally to be created. ‘The law without a sword is but paper’.

Bobbio’s realism, what can be seen as the conservative strand in his thinking, had always coexisted, however, with liberal and socialist strands for which he is better known, and that held his primary moral allegiance. The balance between them was never quite stable, synthesis lying beyond reach. But in extreme old age, he could no longer control

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<sup>54</sup> TA, p. 208; written on 28 August 1983.

their tensions. So it was that, instead of simply registering, or welcoming, the Hobbesian facts of American imperial power, he also tried to embellish them as the realization of democratic values, in a way that—perhaps for the first time in his career—rang false and was inconsistent with everything he had written before. The triptych of liberation invoked as world-historical justification for the Balkan War is so strained as virtually to refute itself. The victory of one set of imperialist powers over another in 1918, with the American contribution to mutual massacre tipping the balance: a glorious chapter in the history of liberty? The D-Day landings of 1944, engaging less than a sixth of Hitler's armies, already shattered in the East: 'totally responsible for the salvation of Europe'?<sup>55</sup> An apotheosis of Reagan for his triumph in the Cold War: who would have imagined it from the descriptions of *Il terzo assente*? There was something desperate in this last-minute refrain, as if Bobbio were trying to silence his own intelligence.

### *Sparks of defiance*

It would be a mistake to deduce the late conclusions of all three thinkers in any simple way from the major body of their writing. That this is so can be seen from the chagrin of pupils and followers, steadfast in admiration for each man, but also loyal to what they felt was the original inspiration of a great *œuvre*. Pogge's disappointment with *The Law of Peoples*, Matušítk's discomfort with *Between Facts and Norms* and dismay at plaudits for the Balkan War, the reproaches of Bobbio's students to the claims of *Una guerra giusta?*, form a family of similar reactions among cohorts less disoriented in the new international conjuncture.<sup>56</sup> Nor would it be right to think that involution was ever complete in these philosophical minds themselves. To the end, flashes of a more radical temper can be found in them, like recollections of a past self. For all his apparent acceptance of capital as an unappealable condition of modernity, ratified by the irresponsible experiment of communism, Habermas could yet write, less reassuringly for its rulers, of a system breeding unemployment, homelessness and inequality: 'still written in the stars

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<sup>55</sup> 'Perché questa guerra ricorda una crociata'.

<sup>56</sup> See Thomas Pogge, *Global Justice*, pp. 15–7; Martin Beck Matušítk, *Jürgen Habermas. A Philosophical-Political Profile*, Lanham, MD 2001, pp. 247–51, 269–74; Eleonora Missana, Massimo Novarino, Enrico Passini, Stefano Roggero, Daniela Steila, Maria Grazia Terzi, Stefania Terzi, 'Guerra giusta, guerra ingiusta. Un gruppo di studenti torinesi risponde a Norberto Bobbio', *Il Manifesto*, 29 January 1991.

is the date that—one day—may mark the shipwreck of another regime, exercised anonymously through the world market'.<sup>57</sup> Bobbio, despite his approval of the Gulf and Balkan Wars, could in the interval between them denounce the 'odious bombardments of Baghdad' ordered by Clinton, and the 'vile and servile' connivance of other Western governments with them, as 'morally iniquitous'. Few intellectuals then spoke so strongly.<sup>58</sup> Rawls offers perhaps the most striking, and strangest case of all. In the last year of his life, when he could no longer work on them, he published lectures he had given over a decade earlier, under the title *Justice as Fairness*. Beneath the familiar, uninspiring pleonasm lay a series of propositions at arresting variance with the tenor of *Political Liberalism*, let alone *The Law of Peoples*.

It had been an error of *A Theory of Justice*, he explained, to suggest that a capitalist welfare state could be a just social order. The Difference Principle was compatible with only two general models of society: a property-owning democracy or liberal socialism. Neither of them included a right to private ownership of the means of production (as distinct from personal property). Both had to be conceived as 'an alternative to capitalism'. Of the two, a property-owning democracy—Rawls hinted that this would be the more congenial form in America, and liberal socialism in Europe—was open to Marx's criticism that it would re-create unacceptable inequalities over time, and do little for democracy in the workplace. Whether his objections could be met, or liberal socialism yield better results, only experience could tell. On the resolution of these questions, nothing less than 'the long-run prospects of a just constitutional regime may depend'.<sup>59</sup> Such thoughts are foreign to *Political Liberalism*. They outline, of course, only the range of ideal shapes that a just society might assume. What of actually existing ones? Rawls's answer is startling. After observing that favourable material circumstances are not enough to assure the existence of a constitutional regime, which requires a political will to maintain it, he suddenly—in utter contrast to anything he had ever written before—remarks: 'Germany between 1870 and 1945 is an example of a country where reasonably favourable conditions existed—economic, technological and no lack of resources, an educated citizenry and more—but where the political will for a democratic regime was altogether lacking. One might say the same of the

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<sup>57</sup> NBR, p. 17; BR, pp. 12–13.

<sup>58</sup> 'Questa volta dico no', *La Stampa*, 1 July 1993.

<sup>59</sup> *Justice as Fairness*, Cambridge, MA 2001, pp. 178–9; henceforward JF.

United States today, if one decides our constitutional regime is largely democratic in form only'.<sup>60</sup> The strained conditional—as if the nature of the American political system was a matter for decision, rather than of truth—barely hides the bitterness of the judgement. This is the society Rawls once intimated was nearly just, and whose institutions he could describe as the 'pride of a democratic people'. In one terse footnote, the entire bland universe of an overlapping consensus capsizes.

### *Reason and rage*

It is unlikely such flashes of candour were mere passing moments of disaffection. What they suggest is rather an acute tension buried under the serene surface of Rawls's theory of justice. Perhaps the most telling evidence for this is to be found in the unexpected entry of Hegel into his last published writings. *Lectures on the History of Moral Philosophy* concludes with a respectful, indeed admiring portrait of Hegel as a liberal philosopher of freedom. What drew Rawls, against apparent temperamental probability, to the philosopher of Absolute Spirit? His reconstruction of *The Philosophy of Right* pays tribute to Hegel's institutional insight that 'the basic structure of society', rather than the singular individual, is 'the *first* subject of justice', and sets out Hegel's theory of civil society and the state with historical sympathy.<sup>61</sup> Here too a sharp aside says more than all the glozing pages of *Political Liberalism*. Hegel's constitutional scheme, Rawls remarks, may well strike us, with its three estates and lack of universal suffrage, as a quaint anachronism. 'But does a modern constitutional society do any better? Certainly not the United States, where the purchase of legislation by "special interests" is an everyday thing'.<sup>62</sup> Clinton's America as no improvement on Frederick William III's Prussia: a more damning verdict is difficult to imagine.

The principal interest of Hegel, however, lay elsewhere. For Rawls his most important contribution to political thinking, flagged at the outset of the relevant *Lectures*, and reiterated in *Justice as Fairness*, was his claim that the task of philosophy was to reconcile us to our social world. Rawls emphasizes that reconciliation is not resignation. Rather, Hegel saw *Versöhnung* as the way in which we come to accept our political and

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<sup>60</sup> JF, p. 101.

<sup>61</sup> *Lectures on the History of Moral Philosophy*, Cambridge, MA 2000, p. 366; henceforward LHMP.

<sup>62</sup> LHMP, p. 357.

social institutions positively, as a rational outcome of their development over time.<sup>63</sup> The idea of justice as fairness belongs to this conception of political philosophy as reconciliation, he explained. For ‘situated as we may be in a corrupt society’, in the light of its public reason we may still reflect that ‘the world is not in itself inhospitable to political justice and good. Our social world might have been different and there is hope for those in another time and place’.<sup>64</sup>

In these touchingly incoherent sentences, Rawls’s philosophy breaks down. Our society may be corrupt, but the world itself is not. What world? Not ours, which we can only wish might have been different, but another that is still invisible, generations and perhaps continents away. The wistful note is a far cry from Hegel. What the theme of reconciliation in Rawls expresses is something else: not the revelation that the real is rational, but the need for a bridge across the yawning gulf between the two, the ideal of a just society and the reality of a—not marginally, but radically—unjust one. That Rawls himself could not always bear the distance between them can be sensed from a single sentence. In accomplishing its task of reconciliation, ‘political philosophy may try to calm our frustration and rage against our society and its history’.<sup>65</sup> Rage: who would have guessed Rawls capable of it—against his society or its history? But why should it be calmed?

Rawls resorted to Hegel in his internal reflections on a constitutional state. On the plane of inter-state relations, Kant remained his philosopher of reference, as the theorist of conditions for a perpetual peace. So too for Habermas. But since Kant failed to envisage the necessary legal framework for a cosmopolitan order, as it started to take shape through the permanent institutions of the United Nations, Habermas, when he came to review the progress made since 1945, also looked towards the philosopher of objective idealism. Measured against the sombre background of the disasters of the first half of the twentieth century, he decided, ‘the World Spirit, as Hegel would have put it, has lurched forward’.<sup>66</sup> As we have seen, Bobbio was responsible for the most pointed appeal to Hegel of all. In one sense, he was more entitled to make it. Welcoming Hegel’s idea of reconciliation as akin to his own enterprise of public reason, Rawls drew the line at his vision of the international realm as a domain of violence and anarchy, in which contention between

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<sup>63</sup> LHMP, pp. 331–2.

<sup>64</sup> JF, pp. 37–8.

<sup>65</sup> JF, p. 3.

<sup>66</sup> EA, p. 207; IO, p. 178.

sovereign states was bound to be regulated by war. Habermas's gesture enlisted Hegel, on the contrary, as a patron of cosmopolitan peace. The first could not square his Law of Peoples with the lawlessness of Hegel's states, the second could only enroll Hegel for pacific progress by turning him philosophically inside out. Bobbio, by contrast, could take the measure of Hegel's conception of world history, as a ruthless march of great powers in which successive might founds over-arching right, and invoke it in all logic to justify his approval of American imperial violence. Law was born of force, and the maxim of the conqueror—*prior in tempore, potior in jure*—still held. 'However difficult it is for me to share the Hegelian principle that "what is real is rational", it cannot be denied that sometimes history has vindicated Hegel'.<sup>67</sup> At the end of the twentieth century, reason had once again proved to be the rose in the cross of the present.

Yet three less Hegelian thinkers than these could hardly be imagined. The guiding light of all their hopes of international affairs remained Kant. In reaching out at the end for his antithesis, each in their different way engaged in a paradox destructive of their own conceptions of what a just order might be. Bobbio, who had most claim on Hegel, was aware of this, and tried to correct himself—he had intended not to justify, but only to interpret the course of the world in the register of the *Rechtsphilosophie*. There are coherent Hegelian constructions of the time, but they come from minds with whom these thinkers have little in common. Perhaps they would better have avoided wishful thinking by looking again at Kant himself, more realistic than his posterity in imagining a universal history for a race of devils.

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<sup>67</sup> Perché questa guerra ricorda una crociata'.