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Terrorism and the Politics of Human Rights

SHARON ANDERSON-GOLD

Abstract: Humanitarian interventions defined as "peace-keeping" missions are becoming an increasingly common occurrence. This paper will consider the relationship between the idea of human rights and the concept of legitimate intervention into the affairs of sovereign nations. I will argue that implicit within the concept of human rights are standards of political legitimacy which render all claims to sovereignty "conditional" upon adherence to these standards. After analyzing how both critics and supporters have viewed human rights interventions, I will consider how the "war on terrorism" may contribute to a further extension of the concept of legitimate intervention. I will conclude with reflections on the implications of these interventions for cosmopolitan democracy and the conditions under which it can be realized.

umanitarian interventions defined as "peace-keeping" missions are becoming an increasingly common occurrence. This paper will consider the relationship between the idea of human rights and the concept of legitimate intervention into the affairs of sovereign nations. I will argue that implicit within the concept of human rights are standards of political legitimacy which render all claims to sovereignty "conditional" upon adherence to these standards. When sovereignty is regarded as conditioned by human rights, violations are viewed as occasions for interventions which are initially justified by humanitarian goals but which ultimately aim at regime change. While constitutional democratic governments are widely regarded as political ideals, my paper raises questions concerning the use of humanitarian intervention as a legitimate means to further democratic ideals.

After analyzing how both critics and supporters have viewed human rights interventions, I will consider how the American "war on terrorism" may contribute to a further extension of the concept of legitimate intervention. Given the legitimacy of a universal and pre-emptive war on terrorism, the inability of any nation to secure its borders and to provide internal security against the use of its territory by terrorists provides an additional justification for intervention to prevent violations of the rights of innocent victims of potential terrorist attacks. Critics of these new policies of intervention see in human rights a useful ideological instrument that continuously generates new conflicts in order to eliminate disturbing social

conditions that stand in the way of securing world peace. Can it be that the cosmopolitan world order that liberals since the time of Kant have set as the supreme moral goal depends upon an ultimate "militarization" of world politics?

In 1948 the United Nations took a rather dramatic step. It criminalized the act of war and empowered the international community to take action against any "aggressor." In the context of the Nuremberg trials, three types of violation of international law were created, all of which presuppose this new view of war as criminal activity: crimes against the peace, war crimes, and crimes against humanity. All of these forms of violence would henceforth be viewed as more than breaches of morality which states may or may not respond to; they would also be viewed as breaches of international law and therefore create obligations on the part of the international community to take corrective action. While the UN Charter also prohibited interference in the internal affairs of states, the classical notion of state sovereignty was clearly transformed by the notion of international crimes. The claim essential to the juridical character of the Nuremberg trials, that officials of state could be held criminally accountable for actions that disturb the peace and security of others, presupposes the legal subordination of national interests to international law.

The UN Charter also took the view that human rights are universal entitlements that are essential to the goal of peaceable association and that these rights should be promoted by all nations both separately and as a whole. Those who had committed crimes against the peace through the initiation of the Second World War had also engaged in genocide. Henceforth, the violation of human rights was connected with a propensity for international aggression in the minds of many statesmen. This sentiment was expressed in the claim of Secretary of State Marshall that, "Governments which systematically disregard the rights of their own people are not likely to respect the rights of other nations and other people and are likely to seek their objectives by coercion and force in the international field." If governments could be internally constrained with respect to the types of violence they could visit upon their own citizens, they might also become less inclined to visit violence on others. Human rights were thus envisioned as an essential part of the scheme of international pacification.

But how was this new doctrine of international human rights to be made legally compatible with the prohibition on interference in the internal affairs of sovereign nations? Initially many international lawyers took the view that human rights covenants were "binding" only in the sense that they represented the intentions and aspirations of the signatories, not that they were "enforceable" by third parties. Under this "idealist" interpretation, international law has been described as "soft law." When states violated these covenants, third parties might alter their own behaviors in such a manner as to impose "sanctions" but direct intervention was deemed to be prohibited by the non interference requirements of the Charter.

In holding to both the principle of t tions of human rights, the Charter something stretching beyond soft l characteristic of hard, or positive la prophetically argued that the UN (matters of domestic jurisdiction for to Henkin, whatever is covered by no longer a matter of domestic jur tervention in the internal affairs of insightful interpretation, interven another. In fact, one might argue a doctrine of implied powers that the action whose purpose is the prot would comprise only those types of human rights.4 Thus the concept of is to "keep the peace" in order to p the doctrine of human rights.

Although the UN lacks direct standards, the Security Council, thr to request volunteers to intervene in security."5 Initially reluctant to use abuses, the Security Council has internal conflicts as "threats to in violence visited upon civilian popu The link between civilian violence been thought to be tenuous, and it has in effect broadened its mandat the sense in which such interventi a new language has emerged. Inter to human rights are referred to as designated "peace-keepers." States as "failed" states and therefore as intervention to constitute a violati cue" operation to restore a norma must be rebuilt. Thus, peace keep task of "state building." But both situation one of simple restoration of the conflicts that have preceded to impose a new normative order.

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In holding to both the principle of noninterference and the criminalization of violations of human rights, the Charter displays a potentially unstable hybrid character, something stretching beyond soft law but without the mechanisms of enforcement characteristic of hard, or positive law.² In 1977 international lawyer Louis Henkin prophetically argued that the UN Charter effectively withdraws human rights from matters of domestic jurisdiction for all members of the United Nations.³ According to Henkin, whatever is covered by international law or agreement is by definition no longer a matter of domestic jurisdiction. While the Declaration also forbids intervention in the internal affairs of another nation, it is not, according to Henkin's insightful interpretation, intervention for one state to respond to violations by another. In fact, one might argue as an inference from the application of the legal doctrine of implied powers that the Charter of the UN authorizes all reasonable action whose purpose is the protection of human rights. Unlawful interference would comprise only those types of interference incompatible with the defense of human rights.4 Thus the concept of a "humanitarian intervention" whose purpose is to "keep the peace" in order to prevent violations of human rights is implicit in the doctrine of human rights.

Although the UN lacks direct executive-military power to enforce human rights standards, the Security Council, through Chapter VII, Article 2.7, is granted the right to request volunteers to intervene in situations that "threaten international peace and security."5 Initially reluctant to use military intervention to prevent human rights abuses, the Security Council has during the past decade increasingly interpreted internal conflicts as "threats to international peace and security" because of the violence visited upon civilian populations and the "humanitarian" crises that result.6 The link between civilian violence and threats to international peace has sometimes been thought to be tenuous, and it is arguable that in this way the Security Council has in effect broadened its mandate to protect human rights directly. To downplay the sense in which such interventions are interferences with national sovereignty, a new language has emerged. Interventions that are responses to perceived threats to human rights are referred to as "humanitarian" and the troops that are sent are designated "peace-keepers." States that are suffering internal conflict are perceived as "failed" states and therefore as possessing insufficient internal sovereignty for intervention to constitute a violation.7 Humanitarian intervention suggests a "rescue" operation to restore a normal condition and a failed state is something that must be rebuilt. Thus, peace keepers are increasingly vested with the additional task of "state building." But both metaphors are misleading. In neither case is the situation one of simple restoration. Both idioms conceal the normative dimensions of the conflicts that have preceded the intervention and the consequent necessity to impose a new normative order.

While intervention in the affairs of other states is hardly a new development, the use of "humanitarian" to modify "intervention" signals a new form of

justification that is characterized as uniquely valid and universal. Previous forms of justification for intervention were various and formulated in terms of the defense of heterogeneous values. What is most striking about the new idiom according to Jovan Babic is that, "As a device to express a new ideology or primary political dogma, it appears to single out a set standard applicable to valid forms of political governance anywhere on the globe." Because international law prohibits war, humanitarian interventions have been conceived as a kind of "police action." However, police action presupposes some form of global law to which all state agents would be continually subjected. But asks Babic, what would international law have to be like to make this possible? He argues that it is not possible to treat the combating of human rights violations as a sort of defense unless there exists a unique point of reference fully authorized to interpret situations without allowance for appeals. Thus a single authority to which all are equally subject is required for the constitution of the global law legitimating interventions.

What then would be the source of this authority? Although the Security Council of the UN is the organ responsible for deciding when interventions are justified, only the most powerful nations have a voice in making these decisions and as things stand in the current international legal order, only the most powerful states are capable of implementing them.9 This introduces the possibility of selective implementation of human rights interventions that primarily serves the geo-political interests of powerful nations. Given precedents it becomes arguable that even regional interventions such as that undertaken by NATO in Kosovo without UN approval (although illegal in the strict sense) are indeed justified by the principle of human rights. Ultimately Babic fears that states meeting the conditions for intervention may become the subject of attack by any country willing and able to engage in "corrective" activities aimed at "ameliorating" the state of affairs in that country (the "coalition of the willing"). According to Babic, the authorization (from whatever source) of the universal enforcement of human rights would have as its consequence the general militarization of global affairs and "would lead to the practice of an intervention becoming, rather than the exception, quite an ordinary matter . . . this would indicate that the practices of sending American troops around the globe would become a much more common occurrence, unsurprising to anyone."10 Critics of humanitarian intervention such as Babic question whether even humanitarian interventions, given the current configurations of power, can escape the charge of private justice.

While also sensitive to the charge that the politics of human rights leads to wars disguised as police actions to lend them a moral quality, Jurgen Habermas argues that the current international order can reasonably be viewed as in a state of transition from a form of law of merely provisional validity to genuine cosmopolitan law with positivist juridical credentials. Habermas acknowledges that the world has become stratified and that only the First World has internalized the norms

declared by the UN Charter, then national interest into harmony wi In order to complete this transition gues there would need to be a greequalization of the material and orejects the claim that human right of politics" lacking in juridical chave a juridical and "positive" stain making a constitutional legal of juridification of human rights is to capable of the pacification of the statement of

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declared by the UN Charter, thereby succeeding to a certain degree in bringing national interest into harmony with the normative claims established by the UN. In order to complete this transition to genuine cosmopolitan law, Habermas argues there would need to be a greater diffusion of these norms as well as a greater equalization of the material and economic status of all nations. Nonetheless, he rejects the claim that human rights interventions are reducible to a "moralization of politics" lacking in juridical character. Human rights according to Habermas have a juridical and "positive" status that is derived from their constitutive role in making a constitutional legal order possible. Thus the ultimate purpose of the juridification of human rights is to bring into existence a cosmopolitan constitution capable of the pacification of the state of nature among states.

In this context Habermas recognizes the strong connection between the criminalization of war and human rights violations and the challenge that these concepts provide to the logic of sovereignty. He states, "The most important consequence of a form of law that is able to puncture the sovereignty of states is the arrest of individual persons for crimes committed in the service of a state and its military."13 Such a definition of criminal activity contains within it an evaluative conception of war and in effect abolishes the traditional conception of a state of nature between nations in which war is morally neutral. However, unlike some critics of this evaluative conception of war (which defines the aggressor as the one who has failed in the upholding of human rights), Habermas maintains that the return to a morally neutral conception of state behavior (with the fully entailed notion of absolute sovereignty) is no longer possible. The prior conception, he maintains, depended upon defining war as a limited engagement over geographically bounded territory whose justification was determined by the rules of prudence. A defeated aggressor was punishable because he had violated the rules of prudence. Peace as defined under these rules was the temporary cessation of war. Given the current situation of global dangers, with its many forms of "terrorism," war is no longer limited. Therefore according to Habermas our concept of peace has to be expanded to include the claim that war is itself a "crime," a crime against peace. Central to the linking of human rights and peace has been the notion that states must be constrained in the use of violence both internally and externally and that therefore domestic and foreign policies must be symmetrical in their objectives. More recently it has been argued that only democratic constitutional governments can guarantee human rights and that non-democratic governments are therefore implicit threats to international peace. Only on the basis of a global regime of democratically constituted governments could genuine cosmopolitan law emerge.

Thus Habermas's defense of the current state of the "politics of human rights" is linked to historical processes that are considered irreversible and are still in the course of development. Of particular importance to Habermas's defense of the politics of human rights is his notion of a global public sphere which he credits

Immanuel Kant with foreseeing. This is because if the norms of human rights are to become truly internal to the political culture of all states, they must become part of a global communicative structure capable of providing a foundation for the development of cosmopolitan law. Habermas appeals to the force of world opinion in providing for the legitimization of the politics of human rights. In this context he looks to pressures brought by nongovernmental organizations to bring about institutional reforms at both the national and international levels, such as those suggested by cosmopolitan democrats like David Held. 14 It is Habermas's belief that insofar as human rights norms are institutionalized and implemented in a nonarbitrary manner, their juridical character will protect against self-interest parading as 'human rights fundamentalism.' Habermas explains, "Morally justified appeals threaten to take on fundamentalist features when they do not aim at the implementation of a legal procedure for the application and achievement of human rights, but rather seize directly upon the interpretive scheme by which violations of human rights are attributed, or when such moral appeals are the sole source of the demanded sanctions."15 The justification of human rights, then, depends heavily upon institutional structures that are truly cosmopolitan in purpose.

The problem for many supporters of the politics of human rights is that the one power capable of providing for the enforcement of human rights in the current international environment, the United States, has blocked many of the institutional reforms needed to complete the transition to a cosmopolitan order. In particular, the US has been unwilling to submit itself to any international court. This lack of principled support for international law gives much credence to human rights skeptics who see in the current climate of intervention only the attempt on the part of the powerful to impose their own interests on others and thereby to attain and secure a position of unchallengeable dominance.

The Bush administration appears ready to expand upon prior interventionist precedents by using the war on terrorism as a justification for interventions in countries that are too weak to secure their own borders and territories from possible use by terrorist groups. Since the ability of nations to provide such security is on a continuum, such a principle is potentially quite broad in scope. Terrorism provides a new conceptual challenge in that such actions are not typically attributed to state actors and therefore do not have the characteristics attributed to wars with respect to authoritative originations or terminations. They are neither limited engagements nor are they geographically bounded. It is unclear then what limits could apply to a "war against terrorism."

If the US is justified in taking unilateral actions to defend itself against terrorism, and if weak states are a threat to the type of security necessary to fight terrorism, then the US appears to be committed to an indefinite policing of the globe. Justified threats will include possession of dangerous weapons of "mass destruction," undemocratic governments that are naturally poised to threaten human rights,

and weak states that cannot secur systematically pursue a "war on to logic of humanitarian intervention keeping operations and engage in

Both critics and supporters agreement about the crucial role declaratory force of internationa appears to be major disagreemen enforcement) becomes internalize under the militarization of huma democracy, hence, no longer have one among many possible interpreter the final basis of all leg deviation is defined as 'injustice. can be "controlled only through universal conflict." 16

This depressing diagnosis of to the heart of how to define cos which it is possible for it to eme idea of "cosmopolitan pluralism an emergent human rights cultutionism reveals the close correst interests. Can then a hegemonic theory" cosmopolitan democracy turing of civil societies. The unpi through eastern Europe in the 19 democratic governance. But thes of civil organizations that press resulting conflicts in some parts the natural consequences of open which interventionists in the Bos settlement.17 Thus, optimism con has survived in some quarters.

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ons to defend itself against terrorcurity necessary to fight terrorism, finite policing of the globe. Justis weapons of "mass destruction," poised to threaten human rights, and weak states that cannot secure their borders and territory. In other words, to systematically pursue a "war on terrorism," as Babic foresees occurring within the logic of humanitarian interventions, the US would have to employ massive peace-keeping operations and engage in major regime change.

Both critics and supporters of the politics of human rights appear to be in agreement about the crucial role of superior power in the transformation of the declaratory force of international law into a constitutive legal order. But there appears to be major disagreement about how what is "the law" (being backed by enforcement) becomes internalized and perceived to be "our law." Babic argues that under the militarization of human rights through interventions, "Liberalism and democracy, hence, no longer have their basis in autonomy. In their places comes one among many possible interpretations of content. . . . This political program becomes the final basis of all legitimization and given its distinct nature, every deviation is defined as 'injustice.'" This circumstance manufactures conflicts that can be "controlled only through securing supremacy over all other sides in this universal conflict." ¹⁶

This depressing diagnosis of recurrent conflict caused by interventions goes to the heart of how to define cosmopolitan democracy and the conditions under which it is possible for it to emerge. I must admit that as one committed to the idea of "cosmopolitan pluralism," I have long put my faith in the possibility of an emergent human rights culture. But a critical assessment of political interventionism reveals the close correspondence between interventions and hegemonic interests. Can then a hegemonic power also provide moral leadership? In "ideal theory" cosmopolitan democracy ought to be the consequence of the internal maturing of civil societies. The unprecedented process of democratization that swept through eastern Europe in the 1990s generated general optimism in the future of democratic governance. But these events had their roots in the prior development of civil organizations that pressed for democratic participation. The regrettable resulting conflicts in some parts of eastern Europe have even been interpreted as the natural consequences of opening up participation in "political will formation" which interventionists in the Bosnian conflict acted to guide toward a "negotiated" settlement. 17 Thus, optimism concerning the future of democracy, while tarnished, has survived in some quarters.

Can this model, which suggests a push/pull process in which external power acts to shape internal democratic forces, be transferred to, say, the Middle East where civil society is either weak or non existent or to Africa where social life is continuously fragmented by civil wars? If we extrapolate from the conflicts which resulted from the opening up of civil society in eastern Europe, contemporary forms of terrorism may be seen to be a consequence of the stirrings of civil society and the processes of liberalization in other areas of the world. The most powerful criticism of the politics of human rights stems from the presumed incompatibility between

the externality of intervention and the internalization of norms that is essential to the nature of any law perceived to be "one's own." Autonomy in this context includes the right to be different. But can autonomy include the right to reject human rights as such? Autonomy surely also includes the dimensions of communication and interaction that allows for individuals to create and recreate associations with others in a global context. Thus the argument from autonomy supports the necessity of certain forms of human rights in order that the claim that certain values are "one's own" and deserve to be respected can be founded and distinguished from an authoritarian imposition of order. In this sense international law and its interventions exist to protect persons from the forms of violence and deprivations that are destructive of the exercise of autonomy.

But interventions by their very nature can only be temporary. It is the future condition of democratic flourishing that justifies intervention. Humanitarian interventions then have their ultimate justification in a condition that is yet to be created. The transition to a cosmopolitan order that Habermas envisions and which provides the juridical foundation for the interventions which precede it presupposes global institutional structures that would destratify the material and economic status of the world's states and societies, thus allowing for the pervasive development of civil society. Such a destratification would presumably lead to the internalization of human rights norms and the transformation of the world's political cultures. Those who would intervene then must be held accountable for the creations of such institutions. On this perhaps both critics and supporters can agree.

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Notes

- 1. Quoted by Patrick Flood, *The Effectiveness of UN Human Rights Institutions* (Westport, CT: Praeger, 1998), 32.
- 2. The UN Charter calls for the development of an international police force but this was never acted upon.
- 3. Louis, Henkin, "Human rights and 'domestic jurisdiction," in *Human Rights, International Law and the Helsinki Accord*, ed. Thomas Buergenthal (Montclair, New Jersey: Allanheld, Osmun & Co., 1977).
- 4. An intervention that could not be carried out without massive loss of civilian life would violate this principle. Sophisticated technologies, such as smart bombs, that allow for the defeat of military opponents without extensive "collateral damage" might pass this test. Such technologies are in general only available to rich and powerful nations who thus are the only states in a position to become human rights enforcers.

- 5. Chapter One, Article One of the UN are "To maintain international p collective measures for the preventior pression of acts of aggression or *othe* The language of this article is broad. to the peace" which apparently can it the repeated references to the protect throughout the Charter, Declaration at that systematic violations of human rigterm peace. *Basic Documents on Hum* 1971), 94.
- 6. I have argued that the UN inte desire to prevent civilian massacres intervention based upon a generalize the purpose of intervention in this in their own purpose for intervention (I facie a threat to international security man Rights (Wales: University of Wa
- 7. The "failed state" has both a de increasingly used to characterize und suffer from internal conflicts. Such st Yinhong and Zhixiong cite this phen number and acceptability of humanic Constraints on Humanitarian Interventiers and Nick Fotion (Oxford: Lexible 1).
- 8. Jovan Babic, "Foreign Armed Int in *Humanitarian Intervention*, ed. A 46.
- 9. Ibid, 56.
- 10. One could argue that the Securi legitimization of interventions, but controlled by the veto powers of a fbe willing to contribute their troops. control the conditions for intervention for either its abolishment or the reformulation democracy.
- 11. Jovan Babic, "Foreign Armed Int 56.
- 12. Jurgen Habermas, "Kant's Perpe in *Perpetual Peace: Essays on Kant's* Lutz-Bachmann (Cambridge: The M

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nout massive loss of civilian life would the as smart bombs, that allow for the lateral damage" might pass this test. In and powerful nations who thus are enforcers.

- 5. Chapter One, Article One of the Charter of the UN stipulates that the purposes of the UN are "To maintain international peace and security, and to that end; to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or *other breaches of the peace*" (italics provided by author). The language of this article is broad. It identifies acts of aggression as a subset of "threats to the peace" which apparently can include a wider range of unacceptable actions. Given the repeated references to the protection of human rights as a primary purpose of the UN throughout the Charter, Declaration and International Covenants, it is not difficult to argue that systematic violations of human rights are threats to international security if not the short term peace. *Basic Documents on Human Rights*, ed. Ian Brownie, (Oxford: Clarendon Press, 1971), 94.
- 6. I have argued that the UN intervention in Somalia was motivated primarily by the desire to prevent civilian massacres from marauding bandits and so did not represent an intervention based upon a generalized threat to international security. If this definition of the purpose of intervention in this instance is accepted, then either human rights become their own purpose for intervention (humanitarian intervention) or their violation is prima facie a threat to international security. Sharon Anderson-Gold, *Cosmopolitanism and Human Rights* (Wales: University of Wales Press, 2001), 124.
- 7. The "failed state" has both a descriptive and a normative significance. This idiom is increasingly used to characterize underdeveloped nations that lack internal cohesion and suffer from internal conflicts. Such states are said not to be "mature modern nation-states." Yinhong and Zhixiong cite this phenomenon as one of the reasons for the increase in the number and acceptability of humanitarian interventions, "After Kosovo: Moral and Legal Constraints on Humanitarian Intervention" in *Moral Constraints on War*, ed. Bruno Coppieters and Nick Fotion (Oxford: Lexington Books, 2002), 249.
- 8. Jovan Babic, "Foreign Armed Intervention: Between Justified Aid and Illegal Violence," in *Humanitarian Intervention*, ed. Alesksander Jokic (Toronto: Broadview Press, 2003), 46.
- 9. Ibid, 56.
- 10. One could argue that the Security Council stands as the collective will underlying the legitimization of interventions, but critics such as Babic would point out that this body is controlled by the veto powers of a few powerful nations and that states must in the end be willing to contribute their troops. Therefore nations, particularly powerful nations, still control the conditions for intervention. Critics of the current status of international law call for either its abolishment or the reform of the organs of the UN along principles of cosmopolitan democracy.
- 11. Jovan Babic, "Foreign Armed Intervention: Between Justified Aid and Illegal Violence," 56.
- 12. Jurgen Habermas, "Kant's Perpetual Peace with the Benefit of 200 Years Hindsight" in *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*, ed. James Bohman and Matthias Lutz-Bachmann (Cambridge: The MIT Press, 1997).

- 13. The claim that human rights are moral concepts without juridical foundations is implicit in Babic's argument but was made explicitly by Carl Schmitt as early as 1932, *The Concept of the Political* (New Brunswick, 1976), and more recently by Hans Enzensberger, *Civil Wars: From L.A. to Bosnia* (New Press, 1994).
- 14. Jurgen Habermas, "Kant's Perpetual Peace with the Benefit of 200 Years Hindsight," 129.
- 15. David Held, *Democracy and the Global Order* (Stanford, Stanford University Press, 1995).
- 16. Jurgen Habermas, "Kant's Perpetual Peace with the Benefit of 200 Years Hindsight," 148.
- 17. Jovan Babic, Humanitarian Intervention, 60.
- 18. Axel Honneth, "Is Universalism a Moral Trap?" *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*, ed. James Bohman and Matthias Lutz-Bachmann (Cambridge: The MIT Press, 1997). Following a line of interpretation developed by Ernst-Otto Czempiel, Honneth demonstrates how even the "empirical" evidence of increasingly severe conflicts can be interpreted as elements in a democratization process.

Part III: Social Philoso