Between Non-intervention and the Protection of Human Rights: a Moral Argument in Defense of Humanitarian Intervention

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Abstract

Although humanitarian intervention has been a recurrent issue in moral and political philosophy for a while now, much disagreement over its moral justifiability persists among scholars. The common denominator of previous views is their working on the assumption that solving the moral problem of humanitarian intervention comes down to making a choice between sovereignty and non-intervention on the one hand, and human rights on the other. The present thesis follows a different strategy: it proceeds from an understanding of the moral puzzle humanitarian intervention presents us with by exploring the philosophical underpinnings of sovereignty and human rights. Two distinct but continuous arguments are put forward. First, *the sovereignty-centered argument* establishes that humanitarian intervention is morally justified when human rights violations are purposive, systematic, extensive, and preventing or ending them represents an emergency, because it aims to restore a genuine form of sovereignty, consistent with its moral rationale. Also, because of the multiple risks it presents, the justifiability of humanitarian intervention is constrained by a series of requirements it needs to meet. Second, *the cosmopolitan argument* establishes that, because the global institutional scheme is unjust and individuals participate in it, they have a duty of humanitarian intervention, which, given its content, can only be discharged by collective agents. This view has far reaching implications that cross the boundaries of moral and political philosophy: it shows governments, political leaders, and lawyers that humanitarian intervention, provided it is conducted in accordance with a series of principles, does not threaten to undermine the global order, but aims to make it more just.

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Introduction

Between April and July 1994, an estimated of 800,000 Tutsis were murdered by the Hutu majority in Rwanda and between 250,000 and 500,000 women were raped. The international community did nothing to stop the massacre, and despite the presence of a United Nations peacekeeping mission in the region that could have intervened, the Security Council refused to acknowledge the event as genocide and instead ordered the partial withdrawal of troops (ICISS 2001, 97-98).[1] It is in relation to events such as the Rwandan genocide that the debate over humanitarian intervention arises. Unfortunately, this is only the highlight of a quite long list of atrocities that the world has witnessed in its recent history. Their high incidence forces us to take the problem of humanitarian intervention seriously and come up with a solution. Is humanitarian intervention ever justified and if so, when? The purpose of the present thesis is to provide a moral defense of humanitarian intervention.

Among moral and political philosophers, camps are fiercely divided: some argue that humanitarian intervention is never justified for the dangers it poses outweigh its potential benefits (*the argument from utilitarianism*); others claim that, unless authorized by legitimate bodies, it is impermissible because it represents a violation of international law, which the actors of the international community have a duty to obey (*the argument from the moral duty to obey the law*); some contend that, although non-intervention ought to be the norm, exceptional humanitarian emergencies can justify intervention (*the argument from the rights of states*); finally, there are those who claim that humanitarian intervention is permissible even as a response to human rights violations that do not reach the proportions of genocide (*broad interventionist arguments*). Although all these views provide meaningful insights into the

[1] ICISS stands for International Commission on Intervention and State Sovereignty

moral problem of humanitarian intervention, they are vulnerable to serious objections that ultimately render them unpersuasive. Their common denominator is working on the assumption that solving the moral problem of humanitarian intervention comes down to making a choice between sovereignty and the protection of human rights.

The view defended here follows a different strategy. It proceeds from an understanding of the moral puzzle humanitarian intervention presents us with by exploring the philosophical underpinnings of sovereignty and the corresponding norm of non-intervention on the one hand, and of human rights on the other. Two distinct but continuous arguments are put forward. First, *the sovereignty-centered argument* holds that humanitarian intervention is morally justified when human rights violations are purposive, systematic, extensive, and preventing/ ending them represents an emergency, because it aims to restore a genuine form of sovereignty, consistent with its moral rationale. Also, given the multiple risks it presents, the justifiability of humanitarian intervention is further constrained by a series of requirements. Second, *the cosmopolitan argument* establishes that because the global institutional scheme is unjust and individuals participate in it, they have a duty of humanitarian intervention towards victims of grave human rights violations, which given its content, can only be discharged collectively – by states, as agents of their citizens, groups of states, regional, or global organizations. The novelty this view brings to the debate is to show that responding to the moral challenge humanitarian intervention presents us with does not require giving up on either state sovereignty with its corresponding norm of non-intervention or human rights, but coming to a proper understanding of their philosophical underpinnings, which are ultimately compatible. Also, it shows that the question of the justifiability of humanitarian intervention cannot be answered in either/or terms, but needs a more refined discussion. The sovereignty-centered argument defended here imposes special constraints on the conduct of humanitarian intervention that derive from its purpose, that of restoring a

genuine form of sovereignty. These realizations have important implications that cross the boundaries of the philosophical debate: they show governments, political leaders, and lawyers that humanitarian intervention, provided it is conducted in accordance with a series of principles, does not threaten to undermine the international system, but aims to make it more just.

In what regards the methodology, this thesis represents an exercise in "institutional theory": it takes some facts of the world – such as the existence of an international system of sovereign states – as pre-theoretical and begins the argument from there. A very brief incursion in "non-institutional theory" is suggested at the very end.

The thesis is structured as follows: in Chapter One, I present and discuss the main concepts and theories that constitute the theoretical body of the thesis with the purpose to outline and explicate the puzzle of humanitarian intervention; I begin Chapter Two with an overview of the state of the art in the debate over the justifiability of humanitarian intervention and show that, although previous arguments provide us with meaningful insights into the problem, none is fully persuasive; I continue with the exposition of *the sovereignty-centered argument* and *the cosmopolitan argument*, and in the end, I discuss three additional problems that a justificatory account of humanitarian intervention needs to face; I conclude by briefly addressing the question of the legitimacy of the current international system as a suggestion for further inquiry.

Chapter One: The puzzle of humanitarian intervention

In this chapter I discuss the main concepts and theories that constitute the theoretical body of the present thesis. Its purpose is to outline and explicate the puzzle of humanitarian intervention, with an emphasis on its moral dimension, but without neglecting its legal and practical aspects.

1.1. Humanitarian intervention

There is no one single generally accepted definition of humanitarian intervention among scholars. Some take it to include a broader spectrum of sanctions that the international community can impose on states, varying from economic or diplomatic sanctions to military interventions (Téson 1997; Scheffer 1992 in Holzgrefe 2003), whereas others adopt a more restrictive view and define humanitarian intervention exclusively as military action (Holzgrefe 2003; Altman and Wellman 2008; Walzer 1992). Another dimension along which definitions of humanitarian intervention vary is that of the agent of intervention: some scholars take only states or groups of states (governments) to be the proper agents of intervention (Téson 1997; Holzgrefe 2003) whereas others prefer to speak in more general terms, using "agents" as an umbrella for states, groups of states, global or regional organizations (Buchanan 2010).

For the purposes of the present thesis, I follow two definitions. The first, proposed by J. L. Holzgrefe, regards humanitarian intervention as

> "the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of the individuals other than its own citizens, without the permission of the state within whose territory force is applied" (Holzgrefe 2003, 18).

This definition stresses three important aspects of humanitarian intervention that distinguishes it from other forms of international action. First, humanitarian intervention refers exclusively to forcible, military action; the definition thus leaves out non-forcible interventions, such as economic and diplomatic sanctions (Holzgrefe 2003,18) or more symbolic sanctions, for instance the interdiction to take part in international sports competitions. Second, the purpose of humanitarian intervention is that of preventing or putting an end to serious violations of the human rights of another state's citizens; the definition thus leaves out rescue missions in which the intervening state aims to protect its own citizens living on a foreign territory (Holzgrefe 2003,18). Third, humanitarian intervention presupposes the lack of consent on the part of the state on whose territory the intervention occurs; the definition thus leaves out cases of civil war and state breakdown when the government or the political elite asks for foreign help to reinstall the social and political order.

The second definition I rely on is proposed by Allen Buchanan. According to him, humanitarian intervention is the "infringement of a state's sovereignty by an external agent or agents for the sake of preventing human rights violations" (Buchanan 2010, 201). There are two elements of this definition that are important for the present thesis. First, by using the term "infringement", the definition points to an important distinction in ethics, that between violation and infringement.[2] Whereas the violation of a right is thought to be always unjust, some infringements are morally justifiable. Second, by using "agent or agents" instead of "states or group of states", Buchanan's definition is more inclusive with respect to who shall carry out the intervention.

Following these two definitions, I define humanitarian intervention as the infringement of a state's sovereignty through the use of force by an external agent – one state, a group of

[2] See Thomson 1990.

states, a regional or global organization - with the purpose of preventing or putting an end to grave violations of the human rights of the citizens' of the state whose sovereignty is infringed, without the consent of the said state. I rule out threats of use of force because they do not represent infringements of sovereignty properly speaking and therefore pose a different moral problem than actual use of force. I also rule out non-forcible types of intervention as I believe the true moral problem they present us with is other than the justifiability of infringements of sovereignty for the sake of humanitarian causes. Specifically, the problem is that economic or diplomatic sanctions, although are meant to persuade the government to give up on its unjust policies, are unfaithful to their cause as they impoverish the citizens who already suffer from the unjust state measures. The question that arises here is how the international community, through its different bodies, can legitimate such actions. As for rescue missions, I believe they pose less stringent and controversial moral dilemmas than humanitarian intervention defined in the strict sense, which is the reason why I rule them out as well.

A further distinction can be made between authorized or legal and unauthorized or illegal humanitarian intervention. The former is conducted with the authorization of the United Nations (henceforth UN) Security Council, whereas the latter occurs in the absence of such authorization. In the literature, this problem is referred to as "the question of authority" (ICISS 2001; Altman and Wellman 2008).[3] Out of the 19 cases of humanitarian intervention

[3] Under the UN Charter, the primary source of authority in matters that endanger international peace and security is the Security Council: article 39 grants the Security Council the authority to "determine the existence of any threat to the peace, breach of the peace, or act of aggression" and "make recommendations, or decide what measures shall be taken (…) to maintain or restore international peace and security"; article 41 grants the Council the authority to "decide what measures not involving the use of armed force are to be employed to give effect to its decisions" and to "call upon the Members of the United Nations to apply such measures"; finally, article 42 grants the Council the authority to "take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security", should it "consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate" (UN, 1945; ICISS, 2001). The Security Council has primary authority over issues concerning international peace and security, but not an exclusive one. Articles 10 and 11 of the Charter grant the General Assembly the authority to discuss and bring to the attention of the Security Council any problem within the jurisdiction of the Charter, including issues concerning the maintenance or restoration of international peace and security (UN, 1945; ICISS, 2001). In addition to the Charter, the resolution 337 A (V) – "Uniting for Peace" - adopted by the General Assembly in 1950 grants the Assembly the

documented by the ICISS Report between 1945 and 2000, only five of them were conducted with the authorization of the Security Council.[4] This is not a negligible fact and one of the tasks of a successful moral defense of humanitarian intervention is to explain how such practice can be morally justifiable in spite of the continuous refusal of a legitimate international body with the authority to make binding decisions in matters of international peace and security to authorize it.

The question of authority points to an important problem - the morality of illegal international action - an example of which unauthorized humanitarian intervention is. There are two positions one can take towards this issue. First, one could say that without proper authorization intervention is always unjust. This claim rests on the assumption that states, once they have recognized the authority of a body to make binding decisions in matters of international peace and security, ought morally to obey these decisions irrespective of their content. This may be true for states that are members of the United Nations, but this view does not tell us anything about states that are not. In this view, interventions conducted by states that are not UN members fall in a blurry moral area. Moreover, the Security Council, despite its legitimacy, remains largely a political body where the national interests of its members play a significant role. In the absence of a clear legal and institutional framework for humanitarian intervention, the likelihood that the decisions of the Council reflect political preferences cannot be ignored. I therefore believe that, although the Security Council is a legitimate body, the existence of its authorization cannot entirely settle the question of the moral justifiability of humanitarian intervention. The second position claims that there is no

authority to make decisions in matters of international peace and security whenever the Council, due to lack of unanimity on the part of its permanent members, fails to fulfill its responsibilities (UN General Assembly Resolution 337 A (V), 1950; ICISS, 2001).

[4] The 19 interventions were: Belgium in Congo (1960); Belgium and the US in Stanleyville (1964); the US in the Dominican Republic (1965); India in East Pakistan (1971); France and Belgium in Shaba Province (1978); Vietnam in Cambodia (1978); Tanzania in Uganda (1979); France in Central Africa (1979); the US in Grenada (1983); the US in Panama (1989); Liberia (1990-1997); Northern Iraq (1991-); The Former Yugoslavia (1992-)*; Somalia (1992-1993) *; Rwanda and Eastern Zaire (1994-1996) *; Haiti (1994-1997) *; Sierra Leone (1997-); Kosovo (1999-); and East Timor (1999-)*. The ones marked with "*" were authorized by the Security Council under Chapter VII of the UN Charter (ICISS 2001, 49-126).

moral difference between authorized and unauthorized humanitarian intervention, all the other things being equal. According to this view, the moral justifiability of humanitarian intervention does not depend on proper authorization, but on other standards that need to be specified. Authorization may be desirable, but it is definitely not necessary. Given the current configuration of the Security Council and its decision-making mechanisms, I tend to agree with this position. However, I believe a more in depth discussion is required, for there are dangers associated with this view as well. The claim that mutually agreed international norms have no binding force when higher moral considerations are in place is a tricky one, for it may render obedience to legal norms a matter of choice. And this is contrary to the essence and purpose of legal norms. I shall come back to this aspect in the next chapter when I shall discuss one powerful challenge to humanitarian intervention, the challenge from the moral duty to obey the law.

1.2. State sovereignty, non-intervention

One of the core concepts that the present thesis relies on is that of sovereignty. In the broadest sense, it can be defined as the exclusive authority of the state to make and enforce laws on its territory. This definition draws on the Westphalian formulation of the principle in the 17th century. Since then the principle has come a long way, but much of its original content has been preserved in contemporary international law. Needless to say, much disagreement remains over what the concept means and what it entails.

Stephen Krasner distinguishes between two dimensions of sovereignty: authority, which "involves a mutually recognized right for an actor to engage in specific kinds of activities"; and control, which "can be achieved simply through the use of brute force with no mutual recognition of authority at all" (Krasner 1999, 10). Along these two lines, Krasner

identifies four different usages of the concept of sovereignty: 1) "domestic sovereignty", referring to "the organization of public authority within a state and to the level of effective control exercised by those holding authority"; 2) "interdependence sovereignty", referring to "the ability of public authorities to control transborder movements"; 3) "international legal sovereignty", referring to "the mutual recognition of states or other entities"; and 4) "Westphalian sovereignty", referring to "the exclusion of external actors from domestic authority configurations" (Krasner 1999, 9). The first usage of sovereignty refers to both authority and control, the second refers only to control, whereas the third and the fourth usages refer exclusively to authority (Krasner 1999, 10).

This kind of analytic dissection is important for it helps us understand what is at stake when the problem of humanitarian intervention arises. The first usage of the concept, "domestic sovereignty" refers to the relationship between the state and its citizens. The cases that are typically presumed to call for humanitarian intervention represent abuses of sovereignty in this sense. The second usage of the concept, "interdependence sovereignty" points to an important aspect of the modern state, namely territoriality and it is expressed in the state's control over the movement of persons, goods, and capital across its territory. The third usage, "international legal sovereignty" has primacy over the other three usages for the simple reason that a state needs to be internationally recognized as sovereign in order have a legitimate claim to domestic, interdependence, and Westphalian sovereignty. Finally, "Westphalian sovereignty" refers to the relationship between a given sovereign state and other actors of the international society and establishes a negative right against foreign interference in domestic affairs. Humanitarian intervention represents an infringement of sovereignty in this sense.

John Simmons proposes a different view, one that conceives of sovereignty as a body of rights that legitimate states have a claim to. These can be divided into three categories,

"rights over subjects" – "a set of rights held over or against those persons who fall within the state's claimed legal jurisdiction", "rights against aliens" – "rights claimed against those persons without the state's jurisdiction", and "rights over territory" – "rights held over a particular geographical territory (whose extent largely determines the scope of the state's jurisdiction)" (Simmons 2001, 300). Table 1 below provides an overview of the main rights that reasonably just states claim to possess. Among these, the most important rights for the purposes of the present thesis are the ones in the second category, first and foremost the right to non-interference. This right is formalized in international law through the principle on non-intervention stated in the article 2.4 of the UN Charter: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations" (UN, 1945). It is important to note that the principle of non-intervention is a norm of *jus cogens* – the highest level norms in international law.

Table 1: The rights of sovereign states

Rights over subjects	**Rights against aliens**	**Rights over territory**
the exclusive right to make and enforce law within the state's jurisdiction	to non-interference, self-determination	"to exercise jurisdiction over those within the territory"
to be obeyed by the state's subjects	"to do 'business' in the world", including to wage war	"to reasonably full control over land and resources within the territory that are not privately owned"
"to threaten all subjects with the legal use of coercion and use such coercion against non-compliers"		"to tax and regulate uses of that which is privately owned within the state's claimed territory"
		"to control or prohibit movement across the borders of the territory"
		"to limit or prohibit 'dismemberment' of the state's territories"

Source: Simmons 2001, 305-6

The three categories of rights are not independent of each other. Rights in the first category have correlative obligations: some held by persons within the jurisdiction of the state and others held by non-subjects (alien persons, groups, or states). Rights held by different states in the first two categories might conflict: for instance, one state might claim the right to enforce human rights against another state, case in which the former's second category rights conflict with the latter's first category rights (Simmons 2001, 305-306). In such case, there is also a conflict between the same state's "rights against aliens", and the obligation to respect another state's "rights over subjects". "Rights over territory" connect with the other two categories of rights by drawing a line between what is within the state's jurisdiction and what is without it. Although there is no perfect overlap between territory and jurisdiction, the former represents a pretty good approximation of the geographical area in which the latter is rightfully exercised.

One point that needs further discussion is what it means for a state to be legitimate and when it can be recognized as such. These issues are captured by the concept of "recognitional legitimacy". According to Allen Buchanan, this notion "plays a central role in international legal institutions", for "it is employed when a judgment is made that an entity satisfies the criteria for being treated as a member in good standing of the state system" (Buchanan 1999, 46). The concept of recognitional legitimacy is defined by its function, content, and criteria of application. Its function is "to make or deny judgments about the status of entities in the international legal system", whereas its content is represented by the body of rights that independent statehood gives a claim to, the most important of which were presented above (48-49). In what regards its criteria of application, there are four traditional ones, stated in the Montevideo Convention (1933), to which the modern legal practice adds a fifth. Accordingly,

> "an entity is entitled to recognition as a state if and only if it possesses (1) a permanent population, (2) a defined territory, (3) a functional government able to control the territory in question, (4) the capacity to enter into relations with other states on its own

> account", and if "(5) in coming into being, an entity that claims to be a state [did not breach] a (basic) rule of international law" (Buchanan 1999, 49-50).

The first four criteria do not have any normative content, whereas the fifth one represent a more substantive standard and points to what Buchanan calls "the nonusurpation condition" – "where institutional resources are available for constitutional change, an entity that comes into being by displacing or destroying a legitimate state by nonconstitutional means is itself illegitimate" (Buchanan 1999, 49-50).

Buchanan argues for a "justice-based account of recognitional legitimacy", one that adds to the five criteria noted above "the nonusurpation condition" and "the minimal internal and external justice condition". The requirements of minimal internal and external justice are intelligible in terms of basic human rights: an entity that wishes to have a legitimate claim to independent statehood must protect basic human rights within its borders, and refrain from their violation beyond them (Buchanan 1999, 52). Minimal internal justice requires two things: "internal legitimacy" and "minimal democracy". Internal legitimacy refers to the relationship between the state and its citizens, where the former is said to possess it "if and only if it is morally justified in attempting to exercise a monopoly in the enforcement of general rules within the territory it claims to be its jurisdiction" (Buchanan 1999, 56). In order to distinguish it from the more demanding notion of "legitimacy as the right to be obeyed", Buchanan calls internal legitimacy "justifiable enforcement legitimacy" (JEL). The reason for preferring this weaker notion is that, although states may lack a moral right to be obeyed by their citizens (as some scholars persuasively argue[5]), citizens may still have powerful reasons to comply with the authority of the state provided it meets the minimal requirements of justice. Although there is much disagreement over what JEL requires, most liberal political theories contend that a state has JEL if and only if it protects the basic human rights of those

[5] See Simmons 1979.

living within its borders (Buchanan 1999, 56-58). The second requirement of minimal internal justice, "minimal democracy" consists of (1) representative, majoritarian law making institutions, (2) accountability of the highest government officials to these representative bodies, and (3) "a modicum of institutionally secured freedom of speech and association required for reasonable deliberation about democratic decisions" (Buchanan 1999, 59-60). The requirement of external justice does not represent a novelty, in the sense that international law already contains provisions against aggressive war. However, what is novel in Buchanan's proposal is the inclusion of the prohibition against aggressive war as an external justice condition in the criteria for recognitional legitimacy (Buchanan 1999, 60).

We are thus presented with an account of recognitional legitimacy that comprises both descriptive criteria – territory, population, effective control, institutional capacity to form and maintain external relations, and normative ones – "the nonusurpation condition", and "the minimal internal and external justice condition". In this account, an entity that meets only the descriptive requirements does not have a legitimate claim to independent statehood and therefore does not have a claim to sovereignty. This is a very attractive position that could provide an immediate solution to the problem addressed by the present thesis: a state that systematically violates the basic human rights of its citizens does not have a legitimate claim to sovereignty, which makes military intervention on that state's territory permissible because no right would be thus infringed. However, I would like to provide two reasons for rejecting this view.

The first reason is that the problem of humanitarian intervention arises in the context of an already established system of sovereign states some of which engage in gross violations of human rights. These states are simultaneously sovereign (at least from a legal standpoint) and internally illegitimate. The question is what justice requires from the international community in such situations: to respect those states' sovereignty and their right to non-

intervention and do nothing except trying by diplomatic means to persuade them to become legitimate, or to infringe their sovereignty and impose sanctions on them, culminating with military intervention in the most serious cases, thus forcing them to become legitimate. Saying that those states do not have a legitimate claim to sovereignty and therefore are not protected by a right to non-intervention is the easy way out, a means to dissolve the problem rather than of attacking it. And if law is to have any relevance for morality, as I believe to be the case, then a moral argument that eludes the legal reality is not one worth considering.

The second reason for rejecting this view has to do with the broader consequences of adopting it. Sovereignty and its corresponding right to non-intervention are meant to protect states not only from interventions with humanitarian purposes, but also from other forms of international action, such as wars of aggression. On the justice-based account of recognitional legitimacy, a state that engages in gross violations of its citizens' human rights, by not having a claim to sovereignty, is not only liable to humanitarian intervention, but to war of aggression as well. Of course, one may hold that a war of aggression is impermissible on utilitarian grounds, given the massive losses of human lives and destructions that it is expected to produce. But we can imagine a unilateral peaceful annexation of the state's territory by a liberal constitutional democracy that would not result in casualties or destruction of infrastructures; on the contrary, it would bring more welfare. One of the consequences of endorsing the justice-based account of recognitional legitimacy is to hold such annexation permissible (and if we ignore the rejection of aggressive war on utilitarian grounds, even aggressive war). The point is that in this account, illegitimate states would be liable not only to humanitarian intervention, but to other practices that sovereignty generally shields states from, practices that we consider impermissible under any circumstances. In order to sort out this dilemma, we need to say something about what makes humanitarian intervention different

from other forms of international action such as aggressive war or peaceful annexation, which turns on our moral reasons for holding sovereignty valuable.

By incorporating both the conditions of internal and external justice into his "justice-based account of recognitional legitimacy", Buchanan blurs the distinction between *internal* and *external* legitimacy, which I believe to be partly responsible for the ultimately unappealing character of his proposal. According to Michael Walzer (1992, 1980), internal legitimacy refers to the relationship between the state and its citizens, whereas external legitimacy points to the moral and legal standing of the state within the international society. Critics of his argument presented in *Just and Unjust Wars*[6] claim that a state that violates the basic rights of its citizens "has no claim with its own people (no moral claim upon their allegiance)", and therefore "no standing in the international society either". This means that such state does not have a legitimate claim to the rights entailed by sovereignty, which makes it "subject to attack by anyone capable of attacking it and altering (for the better) the conditions of its rule" (Walzer 1980, 211). Walzer believes such argument to be mistaken both from the standpoint of law and morality, for "the international standing of governments derives only indirectly from their standing with their own citizens" (Walzer 1980, 212). For Walzer, the two kinds of legitimacy are asymmetrical in the sense that a state that is internally illegitimate is not automatically externally illegitimate as well. The internal legitimacy of the state depends upon the "fit" between government and community, more specifically "the degree to which the government actually represents the political life of its people". If there is no such representation, people have a right to rebel, but they are also free not to rebel if competing overriding considerations are in place (Walzer 1980, 214). The conditions for external legitimacy are different, for the "audiences" are different. External actors have to act on the presumption that a state is legitimate, "unless the absence of 'fit' between the

[6] "The Moral Standing of States" (1980) was written as a response to Richard Wasserstrom, Gerald Doppelt, Charles R. Beitz, and David Luban.

government and community is radically apparent" (Walzer 1980, 214-15). This attitude reflects "our recognition of diversity and our respect for communal integrity and for different patterns of cultural and political development" (Walzer 1980, 215-16). This asymmetry between internal and external legitimacy has two important implications: first, humanitarian intervention is not justified (if ever justified) whenever citizens have a right to rebel against their state, and second, a state may very well be internally illegitimate and still possess external legitimacy, that is, the international society has to act on the presumption of its legitimacy. Altman and Wellman argue for the opposite view, namely that internal and external legitimacy are symmetrical and therefore "the same threshold that determines when a state has the right to rule insiders also determines when a state has a right against interference by outsiders" (Altman and Wellman 2008, 232). This view rests on the assumption that the sole purpose of the state is to protect the rights of its citizens and that its external legitimacy is entirely parasitic on it doing that. There may be a kernel of truth in this view, but then we need to accept that an internally illegitimate state represents a legitimate target not only for humanitarian intervention, but for unilateral peaceful annexation too. As I am not ready to accept this, I shall now try to spell out what is it about sovereignty that makes aggressive war or peaceful annexation impermissible even when states systematically violate the most basic human rights of their citizens.

The idea is that sovereignty and non-intervention are not solely legal concepts, but that there are (solid) independent moral reasons underlying them. John Rawls, in *The Law of Peoples* lists sovereignty and non-intervention among the principles of justice that free and democratic peoples would agree upon in the second original position: "1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples"; and "4. Peoples are to observe a duty of non-intervention" (Rawls 1999, 37). Walzer, one of the champion defenders of the non-interventionist doctrine sees the rights of states ("political

communities") – "territorial integrity and political sovereignty" - as both analogous to and derivative from the rights of individuals within the state (Walzer 1992, 53, 58). As Walzer puts it, "the two belong to states but they derive ultimately from the rights of individuals, and from them they take their force". The mechanism of derivation is a "consent of a special sort", distinct from what theorists of the consent-based account of the origin of state and political obligation talk about. Rather, "'contract' is a metaphor for a process of association and mutuality, the ongoing character of which the state claims to protect against external encroachment" (Walzer 1992, 54). Two points emerge from this: first, the primary role of states is to protect the rights of individuals within the state and sovereignty is instrumental to that end; and second, the state (political community) is not merely a collection of individuals, but the result of an ongoing "process of association and mutuality", which individuals come to identify with and value in itself (Beitz 2009, 338). Sovereignty is instrumental to protecting the intrinsic value individuals assign to their political community too.[7]

A similar view stems from the liberal tradition. For liberals, sovereignty and the right to non-intervention reflect and protect individual liberty and dignity. They allow individuals to work out their political, economic, social and cultural life together on their own, without foreign interference. In order for democracy and freedom to be meaningful for the members of a political society, they need to be the outcome of their own actions and deliberation (Doyle, 2009: 352). The fifth preliminary article of Immanuel Kant's philosophical project for international peace exposed in *Perpetual Peace* (1795) states that "No State Shall by Force Interfere with the Constitution or Government of Another State". In his view, "internal dissention" does not provide a good enough reason for foreign intervention, unless it reaches the "critical point" at which the state falls into two separate entities, each claiming

[7] This intrinsic value of the political community has nothing to do with the kind value nationalist and fanatic communitarians assign to it. This value is subjective in the sense that it is as such for the individuals living in the community. The foreigners' respect of that value derives from the respect owed to the individuals living in the community.

independence from the other. Otherwise, "interference by foreign powers would infringe on the rights of an independent people struggling with its internal disease; hence it would itself be an offense and would render the autonomy of all states insecure" (Kant 1975). On the same note, Mill considers that foreign intervention in domestic affairs would undermine the authenticity of the political, economic, social, and cultural life of the political community and would deny its members the right and capacity to set up the institutions to govern their life together. Besides lacking authenticity, freedom achieved through the interference of another agent would not last, for people would not value it the same way they would value freedom achieved through their own struggle, and they would miss the political capacities to maintain it (Mill 1859 in Doyle 2009, 352-53). In short, according to the liberal tradition, the moral underpinnings of sovereignty and non-intervention are reducible to ideas of human dignity, autonomy, and self-government; they express the idea that the value of a political society stems only in part from the substantive values it embodies - such as democratic principles and various freedoms – the rest deriving from it mirroring the beliefs and desires of its members, which represents the standard of its authenticity and the guarantee of its persistence; finally sovereignty and non-intervention represent an expression of trust in the equal capacity of human beings worldwide to set up the most appropriate institutions meant to govern their political societies.

The common denominator of these two views is that the moral rationale underlying sovereignty is individualistic in nature. Following Beitz, we can distinguish between three dimensions of this rationale. The first is "strategic": sovereignty is instrumental for the attainment of values such as individual liberty, dignity, and self-government; moreover, sovereign states represent the best institutional arrangements for the protection and promotion of these values.[8] The second dimension is "developmental": it is only through their own

[8] See Goodin 1988.

workings and deliberation that people can develop the capacities required in order to create and sustain effective social, political, economic, and cultural institutions; moreover, this process ensures the institutions' authenticity and persistence. The third dimension is "constitutive": sovereignty protects the distinctive character of the political community, the outcome of an ongoing "process of association and mutuality", which is constitutive of its members' identities, and which they come to value in itself (Beitz 2009, 338). This shows us that there is more about sovereignty than the protection of the rights of the individuals living within the states. It is the second and third dimensions of sovereignty that shields political communities from aggressive war or peaceful annexation when governments pursue policies that grossly and systematically violate the rights of their subjects. What makes humanitarian intervention permissible, unlike aggressive war or peaceful annexation, is that, while infringing on the right to non-intervention, the former aims to give the political community back to its members, whereas the latter aims to take it away from them. To put it in a less metaphorical way, humanitarian intervention is consistent with and shows respect to the moral rationale underlying sovereignty, whereas aggressive war or peaceful annexation do not.

1.3. Human rights

It is not an exaggeration to claim that at least in the last four decades, the discourse of political morality has been framed mostly in terms of basic human rights. At least from the standpoint of liberal political theory, the protection of basic human rights within (and according to some without) a state's border represents the minimum standard for internal legitimacy. Despite this relatively recent triumph of human rights, standard histories trace back their origins to Greek philosophy and early Christianity, go through the age of Enlightenment and its proclaimed "rights of men", and culminate with the end of the Second

World War, which is said to constitute the decisive moment in the shaping of the contemporary human rights doctrine. The horror of the Holocaust has allegedly awakened an international moral and political consciousness of our shared inviolable humanity that needed a framework for protection and promotion. Samuel Moyn is critical of this view and proposes instead a different approach, "an alternative history of human rights, with a much more recent timeline". Rather than being an idea that haunted the history of men from its dawn, "the ideological ascendancy of human rights" is partly the outcome of historical accident, but most importantly of "the collapse o prior universalistic schemes and the construction of human rights as a persuasive alternative to them". As such, human rights represent the last utopia of humankind, one that came out of the collapse of other state-based or internationalist "belief systems that promised a free way of life, but led into bloody morass, or offered emancipation from empire and capital, but suddenly came to seem like dark tragedies rather than bright hopes" (Moyn 2010, 6-8). As intellectually challenging as this debate between different histories of human rights is, it is outside the scope of the present thesis. However, I believe the idea of human rights as the last utopia to be very important for at least one reason: if the doctrine of human rights is indeed a utopia mankind has created, then we ought to pay attention to its potential dangers and false promises, for all other utopias in history ended in bloodshed and misery. In what follows, I shall discuss different philosophical conceptions of human rights.[9]

According to Mathias Risse, a fully-fledged conception of human rights consists of four elements:

> "first, an actual list of rights classified as human rights; second, an account of the basis on which individuals have them (an account of what features turn individuals into right holders); third, an account of why that list has that particular composition, that is, a

[9] The legal dimension of human rights is left out due to the space constraints this thesis is subject to. For a comprehensive and up to date overview of the international human rights regime, see Nickel 2010 in *The Stanford Encyclopedia of Philosophy*.

> principle or a process that generates that list; and fourth, an account of who has to do what to realize these rights" (Risse 2008, 5).

There are many possible classifications of conceptions of human rights, but here I will follow a very simple one that broadly distinguishes between traditional and practical or political conceptions. In the first category I will discuss what Beitz calls "naturalistic" conceptions of human rights, whereas in the second the practical/political conceptions proposed by authors such as John Rawls, Joseph Raz, and Charles Beitz.

Traditional conceptions take human rights to be those rights that human beings possess simply by virtue of their humanity (Beitz 2009, 49). Simmons, one proponent of the naturalist conception, regards human rights as "those rights that can be possessed by persons in 'a state of nature' (i.e., independent of any legal or political institution, recognition, or enforcement) (…), that are innate and that cannot be lost (i.e., that cannot be given away, forfeited, or taken away)". As such, human rights are universal, independent from institutional recognition, natural, inalienable, non-forfeitable, and imprescriptible (Simmons 2001, 185 in Beitz 2009, 49). James Griffin, another proponent of this conception, sees human rights as being moral rights that are required in order to protect what he believes to be the core of our humanity, namely our "normative agency" (Griffin 2008, 32; Barry and Southwood 2011, 3-4). His understanding of normative agency (or personhood) is roughly the same with Rawls': the capacity to form, pursue, and revise one's own conception of a good life (Griffin 2008, 32; Rawls 1993). The sustenance of normative agency requires three things: autonomy, liberty, and welfare. Being autonomous means being left to develop one's own conception of a worthwhile life without external pressure or control; liberty – understood as the absence of constraints imposed by others – is what gives one the necessary space in order to act upon one's personal conception of a worthwhile life; finally, some minimal welfare – education, health care, resources - is required in order for one's exercise of autonomy to be meaningful.

Griffin further distinguishes between universal human rights and those that arise within particular social settings. As such, the human rights of any particular society will be the outcome of the universal core grounded in the value of personhood interpreted in light of that society's specificities (Griffin 2008 in Barry and Southwood 2011, 4-5). As Christian Barry and Nicholas Southwood note, one important merit of Griffin's conception is that he succeeds in answering the question about the distinctiveness of human rights. Moreover, it "yields plausible substantive results across a wide range of cases" by providing a valid test for establishing which of the rights thought of being human rights are genuinely so (Barry and Southwood 2011, 5-6). However, they believe this conception to be vulnerable to two major objections: first, by taking what the protection of normative agency requires as the proper standard for something to be a human right, Griffin's conception fails to account for some of the most intuitively plausible human rights, such as the right against racial discrimination[10]; and second, "it fails to account for (…) the political aspect of human rights" in the sense that it does not include any sort of "organized political authority" (e.g. the state) that can be held under a duty to protect and promote human rights (Barry and Southwood 2011, 6-8). This latter objection connects with Raz's main critique of traditional conceptions, namely that "they fail either to illuminate or to criticize the existing human right practice" (Raz 2010, 323-24).

Before moving on to practical/political conceptions, I would like to discuss an original conception proposed by Mathias Risse. His account starts from the "egalitarian ownership" view, which holds that humankind is the collective owner of the earth, meaning that all human beings, irrespective of the time or place of their birth," must have some symmetrical claim to it" (Risse 2008, 16). Out of different possible understandings of this view, the one Risse prefers is that of "common ownership", which means the "right to use something that does not

[10] The argument Barry and Southwood make is that it is not clear in which sense racial discrimination can harm normative agency in such a way as to deny it. One important point here is that Griffin conceives of human rights as what is needed to protect minimally functional normative agency (Barry and Southwood 2011, 6-7).

come with the right to exclude other co-owners from also using it" (Risse 2008, 19). This translates into all co-owners having a claim to "an equal opportunity to satisfy their needs to the extent that this turns on obtaining collectively owned resources" (Risse 2008, 20). In a minimalist view, this means that equal ownership rights shall contain liberty rights supplemented by "a 'protective perimeter' of claim rights". As such, in addition to the liberty right that prevents co-owners from being under "duty to refrain from using any of the resources of the earth", common ownership also guarantees "some minimal access to resources", meaning that it imposes "duties to refrain from interference with certain forms of use of resources" (Risse 2008, 21). This scheme is sufficient to ensure co-ownership rights in a pre-institutional state of nature; however, in complex political and economic system, one additional element is required: co-owners need to "have an immunity from living under political and economic arrangements that interfere with the ability of those subject to them having such opportunities" (Risse 2008, 22-23). The global political and economic order whose main actors are sovereign states, regional and international organizations, and transnational corporations is inconsistent with the original common-ownership rights in two ways: "first, each state imposes a complex system of political and economic relationships that determines which, if any, original resources individuals have access to"; and "second, a system of states imposes a system of ownership where groups claim collective ownership for certain regions". As such, not only some individuals from areas poor in resources are excluded from exercising their common ownership rights, but also individuals who find themselves living under oppressive political regimes are granted very limited exit possibilities. Given that the global political and economic nature threatens the exercise of co-ownership rights, guarantees must be provided that "take the form of moral demands against the global order, and thus of associational (membership) rights within it" (Risse 2008, 23-25).

The question that arises here is to what extent Risse's conception is naturalist and if not, what makes it different. I believe it is a naturalist conception in the sense that in derives human rights from common ownership rights, which are natural rights that all humans possess *qua* humans. However, in Risse's view, human rights are not natural rights, but rather guarantees given to individuals against the global economic and political order in which they live that threatens their exercise of common ownership rights. As such, human rights belong to individuals *qua* members of the global economic and political order. What follows is that although all human beings on the earth's surface living nowadays (and probably those who lived during the past four centuries and those who will be born in the future unless the global order changes fundamentally) possess human rights, this is not true for all human beings from all times. It means that human rights, far from being a universal moral value, represent a relatively modern mechanism of dealing with an institutional setting – the global order – that prevents human beings from exercising their natural right to the common ownership of the earth. This conception brings us closer to the practical/political conceptions, according to which the function human rights perform in the global society is constitutive of their philosophical identity.

Practical/political conceptions take the actual role of human rights in the international society to be philosophically relevant. Scholars that endorse this view criticize traditional conceptions for their blindness this aspect, which represents the proper starting point for a philosophical conception (Rawls 1999; Raz 2010; Beitz 2009). According to Raz, a theory of human rights has two tasks: first, "to establish the essential features which contemporary human rights practice attributes to the rights it acknowledges to be human rights"; and second, "to identify the moral standards which qualify anything to be so acknowledges" (Raz 2010, 327). Traditional conceptions limit themselves to the second task, which renders them unhelpful in making sense of the contemporary human rights doctrine. In his very short

passage on human rights from *The Law of Peoples*, Rawls is the first to describe what is called a practical/political conception. According to him, human rights play three important roles in "a reasonable Law of Peoples":

> "1. their fulfillment is a necessary condition of the decency of a society's political institutions and of its legal order; 2. their fulfillment is sufficient to exclude justified and forceful intervention by other peoples (…); 3. they set a limit to the pluralism among peoples". These roles mark the distinctiveness of human rights as compared to "constitutional rights" or "rights of democratic citizenship" (Rawls 1999, 79-80).

Following Rawls, Raz takes as the starting point of his conception the contemporary human rights practice. This provides the solution to the first task a conception of human rights faces: "the dominant trend in human rights practice is to take the fact that a right is a human right as a defeasibly sufficient ground for taking action against the violator in the international arena". From here the solution to the second task follows: "human rights are those regarding which sovereignty-limiting measures are morally justified" (Raz 2010, 328-29). Beitz's conception is roughly the same: for him the practical role of human rights is the establishment "of a set of norms or the regulation of the behavior of states together with a set of modes or strategies of action for which violations of the norms may count as reasons" (Beitz 2009, 8). Etinson notices that regarded this way, human rights establish "a normative division of labor between states as the bearers of primary responsibilities to respect and protect these urgent interests, on the one hand, and the international community (and those acting as its agents) as the guarantors of these responsibilities, on the other". Consequently, in order for something to qualify as a human right, it must: 1) protect "a sufficiently urgent or important individual interest"; 2) domestic institutions are likely to behave in a way that endangers that interest in the absence of a right to protect it; and 3) the international community disposes of permissible modes of action whose effective carrying out would lessen the likelihood of that interest to be endangered (Etinson 2010, 444).

Practical/political conceptions fare better than traditional ones in terms of accounting for some widely acknowledged human rights, and, most importantly, by identifying states as the primary duty-bearers, they manage to clarify the political aspect of human rights. However, there are important objections that can be raised against them. Barry and Southwood note two: first, by relying too much on the actual practice, they render human rights dependent upon the empirical facts of the setting in which the practice takes place; second, and most problematically, they blur the distinction between human rights as such and their institutionalized form (Barry and Southwood 2011, 13-16).[11] A third objection connected to these two can be made from the standpoint of a very common critique of the doctrine of human rights in general, which holds that the doctrine is highly parochial and ethnocentric and that it represents yet another attempt of the Western civilization to instill a form of cultural imperialism worldwide. As the practical/political conception grounds the distinctiveness of human rights in the international practice, I believe it is the most vulnerable to this charge. The practice of human rights has been largely shaped and developed by Western culture, law, and politics and the contemporary doctrine comes closer and closer to a global application of the principles of liberal constitutionalism, an eminently Western legal and political idea.

One further objection to practical/political conceptions (in particular to the Rawls/Raz version) is raised by Ronald Dworkin and refers to the threshold it establishes for something to count as a human right. For him, human rights, just as political rights, represent "trumps over otherwise adequate justifications for political action" (Dworkin 2011, 329, 332). In Dworkin's reading, practical/political conceptions, locate the distinctiveness of human rights in their acting as trumps over national sovereignty understood in the Westphalian sense. Besides other problems associated with this view, he believes that "the trumps-over-sovereignty idea seems to set too high a bar", resulting in a very short list of human rights that

[11] Barry and Southwood's criticism refers to Beitz's version. However, I believe it can be extended to the Rawls/Raz version as well.

does not match the lists included in international legal documents and advocated for by international human rights activists. The strategy he suggests for distinguishing human rights from political rights is to shift the level of abstraction:

> "though people have a political right to equal concern and respect on the right conception, they have a more fundamental, because more abstract, right. They have a right to be treated with the attitude that these debates [about what political rights people have] presuppose and reflect – a right to be treated *as* a human being whose dignity fundamentally matters" (Dworkin 2011, 335).

The latter is, according to Dworkin, "the basic human right". In this view, violations of human rights are represented by policies that manifestly express an opposite attitude to members of the political community (Dworkin 2011, 332-35).

There is one last objection I would like to address, which has to do with the kind of moral relationships human rights establish. According to the practical/political conception, human rights are held by individuals against states and their function is to pose limits to the sovereignty of the latter. In case states fail to secure human rights on their territories, the international community may legitimately act on its responsibility as guarantor of their protection. As such, human rights establish moral relationships between individuals and states on the one hand, and among states/between states and other international actors on the other hand. I find this to be a very narrow view of the moral function human rights perform in the global society. Given the emergence of a genuine global community, I believe human rights play a much bigger role than practical/conceptions are ready to concede: they link people, communities, states, and other regional and global agents and create an intricate global moral network.

Given the strengths and weaknesses of the two kind of conceptions discussed, I would like to propose a mixed conception, one that grounds human rights in a substantive value, but takes into account the contemporary practice as well. I shall define this conception along the four dimensions proposed by Risse and noted at the beginning of this discussion. As such, *the*

basis on which individuals possess human rights is their shared humanity, whose distinctive feature is human dignity. Like Dworkin, I understand dignity to require two things: treating individuals' fates as equally important, and "respect for individuals' responsibilities for their own lives" (Dworkin 2011, 330). I also take *the principle* that generates the list of human rights from Dworkin: human rights are rights to an attitude that is consistent with the two requirements of dignity. In this view, a state violates the human rights of its citizens by pursuing policies and enforcing laws that represent a rejection of their dignity (Dworkin 2011, 335). *The list* that this principle generates contains at the minimum the following rights: the right to life (the right not to be killed), the right to physical and mental integrity (against torture and other forms of degrading treatment); rights against discrimination based on race, ethnicity, religion, gender, age, sexual, and political orientation; liberty rights (the right to "freedom from slavery, serfdom, and forced occupation" (Rawls 1999, 65), freedom of conscience, of thought, of speech, to religious, and political freedom, the right to private property); due process rights; and minimal welfare rights (a right to the means of subsistence, education, health care).[12] Finally, this conception identifies three *agents that are under a duty to protect and promote human rights*: first, there are the states, who hold primary responsibility in this sense; second, the international community acts as guarantor of the protection of human rights, which entails taking up the responsibility to secure human rights when states fail to do so; and third, in a more general and abstract sense, humanity at large, as refraining from participating in unjust institutional schemes, that is, schemes that generate human rights violations, represents the content of the general duties of justice that all human beings owe to each other.

There are two comments I would like to add regarding the mixed conception defended here. First, by relying on both substantive values and the contemporary practice of human

[12] I used as sources for the composition of the list Rawls 1999; Buchanan 2010; and Dworkin 2011.

rights, it attempts to preserve the strengths of the traditional and practical/political conceptions, while not falling in the same traps they do. Second, from the mixed conception it does not follow that humanitarian intervention is justified whenever states do not fulfill their duty to protect and promote human rights. The definition of humanitarian intervention specifically refers to human rights violations as distinct from mere failure to protect them. The latter may constitute a reason for action on the part of the international community, but not for humanitarian intervention. Moreover, not all violations justify humanitarian intervention. The responsibility assigned to the international community by the mixed conception can be discharged through various forms of action, some of which do infringe on state sovereignty and some others that do not. To put it briefly, while the mixed conception opens the door for humanitarian intervention, additional conditions need to be satisfied in order for it to be justified.

1.4. The puzzle of humanitarian intervention

We are now in a position to explicate the puzzle of humanitarian intervention. At the foundational level, sovereignty and human rights express the same moral commitment to human life and dignity. However, the practice shows that states often abuse their power by enacting laws and pursuing policies that violate the human rights of their citizens, sometimes in a severe and systematic manner. Such cases represent instances in which the exercise of sovereignty clashes with, on the one hand, its own moral rationale, and on the other hand, with human rights. State sovereignty with the corresponding norm of non-intervention and human rights represent the two most important moral and legal pillars of the contemporary international system. This is the context in which the problem of humanitarian intervention arises. Answering the question of its permissibility seems to require choosing between the two

principles, but either alternative entails indefensible consequences: completely disregarding sovereignty would assert the moral irrelevance of legality and would open the door for other forms of international action – such as aggressive war or unilateral peaceful annexation – that we hold impermissible under any circumstances; refusal to intervene would show disrespect to the life and dignity of those suffering from their human rights being violated and would represent a failure of the international community to act on its responsibility for the fulfillment of human rights. To put it briefly, humanitarian intervention presents us with a serious dilemma without a straightforward solution.

Two further aspects complicate this puzzle: the unclear status of humanitarian intervention in international legal texts and its highly selective and arbitrary practice since 1945. For most legal scholars, Article 2.4 of the UN Charter explicitly bans any state from interfering with the internal affairs of any other sovereign member of the international community. Nevertheless, a few claim that the Charter bans only those interventions that threaten the "territorial integrity" or the "political independence" of another state, not any type of military intervention. On these grounds, humanitarian intervention is supported. In addition to the Charter, there are Human Rights conventions that signatory parties are obliged to respect. However, none of these (probably with the exception of the Genocide Convention) explicitly grants the international community the right to intervene on the territory of a state that does not fulfill its obligations deriving from the conventions. Even if they did, not all states signed and ratified these conventions. Customary law blurs the picture even more, as the practice of humanitarian intervention after 1945 has been highly selective and arbitrary: the international community failed to act in some of the most horrendous moments of post 1945 history[13]. When it did act, such as in the case of the NATO intervention in Kosovo, the UN General Assembly condemned the intervention, thus reaffirming the inviolability of state

[13] See (Holzgrefe 2003, 47) for a list of such instances in post-1945 history.

sovereignty[14] (Holzgrefe 2003, 37-48). In what follows, I shall attempt to sort out this dilemma and argue for what I believe to be the most defensible solution to the puzzle of humanitarian intervention.

[14] Such condemnation followed virtually all the interventions carried out before 1990. Although the political and legal climate changed a lot after 1990, the Security Council maintained its reluctance to authorize military interventions, although it imposed other forms of sanctions, most notably international criminal prosecution (ICISS 2001, 49-126).

Chapter Two: The moral case for humanitarian intervention

The purpose of this chapter is to present the moral case for humanitarian intervention. I begin with an overview of the state of the art in the humanitarian intervention debate. I contend that arguments against humanitarian intervention are unpersuasive, to say the least, and that arguments for humanitarian intervention tend to elude important aspects of the problem, which makes them vulnerable to serious objections. Their common denominator is working on the assumption that answering the moral challenge humanitarian intervention presents us with presupposes making a choice between sovereignty with the corresponding norm of non-intervention on the one hand, and human rights on the other, which I believe to be mistaken, as shown in the previous chapter. I go on to present two different, but continuous arguments for humanitarian intervention: first, *the sovereignty-centered argument* establishes the moral permissibility of humanitarian intervention; and second, *the cosmopolitan argument* establishes that individuals have a duty to humanitarian intervention. In the last section I address three additional problems that need to be dealt with in order for the moral case for humanitarian intervention to be persuasive.

2.1. Skeptics and supporters: overview of the major pros and cons of humanitarian intervention

Fernando Tesón distinguishes between three basic types of arguments that can be made with respect to humanitarian intervention: first, absolute non-interventionist arguments hold that intervention is never justified except in self-defense (as a reaction to previous unjustified aggression); second, limited interventionist arguments hold that humanitarian intervention is justified only in the most extreme cases of human rights violations, “such as

genocide, mass murder or enslavement"; and third, broad interventionist arguments hold that humanitarian intervention is permissible in a broader set of circumstances that also include grave human rights violations, "which need not, however, reach genocidal proportions" (Tesón, 1997: 23-24). It is important to note that these three types of arguments are more like "ideal types" and that placing one particular argument into one category is a matter of interpretation.[15]

2.1.1. Absolute non-interventionism

The legalist paradigm

The standard absolute non-interventionist position is expressed by "the legalist paradigm", which represents the "primary form" of Walzer's theory of aggression. The paradigm stems from "the domestic analogy" which regards states as analogous to individuals and the society of states analogous with the domestic society. In this view, war represents "the international equivalent of armed robbery or murder", with the difference that aggression is much more dangerous than crime, for it threatens to undermine the whole system and there is no international police. The absence of a concentrated police force only means that its "powers are distributed equally among all the members". It follows that if the rights of one of the members (a state) are unjustly infringed, the rest need to act in a way that does not merely put an end to the aggression, but also punishes the aggressor. Given this picture, Walzer sums up the legalist paradigm in six propositions:

1) "There is an international society of independent states."
2) "This international society has a law that establishes the rights of its members – above all, the rights of territorial integrity and political sovereignty."

[15] For instance, Tesón considers the argument from the rights of states to be an absolute non-interventionist one (Tesón 1997, 24)

3) “Any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act”.
4) “Aggression justifies two kinds of violent response: a war of self-defense by the victim and a war of law enforcement by the victim and any other member of international society”.
5) “Nothing but aggression can justify war”.
6) “Once the aggressor state has been militarily repulsed, it can also be punished” (Walzer 1992, 61-62).

This paradigm has been the dominant framework for reasoning about war in law and morality for a long time. Its thrust – that only aggression can justify war – is one of the pillars of contemporary international law and feeds many of the legal (and moral) arguments against humanitarian intervention. However, even champion defenders of the non-interventionist doctrine (such as Walzer himself) contend that there are justified exceptions from the paradigm. The important point, with which I completely agree, is that war is a crime, probably the worst of all, and that any departure from the norm, including humanitarian intervention, needs a strong justification in order to be permissible.

The argument from utilitarianism

From the standpoint of utilitarianism, the permissibility of humanitarian intervention is conditional upon it maximizing overall welfare. But, utilitarians argue, the reality of war is so horrific that the likelihood of the good achieved by the intervention to be greater than the harm caused is very low. Moreover, adopting a rule of humanitarian intervention as an exception to the non-interventionist principle would pave the way to abuses, for it would give aggressive states the possibility to hide their true intentions behind humanitarian motives. This, in turn, would cause more human rights violations, more harm, and more suffering (Tesón 1997, 101-2). Also, it would seriously undermine the stability and integrity of the international system, which is, all things considered, too high a price compared to the potential gains (Tesón 2003, 111). The first argument is act-utilitarian as it weighs the

consequences of singular acts of humanitarian intervention against their potential benefits, whereas the second and the third are rule-utilitarian, for they make the calculus from the perspective of adopting a norm of humanitarian intervention.

First, the act-utilitarian argument is irrelevant to the issue at stake here – the moral justifiability of humanitarian intervention – for it contains a factual, rather than principled claim. It can be argued that it is mistaken to think that facts are irrelevant for moral judgments, for if the latter are in stark contrast with the former, they do not have any force. But even so, the act-utilitarian claim does not rely on observation, but on pure speculation. We do not know if humanitarian intervention causes more harm than good. First, there is a problem of currency: what counts as harm and what counts as good? The number of human lives sacrificed/ saved? It is highly debatable whether numbers make a difference to the moral problem of killing.[16] Or do we count in other consequences: social, political, and economic instability, destructions of infrastructure and general disruption of ordinary life on the harm side, and gains in human rights protection and paving the way to a more democratic political regime on the good sine? As soon as we diversify the currency, it is almost impossible to make an accurate calculus. Moreover, since the experience of harm occurs immediately, whereas the good is more future-oriented, we are confronted with a time problem: how are we supposed to weigh consequences that appear at different points in time against each other? But even if we solved the problem of currency, we could still not claim that humanitarian intervention most likely causes more harm than good, for we do not have the kind of empirical knowledge to make such inference. I believe it is quite clear that the act-utilitarian argument is unpersuasive. However, it establishes a valid and important constraint on justified humanitarian intervention, namely the requirement of reasonable expectation of success. How success is to be understood shall be discussed later in this chapter.

[16] See Scanlon 1998, 229-41 and Taurek 1977, 293-316.

The first rule-utilitarian argument is vulnerable to the same objections the act-utilitarian argument is. We simply lack the epistemic conditions for making such claims. But the danger of abuse is not negligible, so additional constraints need to be imposed. As I see it, in the absence of a proper legal and institutional framework with the power to control for abuses, two requirements could reduce the likelihood of abuse: first, intervention ought to be genuinely humanitarian in purpose (alternatively, a weaker requirement, but still plausible could be that intervention ought to be *primarily* and *predominantly* humanitarian in purpose); and second, multilateral intervention, that is intervention conducted by a coalition of states or a regional/ global organization, is preferable to unilateral intervention. Notice that the second condition is not obligatory, for there may be contingent factors that prevent it from being satisfied. However, if the first condition is met, intervention could still be morally justified. The second rule-utilitarian argument is different; it holds that a customary norm of humanitarian intervention would undermine the international system, with or without abuses, but even to a greater extent given the likelihood of abuse. The danger of abuse was (partially) settled by the two additional constraints noted above. But the argument states that such norm would undermine the system even if it weren't implemented abusively. Three responses seem appropriate here: first, the argument rests on the assumption that the state system with is current configuration is worth preserving, which is a highly debatable claim; second, even if it were worth preserving (say, because for better for worse it is the best we had so far and the costs of changing it would probably be too high), it would still not follow that it is morally permissible to let governments treat their subjects in a way that denies their human dignity; and third, the social and political conditions that trigger justified humanitarian intervention are just as likely to undermine the system, if not more, than a potential customary norm of humanitarian intervention (Tesón 2003, 111-13). It is quite clear, I believe, that the three variants of the argument from utilitarianism against humanitarian intervention are

unpersuasive. However, as noted, they do raise some important problems that set additional constraints on justifiable humanitarian intervention.

2.1.2. Limited interventionism

The argument from the moral duty to obey the law

This argument supports narrow interventionism (and opposes broad interventionism) in a different sense than the rest of the arguments in this category. It is not a certain threshold of human rights violations that establishes when humanitarian intervention is permissible and when it is not, but whether it is conducted with proper authorization or not. Restated, the argument holds that intervention conducted without proper authorization (illegal humanitarian intervention) is impermissible, for members of the international community (that are also subjects of international law) have a moral duty to comply with international law. This duty is grounded in their acceptance of international norms as binding, either explicitly in the case of treaties, or tacitly in the case of customary norms (Buchanan 2010, 303). There are at least three possible objections to this view: the first challenges the claim that members of the international community have indeed a moral duty to obey international law; the second challenges the claim that unauthorized humanitarian intervention is illegal from the standpoint of international law; and the third makes a case for "illegal acts of international legal reform" (Buchanan 2010, 298-328).

The first objection holds that members of the international community (at least not all of them) do not have a moral obligation to comply with international legal norms because the latter are not genuinely consensual. The idea is that some members are pressured into signing treaties that contain provisions they would not accept under different circumstances, the best example being peace treaties in which victors can (and do) abuse of their position in order to

impose their will on losers that are forced to accept. Moreover, the claim that customary law benefits from the consent of all states is problematic, for "not opting out cannot properly be regarded as tacitly consenting". Despite these claims, the assertion that international law is broadly consensual still holds, for the mechanisms through which treaties are signed and custom emerges make the imposition of norms opposed by the majority very difficult (Buchanan 2010, 303). I contend that this objection is unpersuasive, that international law is to a large extent consensual and that, in order to refute the argument from the moral duty to obey the law a different strategy is required.

The second objection holds that read properly, international law contains an emergent customary norm of humanitarian intervention that does not depend on proper authorization. The idea is that international law, and especially customary law, is highly informed by moral considerations. The interpretation of state practice by international courts, lawyers, and scholars with the purpose of establishing whether it counts as an emergent custom is not value-free, but presupposes a moral judgment, which is exercised within the framework of moral and political philosophy. The dilemma posed by humanitarian intervention cannot be solved by the value-free reading of state practice and international legal texts. They need to be interpreted and to this purpose, the moral problems posed by the relationship between sovereignty and human rights need to be addressed. Read in light of "the best philosophical position", state practice and international legal texts assert a right to humanitarian intervention (Tesón 1997, 11-15). Although very interesting, this view is untenable. First, the argument works against a significant amount of the recent scholarship in the philosophy of international law, which tries to cut off international law from morality and bring it closer to the status of a proper legal system.[17] Second and more problematic, the argument relies on an interpretive strategy which is highly contestable. What this argument suggests is a "moral reading" of

[17] See Besson and Tasioulas 2010, 1-19.

international law, which I believe to be a dangerous path. It is dangerous because reading international legal texts and state practice in light of what they ought to mean often comes down to reading them in light of what we want them to mean, and by we I mean the majority, or a very powerful minority, neither of them with any moral authority (if such entity exists).[18] Third, and most problematic, I believe the weakest point of the whole idea of humanitarian intervention is its practice. The establishment of a new norm of customary law requires the practice to meet two criteria: "general observance" and "widespread acceptance that it is lawful". Given the highly selective and arbitrary exercise of the alleged "right to humanitarian intervention", it is difficult to show that the practice meets the first criterion. It is even more difficult to show that it meets the second, given the continuous refusal of the Security Council and General Assembly to recognize its lawfulness either ex-ante or ex-post. Finally, even states that did intervene on the territory of other states where governments were massacring their citizens were reluctant to invoke a right to unauthorized humanitarian intervention, instead justifying their actions on other grounds[19] (Holzgrefe 2003, 46-49). For these reasons I contend the second objection fails too in defeating the argument from the moral duty to obey the law, and therefore move to the third, which I believe to be more successful.

The third objection follows from an argument proposed by Buchanan for the moral justifiability of "illegal acts of international legal reform", which he distinguishes from "mere conscientious lawbreaking" (Buchanan 2010, 299). Given the existing mechanisms for international lawful legal reform (Buchanan 2010, 303), he argues that "fidelity to law", understood not merely as obligation to comply deriving from consent, but more substantively, as commitment to the rule of law, does not rule out illegal acts directed towards improving the system, on the contrary, it may sometimes require them (Buchanan 2010, 306-15). However, it does impose additional burdens of justification. He thus proposes eight "guidelines for

[18] See Scalia 1997, 37-41.
[19] See examples in Holzgrefe 2003, 48-49 and ICISS 2001, 49-76.

determining the moral justifiability of illegal acts of reform". The first four guidelines specify conditions under which an illegal act of reform "bears a greater burden of justification":

> 1) "the closer the system approximates the ideal of the rule of law";
> 2) "the less seriously defective the system is from the standpoint of the most important requirements of substantive justice";
> 3) "the more closely the system approximates the conditions for being a legitimate system";
> 4) violation of "one of the most fundamental morally defensible principles of the system".

The last four guidelines specify conditions under which an illegal act is more easily justifiable:

> 5) "the greater the improvement, the stronger the case for committing the illegal act";
> 6) likelihood "to improve significantly the legitimacy of the system";
> 7) likelihood "to improve the most basic dimensions of substantive justice in the system"; and
> 8) likelihood "to contribute to making the system more consistent with its most morally defensible moral principles" (Buchanan 2010, 318-19).

Buchanan distinguishes between two different justifications given for the NATO intervention in Kosovo: the first claimed that the intervention was illegal, but justified in order to prevent gross human rights violations, whereas the second claimed that the intervention was justified because it was directed towards establishing a new, "more enlightened" customary norm that permits unauthorized humanitarian intervention (Buchanan 2010, 321-22). The argument suggested here only defends illegal humanitarian intervention as long as it aims to bring about an improvement in the system, preventing or putting an end to grave human rights violations being only a necessary, but not sufficient reason. I believe the distinction between the two justifications is artificial, for a genuinely humanitarian motivation for conducting the intervention implicitly expresses the judgment that the system is defective, in the sense that it permits such injustices to occur, and therefore that it needs to be reformed by making unauthorized humanitarian intervention lawful. The point I am trying to make is that any unauthorized humanitarian intervention represents an instance of illegal act of reform

as long as its motivation is genuinely humanitarian. To sum up, the third objection gives a plausible reply to the argument from the moral duty to obey the law. It states that the idea of "fidelity to law" is not sufficient to rule out illegal acts of international legal reform, of which humanitarian intervention represents an instance, as long as it is faithful to its humanitarian cause. However, it does impose supplementary burdens of justification, which a plausible defense of humanitarian intervention needs to deal with.

The argument from the rights of states

The argument from the rights of states has already been introduced in the previous chapter with the discussion of legitimacy and the moral content of sovereignty. Although there are many variants of the argument, I shall focus on its most defensible form, what Altman and Wellman call "the consensus view", most famously defended by Walzer. Advocates of the consensus view hold that, although non-intervention ought to be the norm, exceptional human rights violations can justify humanitarian intervention (Altman and Wellman 2008, 231). The value of state sovereignty is central to the consensus. As Walzer puts it, the rights of a political community – "territorial integrity and political sovereignty" – drive their force from the special kind of contract that lies at the foundation of the political community, understood as an ongoing "process of association and mutuality" (Walzer 1992, 53-54). The asymmetry between internal and external legitimacy discussed in the previous chapter derives from the special nature of the political community, which is not paralleled in the international society. From here follows the apparent paradox of an internal illegitimate state that still retains its external legitimacy. But "there is such thing as an illegitimate state even in the international society", Walzer maintains, "and there are cases when sovereignty can be disregarded" (Walzer 1980, 216), when the "unfit" between people and government is radical. In such cases, "the rules of disregard", which represent revisions of the legalist

paradigm apply. Accordingly, "states can be invaded and wars justly begun [1)] to assists secessionist movements (once they have demonstrated their representative character), [2)] to balance the prior interventions of other powers, and [3)] to rescue people threatened with massacre" (Walzer 1992, 108; 1980, 216-18). The third rule of disregard concerns humanitarian intervention, which Walzer believes to be permissible "when it is a response (with reasonable expectations of success) to acts that 'shock the moral consciousness of mankind'" (Walzer, 1992, 107). These include massacre, enslavement, and massive expulsion (Walzer 1980, 218). The rationale for the rules of disregard is that such violations are praiseworthy or at least not condemnable because "they uphold the values of individual life and communal liberty of which sovereignty itself is merely an expression" (Walzer 1992, 108). Other scholars endorsing the consensus view establish as threshold for humanitarian intervention human rights violations that amount to "supreme humanitarian emergency" – genocide, "state-sponsored mass murder", "mass population expulsions by force" (Wheeler 2000, 34 in Altman and Wellman 2008, 230), or "the gravest crimes" – less than genocide, but more than ordinary oppression (Nardin 2005, 21-26 in Altman and Wellman 2008, 230).

I believe the consensus view, and in particular Walzer's argument offer the most promising strategy for a justificatory account of humanitarian intervention. However, there are two difficulties the argument faces. First, Walzer seems to attach an intrinsic value to "communal liberty", one that is independent of the value the members of the political community assign to it. Elsewhere, he notes that individual lives may sometimes be sacrificed for the sake of "communal liberty" (Walzer 1992, 54). The question is to what extent this is permissible, and what happens when an overwhelming majority decides that the existence of a small minority (defined, say, in terms of sexual orientation) undermines "communal liberty" and the government starts enacting laws that discriminate against them. Obviously, there is no "radical unfit" between people and government for the latter has the support of a large

majority of the former. The problem, as I see it, is that Walzer's argument tolerates the violation of the human rights of small minorities as long as those are endorsed by a majority of the people in the name of "communal liberty". This leads us to the second problem, namely the kind of human rights violations that justify humanitarian intervention. Specifically, advocates of the consensus view limit themselves to vague, rather metaphorical expressions and some examples. If humanitarian intervention is only justified in those cases that are explicitly stated, than the bar is too high; if it is justified in more circumstances, than the consensus view does not provide us with any test principle. I believe drawing a principled line between violations that justify intervention and violations that do not is an important task of a justificatory account of humanitarian intervention. Such principled distinction needs to be rooted in a coherent conception of human rights. I contend that the argument from the rights of states fails to provide a successful justification of humanitarian intervention.

2.1.3. Broad interventionist arguments

Arguments belonging to this category have already been introduced in previous discussions. They revolve around the claim of symmetry between internal and external legitimacy: whenever a state violates the basic human rights of its citizens, it ceases to be internally legitimate and thus forfeits its external legitimacy as well. Two variants of this argument were proposed by Tesón. The first variant begins with the claim, already discussed, that read in light of the appropriate moral and political philosophy, state practice and international legal documents entail a customary norm of humanitarian intervention, understood as the right of states to engage in such acts (Tesón 1997, 11-15). The "ethical theory of international law" Tesón defends can be summarized as follows: 1) governments are agents of the people, both domestically and internationally; as such, their rights in the

international society are derivative from the individual rights of their subjects; put differently, the moral justification of states rests on their protection of the human rights of their citizens; 2) when governments fail in performing this task, humanitarian intervention is justified, provided certain conditions are met – a) it "must be aimed at dictators for the purpose of putting an end to human rights violation", b) must be "governed by the interplay of the principles of proportionality and restoration of human rights", c) "the victims of oppression must welcome the intervention" (Tesón 1997, 117-29). The initial claim has already been discussed and shown to be implausible. But even if the ethical theory does not entail a customary norm of humanitarian intervention, it may still offer a plausible justification. Although it has important merits, the argument fails for one main reason. As shown earlier, it is not true that when states violate the human rights of their citizens sovereignty is completely undermined, for there are reasons other than the protection of human rights for valuing sovereignty. If the protection of human rights were the sole moral justification for sovereignty, then either states would be left unprotected also against aggressive war or peaceful annexation, or we would have to come up with an independent ground on which the latter two are impermissible even in the absence of sovereignty. As I said, it seems extremely difficult to come up with a common denominator of the two forms of international action, other than sovereignty. Tesón could reply that the last requirement of his theory rules out peaceful annexation. But the victims of oppression could be willing to welcome even annexation if it were the only alternative to being massacred by their government. I still think it would be impermissible, for that would be not a real, meaningful choice. To put things briefly, even internally illegitimate states retain a thin layer of sovereignty, able to shield them from such actions as aggressive war or peaceful annexation, but not against humanitarian intervention.

The second of Tesón's arguments is pretty much a restatement of the first, with some revisions. For instance, he acknowledges that a state being internally illegitimate does not represent a sufficient condition for humanitarian intervention. However, if intervention is not justified against a particular illegitimate state, it is not for reasons of sovereignty, but for different ones (Tesón 2003, 99). Even in this amended version, the argument is still vulnerable to the objection I raised. I want to point very briefly to an important merit of Tesón's defense of humanitarian intervention, namely that he does provide a test principle for distinguishing between human rights violations that justify humanitarian intervention, and those that do not: "human rights deprivations that justify war are disrespectful violations in the Kantian sense, that is, governmental infringements aimed at thwarting individual autonomy" (Tesón 1997, 123). Altman and Wellman also defend a broad interventionist argument for humanitarian intervention, but I believe it is much weaker than Tesón's (and much broader). I will not enter into the details of the argument, it suffices to say that they hold humanitarian intervention permissible when "(1) the target state is illegitimate and (2) the risk to human rights is not disproportionate to the rights violations that one can reasonably expect to avert" (Altman and Wellman, 2008: 228). The authors endorse the symmetry view described earlier according to which the same threshold sets both the internal and the external legitimacy of states. This threshold is represented by the protection of human rights that states provide. Besides being vulnerable to the same objection as the previous variants of the argument, Altman and Wellman's argument has a very superficial approach to the suffering and destructions that war causes[20]. Moreover, it completely neglects the fact that what needs to be justified represents an infringement of one of the fundamental principles of international law, that of non-intervention. This kind of argument completely eludes the moral relevance of law, which is

[20] Altman and Wellman argue in this respect that more modest scale deployment of force could be very successful in containing the humanitarian emergency, especially given the fact that highly oppressive or criminal regimes do not invest much in military training and equipment and therefore the expected scale of retaliation is relatively low (Altman and Wellman 2008, 235-37). Even if this argument were not in striking contradiction with facts, it would still be pure speculation with no moral force.

one of the views the present thesis argues against. To sum up, broad interventionist arguments for humanitarian intervention do not seem satisfactory either. However, just like previous arguments discussed, they do provide us with guidelines for constructing a better equipped justificatory account of humanitarian intervention. In what follows, I shall focus on it.

2.2. A new moral argument in defense of humanitarian intervention

2.2.1. The sovereignty-centered argument

The argument for the moral permissibility of humanitarian intervention follows from the discussion so far. Given the kind of moral considerations that underlie sovereignty, when states grossly and systematically violate the human rights of their citizens, that is, they pursue policies that are manifestly inconsistent with the principles of dignity, they also act against the moral rationale of sovereignty. Although they become internally illegitimate, states retain residual sovereignty, which still gives them a claim against foreign intervention. The mixed conception of human rights defended here holds that, when states do not successfully discharge their duty to protect the human rights of their citizens, the international community, through its agents, bears residual responsibility in this respect. The international community has at its disposal a variety of possible modes of action, whose appropriateness and permissibility depend primarily, but not exclusively, on the kind of human rights violations that characterize a specific case. When the violations are purposive, extensive, systematic, and require urgent action in order to be stopped or prevented, the appropriate mode of action is that of humanitarian intervention. What makes humanitarian intervention permissible in such circumstances (unlike aggressive war or peaceful annexation) is that, although it represents an infringement of the residual sovereignty states retain, it is consistent with, and is conducted in

respect of, its moral rationale. In this view, humanitarian intervention can be seen as a safety mechanism the international community disposes of, that can be rightfully used it order to prevent or put an end to human right violations that satisfy the abovementioned criteria.

An analogy with medical science can be used in order to make the argument more clear. Suppose the political community is something like the human body and sovereignty something like the immune system. Normally, the immune system is very valuable, for it protects the body from infections. As such, we believe it is something worth keeping intact. However, there are rare, but dangerous cases when the immune system becomes overactive, turns against the body and starts destroying its cells and tissues. In such cases the appropriate treatment consists of immunosuppressants, which weaken the immune system, thus containing the damage. The rationale behind the treatment is that, by suppressing the immune system, it saves the cells and tissues and restores the normal functioning of the body. Given the risks of this treatment, additional protective measures need to be taken, such as keeping the body in a completely sanitary room, for with the immune system suppressed, the most banal infection can become fatal. I believe gross and systematic human rights violations are similar to autoimmune diseases. Sovereignty, something that we normally hold valuable, goes astray and turns against the very things it is supposed to protect. Humanitarian intervention is like the immunosuppressant treatment: by infringing on sovereignty, it aims to restore the normal functioning of the political community. Because of the dangers it poses, protective measures need to be taken in order to make sure it does not undermine the political community. The analogy does not imply that there is anything organic about political communities, its only purpose is to illustrate the argument with a more palpable example.

Given the highly destructive nature of military interventions, additional conditions need to be met in order for the action to be justifiable.[21] First, intervention needs to be genuinely humanitarian in purpose. This ensures that it is consistent with, and is conducted in respect of the moral rationale of sovereignty. Given the facts of world politics and national interest that remains the main determinant of the external behavior of states, an alternative and less demanding condition could suffice: intervention need only to be primarily and predominantly humanitarian. I shall illustrate the point with an example. Suppose you are walking on the street and from one of the houses you hear a child crying from being beaten by her parents. Suppose you heard from the neighbors that the parents regularly beat their child for no good reason. You consider this to be a good enough reason to infringe on their property rights, break into the house, stop them and report them to the police. Suppose now that you know the parents because you used to go to school together. You strongly resent them because back then they were often bullying you. So, although your main motivation is saving the kid (you would do it even if the parents were strangers to you), you also take great pleasure in humiliating the parents. I believe saving the kid is still permissible, even required in this circumstance. Similarly, in the case of intervention, it does not matter if the agent that intervenes has subsidiary reasons, as long as these reasons do not work against the moral rationale of sovereignty.

Second, intervention needs to be a measure of last resort. This condition may seem redundant given the kind of human rights violations that justify humanitarian intervention, but it is important that agents of the international community carefully weigh different forms of action against each other. It may happen that, due to exceptional circumstances, although the rights violations are of such nature that they justify intervention, other modes of action could be just as effective. Third, the intervention needs to be proportional to the danger it aims to

[21] Most of these conditions figure in other accounts of the justifiability of war in general and of humanitarian intervention in particular (see for example Walzer 1992). However, I give them a personal interpretation in light of the account defended here.

contain. Again, this may seem redundant, for humanitarian intervention is by definition an extreme response to an extreme situation. However, different cases pose different challenges, so the scale of the intervention needs to be proportional to the expected scale of retaliation from the part of the state on whose territory the intervention is carried out. Fourth, the intervention needs to have reasonable expectations of success.[22] I said that what makes humanitarian intervention different from aggressive war or peaceful annexation is that it aims to give the political community back to its members. I propose this to be the standard of success. But what does it mean? First, it must actually prevent or put an end to the human rights violations that triggered the intervention. This generally requires removing those in power from office. But this does not suffice, for a void of political power and the subsequent struggles to fill it in are highly likely to degenerate into further human rights violations. So in some way, the international community must to something to assist the state in its transition to a just political regime. I shall come back to this aspect in the last part of this chapter where I shall discuss the problem of post-intervention responsibility. Fifth, a further requirement derives from the purpose of humanitarian intervention: when all other conditions are met and there are alternative ways of conducting the intervention, the preferred strategy should be the one that maximizes the prospects of restoring sovereignty is the shortest feasible period. As such, strategically destroying essential infrastructure or vital resources should be avoided to the greatest possible extent. Lastly, I noted earlier a desirable, but not obligatory condition, namely that, when it is possible, the intervention should be multilateral – conducted by a

[22] This requirement is susceptible to two objections. The first holds that only military powerful states can justifiably carry out humanitarian intervention for military might is essential for success. The second holds that in this account intervention against militarily powerful states could be impermissible for the expectations of success in these cases are reasonably low. I contend the two objections are legitimate; however, their source is located in the facts of world politics and global power distribution and they threaten to undermine the philosophical account defended here only to the extent that the latter fails to consider the former. Although I agree that a comprehensive account of humanitarian intervention ought to consider these problems, it is outside the scope of the present thesis to do so, which is a serious limitation I acknowledge. The recommendation here is that insofar as it is possible, it is morally preferable that intervention be multilateral, that is, carried out by a group of states or a regional or global organization, which would, I believe, partly secure this account against the two objections.

group of states, a regional or global organization – rather than unilateral, that is, conducted by a single state. This would further insure against the risk of abuses.

One aspect needs further exploration, namely which human rights violations count as serious enough as to justify intervention. As noted earlier, a state violates the human rights of its citizens by pursuing policies and enforcing laws that represent a rejection of their human dignity. Two features of violations are implicit in the definition: they are purposive and systematic. This rules out failure to protect human rights due to lack of knowledge or institutional capacity. Violations being systematic means two things: they are part of state policy, explicit or implicit, legally formalized or not; and state capacities (institutional, financial) are used towards their purpose. A further requirement is that violations need to be extensive, meaning that they affect either a significant number of the entire population, or all (the large majority) of a specific group of the population, defined in terms of race, ethnicity, religion, gender, age, sexual or political orientation.[23] The last requirement is that preventing/ putting an end to them needs to represent an emergency. This means to things: first, that preventing/ putting an end to them requires immediate action; and second, that in the absence of such action, the lives of the individuals suffering from the violations would be damaged in a way that is irreversible, irreparable, and cannot be compensated for. The most obvious examples of human rights violations that justify intervention are those given by the majority of scholars and formalized by international law: genocide, ethnic cleansing, enslavement, mass deportation. Also, the extensive use of torture as a means of interrogation counts in this category. It should be noted that the kind of violations that justify humanitarian intervention concern more than one right. For instance, genocide or ethnic cleansing represents the

[23] This is a numerical criterion against which an important objection can be raised. Especially in societies that undergo civil war, or suffer from extreme poverty, it is difficult to know the exact number of human rights violations that can be attributed to government action. Again the moral justification proposed here is susceptible to this objection insofar as it fails to take into account a series of practicalities that a comprehensive justificatory account of humanitarian intervention should consider.

violation of the right against racial or ethnic discrimination and at the same time of the right to life, against torture, or against certain fundamental freedoms.

To conclude this section, I would like to point out the strengths of the sovereignty-centered argument. First, it takes international law seriously. Unlike other views that settle for simply disregarding sovereignty when states grossly violate the human rights of their citizens, the present argument shows that even when states engage is such actions, we still have reasons to care about their sovereignty, and humanitarian intervention is justified precisely because it is consistent with those reasons. This brings us to the second strength, namely that it provides a principled distinction between humanitarian intervention on the one hand, and aggressive war or peaceful annexation on the other, thus explaining why in cases of gross human rights violations the former is justified, whereas the latter are not. Third, the sovereignty-centered argument provides a principled distinction between human rights violations that justify humanitarian intervention and those that do not, which is rooted in a conception of human rights. For these reasons, I believe the present argument is more successful than the ones previously discussed in making a moral case for humanitarian intervention. I shall now take the argument further and show that, when human rights violations reach the threshold set by the abovementioned criteria, individuals have a duty of humanitarian intervention

2.2.2. From moral permissibility to duty: a cosmopolitan perspective

So far, very little has been said about the justice of the international system. Except in the discussion of the argument from the moral duty to obey the law, where following Buchanan I showed that humanitarian intervention, as long as it is at least primarily and predominantly humanitarian, represents a justified form of international illegal action, for it

aims to reform the system, the argument was developed within a morally neutral framework vis-à-vis the international system itself. To put it differently, the background question that inspired the argument was: "given the international system that have now, how do we make the best of it?" I want to move to a different question now, one that asks: "given that the current international system produces a high incidence of gross human rights violations, how do we make it better, that is, more just?" I will show that because (1) the current international system is unjust, that is, it produces a high incidence of gross human rights violations; (2) (a) we have a negative duty not to participate in unjust institutional schemes; (b) the current international system is unjust; (c) we are participants in the current international system; therefore (d) we have duties to aid victims of injustice and promote institutional reform (Pogge 1992, 50, 52); and (3) humanitarian intervention, provided it satisfies the conditions discussed earlier, aids the victims of human rights violations and promotes international reform; it follows that we have duty of humanitarian intervention.

Some preliminary clarifications are required. First, this is a moral cosmopolitan argument.[24] Three elements are characteristic of moral cosmopolitanism: individualism, meaning that "the ultimate units of [moral] concern are human beings, or persons"; universality, meaning that "the status of ultimate unit of [moral] concern attaches to every living human being equally"; and generality, meaning that "this special status has global force" (Pogge 1992, 48-49). Being an ultimate unit of moral concern translates into possessing human rights. Second, this is an institutional cosmopolitan argument. Thomas Pogge distinguishes "institutional" from "interactional" moral cosmopolitanism: the former assigns direct responsibility to fulfill human rights to "institutional schemes", and only indirectly to persons, whereas the latter assigns such responsibility directly to individual or collective

[24] Pogge distinguishes between "legal cosmopolitanism", which is "committed to a concrete political ideal of a global order under which all persons have equivalent legal rights and duties", and "moral cosmopolitanism", which "holds that all persons stand in certain moral relations to one another: we are required to respect one another's status as ultimate units of moral concern - a requirement that imposes limits upon our conduct and, in particular, upon our efforts to construct institutional schemes" (1992, 49).

agents (Pogge 1992, 50). He persuasively shows why institutional cosmopolitanism is preferable to the interactional version, a view I shall adopt here without going into the argument (Pogge 1992, 50-53). Third, the sovereignty-centered argument was constructed within the framework of liberal moral and political thought. I want to show that the two theoretical views are not incompatible. First, the moral rationale for sovereignty was individualistic in nature. The claim was that we care about sovereignty in the international society because of the individual values it protects and promotes. This is consistent with the view of human beings as ultimate units of moral concern. Also, it is consistent with universality – those values ought to be protected and promoted everywhere – and generality – protecting and promoting those values concerns everyone, assigning the function of doing so to sovereign states being an institutionally effective choice. The same is true for the conception of human rights defended in the previous chapter. Second, on the mixed conception, human rights are foundational: they are grounded in human dignity and apply even in the absence of an institutional scheme. Pogge notes two limitations of institutional cosmopolitanism: "human rights are activated only through the emergence of social institutions" and "the global moral force of human rights is activated only through the emergence of a global scheme of social institutions" (Pogge 1992, 51). There seems to be an incompatibility here; however, I believe it is easily surmountable. The strategy I propose is to conceive of human rights as institutionalized natural rights. In the state of nature human beings possess natural rights, which triggers a direct obligation on each and every one not to violate the others' rights. Given the difficulty to enforce such obligation in the absence of a common power, people agree to create institutions meant to guarantee the protection of their rights. The natural rights held directly against other individuals in the state of nature now become human rights held directly against institutions and only indirectly against individuals. The obligation that accrue to individuals in the institutional order is indirect: to refrain from

participating in an unjust institutional scheme (one that causes a high incidence of human rights violations); participation in such scheme creates obligations to aid the victims of injustice and "promote feasible reforms (…) that would enhance the fulfillment of human rights" (Pogge 1992, 50, 52). The same reasoning apply to the creation of the global institutional scheme: because domestic institutions sometimes fail in their task, they join into a global institutional scheme meant to reduce the incidence of human rights across the globe. However, unlike individuals who only have indirect obligations in the institutional order, domestic institutions (states) acquire indirect obligations analogous to those of the individuals, while retaining their direct obligations. I believe this discussion shows that there are no theoretical incompatibilities between the position advanced earlier and the cosmopolitan argument, on the contrary, the latter follows from the former provided we add the premise that the current international system ("global institutional scheme") is unjust.

To begin with, we need to clarify what it means that the international system is unjust. This has empirical grounds: we look at the incidence of human rights violations across the globe and we notice that it is high: the proliferation of oppressive regimes that deny civic and political liberties, where opponents are not allowed to voice against the government and those who do are severely punished, sometimes even murdered; deeply divided societies where the ruling elite representing one group grossly and systematically discriminates the members of the other, discrimination sometimes reaching the point at which people are denied access to the basic means of subsistence; the extensive use of torture against alleged terrorists or political opponents in criminal systems. But to say that the system is unjust is a normative claim: it is so "insofar as the pattern of human rights fulfillment it tends to produce is inferior to the pattern that its best feasible alternatives would tend to produce". We assess social institutions in terms of their justice, so what we aim for, both domestically and internationally is "the feasible (…) institutional scheme that produces the best pattern of human rights

fulfillment" (Pogge 1992, 54). Two objections need to be discussed here. The first is the claim that this premise mistakenly relies on the assumption that the international system is causally responsible for human rights violations. Responding to this objection requires that we distinguish between micro- and macro- explanations of human rights violations: the former concerns local occurrences, whereas the latter refers to their global incidence. The first premise of the argument refers to the global institutional scheme as a factor in the macro-explanation of human rights violations (Pogge 1992, 53). The second objection holds that the international system is not unjust in itself, on the contrary, by design it contains rules that forbid human rights violations; so the fact that it tends to produce such injustices is not a defect of the system. Pogge argues that it is mistaken to evaluate an institution independently of the consequences it produces, for what matters is the impact it has on our lives, not how good it looks on paper. This is the reason why expected consequences are always taken into account in the process of institutional design (Pogge 1992, 54). Although I generally agree with this response, I believe a more refined discussion is needed in the context of the present argument. We need to distinguish within the international system between its ground rules and its rules of enforcement. If injustices originate in the ground rules of the system, then the global institutional scheme is not only unjust, but also illegitimate and we have an obligation to revise it more fundamentally. If the ground rules of the system are just, and injustices occur as a result of weak enforcement rules that tolerate a great deal of non-compliance, then, although the global institutional scheme is unjust, it is legitimate, and we only have an obligation to amend the rules of enforcement. The argument here takes the international system to be unjust, but legitimate. In Conclusions, I shall briefly address the first variant too.

The first premise establishes that the current international system is unjust, in the sense that it tolerates a great deal of non-compliance with its ground rules and therefore leads to an incidence of human rights violations worldwide which is higher then it would be under

alternative feasible institutional arrangements with more strict rules of enforcement. The second premise is that our participation in the system triggers an obligation to aid victims of human rights violations and promote feasible institutional reform. We need to say more about what kind of obligation this is and its mechanism of derivation. Institutional cosmopolitanism assigns only indirect duties to fulfill human rights to individuals: we only have a duty to refrain from participating in unjust institutional schemes. Given that the current global institutional scheme is unjust, as established by the first premise, and that we are participants in it, it follows that we fail in fulfilling our original duty. This complicity in the human rights violations triggers obligations to aid the victims and promote institutional reform. At a first glance these are positive obligations and therefore have little moral force. But this is not completely accurate. Such obligations arise from our failure to fulfill the more demanding negative duty of refraining to participate in unjust institutional schemes. Elsewhere, Pogge argues that duties to correct for past harms are in fact negative (Pogge 2008, 118-45). I believe that the obligations our participation in the international system triggers are much like the duties to correct for past harms; because by our participation we support the perpetuation of an unjust system that inflicts great harm on people worldwide, the said obligations are negative obligations with great moral force.

One more thing is left to be discussed, namely what it means that we are participants in the global institutional scheme. Our participation, of course, is indirect: at least in the more developed parts of the world, where minimally democratic regimes exist, we have a say in who gets to run the government and we have means to hold those accountable for their decisions, both domestic, and international. Some states have greater power than others within the global institutional scheme and their decisions affect people worldwide. Most of the times they tolerate oppressive regimes that violate the human rights of their people; they even support them by entering into economic agreements with them, thus providing them with

money and goods that are meant to sustain their policies. So we can say that at least citizens of democratic regimes have a share in responsibility for the grave human rights violations that other people experience worldwide. This creates negative obligations to aid those people and promote institutional reform.

The last premise states that humanitarian intervention, provided it meets the requirements already discussed, represents a means to aid victims of injustice and promote institutional reform. I believe enough has been said so far in support of this claim. One further clarification is required: humanitarian intervention provides relief to victims of *micro-level* human rights violations, that is, local manifestations of this phenomenon, but promotes *macro-level* institutional reform by contributing to the creation of a norm of humanitarian intervention as an exception to the principle of non-intervention. A discussion of the extent to which a norm of humanitarian intervention would create a system of credible threats would be necessary here, but for simplicity I contend that it has the potential to do so. From the three premises it follows that, when human rights violation reach the threshold set by the criteria discussed in the previous section, we have a duty of humanitarian intervention. This is an individual duty, but given the nature of humanitarian intervention, it can only be discharged collectively: by states, acting as agents of their citizens, groups of states, regional or global organizations. The cosmopolitan argument connects back to the idea that human rights link individuals, groups, communities, states, regional and global institutions, thus creating an intricate global moral network. I believe it has two important merits. First, by speaking of a duty of humanitarian intervention rather than a right to it (like Tesón does, for instance), the cosmopolitan argument captures better our intuitions about the appropriate moral notions necessary to describe the problem of humanitarian intervention: from the standpoint of moral language, it seems strange to claim that when someone has her rights violated someone else has a "right to intervene", especially when the latter has a share in responsibility for the

violation. Second, by shifting the level of analysis from states (groups of states, regional, or global organizations) to individuals, the cosmopolitan argument is better equipped to deal with the problem of "the internal legitimacy of humanitarian intervention" (Buchanan 2010, Tesón 2003), namely "how can the government of a state morally justify humanitarian intervention to its own citizens?" (Buchanan 2010, 202). The cosmopolitan argument gives a straightforward answer: when they engage in humanitarian intervention, states, acting as agents of their people, take upon themselves the discharging of a duty that originally belongs to their citizens.

2.3. Additional problems

To conclude this chapter, I would like to briefly address three additional problems that humanitarian intervention raises. The first one is that given the highly destructive character of military action, innocents will inevitably be killed. The Just War Theory tradition states the immunity of non-combatants among the principles of *jus in bello*. The prohibition of attacks on non-combatants is also affirmed in Humanitarian law. For the purposes of this discussion, I will avoid the question of the moral innocence of non-combatants, although I acknowledge it is important.[25] I have already discussed one way to go around the problem of killing innocents: the number of lives saved needs to be higher than the number of deaths caused. I said this is problematic for it is not certain that we can aggregate lives. Moreover, the question is not about saving the many at the expense of the few, as it may be the case that the victims of human rights violations are the members of a small ethnic group. Of course, the number of deaths inflicted has to be kept at the minimum, but this very vague guideline does not really solve the problem. The suggestion I find the most plausible is that the killing of non-

[25] See McMahan 2009 and Steinhoff 2007.

combatants during humanitarian intervention has to occur in accordance with the doctrine of the double effect.[26] The formulation I shall adopt here belongs to Warren Quinn. He distinguishes between "direct" and "indirect" harmful agency: the former designates "agency in which harm comes to some victims, at least in part, from the agent's deliberately involving them in something in order to further his purpose precisely by their being so involved", whereas the latter designates "harmful agency in which either nothing is in that way intended for the victim, or what is so intended does not contribute to their harm" (Quinn 1993, 184-85). Moreover, direct harmful agency seems to violate the moral imperative of treating persons as ends, by seeing them as strategic material for the attainment of his purposes, which is not the case for indirect agency (Quinn 1993, 190). The doctrine clearly discriminates against direct agency, while holding indirect agency permissible. Going back to the problem of killing innocents in humanitarian intervention, the answer is that civilian deaths have to occur only as a result of indirect harmful agency. This sets a further constraint on the justifiability of humanitarian intervention.

The second problem is that of assignability. The duty of humanitarian intervention belongs to individuals, more specifically to those who participate in the global institutional order. At the minimum, this category encompasses citizens of minimally democratic states. Given the content of the duty, it can only be discharged by collective agents, such as states, groups of states, regional, or global organizations. However, the cosmopolitan argument does not assign the role of discharging the duty of humanitarian intervention to any particular collective agent. One variant, consistent with the argument, is to single out states, groups of states or organizations representing those individuals that participate most actively in the global institutional scheme. Those would coincide with the most powerful actors in the international arena. This suggestion faces two difficulties: first, assigning the duty of

[26] See also Tesón 1997 and Walzer 1992.

humanitarian intervention to a handful of powerful international agents would create a monopoly over the discharging of the duty with great risks of abuse; and second, it is very difficult (if not impossible) to measure the extent to which individuals in one particular state participate in the global institutional order and then make comparisons across countries in order to determine who participates more. Another variant is to single out states/ groups of states that are liberal constitutional democracies. The rationale behind this choice is that "the moral character" of the agent matters and liberal constitutional democracies fare best from this standpoint. However, this suggestion faces potential charges of cultural imperialism. Moreover, the domestic "moral character" of an agent does not guarantee that it will abide by the same rules abroad.

One final variant of singling out the agent of the intervention relies on territorial proximity. This follows from one of Walzer's arguments against intervention, namely the foreigners' ignorance about the "history, (…) conflicts and harmonies, the historical choices and cultural affinities, the loyalties and resentments" of a particular political community (Walzer 1980, 212). Neighboring states are less liable to the "lack of knowledge" argument, for their historical presence in the region made them witness, if not actively take part, in the history of the political community in question. Neighboring states may even have additional reasons for intervention: highly oppressive or criminal political regimes create large fluxes of refugees, which may become problematic for the countries that receive them (these are in the vast majority of cases the neighboring countries); by intervening, they could stop the incoming flow of refugees and ensure that the ones who have already left could safely return to their homes. Much more could be said about the problem of assignability, but to put it briefly, I believe the best alternative is that humanitarian intervention be carried out by a neighboring state, a coalition of states or a regional organization. It should be noted that this does not mean that individuals living in neighboring states have more of a duty of

humanitarian intervention than other individuals; it only means that out of various ways of singling out agents to discharge the duty, this variant offers the best plausible alternative. Also, the discussion does not take into consideration the variant of a global organization with a military force of its own; were there such possibility, given it satisfied certain requirements, it would represent the best alternative.

One final problem needs to be addressed, that of post-intervention responsibility. This connects back to one of the conditions of the permissibility of humanitarian intervention, namely that there should be reasonable expectations of success. I suggested success must be understood in relationship with the purpose of the intervention, the restoration of a genuinely sovereign political community. Since preventing or putting an end to the human rights violations require removing those in power from office and a void of power would only create chaos, something must be done further in order to assist the community build a just regime. This shows that the duty of humanitarian intervention is not only a morally stringent requirement, but a quite demanding one as well. It represents a commitment to help people set up a just political regime for themselves. Here I shall offer some guidelines for how the post-intervention responsibility could be successfully fulfilled. First, if the intervention was unilateral, a multilateral assistance force should be established in order to counter as much as possible the risk of abuses. Second, the assistance force should be composed of both military and civilian forces. The role of the military force should be reduced to maintaining the order, help rebuilding the infrastructure, and help people rebuild their houses, provide them with supplies (food, water, medicine etc.). The role of the civilian force should be to help establish a provisional government and assist it in setting up the fundamentals of a just regime. A lot more could be said here, but the important point is that humanitarian intervention, unlike other forms of military interventions, is subject to important constraints and create commitments that derive from its distinctive purpose, that of restoring sovereignty.

Conclusions

This thesis aimed at offering a moral defense of humanitarian intervention. The strategy adopted was to begin by exploring the philosophical underpinnings of sovereignty with the corresponding norm of non-intervention on the one hand, and human rights on the other, in order to arrive at a proper understanding of the moral challenge humanitarian intervention presents us with. It was shown that at the foundational level the two notions express the same moral commitment to the protection of individual life and dignity. As such, when states gravely violate the human rights of their citizens, sovereignty clashes with both human rights and its own moral rationale.

The first argument suggested regarding humanitarian intervention as a safety mechanism that the international community possesses in order to deal with instances when sovereignty goes astray and betrays its moral function. The thrust of *the sovereignty-centered argument* was that humanitarian intervention, unlike other forms of international action, is justifiable because it is consistent with, and is conducted in respect of the moral rationale of sovereignty. Also, given the multiple risks it involves, the justifiability of humanitarian intervention is constrained by meeting certain requirements that derive from its purpose: the intention needs to be primarily and predominantly humanitarian; the intervention needs to be a measure of last resort; the scale of the intervention needs to be proportional to the expected scale of retaliation; it has to have reasonable expectations of success (which imply extensive post-intervention responsibilities); when alternative strategies for carrying out the intervention are available, the preferred one should be that which maximizes the prospects of restoring sovereignty in the shortest feasible period; when possible, the intervention should be multilateral; and civilian deaths have to occur only as a result of indirect harmful agency. The *sovereignty-centered argument* also defined a threshold of human rights violations that justify

humanitarian intervention in terms of four criteria: they ought to be purposive, systematic, extensive, and preventing/ending them ought to represent an emergency.

The cosmopolitan argument took the problem further and showed that because (1) the global institutional scheme in unjust in the sense that it produces a high incidence of human rights violations worldwide, (2) our participation in the system triggers obligations to aid victims of injustices and promote institutional reform, and (3) humanitarian intervention is a means to aid victims and promote reform, we (individuals) have a negative duty of humanitarian intervention. Given the content of the duty, it can only be discharged collectively, by states acting as agents of their people, groups of states, regional organizations or global ones. The argument distinguished between injustices originating in the ground rules of the institutional scheme and those originating in the rules of enforcement. The injustice of the global institutional scheme was understood as being grounded in weak and insufficient rules of enforcement. This meant that, although the system is unjust, it retains legitimacy. But there are scholars, such as Pogge, who argue that the system is not only unjust, but illegitimate as well, for injustices are grounded in the foundational rules of the system. In this view, the concentration of sovereignty at a single level – that of the "autonomous territorial state" – becomes untenable from the standpoint of morality for it is responsible for threats to peace and security across the world, domestic oppression, and global economic injustice (Pogge 1992, 57-3). This conclusion need not commit us to abandoning the notion of sovereignty altogether, but it does create a more demanding obligation than adding an exception of humanitarian intervention to the principle of non-intervention. Pogge himself suggests "a vertical dispersal of sovereignty" guided by three types of considerations: 1) decentralization of decision-making, 2) centralization, "insofar as this is necessary to avoid excluding persons from the making of decisions that significantly (and legitimately) affect them", and 3) a mechanism of correcting the balance between the first two considerations "because there

cannot always be an established political process that includes as equals all and only those significantly affected" (Pogge 1992, 61-69). Of course, the discussion about the legitimacy of the international system takes us back to the moral rationale of sovereignty and the important question whether the same values can be secured under a different institutional arrangement arises. I believe answering this kind of questions is of crucial importance nowadays given the dynamics of the international system and the continuous shifts in the various institutional arrangements that compose it.

I started this thesis with the story of the Rwandan genocide. I strongly believe that in the Rwandan case, just as in many others, the refusal of the Security Council and the reluctance of other agents to take military action meant a failure to act on their responsibility to protect human rights. It is not only permissible to appeal to military intervention in such circumstances, but as individuals participating in the global institutional scheme we have a duty to pressure our governments and other higher decision-making forums to do so. Of course, a philosophical account of humanitarian intervention does not settle the issue, for there are serious legal and political considerations that need to be addressed in order to get a comprehensive account. In this sense, the present thesis suffers from important limitations. However, it was not my purpose here to settle the issue once and for all and the solution to the puzzle of humanitarian intervention defended here is only meant to shed more light on the topic and open avenues for further inquiry.

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