Enacting International Moral Responsibility:
The Normative Dynamics of Humanitarian Interventions

by

Sarah Podziba Cassel
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Chapter One: 
The Evolution of Humanitarian Interventions

Historical Justifications for Interventions

Historically, states have intervened abroad for three reasons: (1) debt collection, (2) humanitarianism, and (3) international security. Over time, each of these justifications for intervention has shifted, causing certain practices to be considered morally repugnant so that they were eventually made obsolete.

Prior to the 20th century, for instance, powerful states viewed military intervention in weak states for the purpose of debt collection as completely legitimate.¹ The intervening states believed that they were entitled to protect their citizens’ assets abroad by using force to ensure reimbursement of their investments. As will be discussed later, however, the international norm of forced debt collection has changed over time with the introduction of legal procedures for adjudicating claims, which ultimately delegitimized the practice of military action to settle monetary demands.

Similarly, humanitarian interventions have evolved over time, initially focusing on rescuing one’s own citizens abroad, then working to protect foreign citizens abroad militarily, and now considering large-scale operations to address complex emergencies.² Countries that were predominantly composed of white Christians originally undertook humanitarian interventions to protect their white Christian brethren without considering people of other races, religions, or ethnicities. Popular outcry motivated the interventions, for white Christian citizens in powerful

² Ibid., 10.
countries identified with foreign citizens of the same phenotype and belief system. According to Martha Finnemore, “Often a more specific identification or social tie existed between intervener and intervened…in fact…the lack of an intense identification may contribute to inaction.”\textsuperscript{3} Mass atrocities in Asia, Africa, and the Middle East were left entirely unaddressed, since citizens in powerful countries in Europe did not feel related in any way to the suffering of citizens in those regions.

Interventions due to threats to international security were less common before the 20\textsuperscript{th} century, for states at the time were less concerned with maintaining order internationally through collective action as they did not view it as their responsibility, and instead were more focused on establishing their own power through controlling territory and natural resources. Over time, states began to change their views on what constituted a threat to international security so that unfavorable actions by political leaders or the formation of threatening international systems of power were considered just cause to intervene.

In each of these instances of intervention, unilateral action was seen as perfectly legitimate. Until the 20\textsuperscript{th} century, states did not seek partnership with other states to justify their use of force in the eyes of their own citizens or of the international community; rather, states felt the need to monitor other states “to discourage adventurism or exploitation of the situation for nonhumanitarian gains.”\textsuperscript{4} Multilateralism at that time was strategic, for it was “driven by shared fears and perceived threats, not by shared norms and principles.”\textsuperscript{5} Because states intervened together solely to protect against being exploited instead of in pursuit of a common

\textsuperscript{3} Finnemore, \textit{The Purpose of Intervention}, 66.
\textsuperscript{4} Ibid., 80.
\textsuperscript{5} Ibid.
goal, militaries did not seek to coordinate their activities with one another, so contemporaneous operations were undertaken separately.

Furthermore, powerful states prior to the 20th century (though after forced debt collection was determined to be illegitimate) prioritized sovereignty over claims of human rights abuses when considering whether to intervene abroad. After legal procedures were introduced as an alternative to military force to settle disputes, intervening powers were forced to honor states’ borders and allow them to govern their own affairs. As we shall discuss later, the debate over the justness of humanitarian interventions now focuses on the competing values of respecting state sovereignty and protecting individual human rights, but historically, human rights were not a central concern of intervening states.

**Changing Intervention Norms**

The three justifications for military interventions mentioned above changed significantly from the 18th century to today. The system of forced debt collection, for example, was replaced by a commitment to use the law to adjudicate financial claims between states. Legal means eventually became the preferred strategy to collect debts over military action because nations came to recognize the necessity of honoring individual state sovereignty, which forced powerful states to stop treating weaker states as territories. 6 Weaker states clearly favored legal measures to adjudicate disputes since they prevented periodic foreign military presence in their land, and powerful states, although not particularly bothered by using force, found adjusting financial disputes through legal measures to be materially more cost-effective.

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Additionally, interventions motivated by perceptions of threats to international security have changed as states have become more economically and militarily interdependent. Over time, perceptions have shifted regarding what constitutes a secure international order based on power dynamics between and among countries. At varying times, powerful intervening states have viewed different systems of international order as effective or necessary (or the opposite) to maintain overall international stability. Influential states have sometimes preferred a balance of power system, a spheres of influence system, or a hegemonic system, depending on what they saw as the most significant threat. Thus, the desire to intervene to promote a certain internal governance structure for the maintenance of international security has varied according to each state’s desired form of “order.”

Interventions for humanitarian purposes have also changed drastically over time. Whereas prior to the 20th century all humanitarian interventions had sought solely to help suffering white Christians, societal norms within intervening countries changed so that interventions began to be directed at non-European, non-white populations. This shift was in large part due to the abolition of slavery, which, by the 19th century, many European states considered “repugnant to the principles of humanity and universal morality.” It ultimately served to broaden, or universalize, the conception of “humanity” so that the “equality norms that defeated slavery norms fed back into later decisions about humanitarian intervention.” Once slaves were deemed fully “human,” the moral claims driving humanitarian interventions became universalized, meaning that intervening states began to be concerned with non-white

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7 Finnemore, The Purpose of Intervention, 86.
8 Ibid., 68.
9 Ibid., 69.
populations and not only with white Christians for whom interventions had previously exclusively been undertaken.

Furthermore, both the colonization and decolonization movements sought justification in the changing definition of “humanity.” The moral dimension of colonization, which was believed to be mandated by God, focused on the white man’s burden to “bring the benefits of civilization to the ‘dark’ reaches of the earth.”\textsuperscript{10} Colonization was rationalized by taking the form of a humanitarian mission to “civilize” the non-European world and bestow upon “backwards” peoples the “benefits” of European social, political, economic, and cultural institutions. Local populations were considered “uncivilized” and less than human so long as they maintained their own practices and resisted those of the colonizing Europeans. That is to say that once the “barbarians” accepted European “civilization,” including Christianity, they had become “human.” As Finnemore claims, “in a critical sense, the core of the humanitarian mission was to create humanity where none had previously existed.”\textsuperscript{11} Once the process of decolonization began, “humanity” was no longer viewed as something that could be created, and colonized populations were seen as having inherent human “rights,” including the right to self-determination. As beliefs in “natural” human rights and human equality spread throughout Europe, calls for decolonization became more widespread. Thus, the language of “civilizing” no longer morally justified colonization.

\textsuperscript{10} Finnemore, \textit{The Purpose of Intervention}, 70.
\textsuperscript{11} Ibid., 70.
Current Norms of Humanitarian Intervention

In the 20th century, despite a shift in European human rights norms, appeals for humanitarian interventions continued to be based in notions of “barbarism” and “charity”; however, arguments came to be made in the context of international legal obligations to protect basic human rights. Decisions to intervene were framed in terms of states’ duty to prevent harm to foreign civilians, while perpetrators of human rights abuses were deemed “criminals” with warrants produced for their arrests and subsequent trials in courts, tribunals, and commissions.12 The codification and institutionalization of human rights language in international law reified human rights as a legitimate justification for legal action that could call for the use of force. States therefore began to conduct interventions on humanitarian grounds in instances in which a century beforehand military action would have been considered a serious breach of state sovereignty.13

As the duty to prevent massive human rights violations became more widely accepted in international society, the question of the legitimacy of the intervening forces arose. Given the great potential for states to use humanitarian claims as a façade to intervene abroad to serve their own national interests, interventions became viewed as legitimate only when they were authorized by the United Nations and undertaken multilaterally.14 In contrast to interventions in the 18th century in which many states participated solely to watch over one another, contemporary multinational interventions are “organize[d] according to, and in defense of,

12 Finnemore, The Purpose of Intervention, 21.
14 Finnemore, The Purpose of Intervention, 73.
‘generalized principles’ of international responsibility and the use of military force.”\textsuperscript{15}

The international commitment to make decisions to intervene based on legal tenets oriented states to focus on their common obligation as members of an international body to protect civilians.

\textsuperscript{15} Finnemore, \textit{The Purpose of Intervention}, 81.
Chapter Two:  
Introducing the Problem

The evolution of interventions from having been principally undertaken in pursuit of national interests to being deemed legitimate only if required by universal standards raises the questions of where these standards originate and whether they are in fact universal. The definition of a “legitimate” action in the context of humanitarian interventions is based on the extent to which all parties to the action accept the norms used to justify the intervention. It can be difficult, however, to find such shared norms because different groups or peoples subscribe to different comprehensive doctrines that gives rise to different, and often incompatible, conceptions of justice. These disagreements persist, for each group has reasons for believing that its unique comprehensive doctrine and conception of justice is correct. The obvious solution would be to resolve these disagreements, but that is a non-starter. As Rousseau argues, “All justice comes from God, who is its sole source; but if we knew how to receive so high an inspiration, we should need neither government nor laws. Doubtless, there is a universal justice emanating from reason alone; but this justice, to be admitted among us, must be mutual.”\(^{16}\) Since every comprehensive doctrine asserts that it gives rise to the truest conception of justice, but there is no way of absolutely knowing Truth, according to Rousseau, justice among people must be based on reciprocity. Attempting to enforce one particular comprehensive doctrine\(^ {17}\) in light of disagreement will not only create conflict, but the force that would be


\(^{17}\) Throughout this paper, I at times use the term “particular comprehensive doctrine” synonymously with “a particular society’s values” for ease of exposition, despite the fact that a “comprehensive doctrine” does not refer only to societal values.
necessary to execute that conception of justice would undoubtedly lead to serious harms and injustices, even from the perspective of the comprehensive doctrine being imposed. Thus, there arises a need to find principles that all groups who seek to organize social life in accordance with a conception of justice can accept as legitimate, even if those principles are not fully just in terms of their own particular conceptions of justice.

Such principles, in this case taking the form of human rights, must be inherent in the commitment to organizing relationships in line with any conception of justice. This approach to determining the conditions under which humanitarian interventions are legitimate is based on the assumption that human relationships should be governed by justice. Since there are many different conceptions of justice, the standards that must be employed are those that fit into any comprehensive doctrine—except for those that reject the idea that social order at any level, including the global level, must be based on justice. Friedrich Nietzsche, for example, claims that justice is only good in the context of reducing conflict within a group so that the group can be stronger in its contestation with other groups, but the idea of a kind of universal justice is “hostile to life, a destroyer and dissolver of human beings, an assassination attempt on the future of human beings, a sign of exhaustion, a secret path to nothingness.”[^18] The approach developed in this paper does not seek to encompass all comprehensive doctrines, but only those that hold that society, including international society, should be based on a conception of justice.

The standards to which countries that do pursue a conception of justice must defer are those of human rights whose violation international bodies have decided serve as a necessary, though not sufficient, condition for humanitarian intervention. The magnitude of the human rights abuses is ultimately the sufficient condition that determines whether countries should intervene since the abuses must inflict greater damage on a civilian population than military action would, as military operations inevitably carry significant human costs. Whether the human rights standards are actually universal is still up for debate. Anthony Pagden, for example, claims that any standards adopted by the international community will in fact be particular to a certain culture or institution’s interpretation of human rights, and therefore cannot be considered universal.19

The task of creating a standard of universal human rights whose egregious violation would prompt a humanitarian intervention seems to evoke a paradox. On the one hand, it seems that for a standard to be universal, everyone must accept it. On the other hand, this condition of universal agreement is not only pragmatically impossible, but it is also self-defeating. Humanitarian interventions are undertaken because a country is violating basic human rights on a large scale, which means that it is not agreeing to protect the same human rights as other countries, which in turn means that the standard of human rights used by the international community is not universal in the sense that all parties actually accept it. Therefore, if we say that humanitarian interventions may only be carried out because of a violation of universal human rights, there would never be a legitimate opportunity for such intervention. For

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the standards to remain universal in a situation of massive human rights abuses, the human rights that comprise the standard would need to be continually narrowed to a point of absurdity at which not even genocide would be included. For example, if the standard to intervene were truly universal acceptance, the Nazi regime’s rejection of the schedule of basic human rights, which was upheld by most other countries, would render any proposed intervention to stop the genocide illegitimate since the standard would have ceased to be “universal.”

Since defining a standard of universal human rights based on actual universal acceptance is not reasonable, an alternative is to consider a standard “universal” if it has a reasonable grounding such that non-acceptance is unreasonable, even if not everyone actually accepts it. We then turn our attention to establishing a reasonable grounding that does not rely on particular cultural framings of human rights.

When we consider how to satisfactorily identify a standard of universal human rights and to institutionally address issues of humanitarian intervention, it is important not to sacrifice substantial progress in hopes of achieving perfection. We may be worried that by proposing an alternative to the status quo we may actually cause greater harm since we cannot be sure what the consequences of the changes will be. Therefore, we must ensure that whatever changes are made to the system are in line with a general philosophy of moving towards a more law-governed world, which suggests that policy decisions should be seen as part of a dynamic process that allows room for future growth. We should not think about humanitarian interventions in static terms, but rather as incidents that fit into a broader evolutionary process.
leading to a more lawful world. Since war and violent conflict are so destructive and destabilizing, creating an increasingly law-governed world is of primary concern.

As I have previously noted, in order to determine the conditions under which humanitarian interventions would be legitimate, we must begin by developing standards of human rights that we have good reason to believe can be universally accepted. To assess whether the standards are in fact universal, it is necessary for all peoples to affirm them through a process of deliberation that engages representatives from all cultures. Unfortunately, in a situation in which human rights are consistently violated, not all people are able to participate in such deliberations. This suggests that we must employ existing accounts of human rights as provisional standards to establish when humanitarian interventions should be undertaken in an effort to create conditions of stability that promote expanded dialogue on issues of human rights.

Although countries and societies have their own understandings of what constitute a complete schedule of human rights based on their particular comprehensive doctrines, for the purposes of establishing when humanitarian interventions are legitimate, we must only focus on the most basic human rights whose violation would prevent the realization of any other rights, on the supposition that if any rights are universal, such basic rights must be among them.20

Instead of constructing an entire list of human rights grounded in naturalistic or agreement theories of human rights, I develop John Rawls’ theory, which conceives of a pragmatic notion of universal human rights not based on any particular comprehensive doctrine or conception of justice. Rather, his theory begins with the

20 Some extreme critics (e.g. Nietzsche) disagree that it is possible to construe any kind of standard of universal human rights.
idea of social cooperation, that is to say, the idea of a well-ordered society whose members willingly accept the conception of justice underlying its main institutions and practices. Basic human rights, on this account, are those that must be respected if people can be thought of as willingly accepting the norms governing their society. Alternatively, we might say that basic human rights are those whose large-scale violation would prohibit the enjoyment of any other rights. The systematic and widespread violations of such rights justify humanitarian interventions.

After establishing which human rights are necessary to protect through humanitarian interventions, I then consider the value of state sovereignty, which serves as a claim against interventions, for it protects national self-determination, which is crucial for the autonomous functioning of a society, as well as for the realization of individual citizens’ political identities. Despite this legitimate restraint, I will argue that state sovereignty should be—and has recently become—internationally recognized as a responsibility of states to protect their citizens, meaning that in the event that a government fails to protect the basic human rights of its citizens, whether intentionally or due to an inability to govern effectively, the international community may to intervene on humanitarian grounds to protect those rights.

The next section shifts the focus from those for whom the intervention was undertaken to those who actually carry it out. I begin by addressing the moral obligation individuals have to prevent harm to others at little cost to themselves, and then demonstrate how that obligation can be extended to states in order to deal with large-scale human rights abuses. Since it is impossible to quantify the cost a state
must morally incur to prevent harm to foreign civilians, I outline the limitations to that moral obligation, including the principle of “do no harm,” the need for a reasonable assurance of success, the importance of maintaining national security, the costs to citizens’ standard of living, and the likeliness of soldiers’ casualties. I then describe how underpinning all of these limitations is the issue of balancing one’s moral responsibility to particular individuals with whom one has a relationship with one’s more abstract, universal moral responsibility to strangers. I conclude the section with a discussion of the tactics a state may legitimately employ to protect its own soldiers while preventing harm to foreign civilians.

Upon completing the theoretical discussions on universal human rights, state sovereignty, and states’ moral obligations to others, I address the question of what kind of body should be able to claim “right authority” to intervene. I examine the role of the United Nations Security Council (UNSC) in authorizing interventions, including an assessment of its effectiveness and legitimacy given its inequitable institutionalized procedures and construction of asymmetrical power positions among UNSC members.

I conclude by using the case of the intervention in Libya in 2011 to demonstrate how the considerations I have raised throughout the paper can and should be applied to future cases of humanitarian interventions. Within the context of Libya, I specifically highlight states’ motivations for undertaking an intervention (Just Cause), the legitimacy of the UNSC to authorize interventions (Right Authority), and the difficulties involved in preventing harm to civilians while using military force (Calculations of Harm).
Chapter Three: Universal Human Rights

In considering the legitimacy of intervening for humanitarian purposes, it is necessary to address the actual basis for intervention: the violated human rights. It is important also to recognize that the decision to stage a humanitarian intervention to stop “conscience shocking” acts such as genocide or ethnic cleansing\(^2\) was not always a consideration within the international community (and many would argue that it still is not). Taken in historical context, interventions have shifted from focusing on debt collection, promotion of national security, and saving the lives of religiously and racially similar people, to only being viewed as legitimate when enforcing international human rights norms. This change from a commitment to pursuing the aims of particular nations to enforcing universal international standards raises the question of whether the current standards are in fact accepted by all states and whether they are applied impartially. In order to achieve a system of universal norms, the discussion must begin with an attempt to form a notion of universal human rights, a conception that is not grounded in a particular culture, but rather is founded in ideals of basic cooperation and reciprocity that can be endorsed by adherents of any cultural, religious, or philosophical tradition. It is by understanding the essential human rights that emerge from cooperative interactions between people from different cultures that we can come to understand why humanitarian interventions have been restricted to “conscience-shocking” cases.

The difficulty in formulating a universal notion of human rights in international society boils down to the great diversity among cultures. The “rights” that one society may expect should be protected by its government may be very different from, or even in opposition to, the “rights” demanded in another society. Even the fundamental language of human rights or the concept that a government should be accountable to its citizens may be completely alien. Despite this challenge, developing a basic standard of human rights is necessary to protect individuals from harmful state action caused by either unintentional neglect or deliberate oppression, as well as to set guidelines for legitimate humanitarian interventions. Two popular frameworks for human rights that purport to be universal, but are in fact particular, are naturalistic theories and agreement theories.

**Naturalistic and Agreement Conceptions**

Naturalistic theories assert that human rights are intrinsic to all people “simply in virtue of their humanity.”

Understanding in this way, human rights carry three features: their content does not depend on the moral conventions of particular societies; they are based on characteristics applicable to all of humanity; and they exist independently of any political or social institutions. The same aspects of this theory that seem to make human rights universal, however, are those that undermine its universality and reveal that naturalistic theories rely on justifications that are, in effect, culturally specific.

First, to exist apart from the moral conventions of any particular society, it may be argued that humans are born with certain innate rights that God has instilled.

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in them. God, as a kind of objective power or “separate normative order,” would serve as the essential origin of rights, which would give the rights stability on a metaphysical level. This argument is based in particular comprehensive doctrines, however, because not all people believe in God, let alone a God that secures rights for human beings. Even if a religion did promote a conception of a rights-giving God, that God might not necessarily conceive of all people as equal and therefore worthy of equal rights. If people do not subscribe to the belief in a God that ascribes the same rights to all human beings, then if one wishes to argue for the existence of universal human rights on theological grounds, one would need to persuade people first that such a God exists. Thus, in a diverse world in which people differ drastically in their comprehensive doctrines, attributing universal human rights to God’s power is not effective.

Second, naturalistic theories claim that people possess human rights simply on account of their being human, without concern for a particular society’s affirmation of rights. This conception is faulty, however, for it appeals to an idea of “humanity,” which, in order for the account of human rights to be universal, would require a uniformity of opinion about what “personhood” means and which rights a person justifiably deserves to claim. In this diverse world, people define “humanity” differently, with many models negating the idea that “humanity” can demand any kind of moral duty from others, let alone specifying which rights would be included in such a reciprocal moral obligation. Thus, people in different societies disagree on two central features of this naturalistic account: first, which human rights are included
in a conception of “humanity,” and second, whether “humanity” presumes any rights at all.

Third, naturalistic theories assert that human rights are not dependent on state institutions, which may be said to exist in the pre-political “state of nature,” and must be so basic as to apply to people regardless of their institutional membership. The resulting basic rights, or “first-order rights,” would necessarily be limited to include only negative rights (e.g. the right not to be killed or the right not to have one’s property stolen), for any positive rights (e.g. the right to due process of law or the right to healthcare) call for institutions that require people to fulfill rights, as opposed to refrain from violating them. Since rights are correlative with duties, by conceiving of natural rights as existing in a pre-political state of nature, naturalistic rights could only be those rights whose correlative duties apply to individuals, for in a pre-political state of nature there are no institutions that could fulfill positive duties. For example, if we believe that the right to subsistence is fundamental because intuitively people are just as damaged by starvation as assault, naturalistic theories could not be considered satisfactory, for they do not allow for the protection of such a basic right since in a state of nature there is no way to assure that individuals would have the capacity to fulfill the positive duty necessary to secure subsistence. In the state of nature, negative rights, such as the right not to be killed, which take the form of noninterference, clearly apply to everyone and everyone is capable of fulfilling that duty simply through self-restraint. However, positive duties, such as the right to subsistence, only apply to those individuals who have the capacity to fulfill the duty. Therefore, positive duties are not guaranteed to be fulfilled in the state of nature, for
in the state of nature social roles are not clearly defined, making it impossible to
determine who exactly has the responsibility to fulfill the duties.

Unlike naturalist theories that attempt to ground universal human rights on
some transcendent philosophical or metaphysical view, agreement theories find
universal human rights in the overlapping values of diverse societies. While it seems
that agreement theories nicely incorporate the particular cultures of our diverse world
into a conception of universal rights, the fact that for agreement theories to be
effective all countries must agree to a certain list of rights causes the theory to
collapse. As has been previously mentioned, agreement theories are in a sense self-
defeating, for if all peoples agree on a schedule of human rights, there would never be
a justification for humanitarian intervention. If a state intended to violate a right
specified on the schedule, all it would have to do is to reject the right in question and
the list would be narrowed to include fewer rights, and the state could no longer be
charged with violating a “universal” right. Once the agreement among societies on
basic human rights ends, the list of rights must be renegotiated, which means that the
list would not be at all stable. Thus, although naturalist and agreement theories claim
to create universal conceptions of human rights that induce international
responsibility to protect individuals, they are both unsatisfactory, for they either
appeal to particular comprehensive views or fail to form a secure, free-standing
schedule of universal human rights.

**John Rawls’ Conception**

John Rawls, in *The Law of Peoples*, offers an alternative approach. He
conceives of a pragmatic notion of human rights that is not based in a particular
culture or value system and can therefore be a candidate for being universal, since it does not depend on the truth of any particular comprehensive view. His theory, broadly speaking, supports a notion of universal human rights that is based on the idea of a cooperative society, one that is well-ordered in the sense that its basic structure instantiates a conception of justice that is accepted by its members, who therefore willingly accept the major political and social institutions under which they live.

To understand Rawls’ view of universal human rights, we must first consider the concept of “willing acceptance.” Initially, to “willingly accept” seems to imply a kind of consent, yet consent is only possible when one chooses among alternatives—among a range of options that are equally viable, where the background conditions are such that it is possible to choose each option. However, choosing principles of justice, or a way of life, cannot actually be spoken of in terms of consent since citizens are largely unaware of other conceptions of justice, having never experienced them, and therefore they cannot reasonably choose from among various feasible principles. Still, “willing acceptance” may be considered similar to consent despite the impossibility of actually choosing among viable alternatives, for citizens may “willingly accept” conceptions of justice by embracing them, as opposed to submitting to their imposition. In order to ensure that a society embraces a conception of justice instead of one being imposed on it, it is necessary to outline the conditions that must hold if the notion of “embracing” a conception of justice is to be at all plausible. Or, to put it somewhat differently, we can say that if certain standards are not realized there is no possibility of embracing any way of life. These standards
constitute basic, or human, rights. They are universal in the sense that no society can be seen as ordered by any conception of justice unless these rights are effectively realized or protected. When these rights are not realized, it cannot be said – or at least reasonably asserted – that the members of society embrace the rules and procedures that make social cooperation possible.

In Rawls’ theory, a “well ordered society,” or “a society that is effectively regulated by a public conception of justice,”23 is one whose institutions create a system of social cooperation over time whose members consider fair. Social cooperation, as opposed to social coordination, is necessary for a society to be well ordered, for it allows citizens to willingly accept principles of justice that regulate their conduct. Social coordination is employed to bring together diverse sectors of production that specialize in different tasks with the aim of collaboratively meeting the needs of all citizens, for one person cannot meet all of his or her own needs alone. Every society has some system of social coordination comprised of rules and principles that manage people’s interactions aimed at maximizing citizens’ productive energy instead of impeding their work. While social coordination allows for coordination by an absolute central authority, “social cooperation is guided by publicly recognized rules and procedures which those cooperating accept as appropriate to regulate their conduct.”24 Cooperation is generated by members of society, as opposed to by an authoritarian body, to determine what constitutes socially appropriate interactions and behavior. Additionally, social cooperation signifies fair terms of cooperation, which every member may reasonably accept since all other

24 Ibid., 6.
members reasonably accept them as well. These fair terms denote reciprocity or mutuality in that those who follow the agreed-upon rules and principles will benefit in accordance with the public standard. Furthermore, the concept of social cooperation incorporates each member’s “rational advantage”—the “good” that he or she is attempting to advance by engaging in cooperation.25

Social cooperation is only possible if a society’s institutions are grounded in rules and procedures that are based in a conception of justice that its members willingly accept. It is important to note that the basic liberties or rights Rawls outlines do not require that a society subscribes to a conception of “rights,” but only to values or moral beliefs that serve the same purpose of ensuring the protection of the conditions necessary for people to embrace a conception of justice and act from within their own will. These rights include:

The right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly).26

All well-ordered societies honor these rights in addition to rights that are specific to the particular conception of justice on which their societies are based. Rawls describes two different types of societies that can be “well ordered” since the members of each are able to willingly accept a conceptions of justice: liberal

25 Rawls, Justice as Fairness, 6.
societies, which subscribe to a political conception of justice, and decent societies, which subscribe to a common good conception of justice.27

In liberal societies, there is a plurality of comprehensive doctrines that arise from the coexistence of a great diversity of particular cultures and religious groups. Each group, whether due to ethnicity, religion, secular philosophy, or otherwise, has its own comprehensive doctrine or “special priorities,” each of which gives rise to a conception of justice. Thus, for a pluralistic society to be well ordered, it must develop what Rawls calls a liberal “political conception of justice,” one that is not grounded in a particular – and therefore disputed – comprehensive doctrine. Despite their diverse ideologies, Rawls argues, adherents to different doctrines who wish to live cooperatively with others can accept a political conception because it is not based on a comprehensive view that they reject. Liberal societies differ most from decent societies in that they operate on the premise that all citizens are to be viewed as free and equal citizens for the purpose of creating a political conception of justice. Therefore, the institutions that are created in liberal societies that promote social cooperation are grounded in a recognition of people as such and consequently aim to protect a schedule of rights that exceeds basic rights and those rights that are recognized in decent societies. The list of extended rights includes:

- Freedom of thought and liberty of conscience; political liberties (for example, the right to vote and to participate in politics) and freedom of association, as well as the rights and liberties specified by the liberty

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27 I have refrained from speaking about Rawls’s Original Position because Rawls’s conception of universal human rights begins beforehand, since the Original Position already assumes a particular understanding of agency and therefore calls for a schedule of human rights that is too expansive for the purposes of determining the conditions under which humanitarian interventions are legitimate.
and integrity (physical and psychological) of the person; and finally, the rights and liberties covered by the rule of law.\textsuperscript{28}

The rights recognized in a liberal society are not the same rights as those set forth in a decent society, for conceptions of justice in decent societies do not necessarily understand citizens as free and equal.

Decent societies, such as decent hierarchical peoples, are based on common good conceptions of justice; they can be well ordered when the overwhelming majority of the society subscribes to the same comprehensive doctrine, whether religious or secular. Because of this homogeneity of opinion, decent societies maintain a singular conception of justice that is willingly accepted by nearly the whole society.\textsuperscript{29} An example is a society in which almost all members are of a particular faith and therefore arrive at the same conception of justice through the same ideological story. Even if that comprehensive doctrine empowers certain classes over others (i.e. it does not conceive of people as free and equal as liberal societies do), the society is well ordered so long as its members are able to willingly accept the common good conception of justice.

Decent societies’ conception of a person often differs from that of liberal societies in that instead of understanding members of society as free and equal citizens, people are viewed as “responsible and cooperating members of their respective groups. Hence, persons can recognize, understand, and act in accordance with their moral duties and obligations as members of these groups.”\textsuperscript{30} Given this

\textsuperscript{28} Rawls, \textit{Justice as Fairness}, 44.

\textsuperscript{29} Even though common good conceptions of justice are rooted in comprehensive doctrines, not all comprehensive doctrines produce common good conceptions of justice.

distinction, the set of specific human rights affirmed in decent societies is different from that in liberal societies, for decent societies are founded in people’s effective fulfillment of certain relational roles. Instead of attaching to the individual as they would in a liberal society, human rights in a decent society “belong to an associationist social form…which sees persons first as members of groups.” A person’s rights, then, are those powers and immunities necessary to fulfill his or her role in the society and make an appropriate contribution to its common good. Because different people have different roles, their rights may be very different. Although the rights identified in liberal societies and decent societies are different, they both honor a list of basic human rights that protect interests that are guaranteed by any well-ordered society.

While both liberal and decent societies give rise to a more comprehensive schedule of human rights than the basic rights set out above, interventions should only be undertaken to protect the most fundamental rights, for only these rights can be recognized as universal rights, and as I have argued, only interventions based on universal standards can be legitimate. In situations in which these basic rights are being systematically abused, the society in question is obviously not well ordered and is therefore subject to legitimate humanitarian intervention by foreign powers.

Barring such “conscience-shocking” cases, as long as a society is well ordered and as such maintains institutions that are grounded in a conception of justice, it is considered a member in good standing in Rawls’ Society of Peoples. No international body may assert how a particular society’s idea of justice must look, for citizens are able to realize their own “justice,” regardless of whether the content of that justice is

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31 Rawls, Law of Peoples, 68.
internationally satisfactory. Therefore, if a society is able to achieve such a structure, regardless of the actual idea of justice pursued or the specific human rights exercised, it can justifiably claim a right to non-intervention. Because of the focus on maintaining a well-ordered society, as defined by social cooperation that promotes the pursuit of a society’s idea of justice, diverse societies are able to recognize the theory as the basis for a system that can legitimately determine appropriate conditions for foreign interventions.

Thus, Rawls’ theory conceives of universal human rights as a kind of byproduct of societies being “well-ordered” and pursuing their own ideas of justice, which implies that human rights are freestanding and independent of particular cultural understandings. The basic human rights he outlines are universal in that “they are intrinsic to the Law of Peoples and have a political (moral) effect whether or not they are supported locally. That is, their political (moral) force extends to all societies, and they are binding on all peoples and societies, including outlaw states.”

By asserting a universal conception of human rights that incorporates diverse states into a Society of Peoples as members in good standing, liberal and decent societies can legitimately claim a right to non-intervention, for their membership marks their success in protecting basic human rights. On the flip side, “outlaw states,” or societies that are not well ordered, whether due to intentionally abusive practices or an inability to uphold legal institutions, may face humanitarian interventions so that they may eventually become well ordered.

Since introducing a foreign military into any society, even if it is for humanitarian purposes, carries enormous costs in resources and, more importantly, in

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32 Rawls, Law of Peoples, 80.
lives, only massive human rights abuses can offset the inevitable damage caused by military action. The “conscience-shocking” cases that make it absolutely impossible for citizens to willingly accept their government are therefore the only cases that justify the international community to use force to change the domestic practices of another state. Thus, in order to justify foreign intervention on humanitarian grounds, it is not necessary to specify the full schedule of human rights since only widespread violations of essential rights could justify such interventions.
Chapter Four: 
State Sovereignty: A Simultaneous Call to and Limitation on Action

I have so far argued that widespread and egregious violations of essential rights are a necessary condition for an intervention to be justified. The questions then arise: How do we navigate the conflict between respecting state sovereignty and protecting individual human rights? Is it morally permissible for other states to intervene militarily for humanitarian purposes since the intervention itself could be seen as violating a state’s right to administer its own domestic affairs, and since any military action poses obvious risks to human rights?

Defining “State Sovereignty”

Before delving into the difficulties that potentially arise from prioritizing the protection of individual human rights over respect for state sovereignty, we must first define what is meant by “state sovereignty.” Intuitively, sovereign right signifies the right of a state to supreme legal jurisdiction over its political boundaries. Although its definition has changed over time, it has always retained the fundamental meaning of “supreme authority within a territory.” Correlative to sovereign right, then, is a duty on the part of other states to not interfere in a country’s internal affairs. If we view state sovereignty as the right of a state to exercise authority over its citizens so long as its actions are confined within the state’s political boundaries, it is clear that military interventions for humanitarian purposes pose a philosophical, as well as a legal and practical, problem.

The idea of state sovereignty was put forward by Thomas Hobbes to characterize political society as an escape from the state of nature, which Hobbes portrays as a chaotic, lawless world in which every person has the right to do anything, including use another person’s body to advance one’s own interests. The state, or sovereign authority, must be supreme in order to regulate society through a system of law. In the absence of a single, undivided sovereign, Hobbes argues, there would be competing systems of law (or bodies charged with interpreting and enforcing law), which would lead to conflict that would undermine a stable society, whereby preventing basic needs from being met. Hobbes envisions a unitary authority, ideally in the form of a monarch, that governs the state with absolute power. Since the state of nature is generally harmful, Hobbes claims that people would be willing to give up their unlimited individual freedom and conform to the rules set by the state. Although the authority of the monarch stems from the people, “it is essential for them to recognize that they are ‘renouncing and transferring’ their own original sovereignty, with the implication that it is totally ‘abandoned or granted away’ to someone else.”34 The monarch is only accountable to God, and the people have no right to appeal against its judgments. The monarch is also above the law and unbound by any contractual or other responsibilities that could limit its power.35 In the social contract, citizens completely yield their rights to the sovereign without any reciprocal duty on the part of the state to promote popular wellbeing; the mutual obligations involved in Hobbes’s conception of the social contract are owed only by subjects to one another, while they create an almost unlimited obligation for the

35 Dan Philpott, "Sovereignty."
masses to obey the rulings of the sovereign. The people only possess those rights that have been established by the laws of the state. On this account, there are no basic human rights, and so no ground for foreign intervention to protect such rights.

Although Hobbes is correct that a central authority is necessary to enforce the laws, his account of sovereignty is lacking in assuming that only a single, unitary authority can fulfill that function. An authoritative decision-maker is crucial to establishing a lawful state in which people’s actions are regulated by enforceable measures, but that decision-making body does not need to be absolute. In contrast to Hobbes, John Locke asserts that when people enter into a social contract they sacrifice only their natural right “of executing the law of nature and judging their own case” in order to secure legal protection by the government. Specifically, he claims that each individual “authorises the society, or which is all one, the legislative thereof, to make laws for him as the public good of the society shall require, to the execution whereof his own assistance (as to his own decrees) is due. And this puts men out of a state of nature into that of a commonwealth, by setting up a judge on earth with authority to determine all the controversies and redress the injuries that may happen to any member of the commonwealth, whose judge is the legislative or magistrates appointed by it.”

The Call

Locke’s notion of conferring power on a central governing authority by the people is consistent with Hobbes’ idea of sovereignty as legal supremacy, yet they

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diverge in that Locke holds that the people have the power of constructing, and if necessary overthrowing, a civil governing body. In order to protect their property, citizens unite and by majority rule create a form of government. Locke therefore sets up a central authority that takes the form of a system of government in which powers are divided, rather than held by a unitary sovereign, so that power will not be exercised arbitrarily. If the government nonetheless abuses citizens’ natural rights, the citizens have the right to replace the government and establish, by majority consent, a new form of government. By establishing civil law,

The legislative was so placed in collective bodies of men, call them senate, parliament, or what you please, by which means every single person became subject equally with other the meanest men, to those laws, which he himself, as part of the legislative, had established; nor could any one, by his own authority, avoid the force of the law, when once made, nor by any pretence of superiority plead exemption, thereby to license his own, or the miscarriages of any of his dependants. No man in civil society can be exempted from the laws of it.  

Since all people, including those acting within the government, are equally subject to the same laws, violations of natural rights by anyone require a legal response. This analysis may be seen as opening the door to legitimately undertaking humanitarian interventions, for Locke’s theory holds that citizens are morally permitted, if not obligated, to oppose a government if their basic human rights are being violated.

38 John Locke, Second Treatise on Government. “Chapter 7: Of Political or Civil Society.”
Using a similar understanding of the obligation of governments to protect their citizens, in its 2001 report entitled “The Responsibility to Protect,” the International Commission on Intervention and State Sovereignty (ICISS) defined notion of state sovereignty as a responsibility for governments to promote the welfare of their people instead of as a claim by states against foreign interference. This framing of “state sovereignty” creates a legitimate role for the international community to protect the basic human rights of individuals living in states that systematically violate those rights on a large scale, perhaps using military force.

**The Limitation**

Since state sovereignty is necessary for the existence of a legally ordered society, we must consider it as a limit on foreign interventions, for a state’s right to administer its internal affairs is important and cannot be completely sidelined by international society in its quest to promote basic human rights. Most basically, according to David Miller, “nations are communities of obligation, and in particular they are communities which foster ideals of social justice.” The relational nature of personal associations among compatriots within a state, due to a common culture, history, and experience, generates a mutual feeling of moral responsibility among them that does not exist in relationships with foreign nationals. These feelings give rise to a desire to promote the wellbeing of one’s fellow citizens. Moreover, compatriots are much better equipped with the cultural capital necessary to effectively address particular societal problems than outsiders are. A nation must therefore have the right to self-determination so that it may construct a political and

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39 International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, xi
social order that reflects its values and provides a framework in which citizens may improve their own conditions without foreign interference.

State sovereignty also serves to promote economic self-determination. The United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by the General Assembly in 1960, specifically cited the desire of colonized peoples to control their own resources and economic systems. The declaration “affirm[s] that peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law.”

The right of state sovereignty is required for a nation’s generation and implementation of economic policy that fits with its values and cultural self-perception, as well as ensures the prioritization of its own national interests above those of other states or corporations. If state sovereignty were not protected, powerful countries could easily interfere in the domestic economic structures of weaker countries by creating exploitative policies that would drain natural resources from their original environments for use by foreigners. Therefore, although humanitarian interventions are in certain cases legitimate and necessary, state sovereignty must be seriously considered as a limitation on foreign interference, for states must maintain their right to self-determination to protect their interests and individual economic systems.

Self-determination is also necessary for the full realization of one’s individual identity in political terms. Avishai Margalit and Joseph Raz argue that groups that

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have the characteristics to benefit from national self-determination have “a common character and a common culture that encompass many, varied and important aspects of life, a culture that defines or marks a variety of forms or styles of life, types of activities, occupations, pursuits, and relationships…They possess cultural traditions that penetrate beyond a single or a few areas of human life, and display themselves in a whole range of areas, including many which are of great importance for the well-being of individuals.” According to Margalit and Raz, individuals are so indelibly marked by their collective culture that the success of the group is also essential to the success of the individual. Thus, the values of national self-determination and the collective dignity the nation achieves by exercising its autonomy are experienced by individual citizens who feel personally empowered by the assertion of their group’s independent identity within international society.

More specifically, we can say that the right of state sovereignty allows groups to protect their collective culture from external, especially coercive, influences. States are the best safeguards of their own culture, for it is of greater importance to them than any other country to maintain their distinct identity and historical way of life. Will Kymlicka defines “culture” as “societal culture—that is a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres.” The protection of societal culture is therefore necessary for individuals to have any kind of meaningful existence because

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it provides them with a cultural context within which they can have an orientation that enables them to function in the world. Kymlicka argues that realizing one’s societal culture is part of the liberal project of living one’s individual will and acting within values that are based on culturally constructed choices. Since “the survival of a culture is not guaranteed, and, where it is threatened with debasement or decay, we must act to protect it,”\(^44\) state sovereignty is necessary if countries are to safeguard their unique culture and perspective.

Furthermore, state sovereignty is required to protect people’s basic human rights. States are more effective at guaranteeing the rights of its citizens than any other body, including international nongovernmental organizations or external intervening powers. According to Michael Ignatieff, the greatest obstacle to the assurance of human rights today is civil war and anarchy. He claims that we are therefore “rediscovering the necessity of state order as a guarantee of rights. It can be said with certainty that the liberties of citizens are better protected by their own institutions than by the well-meaning interventions of outsiders.”\(^45\) Although states may be seen historically as the chief abusers of their citizens’ human rights, Ignatieff argues that in contemporary times, after the “age of totalitarian tyranny,”\(^46\) internal instability contributes more significantly to human rights violations. Thus, instead of undertaking an intervention, which will inevitably weaken the state structure and cause a degree of chaos, he suggests that organizations and governments that are concerned about human rights abuses in other states should focus their efforts on

\(^44\) Will Kymlicka, \textit{Multicultural Citizenship}, 83.
\(^46\) Ibid.
strengthening social institutions as opposed to undermining them. State sovereignty must therefore be recognized as a limitation on interventions since it is necessary for the establishment of the fundamental order that secures human rights.

Because of the value of national self-determination to the collective’s ability to address its own societal problems and establish its own economic system, as well as to individuals’ construction of their own political identities and capacity to contextualize their worldviews within their unique cultures, the international community must protect the right of state sovereignty. Due to centuries of colonization and exploitation of certain countries, which largely persists today in new and more subtle forms, developing countries are hyper-aware of power asymmetries in the international system that are at play when states pursue their national interests in the international arena. Whether accurately or not, developing countries often perceive an impulse to colonization in the actions of powerful countries, be it in promoting “fair” trade policy or intervening for the “protection” of human rights. They view these aspects of international law as a tool of the powerful that has been, and continues to be, used as an excuse to “legitimately” subjugate and manipulate the weak. These are powerful reasons to respect state sovereignty internationally, not only to allow citizens to control their own internal affairs, but also to assuage the fears of weak countries whose leaders and citizens believe that humanitarian interventions are simply a guise for powerful countries to assert their dominance and pursue their own interests. Only by taking the right of state sovereignty seriously in international society by enforcing laws and prosecuting abuses, will the powerful countries that tend to lead and finance multinational military operations gain the trust
of weaker countries so that humanitarian interventions will be perceived as truly humanitarian in nature as opposed to underhandedly self-serving.

Since we have seen the extent to which maintaining state sovereignty, we may wonder why individual human rights should be prioritized over the collective right to self-determination, thereby legitimizing humanitarian interventions. Framing the issue as a binary battle between individual and collective rights is inaccurate, however, because interventions to protect basic human rights are in fact aimed at allowing individuals to actively participate in their national government and express their political will. For example, if people are deprived of the basic right to bodily security and are in constant fear of persecution on account of their religion or ethnicity, they are in no position to cultivate their political identities and are most definitely not willingly accepting any idea of justice. Humanitarian interventions are therefore necessary to create the conditions in which individuals can actively engage in collective self-determination. Moreover, by defining state sovereignty as a responsibility of states to protect their citizens, humanitarian interventions in effect “deprive” states of managing their internal affairs only because those states are unwilling or unable to effectively fulfill their purposes on their own. Maintaining state sovereignty without requiring the protection of basic individual human rights prevents citizens from employing their collective self-determination to realize any of the goals the right is meant to realize.

Although military interventions may be necessary to protect individuals’ basic human rights from being abused on a large scale, it is important to note that military action will undoubtedly produce human rights violations of their own, whether
intentionally or unintentionally. The concept of “collateral damage,” the harming of civilians while attempting to fight the enemy, is as old as military operations themselves. Moreover, it is possible that intervening to help groups or individuals who are being harmed by the state may in fact lead rebel groups to view violent rebellion as a good option to achieve their goals. By believing that other countries will intervene to prevent a state from using violence against its own population, these groups may choose to initiate violent strategies, which often causes the government to react violently as well, thereby producing greater civilian casualties.\(^47\) Therefore, in order for humanitarian interventions to be a legitimate tool with which to combat human rights violations abroad, the scale of abuse must be so “conscience-shocking” that the potential abuses from military action, or from groups acting opportunistically, outweigh the existing abuses being perpetuated on the ground. While our consciences may be upset by a state’s exploitation of small groups within its borders or by certain ritual practices that seem to denigrate one gender, humanitarian interventions may only legitimately be undertaken in cases of genocide or rampant ethnic cleansing because of the unintended damage they inevitably cause.

Thus, when considering which basic human rights require foreign intervention to protect, the notion of proportionality must be of primary concern. A complete list of universal human rights is not necessary, for the international community must agree to only those rights whose violations would be so egregious as to ensure that more harm would not be unintentionally committed than good with an intervention. Additionally, those basic human rights would be generally agreed upon.

internationally since without those rights, citizens could not practically demand or
fight for any other more substantial rights. Paradoxically, the formulation of a
program of universal human rights for use by international organizations attempting
to help particular foreign nationals in effect aims to serve as the closest
approximation to the principles of those individuals whose human rights are being
violated. Since, because of the circumstances, it is impossible to ask these individuals
whether they feel their human rights are currently being abused, it is necessary to
construct a list of basic human rights that may be regarded as universal so as to
represent all people—including those whose rights are presumably being violated.
Once such agreement exists between countries, in the event that agreed upon
universal human rights are being violated anywhere in the world, the international
community has a legitimate claim to intervene on humanitarian grounds.
Chapter Five:
The Extent of Moral Responsibility

As the previous section concentrated on the rights of those in whose lives interventions take place, this section shifts perspectives to focus on those who actually carry out the interventions, for the mere statement that an intervention should take place does not prescribe who should do it or in what ways it should be done. The most fundamental issue that must be addressed concerns the obligation of states to protect the human rights of foreign civilians. I will begin by considering the moral obligation that individuals have to prevent harm to others, at least when doing so comes at little cost to oneself. I will then extend this idea to the state level by showing the analogous obligation states have to prevent harm to citizens of other states when the cost can be incurred. As I will later explain, many scholars argue that morality is grounded in a relational structure, meaning that individuals have special moral obligations to those with whom they have particular relationships. They claim that the reciprocal duties implicit in morality are inherently relational and that individuals extend those relational moral claims to those who they perceive as fellow members of a group, even when the group is so large that they have never personally interacted. I am not taking a stand on the accuracy of this position; rather, I am supposing it is correct for the sake of argument to demonstrate that even if we believe that individuals’ have obligations to strangers, those obligations are limited in certain ways. I will then show that a similar account of limitations to moral obligations holds for political societies or states.
Moral Obligations of the Individual

As previously mentioned, Hobbes and Locke’s similar though divergent theories on the social contract aim to create order so that people cease to live in a chaotic, violent state of nature. Although their theories differ regarding the institutional body that is tasked with enforcing law within society, both accounts are founded on the notion that all members of society would consent to the social contract since it satisfies their individual interests more than living in a state of nature would. In Hobbes’s account, the individual’s highest interest is in self-preservation, which can be best realized in political society, so by agreeing to live according to common rules, subjects become obliged to obey the sovereign, even when the political order was originally established by conquest. Locke’s account is more complicated in that he argues that there is a moral law, the law of nature, that people can grasp in the state of nature, and that they have a right to interpret and enforce that law, including a right to punish, in the absence of a political society. Under favorable conditions, then, a rough justice can be maintained in the state of nature, as long as violations are limited. But when conflicts become more pervasive, individual enforcement efforts fail and may even exacerbate the problem as people who feel wronged exact excessive punishments from perceived perpetrators. Both views are limited, however, because they construct an essentially voluntary conception of political obligation in which members of society are only bound to obey the authorities to which they have consented.

Kant offers an alternative framework in which he argues that we enter the social contract not by freely consenting to do so based on self-interest, but rather because of a duty that all people have to one another to abandon the state of nature based on their moral equality, which stems from their rational agency. One may not choose to enter into a social contract to advance one’s interests, even when one’s interests are in securing justice when it is inconvenient to do so in the state of nature. Rather, it is a moral duty for all humans to enter into a social contract, which, according to Kant, one may be coerced into doing.\textsuperscript{50} In the absence of political authority in the state of nature, there can be no justice in the world, or, as Kant claims, the world is in a condition “devoid of justice,”\textsuperscript{51} for there is no reliable means to ensure that our rights will be respected, meaning that each person is the judge in his or her own case. Thus, to refuse to enter political society would be to will a condition of injustice, something no just person could do.

The mutual recognition by all people that every person is a rational agent is the basic premise of Kant’s categorical imperative, the rational standard that all people can use to determine their moral duties. The categorical imperative applies to everyone equally and unconditionally because of his or her inherent rational will. According to many scholars,\textsuperscript{52} we can interpret the categorical imperative as part of a decision-making process in which you are to “act only in accordance with that maxim

\textsuperscript{51} Ibid., 44, 137.
through which you can at the same time will that it become a universal law.” In order for an action to be moral, its maxim must be universalizable, meaning that if the maxim were to be a law of nature so that everyone acted in accordance with it, then in such a world one would or could still rationally will to act on that maxim. To refer back to our central case of maintaining a moral responsibility to prevent harm from happening to others at little cost to ourselves, Kant’s categorical imperative offers a stable basis for holding this to be a moral position, for it would be impossible to rationally will the existence of a world in which people are indifferent to others’ suffering since every rational person desires to be helped when personally suffering. Preventing harm to others at little cost to ourselves is, therefore, a universalizable principle, for we would rationally want to live in a world in which others would prevent harm to us at little cost to them.

**Moral Obligations of the State**

Thus far I have been arguing that individuals have an obligation to assist strangers when they can do so without incurring too great a cost to themselves. I will now explain that a similar obligation applies to states when the harm being suffered by foreign citizens occurs on a large scale at the state level. It may be thought that states are simply instruments created for certain purposes, such as maintaining peace or security within a delimited territory as Hobbes suggests, and so do not have responsibilities beyond those purposes. Alternatively, it may be believed that states or collectivities generally should not be conceived as having moral obligations at all, as they are not moral agents and so do not have what might be called a moral character.

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Rawls, however, argues that states do in fact possess a moral character by extending Kant’s idea of reciprocity through the categorical imperative to the level of the state. Rawls’ idea of justice as fairness, which presumes that all people are free and equal and do not inherently deserve asymmetrical benefits resulting from inborn traits over which they have no control, gives rise to principles of justice that guarantee equal basic liberties and equality of opportunity to everyone. Citizens’ freedom extends from their ability to make demands on social institutions, maintain political rights independent of any comprehensive doctrine, and plan their own lives within the bounds of reasonably expected resources, while their equality is based on their ability to participate in social cooperation over time regardless of their particular skills and talents. Given their basic freedom and equality, citizens (in the original position) should agree to work toward the betterment of all members of society. Thus, they are able to recognize claims of justice and see themselves as having responsibilities for contributing to the emergence of a more just world, which will benefit everyone including themselves. As Rawls asserts, “In justice as fairness, men agree to share one another’s fate.” Moreover, Rawls maintains that citizens are reasonable in that they have the capacity and are largely willing to abide by fair terms of cooperation given that everyone else abides by them as well, even if doing so will impede the achievement of their particular desires. Although people work to advance their own self-interest, their common sense of justice, even if constantly disputed and revised, is what makes citizens’ “secure association together possible.” Despite their “disparate aims and purposes, a shared conception of justice establishes the bonds of

55 Ibid., 5
civic friendship; the general desire for justice limits the pursuit of other ends.”

Individuals are also conceived as rational in that they are able to form and reform their own ideas of what constitutes a valuable life, or a conception of the good. Citizens’ ability to assert their freedom and equality through social institutions, Rawls asserts, “is to represent equality between human beings as moral persons, as creatures having a conception of their good and capable of a sense of justice.” Thus, people can be said to possess a moral character grounded in a pursuit of equal social cooperation, for their work aims to benefit all members of society by being based on a mutual agreement to place certain limitations on advancing one’s own self-interest. Preventing harm to others at little cost to oneself would therefore be an accepted principle of justice because it benefits all members of society.

Just as Rawls maintains that individuals have a moral character, so can it be said that states possess a moral character. Since states have agency, as in the capacity to act, and are legitimate authorities with rights and obligations, for example to compel obedience to rules and to advance public interests, they are able to enter into moral relationships with other states. These relationships subject states to the requirements of justice, for any agent that is subject to claims of morality has an obligation to will a world of justice since only a non-moral agent would will a world of injustice. Thus, all states have an obligation to contribute to preventing harm to foreign nationals, at least when they can do so without great cost. In addition, since

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56 Rawls, A Theory of Justice, 5
57 Ibid., 19
58 Rawls argues that “peoples,” not “states” have a moral character analogous to that of individuals because he uses the term “state” to refer to the traditional idea of the state expressed in realist theory in the study of international relations as an entity that is constantly concerned with its power to influence other states and is always guided by its national interests (e.g. to enlarge its territory and glory) (John Rawls, The Law of Peoples, 28). I, however, use the term “state” throughout this paper since I do not ascribe to it the same realist connotations that Rawls does.
states are all better off in a world in which international justice prevails, it is in the interests of each state that egregious violations of human rights be prevented. For a state to refuse to do its share is to free ride on the contributions of other states. The analogous moral obligations states have to those of individuals are to prevent harm to others, in this case through humanitarian intervention to aid foreign citizens, when it comes at little cost to them, and to pursue a just international order. Just as individuals should work to secure a world in which the basic human rights of those within their scope of interaction are guaranteed, so too should states work to protect the basic human rights of foreign citizens when they are being violated, or not protected, by the domestic government. In this sense, humanitarian interventions conducted by states are analogous to actions to prevent harm to strangers performed by individuals, but the former are obviously conducted on a larger scale since the harm that is necessary to prevent is larger (e.g. genocide). In order for peoples to be protected from mass atrocities, states must agree to prevent such harm so that if such a situation arises, there will be assurance of protection. Just as individuals enter into a social contract to make justice possible at the domestic level, so should states commit to uphold certain principles that seek to create conditions that will make justice possible at the international level.

**The Cost: How Much Is Too Much To Bear?**

Given that individuals and states should prevent harm to others when they can do so at little cost to themselves, the question becomes what level of cost an individual or state must be prepared to incur to prevent harm to others. At the level of the individual, David Luban claims that although the “duty to rescue” in “good
Samaritan law” requires a person to help others when his life is not in danger, he is not compelled to endanger himself to help them. In situations in which one’s resources, not one’s life, are at risk, Peter Singer sets the bar quite high, arguing, “if it is in our power to prevent something very bad from happening, without thereby sacrificing anything morally significant, we ought, morally to do it.” He does not discriminate based on physical proximity or the number of people who are capable of contributing to preventing the harm. In Singer’s view, people should “give as much as possible, that is, at least up to the point at which by giving more one would begin to cause serious suffering for oneself and one’s dependents.” He therefore calls for individuals, especially in economically advanced countries, to forgo all luxuries, such as the construction of a new opera house in Australia, to protect people from suffering, for instance to feed starving Bangladeshi refugees in India. Although this moral position may seem noble, if we consider sacrificing a university education or new shoes for our children in order to donate funds abroad to prevent the spread of malaria, we may view the tradeoff as being disproportionate since we may think that the moral obligation to our families has greater weight and so the cost of aiding others in such a case would be too great to bear. It is not the case that the only grounds on which individuals can refuse to assist others is if doing so would conflict with another, more urgent moral obligation. Furthermore, while the moral obligations to those with whom one has a relationship, such as one’s family, would clearly override

61 I am not dealing with Singer’s fully articulated position, which is qualified to a greater extent than I have shown; rather, I am simply using his 1972 piece in a stylized way to explicate the issue of how much cost to oneself is not too much to incur when attempting to help others.
the moral obligation to prevent harm to others, as we shall see below, there are numerous other limitations to fulfilling that obligation.

Just as an individual’s moral duty to help others is limited by other responsibilities and legitimate claims, so too is a state’s obligation to prevent harm limited. Consider, for example, the case of Swedish neutrality in World War II. We might ask whether we should be morally disturbed that Sweden did not join the Western Allies to fight against Germany and instead took itself out of the line of fire by adopting neutrality. However, despite its technically “neutral” position during the war, Sweden continued to trade with Germany and supply it with resources needed by its war industries, as well as helped transport German soldiers and ammunition.63 That being said, “popular sympathies in Sweden never deserted the Allied cause even at its blackest hour”64 as Sweden shared intelligence with the Allies65 and provided training camps for Norwegian and Danish soldiers. It also served as a refuge for Danish and Norwegian Jews.66 Given the geographical location and size of Sweden, it is reasonable to say that the cost of declaring war against Germany would have been too high for the state to incur and would have prevented Sweden from contributing to the Western Allies in more helpful, and less costly, ways.

Concerning interventions, as was previously mentioned, states have a moral obligation to contribute to the prevention of large-scale harm, for instance genocide, for destabilization has widespread effects and all states benefit from a commitment to

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64 Ibid., 327-328.
66 Ibid., 232.
international justice. Since our current global problems are so immense and interconnected, only states, as opposed to individuals, have the responsibility to address them given their capacity for action. Personal agency, and consequently individual normative positions, therefore, does not greatly determine the extent to which a state will protect the human rights of foreign citizens. In our globalized world, says Samuel Scheffler, both consequentialist and common-sense accounts of individual normative responsibility break down, but there is no reasonable way individual action can address global problems. Scheffler claims, “the same global developments that make a more expansive conception of individual normative responsibility seem initially more plausible also raise doubts about the very practice of treating individuals as the primary bearers of such responsibility.”

Global problems result from complex structural and institutional arrangements, which leave little room for individuals to meaningfully orient their behavior toward addressing such large issues. Individuals’ actions are subsumed within the global systems due to such factors as the “limited contribution each agent makes to the larger processes in question; the limited control each agent has over those processes… [and] the pervasiveness of the processes and the attendant difficulty of abstaining in any wholesale way from participation in them.” Since the obligations of individuals give little guidance in determining exactly how much cost a state must incur to bring about

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67 I am focusing primarily on wealthy states’ moral obligation to prevent human rights abuses through humanitarian interventions since they are more capable of absorbing the necessary costs than poorer states.
69 Ibid., 44.
a more just world, I will outline various considerations that states should take into account when establishing the limits to their beneficence.

Limitations on Moral Claims

First, a basic consideration a state should maintain is the principle to do no harm. Regardless of the extent to which a state may prevent suffering of foreign citizens, its most fundamental limitation to its contributions must be a commitment to not augment harm already being done. Addressing moral responsibilities on the individual level, Bernard Gert argues that rather than upholding principles of obligatory beneficence, we are only obliged to uphold principles of nonmaleficence, which are rules that prevent harming others as opposed to protecting them. Gert explains the moral rules of nonmaleficence as: “Don’t kill,” “Don’t cause pain,” “Don’t disable,” “Don’t deprive of pleasure,” and “Don’t deprive of freedom.” In contrast to Gert’s view of individuals’ moral duties, the principle of nonmaleficence is not states’ only consideration when determining their contributions to humanitarian interventions, but it serves as a basic foundation upon which to develop further moral obligations.

Second, a state should bear costs in support of an intervention only if it has a reasonable assurance that its actions would advance the cause. The condition of efficacy must be considered when determining the extent to which a state should contribute to efforts to prevent harm to others, for it would be unreasonable to oblige a state to take on the risks inherent to interventions if its actions would likely not attain a worthwhile goal. For example, to use Singer’s case, if Australia’s funds for its

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opera house would not have significantly contributed to the prevention of
Bangladeshi refugees’ starvation, Australia would not have been morally obligated to
donate its funds to help them. Even if it is reasonable to assume that a state’s
ccontributions would be effective in stemming harm abroad, a state should consider
whether the cost it incurs is proportionate to the contribution’s level of effectiveness,
for states should use their resources effectively be it domestically or internationally.

Third, states should consider the potential cost that would be incurred to their
national security when determining how much to give to an intervention. If it is
reasonably evident that a state’s contribution will advance the goals of the
intervention, the state must then weigh whether it would be compromising its own
survival. If Sweden, for example, would have had to compromise its own national
security to fight Germany or its fighting would not have substantially advanced the
Allies’ cause, it would have been morally correct not to directly engage in the
conflict. Just as individuals are not obligated to prevent harm at great risk to
themselves, so nations are not obligated to do so when it would endanger their own
prospects of survival.

A fourth condition is the necessity to weigh the costs involved in diverting
funds for an intervention from domestic programs if that would reduce citizens’
standard of living to a significant extent. In order to make an intervention successful
over the long term, funds must be donated not only to the military operations that stop
the massive human rights abuses, but also to the construction of institutions that
prevent further abuses, including training domestic police forces, establishing a
system of government with checks and balances, and even instituting a process of
transitional justice. In order to procure the necessary resources for such initiatives, states may be required to increase domestic taxes or divert funds from social programs that are geared toward their own citizens, thereby impacting citizens’ standard of living. Thus, states should consider the extent to which their own population will be negatively affected when determining limitations on the cost they should bear to prevent the suffering of others.

Fifth, states should consider the probable number of casualties that would be sustained when attempting to prevent harm to others as a potential limitation to its contributions to the effort. Since states are primarily responsible for their own citizens’ lives and national interests, the normal expectation of deployed soldiers is that they will risk their lives to protect the security and way of life of their fellow citizens. However, in cases of humanitarian interventions, in which soldiers risk their lives for the protection of foreign nationals, states cannot require their own citizens to fight if the probability of incurring a large number of casualties is high. Thus, so long as the risks soldiers face are not too high, it is reasonable for states to require them to prevent others’ suffering, but if major casualties are very likely, states can legitimately claim that they do not have to fulfill the moral obligation of preventing harm to others.

**Particular vs. Universal Moral Claims**

Behind all of the previously mentioned conditions runs the issue of one’s moral responsibility to particular relationships (e.g. to one’s community or nation), which seems to be at odds with one’s more abstract, universal moral responsibility to other people. Many scholars argue that particular claims of morality are completely
trumped by universal claims of morality,71 maintaining that one holds a moral obligation to protect all people equally regardless of her relationship with them. Others, however, contend that morality is grounded in a relational structure, which serves as an alternative to the impersonal and often counterintuitive morality put forth by consequentialists.72 Jay Wallace, for example, views the deontic structure of morality, the way in which moral claims are presented as requirements, obligations, or duties, as having “an inherently relational aspect, [and] involving structures of reciprocal obligations”73 such as those that characterize friendships and familial relationships. Scheffler explains that valuing one’s relationships and personal projects noninstrumentally74 means seeing them as “distinctive source[s] of reasons for action,”75 so that one often pursues the interests of a person with whom one has a valued relationship or the opportunity to engage in the advancement of one’s own project, even if doing so involves not supporting the equally valuable interests or projects of others. Moral decisions should be based to a certain extent on sustaining relationships with others that require deontic action. One may presume that given the “relationship-dependent reasons”76 grounding morality, people would exercise their

71 “Particular claims of morality” refers to prioritizing the claims of individuals with whom one maintains a relationship over the moral claims of strangers, which is set in opposition to “universal claims of morality,” which equates the moral claims of all people so that one has the same moral duty to everyone, regardless of personal relationships. While particular moral claims are relationship-dependent, they may be universal claims in that they are based on universal principles that hold that the particular moral claim should trump other moral claims. For example, many people would argue that children should honor their parents more than they honor other adults.
74 Scheffler sets valuing something noninstrumentally in opposition to valuing something instrumentally “as a means of achieving one’s long-term goals or obtaining the discrete benefits that group membership makes available” (Scheffler, Equality and Tradition, 50).
75 Scheffler, Equality and Tradition, 48.
76 Ibid., 47.
moral claims and obligations only within a limited circle of close relations, but according to Scheffler, people tend to “value group membership even when the groups in question are large enough that there is no prospect of knowing individually, let alone having a personal relationship with, each of the other members.”

This reasoning explains the emotional difficulty of citizens’ decision to risk the lives of their compatriots to protect the rights of foreign nationals, for even if they are committed to the universalist (and consequentialist) claim of preventing human suffering, they have an obligation to protect those whom they see as members of the same group. However, given the nature of the globalized world in which we have moral duties to people whom we do not recognize as providing us with “relationship-dependent reasons” for action, we must strive “not to preserve the notions of obligatoriness and privileged complaint, but rather to persuade people that they have reason to avoid certain kinds of actions when no particular individuals have special grounds for complaint about those actions.” Whereas Scheffler expresses this form of morality as having implications for negative moral claims, I argue that with regard to humanitarian interventions, states recognize moral reasons to encourage certain kinds of positive actions on behalf of suffering non-relational individuals, even if the force of these reasons is limited by the relationship-dependent obligations states have to their own citizens. Thus, since states, especially wealthy states that are able to absorb significant costs of interventions, have a moral responsibility to prevent widespread human rights abuses abroad, their citizens must be able to extend their

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78 Ibid., 71.
relationship-based morality to foreign others, and to support interventions when the costs are not unreasonably high.

By acting upon moral principles when interacting with strangers, one must apply universal moral standards to individuals who exist in particular situations and under particular conditions. One is therefore enacting a type of universal morality that is rooted in an understanding of people as diverse individuals, for as Kwami Appiah argues, in order for universal moral principles to be actionable in practice, they must be particularized so that actions are based on the facts on the ground. While there are universal values, “their expression is highly particular, thickly enmeshed with local customs and expectations and the facts of social arrangements.” Therefore, to effectively extend basic moral obligations to those with whom one does not have a personal relationship, it is necessary to recognize the particular circumstances at play within each society when acting on a universal moral principle.

The choice to use tactics that will put soldiers’ lives at greater risk to protect foreign civilians is a prime example of extending relationship-dependent morality for universalist aims. The tension between particular and universal moral claims is especially strong in this case, for preventing harm to a foreign civilian could incur harm to one’s co-national, albeit a combatant. According to Michael Walzer, civilians should be protected with even more care than the traditional requirement of proportionality would suggest, though not to such an extent that doing so would endanger the success of the mission. He claims, “If saving civilian lives means risking soldier’s lives, the risk must be accepted. But there is a limit to the risks that

we require.” Civilians must be protected, and depending on “the nature of the target, the urgency of the moment, the available technology, and so on” soldiers may be obligated to risk their own lives to some degree in order to protect civilians. Soldiers often take these risks when the civilians are their own compatriots. In occupied France during World War II, for example, Free French bomber pilots chose to incur greater risk to themselves by flying at lower altitudes when bombing German military sites in France. While the French forces decided to assume more personal risk than they would have assumed had they bombed the sites from a higher altitude, they did not choose to use ground troops even though that may have prevented more civilian casualties because it would have jeopardized the success of the undertaking.

Similarly, in occupied Norway during the war, Norwegian commandos were sent to raid a German heavy water plant instead of attacking it from the air because of concerns for civilians. The first ground troop attempt failed and thirty-four people were killed, but the second attempt was successful without any casualties. A few years later, the water plant was reopened and security around it was tightened, which prompted the United States to bomb it from a distance using airplanes. The attack successfully destroyed the plant, but also killed twenty-two Norwegian civilians. According to Walzer, the operation was justifiable due to the importance of the mission and the relatively small number of civilian casualties incurred. These incidents show that soldiers can and do take risks to prevent harming non-combatants.

In both of these cases, however, the civilians who were in danger shared the same nationality as those conducting the military operation, which illustrates individuals’

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81 Ibid.
82 Ibid., 158.
“relationship-dependent” grounding of morality. However, Walzer uses these cases to demonstrate that since states are willing to assume risks to combatants to protect co-national noncombatants, such risks should be assumed for any and all non-combatants, including civilians of the enemy country. He claims that all people have a basic right to life that must not be infringed, so those who use weapons have a responsibility to take risks to avoid violating the rights of those who are unarmed. The ideal, therefore, is to learn from our particular morality, in this case about the precautions we would take to protect our compatriots in war, and apply that awareness and care universally to those with whom we do not have relationships.

However, given the political reality that states need to maintain support for military operations at home, tactics are typically employed to reduce the risk of soldiers’ deaths while increasing the risk of foreign civilians’ deaths. In order for the public to continue supporting a military intervention, the intervening forces must not incur large numbers of casualties, for otherwise citizens would perceive the cost of intervention as being too high to bear, which would cause them to revoke support and funding for the mission. Without such backing, the intervention would inevitably collapse and the human rights abuses that originally necessitated the intervention would persist or even increase. Governments that are responsible for interventions may therefore face the need to adopt certain force protection policies that would otherwise be unjust in order to limit deaths of their soldiers. The dilemma of “dirty hands” is then raised concerning whether unjust means, such as not taking adequate measures to prevent civilian deaths, may be employed to achieve a just end of preventing egregious violations of human rights. For example, during the
humanitarian intervention in Kosovo in 1999, President Clinton refrained from employing an aggressive warfare strategy because “the American public…would be unwilling to accept very many casualties in a war justified on purely humanitarian grounds.” American and NATO forces refused to fly their planes at low altitudes to bomb Serbian troops and armaments because of the risk of being shot down by surface-to-air missiles; they also declined to put troops on the ground and attack key targets for fear that the public would withdraw its support of the mission.

Thus, while intervening states choose to employ tactics that would minimize soldiers’ casualties, due to both a commitment to relationship-dependent morality and the need to sustain popular support for the intervention, they should bear in mind their original purpose for intervening: to protect the human rights of foreign civilians. Since states have a duty to prevent mass atrocities, they and their citizens must be willing to bear certain inevitable accompanying costs once the limitations to their contributions have been adequately considered.

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83 Luban, "Intervention and civilization,” 82
Chapter Six: Right Authority in Theory and in Practice

In the previous section I explained the grounds that attribute to states an obligation to intervene in other countries to stop egregious violations of human rights, but the fundamental problem remains that in a world without strong and effective governance structures, states are responsible for their own security and therefore must take their own self-interests into consideration. This inevitably raises the question of whether their actions will or can be seen as legitimate by other states, particularly those affected by, or potential targets of, such self-interested actions. When states act unilaterally there will inevitably be grounds for the suspicion that their motives are not to do justice, but rather to advance their own interests. At the same time, since states are the only effective actors in the international system, they must act if human rights are to be protected. This dilemma raises the problem of right authority, the need for a decision-making procedure that in some way represents international society as a whole to authorize interventions. In recognizing this issue, the International Commission on Intervention and State Sovereignty (ICISS) created a report in 2001 entitled “The Responsibility to Protect,” which outlines the conditions for a legitimate intervention.

The Responsibility to Protect Report Overview

The Report begins by defining “sovereignty” as a dual responsibility: first, an external responsibility to respect the sovereignty of other states, and second, an

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84 The Responsibility to Protect was officially adopted unanimously by UN members at the 2005 World Summit when it was included in the summit’s Outcome Document.
internal responsibility to respect the rights of domestic citizens.\textsuperscript{85} If a state violates this responsibility of sovereignty by purposefully or inadvertently failing to prevent its citizens’ suffering serious human rights abuses, “the principle of non-intervention yields to the international responsibility to protect.”\textsuperscript{86} Included in the Responsibility to Protect are three elements: (1) \textit{The Responsibility to Prevent}, which calls for “address[ing] both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk”\textsuperscript{87}, (2) \textit{The Responsibility to React}, which requires “respond[ing] to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention”\textsuperscript{88}, and (3) \textit{The Responsibility to Rebuild}, which includes “providing, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.”\textsuperscript{89}

Prior to undertaking a humanitarian intervention, which the ICISS report defines as “action taken against a state or its leaders, without its or their consent, for purposes which are claimed to be humanitarian or protective,”\textsuperscript{90} certain criteria must be satisfied to ensure that military intervention is necessary. According to the ICISS report, all “prevention options should be exhausted before intervention is contemplated,” and states should consider using “less coercive and intrusive measures”\textsuperscript{91} before greater ones are employed because of the inevitable costs of large

\textsuperscript{85} International Commission on Intervention and State Sovereignty, \textit{The Responsibility to Protect}, 8.
\textsuperscript{86} Ibid., xi.
\textsuperscript{87} Ibid.
\textsuperscript{88} Ibid.
\textsuperscript{89} Ibid.
\textsuperscript{90} Ibid., 8.
\textsuperscript{91} Ibid., xi.
military operations. For a military intervention to be legitimate, it must meet the “just cause threshold” of conscience-shocking harm being inflicted on civilians, such as large-scale loss of life (e.g. genocide) and ethnic cleansing (whether by killing, forced expulsion, acts of terror, or rape).\textsuperscript{92} 

A humanitarian intervention must also be justified in light of the four “precautionary principles”: (1) right intentions, that states must intervene only to “halt or avert human suffering”; (2) last resort, that military force may only be used if all other options have been exhausted or are believed to be ineffective; (3) proportional means, that the “scale, duration and intensity” of the intervention should be the least necessary to secure the objective; and (4) reasonable prospects, that the intervention poses a reasonable chance of success and that action is better than no action at all.\textsuperscript{93} 

The legitimacy of a military intervention also rests on the criterion of “right authority,” which calls for the United Nations Security Council (UNSC) to authorize military action after verifying that human rights abuses have occurred. The request for intervention may be made by the state in which the intervention will take place, the UNSC, or the Secretary General of the United Nations. The Report demands that the five permanent members of the UNSC should not use their veto “in matters where their vital state interests are not involved” when there would otherwise be majority support.\textsuperscript{94} If the Security Council is unable to deal with a case in a timely manner, the General Assembly may consider it in an Emergency Special Session under the “Uniting for Peace” procedure in which action may be authorized by a two-thirds

\textsuperscript{92} International Commission on Intervention and State Sovereignty, \textit{The Responsibility to Protect}, xii. 
\textsuperscript{93} Ibid. 
\textsuperscript{94} Ibid., xii-xiii.
vote in the General Assembly, or regional or sub-regional organizations within the area in which abuses are being committed may act subject to approval by the UNSC.\textsuperscript{95} Also within the criteria of “right authority” is the recognition that if the Security Council fails to produce a resolution to authorize action to address a “conscience-shocking” case, “concerned states may not rule out other means to meet the gravity and urgency of that situation—and that the stature and credibility of the United Nations may suffer.”\textsuperscript{96} The phrase “may not rule out” in this portion of the report is, perhaps purposefully, ambiguous in that it seems to either allow states to circumvent the authority of the Security Council or simply recognize that states will inevitably desire to do so if they believe that the Security Council is not working effectively.

From a legal perspective the United Nations Security Council is the body that should respond to large-scale human rights abuses given its international authority to sanction humanitarian interventions, but in reality it is largely ineffective in preventing mass atrocities quickly. Due to its institutional structure, it is often criticized because it is not representative of all nations and because it allows the five permanent members to veto resolutions, thus enabling them to limit interventions based on their national interests instead of the needs of suffering civilians.\textsuperscript{97} Often, rather than vetoing a proposition entirely, a veto-wielding state will threaten to use its veto to keep certain issues off the Council agenda or to soften the language of certain

\textsuperscript{95} International Commission on Intervention and State Sovereignty, \textit{The Responsibility to Protect}, xiii.
\textsuperscript{96} Ibid., xiii.
resolutions that are at odds with their national interests. Furthermore, the UNSC’s cumbersome bureaucratic processes result in inactivity, indecision, and long delays, which further weakens the Security Council’s ability to effectively deal with human rights abuses. Although the ICISS report lays out an ideal procedure through which the decision to intervene should be made, the structural mechanisms at play in effect allow the five permanent members to pursue their particular interests while preventing other member states from contributing to decisions that are based on universal principles. Given the need to act quickly in the face of mass atrocities, as well as the desire of non-permanent UNSC members to influence the discussion on intervention, countries have staged unilateral interventions not authorized by the Security Council, and bodies other than the Security Council have at times assumed decision-making authority.

“Uniting for Peace”

The Uniting for Peace resolution, which is a provision under the Responsibility to Protect criterion of “right authority,” is an example of authority being diverted from the Security Council to a more representative body, in this case the General Assembly, to determine appropriate responses to international violent conflict. The resolution was originally adopted by the United Nations in 1950 to circumvent the Soviet veto in the Security Council in order to address the crisis in Korea. At the time, the resolution, which placed the General Assembly “alongside of, or possibly superior to, the Security Council as the executive body of the United Nations,”
Nations in preserving and restoring peace,”\textsuperscript{100} was heralded as “the most momentous action ever taken by the General Assembly.”\textsuperscript{101} Among other features, the Uniting for Peace resolution established “transfer” and “emergency session” devices such that

If the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures.\textsuperscript{102}

Despite the power the resolution seems to give to the General Assembly, the Security Council still retains primary decision-making authority, for so long as a majority of UNSC members do not determine that it has “fail[ed] to exercise its primary responsibility for the maintenance of international peace and security,” it is able to continue its deliberations. To transfer an issue to the General Assembly or call an emergency session, at least seven of the sitting UNSC members must vote to do so. Additionally, whereas Security Council resolutions are backed by the full power of the UN, the General Assembly can only produce unenforceable suggestions and recommendations, meaning that anything put forward by the General Assembly would need support from a permanent member of the UNSC. While some contend

\textsuperscript{101} Woolsey, “The ‘Uniting for Peace’ Resolution of the United Nations,” 129
\textsuperscript{102} U.N. General Assembly, Resolution Adopted by the General Assembly 377(V), \textit{Uniting for Peace}, November 3, 1950.
that the Uniting for Peace resolution has been employed ten times since 1950,\textsuperscript{103} there is ongoing debate as to the actual number of applicable cases\textsuperscript{104} due to the language employed in reference to the technical procedures of giving authority to the General Assembly.\textsuperscript{105}

One exceptionally clear-cut case is that of Hungary in 1956. On October 23, a popular revolution began aimed at overthrowing the Soviet-backed Hungarian government, which prompted the Soviets to invade and occupy Hungary and put a new government in place through military means. Upon hearing of the Soviet’s repressive actions, the United States, France, and Great Britain took up the issue in the Security Council where the United States proposed a resolution to force the Soviet Union to end its armed intervention in Hungary.\textsuperscript{106} Not surprisingly, the Soviet Union vetoed the resolution. The United States then introduced a second resolution calling for the General Assembly to hold an emergency session under the Uniting for Peace resolution to broadly “make appropriate recommendations concerning the situation in Hungary,”\textsuperscript{107} which was accepted. Significantly, complaints by the Soviet Union and the Soviet-backed Hungarian government targeted the issue of intervening “in matters which are essentially within the domestic jurisdiction of [the] state,”\textsuperscript{108} as opposed to questioning the legitimacy of the Uniting for Peace resolution, for they knew that

\begin{thebibliography}
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\item \textsuperscript{103} Christian Tomuschat, “Uniting for Peace,” in the United Nations Audiovisual Library of International Law, Codification Division, Office of Legal Affairs, (United Nations, 2008).
\item \textsuperscript{104} Some of the cases that may be argued to have employed the Uniting for Peace resolution are: Egypt in 1956, Hungary in 1956, Lebanon and Jordan in 1958, the Republic of Congo in 1960, India and Pakistan in 1971, Afghanistan in 1980, Palestine from 1980-1982, Namibia in 1981, and Palestine beginning in 1997 (which was adjourned in 2006, but can be resumed at any time upon request of UNSC members).
\item \textsuperscript{106} Quincy Wright, “Intervention, 1956,” \textit{The American Journal of International Law}, 51, no. 2 (1957): 260
\item \textsuperscript{107} Petersen, “The Uses of the Uniting for Peace Resolution since 1950,” 228
\item \textsuperscript{108} Ibid.
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such an objection would not have been sustained. The General Assembly ultimately called on the Soviet Union to withdraw its troops from Hungary and recommended that international observers visit the conflict region, but the Soviet government refused to comply. In a resolution in December, the General Assembly declared that the Soviet Union “by using its armed force against the Hungarian people…is violating the political independence of Hungary” and is in “violation of the Charter…in depriving Hungary of its liberty and independence and the Hungarian people of the exercise of their fundamental rights.”\(^{109}\) The International Commission of Jurists at The Hague also determined that the Soviet Union had committed both “‘direct’ and ‘indirect aggression’ according to [the Soviet government’s] own definition [of aggression].”\(^{110}\)

Other cases that employed the Uniting for Peace resolution were much less straightforward, but they too empowered the General Assembly to circumvent the veto of various permanent UNSC members to recommend interventions, both military and otherwise, to prevent mass human rights abuses of civilians. Although Uniting for Peace has indeed served as an alternative to the UNSC’s authorization in the past, such as in the case of Hungary, it is no longer employed for that purpose, in part because emergency sessions are not convened as regularly,\(^{111}\) but more importantly because of the different composition of states currently in the United Nations. When the United Nations was composed of mostly pro-Western states, the Uniting for Peace resolution was deferred to more often, but as more African and Middle Eastern states

110 Ibid., 276
111 Now that the General Assembly is in session for longer than it had been in the mid 1900s, emergency sessions are not convened as frequently since all parties are usually already present.
have joined the UN, members of the UNSC have since become less interested in giving authority to the General Assembly to make suggestions on international responses to violent conflict. Therefore, the resolution has instead primarily “become a special forum to deliberate on the policies and practices of Israel with regard to the occupied Palestinian territories, totally changing its character from a meeting convened to discuss urgent matters to a permanent, but intermittent conference on a topic of paramount interest to the international community.”

Although not all of the cases in which the Uniting for Peace resolution was employed were cases of humanitarian intervention, the institutional mechanism of giving decision-making authority to the General Assembly is worth noting as an example of engaging a more representative body in discussions of international significance.

**Regional and Sub-Regional Actors**

Regional and sub-regional organizations serve as other examples of forces not affiliated with the UN that are able to decide to stage interventions. Just as the Uniting for Peace resolution was incorporated into the criteria of “right authority” under the Responsibility to Protect, so too are these organizations recognized as capable of dealing with situations that constitute a threat to international peace and security. While the provision of “right authority” calls for the UNSC to authorize the actions of regional and sub-regional organizations, in the case of Liberia in the 1990s, it is unclear whether such authorization was given prior to the Economic Community of West African States (ECOWAS) deciding to intervene with a military Monitoring Group (ECOMOG).

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112 Tomuschat, “Uniting for Peace.”
When civil war broke out in Liberia in December 1989, civilians suffered large-scale human rights abuses at the hands of all parties involved, causing huge numbers of Liberian refugees to seek protection in other West African states. Given its historical relationship with Liberia and the country’s strategic significance, the United States was expected to intervene to halt the fighting.\textsuperscript{113} Although the United States did send small numbers of troops into Liberia and allegedly shared intelligence with various parties in the conflict, publicly, the United States maintained that the Liberian conflict “was a purely internal affair and required no direct US intervention.”\textsuperscript{114} The United Nations similarly remained silent concerning the human rights abuses being continually perpetrated in Liberia. Zaire and Ethiopia, which both had members sitting on the UNSC at the time, were opposed to the Security Council addressing the issue of Liberia for fear that a precedent might be established that would be applicable to them in the future.\textsuperscript{115} After a year of having prevented meetings, Cote d’Ivoire finally requested that the UNSC consider the conflict in January 1991. The UNSC then issued a statement supporting the actions of ECOWAS and requesting that all parties to the conflict continue respecting the ECOWAS-brokered cease-fire agreement. In response to further calls for direct intervention in 1992 due to increased violence, the UNSC voted unanimously to support an arms embargo on the rebel faction imposed by ECOWAS, which was then followed by additional resolutions reaffirming UNSC support for ECOWAS and ultimately

\textsuperscript{114} Ibid., 40.
\textsuperscript{115} Ibid., 41.
culminated in the UN sending a technical team and an observer mission to monitor the ceasefire in 1993.\textsuperscript{116}

ECOWAS initially assumed a mediation role with representatives from five countries in the region, but as a result of continual violence it became predominantly active through the ECOWAS Monitoring Group (ECOMOG), which was comprised of contingents from Nigeria, Ghana, Sierra Leone, and The Gambia plus Guinea.\textsuperscript{117} Although ECOWAS was originally formed in 1975 with the aim of fostering economic integration in West Africa, and so did not include provisions for taking on a collective security role, the member states recognized that regional peace and security were preconditions for development. Following the adoption of a 1978 non-aggression protocol that dealt with intra-regional disputes, ECOWAS established a defense pact in 1986 that would address threats from sources external to the region as well as purely internal conflicts.\textsuperscript{118} Due to this protocol, ECOWAS had legal justification for intervention in the Liberian conflict, but it did not actually receive prior authorization for its actions by the UNSC. The ECOWAS chairman at the time claimed that “he had been advised that the sort of intervention envisaged did not require Security Council approval and, in any case, the UN Secretary General had written to him and wished ECOWAS good luck in their undertaking.”\textsuperscript{119} It can also be argued that the UNSC’s resolutions supporting ECOWAS, adopted after the intervention had already begun, are proof of the Security Council’s post-facto authorization of the mission. Therefore, the case of ECOWAS intervening in Liberia

\textsuperscript{116} Sesay, “Civil War and Collective Intervention in Liberia,” 41.
\textsuperscript{117} Ibid., 42.
\textsuperscript{118} Ibid., 43.
\textsuperscript{119} Ibid., 44.
is significant in considering how various organizations and forces may be employed, even at times without direct UNSC authorization, to prevent massive human rights abuses.

**Kosovo: NATO’s Unilateral Intervention**

The case of Kosovo in the 1990s is distinct from the cases previously mentioned in that it was in no way authorized by the United Nations Security Council. Whereas the Uniting for Peace resolution and interventions by regional and sub-regional organizations have been approved by the United Nations and fall under the provision of “right authority” under the Responsibility to Protect, NATO’s unauthorized intervention in Kosovo completely disregarded the authority of the Security Council. In Kosovo throughout the mid 1990s, violence erupted between Kosovars and Serbs due to increasing nationalistic sentiments, as both parties fought for control over Kosovo once Slobodan Milosevic had revoked Kosovo’s autonomy under Yugoslavia in 1988. After abandoning nonviolent tactics, the Albanians created the National Movement for the Liberation of Kosovo, which established a military wing called the Kosovo Liberation Army (KLA) that was charged with undertaking guerilla operations against Serbia. In April 1996, the KLA began sporadic guerilla activity to kill Serb officials in response to the deaths of KLA fighters. Violence continued to escalate between the Serbs and Albanians, ultimately prompting the UNSC to issue a resolution in 1998 calling upon both parties to cease their violence.

Anticipating that both Serbs and Albanians would ignore the UN resolution, NATO began considering the legality of employing force to intervene in the conflict. Although no members of NATO had been attacked and the conflict was a matter
internal to Serbia, NATO ultimately decided that a military intervention was justifiable on humanitarian grounds. The organization knew that if intervention was proposed to the Security Council, Russia would veto it, but if NATO intervened unilaterally, Russia would have no recourse.\(^{120}\) According to Louis Henkin, “The United Kingdom apparently thought that authorization by the Security Council was not necessary [and] the United States apparently considered that the Council had provided the necessary authorization by implication in the earlier resolutions on Kosovo.”\(^{121}\) After the Serbs refused to sign a peace agreement with the Kosovars at Rambouillet in March 1999, NATO undertook a military intervention without UNSC authorization. Contrary to its expectation of fighting a war of only a few days with light bombing, NATO ended up staging an intervention that lasted seventy-eight days. As a result of NATO activities, 848,000 Kosovars fled Kosovo to Albania, Montenegro, and Macedonia, delighting the Serbs who had sought to “cleanse” Kosovo of Albanians.\(^{122}\)

Within NATO, members had opposing views on how the mission should be carried out. None of them, however, was willing to jeopardize public support for the intervention by risking NATO casualties by using ground troops or flying planes low enough to hit specific targets.\(^{123}\) In an attempt to remain “neutral,” NATO refused to coordinate with the KLA, which worked to its detriment, while instead of supporting NATO during the intervention, the Serbs in Kosovo rallied behind Milosevic.


\(^{122}\) Rogel, “Kosovo: Where It All Began,” 178.

\(^{123}\) Ibid., 178.
NATO’s numerous miscalculations and lack of overall strategy ultimately led to an escalation in violence and a prolonged war. Luckily for NATO, Boris Yeltsin, Russia’s president at the time, was unable to cope with a long NATO mission and eventually told President Clinton that he wanted the war to end, which could be accomplished through Yeltsin’s pressure on Milosevic. At this point, NATO redoubled its efforts and became prepared to use any tactics necessary to force Milosevic to capitulate, including the use of ground troops. Finally, in June 1999, military leaders from NATO and Yugoslavia signed a Military-Technical Agreement to end the fighting, which called for the withdrawal of all Serbian forces from Kosovo and the institution of international observers to monitor the agreement and facilitate the return of refugees. After NATO officially stopped the bombing a few days later, the UNSC passed a resolution outlining the postwar settlement plan for the region.

The Problem with Circumventing the Security Council

The issue of NATO’s unauthorized military intervention in Kosovo has stirred much debate regarding the effectiveness of the Security Council and the establishment of new dangerous precedents. NATO justified its decision to intervene on humanitarian grounds, claiming that the situation in Kosovo proved to be a serious threat to international peace and security. It acted as a multinational force under clear, established guidelines in pursuit of universal interests of preventing civilians from suffering massive human rights abuses. Had NATO waited for the UNSC to create a resolution to intervene, even more abuses may have taken place since Russia would have undoubtedly vetoed any substantive resolution introduced to the Council. Furthermore, the Security Council could monitor NATO action after the intervention

124 Rogel, “Kosovo: Where It All Began,” 179.
had begun. For example, twelve out of fifteen UNSC members voted to reject the Russian resolution to stop NATO operations in March 1999, which seems to suggest that NATO had the support of a majority of the Council, but could not act because Russia had the power to veto Council action.  

Although it may be true that the Security Council would likely have been ineffective in preventing large-scale human rights violations in Kosovo, permitting unilateral action in international affairs, even when the action involves a number of states acting together, sets a dangerous precedent that could easily be abused. For international law to be useful, rules must be known with some certainty by all parties and must be respected as an essential element to international order and justice. Without support from the international community, legal norms limiting the use of force will be undermined and ultimately made irrelevant. But recognizing that decisions to intervene must in some way stem from the United Nations Security Council still leaves many options open. What kind of mechanisms do we wish to see the Security Council employ in the face of humanitarian crises?

**Potential Solutions to Security Council Shortcomings**

One viable option, as proposed by Winrich Kuehne, would be to encourage the development of regional organizations, such as NATO, to be prepared to respond to violent regional conflicts if the UNSC is incapable or unwilling to act. The regional organization must operate in accordance with the UN Charter, recognizing that the Security Council holds the primary authority to call for interventions.  

This view is pleasing in that it acknowledges the need for a central decision-making authority
through the United Nations, while granting regional autonomy that acts swiftly in times of crisis. However, Kuehne fails to place sufficient limitations on regional forces, especially with regard to leaving it to their discretion to determine whether the UNSC has acted adequately or not. While it may be argued that NATO is a well established organization grounded in democratic principles and shared liberal norms, other regional organizations such as the Commonwealth of Independent States and the Arab League may not share the same values.\textsuperscript{127} In the absence of common legal principles enforced by the United Nations, any regional force could legitimately claim to have the authority to intervene wherever it desired, even if its legitimacy is suspect. Furthermore, by ultimately leaving interventions to the control of regional organizations as opposed to the Security Council, each region would need to develop its own systems for maintaining peace and security. This could undermine the international community, for, as Mary Ellen O’Connell correctly points out, “regionalization could very well dilute or alter the universal norms developed during the fifty-five years of the UN Charter” as well as alienate certain regions that are unable to develop systems or rules to maintain regional order.\textsuperscript{128}

A second option is to reform the Security Council so that it is more effective at addressing humanitarian crises as they arise. The United Nations is currently the principal institution for directing the authority of the international community, so to circumvent it would be to undermine its authority and claim that there is a more (or at least another) legitimate authority to sanction international action. This could in turn compromise “the principle of a world order based on international law and universal

\textsuperscript{127} O’Connell, “The UN, NATO, and International Law after Kosovo,” 86.
\textsuperscript{128} Ibid.
norms.” In considering viable reforms, Henkin proposes that UNSC members agree to not use their veto power to prevent humanitarian interventions. Otherwise, he claims, forces may take unilateral action and retroactively challenge the UNSC to make them desist by passing a resolution, which would inevitably fail since at least one member, being an original proponent of the intervention, would surely use its veto. While this position is correct in identifying the veto as problematic to successfully addressing issues of humanitarian crises, it fails to fully explore possibilities of further, more complex reforms.

O’Connell, for example, proposes significant reforms that could greatly increase the effectiveness of the Security Council. She suggests increasing the size and representativeness of the Council to twenty-one members, with seven permanent members from the United States, Russia, and China, and a representative from Europe, Africa, Asia, and South America. She also envisions that “resolutions could still be vetoed by any permanent member, but a veto must be explained and could be overridden by seventeen affirmative votes.” This, she claims, “would remove the argument that regional security organizations should not be blocked by one unsympathetic state's vote—such as Russia's threat regarding Kosovo.”

O’Connell’s proposition takes into account the need for an internationally recognized body to maintain complete authority over the legitimate use of force, while also appreciating that the Security Council must respond to the new challenges that arise in today’s international society. By increasing participation in the UNSC to include

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130 Henkin, “Kosovo and the Law of ‘Humanitarian Intervention,” 827
131 O’Connell, “The UN, NATO, and International Law after Kosovo,” 87
132 Ibid.
more members, decisions made by the Council on universal principles can
legitimately be said to stem from greater, though not entirely universal,
representation. Although it can be argued that incorporating more members into the
UNSC might compromise the speed with which resolutions get adopted, it is equally
possible to contend that resolutions will be passed more quickly since members will
not be able to wield the same absolute veto power that they have today.

Regardless of the specific reforms enacted, continual failure by the Security
Council to address mass human rights violations carries two serious concerns: First,
that another force will act and succeed, thereby undermining the United Nation’s
ability to create international order; and second, that no force will act and the
perpetration of mass atrocities will highlight the ineffectiveness of the United Nations
to create international order.\textsuperscript{133} The authority of the United Nations comes from its
“role as the applicator of legitimacy”\textsuperscript{134} as opposed to through coercive power,
whereas unilateral action is perceived as illegitimate because it is viewed as self-
interested.\textsuperscript{135} By refusing to reform its existing mechanisms, the Security Council
loses its image of legitimate authority, which will likely cause states to look
elsewhere for the management of international conflicts. Although it is unlikely that
the UNSC will be reformed, if it came to be more representative and reduced the
concentration of power in the hands of the five states that were victors in World War
II, then the trade-off between the values of protecting civilians against egregious
human rights abuses and securing widespread international support would be
lessened. With the adoption of new processes that are designed to ensure that the

\begin{footnotes}
\item[133] Evans and Sahnoun, “The Responsibility to Protect,” 108.
\item[134] Ibid., 106.
\item[135] Ibid.
\end{footnotes}
authorization or veto of an intervention will accord with universal interests, it would be possible to avoid to a great extent the reality and appearance of big power aggression under the guise of humanitarianism.
Chapter Seven: 
Libya: The Conceptual Model in Practice

This paper has been an exercise in practical reason to show the considerations states should take into account when deciding to undertake an intervention on humanitarian grounds. I have explained the need to understand the basic human rights whose violation necessitates intervention within the framework of a conception of universal human rights that is based in pragmatic social cooperation and reciprocity. I then examined state sovereignty as both a call for and a limitation on humanitarian interventions, arguing that while sovereignty includes a responsibility to protect civilians, self-determination is required to guarantee certain essential liberties. The issue of balancing relationship-dependent moral claims and universal moral claims was then discussed to determine the extent to which a state must incur costs to prevent harm to foreign citizens. Finally, I assessed the legitimacy of the United Nations Security Council’s authority to adopt resolutions calling for interventions. By using the case of Libya in 2011, I will illustrate how the considerations I have raised thus far in this paper can be applied to future cases of humanitarian interventions. The intervention in Libya serves as a useful case study, not only because it occurred recently, but also because it highlights three critical issues we encounter in the context of humanitarian intervention: balancing protection and other goals (Just Cause), the relationship between the Security Council and regional organizations (Right Authority), and the effective implementation of resolutions aimed at protecting civilians (Calculations of Harm).^{136}

A New Humanitarian Framing

Although the United Nations Security Council has for a long time been concerned with the protection of human rights, Resolution 1973 dealing with the situation in Libya in 2011 “marked the first time the Council had authorized the use of force for human protection purposes against the wishes of a functioning state.”137 The UNSC had previously authorized humanitarian interventions in cases in which there existed an interim government or no central government at all, and had already adopted resolutions that called for a responsibility to protect civilians from grave human rights abuses, but never had it intervened against the wishes of a host state. Over the past decade, the United Nations has been developing a “new politics of protection,”138 displayed in four principal features: first, because of the unanimous adoption of the Responsibility to Protect and the Security Council’s support of peace operations, the international community has become focused on civilian protection. Second, the Security Council has become increasingly willing to authorize the use of military force for human protection purposes. Third, regional actors have begun influencing which issues are put on the Security Council’s agenda and how they are framed so as to elicit certain responses from members. Fourth, contrary to concerns that were stirred by NATO’s unilateral intervention in Kosovo in 1999, all states have agreed to respond to crises through the United Nations and relevant regional organizations.139 The new international attention aimed at protecting civilians, even in opposition to the wishes of a sitting government, has caused the matter of humanitarian interventions to take center stage.

137 Bellamy and Williams, “The new politics of protection?” 825.
138 Ibid., 826.
139 Ibid.
The Case of Libya (2011)

Catalyzed by the Arab Spring in early 2011, Libyan citizens began demonstrating in mid-January, with protests quickly leading to violence due to the Muammar Qadhafi regime’s crackdowns, as well as defections by government and military officials who established an armed opposition group under the Interim Transitional National Council.140 In response to the rebel forces’ early successes in taking key cities, the government forces retook much of the country and threatened “to crush the rebellion’s eastern epicenter in Benghazi.”141 Addressing the international community in February, Qadhafi declared, “Officers have been deployed in all tribes and regions so that they can purify all decision from these cockroaches” and “any Libyan who takes arms against Libya will be executed.”142

The United Nations framed the issue as a humanitarian problem, as the UN’s High Commissioner for Human Rights called on the Libyan government to desist from using violence against demonstrators, which “may amount to crimes against humanity.”143 The Special Advisers and the Secretary General of the UN also echoed these sentiments, citing the Libyan government’s 2005 commitment to the Responsibility to Protect, but to no avail. On February 25, the UN Human Rights Council created a commission of inquiry to investigate human rights abuses in Libya and urged the General Assembly to suspend Libya from the Human Rights Council, which it did on March 1.144 Regional organizations also influenced the UN’s response to Libya “by establishing the conditions under which the Security Council could

140 Bellamy and Williams, “The new politics of protection?” 838.
141 Ibid.
142 Ibid.
143 Ibid., 839.
144 Ibid.
consider adopting enforcement measures.” The League of Arab States (LAS), which usually opposes regional interference, suspended Libya’s participation in the organization until the violence was stopped, while the African Union’s (AU) Peace and Security Council condemned “the indiscriminate and excessive use of force and lethal weapons against peaceful protestors, in violation of human rights and International Humanitarian Law,” in response to the ‘legitimate’ aspirations of the people of Libya for democracy, political reform, justice and socio-economic development.”

As fighting continued, Qadhafi claimed, “Millions defend me...We will march to cleanse Libya, inch by inch, house by house, home by home, alley by alley, person by person, until the country is cleansed of dirt and scum.” Specifically speaking to the defenders of Benghazi, he warned, “My dear sweet people…we will find you in your closets,” and promised them “no mercy.” After a week of consultations and deliberations, the UN Security Council adopted Resolution 1970, which condemned “the widespread and systematic attacks’ against civilians, which, it noted, ‘may amount to crimes against humanity’; welcomed the earlier criticisms of the Libyan government’s actions by the LAS, the AU and the Organization of the Islamic Conference (OIC); and underlined the Libyan government’s responsibility to protect its population.” Resolution 1970 called only for various non-military procedures, for it was believed that Russia, China, India and Brazil would not have accepted more coercive measures.

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146 Ibid.
148 Ibid.
149 Bellamy and Williams, “The new politics of protection?” 839.
150 Ibid., 840.
After the Libyan government refused to heed Resolution 1970, the Security Council, albeit with five abstentions, adopted enforcement measures as a result of the deteriorating situation in Libya, upon which diplomacy seemed to have had no effect. The new measures included the introduction of a draft resolution proposing a no-fly zone by the United Kingdom and France, and, most significantly, the framing of feasible international action by supportive regional organizations.\textsuperscript{151} The United States, though initially wary of employing force in Libya, was ultimately convinced to support the resolution due to the staunch backing of regional actors and the human rights-centric views of certain influential individuals within the Obama administration.\textsuperscript{152} Resolution 1973, which called for an international endorsement of the use of external military forces in Libya, was met with concerns from the states that had originally abstained in the vote to adopt Resolution 1970, grounded mostly in prudential and pragmatic issues. They worried that using foreign military forces might increase the violence and prolong the conflict, and were uncertain as to how measures would be enforced, what the rules of engagement would be, and what the final goal was.\textsuperscript{153} Despite their misgivings, Russia, China, Brazil, India, and Germany abstained in the vote, thereby allowing it to pass because “they believed that they could not legitimize inaction in the face of mass atrocity.”\textsuperscript{154} The calls for action by the LAS, the OIC, and the Gulf Cooperation Council (GCC), as well as from the Security Council’s three Africans members and sole Middle Eastern member, ultimately succeeded. The resolution “defined the situation in Libya as a threat to

\begin{footnotesize}
\textsuperscript{151} Bellamy and Williams, “The new politics of protection?” 840-841.
\textsuperscript{153} Bellamy and Williams, “The new politics of protection?” 843
\textsuperscript{154} Ibid., 844
\end{footnotesize}
international peace and security” and, among other provisions, authorized “all
necessary measures…to protect civilians and civilian populated areas under threat of
attack.” Not surprisingly, once Resolution 1973 was adopted, the UNSC members
all asserted their own interpretations of how it should be put into practice.

The most significant aspect of the Libya case is that from the outset of the
conflict, the international community framed the situation in Libya in human
protection terms with the Special Advisers, the High Commissioner for Human
Rights, and the Secretary General playing central roles. Resolution 1973 was adopted,
which authorized the use of force against the Libyan government’s wishes, and
regional organizations, contrary to their usual stance, supported international
action. The fact that the intervention in Libya seems to have been undertaken on
humanitarian grounds, as opposed to in pursuit of narrowly defined national interests,
highlights the need for states to consider philosophical, as well as pragmatic,
questions about universal human rights, the role of state sovereignty, and the tactics
employed in military operations so that they will be prepared to respond appropriately
to humanitarian crises. In the case of Libya, the challenges faced in authorizing and
carrying out the intervention point to the issues of just cause, right authority, and
calculations of harm, which have been previously raised. I will explain each of these
continuing concerns, drawing on examples from the intervention in Libya.

Just Cause

The motivations for staging interventions are generally disputed, in large part
because there is usually more than one reason for intervening in any given case. In

156 Ibid., 845.
Libya, it is clear that large-scale human rights abuses were being perpetrated, mostly at the hands of the government forces. Resolutions passed by the UNSC stressed the need to protect civilians from harm, ultimately authorizing a humanitarian intervention by NATO to use air forces to prevent further suffering. Leaders from countries typically opposed to military action by the United States, however, claimed that the West was using humanitarianism as a rationalization for its imperialist ambitions to control Libyan resources. President Robert Mugabe of Zimbabwe, for example, said “we looked forward to [Libya] transforming its own system in its own way, not in the way they [i.e. the West] desire, and now taking advantage of the fact that [the West] has been given that support, to place itself in a position in which tomorrow it would be master of the resources of Libya, especially oil.”

Leaders in Venezuela, Cuba, Nicaragua, and North Korea issued similar statements.

However, according to Alex Bellamy and Paul Williams, “although many internet blogs and newspaper editorials have accused western states of pursuing their material interests in Libya, especially in relation to oil, we have found little evidence to support such an interpretation.” Jeremy Kinsman also claimed that the intervention “was never about access to oil. Libya isn’t that important a producer and in any case sold all the oil it could.”

Though the claim that western states were motivated to have physical control of foreign oil may have been well grounded prior to the 20th century, with the demise of colonialism and the emergence of independent states that effectively controlled their territories, conditions changed and access to

158 Bellamy and Williams, “The new politics of protection?” 848.
resources through trade rather than military conquest became possible. Newly independent states generally have pursued development strategies and defense policies that require significant imports of machinery and technology, which has spurred them to sell goods as exports to pay for them. Oil-rich countries nationalized most of the holdings of western countries for this purpose without any adverse consequences for oil supplies. Therefore, since Western oil companies already had access to Libyan oil, there is no reason to believe, or evidence to suggest, that states were motivated to stage a military intervention to control those resources.

The perception of ulterior motives, however, is a significant challenge to forming a common front in the United Nations to respond to states that fail to protect the basic human rights of their citizens. The lack of specificity in UNSC resolutions compounds states’ suspicions that interventions are a pretext for pursuing national interests, for although the United Nations prohibits interventions from being directed at changing the sitting government, the line between protecting civilians and unseating a regime that is violating human rights is often blurry. As the Brazilian representative in the Security Council, for example, argued, “excessively broad interpretations of the protection of civilians…could…create the perception that it is being used as a smokescreen for intervention or regime change.”160 The South African representative similarly urged that “actions should not go beyond the ‘letter and spirit’ of Council resolutions or advance ‘political agendas that go beyond the protection of civilian mandates, including regime change. In our view, such actions

160 Bellamy and Williams, “The new politics of protection?” 848.
will undermine the gains made in this discourse and provide ammunition to those who have always been skeptical of the concept.”

In Libya, a precise strategy was difficult to create, for NATO was instructed to protect civilians from violence inflicted on them by government forces while refraining from targeting those same government forces. Despite the post-
Responsibility to Protect definition of sovereignty as states’ and international society’s responsibility to protect civilians from large-scale human rights abuses, the United Nations recognized that conventional sovereignty over domestic political affairs was valuable to maintain. As was previously mentioned, national self-determination must be preserved for citizens to address their own social problems and establish their own economic systems, as well as to construct their own political identities and safeguard their cultures. In the case of Libya, citizens living under Qadhafi’s rule were obviously unable to use their nation’s political sovereignty to enjoy these liberties, but neither would replacing the Libyan government with UN-selected individuals or occupying the country with foreign forces have created the systems necessary for citizens to eventually take advantage of their state sovereignty. Given the value of national self-determination, intervening external actors must take pains to stop human rights abuses without aiming to change the sitting regime, though such a balance may very well prove impossible when the regime itself is deliberately committing the human rights violations. On April 6, 2011, The New York Times reported, “No official, of course, is willing to talk about any covert mission to remove the colonel, except to say that ‘regime change’ is not authorized by the United Nations. And that is why Britain, Turkey and the United States are all exploring the

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161 Bellamy and Williams, “The new politics of protection?” 848.
possibilities of a negotiated solution to the conflict, provided Colonel Qaddafi and his sons relinquish power.”

At the tactical level, NATO was operating in obscurity, such as when it attacked the convoy in which Qadhafi was traveling prior to his assassination. NATO officials claimed they had not known that Qadhafi was in the convoy. As a USA Today article maintained, “The stated mission of the air campaign was to protect civilians from Gadhafi's regime. [The] aircraft did not directly target him.”

Thus, the challenge of meeting the criteria of legitimacy for humanitarian interventions is due not only to the existence of multiple reasons for staging an intervention, but also to the ambiguous conditions under which states intervene, which necessitate actions that seem to cut across multiple objectives. As is clear in the case of Libya, interventions that focus on protecting civilians may likely end up needing to consider strategies relating to the treatment of the regime itself.

**Right Authority**

The case of Libya also highlights the issue of “right authority.” Despite concerns after NATO’s unilateral intervention in Kosovo that powerful states would not pursue UN authorization before acting, NATO intervened in Libya with authorization from the Security Council (though with five abstentions). Without changes to the size of and representation within the Security Council, or to the permanent members’ veto power, the Security Council nevertheless voted to approve the humanitarian intervention in a timely manner. The reason for its swift action is the ambiguity of the resolutions adopted, for they were worded in such a way as to be

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163 Tom Vanden Brook, “NATO strategy in Libya may not work elsewhere,” *USA TODAY*, October 23, 2011.
favorably interpretable by each power. Given the difficulty mentioned previously in
developing a strategy that focuses on protecting civilians without engaging directly
with the sitting regime, resolutions require greater specification so that humanitarian
interventions will not be seen as pretexts for deposing leaders. However, specifying
the language of resolutions will likely prevent members of the Security Council from
agreeing to adopt resolutions, which will delay the process and in turn may
incentivize countries to circumvent the UNSC when they decide to intervene. In the
case of Libya, the Security Council also ultimately agreed to pass the resolution
because the regional organization involved were unified in their support of an
intervention. They were able to persuade the three African representatives to vote for
the resolution who, had they opposed the resolution, would have prevented it from
receiving the required majority of votes to pass.

The fact that the three regional organizations involved in the Libya case
possess such persuasive power is potentially harmful, for in other cases in which the
regional organizations do not agree amongst themselves as to the use of force, the
question is raised about which organization should be heeded most. For example,
“while the LAS and its representative on the Security Council, Lebanon, facilitated
interventions in Libya, it prevented the Council from even condemning violence
against civilians in Syria,”164 at least for a time. Even though all UNSC members,
including China and Russia, “were reportedly comfortable in principle with the idea
of issuing a Council press statement criticizing the Syrian regime for killing unarmed
protesters…the initiative was blocked by Lebanon.”165 Thus, while regional

164 Bellamy and Williams, “The new politics of protection?” 848.
165 Ibid.
organizations are capable of fostering a significant international response to protect civilians, they are also able to obstruct decisions when action is required.

The Libya case highlights the issue discussed previously concerning the Security Council’s ability and legitimacy to act as the “right authority” to determine the conditions under which humanitarian interventions should be undertaken. The institutional structure of the Security Council, which provides veto power to only five members, allowed Russia and China to initially demand strictly non-military procedures to address the situation in Libya by merely threatening to use their vetoes, thereby permitting them to pursue their national interests. If other states, for example those in the LAS or AU, also were members of the UNSC, or if the Security Council required a simple majority of members’ votes to pass a resolution, a more effective resolution may have been adopted sooner. Since the Security Council does not provide the opportunity for universal participation by all UN member states, interested parties not represented in the Council employed their membership in regional organizations to together pressure the UNSC to adopt a resolution they thought would effectively stop human rights abuses. In the case of Libya, the Security Council was able to exercise its “right authority” in that the intervening states recognized the need to secure legitimacy for the intervention through authorization by an institutional body that has at least some diverse representation. However, in cases such as Syria, in which regional organizations disagree and therefore prevent the UNSC from passing resolutions, states that desire coercive action may likely decide to circumvent the authority of the Security Council and act unilaterally. It seems, therefore, that the Security Council serves as the “right authority” until its powerful
members believe that it is not working effectively. Whether the Security Council needs to reform its organizational principles or members pushing for certain resolutions need to acquiesce to the wishes of other states remains a balance that is constantly up for debate. The lack of universal representation in the Security Council, as well as the unequal power among permanent and non-permanent members, calls into question the claim that the UNSC is a legitimate authority to make decisions on interventions, for it allows too much scope for powerful countries to disregard human rights. Nevertheless, as has been previously explained, states that would choose to intervene unilaterally without UNSC authorization would be acting wrongly since they would be setting a dangerous precedent that could easily be abused and would be undermining a commitment to uphold international law.

**Calculations of Harm**

Perhaps the largest concern that emerged from the intervention in Libya, though it exists with regards to any military operation, is the issue of the intervening force perpetrating harm against the civilians they are meant to protect. NATO’s operation in Libya has been criticized widely for causing civilian casualties, with some even wondering if NATO’s actions caused more civilian deaths than would have occurred without the intervention. Many accounts have surfaced of NATO’s imprecise bombings and claims that civilian homes constituted “legitimate military targets.”\(^{166}\) The unfortunate reality of collateral damage in Libya underscores the aforementioned issue of proportionality—that a state, or in this case the Security Council, must be reasonably certain that the military intervention will cause more


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overall good than harm to civilians. The seriousness of this concern should not be overlooked; rather, it should be considered as a limitation to interventions prior to committing to using military force to address a conflict. In the case of Libya, despite the recognition that civilians will inevitably be harmed, the question is raised as to whether NATO’s rules of engagement contributed to human rights abuses, such as in the case of Kosovo when NATO insisted on bombing only from high altitudes, whereby reducing the accuracy of their attacks. In Libya too, NATO decided to only use air forces to protect civilians, though its operations differed from those in Kosovo in that NATO used air forces to support the Libyan rebels that were active on the ground. NATO intended to coordinate with the rebel forces by only supplying them with air power, arms, and training so that the face of the uprising remained Libyan. However, despite NATO’s attempts to protect civilians by backing the rebels, leaders of the rebel forces constantly claimed that NATO was acting too slowly and was not effectively helping them fight against the government forces. In response, NATO commanders argued that the UN mandate under which they were operating was to protect civilians. “It did not say to gain the trust of either side in doing that,” claimed Rear Admiral Russ Harding, the deputy commander of NATO's Libya operation. "There is a tank with dozens of people around…the best thing at that stage is probably not to drop a bomb on the tank."167 Unlike NATO’s intervention in Kosovo, it seems that NATO’s rules of engagement in Libya were largely focused on preventing harm to civilians. Thus, although attempts are made to limit inevitable destruction, the great number of civilian casualties incurred through the use of force

must be seriously taken into account when states consider whether to support a
humanitarian intervention. As was previously argued, since military operations inflict
so much damage on the very civilians they aims to help, humanitarian interventions
are only justified in egregious cases of human rights violations so that the
intervention will almost undoubtedly cause more good than harm.
Conclusion

In the history of political philosophy, the international system has long been regarded as operating in a state of nature in which states’ resort to force is inevitable. In such a system, Hobbes, for example, takes for granted that war and violence are unavoidable aspects of human life. As long as we lack political authority in the state of nature, which gives rise to perpetual violence, we are, as Kant argues, living in a world in which justice cannot adequately be realized. Therefore, in analyzing issues of international political theory, we must conceive of particular problems in the context of a program that is aimed at bringing about a just world by displacing force with law to regulate international society. Each element in the scheme that I have developed functions to shift the system in a direction that moves away from using force and toward using legal means as a mechanism to resolve disputes.

The formulation of the problem, which focuses on ascertaining which conditions must exist for humanitarian interventions to be legitimate, is itself framed as an attempt to establish legal principles that could be used to determine how to adjudicate violent disputes. Stemming from this question, the entire project is a search for appropriate, objective standards to which authorities can defer when faced with cases of humanitarian crisis.

The development of a universal conception of human rights that is not based in a particular comprehensive doctrine is a necessary foundation upon which to establish criteria for legitimate humanitarian interventions. Since not all states will agree to a conception of human rights that emanates from a particular society’s values, a universal conception must be created that is acceptable to all states that seek
to be justly ordered so that a basic standard can be formulated and adopted as an international norm. For an intervention to be legitimate, all states must be able to reasonably agree to the reasons motivating it, in this case to protect what they all recognize as basic human rights, for if there is no consensus on the norms governing intervention, there would be no way to determine when an intervention is legitimate. Without a universally agreed upon standard, states could claim to intervene to respond to violations of their own conceptions of human rights, which in effect allows states to use military force whenever they see fit, returning the international system to the state of nature.

Similarly, state sovereignty is a significant principle to uphold in supporting legal measures to regulate states’ behavior in international society. The right to sovereignty carries a correlative duty that all states must respect one another’s political and territorial autonomy, which serves as a safeguard against powerful states invading weaker states as they will. The inclusion of states’ responsibility to protect their citizens in the definition of sovereignty also defends against abuse of power, for only under the condition that a state is abusing the basic human rights of its citizens may another state intervene. By having agreed to the standards of universal human rights, however broad, states are limited to staging humanitarian interventions only in cases that satisfy the agreed-upon stipulations.

Recognizing states as having a moral character also contributes to moving in a more lawful direction, for only by doing so can we deem them as subject to law without appealing to traditional conceptions of sovereignty. Since we cannot have genuine peace without justice, we must envision justice that begins with an account of
legitimacy rather than justice in its purity. This takes the form of Rawls’ political conception of justice, which emphasizes pragmatism as opposed to claiming to be the truest form of justice derived from a particular comprehensive doctrine. By establishing that states have a moral character, and therefore a moral responsibility to prevent harm to others, we are able to examine the limitations to that obligation due to competing moral claims. Because of the moral gray area in these cases, as well as the particularities of each situation, it is impossible to establish strict legal procedures that must be followed; however, it is possible to outline legitimate considerations to determine the cost a state is willing to bear to protect others.

The final aspect that was explored in this paper, right authority, is essential to replacing violence and the will of the strong with legal mechanisms in international society. Intervening without United Nations authorization effectively undermines the institutional progress that has been made thus far. Although the UN Security Council still has a long way to go to effectively prevent mass human rights abuses, it is important to work within the system to build upon and improve the legal principles already instituted to create better practices. Circumventing the legal bodies already in place, while perhaps preventing some human rights violations at the time, sets a dangerous precedent that any power state may act as it wills.

As we pursue a world in which justice replaces force among nations, we must envision the steps necessary to pragmatically actualize such a world, including heightening the role of moral principles, such as human rights, within international society. While we cannot stop all abuses or prevent them before they occur, states must attempt to move in that direction by collaborating with other states to orient
international responses to abusive governments toward the protection of civilians. Although we strive to employ nonviolent solutions to conflict, we must be willing, in particularly extreme situations, to use force to address the actions of states that violate the basic human rights of their citizens. That being said, the inevitable negative effects of military interventions, no matter how good the intentions, are enormous and are predominantly felt by the very people whom we aim to protect. Given this reality, we must work to limit the scope of the violence that accompanies military operations by instituting legal principles to which international society defers to determine the legitimacy and effectiveness of a humanitarian intervention.

If we did in fact have such universal legal standards that would justify intervention, the world would be structured in such a way that it would be unlikely for there to be any occasion to intervene. If peoples everywhere had the capacity to participate in a deliberative process to define a standard of human rights, they would necessarily be living in conditions in which their basic human rights were protected, meaning that their actual agreeing on universal standards would only be possible in a world in which those standards were largely observed, thereby obviating the need for intervention. Thus, this paper is a contribution to the emergence of a world in which the work itself eventually becomes obsolete. By articulating a way of thinking about legitimate intervention in our current circumstances, which are wrought with injustice and abuse, I aim to move us toward a more just world in which the question of intervening to protect human rights ultimately does not need to be considered.
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