

Surrogate Sovereignty? Great Power Responsibility and "Failed States"

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Abstract

Do the great powers, for example the permanent five of the UN Security Council, have a responsibility for the domestic conditions of “failed states”? I argue that the answer to that important question is “no”. For to answer in the affirmative is to accept the principle of trusteeship in world politics, which is a form of paternalism. The paper contends that there is no room for paternalism in a world of sovereign states.

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In Chad, the 'modern' state inherited from the colonial period no longer exists.

- *Le Monde*, December 30, 1980

Not since the Napoleonic upheavals (if not the Peace of Westphalia in 1648) have the rights of states, people and governments been so unclear.... What "sovereign" rights, if any, do governments have to prevent outsiders from telling them how to treat their people.... And what about the rights of outsiders to come to the aid of peoples victimized by the actions or inactions of local governments - or to create the functional equivalent of government where, as in Somalia, none exists?

- Chester Crocker, U.S. Assistant Secretary of State for African Affairs, 1992

A paternal government is the greatest conceivable despotism.

- Immanuel Kant

I. Sovereignty Can Be Dangerous

Anybody who is familiar with contemporary world politics will be aware of the existence of states which fail to safeguard basic civil conditions domestically and which consequently confound the usual normative justifications for having states. The news media report such failures on a regular basis. There is an emergent academic literature on the subject.¹ Some states could accurately and legitimately be advertised by the following public notice posted on large signs at all border entrances: “Warning: this country can be dangerous to your health.” Foreign governments are aware of unsafe countries and they make it their policy to advise their citizens to avoid them. Some countries are only unsafe for foreigners. They fail to fulfill Kant’s third article of perpetual peace: universal hospitality.² But some countries present a hazard to their own populations as well. Some countries are safer for foreigners than they are for their citizens, i.e., they are more civilized internationally than they are domestically. Afghanistan, Algeria, Burundi, Cambodia, Congo (Zaire), Georgia, Haiti, Iraq, Liberia, Rwanda, Sierra Leone, Somalia, Sri Lanka, Sudan, and former Yugoslavia (Bosnia-Herzegovina, Croatia, and the province of Kosovo in Serbia) were some of the most dangerous countries in the 1990s.

That historical development which is rooted in the disintegration of empires raises important questions about the ethics of political independence and the responsibilities of great powers. Sovereign states are classically understood as places of refuge and not places of danger. For example, Thomas Hobbes understood them as necessary political arrangements for safeguarding social peace: the civil condition.³ He noted the security dilemma of a world of independent political leviathans which created conditions of peace domestically but simultaneously fostered conditions of war internationally.⁴ The existence of “failed states” is a curious inversion of Hobbes’ security dilemma: in regard to such states, peace usually exists internationally but war often exists domestically. Hobbes implied that there was no point in having states if they could not make a decisive contribution to domestic civil conditions: “such things as are necessary to commodious living.”⁵ “Failed states” turn Hobbes’ political theory on its head. A failed or collapsed “state” would be indistinguishable from the “state of nature” in which armed anarchy is a way of life. Today we know that countries under the sway of local warlords are a reality in some parts of the world. Anarchy is a domestic condition. Warlord Somalia in the 1990s is the definitive case.⁶

By “failed states,” I shall be referring exclusively to states which cannot or will not safeguard minimal *civil* conditions, i.e., peace, order, security, etc. domestically. I shall not be referring to the problem presented to weak or poor governments by natural disasters - floods, famines, droughts, etc. Although they are not obliged to accept foreign disaster relief, most governments invite such assistance and are grateful for it. Nor shall I address the question of economic assistance to poor countries. A

¹ See, among others, Christopher Clapham, *Africa and the International System: The Politics of State Survival* (Cambridge: Cambridge University Press, 1996), I. William Zartman (ed.), *Collapsed States* (Boulder, CO: Lynne Rienner, 1995), K.J. Holsti, *The State, War, and the State of War* (Cambridge: Cambridge University Press, 1996), and R. Jackson, *Quasi-States: Sovereignty, International Relations and the Third World* (Cambridge: Cambridge University Press, 1990).

² I. Kant, “Perpetual Peace,” reprinted in H. Reiss (ed.), *Kant’s Political Writings* (Cambridge: Cambridge University Press, 1977), p.105.

³ T. Hobbes, *Leviathan* (Oxford: Blackwell, 1946), ch. 13.

⁴ Hobbes, *Leviathan*, ch. 13. In the same vein but with a different purpose Kant remarks: “The same unsociability which forced men to do so gives rise in turn to a situation whereby each commonwealth, in its external relations (i.e., as a state in relation to other states), is in a position of unrestricted freedom. Each must accordingly expect from any other precisely the same evils which formerly oppressed individual men and forced them into a law-governed civil state.” “Idea for a Universal History with a Cosmopolitan Purpose,” reprinted in Reiss, *Kant’s Political Writings*, p.41.

⁵ Hobbes, *Leviathan*, p.84.

⁶ See J. Mayall (ed), *The New Interventionism 1991-1994* (Cambridge: Cambridge University Press, 1996), pp.94-124.

“failed state” is not necessarily underdeveloped economically. There are relatively underdeveloped states that are tolerably civil - for example, Botswana - and relatively developed states that are comparatively uncivil - for example, some successor states of former Yugoslavia. Civility is no more a modern political virtue than incivility is a premodern political vice. Nor shall I address every kind of collapsed state. “Failed states” have not collapsed under external military pressure - as Germany and Japan collapsed in 1945 but soon recovered.⁷ Their condition is self-inflicted. They have self-destructed by armed anarchy from within. “Failed states” have a legal existence but not much political existence. They are political failures. The government has failed the citizens and maybe the citizens have failed the government too: to speak of “government” and “citizens” is misleading. In short, “failed states” are hollow juridical shells that shroud an anarchical condition domestically. They fail to disclose very much if anything in the way of empirical statehood.

How should we understand their historical existence? “Failed states” are not only a consequence of the end of the Cold War. Chad was a failure of statehood almost from the time of independence in 1960. Sudan has been largely a failure since the British departed in 1956. “Failed states” are simply more clearly evident today. New cases have emerged with the disintegration of the Soviet empire and the Yugoslav federation. “Failed states” are a consequence of the end of empire. They are a price of unrestricted self-determination of former - usually colonial - dependencies. They have an international existence only because their independence is underwritten by international society including the great powers. That external guarantee is primarily owing to the emergence of a post-colonial international society that is highly tolerant of different degrees of statehood across the world. People living in former colonies have an unhindered right to independence within the framework of the former colonial borders if they want it. Recognition of governments is declaratory and not constitutive, i.e., it is not conditional on empirical statehood domestically. That post-colonial international guarantee has brought into existence a significant number of insubstantial or marginal or even nominal states: what for lack of a better term might be called “quasi-states” of which some have clearly failed, or collapsed, and cease to be “states” in any significant empirical meaning of the term.⁸

We can begin to understand the seeming paradox of juridical statehood in the absence of empirical statehood in the light of a political sleight of hand in the historical application of the rules of the UN Charter regarding the admission of new states.⁹ “Failed states” are an international reality because, firstly, the procedural norms of equal sovereignty and non-intervention (juridical statehood) are observed regardless of domestic civil conditions - in accordance with UN Charter Article 2 (4, 7). And they exist because, secondly, the substantive qualification for international recognition and UN membership (empirical statehood) has been disregarded - Article 4 (1) which declares that member states “are able and willing to carry out” their Charter obligations. That presupposes the capabilities as well as the volitions of empirical statehood and a diplomatic regime of constitutive rather than declaratory recognition.¹⁰ If Article 2 were not universally respected and Article 4 were not generally disregarded “failed states” would probably not exist. Instead, colonies and other kinds of dependent states would still be in existence. In short, as indicated, “failed states” issue out of a novel post-colonial international society which has recently welcomed another wave of new or rediscovered states emerging out of the disintegration of the Soviet Union and former Yugoslavia.

The subject that I wish to address in this essay is not the historical background of “failed states” or the changed international circumstances that made their emergence possible. I have dealt with that at length elsewhere.¹¹ Here my purpose is to investigate the implications of “failed states” for applied international ethics. “Failed states” clearly are a calamitous reality for their populations. But do they also

⁷ See A.W. DePorte, *Europe between the Super-powers*, 2nd edition (New Haven, NJ: Yale University Press, 1986), p.57.

⁸ See Jackson, *Quasi-States*.

⁹ I am indebted to Will Bain for drawing this to my attention.

¹⁰ See M.J. Peterson, *Recognition of Governments* (London: Macmillan, 1997), pp.68-71.

¹¹ Jackson, *Quasi-States*.

constitute a normative problem for international relations? I shall approach the subject from the international society perspective associated with the work of Hedley Bull and Martin Wight.¹² The ethical issues presented by “failed states” shall be investigated along two normative dimensions of international society: state sovereignty and great power responsibility.

II. Pluralism, Solidarism and “Failed States”

What ought to be the response of international society to “failed states”? The ethics that underpin postcolonial international society are basically pluralist, i.e., they are concerned primarily with upholding international order and the sovereignty of independent states. Whatever governments and populations do with their sovereignty at home, whether they use it for good or ill, is largely up to them to determine. That conventional pluralist view is disclosed most clearly by the universal *grundnorm* of non-intervention. There are human rights. There are refugee laws. There is a Convention on the Prevention and Punishment of the Crime of Genocide. Since the end of the Cold War there is a rapidly growing body of Security Council resolutions which are directed at massive human rights abuses in certain states. There is a vigorous debate about humanitarian intervention.¹³ The domestic jurisdiction of states - as affirmed in UN Article 2(7) - has been eroded in a few cases by UN Security Council resolutions, e.g., 688 on Iraq, 794 on Somalia, 713 on Bosnia. We speak of “the new interventionism” by international organizations.¹⁴

Those normative developments provoke the following questions. Are the ethics of international society becoming more cosmopolitan or solidarist, i.e., are they increasingly concerned about domestic civil conditions around the world regardless of the sovereign state in which people happen to live?¹⁵ Is it becoming plausible that the sovereignty of UN member states is protected not only for the sake of international order and political independence but also to uphold domestic civil conditions? Defending the sovereignty of particular states arguably makes less than complete sense if their governments cannot or will not pass on the benefit to their citizens - or if their citizens cannot or will not put that benefit to good use in their joint political lives. Do “failed states” present a challenge to the Westphalian order as Chester Crocker suggests?

That raises further questions concerning state sovereignty and great power responsibility which shall occupy centre stage in the remainder of this essay. Are the “successful” members of international society responsible for “failed states” beyond the duty to respect their external sovereignty? Are they also bound to alleviate their adverse domestic civil conditions if that is possible? Do “failed states” present a normative quandary to the great powers if they do not pose any threat to international order? The qualification is crucial: if “failed states” pose a threat to international order there is no normative predicament because the great powers are charged specifically with defending international peace and security under Chapter 7 of the UN Charter. The crucial question is: Do great powers have any responsibility in regard to “failed states” if those states are a calamity for their population but only a nuisance for their neighbors and other outsiders? Is there any place for international trusteeship or comparable arrangements that would (in effect) put “failed states” into political receivership or political

¹² See, for example, Hedley Bull, *The Anarchical Society*, 2nd edition (London: Macmillan, 1995) and Martin Wight, *Systems of States* (Leicester: University of Leicester Press, 1977). I apply the international society approach to the post-Cold War era in *The Global Covenant: Sovereignty, Humanity and World Politics* (forthcoming).

¹³ One of the best arguments for conceptual revision is O. Ramsbotham, “Humanitarian intervention 1990-95: a need to reconceptualize?” *Review of International Studies* 23 (1997), pp.445-468. Also see M.J. Smith, “Humanitarian Intervention: An Overview of the Ethical Issues,” *Ethics and International Affairs* 12 (1998), pp.63-80.

¹⁴ See Mayall, *The New Interventionism 1991-1994*.

¹⁵ Hedley Bull raised that question in *Justice in International Society: The Hagey Lectures* (Waterloo, ON.: University of Waterloo Press, 1985).

care until their domestic conditions reach some minimally acceptable standards of civility? Should the great powers have the responsibility of providing the armed forces that are necessary for taking internal control of the state and nursing it until the population is declared “fit” to resume political independence?

To sum up thus far: international society has accommodated many “quasi-states” that are of doubtful value to their citizens and some “failed states” that are dangerous places in which to live. Do the uncivil domestic conditions of certain countries constitute valid grounds for setting aside pluralist norms of equal sovereignty and non-intervention? Do they demonstrate a need for making independence conditional, i.e., on minimally satisfactory domestic peace, order and good governance as determined by external judges? Do the great powers and particularly the United States have any responsibility *for* restoring the domestic civil conditions of those countries? If they have such a responsibility, *to* whom are they responsible in that regard? If they presently have no such responsibility, are there any compelling reasons for instituting an international norm for that purpose? Should international ethics become more solidarist at least as regards “failed states”?

III. Responsibility in International Society

In order to investigate these questions explicitly it is necessary to clarify what the concept of responsibility shall mean in this essay. It is familiar territory and some readers may wish to skip over this section.

What does it mean to be politically “responsible”? That is a big question in political theory.¹⁶ Here it must be dealt with unphilosophically and rather briskly. I shall therefore stay as close as possible to everyday English usage. By “responsibility” I refer to the core lexical meaning which is signified by the synonymous terms “answerability” and “accountability.” That meaning is perfectly captured by a famous phrase of President Harry Truman: “the buck stops here.” President Truman had to answer for Hiroshima: that was his responsibility more than anybody else’s. Responsibility calls state leaders to account for their decisions and actions. It is a moral discipline on foreign policy and an important element of the ethical framework that is involved in the conduct of international relations.

The foreign policy responsibilities of state leaders are usually fewer than their domestic policy responsibilities but they are not any lighter. On the contrary, they are heavier. That is particularly so for leaders of the great powers because their international responsibilities carry the clear implication of armed force and thus life and death. The key question that a responsible person is called upon to answer is: “How do you justify that plan, decision, policy, action, lack of action, etc.?” Every national leader who is contemplating a decision or policy has in the back of his or her mind the awareness that it may be questioned by other interested or concerned parties at home or abroad. He or she must therefore anticipate how it could be justified if that becomes necessary. To be responsible is to be answerable *to* some individual or group *for* one’s action. National leaders are usually responsible *to* other authorities, e.g., to superiors (a military commander’s responsibility to the commander in chief), to the electorate, to allies, etc. They are also responsible *for* their actions - in detail virtually an endless number of activities most of which are delegated to subordinates who carry them out.

There is an important distinction between procedural responsibility and prudential responsibility that we ought to keep in mind. On the one hand, we can discern (legal) responsibilities that are defined by the offices that statespeople occupy and by the constitutions, institutions, and rules that specify the authority and powers of those offices: procedural responsibility. That is the responsibility that stems from legal authority. On the other hand, we can discern (political) responsibilities that flow from the discretion or latitude, as large or as small as it may be, that is open to officials in carrying out their duties and assignments: prudential responsibility. Discretion has been conceived as an area of human conduct

¹⁶ See D. Warner, *An Ethic of Responsibility in International Relations* (Boulder, CO: Lynne Rienner Publishers, 1991).

“left open by a surrounding belt of restriction”: Ronald Dworkin uses the analogy of “the hole in a doughnut” to capture the idea.¹⁷ Prudential responsibilities stem from concern about the possible adverse consequences of any contemplated decision, policy or action in the circumstances of time and place in which it must be taken. The virtue of prudence is at the heart of the situational ethics of statecraft.¹⁸

Normally procedural responsibility (based on legal authority) and prudential responsibility (stemming from discretion) operate in tandem and not separately. Thus, for example, under the UN Charter member states have a right of nonintervention and a corresponding duty not to intervene (Article 2). All states have that legal responsibility which can only be set aside in lawfully recognized circumstances which boil down to Article 51 (inherent right of self-defense) and Chapter VII (safeguarding international peace and security). The latter is of course a special responsibility of the Security Council, particularly the permanent (great power) members: United States, China, Russia, Britain, France. The rule of nonintervention is not open to doubt as to its legal existence and shape. However, it is open to state leaders and particularly leaders of the great powers to decide when and where and how it shall be enforced. It might be impossible or unwise to enforce it consistently at all times in every place on earth. Prudence is a political virtue and that is especially so in foreign affairs where risks and hazards of political life are usually greater.

The main responsibility for safeguarding international peace and security obviously must reside with the leading military powers of the day: they are among the small number of states in a position to threaten international peace and security, and they are the only states in a position to deter such threats or take effective military actions against them. There is a special ethics of responsibility which has to do with international order and applies exclusively to the great powers. Historically, as Martin Wight points out, “the only distinction in normal diplomatic intercourse is that between great powers and other powers.”¹⁹ That linguistic distinction may be more muted or blurred in our democratic age but the hard reality behind it remains.

As I shall understand the term, a “great power” is a state whose weight (in military power, in political prestige, in economic wealth) is of such magnitude that it is among a very select group of states whose policies and actions can affect the course of international affairs. They are thus of great interest and concern to everybody else. Power inevitably carries responsibility. Great powers have heavier responsibilities than other states: they are answerable for their conduct regarding the most important international issues which often are the most difficult and with regard to which only great powers can do anything very substantial. They are answerable not only to their own people but also to other states and to international society as a whole. The procedural or legal responsibilities of the great powers since 1945 have been defined by the UN Charter and by their domestic constitutions. Their prudential or political responsibilities are defined by their discretionary power to defend their national interests and uphold international order.

By “great powers,” I am of course referring to the permanent members of the UN Security Council all of whom possess a veto. Great powers are not great because they possess the procedural right of the veto; they prudently and politically gave themselves the veto because they were great powers.²⁰ My main focus is on the United States which since the end of the Cold War has clearly emerged as *primus inter pares*. Perhaps the United States is the only remaining great power. Perhaps there is one great power and 4 to 6 major powers (the other four permanent members of the Security Council plus Japan and Germany). But however we decide to answer the empirical question about who qualifies as a great power nowadays the fundamental point remains: it is still possible to talk of great power responsibility in world politics because there is still a fundamental diplomatic distinction in that respect.

¹⁷ Ronald Dworkin, “Is Law a System of Rules?” in Ronald Dworkin (ed), *The Philosophy of Law* (Oxford: Oxford University Press, 1979), p.52.

¹⁸ See R. Jackson, “The Situational Ethics of Statecraft,” in C. Nolan (ed.), *Ethics and Statecraft* (Westport, CT: Praeger, 1995), pp.21-38.

¹⁹ Martin Wight, *Power Politics*, new edition (Harmondsworth: Penguin Books, 1986), p.41.

²⁰ See Wight, *Power Politics*, p.45.

The special procedural responsibilities of the great powers are set out in Chapter VII of the UN Charter: “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall...decide what measures shall be taken...to maintain or restore international peace and security.” Packed into that small text are the key ideas and assumptions of the procedural doctrine of great power responsibility in world politics. First, there is the postulated existence of a concert of great powers: the five permanent members of the Security Council. Second, there is the assumption of international peace and security as a basic value which it is the special responsibility of the Security Council to uphold and preserve. Third, there is the implication that any action by a state or states which threatens or violates that norm is a grave matter of concern to international society as a whole. Fourth, there is the presumption that the Security Council must actively find a way to “restore international peace and security” when it has been disrupted. Furthermore, under Articles 41 and 42, the Security Council may decide what measures to take to enforce the norm, including the use of military force.

But, arguably, it is prudential or political considerations which weigh most heavily and which (usually) reflect a great power’s assessment of its own national interest on any major foreign policy issue. It was the sharp reduction of the threat of nuclear war and the growing possibilities of new forms of cooperation between America and Russia which marked the end of the Cold War and made possible the resuscitation of the previously moribund Security Council and which enabled its actions under Chapter VII in regard to Iraq, Somalia, Bosnia, etc. in the 1990s. Political realities paved the way for legal activities.

IV. International Society as a Benevolent Association

Does the co-existence of “failed states” and “successful states” in one common and universal international society present a normative problem to the pluralist Westphalian doctrine of equal state sovereignty and non-intervention? Should there be a residual responsibility that remains with international society for countries whose governments or citizens, or both, fail to uphold domestic civil conditions? Should sovereign state responsibility revert to outsiders when insiders fail: i.e., to international society?

Implying a positive answer, R.J. Vincent compares international society to an egg-carton.²¹ The sovereign states are the eggs, the carton is international society, and the point obviously is to separate and cushion the eggs. Egg-cartons are necessary because eggshells are fragile and their contents are valuable. The container reduces the chances of cracking the eggs and decreasing or destroying their valuable contents. By analogy international society (the egg carton) serves an important value beyond those of order - the fundamental value of international society - and the independence of member states (the eggs) - the value next in importance. It also serves the good life *within* member states. What if the contents of some of the eggs in the carton are rotten? Egg-cartons obviously would be pointless for rotten eggs. All that one can do with rotten eggs is throw them away and replace them with fresh eggs. Vincent’s analogy carries solidarist implications that “failed states” should lose their sovereign rights and privileges and become (temporary) wards of international society.

“What Ought to be Done about the Condition of States?” Mervyn Frost raises that question in an important article.²² He argues that sovereign states in an international society “reciprocally constitute one another,” i.e., by mutual recognition and by subjecting themselves to a common *norm* of state sovereignty

²¹ R.J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986), pp.123-125.

²² M. Frost, “What Ought to be Done about the Condition of States?” in C. Navari (ed.), *The Condition of States* (Philadelphia, PA: Open University Press, 1991), pp. 183-196. Also see by the same author *Ethics in International Relations: A Constitutive Theory* (Cambridge: Cambridge University Press, 1996), pp.153-155.

and non-intervention.²³ “In order to be recognized as an autonomous state, the state must meet certain specific requirements.... An autonomous state is one in which the citizens experience the well-being of the state as fundamental to their own well-being.”²⁴ Any truly sovereign state, for Frost, is a state whose citizens are substantially free and are not merely juridically independent in their external affairs while remaining more or less in servitude domestically. According to Frost, the adverse conditions of the citizens of “failed states” must be a matter of international concern to the governments and citizens of “successful states:” “the recognition of slaves cannot establish the freedom of the master.”²⁵ The civil conditions of “failed states” should therefore be restored by international action as soon as possible. If “failed states” are simply tolerated by “successful states” - i.e., their independence is respected but nothing is done to correct their adverse domestic civil conditions - neither “failed states” nor “successful states” will be truly free but, instead, their status and relation will be more akin to that of slaves and slave-masters.

What action should international society take to correct the adverse domestic condition of “failed states”? Frost’s normative analysis invites the answer: “successful states” ought to establish the condition of true or substantive freedom in their interactions with “failed states.” Substantive freedom, according to Frost, requires a process of education and counseling which presupposes that the citizens of all states be treated “*as if they were citizens of a free state.*”²⁶ It seems to imply constitutive recognition which was (largely) a colonial practice that required candidates for statehood to meet externally imposed standards of domestic governance before independence was acknowledged. According to Frost:

Just as social workers attempt to educate inadequate parents to the responsibilities of parenthood.... States and citizens ought to be educated about the ways in which freedom is constituted in the relations between sovereign states.... A self-respecting free state is one that is recognized as such by other states. Subservient states, frail states and enslaved states cannot confer on strong states the recognition constitutive of freedom.²⁷

The world of states is certainly interconnected in terms of shared norms of international society which specify procedural responsibilities in the relations of states - e.g., those laid down by the UN Charter discussed above - and presuppose prudential responsibilities connected with the value of international order. The question invited by Frost’s controversial and somewhat old-fashioned argument is: should that pluralist basis of the society of states be replaced - at least in those circumstances that involve “failed states” - by a more demanding solidarist norm of positive sovereignty, that is, should the requirement that state capacity to enforce domestic civil conditions and to carry out international obligations (Article 4 of the UN Charter) be a requirement for continuing independence? That is the colonial practice of constitutive recognition. Or should international society continue to be based on a less demanding pluralist norm of negative sovereignty: freedom from external political and military interference (Article 2 of the UN Charter) the almost certain result of which will be continuing substantive inequality between states?²⁸ That is the post-colonial practice of declaratory recognition which does not impose external conditions on domestic governance as a condition of membership of international society.²⁹

²³ Frost, “What Ought to be Done about the Condition of States?” pp.183-196.

²⁴ M. Frost, *Towards a Normative Theory of International Relations* (Cambridge: Cambridge University Press, 1986), p.179.

²⁵ Frost, “What Ought to be Done about the Condition of States?” p.195.

²⁶ Frost, “What Ought to be Done about the Condition of States?” p.195 (italics in original).

²⁷ Frost, “What Ought to be Done about the Condition of States?” p.195.

²⁸ On positive and negative freedom see I. Berlin, *Four Essays on Liberty* (London: Oxford, 1969), pp.118-172.

²⁹ See the discussion of this aspect of recognition in Peterson, *Recognition of Governments*, pp.12, 22-26.

V. Great Powers as International Trustees

The implications if not the actual arguments of Vincent and Frost concerning international responsibility as regards “failed states” bring to mind an earlier international society that embodied institution of trusteeship. That older normative doctrine was famously expressed in 1783 by Edmund Burke in a debate in the British parliament on British rule in India: “all political power which is set over men...ought to be some way or other exercised ultimately for their benefit.... [E]very species of political dominion...are all in the strictest sense a trust; and it is of the essence of every trust to be rendered accountable.”³⁰ In other words, Britain was responsible for the civil conditions of British India until such time as India could stand on her own feet and become a full and equal member of the family of nations.

That older international society consisted of both non-sovereign states and sovereign states, i.e., dependencies of one kind or another as well as independent countries. Not so very long ago, the political world included numerous non-independent countries of various kinds: UN Trust Territories (there may still be one or two left), League of Nations Mandates, condominiums (such as the Anglo-Egyptian Sudan), colonies, colonial protectorates, protected states, among others.³¹ Statehood was justified by reference to the (Western) “standard of civilization”, the (British, i.e., Lord Lugard’s) Dual Mandate in Tropical Africa, the (French) *mission civilisatrice*, and similar norms and institutions that expressed principles and practices of international trusteeship.³² Article 6 of the General Act of the Berlin Conference (1885) bound all colonial powers involved in the partition of Africa “to *watch over* the preservation of the native tribes and to *care* for the improvement of the conditions of their moral and material well-being.”³³

Trusteeship had a place in both the League of Nations Covenant and the United Nations Charter. Article 22 of the Covenant declared that “those colonies and territories...which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world...form a sacred trust of civilization.” “Tutelage” of such peoples was “entrusted” to certain “advanced nations” and “exercised by them as Mandatories on behalf of the League.” The League mandate system thus involved the exercise of quasi-colonial government by a designated great power over such colonies and territories. The purposes and responsibilities of the UN’s trusteeship system involved not only the pluralist goals of furthering “international peace and security,” among others, but also the solidarist goal of promoting “the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples.” In other words, international society and the great powers in particular were involved in the domestic affairs of certain territories that were deemed to be not yet fit for state sovereignty or, in some cases, even for internal self-government.

Trusteeship was almost completely terminated at the end of the colonial era: international society was formally leveled at that time. The watershed of change was the 1960 UN General Assembly Resolution 1514 which declared that “all peoples have the right to self-determination” and “inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.” That revolutionary principle was passed by a vote of 89 to 0, with 9 abstentions. The Declaration is considered by Third World states and by many others as a “second Charter” of the UN promulgated to liberate all remaining dependent peoples from alien rule. From that time empirical statehood as a valid ground for determining the right to sovereignty went into eclipse and juridical statehood became the basic criterion. That normative change is clearly implicated in the substantively very unequal international society in which we presently live.

³⁰ Burke, *Collected Works*.

³¹ See M. Wight, *British Colonial Constitutions* (Oxford: Clarendon Press, 1952), pp.5-14. For a recent inquiry into the revival of trusteeship see P. Lyon, “The Rise and Fall and Possible Revival of International Trusteeship,” in M. Twaddle, *Decolonisation and the International Community: Essays in Honour of Kenneth Robinson, Journal of Commonwealth and Commonwealth Politics XXXI* (March 1993), pp.96-110.

³² G.W. Gong, *The Standard of “Civilization” in International Society* (Oxford: Clarendon Press, 1984).

³³ Emphasis added.

In the early 1960s, a leading British scholar observed that independence of the Third World did not eliminate the problem for which trusteeship was originally instituted: the world was still fundamentally divided between the strong and the weak, the rich and the poor, the capable and the incapable, the organized and the disorganized, the experienced and the inexperienced:

“The problems of trusteeship were the problems of power, of the *responsibilities* of the strong towards the weak. The unequal distribution of political and economic power in the world, which was the fundamental basis of colonialism, has not been suddenly abolished by the accession of most colonies to political independence...the rich and powerful countries of the world are not thereby absolved from any further *responsibility* toward those countries.”³⁴

That plea went largely unheeded. From 1945 until the end of the Cold War international trusteeship was confined to UN supervised transition of a small and select number of territories around the world from quasi-colonial status to independence. UN Trusteeship involved decolonization via international organization. It was expected to go out of business when all dependent territories were independent. It was not intended to transfer already independent states back to a quasi-colonial status.

In the 1990s, however, there are some indications that the idea of trusteeship may not be quite dead. Some intimations of trusteeship are discernible in the involvement of the UN in the domestic conflicts of certain independent states without the consent or invitation of their governments (the existence of which is sometimes in doubt) and under no threat to international peace and security, for example: in the Kurdish areas of northern Iraq where pacification and protection was provided by the United States and several other military powers; in Cambodia where the UN assumed the responsibility of restoring and maintaining internal order and administration; in Somalia where for a time such government as could be said to exist was in the hands of a UN representative, a US military commander, and a representative of humanitarian NGOs; in Liberia where an outside military force of West African states under Nigerian leadership attempted to restore domestic peace which had collapsed in a civil war. In short, certain “failed states” have been met with international responses that have earmarks of trusteeship even if the language and the formal arrangements of trusteeship are not employed.

In the contemporary era of numerous civil wars and internal conflicts it is easy to see the need for some kind of international trusteeship which might take over responsibility for pacifying and governing what clearly are “failed states” or “collapsed states” until such time as domestic civil conditions can be restored and such countries can be returned to a government of their own people. According to Peter Lyon (who favours the idea of trusteeship in the proper context): “It is in the desperate situations of state collapse or near-collapse that the United Nations, or some other international body, is invoked to act as a surrogate sovereign and support system in the face of anarchy and human misery - and the signs are that such situations are currently on the increase... UN trusteeship would almost certainly be an improvement on the anarchical conditions of the several quasi-states the world has now.”³⁵ Lyon acknowledges the practical difficulties that would confront international trusteeship: “Sustaining collapsing states, quasi-states, and merely nominal states becomes the main challenge and task for would-be trustees in the 1990s...[but]...it would be politically and psychologically unwise to saddle what would, in practice, be a freshly thought out system with the old name. Perhaps guardianship...would be appropriate.”³⁶

I argued above that a revolutionary normative change of international society - i.e., that allowed all colonies to become independent if they wished regardless of their domestic civil conditions and their capacity for self-rule - was implicated in the existence of “quasi-states” and “failed states.” If that argument has historical validity, and I believe it does, then presumably another normative change of an opposite kind that sanctioned and required minimal standards of domestic peace, order, and good governance as an international condition of continuing independence would reverse the problem. In

³⁴ Kenneth Robinson as quoted by Lyon, “The Rise and Fall and Possible Revival of International Trusteeship,” pp.105-106 (emphasis added).

³⁵ Lyon, “The Rise and Fall and Possible Revival of International Trusteeship,” p.106.

³⁶ Lyon, “The Rise and Fall and Possible Revival of International Trusteeship,” pp.107-108.

effect that would involve resuscitating and reinvigorating the institution of international trusteeship whatever we decide to name it.

VI. The Responsibility of Political Independence

Such a counter-revolution would reverse universal decolonization. The chances of that happening are not very good in the present circumstances of world politics. It would be loudly condemned by Third World states and their major international supporters, for example China and India. If it got that far, China could veto any such action by the UN Security Council. But suppose it were feasible politically. Would it be desirable? Would it be wise? Would it be justified? The burden of argument for adopting trusteeship or any comparable international arrangement for dealing with “failed states” is on those who propose such a fundamental change. In this final section I shall address some normative questions about the responsibility of political independence raised by the existence of “failed states.” These questions concern issues of procedural responsibility, issues of prudential responsibility and issues of moral responsibility.³⁷ I shall conclude by justifying the post-colonial practice of international responsibility.

There are questions of a procedural nature to be addressed. First, there is the issue of criteria and their application: On what generally accepted criteria would international trusteeship for “failed states” be based? Who would decide what the criteria were? In what situations would they be applied? Who would determine the domestic conditions that impose trusteeship and those that withdraw trusteeship in any particularly case? Second, there is the question of carrying out the responsibility: Who would be called upon to bear the possibly heavy and thankless burden of serving as international trustee for “failed states”? Would that responsibility be voluntary or would it be obligatory? If it is voluntary would it be carried out? Would any volunteer be acceptable? Would it have to fall upon designated capable and public spirited states - e.g., the United States, Britain, France - and be obligatory?

There are questions of a prudential nature. International trusteeship for “failed states” clearly would lay additional and very likely onerous responsibilities on the great powers, and particularly the United States, that would be difficult to exercise even in favorable circumstances and would, as indicated, provoke enormous controversy. It could undermine the most fundamental international good that the great powers are singularly responsible for upholding and defending: international order. Would great powers or anyone else be willing to accept what may be a very long commitment involving years or possibly even decades? (I have in mind the decades long unresolved internal conflict in Cyprus.) If responsible outside powers - the United States, for example - hesitate, would irresponsible outside powers use this circumstance to intervene in the name of trusteeship?

However, let us assume that these problems could be sorted out. Suppose, then, that a trusteeship system were instituted to rehabilitate particular “failed states” that had been taken into international care. When would we know that they were restored to the point of being ready for independence once again? How can social workers be certain that those individuals in their care are now ready to assume the responsibilities of parenting and can have their children back? The truth is we would only know if a government or people had been successfully returned to minimally acceptable conditions of empirical statehood after trusteeship was withdrawn and constitutional independence was restored. The proof of the pudding is in the eating. We might discover that the problem was still there. Should the state then be placed back into international care again? The impossibility of that scenario is obvious. That seems to suggest rather strongly that government - good, bad, or indifferent - is primarily a matter of domestic politics. If that is so, it tells against any international ethic of solidarism for “failed states.”

Finally, there are questions of a moral nature. And here we come to the heart of the matter. The fundamental question that should be asked of those who advocate an educative or social work relationship

³⁷ I am indebted to Jennifer Jackson Preece for clarification of these points.

between “successful states” and “failed states” is: are they prepared to accept the normative implications of their solidarist argument which may be indistinguishable from colonialism and thus paternalism? Trusteeship involves paternalism on an international scale. What does paternalism come down to in foreign affairs? It is taking on at our own initiative responsibilities that lie outside our sphere of jurisdiction and operation in the desire to do some good or to reduce some evil in a foreign country by placing the people who live there under our control and care without the consent of the government. Paternalism is treating governments and citizens of foreign countries as children. Kant believed that a paternal government was “the greatest conceivable despotism” because it treated adult and sane human beings “as immature children” who cannot be entrusted with responsibility for their own lives. It thereby “suspends” their freedom and obliges them “to behave purely passively.”³⁸ The same moral criticism can be made against those who advocate international trusteeship to rehabilitate “failed states.”

The post-colonial state system is based on the opposite norms of pluralism and anti-paternalism. When countries cease to be colonies and become independent, the legal and political responsibility of state sovereignty passes from the imperial power to the government of the newly or once again independent state. The local government is from that moment responsible for the conduct of the domestic and foreign affairs of the state. The imperial government is no longer responsible. Authority has passed from a government run by outsiders to a locally sovereign government run by agents or representatives of the indigenous population. The imperial government is legally and politically now out of the picture. Their international duty is to stay out and henceforward to refrain from intervening in what is now the domestic jurisdiction of a foreign state. The newly independent government is now and henceforth answerable *for* both the domestic and the foreign policy of the ex-colonial state. It is answerable *to* its own people and *to* other sovereign members of international society. The British refer to that transfer of sovereign authority and power as the acquisition of “responsible government.” I believe that is a useful term which precisely captures recent and current international practice.

Who, then, is responsible *for* “failed states”? If we accept the pluralist and anti-paternalist normative logic of equal state sovereignty the answer to that question is: the people who live in “failed states” are responsible, both the citizens and the government but especially the government. The people who are responsible for the calamity in Somalia are the Somali clan leaders and followers: there being neither a Somali government nor a Somali people since the state fell apart in 1990-1991.

Can that restricted practice of international responsibility as regards Somalia and other “failed states” be justified? I believe the only reasonable answer in a society of sovereign states is yes. In an international society based on non-intervention, the domestic good life is something for which the governments and citizens of those states are primarily responsible. If domestic civil conditions remain to be built after independence outsiders cannot be expected to carry out that clearly internal responsibility. The most that outsiders can legitimately be expected to do is, firstly, not to obstruct insiders in that regard - that would violate the norm of non-intervention - and, secondly, to generously provide whatever material and moral assistance they can - international aid would not violate existing norms of state sovereignty. I do not believe that it is either feasible or desirable to return to the era of trusteeship - even if the language is not employed. A change of terminology cannot come to grips with the underlying normative problem that trusteeship or guardianship or any other such term invokes. Whatever it may be termed, trusteeship is normatively at odds with the ethos of equality of cultures, civilizations, races, etc. that entered into international society, in my view quite rightly, during the course of decolonization after centuries of inequality and discrimination.

³⁸ I. Kant, “On the Relationship of Theory to Practice in Political Right,” reprinted in Reiss, *Kant’s Political Writings*, p.74. Also see in the same vein J.S. Mill, “A Few Words on Non-Intervention,” in J.S. Mill, *Essays on Politics and Culture* (ed. by G. Himmelfarb) (New York: Anchor Books, 1963) and M. Walzer, *Just and Unjust Wars*, 2nd edition (New York: Basic Books, 1992), ch. 6. See the interesting commentary in Samuel LaSelva, “Selling Oneself into Slavery: Mill on Paternalism,” *Political Studies* XXXV (1987), pp.211-223.

The normative boundary that separates the post-colonial world of equal sovereignty and non-intervention, on the one hand, and the colonial or quasi-colonial world of international trusteeship, on the other hand, is that of consent, i.e., freely exercised and uncoerced accord. On one side of the line is a political world of formal equality, of independence, of non-intervention: post-colonial and post-Soviet Westphalia. On the other side of the line is a political world of formal inequality, of dependent status, of foreign intervention: the world of imperialism, of medieval pre-Westphalia, and possibly of post-Westphalia too. Western decolonization of the Third World, the freeing of the Soviet satellite states of eastern Europe, and finally the breakup of the Soviet Union and Yugoslavia marked a movement of the international system completely to the anti-imperial Westphalia side of that line: *cujus regio, ejus religio*. That is the international norm of toleration and non-intervention or, as one of Gorbachev's senior aids (Gennady Gerasimov) put it: the "Sinatra Doctrine" and no longer the "Brezhnev Doctrine."

What, then, ought to be done about "failed states" if the norm of consent is to be respected and violations of the UN Charter have not been committed by the government? There are various international options available to members of international society for that purpose. The sovereignty of "failed states" cannot rule out the perfectly legitimate and legal questions: Should we continue to recognize their governments? Should they be isolated?³⁹ It is up to members of international society to decide whether they wish to see "failed states" continue to participate in their exclusive club the core of which is still the Western democracies. "Failed states" could be banished to the outer fringes of diplomacy or beyond. They could be blackballed. They could be expelled from the international organizations of which they are members. The declaratory recognition of governments can be withdrawn without infringing on state sovereignty, i.e., the constitutional independence of states.⁴⁰ Members of international society also are fully entitled to impose conditionality on countries who seek their financial aid or technical assistance. Foreign governments are perfectly within their rights to lay down conditions such as the protection of human rights or the institution of the rule of law in exchange for their international aid. In short, there are many ways to responsibly address the problems of "failed states" without suspending their sovereignty and patronizing their people.

Far from being morally defective the existing pluralist and anti-paternalist ethics of international society can be justified in the present conditions of world politics. As indicated, upholding the *grundnorm* of nonintervention only makes normative sense if the states being defended give or can at least plausibly be assumed to give the opportunity for independent countries to pursue the "good life" however differently that domestic political condition may be defined from one time or place to the next. Nonintervention is a prohibition and thus a negative liberty: freedom from outside interference.⁴¹ It is an international guarantee that makes the pursuit of the "good life" possible within independent countries without worrying about foreign intervention. But it is not an assurance that the good life will actually be forthcoming: it is not an enabling condition or positive liberty.⁴² Whether the government and citizens of any particular state actually manage to build and enjoy their own "good life," or not, is up to themselves; it is not a responsibility of international society as a whole or the great powers in particular.

By postulating the actual value of all member states of international society, the egg-carton analogy clearly is misleading. The society of sovereign states is not completely analogous to an egg-carton. Although it is fundamentally concerned with maintaining the peaceful co-existence of states, it is not concerned with ensuring the internal value of states according to some general standard comparable to that of "fresh eggs." Contemporary international society does not operate generally (i.e., universally) with enforceable standards which exclusively concern the domestic conditions of states. It only operates that

³⁹ I have elaborated on this point in R. Jackson, "International Community Beyond the Cold War," in G. Lyons and M. Mastanduno (eds.), *Beyond Westphalia?* (Baltimore, MD: Johns Hopkins, 1995), pp.59-83.

⁴⁰ For the important distinction between constitutional independence and recognition see Alan James, "The Practice of Sovereignty in Contemporary International Society," in R. Jackson (ed.), *Sovereignty at the Millennium*, a special issue of *Political Studies* (forthcoming 1999).

⁴¹ For the domestic analogy to this point see Berlin, *Four Essays on Liberty*, pp. 118-172.

⁴² I have explored the distinction between negative sovereignty and positive sovereignty in *Quasi-States*.

way voluntarily in certain world regions - such as Europe and North America - where, for example, member states of the Council of Europe, the EU, the OSCE, and NATO's Partnership for Peace consent to intrusive international standards - such as human rights, the rule of law, protection of minorities, liberal democracy, market economy, etc. There also is nothing to prevent voluntary consensual international action to assist people in foreign countries to engage in domestic pacification or state building or other forms of political development. International aid is widely practiced. Peace-keeping is also widely practiced. But it is deferential to state sovereignty. It is not conducted in disregard of international borders. Nor could it be that way if the political independence of existing states is to be preserved.

It might be argued that human rights norms justify international trusteeship for "failed states." In general, human rights norms do not preempt the *grundnorm* of non-intervention.⁴³ If human rights were a preemptive norm that was generally observed - i.e., the way that non-intervention is observed - we would be living in a dramatically different world in which the *grundnorm* would effectively be intervention rather than non-intervention. World politics would no longer presuppose states as independent moral communities framed by an international ethic of pluralism. Instead, it would posit a singular world political community with a solidarist ethic. But the fact is that such a radically different world does not exist nor is it looming on the horizon. There is no compelling indication in state practice of which I am aware that solidarist ethics are preempting pluralist ethics in world politics. We are still living in a Westphalian world and we appear destined to continue in that way for the foreseeable future. The purpose of this essay, however, is not to speculate about the future course of international normative change. It is merely to defend existing pluralist norms of state sovereignty in regard to the international issue of "failed states".

⁴³ That is not to deny that the concept and doctrine of humanitarian intervention is presently undergoing some measure of revision. See Ramsbotham, "Humanitarian intervention 1990-95: a need to reconceptualize?"