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‘Supreme Emergencies’, ontological holism, and rights to communal membership

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This paper highlights the importance to just war theory of ontological questions about the constitution of personal identity. It does so through a critical reinterpretation of Michael Walzer’s invocation of a supreme emergency exemption to the principles of *jus in bello*. Walzer’s argument has been widely criticized for attaching more importance to communities than to individuals. I argue that his position normatively prioritises individuals, but is grounded in a holistic ontology. He valorises political community only because of its importance to the individuals who comprise it. On this view, each community forms a moral world, and shapes individual identity. This gives individuals a highest-order interest in being part of an autonomous community, and makes threats to communal existence a form of moral disaster. The paper concludes that the debate about supreme emergency should engage with ontological questions, and that such engagement would mean problematizing the study of what liberalism demands in international ethics.

KEYWORDS: supreme emergency, Walzer, *jus in bello*, ontology, dirty hands.

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Introduction

To wage war in accordance with the restrictions of just war theory's *jus in bello* (justified conduct in war) is, in effect, to fight with one hand behind one's back (Ignatieff 2004, p. 24). As this can threaten the outcome of war, there is a recurrent tension between the importance of winning and the need to fight well (Walzer 2006 [1977], pp. 109-37). To allow the principles of *jus in bello* – principally, discrimination and proportionality (see Orend 2006, pp. 105-37, for a detailed discussion) – to jeopardise victory could, if the enemy is sufficiently amoral, risk the survival of a world that takes moral restraints seriously. Conversely, ignoring those principles violates rights and could undermine respect for moral norms, thus exacerbating the threat to morality that prompted the just war. This tension in the ethics of war seems to create a no-win situation: in certain circumstances, any course of action threatens the continued existence of just war theory as a body of norms that imposes limits on military action. In the contemporary world, in which talk of threats to civilisation is so common in the context of the ‘war on terror’, this dilemma is one of the most urgent issues in international ethics.

One of the most important proposed solutions to the problem is Michael Walzer's invocation of a 'supreme emergency' (SE) exemption to *jus in bello* principles, which he propounds in his seminal work *Just and Unjust Wars* (Walzer 2006, pp. 251-68) and in 'Emergency Ethics' (Walzer 2004, pp. 33-50). Walzer argues that, if a political community faces a 'serious' and 'close' moral disaster that threatens its collective survival and freedom, then it *must* override just war principles and fight in whatever manner is necessary to avert the threat (Walzer
2006, p. 252), although it also does wrong in doing so, provided that such actions are a last resort and will be effective. Walzer's argument may be 'the most controversial, and consequential, amendment to just war theory ever proposed' (Orend 2006, p. 141). It has had a chequered history: it became a 'well-established element of the doctrine of just war' (Shue 2004, p. 140), before facing a barrage of 'highly critical' recent discussion (Primoratz 2011, 372. The critics include Shue (2003 and 2004), Orend (2000, 2005, and 2006), Toner (2005), Bellamy (2004), Coady (2004), Cook (2007), Sandin (2009), 153-67, and Kaplan (2011), 219-38).

Many of the critics argue that Walzer's argument is collectivist, because he appeals to the survival of a community and so, they claim, grants independent moral status to states or communities (Shue 2003, pp. 753-5, Primoratz 2011, Roberts 2012).

In this paper, I provide a critical reinterpretation of Walzer’s position, arguing that, rather than being collectivist, it relies on a different type of individualism to that of his critics. In making this argument, I adopt a distinction Charles Taylor has made between ontology and advocacy (Taylor 1989, pp. 159-60). Ontological questions concern ‘the factors [we] invoke to account for social life’ and divide ‘atomists’ from ‘holists’ (Taylor 1989, p. 159). Atomists explain social conditions as conglomerates of individual properties and take individual identity to be independent of society, while holists take identity to depend on particular social formations, so that people’s identity is in large part constructed by their community. Questions of advocacy relate to the degree to which one prioritises individual rights or the common good – in short, they are normative questions – and divide ‘individualists’ from ‘collectivists’ (Taylor 1989, pp. 159-60). Ontological positions
do not determine advocacy, but they are a crucial part of the background to one’s normative position (Taylor 1989, pp. 160 and 163), limit the justifications for positions that theorists may consistently advance, and ‘help to define the options which it is meaningful to support’ (Taylor 1989, p. 161). I suggest that Walzer’s communitarianism reflects a holistic ontology, not a collectivist advocacy.

This means that Walzer does not advance the view that communities are more important than individuals, but that individual identity is in important ways dependent upon the community. A supreme emergency involves conflicting rights: the right of innocent civilians to life versus the right of other innocent civilians to live in an independent community. As a holist, Walzer offers a different account of the importance of those individual rights, attaching at least as much importance to self-determination and to communal membership as to life itself. In arguing that an existential threat to the community can place us in a supreme emergency, he suggests that depriving people of their community may be a fate worse than death. In this view, our interest in being part of an autonomous community reflects the fact that each community forms a moral world. Deprived of that world, we lose a key part of our identity, which is why threats to the community constitute a moral disaster and place us in a supreme emergency.

I argue, then, that the charge of collectivism is misplaced. I go on to suggest that Walzer’s argument is in accord with important aspects of our moral experience, such as our expectation that soldiers will accept risks to themselves for the sake of the community. I also raise important questions about Walzer’s theory, relating to proportionality, the conceptualisation of communities, and the distinction between
political and other communities. I then argue that debates about supreme emergency are mutually intelligible and resolvable only when linked to questions of ontology. I conclude that theorising about supreme emergency, and about the ethics of war in general, must engage with these foundational explanations of the social world. This suggests that the debate about liberalism's ethical requirements on the global scale must be problematized, because holism is compatible with a liberal nationalism that has as strong a pedigree within the liberal canon as does cosmopolitanism.

Walzer’s account of the ‘Supreme Emergency’ (SE) Exemption

Walzer takes his inspiration from a memorandum Winston Churchill sent to the British Government on 16 December 1939 urging them to mine the ‘Leads’, the sheltered waters off the coast of Norway down which German iron ore supplies from Sweden passed en route to Germany. Noting that doing so would violate Norwegian neutrality and jeopardise the safety of Norwegian civilians, Churchill countered that Norway’s independence was reliant on an Allied victory (Churchill 1960, pp. 483-5), and concluded that,

We are fighting to re-establish the reign of law and to protect the liberty of small countries. Our defeat would mean an age of barbaric violence, and would be fatal not only to ourselves, but to the independent life of every small country in Europe...we have a right, and are indeed bound in duty, to abrogate for a space some of the conventions of the very laws we seek to consolidate...The letter of the law must not in supreme emergency obstruct those who are charged with its protection...Humanity, rather than legality, must be our guide. (Churchill 1960, p. 486, emphasis added).
Like the British Government, Walzer rejects Churchill’s claim, arguing that violating Norwegian neutrality at that point would have been simply expedient, not necessary (Walzer 2006, pp. 248-9).

Nonetheless, Walzer uses Churchill’s memorandum as the inspiration for his own account of SE, arguing that it occurs when a particular danger is both horrific (‘serious’) and imminent (‘close’), and so constitutes a moral disaster (Walzer 2006, p. 252). The criterion of seriousness means that the threat is one that would be devastating if it were realised, that of closeness means that there is a grave danger that the threat will succeed. Both criteria must apply for a situation to count as an SE. Walzer argues that Nazism met the first criterion, posing an ‘unusual and horrifying’ threat because it ‘was an ultimate threat to everything decent in our lives…a practice of domination so murderous, so degrading even to those who might survive, that the consequences of its final victory were literally beyond calculation, immeasurably awful’ (Walzer 2006, p. 253). He argues that the second criterion was not met in 1939, but that between the fall of France in 1940 and the summer of 1942, when it became clear that the Nazis would ultimately be defeated, the danger that the Nazis would win the war was sufficiently great that the threat was also ‘close’ (Walzer 2006, pp. 255-63). So, in Walzer’s account, an SE exists when there is a very real chance of suffering defeat at the hands of an enemy of a particularly horrific kind.

Walzer argues that, in an SE, we are justified in overriding the principles of jus in bello, provided that doing so will be effective and is our only way of averting the threat (i.e. our last resort). Given that the Nazis could not be allowed to win the
war, and might well do so, Britain could bomb German cities during the Battle of Britain (Walzer 2006, pp. 255-63). Although the principles of *jus in bello* are constraints upon war making that we must respect in almost all situations, they depend on ‘some minimal fixed values...When our deepest values are radically at risk, the constraints lose their grip’ (Walzer 2004, pp. 39-40. C.f. O’Brien 1981, pp. 79-83. Coates 1997, pp. 5-6, notes that O’Brien is sometimes taken to be the author of the concept of SE). Invoking an SE exemption to just war principles is, in a sense, justified because, although war must be limited, there are times when the limits must be broken.

However, unless both criteria apply, then bombing cities is illegitimate, and so Walzer holds that the firebombing of Dresden, Hamburg, and Berlin after 1942 was simply terrorism (Walzer 2006, p. 261). Given that the Japanese threat was not sufficiently horrific (‘serious’, in Walzer’s terminology), the same applies to the firebombing of Tokyo and to the atom bombs (Walzer 2006, p. 261). Bombing German cities after 1942 might, Walzer argues, have been legitimate were the intention to prevent the Holocaust, which could have been conceived of as a new SE because it threatened the existence of an entire people (Walzer 2004, p. 46), but only if doing so would have prevented the Holocaust and was the only possible way to prevent it. This points to the most controversial aspect of Walzer’s argument: he holds that an SE exemption could have been legitimately invoked even if the Nazi threat were specific to a single country and did not threaten every country in Europe (Walzer 2006, p. 254).
That is because he takes the exemption to arise out of a tension between the responsibilities of office and the duties of humanity. The principles of *jus in bello* reflect the latter. The former exist because of the value of membership in an independent community (Walzer 1983, p. 29). Indeed, political office exists to protect the community and the ‘duties of...office’ impose on political leaders responsibility for outcomes and the safety of the community (Walzer 1973, 161).

We understand Walzer’s invocation of an SE exemption best if we take it as an example of what he calls a ‘dirty hands dilemma’ (Walzer 1973). In such situations, ‘a particular act...may be exactly the right thing to do...and yet leave the man who does it guilty of a moral wrong’ (Walzer 1973, 161, Walzer 2004, p. 38).

Such dilemmas exist because it is impossible to govern innocently and fulfil one’s responsibilities to the electorate (Walzer 1973, 162-4). They are dilemmas because moral principles such as the prohibition on harming the innocent cannot be set aside, but must be overridden (Walzer 1973, 171), which means that acting contrary to principle involves criminal action and ‘leaves guilt behind’ (Walzer 2004, p. 34). In other words, in a dirty hands dilemma, every possible action is simultaneously both right and wrong. If there were no forbidden actions – no inviolable principles of just war, no means *mala in se* – there would be no such thing as a dirty hands dilemma (Walzer 1973, 168), and no need for an SE exemption. No matter how justified, important, or necessary, deliberately targeting civilians is ‘a kind of blasphemy against our deepest moral commitments’ (Walzer 2006, p. 262). Doing so threatens the identity that it intends to protect, and so an SE exemption can *almost* never be countenanced.
Criticisms of Walzer's account of the SE exemption

Walzer’s argument has been subjected to voluminous criticism (for a critique of his position on dirty hands, see Coady 1989, 2012, De Wijze 2007). For reasons of space, I will focus on those that accept that an SE exemption can be justified but take issue with his justification of it. Such a critique stems from the fact that, at least in Just and Unjust Wars, Walzer blurs the arguments that Britain’s justification for overriding principles of jus in bello was the Nazi horror and that it was the threat to Britain’s independence (Coady 1989, pp. 193-5, Coady 2004, 772, Shue 2004, pp. 145-54). Critics insist that the exemption can be justified only by the horror of the threat and not by the threat to the community. In other words, only a general threat should qualify as a ‘serious’ one. There are two related ways of making this point: an SE can be taken to mean a threat to ‘civilized life’ per se (Roberts 2012, 159, Rawls 1999, p. 99, Shue 2004) or to mean a threat of catastrophic levels of loss of life (Primoratz 2011, 382, Shue 2004, p. 147). Each view criticises Walzer’s account for attaching fundamental moral importance to communities.

On the former view, the SE exemption is to be ‘invoked on behalf of all well-ordered societies...against a threat to well-orderedness in the world rather than in defence of any particular polity’ (Roberts 2012, 159). As Shue puts it, the ‘most compelling form of argument [in favour of an SE exemption] is that the survival of the values that animate and give significance to a body of principle of law may in exceptional cases depend on the reluctant, regretful, and temporary violation of
some of the constituent principles or laws’ (Shue 2004, pp. 145-6). If we are to violate rights, it must only be in order to ensure the survival of the system of rights, not a community’s independence. Taking rights-protection to be the basis of a just war (on this, see Orend 2006, pp. 33-40 and 127-36), defenders of this view argue that it is legitimate to violate rights only if the existence of a world in which rights are taken seriously is itself under threat. Although the purpose of *jus in bello* is to ensure that means on the pursuit of legitimate ends are limited, and non-combatants are immune from harm, those harms can be countenanced if the alternative is to allow the creation of a world in which *jus in bello* ceases to be respected (Shue 1997, p. 349). Shue, for example, accepts that the Nazis posed ‘a supreme moral emergency in the form of a threat to principled society’ (Shue 2004, p. 147). Had they won, they might have eclipsed the rule of law and inaugurated ‘an age of barbaric violence’ that would have affected ‘at least a large portion of humanity’ (Shue 2004, p. 148). An SE arises out of a threat to the existence of morality per se, which constitutes a moral disaster.

On this view, the SE exemption cannot be justified by a threat to a particular community. Shue puts this clearly: we should resist the temptation to include ‘national emergencies’ within the scope of the exemption, because ‘the defeat of a single nation, or even the defeat of an alliance, would not constitute the destruction of any moral ideal, such as the reign of law or civilized society’ (Shue 2004, p. 148). Just as threats of the magnitude of the Nazis are rare, so are paragons of virtue necessary to the survival of moral ideals, because ‘ideals survive the destruction of particular embodiments of them’ (Shue 2004, p. 148). Including national
emergencies within the category of SE would, on this view, blur the contrast between a ‘terrible but “normal war”’ and a ‘supreme moral emergency’ (Shue 2004, p. 149).

As Roberts notes, the view that the SE exemption should be invoked as a defence of civilised life is part of a liberal conception of just war theory that focuses on respect for human rights as crucial to the legitimate use of force (Roberts 2012, 166-8). To this, Shue adds the view that, ‘Liberalism is committed to the individual person being the ultimate moral unit’ (Shue 2004, p. 151), and concludes that national emergencies cannot count as SEs because, ‘For liberalism, communities matter not in themselves but to their individual members’ (Shue 2004, p. 152). On this view, Britain could invoke an SE exemption only because the Nazi threat was so great, not because of the threat to Britain itself.

The second alternative view of SE differs from the first in that it does not appeal to a threat to civilised life per se, but to large numbers of people. It defines an SE as a case where the loss of life and the generalised destruction that are threatened are unbearable in their extent. In other words, it takes it that an SE exists when the human suffering that would occur if an SE exemption were not invoked is beyond a certain level.³ Primoratz advances this position, arguing that SEs may be justified by cases of extermination – within which he includes both genocide and ethnic cleansing – but not by enslavement, because the latter is reversible

³ Shue hints at this position when he notes that ‘the human spirit is indomitable’ and ‘it is conceivable that civilization would have recovered even from a Nazi victory’. He adds, however, that the possibility of recovery is not sufficient to vitiate the severity of the threat (Shue 2004, p. 147).
Here, what makes something an SE is a combination of
‘enormity and finality’, and this also preserves the ‘rarity value’ of the exemption
(Primoratz 2011, 384). On this view, ‘slippery slope arguments become less
convincing as the cost of keeping to the rule’ increases, which leads to the
conclusion that, in cases of genocide, the fear that dents in the rule will lead to other
‘unjustified breaches’ is not sufficient to rule out the SE exemption (Primoratz 2011,
384-5).

As with the previous view, this invocation of SE refuses to countenance an
exemption in cases of threats to political independence. Shue sums up both critiques
when he argues that, ‘The defeat of a single people’, or the subjugation of a way of
life, can be conceived of as an SE only at the price of erasing any distinction between
SE and any defeat in war (Shue 2004, pp. 153-4). Likewise, both critiques hold that
invocations of SE must appeal to individual human rights violations. If this is correct,
then Walzer’s second justification of the SE exemption, which took British resort to
terror bombing to rest upon the threat to British independence, is illiberal, at least
unless it is allied to a claim that the Nazis would have enslaved the British people
and not merely reduced them to the status of vassals.

Walzer’s critics, then, insist that political communities must on occasion
accept defeat in war and consequent loss of national independence (Roberts 2012,
384).

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4 Shue, again, hints at this when he accepts that a ‘physical’ national emergency
involving the extermination or enslavement of a people might count as an SE, but
that a ‘political’ national emergency involving loss of independence would not (Shue
2004, pp. 150-1). Shue and Primoratz differ on whether enslavement would
constitute an SE.
They argue that Walzer attaches too much importance to states and so offers insufficient respect for individual rights.

Membership rights as individual rights

I will now offer a rereading of Walzer designed to show that the critics have misinterpreted him. Like them, he takes individuals to be the locus of moral value and tries to avoid making a fetish of the community (Walzer 2004, pp. 45, 50). It is true that Walzer takes the SE exemption to be a ‘communitarian doctrine’ (Walzer 2004, p. 44), and grounds it in the idea that ‘the survival and freedom of political communities – whose members share a way of life, developed by their ancestors, to be passed on to their children – are the highest values of international society’ (Walzer 2006, p. 254). This appears to downplay the moral importance of individuals, but appearances are deceptive. He does value the survival and freedom of communities more highly than his critics, but that is because of their importance to the individuals who comprise them. Communities matter, in his view, because they are ‘a feature of our lived reality, a source of our identity and self-understanding...A non-fetishized community...sustains the discipline of its soldiers and the restraint of its leaders, who thus act badly only...under absolute necessity’ (Walzer 2004, pp. 49-50). Thus, in Walzer’s view, although appeal to SE is communitarian, it is not ‘collectivist’ (Walzer 2004, p. 50).

We can understand Walzer’s distinction between communitarianism and collectivism best by recalling Charles Taylor’s distinction between questions of ontology and questions of advocacy (Taylor 1989). In this account, ontological
questions are about the factors that one invokes to explain social life and divide ‘atomists’ from ‘holists’ (Taylor 1989, p. 159). Atomists take identity to be independent of society, while holists see it as in large part constructed by social formations. Questions of advocacy are normative ones relating to the degree to which one prioritises individual rights or the common good. Here the distinction is between ‘individualists’ and ‘collectivists’ (Taylor 1989, pp. 159-60). When Walzer says that his position is ‘communitarian’ but not ‘collectivist’, what he means, in Taylor’s terms, is that it is based on a holistic ontology, but reflects an individualistic advocacy. It is individualistic because it takes real human beings as the locus of moral value and defends individual rights. It is holist on questions of ontology because it sees individual identity and interests as constituted by and inseparable from particular communal formations.

The distinction between ontology and advocacy needs to be explained carefully. They are both obviously related and conceptually separable: taking a particular ontological position helps ‘to define the options which it is meaningful to support’ but ‘does not amount to advocating something’ (Taylor 1989, p. 161). Failure to recognize this has resulted in Walzer’s holism being mistaken for collectivism. Taylor notes that it is possible to be an atomist collectivist, and defines himself as an individualist holist (Taylor 1989, p. 163, Choi 2011). Although ontology does not determine advocacy, our understanding of the relationship between social structures and formation of the self will incline us towards a position on the relative importance of different rights such as the right to life and that to membership. This will in turn incline us towards a position on normative questions,
such as those involved in the debate about SE. As Taylor puts it, ‘ontology structures the debate between the alternatives’ (Taylor 1989, p. 181).

This has important implications: if we find our identity in communal life, then one of the most important rights we have is to membership in our community. If that is so, then destruction of the community may be a moral disaster and the loss of a way of life may be as disastrous as the ‘destruction of [a] moral ideal’ (Shue 2004, p. 148). As I will show, reasoning like this leads Walzer to defend an SE exemption in the case of threats to particular communities. The crucial point is that it is individualistic reasoning grounded in the vitality of rights to communal membership. Walzer does not advocate an SE exemption in cases of monstrous threats to the survival of the community because he takes the collectivist position that the common good takes priority over individual rights. Rather, he advocates it because his holistic position on the formation of the self leads him to see community membership as a highest-order interest, and so to see threats to the community that can be averted only by deliberately targeting civilians as involving competing rights that are of similar importance. This does not mean that all holists will agree with Walzer’s advocacy of SE – indeed, Taylor would not do so (Taylor 2011, pp. 105-23). However, holists are more likely than atomists to value membership in an independent community as being among our central interests because of the role of community in the formation of identity. As a result, holists are less likely to advocate an SE exemption in the case of general threats but refuse to grant it in the case of threats to particular communities than are atomists.
To see that Walzer’s argument is that of an individualist holist, note that Walzer’s argument that an SE exemption might have applied were the threat specific to Britain was not a careless formulation, but central to his analysis. The argument that the dirty hands dilemma is particularly relevant to political life because politicians take upon themselves responsibility for the welfare of the community foreshadows it (Walzer 1973, 162-4. Walzer 2004, pp. 41-2 calls this the ‘argument from representation’ and says that its validity depends on the supplementary ‘argument from community’). The argument that SE is communitarian repeats it, because the reason that the SE exemption is communitarian is that it would have no purchase were the political community ‘nothing more than a neutral framework within which individuals pursued their own versions of the good life’ (Walzer 2004, pp. 44-5). This takes us to the heart of the ontological dispute. The view that the political community is a neutral framework is an atomistic one: indeed, the *defining feature* of atomism is the ‘vision of society as in some sense constituted by individuals for the fulfilment of ends which were primarily individual’ (Taylor 1992, p. 29). Holists, by contrast, view the community as an arena in which we find our identity and construct a vision of the good life, and so hold that the community cannot be a neutral framework.

Walzer’s holism underlies his invocation of the SE exemption because it leads him to see each community as forming a moral world. Coercively denied our community, it becomes harder to pursue our vision of the good life. This is why any threat to the independence of a community, which places in peril a way of life, is a threat to a moral world, and so places us in the situation envisaged by Shue and
Roberts when the threat is generalised. An implication of this argument is that SE
cannot easily be justified by humanitarian disasters, because such a justification
would mean that a populous nation can with more legitimacy invoke the exemption,
and Walzer does not think that that is true (Walzer 2006, p. 254). On Walzer’s view,
any threat to a community is a threat to a moral world, even if the lives of its
members are not threatened.

Holding this view leads Walzer to the conclusion that, ‘the distinction of state
rights and individual rights is simplistic and wrongheaded’ (Walzer 2007, p. 234).
He offers two main reasons for this view. First, individual rights do not exist in a
vacuum: they have to be established before they can be defended (Walzer 2007, p.
230). The community is important to individuals because only it can establish an
environment in which rights can be protected. Secondly, Walzer’s ‘defence of
politics’ rests on the view that, as politics ‘depends upon shared history, communal
sentiment, accepted conventions’, it requires separate communities that reflect that
history and those sentiments (Walzer 2007, pp. 233-4). Destruction of a community
means ‘a loss to the individual members...of something valuable...to which they have
a right’ (Walzer 2007, p. 234, emphasis added). Distinguishing between state and
individual rights is simplistic because it assumes that rights are universally and
unambiguously recognised and agreed upon, whereas, in fact, they ‘come to be
recognized [in] a political process’ and so are established in different ways in
different polities (Walzer 2007, p. 232). It is wrongheaded because state rights exist
for the sake of individual rights. We have an individual right to membership in our
independent community.
In Walzer’s view, we have that right because we derive our character and beliefs, and hence our identity, from the community (Walzer 2004, p. 42). This does not mean that the community is more important than the people who make it up, but that many of our hopes are caught up in its survival. One of the ways in which we come to terms with our mortality is by trying to leave behind us an on-going way of life, which is embodied in the community (Walzer 2004, pp. 42-3). Our mortality is rendered easier by the hope that the community is not mortal (c.f. Tamir 1997, p. 236). Walzer concludes that leaving a way of life behind us is why individuals may not invoke an SE exemption when they are threatened with death. The idea is that a soldier ‘must risk death and even die within the moral limits so that his children and his children’s children can hope to live within them’ and ‘continue to uphold the principles and practices he values’ (Walzer 2004, p. 45, emphasis added).

The emphasis on practices showcases the difference between Walzer’s view and those of his critics. While Shue is willing to grant an SE exemption for the sake of moral principle, he does not accord such importance to practice. On holist views, however, each community constitutes a moral world. Hence Walzer argues that the resources needed for moral argument should be drawn from the moral world we already inhabit (Walzer 1987, pp. 33-65). Furthermore, the moral world that is the community cannot re-emerge if it is destroyed, and so (contra Primoratz 2011, 382) enslavement is as irreversible as extermination or ethnic cleansing.

However, given that it is both principle and practice that define the community, it follows that Walzer’s account is not committed to the view that becoming a puppet or satellite state constitutes a ‘coercive transformation of [a]
way of life’ (Walzer 2004, p. 49) unless it is accompanied by coercive changes in belief and practice that are akin to enslavement (Walzer 2004, p. 47). Indeed, Walzer is not committed to the view that state survival is a legitimate ground for the exemption, and so is not committed to the view that what Shue calls a ‘political national emergency’ (Shue 2004, p. 150) constitutes an SE, unless it involves enslavement. Walzer argues that the state is merely an ‘instrument’ of the community that can be replaced and that the exemption cannot be invoked for losses of territory or changes to the structure of government (Walzer 2004, pp. 42-3, 49).

So, Walzer’s ‘communitarian’ invocation of SE does not reflect a collectivist view that the group is more important than the individual. Indeed, it is not clear that his advocacy differs from that of Shue. (Both differ from Primoratz, who would not grant an exemption in cases of enslavement). Rather, Walzer’s position reflects a different ontology based on the view that identity is formed socially. This belief leads Walzer to view participation in a common way of life, and the survival of that way of life, as being in the first rank of interests, alongside life and liberty. Walzer’s advocacy of an SE exemption in the case of threats to particular nations is informed by an ontology that takes our fundamental interests to be social ones. On this view, a communal emergency can be a supreme one because of the importance of the community to its members, not because the community has any independent moral importance. His version of the SE exemption sees it as justified by the wide range of human interests that communities safeguard. Political communities are one of our sources of hope for the future. We must accept the loss of our own life, which is
sooner or later inevitable. We do not have to accept the death of our community, because its survival helps us come to terms with our own demise. Life is, indeed, extremely dear to us, and we would be loathe to lose it. But it is not, quite, all we have.

Jeff McMahan encapsulates the critiques of Walzer's position thus:

The concern with the survival of collectives is a concern with consequences. I believe that the deepest meaning of the requirement of discrimination has nothing to do with collectives or consequences but is instead a matter of respect for individual rights. If civilians may not be attacked or harmed in war, it is because they have done nothing to lose their right not to be attacked, not because their survival as individuals is necessary for or constitutive of collective survival (McMahan 2009, p. 212).

If my reading of Walzer is correct, then the critique must be rethought, for Walzer's concern with the survival of collectives is not based on concern for consequences but for individual rights. When the Nazis threatened the survival of Britain as an independent nation, what was at stake was not the common good of the British people but the individual rights to membership in their political community of particular British persons. Walzer conceives the situation as one of conflicting rights: the rights of Brits to independence versus the rights of innocent German civilians not to be harmed. He does not argue that the survival of British people is necessary for or constitutive of British survival, but that British survival is necessary for or constitutive of the survival of the identity of individual British people. His advocacy of an SE exemption in such cases is, then, not based on the collectivist position that the common good outweighs individual rights. Rather, it is based on a particular type of individualist position that holds that, for reasons of ontological holism, rights to cultural membership are among the most vital rights we have, and
that concludes that, in cases of imminent and horrific threats to national survival, it may be necessary to override the right to life of innocent people.

Fault lines in the debate about SE

While Walzer may be not guilty of the charge of collectivism, my reading may prompt several other possible objections to his account. In this section, I will consider some of these and sketch the lines along which a response would have to proceed. These relate to identity, types of community, and proportionality. First, it might be argued that invoking identity as a justifying criterion for an SE exemption would open the door for all sorts of other claims to an exemption on the grounds of aspects of personal identity that carry much less weight. Secondly, some might question how we define a community and distinguish a political community from religious or cultural ones. Finally, some might suggest that Walzer’s invocation of an SE exemption on the part of a national community would fail a proportionality test, because although the survival of the community is valuable to its members, that value is outweighed by the lives of innocent civilians. In responding to these points, I suggest that on Walzer’s account communities are distinctive for two reasons: they are involuntary associations that are identity-constitutive, and play a formative role in shaping us as the people that we are. Furthermore, political communities are distinctive because they exist to safeguard the community’s survival and the identities of their members. Finally, I reiterate that, as a type of dirty hands

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5 For a useful alternative typology of the various communities to which Walzer appeals, see Agnafors 2010, pp. 53-88, especially 65-9.
On the first objection, if we can use the loss to identity caused by destruction of a community in order to invoke an exemption, then it is unclear why we should not be able to invoke an exemption in cases of threats to our house, business, marriage, or the like, if we find our identity in them. After all, these are all also things in which people have placed their hopes for the afterlife, hoping to leave a family line or to bequeath things to their children. Many people choose to attach a great deal of importance to such things, often more than they do to their membership in the community. Yet we would not want to grant an SE exemption on the grounds of such threats, and Walzer explicitly refuses to grant an individual SE exemption (Walzer 2004, p. 45). What is the difference?

I think that a Walzerian response to this objection would point out that, while attachment to the political community may not be more intensely felt than other attachments, it is different in origin. While the others are commitments to which we may choose to attach a great deal of importance, membership in a political community is typically an attachment that is formed prior to choice. In Walzer’s terms, the political community is ‘an involuntary association’ (Walzer 1998a, Walzer 2005, pp. 1-20). We do not choose to attach importance to our membership. Rather, we are embedded in a community from birth, so membership structures our identity whether we will it or not (Walzer 2005, p. 8).

However, the critic might point out, some other interests are also involuntary. For example, we do not decide on questions of taste. So, a Walzerian
response would have to point out that despite, or perhaps because of, its involuntary nature, community membership creates important obligations (Walzer 2005, p. 11), and a world without such associations is impossible. Our membership *structures our identity historically*, and makes some aspects of the world matter more because of earlier beliefs and experiences. In other words, this response would redirect the debate towards questions of ontology by pointing out that political association is not only involuntary but also *identity-constitutive*. As a holist, Walzer, while valuing individual liberty, thinks of human beings as always being ‘situated selves’ (Taylor 1989, p. 160), formed by and embedded in our society (Taylor 1989, p. 163). If the holist thesis is correct, then, there is an important difference between our attachment to our political community and our attachment to our business, because the latter is chosen, while the former is inescapable. At the same time, there is an important difference between political association and taste, because tastes are not constitutive of identity.

Secondly, a critic might note that Walzer’s account of the political community leaves its makeup rather unspecified, although he does draw a distinction between it and the state, which is ‘an instrument’ of the community that can be replaced (Walzer 2004, pp. 42-3). There is an obvious danger that states will invoke the exemption on their behalf and not that of the community. The political community is not, of course, the only involuntary association that helps to construct our identity and so creates particular obligations. We are born into families, religions, and cultures, too. Furthermore, in the contemporary world the boundaries of the

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6 Our obligations to our parents or siblings might not constitute a supreme emergency, but we can imagine them embroiling us in dirty hands dilemmas.
community are notably porous: most states are multinational and multi-ethnic, our
way of life depends on membership in cultural or religious communities as much as
on the political community, and the modern person’s identity is a composite of
myriad different affinities. All these mean that the claim that our identity depends
on our communal membership is overblown. At the very least, our identity can
survive the loss of one aspect of it. Moreover, communities cease to exist not only
because of military threat but because of cultural competition. If the demise of a
community means the loss of a way of life, then Walzer’s argument would seem to
imply that such competition could legitimate a violent defence of the community.

There is no doubt that Walzer’s work on SE leaves the nature of the
community under-theorised, but responses to these objections are possible if we
draw on his broader corpus. Walzer is, of course, aware of the fragmented nature of
contemporary society and of the contemporary self, having written on it extensively
argues that the best way to accommodate divided selves is by ‘different versions of
self-determination’, because ‘the protective shelter that sovereignty alone provides
in the modern world seems morally appropriate, perhaps even necessary’ to the
divided self (Walzer 1994, p. 103). Even selves constituted by multiple overlapping
identities are likely to be ‘the products of a common history, speaking in a similar
idiom’ (Walzer 1994, p. 102). On this view, difficulties in demarcating the
boundaries of communities do not diminish the importance of communities to
individual identity and so do not negate the importance of our rights to communal
membership.
Moreover, in his analysis what makes a community political is that it takes it upon itself to protect the identities and interests of its members by sustaining the community. This is implicit in his account in *Spheres of Justice* of the ‘blocked uses of power’, in which Walzer argues that using power to corrupt the criminal justice system, control marriages, and so on would not be political power but mere force (Walzer 1983, pp. 282-4). In his analysis, political power is that exerted to maintain the community and ‘protect us from tyranny’ (Walzer 1983, p. 281). That is to say, political power exists to make sure that the community maintains itself.

This is more explicit in Walzer’s recent book, *In God’s Shadow* (Walzer 2012). The thesis of the book is that the biblical writers never developed a fully autonomous political theory, because the shadow cast by God led to anti-political tendencies by diminishing the role of human action (Walzer 2012, pp. xii-xiii, 67-8, 85-8, 93-7, 103-4, 123-5, 183-4, and 227). There were entities who claimed to look after the community personally: for example, kings, as ‘the people’s choice’ were ‘the servants...of social order’ whom, like the modern state, society could always replace (Walzer 2012, 71). However, the widespread view, shared by prophets, priests, sages, and messiahs was that God would look out for the Israelites if they upheld their part of the covenant.

To be in God’s shadow, then, is to be anti-political by denying human responsibility for the maintenance of the community. By acting politically, in Walzer’s account, we leave God’s shadow and take on responsibility for self-protection. The function of politics, then, is to maintain the community. That is why political communities are unique among those communities that are involuntary
and identity-constitutive attachments in claiming the right to invoke an SE exemption. It also means that communities can be both religious and political or both cultural and religious if they act in the world in order to sustain themselves. Walzer clearly suggests that religious communities might invoke an SE exemption when he notes that ‘the community of faith’ is no more replaceable than the political community (Walzer 2004, p. 49) and that ordinary military defeats leave intact ‘political and religious communities’ (Walzer 2004, p. 47). However, any entity that took upon itself the charge of self-maintenance of a way of life would in Walzer’s analysis be a political community, even if it were also religious or cultural, and would thus be able to invoke an SE if it faced a ‘serious’ and ‘close’ threat.7 This raises an important dilemma, given the just war requirement that parties to war be a competent authority.

However, it is important to bear in mind that the ‘closeness’ of the threat to the community is but one of two necessary conditions of the SE exemption. The other is its ‘seriousness’. As I noted above, ‘closeness’ relates to the imminence of the threat, and ‘seriousness’ to its horror. So, for a threat to community to constitute an SE, it has to be a threat posed by a brutal opponent, and cultural competitors are unlikely to cross that threshold because they do not pose the risk of a coercive transformation of a way of life. Only coercive threats to ways of life constitute SEs (Walzer 2004, p. 49), because although Walzer’s holism leads him to see membership as constitutive of identity, his individualism means accepting that we

7 It is worthy of note that one of the exemptions that Walzer grants to the norm of non-intervention is counter-intervention in civil wars, which are cases when ‘a particular state includes more than one political community’ (Walzer 2007, p. 225).
may *choose* to abandon our community because of cultural competition (Walzer 1997, p. 109). We must, however, offer ‘qualified and conditional’ support for cultural reproduction (Walzer 2005, p. 55), because nobody should be *forced* to lose his or her community.

Moreover, the possibility that the state will claim an exemption on its own behalf rather than that of the community may reflect a real risk, but it does not address the question of principle. There is in moral life generally a danger of arguments being used to justify positions that they were not intended to support, but that does not nullify the original claim. Rather, it suggests caution in the framing and application of arguments.

Finally, a critic might object, even if we accept that membership in the political community is constitutive of identity in a way that personal goals are not, that does not mean that invoking an SE exemption on behalf of the community is proportionate. After all, invoking the exemption means permitting the deliberate killing of innocents. Surely life itself is more significant morally than membership in the community. Even if our identity is partially lost if the community is destroyed, at least we are still alive. Moreover, the damage might heal, especially if the conqueror is later defeated, and the community restored.

This objection is the most challenging. We should note that Walzer recognises its force by accepting that those who invoke an SE exemption do wrong, even when doing what they have to do. He does not argue that the rights to life of innocent civilians are set aside, but only that they are overridden (Walzer 1973, 171). As a type of dirty hands dilemma, an SE is a tragedy, and the exemption not
morally clean, because it involves doing a very real wrong. If we think of ethics as being about both guiding action and character formation, then an SE is a situation in which there is a conflict between the two. We must take the best course of action, and invoke an exemption, but we do wrong from the perspective of the virtues and so leave a moral stain in our wake.

Still, the objector might insist, if such rights must be overridden, they must only be overridden on the grounds that something even more weighty than them is at stake, and an independent political community does not have this moral weight. It would be tempting to drop the language of morality, and appeal to Orend’s claim that the SE exemption is based on a non-moral survival instinct (Orend 2006, pp. 154-7). However, it is not clear that Orend succeeds in eliminating moral argument from his justification of the SE exemption (Sandin 2009, 163-6, Primoratz 2011, 375-7). Moreover, Walzer argues that the exemption is (morally) necessary, not that it is inevitable, and that invoking it on behalf of the community is to appeal to ‘our deepest values’ (Walzer 2004, pp. 39-40), which makes clear that his view is that the survival of a way of life is on a par, morally, with loss of life.

This is probably the most important normative tension in Walzer’s account, but it is worth pointing out that the practice of war implies that we should sometimes sacrifice our own life for the sake of the community. If that it not because the community helps define our identity, and because its ‘ongoingness’ helps to reconcile us to our own death, then demanding individual sacrifices from soldiers in war moves perilously close to using them as means to social ends. Moreover, it makes it difficult to understand such sacrifices, because soldiers would be risking
their highest-order interest, in life, for the sake of something of substantially less significance. If the community does constitute a moral world, then perhaps it is, morally speaking, on a par with life. If that is so, then its destruction might be a moral disaster and be sufficient to invoke an SE exemption. Here again, though, the question cannot be settled without reference to ontological questions about the formation of the self and the nature of the social world.

**Conclusion**

I have argued that Walzer's invocation of an SE exemption on behalf of political communities, rather than in defence of civilised life or so as to avoid humanitarian catastrophe, is not collectivist. In making this argument, I emphasised the importance of distinguishing between questions of advocacy and ontology, taking it that Walzer's position is individualistic, but reflects a holistic ontology in which, in a conflict between rights to life and rights to communal membership, it is not clear that the former must take priority. I went on to argue that the most vulnerable points in Walzer's argument relate to proportionality and the definition of the community, before sketching some ways in which a Walzerian might try to shore up the position on those fronts, and emphasising that those who invoke an SE do wrong even if their invocation is, all things considered, justified.

In concluding, I want to suggest that my invocation of Taylor's distinction between advocacy and ontology is a fruitful line of future research not just for the debate about SE but for theorising about war and, indeed, international ethics in general. As Taylor notes, 'the ontological question restructures the debate about
advocacy’ (Taylor 1989, p. 181). Indeed, ‘the only alternative to discussing
[ontological questions] is relying on an implicit and unexamined view of them’
(Taylor 1989, p. 164), which leads to those who disagree about ontology talking past
and misinterpreting each other. In terms of the debate about SE, the issue is not just
that an atomistic ontology, taking people to have a self that is independent of social
formation, makes it hard to grant that a threat to the community might justify an SE,
but that from this perspective it makes it hard to see how grounding the SE
exemption in the community's continued existence can possibly be an individual
rights-based argument. Thus, as noted above, Shue queries Walzer’s commitment to
liberalism’s moral individualism, while McMahan outright denies it (Shue 2004, pp.
151-2, McMahan 2009, p. 212). My reconstruction above suggests that Walzer’s
stated moral prioritisation of individuals is indeed plausible. He disagrees with Shue
and McMahan about which individual rights are most important, not about whether
individual rights are more important than the common good. Questions of advocacy
are prone to misunderstanding if they do not engage with foundational questions of
ontology.

In this regard, a critique that Taylor offers of ‘procedural liberals’ in debates
about distributive justice is apposite to many of Walzer’s critics:

[They] seem quite unaware that this issue [of ontology] has to be addressed...thus
they fail to articulate the distinction between ontological and advocacy questions,
and take their communitarian critics to be simply advancing a different policy, which
they vaguely apprehend as more collectivist; instead of seeing how the challenge is
based on a redrawn map of political [and ethical] possibilities (Taylor 1989, p. 181).

In fact, the policy is misapprehended as more collectivist. Walzer’s position is
individualist, in that it prioritises individual rights just as much as do the rival
conceptions of SE. An individualist holist position will indeed seem to be collectivist if individualism (the moral prioritisation of individuals) is blurred with atomism (the view that individual identities are independent of society), because that blurring encourages the view that the individual right to communal membership is relatively insignificant, and so makes appeals to community appear to grant it an independent moral status.

The blurring of atomism and individualism that results from the failure to distinguish ontology from advocacy is significant in a further way. As noted above, both Shue and Roberts are concerned with the compatibility of the SE exemption with liberalism and argue that liberals may, indeed must, countenance overriding rights to life in cases where ‘civilised life’ is under threat, but must not do so in cases of threats to particular communities. Yet this account of liberalism is altogether too narrow. Granted, the hallmark of liberals of all stripes seems to be that they are individualistic on questions of advocacy. However, as Taylor points out, by no means all liberals are atomists on questions of ontology. In fact, such luminaries of liberalism as J. S. Mill and Humboldt were holists (Taylor 1989, p. 164). In view of that, Taylor argues that ‘it is astonishing that anyone should read a defence of holism as entailing an advocacy of collectivism’ (Taylor 1989, p. 164). Put differently, liberalism is comprised of a number of traditions, each of which grapples with a particular set of moral dilemmas. My argument thus ties the ethics of war to a traditions and dilemmas approach to contemporary American political thought (on this, see Bevir 1999, Bevir and Gališanka 2012, Blakely 2013, Choi 2009).
Individualist holism is, in other words, compatible with a liberal nationalism that takes national identity to be a prerequisite for the achievement of individual autonomy, or with a liberal communitarianism that makes a similar argument about cultural or religious communities. Walzer’s argument about SE takes communal identity to be such a prerequisite, because the community is a site of the formation of identity, and because the role of politics is to protect that identity. Given that individualist holism can be compatible with liberalism, and that liberal nationalism is an important type of liberal tradition, the questions about liberalism must be rephrased as, ‘Which types of SE exemption are compatible with which conceptions of liberalism?’ and ‘Which types of liberalism make which demands in international ethics?’ For example, liberal communitarians and cosmopolitans will tend to take different stances on when humanitarian intervention is legitimate, with cosmopolitans tending to focus on brutality and loss of life, and communitarians on the fate of sub-state political communities that uphold particular ways of life. If we are to adjudicate between these fundamental dilemmas in international ethics and just war theory, we must reopen the ontological debate about the construction of identity and the nature of social reality.

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