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The Moral and Legal Aspects of Protecting Human Rights: Or, How I Learned to Stop Worrying and Love the Intervention

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“It will actually be a shame to go on living, to belong to the human race,
if steps are not taken to halt the greatest crime in history”¹

-- Szmul Zygielbojm, 1942

For those counting, the twentieth century bore witness to the slaughter, on both political and ideological grounds, of hundreds of millions of people². Though exact numbers are difficult to estimate, the ethnic and political strife abounding around the globe has given these past hundred years the legacy of being one of the most brutally malicious in recorded history. It is not evident whether this reflects the decay of moral and rational society, increased antagonism between historically opposed groups of people, or simply human ingenuity and innovation in the methods of mass killings. What should be noted, however, is that the world's response to mass killings throughout the era of global governance has been astonishingly similar across time, geography, ideology, and geopolitical balance³—a response that can only be described as willful indifference. Despite the post-WWII barrage of conventions, treaties, and organizations that make up the human rights regime, the Armenians found their strife in 1915 as neglected as did the Tutsis in Rwanda in 1994.

Each massacre, to be sure, was punctuated by an effete, half-yawned proclamation that “never again” would the international community let this happen. The last decade, to be sure, went out with a bang as one state collapsed after another: Somalia in 1991, Bosnia in 1993, Rwanda in 1994, and Kosovo in 1997, while economic sanctions on Iraq throughout the Nineties starved more than half a million civilians to death. While the increase in transnational communication between the time of Armenian genocide in 1915 and the crisis in Kosovo is admittedly vast, if not altogether incomparable, for no incident could it be truthfully said that the major world powers were blissfully ignorant of the situation; truer more so now than ever before. Nor can isolationism be cited for hesitation or complete inaction on the part of the international

community given the inextricable interdependence of nations, politically and economically, throughout the century.

Welcoming the new millennium with yet another round of carnage, the government of Sudan summarily began a campaign of politically-charged killings in Darfur, a forerunner to the peace treaty ending a separate, twenty-two year civil war against the historically-marginalized South. Fighting armed rebel groups for four years by means of the comprehensive destruction of civilization in the France-sized region has left hundreds of thousands of civilians dead and over two million displaced. Both the government and the rebels against whom they employ their militias have threatened humanitarian aid, to be sure, currently the only missions working to stem the flow of blood. Relief operations, if not driven away by violence, are aggravatingly impeded by red tape—a “slow death by a thousand paper cuts.”⁴ Meanwhile, the stymieing morass of the history, identities, and purposes of the warring parties in Sudan, confounding the general public, has left policymakers the latitude to safely evade uncomfortable decisions to commit themselves to action.

One might conclude, alternatively, that the high number of Darfur activists worldwide, and the relative responsiveness of their governments, indicates a watershed as to concern for human rights. To the great credit of tens of thousands of demonstrators, to name only a few of their accomplishments, the U.S. State Department felt compelled to issue threats against Khartoum; cities, states, and major corporations have divested from Sudan’s booming oil-economy; and Governor Bill Richardson, former U.S. Ambassador to the United Nations, personally helped to negotiate an important, though failed, ceasefire between the government and rebels. The response of the Bush administration has been laudable, though ultimately impotent in halting Khartoum’s scorched earth policy of systematic murder, rape, and pillaging of its westernmost region.

The international community's nominal commitment to human rights, as manifested through dozens of United Nations conventions and declarations including the UN Charter itself, ostensibly provides the impetus not to sit idly by when yet again faced with a humanitarian crisis. Reviewing the past, brutal century, though, one finds this to be empirically untrue. The methodology currently employed in determining action, it seems, is to seek a balance between ensuring vital national interests and preserving international credibility—a position that conspicuously omits the plight in question from deliberation. It would, furthermore, be naively idealistic to expect progress in this area without a major reconstruction of the framework used to interpret each nation's obligation to these agreements.

To introduce a new model, in place of the embarrassingly feckless standard we currently employ, it is essential that we create an institution capable of engaging itself against failed, inept, and rogue states⁵ disavowing the rights of individuals. With the power and authority to intervene in a humanitarian crisis⁶, this institution likely under the aegis of the United Nations, could be implemented to protect the victims and forcefully restrain the perpetrator. The pragmatics of designing and implementing this institution are not the focus of this research; in fact, responding to a challenge given by Kofi Annan in 2000, the International Commission on Intervention and State Sovereignty has clearly outlined the structure and parameters of such an institution.⁷ Instead, the following will discuss some of the moral and legal foundations upon which it can be created. While acknowledging the complexities of its future realization, in order for the international community to commit itself to the premise implied in “never again,” a consensus must first be reached regarding our obligation to protect human rights and the international legal precedent to do so.

The first section, thus, will identify the origin of our moral obligation to stop systematic violations of basic human rights, a feat most effectively accomplished by means of international

cooperation towards prevention, reaction, and post-conflict rebuilding.⁸ Using Immanuel Kant's theory of justice, it will be argued that protecting basic human rights by means of military interventions, when necessitated, constitutes a perfect duty. What this means is that there is a socially and potentially legally binding obligation on humanity to use available means towards its cessation. Responsibility in these matters, though, is commonly conceived as merely *imperfect*, meaning that it is self-legislating and therefore unenforceable externally. Like giving to charity, it allows for a commitment ambiguous on many levels, impairing collective response when it is time to act. Garnering support for an intervention will be hardly possible without recognizing our very real duty to intervene.

Individuals, of course, operate through the construct of their government to react to what are by and large foreign political matters. When it comes to intervention, though, even sovereign nations must exhaust all possibilities to operate through the construct of international organizations, such as the United Nations. This does not relieve any party of their obligation to be a part of the solution, however; only in recognizing the proper means of assigning agency, a matter soon discussed, can our duties towards others, even those in distant coordinates of the Earth, evolve towards something practical and legitimate.

The other realm in which the pro-interventionist argument must be developed is in the legal right of an external agent to use coercive force against a sovereign nation. The traditional conception of sovereignty effectively provides a state not only the total monopoly of domestic authority structures⁹, delimiting their exclusive domain in which to exercise judiciary power as regards its own nationals, but also with the dove-tailed right to non-intervention, the forbiddance of foreign actors from wresting control from the state. Considered separate and distinct entities, written into the UN Charter itself is the respect and inviolability of national borders.

While it is not argued that these guarantees are inherently rendered null and void in a

globalized society, they cannot be understood as barriers to action in protecting universal (i.e. *borderless*) human rights. If examined closely, one finds precedent for bending the axioms of internationalism in such a way that both sovereignty and universal human rights can coexist—we have simply not applied lessons learned from the more subtle behaviors subverting our conception of Westphalian sovereignty. As such, three principles of international law that stand as barriers to intervention will be scrutinized to show that they are not, perhaps, as sacrosanct as once believed.

Morality or Law?

Before dividing arguments for humanitarian interventions into their moral and legal aspects, though, it is important to clarify the distinction between the two—an ostensibly simple task. Due to a shared vocabulary, however, this distinction is often lost. Morality certainly has an influence on law (and to some extent law on morality), but we must be exacting when we speak of positive legal rule, a rationally grounded moral principle, or a custom or practice that is neither legally nor morally binding.¹⁰ The discussion of morality takes place away from empirical considerations—the actuality of human behavior and reality.

While implementing an international institution, as aforementioned, is complicated and fraught with dangerous consequences, this does not make the noumenal judgment of its obligation any less real. "Moral philosophy rests solely on its pure or non-empirical part," wrote Kant, "or else condemning the man to self-contempt and inward abhorrence."¹¹ In other words, making a moral argument for the perfect duty of humanitarian intervention must, then, eschew all prudential considerations¹² and study what *ought* to exist or happen. Seeking a set of maxims derived from the actual behavior of mankind or their institutions would inevitably lead to a confused array of hypocritical and potentially dangerous ideas.

Normative accounts of morality apply universally in a metaphysical sense, and herein lies the distinction with law—an inconstant, diverse, and culturally-dependent body of regulations. Illustrating the difference between the discourses, prefacing an anthology on the subject of humanitarian interventions, Editor Terry Nardin uses the example of the suspension of the principle of non-intervention in times of “exceptional humanitarian necessity.”¹³ Whereas there is a potential to argue a moral concern can override a legal norm, it is never the case that a legal norm can justify exceptions to morality without “bringing morality itself into question.” Legal rights such as sovereignty, in other words, cannot be asserted to cover for committing gross moral wrongs.¹⁴

To the extent that morality does inform law, it is nevertheless crucial to recognize the inherent schism between them—especially internationally, in which “authority” is still ambiguous at best, and no law or treaty is absolutely binding. Given the range of ideologies, religions, and spheres of interest among the nearly two-hundred nation states, a consensus on what the law *is* can hardly be reached, much less the normative issues of what it *should be*. It will, therefore take the reconstitution of both dimensions—the normative and the descriptive—if we are ever to create legal frameworks that uphold basic human rights, supported by unrelenting moral vindication that this is, indeed, our moral obligation.

The Moral Imperative

From early April to mid-July of 1994, the international community stood paralyzed as the government of Rwanda, controlled by Hutus, carried out genocide of unprecedented speed and proportion against almost a million Tutsis. Animosity dates back to the nation's colonization first by Germany and then, after World War I, Belgium. Though this distinction as two separate ethnic groups did not exist historically, the Belgians exploited phenotypical differences between

socio-economic classes and indirectly controlled the country through the more “European-looking” Tutsis. In Burundi as well as Rwanda, zealous violence for political dominance sprawled the Great Lakes region throughout the Twentieth century.

In terms of the 1994 genocide, while some countries are guilty only of inaction, the United States and France, in fact, took measures to specifically *prevent* countries from intervening if not downright aiding the *genocidaires*.¹⁵ Security Council meetings became efforts to suppress knowledge of the events, and specifically not to label the crisis as a genocide. At an infamous State Department press conference, the world watched spokeswoman Christine Shelley nervously parse words until utterly devoid of meaning—her phrasing of “acts of genocide” has since become the symbol of American unwillingness to risk money and soldiers after the disaster in Somalia in 1993.

When discussed in the dozens of emotional accounts of those barbarous one hundred days, the collective global inaction towards resolving the crisis is often referred to as—in some variation—a “horrific moral failure.”¹⁶ An albatross around Clinton's neck in his next term, he was even driven to fly to Kigali to personally apologize for his share of the responsibility (though conspicuously never leaving the airport in doing so). Clinton's National Security Adviser Anthony Lake later remarked that his own ineptitude and lack of effort during the crisis was, in his own words, “truly pathetic.”¹⁷ A specter haunting the conscience of the world, the case of Rwanda stands out as a particularly shameful episode in contemporary history. What can be gleaned from the near-universal contempt for the policy of entirely ignoring the Tutsi's massacre (often upwards of 10,000 each day) is that respect for human rights goes beyond a utopian ideal. Instead, perhaps it comes from a rationally-derived system of ethics whose clear logic evokes the pangs of moral culpability.

Deriving such an ethics from the Kantian system, one can show not only why we *should*

intervene in humanitarian crises, but also how it can be seen as a moral *obligation*. The idea upon which one might found this is Kant's categorical imperative, imploring us (in one formulation) to “act only on that maxim through which you can at the same time will that it should become a universal law.”¹⁸ Ubiquitous in elementary philosophy, he famously uses the example of the immorality of lying: one should not lie because, if universalized to an entire society that found no issue with lying, the very idea of 'truth' would become meaningless. Though deceptively similar to the “golden rule” ('do unto others...), Kant himself points out that this principle is “banal” and too restricted—it does not provide a basis for duties to oneself or, more importantly for the purposes of the present thesis, benevolent duties to others.¹⁹ In sum, given the assumed equality of mankind, only those ethical maxims based on this principle of universality can be considered valid.

From the categorical imperative stems two critical extensions in need of elaboration. Firstly, it is the source of the conception of human rights. Kant maintains, and indeed it is an integral component of the categorical imperative, that “every rational being exists as an end in himself and not merely as a means to be used by this or that will at its discretion.” Implied in this statement is that mankind is somehow 'outside of nature' and cannot be treated as mere objects. Personhood, singular and irreplaceable²⁰, sets limits on the actions of others in ways that other forms of non-rational life does not. Whereas mankind is said to possess absolute value or worth, the value of objects, he later explains, is contingent on the desires of human subjects. Bearing only relative value, objects can be said to have a price. The rational actor acts as a touchstone of value; our ability to be the creator of desires, and therefore value, makes us unique vis-à-vis mere *things*.

Furthermore, Kant explains that the capacity for rationally setting ends for oneself, amid a world of others doing the same, makes a person a special locus of value²¹ distinct from all other

non-rational beings.

Reason accordingly checks out every maxim of your will, in its role as giver of laws, to see how it relates to everyone else's will and also to every action towards yourself. It doesn't do this from any external practical motive or future advantage, but rather from the idea of the dignity of a rational being who obeys no law except one that he himself gives while obeying it.²²

Universalizing the notion of one's own self-worth, we come to the conclusion that all persons, insofar as they are capable of reason and self-legislation, are their own source of value—they are to be considered as an end in themselves and treated with all due dignity. Human rights, thus, originate not from a top-down, imposed ideal of a cosmopolitan society, but are *a priori* to society itself. The origin of human rights, therefore, is indistinguishable from that of mankind itself.

Appropriately, 1948's Universal Declaration of Human Rights document, is, in many ways, an extension and pragmatic implementation of the categorical imperative.²³ Many of the thirty articles in the Declaration—including the right to life and liberty, freedom from slavery, the right to own property, and so on—act as a maxim that, withstanding Kant's litmus test, can be universally applied without exception. In other words, these guarantees would not contradict themselves if extended to the whole of humanity. The very first article of the Declaration, mimicking Kant's own words quite closely, reads as follows: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”²⁴ The influence apparent, the categorical imperative is the source of validation for most of what are commonly referred to as 'basic' human rights.

The ability to universalize the articles of the Declaration does not, however, apply unconditionally. One must note that included are not only *negative* rights (freedom *from* something, such as being enslaved) but *positive* rights, as well—a quite meaningful distinction.

The idea of a positive right demands some sort of end be brought upon or given to another by society. Article eighteen (“freedom of thought, conscience, and religion”), a negative right, differs in this sense from article twenty-six, affirming the right to free elementary education. Kant himself was wary of positive rights being taken as guaranteed, for reasons that will be explicated below. With this vocabulary of rights in mind one can frame the discussion for the second essential component derived from the categorical imperative: the duties and obligations we have towards our fellow man, and, in particular, protecting human rights.

The foundation of all duties is the categorical imperative, of course. An objective, ethics-giving principle, it reminds us to act only so that the will could regard itself as giving universal law. “In the case of a rational being whose maxims don’t by their nature already necessarily conform to this objective principle,” says Kant, “the necessity of acting according to that principle is called practical compulsion or constraint, i.e. duty.”²⁵ Despite our personal tendencies to lie, cheat, and/or steal, by the categorical imperative and its ramifications we are obligated to act according to principle. Our personal desire to perform or not perform a duty, as such, is wholly irrelevant to our actual obligation to do so.

To continue with the line of reasoning proffered by Kant, the schemata of positive and negative rights must be translated into the somewhat parallel ideas of perfect and imperfect duties. When infused with corresponding definitions, the distinction between the two still seems fairly evident; in summary, the command of perfect duties pertains to the idea of justice and individual human rights. These rules prohibit one person from violating the rights of another, and must be “performed” (in whatever sense one can perform by abstention) no matter what the cost to oneself.²⁶ Imperfect duties, however, have mere beneficence as their foundation. Virtue and charity are respectable, surely, and can carry much moral weight; however, their obligation has severe limitations that would, in times of dire emergency, surely debilitate immediate action.

The differences between perfect and imperfect duties, at first glance, may seem vague and amorphous. To make a substantial case that we, as a society, have the perfect duty to protect basic human rights²⁷, these must be more clearly identified. In doing so, it will hopefully be made evident that the specific case of interventions should cease to be regarded as an act of mere beneficence, but rather required as rational actors. Perhaps the simplest method of understanding the qualities that make a perfect or imperfect duty, is to ask the following questions: *Is the duty enforceable?*, *Can it be satisfied?*, and *Who must perform the duty?*²⁸

Perfect duties, to begin, can be demanded of society and individuals and enforced to ensure that justice prevails.²⁹ Their maintenance, in fact, is the very basis upon justice exists; they are rules by which we essentially escape the Hobbesian state of nature. These are normally duties to refrain from something, such as harming another. Whether by physical force, judicial action, and/or simply socially ostracizing the offender, when one's rights are put into jeopardy, the “hindering of a hindrance to freedom” is consistent with universal laws.³⁰ The act of murder, to use an unambiguous example, clearly impinges on the basic rights of another; through the penal system it can be, at the very least, punishable, if not altogether preventable. Creating institutions such as the police force and justice system, acknowledging our powerlessness individually, are necessary for a functioning society. Not only *can* perfect duties be enforced, they *must* be.

On the other hand, imperfect duties are self-legislating (meaning, prescribed by and to oneself) and are therefore only internally enforceable. These duties are imperfect because of the many ways in which their performance is ambiguous and not something for which we can be held accountable. Aiding the poor, for example, is not an act for which an agent is specified, nor are there clear objectives by which to measure success. As such, coercion to perform such virtuous acts, Kok-Chor Tan explains, is tantamount to a violation of justice itself.³¹ There is a

legitimate concern as to how it can, under these circumstances, be called a duty. In Kant's account, however, it is the intention to comply with an imperfect duty that exonerates. Naturally, there is an enormous amount of ambiguity in this response, however, a failure to perform acts of benevolence are not inherently unjust and cannot be externally enforced. One might assume, thus, that the categorical imperative, while gracefully providing a foundation for basic human rights, does not go so far as to demand a full-scale intervention to protect them.

Besides enforceability, there is also the issue as to whether the duty can be satisfied, breaking down into three issues, itself: whether there is a specific claimant of the duty, whether the means are clear, and whether the duty can be “precisely specified and... fully discharged.”³² Paying a debt, Nardin remarks, is a perfect duty because one knows exactly one's due responsibility, to whom it is owed, and it can be completed by paying what is owed. The duty to aid the poor is imperfect because, though the maxim of beneficence is clear and the desired end given generally, the duty of charity to the poor is unlikely to be completed by any finite series of actions, if ever.³³ Furthermore, it is unclear exactly what actions must take place to correct the imbalance, and the extent of the duty, by definition, “is not even conceptually possible to delimit and determine.”³⁴ Kant wrote that “to be beneficent when we can is a duty,” emphasizing that, though imperfect duties are not optional, their ambiguous nature gives significant leeway to the actor. Leaving the enforcement open-ended, yet specifically reminding us that they are not left to our volition, has created a problem of interpretation—upon which balances much of the discussion surrounding humanitarian intervention.

Finally, a third manner by which to divide the two lies in the question of agency—that is, who must perform the duty? A perfect duty, in this sense, would be one in which the actor is clearly specified, such as the debtor owing money to another party. Additionally, in terms of perfect duties, all individuals are themselves agents in *not* committing offenses—we need look

no farther than ourselves. When there is an imperfect duty, however, no one person is designated to provide the necessary assistance. Nardin also notes that framing these duties often takes place in the passive voice, conveniently leaving the subject of their sentence unspecified. In a situation where the means to an end are unclear and the performance of such an end is neither legally nor socially binding, this third piece of the puzzle, the missing *agent* to carry out the task, can be the nail in the coffin for duties of beneficence (and potentially for whom the duty was intended). In the case of protecting human rights, without an institution authorized to manage global conflict, agency remains wholly ambiguous and no one left even morally culpable; with duties of beneficence, so long as it is maintained that there is an intention to act, however indeterminate this can be, there is no guilt. Again, this is a particularly pressing issue in terms of emergency situations as when genocide occurs, where time is of utmost importance and each member of the international community nervously looks away.

These three aspects of what makes a duty imperfect, by virtue of their ambiguity, at first glance seem to weaken the case for a moral compulsion for humanitarian interventions. Regardless of the ramifications of its actual implementation, is it that the argument for the coercive use of force to protect human rights, universally guaranteed by Kant, fails before even reaching pragmatic considerations? If requirements of agency, satisfaction, and enforceability are not met, it would be unlikely that the process of the institution's creation, a complicated process in need of consummate leadership, would become a *cause célèbre*. To begin the argument of intervention as obligatory, these conceptual barriers will be dealt with individually, showing them as either false or ultimately inconsequential in creating a space for the perfect duty to intervene. There is for each a counter-argument that entirely pivots the angle from which it is approached. Intervention as an imperfect duty, piece by piece, takes on new meaning as an absolute obligation.

Agency

Starting with the last of these ideas, we find that it is also the simplest to solve, conceptually. It is written in the Genocide Convention of 1948, specifically in Article VIII, that “any contracting party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide.” This is a careful phrase, however, as the diplomatic relations branch of the United Nations acts more like a convention hall for its countries' ambassadors than a body vested with power; as such, there is no *de facto* armed force to be deployed. What can be done is to either organize a coalition force as peacekeepers, or condone external forces taking justice into their own hands. More often, however, as happened in Kosovo and Liberia, the Security Council will retrospectively acknowledge the legitimacy of a non-UN force intervening in a humanitarian crisis, despite the circumnavigation of the UN Charter in its respect for sovereignty. The ends, here, justify the means.

In any case, despite dozens of crimes against humanity committed since the Holocaust, including genocide itself, the convention has never once been invoked to demand the UN initiate an intervention force to prevent such atrocities. For obvious political reasons, as tens of millions perished in the Soviet Union, China, Cambodia, and elsewhere, quite the opposite was true. Just as when the Security Council did everything in its power to prevent the use of the very word genocide in 1994, the UN as a cooperative organization working towards its stated purposes (including human rights) took a backseat to realist politics. The inherent flaws of the Security Council as a jurying panel, determining when to commit to invasive action, are obvious given the enormous imbalance of power. It is often the case that none of the countries with permanent Security Council seats have any inclination to intervene due to a lack of national interest.

Furthermore, in a sad twist of fate, Rwanda held a rotating seat at the time—a Hutu who denied up and down the reality of the crisis. That these nations, together, determine the fate of a one million victims severely undermines the legitimacy of the institution as a proper jurying panel.

The scope of the present research is limited to the moral and legal aspects, though for the present let it be stated simply that a lack of an innate guardian of human rights does not speak at all to the perfect or imperfect nature of the duty. Michael Walzer, writing in Just and Unjust Wars, argues that “the general problem 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... a duty that doesn't belong to any particular agent.”³⁵ This view, though, is shortsighted and unnecessarily ends the logical progression from the foundation of universal rights to its being embedded in international law. Carla Bagnoli, responding that the duty to protect is, in fact, a perfect duty, directly responds to Walzer: “That there is no international institution with the proper authority to intervene means that we *ought* to design such an institution.”³⁶ In this way, the moral imperative we have in regards to protecting human rights might be seen as an obligation to create this progressive institution.

Speaking strictly from a moral perspective, to acknowledge that we have even an imperfect duty to intervene in situations of extreme humanitarian emergency is to acknowledge that, in its broadest conception, the onus falls on humanity at large. Private citizens, naturally, cannot be held individually responsible to intervene, though the combined power of human innovation and reason can hardly be expected to give up at such a superficial impasse. Just as institutions have been created to solve agency problems of this nature both domestically (e.g. police and fire departments) and globally (e.g. international financial institutions), such a global policing institution, or multiple versions thereof, must be given the authority to represent humanity at large and give agency to our obligation to human rights.

Genocide and other acts of political mass killing are hardly unpredictable events—one need only look at the breadth of the literature on the Holocaust and Rwanda alone to see that it is a well-researched and understood phenomenon. Precursors and tell-tale movements can be read much like any other signals to a forecastable event, perhaps none as important as monitoring behaviors that can lead to genocide, yet we continue to act surprised upon the news of yet another conflict. Critiquing this haphazard approach, Nardin remarks that the ad hoc manner in which the international community deals with the problem of large-scale and systematic murder “is a sign of collective myopia and moral failure, not brilliant improvisation.”³⁷ With the interminable flow of information from all regions of the globe, there can be no excuse for surprises. That there is no specific agent to carry out this duty reflects only on the way we persistently handle these types of crises—refusing to create a responsible institution—and not on the nature of interventions as an obligation.

Can it be satisfied?

The second perfect/imperfect criterion is whether the duty can be satisfied. One will recall that what made 'aiding the poor' an imperfect duty is in this sense threefold: it has no specific claimant, the means to do so are not given, and it is unlikely that any finite series of actions will complete it. On all accounts, thus, it differs from the example of paying back a debt, in which someone has the duty to pay back a sum owed (the means) to another person (the claimant), at which point the duty is fully discharged. With these uncertainties inherent in duties of beneficence, especially in light of an “anarchical” international society, it seems doubtful that decisive action, when soldiers, money, and international prestige are on the line, will be at all efficient in times of extreme emergency.

When one draws the distinction between *promoting* human rights and *defending* human

rights, however, the exact responsibilities of the international community are far clearer. While duties of beneficence may have these difficulties, one would be in error to see the duty of intervention in humanitarian crises as akin to aiding the poor. These two situations, though both surely dire and worthy of our compassion and commitment, contrast on a fundamental level—this difference deeply affecting the nature of the means for pursuing them.³⁸ Making this case, Bagnoli writes:

“To assist a country in promoting the social and political conditions for the fulfillment of human rights cannot be successfully carried out by warfare: it is a much more complex endeavor that requires many different activities and structures. Instead, stopping a particular violation of basic human rights can sometimes be achieved only by inflicting sanctions, specifically, by military action.”³⁹

Examining the criteria piecemeal, specifically in cases of gross human rights violations and genocide, we are definitely not at a loss for a specific claimant. The Tutsi ethnic group in Rwanda, slaughtered faster than in any other instance of mass killing, stands out as a quite unambiguous group in need of international assistance. Beckoning for help, they instead watched the peacekeeping force *already in Rwanda* shrink from 2,539 soldiers to 270.⁴⁰ Meanwhile, worldwide media outlets created more confusion about the situation in the little airtime it received, effectively making these very real victims into anonymous and generalized persons, without any specific claim for help. Unconscionable violence between “tribes” in Africa (ethnic groups, more appropriately) has sadly become such a cliché on primetime news that their suffering is often devoid of meaning and context. Much like the ongoing crisis in Darfur, to characterize the upheaval in Rwanda as a “product of primordial ethnic hatreds misses the point of what is really happening there... The real instigation is shamelessly political, not ethnic.”⁴¹ Unlike promoting human rights generally, through the many organizations dedicated to humanitarian aid, situations of grave emergency have very specific claimants who must be given proper respect as fellow human beings.

Secondly, defining the end and how it can be “discharged” in the arena of defending human rights is, perhaps, less of a daunting task than more inexplicit beneficent duties. Whereas aiding the poor raises questions such as how this end can be sustained, given the eternal tendency towards at least some level of poverty (as well as the question as to what should be the minimum level tolerable), protecting victims of mass killings has more or less discernible stages of action depending on the circumstances. Declaring a cease-fire, ensuring the legitimacy of the peace agreement of the offending regime, and returning refugees and internally displaced persons are just some of the objectives necessary towards achieving the larger goal.

Many would argue, however, that there must necessarily be one further step than protecting the victims: establishing a new regime altogether. “When a state or coalition intervenes to halt a massacre,” Nardin remarks, “it faces not only a crime but a criminal. Often that criminal is the regime that has allowed, encouraged, or carried out the massacre... and has to be replaced.”⁴² Pragmatic concerns aside, recognizing humanity in others (and, further, the responsibility to protect) argues Bagnoli, includes the complementary aspects of respecting their freedom *and* obstructing any action meant to curb that freedom.⁴³ Recall Kant's corollary to duties of justice on the rights of others, authorizing coercion against someone who infringes upon another's freedom. Though unequivocally more complicated than simply ensuring a ceasefire, where there's a crime there's a criminal—this cannot be ignored for the sake of ease or diplomacy. Furthermore, we find that to depose a despotic regime bent on mass extermination is yet another accomplishable objective by which to determine exoneration from the duty.

Finally, the means by which to implement the duty—protecting the victims of genocide or massive human rights abuses—are also far from enigmatic. Context must ultimately determine the appropriate response to a grave situation, and the methods one has to protect the victims range from peaceful diplomatic posturing, to economic sanctions, to, in extreme and hopefully

rare cases, military intervention. Because it is clear exactly when the end will have been achieved (when the safety of those being persecuted is ensured and their lives are allowed to resume), the proper authority can take appropriate and proportionate measures.

Each situation is unique, of course, and must be treated as such. Regional organizations, under the auspices of the United Nations, would be best tailored to assess these peculiarities of its jurisdiction and act accordingly. For example, the military branch of the Economic Community of West African States (ECOWAS), though in defiance of the complacent UN at the time, intervened in Sierra Leone in 1997 to halt the civil war. While their success was hardly as swift and decisive as one would hope, unsupported at the international level, from their initiative of Africans solving African problems was gained much insight into effective strategies for regional organizations. Regardless, taking the preventative and reactive measures listed earlier is crucial to saving as many lives as possible given the contextual limitations. As achievable objectives leading towards the main goal, the duty remains unambiguous down to the very movements of the intervention—a procedure widely researched and viable in most situations. Treating each human life as an end of itself requires that the ultimate goal to be, at the very least, stepping in between the attackers and victims until further action is decided.

Is it enforceable?

Perhaps the most crucial test to show whether an obligation is, indeed, perfect and morally-binding is whether the duty can be enforced. We can be compelled to respect someone's right to life and security of person through social institutions (as we can be forcibly restrained from doing so, or punished thereafter), and similarly held accountable to repay a debt owed. By Kant's conception of justice, implied through the categorical imperative, we are compelled to do that which can be willed universally. As a duty of beneficence, we cannot be expected to give to

the poor until we are impoverished ourselves. There are, thus, conceptual limits to positive rights that inherently limit the extent to which we are obliged.

It is important to note that we are compelled to perform perfect duties *regardless* of our motives in doing so; morality, in terms of perfect duties, is irrelevant. The moral worth of a duty, separate from our obligation to perform it, comes only from our intention. Elaborating on this idea, Kant gives the example of wealthy man who gives to charity strictly out of a sense of duty. He has no fear of punishment, but is simply compelled by reason and force of the categorical imperative to respect his neighbors as ends in themselves. This, it is said, would have a positive moral worth. In contrast, the act of a person who simply has an inclination to charity—in that “they find joy in spreading joy around them, and can take delight in the satisfaction of others so far as it is their own work”—is said to have no moral worth whatsoever.⁴⁴ To this effect, Bagnoli writes that “it is not a logical contradiction to fulfill a perfect duty from the wrong motive.”⁴⁵

Imperfect duties, however, cannot be enforced without contradicting their nature as independently satisfied *when possible*. While it is not the case for perfect duties, the performance of an imperfect duty is inseparable from a person's motive to fulfill it. To prove that protecting victims of genocide and other massive human rights crimes is a perfect duty—one that we cannot, as rational beings, ignore without hypocrisy—it must be shown that this is not simply internally-legislated and motivation-bound, but also something we can be coerced to perform. Bagnoli makes one such argument, stressing again the inherent difference between *promoting* human rights and intervening to specifically *defend* basic human rights. “Resisting the violation of basic human rights is not simply a duty of charity, or something that one may or may not choose to perform,” she posits. “It is a perfect duty... that proceeds from respect for humanity.”⁴⁶

What gives the duty its force is the basic conception of humanity as an end in itself, universalized via the categorical imperative. A community of persons with these inalienable

rights is governed by moral norms that “express and give substance to the equal dignity of persons and dictate how they must address and treat each other, what they may properly exact from one another, and what they owe to one another.”⁴⁷ Calling these moral norms “duties of respect,” Bagnoli argues that mutual recognition of each other's humanity is the condition on which the possibility of appropriate relationships and interactions is grounded. This is derived from Kant's work itself, which states that “every human being has a legitimate claim to respect from his fellow beings and is in turn bound to respect every other.”⁴⁸

An interesting facet of the categorical imperative is that there are slight variations throughout *Groundwork*, one of which commands that we “act externally [so that] the free use of your choice can coexist with the freedom of everyone according to universal law.”⁴⁹ In this conception is an emphasis on the restriction on one's own use of freedom based on the rights of others. It is from here that Kant derives the tenet that one's own freedom, if corrupting that of another, “*may forcefully be restricted by others.*”⁵⁰ Thus, the duty to respect others humanity, as well as forcefully restricting the freedom of those who violate the inviolable, cannot be considered an internally-litigated obligation. In fact, it is quite the opposite; the duty to create the global institution and enforce human rights would rather be of the persuasion of obligations with which *compliance* is mandatory but motivation (the rubric by which the act is judged moral or not) is, in this way, irrelevant. It matters not *why* one complies with duties of respect, so long as they do. The duty to respect one's fellow human beings, therefore, is coercible and, as such, a perfect duty.

Finally, it might be a blessing if protecting victims of human rights abuses was considered an imperfect duty in that they are not enforceable, by nature. They remain duties, as mentioned, but are only internally legislated to the extent that as long as one intends to comply with the duty it cannot be said of them that they have done wrong. Literally doing nothing, in

these cases, is unfortunately a perfectly legitimate response. If, however, there exists a proposal by the UN or any other regional organization to take the necessary steps in creating the policing institution as earlier described, compliance would be mandatory: Tan points out that “any outright opposition to the creation of such a force, when it is known that absent this force human rights protection in extreme cases cannot be offered, is morally culpable.”⁵¹ Intention is what counts in imperfect duties, though this is hardly measurable. When put to the test in this way, like acid to invisible ink, one’s true ambitions show.

Based on this understanding of Kantian justice and its many facets, the duty to protect victims of egregious human rights violations shows itself to be not just an internally-legislated duty of virtue, but a fully-coercible and “perfect” duty. Persons, as self-originating sources of their own value, must be compelled to treat each other with all due respect as ends in themselves. Whether by social or legal constraints, one's own freedom may be rightfully restricted if infringing on the freedom of another, regardless of wealth, ethnicity, geography, or any other factor. In this somewhat cosmopolitan understanding of the globe, borders and sovereignty become non-matters in times of the institutionalized violation of a people.

When bearing in mind national borders and all that is implied therein, one begins to discuss more experiential matters that factor into intervention, rather than metaphysical issues in moral philosophy and ethics. Moving towards empirical reality, the following section will argue that there is a legal right to protect victims of crimes against humanity, denying the Westphalian tradition of non-intervention and domestic sovereignty. Coupled with the very real moral duty, it should be unequivocal that to protect basic human rights is an obligation of utmost importance. A failure to recognize this demonstrates complete hypocrisy as rational agents. We cannot espouse the most basic tenets of justice without extending these rights to others and demanding their respect elsewhere. In ignoring these crimes against humanity, we are culpable as per the

laws and tenets that comprise our societal obligations—the guilt of which can be palpable. To be sure, Szymul Zygielbojm, from whom the epigraph was taken, was not one to mince words. Five months after his plea to stop atrocities committed by the Nazis, he surmised that it would not be worth living in a world that forsook this responsibility. Zygielbojm committed suicide in protest.

International Law and the Right to Intervene

If it is believed that there is, indeed, a duty to protect victims of massive human rights abuses, whether based on Kant or otherwise, there still remains an abundance of more pragmatic concerns to overcome. Mere conviction of this obligation far from settles even the normative debate about humanitarian intervention, much less prudential concerns. Morality alone cannot bridge the perceived ideological divide that separates the will to abrogate sovereignty for a “just” cause from the *jus cogens* of international law. Managing to conceive of intervention as harmonious with existing principles of international society—the two, by some ideologies, wholly antithetical—must necessarily precede questions of implementation.

This problem can perhaps be illuminated by quickly examining one of the ways in which behavior in international society differs from behavior domestically. Within a functioning state there is no question of the legitimate sovereign, the authoritative decision maker that can adjudicate the applicability of a wide body of accepted legal rules.⁵² Decisions made at this level are, in turn, binding on individuals with respect to the monopoly of power afforded to the sovereign. Internationally, with widely varying conceptions of justice and the values ingrained in a particular culture, there is no sovereign authority and, thus, no binding laws. Actors perhaps abide by normative conceptions of conduct, maintaining some semblance of peaceful relations, but are not (in theory) beholden to any higher power than themselves.

In a simple definition offered by Nardin, humanitarian intervention is the “use of force by

a state that aims to protect innocent people who are nationals of another state from harm inflicted or allowed by that state's government."⁵³ Inherent in an intervention, by this and other definitions, are a number of violations of customary international law that some see as a threat to the international system. It is possible to dispel this fear, though, by demonstrating that the core values of the system need not be conceived as antagonistic with the idea of universal human rights. Rather than propose a new cosmopolitan world order, it seems that the zeitgeist is naturally flowing towards the reinterpretation of long held values that comprise international relations.

Dissecting the given definition, one finds the following three infractions of international norms, according to customary analysis: (1) the recognition of states only, in contrast to individuals, as subjects of international law; (2) the restriction of *jus ad bellum* to cases of individual and collective state self-defense; and (3) the commitment to the principle of non-intervention as part of the *jus cogens* of international law.⁵⁴ The remainder of the present research will be devoted to the demonstration of how we can maintain these three values while allowing for the institutionalization of ending egregious abuses of human rights.

States as the Subjects of International Law

To speak of international society is to first make some basic assumptions about the principle actors of the society that coexist and choose to interact with each other. The starting point is the *state*, a particular territory controlled by a government and asserting sovereignty over a group of people within.⁵⁵ A system of states emerges when two or more states are regularly in contact, though this does not necessarily imply any synchronization of common interests or values. Though still quite fundamental at this level, the major theories of international relations diverge at this point and, in the interest of clarity, it will be useful to locate the appropriate

framework to properly discuss interventions.

At one end, a realist supposes complete anarchy in all interaction between states. Power, here, is the only deciding factor in relations between states, each of which is assumed to be focused on maximizing their interests by any means necessary. Subverting norms and international law (to the extent that it is followed at all) is itself the norm. The people that comprise the citizenry of a state in this system, one might notice, are conspicuously missing from this framework. In a view wherein nationals of another country have no bearing on external behavior, a humanitarian intervention can only be viewed as a transparent mask for the interests of states.⁵⁶ At the very least, a number of national interests would have to serendipitously converge for such a ‘charitable’ mission to occur; otherwise, risking lives and money for humanitarian ends would be quite unlikely.

Progressing from merely a *system*, a *society* of states exists when a group of states conceive themselves to be bound by a common set of rules in the relations with one another, sharing in common institutions.⁵⁷ To conceive of an international society automatically moves the discussion away from the realists, wherein there is some semblance of norms to which states regularly conform. The use of the word *society*, itself, Alan James notes, “to an appreciably greater extent than *system*, draws attention to the fact that states are made up of human beings.”⁵⁸ Here, indeed, we find space for the subjects of human rights law. The English school of international relations finds the amalgamation of sovereign states as an international community. The perceived unity does not, however, extend quite as far as the Kantian perspective which, at the opposite extreme from the realists, envisions the complete unity and interdependence of humankind.

The English school, itself, can be further divided into two groups. Leaning closer to the realists, on one hand, Pluralists would seek to subordinate human rights to the jurisdiction of

states.⁵⁹ There is certainly normative behavior that loosely directs the comportment of countries in this view, though the sovereignty of states ultimately trumps external values. Solidarists, as the name implies, alternatively see humanitarianism as embodying “the shared interests and values of the society of states.”⁶⁰ More important than sovereignty, here, is the legitimacy of a state as per its obligations to its citizens. The goals encompassed by basic human rights, thus, would be one major source to substantiate the claim to power of a government. Similarly, their abuse is a major factor in delegitimizing a regime—in effect, opening the door to intervention if deemed necessary.

On the opposite extreme of the Realists exists an ideology supposedly extrapolated from the work of Kant. Less descriptive than normative, a “Kantian” in this sense would refer to one aspiring towards the apogee of cosmopolitan society—a “one-world” arrangement without much, or any, adherence to current state borders. Whereas the Pluralists find room for universal human rights within a system of internationalism—the grounding in which the present research finds itself—there is geographical distinction dividing humanity by which to undermine human rights.⁶¹

Of these four models of interaction, it is clear that the argument for the right of humanitarian intervention finds solid ground with the Solidarists. The mindset need not be polemical, though, which would, in effect, render the entire assertion contingent on one’s world view. It is perhaps easier to understand the different archetypes as descriptive, characterizing past behavior, than normative, what it ought to be. Instead of choosing a single model, Hedley Bull argues that throughout the twentieth century, depending on one’s place in history and geopolitical circumstances, the modern international system, in fact, reflects all of the ideologies.⁶² Furthermore, many would agree with Bull, considered the progenitor of the English school, that the twentieth century in particular has seen a remarkable retreat from the age-old

assertion that the members of international society were states and nations, alone.

As witnesses to documents such as the Universal Declaration of Human Rights and non-state judiciaries, individuals have joined states as the bearers of legal and moral rights and duties.⁶³ Ramsbotham and Woodhouse identify three components of the human rights regime, appearing as early as the 1864 Geneva Convention, each concerned to guarantee the security and dignity of the person: the international humanitarian law of armed conflict, the cluster of enterprises referred to as ‘international humanitarian assistance,’ and what is known as ‘international human rights law.’⁶⁴ The law of armed conflict, for example, reflects the significance of the right to life of noncombatants even in contexts of politically organized and legally sanctioned violence. International humanitarian assistance promotes the security and dignity of persons through the provision of food, clothing, shelter, and medical assistance, and, in a human rights framework, these concerns are expressed through conventions prohibiting torture, genocide, slavery, and racial discrimination.⁶⁵

Christine Chwaszcza makes a strong case for the necessity of guaranteeing human rights through international law. Given that human rights are generally not considered to be violated by individuals as private actors, but rather by the systematization of abuse by governments or institutions, human rights must be interpreted as formulating restrictions on political, legal, and social institutions, constraining the activities that representatives of these institutions may engage in.”⁶⁶ If human rights are considered to be universal in character, as pledged by innumerable international agreements and referring to institutions, she deduces “it seems absolutely counter-intuitive that these core values should not be incorporated into and guaranteed by international law.”⁶⁷ Protecting citizens from their own governments, as well as others in times of interstate conflict, is the logical extension of these widely-held values.

One of the ways in which this has already taken place is in the 1948 Convention on the

Prevention and Punishment of the Crime of Genocide, the only binding international treaty to date by virtue of its unique conception as not only a treaty but a penal statute.⁶⁸ Article 2 of the convention defines genocide as any of the following acts, “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:”

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

As a binding document, committing genocide is more than simply a treaty violation but also subject to criminal prosecution, providing for the punishment of those found guilty through special ad hoc tribunals. In fact, many of the *genocidaires* from Rwanda and ex-Yugoslavia found themselves imprisoned for their crimes, their trials heard by such international courts. Despite some dispute as to the effectiveness of the convention as a penal code, the genocide convention is a progressive step towards the recognition of individuals under international law.

While a state’s sovereignty makes it the recognized agent of international society in customary law (i.e. accepted behavior standardized over time), the legal status of a private sphere was institutionalized by Article 2(7) of the UN Charter, entitling each state to the domestic jurisdiction of private matters.⁶⁹ Along with the changing norms, however, the conception of the state itself, and its role as sovereign, has similarly evolved. Far from the time of the divine right of kings and emperors, there has been a notable shift, as described by Catherine Lu, from sovereignty as *privacy* versus sovereignty as *responsibility*. Similarly, Stanley Hoffman is apt to insist the rights of a state in international affairs are only considered legitimate because there is a certain assumption of a “fit” between the government and the citizens.⁷⁰

Lu makes a poignant analogy to emphasize this distinction between privacy and responsibility—that of the domestic family. Parallels are drawn between the pressure on

international society to refrain from interfering in a sovereign state and the government refraining from interfering in the household—long-considered the private sphere of the family until fairly recently. Suggesting that just as families as social institutions adapted in order to survive the decline of absolutist conceptions of parental authority, states as political institutions will also survive the decline of absolutist conceptions of internal sovereign authority.⁷¹ The sovereignty of states, thus, is contingent upon the way they treat their citizens. An irresponsible state, like an irresponsible parent, can lose this revered status.

This theme will return later in the question of non-intervention, but for the present it is essential to understand the elevated status that has been assigned to the individual in international law. The human rights regime has created a space for individuals to have great influence on international politics, over time transforming even the duties of the state to its citizens. While the realist assertion that states are the primary actor in international society is not entirely false, the information age continues to accelerate the pace at which the world at large comes to know intimately the affairs of other governments. The resulting pressure will mount against one's own government to take into consideration the human rights of individuals abroad. Sovereignty as responsibility, thus, not only applies to an offending state (thereby losing their legitimacy) but also to the government of a decent nation—one that must be responsive to the plea of their citizens to define the protection of human rights as a primary tenet of their political beliefs.

The Restriction of Jus Ad Bellum to Individual or Collective State Self-Defense

If we take seriously the idea of universal human rights, considering individuals to be the bearers of rights and duties alongside states, then that which constitutes self-defense might not be strictly limited to actions of self-defense. Slightly different from the problem of the right to non-intervention, discussed in the final section, the present concern is closely related to the tradition

of defining a *just war*. Under what conditions, philosophers have asked, can a state use physical violence against another, and for what purposes? Theories have changed with vast temporal space between the thinkers, and as will be argued, perhaps they must evolve yet again for the post-modern age.

Normatively, perhaps, the end of the imperialist age signaled a transformation in the comportment of global powers, who no longer found conquest for territorial or political purposes to be valid. The legal conception of an international society, however, can be found in the defining document of that society itself—the UN Charter. Though there are a number of somewhat contradictory phrases in the charter, two articles in particular firmly establish the limitation of *jus ad bellum*. Article 2(4) asserts that “All Members shall refrain... from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations” while Article 51 reads “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations.”⁷² Unless retaliatory in nature, in other words, using violence against a sovereign territory is hereby prohibited.

The specificity of the phrase “Member of the United Nations” in Article 51, implying only countries as a whole, might seem to negate an armed protection of human rights. As the central agreement among nations, it is likely for an offending state to see the Charter’s guarantees to sovereignty as taking precedence over any following conventions or declarations. The clause at the end of 2(4), however, could be read as opening a new channel for its discussion. While “purposes of the UN” could have been left intentionally vague, drafters instead outlined these goals quite explicitly in Article 1—one of which articulates that of “promoting and encouraging respect for human rights and for fundamental freedoms for all.” If one is to interpret the above as an exception to the 2(4)/51 limitations, there can still be found a space in

international law for a sanctioned intervention.

Other writers, alert to the semantics involved, suggest that the statements in the UN Charter impose limitations only on member states and not the United Nations itself. The existence of the Department of Peacekeeping Operations, including armed troops presently on the ground in sixteen different countries, shows the commitment to enforce what is written in the Declaration of Human Rights, regardless of direct provocation. The UN investing itself with the authority to act as a multi-lateral organization in resolving crises was precedent-setting; in this organization there is clearly an avenue of operation for non-state actors to legitimately enforce shared values without violating norms of self-defense. Outlining the differences between unilateral and collective intervention, Evan Luard suggests that because the principles, purposes, and methods vary so greatly, multilateral action might not even be classified as intervention at all. “Under a certain view of international politics there can be no such thing as ‘intervention’ by an international organization to which its members have accorded a certain degree of authority.”⁷³ Already exemplified by the United Nations, this can be further institutionalized to great effect by the community of states who, in theory, believe in “never again” letting a situation like Rwanda degenerate to genocide.

Following Luard’s re-conceptualization of intervention, George R. Lucas Jr. posits that the criteria for a just war are altogether unfit by which to judge peacekeeping interventions, because of the inherent distinctions between the two operations. Rather, unlike a military force in a traditional war, a military force used in humanitarian crises is far closer to the use of force in domestic law enforcement and peacekeeping.⁷⁴ Because of the operation’s unique mission in upholding “civilizations highest ideals,” there are far more stringent conditions on a humanitarian intervention than any normal military force would follow. Like domestic law enforcement, he writes, “military personnel must incur considerable additional risk, even from

suspected guilty parties, in order to uphold and enforce the law without themselves engaging in violations of the law.”⁷⁵ In other words, on the ground, the safety of the victims trumps that of the military forces, lest indiscriminate murder be used in enforcing human rights.

Eschewing *jus ad bellum* for *jus ad pacem*, Lucas combs over each criterion of *jus ad bellum* (right intention, last resort, proportionality, etc.) and argues that because of the distinctions, the justification process for *jus ad bellum* cannot be used for a just humanitarian intervention. Rather than retaliation, defense, or punishment, as in a traditional use of force, he suggests that an intervention is justified when the behavior of a government result in grave threats to the peace and security of other states and other peoples. The system he develops is similar to *jus ad bellum*, in that there are stringent conditions put on the use of force outside of one’s borders, but is specifically tailored to situations in which human rights must come before maintaining international peace. Intervention need not be restricted to such cases, he adds, but may be justified when the threats to human rights are wholly contained within the borders of the state in question.⁷⁶

To reiterate, the norm that the use of military force is only legitimate in situations of state defense, retaliation, or punishment cannot be simultaneously held with that of universal human rights. As Pratap Mehta so elegantly puts it, “there is no such thing as a ‘humanitarian crisis’ happening *elsewhere*.”⁷⁷ Crimes against humanity are exactly that, not simply acts against a particularly group of people. The idea of basic human rights, at least nominally agreed to by every state on the planet, demands that individuals be regarded with enough significance as to protect them from the very institutions that ostensibly exist to serve them. Thus, restricting ourselves to the logic of *jus ad bellum* in cases of humanitarian interventions is not only myopic but, in fact, a contradiction to the norms we have developed and codified throughout the twentieth century.

The Commitment to the Principle of Non-Intervention

As a sort of syllogism, if one accepts that individuals stand beside states as the bearers of rights and duties, and that the use of military force may be condoned in situations other than self-defense—more specifically, as the protector of non-nationals—it stands that a state’s reciprocal right to non-intervention can be abrogated in situations of the protection of human rights.

Without this final step, all that had been done on behalf of human rights (conventions, treaties, non-governmental organizations working to alleviate suffering, etc.) would seem to be for nothing. If universal human rights are *a priori* to national borders, as argued earlier using Kant’s theory of justice, then, as put by former UN Secretary-General Pérez de Cuéllar, “the principle of non-interference with the essential domestic jurisdiction of states cannot be regarded as a protective barrier behind which human rights could be massively and systematically violated with impunity.”⁷⁸ As hinted at earlier, a state’s sovereignty should be considered as contingent upon its internal and external legitimacy—the interdependency of a government and its people, and the international recognition of statehood, respectively.⁷⁹ Without these elements, there is hardly an argument for the state’s right to exist beyond mere force of habit—at which point the norm of non-intervention becomes, instead, a non-issue. A government merely claiming the right to sovereignty but unable to assert it in practice, so says Bull, “is not a state properly so-called.”⁸⁰

To be sure, the norm of non-intervention might be the defining feature of the system of states; without it, there could *be* no such thing as international society. It is itself a constraint on sovereignty that allows for the existence of a pluralistic community, the reciprocal agreement to renounce the use of force for political, cultural, or economic purposes enables the system to persist. The historical origins of non-intervention, Mehta argues, suggest that the principle was

simply the “best expression of a healthy internationalism,” protecting the weak from the strong, and allowing for political and social diversity.⁸¹ Integral to the society of states, one that is simultaneously realist, idealist, and otherwise (if one is to believe Bull’s earlier statement), it should not be inferred, therefore, that the principle of non-intervention is undesirable or even an anachronism. The more relevant question here is the limits of sovereignty—the threshold beyond which states can rightfully delimit the “diversity” of practices that deny rights to its citizens.

Sovereignty, itself, is a quite amorphous term that can be construed in a number of different ways. Stephen Krasner, writing at length on the subject, finds it first necessary to separate the idea of Westphalian sovereignty (the exclusion of external actors from authority structures within a territory) from that of domestic, international legal, and interdependence sovereignty. The central thesis of his book, Sovereignty: Organized Hypocrisy, is perhaps inferred straight from its title: sovereignty, while an institution permeating all aspects of international society, has a long history of being breached for a wide array of reasons. He argues that the Westphalian model (most closely related to non-intervention of the four) serves a distinct purpose and its perpetual violation only serves to reinforce its durability as an institution.⁸²

Furthermore, one finds that Westphalian sovereignty, the “lodestar of identity”⁸³, is abrogated in a number of ways. For good or evil purposes, the principle of sovereignty is infringed upon so often that it is hardly recognized as such. In the chart below, Krasner organizes

		Pareto Improving	
		Yes	No
Contingent	Yes	Contract	Coercion
	No	Convention	Imposition

Figure 1.1. Modalities of Compromise

Source: Krasner, Sovereignty: Organized Hypocrisy

these methods according to whether they are Pareto Improving and whether they are contingent on other states.⁸⁴ On the inner left, both contracts and conventions are listed as Pareto Improving—benefiting all parties while leaving none, even non-signatories, worse off. To sign the Declaration of Human Rights, for example, even if it is not obeyed by one of the parties, hurts no one and likely serves to help the legitimacy of the administration. It must be remembered, however, that even Pareto Improving contracts and conventions compromise one's sovereignty. There is no getting around the fact that even a non-binding convention has some slighting effect on one's autonomy. Coercion and imposition, on the other hand, imply power asymmetries that the weaker state cannot resist. Whereas economic sanctions perhaps best exemplify coercion (their effectiveness aside), the topic of the present research is represented in the corner of "imposition." Intervention, at least for the ruling class, is not Pareto Improving and certainly not contingent on their invitation.

Contingency, in the above chart, is meant to indicate the level to which the behavior of one state or ruler depends on that of another, in either a willing or unwilling violation of Westphalian sovereignty. Contracts, as an agreement between two or more parties with explicit mutual benefits, thus fall under the 'contingent' quadrant of the chart while conventions do not— one party's adherence is not contingent on any others, agreeing to abide by certain standards regardless of what others do. In the realm of non-Pareto Improving situations, whereas a ruler may have some leverage when being coerced by a stronger power, imposition implies that the target ruler "cannot effectively resist."⁸⁵

The purpose of this demonstration of Krasner's "modalities of compromise" is to show the autonomy of Westphalian sovereignty, regardless of its extremity, is violated so often (and most times willingly) that rulers have been "blinded to their frequency by the assumption that the Westphalian model has been operative."⁸⁶ Trying to understand why such violations occur,

Krasner argues that institutions provide scripts, or maxims for behavior, that define appropriate behavior for rulers; when two scripts are in direct conflict (non-intervention and human rights, for example), it may not be clear which is most applicable.⁸⁷ When sovereignty is subordinated to a higher ideal, thus, we find action being taken by one of the above methods—contract, convention, coercion, or imposition.

Krasner mentions that coercion and imposition always “leave one of the parties worse off,” seeming to imply that their statehood has somehow been diminished. This distinction, however, is counterbalanced with a passage by Rosalyn Higgins essay in Bull’s anthology Intervention In World Politics, reminding that “not every maximalist intervention is unlawful and not every minimalist intrusion is lawful.” She goes on:

The purpose of the international law doctrine of intervention is... to provide an acceptable balance between the sovereign equality and independence of states on the one hand and the reality of an interdependent world and the international law commitment to human dignity on the other.⁸⁸

Imposition (i.e. interventions), thus, are not inherently more malicious than “gentler” forms of interfering with the autonomy of another sovereign state. For example, whereas a military intervention in Northern Iraq to protect the Kurd refugees saved thousands of lives (a non-Pareto Improving, non-contingent breach of non-intervention), the economic sanctions in Iraq that followed throughout the 1990s led to the starvation of hundreds of thousands of civilians.⁸⁹ Thus, despite the distinction between coercion and imposition in the level of power held by the target—perhaps implying the latter is a more egregious violation—it is difficult to justify one method trumping another.

The operative word in Higgins’ passage above is *balance*, something necessarily found between the concepts of international order and justice. In cases of extreme emergency, humanitarian intervention bridges the schism between these “dual pillars of international society.”⁹⁰ Bull asserts that there can be no justice without first establishing peace, but assures

that this does not mean order is necessarily preferred. Despite it being a condition for other values, this does not imply that a given institution or course of action is desirable because it is conducive to order.⁹¹ In fact, if there is any value attached to order in world politics, he posits, it is because it is instrumental to the goal of order in human society as a whole—the importance of peace as a value, therefore, is derivative.⁹²

The principle of non-intervention, in terms of its import to world order and stability, and in light of its ingrained resilience, cannot be seen as a precluding interventionist operations to protect human rights. Depending on the circumstances of each situation, contracts, conventions, and coercion would likely all be tried first to end or simply prevent human rights violations. The principle of non-intervention cannot prevent the international community from taking the necessary measures to carry out justice in the name of human rights. The framework of international order is strong, and, as written by Bull, can “withstand the shock of violent assaults carried out in the name of 'justice.’”⁹³

Conclusion

At the beginning of a new millennium, following, perhaps, the most socially and technologically progressive eras of human history, the end of genocide and other egregious crimes against humanity still remain out of reach. In situations of such grave emergency, when all attempts to peacefully resolve the conflict fail, the determination implicated in the post-World War II maxim “never again” typically falls short, as yet more millions of innocent victims are murdered for ideological or political purposes.

To address the moral and legal aspects that often limit the response of the international community, it was first argued that, by using Kant’s theory of justice, protecting universally-established human rights constitutes a perfect duty—both a binding and enforceable obligation.

In situations of genocide and other crimes against humanity that “shock the moral conscience of mankind,” as Michael Walzer said, humanity at large is the agent responsible; we cannot proceed much farther into the twenty-first century continuing to isolate ourselves from those in grave need—lest they soon need graves. It is our moral responsibility to create the institutions authorized to respond to these crisis.

Secondly, the thoughts of various writers were presented as to the legal right of an outside force to intervene. Despite breaching the *jus cogens* of international law, typically understood, it was shown that interventions, in the context of canonical agreements and conventions, can be recognized not only as acceptable but mandatory on the part of the international community. The answer is not a cosmopolitan utopia; there is much reason for the international norms that regularly govern the behavior of states. But as many said, our framework is durable and any failure to act is a failure on the part of humanity at large and not a past body of rules—rules that, we have seen, hardly govern international society in the first place.

Boundaries that divide humanity, whether real or imagined, have no place in determining the right to existence of persecuted groups around the globe. “Human beings are only incidentally members of polities,” writes Brian Barry; “membership of a society does not have deep ethical significance.”⁹⁴ We must heed this notion of our existence in arbitrarily-defined coordinates of the Earth, and react to humanitarian crises as though time and space between us was meaningless. Should the moral and legal zeitgeist lean towards this understanding of common humanity, the question will not be *if* we should extend our hand to protect, but *how*.

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- ¹ Power, Samantha. *A Problem From Hell: America and the Age of Genocide* (New York: Basic Books, 2002), 33
- ² Valentino, Benjamin A. *Final Solutions: Mass Killing and Genocide in the 20th Century*. Ithaca: Cornell UP, 2004. 1.
- ³ Power, Samantha. *A Problem From Hell: America and the Age of Genocide* xvi
- ⁴ Polgreen, Lydia. "Aid to Darfur is Imperiled" (New York Times, 27 Mar 2007)
- ⁵ The distinction between these three types of states likely to abuse human rights is explained by George R. Lucas. "From *jus as bellum* to *just ad pacem*." *Ethics and Foreign Intervention*. Ed. Dean K. Chatterjee and Don E. Scheid. Cambridge: Cambridge University Press, 2003.
- ⁶ The phrase "humanitarian crisis" is interpreted in different ways throughout academia, however all references throughout this research and variances thereof (*mass killing, massacre, etc.*) refer solely to the systematic and organized extermination of a people, regardless of real or perceived group affiliation, conducted or condoned by a governmental institution.
- ⁷ *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (International Development Research Centre: Ottawa, December, 2001)
- ⁸ These orders of action taken from the *The Responsibility to Protect*
- ⁹ Krasner, Stephen. *Sovereignty: Organized Hypocrisy* (Princeton University Press, 1999), 20
- ¹⁰ Nardin, Terry. "Introduction" *Humanitarian Intervention (NOMOS Vol. XLVII)*, (New York University Press, 2005), 5
- ¹¹ Kant, Immanuel. *Groundwork for the Metaphysics of Morals*. Trans. Jonathan Bennett, 26. 31 Mar. 2007 <<http://www.earlymoderntexts.com/pdfbits/kgw.html>>.
- ¹² Bagnoli, Carla. "Humanitarian Intervention as a Perfect Duty," *Humanitarian Intervention (NOMOS Vol. XLVII)*. New York: New York UP, 2005.120
- ¹³ Franck, Thomas. "Legality and Legitimacy in Humanitarian Intervention." *Humanitarian Intervention (NOMOS Vol. XLVII)*. New York: New York UP, 2005. 144
- ¹⁴ Nardin 7
- ¹⁵ See Pogge, Thomas. "Moralizing Humanitarian Intervention." *Humanitarian Intervention (NOMOS Vol. XLVII)*. New York: New York UP, 2005. 161-163
- ¹⁶ Chatterjee, Deen K., and Don E. Scheid. "Introduction." *Ethics and Foreign Intervention*. Cambridge: Cambridge UP, 2003. 5.
- ¹⁷ Chollet, Derek. "The Age of Genocide." *Policy Review* 114 (2002).
- ¹⁸ Kant, *Groundwork* 23
- ¹⁹ Ibid. 29
- ²⁰ Ibid. 28
- ²¹ Bagnoli, Carla. "Humanitarian Intervention as a Perfect Duty." 119-120
- ²² Kant, *Groundwork* 32
- ²³ Atzmon, Gilad. "Kant, Hamas and Human Rights." *Peace Palestine* 1 Feb. 2006. 31 Mar. <<http://peacepalestine.blogspot.com/2006/02/gilad-atzmon-kant-hamas-and-human.html>>.
- ²⁴ United Nations. General Assembly. *Universal Declaration of Human Rights*. 10 Dec. 1948. 31 Mar. 2007 <<http://www.un.org/Overview/rights.html>>.
- ²⁵ Kant, *Groundwork* 31-32
- ²⁶ Nardin, "Introduction" 5
- ²⁷ Basic human rights can most succinctly be conceived as the right to life and security of person, as stated in Article III of the Universal Declaration of Human Rights. For the sake of clarity, the term "liberty" will be excluded given its wide range of interpretation.
- ²⁸ Nardin, "Introduction" 5
- ²⁹ Tan, Kok-Chor. "Kantian Ethics and Global Justice." *Social Theory and Practice* 23 (1997): 56.
- ³⁰ Kant, Immanuel. *The Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1991), p. 188 (383)
- ³¹ Tan, "Kantian Ethics" 57
- ³² Nardin, "Introduction" 15
- ³³ Ibid. 15
- ³⁴ Tan, "Kantian Ethics" 69
- ³⁵ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Allusions* (New York: Basic Books, 1977), xiii.
- ³⁶ Bagnoli, "Humanitarian Intervention as a Perfect Duty," 134
- ³⁷ Nardin, "Introduction" 15
- ³⁸ Bagnoli, "Humanitarian Intervention as a Perfect Duty," 126

- ³⁹ Ibid. 126
- ⁴⁰ Pogge, "Moralizing Humanitarian Intervention" 163
- ⁴¹ Rotberg, Robert I., and Thomas G. Weiss, eds. From Massacres to Genocide: the Media, Public Policy, and Humanitarian Crises. Brookings Institution Press, 1996. 124.
- ⁴² Nardin, "Introduction," 20
- ⁴³ Bagnoli, "Humanitarian Intervention as a Perfect Duty," 127
- ⁴⁴ Kant, *Groundwork* 8
- ⁴⁵ Bagnoli, "Humanitarian Intervention as a Perfect Duty," 122
- ⁴⁶ Ibid. 125
- ⁴⁷ Ibid. 127
- ⁴⁸ Kant, Immanuel. "Metaphysical Principles of Virtue", in Immanuel Kant's Practical Philosophy, trans. and ed. J. Ellington (Indianapolis: Hackett Publishing Company, 1983 [1797]), 6:462
- ⁴⁹ Kant, "Metaphysical Principles of Virtue", 6:230:24-26
- ⁵⁰ Ibid. 6:231:13-17
- ⁵¹ Tan, Kok-Chor. "The Duty to Protect." Humanitarian Intervention (NOMOS Vol. XLVII). New York: New York UP, 2005. 106.
- ⁵² Nicholas Wheeler. Saving Strangers. Oxford University Press, 2000, 3
- ⁵³ Nardin, "Introduction" 9
- ⁵⁴ Chwaszcza, Christine. "Secession and Political Boundaries." Ethics and Foreign Intervention. Ed. Dean K. Chatterjee and Don E. Scheid. Cambridge: Cambridge UP, 2003. 179.
- ⁵⁵ Bull, Hedley. The Anarchical Society. New York: Columbia UP, 1977. 8.
- ⁵⁶ Ramsbotham, Oliver, and Thomas Woodhouse. Humanitarian Intervention in Contemporary Conflict. Cambridge: Polity P, 1996. 31.
- ⁵⁷ Ibid. 13
- ⁵⁸ James, Alan. "System or Society?" *Review of International Studies*, 19(3), 259-88
- ⁵⁹ Ramsbotham and Woodhouse, 31
- ⁶⁰ Ibid. 31
- ⁶¹ It must be noted that despite the use of Kant's theory of justice earlier in the paper, in respect to perfect and imperfect duties, the author parts ways with the ideology of the Kantians/Universalists in their conception of global society. Their independent adoption of Kant's name should not, therefore, imply an endorsement of this view.
- ⁶² Bull, The Anarchical Society, 41
- ⁶³ Ibid. 39
- ⁶⁴ Ramsbotham and Woodhouse, Humanitarian Intervention in Contemporary Conflict, 9-10
- ⁶⁵ Lu, Catherine. "Whose Principles? Whose Institutions?" Humanitarian Intervention (NOMOS Vol. XLVII). New York: New York UP, 2005. 195
- ⁶⁶ Chwaszcza, Christine. "Secession and Political Boundaries", 182
- ⁶⁷ Ibid. 183
- ⁶⁸ Quigley, John. The Genocide Convention: an International Law Analysis. Burlington: Ashgate, 2006. 75
- ⁶⁹ Lu, "Whose Principles? Whose Institutions?", 194
- ⁷⁰ Hoffman, Stanley. "The Problem of Intervention." Intervention in World Politics. Ed. Hedley Bull. Oxford: Clarendon P, 1984. 26.
- ⁷¹ Lu, "Whose Principles? Whose Institutions?", 198-9
- ⁷² United Nations. Charter of the United Nations. 26 June 1945. 8 Apr. 2007 <<http://www.un.org/aboutun/charter/>>.
- ⁷³ Luard, Evan. "Collective Intervention" Intervention in World Politics. Ed. Hedley Bull. Oxford: Clarendon P, 1984. 159
- ⁷⁴ Lucas, George. "From *jus as bellum* to *just ad pacem*." Ethics and Foreign Intervention. Ed. Dean K. Chatterjee and Don E. Scheid. Cambridge: Cambridge UP, 2003. 73.
- ⁷⁵ Lucas, "From *jus as bellum* to *just ad pacem*." 92
- ⁷⁶ Ibid. 85
- ⁷⁷ Mehta, Pratap. "From State Sovereignty to Human Security" Humanitarian Intervention (NOMOS Vol. XLVII). New York: New York UP, 2005. 283
- ⁷⁸ De Cuéllar, J. P. 1991: *Report of the Secretary-General of the United Nations*. New York: United Nations
- ⁷⁹ Ramsbotham and Woodhouse, Humanitarian Intervention in Contemporary Conflict, 37
- ⁸⁰ Ibid. 8-9
- ⁸¹ Mehta, "From State Sovereignty to Human Security", 263
- ⁸² Krasner, Sovereignty: Organized Hypocrisy, 68-9
- ⁸³ Mehta, "From State Sovereignty to Human Security", 262

⁸⁴ Krasner, Sovereignty: Organized Hypocrisy, 27

⁸⁵ Ibid. 28

⁸⁶ Ibid. 28

⁸⁷ Ibid. 65

⁸⁸ Higgins, Rosalyn. "The Problem of Intervention." Intervention in World Politics. Ed. Hedley Bull. Oxford: Clarendon P, 1984. 30.

⁸⁹ Diprizio, Robert C. Baltimore: The Johns Hopkins UP, 2002. 23-43.

⁹⁰ Williams, Melissa. "The Jury, The Law, and the Primacy of Politics" Humanitarian Intervention (NOMOS Vol. XLVII). New York: New York UP, 2005. 250-251.

⁹¹ Bull, The Anarchical Society, 98

⁹² Mazrui, Ali. Towards a Pax Africana (London: Weidenfeld & Nicolson, 1967).

⁹³ Bull, The Anarchical Society, 98

⁹⁴ Barry, Brian, "International Society from a Cosmopolitan Perspective," in International Society: Diverse Ethical Perspectives, ed. David Mapel and Terry Nardin (Princeton: Princeton University Press, 1998), 145