"The Norms of Justice, International Law, and the 'Duty to Protect'"
By Robert P. Abele

I. Introduction

Writing about Ukraine is like examining the trajectory of a speeding bullet while it is in motion. Events happen so quickly that by the time they are documented in writing, a turn has occurred and a whole new set of events are set in motion.

Nevertheless, there are some aspects about the situation in the Ukraine that do not move so quickly, and through which we can analyze and critique the actions of the parties involved. They happen to be the normative and legal aspects of international relations, neither of which changes as quickly as the events themselves, and by which one may arrive at a more nuanced understanding of the events in Ukraine than either the Obama administration or the American media presents.

The focus of this chapter will thus be the understanding of justice that both underpins international law and also allows both a normative and a legal assessment of the situation in Ukraine. Any discussion of interference or intervention in the Ukraine by any other nation, specifically by Germany, the European Union (E.U.), the United States, or Russia, will necessarily be bound by the structure and normative parameters of justice, specifically as they are contained in international law. (Unless otherwise noted, the use of the term "norm" in this chapter will refer to distinctly moral norms of justice, such as those elaborated in the following section.)

II. The Normative Foundations of Justice and the Basis of International Law

One thing that is nearly universal in discussion of justice is that the norm of equality is primary and intrinsic to the concept of justice. The importance of the norm of equality is demonstrated by the recognition that one cannot state any other principle of justice (e.g. fairness; dignity; self-determination; human rights) without presuming a notion of equality. Even libertarians have a notion of equal freedom. Furthermore, international law is itself based on the norm of the equality of nation-states. For example, the United Nations Charter states that the U.N. is "based on the principle of the sovereign equality of all its members." So we begin with the idea that a normative analysis must presume the value of equality as a starting condition.

From this point, the positions regarding justice become complex, and there are numerous arguments about what this concept of justice entails. We will avoid examining those arguments here, opting instead for the use of a single model for normative concerns of justice: the political theory of John Rawls, professor of philosophy at Harvard University (1962-2002, the year of his death). This is not to maintain that Rawls has the only workable set of social norms, or that Rawls' theory is unassailable. It simply stipulates as a heuristic device one of the fullest understandings of political justice as a model for our normative evaluation of the situation in Ukraine.

In 1971, Rawls published his most important work, *A Theory of Justice*, in which equality is expressed by the phrase "justice as fairness." There are two main principles of justice encapsulating that equality: "(1) Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others; (2) Social and economic inequalities are to be arranged so that they are both (a) reasonable expected to be to everyone's advantage, and (b) attached to positions and offices open to all." These principles directly imply the right to self-determination—i.e. the right of people to determine their lives and polity by their own self-directed choices, without foreign intervention.

Later in this same work (in Chapter VI), Rawls extends this notion of domestic equality to an "international original position," which is intended to establish norms that are not contingent on social, political, or historical biases and advantages that favor certain nation-states over others. The main principle chosen here, according to Rawls, would be, unsurprisingly, the principle of equality. This principle is sufficient to imply the right to self-determination of peoples, without external interference or intervention:

> "The basic principle of the law of nations is a principle of equality. Independent peoples organized as states have certain fundamental equal rights. This principle is analogous to the equal rights of citizens in a constitutional regime. One consequence of this equality of nations is the principle of self-determination, the right of a people to settle its own affairs without the intervention of foreign powers." (p. 378)

In *The Law of Peoples* (1993) Rawls reformulates his position in order to apply principles that would be morally acceptable foreign policies of liberal nation-states. These principles include the obligation of nations to respect the freedom of peoples by other peoples, the honoring of human rights, the duty to assist other people living in unfavorable conditions, and the duty of nonintervention. The obvious conflict between the duty to assist and the duty of nonintervention is solved by stipulating that the latter overrides the former in cases of extreme human rights violations (p. 37). It is noteworthy that, as controversial as Rawls' text is, each item on the list of the foundational norms of justice that he provides has its direct correlate in contemporary international law today.

One of the main problems with Rawls' theory, for our concerns here, is that Rawls' principles of international justice apply to peoples (a.k.a. nation-states), not persons. That means that democracy is representative, not direct. The result is that the normative concern he expresses in terms of individual human rights does not run very deep. On the other hand, it is possible, just for our working model of the normative concerns of justice, to combine the fundamental norm of equality of persons with Rawls' "international principles," and conjoin both of them with the principle of national sovereignty, through an understanding of sovereignty that includes both a right of non-interference *and* a duty of the state to protect the human rights of its members. This is in fact the thesis of the ICISS report, "The Responsibility to Protect," which we will consider in some detail, below.

The final issue to be mentioned here concerns Rawls methodology, arguments concerning which we cannot detail here. Suffice it to say that ongoing problems remain with regard to Rawls' first

statement of his "Original Position," the "Veil of Ignorance," and "Wide Reflective Equilibrium" in *A Theory of Justice*. These are all criticisms of Rawls' "proceduralist" methodology, or more precisely, Rawls' attempt to legitimate Kantian theory in politics without appealing to Kant's transcendentalism. As a general and peremptory response to such criticisms, it is plausible that, if it is crucial for Rawls that our conception of justice matches our settled intuitions, then the specific methodology of social contract thinking Rawls uses to justify the principle of equality may be reworked to note the Categorical normative intuitions in a more direct way, such that the intuition of equality and the universalized structure of a rational Categorical Imperative form are what individual intuitions present as distinctly rational-ethical norms. In short, the inherent problems of Rawlsian proceduralism could give way to a form of biologically-based (yet still transcendentally-oriented) philosophy in a form of "maximalist Kantian constructivism." This would entail that the procedural processing of what Rawls calls the "conceptions" of justice come far later in cognitive processing than the self-understanding of moral agency conditioned by the Categorical Imperative, and thus Rawlsian proceduralism would be understood as a backwards-looking justification for what biological agency already entails and out of which Rawlsian procedural methods develop. The reworking of primary moral intuitions in this way would be foundational in the sense that it would present a set of necessary conditions for deliberations about justice, whereas what is sometimes called "deliberative democracy" would take place on the "concrete" and more pragmatic level, with the foundational givens as the distinctly normative focus for such deliberative considerations (see Deen Chatterjee, *Democracy in a Globalized World*, pgs. 177-8). On this view, Rawls' proceduralism, as he argued it, is closer to deliberative democracy than to Kantian morality *per se*. Also on this view, the Lockean social contract theory, based as it is on natural rights, would give way once again to a Kantian conception of biologically-anchored pure practical reason which is the constructivist "floor" from which Lockean notions would be defended. In short, this is an attempt to cut a path in between transcendentalism and proceduralism, the details concerning which have yet to be worked out.

The normative analysis above yields for us some specific political norms which are used not only for international law, but which provide a critical foundation for moral-political analyses. These norms include: equality of opportunity; self-determination; human dignity; and human rights, specifically the rights to security and human sovereignty. This is in strong contrast to the neoliberal (and modern capitalist) position, which emphasizes equal human freedom exclusively, allowing all other actions, provided individual freedom is not violated. That this latter is an extraordinarily narrow view, normatively speaking, may be seen in the recognition that conceptions of equal freedom presuppose equal opportunity to exercise such freedom, lest only some individuals be free. However, contrary to the libertarian position, to both establish and maintain equal opportunity requires government intervention (e.g. taxation; regulation; redistribution schemas).

Standing in direct opposition to these normative concerns, particularly with regard to the right to self-determination, are practices by nation-states of Domination and Imperialism. Imperialism can come in one of two forms: neocolonialism or hegemony. Neocolonialism is the interference or intervention by one state into another for the purpose of economic, resource, or geopolitical exploitation. Hegemony is the limitation by one state of the foreign policies and affairs of

another state. With hegemony, the affairs within a state are usually permitted by the hegemon to be carried out without interference.

Domination refers to the external control by one nation-state of the internal political affairs either of another nation-state, a corporation, or non-business corporations, such as the World Bank and the International Monetary Fund. This interference that would count as dominance would be applied directly to the right to self-determination, which by definition would be undermined by a dominant power interfering the in the internal affairs and operations of that nation-state (For more detail and analysis regarding these categories, see Phillip Pettit, "A Republican Law of Peoples," *European Journal of Political Theory*, 9(1):70-94, 2010)**.**

The International Monetary Fund (IMF), an arm of the U.N., was established in 1944 in order to assist and encourage economic cooperation between nation-states. It is funded by its member states, and is effectively controlled by the United States, which is not only the primary funding agent, but also exercises exclusive veto power. Any state that joins the IMF agrees to allow it to review their domestic economic policies and to order changes, making funding contingent on approval of changes. This has been quite controversial in world economic relations, since the emphasis of the IMF has been on cutting public funding, coupled with privatization of state agencies and functions. Because poorer nations are required to engage in such so-called "austerity measures," the IMF has become a lightning rod for accusations of its being responsible for the ongoing world economic recession. The reason is that they have a dual set of requirements for rich and for poor nations. In other words, IMF policy is based on severe *inequality*, and thus makes itself susceptible to normative criticism. The result of their policies has been severe recessions for those nation-state members (especially the poorer ones) that capitulate to the membership requirements.

The World Bank is the major lender of money to nation-states and to corporations. Like the IMF, it is largely controlled by the United States, who is its biggest shareholder. Thus, the World Bank located in Washington, D.C., essentially functions at the behest of U.S. economic interests. It, too, has been the source of numerous controversies due to its own role in imposing "Structural Adjustment Programs" based on the neoliberal agenda of reducing deficit, privatization, etc. mentioned above. In both cases, the normative criticism directed at the IMF and WB is that it violates nation-state and citizen sovereignty by interfering in their internal affairs through its control of both the economies and the governing structures of recipient countries (For more basic facts on the IMF and World Bank**,** see *The Encyclopedia of Global Justice*, The Hague, Netherlands, Springer Publishing, 2011).

III. International Law and the Rule of Law

We have seen the normative foundation for international law spelled out, most prominently and directly for our concerns in this chapter, in John Rawls' *The Law of Peoples*. We will now trace out the legal sources of international law. Combining the normative and legal foundations for the law of nations will give us all the resources we need for a full-blown critique of U.S. and E.U. actions in Ukraine.

A. Sources of International Law

The origin and sources of international law are definitively stated in the Statute of the International Court of Justice (ICJ), Article 38(1): international custom; international conventions or treaties; judicial decisions; judicial (scholarly) writings; and general principles of law. International custom is defined as state practice that is based on a sense of *legal obligation* (i.e. not state practice alone). General principles are not specified by the ICJ, but there are two things of which to take note here. First, this reference is widely interpreted in law to be a directive to use commonly held legal principles to complete understanding and application of international laws. Second, there are two principles that are widely appealed to as being meant by the Court: estoppel and equity. The first prohibits one nation from misleading another nation, in word or action, from believing in a given legal or factual condition, and then reversing course to a contrary position. This would arguably apply in the infamous April Glaspie claim to Saddam Hussein in 1991 that the U.S. has no interest in protecting Kuwait.

The second principle, equity, means just what it implies: that equal parties are treated equally, and that each discharge their legal obligations in good faith. This stems from English law, and today is concerned with rights and duties of states.

The third main source of international law, international conventions and treaties, most importantly includes the United Nations Charter, which itself has several notable features. First, the Charter has a supremacy clause that makes the U.N. the highest authority in international law. Included in the composition of this "highest authority" is the U.N. General Assembly and the Security Council, the latter of which must be the proper authority of approval for a nation going to war.

Short of war, however, there are other interferences and interventions that one nation or set of nations can inflict upon another, all of which affect the issues of human rights and most specifically the right to self-determination. These are interferences involving dominance, hegemony, humanitarian intervention, and general non-military intervention. These are the issues that arise when discussing U.S./E.U. interference in Ukraine.

The U.N. Charter contains within it numerous provision stating its function and responsibilities as an organization for individual human rights (Articles 1, 13, 55, 62, 68, and 76, to name but a few places where its mission statement vis-à-vis human rights is stated). This was officially specified on December 10, 1948, when the U.N. adopted the Universal Declaration of Human Rights. Although the Declaration itself is not widely accepted as international law, many of its provisions are becoming what is called "customary international law."

B. International Laws Concerning Self-determination

Of the norms, rights, and laws discussed so far, the predominant one in much of the discussion regarding Ukraine (and Crimea) is the right to self-determination. Generally speaking, most definitions of self-determination revolve around the notion that all peoples have the right to determine their own economic and political development. This right legally came into existence in international law only in 1960, when, due to decolonizing concerns, the U.N. General Assembly adopted Resolution 1514 (XV), which stated that "all peoples have the right to self-

determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

Perhaps the most important formulation of self-determination from the United Nations was stated in U.N. General Assembly Resolution 2625, adopted on October 24, 1970. It is worth quoting extensively. Here are six crucial mandates from this resolution, each one salient for an international law analysis of the situation in Ukraine:

"No State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of another State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law."

"No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of it sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State."

"Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to…involve a threat or use of force."

"Every state has an inalienable right to choose its political, economic, social and cultural systems without interference in any form by another state."

"By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development"

"The establishment of a sovereign and independent state, the free association or integration with an independent state, or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination."

Each of these mandates involves the interaction of the principles of self-determination and intervention. In point of fact, the Resolution also condemns military intervention against the "territorial integrity or political independence of any State," referring to such incursions as "a war of aggression…for which there is responsibility under international law."

On January 3, 2006, the United States, Russia, and Ukraine, among many other nations, signed the International Covenant on Economic, Social and Cultural Rights," which guarantees, in Part I, Article 1, that "All people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

Finally, the right of a people to self-determination was further underscored by The United Nations Declaration on the Rights of Indigenous People (UNDRIP) of June, 2006, in which it defines self-determination as the "right to freely determine their own political status and freely pursue their economic, social and cultural development" (Article 3). Article 4 goes further, specifying the right to self-determination as "the right to autonomy or self-government in matters relating to their internal and local affairs."

C. International Laws Concerning Intervention

Intervention into another country by a nation or group of nations can take one or all of several forms: military, economic, subversive (i.e. use of propaganda through media to foment civil unrest or revolution in another state), diplomatic (i.e. use of threats of military action by one state against another, in order to affect internal changes in the threatened state), and humanitarian. Specific to our analysis here, the ICJ has ruled that the right to national sovereignty and self-determination prohibit other nations from aiding insurgents with money, weapons, training, or logistic assistance (e.g. *Democratic Republic of Congo v. Uganda*, 2005).

Humanitarian intervention is frequently the pretext by which one nation claims to have the right to intervene in the affairs of another, especially militarily. By definition, humanitarian intervention is done in order to prevent or end human rights abuses by the state. Thus, the state mechanism itself becomes the target for intervention. This is the reason that humanitarian intervention tends to be of the military variety. Nonetheless, there is such a thing as non-military humanitarian intervention. The latter variety includes such things as economic sanctions, boycotts, withholding of loans and other aid, etc. The U.N. frequently engages in such missions. More importantly, other nations, particularly the U.S., unilaterally engage in humanitarian rhetoric to justify intervention into the affairs of other nations and governments.

The international laws applicable to intervention may be taken from several sources. The International Court of Justice (ICJ) has stated in various rulings that the principle of non-intervention is "part and parcel of customary international law" (e.g. *Nicaragua v. United States*, 1986). The primary sources for such law include *jus cogens* (discussed above), U.N. General Assembly Resolutions; various regional agreements between nations (e.g. Charter of the Organization of American States, Articles 16, 18, and 19); friendship and cooperation treaties between nations; the U.N. Charter (Article 2(7)), and various charters of international organizations (e.g. the World Bank).

Specifically, the ICJ has ruled (in *Nicaragua v. United States*, 1986) that intervention is prohibited when it bears "on matters in which each State is permitted, by the principle of State sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones." Further, "the element of coercion" includes "the indirect form of support for subversive or terrorist armed activities within another State" (para. 205).

Independent/individual states are banned from unilateral intervention by Article 2(1, 3, and 4) of the U.N. Charter. It is a necessary condition of national sovereignty. Only the United Nations

Security Council can make legal decisions regarding intervention (see *Yugoslavia v. United States of America*, 1999).

However, there is clearly a need in extreme cases for some type of intervention by the world into the affairs of another nation-state. This is demonstrated by the 1994 massacre in Rwanda, the ongoing war in Darfur, which some are calling a genocide, and the state failures of Sudan, Chad, and Somalia to prevent wars, disease and famine from breaking out among its population. As U.N. Secretary-General Kofi Annan put it in his address to the General Assembly in 1999: "The world cannot stand aside when gross and systematic violations of human rights are taking place." [However, for the argument that absolutely no intervention is legally permissible, see Lyal Sunga, "Is Humanitarian Intervention Legal?" *E-International Relations*, October 13, 2008).

Given the need appealed to by Annan, the U.N. adopted a report on international law of humanitarian intervention, written by the International Commission on Intervention and State Sovereignty (ICISS), and entitled "The Responsibility to Protect." The report itself was commissioned by the Canadian government, not the U.N. Published at the end of 2001, it was adopted at the U.N. Summit of 2005, and remains controversial due to its effect of essentially weakening state sovereignty. Furthermore, it has not become international law, although, as the Report notes, it lays out the "emerging consensus" on the limits of state sovereignty by individual human rights. Overall, it has become a widely quoted and used document outlining the main issues of humanitarian intervention.

The importance of the ICISS report lies in its statement of the emerging norms of humanitarian intervention, which are to be touchstones of legal institutions and practices in the future vis-à-vis human rights, human security, and human self-determination. Although the focus is on military intervention, the report transcends the military in favor of other forms of intervention as well. Further, although it takes pains to submit that the norms are not a threat to or encroachment upon state sovereignty, in point of fact the report does limit the autonomy of the state, especially as regards impunity for domestic and international activities.

The report itself runs under 100 pages, and is divided into eight chapters. Important to our discussion here is the following arguments put forward in the report:

State sovereignty is maintained as the norm, but is limited in this report in the following manner: State sovereignty implies state responsibility to protect its citizens. When a population is suffering serious harm, and the state is unable or unwilling to halt or avert that civilian harm, "the principle of non-intervention yields to the international responsibility to protect." This international responsibility has three parts to it: prevent; protect; and rebuild. It limits military intervention to traditional Just War Theory, detailed below.

A significant concern of the ICISS is to delineate the changed and changing international situation. First, whereas in 1945 the U.N. had 51 member states, today it has 189 such members. Further, the situation "on the ground" in many of these states and interstate relations is that there is a growing demand for political rights, coupled with the fact that many states are violently exploited and plundered for their resources, either by other states, or by internal, armed gangs. These gangs now have access to weapons of mass destruction. The result of all of these changed

factors is that civilians are now even more vulnerable to harm and even direct targeting by local and national powers. When it is acknowledged, as this report does, that rich states are fomenting and aiding the breakup of other nations into smaller states, the clear conclusion is that human security and human rights become of paramount importance in limiting the power of the state to act internally or externally.

The ICISS sees the legal sources for collective (not unilateral) humanitarian intervention in Chapter VII of the U.N. Charter, natural law principles, the human rights provisos of the U.N. Charter, the U.N. Declaration of Human Rights, the Genocide Convention, the Geneva Conventions and Additional Protocols on international humanitarian law, and the statue of the International Criminal Court.

In sum, "what has been gradually emerging is a parallel transition from a culture of sovereign impunity to a culture of national and international accountability," based on "realizing the notion of universal justice—justice without borders" (2.18; 2.19).

D. International Laws of War (Military Intervention)

The ethical norms of warfare have not only been established for many centuries, but they are intrinsic to conceptions of justice (e.g. Rawls, *A Theory of Justice*, pages 378-382), and remain the foci of discussion of war today. Even though they have their detractors, the norms of war have entered not only into international law, but also into the lexicon of most citizens who discuss the justice of a war. The norms are traditionally divided into two categories, with subcategories under each.

The first category answers the question "Is the war justified?" In order to answer that question ethically, three subcategories must be addressed. First, is the cause just? In normative theory as well as in international law, the use of military force must only defensive—i.e. can only be in response to a current or obvious imminent threat to use military force by another nation. It is under this rubric that the Bush administration sought to justify the attack on Iraq in 2003, by taking the notion of "preemptive attack" implied in this norm, and expand it to "preventive attack," which was defined by the administration as the speculated possibility of military attack at some unspecified future time.

Second, ethics requires the use of a proportionality criterion, defined as a rational and reasonable calculation that the good resulting from going to war will exceed the evil produced by it.

Third, the military conflict must be the last resort as a means of achieving peace, after all reasonable options and alternatives have been exhausted.

The second category for use of military force must include considerations of discrimination (i.e. non-combatant immunity from direct attack) and proportionality. The latter requires that civilian

casualties and infrastructure damage, termed as "collateral damage" by military planners, must not be intended, and must not exceed the overall objective of obtaining peace.

As ethical norms go, these are not detailed and allow in some cases for a robust debate regarding their applicability and even their fulfillment in a war (for more, and for a good application of these norms to the U.S. invasion of Iraq, see Steven Lee, "Was the Iraq War a Just War?" Hale Lecture Series, March 4, 2003).

Regarding international law of military action by one country against another, the law mandates that the U.N. Charter be followed. This requires a minimum of two things for a nation to be legally justified when using military force. First, the war must be in self-defense. According to the U.N. Charter, Article 51, defense self-defense as "if an armed attack occurs" or in response to a directly/immediately immanent attack. The second criterion is that, if it is not in immediate self-defense, then use of military force must be approved by the U.N. Security Council (Chapter VII, Articles 42 and 43).

There is a third norm in international law that nations are legally compelled to follow, and that is "*jus cogens*"—i.e. "compelling law," which is also seen to be a "higher law." These are arguably part of the "general legal principles" referred to by the ICJ, and include such laws as rejecting genocide. Included in this type of law is a **war of aggression** (a.k.a. a crime of peace). In international law, U.N. General Assembly Resolution 3314 defines aggression not only as military incursion into another state, but any actions engaged in by one state directed toward another "*in any manner* inconsistent with the Charter of the United Nations" (emphasis mine).

IV. Application to Ukraine

This now puts us in a position to assess, through normative justice and international law, the case of NATO, EU, and U.S. meddling in states such as the Ukraine.

A. Background Information

First, though, it is important to recognize that all current events in Ukraine, particularly as they regard Russia, must be seen in the context of NATO encroachment on Russia since the 1989 fall of the USSR. They make little sense without this reference, especially since history does not operate without precedents, and since it is entirely plausible that the whole Ukrainian catastrophe is the direct result of NATO's ambitions regarding Russia. For instance, the new government called for "emergency aid" from NATO, and NATO dutifully met to consider it right after the request. Ukraine is not a NATO member, so aid to Ukraine and military equipment, etc. are not legally prescribed. Further, nearly every poll taken in Ukraine shows conclusively that the vast majority of Ukrainian citizens are opposed to NATO membership (see Jonathan Steele, "The Ukraine Crisis: John Kerry and NATO must Calm Down and Back Off," *The Guardian*, March 2, 2014). Yet NATO continues to encroach. This is all part of a pattern established by NATO since at least the 1980's, under President Reagan. Reagan assured Gorbachev that NATO would not expand into the former Soviet satellites, and then turned around and did precisely that. The U.S. also withdrew from the treaty that banned anti-ballistic missiles, and changed its nuclear doctrine to allow it to engage in a "first strike" option.

Second, not only is there a history of NATO encroachment to the East in Europe, but now NATO is deploying troops all along Russia's western borders, not just in Ukraine, but in Poland, Latvia, Estonia,, and Lithuania. That this is provocative to Russia can scarcely be denied.

Third, outgoing NATO General Secretary Anders Fogh Rasmussen crowed about the great success of NATO incursions to the East, and advocated a NATO takeover of Bosnia-Herzegovina, Macedonia, Georgia, and Montenegro.

Fourth, the U.S. god of neoliberal aggression, Zbigniew Brzenzski, has written that Ukraine is a critical geopolitical pivot; that if the U.S. wants to sever Russia from Europe and subsequently guarantee U.S. hegemony by limiting Russian power to its own region, then they must take Ukraine (see his "A Geostrategy for Eurasia," *Foreign Affairs*, 1997).

Fifth, we have seen this NATO playbook opened before, as Rasmussen admits. Just since the fall of the Soviet Union in 1989, NATO has taken over the following former Soviet blocs: Czech Republic, Hungary and Poland (1999), Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, Slovenia (2004), and Albania and Croatia (2009), and now Ukraine.

Finally, we may apply the ICISS report to the situation in Ukraine by taking the argument given in the report in the opposite direction. Whereas the report itself intends to establish the norms for justifying international intervention into a sovereign state, the same norms may be used to determine when state or NGO intervention in another state is inherently unjust—to wit, when such intervention *causes harm* to either the civilian population or to a government that *has* successfully protected its population, both domestically and internationally (e.g. ICISS, 2.25). Thus, the ICISS recommendation that the normative limit to sovereignty occurs in the obligation of the international community to protect human rights ("responsibility to protect"), when taken in conjunction with current international law and practice on non-intervention (as shown above), can be given in a negative (contrapositive) form: when there is no protection of human rights needed, nations have a responsibility not to interfere in other nations, specifically when such interference harms that nation's population through human rights violations or the right of self-determination and/or the ability of a democratic government to protect human rights (it would have to be a form of democratic government if human rights include, as they do, the right to self-determination. Thus, elections would be crucial for this form of government to be protected under this norm): call it the "responsibility not to harm" or the "no harm principle," or even "the right to be left alone" principle (with reference to the dual notions of people's sovereignty and state sovereignty, as stipulated in the ICISS report, 2.13). This uses the same norms of human rights protection, and simply applies the same ICISS norms to what acts are prohibited against one nation-state by (an)other nation-state(s). The same process has been essentially undertaken by other U.N. covenants regarding torture, etc.

The dubious nature of such intervention can be shown in the simple example of justifications the U.S. government made regarding its invasion of Iraq in 2003. While the U.N. resolution 1441 made reference to the necessity for Iraq to dismantle and remove its weapons of mass destruction, the U.S. subsequently argued that the sanctions were in place to have the current Iraqi government removed from power, on the grounds of Saddam Hussein's inhumanity toward

his own people. Many critics saw this move as a cynical attempt to use the language of humanitarian intervention as a veil for a new form of imperialism. This criticism became highly plausible as stories began to come out of Iraq concerning U.S. military actions there, such as the use of depleted uranium and the massacres of civilians in Fallujah and Ramadi. Because United States actions in Iraq violated all normative criteria of discrimination (civilian immunity from military targeting) and proportionality, demonstrated in the increased cancer rates and most significantly, the increased infant mortality rates, it was seen that the language of humanitarian intervention could easily be used as a cloak for imperialism or a war of aggression. This clouds the usefulness of the humanitarian label for intervention into another country. When it is taken into account that the norms of such intervention would have to follow something very similar to the traditional just war normative positions (e.g. just cause; proper authority; proportionality, etc.), the close relationship between non-military and military humanitarian intervention is easily recognized, and the dubiousness of the former all the more doubtful.

Given this background, we may address three crucial incidents in the Ukraine: the alleged *coup d'état*, the Crimean secession, and the issue of military intervention.

B. The coup d'état in Ukraine

First, was there a *coup d'état* in the Ukraine*?* If it can be demonstrated that the U.S. and/or the European Union (EU) played a role in the overthrow of the legitimately elected government then in power, then they are in violation of international law, which indisputably recognizes the right to state sovereignty from such interference. The difficulty in making the case for the illegality of U.S. support for political protests in Ukraine comes from the fact that such intervention was not done militarily, but through economic and semi-subterranean U.S. support for the violent political protests in Ukraine. Additionally, had it not due to a particular leaked phone conversation (discussed immediately below), the evidence would be largely circumstantial. So one must play a "connect the dots" game to see who is behind the putsch in Ukraine. To that end, here are just a few of the facts we possess regarding U.S./E.U. actions in Ukraine that can make the case not just for U.S./E.U. intervention in Ukraine, but for its normative violations and its illegality:

1) The now-infamous leak of the phone conversation between U.S. State Department Assistant Secretary for Europe and European Affairs, Victoria Nuland, and Geoffrey Pyatt, U.S. Ambassador to Ukraine, revealed two important pieces of information concerning U.S. intervention in Ukraine: first, that the U.S. has spent upwards of five billion dollars to foment "regime change" in Ukraine; second, that the U.S. was actively planning who would be appointed to the top government posts in Ukraine, post-coup (see Daya Gamage, "U.S. 'Regime Change' Plot in Ukraine Uncovered: How's Sri Lanka Destabilization?" *Asian Tribune*, February 12, 2014).

2) Nuland herself, along with U.S. Senator John McCain, made no fewer than four independent trips to Ukraine to publicly hand out cookies to the right-wing, self-proclaimed neo-Nazi parties (i.e. Svoboda and Right Sector).

3) In early November, the E.U. demanded that the Ukrainian government decide one way or another to ally with the E.U. or for Russia. This forced the hand of Ukraine's president, Victor Yanukovych, who had strong and historical ties to Vladmir Putin and Russia, as well as to the E.U. The E.U. mandate was aggressive in intent, forcing another government to choose by means of an exclusive disjunction, even though Russia had proposed a tripartite agreement between Ukraine, Russia, and the E.U. The U.S./E.U. rejected such an agreement. This is the very definition of intervention, both in ethical norms and in international law, as we have seen.

4) In November, 2013, Yanukovych cancelled the signing of the Ukraine's association agreement with the E.U. in favor of maintaining and perhaps strengthening Ukraine's ties with Russia. By December, a few thousand organized protestors of the President's decision were in the streets. One must question the timing of the events in Ukraine in this light of this E.U. demand and the Yanukovych rejection of it.

5) As part of the fast-moving events that resulted in the dethroning of Yanukovych, officials from the E.U. and the IMF met with their newly-installed political leaders in order to discuss finances just a few days after they took office. The E.U. and IMF are now demanding that Ukraine establish "austerity measures," which will require deep slashes to state subsidies for the people, including subsidies for energy prices, a 10 percent layoff of Ukraine's civil service workers, and a 50% increase in natural gas prices. This, of course, is a direct call for surrender of Ukraine's economy to capitalist hegemons, backed by the threat of being cut out of the global market currently controlled by Western, not Eastern, oligarchs.

6) The Constitution of Ukraine itself, in Article 2, clearly states that "the sovereignty of Ukraine shall extend throughout its entire territory," with Article 3 asserting the centrality of human rights "as the highest social value" in governing Ukraine under the Constitution. Article 5 guarantees popular sovereignty over their government, concluding the Article with the sentence: "No on shall usurp the State power." That this reference is to self-determination is made clearer under Title III, Article 69 of the Constitution, which calls for elections with "direct democracy" concerning government and governing issue. Finally, Article 10 protects the use of Russian language in Ukraine.

When these facts are taken into account, a strong case can be made for U.S./E.U. involvement in the *coup d'état* in Ukraine. Both the norms of justice and international law are clear in this regard: when other nations interfere with the internal functions of another nation and then involve themselves in overthrowing that elected government, it directly infringes on self-determination and sovereignty, and thus constitutes a *coup d'état*. The result of this was that a democratic form of government was effectively undermined by outside intervention. In its place are a band of fascists and fomenters, who are not of democratic spirit. Witness their first legislative act: banning the legal status of Russian, in violation the Constitution of Ukraine. Witness further their proclaimed goals of ridding Ukraine of Russians and Jews and stopping "foreign" adoption of Ukraine children (see "The Fascist Danger in Ukraine" [March 6, 2014], "The Real Face of Ukraine's Maidan "Democrats," [March 28, 2014], and "Western-backed Ukrainian Opposition Seizes Power in Fascist-let Putsch" [February 24, 2014], all from *World Socialist Web Site*). None of this is democratic, and in fact their putsch actually undermined a

legitimate democratic system that was in place, presidential unpopular as he was, he was still an elected leader. But the U.S./E.U. chosen replacement regime was not put there by democratic means, nor do they present democratic ideals.

As we have seen, there are clear and distinct ethical norms and international laws regarding intervention. To recapitulate a few of them:

-John Rawls ("One consequence of this equality of nations is the principle of self-determination, the right of a people to settle its own affairs without the intervention of foreign powers");

-U.N. General Assembly Resolution 2625 ("No State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of another State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law");

-ICJ ruling (*Nicaragua v. United States*, 1986, that intervention is prohibited in matters of "the choice of a political, economic, social and cultural system, and the formulation of foreign policy," including "the indirect form of support for subversive or terrorist armed activities within another State);

-U.N. Charter, in which individual states are banned from unilateral intervention by Article 2(1, 3, and 4);

-*Yugoslavia v. United States of America*, 1999, where the ICJ ruled that only the United Nations Security Council can make legal decisions of intervention.

Note, though, that whether one is using the direct language of the ICISS and/or international conventions on human rights, or international laws concerning intervention in another country, the use of such intervention into another nation-state to further economic, and/or geo-political gains would be patently, explicitly, and strongly condemned. Even though by all accounts Ukraine was economically lagging behind other European countries, the people of the Ukraine were by no means destitute enough to portray the intervention from the West as a humanitarian one. As has already been noted, this type of intervention is often used, especially by the United States, to justify interfering with another nation-state. Interestingly, that justification has so far not been used by the Obama administration in this case.

C. Was the Crimean referendum legally justified?

The secession of Crimea presents a very thick and difficult case, both normatively and legally. We cannot develop that case in detail here, except to note a few salient issues regarding the debate on Crimean secession from the Ukraine. Contrary to the claims of conservative commentators (e.g. Ashley Deeks, "Here's What International Law Says About Russia's Intervention in Ukraine," *New Republic*, March 2, 2014; Noah Feldman, "Crimea's Democracy Trampled its Constitution," *Bloomberg News*, March 20, 2014), neither ethical-political norms nor international law are clear regarding the issue of secession.

The parties the U.S./E.U. has been supporting and working with Ukraine—Svoboda and Right Sector—have been widely reported to be deeply anti-Semitic and anti-Russian. In fact, in its first

act once it took power in Ukraine, it eliminated the right of Russian nationals to speak their native language. But U.N. General Assembly Resolution 2625 permits secession if a government does not "conduct themselves in compliance with the principle of equal rights and self-determination of peoples and possess a government representing the whole people, belonging to the territory without distinction as to race, creed, or color." When the first thing a new government does is to ban the speaking of a certain language, in this case, Russian, the case begins under 2625 for the right to secession.

While there is ample prima facie evidence that the Crimean secession was a violation of the Ukrainian Constitution, the arguments making this claim have all failed to take into account two important issues: the *moral* right to secede, and legal precedence, such as the International Court of Justice (ICJ) decision concerning Kovoso. Regarding the first issue, exactly when this moral right obtains and thus the right to secession may occur is highly contentious in normative thought. Some maintain that there must be ongoing and serious injustices and human rights abuses (referred to as "Remedial Right Only Theories), while others contend that the moral right to secession occurs even when no injustice has been experienced (called "Primary Right Theories." For both types, see A. Buchanan, "Theories of Secession," *Philosophy and Public Affairs*, 1997, 261: 31-61).

Nor do the arguments opposed to the secession take into account the significant and notable disagreement within international law regarding secession. For example, is the right to secession intertwined with or conceptually dependent on the principle of self-determination? Further, just how does one define secession, legally? There is no agreement between international lawyers on this (See Ioana Cismas, "Secession in Theory and Practice: the Case of Kosovo and Beyond," *Goettingen Journal of International Law* 2, 2010, 531-587).

Finally, such arguments do not take note of the ICJ's decision regarding the secession of Kosovo, which stated, in ruling in favor of Kosovo's declaration of independence from Serbia, that "general international law contains no applicable prohibition of declarations of independence."

C. Was the Russian military intervention in Crimea legally justified?

Where Russia clearly can be faulted in its actions in Crimea is with the movement of troops outside of Russian bases on the Crimean peninsula and into the cities and civilian airports, and their disarming of Ukrainian troops, all of which are indisputable violations of the longstanding agreement between Russia and Crimea regarding Russian lease of Crimean territory for their military bases. According to this 1977 agreement, Article 8.1 and 9.1 limit the activities and stationing of Russian troops and military equipment to agreed-upon territories (i.e. military bases). Additionally, according to the Budapest Memorandum of 1994 between Russia and Ukraine, Russia is bound to respect the national boundaries of Ukraine. So when Putin expanded Russian troop movement in Crimea beyond their circumscribed bases, it seems hard to deny that this was, in legal terms, an act of military aggression. But it seems inconsistent and unreasonable to condemn Russian actions in Crimea, while ignoring the facts that the U.S./E.U. have brought down a democratic government, installed their own government, that the new government then turns to the West and, in thanks, asks for NATO help, and NATO responds by its own *de facto*

"annexation" of Ukraine as part of NATO and the E.U. Russia did it through military intervention; the U.S. did it through subversion, or as President Obama prefers to call it, "leading from behind," in essence by hiring a group of violent subversives to upset the order of the country it targets, just like the U.S. did in Libya and Syria. Both types of action are banned by international laws regarding intervention, as we have seen.

Regarding the issue of military intervention, the U.S. is once again using its military might as a direct threat to Russia, should Russia intervene in the U.S. intervention in Ukraine (beyond Crimea). Even more than the threats, the U.S. has substantially increased its military presence in the Baltic States, as of this writing sending six F-15C combat planes to Lithuania, holding Navy exercises in the Baltic Sea, and sending 300 military personnel and 12 warplanes to Poland. Additional U.S. troops are being sent to Latvia and Estonia. Germany and Britain have also committed to escalating their own military presence and maneuvers in the region ("Stefan Steinberg and Peter Schwarz, "NATO Steps up Military Pressure on Russia," *World Socialist Web Site*, April 1, 2014). This is all being done under the pretext of an "existential threat" (although factually non-existent) of Russian military intervention in Ukraine. In reality, the U.S. is moving its military might into positions in Ukraine and surrounding areas in order to maintain their intervention in Ukraine and to prevent a military response from Russia. Where do such U.S. threats and potential military action in Ukraine stand regarding our normative and international law concerns?

The use of Western military force to occupy Ukraine or any other former Soviet territories surrounding Russia would violate not only the Just War Theory of "just cause" and "proper intention," but it would also be a direct violation of international law. Once again, as in Iraq and Libya, the U.S. would be committing the crime of "aggression," the most supreme of all crimes, according Justice Robert Jackson, chief prosecutor for the United States at the Nuremburg Trials. The Nuremburg Tribunal itself stated: **"**To initiate a war of aggression...is not only an international crime; it is the supreme international crime, differing only from other war crimes in that it contains within itself the accumulated evil of the whole." However, Russia is also in violation of these criteria by its military takeover of Crimea, as we have just seen. In the case of the use of military force, Russia was not justified in taking over Crimea, and the U.S. would not be justified in militarily occupying Ukraine. No doubt the U.S. would dress up this potential occupation as an "invitation" from Ukraine, or as "joint military exercises," but an invitation for such "exercises" from a non-elected government would be illegal under laws of intervention.

This military issue now becomes the use of threats to use force, as the U.S. has done repeatedly through the Obama administration pronouncements and through its military actions in and around Ukraine (new reports and quotations from President Obama, John Kerry, and other members of his administration are legion by this point, but for one example, see "U.S., Europe Step Up Threats against Russia Over Ukraine," *World Socialist Web Site*, February 24, 2014).

Regarding the threat to use force, as we have seen, U.N. General Assembly Resolution 2625, adopted on October 24, 1970, prohibits it:

"No State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of another State. Consequently, armed intervention

and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law."

And: "Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to…involve a threat or use of force."

V. Closing Reflection and Analysis

a) U.S. uses of international law in *Realpolitik*

i. One of the most notable actions of U.S. foreign policy is the way the U.S. has consistently excluded itself from international law and conventions, while holding other nation-states strictly to it. For example, the Obama administration, including the President himself, has made numerous statements regarding Russia's violation of international law by sending troops into Crimea (which it was), while consistently failing to mention that U.S. intervention in Ukraine is just as illegal as is Russia's.

That the U.S. has a long history of such self-exclusion has been amply documented by Noam Chomsky, particularly in his book *Failed States*, and that history will not be rehearsed here, except to mention in passing that Chomsky's list include U.S. attempts to exclude the International Committee of the Red Cross (ICRC) as the sole authority to determine the status of prisoners of war; the Organization of American States (OAS); the World Court (e.g. Nicaragua); the U.N. Security Council; international laws of aggression (e.g. Iraq; Libya…) (see Chomsky, *Failed States*, Chapter Two: "Outlaw States," Metropolitan Books, 2006. See also Chomsky, *Hegemony or Survival*, Chapter Two: "Imperial Grand Strategy," Metropolitan Books, 2003). Thus, it should come as no surprise that the U.S. is double-dealing on the Ukraine.

b) Three dangers to U.S./E.U. actions worth noting:

i. The danger of Russian response. Paul Craig Roberts itemizes how Moscow might respond to current Western encroachments, including their use of their own drones, cutting off gas supplies to Eastern Europe, and possibly even going to war (Paul Craig Roberts, "Russia under Attack," *Global Research*, February 15, 2014).

ii. Danger from fascist/neo-Nazi leaders installed by U.S. in Ukraine. Much has been made of the characters now in control of the Ukrainian government. For just a few examples, Andriy Parubiy, a cofounder of the Svoboda part and leader of the armed fight-wing militia protestors who several times assaulted President Yanukovych's security forces, is now head of the National Security Council. Other key posts are held almost exclusively by Svoboda or Right-Sector party members.

In this regard, it is important to note that the voices of moderation in the Ukrainian government are now gone. All that remains are the right-wing paramilitia leaders (for more on this issue, see "U.S., Europe Step Up Threats against Russia Over Ukraine," and "The Real Face of Ukraine's Maidan 'Democrats," both from *World Socialist Web Site*, February 24, 2014 and March 28, 2014, respectively).

iii. The danger of having oligarchs run the country and the world. It is no secret that the Russian government is beholden to its oligarchs, as is the U.S. government. The oligarchy of the latter is now establishing its own progeny in government seats not just at home, but in countries that were made unstable by their own hands. Putting government leaders in place that will do the bidding of the foreign oligarchy controlling them, and who will use that government simply to further a capitalist ideology and little else, is an incredibly dangerous move. Ukraine's right-wing militia government is going to prove an interesting test ground in this issue.

iv. The danger of sowing the seeds of great instability in Ukraine, Eastern Europe, and the Mideast, all at once, is one that is not receiving much attention from media commentators, who prefer a case-by-case style of reporting. Installing fascist government in the Ukraine and funding and fueling Islamist and jihadist violence in Syria creates increasing instability in a nuclear age and an age in which small groups are able to obtain weapons of mass destruction (WMD). The ability of such groups to engage either low tech (e.g. used in the 9/11 attacks on the U.S.) or high tech (nuclear weapons; dirty bombs, etc.) means more danger to humanity the more they are encouraged to wreak havoc by the world's only superpower.

VI. Conclusion: Looking forward

The situation in the Ukraine calls for an analysis that extends beyond the immediate exigencies of the local events there, and involves a wider, global analysis that examines what portends for the future, given the rapacious greed and lust for power that pushes the U.S. to attempt hegemony in all directions? In answer to that, as we have seen, there is an emerging international discussion, if not a consensus, on emphasizing norms, both normatively and politically, that prioritize human rights, human dignity, and human security and sovereignty over state sovereignty. Taken together with other historical movements, this renewed focus on norms ensuring human dignity could result in the diminishing of the power of states and most especially of empires, in favor of (and perhaps even being replaced by) an international order of peoples: a world order based on a community of citizens whose sovereignty means that, *qua* human, they are the locus of political arrangements, not state institutional arrangements or concerns. This could be secured by an international arrangement seeking to guarantee the priority of human rights to state interests, thus fulfilling the democratic norm that power reside in the people, not in its leaders. In this light, sovereignty would be defined as the right to self-determination without internal or external pressures or interference from parties whose intentions are questionable in regards to increasing the right to self-determination for all persons involved, instead of just a few elites.

It is thus plausible that, as the U.S. and NATO forcefully push to the East in Ukraine (and the former Yugoslavia, and in Syria, and in Afghanistan) and to the West in the Pacific Rim (through Obama's "Asian pivot"), that they are initiating a process of a change of world order to something far beyond the intended aim of Western dominance, to an era of reduced sovereignty and security of the nation-state (e.g. those being either "hemmed in" and isolated by, or taken over by, the world's hegemon), whose rapacious greed and lust for power knows no bounds. Ultimately, only two things will stop this (U.S.) superpower from expansion and world control: it meets its natural limitation (perhaps by over-extending its consumptive reach beyond its ability

to finance it; perhaps the depletion of the natural resources required to run the engine of Empire), or the people in the world, independently and with a recognition that they are all together in the struggle, begin to apply pressure on the superpower. This "pushback" will entail an application of the very normative concepts we have discussed in this chapter, overall that power comes from and applies to the people, and that the sovereignty of the people is the value and commitment that unites them, not the artificial borders that separate them.

We are seeing such a movement in its nascent form right now. On the basis of the increasing emphasis worldwide of human rights and the good of people (i.e. their sovereignty and security), international law is beginning to take note of these changes. Combined with the facts of globalization (resulting in economic interdependency of states), the increased intrusion of state power and force into peoples' lives (e.g. Egypt), the noted instability of the current state system, brought about in large measure by the West working to actively dismantle current state mechanisms that do not work in their self-interest system (e.g. Afghanistan, Iraq, Libya, Syria, and now the Eastern European states, to name but a few), and with the internal collapse of ostensibly democratic institutions (e.g. NSA spying in the U.S., England, Germany, and France, along with various judicial decisions in the U.S. concerning corporate personhood and political influence—e.g. the recent Supreme Court ruling removing as many bars as they can to the power of money in the electoral process, in *Citizens United v. Federal Election Commission* [2010] and also *McCutcheon v. Federal Election Commission* [2014]), there are indications that perhaps we are witnessing the birth pangs of a new world order, one that focuses on human dignity and world citizenship rather than state sovereignty, which in practice has become the concentration of power and control over the political and economic opportunities and self-determination activities of the people by any given state or set of states. It is not just that a case can be made that we are witnessing a historical movement the nascent beginnings of which, but that the historical conditions are becoming ripe for making a deliberate commitment to support this normative trend toward human rights and dignity a critical goal worth pursuing as the nation-state system of governance overreaches and subsequently diminishes or even collapses in importance.

The situation in the Ukraine calls for an analysis that extends beyond the immediate exigencies of the local events there, and involves a wider analysis that asks whether we may be witnessing the twilight of the power (if not the existence) of the nation-state. This should be a welcome development for those who emphasize ethical norms, human rights, and the rule of law, since state power has shown itself to be deaf, dumb, and blind to such issues when its own institutional increase in power is at stake.

In either case, the implication for weakened or limited state sovereignty by human rights opens the way for a global democracy. More to the point, the clear and growing interdependence of nations and peoples, economically and in terms of resources, indicates that the world's communities are becoming interlinked with one another, and as they become more intertwined, they fail to be able to provide solutions to their problems in a strictly unilateral manner. Add to that the fact the business corporations already recognize this, and are making headway, although only through strictly libertarian-capitalist ideologies, in enacting so-called "free trade agreements," allowing this economic interdependence to benefit profitability. These facts require that our norms and laws recognize this by maintaining a space for human autonomy and active

citizenship. There needs to be more of a robust discussion on what type of global democracy and global citizenship will best enhance human dignity, rights, and self-determination. Principles such as globalism, universalism, participation, and procedural fairness are already in play in such discussions, resulting in distinct notions of Cosmopolitanism, which is the view that humanity is one single, but pluralistic ethical community (For more, see Deen Chatterjee, ed., *Democracy in a Global World: Human Rights and Political Participation in the 21st Century*, Rowman & Littlefield, 2007).

Although many if not most commentators maintain that the nation-state is here to stay, at least for the foreseeable future, if the analysis presented here is correct that the nation-state as the all-powerful sovereign is in decline, then the citizens will have to take on the self-chosen role as the *voice of conscience* of their institutions. This is not the result of citizen sovereignty over state sovereignty, but it is the necessary condition of such sovereignty. It would be recognized under this new philosophy that institutions have their own distinct concerns; that those concerns are not in the interests of the individuals they ostensibly represent; that primary among those institutional interests is the growth of power toward the top levels of that institution; and that those institutional interests must be hemmed in by notions of individual autonomy, guaranteed by human rights. Although the institutional structures of such a new world order would have to be created (e.g. see Richard Falk, *Achieving Human Rights*, Routledge, London, 2008 versus Jürgen Habermas, *Between Facts and Norms*, MIT Press, 1998, for just two forward-looking but competing views on this topic), one hope is that the monolith of superpowers like the current U.S. Empire would become a thing of the past. If this is to happen in a world of reduced sovereignty and power of nation-states, it remains up to the citizens of their governing institutions to initiate normative limitations to the natural upward power movements within ostensibly democratic government structures, so that interventions into other countries at the behest of such institutional drives for geo-political power and resource-control, such as is seen with the intervention of the U.S. and E.U. into Ukraine, will be both less likely to happen in the future, and will come with much a greater sanction against unwarranted intervening agents and municipalities.