
DR. MARTIN L. COOK



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UNCHARTED WATERS

Welcome and Introduction, Dr. Albert C. Pierce, Director,
Center for the Study of Professional Military Ethics

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Lecture by Dr. Martin L. Cook

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Questions and Answers

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William C. Stutt, USNA Class of 1949

This is an edited, abridged version of the original lecture transcript.

WELCOME

Dr. Pierce

Good evening, ladies and gentlemen. Welcome to the 2005 William C. Stutt Ethics Lecture. Two years ago, Bill Stutt, Naval Academy Class of 1949, and his wife, Carolyn, made a generous contribution to the Leaders to Serve the Nation Campaign to support one major ethics lecture every fall semester. These lectures are part of a larger series begun by the Center for the Study of Professional Military Ethics back in the spring of 1999. Twice a year, we bring a distinguished speaker here to address important ethical issues facing the military profession. We choose the speakers and the topics with an eye towards the learning objectives and the syllabus of the Naval Academy's core ethics course NE203, and it's great to see this semester's crop of NE203 students here this evening, as well as many others in the Naval Academy community.

One of the pleasures in my job as Director of the Ethics Center is that I occasionally get the opportunity to invite and introduce a friend to speak here. Dr. Martin Cook and I have known each other for more than 10 years and collaborated on a number of projects. You have his bio in your program, and I encourage you to read that. I will not repeat all of the details of his distinguished career. I would say, however, that he is a most serious and a most highly respected student and teacher of professional military ethics. I would also point out, and this is, I think, not in the program, that he grew up as an Air Force brat, taught for several years at the Army War College, and is now a professor of philosophy at the Air Force Academy. So to make him truly joint, from time to time, we give him a touch of Navy blue, and we invite him here to speak to us at the Naval Academy. Please join me in a warm Naval Academy welcome for Dr. Martin Cook.

LECTURE

Dr. Cook

Thanks, Al, and it truly is a pleasure to be here with you. My nod at jointness is the title of my lecture, "Uncharted Waters," because the thesis I want to develop tonight is that we are entering a stage of international relations which truly is very new, and it's going to affect, in particular, the *jus ad bellum* side of the Just War tradition that you have been studying.

So almost immediately, I want to switch metaphors to one that Dr. [George] Lucas and I learned about when we started together at Santa Clara University in California in 1982, and that metaphor is the earthquake. I never experienced earthquakes until I moved to California, and the most interesting thing about them is the psychological effect that they have on people. You're sitting somewhere, and the landscape around you is stable as the rocks, and everything looks familiar. Then, all of a sudden, there is this sudden jolt, and if it's a big one, the landscape is rearranged, and it fundamentally looks different than it did only minutes ago. And it seems to me that we are at one of those earthquake points in terms of international relations, and just like real earthquakes, there are lots of little tremors and little suggestions that we're building up toward this before the major shift, but I think we're almost there.

In other words, I am going to suggest that there are a number of developments in the contemporary world that are moving us into genuinely new territory and will cause us to rethink our settled moral and ethical frameworks and even the legal ones about the use of military force. I'll suggest, in fact, that this change is of a magnitude we haven't seen for 350 years.

The last time there was such an earthquake was the year 1648 with the Peace of Westphalia, which created the international system that we know now. You remember from your history that the reason for that peace was that there had been a century and a half of religious war in Europe following the Protestant Reformation. The Reformation challenged an assumption that had been abroad in Western culture for more than 1,000 years,

which was that civilization was only possible if there was a unified Christian civilization, known as Christendom. After the Reformation, all the players except for the radical reformers thought it was worth fighting a war to try to put the Humpty Dumpty of a single, unified Christian civilization back together again. In a fit of exhaustion rather than a triumph of idealism, they decided the game was over in 1648 and a new system would have to be created. That was the Westphalian system, under which we have all lived for 350 years or so.

Let's remind ourselves what the basic features of that system were. The essential elements were that the world would be divided into sovereign states, which would possess the rights of territorial integrity—that is to say, their borders would be respected—and political sovereignty, meaning what they do in their own territory, would be sacrosanct and not disturbed by other states.

That's important because, at the time, if you were of the wrong religion in the wrong country, you were likely to be persecuted or even killed, and the states that shared your religious convictions were choosing deliberately to turn a blind eye to that reality. So to put it in modern terms, the Peace of Westphalia was international stability purchased at the price of human rights, with the realization that human beings would be sacrificed, but it was the only alternative for international peace.

My thesis is that this [system] is undergoing enormous stress, and I'm going to explore three dimensions of that stress in our brief time together this evening. First is one that's as old as the Westphalian system; namely, there is an ever-growing and more apparent mismatch between the humanitarian demands of living human individuals and the current system of international law that is supposed to protect them. So the first point is the mismatch between international law and humanitarian concerns.

The second is a number of changes in military technology, especially for major powers such as ourselves, which affect the way we do war fighting. You would think this was a *jus in bello* consideration, but I will argue [these changes] have unanticipated

ripple effects back into the *jus ad bellum*, the decision to use force in the first place.

Thirdly, and most obviously, are the challenges posed by the need to fight an effective global war against terrorism.

So let's start. The Westphalian system, as I have already indicated, was stability bought at the price of human rights. That system was deemed not ideal, but it was the best of a bad deal for quite a long time. When we got to the end of World War II and looked at the carnage of the war and, in particular, the Holocaust, most of the states of the First World who survived said that the systematic destruction of human beings by their own government should never again be permitted.

As soon as the new United Nations was created, one of its very first acts was the creation of the Genocide Convention, which said that sovereignty of international states had limits. The major limit, the clear limit, was they were not permitted in the name of their sovereignty to commit genocide against their own citizens, and the states of the world committed themselves to use military force to stop genocide.

If you followed the discussions in recent years concerning places like Rwanda and the Darfur region of the Sudan, you know that this raises an enormous practical problem. We are very reluctant to call something genocide, because if we do call it genocide, arguably we have committed ourselves to an obligation to make it stop.

Let me read you a passage from one of the best books about this topic, Geoffrey Best's *War and Law Since 1945*. He writes:

From 24 October 1945, the day the [United Nations] Charter entered into effect, it has had competition. Alongside it, and prefigured in the Charter itself, there ran a parallel legislative stream of humanitarian and human rights rules and standards which States undertook to take note of, and which, if words mean anything, they should in some last resort be required to observe. ... Members of the U.N. insist that they retain full sovereign rights, and nominally indeed they do, yet they stand committed at the same time to a

variety of human rights observances which in principle entitle their neighbours to complain in case of neglect.

That's the end of the quote. Notice he is not saying anything grand here, but he is saying that the states that signed the genocide convention—and, for that matter, the treaty—said that when states violate the human rights of their own citizens beyond some unfortunately vaguely specified threshold, other states have minimally the right to complain and criticize the internal affairs of that state.

There was a deep tension that wasn't fully appreciated when the United Nations was founded. On the one hand, the U.N. was committed to collective security in a way that was consistent with Westphalia and sovereignty, that is to say, it was an agreement that the major powers, acting through the Security Council, would have legal authority to authorize intervention to prevent aggression. That was the collective security mission.

On the other hand, by their embracing of these human rights concerns, they had—perhaps without fully appreciating the magnitude of what they were doing—also committed themselves to actions to protect human rights, which might undermine their own sovereignty. This tension was largely obscured, by the way, during the Cold War, because almost everything that could have called for humanitarian intervention was also part of the bipolar world problem that the Cold War created. [This tension] came to the fore with the Kosovo intervention, which you're probably just barely old enough to remember, but let remind you of the features of that.

All the players agreed that Kosovo was a part of the sovereign state of Serbia and should remain so. Indeed, it was the policy of the United States and every other player that Kosovo ought not, at the end of this process, end up an independent state.

On the other hand, there was no Security Council authorization for anybody to intervene to stop the ethnic cleansing that was going on in Kosovo. Nevertheless, NATO, as you well know, went ahead and did the intervention and effectively stopped it.

Now there was a lot of verbiage about how to justify that intervention in the U.S. The Brits were actually more honest about what happened here. In their official study of the Kosovo intervention, they said it was, and I quote, "Illegal but necessary." Illegal but necessary. Why was it illegal? Because the charter clearly reserves the right to authorize such things to the Security Council, and yet here is a case of a regional security organization acting on its own authority in the name of human rights to carry out the intervention.

Well, the issue then is the inability of the U.N., or of the so-called international community collectively, to deal effectively or consistently with human rights issues. Recently, Secretary General Kofi Annan from the U.N. said the following: "While the purposes should be firm and the principles constant, practice and organization need to move with the times. If United Nations is to be a useful instrument for its member states and for the world's peoples, it must be fully adapted to the needs and circumstances of the 21st Century."

I take that to be the Secretary General's authorization and notice that the U.N. is inadequate to the task, and if you follow what is going on at the U.N. right now, there is a lot of discussion about how to reform it. Maybe that will be successful, but to be honest, I'm not too optimistic about it. So if [the U.N. isn't it], what will be the legitimate international authority?

You may be familiar with the work of Thomas Barnett, who used to teach at the Naval War College. [His recent books include] *Blueprint for Action* [and] *The Pentagon's New Map*. His basic thesis is the world is divided into what he calls the core states, states that are united by their commitment to globalized trade, to democratic governance, to human rights, and that that core has common interests which need to be articulated. One of the strategic goals of the core ought to be to bring in what he calls the gap states, so that their interests are involved too. And he says probably the best we are going to do in the near future in terms of legitimate authority for various kind of interventions in the name of human rights is for these core states to be able to cooperate with each other.

So my first major area of uncharted water is this: There is a deep mismatch between the international legal order as it now exists and the humanitarian needs around the world that desperately need to be addressed. Some of the uses of force that we are probably going to advocate, which are arguably necessary, will fit poorly, if at all, in these settled frameworks of international law and ethics. In other words, this is a tension point on the fault line.

Something is going to have to give here, and I'm not sure what. A couple of things could happen. The U.N. could reform itself; new international agencies could come along; or, as in the case of Iraq, individual states like the United States will claim unilateral authority to act. All of those are problematic in different ways, so hold that thought. [Point] number one is the mismatch between the structures of international law and the practical problem.

Point number two, technology. In recent years, we have seen a dramatic change in the nature of conventional warfare, at least as conducted by us and a few other high-technology states. Largely, this is a result of technological development. Here, I am talking primarily about precision, standoff munitions for aircraft and ships.

When you first look at precision munitions, or PGMs, it can't fail to be good news from an ethical point of view. For the first time, it is possible to conduct significant combat operations that are fairly discriminate and proportionate. Indeed, in the Air Force, one of the big debates is about the new small-diameter bomb, which reduces the explosive yield of the weapon. If you can be that precise with targeting, you don't need large explosive power. You have just studied *jus in bello*. You know that has to be good news, that it is possible to conduct this kind of warfare discriminately.

And indeed, I bug my cadets by asking them questions like: When is the last time the United States Air Force flew a significant air-to-air combat mission? The answer is Vietnam. When is the last time United States Air Force flew into significantly defended airspace? The answer is Vietnam. So we have achieved a degree of air dominance with these weapons that is beyond the wildest dreams of air power enthusiasts of the early

years, and similar things go for naval aviation and also for naval cruise missiles.

I furthermore think, and this really irritates my cadets, that the future of aviation is probably unmanned aerial vehicles (UAVs) and space weapons, and this goes deeply against the culture of the Air Force, which loves its airframes. I don't know if you noticed in the "Early Bird," but about a month ago, they announced that one operator, who wasn't even a trained pilot, successfully flew a four-ship formation of predators with computer assistance out of Nellis Air Force Base. In the future, you can imagine fairly low-trained operators, who don't need a pilot's license, operating entire fleets of UAVs with computer assistance, safely and far behind the lines, indeed in the continental United States if the connectivity and bandwidth permit.

I also don't know if you noticed, but about three weeks ago, DARPA [Defense Advanced Research Projects Agency] had an experiment for an autonomous land vehicle, one that would navigate completely across desert terrain on its own. They conducted this experiment last year, and all the vehicles ran off the road in the first 300 yards, I think. This year, they succeeded. At that rate, I think we're looking at a degree of autonomous weaponry and nonhuman-operated weaponry, or at least remotely operated human weaponry, that will be quite significant. We are already using robots, as you probably know, all over Iraq to scout the interiors of buildings.

Well, how do these kinds of technical developments—which you might think are just interesting technical facts—how do they affect the ethical and legal waters to make them uncharted? Well, as you know from your studies, one key aspect of the *jus ad bellum* criteria of Just War is that the use of military force should be a last resort. Now, if you think about that and ask why that should be an ethical requirement of the use of force, there were historically two reasons. One is that there is an inherently ethical reason, namely killing people and breaking their things is *prima facie* something that is bad to do, and you need to justify doing it ethically by showing that the cause is sufficiently grave. In addition to that, there was a prudential reason. Since any use of

military force required putting one's own forces at risk of significant loss of life and equipment, a thoughtful commander would be reluctant to commit those forces unless he or she believed he had no alternative. Even the most successful wars conducted by major powers historically have been enormously costly in lives and of the resources of the state.

Well, the technologies that I just mentioned come close to eliminating, or at least radically reducing, the prudential reasons for insisting that use of force be a last resort. That is to say, they make military options available to political leaders sooner than they might otherwise have been, because they approach risklessness for their own forces. So the ironic fact is that technologies that were developed to help military power be more discriminate and more in keeping with the *jus in bello* requirements of Just War turn out arguably to reduce the *jus ad bellum* requirement of last resort.

One way to test my hypothesis about this is to ask the following question. Just pick any recent use of U.S. military force and ask if we would have done this if we thought we would have significant U.S. casualties as a result of doing it. If you ask yourself that question, I think you will find yourself paring down very quickly a number of things. For example, in the Clinton Administration, there were several occasions where we launched large quantities of cruise missiles at Iraq, saying that we were doing this to "send a message," which previously had been the job of the State Department. But if you can do it with standoff munitions, then it becomes more tempting to use those rather than the other elements of national power.

Here is the second area of uncharted waters. The possession of military capabilities to engage in uses of military force without significant risk will, at a minimum, tempt political leaders to use the military instrument of power in ways in which, in the past, they might not have. They might have instead relied on diplomatic or on economic means to try to influence events. It seems to me that this fact inevitably threatens whatever small degree of restraint the Westphalian *jus ad bellum* put on the use of force between nations. So that is number two, technology and its effect on *jus ad bellum*.

Lastly, the challenge of global terrorism. Most of you are, I assume, familiar with the National Security Strategy (NSS) of the United States, what it is and what the document represents. This is the highest-level statement from every administration of what we think our strategic goals are in the world. As you probably know, it is handed to the military to create a secondary document, the National Military Strategy, which suggests that if this is what you want to achieve politically, then here is the force structure. Here is what the military must do to accomplish those goals.

Forgive me, but I want to read you a couple of paragraphs of the NSS, and I want you to reflect on what is going on here, because even though this is a bureaucratic document written for bureaucratic reasons, if you listen carefully, there is a moral argument going on here.

Here is the NSS: “For centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack.” Everybody got that? [May] legitimately use force when there is an imminent danger of attack. For the A students in the class, the lawyers have a different term for this. They call it anticipatory self-defense.

The quote continues:

Legal scholars and international jurists often conditioned the legitimacy of preemption on the existence of an imminent threat—most often a visible mobilization of armies, navies, and air forces preparing to attack.

We must adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries. Rogue states and terrorists do not seek to attack us using conventional means. They know such attacks would fail. Instead, they rely on acts of terror and, potentially, the use of weapons of mass destruction—weapons that can be easily concealed, delivered covertly, and used without warning.

Okay, listen up. Here comes the moral argument. “The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy’s attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.”

Okay, a couple of comments about this. First, did everybody note that there is an explicit moral and legal argument in this document? It says explicitly that the ancient category, the well-established legal category of anticipatory self-defense, well established in international law, needs to be reinterpreted, according to us, from what has been the accepted understanding of it to something new, and there is a justification for that reinterpretation because of the nature of the adversary, the gravity of the threat, and the covert character of probable attack.

Let’s unpack that argument a minute and see how good it is. The most obvious thing to notice about the war on terrorism, as it is generally called, is however you want to characterize our adversaries, they are not states. This raises a major problem for the entire system that we have lived with for 350 years, because war in the Westphalian system is by definition an activity that states conduct against other states. So, if we are strict about the language, we are either changing what the word “war” means, or we are using it metaphorically.

There are important things to note because [our adversaries] are not states. They are willing to commit suicide. Therefore, rather obviously, they are neither deterrable nor punishable. In contrast, of course, conventional nation-state actors are. If their agents attack you, you know where they live. With these folks, the literal perpetrators are absolutely beyond being punished because they are dead, and your ability to link them to some group that you could have punished depends entirely on the quality of your intelligence, which so far has not been terribly good in this conflict.

Furthermore, retaliation is difficult too. Even if you knew who the group was that sent the terrorists, unless they are on the high seas or in a completely failed state, they are in the territory of

some sovereign state. Under the existing international law, if you attack them on that territory, you have committed an act of aggression against the state in which they find themselves. So you can't retaliate against them; you can't deter them; and you can't punish them.

The fact that they aspire to very large attacks, possibly including weapons of mass destruction attacks, makes it imperative, so the NSS argues (and I think most of us would agree), to prevent the attack, even though the conventional understanding of Just War has tended for the last 200 years to restrict the just causes of war to the response to aggression which has already occurred against you or something that comes so close to it as to be a criterion of imminent attack.

I think you worked through Michael Walzer on this, didn't you? Walzer, you remember, argues for a three-part test, that your adversary has capability, intent, and that there is a great risk of waiting. What the NSS essentially argues is we can't get intent, or we are going to assume intent, and we don't know about risk, because we won't know until it happens, so we are going to use one criterion for legitimate attack, namely capability. We will try our best to eliminate the capability.

The reasons for that are, I think, pretty clear, but this is one we may want to talk about a bit. Ask yourself as ethics students the following question. If the strategy of preemption, as articulated in the U.S. National Security Strategy, became the accepted standard for international conduct for all states, what would the consequence be? And if you remember your moral philosophy, you will remember that this is essentially what Kant had in mind when he asked whether you can universalize your maxim. So are we genuinely and sincerely proposing that we are rewriting the rules of international conduct for a new rule, and if so, what is the rule? Apparently, the rule is that every sovereign state may, based on its own judgment as to the nature and extent of threat, use force to eliminate capability which they believe to be a threat against them, without the need to justify it before any international tribunal.

I suggest it doesn't take a very clever person to see that if that

were indeed the universal standard, there would be serious problems with this. You may recall this came up in the last presidential election, and the debate got trivialized into the question of whether there is or isn't an international test for the use of American power. President Bush said no international test, and John Kerry said probably some kind of international test, but he was not terribly clear about what it was. Why is the debate so stuck? Because the only thing that would pass for an international test in the present system is the U.N. Security Council, which as we have already indicated, is dysfunctional on this point, or at least erratically functional. So that is not going to serve as an international test.

So here is the third area of uncharted waters. How are we—and I don't just mean we Americans, I mean we the world community—going to rework international institutions and international law to address these very real problems that the NSS is correctly struggling with? [How can we do it] without totally removing or undermining all agreed standards of international conduct, indeed the work of hundreds of years at the international level?

If we take the NSS at face value, it at least risks reverting to a *de facto* standard that claims every state has the freedom to do whatever it likes whenever it claims, on the basis of its own information and its own authority, that it believes its actions are necessary for its own defense. Unilateral preemption of that sort, in the absence of any kind of new law or international institutions or any agreed standards, would, if you think about it, amount to the restoration of the 18th-century standard for the use of military force, which was for reasons of state. If you are familiar with the way that dialogue went, all a leader had to do was say, "I am committing military forces for reasons of state," and that was a full and sufficient reason for doing it. If we go that way, we go back to what Hedley Bull called the anarchical society in its extreme form in international relations, which the last couple of centuries of international law have tried to restrain.

I have reached my conclusion, and I look forward to dialogue.

Let me just summarize it. International law and the settled ethics of war that we have now are simply not adequate to address today's international challenges. That is okay from a philosophical point of view, because it is important to think about this. The Just War tradition has two fundamental pieces to it. It has a legal form, and it has an older and deeper philosophical form. I assume, when you did this in class, you talked about the origins of this with St. Augustine and Thomas Aquinas and all of that stuff that long predated the Westphalian system, explaining the uses of force in those terms.

The law as it has evolved since Westphalia is a kind of stop-motion photograph of an evolving ethical tradition. In some ways, I think the international system we now look at is more like the problem St. Augustine faced than it is like the problem that Hugo Grotius, the father of international law, faced, because Augustine's problem was not the attack of sovereign states upon sovereign states. It was attack by barbarians on the entire order of civilization as he knew it and the need to work out a justification for its defense.

I think we are at a point where some hard thinking needs to reach all the way back to the origins of Just War, namely to the Augustinian model. In the end, the goal is not the peace of an ideal world, but the peace of a kind of tranquility of order which is made possible by an overarching international system within which people can travel in peace and conduct commerce.

We have got some hard thinking to do, and I suspect that the military world you are about to enter will be one during which the earthquake will occur. So thank you for your kind attention.

QUESTIONS AND ANSWERS

Question

Who are we to go against this [international] system [of laws] in order to defend it, and can we qualify a state who is going against the United Nations as a rogue state, even if it is for human rights issues?

Dr. Cook

I want to go to the last point that I made. How do we understand what is happening in the international system now? It seems to me the model that we have been working with is what I called the Westphalian model, the idea that the important players in the international system are sovereign states possessing equal rights. That model is fitting very poorly in the current context. This gives us great difficulty, because all of our legal and ethical frameworks for several hundred years have been geared to thinking about the international system that way.

Of course, the power, the actual military power to do things in the world, still is in the possession of independent sovereign states, and overwhelmingly in the hands of the United States. The question then is how to construe the threat and how to think about the community that is defending itself. What I was trying to suggest is I don't think the U.S. in the long run will be well served by saying it's about defending the United States. I think what is best going to be defended is saying, "Well, you Canadians and Europeans and Japanese and Singaporeans and Australians"—this is the Barnett thesis, and we could add more countries, perhaps India on the way and some others—"constitute a genuine community of interest despite all of our differences." We have a common interest in an economic system and in a democratic political structure, certain kind of commitments to human rights, and what is being attacked by groups like Al Qaeda is precisely that. It is not an attack on any of these independent countries. Indeed, their long-term goal, as you know, [has nothing] to do with what we think of as the First World. It has to do with their own governments in the Middle East and the restoration of an imagined historical caliphate.

That's why I used the Augustine example. You know, here you have Augustine sitting there in North Africa, watching as Rome has already been conquered and as the civilization around him is falling, and being asked to defend what is worth defending here. And the charge, by the way, against him and his fellow Christians was "It's you guys' fault that this is falling apart. When Rome had its civic gods and its commitment to civic virtue, we did okay." So he gives this very nuanced answer to say, on the one hand, the fall of Rome, if it happens, is not the absolute end of the world. It's not the highest good on planet earth, but on the other hand, only a fool would fail to recognize that Roman power provides a kind of what he calls tranquility of order that makes a kind of decent, civilized life possible. So who are we to do it? Well, I think we are the people with the civilization to defend.

Questioner

But is it good to go against our own rules to defend this civilization?

Dr. Cook

Well, that's why I was trying to say yes and no. The particular set of rules we have doesn't fit the problem very well. On the other hand, I hope it was clear from what I said at the end, I am not suggesting, as some are, that it is such a new world we need to throw out the idea of rules entirely, but we do have to rework the rule set.

Just take the Security Council, for example. The founding idea of the U.N. is very clear, and by the way, the United States was the primary author of this document. The assumption was that the five major powers would cooperate for collective security, and indeed originally, that they would pony up military forces for collective security. It is obvious that never worked effectively, and it is certainly not working now. One option is to say, "Well, because it says this in the U.N. charter, you can't do anything that is not authorized by the Security Council." I call that U.N. fundamentalism.

Now, if that is to be the way we go, we are basically paralyzed in all but the easiest cases. The U.N. knows it has a problem. That's why I quoted Kofi Annan. We know they have a

problem. Maybe the U.N. could be reformed to make this work. Maybe it can't. If it can't, then what is your alternative? I was suggesting that one alternative is to start thinking about a community of like-minded states. So the fact that Article 5 of the NATO charter was invoked for the first time in its history after the United States was attacked was a collective security judgment by the NATO alliance, saying "Well, we are not going to wait for the Security Council here. One of our member states has been attacked. We are going to work in a collective security way to deal with that problem." That may be where we have to go.

And my point about the stop-motion character of law is the law may not be there yet, but the law is a moving target. The law, as we now know it, was a human invention to deal with the reality after the last earthquake, after the settlement of the Peace of Westphalia, and there is nothing sacrosanct about that. The landscape looks different now.

Question

I have a question about the whole idea of humanitarian intervention. No matter how far you trace it back, a strong person or strong entity has always had the obligation to intervene when people that are weak had their rights challenged. This was before the U.N. ever came along. Why don't we just scrap the whole U.N. idea and say, "Hey, guess what, we are the big kid on the block. We still have a moral obligation to act in humanitarian crises, you know. Let's just keep rolling on like we did before."

Dr. Cook

Great question. Let me just correct one historical point, all right? The point I wanted to make about Westphalia is Westphalia was a deliberate decision not to use force to intervene.

Trick question: What is the preface to Calvin's Institutes of the Christian Religion? Who is it addressed to? Does anybody happen to know the answer to that? There is a long preface [to this] very theological book.

The preface is to the King of France. So why is John Calvin, Protestant theologian, sitting in Switzerland, writing a long letter

to the King of France at the front of his book? Because what he is trying to do is say to the King of France: "This is what we Protestants believe. You shouldn't be persecuting us."

They fought this series of wars from his time in the 1540s and '50s up until 1648, and that was the point of my historical story about Westphalia. When they decided to stop in 1648, the consequences of that decision were bloody. The decision was: if I am a Protestant prince looking at you, Catholic France, I am going to ignore whatever you do to my coreligionists who live in your territory. If you kill them or persecute them, which probably by the way you will, I am going to choose to ignore that. That's what I call black-box Westphalian sovereignty, and people were very conscious when they did it that they were walking away from the lives and religious rights of those religious groups that happened to be in the wrong borders. That was the key [to the] Westphalian system.

After World War II, people said we can't do that again. Remember that a lot of what the Nazis did to the Jews and to gypsies and to homosexuals and a lot of other people was something they were doing to their own citizens on their own territory, by the way, the activities being conducted by a democratically elected government.

So people looked at that and said, "You know, I think there are limits to what sovereignty is going to protect, and that is over the line." So that was the point of my little historical story. On paper, you have the commitment in 1948 saying we won't do that anymore. But in practice, how many genocidal-like activities have gone on in the world between 1948 and now that, for one reason or another, the major states kept their hands off of?

Questioner

Too many.

Dr. Cook

Lots, right. The vast majority of them. Intervention is rare rather than the norm. So my point is, this is again a case where, as Best put it in the quote that I read, you have these two bodies of law, one that says Westphalian states are sacrosanct. They get

to have their borders and their political sovereignty. Leave them alone. And then along with it in parallel, you have this body of law that has kept growing, saying human individuals have rights that ought to be respected, and their governments ought to respect them, [resulting in] treaties on the rights of women, on the rights of children, and on religious diversity. I mean, all that stuff is on the books, right? So you have two bodies of valid and incompatible law, and what happens in practice is states cherry-pick this. Depending on what the dispute is about, they play to one side or the other. Some states have a consistent preference for one side of it or the other. The European community tends to have a consistent preference on the human rights law side. The Russians and the Chinese tend to have a consistent preference on the state sovereignty side, and we tend to play it right down the middle, depending on what the issue is.

My point is that this is another one of these tectonic issues that clearly is not logically coherent. Something has to give.

Now to your final point, is the right answer to say we have the power, and we will act unilaterally? Well, I think if you think that through, what I was suggesting is the danger of absolute unilateralism is far too great because you make your own enemies. On the other hand, I think we are wrong to suggest that we don't have a lot of friends out there who share similar values. If given a convincing case that humanitarian intervention is called for, they would more often than not be willing to cooperate if the case is convincing and the resources are available. It is a diplomatic job to do the convincing. Will it work every time? No, but if you go in with the attitude that we have no international test, which means we don't need to talk to you, I think that you set yourself up for failure.

If that is not responsive, please go ahead.

Questioner

Yes, sir, it is very responsive, but in the event where diplomatic bodies fail to act in a timely manner while atrocities are being committed, and people actually do die while we wallow in inactivism—

Dr. Cook

Right.

Questioner

Why don't we just pick up the cause and say, "You know what, if it was such a large priority to the world community, they would have done it in a timetable that we were going to do it on."

Dr. Cook

The history of the Kosovo intervention is really interesting to look at on that, because the U.N. was clearly not going to do anything about it. Why not? Because the Russians were going to veto anything. The Serbs are their historical allies. There was no chance, zero chance, that a resolution would get out of the Security Council. So that is political reality number one.

Political reality number two, the Europeans initially said "We can handle this. It's a problem in Europe. It's a European problem. Let us handle it." That went badly. Finally [they evolved to] "Yes, U.S., would you please do it?" As a coalition of NATO, we went and did it.

Now what was the lesson learned by all that? If you read Wesley Clark's book, who was in command of that operation, what you find out is that having the whole of NATO involved turned out to bring an enormous diplomatic complexity to the problem, with not a lot of military capability from the allies. So when we went to Afghanistan, NATO was willing to come, but we said, "Thanks, we would rather do it on our own, because we don't want all the diplomatic complexity."

This problem is not solved, but what I think is called for is a new diplomatic kind of initiative to build this coalition of like-minded states and continue to work with the U.N. I mean, the U.N. is not unaware that it has this problem. Whether it is fixable or not, I think, is unclear. What Barnett is arguing, and I was suggesting too, is you may not get the U.N. fixed, but there is probably something better than unilateralism, namely a coalition of like-minded states at least.



