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The Case for Foreign Electoral Subversion

Q1 Cécile Fabre*

Most foreign policy is not implemented through war. Yet, with a few recent exceptions—like James Pattison’s 2018 monograph *The Alternatives to War*—political and moral philosophers have yet to explore all options between war and doing nothing.¹ Here I consider one such option: subversive interference in a democracy’s nationwide elections. In that regard, the years 2016–2017 have proved rich in controversies. In France, Russian banks with close ties to the Kremlin provided cash loans to the National Front in the run-up to the 2017 presidential elections. And in December 2017, the Australian premier announced a tightening of restrictions on foreign funding of political parties out of concern with alleged and undue Chinese influence on some Australian politicians. Last, but far from least, in the United States the Office of the Director of National Intelligence along with the CIA, FBI, and NSA all take the strong view, backed in part by social media data, that Russian authorities actively sought to undermine Hillary Clinton’s 2016 presidential campaign and bolster Donald Trump’s.² Interestingly, however, some of President Putin’s critics are vulnerable to the charge of hypocrisy. To give but two examples, the United States has a long history of interfering in the institutions and elections of its Latin American neighbors and, indeed, at the height of the Cold War, of its European allies. More recently, many believe that, absent U.S.-driven assistance, the Democratic Opposition of Serbia would have lost the 2000 Yugoslavian presidential election to Slobodan Milošević.³

Attempting to subvert the democratic elections of a putatively sovereign country is a time-honored way of bending the latter’s domestic and foreign policy to

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37 one's will. However, it seems to elicit far more condemnation than war and,
38 indeed, other forms of coercive diplomacy. Perhaps this is because, to many peo-
39 ple, the rights of democratic participation have primacy over all other rights; or
40 because most often electoral subversion takes place covertly. Either way, given
41 how destructive those other modes of interference are, this is puzzling.

42 I frame my inquiry as follows. I focus on the state-sponsored, nonviolent, non-
43 kinetic subversion of nationwide elections (for short, subversion). Moreover,
44 because I am interested in exploring whether there are any situations in which
45 subversion may be justified, I consider cases in which subversion is used as a
46 means to prevent or end large-scale human rights violations, though my argument
47 also has implications for subversion as a tool of foreign policy in general. In addi-
48 tion, my aim is not to evaluate subversion as an alternative to war or, for that mat-
49 ter, to other measures, such as economic sanctions. Due to space constraints, I
50 simply wish to show that, under certain conditions and subject to certain
51 constraints, subversion is *pro tanto* justified. Whether it is justified *all things*
52 *considered*—and, in particular, once one has taken into account other options—
53 is another matter and one that I cannot settle here. Finally, although subversion
54 affects election candidates, it above all undermines a citizen's right to vote.
55 Accordingly, in what follows I focus on the latter and not the former.

56 Before I begin, let me outline the overall normative framework on which my argu-
57 ments rely. I take it for granted that all individuals, wherever they reside in the world,
58 have rights to the freedoms and the resources they need to lead a minimally flour-
59 ishing life—in other words, human rights. Moreover, they hold those rights against
60 all human beings and their respective governments. Put differently, on this cosmo-
61 politan view, all of us, wherever we reside in the world, are under duties to all other
62 individuals, wherever they reside, to respect their human rights. How precisely we
63 discharge those duties partly depends on the institutional structures under which
64 we live. Be that as it may, I am not under a stronger duty to respect my compatriots'
65 human rights—for example, not to be killed or to be given means of subsistence—
66 than I am to respect those same rights of noncompatriots, and vice versa.⁴

68 THE ISSUE

69
70 At first sight, subversion is deeply worrisome. A commitment to democracy is the
71 bedrock of the international normative order. Regular, free, fair, and binding
72 nationwide elections, in which every eligible citizen has the right to cast one

73 vote, are the hallmark of democracy, as they ensure that individual preferences are
74 converted into collective outcomes. Now, let us imagine that a country's citizenry
75 has to choose between two presidential candidates, Jones and Smith, and that a
76 foreign regime—Intervener—wishes Smith to win. The election has three vari-
77 ables: a set of citizens, two candidates, and a voting procedure. Intervener
78 might subvert the election at all three junctures. First, it might interfere with
79 the citizens' exercise of their right to vote. For example, it might threaten to
80 take harmful measures if Jones wins, such as the denial of aid (as the United
81 States did in connection with the 2009 Lebanese election⁵) or the imposition of
82 economic sanctions. To the extent that those citizens believe that incurring
83 such costs are too high, Intervener would undermine the principle that citizens
84 ought to be free to determine their collective future. More invasively, Intervener
85 might deprive citizens who are more likely to vote for candidate Jones of the
86 opportunity to cast their vote by hacking into and tampering with electoral
87 rolls. In so doing, it would undermine the principle that all eligible citizens
88 have the right to vote—that is, the principle that voting should be free.

89 Second, Intervener might seek to shape the candidates' playing field. For exam-
90 ple, it might help Smith by financing her party and electoral campaign (Russia and
91 the French National Front), or by providing technical assistance with polling and
92 campaign research (the United States and the 2000 Yugoslavian election). It might
93 also undermine candidate Jones directly, such as by hacking into his party's IT
94 infrastructure, disclosing damaging albeit accurate information about his entou-
95 rage, and conducting disinformation campaigns. In so doing, Intervener would
96 undermine the principle not only that the election should be free but also that
97 it should be fair—that is to say, that citizens with widely divergent preferences
98 should have a decent chance of electing the candidate that most represents them.

99 Third, Intervener might disrupt the voting procedure itself, for example, by
100 hacking into vote-counting software so that even if Jones gets more votes than
101 Smith, Smith would be officially declared the winner. In so doing, Intervener
102 would sever the link between citizens' preferences and collective outcomes, and
103 undermine citizens' effective exercise of their right to vote.

104 105 A FIRST CUT: SUBVERTING DEMOCRATIC CHOICES

106
107 So conceived, subversion does seem deeply problematic. Whether it is successful
108 or not, it violates the democratic requirement that the government be of, by, and

109 for the people. It is easy to see why leaders who comment on other countries' elec-
110 tions or referenda are harshly condemned by the side they disfavor, why many
111 democracies ban or severely restrict foreign donations and loans to political par-
112 ties, and why some governments have recently expressed worries about, and have
113 indeed banned, Internet voting.⁶

114 Upon closer inspection, however, there are grounds for endorsing subversion
115 under some circumstances. Whether one favors democracy for its intrinsic
116 value, its instrumental value, or both, from a cosmopolitan perspective we have
117 democratic rights only to the extent that we are more likely, by exercising them,
118 to respect and promote the human rights of other agents—and not just those of
119 our fellow citizens *but those of distant strangers too*. The latter point cannot be
120 stressed strongly enough: citizens do not have the moral right to vote for any for-
121 eign policy they might prefer, regardless of ethical considerations. Even if there
122 can be such a thing as a right to do wrong, and even if citizens have such a
123 right, they do not have the right to authorize mass violations of human rights.
124 Indeed, when they do so, in principle they may be subject to retortive measures,
125 such as war, economic sanctions, and various punitive measures.⁷

126 If this is correct, voters forfeit their democratic rights when they exercise them
127 as a means to violate human rights, and thus do not have a grievance against
128 agents who seek to thwart their attempt to do so. To illustrate, suppose that
129 Jones is the democratically elected president, and thereby commander-in-chief
130 of a country named Blue. Since his election his foreign policy vis-à-vis
131 Intervener has been characterized by mass human rights violations. For example,
132 Jones has authorized a large-scale military invasion of Intervener's eastern prov-
133 ince; or he has repeatedly authorized cyberattacks on Intervener's major utilities
134 and financial services, as a result of which a number of Intervener's citizens
135 have suffered severe hardship. Clearly, Intervener is justified in taking some defen-
136 sive steps against Jones and his supporters. Now, suppose Jones is up for reelec-
137 tion, and that if reelected he will continue so to act. But if Smith wins, she will put
138 a stop to such a policy and seek to negotiate with Intervener's regime. Under those
139 circumstances, Jones provides Intervener with a justification for seeking to get
140 Blue's citizens to avoid voting for him. For example, Intervener may justifiably
141 put the case for negotiations via propaganda campaigns targeted at Blue's citizens;
142 it may also justifiably threaten to escalate the conflict or to refuse to compromise
143 during ensuing diplomatic negotiations. Jones's ongoing policies also provide
144 Intervener with a justification for helping Smith directly, for example, by

145 providing material and financial support for her campaign and thereby reshaping
146 the candidates' playing field. More controversially still, Intervener also has a jus-
147 tification for tampering with citizens' right to vote, for example, by tampering with
148 the voting procedure. For insofar as those citizens' rightful exercise of the right to
149 vote is subject to their not using it to grievously wrongful ends, Intervener's deci-
150 sion to thwart their vote does not wrong them. The point is structurally similar to
151 the claim that by culpably subjecting you to a wrongful lethal threat I forfeit my
152 right not to be killed, and you in turn do not wrong me by killing me in
153 self-defense.

154 Importantly, my defense of subversion does not apply only to cases in which
155 Jones and his regime target Intervener; it also applies to cases in which a regime
156 commits, or has committed, large-scale human rights violations against a section
157 of its own population, and in which the latter needs external assistance to over-
158 throw the culpable regime. The aforementioned case of Serbia, whose 2000 pres-
159 idential election witnessed a very high degree of foreign involvement, illustrates
160 the point well. Incumbent President Milošević, who had been indicted in absentia
161 by the International Criminal Tribunal for the former Yugoslavia for crimes
162 against humanity, had clearly demonstrated that he was willing and capable of
163 engaging in highly repressive policies toward his opponents, and there was
164 every reason to assume that he would have continued to do so had he been
165 reelected. There was also ample evidence that a growing majority within the
166 Serbian citizenry wished him out, yet had been consistently and violently
167 repressed by his security apparatus for trying to do so peacefully. Under those cir-
168 cumstances, Milošević's supporters did not have a right to be allowed to return
169 their candidate into power, whereas their opponents were *pro tanto* justified in
170 seeking, and getting, external help to block their efforts.⁸

171 So far I have assumed that Jones is the incumbent and has already initiated and
172 authorized a policy of mass human rights violations. Suppose now that at the time
173 of the election, Jones has not yet done so, but that he is running on a platform of
174 new policies the adoption of which would provide Intervener with a justification
175 for some retortive measures. (Either Jones is the incumbent but is advocating a
176 shift in foreign policy, or he is the challenger.) In this case, subversion would
177 have to be justified, if at all, on preventive grounds. Admittedly, preventively
178 blocking a future threat is harder to justify, other things equal, than thwarting
179 an ongoing harm. Nevertheless, the considerations adduced above in support of
180 the claim that subversion does not wrong Jones's voters when the latter provide

181 Intervener with a justification for blocking ongoing human rights violations also
182 apply here.⁹ To see this, suppose that I declare to all and sundry that I plan to
183 assault Albert as soon as I can get hold of a baseball bat—an act for which I
184 have no justification. Bob, who is aware of my intention, nevertheless proceeds
185 to lend me his bat. Should you decide to step in and prevent Bob from so acting,
186 he cannot complain that you wrong him. Even though, for all he and you know, I
187 will not in fact assault Albert, he really ought not to lend me his bat under those
188 circumstances. Analogously, *if* Jones’s voters would vote for him notwithstanding
189 his grievously wrongful platform, they cannot complain that they were wrongfully
190 denied the opportunity to elect their preferred candidate in a free and fair election.

192 REFINING THE ACCOUNT

193
194 Some readers might object that my defense of subversion rests on an overly sim-
195 plistic view of elections. Candidates rarely campaign on a one-issue platform, and
196 citizens rarely vote for a candidate on the basis of only one of the many policies he
197 or she endorses. They also rarely vote in full knowledge of their preferred candi-
198 dates’ platform. These considerations might seem to pose a difficulty for, and thus
199 generate an objection to, subversion in at least the following three kinds of cases.
200 First, suppose citizens vote for Jones while sincerely believing, on the basis of his
201 pronouncements, that he will not take the country into a war that would turn out
202 to be unjust. Unbeknownst to them, however, Jones intends to do precisely that.
203 Even if Intervener has some reasons to distrust Jones, and even if Jones *himself*
204 lacks a claim not to be subject to subversion, it seems unfair to undermine
205 those citizens’ democratic rights, given that they are not morally responsible for
206 the uses to which their vote will be put. Consider the 1964 U.S. presidential elec-
207 tion. Many U.S. citizens voted for incumbent President Lyndon B. Johnson believ-
208 ing in his repeated assertions that he would seek “no wider war” in Vietnam. At
209 the same time, however, his administration was preparing for military escalation.¹⁰
210 Let us accept for the sake of argument that escalation was morally wrong. Even if
211 subversion would have been justified vis-à-vis those of his voters who did not in
212 fact believe him and supported his Vietnam policy, it would not have been justi-
213 fied vis-à-vis those whom he successfully misled. Or so the putative objection
214 would go.

215 This objection raises deep and complicated questions about the nature of for-
216 feiture and its relationship to facts, belief, and evidence, which space constraints

217 prevent me from addressing here. It is worth noting, however, that it relies on the
218 claim that one is justified vis-à-vis an agent to deprive him of that to which he has
219 a presumptive right only if he is morally responsible for the harmful consequences
220 of his exercise of that right. Yet this seems to prove too much, for by that token
221 one may not forcibly stop an oblivious agent from moving from point A to point B
222 (thereby depriving her of her presumptive right to freedom of movement) as the
223 only means to prevent her from knocking an innocent person to the ground. In
224 fact, either the agent would not vote for Jones if she knew what his real intentions
225 were with respect to the unjust policy, in which case she ought to welcome
226 Intervener's subversive steps; or she would vote for him, in which case she has for-
227 feited her democratic rights anyway.

228 Second, and conversely, suppose that Jones conducts his campaign on a morally
229 unjustified, rights-violating foreign policy platform. In truth, however, he has no
230 intention of conducting those policies, but he needs to secure electoral support
231 from the hawkish wing of his party and "natural" electorate.¹¹ Even though
232 Jones voters intend for him to pursue this policy, they do not *in fact* enable
233 him to do so, and so have not forfeited their right to elect him. Thus, even if
234 Intervener has every reason to believe (albeit mistakenly) that Jones is not bluffing,
235 it is not justified in resorting to subversion. Or so the putative objection goes.

236 The objection assumes that one forfeits one's right not to be thwarted in one's
237 ends only if one in fact exercises it to wrongful ends—and not if one merely
238 intends, though fails, to pursue those ends. This too seems to prove too much.
239 By analogy, suppose that I shoot at you, fully intending to kill you, without war-
240 rant. You shoot back at me in self-defense. Neither you nor I know that my gun is
241 firing blanks. Intuitively at least, by dint of my apparent conduct, I provide you
242 with a justification for defending yourself, such that you do not wrong me by
243 harming me in the course of defending yourself. The same point applies, *mutatis*
244 *mutandis*, to subversion in this case.

245 Third, suppose that if Jones were (re)elected he would not only embark on a
246 rights-violating policy against Intervener, such as to provide the latter with a
247 just cause for retortive measures, he would also embark on much-needed reforms
248 mandated by social justice. Smith, for her part, would not conduct a
249 rights-violating policy vis-à-vis Intervener, but she would slash welfare programs
250 and introduce tax cuts for the benefit of the rich. It may well be that Jones himself
251 has forfeited his democratic right to run for office in a fair and free election, be
252 declared the winner, and so on (after all, he could run on a social justice and

253 peace platform). Still, not all his electors support his foreign policy. On the
254 contrary, some would much rather that he just bring about social justice. Given
255 that they have justice-based reasons for voting for Jones, subverting the electoral
256 process, particularly by undermining their right to vote, does seem to wrong them.

257 Still, by voting in favor (albeit reluctantly) of Jones, they would if successful
258 enable the commission of grievous rights-violations against Intervener. The ques-
259 tion, then, is whether the fact that they would also and at the same time enable the
260 realization of social justice within Blue entails that Intervener may not engage in
261 subversion. The answer depends on whether Intervener is morally obliged to con-
262 fer greater weight on the realization of social justice within Blue than on protect-
263 ing itself from the latter. I doubt that it always is: individuals and communities can
264 only sacrifice so much for the sake of others. Even if subversion infringes upon the
265 democratic rights of Jones's justice-minded electors, it does not follow that
266 Intervener may not resort to it. This is because agents are sometimes justified
267 in infringing the right of another person for the sake of protecting a third person
268 from grievous harm. To claim otherwise is to imply that war, which typically
269 inflicts collateral damage on innocent people, thereby infringing their rights,
270 can never be justified however strong the cause, which seems implausible (*pace*
271 absolutist pacifists).¹²

273 CONCLUSION

274
275 Clearly, there is much more to be said about foreign meddling in elections in par-
276 ticular, and in democratic decision-making in general. For a start, we need to
277 investigate the extent to which, if at all, subversion wrongs candidates, which in
278 turn requires a proper inquiry into the grounds and limits of the right to run
279 for office. We also need to consider more deeply how subversion compares
280 with other alternatives, including doing nothing. A full account and defense (or,
281 for that matter, rejection) of subversion, which is long overdue, should tackle
282 these (and related) questions.

283 My aim has been more modest. In particular, my arguments in favor of subver-
284 sion and my responses to putative objections have not decisively established that
285 Intervener may resort to subversion. For even if everything I have said so far is
286 true, there may be powerful countervailing reasons for rejecting subversion *all*
287 *things considered*. In particular, some modes of subversion might do considerably
288 more harm in the longer run than alternative measures. Hacking into a

289 candidate's IT infrastructure, waging disinformation campaigns, and tampering
290 with electoral rolls and voting machines might elicit such distrust in politicians
291 and in the integrity of democratic processes and institutions as to wholly under-
292 mine democracy itself. That, in the end, might turn out in the longer run to be
293 worse, all things considered, than (for example) targeted economic sanctions or
294 a very quick war. Thus, if Intervener has good reasons to believe that to be the
295 case, it must shun it in favor of other alternatives. Such a judgment would have
296 to be reached on a case-by-case basis. The point still stands, however, that the sub-
297 version of a democracy's nationwide elections as a means to thwart citizens for
298 voting for grievously unjust policies may sometimes be justified, so long as it is
299 a proportionate response.

300 NOTES

- 301 ¹ For studies of those alternatives to war, see James Pattison, *The Alternatives to War: From Sanctions to*
302 *Nonviolence* (Oxford: Oxford University Press, 2018). See also Cécile Fabre, *Economic Statecraft:*
303 *Human Rights, Sanctions, and Conditionality* (Cambridge, Mass.: Harvard University Press, 2018).
- 304 ² The joint CIA-FBI-NSA declassified report on alleged Russian interference in the 2016 U.S. presidential
305 election, entitled "Background to 'Assessing Russian Activities and Intentions in Recent US Elections':
306 The Analytic Process and Cyber Incident Attribution" (January 6, 2017), is available at www.dni.gov/files/documents/ICA_2017_01.pdf (accessed July 19, 2018). On the National Front and the loans
307 it secured from Russian banks, see "Financement du FN : des hackers russes dévoilent des échanges
308 au Kremlin," *Le Monde*, April 3, 2015, www.lemonde.fr/les-decodeurs/article/2015/04/02/fn-des-hackers-russes-devoilent-des-echanges-au-kremlin_4608660_4355770.html. On the Australian case, see
309 Jonathan Pearlman, "Australia Bans Foreign Donations to Political Parties after China Controversy,"
310 *Telegraph*, December 5, 2017, www.telegraph.co.uk/news/2017/12/05/australia-bans-foreign-donations-political-parties-china-controversy/.
- 311 ³ For a recent empirical discussion of some of those cases, see Dov H. Levin, "When the Great Power Gets
312 a Vote: The Effects of Great Power Electoral Interventions on Election Results," *International Studies*
313 *Quarterly* 60, no. 2 (2016), pp. 189–202; Ryan Grim and Arthur Delaney, "The U.S. Has Been
314 Meddling In Other Countries' Elections For A Century. It Doesn't Feel Good," *Huffington Post*, July
315 27, 2016, www.huffingtonpost.co.uk/entry/the-us-has-been-meddling-in-other-countries-elections-for-a-century-it-doesnt-feel-good_us_57983b85e4b02d5d5ed382bd. ; and Michael Dobbs, "U.S. Advice
316 Guided Milosevic Opposition," *Washington Post*, December 11, 2000, www.huffingtonpost.co.uk/entry/the-us-has-been-meddling-in-other-countries-elections-for-a-century-it-doesnt-feel-good_us_57983b85e4b02d5d5ed382bd.
- 317 ⁴ I develop an argument to that effect in Cécile Fabre, *Cosmopolitan War* (Oxford: Oxford University
318 Press, 2012), ch. 1; and in Cécile Fabre, *Cosmopolitan Peace* (Oxford: Oxford University Press,
319 2016), ch. 1.
- 320 ⁵ Levin, "When the Great Power Gets a Vote."
- 321 ⁶ For relevant provisions in the United Kingdom and the United States, see, respectively, the 2000
322 Political Parties, Elections and Referendums Act (articles 54 and 71H), and the United States Code §
323 30121. Internet voting was banned in the 2017 French legislative elections.
- 324 ⁷ On the right to do wrong in general, see Jeremy Waldron, "A Right to Do Wrong," *Ethics* 92, no. 1
(1981), pp. 21–39. On democracy's right to do wrong, see Michael Walzer, "Philosophy and democ-
racy," *Political Theory* 9, no. 3 (1981), pp. 379–99. On those retortive measures specifically, see
Pattison, *Alternatives to War*."
- ⁸ On protests and repression under Slobodan Milošević's regime, see, for example, Nebojša Vladislavljević,
"Competitive Authoritarianism and Popular Protest: Evidence from Serbia under Milosevic,"
International Political Science Review 37, no. 1 (2016), pp. 36–50. Incidentally, the rationale for subver-
sion in such cases also supports internal subversion, when some citizens of Blue tamper with Blue's
elections on the grounds that some of their compatriots would vote for grievously unjust policies if
unimpeded. I am grateful to Matthew Mandelkern for drawing my attention to this."

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⁹ On preventive war, see, for example, David Rodin and Henry Shue, eds., *Preemption: Military Action and Moral Justification* (New York: Oxford University Press, 2007).

¹⁰ For an absorbing account, see Daniel Ellsberg, *Secrets: A Memoir of Vietnam and the Pentagon Papers* (New York: Penguin, 2002), especially chs. 2–4.

¹¹ I am grateful to James Pattison for drawing my attention to this kind of case.

¹² The points I make in this paragraph apply *mutatis mutandis* to cases in which Jones would authorize severe rights-violations against Blue’s ethnic minorities yet embark on social justice reforms to the benefit of the majority, while Smith would do the opposite, and in which Intervener would be inclined to subvert the election in Smith’s favor.

Abstract: It is widely alleged that President Putin’s regime attempted to exercise influence on the 2016 U.S. presidential election. It is known that its Soviet predecessors funded Western communist parties for decades, as a means to undermine noncommunist regimes. The United States, too, has a long history of interfering in the institutions and elections of its Latin American neighbors, as well as (at the height of the Cold War) its European allies. More recently, many believe that, absent U.S.-driven assistance, the Democratic Opposition of Serbia would have lost the 2000 Yugoslavian presidential election to Slobodan Milošević. As those examples suggest, attempting to subvert the democratic elections of a putatively sovereign country is a time-honored way of bending the latter’s domestic and foreign policy to one’s will. In this paper, I focus on the state-sponsored, nonviolent, nonkinetic subversion of nationwide elections (for short, subversion), through campaign and party financing, tampering with electoral registers, and conducting disinformation campaigns about candidates. I argue that, under certain conditions and subject to certain constraints, subversion is *pro tanto* justified as a means to prevent or end large-scale human rights violations.

Keywords: campaign financing, democratic rights, electoral subversion, propaganda, Russia, Serbia, United States, Vietnam