

**SELF-GOVERNMENT AND HUMAN RIGHTS
IN THE AGE OF COSMOPOLITAN INTERVENTIONISM**

by

MICHAEL STEPHEN KOCSIS

A thesis submitted to the Department of Philosophy

In conformity with the requirements for

the degree of Doctor of Philosophy

Queen's University

Kingston, Ontario, Canada

(September, 2013)

Copyright © Michael Kocsis, 2013

ABSTRACT

This dissertation explores a family of theoretical models of humanitarian military intervention. A number of recent theorists, including Tesón, Caney, Buchanan, Orend, Moellendorf, and Wheeler, build their models from a perspective called ‘cosmopolitanism.’ They offer arguments based on the moral supremacy of human rights, the arbitrary character of territorial boundaries, and the duty to protect individual human beings exposed to serious and systematic violence by their own governments.

I develop a model of intervention that recognizes the moral significance of *political self-government*. To the extent that international society should countenance a ‘duty to protect’ human rights, the duty ought to be constrained by a commitment to the values of self-government. The model developed in this dissertation also recognizes the significance of *international law enforcement*. Insofar as we should permit a role of enforcement for international human rights, that role should be constrained by formally accepted global principles and in particular by positive obligations to prevent and punish actions regarded as international crimes.

These other global values are viewed with suspicion by cosmopolitan theorists, who tend to construe them in stark contrast to the vision of global responsibility for human rights protection. But I will show how these other values emerged simultaneously with cosmopolitanism and share many of its underlying intuitions. Because self-government and law enforcement are linked politically to the cosmopolitan vision, these two distinctive global values can be utilized as tools to fortify or expand cosmopolitanism by enlarging the global sense of responsibility for human rights. The aim of this project is to explain how these other values came to be neglected by cosmopolitan theorists, and why they should not be forgotten.

ACKNOWLEDGEMENTS

This is perhaps the most challenging part of this project, for just about everyone I know has contributed and offered generous support in one way or another. Firstly, my most significant intellectual debt is to my doctoral supervisor Will Kymlicka. I cannot imagine acquiring more insights or receiving more patience and perseverance from a doctoral supervisor. I received much the same encouragement and support from the other members of my oral defense committee, which included Stan Corbett, Alistair Macleod, Margaret Moore, Brian Orend, and Lynda Colgan. All of them offered inspiration and understanding which I hope are reflected in this final product.

The members of my family, friends, and colleagues at Queen's University who lent support to this project are too numerous to mention. But I must recognize the special support I have received from parents; Stephen, Leslie and Anne Kocsis, and my aunt Patricia Woodburn. My father Stephen read through and commented on more rough drafts than we would now care to mention, and my mother Anne's boundless encouragement and support for my studies puts her in a class of her own. Chris Riddle and Jeremy Butler were good friends and dependable allies throughout the more challenging stages. And finally, I owe a special kind of acknowledgement to my daughter Gwen, who grew up simultaneously with this project and never fails to brighten each day.

Any lengthy piece of work depends on enormous kindness and encouragement by an author's family and colleagues. The generosity I have received during the course of this project is far beyond measure.

TABLE OF CONTENTS

ABSTRACT.....	ii
ACKNOWLEDGEMENTS.....	iii
Chapter 1 INTRODUCTION	1
Chapter 2 THE RISE OF COSMOPOLITAN INTERVENTIONISM	32
Chapter 3 WALZER’S THEORY OF AGGRESSION REVISITED	64
Chapter 4 HUMANITARIAN INTERVENTION AS LAW ENFOCEMENT	96
Chapter 5 CONCLUSIONS	130
REFERENCES	141

Chapter 1

INTRODUCTION

The goal of this dissertation is to analyze a group of interrelated questions about the moral legitimacy of humanitarian military intervention.¹ Our aim is to explore the arguments and objections associated with a certain approach to the dilemma of humanitarian intervention, and in the following chapters I want to clarify the arguments and assumptions that lay beneath it. I want to trace them back through intellectual history in order to determine if values of significance were left behind as theorists moved to endorse the new paradigm of humanitarian intervention.

The issue of humanitarian intervention seems certain to remain one of the prominent challenges of the 21st Century. A brief look through the pages of a major newspaper reveals how the global community faces virtually constant crisis events in which the deployment of armed force for purposes of human rights protection is the central dilemma; where the international community faces critical decisions about whether to deploy armed force against severe political repression by their own states. Students of international relations learn quickly that military conflict ‘inside the state’ is a perpetual global concern, and even the suggestion of deploying troops in a foreign country will be likely to provoke rancor and controversy at home and abroad.

¹ I am defining ‘humanitarian military intervention’ as ‘the threat or use of military force across state borders by a state, or group of states, aimed at preventing or ending widespread and grave violations of the fundamental rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied’ (See Holzgrefe 2003: 18). More will be said in this chapter about how we shall define this central concept.

Clearly there are political and strategic considerations at play in every situation where humanitarian military intervention is at issue. But the purpose of this study is to focus on ideas, arguments and substantive claims which are often given to defend actions or policies of humanitarian intervention. And in this particular domain—the realm of ideas and argument—humanitarian intervention appears to produce an intractable contradiction. The current generation of intervention theorists was raised and educated in the context of a global morality of human rights, and that morality seems to be rivaled by an ancient and traditional morality of state sovereignty. The dilemma of humanitarian intervention is frequently viewed through a prism of global values where an emergent ethic of international human rights is the rival that is displacing a traditional and regressive ethic of state sovereignty.

As we will see, much depends on how we understand this contradiction. The issue of humanitarian intervention challenges us not simply because of its difficult political and strategic connotations, but also because two great paradigms of global justice collide in irreconcilable opposition. In some respects, our theories and our case-specific judgments about humanitarian intervention are both the product of this tension between universal human rights and traditional conceptions of state sovereignty.

In this project, I want to show how a growing number of theorists, across all fields of the intervention discourse, have assembled their models of intervention from basic moral assumptions about the *priority of international human rights*. An increasingly

accepted line of argument asserts that the deployment of military force is legitimate² provided that such force will successfully avert “widespread and grave” violations of human rights.³ It is often argued that any regime that exposes its own citizens to widespread and grave human rights violations gives up the shield of legitimate protection traditionally associated with state sovereignty. In other words, military force should be deployed to preserve human life or protect human rights provided the intervention will provide effective protection for the target population.

A leading example of this standard view was developed by Fernando Tesón.⁴ “Governments,” Tesón argues, “are mere agents of the people both internationally and domestically.” *The protections associated with state sovereignty derive from the rights and interests of individuals: those who inhabit the state* (1996: 144). In other words, Tesón believes that “states have value insofar as they act in a just fashion and respect peoples’ rights.” Therefore, any regime failing to protect the basic interests of individual citizens has no legitimacy. No such state is immune from coercive intervention (2006: 94-97). Wherever we find an example of “tyranny” or “anarchy”, foreign powers capable of intervening successfully, preferably under authorization by the United Nations (*UN*), are acting in accordance with their duty to intervene, even though intervention clearly compromises state sovereignty (96).

² ‘Legitimacy’ is being used in two senses. I refer to ‘legitimate interventions’; i.e., by sovereign states, but I will also refer to ‘legitimate states’; political communities which should be deemed immune from military intervention.

³ Formulaic statements like ‘widespread and grave’ human rights violations are increasingly common among today’s theoretical models. Some authors phrase their conditions for intervention in terms of ‘serious and systematic’ rights violations, while others draw the conditions from the terminology of ‘severe’ human rights violations.

⁴ Tesón’s contribution to the humanitarian intervention discourse spans three decades. For examples of his more recent arguments for legitimate intervention, see; 2006: 94-97; 2005a: 149; 2003: 98.

The emphasis on tyranny and anarchy allows Tesón to mark out a sphere of protection for all human beings from the potential violence of their governing regime. The crisis events to which Tesón's formula applies are easy to visualize; he is concerned with political communities that have committed intolerable acts of violence against citizens, and he is also concerned with cases where institutions of the central state have in effect disintegrated, as in the situation of a 'failed state'. In both types of situation, he suggests, our judgments should conform to the same moral calculus. Protection for basic human rights should be the primary determinant of legitimate military action.

Another model is found in the work of Simon Caney, who claims that humanitarian intervention is morally legitimate provided that the regime in question "ignores basic human rights" (2005: 248). As long as humanitarian intervention is not likely to produce disproportionate rights violations, and as long as certain other significant constraints are respected, we should view the intervention not merely as an instance of acceptable action, but as a course of action that respects a binding *obligation* to use decisive military force to protect individuals from severe repression.

Similar to Tesón, Caney offers a formula to guide political judgments about intervention—a 'test' which he thinks should regulate our political judgments during crisis events. Caney's test includes the following conditions: the intervention should aim to provide protection for fundamental human rights; should outweigh non-intervention in terms of human rights protection; should be undertaken by a legitimate authority; and should not impose undue costs on intervening authorities (1997: 32).

Another model based on human rights is found in Allen Buchanan's argument for "recognitional legitimacy." Buchanan applies the same formula as Caney and Tesón to the institution of 'state recognition'. A sovereign state, he argues, "must satisfy certain minimal requirements of internal, external, and procedural justice in order to be recognized as legitimate" (1999: 241). On this view, no sovereign state should be recognized as legitimate by the international community unless it satisfies the condition of 'minimal justice,' a concept articulated in terms of basic human rights protections (243).

At first glance, Buchanan's model seems to encompass a different reform project—one concerned with 'statehood criteria' and how the conditions for recognition of new states should give voice to values of universal human rights. On a deeper level, Buchanan's project expresses the same test of legitimacy found in Caney and Tesón, for each of these models is grounded in the view that human rights should be the sole basis for determining when armed force ought to be deployed against severe or systematic repression in another sovereign state.

Despite differences on the surface, these theoretical models reflect a systematic framework for thinking about legitimate intervention. They are all rooted in a unified family of human rights-based arguments, and in a set of global values and principles designed to guide our political judgments. I agree that this new framework for humanitarian intervention is grounded in a solid ethical core of human rights. They are rooted in the proposition that priority should be granted to the basic needs or legitimate expectations of *individual human beings*.

The new framework seeks to overturn antiquated and traditional notions about state sovereignty. It seeks to usher in an atmosphere of accountability for human rights violations. Nevertheless, I want to emphasize defects contained in the standard model. I will attempt to point out significant alternative views which were not fully explored. Specifically, I want to examine an alternative view found in the writings of Michael Walzer, particularly his book *Just and Unjust Wars* (1977). By looking at Walzer's distinct and disputed theoretical approach to the intervention dilemma, we can construct a framework for thinking about humanitarian intervention that is anchored in global values of enduring significance.

Throughout this dissertation, we will encounter an impressive cast of theorists virtually all of whom support a variation of the standard view already sketched. Those who support the standard view include Charles Beitz, Allen Buchanan, Simon Caney, Jean Bethke Elshtain, Darrell Moellendorf, Terry Nardin, Brian Orend, Fernando Tesón and Nicholas Wheeler, and others.⁵ I want to explain how these theorists use distinctive lines of argument to defend the fundamental proposition that state sovereignty should be reconfigured to acknowledge and respect the rights of individual human beings.

We should acknowledge that the standard framework of Tesón, Caney and Buchanan has been received with broad enthusiasm by international opinion-makers and representatives of the *UN*. For example, in his 1999 essay in *The Economist*, Kofi Annan

⁵ The examples fall into three groups. The first includes Beitz (1979; 1980; 1999; 2009), Doppelt (1978; 1980), Luban (1980*a*; 1980*b*; 2012) and Wasserstrom (1978). The second includes Tesón (1996), Hoffman (2003) and Nardin (1986; 2003). The third includes Tesón, (2005*a*; 2005*b*), Caney (1997; 2001; 2005), Buchanan (1999; 2003*a*; 2003*b*; 2003*c*; 2004), Orend (2002; 2006), Moellendorf (2002), Tan (2000; 2006*a*; 2006*b*), Elshtain (2001; 2003) and Wheeler (2000; 2001). Others could be added. I have tried to select a group of prominent and representative writings.

described what he viewed as a great transformation taking place in the norms of the international system.⁶ “State sovereignty in its most basic sense,” Annan claimed, “is being redefined”. So the Secretary General called attention to a tectonic shift in international structures and global ideas. And that shift was propelled “not least by the forces of globalization and international co-operation. States are understood to be instruments at the service of their peoples, not vice versa”.

Less than two years after Annan’s essay, a document entitled *The Responsibility to Protect (R2P)* was released by a Canadian government commission.⁷ Since its appearance in 2001, the *R2P* has been a lightning rod in the intervention discourse. The new doctrine asserts that military intervention for human protection purposes should be viewed as legitimate provided it will “avert large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action or state neglect; or large scale ‘ethnic cleansing,’ whether carried out by killing, forced expulsion, acts of terror or rape” (2001: 4.19).

Similar to the models developed by Tesón, Caney and Buchanan, the *R2P* is grounded in the ‘priority of international human rights.’ It is expressed in three substantive claims:

- (1) A state has a responsibility to protect its population from mass atrocities;
- (2) The international community has a responsibility to assist the state to fulfill its primary responsibility;
- (3) If a state fails to protect its citizens from mass atrocities and peaceful measures have failed, the international community has the responsibility to intervene through coercive

⁶ Annan, ‘Two Concepts of Sovereignty.’ *The Economist* (September 1999). Annan at the time was chief official of the United Nations, an organization created and constituted by the world’s sovereign states. This seems to reveal how deeply these ideas have penetrated international society.

⁷ The *R2P* was produced by the ‘International Commission on Intervention and State Sovereignty’ (*ICISS*), a multidisciplinary scholars and policy experts.

measures such as economic sanctions. Military intervention is considered the last resort.⁸

The common framework for humanitarian intervention calls for a sweeping overhaul of the structures of state sovereignty, premised on a fundamental claim that human rights protection should be the determinant of judgments about intervention. This basic framework for decision-making has crossed the traditional disciplinary boundaries and now appears with frequency in the speeches of global figures and in the principles discussed in *UN* agencies.

Before providing a detailed overview of the emerging framework, I want to clarify what is meant by the term ‘humanitarian intervention.’ On one definition, humanitarian intervention is “the threat or use of force across state borders by a state or group of states aimed at preventing or ending widespread and grave violations of the fundamental rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied” (Holzgrefe 2003: 18).

What types of action are circumscribed by this common definition? We can distinguish three levels of intervention in the domestic affairs of a sovereign state. ‘Soft intervention’ involves diplomatic pressure and similar policies short of coercion. ‘Hard’ intervention refers to coercive acts such as sanctions and blockades, actions which in some measure involve the deployment of armed force. But it is ‘forcible’ intervention we

⁸ The *R2P* document can be accessed at: <<http://responsibilitytoprotect.org/>>. There are important questions here about whether the *R2P* doctrine refers primarily to *governments* or *states*. Taken literally, the main targets are the offending states. However, it would seem important to recognize that such doctrines should perhaps apply primarily to governments—that is, to the regime that wields effective power over the state. The *R2P*, however, disregards this distinction by referring exclusively to the legitimacy of sovereign states.

are concerned with in this project. That is, we are primarily concerned with interventions that involve the deployment of troops over recognized frontiers for purposes of responding to violence committed by another sovereign state.

A focus on military coercion highlights the most significant feature of humanitarian intervention. Humanitarian interventions are designed to compel a society to endorse a foreign standard of political justice, that is, a standard set by outside authorities, one possibly unendorsed by large numbers of those subject to it. As the Cold War-era international relations expert Hedley Bull explained, “humanitarian intervention represents dictatorial or coercive interference by an outside party or parties in the sphere of jurisdiction of a sovereign state, or more broadly of an independent political community” (1984: 1).

The distinguishing features of humanitarian intervention are the deployment of troops inside a foreign state and the objective of establishing new legal, political and social institutions. Therefore, actions associated with ‘international peacekeeping’ are not our immediate concern. Such operations are generally administered by the *UN* to enforce cease-fires and negotiated peace settlements. Unlike peacekeeping operations, humanitarian interventions do not always receive *UN* approval, and indeed, the most controversial cases are those in which *UN* approval is absent. ‘Humanitarian intervention’ includes actions authorized by a competent global body such as the UN, but also (in

certain circumstances) unilateral and multilateral action by states without international authorization (Malanczuk 1993: 3).⁹

The relevant case history of humanitarian military interventions covers the decades since WWII. I will focus on two significant phases. In the first, interventions were undertaken in East Pakistan (1971), Cambodia (1978) and Uganda (1979),¹⁰ where troops were deployed by neighboring states for the purpose of protecting human rights and alleviating massive human suffering. To be sure, the actions of ‘intervening’ states showed a range of motives. But their actions were defended to the international community and predicated on humanitarian intent. Intervening states were aware of the ramifications of acting without *UN* approval, but the scale of human rights violations¹¹ galvanized the global community and led to *ex post facto* support for each intervention.

In the second phase, during roughly two decades since 1989, interventions were carried out in the former Yugoslavia (1992-5), Somalia (1992-3), Rwanda (1994-6), and Kosovo (1999).¹² In these cases the initial act of intervention was looked on as a potential

⁹ A standard way to distinguish humanitarian intervention from peacekeeping is with separate Articles in the *UN Charter*. Peacekeeping is encompassed by Chapter VI, which refers to ‘pacific settlement of disputes,’ and sets out ‘military and non-military action to restore international peace and security.’ Humanitarian interventions are potentially encompassed in Chapter VII, which refers to ‘actions with respect to threats to the peace, breaches of the peace, and acts of aggression.’ Empowers the UN Security Council to undertake enforcement action in situations where pacific settlement is no longer an option (Malanczuk 1993: 16). The *UN Charter* can be found at: <<http://www.un.org/en/documents/charter/>>

¹⁰ The United States also carried out humanitarian interventions in Grenada (1983) and Panama (1989). We can perhaps set these aside, for most would agree these interventions were not primarily ‘humanitarian’ in character. They were premised on a ‘just cause,’ but did not satisfy the constraint of ‘right intention.’

¹¹ Not to mention instability and refugee flows. It seems hardly possible to separate the intervening states’ desire to protect human rights from their desire to stabilize dangerous borders. However, ‘mixed motives’ always complicate international relations. Still, these examples are taken as credible examples of ‘humanitarian interventions.’

¹² There were of course other interventionary events, including in Iraq (2003) and East Timor (1999). Indeed, after 2001 both the frequency and intensity of military interventions rise significantly. The case of Libya (2011) is significant for how quickly the international community became alert to human rights

act of unilateral aggression; but foreign troops were deployed and tasked to establish basic human security, or alleviate massive human suffering, in a society broken apart by internal political violence.

It was natural and predictable that theorists of intervention would contemplate broad and more permissive thresholds for intervention during the second stage of conflicts. In the wake of the new post-Cold War conflicts, theorists of intervention would work from similar assumptions and aim to develop a new theoretical framework which would appropriately reflect the modern ethic of international human rights. I believe a certain narrative about such post-Cold War conflicts is required in order to understand the arguments of Tesón, Caney and Buchanan. In some respects, the common framework embodies a timely and measured reaction by the international community to rampant and severe forms of political repression.

Overview of Cosmopolitan Interventionism

Above I described the standard framework for judgments about humanitarian intervention, and provided a series of core arguments all of which are rooted in the primacy of human rights. I also suggested that these arguments derive their authority partly from a common sensibility regarding the proliferation of armed conflicts inside the state. What is more revealing is how the theoretical models developed by Tesón, Caney and Buchanan fit together into a pattern, a systematic paradigm, which I refer to as the

violations and how quickly powerful states deployed coercive force. I will claim that interventions have become increasingly common in this second stage and that the likelihood of acts of humanitarian military intervention has increased dramatically.

paradigm of ‘cosmopolitan interventionism.’ As we will see, the new paradigm serves many purposes. Its most important aspect is to provide a sense of global responsibility linked rationally to clear benchmarks for judgments about intervention. The essence of cosmopolitan interventionism is the effort to affirm basic moral requirements and ground them in a coherent and ethically sound view of global values.

In what he calls his “liberal argument” for humanitarian intervention, Tesón claims that a state that fails to adequately protect human rights relinquishes protections afforded by state sovereignty.¹³ If some other state is equipped to provide adequate protection, it is obliged to intervene militarily by fundamental principles of global justice. Tesón’s conditions for legitimate intervention include the principle of proportionality, consent of the target population, and approval of the international community (1996: 164).

The idea of a duty to protect innocent civilians presupposes the existence of a ‘right’ to humanitarian intervention. For this reason, Tesón maintains, only *severe* cases of anarchy or tyranny qualify for humanitarian intervention; victims of tyranny or anarchy must welcome the intervention, and intervention should preferably receive the approval or support of the community of democratic states (1996: 164). Tesón’s liberal argument for intervention contains elements of contractarianism; the view that state governments are bound to protect the rights of individual citizens, and a commitment to individualism; the view that human beings are the sole or exclusive metric for

¹³ Tesón describes this as a ‘liberal argument’ for humanitarian intervention (See 2005; 2006). Many titles can be used, but I will categorize them together as ‘liberal democratic’ or ‘cosmopolitan’ arguments. Differences between these terms are unimportant for present purposes.

determinations of global justice.

Similarly, Caney embraces the constraints of just cause, proportionality, last resort, and legitimate authority, all of which are featured in the ‘just war tradition,’ a discourse on the rightfulness of war stretching back many centuries. In Caney’s view, our conception of humanitarian intervention should be re-formulated in light of ancient just war constraints. But this new account of ‘just intervention’ should also make explicit our universal ‘duty to protect’ human rights. Like Tesón, he claims that humanitarian intervention is justified when a regime violates people’s basic human rights and where intervention is ‘proportional’ in terms of foreseeable casualties (2005: 248).

Buchanan’s recognitional legitimacy model is rooted in a similar view of the supremacy of human rights. His argument for recognitional legitimacy fixes attention on “certain minimal requirements of internal, external, and procedural justice” which should determine a state’s status as legitimate (1998: 241). Buchanan insists that no sovereign state should be ‘recognized’ unless it satisfies the condition of minimal justice.

Brian Orend’s model of intervention is embedded in historical just war tradition. So it reflects a similar fusion of cosmopolitan values and the just war tradition’s enduring constraints (2000a; 2006). The early just war tradition made limited provision for humanitarian intervention, Orend explains, but we can and should revise its characteristic arguments and ground them in a “fundamental concern with universal human rights.” In this modern reading of just war theory, the basic moral commitments are individualistic. “Human rights, perhaps alone amongst political concepts, genuinely acknowledges the worth of each individual life and the importance of that life’s value being protected

against all the other people, forces, and institutions who might otherwise plot to use [it] as a mere prop in their own projects” (Orend 2006: 53-4).

Nicholas Wheeler’s model expresses a strong appreciation for the norms and accepted practices of international society. But Wheeler’s position is also founded on a human rights-based account of global values. International norms, he argues, establish a distinctive line of argument supporting acts of intervention; most significantly, they reveal that intervention can be considered legitimate when responding to “supreme humanitarian emergencies,” provided that the intervention is likely to produce “a humanitarian outcome” (2001: 37).

We should note that theorists like Tesón, Caney, Buchanan, Orend and Wheeler define the argument for humanitarian intervention not merely as a prerogative, but as a *duty to protect* human rights. The commitment to the priority of human rights, in addition to a broad recognition of the arbitrary character of state borders, seems to imply the position that intervention is a binding duty of the international community to human beings everywhere. Such a duty is applicable anywhere human rights are jeopardized by the state with primary responsibility over them. According to many cosmopolitan interventionists, we need to think in terms of a ‘Kantian’ doctrine of humanitarian intervention that offers universal respect for human beings. The Kantian notion of intervention denotes *equal* respect for persons, and it seems to reject any sense of human beings as social and political beings. According to Eric Heinz, however, such a demanding view of intervention is “morally required” if we wish to “fully encompass the human rights implications of the use of force” (2004: 543).

The supporting arguments for cosmopolitan interventionism are grounded in values of human dignity and well-being, and they enable us to recognize the sanctity of individual persons. Universalizing respect for individual persons is a powerful virtue of cosmopolitan interventionism. It implies the proposition that so long as the ‘collateral’ damage from military intervention is manageable—as long as casualties caused by the intervention project lower than those caused by the domestic regime, intervention should be viewed as the *only* legitimate course of action.

Other theorists focus on the significance of political consent. The legitimacy of the target regime depends on a prior question about whether the regime has the actual support of individual citizens. Similarly, the act of intervention derives its moral legitimacy from the fact that those repressed by their own governments actually desire intervention by a foreign power. Michael Ignatieff claims that:

Those who criticize interventions in the name of human rights on the grounds that we must always respect sovereignty ... need to remember that the victims of that state are usually imploring us to intervene. Other conditions follow: the abuses must be gross and systematic; they must be spilling over into nearby countries, causing refugee flows and instability ... and intervention must stand a genuine chance of success (2000: 50).

Each of these accounts of legitimate intervention derives from a broader framework of global values known as ‘cosmopolitanism’. The above arguments share the conviction that values of human dignity, well-being and moral equality should determine the legitimacy of intervention: our judgments should be determined by a basic presumption that human beings are important, and that the importance of human beings should be defined by a principle of moral equality.

In this respect, cosmopolitan interventionism expresses a profound moral vision, one that aspires to global accountability, responsibility and limited governance. And the new paradigm appears to offer clear political benchmarks expressed as minimal requirements that should guide our reasoning about both political events and our efforts at international reform.

In general, the new paradigm limits recourse to military coercion to actions and policies authorized by the *UN Security Council*. It is seen as preferable, for both ethical and political reasons, to restrict the legitimacy of humanitarian intervention to actions authorized by an international organization (Malanczuk 1993: 30). Correspondingly, many intervention theorists affirm the constraint of ‘proportionality,’ defined as the principle according to which the harms or violations caused by intervention should not exceed those prevented. Intervention should “be *proportional* to the injustice occurring,” and should not “repair an injustice at a cost to human well-being greater than the injustice itself” (Moellendorf 2002: 119-120). As Tesón once put it, intervention is acceptable “when it *maximizes* human rights protection” (2003: 103).

The principle of proportionality and the multilateralism constraint are defined in terms of the prior commitment to individual rights (Heinz 2004: 548). And both constraints have an impressive pedigree in the just war tradition (Orend 2006: 59-60). So the fundamental proposition on which these models rest is that human rights protection provides a clear benchmark that reflects basic and essential cosmopolitan commitments.¹⁴

¹⁴ It might be suggested that these constraints and others on similar lines represent either distinguishing features of distinct versions of cosmopolitan interventionism, or attempts to accommodate values of political association and bonds of mutuality within the cosmopolitan vision. I would respond by

To be sure, cosmopolitanism originates from several sources and takes different forms. But all cosmopolitans agree that the rights, fundamental dignity, or well-being of human beings should be taken into consideration in judgments about intervention. According to a common formulation, the cosmopolitan vision is marked by three features. Human beings are what ultimately matter; they matter equally; and nobody is exempted by distance or lack of a shared community from potential demands arising out of the counting of everybody equally (Pogge 1992: 48).

Hence, cosmopolitan interventionists typically adopt the same position on the scope, weight and object of moral concern. They accept that certain basic rights should be extended to *all* human beings; should be held on *equal terms*, and should be held by *individual human beings*, rather than nations or any other socially-constituted group (Holzgreffe 2001: 19).

On this view, human rights also demand *equal* protection. Tesón reminds us of the arbitrary nature of state boundaries. Current borders are ‘moral accidents’; legacies of past injustice meriting no automatic moral standing. Indeed, existing state boundaries are often major obstacles which stand in the way of progressive human rights protection.

So the cosmopolitan foundation of the arguments of Tesón, Caney and Buchanan shields them from the most regressive notions of state sovereignty. Regressive views seem hopelessly mistaken about severe political repression; ‘culture and tradition’ seem

emphasizing the precedence given in all instances of cosmopolitan interventionism to the priority of individual human rights. The models mentioned so far each make individual human rights the sole or exclusive ethical priority, and the re-define all their constraints accordingly. I believe that much can be gained from our construction of cosmopolitan interventionism, although, to be sure, nuances and significant differences may be overlooked in the process.

to take precedence over individual victimization. All in the name of communal politics the regressive view seems to enable all manner of tyrants to simply disregard the ‘sovereignty of the individual.’ Because their arguments are grounded in cosmopolitan values, proponents of the new paradigm resist the ‘moral danger’ of collective values.

From a slightly different vantage point, cosmopolitanism also seems fair and open-minded with respect to cultural attachments. As a global ethic, it is assertively universal; but cosmopolitanism is nevertheless tolerant at least in regard to societies and traditions that respect basic human rights. Models of intervention drawn from cosmopolitanism seem compatible with a range of societies, provided they give equal protection to fundamental human values.

In short, cosmopolitan interventionism offers more or less clear benchmarks to guide our judgments about intervention, and it renders them in a way that emphasizes their foundation in a 21st Century vision of global responsibility and accountability.

Alternatives to Cosmopolitan Interventionism

Above are some of the antecedent reasons why the paradigm of cosmopolitan interventionism is considered a framework worthy of our allegiance. What are its key alternatives? We must examine three positions offered as alternative frameworks. They include; *statism*, *radical interventionism*, and Michael Walzer’s *theory of aggression*. But as we will see, each alternative is inferior by cosmopolitan standards, and so the models built by Tesón, Caney and Buchanan seem clearly to triumph as theoretical foundations for humanitarian intervention.

Statism is the view that *no* commitment can fully legitimize humanitarian intervention. Statists deny the legitimacy of humanitarian intervention entirely and they call into question the broader cosmopolitan aspiration of global justice. According to statist, considerations of justice apply *within* the borders of the political communities, whereas the cosmopolitan vision, which builds its case for intervention on the priority of human rights, is indefensible. States are the significant factors in our major judgments.

In centuries past, statism was highly antagonistic toward human rights. The philosopher Hegel (1770-1831), for example, adopted a radical view of the ‘moral reality’ of the state and this encompassed the Hegelian concept of “objective spirit” (see Taylor 1979: 89). Hegel saw little need to acknowledge the sanctity of individual human beings. He said although individuals “may fulfill their own interests” by participating in the unfolding of the state, what is more important is the process through which “something further is ... brought into being, something which is inwardly involved in what they do, but which was not in their consciousness or part of their intention” (Hegel 1967: 21; Taylor 1979: 98. Hegel simply accepted the view that individuals may “fall in the battle,” but he held that “their universal purpose carries on safe above it.”¹⁵

Like other statist, Hegel viewed the sovereign state as an encompassing *source* of value, rather than as an instrument for the achievement of the ends of justice (Donnelly 1992: 98). We know that those who endorse the cosmopolitan vision disagree; we agree that statism is an indefensible approach to global values, for it disregards and diminishes

¹⁵ The state, he said, is an ‘absolute and unmoved end in itself’, which ‘has supreme right against the individual, whose supreme duty is to be a member of the state.’ See Hegel (1967: 257-8); also Rodin (2002: 143) and Fox (2005: 37, 92).

the importance we rightly attach to human rights. Hegel denied the sanctity of individual human life and the significance of individual self-definition in the broader social and political experience. However, among cosmopolitans these or similar universal values are the non-negotiable elements of international justice.

The second alternative is *radical interventionism*. Military coercion, on this view, is an acceptable instrument to establish democratic governance. Thus radical interventionism is premised on the superiority of liberal-democratic institutions, and on this basis its defenders downplay the significance of international law and normative restraint. One can associate radical interventionism with proposals for intervention by US figures such as William Crystal and Paul Wolfowitz, who insisted that the importance of ‘installing’ democratic institutions outweighed objections to the US-led invasion of Iraq in 2003.

But as the case of Iraq amply suggests, radical interventionism undermines its own core values. The value of democratic institutions is exaggerated by radical interventionists so as to become self-defeating; it seems obvious that an unregulated insistence on democratic governance could transform into a kind of fundamentalism, and quickly alienate societies outside the Western fold. The attempt to enforce democratic norms by military force could unleash untold military interventions, producing instability and delegitimization of the institutions that comprise international society.

Thomas Franck writes about democratic governance as an “emerging right,” (Frank 2003). And like other cosmopolitan interventionists, he limits the deployment of armed force by a series of legal and justice-based institutions. But Franck’s notion of

democracy promotion as a norm of international society and a rationale for using armed force speaks to the core worry about radical interventionism; most would agree that international law has evolved so as to resist pro-democratic interventions. International law expressly condemns intervention as a tool to advance democratic governance. Legal experts agree that no credible basis exists for pro-democracy intervention in current international law (Byers 2005: 85).

Therefore, against radical interventionism the new paradigm offers advantages. Proponents are concerned, as I have noted, with “extreme harms”; violations that qualify as “systematic and severe.” They exclude “ordinary” human rights violations and more common forms of political repression. So in this respect the arguments provided by Buchanan, Caney and Tesón can be viewed as “adequately restrictive,” and their restrictiveness seems principled and consistent, grounded in the higher principles of the cosmopolitan vision.

The third alternative to cosmopolitan interventionism is Michael Walzer’s *theory of aggression* (1977; 1980). According to Walzer, in each state there is a unique ‘fit’ between the government and its citizens, and this fit is crucial, because by protecting it, we safeguard the important global value of “communal integrity.” Governing regimes are underwriters of communal integrity, Walzer suggests, and therefore we should adhere to a strong (but not absolute) presumption of legitimacy that protects state boundaries from coercive intrusions.

Walzer’s model is based on *presumptive legitimacy*; and this feature seems to place him at odds with the cosmopolitan vision. Walzer restricts legitimate intervention

to situations of “genocide, mass murder, and crimes against humanity” (1977), situations severe enough to be considered sufficient justification for full spectrum military action. For Walzer, other violations—we can call them ‘serious but not genocidal’—do not activate the threshold. In other words, restrictiveness distinguishes Walzer’s model from cosmopolitan interventionism; for in his alternative model, intervention is acceptable only in cases where the state “turns savagely” on its citizenry, or acts in a manner that “shocks the conscience” of humanity (1977: 107).

Walzer’s model is grounded in the value of ‘self-determination.’ He claims that humanitarian intervention is justified, and may be obligatory, in extreme cases where “the life and liberty of citizens is threatened from inside the state” (2003). This is because “self-determination is the right of a people to become free by their own efforts.” Therefore, “states have the right to be free from aggression, or the imminent threat thereof, because individuals have the right to share a common life together and the state by the consent of citizens protects this individual right” (1977: 86-88; see Moellendorf 2002: 107).

Because he is known internationally for his writings about culture, diversity, and self-determination, Walzer’s model is frequently linked to a generic type of ‘communitarian’ view of global values. The presumption of legitimacy is articulated in the form of an argument for ‘communal integrity,’ which seems to voice arguments primarily *against* humanitarian intervention. Community itself may be the fundamental value, and according to Walzer it may be the most basic in our ethical universe (1983: 29).

This is an important dividing line in the intervention discourse. According to a common assumption, Walzer is fundamentally at odds with cosmopolitanism. Many theorists have posed the following question; ‘if individual rights are so important, why shouldn’t each and every violation shock the conscience’ (Wasserstrom 1979)? A common view is that Walzer’s theory of aggression is rooted in a “Hegelian myth” that endorses Hegel’s notion of the moral reality of the state (Tesón 2003, 55-9; also see Beitz 1999, 76). The claim accepted by cosmopolitan interventionists is that of the supremacy of human rights; human rights should take precedence over the traditional rights of state sovereignty. As one cosmopolitan argues, “the value of sharing a common life together does not trump other considerations of justice” (Moellendorf 2002: 105).

Walzer seems to misconstrue the full weight of the cosmopolitan vision, or to disregard cosmopolitan values in favor of collectivism. So as with *statism* and *radical interventionism*, Walzer’s *theory of aggression* appears to fail as an alternative to the new paradigm. Cosmopolitan interventionism appears clearly the best, if not the only, stance acceptable to supporters of cosmopolitan global values.

Moreover, the rise of cosmopolitan interventionism has played a key role in the broader movement toward international human rights; the so-called “human rights revolution”. Many describe a global shift of attitudes in which global governments and a burgeoning ‘global civil society’ act together to entrench human rights at all levels of political association. Ignatieff describes international human rights as a modern phenomenon in which activists and scholars around the world continue to expand the realm of individual rights. “From 1948 onward,” he explains, “countless people have

fought for and won a new atmosphere of global accountability. The history of the past half century has been the struggle of colonial peoples for their freedom, the struggle of minorities of colour and women for full civil rights, and the struggle of aboriginal peoples to achieve self-government.”¹⁶

This ‘human rights revolution’ has already transformed our world, as the earlier reference to Kofi Annan’s *Economist* essay indicates. And cosmopolitan interventionism is not only its implication, but one of its touchstones. The rise of cosmopolitan interventionism is perhaps the most fervent expression of the global movement to protect human rights.

So why is it necessary to question cosmopolitan interventionism and theorize about possible alternatives? Why should those who endorse the essence of the cosmopolitan vision seek to challenge the standard framework of Tesón, Caney and Buchanan? My objective in the following four chapters is to identify two specific areas where cosmopolitan interventionism comes up short as a normative framework for intervention. In order to fully comprehend the significance of armed conflict, we need to deepen our understanding of the ‘communal dimensions’ of the sovereign state, especially as they factor in contemporary war and global crisis events. I will argue that the cosmopolitan vision of global responsibility provides valuable resources to help clarify and accommodate the collective aspects of war, although many of those resources have been left largely unexplored.

¹⁶ See Ignatieff (2000: 3).

Challenges to Cosmopolitan Interventionism

Before we proceed to these fundamental questions, I want to examine some well-known challenges to cosmopolitan interventionism as found in the literature. One challenge ties cosmopolitan interventionism to ‘human rights imperialism.’ The core cosmopolitan values of human dignity, moral equality and popular consent are presented as universal; but they are Western values. And therefore they may reflect a project to enforce Western values internationally. To be sure, the charge of ‘imperialism’ is easily exaggerated, for the project to realize a new norm of humanitarian military intervention is not motivated exclusively by imperial ambition. Regardless, in the world today large blocks of states suffer a continuing legacy of colonial rule, and the defense of ‘Western Universalism’ faces real challenges in the global debate about human rights (Donnelly 1999: 62-4).

Another challenge focuses on inconsistency by the international community in deciding where to intervene militarily. To many, the response to extreme violence was excessive in Kosovo in 1999 but virtually nonexistent in Rwanda’s genocide. In Darfur’s long-standing conflict with the Sudanese state, the foot-dragging of Western powers seemed to reflect a bias against protecting human lives in Africa.

Another challenge focuses on current prohibitions on military intervention. How should we explain the fact that existing international conventions like the *UN Charter* seem to disqualify humanitarian intervention? Military intervention would seem to be made illegal by the *Charter*; for it clearly violates Article 2(4): “Members shall refrain in their international relations from the threat or use of force against the territorial integrity

or political independence of any state.”¹⁷ Here is how Stanley Hoffman puts it:

International Society, for some centuries now, has been founded on the principle of sovereignty; the state is supposed to be the master of what goes on inside its territory, and international relations are relations between states, each one of which has certain rights and obligations derived from statehood (1986: 11).

Supporters of cosmopolitan interventionism refer to the *Universal Declaration of Human Rights (UDHR)*.¹⁸ They endorse the legal protections for human rights enshrined in the *UDHR*, even if the specific rights to be protected vary from one model to the next. For Caney and several others, basic rights include “rights to a decent standard of living as well as rights against torture, murder, imprisonment, or enslavement” (Caney 2005: 29).

But even if such references to the *UDHR* confer some international legitimacy, humanitarian intervention patently contradicts other conventions, most conspicuously *Article 2(4)* of the *Charter* and its clear language unequivocally protecting the territory and political integrity of members of the *UN* system.¹⁹

So we encounter two views about the legal and institutional basis of humanitarian military intervention. But the legal status of humanitarian intervention is not settled with reference to the *UDHR* alone. “Unilateral intervention, even for what the intervening states deem to be humanitarian ends, continues to be regarded as unlawful” (Thomashaussen 2002: 144).

Together, these challenges, from international law, inconsistency, and ‘human rights imperialism’ are not trivial. Proponents of cosmopolitan interventionism should,

¹⁷ *Charter of the United Nations* (1945). <<http://www.un.org/en/documents/charter/>>.

¹⁸ *United Nations Declaration of Human Rights* (1948). <<http://www.un.org/en/documents/udhr/>>.

¹⁹ *Article 2(4)* contains the famous ‘rule of non-intervention’, which asserts that “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

and sometimes do, respond to them directly. Each raises a separate question about the new paradigm's capacity to achieve its great promise of global responsibility for human rights.

Indeed, the three challenges are connected: human rights imperialism will continue to frustrate advocates of intervention partly because Western responses to political violence, in Africa and Asia for example, seem to be biased or self-serving. The aspirations of cosmopolitan interventionism will be thwarted by uncertainties about the legality of humanitarian intervention and its negative or uneven endorsement by core actors in the international community.

Still, none of the challenges has given impetus to intervention theorists who would want to reconsider the central disagreement about cosmopolitanism and its approach toward humanitarian military intervention. None suggests an alternative answer to the question at the centre of the humanitarian intervention discourse, or defends the assumption that only a permissive model of intervention squares with the core commitments of cosmopolitanism. The clear implication is that those who endorse the notion of human rights as the ethical cornerstone of global responsibility should view Walzer's theory of presumptive legitimacy as a failure equivalent to that of statism.

Summary of the Project

The task in the following chapters is to reconsider Walzer's theory of aggression and ground it in an appropriate foundation of cosmopolitan values. Similar to Walzer, I wish to carry out a broad consideration of important social and collective dimensions of

political life, especially as they relate to human rights protection in the midst of armed conflict. However, although I will advance a platform of arguments that differs from cosmopolitan interventionism by offering a degree of recognition to existing political boundaries, our recognition of political boundaries does not entail an abandonment of the cosmopolitan global vision. Indeed, I will attempt to show that cosmopolitanism is consistent with several lines of argument that were foundations for Walzer's theory of aggression and pedestals in its normative model of legitimate intervention.

The first element of the project could be described as an example of 'philosophical anthropology'; our aim is to establish a genealogy of arguments and assumptions that lie behind cosmopolitan interventionism, and to lay bare the pattern of their philosophical evolution. Similar to Charles Taylor's methodology,²⁰ we will chart the emergence of dominant ideas about humanitarian intervention through a series of historical and contemporary debates.

Chapter Two will focus on three seminal turning points in this long discourse. First, in the 'Early Debate,' the foundations of the new paradigm are laid in a position called 'solidarism', which reflects a convergence of earlier concepts about just war and the law of nations. Solidarism is the precursor of the contemporary cosmopolitan idea of a community of humankind. But it faces challenges from three separate schools of thought which seek to establish (against solidarism) a solid conception of the 'moral

²⁰ Taylor's 'philosophical anthropology' combines elements of hermeneutics and game theory to understand and contrast the dominance of paradigms like atomism and positivism. The goal of this study is modest by comparison. We will focus on arguments and values contained in the humanitarian intervention discourse. Still, much like Taylor, I will draw attention to a broad modern emphasis on individualism over and above communal and social values. See Taylor (1985).

standing' of the sovereign state. Ultimately each challenge fails, and solidarism approaches the 21st Century as the commonplace model for theorizing legitimate intervention.

In the second stage, Walzer seeks to modernize solidarism in the form of a restrictive model of intervention. But that theoretical model is linked to Walzer's controversial ideas about culture and community, and four prominent critics argue that Walzer failed to adhere to the core cosmopolitan commitments. We will see that the critique of Walzer not only serves as reinforcement of the authority of solidarism. It gives rise to countless new variations and indeed to the paradigm of cosmopolitan interventionism itself.

The third and most recent stage is the 'post-Cold War' period, where immense development occurs in the arguments of Walzer's critics. And due to political developments of this period, relating especially to globalization and international human rights, as well as a rise in armed conflict 'inside the state,' our ancient discourse witnesses unprecedented expansion. What I am calling the paradigm of cosmopolitan interventionism proliferates across numerous fields of this centuries-old debate.

The central task of this dissertation might then be described as an example of 'public philosophy.' Following Michael Sandel's methodology,²¹ my plan is to clarify, evaluate, and establish clear benchmarks to regulate difficult political decision-making. Chapter Three claims that neglected aspects of Walzer's argument should be

²¹ Sandel (2005: 5) describes two senses of public philosophy: 'finding in the political and legal controversies of our day an occasion for philosophy,' and 'an attempt to bring moral and political philosophy to bear on contemporary public discourse.'

reconsidered. Walzer's model gives us a starting point to understand a family of values related to 'political self-government,' which were neglected or ignored on the path to cosmopolitan interventionism.

I will claim that basic human security is dependent upon minimal protection for self-government, and for similar reasons, establishing a representative democracy depends on a certain core of communal values and attachments. Furthermore, self-government plays a dynamic role in the realization of cosmopolitan values on the global stage and affirms a suitable idea of cultural pluralism for the global community.

Chapter Four explores another neglected dimension of Walzer's model. I defend the view that a conception of international law enforcement is superior to the human rights protection model offered by cosmopolitan interventionists. Current intervention theorists increasingly advance what is called a 'regime of accountability' for international human rights. They strive to "overcome limitations of existing international law and establish a framework for preventing large-scale abuses of human rights; the ideal of justice backed by military force" (CSS 2000: 1). But the *UN Charter* denies authority to intervene in the internal affairs of a member state (Thomashausen 2002: 15). And as I will point out, accounts of international law enforcement that came before the past two decades reveal what is lacking in cosmopolitan interventionism and help us reformulate strategies for reform.

Chapter Five draws together our major lines of discussion and provides a summary of our reasons to revisit Walzer's theory of aggression. Regarding major judgments about humanitarian intervention, the core arguments of cosmopolitan

interventionism are detached from global debates and their status remains almost entirely aspirational. Even the *R2P*'s advances in implementing the duty to protect human rights remain largely aspirational in character. Walzer's restrictive model, on the other hand, plays an integral role in progressive thinking about humanitarian military intervention.

In two specific ways, then, I will argue that Walzer's theory of aggression can help fix attention on global values of continuing significance. Walzer took a broad view of the status of political communities. Although he ultimately failed to defend a convincing cosmopolitan basis for legitimate intervention, we can build on his sense of the cultural, institutional and territorial features of sovereign states. Moreover, we can demonstrate that these features are essential to the cosmopolitan vision and should be priorities in how we deal with the world's worst instances of political violence and repression.

Chapter 2

THE RISE OF COSMOPOLITAN INTERVENTIONISM

In the first chapter we defined ‘cosmopolitan interventionism’ as the position that humanitarian intervention is legitimate when it effectively protects basic human rights. I suggested that this view traces back through several centuries of debates; in this chapter, we will see how the core propositions of cosmopolitan interventionism were first imagined and defended, and how they have evolved over time and taken shape into the current literature.

In what follows, I will focus on three key stages or turning points. The first stage is characterized by a position called solidarism found mainly in the writings of just war theorists such as Vitoria and Grotius, which faced a series of challenges attempting to establish the moral standing of the sovereign state. The second stage occurs in an exchange between Walzer and his critics. Walzer claimed to be modernizing solidarism, giving it a modern cosmopolitan foundation; but the critics object to his theory of aggression, arguing that Walzer failed to accord sufficient weight to cosmopolitan values. The third stage is found in the post-Cold War period, where models of intervention by Tesón, Caney, Buchanan, Orend and Moellendorf expand, branching into new fields of the intervention discourse, encompassing debates about state politics and international law.

In each stage, we see a similar dynamic unfolding. We see a gradual but steady movement toward accountability for state-sponsored violations of human rights, coupled

with a parallel movement to downplay ancient or regressive notions of state sovereignty. As we will see, this re-envisioning of state sovereignty as conditional on individual human rights protection has become the cornerstone of a distinctively modern point of view.

The Early Discourse

Let me begin with the major precursors of solidarism. The earliest discussions are found in Roman discourses known today as the ‘just war tradition.’ In its basic sense, that tradition is concerned with “basic moral rules to aid decision-makers facing the monumental challenges of war and peace” (Orend 2006: 471). The idea of ‘just war constraints’ emerged in debates among Roman jurists and philosophers interested in restraining the conduct and occasions for Rome going to war.

Many agree that the tradition and its famous constraints originated in the writings of Cicero (106-43BC), who was the first to systematically deliberate on what constitutes a just cause for war. Cicero developed parameters of judgment to regulate the recourse to war by Rome’s Senate. And while asking about the rightfulness of war, his greatest contribution was to distinguish wars of self-defense from wars of empire or glory. In this respect, Cicero separated justifications based on grounds of justice from justifications stemming from what he called the “aggrandizement” of Rome (Orend 2006: 11).

Still, the discourse that begins in Cicero is narrow and self-interested compared to later efforts to theorize just war; Cicero put his views forward as conditions on the recourse to war. But his analysis was enclosed in the ‘*jus fetiale*,’ a legal corpus

developed by Roman lawyers for the realm of public reasoning. The rightfulness of war, in this domain, was shaped by presuppositions about the Imperial status and the superiority of Rome.

Shortly thereafter, we begin to detect a desire to *moralize* constraints on war. None of the Roman jurists contemplated the justice of war in the context of a truly universal ethic, although they did set in motion a thread of arguments that led over time to a genuine ethic of global community.

Several centuries later, St. Augustine (354-430) had theological as well as personal reasons to revise Cicero's conception of war. Augustine defended further limitations on war, giving three main claims to this effect. He argued, firstly, that a just war is one conducted under the legitimate authority of a "Prince." Just wars are not conducted by private militias, nor can they be undertaken by 'gangs and bandits.' Only those with legal authority are entitled to initiate a war legitimately. Second and thirdly, Augustine developed conceptions of *just cause* and *right intention*; further restrictions on occasions for war. A war is just only if its ruler initiates military action for sufficiently weighty reasons, Augustine argued, not simply for 'ulterior motives.' In short, he claimed that "war may be just if it is waged in defense of a common good and to protect the innocent from certain destruction" (Elshtain 1985: 44).

We encounter in these conceptions of just war an effort to build a kind of framework for responding to ethical dilemmas of war. Augustine's method was to provide simple and straightforward constraints. But he strove as well to provide them with a suitable foundation of normative principles, which for Augustine were derived

from Christian theology. Augustine was the first major thinker in Christianity to confront the contradiction between pacifism and collective violence. Throughout Augustine's lifetime Christian communities faced threats of political violence within the sphere of Roman power and influence and also, increasingly, from external adversaries. He reasoned that Christians would be required to brandish tools of violence if they were to survive and flourish as an enduring mode of political life.

One purpose of the great work *City of God* is to distinguish legitimate from illegitimate expressions of collective violence (Elshtain 1985: 45). Augustine asserted that "in the same way that a Christian ruler rightly uses the sword in defense of those living within the realm, so too they rightly use the sword of war to protect their polity from external enemies" (Elshtain 1996: 20).²² Hence Augustine's concept of just war transcends the self-interested public reason that characterized the Roman *jus fetiale*; his project of expanding the constraints in a foundation of normative claims in the *ius gentium* would be a primary influence on all future just war theorizing.

The Augustinian view dominated Western discourses until the period of St. Thomas Aquinas (1225-1274). Like his theological predecessor, Aquinas accorded great importance to the *cause* and *intention* of war, and he insisted on vesting authority to wage offensive war in independent princes" (Reichberg and Syse 2002: 312-313). However, Aquinas added to Augustine's just war theory in several key respects. He claimed that just wars must also be fought by *just means* because there are natural limits to methods

²² The imagery of the two cities is central to Augustine's view. The 'Earthly' city was constantly beleaguered by violence and therefore, even though a 'Christian ruler must show love for his own people,' he 'must also on occasion order war, and then, only after the greatest reluctance, and never to indulge bloodlust or hatred for enemies' (Orend 2006: 12).

and activities that soldiers can utilize even if their war is undertaken justly (Bull 1977: 29). Looting and pillaging, for example, were obvious concerns for medieval thinkers like Aquinas. He argued that unnecessary violence intentionally committed against innocent civilians was excluded from the legitimate activities of war.²³

Aquinas further systematized the just war doctrine in his “laws of nature.” His intellectual project, on this theme and elsewhere, was to provide a synthesis of the ideas of Aristotle, Augustine, and Roman philosophers, which led Aquinas to conceive of the laws of nature as the “rule and measure” of human experience. He claimed that “everything in the terrestrial world is created by God and endowed with a certain nature that defines what sort of being it is in its essence.” Attacks on civilians were thus excluded from the conception of just war; not only because they offended Christian sensibilities, but also because they violated precepts to which we as human beings owe rational allegiance. In this sense, Aquinas was the first to develop a genuinely ‘universalistic’ view of just war.

These were early precursors of solidarism. The arguments of Cicero, Augustine and Aquinas are significant for how they form a base of ideas about the rightfulness of war, and in their discussions about just cause, self-defense, right intention, and just means, and in the way they were grounded in ‘laws of nature,’ we see a number of themes that will be the source of much debate for several centuries to come.

²³ For the extended passage, see the *Summa Theologica* at Part II: Question 40; *Of War*.

The Birth of Solidarism

The next great shift began in the writings of Francisco Vitoria (1483-1546), particularly his book *De Potestate Civili* (1528). Vitoria's project was to reconcile the emerging just war doctrine with the Roman concept of the *ius gentium* (the 'law of all nations'). He anchored these two seminal ideas in Aquinas's natural law foundation, which is where the position we call 'solidarism' comes into existence. Solidarism is the position that individual human beings are a basic source of moral concern (Bull 1977: 11-12).²⁴ According to solidarism, human beings are members of a "universal community" of humanity and sovereign states have responsibility not only for their own citizens but also wider guardianship; duties of protection that extend to human beings around the world (ibid).

Solidarism emerged in European debates about the conquest of indigenous peoples in the Americas. The *Conquistadors* movement produced great controversy among European intellectuals, and their discussions featured several of Vitoria's followers, including Sepulveda (1490-1574), Francisco Suarez (1548-1617), and Albertico Gentili (1552-1608). Many rejected the proposition that Indigenous tribes, which were non-Christian, could be proper subjects of rights and normative claims. To them, the moral universe of Christianity excluded non-Europeans; such theorists believed that justification for New World conquests was derived from the concept of *imperium*

²⁴ I am using 'solidarism' to differentiate historical arguments about a universal human community, but I am also aware that the same term was used by the members of the 'society of states' school, such as Wheeler (2000) and Bull (1977), to define a much broader contemporary position on international justice.

mundi, the Papal directive viewed as necessary and sufficient to justify conquests in the Americas.

Others maintained that lands inhabited by non-Christian peoples were “automatically open to acquisition by conquest” (Korman 1996: 42). But an influential minority including Vitoria sought to include Indigenous peoples in their vision of universal humanity. Vitoria held that war against Indigenous peoples could be legitimate only if they violated rights of Spaniards to travel freely, or engage in trade in the new world, or to propagate Christianity and establish new Spanish colonies (Dinstein 2005: 65).

Two important claims followed. Non-Christian peoples enjoyed the rights of *jus ad bellum*, Vitoria said, and therefore wars against Indigenous peoples had to qualify as *just wars* (Orend 2006: 16). Secondly, on that basis Vitoria’s solidarism also allowed for a restrictive notion of what we now call humanitarian military intervention. In a seminal passage, he argued that the conditions which render acts of intervention legitimate include:

Sins against nature which are harmful to our neighbors, such as cannibalism or euthanasia of the old and senile, which [are] practiced in *Terra Firma*; since the defense of our neighbors is the rightful concern of each of us, even for private persons and even if it involves shedding blood, it is beyond doubt that any Christian prince can compel them not to do these things. By this title alone the emperor is empowered to coerce the Caribbean Indians (Vitoria 1528; See also Boyle 2006: 45).

Therefore, in situations of ‘inhumane’ violence, or cases where a tyrant “turns savagely” on innocent people, military intervention to protect innocent people was permissible provided other just war constraints were heeded. And this limited notion of

intervention had roots in Christianity's concept of 'hospitality.' Vitoria argued that "hospitality—or *caritas*—obliged believers, regardless of whether the one to whom aid was owed was a family or tribal member or a stranger" (Elshtain 2003: 65). Hospitality underscored virtues of fellowship and reverence for human life (Bull 1977: 27). So in this important sense, Vitoria was developing a global ethic with universal reach; the evils that military intervention intended to address were violations of the natural law, Vitoria claimed, and not only Christian law.

So Vitoria was the first to accept legitimate intervention in cases of extreme barbarism. Non-Europeans, on his view, should be valued as human beings, not simply as enemies of Christian civilization. Solidarism even in this early variation was grounded in two fundamental ideas; the existence of a universal moral order that "originates in each individual person", and the responsibility of the sovereign to individual subjects (Chesterman 2001: 13; Nardin 2000).

More than a century later, Hugo Grotius (1583-1645) transformed Vitoria's solidarism, giving it new impetus and the elaborate architecture that is familiar in today's international society. Like his predecessors, Grotius advanced 'laws of nature' as the basis of his arguments about just war. He said: "just as in each state the civil laws look to the good of the state, so there are laws established by consent which look to the good of the great community of which all or most states are members, and these laws make up the *ius gentium*." And on this basis, he perfects the well-known index of just war constraints; just cause, proportionality and last resort (Fotion 2002: 92).

But for Grotius, sovereign states also had a clear moral guardianship—a set of duties of protection—for human rights around the world (Bull 1977: 11-12). On this view, sovereign states ought to “regard themselves as members of society, bound together by the universal supremacy of justice” (Brierly 1963: 29). Grotius argued that states which fail to guarantee a minimum degree of “common humanity” are answerable to higher powers, powers with the capacity to protect innocents and enforce the laws of nature (Grotius 1902: 428).

The argument occurs forcefully in the book *De Jure Belli ac Pacis*. “If a tyrant...practices atrocities towards his subjects, which no just man can approve, the right of human social connection is not cut off in such a case. It should not follow that others may not take up arms for them” (Grotius 1904 [1625]: 440). For such reasons, wars undertaken “on behalf of the oppressed” are also just wars (1904: 441-2).

I have argued that solidarism was born in the writings of Vitoria and Grotius, whose ideas trace back to the texts of Roman jurists and early Christian theologians. Solidarism’s notion of universal community would become a foundation for cosmopolitanism. We will see later that Grotius’s conception of solidarism in particular becomes a pillar of cosmopolitan interventionism. But the reaction to solidarism is significant and revealing, and as we will now see, defects in solidarism’s alternatives solidify and increase the authority of Grotius’s radically modern formulation.

Challenges to Solidarism

In the centuries after 1600, solidarism generated a series of challenges from distinct schools of thought that each questioned solidarism's global universalism and 'pretensions' to universal morality. On separate grounds, these schools of thought argued that solidarism, as developed by Vitoria, Grotius and their followers, failed to respect the boundaries of sovereign states.

International Realism is the view that state self-interest is the sole determinant of the justice of war. Suggestions about acting on universal moral codes betray this pure aspect of state sovereignty (See Fotion 2002: 3; Donnelly 2000: 166-7). The classical tradition of international realism goes back further than solidarism, beginning with Thucydides (460-395BC) and extending through Machiavelli (1469-1527) and social contract theorists like Thomas Hobbes (1588-1679).²⁵ Like the solidarists, Hobbes developed his arguments in relation to the 'laws of nature' (Forde 1992: 62). But in Hobbes, these laws place sovereign rulers in a situation of perpetual combat. The sovereign, in Hobbes's words, lives in the "state and posture of a gladiator," and therefore "every commonwealth has an absolute liberty to do what it shall judge most conducing to its benefit" (1962: 162).²⁶

For contemporary international realists, "the primary commitment [of global justice] is to the state's interests; to the integrity of its political life and the well-being of

²⁵ Here I take up two main threads connecting classical realism with modern-day international realism. For a more extensive chronology, see Forde (1992: 62-68).

²⁶ Hobbes argued that 'the Law of Nations and the Law of Nature are the same thing... Every Sovereign hath the same right, in procuring the safety of his People, that any particular man can have, in procuring his own safety' (Hobbes 1962: 158; see May 2005: 14).

its people.”²⁷ International realists hold that “it is futile to search for an abstract principle which would allow us to distinguish a salient difference between legitimate and illegitimate intervention” (Morgenthau 1967: 430; Donnelly 1992: 85).

Realists claim that the state is free to pursue its goals in relation to other states without moral or legal restrictions of any kind (Bull 1977: 23-25). But this suggests that international human rights are foundationless; our ideas of universal morality and global responsibility are incoherent. As Beitz put it, “It is difficult to see how [realism] can be given a consistent defense without adopting a thoroughgoing skepticism about all morality, which is something ... few are willing to do” (Beitz 1979: 407-8).

One can interpret realism as saying that the sovereign state has a *primary interest* in peace and political stability. Realism, on this account, stresses the primacy of power and security (Donnelly 1992: 85). The Hobbesian dictate to “seek peace and to follow it” is taken to be authoritative, and realism can endorse a version of pro-intervention argument (May 2005: 15).

Yet even in this less extreme form, international realism is grounded in the exclusive interests of sovereign states; legitimate intervention is justified only if it advances the interests of the state. Acts of intervention should be judged on instrumental grounds of national interest (Donnelly 1992: 102; Wheeler 2000: 27-33). Or as the noted international realist Hans Morgenthau put it, leaders of a state have “no right to let moral disapprobation... get in the way of successful political action, itself inspired by the principle of national survival” (See Beitz 1979: 407). Many still today think intervention

²⁷ For famous statements of contemporary international realism, see Kennan (1954: 45).

is simply a disguise for pursuit of national interest; talk of a ‘right of humanitarian intervention’ could only be used to the disadvantage of weaker states.

Solidarism was called into question during the 18th and 19th centuries by *legal positivists*. According to positivists, the determinant of the legitimacy of a state’s actions is positive international law; the goal of legal positivism was to detach principles of international law from solidarism’s morality of the individual (Chesterman 2001: 17). Whereas both solidarists and international realists considered the laws of nature as moral anchors of international society, positivists rejected them, and viewed the sovereign state as the locus of moral consideration.

Christian Wolff (1679-1754) argued that existing boundaries are both the limitation and the ultimate source of global commitments. To make his view of territorial inviolability explicit, Wolff deployed the ‘domestic analogy.’ He explained that “nations are to be regarded as individual persons living in a state of nature”. But Wolff used the analogy to deny solidarism’s notion of the laws of nature. He deployed the domestic analogy as a supporting argument for the rule of non-intervention.

Hence, for Wolff humanitarian intervention was strictly forbidden. He took the view that “to interfere in the government of another is opposed to the natural liberty of nations, by virtue of which one nation is altogether independent of the will of other nations in its actions” (Wolff 1964: 131; also see Holzgrefe 2003: 28). Even if the sovereign in question “should burden his subjects too heavily, or treat them too harshly, the ruler of another state may not resist by force...” For the sovereign state is the sole and exclusive determinant of global justice; “no ruler of a state has a right to interfere in the

government of another, nor is this a matter of his judgment” (Vincent 1986: 115; See also Tesón 2005: 61).²⁸

Wolff’s positivistic argument for ‘just war’ was expressed in the language of ‘punitive war.’ “Wars of punishment,” said Wolff, “are justified when waged by a state that received ‘irreparable injury,’ where satisfaction cannot otherwise be obtained.” Punitive wars are not legitimate, however, if waged against nations simply because they are “very wicked,” or “violate dreadfully the law of nature, or offend against God” (Wolff 1964; also see Chesterman 2001: 17).

The positivist Emerich Vattel (1714-1767) largely endorsed Wolff’s strong conception of the state. Vattel opened positivism’s prohibition on humanitarian intervention. He argued that “no foreign State may inquire into the manner in which a sovereign rules, nor set itself up as the judge of his conduct, nor force him to make any changes in his administration”. But he allowed that a sub-state nation, what we call today a ‘national minority,’ if it is powerful enough and sufficiently well organized to “rise against its sovereign,” generates a powerful claim to armed assistance from its allies.

In present terms, Vattel expands Wolff’s non-interventionism with a principled exception for intervention on behalf of a secessionist minority. He allows that when a nation rises in revolt against its sovereign, then “another state may enter the quarrel” (See Chesterman 2001: 17-9, 37). In the end, however, Vattel’s concession is unsatisfactory in comparison to solidarism’s capacity to protect human beings.

²⁸ The original source is Wolff (1964: Sec. 2.9).

According to positivists, the *ius gentium* was unequivocally the law of a system of states, not a transnational community of individuals (Nardin 1983: 62). Therefore legal positivism rejects universal values. Most of us today would disagree with this position. We acknowledge that human rights should be among the basic and non-negotiable components in a defensible model of humanitarian intervention.

The 20th century produced a final challenge to solidarism from a school of thought known as the *society of states*.²⁹ This approach was characterized by two features: a Hobbesian appeal to national interests and the need to protect them; and also “another characteristic, equally constant, namely the endeavor of states to introduce some kind of order or regularity in their external relations” (Forsyth 1992: 23). Hedley Bull argued that states in international society are bound by conventions and accepted diplomatic practices, such that their relations constitute a complex moral community.

To put it simply, the justice of a state’s actions is determined by a complex interplay of factors in international society. The significance of the state is conceived in the relations or norms ascertainable in the conduct of international relations. As Nardin explains, the society of states analysis of state borders does not deny:

that states often cooperate to promote shared purposes, or that their desire to realize these purposes is an important factor in motivating them. It simply recognizes that, when states *do* cooperate, they do so within an existing framework of practices and procedures, at least some of which have not been deliberately instituted. International society is thus something more than the sum of the transactions of its members (1983: 16).

And the society of states accepts moral responsibility not only to protect a state’s

²⁹ The approach emerged from the work of the ‘English School’ of international relations, led by Hedley Bull (1932-1985), Martin Wight (1913-1979) and John Vincent (1943-1990). For a survey, see Vincent (1974: 43). For current works, see Caney (2005); Wheeler (2001) and Forsyth (1992).

own citizens, but also duties for human rights everywhere (Bull 1977: 11-12).³⁰ Bull recognized that intervention is “endemic” to international society. He considered humanitarian intervention “a ubiquitous feature of modern international relations,” perhaps even an inherent feature of it.” No serious student of the subject can fail to see intervention is sometimes justifiable (Bull 1984: 2).

Among society of states theorists, John Vincent provided the best-known analysis of humanitarian intervention. He gave priority to the rule of non-intervention—he called it the “golden rule” of international relations—which asserts that “states should reciprocally recognize their right to collective liberty” (Vincent 1986: 123-4). Although the society of states provided the tools to encompass legitimate intervention, it provides conflicting messages. On one hand, “international human rights activity is ... permissible to the extent authorized by the norms of the society of states” (Donnelly 1998: 29). On the other, the non-intervention rule remains centrally fixed in the society of states as the key presupposition for our case-specific judgments (Bull 1977: 22, 67). Proponents are known to hold with the maxim “order precedes justice” (Wheeler 2000: 28).

To sum up this section, following the birth of solidarism, three separate schools of thought attempted but ultimately failed to establish grounds for the moral standing of the state. The conception of solidarism developed by Vitoria and Grotius over a lengthy discourse became an outlook with immense authority and adherents around the world.

³⁰ Here is an example. We know that when a state “decides to disregard the rules, it recognizes that it owes other states an explanation of its conduct in terms of rules all states endorse” (Bull 1977: 45). When international norms are disputed or disregarded, states inevitably turn to shared organs such as the *UN* to obtain validation for their foreign policies in terms of accepted rules (Wheeler 2000: 25).

Realism, positivism and the society of states, in stark contrast, remain locked in their historical periods, considered by cosmopolitans to be discredited.

The Post-Walzer Debate

The next shift began with a single book; Walzer's *Just and Unjust Wars* (1977). Walzer's project was to reconstruct and modernize solidarism in a framework that pays adequate respect to values like self-determination and global pluralism. We will see, however, that the critics deny Walzer's effort to modernize just war theory, and they argue, largely in unison, that the restrictive model fails to cohere with the core commitments of cosmopolitanism.

At a general level, Walzer's position is that we shouldn't intervene in sovereign states because of a certain unity, a correspondence, which binds a government with its people. The correspondence generates significant values of communal integrity, and by giving it status in our judgments, we safeguard the modes of political life sovereign states presumably reflect. Humanitarian intervention disrupts the correspondence between states and citizens. Intervention entails the use of military coercion by one state against another.

Thus Walzer describes the essential feature of his model in terms of "presumptive legitimacy."³¹ His model is restrictive in the sense that military force can be legitimately deployed only when one of three conditions apply; it must aim to liberate a subjugated national minority; or counteract unjust intervention in civil war; or halt genocide,

³¹ For a classic formulation, see Walzer (1980: 210).

enslavement or mass murder. These cases, Walzer argues, enable us to draw a clear threshold beyond which the presumption of legitimacy would seem “meaningless and irrational, cynical and irrelevant.”

Walzer’s restrictive model of intervention is anchored in an appeal to ‘communal integrity.’ He claims that his value of communal integrity derives its force “from the rights of contemporary men and women to live as members of a historic community and to express their inherited culture through political forms worked out amongst themselves” (Walzer 209: 211). Communal integrity “concerns the freedom of the community as a whole; [and thus it can have] no force when what is at stake is the ... survival or minimal liberty of some substantial number of its members” (1977: 88, 101; also 2004). This is the reason why acts of “massacre and enslavement”, and not wider forms of violent repression, trigger Walzer’s threshold. Intervention is legitimate only when a state “turns savagely” against its people or when its actions “shock the moral conscience” of humankind (1977: 107).

Walzer’s restrictions are grounded in an appeal to the notion of ‘self-help.’ He refers to J.S. Mill (1806-1873), who argued that social virtues, shared commitments, and a certain kind of collective vision were preconditions of political freedom. These are the kinds of virtues which “the armies of another state are most unlikely to produce”. We can call this aspect of the restrictive model the ‘Mill/Walzer thesis.’ Its priority is to ensure that intervention will not place the target society under a “foreign yoke.”

According to Walzer, then, humanitarian intervention is a restrictive prerogative triggered by mass murder, genocide, and certain atrocities of the most extreme kind. He

insists that “a state forfeits its basic rights if its ability to govern is disrupted by a secessionist movement which is representative in character or it has engaged in massive violations of basic personal rights” (See Lackey 1982: 530).

Walzer’s critics³² claim that an acceptable correspondence between a government and its citizens exists only when individual and/or democratic rights are protected; we achieve the appropriate values of political community, on this view, only if there is basic or minimal protection for human rights. In a sense, protection of basic human rights ‘grounds’ the state in a foundation of cosmopolitan justice. The critics claim that Walzer’s appeal to communal integrity derives from a ‘statist’ vision of global values that denies the authority of human rights in the context of global justice.

Doppelt objects to the potential for repression he sees in the communal integrity thesis (1978; 1980). He points out that “there are states which satisfy [Walzer’s] criteria of which it would be straining to the point of incoherence to say that a majority of its people enjoy rights ‘to express their inherited culture through political forms worked out among themselves’”.³³ He accuses Walzer of callously neglecting ‘lesser’ forms of political violence; “a state may be extremely tyrannical and unfree even though it ... is not engaged in the massacre of its people. Within Walzer’s [model], such a state, regardless of how tyrannical and unfree it may be, possesses the infeasible rights of

³² I am referring to the theorists who published critical responses to *Just and Unjust Wars* in the two years that followed. They are Beitz (1979; 1980), Doppelt (1978; 1980), Luban (1980a; 1980b), and Wasserstrom (1978).

³³ Worse than that: “tyrannical regimes typically manipulate and suppress the inherited culture of their people, destroying or transforming whatever elements threaten their hegemony” (Doppelt 1980: 399).

political sovereignty; and in such cases [Walzer argues] foreign military intervention is always morally wrong” (1978: 8).

Luban argues that the theory of aggression is untenable because it fails to honour the essential idea of popular rule expressed in the social contract (1980*a* and 1980*b*). Luban calls on arguments by Hobbes and Locke, who developed “very different conceptions of the social contract.” The first was a “vertical contract,” associated with Hobbes, in which a people consent to a sovereign ruler who holds authority over them. The other was a “horizontal contract,” associated with Locke, where the people bind themselves into a political community and their regime holds power as a guardian of their interests.

Hobbesian and Lockean social contracts are different ways a political community may be said to *consent* to the regime governing it. But for Luban, only the vertical contract applies as a conception of international legitimacy; our concern ought to be with the sources and limits of power exercised by a state over individual human beings. It seems obvious, he claims, that “a state’s rights can be established only through a vertical contract, which according to social-contract theory “means nothing more or less than that the state is legitimate” (1980*a*: 168; 1980*b*: 159).

So Luban claims that the rule of non-intervention is rooted in un-cosmopolitan foundations (1980*a*: 167). Consequently he can proceed to develop an alternative model, constituted by a new human rights-based ‘calculus’ of legitimacy. On this interpretation, the just war concepts are redefined in accordance with human rights principles. Luban

argues that “a just war is a war (*i*) in defense of socially basic human rights (subject to proportionality); or (*ii*) a war of self-defense against an unjust war” (1980: 175).

Wasserstrom’s critique focuses on Walzer’s notion of self-defense. The right of self-defense was a key feature for Walzer; it was an implication and also a foundation in his platform for presumptive legitimacy. But the way Walzer defines the right of self-defense, Wasserstrom suggests, ignores the rights of individuals. It is “striking and problematic,” he claims, that self-defense rests on a “relatively unqualified assertion that the sanctity of the territory or sovereignty of the nation-state underlies the rightfulness of full-scale resistance to all initiations of war” (538).

Citizens are neither duty-bound nor “forced to fight” for a tyrannical regime. Therefore, it seems unclear “why the rights of individuals do not justify [greater latitude in terms of military] intervention, and less allegiance to the rule of non-intervention” (1978: 544). Wasserstrom’s conditions for legitimate intervention are given in terms of a ‘utilitarianism of human rights’ principle; judgments about a given act of intervention should be determined by the rule of *proportionality* (1978: 544; Also see Walzer 1980: 222).

Beitz challenges Walzer’s communal integrity thesis. He targets the assertion that “over a long period of time, shared experiences and cooperative activity of many different kinds shape a common life” (Walzer 1977: 54). For Beitz, although we should recognize the significance of “association and mutuality,” values which help us to demarcate practices and traditions essential to shared existence, we should reject the conclusions Walzer draws in regard to communal integrity. “Walzer thinks ... that state

boundaries define political communities in which autonomous processes of social development take place ... these processes consist of the exercise by a state's members of their rights to 'build a common life'." But whenever severe repression occurs we must remain skeptical about whether the state is a genuine guardian of the people.

"The idea that the rights of states are based on the rights of citizens is plausible," Beitz contends, "only if the rights of citizens are given definite moral content, but any definite moral content will require a limitation in the scope of the principle protecting the rights of states to states which satisfy corresponding moral criteria" (1979: 414-5). It may be true that Walzer's concern with association and shared experience suggests important values that may be undermined by coercive military intervention: but Beitz decisively rejects the view that "concern for the history and culture of a society, appropriate as it is, [supports or justifies] the non-intervention rule" (1980: 387).

In other words, there is no principled grounding for 'presumptive legitimacy.' "Everyone has a basic moral right to live in institutions that are as nearly just as their circumstances permit. States whose institutions satisfy this condition might therefore claim rights of territorial integrity and political sovereignty" (Beitz 1980: 415). And as we saw with Luban and Wasserstrom, the implication for Walzer's theory of aggression is clear; "the only states that deserve ... protection are those that respect the human rights of their citizens. States that fail this test would ... be targets of "reform intervention." We might decide against reform intervention, but not for the reasons offered by Walzer" (1979: 413-5).

Beitz further explains that “each case of reform intervention must be examined individually, in its own historical and political setting, to determine how the relevant strategic calculations are likely to come out in that case” (Beitz 1979: 415). He reminds us of the applicability of non-military modes of intervention, which promote human rights without bringing the cruelty and instability of war into play (1979: 413; 1999: 72).

In all, the critics argue that Walzer’s idea of communal integrity, the normative centre of his theory of aggression, is either illusory (Luban 1980a: 169) or derived from statist conceptions of global values that reject the validity of human rights (Wasserstrom 540; Beitz 1979: 415). Walzer said his restrictive formulation was *implied by* the core commitments of moral cosmopolitanism; but the critics envision international society as framework including a dominant norm of humanitarian intervention grounded in international human rights.

One could not overstate the importance of this exchange in the context of the humanitarian intervention discourse. The critics’ arguments are rooted in two fundamental assumptions. The first is about the fundamental priority of human rights. The second is about the arbitrary nature of existing state boundaries. Together, they spark innovation and development in two decades that follow, as a growing community of theorists elaborate and add substantially to them. Nearly all theorists of intervention seem convinced that the critics prevailed; that the theory of aggression failed in its endeavor; and that a framework of humanitarian intervention based on the supremacy of human rights is the only one that follows from the cosmopolitan vision.

The Post-Cold War Debate

Throughout the Cold War, human rights were subordinate to state values, and nearly all agreed that intervention in the jurisdiction of another state could jeopardize bipolar peace or destabilize international society (Thomashausen 2002: 22). Soon after 1989, however, with the fear of global war diminished, supportive attitudes began to coalesce around the protection of international human rights.

Prominent models of intervention throughout this period emphasize the supremacy of human rights and the arbitrariness of state boundaries. They call for legal reform in the area of humanitarian intervention. Hoffman denounced “the passivity of the international community” in situations where “people are killed or otherwise suffer massively.” Half-measures, he said, “easily result in ... inconsistent policies whose success is at the mercy of the strongest parties to the conflict” (1996: 5-7). We should be prepared to intervene with armed force “sooner rather than later.”

According to Hoffman, “sovereignty can be overridden whenever the behavior of the state, even within its own territory, threatens the existence of elementary human rights abroad, and whenever the protection of the rights of its own members can be assured only from the outside” (Hoffmann 1996: 92). Still, Hoffman seeks to retain the “presumption against unilateral intervention” which “still ought to stand” (Hoffman 1996: 21). He views the non-intervention rule as one of the two basic “*Grundnormen*” of international society; the protection of human rights and the right of states to peace and security are the considerations built into international society (1996: 23).

Nardin also sought to retain the general presumption against intervention. But he agreed under certain conditions that the presumption should be overridden, namely to protect human rights (1986; 2003; See also Caney 1997: 27). Intervention to protect human rights should be considered acceptable when stringent conditions are met. For example, less drastic remedies are tried and fail. Intervention should be likely to remedy human rights violations; which should be sufficiently serious prior to intervention to warrant the costs in terms of human life. Anticipated effects on international stability should be minimized (Nardin & Slater 1986: 93-94). This line of reasoning is rooted in Nardin's reading of the post-Walzer critique. He says "one might reasonably ask why Walzer justifies intervention only when people are being massacred or put into slavery. Hence Slater and Nardin ask in a famous essay; "Why not political murder or torture" (91)?

Tesón asserts that military intervention is justified only if it "maximizes human rights protection" (Tesón 2003: 103). In other words, he is committed to the view that our judgments should honour a commitment to universal human rights. Tesón argues that non-intervention is a "doctrine of the past". Intervention is justified "not only to remedy egregious cases of human rights violations, such as genocide, enslavement, or mass murder, but also to put an end to situations of *serious, disrespectful, yet not genocidal oppression*" (Tesón 2005: 16-7).³⁴

In short, theorists of the post-1989 period accept a fundamental presumption about the priority of human rights; they gain their authority from acknowledgement of the

³⁴ Tesón's major book is *Humanitarian Intervention: An Inquiry into Law and Morality*, and its first edition was published in 1997.

arbitrariness of state borders. Walzer's theory of aggression is characterized as a failed form of statism. Tesón holds that "inherited cultures are morally binding because they are the product of a long process of association and mutuality, shared experience, cooperative activity—in short, they are binding because they are the product of consent" (Tesón 2003: 33).

This is a key feature of Tesón's approach. As we've seen, Tesón thinks that "the reason for creating and maintaining states and governments is precisely to ensure the protection of the rights of individuals." From his perspective, Walzer's conditions of intervention are unjustifiably restrictive (2005: 144).

Brian Orend is a noted modern just war theorist, and he describes the outcome of the post-Walzer critique as a consensus in the critics' favor. He writes that:

Walzer came under critical fire for his stress on the magnitude of rights violations that must be present to justify intervention. Critics like Beitz, Luban, and others suggested that regimes which fail to respect human rights, yet do not go so far as to massacre or enslave their citizenry, have lost their legitimacy as readily as those monstrous few which resort to massacre (2000: 542).

Although Walzer suggests his restrictions on humanitarian intervention can be reached by appealing to the "rights of people to build a common life," his position is argued outside a rights-based framework" (Heinz 2004: 555). Hence the restrictive model is equated to legal positivism.³⁵ Tesón and Caney characterize it as a reformulation of realism (Caney 2006; Tesón 1996). Tesón goes further in claiming that Walzer's pluralistic model "does not differ significantly from moral relativism" (2005: 38). The

³⁵ See Begby (1999).

consensus view is that Walzer's theory of just war is out of touch with worldwide attitudes.³⁶

In Chapter One I said cosmopolitan interventionism was founded on two key propositions; human rights are sole determinants of legitimate intervention, and state sovereignty should be conceptualized to make human rights the primary condition for deciding when to respond with armed force against severe rights violations. We saw in this section how these two claims played a prominent role in post-1989 models of intervention. But in the literature after 2001 we will see them not only permeate the discourse, but find new modes of application, as a new generation attempts to grapple with the intensifying challenges of humanitarian intervention.

The Debate Since 2001

In the most recent stage of the discourse, several new themes begin to emerge: cosmopolitanism; minimal justice; the duty to protect; and the turn to institutional reform, especially in the form of the *R2P*. I want to touch on each of these trends. But the point to remember is the proposition we began with, regarding 'severe and systematic' human rights violations triggering legitimate military force. This is the core assumption upon which virtually all new writings are expressed. It is the philosophical centre of a new paradigm of humanitarian intervention.

³⁶ Another common suggestion is that Walzer changed his position on intervention to cohere with a thorough affirmation of cosmopolitan values (Tesón 2003). On this view, Walzer changed his views about what justice requires," perhaps realizing that humanitarian intervention is justified when the domestic citizenry is desperate, not only when it is doomed to annihilation without international rescue (Orend 2006: 92-3).

The cosmopolitan theorist Moellendorf argues that military force is acceptable as long as it will enhance or restore human rights protection. “The cosmopolitan conception entails that a state can claim the protection of the principle of non-intervention” only if the intervention will “attempt to advance the cause of justice in the basic structure of the state” (2002: 117).

Such arguments mark a radical departure from past ideas about humanitarian intervention. They seem to transcend all earlier conceptions, save that of Hugo Grotius. They reflect a commitment to cosmopolitanism’s global vision. We see a major shift toward a ‘*duty to protect*’ individual human rights, enunciated at its clearest in the *R2P*. “Once we accept that there is a right of humanitarian intervention—that in crimes against humanity, outsiders may forcibly intervene—we can move on to a more complicated and controversial question: whether there is a *duty* to intervene in such situations” (Nardin 2005: 12).

Those who refer to humanitarian intervention as a duty usually have in mind an “imperfect” duty, which is “not a specific obligation, such as one might have under a contract, but a general obligation to promote a goal, such as the well-being of others” (Nardin 2006: 14). Many argue for a more substantive duty to protect human rights. K.C. Tan argues that whenever it is permissible to intervene in a foreign country to stop severe human rights violations there are obligations on the part of the international community (or some state) to intervene militarily (2006: 94).

In addition to these developments, we see another movement toward concepts of international enforcement. So the debate shifts to questions about legal legitimacy and

values of ‘international law enforcement.’ Indeed, the essence of the *R2P* is the proposition that basic human rights should be protected by coercive military force if necessary.

Another shift is toward the minimal justice conception of legitimacy, which says that human rights should be the sole determinant of a state’s immunity from foreign intervention and for evaluating whether an intervention should be deemed legitimate. The ‘minimal justice’ conception of legitimacy generates a basic standard of international justice. For Caney, such rights include “rights to a decent standard of living as well as rights against torture, murder, imprisonment, or enslavement” (Caney 2003: 29). Orend argues that minimal justice is the “most obvious way” to determine political legitimacy in the context of liberal democratic institutions (2000: 36).

Note that each line of argument is anchored in the broader cosmopolitan vision. Together, they proclaim the priority of human rights and they accord no intrinsic standing to collectivistic values other than those affirmed by universal human rights. State sovereignty is understood as *conditional* on effective human rights protection. Tesón argues that governments are “mere agents of the people,” that their international rights derive from the rights and interests of the individuals who inhabit and constitute the state. “Our determination of the legitimate threshold conditions depends largely or entirely on predictions about the *costs* of intervening” (Tesón 2006: 98). “The permission to use force in defense of others is anchored in the principle of beneficence, itself related to the idea of respect for persons” (Tesón 2005: 153).

Caney’s model emerges from two fundamental propositions. Each human being

has moral interests and a moral status worthy of respect; and political institutions ‘have value’ only “to the extent that they respect peoples’ moral interests or moral standing” (2005: 121; 232).

Other arguments focus on the consequences of intervention. Wheeler, for example, argues that “humanitarian intervention in some cases ... promotes overall well-being. Far from forbidding humanitarian intervention, consequentialist reasoning supports it” (Wheeler 2002: 50). “A human rights-based view of international morality, when applied to humanitarian intervention, necessarily requires that one define criteria for humanitarian intervention not with regard to how it affects states, but more importantly, how it affects those individuals whose welfare is affected by the use of force or its absence” (Heinz 2004: 544).

Others concentrate on political consent, which is defined in terms of consent by individual citizens. “As long as healthy democratic institutions are in place in a state, there is a strong defeasible presumption against military interventions” (Moellendorf 2002: 120). Indeed, Ignatieff claims that “those who criticize interventions in the name of human rights on the grounds that we must always respect sovereignty ... need to remember that the victims of that state are usually imploring us to intervene.”³⁷ Political consent is the “first condition that must be met if interventions are justified: victims must be demanding our help” (2000: 50).

Many theorists appeal to the ancient texts of the just war tradition. They assert that a just cause for intervention exists if (and only if) the intervention is directed towards

³⁷ Like Gareth Evans and Ramesh Thakur, Ignatieff was an *R2P* commissioner. These three foreign policy experts helped to bring the core arguments of cosmopolitan interventionism into foreign policy debates.

advancing justice in the basic structure of the state” (Moellendorf 2002: 118-9). For Moellendorf, “just cause is not a sufficient condition of intervention, because it does not require that there be good reasons to believe that the action will remedy the injustice, that such action is necessary to remedy the injustice, and that greater harms will not also be done in the course of attempting to remedy the injustice” (Moellendorf 2002: 118-9).

In Elshtain’s model, the legalistic terminology surrounding human rights is less significant than how we think in broader terms about the responsibilities of a universal community (2001; 2003). Her equal regard criterion calls for the use of force “as a remedy, under a justice claim based on *equal regard* and *inviolable human dignity*” (Elshtain 2003: 67). Elshtain’s equal regard norm is meant to regulate the use of force internationally. “The politics of equal regard, hence the right to make a claim for armed intervention, establishes a framework for a decent ... international order as the prelude to freedom and international justice” (Elshtain 2003: 67).³⁸

Each of these arguments is more permissive than the position developed by Walzer. As Elshtain puts it, “genocide is the most obvious case in point. But there are others...” (Elshtain 2003: 68). Recall the *R2P* assertion that “military intervention for human protection purposes is justified in two broad sets of circumstances: namely, to avert: large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action or state neglect; or large scale “ethnic cleansing,” whether carried out by killing, forced expulsion, acts of terror or rape (2001:

³⁸ Which state or states bare responsibility to enforce the equal regard norm? Elshtain’s answer is that ‘the more powerful have greater responsibilities; with great power comes responsibility’ (2003: 73). In this way, her argument does not differ substantially from the familiar variations of cosmopolitan interventionism.

4.19).

This is the conception of legitimate intervention that has taken primary position in geopolitical discourses. A top-level U.N. document published in 2004, entitled “*A More Secure World*”, recommended incorporating the *R2P* into the UN system (UN 2004: 35, 39). And *R2P* principles were endorsed again at the UN World Summit in September 2005 (See Evans 2008: 43-45). UN Secretary General Kofi Annan described a “clear acceptance by all UN members that there is a *collective responsibility to protect* civilian populations against genocide, war crimes, ethnic cleansing and crimes against humanity, with a commitment to do so through the Security Council wherever local authorities are manifestly failing” (Annan 1999). Ramesh Thakur argues that:

As human beings, we bear rights that are inalienable. Because these arise from the fact that we are human, they are necessarily universal, held equally by all humans. The growth and expansion of human rights and international humanitarian law, so prominent in the past three decades, has converged on a certain view of the protection of civilians and punishment of perpetrators in cases of government-instigated atrocity crimes like genocide, ethnic cleansing and large-scale killings (Thakur 2007).

Thakur’s comments reflect a dramatic turn to issues of international enforcement. Not only the discourse about cosmopolitan global justice, but as well in the just war tradition and the literature on the law of international armed conflict, we see a decisive turn toward ideas of legitimate punishment and protection from international crimes. Secondly, Thakur neglects to accord standing to existing territorial boundaries.

Cosmopolitan interventionists argue that state boundaries deserve no principled recognition in major judgments. International society is viewed as a normative community grounded in one basic global value; that of individual rights protection, which

extends a protective shield around victimized human beings; regardless of where they live and which political community they happen to belong to.

Let me add two final notes on the rise of cosmopolitan interventionism. We must acknowledge that this is a story of remarkable mobilization. We see in these interconnected discourses a unique interplay between global values and policies around international relations. Debates at a theoretical level have influenced debates about political events. Still, the course of these ideas and arguments was not inexorable. Cosmopolitan interventionism is not equivalent to cosmopolitanism, although it currently stands as the most compelling cosmopolitan foundation for humanitarian intervention. Our task in the next two chapters is to draw upon and cultivate two largely unexplored lines of argument, which represent equally formidable global values. Our thesis will be that they should be better understood, for they might ultimately serve to advance the cosmopolitan vision.

Chapter 3

WALZER'S THEORY OF AGGRESSION REVISITED

So far I have tried to show that cosmopolitan interventionism is the product of a long intellectual discourse in which cosmopolitanism and international human rights progressively triumphed over state-centric ways of thinking. Initially, we saw how cosmopolitanism, in the early form of solidarism, prevailed over realism, positivism and the society of states. Then we saw Walzer's attempt to revise solidarism challenged by four prominent critics who urged us to accept a demanding and universalistic interpretation of cosmopolitanism. We have seen in looking at the two recent decades that the arguments of Walzer's critics became the core of a common framework for dealing with humanitarian intervention.

The aim of this chapter is to reconsider Walzer's theory of aggression and to reassess its quality as an interpretation of the cosmopolitan vision. The first section will focus on the question of the moral standing of the state and consider various attempts to ground the state in cosmopolitan justice. The second section will review arguments by Tesón, Caney and Buchanan which are put forward as conceptions of political legitimacy. I will argue that cosmopolitan interventionism neglects significant communal dimensions of the sovereign state. In two sections after that, I will spell out a conception of 'political self-government' and argue that this conception coheres with, and may be the cornerstone of, a rational and politically informed cosmopolitan model of legitimate intervention.

I will claim that (*I*) protection of basic human rights is conditional on a minimal

degree of self-government, and (2) the establishment of representative government is conditional on self-government. Additionally, self-government (3) creates a political space for cosmopolitan values to be realized internationally, and (4) affirms a sense of global pluralism, defined in terms of “integral pluralism,” which is a strong candidate for a conception of pluralism in the context of international society.

Together, the four arguments help us to strengthen the cosmopolitan platform for Walzer’s restrictive model. A conception of self-government can help us to clarify what considerations best support Walzer’s controversial arguments. The same conception will also reveal why cosmopolitanism’s values of human dignity, popular consent, and human well-being are significantly political, and sometimes best secured by a principled affirmation of self-government.

The Moral Standing of States

Walzer claimed that his theory of aggression, rules of disregard, and rule of non-intervention were embedded in the ‘rights of individuals.’ For him, intervention is justifiable only if the state in question “shocks the conscience” of humanity or “turns savagely” on its people (1977: 107). Our judgments should protect existing state boundaries and the correspondence that binds governments and individual citizens.

The critics claim that the only correspondence worthy of our adherence is the kind that guarantees protection for individual or democratic rights. Protection of basic or democratic rights secures the necessary conditions for people to enjoy their local social and political institutions. On this view, Walzer’s appeal to self-determination is illusory

(Luban 1980a: 169) or derived from a statist conception of global values (Wasserstrom 1978). In one sense or another, Walzer fails to show proper respect for cosmopolitan commitments (Beitz 1980).

One difficulty is that Walzer's political philosophy operates on multiple levels.³⁹ For some critics, Walzer simply discards cosmopolitanism, despite claims to the contrary, and draws support ultimately from ideas about the moral reality of the state. Walzer is interpreted, in other words, as a proponent of global 'value dualism.'⁴⁰ Interpreting the theory of aggression dualistically implies that the main disagreement between Walzer and his critics is a conflict between different kinds of global values. On one hand there is the right of states to self-determination, territorial security, communal integrity, and so forth; on the other there are personal rights to life and fundamental liberties.

Walzer claimed that "self-determination is the right of a people to become free by their own efforts," that "citizens of a sovereign state have a right, insofar as they are to be coerced at all, to suffer only at one another's hands" (Walzer 1977: 86-7). With such claims in the foreground, and Walzer's communitarian commitments always front of mind, the charge of dualism leads easily to the view that the theory of aggression is nothing more than a "moral mistake" (Hoffmann 1996:223).

³⁹ Walzer's methodology operates on three levels. First, at the level of 'policy,' recommendations about specific issues are discussed; secondly, at the level of normative political philosophy, justificatory arguments are discussed; thirdly, at the meta-ethical level, where the focus is Walzer's views on the nature of human communities. For discussions of these aspects, see Kymlicka (2009) and Orend (2000a).

⁴⁰ Dualism is the view that "both states and persons possess moral rights." It is a view at variance with cosmopolitanism's universe of undifferentiated human beings.

Consider Luban's objection. He detects a "blind acceptance of the premises of nationalism" which he claims to find five theses.⁴¹ But Walzer's restrictive model does not commit us to 'nationalism.' If nationalism is the thesis that certain communities should be given recognition on the basis of their shared cultural vision and practices, Walzer's model clearly rests on a wider, more sophisticated, view of the relationship between individual and collective values.

Nor does Walzer commit us to the proposition that states are self-enclosed. Walzer indeed believes that sovereign states are constituted by a union of people and governments; but a more careful reading shows that his sense of global community is not only about sovereign states. The goal is to deal with the more vexing question of how international society can be grounded in a vision of universal humanity that gives priority of place to the communal aspects of sovereign states.

Another strand of the critique recognizes that Walzer accepts the cosmopolitan vision but seeks to defend an individualistic conception that simultaneously affirms values of global pluralism. On this view, the restrictive model tries but fails to ground the restrictive model in a foundation of cosmopolitan values. This comes across most clearly in Beitz, who targets the communal integrity thesis. Walzer claimed that "the real subject is not the state at all but the political community that underlies it," and he argued that sovereign states represent political communities which are "shaped by shared experiences

⁴¹ Here are Luban's theses; (1) Nations are completely self-enclosed; (2) the state is constituted by the union of people and government; (3) the political and moral status of a nation is aptly characterized by the metaphor of the social contract; (4) the only global community is ... a community of nations, not of humanity; and (5) and the main moral principle of international politics is 'pluralism,' which entails respect for the integrity of nations and their states" (1980b: 393).

and cooperative activity over a long period of time” (1980: 210; 1977: 54). Beitz objects that Walzer’s restrictive model fails to successfully ground collective values in the ‘rights of individuals.’

How does Walzer defend his model? One device is the ‘domestic analogy.’ He argues that individual persons possess “certain rights in [the] home ... because neither life nor liberty is secure unless there exists some physical space within which they are safe from intrusion” (1977: 54). Territory, on this view, plays a role collectively that compares to property in our domestic lives.

Such analogies reveal how ‘merely arbitrary’ boundaries can be crucial elements in protecting autonomy and clarifying the obligations of individual moral agents. The domestic analogy helps us to recognize two sides of the claim that coercion and violence can be brought to bear legitimately to protect innocent victims. Questions about coercive interference in lives of individual citizens are based on a prior question about the primary sphere of physical non-intervention, where intrusion by the state is considered harmful in principle because it threatens the interests, even the sense of self-worth, of individual citizens.

We operate with two basic propositions: (1) there are occasions when the sanctity of private property must be overridden, but; (2) we must tread carefully and clearly mark the threshold for coercive interference; for a permissive threshold for coercion easily undermines the basic norms upon which the normative order is founded.

Similar is the case internationally. Territory physically marks out and defines agents and their reciprocal obligations. We acknowledge that political boundaries are

non-absolute but we seek ways to affirm and protect values of the normative order. Walzer uses the domestic analogy to emphasize the structure of fundamental moral claims at work in the two levels of intervention.

Shortcomings are easy to find in this application of the domestic analogy. Walzer's presumption of non-intervention is troubled when we consider private intrusions. If we envisage a situation where violent crime is in progress within a private dwelling, and where I have the means to protect an innocent citizen by terminating the crime, it seems morally obvious that priority should be with protecting the fellow citizen by stopping the crime. Why should someone who endorses cosmopolitanism agree to a restrictive view of interventions on behalf of victims of crime?

At a general level, political philosophy has difficulty accounting for the cosmopolitan foundations of local and particular claims. Territorial claims seem to parallel individual property; but traditionally, analogies to property rights have been linked to statist conceptions of sovereignty. In the same way property entitles an owner to exclude others, sovereignty appears to entitle the regime in question to remain free of interference and to govern as it sees fit. It seems to imply that "having the right entitles the bearer to do the wrong thing" (Moellendorf 2002: 106).

What other devices does Walzer utilize? In a 1980 essay in *Philosophy and Public Affairs*, he again resists the cosmopolitan challenge in his final rejoinder. He continues to claim that "states can be presumptively legitimate in international relations and actually illegitimate at home." But now Walzer defends his restrictions with a thought-experiment. He asks if it would be acceptable to establish a new democracy by clandestinely

introducing a 'democracy narcotic' in the drinking water of some society dominated by a home-grown and violent authoritarian regime. The narcotic would "turn all citizens, old and young, rich and poor, elites and masses, into European-style social democrats, providing them with the knowledge, capacity, and will to create a new regime" (1980: 214; 225-6).

Of course, Walzer insists: administering the democracy drug is highly objectionable. It seizes or misappropriates from already-repressed citizens political and cultural traditions that may be valuable to them, to which they may attach great significance. Even citizens of a repressive state, he continues, should have rights to a "culture of their own." There is no justification to impose alien beliefs on citizens even when those beliefs are drawn from noble values of cosmopolitanism. Walzer says about the imaginary case; "it is entirely plausible to say that the rights of ... citizens have been violated; their loyalties have been ignored, their prudential calculations have been rejected in favour of someone else's conceptions of political justice and political prudence" (1980: 215).

I agree with Walzer's line of argument and with the assessment that the thought experiment expresses values disregarded by standard views of cosmopolitanism. The new analogy is designed to illustrate how cosmopolitan reasoning can lead us to overlook values of significance, but it plays into the hands of critics. It is easier to perceive wrongs against individuals than to recognize less tangible 'collective harms' of the kind Walzer strives to elucidate.

According to Beitz, the wrong of the democracy narcotic is explained perfectly

well in terms of countless wrongs against individuals whose physical security is obviously trampled. Beitz insists that the overriding concern for cosmopolitans should be “manifest violation(s) of peoples’ rights *as individuals*; rights like personal autonomy and bodily integrity, which are clearly and callously disregarded” should anyone “seek to deceive foreign citizens in this covert manner” (Beitz 1980: 387).

In other words, Walzer’s concern about collective rights of victims fades in significance once we see countless violations of the basic interests and expectations of human beings. Should foreigners administer the drug? Beitz also answers firmly in the negative; “doing so transgresses rights to individual integrity ... and this explanation is quite satisfactory to explain why [we] should not use the pro-democracy drug (1980: 89-90).

Why should anyone who agrees with Beitz about the priority of basic human rights consider Walzer’s restrictive model a valid theoretical option? The critics claim the principled ground, and Walzer’s alternative form of cosmopolitan is left in a precarious or unclear relationship with cosmopolitanism; little is added by the enhanced analogy to reinforce Walzer’s contentious idea of presumptive legitimacy, communal integrity, or the ‘fit’ or correspondence that exists between citizens and governments.

To clarify this second level of political legitimacy, I now want to expand the domestic analogy in a way that casts a light on humanitarian intervention. So let us imagine a scenario on Pitcairn Island, one of the most isolated habitable places in the

world,⁴² where a thousand political philosophers are exiled to a life of isolation.

Desperately isolated, they face predictable human needs and inclinations. They seek to establish a secure existence and the ability to flourish in adverse surroundings. The primary imperative of the exiles is to establish a decent life and the capacity to flourish. I will suggest that in this undertaking they would establish patterns of social activity and organizing themselves in separate political forms.

Great diversity is to be expected in the forms of political association brought into existence on Pitcairn. These exiles represent a broad spectrum of political doctrines. Some exiles support Rawlsian political philosophy; others are Kantians or Millians; still others are followers of Nietzsche. Many are organized on theological bases, and a few small outlying bands may reflect self-styled anarchist views or other radical doctrines. Diversity is inescapable but also largely desirable. In its own unique fashion, each form of political association reflects a proposed answer to the problem of surviving and flourishing in isolation on Pitcairn.

Still, a time could arise when Pitcairn's diverse political societies aspire to build an 'Island-wide' agreement, for mutual advantage, toward what we would call their 'universal compact.' When that moment arrives, crucial decisions would present themselves in regard to the design of the Island-wide agreement; its scope and limitations, fundamental values, and formal structure. On one hand, the exiles are presumed, as enlightened thinkers, to appreciate the desirability and value of a universal

⁴² Located in the Pacific Ocean at 25°S, 125°W, Pitcairn was the refuge sought by Fletcher Christian and his mutineers on the *HMS Bounty* in 1789. Several of Pitcairn's approximately 50 inhabitants trace their ancestry to the settlement by Christian. See <<http://www.government.pn/>>.

compact. Around trade and exchange, for example, and the regulation of coercive force, they recognize the advantages of coordination at ‘global’ levels of political association.

In their self-interested reasoning, the exiles, no doubt through delegated representatives, would pursue certain models of the compact and intensely resist others. The difficulties of ‘outlaw’ societies loom large. Our exiles would pursue an agreement legitimizing some expressions of coercive force but just as certainly limiting others as dangerous and false applications of ‘official coercion.’

Pitcairners would seek a rational balance in their universal community that maintains local or particular ways of life; each local society evolved, they might assert, in a specific location and in accordance with particular doctrines of shared social life. It would therefore seem dangerous, and a dramatic failure of responsibility, for the leader of a Pitcairn community to agree to a compact disadvantaging the group to which they are primarily committed. The exiles may aspire to a universal compact; one establishing Island-wide protection for the dignity or well-being of all. But this would entail crucial boundaries, especially in terms of the maintenance and protection of existing political communities.

At a minimum, they would reject precepts in the form of Wasserstrom’s ‘utilitarianism of human rights.’ For endorsing any such precept would open up a dangerous prerogative for coercive violence, which could lead directly to potential domination; moreover, it would legitimize such domination, leave victims twice-wronged. The attention of the Pitcairners would be fixed on this dangerous prospect; the idea that ‘official violence’ could, if legitimized permissively, lead to frequent and

legitimized violence by the powerful against the weak.⁴³

Why might the exiles on Pitcairn consider their local associations worthy of protection? What arguments would they wish to bring into the negotiating forum? Which would they consider non-negotiable? And would their rationales link coherently with the cosmopolitan vision? These are the questions we should keep in mind in the next two sections, as we try to think creatively about the claims the exiles might be expected to defend.

Political Legitimacy and the Cosmopolitan Vision

Cosmopolitan interventionism implies a specific notion of political legitimacy. We can define the term ‘political legitimacy’ as the “rightfulness of a power holder or system of rule” (Beetham 1991). In the context of humanitarian intervention, the concept is used in a specialized or technical way. It asks us to decide which principles, norms and values should be brought into play by analysts or decision-makers as accepted standards of political justice (Malanczuk 1993: 6).

There is a key distinction, however, between domestic and international legitimacy; domestically, the legitimacy of a regime is debated with an ensemble of arguments going back centuries in political philosophy. Internationally, the criteria for political legitimacy aspire to be fundamentally the same. To account for the distinction, some theorists distinguish between ‘ideal’ and ‘non-ideal’ levels of reasoning. On this

⁴³ In Chapter 4 I will make the case that Pitcairners would consider deploying a time-honoured approach; their reasoning would restrain the prerogatives of other associations as regards issues like enforcement, aggression, and concerns with political domination. One time-honored and successful method to regulate coercive force with such concerns front of mind is through protection for particular societies.

view, considerations about global values occupy two spheres; they may apply in ‘ideal’ theorizing but may not be applicable in our ‘non-ideal’ world.

So one concept of legitimacy is concerned with the standing of a regime in the eyes of its citizenry, and the other is concerned with standards of legitimacy specifically situated in the international community. For many intervention theorists, ‘basic human rights’ are defined as rights that surround minimal human interests; for example, rights to life, basic liberties, and freedom from severe repression.

Buchanan’s recognitional legitimacy is built on four basic moral requirements: basic human rights, including rights to bodily integrity and subsistence; minimal democratic institutions; “bare minimum” representative government, and basic accountability among state officials (1999: 261). Similarly, Caney argues that a minimally just society is one that “ascribes some basic human rights to persons but excludes others” (2005: 64).

Such models are obviously grounded in the cosmopolitan vision. Nevertheless, they fail to acknowledge two worries about that vision. First, a degree of vagueness and imprecision is built into ‘minimal justice,’ which makes it difficult in practical settings to specify a useful threshold of humanitarian intervention. Cosmopolitan interventionism pledges to provide a clear and defensible threshold, one that is derived from, and grounded in, cosmopolitan values such as human dignity, well-being and moral equality.

However, in the real world that specification of legitimacy conditions is a distant abstraction. Consider the common complaint made against Rawls’s terminology of ‘basic human rights,’ which Rawls calls “human rights proper.” He refers to rights enunciated in

the *UDHR's Article III*, which insists that “everyone has a right to life, liberty and security of the person” (1999: 80). The worry is that the cosmopolitan scheme of normative claims demands a clear sense of which rights deserve to be called ‘basic.’

The second worry about minimal justice is its neglect for communal facets of politics in the modern state. Cosmopolitan interventionism is an individualistic framework, thought by some to completely exclude all forms of particular attachment. Tesón speaks of the “disappearance” of the nation-state and its “moral irrelevance,” and many others argue that territorial belonging is “ethically meaningless” (Tesón 2003: 103; see Moellendorf 2002: 104).

Beitz and Buchanan seek to affirm the importance of values like association and mutuality. They try to make adequate space so that human rights-based values can be established—can flourish in specific cultural and political forms. In all such views, claims about territory and culture are valid only when the regime in question protects basic human rights.

To put it differently, Beitz, Buchanan and Caney offer arguments that are certifiably cosmopolitan. But we need to ask whether some other conception of political legitimacy, a view that stems from ‘collectivistic’ or group-based values, can be grounded securely in the cosmopolitan vision. We can identify several variations of cosmopolitanism. A primary distinction is drawn between ‘moral’ and ‘political’ cosmopolitanism, for example. The former seeks to advance a basic or minimal moral code for all humanity; and the latter seeks global institutions that reflect world government.

‘Cultural’ cosmopolitanism is the view that we should strive toward a global *mores*. We encountered another distinction between ‘Enlightenment’ cosmopolitanism, which takes its authority from an abstract or rationalistic vision, and ‘rooted’ forms of cosmopolitanism, forms that emphasize territorial belonging and elements of social identity and culture, values which can be viewed as crucial to cosmopolitanism’s vision of global responsibility (Kymlicka and Walker 2012).

The paradigm of cosmopolitan interventionism is grounded in the Enlightenment form of cosmopolitanism. But this variant ignores the deep significance of communal values, and renders global commitments in terms of a deeply universal idea of global accountability and responsibility. Indeed, the worry should be that these derivations from Enlightenment cosmopolitanism are predisposed to muddy the lines between moral, political and cultural interpretations. Examples of cosmopolitan interventionism generally fail to recognize the risk or danger to human beings that emerges from cultural cosmopolitanism. Similarly, the models developed by Tesón, Caney and Buchanan are undoubtedly derived from moral cosmopolitanism, in the sense that they speak for a minimum universal standard of morality. But their arguments have little traction when we ask how to distinguish their models from proposals for global *mores* and/or ‘global government.’

The Significance of Self-Government

We can get a foothold on a restrictive/cosmopolitan model by looking at two aspects of Walzer’s theory of aggression, namely the ‘rules of disregard’ and what I called the

‘Mill/Walzer’ thesis. Starting with these two elements, we will see with clear eyes what Walzer meant to do with his theory of aggression.

First, consider Walzer’s revisions of the legalist paradigm—the ‘rules of disregard.’ These are the situations where the general presumption about non-intervention must be set aside. They included: counter-intervention in civil war; intervention on behalf of a secessionist minority; and humanitarian military intervention. So humanitarian intervention is defended as one of three contexts in which Walzer says non-intervention is unsustainable. A legitimate exemption to that rule is generated; and where foreign states act legitimately if they deploy military force to stop severe human rights violations.

Walzer said that “the right ... not to be invaded derives from the *common life* its members have made on this piece of land,” and he appealed to the rights of “contemporary men and women to live as members of a historic community and to express their inherited culture through *political forms* worked out among themselves” (1977: 55; 1980: 211). But what is the character of these ‘common lives’ and ‘political forms’? And how shall we understand Walzer’s revisions of the legalist paradigm as implied by the value of communal integrity?

One answer is that Walzer values the *continuity* of existing states; he seems to advance the claim that the importance of continuity shields sovereign states from military intervention. On this view, he values existing states in the same manner as positivists and realists. Regardless of the real character and internal legitimacy of the state in question, Walzer appears to argue for the maintenance of existing state borders. “The statist conception of state sovereignty holds that a state has moral authority ... in virtue of

exercising extreme *de facto* authority over [its] domain” (Moellendorf 2002: 105).

Another reasonable answer is that Walzer values the *origin* of existing societies. As long as domestic politics is sufficiently local, in terms of its source, Walzer seems to suggest that the sovereign state in question merits our rational allegiance. On this view, Walzer’s model equates political legitimacy with the *de facto* authority of a regime, and more precisely, with the fact of authority being held by a government with a ‘native’ pedigree.

These are both reasonable interpretations. Walzer’s theory reads consistently with them in certain passages. But the most important grounding by far for Walzer’s non-intervention rule is the principle of ‘communal integrity.’ We have discussed the reaction to the principle and the risk that it will be mistranslated into some other derivative value.

I want to argue that Walzer holds an *integrated* conception of political legitimacy; he values at least three elements of the sovereign state, which we can call the cultural, political, and territorial bonds. Furthermore, Walzer values the integration of the values of self-government in existing societies. Neither the elements themselves, nor their integration, is fully articulated; but these ideas express the essence of Walzer’s restrictive model. In other words, he tried to define a significant value brought into existence when political communities establish themselves in a pattern of governance on a specific territory.

To understand the significance of self-government, we must think about *cultural* belonging; the ways in which religion, language, and distinctive practices assume enduring form in a sovereign state. A familiar purpose of the sovereign state is to defend cultural bonds: to safeguard or preserve practices expressed in particular languages,

histories and traditions. Cultural protections, then, point to values that sovereign states are assumed to reflect.

But the significance of cultural bonds is easily lost when we limit our focus to “shared traits and practices.” Jeff McMahan distinguishes “cultural commonalities” like language, religion, and ethnicity from “political commitments”; the society’s legal and economic ideals, relationships, and other shared or associative bonds (1996). When cultural bonds are defined in terms of traits and local practices, and the worth of cultural practices is measured in individual perceptions about each culture, their significance dissolves. Their importance lies in how cultural bonds are seedbeds for shared aspirations. They produce doctrines of political justice and visions about collective life. Cultural bonds are the foundational structure for “communities of people with the aspiration to be politically self-determining” (Miller 1997: 19).

Secondly, we must think about *political* belonging. Cultural communities (as defined above) are capable of assuming agency for their political future, and indeed, when they are mostly unfettered and unrepressed, cultural bonds appear to lead dynamically to specific relationships in political society. Above I described the collective vision or shared aspiration that gives actual expression to cultural bonds. Now I suggest that cultural bonds and shared aspirations manifest themselves in formal institutions that regulate social life.

Particular relationships that exist in each state will vary greatly from one state to the next. But we can nevertheless think clearly about relevant kinds of relationships, each of which is essential because it is embedded in a dynamic of self-government in a

particular society. We can and frequently do speak of ‘intergenerational’ relationships, wherein members of a society are bearers (and beneficiaries) of duties and obligations to the past and future. It proves difficult to affirm such duties in the exacting language of duty and obligation. But we do understand ourselves as members of political communities, bound to the past and future. It is a standard feature of life in the modern state to understand one’s ‘self’ as part of an intergenerational enterprise (2006).

Political relationships, on this broader definition, are not encompassed by the social contract tradition. Luban argues for only one view of the social contract; his Hobbesian view. We can nevertheless speak of a complex web of bonds in political societies, including; relationships of leadership, reciprocity and social cooperation. Again, however, political belonging (as defined here) dissolves when forced through a radically individualistic filter. After all, critics will say, ‘these other relationships are secondary to the basic question of the legitimacy of the governing regime.

Thirdly, there are features of *territorial* belonging. A society is self-governing only if it controls a physical territory more or less completely, without sustained or permanent challenges. Most would agree that territory is valuable partly because it facilitates and serves as a primary requirement for other collective goods, also simply because people value their national territory. To be sure, we encountered difficulties associated with territorial belonging in previous chapters. We saw that territorial claims are generally products of conquest, occupation and annexation; because they seem ‘arbitrary and meaningless’ from the perspective of global justice. Walzer offered arguments to the effect that “the right of a nation or people not to be invaded derives from

the common life its members have made on this piece of land, and not from the legal title they hold or don't hold" (1977: 55).

At least three features or elements, then, are fundamental to the significance of political self-government. Understanding them strictly in isolation leads to a failure to support Walzer's presumptive legitimacy. When we view them together, however, as elements in a dynamic process, the pedestals of self-government speak with greater authority.

This integrated conception of the value of political community is significant for at least two reasons. First, it avoids an erroneous line of reasoning that afflicts a number of contemporary models—that of 'function atomism.' It is difficult to conceptualize the values of political community when its elemental values are divided or reduced to discrete individualistic values. As Daniel Kofman points out, the "function-atomist fallacy" has led some cosmopolitan theorists to obscure the pre-eminence of state sovereignty without undertaking a consideration of alternative dispersals of state powers (2007: 74).

Secondly, an integrated view of the value of political community allows us to realize that political communities (rather than alternative dispersals of state powers) are the precondition for creating many other social goods. Territorial boundaries and local bonds formed within them are essential requirements for most other "public goods." To be viable, the elements of political community must "function together according to shared norms and coordinated functions" (73). According to Kofman, the integration of public goods itself turns out to be an essential good" (74). Political communities require a

physical location and the development of attachments within it in order to be sustained or to flourish. Indeed, the capacity to create such public goods is a basic condition for the development of social equality and democratic authority (75).

Self-governing groups value their autonomy in order to secure and develop their existence; to enhance their prestige and their competition with other societies for further public goods (Plotke 2003: 20). As Tamir suggests, “when individuals are able to identify their own culture in the political framework; when the political institutions reflect familiar traditions, individuals come to see themselves as the creators of a valuable set of beliefs” (Tamir 1993:72).

We can capture these pedestals by describing them as features of Aristotle’s concept of ‘*politea*.’ According to Aristotle’s famous characterization, *politeia* was not simply an abstract definition of kinds of city-states; it was a tool to reflect upon their distinctive ‘founding structures.’⁴⁴ Aristotle recognized that each city-state is coordinated by its own founding principles, its unique mode of social organization, and its ‘method’ of balancing domestic or internal powers. The constitution of every political community, he claimed, is an “imminent ordering” of inhabitants of the city-state, the totality of enduring laws, customs, and institutions.⁴⁵ The *politea* is guided primarily by its internal forces, its changing levels of competence and participation, and willingness to endorse reforms.

Let us now return to our primary discussion of humanitarian military intervention.

⁴⁴ For Aristotle, the notion of a political ‘constitution’ is not defined in a formal or legalistic sense, but rather through this notion of ‘imminent ordering.’

⁴⁵ The quotation is drawn from Aristotle’s *Politics* at Book III (274632-41).

A state is self-governing when it has authority over its constitution, defined in a manner approximating Aristotle's *politeia*. Conversely, a state is not self-governing when its constitution is under the authority of a foreign power.

To understand the reasons why, consider the Mill/Walzer thesis. Walzer sided with Mill on the proposition that it is “only during an arduous struggle to become free by their own efforts” do “virtues of a democratic society have a chance of springing up” (1977: 108; See Mill 1873). The key proposition is that “freedom from tyranny is something which one has to fight for oneself; one cannot receive it from the outside” (Hoffman 1986: 26). Walzer cites Mill's vision of democratic governance with approval:

Members of a political community must seek their own freedom, just as the individual must cultivate his own virtue. They cannot be set free, as he cannot be made virtuous, by any external force. Indeed, political freedom depends on the existence of individual virtue, and this the armies of another state are most unlikely to produce. (1977: 108).

This reference would have struck cosmopolitan readers as an ill-favored basis for legitimate intervention. It departs in obvious ways from the standard focus on human rights. Walzer appears to associate non-intervention with a callous principle of ‘self-help.’ This may be the reality of contemporary state politics, but it is an unfortunate one, and clearly out of pace with cosmopolitanism and human rights.

But Mill's analysis was developed for the domain of ‘representative government’ (See Mill 1991). He argued that “the people for whom the government is intended must be willing to accept it” (1859: 207). Thereafter, a citizenry engaged in an enterprise of representative democracy “must be willing to do what is necessary to keep it standing” (208). Representative governments “depend for their permanence on the readiness of the

people to fight for them in case of their being endangered” (258). The assertion at the heart of this question is that only during a struggle for freedom that basic human rights can be established.

Of course, Beitz denies these Millian ideas “that free institutions are unlikely to survive unless ... struggled for and won by those who are to live under their sway.” He asks; why shouldn’t self-government be provided by foreigners if they are indeed equipped, morally and militarily, to provide it (1980: 414)? The creation and maintenance over time of public goods requires a political community, what Aristotle called a *politeia*. Territorial boundaries should not be viewed (exclusively) as barriers to cosmopolitan realization of human rights, but as elements or conditions to implement basic human rights and democratic governance.

So I think that political self-government is a rationale supporting a general presumption of legitimacy to protect the sovereign state. Further discussion will be necessary before the reasons to set aside our general presumption can be defended. A complete account of the conditions for military intervention will occupy the next chapter.

In the remaining paragraphs, I want to offer four cosmopolitan rationales to underpin political self-government. I will claim that protection of basic human rights, and the establishment of representative government, are conditioned on certain minimal values of self-government. I will suggest that self-government creates a political space for core cosmopolitan values to flourish and be sustained internationally, and finally, I will explain that self-government affirms a progressive view of global pluralism—call it ‘integral pluralism’—which is superior to the individualistic or atomistic view of

pluralism so often put forward in the context of global justice.

(1) Protection of basic human rights is conditional on a minimum of self-government. We have seen how Walzer considered military intervention as an obstruction of important global values. The workings of a society, he argued, are largely unknown to foreign leaders. Because societies must cultivate the political virtues of self-determination primarily on their own (1977: 87), the founding moment of a state fixes its shared vision more or less permanently into law. Its leadership moves according to an implicit covenant with the people subject to its rule.⁴⁶

Walzer held that “Governments cannot be constructed by premeditated design. They are not made, but grow” (1859: 206). The development of a human rights-respecting society depends on collective conditions which (arguably) cannot be put in place by foreign soldiers. The counterexample is Japan

We should treat sovereign states as self-determining communities “whether or not their internal political arrangements are free, whether or not the citizens choose their government and openly debate the policies carried out in their name” (Walzer 1977: 87; see also Doppelt 1978: 6).

Institutions designed to underwrite ‘basic human security’ are arguably the most fundamental. Cosmopolitan interventionists frequently refer to ‘minimal justice’; here we seem to have shifted the discussion to a concept of basic human security. My claim is that providing basic human security is an essential public good, and like other such goods, it warrants protection; and like other social institutions, it demands the broad support and

⁴⁶ Indeed, Aristotle argued in the *Politics* that the ‘person who first establishes [the *politeia*] is the cause of very great benefits’ (1981: Bk.. I.2.1235.30-1).

participation among individual citizens who must support one or more political doctrines put forward in the polity, and comprehend them in their vernacular. The claim is that individual human rights cannot, under present historical circumstances, be realized outside a secure social context, which the state alone can offer (See Walzer 1977: 58; Orend 2000: 528).

However, notice that our platform for political self-government is not built from ideas about ‘subsidiarity.’ They don’t call for radical devolution, or ‘downloading’ of powers to the lowest levels of governance. Political self-government is not based on a commitment to subsidiarity. As conceived above, political self-government rests on the claim that sovereign states are authoritative makers of law, and that in particular laws around basic security and popular rule are functions that ought to be discharged by national states. In this regard, the most promising argument in the cosmopolitan literature is that which focuses on “conditions of autonomy” (Moore 2006a: 630). The significance of political community is encompassed by the cosmopolitan vision insofar as that vision is committed to strengthening the options available to individuals.⁴⁷

(2) For similar reasons, the creation of a representative government is conditioned by values of self-government. Indeed, representative government itself is a public good; built through patterns of public support, compromise, sacrifice and achievement.

Representative governance demands a more confident and well-developed sense of

⁴⁷ Here is slightly different but parallel line of argument. We can think in terms of Pogge’s ‘democratic procedures’ to enhance democratic legitimacy in the European Union (EU). In a project to respond to the EU’s ‘democratic deficit,’ Pogge develops a quite elaborate three-step procedure. It specifies, through sequenced democratic voting procedures, the *domain* and *purpose* of the compact. Taking into account the community’s voice in designing new institutions, and configuring the difficult transformation toward them, are the insights of this proposal. See Pogge (1997).

political self-government, as Taylor argues. “The modern democratic state needs a healthy degree of what used to be called ‘patriotism,’ a strong sense of identification with the polity, and a willingness to sacrifice oneself for its sake” (Taylor 1997: 40).

Now I can defend two assertions. Representative government cannot be established by foreign military powers. And divided societies are virtually impossible to rebuild after foreign intervention. As David Plotke explains, civil wars destroy relations of trust which are essential to representative government; civil wars perpetuate themselves, as conflicts persist, and become embedded in memories and practices, providing a durable point of political identification and mobilization” (2003: 7).

(3) Self-government also creates a space for cosmopolitan values to be affirmed internationally, as it were; in a sphere or domain in which values such as human dignity and popular consent can endure as global values. To put it simply, by affirming self-government we establish political space for these values to take root. I have tried to point out how non-individualistic ideas about international justice are frequently devalued by thinkers who see collective values as ‘parochial’ or regressive. But in a different and significant sense, our efforts to sow cosmopolitan seeds, as it were, across the world’s developing and illiberal societies, is better cultivated by an orientation toward self-development of the ‘political virtues.’

The core issue is psychological: which approach—the permissive or restrictive framework will bring the best outcomes in terms of real-world expansions of cosmopolitan values on the international stage. And in this context, once again, the choice is between a coercive and a self-generated embracing of complex social values. Some

fully reject Western values on all levels. “Others, however, are ... ready to espouse universal norms, but they are made uneasy by [an] underlying philosophy of the person in society (Taylor 1999: 128). The conditions of an ‘unforced consensus’ on human rights (Taylor 1999: 124) include a posture of principled respect for fellow members of the international community. My supposition is that such a posture or international *ethos* that respects the independence of political communities is more likely to take root in divided societies and conflict situations.

(4) Self-government affirms a progressive view of global pluralism. We saw that self-government offers another way to express Walzer’s restrictive model of intervention; and his argument for cultural pluralism is a case in point. Walzer considered it essential to support cultural diversity and validate or affirm that value in our conceptions of global governance. By striving for global pluralism we contrast with uniformity and homogeneity in global institutions. And we can say something substantive about the pluralism at the global level. A restrictive formulation of the conditions for legitimate intervention enables us to (a) adopt a posture of respect towards different cultural and political systems of ideas; plus (b) this posture propagates a certain kind of collaborative engagement, which (c) depends on a basic recognition that one’s own perspectives are contestable, subject to challenge. Fred Dallmayr calls this “integral pluralism.” It is fundamental to cosmopolitanism’s sense of respect for persons and moral equality.

Self-Government and Human Rights

Re-establish the line of argument, which became digressed

I have claimed that a conception of self-government enhances our understanding of Walzer's restrictive model. And I argued that self-government is not opposed to cosmopolitan values, but is rather an instrument for their realization. In this section, I will elaborate on the linkages between self-government and cosmopolitanism, for the connections help us to see how these seemingly distinct families of global values operated historically in close association.

Cosmopolitanism, in its fundamental sense, is the proposition that human beings are citizens of the world, owing primary allegiance to the worldwide community of humanity (Scheffler 1999: 257). Let me outline three observations. We can agree that the powers of state sovereignty are increasingly distributed (Beitz 1999). We also agree that an acceptable form of cosmopolitanism should be minimalistic, should only invoke the most basic protections (Scheffler 1999; Miller 1997). The vision can be worked out in several ways. As Miller suggests,

If basic human rights are to generate obligations of global justice, it must be possible to justify them in a way that is genuinely universal; the idea of a decent life to which we appeal in order to identify human needs most not be slanted towards any one form of life in particular, which means that the list of human rights, for this purpose, is going to be fairly short (1997: 12).

We should resist the obvious tendency towards 'Enlightenment cosmopolitanism' (Barry 1998). But cosmopolitanism is increasingly associated with three features. Human beings are what ultimately matter; they matter equally; and nobody is exempted from consideration because of distance or lack of a shared community (Pogge 2006). Pogge's definition of cosmopolitanism, as we saw in Chapter Two, has become a grounding argument for cosmopolitan interventionism. Human rights should be held by *all* human

beings; held on *equal terms*, and most significantly, should be held by *individual human beings* rather than nations or socially-constituted groups (Holzgrefe 2001: 19).

Let me also emphasize that this argument was established as a supplement to Walzer's presumptive legitimacy; political self-government, as conceived above, does not depend on a conception of "collective human rights." Freeman has argued that concepts of international human rights should embrace, and give special recognition to, the basic interests of "collectivities" (Freeman 1995). Human rights, on this view, contain collective elements, and our concept of human rights should reflect them, and should affirm their place as elements of shared social and political life.⁴⁸

Our concern here has been to modify, expand and re-articulate features of the cosmopolitan vision, rather than to tamper with already contested definitions of international human rights. As Danielle Archibugi argues, we should envision cosmopolitanism on the basis of a framework that affirms local deliberation and autonomy. We should be cautious to avoid a framework that tramples local autonomy for the sake of universalism.

I have tried to show that self-government is not antithetical to cosmopolitanism, but is rather a condition for its realization in geopolitical contexts. To remain relevant, cosmopolitanism should strive to take into account the moral significance and political reality of communal or collectivistic bonds. When human dignity, popular consent and human well-being are considered highest priorities, they must be features of the political beliefs and competence of those who administer the regime.

⁴⁸ In the same connection, Rex Martin has put forward the "social recognition" thesis (2013).

Points of connection between cosmopolitan values and self-government trace back to the beginning of political philosophy.⁴⁹ A key thread is introduced by Vitoria, who argued that “the political community is a natural institution on which human beings fundamentally rely” (Coates 2006: 66). The capacity of sociability, on this view, is ingrained in human nature; anchored in ‘laws of nature.’ Vitoria’s solidarism sought to uphold and affirm humanity’s political nature.

A major concern for Grotius was jurisdiction over the oceans—the *mare liberum*, or ‘freedom of the seas.’ The sea for Grotius represented “independent territory,” regulated only through the agreements of sovereigns. Independent states have a collective interest in freedom of the seas, he argued, for functions like transportation and communication; the principle of freedom of the seas spoke of new channels of global transportation and trade; goods which benefit sovereign states independently as well as the association of which they are members. In Grotius, then, human sociability and political community are diminished, accorded secondary importance beneath the progressive and modern sense of “sovereignty of the individual”. His understanding of human sociability is “only superficially like that of Aristotle and Aquinas” (Coates 2006: 67), and the value of political community is assumed to be encompassed in their benefits to individuals.⁵⁰

I am claiming a major schism in the cosmopolitan paradigm begins in these

⁴⁹ One would begin tracing this thread at St. Thomas Aquinas, who viewed political life as ‘one of the natural goods toward which human beings are inclined.’ The good of political society was part of the laws of nature, emerging from ‘natural’ needs and desires. Political community is a condition for attaining the “full perfection” of human existence (Aquinas 1981).

⁵⁰ See Grotius (1925: Bk. 1, *Ch.* I; 10.1). Grotius said that natural law is defined as “the dictate of right reason, indicating that an act, from agreement or disagreement with the rational and social nature of [humanity]... is either forbidden or commanded by God the author of nature.

debates between Vitoria and Grotius. I have tried to clarify and support features of Vitoria's cosmopolitanism, but in contemporary debates the form of cosmopolitanism found in Grotius became very much the standard view, and later it evolved into the paradigm of cosmopolitan interventionism.

I believe this is useful context that helps to illuminate Walzer's theoretical framework. Walzer is one theorist who supported a pluralistic or political brand of the cosmopolitan vision. Another is John Rawls, whose *law of peoples* is designed to produce an "overlapping consensus" of sovereign states. The consensus is based on moral principles accepted by all reasonable societies, and Rawls aims to derive laws to which well-ordered peoples would reasonably agree (Brock 2010: 86). Rawls's conception of a "decent consultation hierarchy" is a category of non-liberal societies and his imaginary 'Kazanistan' is a reference point to pay recognition to global pluralism (among other global values). Would citizens of the imaginary Kazanistan consent to foreign military intervention?

Most cosmopolitans expressed dismay at Rawls's reluctance to universalize his liberal-democratic principles of justice. (Brock 2010: 85). They generally argued that Rawls offers little more than a *modus vivendi* with non-liberal states, "taking cultural pluralism perhaps too seriously, at the expense of the individual persons who must sometimes suffer their non-liberal states" (Brock 2010: 97).

The most powerful reasons to embrace political self-government are empirical. In her project to analyze the relationships between self-government and human security, Jens Meierhenrich concludes that a past tradition of legality in the target society is a

necessary condition for forming a new state as are educated bureaucrats inherited from the previous regime is necessary condition (2004: 158-160). The formation of new political communities following “state failure,” she claims, paints a vivid picture of how human rights protection is closely tied to sentiments, competencies and past achievements in the domestic society in question (Meierhenrich 2004).

Additional evidence on the ground emerged in experiences of the US military in post-invasion Afghanistan and Iraq.⁵¹ In general, the post-invasion experience reinforces the view that social and political divisions created or perpetuated by military intervention severely undermine self-government.

Let me sketch the point using a specific illustration. Dismayed by their failure to establish human security in the Northern Iraqi city of Tal Afar, US troops commanded by a Colonel S. McMaster undertook a new method of interaction and communication with local levels of authority. McMaster’s method prioritized three elements: *clearing* enemy insurgents; *holding* the areas for a sufficient period; then *building* institutions of basic security. The method is known colloquially as “*clear, hold and build,*” and it saved many lives in both Afghanistan and Iraq.⁵²

There is much more to say about these dynamic relationships between cosmopolitanism and self-government. We have theoretical models from which to work, and operational experiences seem to reinforce the connections; to give further evidence that self-government and individual rights protection are part of the same social dynamic.

⁵¹ The paradigm shift is from conventional operations to ‘counterinsurgency.’ For a discussion, see Petraeus (2006: 47).

⁵² It was certainly the impetus behind the ‘troop surge’ approach, which many credited for establishing a more stable atmosphere of basic security.

A political community is self-governing if its constitution is under primarily domestic control.

To conclude, I believe the major cosmopolitan challenges to our conception of political self-government can be answered. We have seen how cosmopolitan interventionists use the concept of 'moral standing' to determine when the state should be granted immunity from foreign military interventions. But the conception of moral standing they usually posit shows a concerning inattentiveness to collective or social realities of both war and coercive military intervention. By recognizing them as political realities, we began to fashion a model of intervention that situates in a suitable way in the cosmopolitan vision.

Chapter 4

HUMANITARIAN INTERVENTION AS LAW ENFORCEMENT

The previous chapter claimed that values of some significance were contained in Walzer's theory of aggression, but lacked full expression. Walzer bundled them together in his principle of communal integrity, but over time that principle gradually but steadily was attached to ideas of cultural pluralism and personal identity. I suggested that a suitable conception of political self-government should play a central role in our judgments. A principled framework that includes the value of self-government can help to articulate values at stake in real-world cases of humanitarian intervention.

This chapter will focus on a closely related line of argument. I argue that a framework of 'international law enforcement' is preferable to the 'rights protection' framework of enforcement offered under cosmopolitan interventionism.

We saw above that theorists such as Tesón, Caney and Buchanan consider 'minimal human rights' a sufficient condition for military intervention. In a significant way, this implies that cosmopolitan interventionists consider international human rights internationally *enforceable*. But this suggests critical questions about existing conventions and their status in opposition to enforceable institutions.

I believe such questions can be answered, but not in the manner proposed under the new paradigm. Our task in this chapter is to better understand the earlier approach to international enforcement. In the first section, I will explain how proponents of cosmopolitan interventionism conceive of international enforcement. In the second, I will

explain how theorists of just war conceived of enforcement values in earlier stages of the discourse. Priority was given, generally, to the international rule of law and to the prevention and punishment of international crimes. Such values were pivotal to early just war arguments for humanitarian intervention; now they are largely ignored.

I will claim that we should conceive of humanitarian intervention as a species of international enforcement. In the two sections that remain, I will assess the normative significance of two specific crimes of international law, namely the crimes of armed aggression and genocide.

The Human Rights Protection Model

Enforcement action may be defined as coercive force designed to bring about compliance with legal standards. Cosmopolitan interventionists ground enforcement action in the moral logic of cosmopolitanism; values of procedural legality and punishment of crime are revised or translated into the terminology of human rights. I touched on three variations of the argument from enforcement values to human rights protection.

According to Tesón, the platform for legitimate intervention depends on a prior claim that human rights should determine international legitimacy.

Buchanan is committed to his “lawfulness” justification, which affirms a commitment “to values embodied in the legal system—not just those of moral judgment—in this case protection of human rights” (See Keohane 2003: 4).⁵³ As long as

⁵³ Buchanan speaks of ‘institutional reasoning’ as distinct from standard reasoning about global values. Here I will disagree with Buchanan’s distinction.

authority was not illegally seized, and the minimal rights of citizens are protected, the regime should be accepted as a member of the community of states (1999: 309).

The approach to enforcement is virtually the same in connection with the *R2P*. That doctrine seeks international legal legitimacy on two tracks: first by redefining outdated conceptions of sovereignty long embedded in global attitudes; secondly by working within constraints of *Chapter VII* of the *UN Charter*. The *R2P* doctrine seeks to ‘legitimize’ the right of humanitarian intervention while simultaneously preserving international legality. The strategy is to cultivate *R2P* norms in our principles and policies, also working toward wider education, expanding knowledge, confidence building, and demanding higher standards of global leadership (Evans 2008: 225-251).

In such areas—education and confidence building—the *R2P*’s achievements are unrivalled. The work of organizations dedicated to raising awareness around the *R2P* norm has been impressive and continues to expand.⁵⁴ As the *R2P*’s celebrated advocate Gareth Evans explains, “if a legal foundation has to be found in the *UN Charter* for the authorization of coercive military force, the obvious place to start is *Chapter VII*, which sets forth a scheme for dealing through the Security Council with “threats to the peace, breach of the peace, or ‘acts of aggression’” (2008: 133).

The arguments found in Tesón and Buchanan, and contained in the *R2P*, are rooted in a difficult and unguarded assumption. The institutional basis for humanitarian intervention is strictly equated to the procedures and mechanisms of the *UN Security*

⁵⁴ Here are some key examples. There is the ‘*R2P Coalition*’ <<http://r2pcoalition.org/>> and the ‘*International Coalition for the Responsibility to Protect*’ <<http://www.responsibilitytoprotect.org/>>; the ‘*R2P Student Coalition*’ <<http://r2p-student-coalition.org/>>; the ‘*Asia-Pacific Centre for the Responsibility to Protect*’ <<http://r2pasiapacific.org/>>; and the ‘*Global Centre for the R2P*’ <<http://www.globalr2p.org/>>.

Council. Such proposals to reform of institutions of global governance call for “states proposing the preventive use of military force either with prior Security Council approval or submit themselves afterward for evaluation by an impartial body on the accuracy of their prior statements and the proportionality of their actions” (Evans 2008: 136).

For the same reasons, the intervention discourse has embraced the concept of “jurying.” Several theorists, notably Thomas Franck (2003), offer arguments that intervention are legitimated by the processes of the international community—for example, by incremental precedents in the *UN Security Council* and other forms of affirmation of humanitarian intervention.⁵⁵

To be sure, *UN* organs often serve a critical function in this regard. Similar to a jury, they “weigh the evidence and decide whether violation[s] should be punished. The result, in practice, is an evolving international law that takes account of changing ethical understandings” (Keohane 2003: 6). Franck’s view of international law evolving and progressively developing, as “part of an existing discourse, subject to reinterpretation in a way that is reminiscent of how the common law changes over time” (Franck 2003; see Keohane 2003: 7).

Notice how both strategies—Security Council approval and a form of the jurying procedure—suggest gradual, incremental progress toward acceptable actions and authoritative conventions. The aim is to shift attitudes toward acceptance of minimal justice; but one cannot accurately predict how norms and institutions of international

⁵⁵ ‘Jurying,’ of course, is reconstituted from the just war tradition’s ‘legitimate authority’ constraint. But it is very much a concept for the 21st Century. Jurying is barely reminiscent of St. Augustine’s original claim that constraint against ‘gangs and bandits’ commencing wars.

society will adapt over time. Both the current status and future prospects of the paradigm of cosmopolitan interventionism are embedded in such a project of institutional reform. The rights protection framework is an effort to cultivate a new institutional basis for humanitarian intervention and to promote an orderly transition of institutions toward global responsibility and accountability for human rights protection.

Theorists such as Ignatieff suggest we should retreat from traditional vocabularies of international enforcement, placing our confidence in the human rights protection approach. “Legitimate intervention,” he claims, “has no justification as punishment; its only purpose is to protect” (2000: 51).⁵⁶ Others, such as Nardin, attempt to override punishment and proceduralism by downplaying their significance as ideas distinct from cosmopolitan values.

Nardin suggests that “it is dangerous to regard armed humanitarian intervention as an enforcement mechanism” (2006: 18). We should turn our efforts to explicating and defending the rights protection paradigm, which mirrors and reinforces our intuitions about human rights and cosmopolitanism, but is equipped to avoid the possibility of excessive intervention detracting from overall human rights protection.

And yet, opposition to these proposals is fierce among international lawyers, who express grave doubts about relaxing international prohibitions. They argue that allegiance to existing institutions, such as the non-intervention rule, are preferable to the dangers associated with too permissive a prerogative of humanitarian intervention. Chesterman

⁵⁶ Ignatieff was an ICISS Commissioner and involved in the creation of the *R2P*. It is not surprising that Ignatieff urges a move away from just war as punishment to a modern view of intervention as human rights protection. Two others, namely Evans and Thakur, sat with Ignatieff on the ICISS and both recommend a shift from punitive to human rights protection concepts.

argues that the emerging conception of legitimate intervention is “inimical to the emergence of international rule of law” (2003: 6). On his view, our allegiance should remain with accepted procedures of international society; they supersede the impulse behind humanitarian intervention, and provide an assuring counterbalance to it.

Debates between incrementalists (like Franck) and proceduralists (like Chesterman) are sure to continue. But they do so without directly addressing the foundational problematic, in which proponents of cosmopolitan interventionism “envisage a regime that overcomes limitations of existing international law and establishes a framework for preventing large-scale abuses of human rights; the ideal of justice backed by military force” (CSS 2000: 1).

But we can sketch a different kind of legal interpretation. Article 2(7) of the *UN Charter* explicitly denies Security Council authority to intervene in the domestic affairs of a member state (Thomashausen 2002: 15). That Article is neither a drafting compromise nor an accident of diplomacy: it is the core assertion and constitutional basis of international society. The famous provision states that; “Nothing in the present *Charter* shall authorize the United Nations to intervene in matters which are essentially in the domestic jurisdiction of any state or shall require Members to submit such matters to settlement; but this principle shall not prejudice the application of enforcement measures under *Article 7*.”

In legal terms, this suggests that the rule of non-intervention is fundamental—it serves the role of a ‘rule of recognition,’ on which legitimate functions of international society are founded. Bull argues that “at the heart of [international society] is the

principle that each state accepts the duty to respect the sovereignty or supreme jurisdiction of every other state over its own citizens and domain, in return for the right to expect similar respect ... from other states (1977: 67).

Proponents of the rights protection framework define legal legitimacy as a process leading to the establishment of *jus cogens*.⁵⁷ Nardin describes the emergence of international laws as a process that ends when “enough states treat an illegal act as legal.” International legitimacy, on this view, is a matter of precedents. We should “look at the [legal] authority for humanitarian intervention as something that may indeed emerge after the fact when, as often happens, a state acts before the UN has given a green light” (Nardin 2006: 23).

But this sense of *jus cogens* is questionable. The strategies available to cosmopolitan interventionists strive for *post hoc* legitimization, with varying degrees of success and failure. The method is to identify a contentious pivot point in the laws of international society and the law of argument conflict; then to argue that sovereign states only need to shift attitudes and practices around it.⁵⁸

Non-intervention is the founding constitutional principle of the international state system. And since it passed into force in 1945, non-intervention has achieved the status

⁵⁷ *Jus cogens* is the Latin phrase for ‘compelling law.’ It describes peremptory norms of international society; that is, legal standards acknowledged as binding by international society and sovereign states. Earlier notions of enforcement maintained the importance of *jus cogens* norms as building blocks of international society.

⁵⁸ They are core elements in the norm of *jus cogens*. “As enunciated in Articles 53 and 64 of the *Vienna Convention of the Law of Treaties* (1969), *jus cogens* norms cannot be violated and can only be modified by a “subsequent norm of general international law having the same character” (Thomashausen 2002: 16).

of a customary international law (Dinstein 2005: 127).⁵⁹ Because that rule was always conceived so as to prohibit unilateral recourse to force by individual states, the *jus cogens* strategy posited by cosmopolitan interventionists cannot succeed in its grand aspirations (Thomashausen 2002: 19).⁶⁰

A key distinction should be drawn between two levels of theorizing about international law. The first level involves the diffusion of a set of ideals and practices to which all states should aspire; whereas the second involves the codification of a set of minimum legal standards below which no states should fall (See Kymlicka 2007: 4).

There is a conflict between the desire to protect human rights and the duty to enforce accepted standards of international law. More precisely it requires us to choose between protecting human rights and maintaining existing norms and conventions of international society. An illustration is the international community's response to the crisis in Somalia (1991-2), where UN *Security Council Resolution 794* seemed to set a strong precedent for the pro-intervention cause. It described the unfolding humanitarian crisis in Somalia a "threat to international peace and security," and authorized a US-led force (UNITAF) to use "all necessary means to establish as soon as possible a secure environment for humanitarian relief operations inside Somalia." Here the Council appeared to lay a formal foundation for future forcible interventions to be carried out to

⁵⁹ The fact that non-intervention is a fixture of customary international law is evidenced in the UN *Charter* as well as its predecessors the *Treaty of the League of Nations* (1919) and *Kellogg Briand Pact* (1928); and recent conventions including the *UN Definition of Aggression* (1974) and subsequent decisions of the International Court of Justice (*ICJ*) and International Criminal Court (*ICC*).

⁶⁰ Aspirational international laws, on the other hand, make no assertion of binding legal authority. They would be impossible to enforce globally (Riesman and Antoniou 1994: *xxiii*).

avert human catastrophe (Thomashausen 2002: 50, 65).⁶¹

This is not a compelling precedent for cosmopolitan interventionism. Its premise of ‘international peace and security’ commits international society to nothing new.

Another illustration; in March 1999, NATO commenced a bombing campaign against the Federal Republic of Yugoslavia (“FRY”) in order to avert humanitarian catastrophe in Kosovo. The need to prevent further violations of international human rights was widely recognized (Thomashausen 2002: 88). The main justification given by NATO officials was the imminent humanitarian crisis in Kosovo resulting from “Belgrade’s sustained and accelerating repression of Kosovar Albanians” (101).⁶²

Some construe the crisis in Kosovo as strong evidence of an emerging norm of humanitarian intervention, citing the Kosovo intervention as a milestone toward the emergence of a *jus cogens* norm in international society. The NATO air bombing campaign lasted 78 days, and by early June, the Serbian Government agreed to NATO’s demands for a peace plan (Thomashausen 105).

I described this as the standard narrative regarding to the Kosovo campaign. And such a view follows neatly from the sense of enforcement law espoused by cosmopolitan interventionists; indeed, the jurying function appears to serve efficiently. Many theorists of intervention believe that setting such a precedent is what legal legitimacy depends upon.

⁶¹ *Resolution 794* authorized coercive military action to stabilize the situation for provision of famine relief (See Thomashausen 2002: 65).

⁶² *Security Council Resolution 1199*, adopted in September 1998, warned the parties that the Council was ‘gravely concerned at the intense fighting in Kosovo and in particular excessive and indiscriminate use of force by Serbian security forces and the Yugoslav army’, which have ‘resulted in numerous civilian casualties and, according to the estimate of the Secretary General, the displacement of many’ from their homes (Thomashausen 2002: 93). See <<http://www.un.org/peace/kosovo/98sc1199.htm>>

In the real-world, however, international legal institutions and conventions in the laws of war should provide clarity in our legal standards. I am suggesting a different perspective on the Kosovo affair. Early in 1999, major powers conceived a moral imperative of protecting Kosovo's civilians who indeed were exposed to serious and widespread violence if not genocide. The powers agreed to engage in military action against the Serbian regime. Widespread hopes regarding the emergence of a new *jus cogens* norm did not supersede the peremptory norm of the international state system.

Cosmopolitan interventionists persist in believing that we are within reach of a new era of global justice, which we can solidify in international law. Behind the rise of cosmopolitan interventionism is a widespread perception about how we should construe the significant values of international law enforcement.

But that idea expresses an unfortunate "tendency to think of humanitarian war as an enforcement mechanism for rights, which may ultimately undermine the very values at stake in the defense of human rights" (Mehta 2006: 261). It is sometimes said that the humanitarian intervention discourse is stuck at a crossroads. Theorists seem to agree about the theoretical model we should use to express the morality of intervention. But legality is a difficult issue that will take time to resolve.

The considerations discussed above help, I think, to reveal why this is a false dilemma. In the laws of armed conflict and at the centre of international society, the new paradigm forces us to choose between international legality and international human rights protection (Chesterman 2001: 234). The rights protection model is at odds with key values of global justice.

A Model of International Law Enforcement

We need a clearer sense of these values of enforcement. If cosmopolitan interventionism is lacking because of an *ad hoc* definition of these values, how can we best define them? My plan is to clarify the terminology and structure of enforcement values; then to survey how just war theorists conceived them in the past. Then we will consider objections that could be used to defend cosmopolitan interventionism.

We often use the terminology of ‘enforcement’ to speak of notions of due process, fair punishment, prevention of crime, and the rule of law. We also frequently appeal to certain cognate distinctions; between crime and punishment, for example, and guilt and innocence, aggression and self-defense. And such distinctions predate cosmopolitanism; for they were originally at home in Christian philosophy. In early stages of the tradition, punishment and procedural legality were integral. Aquinas argued that a just war is one with a just cause, and just cause exists when those who are attacked “deserve their fate” because of “wrongs they have done”.⁶³ His project to ground the *ius gentium* in terms of ‘universal’ law was the first attempt to defend an ‘international rule of law,’ and it was rooted in the value of procedural legality. Vitoria held the view that just wars should be limited by the desire to correct violations of rights (Ceulemans 2002: 25). In cases where no jurisdiction existed, Vitoria demanded that no right of punishment existed” (Nardin, 2000).

⁶³ In his *Summa Theologica*, Aquinas claimed it was a ‘natural duty’ to uphold and preserve natural law.

In other words, Vitoria's model of humanitarian intervention is a *punitive* conception of international justice (Boyle 2006: 38). Vitoria's follower Suarez held that war is justified when it punishes wrongs; war is justifiable only if a nation or state has to be punished for refusing to make amends for wrongs inflicted, or to restore what has been seized unjustly (Ceulemans 2002: 26). Indeed, Vitoria and his fellow 'Scholastics' developed a deeply social vision of the *ius gentium*. They idealized the sovereign state as "perfect community," which by its nature was "complete in itself, not part of another community, with its own laws and its own council and magistrates" (Nardin 1983: 52). This idealization of the sovereign state system led Vitoria and his followers to conceive of the *ius gentium intra se*, the body of laws common to all human societies.

Grotius also affirmed the terminology of punitive war (See Orend 2006: 18). He was reminding sovereigns of his era "that their authority was not absolute." Sovereigns were not free to commit crimes and perpetrate injustice either internally or externally. "Tyrannous acts within their own states constituted crimes for which these rulers were subject to punishment" (See Edwards 1981: 136). For later just war theorists like Alberico Gentili, war was considered a form of "armed litigation" (Forsyth 1992: 33). Gentili claims that laws are not based upon rare instances and adapted to them... therefore no change must be made in the law of war; for it is impartial to both sides, just as in the contests of the Forum the law is impartial towards each of the litigants, until sentence has been pronounced in favor of one or other of them."

Once again, it seems clear a major shift occurs between Grotius and Vitoria, most significantly when Grotius downplayed the punitive aspect of humanitarian intervention

and allowed the first great gulf between global values and positive laws. In our early examples of law enforcement, the platform for legitimate intervention had two constituent elements: a war on behalf of the oppressed; and a war to punish transgressions.

International enforcement entails punishment of universal crimes. In order to punish crimes, however, we first need a definition and specification of the legal duties associated with the international response to this crime, and we need to specify what are called ‘elements of the crime’ by the *criminal law*.

As we know, there is not a genuine international analogue to criminal law, except for the *UN* and its enforcement provisions. And that is the reason humanitarian intervention historically had two components; a duty to protect victims of violence, and a duty to thwart aggressors using force (Bagnoli 2006; also Nardin 2006: 19).

Such theorists value political community; they aspire to the *ius gentium*; and they desire a ‘universal’ law; but they each perceive an immediate and fundamental problem. If states are allowed to act unilaterally to enforce the ‘universal law,’ the whole project fails. But certain additional concerns helped to motivate these earlier views of international enforcement.

An overriding concern was that “powerful agents, particularly in a decentralized legal system, can sometimes make legal space by acting consistently as if it were already in place” (Farer 2004: 2). We often refer to the value of ‘state consent.’ Buchanan, for example, takes as his foil the “state consent super-norm.” And it is undoubtedly true that state consent is an integral value in the current system of states. International law is

designed to provide “standards by which the conduct of states can be judged. And these standards have not been imposed from the outside; they have been set out and accepted by the states themselves” (Jones 1992: 58).

Alex Bellamy argues that a new prerogative allowing sovereigns to wage war to enforce “natural law” would unleash a dangerous opportunity for manipulation by powerful states. Indeed, Bellamy sees ‘enforcing’ natural law as a core dynamic, present whenever the idea of natural law is on the table. He explains that:

Positive international law ... developed as a response to the endemic abuse of natural law. As a result, natural law and positive law should not be viewed as separate bodies of reasoning. Instead, the application of natural law to contemporary moral dilemmas should be tempered by legal positivism in order to guard against abuse. (Bellamy 2004: 9).

Earlier theorists of just war were concerned to define ‘crimes of universal jurisdiction.’ Vitoria recognized, for example, deficiencies in Christian and European society, and this recognition allowed him to “resist the paternalistic or imperialist tendencies of those, like Sepulveda, who argued the right of a Christian and civilized power such as Spain to subject the barbarian Indian communities of the New World to its rule” (Coates 2006: 66).

Values of enforcement, on this view, help us to fend off concerns about European cultural superiority. This is why Vitoria’s pro-intervention argument was couched in terms of “other defense” (Orend 2006: 16).⁶⁴

⁶⁴ Similarly, Pufendorf argued that “wars of *self-defense* are a form of *law enforcement*, since in the absence of a sovereign global power, police powers are distributed among the members of the international community” (Rodin 2002: 174).

Rawls is another theorist who adapts enforcement values in his global theory, as in his *law of peoples*, a model that anchors international society in actual forms of political association. International norms are designed to produce an “overlapping consensus” of political traditions. Rawls’s *law of peoples* is organized around principles which would be rationally acceptable to members of that society, and his principles constrain the exercise of state sovereignty. Rawls theorizes international norms in a way that affirms state equality, rule of law and enforcement of international crimes.⁶⁵

Rawls aims to derive the laws to which well-ordered peoples will agree (Brock 2010: 86). In several respects his model of global justice mirrors Walzer’s, and not surprisingly both theorists locate ‘punitive war’ at the forefront. Walzer argues in *Just and Unjust Wars* that “once the aggressor state has been militarily repulsed, it can also be punished” (1977: 62).⁶⁶ Walzer’s model of intervention is embedded in a larger family of precepts about non-aggression.

These examples reveal a line of argument that differs significantly from cosmopolitan interventionism. The reasoning represented in Vitoria, Walzer and Rawls has at least these two features; it is *pluralistic* and *particularistic* in its definition of state sovereignty.

The most significant feature of this older, Walzerian and Rawlsian model of

⁶⁵ Rawls gives the following principles as the philosophical centre of the *law of peoples*. Peoples are to observe treaties and undertakings; are equal and party to the agreements that bind them; peoples are to observe a duty of non-intervention; and have the right of self-defense; peoples are to honor human rights; and observe certain specified restrictions on the conduct of war; finally, peoples have a duty to assist other peoples living under unfavorable conditions that prevent them developing a just or decent regime (1999).

⁶⁶ This was the last proposition comprising the ‘legalist paradigm’ of international society. Walzer admits that ‘neither the procedures nor the forms of punishment have ever been firmly established,’ but he presupposes that clear standards will evolve through the ongoing activity of international society. See Walzer (1977).

enforcement in the *ius gentium* is how it focuses on ‘crimes of universal jurisdiction.’ In two remaining sections of this chapter, I will discuss two specific ‘crimes of universal jurisdiction.’ By following the progression of these lines of argument about international enforcement we will further develop a conception of legitimate intervention.

Before that, however, we should consider two kinds of objection that might remain available to cosmopolitan interventionists. The rights protection framework seems to account for enforcement values quite satisfactorily, on this view, because the new paradigm accounts what is fundamental in matters of international enforcement; the requirement that enforcement action is an effective *deterrent* and not excessive in terms of *retribution*.

The most straightforward application of the arguments of cosmopolitan interventionism would take the objective of international enforcement to be not punishing crimes once committed, but preventing crime by way of ‘structured incentives.’ Punishment, on this view, is instrumental to the primary commitment to protect human rights; the significance of punishment is found in how effectively it deters human rights violations as part of incentives.

Tesón, Caney and Buchanan defend their framework by pointing out that human rights furnish us full resources to account for enforcement concepts like punishment, protection and proceduralism. Cosmopolitan interventionism affirms a human rights-based standard, and this standard accounts for what really matters in the realm of enforcement; deterrence. Similarly, cosmopolitan interventionism appears preferable by a cosmopolitan standard because it rests on a *non-retributive* conception of enforcement.

Because international human rights are our exclusive priorities, the duty of punishment reduces to a duty to protect basic rights. On this view, cosmopolitan interventionism can be said to avoid the ‘moral danger’ that accompanies retribution; equipped to restrain punishment activity and conceptualize it strictly within the basic duty to protect human rights.

The above account of international enforcement is equally non-retributive. The aim of punishment as discussed in early just war doctrines was to punish actions of states deemed to have committed crimes against the *ius gentium*. The aim of punishment was to exert the military force needed to eliminate a certain kind of threat to the *ius gentium*. Once again, the positivist Pufendorf; “It is permitted to apply force against an enemy not only to the point where danger against me is repelled; I can also proceed against him in order to obtain a guarantee for the future. So long as the other allows this to be wrested from him through force, he gives sufficient indication that he still intends to injure me even thereafter” (Pufendorf 1994: 259).

This view of the role of punishment in the *ius gentium* is not related to harsh retributivism or ‘Old Testament’ justice. The legitimacy of coercive military force is determined not by retributive attitudes, but by a duty to safeguard international society and its basic principles. Similarly, the above account of enforcement given in this section is not inferior in terms of deterrence; indeed, the framework of Tesón, Caney and Buchanan features a clearly cosmopolitan ‘incentive structure.’ Because cosmopolitan interventionism is rooted in cosmopolitan ideals it could ideally lead to effective protection for human rights.

Still, the question of whether cosmopolitan interventionism would in fact deter human rights violations is not easy to answer. Our answers would depend on whether and how the *R2P* will eventually come to be accepted among the norms of international society. If the goal of the new paradigm was to establish a noble and rational global aspiration, we can proclaim success. But if the goal is to deter international crimes, cosmopolitan interventionism comes up short, for the rights protection framework offers no clear specification of international crimes.⁶⁷

Our key question was about whether traditional law enforcement conceptions might contribute to the institutional basis of humanitarian intervention. In the next two sections, I will work out an approach to international enforcement that so far is not well surveyed. I will seek to show how both international crimes represent important features of cosmopolitan global justice, and therefore those who desire an enforceable conception of humanitarian intervention should consider them viable options.

The Crime of Aggression

I will argue in this section that international aggression is a sound basis for our earlier concept of restrictive intervention. Aggression is defined as an international crime in *Article 2 (4)* of the *UN Charter*, which reads: “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or

⁶⁷ International lawyers use a rather ‘odd sounding’ distinction between ‘aspirational laws’ and ‘soft laws.’ Soft laws lack authoritative sanctions, or sanctions are weakly or inconsistently enforced. Aspirational international laws, on the other hand, make no assertion of binding legal authority, and would be impossible to enforce globally (Riesman and Antoniou 1994: *xxiii*). Most would agree that the laws of armed conflict are ‘not binding in the normal legal sense,’ but this distinction suggests nuances and different degrees of binding force.

political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.”

The criminalization of armed aggression began with the *Nuremburg Charter* (1945), a document that brought human rights irreversibly into the international system. At this early stage human rights subsumed ‘crimes against peace,’ ‘crimes against humanity,’ and major war crimes. These were the apex of *jus cogens* norms of international law (Thomashausen 2002: 16).⁶⁸

In 1974, UN *General Assembly Resolution 3314* defined armed aggression as a crime against peace,⁶⁹ and two decades later, with the *Rome Statute of the International Criminal Court* (‘ICC’),⁷⁰ aggression came fully under international jurisdiction. So procedural legality and criminal punishment are hallmarks of this paradigm, and the value of the definition of aggression lies in the criminal field.

The definition of military aggression sets out the following elements of an international crime; “planning, preparation, or initiation of a war of aggression, or participation in a common plan or conspiracy for the accomplishment of the foregoing.” Based on these provisions, we can determine *individual* responsibility for the international crime of aggression (Dinstein 2005: 126; 131).

Indeed, military aggression is spoken of as the *fundamental* crime of international society. Initiating a war of aggression is not simply to commit an international crime, but to commit “the supreme international crime, differing from other war crimes in that it

⁶⁸ *Charter of the Military Tribunal at Nuremburg*. <<http://untreaty.un.org/>>

⁶⁹ *GA Resolution 3314*, ‘The Definition of Aggression.’ <<http://untreaty.un.org/cod/avl/ha/da/da.html>>

⁷⁰ The *Rome Statute* ushered in a new structure of law for international criminal enforcement. Its provisions are available at: <<http://untreaty.un.org/cod/icc/index.html>>.

contains within itself the accumulated evil of the whole” (Dinstein 2001: 120).

The freedom to indulge in war ... seemed to create an egregious anomaly. It did not make much sense for the international legal system to be based on respect for the sovereignty of States, while each state had a sovereign right to destroy the sovereignty of others. On the one hand, it was incumbent on every State to defer to a plethora of rights accorded to other States under both customary and conventional international law. On the other hand, each State was at liberty to attack any other State whenever it pleased (Dinstein 2001: 71).

The logic of non-aggression is central to architecture of international society. The concept of military aggression implies a *prima facie* claim against humanitarian intervention. But it also contains specific arguments supporting humanitarian intervention. We saw in Chapters One and Two that for Walzer, “our judgments [about just war] are the product of a series of deductions that follow from the notion that military aggression is an international crime.” He held that “once the aggressor has been militarily repulsed, it can also be punished (1977: 61-3).

Walzer recognized the centrality of the crime of aggression, and he did so because of law enforcement values. Humanitarian intervention should be considered legitimate, Walzer argued, when states commit acts against their own citizens that otherwise would be construed as military aggression. It is consistent to call such regimes “internal aggressors” (Orend 2006: 91).

We should view internal aggression as a sufficient condition for legitimate intervention. This raises the difficult question of whether we can distinguish internal aggression from other domestic repression. Violent force by a state government for purposes of internal security differs from military action, even if in practical terms it is seldom obvious how to distinguish internal aggressors from non-military ‘security

forces.’

Most international lawyers accept that “the *General Assembly Definition* [of 1974] is silent as to the means of punishing the international crime of aggression” (Green 2000: 14). And yet the *Rome Statute* also states that the *ICC* may not exercise jurisdiction over the crime until such time as the states parties agree on a definition of the crime and set out the specific conditions under which it can and should be prosecuted. State parties to the *Rome Convention* must adopt a definition that resolves the following: a definition of aggression and clarity on the conditions under which the *ICC* should exercise its jurisdiction and these documents account for both punishment and proceduralism.

For such reasons, proposals to open the currently-accepted definition of international aggression would seem hard pressed. For at least 75 years, that certain family of terms—invasion, first use of force, armed attack—became the essence of our notion of aggression (Reichberg & Syse 2002: 309).

I think two rationales can be offered to explain the moral significance of criminal aggression. The first is about the particular form of modern evil that military aggression represents. Long before *Just and Unjust Wars* Walzer was writing about the the particular evil that constitutes aggression, asking readers to imagine “a state whose government strives to press its boundaries or its sphere of influence outward ... continually over a period of time, using force or the threat of force as these appear necessary” (Walzer 1971: 7). Tolerating such as state is equivalent to appeasing military aggression, and by ‘appeasing’ it, we “give over to the rule of violence.” By yielding to an aggressive sovereign state we “yield to a force that is more unusual and more frightening: the rule of

men committed to the continual use of violence, to a policy of genocide, terrorism, or enslavement”. Walzer sees the appeasement of aggression as a failure to resist evil in the world (Walzer 1971: 7-8).

The other rationale for aggression as an international crime is about its predecessor paradigm. In a ranging historical study, Sharon Korman describes the end of the ancient “right of conquest.” After WWI, international law gradually prohibited the acquisition of territory by conquest, the conflict between non-aggression and the ancient right of conquest decisively came to favor the former” (Korman 1996: 12).

In the 20th Century, the criminalization of military aggression overturned many centuries of dominance for the right of conquest. The criminalization of aggression is a denial of the right of conquest (Korman 1996: 133, 302). Korman’s view is that the criminality of aggression is our opposition to the right of conquest.

In other words, we can marshal two reasons to condemn military aggression. Appeasing aggression is surrenders to evil. The crime of aggression is a fortification against the right of conquest. These are fundamental ideas, essential to our conceptions of humanity and civilization. But I also suggested that the crime of aggression, as it exists today, contains no provision around internal aggression, and that such a provision seems not likely.

We might still glean something worthwhile from Walzer’s theory, particularly his method of grounding arguments for intervention in a ‘theory of aggression.’ In the original exchange, these dimensions of Walzer’s argument were not made fully explicit. By taking into consideration the criminalization of aggression, and the enforcement

values that make sense of it, we have developed a new perspective on the mechanisms of legitimacy in international society. The crime of aggression reflects a set of values that Walzer considered significant. One way to think about re-envisioning the prohibition on humanitarian intervention is to build from the norms and conventions around this ‘universal crime.’

The Crime of Genocide

The situation is different with the crime of genocide. Whereas aggression seemed a ‘closed case,’ in that fresh provisions to develop, expand and clarify that international crime would appear futile or unlikely, the crime of genocide is alive with controversy and debate. It features most significantly in an important legal discourse about provisions contained in the *Genocide Convention (GC, 1948)*.⁷¹

Walzer argued that military coercion is acceptable as a response against acts that “shock the conscience” of humanity. In what follows, we will assume that Walzer’s precept is analyzable in terms of the crime of genocide, specifically to legal debates on the *GC*. “Genocide,” as defined in the *Convention*, refers to “acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”⁷²

The definition covers acts such as killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

⁷¹ The *International Convention on the Prevention and Punishment of the Crime of Genocide* (1948). <<http://untreaty.un.org/cod/avl/ha/cppcg/cppcg.html>>.

⁷² The concept of genocide attaches two root terms: ‘*genos*’ for tribe or group, and ‘*cide*’ for murder. For elaboration, see Lemkin (1944).

imposing measures intended to prevent births within the group; or forcibly transferring children of the group to another group. In response to any such act, the argument goes, we should deem military intervention permissible provided its purpose is forthrightly to defend civilians. The requirement of Security Council approval does not in this case asked to bear the weight of the case for international intervention.

The driving force behind the ratification of the *GC* was a lawyer named Rafael Lemkin (1900-1959), whose career was devoted almost entirely to the concept of genocide as a crime in international law. He sought to give legal expression to what Winston Churchill called “a crime without a name” (Schabas 1999: 1). Already an expert in the ‘international penal law’ by the outbreak of WWII, Lemkin watched the horror of genocide unfold in his native Poland, then from Sweden, and finally as a citizen of the United States. Lemkin lobbied (without success) for the inclusion of his ‘international crime of genocide’ in criminal cases at the *Nuremburg* tribunal in 1945 (Schmitz 2003: 19-20).

Genocide is a crime of international jurisdiction. State parties are committed to take “all necessary action” to prevent and punish genocide.⁷³ This assertion ascribes criminal responsibility and requires states to “take action not just within their own borders but outside them, against activity that may go as far as the use of [military] force in order to prevent the crime being committed” (Schabas 2000: 546). Indeed, only the Genocide Convention and a small number of other international laws even mention the

⁷³ As stated in *Article XI*, the High Contracting Parties to the *GC* pledge themselves ‘to disband any group or organization which has participated in any act of genocide mentioned in the Convention.’

term “international crime” (May 2005: 64).⁷⁴

And the provisions around punishment contained in the *GC* ground prosecution of individual perpetrators. “The *GC* placed individuals on notice that they would be subject to prosecution and could not invoke their own domestic laws” to defend their actions (Schabas 2000: 4).

How should we understand the elements of genocide, namely, the elements “intent to destroy”, “in whole or in part”, and groups defined by “nationality, ethnicity, race or religion” (Stein 1996: 1)? Some insist that genocide retains a unique status in international society. It should continue to play a role in the human rights movement. Others claim that the era of international human rights has made the crime of genocide irrelevant, destined to be absorbed by the larger category of ‘crimes against humanity.’

“The missing piece is the view that humanitarian intervention to prevent genocide is not so much a ‘right’ as a duty” (Schabas 2000: 546). “There may be a moral duty to launch military campaigns if the state has the capability to do so. But a moral duty is entirely different from a legal duty under international law. Although the *GC* says that states must prevent genocide, this must be read in tandem with the general assumption of international law that military force is always exercised voluntarily” (Fletcher & Ohlin 2008: 130).

Cosmopolitan interventionism seeks to account for the crime of genocide by defining genocide as a species of ‘crimes against humanity.’ But this renders the concept of genocide meaningless. In general terms it is defined as a crime against individuals, as

⁷⁴ Some say that only the *GC* of 1948 and the *Torture Convention* of 1984 are crimes prosecutable under international law (See Thomashausen 2002: 17).

not distinguishable from ‘crimes against humanity.’ The concept of genocide maintains some of its original stigma, but the distinction between the two concepts has minimal or decreasing legal consequence (Schabas 2006: 9). But if we imagine genocide as a crime against social collectives, we depart from the human rights-based vision, seemingly accepting a ‘collectivistic’ vision of global values.

We face two options. We can expand the definition contained in the *GC*, or we can choose to engage state parties in affirming their commitment to realize obligations it contains. Nevertheless, we are witnessing the absorption of the crime of genocide into ‘crimes against humanity.’ It has always seemed that the *GC* violated world culture principles such as individualism and universalism, whereas the *UDHR* seems broadly compatible with human rights and their universal language (Schmitz 2003: 29). In the decades since 1989, the *GC* has steadily but firmly been overshadowed by the *UDHR*. Whereas the latter is clear in its commitment to the values of dignity and decency that underpin its legal authority, the former has become the rallying point for a new generation of international activists and scholars.

The *UDHR* offers an interpretation of human rights compatible with world culture principles, whereas the Genocide Convention fails this test by representing a collectivist and group-based version of human rights protection (Schmitz 2003: 1-3). A number of legal scholars argue that the *GC* should be formulated individualistically; as a crime against individual human beings.⁷⁵

⁷⁵ Consider Donnelly’s (2002) discussion as an illustration.

But if we define genocide individualistically, we abandon its distinction from (other) major war crimes. It was once the case that the crime of genocide and the human rights movement were considered part of the same global project. However, it seems clear today that genocide and individual human rights are separate. “The victory of the individualist model is apparent, as genocide is now viewed in international law as “a subcategory of the more general term crimes against humanity” (Schmitz 2003: 29).⁷⁶

The *GC* enshrines universally binding duties even though these duties fail to be realized too often. A consequence is that the *GC* has “failed to cover some of the major human rights violations and mass killings perpetrated by dictators and their accomplices” (Schabas 2000: 7). The *GC* is considered ineffective because of the failure of powerful states to satisfy their entrained obligations. There have been too many instances in which the group has physically survived but its cultural distinctiveness has been eradicated (Stein 1996: 2). Although the *Convention* remains in force, its great failure is the fact that genocidal atrocities still occur (Schabas 1999: 6).

In his recent work, Larry May seeks to overcome the legal impasse by defining genocide as a crime against individuals. He categorizes it as a form of ‘group-based harm’, where we find “an explicit link between what the individual did and the international aspect of the crime (May 2005: 22). May claims that certain policies and actions affect humanity adversely.

⁷⁶ The *GC* was signed only two days prior to the Universal Declaration of Human Rights (*UDHR*), in December 1948. Whereas the latter has gained unprecedented rhetorical recognition in international affairs, the former has fallen into a pattern of disintegration (Schmitz 2003: 3). The *GC* was signed two days prior to the *UDHR* in December 1948. Whereas the latter gained unprecedented recognition in international affairs, the former edged toward disintegration.

To determine whether harm to humanity has occurred, one of two (and ideally both) conditions should be met. Either the individual is harmed because of that person's group membership or other non-individualized characteristic, or the harm occurs due to the involvement of groups such as the State."⁷⁷ To put it simply, May holds that "group-based harms are ... necessary to justify international prosecutions" (2005: 21). May is correct to point out that the "international community takes a special interest in certain categories of acts because these seem to affect humanity adversely" (2005: 82-83).

And his analogy is also helpful. May argues that the "parallel in domestic criminal law concerns conspiracies or hate crimes" (2005: 127). "The prevailing wisdom about the genocide convention has changed. Although it was a nice idea, no one really takes seriously anymore the idea that the *Convention* obligates signatories to launch military campaigns to prevent genocide." (Fletcher & Ohlin 2008: 130). If a choice is to be made, it would be better to engage state parties in a commitment to intervene, with force if necessary, in order to prevent the crime of genocide, rather than to expand the definition or suggest its borders are uncertain (Schabas 2000: 552).

What we need is a clear sense of how to answer the legal questions surrounding the GC. Lemkin's major work *Axis Rule in Occupied Europe* (1944) defined genocide as "a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves" (Lemkin 1944; Schabas 1999: 2).

⁷⁷ According to May's harm principle, certain harms are rightly within the province of the international community because they more likely assault the common humanity of their victims (2005: 83).

Lemkin was concerned not only about the well-being of European Jews, victims of genocide, but also compatriots in Poland, who in addition to deprivations during the war lost a political community to which they belonged, and to which many attached great personal significance. He “rejected the idea of “human rights” as individualistic and ineffective in preventing the mass atrocities he was concerned with” (Schmitz 2003: 20). He “rejected the broad and possibly vague instrument, in favor of a clearly defined and enforceable treaty against one specific crime against humanity.” He was convinced that human flourishing was possible only in the context of a collective group (Schmitz 2004: 16).⁷⁸

So Lemkin sought to defend pluralism, rather than universalism, as the appropriate response to the Holocaust (Schmitz 2003: 21). His landmark definition was not an “unfortunate drafting compromise,” but rather, a rational effort to address a particular phenomenon of human rights violation; the threat to the existence of what we now call ‘ethnic’ groups and what the drafters conceived of as ‘national minorities’ (Schabas 2000: 547).

Think about two concepts; ‘ethnic cleansing’ and ‘identicide.’ It is more difficult than one might think to define the distinctive harm of ethnic cleansing. It is even more challenging to explain its criminality. Also think about the concept of ‘identicide,’ which has been called genocide’s “precursor framework.” Some scholars of international law call for it to encompass destruction of any or all of the particular qualities that make up, not necessarily the actual elimination of a people, but rather, the places which they have

⁷⁸ His other works include a series of five essays published before and after *Axis Rule in Occupied Europe*.

constructed over time and in which they habitually live, and their customary and routinized social practices (Meharg 2006: 3).⁷⁹

International law should guide us in explaining why identicide should be prohibited; for the same reasons as genocide. It should encompass ethnic cleansing as well. But these are blind spots in the contemporary laws of armed conflict.

We can defend Lemkin's model from three general families of global values; claims about 'global pluralism'; a desire to protect 'global civilization'; and claims grounded in cosmopolitanism and international human rights. One of the central values underpinning genocide is that of cultural pluralism. Lemkin's pluralism was both personal and theoretical. Walzer's rationale for appealing to genocide would also take the form of an argument from global pluralism.

But cultural pluralism alone is not sufficient as an explanation for the crime of aggression. Others have sought to ground Lemkin's concept in the values of global civilization. By 'civilization,' I am referring to ideas and innovations that have made the global community that we now inhabit. We are both creators and beneficiaries of world civilization; it is important to recognize the obligations that follow.

In other words, the concept of pluralism underpins the criminality of genocide. It is easy to see that the opposite of civilization is barbarism, and that genocide represents the most virulent form of barbarity. However, 'civilizational' arguments also become problematic. For even though civilization in most of its respects is worthy of preservation, we know that even culturally advanced societies are capable of barbarism.

⁷⁹ As stated in *Article XI*.

The two arguments (from pluralism and civilization) are not sufficient to shed light on the crime of genocide, or more precisely, to answer the critical question of whether genocide is a crime against individuals or socially-constituted groups. In contrast, rooted cosmopolitanism furnishes us with a penetrating formulation of Lemkin's formulation. First, enforcing the crime of genocide gives essential protection to individual human rights. Secondly, enforcing the crime of genocide enhances human well-being; by saving lives

From a certain point of view, what is needed is a stronger commitment to affirm its enforcement obligations, as well as greater political support for necessary enforcement action. "The missing piece is the view that humanitarian intervention to prevent genocide is not so much a 'right' as a duty" (Schabas 2000: 546). Some international lawyers argue that this is exactly how the *GC* is being understood in recent 'case law.' The 1998 ruling of the *International Criminal Tribunal for Rwanda* ('*ICTR*')⁸⁰ found that that the *Convention* definition is "meant to protect all 'stable' groups, which are those "constituted in a permanent fashion, membership of which is determined by birth, to the exclusion of the more "mobile" groups which one joins through individual voluntary commitment, such as political and economic groups" (Schabas 1999: 3; 2000: 130).

"Short of an amendment to the Convention that could develop the content of the duty to prevent genocide—an unlikely prospect—a number of other less dramatic mechanisms might be considered. A commitment by States to the use of force in order to prevent genocide might take the form of a *General Assembly* resolution. These would be

⁸⁰ The *ICTR* is accessible on the WWW at: < <http://www.unictt.org/>>. Others could say that the *ICC*'s recent rulings leave such definitional question open-ended.

authentic expressions of the obligation to prevent genocide set out in the *Convention*, which already legally entrained and binding as manifestations of state practice” (Schabas 2000: 546). Lemkin’s defense of collectives as conditions on individual well-being is a compelling criticism of the strictly individualist perspective on human rights” (Schmitz 2004: 23).

A critic might observe that the duty to prevent and punish acts of genocide is encompassed under the *R2P* (See Schabas 2006: 9). Indeed, the Commissioners who wrote and advocate for the *R2P* not long ago recommended a resolution whereby permanent members of the Security Council pledge themselves to refrain from the use of the ‘veto’ in cases where genocide or other large-scale human-rights abuses are taking place.⁸¹

Unfortunately, however, state parties to the *Convention* disagreed with this recommendation, which had little support among permanent members of the Security Council (Pace & Deller 2005: 31). Largely for reasons mentioned above, a new generation of scholars and non-state actors place their confidence fully behind the *UDHR*. This individualism is the explanation for the marginalization of the *GC* (Schmitz 2003: 27).

Let me gather up the main threads in the two preceding sections. I argued that certain conceptions of international enforcement can help us to build a contrast to cosmopolitan interventionism’s rights protection framework. And when we consider

⁸¹ In the original document, Evans, Thakur and Ignatieff suggest it is “unconscionable that one veto can override the rest of humanity on matters of grave humanitarian concern.” I submit that such a Resolution would be received differently, even in the corridors of the Security Council, if it could distinguish between ‘genocide’ and ‘other large-scale human right abuses.’

ideas of legality and punishment promulgated by theorists such as Vitoria, Walzer and Rawls, we see that the rights protection model presupposes a view of international society that is incomplete; it fails to recognize essential values and commitments long accepted in international law.

When we take law enforcement values seriously, however, a series of compelling strategies for international reform come into view. The two crimes remain legally controversial, but the international crime of genocide in particular shows potential as legitimate reform of the conventions prohibiting humanitarian intervention. Most significantly, by reflecting on early conceptions of law enforcement we can defend new, untried amendments to the *GC* that would clarify the elements of this international crime and affirm conditions under which it underpins a duty to deploy coercive military force to protect groups threatened with genocide.

I have tried to indicate that this revision of the crime of genocide is fundamental to cosmopolitanism's vision of global responsibility for human rights. This seems true at the level of global ideas, how people comprehend human rights. But it is equally true at the level of institutions, where human rights and genocide are dual elements in a continuing movement of global governance, community and responsibility.

Such linkages between self-government, law enforcement and cosmopolitanism are not yet deeply explored by today's intervention theorists. Their assumptions about the supremacy of human rights and conditional state sovereignty have obscured the range of theoretical options. So let us acknowledge, by way of conclusion, that the connections focused on in Chapters Three and Four would be imperceptible without Walzer's

visionary theory of aggression. Although both its structure and content were dismissed by influential cosmopolitans, I have suggested that these ideas contain possibilities so far unrealized.

In the final chapter, I will explain how the threads discussed above come together in a way that highlight certain attractive possibilities—intellectual opportunities—which suggest how this discussion of Walzer may help us make progressive judgments here and now, while it also helps us mark out a clear path for the future of these debates.

Chapter 5

CONCLUSIONS

In Chapter One we set out to understand the reasons why the debate on humanitarian military intervention has shifted as it has over the past two decades. We have seen how attitudes began to gather and quickly coalesce behind a formidable framework of arguments rooted in cosmopolitanism; today's theorists view individual human rights protection as the essential determinant of a state's moral immunity from military intervention. Human rights protection is their benchmark for deciding whether to intervene unilaterally against severe political violence.

Such theorists advance arguments from the priority of human rights, and from the proposition that state boundaries are ethically meaningless. They tend to view territorial boundaries as arbitrary, and therefore rigorously conditional on human rights. Accordingly, they frequently support a demanding sense of the 'duty to protect' human rights wherever in the world severe political violence occurs.

The position I called 'cosmopolitan interventionism' was designed to give context to a broad family of arguments and to focus attention on how they reflect a characteristic fusion of cosmopolitan ideals, concepts of just war, and ideas about the *ius gentium* or law of all nations. I claimed that these arguments constitute a new conceptual paradigm: the more or less accepted response to the age-old dilemma of humanitarian intervention.

To contrast that standard view, I tried to underscore the significance of two other global values. I argued that the boundaries of existing states may be arbitrary, but are also inescapably part of the protection of human rights. Territorial boundaries should

sometimes play a decisive role in our political judgments and strategies for international reform. Furthermore, humanitarian intervention should be viewed as a species of international law enforcement. Our considerations about the institutional basis of legitimate intervention should affirm the values of legality and punishment and should focus on extending and actually enforcing existing international crimes.

By way of conclusion, I want to discuss two sets of considerations that follow from our discussion above. The first relates to how the two major frameworks for legitimate intervention—permissive and restrictive—should find expression or factor into real-world political judgments. Which framework is better equipped to deal with the dilemmas of intervention? The remaining considerations relate to what lies ahead for cosmopolitan interventionism. If the genealogical map provided above in Chapter Two is an accurate account of the evolution of cosmopolitan interventionism, then what directions are these arguments and the broader intervention discourse likely to take in years to come?

Political Judgments

In Chapter One, I referred to Michael Sandel's methodology of 'public philosophy'; a method seeking benchmarks and normative principles to assist decision-makers and the general public as they grapple with conflicts of fundamental global values. Let it be said that the model offered by Tesón, Buchanan and Caney stands at a vast distance from our real-world judgments. Tesón recommends that intervention should be considered legitimate when we are reasonably certain that intervention will bring net benefits in

protection of human rights. But it is *never* that very clear when human rights are best secured by intervention as opposed to non-intervention. Cosmopolitan interventionism is intended to provide a clear cosmopolitan standard; but when we look at specific events, that standard is abstract and aspirational.

For example, the Bosnian civil war was a prolonged event constantly obscured by the flux of shifting strategies and military boundaries. Rarely was it possible to determine with certainty whether net benefits in human rights protection would be brought about or diminished by an act of intervention. From an international perspective, the Bosnian Civil War was about aggressive nationalism and specific instances of genocide.

Each major deployment followed an act of escalation by at least one party to the conflict. The issues at stake in the international debate were generally issues connected to international law. In the context of 2011's 'Arab Spring' uprisings, the gap between cosmopolitan interventionism and real-world political judgments grows dangerously wide. Today in both Libya and Syria, it is hardly possible to determine whether human rights protection was or would be enhanced or diminished by military intervention. The core arguments of cosmopolitan interventionism offer a seemingly clear cosmopolitan benchmark, but attention of global actors is generally fixed on the capacity of belligerents to govern themselves effectively in accordance with authoritative political traditions.

In Syria, international attention from the outset concentrated on whether the Assad regime attacked civilians. Questions about the human rights credentials of the 'opposition,' about whether it is unified and representative, remain wide open. But a critical threshold was crossed when the regime attacked civilians with armed force. We

should act decisively to prevent such regimes from crossing the most desperate threshold and commencing to slaughter their own people.

Consider the genocide in Rwanda. The international community's intransigence and self-interested policies must be acknowledged. But in one respect their reluctance was not unwise. A number of recent scholars recognize that effectively halting genocide in Rwanda would have provided immense challenges. The common wisdom about Rwanda ignores the difficulties any intervening force would have faced, which suggest that international action may not have averted that monstrous crime.⁸²

Since Rwanda we have learned about the "mechanics of genocide" (Kuperman 2001: 14-22). Most significantly, we should aim a global spotlight on conflicts in which genocide may occur, and we should remain in compliance with the international duties proscribed in the *GC* to prevent and punish the crime of genocide. In such situations the only available course of legitimate action is coercive military force leading if necessary to 'regime change.' Such actions are exceptional, but justifiable in the desperate types of case where Walzer said the decent course of action is declaring war against the aggressive regime.

'Maximizing' human rights protection is a truly noble moral aspiration. But our real considerations concerning deploying armed force more often express values of self-government and law enforcement. Have Syrians reached a moment when they wished to overthrow of Assad regime? Have they undertaken an effort to replace the regime? Does

⁸² For clear statement of this argument, see Kuperman (2001: 1-4).

the opposition have sufficient means to establish a representative regime? Who struck first: were their actions in accordance with acknowledged standards of armed conflict?

These are some of the pivotal questions. But none is reflected in cosmopolitan interventionism's normative calculus; they are removed from consideration by a blanket claim about the supremacy of individual human rights. Some, like Ramesh Thakur, view the *UN*-sanctioned intervention in Libya (in 2011) as a precedent-setting confirmation of the *R2P* (Thakur 2011). Thakur considers new instances of military intervention gradual steps toward the final affirmation of 'sovereignty as responsibility.' On this view, the campaign in Libya can be understood as advancing the norm of *R2P* internationally, affirming the precedent laid down in the *UN*'s 2005 *World Summit Outcome Document*, a reminder to world leaders that state sovereignty is not a shield to ignore human rights.

Internationally, the effort to expand and entrench cosmopolitan values across the world's diverse and often-conflicting societies rests on our capacity for building friendly relations with developing societies, and this in turn depends upon building institutions and presenting innovative and culturally and politically viable solutions that both enable and protect weak and vulnerable societies from encroachment by military powers.

In addition to those two other global values, we should be attentive to what I feel is a dramatic imbalance of global power currently dividing nation-states who may decide to undertake military interventions from people who may become its targets. Taken in abstraction, our conception of 'international society' fails to capture this division; no one supports the idea of hierarchical *UN* membership. Our immediate worry about humanitarian intervention is that major judgments about which faction forms the

government of a weakened state may be left in the self-interested hands of Western leaders.

This stratification of world military power will become an increasing source of friction. Most significantly, it carries the obvious risk of association with ‘liberal imperialism’; the widely-believed agenda of Western domination. The same imbalance constantly flames accusations that the West and the UN apply a “double standard” in deciding whether to undertake intervention (Malanczuk 1993: 2, 12).

Thus, in relation to the political cases that confront us, there are powerful reasons to resist exaggerating the authority of international human rights as enforceable instruments of international law. The dilemma of humanitarian intervention is laden with a hidden dynamic of political domination. “A basic condition of any policy that can be called interventionary ... is that the intervener should be superior in power to the object of the intervention: it is only because the former is ... stronger and the latter weak that the question arises of a form of interference that is dictatorial or coercive” (Bull 1986).

We should want to protect the pro-intervention position from such associations. We should say about international society that certain states are perpetually vulnerable to the overwhelming power wielded by the Western liberal-democracies. Two ways to mark this recognition and prevent its unfair consequences are to affirm the core values of state sovereignty and to get a full grasp on the normative values contained in the laws of armed conflict as the inner structure of international society.

With those considerations in view, let me offer two final observations. Cosmopolitan interventionism may be prone to increase armed conflict, in both frequency

and intensity, as it undermines perceptions of legitimacy of the core institutions of international society. Some theorists have questioned whether the common presumption around permissive intervention has the intended outcome. The emerging norm of humanitarian intervention may give rise to an effect of ‘moral hazard,’ where leaders of national minorities trigger ‘suicidal rebellions’ in order to provoke international assistance (Kuperman 2005).

A restrictive model may serve to reduce armed conflict while it adds progressively to perceptions of legitimacy around global institutions. The Walzerian threshold for intervention is restrictive; presumably it licenses fewer interventions. But let me say again that the model drawn from Walzer’s theory of aggression confronts state violence in its most virulent form. Military aggression by a regime bent on conquering or eliminating those who do not comply: this is the underlying impulse of state violence that should comprise the threshold for legitimate military intervention.

Both of the global values discussed here were first defended in Walzer’s theory of aggression, but lacked full elaboration. Whereas Walzer conceived restrictive intervention on the basis of ‘communal integrity’ I have tried to show that a restrictive model of humanitarian intervention can be grounded securely in cosmopolitan values. For that reason it merits our further consideration. .

The Future of Cosmopolitan Interventionism

I referred near the end of Chapter One to Charles Taylor's method of 'philosophical anthropology,' where the object is to understand ideas by tracing their historical and philosophical origins. For Taylor, a key contribution of political philosophy is its ability to clarify the arguments of different periods, over multiple fields, in dynamically evolving intellectual discourses. In a similar way, our aim in this study was to map the conceptual territory in the humanitarian intervention discourse; to set forth a context for cosmopolitan interventionism over a series of interconnected discourses.

We have sought to clarify today's standard arguments in terms of their emergence, underlying values, and the story of how they captured worldwide attention. But we have also found unguarded assumptions. For reasons discussed above, cosmopolitan interventionism is not an adequate theoretical basis for humanitarian intervention. Its core arguments reveal a lack of understanding of political dynamics that lie behind human rights protection in situations of radical political instability. We have seen that cosmopolitan interventionism fails to acknowledge that our global morality of universal human rights should make sense of the social connections and communal bonds that are essential elements in the world of sovereign states.

I want to make three assertions. First, the window of opportunity to reformulate our theoretical frameworks for humanitarian intervention remains open. The debate on legitimate intervention is active, and the volume of material produced each year has not significantly diminished. There is no reason to think that the paradigm of cosmopolitan interventionism cannot be revised.

A second assertion is that intervention theorists should aim to play a leadership role. The debate on legitimate intervention shows how academic or philosophical discussions of humanitarian intervention sometimes reflect general trends in the practical and political discussion. The discourse on humanitarian intervention will be determined in the two decades ahead by many of the same philosophers, foreign policy experts, and international lawyers who have participated in the rise of cosmopolitan interventionism. Their collaboration sets a precedent of dialogue and coordination between sectors of the discourse which have enormous contributions in their specialized domains. One hopes that these levels will continue their collaborative discussion, and that theoreticians can contribute in their distinctive way.

It is not necessary to abandon what has been achieved so far on the road to cosmopolitan interventionism. The effort to mobilize global perspectives around the *R2P*, for example, and current strategies of spotlighting dangerous conflicts before they produce extreme violence, are stories of success and lessons learned.

The arguments of Tesón, Caney and Buchanan seemed appealing in part because of a deeply-held conviction about state sovereignty; that traditional conceptions are in decline, eroded by the forces of globalization. More and more it seems that “domestic authority structures are influenced or even dictated by foreign actors” (Krasner 1999: 120-1). And as old edifices of state sovereignty have declined, the international system has seemed to affirm a new foundation in the commitment to international human rights. There is a reasonable narrative within which cosmopolitan interventionism seems the only available option.

The rise of cosmopolitan interventionism is associated with a widely-accepted narrative in which progressive thinkers consider state sovereignty an adversary of global responsibility. State sovereignty is deemed to reflect a “denial of the possibility of development in international relations” (Brierly 1963: 51).

I claimed that such narratives exaggerate the decline of state sovereignty. The relationship between human rights and state sovereignty is complicated and dynamic, and the concept of state sovereignty will remain integral to international relations.⁸³ I have tried to show that state sovereignty should be conceived as an instrument of human rights protection. To be sure, the notion of the sovereign state as a tool or instrument of rights protection will seem to many as paradoxical or eccentric. But the idea is admired outside the West, especially in developing states, where institutions of state sovereignty serve as precious tools of political mobilization.

Non-Western states tend to value their powers of state sovereignty, probably because these powers enable them to expand and secure domestic political liberties. As Hedley Bull explained, outside the West the sovereign state is typically viewed as an instrument to protect human interests. But especially “in Third World countries, life is often shaped by the bitter experience that goes along with being without a state.” Indeed, “the political awakening of Third World peoples that brought about the struggle against Western colonialism and neo-colonialism, now receding into the past, has also strengthened their capacity to resist intervention (Bull 1986: 149-154).

Deeply-held convictions are not easily changed. It may be difficult to imagine

⁸³ We should, however, acknowledge that the era of state sovereignty as pure *dominium* has long past.

‘turning back the clock’ on the core arguments cosmopolitan interventionism. But on the other hand, as these discourses continue to evolve, we will be equipped to challenge the assumption that the evolution of state sovereignty has come to an end.⁸⁴ And perhaps the prospects for re-defining state sovereignty are wider than ever, for the *R2P* has sparked an important new debate about state sovereignty in the 21st Century.⁸⁵

This wide-ranging discussion suggests that we should rethink common assumptions about an irreconcilable conflict that divides cosmopolitanism and the values of self-government and international enforcement. For several reasons, I believe that a clearer view of two other kinds of global values could be essential to bring about what all theorists of humanitarian intervention desire: concepts and arguments that lead to safer and more prosperous lives for human beings around the world.

In the final analysis, I have offered reasons to adopt a critical position on recent the shift in attitudes around humanitarian intervention. In a turbulent and conflicted world, where the dilemma of humanitarian intervention continues to challenge us, we should rethink some of our assumptions about self-government and law enforcement. Though they are thought to oppose the cosmopolitan vision, we have seen that these are distinctively modern values, raised from ancient discourses, which may help us to expand the realm of human rights protection today and in the future.

⁸⁴ This is the point made in Brierly (1963: 51).

⁸⁵ Francis Deng originally developed the concept of “sovereignty as responsibility” in 1996. He was trying to advance the debate beyond traditional views of ‘sovereignty as control of territory’; ‘sovereignty as responsibility’ would be a way to circumvent the impasse surrounding the ‘right’ of humanitarian intervention. However, Deng’s conception was a reminder to state governments that responsibilities for human rights protection were their own, rather than obligations of international authorities. Deng’s goal was not to advance the idea of human rights enforcement. Quite the contrary; it was to revise international policies so as to affirm ‘localized’ human rights institutions.

REFERENCES

- Altman, Andrew and Christopher Heath Wellman. 2004. "A Defense of International Criminal Law." *Ethics* 115.1: 35-67.
- Antoniou, Chris and Michael Reisman, eds. 1994. The Laws of War. New York: Vintage Books.
- Aquinas, St. Thomas. 1981. Summa Theologica. Grand Rapids: Christian Classics.
- Archibugi, Daniele. 2004. "Cosmopolitan Guidelines for Humanitarian Intervention." *Alternatives* 29: 1-21.
- Aristotle. 1981. The Politics. Ed. Trevor Sanders. New York: Penguin Classics.
- Arnold, Roberta, ed. 2008. Law Enforcement within the Framework of Peace Support Operations. Leiden: Martinus Nijhoff.
- Badescu, Cristina G. and Linnea Bergholm. 2009. "The Responsibility To Protect and the Conflict in Darfur: The Big Let-Down." *Security Dialogue* 40: 287-309.
- Bagnoli, Carla. 2006. "Humanitarian Intervention as a Perfect Duty: A Kantian Argument", in Humanitarian Intervention. Eds. Terry Nardin and Melissa Williams. New York: New York University Press.
- Bauer, Joanne and Daniel Bell, eds. 1999. The East Asian Challenge to Human Rights. Cambridge: Cambridge University Press.
- Barry, Brian. 1998. "International Society from a Cosmopolitan Perspective", in International Society: Diverse Ethical Perspectives. Eds. David Mapel and Terry Nardin. Princeton: Princeton University Press. 144-163.
- Barry, Brian. 1999. "Self-Government Revisited", in Theorizing Nationalism. Ed. Ronald Beiner. Albany: SUNY Press.
- Begby, Endre. 2003. "Liberty, Statehood and Sovereignty: Walzer on Mill on Non-Intervention." *Journal of Military Ethics* 2.1: 46-62.
- Beiner, Ronald, ed. 1999. Theorizing Nationalism. Albany: SUNY Press.
- Beitz, Charles. 1979. "Bounded Morality: Justice and the State in World Politics." *International Organization* 33.3: 405-424.
- Beitz, Charles. 1980. "Nonintervention and Communal Integrity." *Philosophy and Public Affairs* 9.4: 385-391.
- Beitz, Charles. 1999. "Social and Cosmopolitan Liberalism." *International Affairs* 75.3: 515-529.

Beitz, Charles. 2009. "The Moral Standing of States Revisited." *Ethics and International Affairs* 23.4: 325-347.

Bellamy, Alex J. 2008. "The Responsibility to Protect and the Problem of Military Intervention." *International Affairs* 84.4: 615-639.

Bellamy, Alex J. 2010. "The Responsibility to Protect—Five Years On." *Ethics & International Affairs* 24.2: 143-163.

Bellamy, Alex J. 2012. "Getting Away With Mass Murder." *Journal of Genocide Research* 14.1: 29-53.

Beetham, David. 1991. The Legitimation of Power. Houndmills: Macmillan.

Boyle, Joseph. 2001. "Boundaries, Ownership and Autonomy: A Natural Law Perspective", in Boundaries and Justice: Diverse Ethical Perspectives. Eds. David Miller and Sohail Hashmi. Princeton: Princeton University Press. 296-316.

Boyle, Joseph. 2006. "Traditional Just War Theory and Humanitarian Intervention", in Humanitarian Intervention. Eds. Terry Nardin and Melissa Williams. New York: New York University Press.

Brierly, J.L. 1949. Law of Nations: An Introduction to the International Law of Peace. Oxford: Clarendon Press.

Brock, Gillian. 2010. "Recent Work on Rawls's Law of Peoples: Critics versus Defenders." *American Philosophical Quarterly* 47.1: 85-101.

Brown, Chris. 2003. "Selective Intervention: A Defense of Inconsistency", in Humanitarian Intervention: Ethical, Legal and Political Dilemmas. Eds. Deen Chatterjee and Don Scheid. Cambridge: Cambridge University Press. 31-52.

Buchanan, Allen. 1999. "Recognitional Legitimacy and the State System." *Philosophy and Public Affairs* 28.1: 46-78.

Buchanan, Allen. 2003a. "Reforming the International Law of Humanitarian Intervention", in Humanitarian Intervention: Ethical, Legal and Political Dilemmas. Eds. J.L. Holzgrefe and Robert Keohane. Cambridge: Cambridge University Press. 130-174.

Buchanan, Allen. 2003b. "Secession, State Breakdown, and Humanitarian Intervention", in Ethics and Foreign Intervention. Eds. Deen Chatterjee and Don Scheid. Cambridge: Cambridge University Press. 189-211.

Buchanan, Allen. 2003c. "The Making and Unmaking of Boundaries: What Liberalism has to Say", in States, Nations and Borders: The Ethics of Making and Unmaking Boundaries. Eds. Allen Buchanan and Margaret Moore. Cambridge: Cambridge University Press. 231-261.

Buchanan, Allen and Margaret Moore, eds. 2003. States, Nations and Boundaries. Cambridge:

Cambridge University Press.

Buchanan, Allen. 2004. Justice, Legitimacy and Self-Determination. Oxford: Oxford University Press.

Buchanan, Allen. 2006. "Institutionalizing the Just War." *Philosophy & Public Affairs* 34.1: 2-38.

Bull, Hedley. 1977. The Anarchical Society. New York: Columbia University Press.

Bull, Hedley. 1986a. "Intervention in the Third World", in Intervention in World Politics. Ed. Hedley Bull. Oxford: Clarendon Press. 135-156.

Bull, Hedley. 1986b. "Introduction." Intervention in World Politics. Ed. Hedley Bull. Oxford: Clarendon Press. 1-6.

Burgess, Peter J. 2002. "Ethics of Intervention: The Circles Closes." *Security Dialogue* 33.3: 261-264.

Byers, Michael and Simon Chesterman. 2003. "Changing the Rules about Rules? Unilateral Humanitarian Intervention and the Future of International Law", in Humanitarian Intervention: Ethical, Legal and Political Dilemmas. Eds. J.L. Holzgrefe and Robert Keohane. Cambridge: Cambridge University Press. 177-203.

Byers, Michael. 2005. War Law. Vancouver: Douglas & McIntyre.

Caney, Simon. 1997. "Human Rights and the Rights of States: Terry Nardin on Nonintervention." *International Political Science Review* 18.1: 27-37.

Caney, Simon. 2001. "Human Rights, Compatibility and Diverse Cultures", in Human Rights and Global Diversity. Eds. Simon Caney and Peter Jones. Portland: Frank Cass Publishers. 51-76.

Caney, Simon. 2005. Justice Beyond Borders. Oxford: Oxford University Press.

Ceulemans, Carl. 2002. "Just Cause", in Moral Constraints on War. Eds. Bruno Coppieters and Nick Fotion. Lexington: Rowman & Littlefield. 25-40.

Centre for Strategic Studies. 2002. "Humanitarian Intervention: Definitions and Criteria." *CSS Strategic Briefing Papers* 3.1: 1-2.

Chatterjee, Deen and Don Scheid, eds. 2003. Ethics and Foreign Intervention. Cambridge: Cambridge University Press.

Chesterman, Simon. 2001. Just War or Just Peace? Humanitarian Intervention in International Law. Oxford: Oxford University Press.

Coady, C.A.J. 2003. "War for Humanity: A Critique" in Humanitarian Intervention. Eds. Deen Chatterjee and Don Scheid. Cambridge: Cambridge University Press. 274-295.

- Coates, Anthony. 2006. "Humanitarian Intervention: A Conflict of Traditions", in Humanitarian Intervention. Eds. Terry Nardin and Melissa Williams. New York: New York University Press. 58-83.
- Coppieters, Bruno and Nick Fotion, eds. 2002. Moral Constraints on War. Lanham: Lexington Books.
- Deigh, John. 2013. "Human Rights as Political Rights: A Critique." *Journal of Social Philosophy* 44.1: 22-42.
- Dinstein, Yoram. 2001. War, Aggression and Self-Defense. Cambridge: Cambridge University Press.
- Dobos, Ned. 2010. "A State to Call their Own." *Journal of Applied Philosophy* 27.1: 26-38.
- Donnelly, Jack. 1999. "Human Rights and Asian Values: A Defense of 'Western' Universalism", in The East Asian Challenge to Human Rights. Eds. Joanne Bauer and Daniel Bell. Cambridge: Cambridge University Press. 60-87.
- Donnelly, Jack. 2002. "Genocide and Humanitarian Intervention." *Journal of Human Rights* 1.1: 93-109.
- Doppelt, Gerald. 1978. "Walzer's Theory of Morality in International Relations." *Philosophy and Public Affairs* 8.1: 3-26.
- Doppelt, Gerald. 1980. "Statism without Foundations." *Philosophy and Public Affairs* 9.4 (1980): 398-403.
- Dorn, A. Walter. 2011. "The Just War Index: Comparing Warfighting and Counterinsurgency in Afghanistan." *Journal of Military Ethics* 10.3: 242-262.
- Doyle, Michael. 2009. "A Few Words on Mill, Walzer, and Nonintervention." *Ethics and International Affairs* 23.4: 349-369.
- Doyle, Michael. 2011. "International Ethics and the Responsibility to Protect." *International Studies Review* 13.1: 72-84.
- Edwards, Charles S. 1981. Hugo Grotius: The Miracle of Holland: A Study in Legal and Political Thought. Chicago: Nelson Hall.
- Elshtain, Jean Bethke. 2001. "Just War and Human Rights." *Ideas: From the National Humanities Center* 8.1: 1-21.
- Elshtain, Jean Bethke. 2003. "International Justice as Equal Regard and the Use of Force." *Ethics and International Affairs* 17.2: 63-75.
- Elshtain, Jean Bethke. 2004. "St. Augustine." *Contemporary Political Theory* 3.3: 268-274.

- Etzioni, Amitai. 2004. "A Self-Restrained Approach to Nation-Building by Foreign Powers." *International Affairs* 80.1: 1-17.
- Etzioni, Amitai. 2006. "Sovereign as Responsibility." *Orbis* 71-85.
- Evans, Gareth. 2006. "Crimes against Humanity: Overcoming Indifference." *Journal of Genocide Research* 8.3: 325-339.
- Evans, Gareth. 2008. The Responsibility to Protect. Washington: Brookings Institution.
- Farer, Tom. 2004. "The Ethics of Intervention in Self-Determination Struggles", in Ethics and Foreign Intervention. Eds. Deen Chatterjee and Don Scheid. Cambridge: Cambridge University Press. 143-167.
- Farrell, Daniel. 2009. "The Justification of General Deterrence", in Arguing about Law. Eds. Aileen Kavanaugh and John Oberdick. New York: Routledge. 473-487.
- Fixdal, Mona and Dan Smith. 1998. "Humanitarian Intervention and Just War." *Mershon International Studies Review* 42.2: 283-312.
- Fletcher, George P. and Jens David Ohlin. 2008. Defending Humanity: When Force is Justified and Why. Oxford: Oxford University Press.
- Forde, Steven. 1992. "Classical Realism", in Traditions of International Ethics. Eds. Terry Nardin and David Mapel. Cambridge: Cambridge University Press. 62-84.
- Forde, Steven. 1998. "Hugo Grotius on Ethics and War." *The American Political Science Review* 92.3: 639-648.
- Forsyth, Murray. 1992. "The Tradition of International Law", in Traditions of International Ethics. Eds. Terry Nardin and David Mapel. Cambridge: Cambridge University Press. 23-61.
- Fotion, Nick. 2002. "Proportionality", in Moral Constraints on War. Eds. Bruno Coppieters and Nick Fotion. Lexington: Rowman & Littlefield. 91-100.
- Fox, Michael A. 2005. The Accessible Hegel. Amherst: Humanity Press.
- Franck, Thomas. 2003. "Interpretation and Change in the Law of Humanitarian Intervention", in Humanitarian Intervention: Ethical, Legal and Political Dilemmas. Eds. J.L. Holzgrefe and Robert Keohane. Cambridge: Cambridge University Press. 204-231.
- Franck, Thomas. 2006. "Legality and Legitimacy in Humanitarian Intervention", in Humanitarian Intervention. Eds. Terry Nardin and Melissa Williams. New York: New York University Press. 143-157.
- Freeman, Michael. 1995. "Are there Collective Human Rights?" *Political Studies* 43.1: 25-40.
- Freeman, Michael. 1998. "Self-Determination, Peace and Human Rights." *Peace Review* 10.2: 1-

7.

Gardner, John. 2009. "Crime: In Proportion and in Perspective", in Arguing about Law. Eds. Aileen Kavanaugh and John Oberdick. New York: Routledge. 473-489.

Green, Leslie C. 2008. The Contemporary Law of Armed Conflict. 3rd Ed. Manchester: Manchester University Press.

Grotius, Hugo. 1925. De Jure Belli ac Pacis Libri. Trans. Francis Kelsey. Oxford: Oxford University Press.

Hashmi, Sohail and David Miller, eds. 2001. Boundaries and Justice. Princeton: Princeton University Press.

Hegel. 1967. Philosophy of Right. Oxford: Clarendon Press.

Heinze, Eric A. 2004. "The Moral Limits of Humanitarian Intervention: Reconciling Human Respect and Utility." *Polity* 36.4: 543-558.

Heinze, Eric. 2009. Waging Humanitarian War: The Ethics, Law, and Politics of Humanitarian Intervention. Albany: SUNY Press.

Hill, Thomas. 2009. "Kant and Humanitarian Intervention." *Philosophical Perspectives* 23: 221-240.

Hoffman, Stanley. 1981. "States and the Morality of War." *Political Theory* 9.2: 149-172.

Hoffman, Stanley. 1986. "The Problem of Intervention", in Intervention in World Politics. Ed. Hedley Bull. Oxford: Clarendon Press. 7-28.

Hoffman, Stanley. 1996. The Ethics and Politics of Humanitarian Intervention. Notre Dame: University of Notre Dame Press.

Hoffman, Stanley. 2003. "Intervention: Should it go on, Can it go on?", in Humanitarian Intervention: Ethical, Legal and Political Dilemmas. Eds. J.L Holzgrefe and Robert Keohane. Cambridge: Cambridge University Press. 21-30.

Holzgrefe, J.L. 2003. "The Humanitarian Intervention Debate", in Humanitarian Intervention: Ethical, Legal, and Political Dilemmas. Eds. J.L. Holzgrefe and Robert Keohane. Cambridge: Cambridge University Press. 15-52.

Holzgrefe, J.L. and Robert Keohane, eds. 2003. Humanitarian Intervention: Ethical, Legal, and Political Dilemmas. Cambridge: Cambridge University Press.

Hurka, Thomas. 2005. "Proportionality in the Morality of War." *Philosophy of Public Affairs* 33.1 (2005): 34-66.

Hutchings, Kimberly. 2001. "The Question of Self-Determination and its Implications for

Normative International Theory”, in Human Rights and Global Diversity. Eds. Simon Caney and Peter Jones. Portland: Frank Cass Publishers. 91-120.

Ignatieff, Michael. 2000. The Rights Revolution. Toronto: Anansi Press.

Janssen, Dieter. 2008. “Humanitarian Intervention and the Prevention of Genocide.” *Journal of Genocide Research* 10.2: 289–306.

Jokic, Aleksandar, ed. 2003. Humanitarian Intervention: Moral and Philosophical Issues. Peterborough: Broadview Press.

Jones, Dorothy. 1992. “The Declaratory Tradition in Modern International Law”, in Traditions of International Ethics. Eds. Terry Nardin and David Mapel. Cambridge: Cambridge University Press.

Kelling, Fiona. 2010. Review of Humanitarian Intervention: Confronting the Contradictions, by Michael Newman. *Development in Practice* 20.6: 748-750.

Kennan, George. 1954. Realities of American Foreign Politics. Princeton: Princeton University Press.

Kilcullen, David. 2006. “Twenty-Eight Articles: Fundamentals of Company-Level Counterinsurgency.” *Military Review* 134-139.

Kleingeld, Pauline. 2006. “Defending the Plurality of States: Cloots, Kant and Rawls.” *Social Theory and Practice* 32.4: 559-578.

Kofman, Daniel. 2007. “The Normative Limits to the Dispersal of State Sovereignty.” *The Monist* 90.1: 65-85.

Korman, Sharon. 1996. The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice. Oxford: Oxford University Press.

Krasner, Stephen D. 1999. Sovereignty: Organized Hypocrisy. Princeton: Princeton University Press.

Kuperman, Alan. 2001. The Limits of Humanitarian Intervention. Washington: Brookings Institution.

Kuperman, Alan. 2005. “Suicidal Rebellions and the Moral Hazard of Humanitarian Intervention.” *Ethnopolitics* 4.2: 149-173.

Kymlicka, Will. 1997. “The Sources of Nationalism: Commentary on Taylor”, in The Morality of Nationalism. Eds. Robert McKim and Jeff McMahan. Oxford: Oxford University Press. 56-65.

Kymlicka, Will. 2001. “Territorial Boundaries: A Liberal Egalitarian Perspective”, in Boundaries and Justice: Diverse Ethical Perspectives. Eds. David Miller and Sohail Hashmi. Princeton: Princeton University Press. 249-275.

- Kymlicka, Will. 2007. Multicultural Odysseys: Navigating the New International Politics of Diversity. Oxford: Oxford University Press.
- Kymlicka, Will. 2009. "Categorizing Groups, Categorizing States: Theorizing Minority Rights in a World of Deep Diversity." *Ethics and International Affairs* 23.4: 371-388.
- Kymlicka, Will and Kathy Walker, eds. 2012. Rooted Cosmopolitanism: Cosmopolitanism and the World. Vancouver: University of British Columbia Press.
- Lackey, Douglas. 1982. "A Modern Theory of Just War." *Ethics* 92: 533-546.
- Lang, Anthony, ed. 2003. Just Intervention. Washington: Georgetown University Press.
- Lang, Anthony. 2008. Punishment, Justice and International Relations: Ethics and Order after the Cold War. New York: Routledge.
- Lango, John W. 2010. Review of Renegotiation of the Just War Tradition and the Right to War in the Twenty-First Century, by Cian O'Driscoll. *Ethics & International Affairs* 24.2: 213-222.
- Lattimer, Mark, ed. 2007. Genocide and Human Rights. Aldershot: Ashgate.
- Lee, Stephen. 2005. "A Moral Critique of the Cosmopolitan Institutional Proposal." *Ethics & International Affairs* 19.2: 99-130.
- Lemkin, Rafael. 1994. Axis Rule in Occupied Europe. Washington: Carnegie Endowment for World Peace.
- Levene, Mark. 2004. "A Dissenting Voice: or How Current Assumptions of Deterring and Preventing Genocide May be Looking at the Problem through the Wrong End of the Telescope." *Journal of Genocide Research* 6.2: 153-166.
- Luban, David. 1980a. "Just War and Human Rights." *Philosophy and Public Affairs* 9.2: 160-181.
- Luban, David. 1980b. "The Romance of the Nation-State." *Philosophy and Public Affairs* 9.4: 392-397.
- Luban, David. 2012. "War as Punishment." *Philosophy and Public Affairs* 39.4: 299-330.
- Luck, Edward. 2010. "The Responsibility to Protect: Growing Pains or Early Promise?" *Ethics & International Affairs* 24.4: 349-65.
- Lyons, David. 2013. "The Social Recognition of Rights." *Journal of Social Philosophy* 44.1: 43-50.
- Macleod, Alistair M. 2013. "Rights and Recognition: The Case of Human Rights." *Journal of Social Philosophy* 44.1: 51-73.

- Malanczuk, Peter. 1993. Humanitarian Intervention and the Legitimacy of the Use of Force. Apeldoorn: Het Spinhuis.
- Mapel, David R. 1992. "The Contractarian Tradition in International Ethics", in Traditions of International Ethics. Eds. Terry Nardin and David Mapel. Cambridge: Cambridge University Press. 180-199.
- Margalit, Avishai and Joseph Raz. 1990. "National Self-Determination." *Journal of Philosophy* 87.9: 439-461.
- Margalit, Avishai. 1997. "The Moral Psychology of Nationalism", in The Morality of Nationalism. Eds. Robert McKim and Jeff McMahan. Oxford: Oxford University Press. 74-87.
- Martin, Rex. 2013. "Human Rights and the Social Recognition Thesis." *Journal of Social Philosophy* 44.1: 1-21.
- May, Larry. 2005. Crimes against Humanity: A Normative Account. Cambridge: Cambridge University Press.
- May, Larry. 2008. Aggression and Crimes against Peace. Cambridge: Cambridge University Press.
- May, Larry. 2010. Genocide: A Normative Account. Cambridge: Cambridge University Press.
- Mayroz, Eyal. 2012. "The Legal Duty to 'Prevent': After the Onset of 'Genocide'." *Journal of Genocide Research* 14.1: 79-98.
- McFate, Montgomery and Andrea V. Jackson. 2006. "The Object Beyond War: Counterinsurgency and the Four Tools of Political Competition." *Military Review*: 56-69.
- McMahan, Jeff. 2005. "Just Cause for War." *Ethics and International Affairs* 19.3: 1-22.
- Meharg, Sarah Jane. 2006. "Identicide: Precursor to Genocide." *Centre for Security and Defense Studies Working Paper* 05: 1-19.
- Mehta, Pratap Bhana. 2006. "From State Sovereignty to Human Security (via Institutions?)" in Humanitarian Intervention. Eds. Terry Nardin and Melissa Williams. New York: New York University Press. 259-285.
- Meierhenrich, Jens. 2004. "Forming States after Failure", in When States Fail: Causes and Consequences. Ed. Robert Rotberg. Princeton: Princeton University Press. 153-169.
- Mill, John Stuart. 1859. "A Few Words on Nonintervention." *Fraser's Magazine* 60: 766-776.
- Mill, John Stuart. 1991. "Considerations on Representative Government", in On Liberty and Other Essays. Ed. John Gray. Oxford: Oxford University Press.
- Miller, David. 1997. On Nationality. Oxford: Oxford University Press.

- Miller, David. 2003. "Liberalism and Boundaries: A Response to Allen Buchanan", in States, Nations and Borders: The Ethics of Making and Unmaking Boundaries. Eds. Allen Buchanan and Margaret Moore. Cambridge: Cambridge University Press. 262-274.
- Moellendorf, Darrel. 2002. Cosmopolitan Justice. Boulder: Westview.
- Moore, Margaret. 2006a. "Cosmopolitanism and Political Communities." *Social Theory and Practice* 32.4: 627-658.
- Moore, Margaret. 2006b. "Identity Claims and Identity Politics: A Limited Defense", in Identity, Self-Determination and Secession. Eds. Igor Primoratz and Aleksander Pavković. Aldershot: Ashgate.
- Moore, Margaret. 2012. "Natural Resources, Territorial Right and Global Justice." *Political Theory* 40.1: 84-107.
- Murphy, Sean D. 2009. "Criminalizing Humanitarian Intervention." *Case Western Reserve Journal of International Law* 41.2/3: 341-377.
- Nardin, Terry and Jerome Slater. 1986. "Nonintervention and Human Rights." *The Journal of Politics* 48.1: 86-96.
- Nardin, Terry. 2003. "The Moral Basis of Humanitarian Intervention", in Just Intervention. Ed. Anthony Lang. Washington: Georgetown University Press. 11-27.
- Nardin, Terry and Melissa Williams, eds. 2006. Humanitarian Intervention. NOMOS XLVII. New York: New York University Press.
- Orend, Brian. 2000a. Michael Walzer on War and Justice. Montreal: McGill-Queen's Press.
- Orend, Brian. 2000b. "Michael Walzer on Resorting to Force." *Canadian Journal of Political Science* 33.3: 523-547.
- Orend, Brian. 2002. Human Rights: Concept and Context. Peterborough: Broadview Press.
- Orend, Brian. 2006. The Morality of War. Peterborough: Broadview.
- Pace, William R. and Nicole Deller. 2005. "Preventing Future Genocides: An International Responsibility to Protect." *World Order* 36.4: 15-32.
- Pattison, James. 2007. "The Representativeness of Humanitarian Intervention." *Journal of Social Philosophy* 38.4: 569-587.
- Pavković, Aleksandar and Igor Primoratz, eds. 2006. Identity, Self-Determination and Secession. Aldershot: Ashgate.
- Pawlowska, Karina. 2005. "Humanitarian Intervention: Transforming the Discourse." *International Peacekeeping* 12.4: 487-502.

- Petraeus, David H. 2006. "Learning Counterinsurgency: Observations from Soldiering in Iraq." *Military Review*: 45-55.
- Plotke, David. 2003. "Democracy and Groups." *Social Research* 1-20.
- Pogge, Thomas. 1992. "Cosmopolitanism and Sovereignty." *Ethics* 103.1: 48-75.
- Pogge, Thomas. 1997. "Creating Supra-National Institutions Democratically: Reflections on the EU's 'Democratic Deficit'." *Journal of Political Philosophy* 5.2: 163-182.
- Pogge, Thomas. 2003. "Moralizing Humanitarian Intervention: Why Jurying Fails and How it Can Work", in Humanitarian Intervention: Ethical, Legal and Political Dilemmas. Eds. J.L. Holzgrefe and Robert Keohane. Cambridge: Cambridge University Press. 158-187.
- Pufendorf, Samuel. 1994. The Political Writings of Samuel Pufendorf. Trans. Michael Seidler. Oxford: Oxford University Press.
- Rawls, John. 1999. The Law of Peoples. Cambridge: Harvard University Press.
- Reichberg, Gregory and Henrik Syse. 2002. "Humanitarian Intervention: A Case of Offensive Force?" *Security Dialogue* 33.3: 309-322.
- Rodin, David. 2002. War and Self-Defense. Oxford: Clarendon Press.
- Sandel, Michael J. 2005. Public Philosophy. Cambridge: Harvard University Press.
- Sangiovanni, Andrea. 2008. "Justice and the Priority of Politics to Morality." *The Journal of Political Philosophy* 16.2: 137-164.
- Schabas, William. 1999. "The Genocide Convention at Fifty." *United States Institute of Peace Special Report* (January): 1-8.
- Schabas, William. 2000. Genocide in International Law: The Crime of Crimes. Cambridge: Cambridge University Press.
- Schabas, William. 2006. Preventing Genocide and Mass Killing: The Challenge for the United Nations. London: Minority Rights Group International.
- Scheffler, Samuel. 1999. "Conceptions of Cosmopolitanism." *Utilitas* 11.1: 255-276.
- Sorley, W.R. 1891. "The Morality of Nations." *International Journal of Ethics* 1.4: 427-446.
- Stassen, Glen. 1994. "Michael Walzer's Situated Justice." *Journal of Religious Ethics* 22.2: 375-399.
- Stein, Mark S. 2004. "Unauthorized Humanitarian Intervention." *Social Philosophy and Policy* 21.1: 14-38.

- Stein, Stuart D. 2005. "Conceptions and Terms: Templates for the Analysis of Holocausts and Genocides." *Journal of Genocide Research* 7.2: 171-203.
- Yael Tamir. 1993. Liberal Nationalism. Princeton: Princeton University Press.
- Tan, Kok-Chor. 2000. Toleration, Diversity and Global Justice. University Park: Pennsylvania University Press.
- Tan, Kok-Chor. 2006a. "The Duty to Protect", in Humanitarian Intervention. Eds. Terry Nardin and Melissa Williams. New York: New York University Press. 84-116.
- Tan, Kok-Chor. 2006b. "The Unavoidability of Morality: A Commentary on Mehta", in Humanitarian Intervention. Eds. Terry Nardin and Melissa Williams. New York: New York University Press. 286-298.
- Taylor, Charles. 1979. Hegel and Modern Society. New York: Cambridge University Press.
- Taylor, Charles. 1985. Philosophy and the Human Sciences: Philosophical Papers Vol. II. Cambridge: Cambridge University Press.
- Taylor, Charles. 1999a. "Nationalism and Modernity", in Theorizing Nationalism. Ed. Ronald Beiner. Albany: SUNY Press. 219-246.
- Taylor, Charles. 1999b. "Conditions of an Unforced Consensus on Human Rights", in The East Asian Challenge to Human Rights. Eds. Joanne Bauer and Daniel Bell. Cambridge: Cambridge University Press. 124-146.
- Tesón, Fernando. 2003. "The Liberal Case for Humanitarian Intervention", in Humanitarian Intervention: Ethical, Legal and Political Dilemmas. Eds. J.L. Holzgrefe and Robert Keohane. Cambridge: Cambridge University Press. 93-129.
- Tesón, Fernando. 2005a. Humanitarian Intervention: An Inquiry into Law and Morality. 3rd Ed. Ardsley: Transnational Publishers.
- Tesón, Fernando. 2005b. "Ending Tyranny in Iraq." *Ethics and International Affairs* 19.2: 1-20.
- Tesón, Fernando. 2006. "Eight Principles for Humanitarian Intervention." *Journal of Military Ethics* 5.2: 93-113.
- Tesón, Fernando. 2011. "Humanitarian Intervention: Loose Ends." *Journal of Military Ethics* 10.3: 192-212.
- Thakur, Ramesh. 2007. "We Can Live Up to the Responsibility to Protect." *Ottawa Citizen* December 8, 2007.
- Thakur, Ramesh. 2011. "UN Breathes New Life into the Responsibility to Protect." *Toronto Star* March 21, 2011.

Thompson, Janna. 2006. "Memory, Identity and Obligation", in Identity, Self-Determination and Secession. Eds. Igor Primoratz and Aleksander Pavković. Aldershot: Ashgate.

Thomashausen, Sophie. 2002. Humanitarian Intervention in an Evolving World Order: The Cases of Iraq, Somalia, Kosovo and East Timor. Pretoria: Africa Institute of South Africa.

Tuck, Richard. 2003. "The Making and Unmaking of Boundaries from the Natural Law Perspective", in States, Nations and Borders: The Ethics of Making and Unmaking Boundaries. Eds. Allen Buchanan and Margaret Moore. Cambridge: Cambridge University Press. 143-170.

United Nations. 2004. A More Secure World: Our Shared Responsibility [Report of the High-Level Panel on Threats, Challenges and Change]. New York: UN Department of Information.

United Nations General Assembly. 2005. *In Larger Freedom: Report of the Secretary-General* (59th Session, 45/55; March 21).

United Nations General Assembly. 2009. *Implementing the Responsibility to Protect: Report of the Secretary-General* (63rd Session, 44/107; January 12).

Vincent, R.J. 1974. Nonintervention and International Order. Princeton: Princeton University Press.

Wellman, Christopher. 2005. A Theory of Secession: The Case for Political Self-Determination. Cambridge: Cambridge University Press.

Wellman, Christopher. 2009. "Rights and State Punishment." *The Journal of Philosophy* 106.8: 419–439.

Wellman, Christopher. 2012. "Reinterpreting Rawls's The Law of Peoples." *Social Philosophy & Policy* 29.1: 213-232.

Welsh, Jennifer W. 2010. "Implementing the Responsibility to Protect: Where Expectations Meet Reality." *Ethics & International Affairs* 24.4: 415–30.

Welsh, Jennifer W. 2011. "A Normative Case for Pluralism: Reassessing Vincent's Views on Humanitarian Intervention." *International Affairs* 87.5: 1193–1204.

Walzer, Michael. 1971. "WWII: Why was this War Different?" *Philosophy and Public Affairs* 1.1: 3-21.

Walzer, Michael. 1977. Just and Unjust Wars. 4th Ed. New York: Basic Books.

Walzer, Michael. 1980. "The Moral Standing of States: A Response to Four Critics." *Philosophy and Public Affairs* 9.3: 209-229.

Walzer, Michael. 1983. Spheres of Justice. Oxford: Blackwell.

Wasserstrom, Richard. 1978. Review of Just and Unjust Wars, by Michael Walzer. *Harvard Law Review* 92: 536-545.

Wheeler, Nicholas. 2000. Saving Strangers. Oxford: Oxford University Press.

Wheeler, Nicholas. 2001. "Humanitarian Vigilantes or Legal Entrepreneurs: Enforcing Human Rights in International Society", in Human Rights and Global Diversity. Eds. Simon Caney and Peter Jones. Portland: Frank Cass. 139-162.

Wolff, Christian. 1964. Jus Gentium Methodo Scientifica Pertractatum. Ed. James Brown Scott. Oxford: Clarendon Press.