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Humanitarian Intervention: Moral Perspectives

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Humanitarian Intervention

by

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ABSTRACT

This thesis addresses primary concepts in the humanitarian intervention debates. I argue that humanitarian intervention is a perfect duty. The global community has a moral obligation to act decisively in the face of extreme human rights abuses. There are two contrasting theoretical perspectives regarding international relations and humanitarian intervention: statism and cosmopolitanism. These contrasting perspectives contest the relative value of state sovereignty and human rights. Some of the most prominent ethicists in the debate have determined states have a "right" to intervene militarily in the internal affairs of other states to halt severe human rights abuses but there is no "duty" to intervene. These conclusions are largely based upon consequentialist considerations. This thesis argues a deontological perspective is essential. References to events Rwanda, Darfur, and Kosovo are made. There is a critical role for preemptive actions to play in addressing humanitarian crises and calls for global justice.

Key Words

Introduction

Approximately 40 million people were killed in wars between states while more than four times that number, some 170 million people, were killed by their own governments in the 20th century.[1] In addition to repressive governments, the lack of a functioning state government with authority over its entire territory can foster humanitarian crises. With many states incapable of carrying out their responsibility to protect lives and maintain public order, the scourge of mass murder, ethnic cleansing and genocide continues accompanied by rampant disease and starvation. Some human rights abuses can only be averted or halted by military force. While all reasonable religious and ethical theories converge in the judgment that severe human rights abuses are morally unacceptable, there is no convergence regarding morally acceptable responses to such atrocities.[2] The morality of military intervention in the affairs of another sovereign state, on the one hand, has to be examined against the moral permissibility of not acting to protect innocent lives from systematic human rights abuses, on the other. How are morally authoritative guidelines for determining when to act established and justified?

Deliberations regarding humanitarian intervention encompass a range of contentious moral, political and legal concepts. This essay examines some of the contemporary moral concepts employed in deliberations regarding humanitarian intervention. The salient themes in the debate are essentially moral in nature and I generally shall put the political and legal considerations aside in this essay.[3] The justification of humanitarian intervention should rest upon moral reasoning rather than international law. Moral reasoning has the potential to guide us in a more

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[1] Alex Bellamy and Paul Williams, "The UN Security Council and the Question of Humanitarian Intervention in Darfur", *Journal of Military Ethics* 5, no. 2, (2006): 144.

[2] Fernando Teson, *Humanitarian Intervention: An Inquiry into Law and Morality. 3rd ed.* (2005): 48.

[3] Ibid., 8.

just and comprehensive manner. Laws and political traditions are bound to reflect communally established practices based upon prudential considerations. Moral reasoning can help us determine what *ought* to be done for sake of global justice. Legislative bodies will often prescribe what will be done based upon the unjust inclinations of its most powerful members. The deficiencies of the United Nations Security Council as a source of just international law make the need for alternative sources of authoritative international norms evident. Customs and agreements based upon international power structures should not take priority over sound moral reasoning.[4]

In general, conclusions regarding what is morally acceptable are guided by the relative priority assigned to contrasting philosophical concepts. Broadly speaking, a deontological focus, for example, emphasizes what actions we *ought* to take based upon principles that guide agents in determining what choices are morally required, forbidden, or permitted. In contrast, a consequentialist perspective will assess the morality of actions based upon the value of the state of affairs (or outcome) they bring about relative to what has been determined to be the overall "Good".[5] The Kantian deontological principle of humanity as an end-in-itself is central to this thesis.

This essay contends there are sound philosophical reasons to view humanitarian intervention as a moral obligation in certain cases. Initiating military actions to halt human rights violations is the essence of humanitarian intervention. The moral worth of humanitarian intervention rests upon the supreme principle of humanity as an end-in-itself. In fact, humanitarian intervention is a perfect duty in that the empirical circumstances themselves surrounding human rights crises

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[4] Aidan Hehir in *Humanitarian Intervention: An Introduction, 2nd ed.*, notes the distinction, (2013): 112.
[5] Larry Alexander and Michael Moore, "Deontological Ethics" The Stanford Encyclopedia of Philosophy, Spring 2015 Edition: 1.

generally dictate *what actions* must be taken, *when* the action must be taken and *who* must take the life-saving actions.[6] Human rights obligations are universal. At the same time, only a limited number of states possess the military assets needed to rescue victims of extreme abuse.

This essay establishes the case for humanitarian intervention as a moral obligation by considering critical aspects of several topics related to human rights and global justice in the 21st century. They include: (1) the nature of duty and moral obligations, (2) human rights and moral obligations, (3) armed humanitarian intervention, (4) statist and cosmopolitan conceptions of global order and duty, (5) global justice and moral obligations, (6) the role of preemption in the duty to protect and rescue, and (7) objections to humanitarian intervention. The general nature of this essay rests upon narrowing the nature of human rights violations that necessitate humanitarian intervention while at the same time making a case for decisive early actions when abuses are imminent. While there are a wide range of opinions regarding the scope and nature of human rights, I advocate humanitarian intervention only in cases involving a narrow class of human rights violations which we reviewed later.

The essay will explore the value of preemption as a moral response to the threat of severe human rights abuses. In expounding upon the related topics I hope to address essential elements of a deontological approach to humanitarian intervention. In constructing an effective future approach to humanitarian intervention the International Commission on Intervention and State Sovereignty (ICISS) notes the necessity of meeting several basic objectives.[7] They include the establishment of the legitimacy of military intervention when necessary, and the establishment of

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[6] Violetta Igneski, "Perfect and Imperfect Duties to Aid", *Social Theory and Practice*, (July 2006: 444).

[7] The ICISS was established by the government of Canada and published its report, "The Responsibility to Protect", in December 2001: 11.

clearer rules, procedures and criteria for determining whether, when and how to intervene. How are we to determine our moral duties regarding humanitarian crises?

Chapter 1: Duty and Moral Obligations

We turn now to a consideration of the critical role of the concept of duty in deontological ethics. Drawing distinctions between the nature of perfect and imperfect duties is important. In order for society to exist at all, some basic moral requirements or laws of civil society must be observed. In contrast, observing other social practices only contribute to "an improved existence". [8] Perfect rights and duties are viewed as taking their identity from the first kind of obligation: the imperfect from the second. Imperfect duties maybe considered duties linked to adopting ends. One could, for example, make a general commitment to beneficence and aiding the needy. The structure of this imperfect duty gives the agent latitude regarding who to help, how to help and when to help. The obligations of an imperfect duty are generally not dictated by emergency circumstances. The agent is not bound to fulfill this duty in any particular way or at any particular time.[9] The time, place, object and nature of the actions required come into play in considering whether an obligation is a perfect or imperfect duty.

The fact that one has latitude in fulfilling an imperfect duty gives the agent a range of options in choosing who to help, how to help, and when to help.[10] In contrast, a duty is perfect when one has an obligation to perform a particular task at a specific time. In sum, a perfect obligation binds one to do a specific thing, while an imperfect obligation may commit one to a general orientation

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[8] J. B. Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy*, (1998):133.

[9] Violetta Igneski, "Perfect and Imperfect Duties to Aid", *Social Theory and Practice*, (July 2006: 440).

[10] George Rainbolt, "Perfect and Imperfect Obligations", *Philosophical Studies* (2000): 243.

of charity and beneficence, for example, giving one the latitude to fulfill the obligation in a number of different ways. Igneski argues it is the "moral determinacy" of situations that accounts for this difference between the two.[11] In general, morally determinant circumstances are characterized by an imminent danger requiring specific actions to avert a tragic outcome. Accordingly, a perfect duty obliges an agent to do (or refrain from doing) a *particular act* and it is determinate in terms of *who* must carry it out and *when* it must be done.

Humanitarian crises are "morally determinant", and humanitarian intervention is as an appropriate response to these human tragedies.[12] Definitive actions, not long-range strategic calculations, are required. Specifically, there are two conditions that make a situation morally determinant.[13] A morally determinant situation specifies when the agent must act. In most cases the specific time is *now*.[14] The response is required immediately. And the situation itself dictates what must be done to resolve the problem.[15] From the agent's perspective, a specific act is required, if the moral obligation is to be fulfilled. Acting in a timely manner in specific ways is required to save victims of ethnic cleansing and genocide, for example. The general circumstances themselves determine what must be done. When civilians are being systematically killed by state-supported military forces, or armed gangs beyond the control of the states, the only way to halt the carnage is counter military measures. These are circumstances in which many lives will be lost if only non-military initiatives are pursued. Appeals to reason and diplomatic initiatives alone will not stop those bent on ethnic cleaning and genocide. If actions are not taken immediately lives will be lost. For these reasons humanitarian crises typically

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[11] Violetta Igneski, "Perfect and Imperfect Duties to Aid", 440.
[12] Ibid., 446.
[13] Ibid., 448.
[14] Ibid., 449.
[15] Ibid., 448.

prompt circumstances entailing perfect duties to rescue. The imminent threat of mass murder and genocide creates morally determinant circumstances. A morally determinant situation will, in and of itself, circumscribe *particular actions*, *who* must take the actions, and *when* (or by when) the actions must be taken in order to fulfill a moral obligation.

To a large extent clarifying the moral imperative of employing military actions to rescue victims of human rights abuses requires us to specify the nature of human rights and exactly what humanitarian intervention does and does not entail. We start first with the concept of human rights then consider details regarding what humanitarian intervention entails. This should help us clarify how morally authoritative trip-lines for determining when to act are established and justified? The nature and justification of human rights is also contentious. Yet a claim that humanitarian intervention is a moral obligation based upon duties to protect human rights requires us to specify how basic human rights are conceived in this essay. Ideally, the overall expectation is the establishment of humanitarian intervention as a legitimate component within a framework of universal moral norms. The existing human rights treaties and conventions have provided a contextual platform for addressing global moral norms regarding human dignity and the sanctity of human life. Therefore, it is appropriate to consider human rights here.

Chapter 2: Human Rights and Moral Obligations

Human rights have a high moral priority. Interest-based justifications and agency-based justifications offer critical considerations. Securing the basic interest and needs of human beings is a primary consideration. The process of identifying and justifying basic human interests and needs is itself considerably engrossing. Nevertheless, human rights should secure minimal

standards that make it possible for human beings to pursue a life plan and social arrangements they choose without coercive directives. The universal nature of human rights, respect for human beings as rational agents, and the legitimate claims of right holders are important considerations in the humanitarian intervention debate.

The universal nature of human rights is critical to humanitarian intervention. A brief examination of the nature of rights as they relate to claims is examined. Finally, it is noted while individuals may have morally imperatival claims on others, we do not necessarily consider all morally legitimate claims to be human rights. However, morally legitimate claims, when placed in context, are directly related to the duty of humanitarian intervention. I address this in greater detail later.

Broadly speaking, human rights are primarily universal moral norms that bind all people in all places at all times: they exist independently of legal and political recognition, and human beings have them simply because they are human beings.[16] They are the rights of all human beings. Gordon notes Locke's contention that "human beings possess natural rights, independently of the political recognition granted them by the state".[17] Essentially, these natural rights are possessed independently of and prior to the formation of any political community. Being human, not political declarations and treaties, is the critical consideration in defining human rights. The moral significance of human rights and human-rights violations does not vary with whose human rights are at stake; as far as human rights are concerned, all human beings matter equally.

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[16] John-Stewart Gordon, "On Justifying Human Rights", in Boylan's *The Morality and Global Justice Reader,* (2011):28.
[17] Ibid., 31.

Human rights have an "independent existence".[18] People have human rights independently of whether they are found in the practices, mores, or the laws of their country or culture. A human right is a genuinely universal moral right. Human rights do not depend in any way on the status of the individual. They are rights that pertain to human beings merely because they are human beings.

Human rights are sustainable and justified as inherently valuable, "always and everywhere", largely because human beings are naturally goal creating, purposive, and evaluative beings.[19] I am in agreement with the perspective that human rights are best understood and justified with regards to a moral obligation to protect human agency or autonomy. A critical aspect of Western human rights is their existence as moral rights of individuals to make autonomous decisions regarding their lives. Boylan notes the imperative of all people having the ability and opportunity to make decisions regarding "the essential core commonly held values: ethics, aesthetics and religion."[20] The agent-based perspective of human rights is directly linked to the natural ability of humans to form, revise, and pursue conceptions of a worthwhile life. Having the autonomy to act upon one's essential core values is essential. Accordingly, the justifying generic function that Griffin assigns to human rights is protecting individual agency which includes three components: autonomy, freedom, and a minimal well-being.[21] From my perspective, establishing human rights based upon the natural capacities of individuals highlights their universal nature. Yet, what matters most in the end is a consensus regarding human dignity and the sanctity of human life.

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[18] James Nickel, "Human Rights" *The Stanford Encyclopedia of Philosophy*, (Winter 2013): 3.
[19] Robert Churchill, "Global Human Rights", in Boylan's *The Morality and Global Justice Reader*, (2011):20.

[20] Michael Boylan, *Morality and Global Justice: Justifications and Applications*, (2011): 24.
[21] James Nickels, "Human Rights", 9.

The various ways in which individuals and institutions bear correlative duties is a critical aspect of human rights. Consideration must be given to the relationship between rights and duties. Human rights are unequivocally justified when a definite claim can be established against a specific agent. Given the expansive nature of the human rights debate, I find the concept of having duty-bearers corresponding to right-holders is essential. The various ways in which individuals and institutions bear correlative duties is a decisive aspect of human rights. If it is established, for example, that there is a "right" to an education, then it is the case that this right imposes a corresponding duty on others to provide an education. "Human rights are rights of all individuals against all individuals: To say that all men have a right to life is to impose on all men the duty of respecting human life."[22] This perspective gives focus to individual human beings, not the state, as the ultimate source of morality and the ultimate units of moral concern. Human rights are essentially the rights of everyone imposing a duty upon everyone.

What the specific content of the counterpart obligation is and who specifically has that obligation are critical aspects of human rights. I am inclined to agree, there are no substantive rights without specific obligations on the part of second parties. Where these things (correlative claims and obligations) are lacking we don't have a proper right.[23] Human rights are "doubly universal" in the sense that all human beings are protected by human rights and, at the same time, they also hold corresponding duties to others with the same rights.[24]

Human rights conceived from this perspective reference a "narrow definition", not including all of the privileges delineated in the Universal Declaration of Human Rights and in the constitutions of liberal Western states. Reference is being made to a "special class of urgent

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[22] Rex Martin, "Are Human Right Universal", in Patrick Hayden's (ed.), *The Philosophy of Human Rights*, (2001): 62.
[23] Ibid., 65.
[24] John-Stewart Gordon "On Justifying Human Rights": 30.

rights" prohibiting mass murder and genocide.[25] The violation of this class of rights is universally condemned. Humanitarian intervention should proceed with the objective of securing the right to physical integrity and unwarranted bodily harm, without interfering with the ongoing social, economic, and political arrangements of communities. At the same time, positive rights and duties are also essential as we shall see.

Advancing the concept of humanitarian intervention requires at least a minimal consensus on human rights. The existence of a basic consensus, or a lack thereof, plays a critical role in the nature of international responses to human rights abuses. However, narrowing the scope of human rights does not, by any means, narrow the scope of legitimate moral obligations. The duty of humanitarian intervention, I will argue, involves moral obligations that lay beyond those based upon human rights. Human rights are an essential component, but not the only consideration. We discuss critical aspects of moral obligations based upon global justice later.

Chapter 3: Armed Humanitarian Intervention

In this essay humanitarian intervention is viewed as military action of one state, a group of states, or an international organization aimed at a prevention or interruption of life threatening conflicts in another state. The purpose is to stop significant and specific human rights violations. The world has an obligation to prevent widespread human suffering resulting from mass murder, ethnic cleansing and genocide. Human lives can be put at risk not only by external aggression, but also by circumstances within a country over which the government has little or no control. It is only when national systems of justice either cannot or will not act to deter or halt large scale

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[25] Ibid., 79.

crimes against humanity that universal jurisdiction and other international obligations should come into play.

Humanitarian intervention has different objectives than both traditional war-fighting and traditional peacekeeping operations.[26] It is important to note how humanitarian interventions are distinguished from other types of military enforcement action and traditional peacekeeping. The goal is to protect populations and not to defeat or destroy an enemy militarily. In contrast to UN-sanctioned cases of humanitarian intervention, peacekeeping operations are authorized by the Security Council under Chapter VI of the Charter – rather than Chapter VII, which allows for the "use of all necessary means" to restore international peace and security, including military force.[27] The justification of military force as an option is supported by the knowledge that in some circumstances only military force can accomplish the job of protecting victims of human rights abuses and ensuring protection of them.

The fact that many developing states lack the capacity to effectively secure human rights is critical. Outside assistance may constitute the main lifeline for many distressed populations. Yet, humanitarians confront formidable problems in security deprived societies. The conditions in the great lakes regions of Africa is an example. "Since 1998 deaths in the Democratic Republic of the Congo alone approach 5.4 million."[28] Humanitarians acting to protect and rescue victims confront formidable problems in war-torn societies. Belligerents often do not consent to allowing the passage and provision of relief. And they generally have no respect for human rights conventions and international agreements. They are often unaware of them or are not signatories. The dramatic increases in the numbers and kinds of civilian fatalities and human rights abuses

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[26] ICISS Report, 57

[27] Thomas Weiss, *Humanitarian Intervention: War and Conflict in the Modern World 2nd ed.,* (2012): 9.

[28] Ibid., 81.

has heightened humanitarian calls for military resources to protect victims and ensure the

establishment of their rights.[29] In such circumstances, the most basic task is for aid agencies to

actually carve out secure spaces in which to operate. Humanitarian agents require safe zones in

which to operate.

Humanitarian intervention as noted here excludes actions against the territorial integrity of

the target state. It also excludes attempts to restrict the ongoing political independence of any

state.[30] The short-range goal of humanitarian intervention is to bring security and to protect

human lives, not to undermine the sovereignty of the state. The long-range goal is to support, not

undermine, the rights of communities to make choices regarding political, economic, and cultural

systems.

Chapter 4: Statism and Cosmopolitanism: The Nature of Duties

Advancing humanitarian intervention as a global norm poses a challenge to the current

structure of the global order.[31] Nonintervention and restraint regarding the use of military force

is broadly defended in scholarly essays, and proclaimed in national and international bodies. It is

the prevailing tradition. Statists, in general, may acknowledge an imperfect obligation of

benevolence in using non-military power as a diplomatic tool in international relations, but there

is nothing to indicate they view the duty to protect and rescue victims of human rights abuses as

a perfect duty. They view the maintenance of order with institutionalized prohibitions against

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[29] Ibid., 88.

[30] Aidan Hehir notes in *Humanitarian Intervention: An Introduction, 2nd ed.*, there is an array of definitions for humanitarian intervention, (2013): 21.

[31] Tom Farer, "Humanitarian Intervention Before and After 9/11: Legality and Legitimacy", J.L. Holzgrefe and Robert Keohane, (eds.), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, (2003): 53.

interference in the internal affairs of other states as an essential element of international peace and stability.

In contrast, cosmopolitans are likely to view the moral imperative to respond to human rights abuses quite differently. From their perspectives, the violation of the rights of innocent people should be the referent object of concern in deliberations regarding humanitarian intervention. Cosmopolitans focus upon the universal nature of obligations to humanity. Some cosmopolitans advocate humanitarian intervention in a relatively wide range of repressive political situations. Authoritarian governments are often viewed as unduly repressive; consequently, they may be considered legitimate targets of international intervention. Arbitrary arrests and detentions, restrictions on freedom of movement and assembly, and "non-democratic" institutions in general, pose challenges regarding the scope of universal human rights, according to cosmopolitans.

Broadly speaking, we have two contrasting theoretical positions regarding international relations.[32] One way in which these perspectives contrast is their degree of focus on moral judgments in international relations. In international relations and foreign policy considerations skepticism about the possibility of international moral norms has attained the status of a professional orthodoxy in both academic and policy circles as the dominant or default paradigm.[33] Enhancing national security and considerations regarding the global balance of power are the primary focus. This orientation represents the "realist" perspective linked to statism. Concepts such as global justice and humanitarian goals as ends-in-themselves are not realist considerations.

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[32] Eric Heinze, *Waging Humanitarian War: The Ethics, Law, and Politics of Humanitarian Intervention*, (2009): 15.

[33] Charles Beitz, *Political Theory and International Relations*, (1979): 15.

Statism gives priority to specific principles of international relations that generally do not give human rights and humanitarian actions much weight. National security and strategic advantage should motivate actions. The sovereignty of the state is given greater weight than the human rights of its individual inhabitants. On the other hand, cosmopolitanism advances a conception of international relations that gives priority to principles of individual human rights and "global justice" over state sovereignty.

Global justice in the context of this essay and humanitarian intervention is considered as an institutionalized retributive commitment to timely addressing humanitarian crises that are largely the result of Western colonialism, imperialism, and globalization. For this purpose, we are referencing legitimate international expectations that procedures must be developed for, and resources committed to, rescuing and protecting people from specific human rights abuses. We discuss Western influences in shaping the current global order later.

Noninterventionists contend states hold international rights above and beyond human rights. Interventionists claim the international rights of states are but a derivation of human rights. More will be said about this claim later. On the whole, cosmopolitans accept the principle of humanitarian intervention as a legitimate moral imperative. [34]

Although adherents to cosmopolitanism share certain core convictions, there are different versions of cosmopolitanism. The same can be said for statism; there is no one perspective regarding the relative importance of state sovereignty, human rights, individual or state self-determination and international moral obligations. However, the perspectives contrast regarding the nature of sovereignty. A cosmopolitan perspective acknowledges peoples or individuals as the legitimate bearer of rights. A statist views states as the legitimate bearer of rights in the

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[34] Teson, *Humanitarian Intervention,* 18.

international community. The nature and privileges of citizenship differ between these positions.

Ideally, individuals are viewed as citizens of a universal moral community from a cosmopolitan

perspective. Statists view individuals as citizens of specific states with rights and privileges

conferred by the state. Conferring rights, duties, and liberties based upon ethnicity, nationality,

and other "artificial" categories is fundamentally inappropriate from the perspective of most

cosmopolitans.[35] Statists are inclined toward a perspective granting one's compatriots an

elevated status, and they are inclined to believe that people are naturally inclined to specific

allegiances toward their nation, state, and local political forms. Statists are inclined to

acknowledge and accept moral standards as communitarian, as opposed to universal moral

standards. In contrasts to individual rights and agency, communitarians emphasize social identity

based upon membership in specific groups and kinship ties stressing a sense of common purpose

and tradition. Viewed from this perspective, international intervention could be interpreted seen

as a strike at the heart of the social identity and established traditions of a community.

Statism

Statism is, to a large extent, theoretically constructed on the principle that the rules of

international relations are derived analogously from domestic society.[36] In the liberal tradition,

autonomous citizens in domestic society are viewed as having a right to self-determination and

freedom from external interference. States are the international analog of individuals in domestic

society and as such, states have the same rights and privileges in the international arena that

individuals have in liberal domestic settings. The principle of nonintervention is emphasized as

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[35] Uwe Steinhoff, "Against Pogge's Cosmopolitanism" *Ratio*, (2013): 340.

[36] Heinze, *Waging Humanitarian War*, 17.

just and necessary in order to protect the rights of nation-states. This perspective constrains humanitarian intervention.

Michael Walzer articulates many of the established principles of contemporary statists.[37] From the statist perspective, states are comparatively self-enclosed and states must refrain from interfering in the domestic affairs of other states. The only global community is a community of states, not of humanity. Established governments are the legitimate representatives of people in international relations. A primary legitimating principle of international politics is self-determination of states. States have a right to territorial integrity, and within their territorial borders they have a right to independence and non-interference regarding their choices about political, economic, and cultural systems. This includes the rights of people to establish political processes and institutions that may be viewed as morally and structurally untenable from a Western perspective.[38] This is a molecular theory of world politics, in which self-contained nation-states are the units of moral and political consideration; states are bound together from within and present themselves as a unit from without.[39] This ideological framework entails specific limitations regarding the use of force in international relations. States may legitimately wage war only as a response to aggression.[40]

Walzer argues that nonintervention and territorial integrity have moral worth because it is only within states where people can establish political communities of their own making.[41] People should be granted the right to be governed in accordance with their own traditions. States

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[37] David Luban, "The Romance of the Nation-State", Robert Goodin and Philip Pettit, (eds.), *Contemporary Political Philosophy* (2006): 670.

[38] Ibid., 670.

[39] Ibid., 671.

[40] Teson, *Humanitarian Intervention*, 27.

[41] Heinze, *Waging Humanitarian War*, 18.

have a right to an autonomous process of social development, as individuals have a right to independently establish and pursue private ends. Therefore, foreigners are in no position to challenge the internal actions and legitimacy of a state's institutions or actions because they simply lack the knowledge and understanding to adequately judge the political "fit" existing between the government and the governed in other states.[42] So long as there is a political community whose government fits its traditions and social order, the government must be granted legitimacy and sovereign jurisdiction over its citizens. [43] Sovereignty is more than just a functional principle of international relations. Sovereignty is linked to self-determination, and for many states and peoples, it is also a "recognition of their equal worth and dignity, a protection of their unique identities and their national freedom, and an affirmation of their right to shape and determine their own destiny."[44]

Walzer maintains that independence from external military intervention is one of the highest goods for states in international relations – if not the highest good.[45] From this perspective nonintervention itself can be viewed as a necessary condition for the enjoyment of human rights.[46] There is a causal connection between the absence of foreign intervention and individual liberty. Human rights can only be established, enforced, and observed as the result of a purely domestic political process. Furthermore, it is argued, the modern international underpinning for this perspective is supported by a conventional interpretation of Articles 2(4) and 51 of the U.N. Charter which states a war is just if, and only if, it is a defensive war.[47]

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[42] Ibid., 18.
[43] Ibid., 21.
[44] ICISS Report, 7
[45] Ibid., 22.
[46] Teson, *Humanitarian Intervention*, p. 32.
[47] Teson, *Humanitarian Intervention*, p. 28

Debates regarding the legitimacy of military actions (war) constitute "a two thousand year old conversation".[48] It is with great reluctance that many have acknowledged the position that under certain extreme circumstances the use of force is permissible. The Just War Theory (JWT) tradition represents an attempt to delineate these circumstances. The statist arguments regarding the legitimate use of force and coercion in the international order are also informed by their commitment to and interpretation of JWT. As noninterventionist restraints, the tenets of JWT that appear most relevant in guiding and assessing morally appropriate responses to humanitarian crisis are *jus ad bellum*.[49] Deliberations regarding humanitarian intervention essentially entail deliberations regarding the justice of resorting to war.

The principles of *Right Intention* and *Just Cause* are tenets of JWT that stipulate the legitimate use of force must be motivated by just rather than expedient intentions such as a perceived strategic military advantage or economic gain: legitimate statist objectives. Initiating military actions for self-defense purposes is a legitimate act based upon the right intention requirement of JWT. It is morally acceptable when states act with the intent to defend themselves and halt aggression.

What are we able to determine regarding the statist view of humanitarian intervention as an imperfect duty or a perfect duty? In the face of continuing global atrocities some statists appear to acknowledge the existence of an obligation to act but there is no indication they view the obligation as a perfect duty. A reformulation of the statist positions regarding human rights abuses and state sovereignty is evident. Walzer does state: "faced with the sheer number of recent horrors-with massacre and ethnic cleansing" in places such as Kosovo, Rwanda, Sudan

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[48] Hehir, *Humanitarian Intervention*, pg 27.
[49] Ibid., p. 28.

(Darfur), and the Congo "more military intervention is necessary".[50] An emphasis on human rights and the need to address significant abuses has gained traction in the international community. Yet, a consensus regarding appropriate responses remains elusive. Walzer maintains a general presumption against intervention and strongly suggests that institutionalizing humanitarian intervention poses a threat to the stability of the international order.[51] While there may be some degree of convergence of opinions regarding the nature of duties and obligations and some acceptance of humanitarian intervention as an appropriate response to extreme human rights crises, there are still disagreements over the exact nature of the duty to rescue victims of abuse. Do states have a duty to rescue, or do they only have a right to rescue in some cases?

Perhaps the position of some statists in the face of extreme human rights abuses is that there is a right (not a duty) of humanitarian intervention.[52] States have a discretionary right to intervene on behalf of victims of human rights abuses of the kind mentioned by Walzer. But they do not have to exercise that right, if their own citizens would be unduly burdened. If humanitarian intervention is viewed as a duty, it is held to be an imperfect duty, like the duties of charity and beneficence. There is no perfect or strict moral imperative to protect and rescue victims of mass murder and genocide. States may discharge these obligations at their own discretion and in a manner of their own choosing. Walzer's general orientation suggests that the idea "that there is no right to be protected against the consequences of domestic failure" still has validity in the 21st century.[53] This disposition allows states to avoid relatively moderate burdens to their own citizens by not acting even if others are being subjected to severe human rights abuses. Acting in

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[50] Michael Walzer, *Arguing about War*, (2004): xii.
[51] Ibid., xii.
[52] J.L. Holzgrefe, (2003), "The Humanitarian Intervention Debate", in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, (2003): 26.
[53] Michael Walzer, *Just and Unjust Wars*, (2006): 88.

the face of morally determinant humanitarian crises must be judged against national security and strategic advantage considerations. In other words, despite the urgency of having human lives hanging in the balance, states are still viewed as having the latitude to choose who to help, how to help and when to help. This is the essence of an imperfect duty. We may be obligated to aid persons in need, but we are not bound to fulfill this duty in any particular way or at any particular time. This perspective stands in contrast to the thesis of this essay; humanitarian intervention is a perfect duty in that the empirical circumstances surrounding specific human rights abuses generally dictate specific moral obligations: *what actions* must be taken, *when* they must be taken and *who* must take them to end human rights abuses.

If states may discharge duties (or rights) at their own discretion and in a manner of the own choosing, then the victims of mass murder, ethnic cleansing and genocide possess no "right of humanitarian rescue". No person or state has a moral claim to be rescued. The general problem writes Michael Walzer, "is that intervention, even when it is justified, even when it is necessary to prevent terrible crimes – even when it poses no threat to regional or global stability is an imperfect duty – a duty that does not belong to any particular agent."[54] Somebody ought to intervene, but no specific state or society is morally bound to do so. And as we have seen in many humanitarian crises, no one acts. The statist orientation appears to reject the idea of universal obligations to humanity based upon the principle that human rights impose duties that are binding on all people, in all places, at all times.

Although an imperfect duty of humanitarian intervention comports easily with the belief that states should privilege their strategic interests and the well-being of their own citizens over the well-being of foreigners, it can have terrible consequences as we have seen in Rwanda and

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[54] J.L. Holzgrefe, "The Humanitarian Intervention Debate", 27.

Darfur.[55] Human rights and moral obligations are not given priority. This is not the case when it comes to the principles of cosmopolitanism. Although my position is largely in agreement with the cosmopolitan perspective, there are some critical differences when it comes to humanitarian intervention.

Cosmopolitanism

"As a direct challenge" to statism, cosmopolitanism treats individuals instead of states as the principal subjects of international order and morality.[56] My contention that humanitarian intervention is a perfect duty appears to be consistent with a cosmopolitan perspective. There is, however, a divergence regarding when or under what circumstances humanitarian intervention is a moral imperative. To some extent, the difference is linked to the idea of a universal right to democracy. We will discuss this later.

The rights of states under international law, from the cosmopolitan perspective, are properly derived from individual rights. The notion that states have an autonomous moral standing is rejected. Governments do not hold international rights that are independent from the rights of individuals who populate the state.[57] The sovereignty of the state is not absolute. Governments are obligated to serve human ends. They have instrumental value. In essence, cosmopolitanism suggests the distinction between internal and external legitimacy is morally unfounded. The internal legitimacy of a government is determined by whether its citizens view its rule and authority as valid. The external legitimacy of a government is based upon whether the international community in general views its rule and authority as valid. The cosmopolitan

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[55] Ibid.

[56] Heinze, *Waging Humanitarian War*, 19.

[57] Teson, *Humanitarian Intervention*, 17.

conception of universal standards regarding legitimate rule suggests there should be no variation between the citizens of states and the international community regarding the question of legitimate rule and authority. "State borders and national or ethnic boundaries have no fundamental moral significance."[58] Borders and most of the arbitrary categorizations that divide humanity such as ethnicity and nationality are viewed as being artificial. Foreign states may intervene to uphold human rights without denying citizens their right to govern themselves: that is, the right to self-determination.[59] Humanitarian intervention can be supported as a moral obligation from this perspective. Cosmopolitanism entails the notion that "every human being has a global status as the ultimate unit of moral concern".[60]

Accordingly, Teson argues, from a contemporary cosmopolitan perspective, that humanitarian intervention is "morally justified in appropriate cases".[61] A major purpose of states and governments is to protect and secure human rights, that is, rights that all persons have by virtue of their nature as human beings.[62] A corollary of the argument is that, to the extent that state sovereignty has value, it has an instrumental, not an intrinsic, value. Sovereignty serves valuable human ends and should be understood as an instrumental value because it derives from a state's responsibility to protect the welfare of its citizens.[63] We all have the obligation to respect human rights by aiding and rescuing victims of human rights abuses, if necessary. Cosmopolitanism maintains that external actors have a right to intervene in the internal affairs of other states to support victims of extreme human rights abuse. In addition, it is important to note the

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[58] Uwe Steinhoff, "Against Pogge's Cosmopolitanism", *Ratio*, no. 3, (September 2013): 340.

[59] Teson, *Humanitarian Intervention*, 32.

[60] Beitz, *Political Theory*, 199.

[61] Fernando Teson, "The Liberal Case for Humanitarian Intervention", in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, J.L. Holzgrefe and Robert Keohane, (eds.), (2003): 93.

[62] Ibid., 93.

[63] Ibid., 93.

perspective of humanitarian intervention advanced by Teson has much broader objectives than the humanitarian goals delineated in this essay.

As has been noted, I agree with the moral status cosmopolitans assign human rights. The state, as an entity with instrumental value, should be bound by the human interest of the individuals that populate the state. Human interest should be the priority. At the same time, I disagree with the cosmopolitan conception of humanitarian intervention as a means to social/political engineering. Military intervention with the goal of establishing a particular form of governance in other states is unjustified. Intervening in an attempt to impose or establish democratic governance is extremely problematic and divisive. It has an imperial vein that almost all developing states will reject. Let us consider the United States invasion of Iraq in 2003, for example.

In "Humanitarian Intervention: Lose Ends" Teson notes humanitarian intervention is justifiable as an instrument of "ending severe tyranny" and that "this standard does not necessarily require that genocide or a similar massive crime should be afoot".[64] The motive of rescuing victims of tyranny can justify humanitarian intervention. He finds intervention acceptable, for example, when "democratic revolutionaries need help" from a powerful neighbor to succeed.[65] Teson argues that the invasion of Iraq in 2003(Operation Iraqi Freedom) was morally justified as humanitarian intervention. "The act of intervention which brought an end to a reign of terror is justified for that accomplishment".[66]

In the case of Iraq, Saddam Hussein indeed had a long history of barbaric human rights abuses. Yet, the context of the 2003 invasion must be considered. The U.S. and its allies had

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[64] Teson, "Lose Ends", 195.
[65] Ibid., 194.
[66] Hehir, *Humanitarian Intervention*, 253.

been actively involved in actions aimed at restricting the actions of Saddam for years. After the

Iraqi invasion of Kuwait in 1990 the U.S. led a United Nations mandated coalition that expelled

the Iraqi army from Kuwait in 1991. In an effort to "contain" Saddam's brutality and punish him

for violations of international law, the U.S. and the U.K. conducted air strikes against Iraq

throughout the 1990s.[67] The containment aspects of this approach were generally effective, yet

Saddam remained in power despite opposition forces being encouraged to overthrow the tyrant.

In short, the antagonistic relationship between the U.S. and Iraq continued and grew in intensity

following the 11th of September, 2001 terrorist attacks. After these events, concerns regarding

the threat of terrorism naturally played a greater role in U.S. foreign policy considerations. The

threat of terrorism from failed states and rogue regimes became a growing concern. The calls for

preventive actions intensified.[68] These U.S. security considerations were accompanied by

proclamations regarding the moral imperative of acting to bring Saddam Hussein's tyranny to an

end. In short, overthrowing Saddam in Iraq and establishing democratic rule would serve U.S

foreign policy security objectives and humanitarian ends. The Iraqi political system would be

reformed and the country would be become a model of democratic governance and liberalism in

the region. Other Arab states would gravitate toward the establishment of these enlightened

political institutions. Obviously I have presented a rather oversimplified account of the events.

Yet the main point is, from the perspective of some cosmopolitans, one of the primary goals of

humanitarian intervention should be regime change and the establishment of political systems

modeled after liberal Western states.

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[67] Hehir, *Humanitarian Intervention,* 246.
[68] Ibid., 247.

This has not worked in Iraq. States are inclined to developed specific social, political and legal arrangements based upon their unique histories. Humanitarian intervention must always give consideration to the rights to states to develop and establish institutions and practices that respect human dignity and the sanctity of life in their own ways. Military force can be employed to stop brutal human rights abuses but it cannot be employed to establish political institutions that are humane and durable. Humanitarian intervention should address life threatening conflicts. "Democratization" should not be the objective.

As noted earlier, humanitarian intervention as specified here excludes actions against the rights of communities to make choices regarding political, economic, and cultural systems. Restricting self-determination and ongoing political processes is not the aim. [69] The right to choose when it comes to political, economic, and cultural systems must be honored. Armed intervention aimed at reforming internal institutions so that they conform to "appropriate" principle of governance and justice is not acceptable. I see no moral imperative in supporting "reform interventions" aimed at liberalization.[70] Next, I consider some of my concerns regarding reform interventions and the overtly expansive nature of the cosmopolitan push for liberal democratic governance.

Cosmopolitan Liberalism and Human Rights

Teson notes a regime is tyrannical when its violations of human rights are systematic, "not isolated or occasional". [71] He notes war crimes, mass murder, genocide and widespread torture as indicators of extreme tyranny. Other specific indicators of freedom (and tyranny) include

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[69] Hehir notes in *Humanitarian Intervention* an array of definitions for humanitarian intervention, (2013): 21.

[70] Eric Heinze, (2009), *Waging Humanitarian War*, State University of NY Press, Albany NY. Pg 25.

[71] Teson, *Humanitarian Intervention*, 158.

arbitrary detention and torture, a lack of freedom of speech, an unfair judicial system, and state sponsored-kidnappings and murders. In general, "the test" is whether human rights violations are sufficiently widespread and pervasive. "There need not be any massive killings, no extermination camps, no genocide, no ethnic cleansing".[72]

Teson further states one measure of the appropriateness of military intervention in another state will be whether "the intervener helps set up a liberal constitution and secure democratic elections".[73] Again, I disagree with this perspective of humanitarian intervention. Forms of governance that respect human dignity and give priority to the minimal use coercion must be allowed to develop within national contexts. They cannot be external orchestrated or imposed. In addition, the focus is potentially shifted away from the primary duty to rescue victims of human rights abuses. If liberal democracy becomes paramount can we still claim that individuals instead of states are the principal subjects of international order and morality? The insistence upon liberalism makes the institutionalization of humanitarian intervention even more contentious. The prospects for obtaining any degree of consensus regarding rescuing and protecting victims of human rights are diminished.

The cosmopolitan desire to spread liberalism is, to a large extent based upon, the belief that Western "democratic" governance is the most effective way to guarantee the sanctity of human rights. Teson states democratic rule "may well be a necessary condition" for enjoying human rights.[74] In like manner, the question is generally posed: "Is there a human right to democracy?" It is not my intent to address that question here. I merely contend that injecting the question of the value of liberal democratic governance into the humanitarian intervention debate is inclined

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[72] Ibid., 159.
[73] Ibid., 156.
[74] Ibid., 180.

to side track the focus on acting to protect victims of human rights abuses. Acknowledging that tyranny is abhorrent is not problematic. In contrast, attempting to export Western liberalism and its legalistic orientation has a divisive imperial tone.

In contrast to acquiescing to liberalism as the universal guarantor of human rights Taylor notes the true issue is not a specific constitutional arrangement but a consensus regarding "certain norms of conduct".[75] Institutionalizing respect for human rights from this perspective is essentially viewed as an effective application of the doctrine of nonviolence, not as a call for a specific form of governmental structure with legalistic frameworks. The determining factor is a respect for the dignity of each person which in effect demands a minimal use of coercion in human affairs. Taylor references the Asian perspective of social/political organization which cautions people against the politics of anger and violence.[76] The Buddhist injunction to respect human dignity comes as a consequence of the fundamental value of nonviolence, not liberal constitutional structures. What is important is the fact that outcomes are consistent with the moral priority given to human individuals in Western thought. This is an outlook that converges with the belief that there is a moral obligation to institutionalize respect for human dignity. Yet, it is rather different from the standard cosmopolitan insistence upon the imperatives of liberalisms. To be sure, norms of conduct that give priority to human rights are established in various ways in different cultural, philosophical and religious traditions.

Furthermore, from a global justice perspective, a different angle on democracy has emerged in arguments that international institutions themselves need to adopt democratic practices. For example, Secretary-General Boutros-Ghali contended that it is difficult to endorse democracy

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[75] Charles Taylor, "A World Consensus on Human Rights", in *The Philosophy of Human Rights*, Patrick Hayden, ed, (2001): 411.
[76] Ibid., 419

within states if the international system is itself undemocratic."[77] The undemocratic structure of

the United Nations Security Council needs reform. The World Bank and The International

Monetary Fund consistently force repressive economic policies on developing states.

International corporations operate in developing countries with little regarding for the interests of

indigenous populations. Democratic input into global governance institutions appears to be

overlooked by most proponents of spreading democracy. Those who advocate a right to

democracy should consider the fact that just procedures should be institutionalized within all

organizations and institutions that are increasingly cross-border or transnational, whether

regional or global. The primary consideration in these regional and global institutional

arrangements should be a commitment to establishing a consensus regarding universal norms of

conduct that respect human dignity, not the global establishment of any particular model of

governance. The need to devise new forms of transnational representation for the institutions of

global governance is a critical global justice issue.[78] Held offers insight into this necessity.

Held notes globalization contests the traditional resolutions of the key questions of

democratic theory and practice at the state level.[79] This is a problem for defenders and critics of

modern democratic systems in a world of regional and global interconnectedness. The very

process of governance can escape the reach of the nation-state. National communities by no

means exclusively make and determine decisions and policies for themselves, and governments

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[77] Hilary Charlesworth, "Is There a Human Right to Democracy", in *Human Rights: The Hard Questions*, Cindy Holder and David Reidy, (eds.), (2013): 276.

[78] Carol Gould, "The Human Right to Democracy and its Global Import", in *Human Rights: The Hard Questions*, Cindy Holder and David Reidy, (eds.), (2013): 297.

[79] David Held, "Democracy: From City-states to a Cosmopolitan Order" in *Contemporary Political Philosophy: An Anthology*, (2006): 681.

by no means determine what is right or appropriate exclusively for their own citizens. People in

the developing world are particularly subject to repressive forces beyond their borders.

In addition, from an academic perspective developing world scholars have suggested that the

colonial-era distinction between civilized and uncivilized states is reproduced in the modern

distinction between liberal democratic and illiberal undemocratic states. This is viewed as

providing a disguise for intervention rather than promoting human rights.[80] There are concerns

about "the imperial project of remaking the world to suit the most powerful" while marginalizing

other critical areas of collective decision making that impact conditions that prompt humanitarian

crises. For the developing world, the idea of democracy has invoked concepts such as self-

determination, permanent sovereignty over natural wealth and resources, the right to

development, and the principles of solidarity which calls for the distribution of the costs of

global challenges in accordance with basic principles of equity and social justice.[81]

Democratization, for many in the developing world, is a term that has imperial overtones,

signaling the imposition of alien forms of governance that respond to the dictates of global

financial institutions (such as the IMF and the World Bank) rather than local conditions. The idea

of a human right to democracy implies that there are universal democratic standards that can be

applied to all national contexts. This is controversial not only because of its links to colonialism,

but also because of the respect international law traditionally accords to local political, social,

and religious arrangements."[82] Rawls has also articulated the importance of respecting "non-

liberal" societies.

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[80] Charlesworth, "Is There a Right to Democracy", 278.
[81] Ibid., 272.
[82] Ibid.

Rawls notes the need to refrain from exercising military, economic and political sanctions in order to force other states to change practices and policies we may disagree with. He believes there should be consideration given to the fact that there are various ways besides liberalism of ordering a society, provided a non-liberal society's basic institutions meet certain specified conditions regarding human dignity and respect for the sanctity of human life.[83] Given the diversity of political and social arrangements throughout the world Rawls' call for tolerance is appropriate and just. This perspective suggests the cosmopolitan tendency to judge other societies by how closely their practices and institutions mirror liberal political traditions is unjustified. Rawls indicates determining whether or when another state is an appropriate target of sanctions is not a task to be taken lightly. Misguided actions to sanction non-liberal states run the risk of denying them a due measure of respect and self-determination. Putting unreasonable external pressure on other states to democratize is often counterproductive.   Furthermore, liberal societies should not hastily determine that other states are unable to reform themselves and establish norms of conduct that respect human rights in ways that are consistent with their own social, religious and political traditions.[84]

Finally, as it relates to the values of liberal democracy and global justice, cosmopolitans are inclined to offer another hypothesis that is questionable. Teson states the reason for giving prominence to democratic legitimacy and rule is "democracies are more peaceful". Therefore, a rule requiring democratic governance advances support for the cause of human rights and the idea of a lasting world peace. "Tyrannies are more aggressive; moreover, the difference in

[83] Rawls, *The Law of Peoples*: 59.
[84] Ibid., 61.

regimes-the coexistence of liberal and illiberal regimes-is a major cause of conflict."[85] Real world events do not support this contention. Shue and Rodin cites sources indicating that in the 1950s and the early 1960s the United States, a "liberal democracy", used its military power or paramilitary power on average of once every eighteen months either to prevent a government deemed undesirable from coming to power or to overthrow a revolutionary or reformist government considered inimical to America's interests. The United States' interventions were not preemptive attacks but aggressive preventive wars.[86] In these preventive actions there were no imminent threats. Aggressive military action was often initiated based upon vague calculations regarding potentially adverse shifts in the cold-war balance of power.

Beyond my objections to the liberal democratic imperative, I oppose aspects of Teson's perspective of humanitarian intervention based upon its consequentialist orientation. His position seems to entails ambiguity when it comes to humanitarian intervention and taking actions in morally determinant situations. I go into greater detail regarding my objections to consequentialism later in the section addressing objections to humanitarian intervention. While delineating the case against tyranny and the imperatives of liberal democracy, Teson seems to hedge his commitment to the priority of rescuing victims of extreme human rights abuses. "There are, unfortunately, no mechanical prescriptions".[87] In sum, he advocates a right to intervene, not a duty to intervene. The consequentialist considerations, in contrast to the moral imperatives, are evident. He states the general principle is that we all have a duty to rescue victims of tyranny if we can do so at a "low cost". "If, on the other hand, the cost rises, the duty

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[85] Teson, *Humanitarian Intervention*, 181.
[86] Henry Shue and David Rodin, *Preemption: Military Action and Moral Justification,*(2007): 4.

[87] Teson, *Humanitarian Intervention*, 158.

turns into permission."[88] Teson states we may, but do not have to, rescue victims of tyranny when doing so would be costly. The question must be asked, exactly how do those who favor cost-benefit approaches make morally authoritative decisions regarding not initiating humanitarian intervention to save victims of genocide. Are the costs considerations consistent with the consequentialist proclamation that all humans are "morally equal"? In any event, humanitarian intervention is not a perfect duty from this cosmopolitan perspective. Essentially, from Teson's perspective the estimated costs of fulfilling a duty can transform that duty into a right. I disagree.

It appears to me that moral duties are essentially immutable. Granted, there are often very good justifications offered for not fulfilling a duty. If that be the case, then the agent should acknowledge that she has determined for very good reasons not to fulfill the duty. Perhaps an agent might determine that fulfilling a duty involves risks to her safety and welfare that she is not willing to take. An agent might have an unfavorable opinion about the people who may benefit from her fulfilling an obligation. Nevertheless, an agent cannot, based upon consequentialist calculations, decide to turn the duty into a right. Teson acknowledges there is a general duty to assist victims of grievous injustice.[89] But the agent must analyze the costs of intervening. Again, the costs analysis, according to Teson, will determine if humanitarian intervention is a duty or a right. As I have noted, life-and-death moral obligations carry too much weight to be flipped. The agent should let the moral imperative of the obligation stand and simply admit that she has determined not to fulfill the obligation.

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[88] Ibid., 154.
[89] Ibid., 153.

Next, we give further consideration to my position which is situated between the non-interventionist orientation of statism, on the one hand, and the cosmopolitanism mission of spreading liberalism, on the other.

Chapter 5: Global Justice and Moral Obligations

Moral deliberations regarding acceptable responses to severe human rights abuses require a consideration of the concept of duty. Kant offers significant insights into the source and nature of moral obligations.[90] The rational human will is the true source of moral laws and duties. Kant contends rational agents are naturally capable of formulating moral laws. These moral laws are universal and they are unconditionally binding. The essential nature of universal moral obligations rests upon the intrinsic worth of human willing. Rational agency facilitates the recognition of universal moral duties. Rational agency has intrinsic value as a moral guide.

The supreme standing of rational beings with a capability to legislate universal obligations is central to Kantian morality. Their very nature makes them ends-in-themselves. This being the case, the only moral obligations that bind all men are essentially those of their own wills. The will is "designed by nature to give universal laws".[91] Kantian morality stipulates that humanity is an end-in-itself and we have a duty to act in a manner consistent with this principle.[92] The principle of humanity as an end-in-itself places a "supreme limiting condition" on the actions of every man.[93] Our rational nature, in framing our individual desires to be treated not as objects or means to an end, will recognize this necessity as a universal obligation, or "categorical

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[90] Immanuel Kant, *Fundamental Principles of the Metaphysic of Morals*, (1785): 49.
[91] Ibid., 49.
[92] Ibid., 47.
[93] Ibid., 49.

imperative."[94] In a sense, there would be a rational universal convergence regarding the idea of the sanctity of humanity and the resulting moral obligations. Rational beings are ends-in-themselves and cannot be used as means to an end. People cannot be measured or accounted for in the same way we determine the value of objects. Morality categorically stipulates that we have no basis for measuring the worth of human beings in the same way we may measure the worth or cost of objects. I essentially agree with this Kantian perspective regarding humanity as an end-in-itself.

From a deontological perspective the demands of moral obligations often contrast with actions that maybe expedient based upon cost-benefit calculations. Consideration of costs versus benefits, as we have seen with Teson, will generally determine states have a duty to intervene only if the costs are not significant. In sum, it is often determined that a moral obligation to aid and rescue victims of human rights abuses is incommensurate with the traditional statist priority of maximizing national security, and not overburdening its own citizens.

We have noted ethicists divide moral duties into two classes: duties of perfect and of imperfect obligation. The duties of perfect obligation are distinguished by virtue of the existence of correlative rights.[95] There is a correlation between perfect and imperfect rights, and perfect and imperfect duties. We have perfect rights to our lives; everyone therefore has a duty not to kill us, for example. We have similar rights to our bodies, so that no one has a right to use them without our consent. The use of force to protect these rights is viewed as morally acceptable.[96] The JWT tradition stipulates using military force to prevent and correct grave injustices is morally

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[94] Ibid., 46.

[95] John Stuart Mill, *On Liberty & Utilitarianism*, (1859): 217.

[96] J.B. Schneewind, *The Invention of Autonomy*, 132.

acceptable. It is acknowledged that everyone has a right to self-defense. The right to survival is universal.

When we call anything a person's right, we in turn acknowledge that a just society ought to take measures for securing it on her behalf if needed, and should not leave it to chance, or to her own powers. To have a right, as thusly conceived, is to have a claim that a just society is morally obligated to defend.[97] Acknowledging basic human rights as universal clearly leads to support for the belief that all members of the international community are at a minimum morally justified in using force to protect victims of extreme rights abuses. International standards of conduct for states and individuals are detailed in the Universal Declaration of Human Rights; the four Geneva Conventions and the two Additional Protocols on international humanitarian law in armed conflict; the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; and the adoption in 1998 of the statue for the establishment of an International Criminal Court.[98]

If humanitarian intervention in cases of specific, grievous violations of human rights are a perfect duties, then the international community has a moral obligation to seek the institutionalization of the practice. Millions of human beings continue to face life threatening circumstances as a result of civil wars, insurgencies, state repression and state collapse. The experience and aftermath of Somalia, Rwanda, Srebrenica and Kosovo, as well as interventions and non-interventions in a number of other places, are a clear indication that the tools, devices

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[97] Mill, *On Liberty & Utilitarianism,* 222.
[98] ICISS Report, 6.

and thinking of international relations need to be comprehensively reassessed, in order to

safeguard human rights in the 21st century.[99]

Moral Claims Beyond Human Rights

   In our consideration of human rights we have noted a narrow definition, or special class, of

human rights that justify humanitarian intervention. There are situations where there is or is

likely to be mass intentional killing of innocents whom cannot protect themselves. This may

initially seem problematic but we can address this concern by considering what Churchill

references as "separability" in identifying moral obligations.[100] In discussing what distinguishes

theories of human rights from the justification of human rights Churchill employs the concept of

"separability" to make the point that legitimate moral obligations go beyond what might be

considered a human rights. Just because something has not be accepted and defined as a human

right does not mean that it is not a critical moral concern. The point is that while human rights

are justified as an indispensable part of our moral lives, they should be regarded as "coextensive"

with the realm of morality concerning duties and obligations.[101] "It is a great, but now common,

mistake to think that, because we see rights as especially important in morality, we must make

everything especially important in morality into a right".[102] A strong conception of human rights

ought to draw boundary line and show how important elements of compensatory, distributive and

retributive justice fall outside the proper scope of human rights.[103] Identifying and establishing

moral obligations must go beyond human rights considerations. Decisions regarding

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[99] ICISS Report, 11.
[100] Churchill, "Global Human Rights", 12.
[101] Ibid.
[102] Ibid.
[103] Ibid., 12.

humanitarian intervention entail the application of ethical principles. Historical developments and contextual considerations have relevance. Therefore, narrowing the scope of human rights, when considering humanitarian intervention, does not narrow the scope of legitimate moral obligations. Employing some of concepts of Shue regarding moral duties and giving consideration to the historical aspects of global injustices add weight to the concept of humanitarian intervention as a perfect duty.

Shue notes a critical distinction among duties beyond the perfect/imperfect distinction.[104] "The complete fulfillment of each kind of right involves the performance of multiple kinds of duties."[105]   Shue's conception serves to expand and delineate critical aspects of moral obligation in the international arena. Shue tenders a tripartite typology of duties. He contends for every basic rights there are three types of duties all of which must be performed if basic rights are to be fully honored.[106] The three basic duties that correlate with every right are (1) duties to avoid depriving, (2) duties to protect from deprivation, and (3) duties to aid the deprived. For every person's human right to physical security, for example, there are three correlative duties. They are: (1) duties not to eliminate a person's security-avoid depriving; (2) duties to protect people against deprivation of security by others-protect from deprivation, and (3) duties to provide for the security of those unable to provide for their own security-aid/rescue the deprived. With this typology in mind, we shall now add some historical context to our analysis in order to delineate moral obligations based upon global justice. Shue's topology should help us in identifying which states may have specific obligations and why they may have these obligations. The typology is useful in adding context to specific humanitarian crises that will be examined.

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[104] Henry Shue, "Basic Rights", in *Contemporary Political Philosophy: An Anthology* (2006): 308.
[105] Ibid.
[106] Ibid.

Held explains that the global consolidation of the modern international system resulted from the expansion of European powers.[107] Key features of the modern states system such as the centralization of political power, the expansion of administrative rule, and the emergence of massed armies, became prevalent features of the entire global order. The diffusion of European power was accompanied by expanding capitalistic economic structures. "Eventually the objectives of war became linked to economic objectives: military endeavor and conquest became more directly connected with the pursuit of economic advantage."[108] In sum, the global expansion of the Western nation-state system became inseparable from the statist focus on national security and strategic advantage-including economic gain.

The globalization of economic life and national security objectives have not by any means been a morally just process affecting each region and country in a similar or equal way. From the outset, this process has involved great costs for the autonomy and independence of many. The disorganizing effects of Western rule on a large number of small societies and the interlinked degradation of the non-European world are well documented. In fact globalization has been characterized both by hierarchy, unevenness and injustices. It has been dominated by those constellations of economic power concentrated in the West and North.[109] The social and political conditions surrounding mass violence and wars in the developing world are linked to these historical developments. Walzer notes the need for a "specification of the context" regarding wars and mass violence.[110]

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[107] David Held. "Democracy: From City-states to a Cosmopolitan Order" in *Contemporary Political Philosophy: An Anthology,* (2006): 683.
[108] Ibid., 684.
[109] Ibid., 684.
[110] Michael Walzer, *Just and Unjust Wars,* (1977): 25

Western states are directly linked to the circumstances and conditions threatening human rights in the developing world. How do we explain repressive governments that foster humanitarian crises and mass human rights abuses? Why is the developing world plagued by the lack of functioning state governments with authority over their entire territory? "A long history of slavery, colonialism, racism, oppression, exploitation, cold war manipulation, militarization, conscription, protectionist trade policies, and so on provides important parts of the explanation."[111] Many developing states do not have the capability and resources required to effectively protect lives and maintain public order.

Let us now return to the tripartite analogy of Shue and consider how it relates to defining moral obligations in the 21st century global order. Even for observers who are only willing to consider a very narrow delineation of human rights as substantive, it is virtually impossible to ignore the historical circumstances contributing to the inability of governments to uphold their duty to protect. Western states have failed in meeting their moral obligation to avoid depriving. Likewise, the moral obligation to protect from deprivation has not been met. Humanitarian intervention provides a means to fulfill the duty to aid or rescue the deprived. It is an answer to the question of *what actions* are morally appropriate in cases of humanitarian crises. These considerations are factors determining the nature of Western obligations. When people take actions that are sufficient to bring about an undesirable effect, especially one that there is no particular reason to think would have otherwise occurred, it is perfectly normal to consider their actions to be a specific cause of the harm. Making attempts to rectify harm is morally justified. Colonialism and imperialism clearly involved human rights abuses. They are directly linked to most of the life threatening humanitarian crises in the developing world.

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[111] Michael Selgelid, (2011) "Global Health Justice", *The Morality and Global Justice Reader*, 216.

Both colonialism and imperialism were forms of conquest that were expected to benefit the West economically and strategically. The day to day work of government might be exercised indirectly through local assemblies or indigenous rulers who paid tribute, but sovereignty rested with the colonizers. The system of colonial domination, which involved some combination of slavery, quasi-feudal forced labor, or expropriation of property, is antithetical to the basic "Enlightenment principles" of self-government and humanity as an end-in-itself.[112] Indigenous populations were denied autonomy in their ability to make choices regarding core values: religion, aesthetics and ethics. Governments wielding political power in the developing world were structured in ways that systematically undermined the human dignity of indigenous populations. The colonial/imperial system was structured to benefit the Western states and transfer resources from the periphery to Western metro-poles.[113] How are these historical realities related to human rights obligations now? What can we conclude regarding specific cases of mass murder, ethnic cleansing and genocide in the modern era? The cases of Rwanda and Sudan are important in this regard.

In 1994 the genocide in Rwanda resulted in the range of 500,000 to 1,000,000 deaths for the 100 days of bloodshed.[114] The genocide centered on the two major groups of Rwandans: Hutus and Tutsis. There is much to suggest that these ethnic distinctions are contrived "state-enforced political identities".[115] In 1933 the Belgians introduced ethnic identity cards which essentially froze the ethnicity of Rwandans and embedded ethnic differences into the political system. Prior

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[112] Margaret Kohn, (2014) "Colonialism", *The Stanford Encyclopedia of Philosophy*, (2014): 4.
[113] Ibid,. 9.
[114] Hehir, *Humanitarian Intervention*, 204.
[115] Ibid.

to colonial administration the distinction between the Tutsis and Hutus was not deeply embedded.[116]

Other factors in the genocide are telling. One of the explanations given for the violence is resource scarcity and increased social tensions as groups struggled to survive the economic impacts of globalization.[117] The fact that for at least three years prior to the genocide the international community was deeply involved in Rwanda must be considered. The structural adjustment programs of the World Bank and the International Monetary Fund (IMF), the pressure put upon leaders to "democratize" and the externally brokered Arusha Accords suggests to some that international involvement contributed to circumstances that threatened human security. In June 1990 the World Bank and the IMF forced Rwanda to implement structural economic adjustments which resulted in the currency being devalued by two-thirds.[118] The democratization pressures from the international community caused the governing party to legalize opposition parties, and ultimately introduce contentious coalition partners, at the same time the government was trying to wage war, manage a collapsing economy, and negotiate with hostile insurgents. The peace delegations at Arusha were largely controlled by external parties, and represented neither those in charge of the government nor the Rwandan military although the Arusha Accords formally ended the civil war.[119] These factors contributed to the breakdown of Rwandan society. Rather than blame the external parties and international financial agencies, the Hutu extremists portrayed the Tutsis as the cause of Rwanda's problems and economic decline. The Tutsis were the primary target in the genocide.

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[116] Ibid., 201.
[117] Ibid., 205.
[118] Ibid., 206.
[119] Tom Dannenbaum, "War and Peace in Rwanda", in *Stopping Wars and Making Peace: Studies in International Intervention*, Kristen Eichensehr and W. Michael Reisman, (eds), (2009), 77-78.

The genocide in Sudan must also be considered in terms of the impact of colonialism and its lingering effects. The borders of post-independence Sudan owed more to the legacy of the British occupation (1899-1956) than to any demographic trends or topography. Establishing borders and map-making by colonial powers in Africa has been an ongoing contributor to state dysfunction. The north and south regions of Sudan have been in a near perennial state of conflict. In 1983 a civil war erupted claiming some 2 million lives.[120] In the 21st century a systematic campaign of ethnic cleansing was pervasive. By mid-2004, based largely upon World Health Organization information and other reports, Darfur was described within the UN system and Western states as "the most serious humanitarian emergency in the world today".[121]

Humanitarian intervention is about aiding the deprived but when we give adequate consideration to the global structure of the international order it is clear that the West has not avoided depriving, nor have we protected persons from deprivation. Colonial and imperial powers have disregarded the human rights of people in the developing world and actively fostered deprivation. Can we totally separate these past injustices from the current moral imperatives of humanitarian intervention? Some of the past rights violations are directly linked to the existence of circumstances that are fostering humanitarian crises. Those deprived have legitimate claim to rights in these circumstances. Based upon the standards of morality and universal entitlements propagated by fundamental Western moral principles, the developing world is owed a duty of justice as a result of the harm that has been done. The deontological conception of humanity as an end-in-itself is a central principle. This is the same principle that

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[120] Ibid., 266.
[121] Ibid., 267.

places "supreme limiting conditions" on the treatment of individuals. The same principle should guide us in morally justifying humanitarian intervention.

A systematic pattern of behavior on the part of Western states has unequivocally caused harm to many developing states. Without these morally improper infringements there is no particular reason to think many of these life threatening circumstances would have occurred otherwise. The duty to protect and aid/rescue are now moral imperatives. "It is duties to aid that often have the highest urgency, because they are often owed to persons who are suffering the consequences of failures to fulfill both duties to avoid and duties to protect."[122] It seems reasonable to conclude that the states that have actively fostered life threatening circumstances now have an obligation to make a commitment to addresses the problems. They have an obligation to commit resources to an international effort.

Chapter 6: Preemption:A Duty to Protect and Rescue

Preemptive humanitarian intervention can play a critical role in the global community meeting moral obligations to protect and rescue. It can also address the need to bring international norms in line with the demand to protect human rights and halt barbaric human rights abuses. States with the capacity have an obligation to ensure that threats to humanity that are distant do not become imminent and those that are imminent do not actually become deadly. Adequate military power is the most basic aspect of state capacity. If an agent does not have the minimum resources required it is not a suitable agent of intervention. Resources are a critical factor in determining who must act.

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[122] Shue, "Basic Rights", 313.

Furthermore, the international community must "act early, decisively and collectively against the threats of crimes against humanity".[123] Crimes against humanity include mass murder, ethnic cleansing and genocide. When is preemptive humanitarian intervention morally permissible? It appears such actions could have a made a tremendous difference in Rwanda, Darfur, and Kosovo.

Early actions would have made a great difference in Rwanda. Perhaps 250,000 Rwandans were killed in the first two weeks, which equates to a figure of some 17,500 deaths per day.[124] Romeo Dallaire, commander of UNAMIR, United Nations Assistance Mission for Rwanda, made several requests for reinforcements and permission to act against those planning genocide in January 1994, prior to the actual start of the genocide. UN officials refused his request for a more robust campaign against those planning genocide.[125] No other states initiated significant preemptive actions at the time. Official observers have agreed that early military intervention – within two weeks of the initial violence – by a force of 5,000 could have made a significant difference in the level of violence in Rwanda and that there was a window of opportunity for the deployment of this force in April 1994.[126] In the case of Rwanda it is likely that 5,000 troops could have averted the slaughter of a half-million people.[127]

The case of Darfur is instructive, also. The coverage of the unfolding disaster in Darfur by the media, NGOs and UN fact-finding missions in 2003 was such that the violence which followed was not unexpected. The human rights abuses were consistently highlighted. By mid-2004 the

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[123] United Nations, "A More Secure World: Our Shared Responsibility", United Nations Report (2004): 3.
[124] Hehir, *Humanitarian Intervention*, 203.
[125] Ibid.
[126] Ibid., 210.
[127] Ibid.,

World Health Organization estimated that between 240 and 440 people were dying every day.[128] Again, it is believed an intervening combat force would have had little trouble stopping killings by the Janjaweed. A well led-African combat force with Western support would have made it possible to stop some of the abuses.[129]

Given that Kosovo's explosive potentiality was so widely discussed, it is morally problematic that it did not receive the attention its reputation should have commanded. Finally, by the autumn 1998 Resolution 1199 was passed empowering the Security Council to act under Chapter VII of the UN Charter.[130] Again, more decisive actions prior to the worst abuses could have saved lives.

Considering the worst human tragedies of the past century, what stands out in each case is fact that there were warning signs. Violence of such magnitude takes planning and preparation, and unfolds within a communal social and political context.[131] Mass systematic human rights abuses require planning, propaganda and the mobilization of substantial human and material resources. They require permissive conditions, both domestically and internationally.[132] "In circumstances where the loss of life is imminent the deployment of international military assets and armed forces may be able to save lives by stopping the direct killing of civilians and allowing for safe zones to be established."[133] In morally determinant circumstances the time to act is *now*.

Information regarding life threatening conflicts is widely available now. The International Crisis Group (ICG) is a new type of NGO dedicated exclusively to monitoring and reporting on

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[128] Ibid., 267.
[129] Ibid., 273.
[130] Ibid., 226.
[131] United Nations, "Implementing the Responsibility to Protect", UN Report to the Secretary General, (2009): 6.
[132] Ibid., 13.
[133] Ibid., 18.

areas of the world where conflict appears to be emerging.[134] Early warning is a critical aspect of preemptive humanitarian intervention. "To be an effective component of national security strategy preemption requires 'exquisite intelligence'".[135] This is another critical component of the state capacity factor. And it has been noted capacity is critical in identifying who must act. Having knowledge that human rights catastrophes are brewing and gathering momentum will increase the chances of being able to take effective actions to avert them.[136]

Preemption as referenced here constitutes a first strike against an enemy who has not yet attacked but whose attack is clearly imminent. The argument for preemption presumes a morally determinant situation in which there will be no time to react if one waits. Preemption is distinct from and more widely accepted than preventive war. Preemption is viewed as justified only when there is an overwhelming necessity of self-defense leaving virtually no time for deliberation and no latitude regarding the need for a military response.[137] Danger to life is imminent in the sense that it can be made manifest within hours or weeks unless action is taken to halt it. Waiting could very well result in a situation in which there is no military option that would succeed in reducing or eliminating the threat. Preemptive intervention is also justified when military force is necessary in the sense that only military force can accomplish the job.[138]

Is it ever the case that an overwhelming necessity of self-defense leaves no time for deliberation and no latitude regarding the need for preemptive military responses? In answering this question we must consider the reality that mass violence, in general, and wars, in particular,

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[134] ICISS report, 26.

[135] Colin Gray, "The Implications of Preemptive and Preventive War Doctrines: A Reconsideration", U.S. Strategic Studies Institute, (2007): 36.

[136] Thomas Weiss, *Humanitarian Intervention*, pg,viii.

[137] Neta Crawford, "The False Promise of Preventive War: The 'New Security Consensus' and a More Insecure World", Henry Shue & David Rodin (eds.), *Preemption: Military Action and Moral Justification*, (2007): 118.

[138] Ibid., 119.

have long "political and moral pre-histories".[139] Walzer employs an analogy in explaining how military actions may be justified in the fact of imminent threats.[140] A nation under threat is like an individual hunted by an enemy who has announced his intention of killing or injuring him. Surely, sure a person would be justified in surprising his hunter, with a preemptive attack, if he is able to do so. In sum, there are life threatening circumstances with which no nation or people can reasonably be expected to live.

Military action can be morally legitimate as an anticipatory measure in response to clear evidence of likely large scale killing. Without the possibility of anticipatory action, the international community would be placed in the morally untenable position of being required to wait until genocide begins, before being able to take action to stop it.[141] Creating an environment of pending mass murder makes an adversary morally liable to military attack. Planning and preparing for mass human rights abuses, especially where there is a historical occurrence of such, makes states or other actors morally liable to military attack.[142]

Preemption is not controversial in dire circumstance.[143] The decision to commit atrocities and go to war has already been made by the enemy. Preemption in morally determinant circumstances is a self-defensive survival strategy. At times it may be a desperate option of last resort prior to receiving an attack that one is absolutely certain is on its way. Self-defense if morally justified.

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[139] Michael Walzer, *Just and Unjust Wars*, 82.
[140] Ibid., 85.
[141] ICISS Report, 33.
[142] David Luban, "Preventive War and Human Rights", (eds.) Henry Shue & David Rodin, *Preemption: Military Action and Moral Justification,* (2007): 191.
[143] Colin Gray, "The Implications of Preemptive and Preventive War Doctrines, (2007): v.

The emerging principles of the Responsibility to Protect (R2P) are relevant in considering preemption and moral obligations.[144] R2P is not merely a responsibility to react after tragedy has occurred. "The responsibility to protect means not just the responsibility to react, but the responsibility to prevent…"[145] Humanitarian intervention is a morally justified act in fulfilling the duty to rescue when major harm to civilians is occurring or imminently apprehended, and the state in question is unable or unwilling to end the harm, or is itself the perpetrator.

Chapter 7: Objections to Humanitarian Intervention

We will consider the objections to humanitarian intervention from four perspectives: relativism, legalism, consequentialism and realism. I'll outline the general objections of these perspectives then offer a reply.

Relativism: The Problem of Moral Consensus

Noninterventionists, from a relativist perspective, are inclined to contend that moral deliberations in general, and liberal rights discourse, in particular, represent the efforts of hegemonic states inappropriately attempting to extend the sphere of authority of liberal-democratic values to social contexts in which those values do not hold. The desire of all people to shape and determine their own destiny is essential.[146] Attempting to universalize human rights and institutionalize humanitarian intervention is a form of moral imperialism. Humanitarian intervention continues a desire to deny the equal worth and dignity of the institutions and

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[144] Henry Shue and David Rodin, *Preemption: Military Action and Moral Justification,*(2007): 19.
[145] Ibid.
[146] ICISS Report, 7.

practices of people in the developing world. Taking military actions to force Western values on

other states is morally problematic. The global community must respect the right to self-

determination and be mindful of the fact that local traditions and practices may have intrinsic

value.

In reply to the concerns of relativists, it should be noted that ethical/moral relativism itself is

theoretically problematic as it lacks coherency when it comes of moral judgments. If relativism

is true, then the case for humanitarian intervention and universal moral principles in general,

becomes quite problematic. A defense of humanitarian intervention must reject relativism.[147]

Furthermore, we should recall how humanitarian intervention was defined earlier. The purpose

of humanitarian intervention is the deployment of military forces into life threatening conflicts in

order to protect victims and ensure access to them for humanitarian reasons. Humanitarian

intervention as noted here is understood to not involve actions against the general social and

cultural practices of the target state, nor attempts to restrict the ongoing political independence of

any state. The goal is to address massive human rights violations and prevent widespread human

suffering. Acknowledging that those from the outside with a duty to aid must completely

recognize and respect the sovereignty and traditions of the counties concerned and must attempt

to find solutions to deadly conflict within the parameters of indigenous institutions is not

problematic.[148]

The moral foundations of current international institutions and conventions do not support

a relativistic perspective. The claim that one has a legitimate political or cultural tradition that

supports mass murder and genocide is unfathomable. Mill notes: "One aspect of every system of

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[147] Teson, *Humanitarian Intervention*, 36-37.
[148] ICISS Report, 25.

morals is that they all enjoin to abstain from whatever is manifestly pernicious to human agency in particular and society in general."[149] Also, we have defined human rights in such a way were it should not be impossible to imagine a consensus on this "narrow definition". And we have acknowledged that rights to choices regarding political, economic, and cultural systems must be honored. Armed intervention aimed at reforming internal institutions so that they conform to Western principles of justice and liberalism is not justified. There is no moral obligation to support "reform intervention". A perfect duty to intervene is only sustainable in cases of morally determinant humanitarian crisis. Overthrowing tyranny and institutional reforms are not sufficient causes. Domestic political processes and institutions are entitled to enough leeway for autonomous resistance and self-determination within limits.

Legalism: Maintaining a Stable Global Order

Legalists emphasize maintaining a stable international order by acting in accordance with formally authorized multilateral actions. They demonstrate an unwavering commitment to the restraints of JWT and the necessity of United Nations authorized multilateral actions. International customs and agreements are paramount from a legalistic perspective. Humanitarian intervention in general and preemptive intervention in particular is viewed as posing risks in a world full of perceived potential threats. The risks to the stability of the global order and the norm of non-intervention on which it continues to be based is simply too great for the institutionalization humanitarian intervention and preemptive military action. Legalists believe permitting humanitarian intervention in too many instances creates a prescription for global

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[149] John Stuart Mill, *On Liberty* & *Utilitarianism*, 177.

instability.[150] The argument is made that allowing preemptive humanitarian intervention is likely to lead to a disastrous proliferation of conflicts around the globe. In addition, aggressive military actions are essentially unlawful from an international perspective.[151] Legalists are also inclined to contend that the inherently speculative character of the military action makes it subject to error and abuse.[152] There are continuing fears about a "right to intervene" being formally acknowledged.

How should we address legalists concerns? Their objection to preemptive war does not consider the possibility that well-designed institutions for decision-making could address the problems that would otherwise make it irresponsible for a state to initiate humanitarian intervention.[153] Institutional checks and balances must be constructed around the practices we determine to be morally justified.

In considering the stability of the international order, "any event or process that lead to large-scale death or lessening of life chances and undermines the state as the basic unit of the international system is a threat to international security."[154] Incorporating humanitarian intervention as an acceptable response to international crises is likely to increase global security rather than destabilize the global community. In an interdependent world the existence of fragile and failed states that can only maintain internal order by means of gross human rights violations can constitute risks to people everywhere.[155] Again, Rwanda provides an example. The chaos in the region after the genocide contributed directly to two civil wars in Zaire in 1996 and 1998-

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[150] Neta Crawford, "The False Promise of Preventive War", 91.
[151] David Rodin, "The Problem with Prevention" in *Preemption: Military Action and Moral Justification*, 170.
[152] Allen Buchanan, "Justifying Preventive War", 130.
[153] Ibid., 131-132.
[154] UN Report, "A More Secure World", 2.
[155] ICISS Report, 5.

2003 that killed more than 3 million people (most by disease) and destabilized the entire great lakes region.[156] Maintaining a non-interventionist posture based upon legal considerations, in addition to being morally problematic at times, does not automatically promote a stable global order. Furthermore, like the case of NATO's intervention in Kosovo, humanitarian intervention can be considered "illegal", yet at the same time, morally justified. It is quite possible for customs and laws to lack sound moral foundations.

Consequentialism: Outcomes versus Moral Obligations

Consequentialists are inclined to make decisions regarding the morality of humanitarian intervention with considerations given to costs and outcomes. Focusing upon outcomes, they are inclined to question whether the intervening forces have the ability to stay the course and point to the fact that anarchical conditions may continue after intervention. Somalia in 1993 – 1994, and Haiti 1994 are examples given.[157] The inadequacy of institution-building efforts after interventions is often cited. Humanitarian intervention does not end with the termination of an emergency. Consequentialists may ask, why start in the first place when the work will not be completed? The consideration of whether the application of military force does more harm than good requires applying consequentialist ethics. The real difficulty lies in determining whether using the military will help bring about a better outcome than the alternatives.

Consequentialists may raise some valid concerns. Yet it appears they offer no significant guidance for responding to morally determinant situations. Determining morally appropriate responses is quite different from attempting to calculate the likely outcomes of acting, or not

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[156] Hehir, *Humanitarian Intervention,* 209.
[157] Weiss, *Humanitarian Intervention,* 90.

acting. Furthermore, there are significant quantitative problems regarding the actual measurement of costs and benefits. The question of attaching a value to human life must also be considered. We must be mindful of the weight of moral imperatives versus procedural considerations.

In addition, I am inclined to agree with Rodin's assessment of consequentialism.[158] He notes: "Consequentialism suffers from debilitating epistemological problems that renders it effectively useless as a moral theory of war".[159] In general, consequentialist reasoning cannot yield substantive conclusions regarding the moral justifications of war.[160] The Kantian principle of humanity as an end-in-itself must be considered. From a deontological perspective the demands of duty will often contrast with actions that maybe expedient based upon consequentialist calculations. How would a consequentialist perspective give weight to global justice and the historical considerations that we have determined are critical to our current moral obligations?

Realism: The Prospects of a Just Global Order

Realists are inclined to view the struggle for power and the struggle for survival as identical. For this reason they argue that states do not act on the basis of moral concerns, such as human rights violations abroad. States are primarily obligated to enhance their own security and economic well-being. As a result, realists are inclined to believe the use of the military in humanitarian crises is bound to reflect the grand strategies of powerful states.[161] This perspective is evident in some of the criticisms of NATO's actions. Critics argue that NATO's intervention

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[158] David Rodin, "The Problem with Prevention", 143.
[159] Ibid.
[160] Ibid., 145.
[161] Weiss, *Humanitarian Intervention*, 91.

was inspired by the desire to proliferate capitalism and project power into Eastern Europe: Operation Allied Force was "all about U.S. global hegemony" and not based upon any moral imperative to aid the Kosovar Albanians.[162]

The realist perspective that the global community is locked in a world order that precludes actions based upon moral reasoning does not address legitimate rights claims based upon universal human rights and global justice. The realist argument rests solely upon the way the world *is*, as they see it. Furthermore, the realist objections to considering altruistic actions in international relations display a lack of concern for the sanctity of humanity. We must give moral weight to what *ought* to be as opposed to a particular perspective focused upon what *is*. Moral deliberations regarding humanitarian intervention as a perfect duty are not utopian. Yet, they may require us to intellectually step away from the real. In contrast to the realist perspective, Kantian moral principles advise us to seek the true nature of universal moral obligations neither in the nature of man nor in the circumstances of the world.[163] A conception of humanitarian intervention based upon moral obligations assumes that a just social order can in due course be achieved. The desired end of a just international order cannot be undermined simply by pointing out that it currently does not exist. There is no evidence that it is somehow given in the nature of things that people cannot develop institutions and practices capable of halting mass human rights abuses.[164] Establishing universal moral standards and developing a framework for the implementation of strategies to address human rights abuses is critical for the global community.

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[162] Hehir *Humanitarian Intervention*, 234.
[163] Kant, *Metaphysics of Morals*, 5.
[164] Charles Beitz, *Political Theory and International Relations*, 156.

Concluding Comments

Humanitarian crises are morally determinant situations. We must recognize and act upon our duty to aid and rescue victims of severe human rights abuses. The global distribution of organizational and military capacity makes identifying agents that have the ability to respond to humanitarian crises rather unproblematic. This answers the *who* question. In circumstances where defenseless civilians are facing the threat of death from those bent on a brutal campaign of ethnic cleansing the question of what *particular action* must be taken to save innocent lives is not problematic: military intervention is generally their only hope. The question of *when* action must be taken is not difficult to answer when the threat of genocide is imminent. Actions must be taken immediately. The circumstances will determine we must act, what actions we must take and when. Humanitarian intervention is a perfect duty in the face of human rights abuses.

Our global community has evolved. The old norms are morally deficient. The statist position that in morally determinant situations we have a right to intervene, but not a duty to intervene is no longer morally tenable. The cosmopolitan position that we should intervene to promote democratic governance has an air of cultural and political imperialism. What has been offered in this essay moves us away from the statist past, yet moderates the cosmopolitan push for an aggressive spread of liberalism. Circumstances now demand that the international community change its basic mindset from a "culture of reaction" to that of a "culture of prevention."[165] Preemptive humanitarian intervention presents itself as a moral necessity we must institutionalize.

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[165] ICISS Report, 27

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