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# HUMANITARIAN INTERVENTION

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## THE DUTY TO PROTECT

KOK-CHOR TAN

## 1.

Much of the philosophical discussion on humanitarian intervention has been concerned with what we may call the permissibility question, that is, whether and under what conditions intervention is morally permissible. Relatively little attention, however, has been paid to the question whether an intervention, when permissible, can also be morally obligatory.<sup>1</sup> This relative neglect in the literature concerning the obligation to intervene is perhaps understandable given that the just war tradition, within which the debate on intervention is conventionally situated, is concerned with limiting the occasions for war and protecting the sovereignty of states, and so treats intervention as a forceful transgression of state sovereignty that needs to be justified. The burden, in other words, is generally on interveners to prove that their actions fall within the limits defined by the principles of just war.

But in recent years, some of the more urgent criticisms concerning intervention are directed not at unjustified interventions but at the failure to intervene to protect human rights. The case of Rwanda is an obvious example. Here, the main criticism was not the familiar one that an intervention took place when it should not have but that an intervention to stop the genocide did not happen when it ought to have. The tardy and tepid response on the part of Western democracies to the human rights violations in Kosovo and the Balkans more generally, the rapid with-

drawal of the intervening force from Somalia when the intervention became no longer risk free; and the indecisiveness in action with respect to the civil war in Liberia are other examples.<sup>2</sup> These cases poignantly suggest that the moral problem of intervention is not restricted to the question of permissibility but further includes the question whether an intervention (when permissible) can also be obligatory. The philosophical debate surrounding intervention must move beyond the permissibility question, which has preoccupied much of the contemporary discussion, and explicitly address the question of obligation. This is not to suggest that the permissibility question is settled and no longer open to debate but only that the question of obligation is a distinct and morally pressing one that deserves more attention in the literature than it currently receives.

One might offer the observation that although the central challenge of intervention during the height of the Cold War was to contain unjustified and violent interference in the affairs of other states, the passing of the Cold War presented the new challenge of getting states to intervene to combat severe human rights abuses. The eagerness of the rival superpowers to intervene in countries for the purpose of extending their spheres of influence during the Cold War has been replaced by a reluctance on the part of the remaining superpower and its allies to commit their military in regions where there are no perceived national security interests, even when human rights violations in these regions acquire genocidal proportions. The new "realities" of the post-Cold War era have made poignant a question that was less urgent when states were eager to intervene.<sup>3</sup> These admittedly conjectural comments aside, it is an indisputable fact that humanitarian intervention in the contemporary world is undertaken selectively by the countries capable of stopping gross human rights violations, and this naturally raises the question of whether it is morally right for a state *not* to intervene when such violations occur.

In this discussion, I want to explore that question, whether there is an obligation to intervene to protect human rights—a duty to protect, for short. Two more specific questions can be identified. First, are the conditions that are *necessary* for making an intervention permissible also *sufficient* in themselves for making that intervention obligatory? That is, is a permissible

intervention also straightaway an obligatory intervention? Second, if not, what are the additional conditions that must be met before a permissible intervention becomes an obligatory intervention?

I will address these broad questions in the following, more definite, steps. I begin, in section 2, by examining why one might think that a permissible intervention is also straightaway obligatory. One reason for this is that given the stringency of the conditions that an intervention must meet in order to be permissible, these conditions are also thought to be, by themselves, robust enough to generate a duty to protect. To put it more specifically, it might seem that if human rights violations are severe enough to overrule the principle of nonintervention, they should also be severe enough to overrule the right of third-party states to neutrality. I point out, however, that this argument shows only that there is an *imperfect* obligation on the part of any particular state to intervene, in the sense that the international community as a whole has the duty to protect, but *no specific* agent can be said to have the moral duty to act. It seems, then, that if the duty to protect is to be a perfect duty, there must be the additional condition that an agent capable of performing the duty be identified and assigned the responsibility to act.

I go on (section 3) to consider two situations in which the "agency condition" is arguably met. One is when an agent stands in a special relationship to the people needing protection; the other is when an agent is obviously the most capable among potential actors of successfully providing the protection. But (section 4) even if the agency condition is not satisfied in the above ways, that there is a duty to protect means that all relevantly situated members of the international community are obliged to take the necessary steps to assign and allocate their respective responsibilities to facilitate the discharge of the collective duty. In other words, if there is an imperfect duty to protect, it need not, and ought not, to remain imperfect. Finally (section 5), I try to counter the objection that the duty to protect exceeds the limit of obligation because of the risks of military intervention.

To avoid misunderstanding, it is worth stressing the obvious point that there can be a duty to protect only if it is also permissible to protect. This follows from what I hope is a truism that all obligatory actions must by definition be permissible—one cannot

be required to do that which one is required not to do. So my discussion assumes that humanitarian intervention is permissible in at least some cases. My question, to be precise, is whether a *permissible* intervention could also be morally obligatory.<sup>4</sup>

Before beginning, I want quickly to note and leave to one side a possible line of argument in defense of obligatory intervention. One might argue that a state has a duty to intervene when the human rights violations in a foreign country pose a security threat against its own citizens. Given that states have the primary obligation to ensure the security and safety of their own citizens, a state can be said to have a duty to intervene (where the intervention is also permissible) that derives from its primary obligation to its own people. The practical significance of this argument is not to be underestimated. Many commentators have remarked, for example, that the events of 9/11 are stark reminders that human rights violations—and conditions associated with these, such as the phenomenon of failed states, civil war, genocide, and so on—in distant lands can have regional and even global consequences. Failure to take action abroad can have serious security repercussions at home.<sup>5</sup> Still, it is worthwhile asking if there can be a duty to intervene *for the sake* of protecting foreigners. This question clearly raises distinct issues that are of philosophical interest in their own right, for it asks whether there can be moral reasons for going to war that are not tied, directly or indirectly, to national defense. But for this reason, the question also has significant practical implications. Grounding the duty to intervene on the duty to protect national security holds the former hostage to how countries perceive and understand the interdependence between global human rights protection and their national security.

Taking the duty to protect to be derivative of a country's national security commitments allows potential interveners to rationalize their inaction against grave moral atrocities. As suggested above, a primary reason for the failure to respond to the genocide in Rwanda was the *perception*, by those most capable of stopping the atrocity, that Rwanda did not present a compelling national security issue.<sup>6</sup> Indeed, how severe human rights violations elsewhere can affect another country is ultimately speculative, given the complex array of contingencies involved, and so whether any given human rights crisis in a foreign land is thought

to pose a threat against a country's national security depends on its own "expert" evaluation of the situation. But if there is a duty to protect that is nonderivative (in the aforementioned sense), it would not be constrained by the difficulties of assessing the national security challenges presented by humanitarian crises abroad, and one can defend such a duty without invoking potentially controversial causal claims about security and human rights. It is, therefore, not just conceptually interesting but of great practical importance that there may be a duty to protect that is independent of national security considerations.

## 2.

Discussions of humanitarian intervention sometimes assume that a permissible obligation immediately generates a duty to protect. The report of the special International Commission on Intervention and State Sovereignty (ICISS), entitled *The Responsibility to Protect*, illustrates this way of thinking.<sup>7</sup> Its title notwithstanding, the report is narrowly focused on the traditional debate concerning the limits of state sovereignty and the principle of nonintervention. It is mainly concerned with clarifying the conditions under which an offending state's sovereignty may be overridden for the sake of protecting the rights of its own citizens. It does not explain why a permissible intervention also generates "a responsibility" on the international community or some other agent "to protect." Instead, it simply assumes that when the principle of nonintervention is overridden, there is "the international responsibility to protect."<sup>8</sup> The report seems to take it for granted that there is a default responsibility to protect, and the only obstacle to the performance of this responsibility is the principle of nonintervention. So once the nonintervention principle has given way, the default duty can be permissibly carried out.

Establishing the permissibility of intervention is, of course, a necessary first step toward showing its obligatory character, given that an obligatory action must, by definition, be permissible. Because some continue to oppose the permissibility of intervention on the grounds of state sovereignty and the principle of nonintervention, to the extent that the ICISS report persuasively defends the permissibility of intervention by showing the limits of

sovereignty and nonintervention, it contributes importantly to advancing this debate. But permissibility alone does not necessarily generate an obligation, and if the ICISS report is, as its title intends, interested in the question of responsibility, the missing premises that are needed to connect the claim about permissibility to the conclusion about responsibility must be fleshed out. It might be the case that intervention presents a special class of action, such that when it is permissible, it is also necessarily obligatory. But this needs to be explicated.

Let us examine, then, whether the conditions for permissible action do in fact sufficiently ground an obligation to act in the special case of humanitarian intervention. Humanitarian intervention involves the use of military force to defend the population of a foreign country against human rights abuses. This use of force is normally directed against the ruling regime of a country. However, in the case of a failed state (e.g., Rwanda or Somalia), the use of force will be directed against insurgents who are attacking the population. What is common to both cases, importantly, is that the territorial integrity and the political sovereignty of an independent state are compromised for humanitarian reasons.

The precise limits of a permissible intervention are, of course, a point of contention in the just war debate.<sup>9</sup> But it is generally agreed that intervention is permissible when the human rights violations in a country are so extreme as "to shock the conscience of mankind," to use the familiar expression. Such violations include mass enslavement, genocide, large-scale massacre (whether genocidal in intent or not), mass expulsion, and so on. Indeed, interventions are termed "humanitarian" (and thus by definition permissible?) when they are motivated by the need to put a stop to grave *human rights* violations.

Of course, other considerations are relevant in determining the permissibility of intervention. As with any defensible military action, the intervention has to meet certain requirements of proportionality (for example, the foreseeable harm to civilians resulting from the intervention cannot be disproportionately greater than the ongoing violation against them that the intervention aims to end). Also, it is normally agreed that the use of force is permitted only after nonmilitary alternatives have been seriously tried, and that the military option (given its inherent high moral

costs) has a reasonable chance of success. Moreover, to ensure that the intervention is not an "ideological intervention" (that is, an intervention serving geopolitical ends) under the guise of humanitarianism, there might be the further requirement that a permissible intervention must also be a multilateral one.<sup>10</sup> But serious human rights violation is the crucial and necessary factor that is commonly thought to make a humanitarian intervention permissible. The universality of human rights means that state borders provide no immunity from international moral action when the violations of rights within a country are severe enough.

What the conditions of permissibility overrule is the presumption of state sovereignty and the corollary principle of nonintervention. International relations are premised on the idea that states have sovereign political authority over their territories, and the principle of nonintervention protects this sovereignty. Michael Walzer writes that the principle of sovereignty "derives its moral and political force from the rights of contemporary men and women to live as members of a historic *community* and to express their inherited culture through political forms worked out among themselves."<sup>11</sup> However, Walzer also notes that when human rights abuses in a state are so extreme as to make any talk of community or self-determination "cynical and irrelevant," that state forfeits its claim to sovereignty, and military action, under the right conditions, may be taken against it to end the abuses.<sup>12</sup> The idea that states have *absolute* sovereignty and that they may do whatever they want to their own citizens is rapidly becoming an outmoded one.<sup>13</sup>

Taking this relatively widely accepted (and minimalist) account as the paradigmatic case of permissible intervention, it seems that a permissible intervention must also be obligatory. If rights violations are severe enough to override the sovereignty of the offending state, which is a cornerstone *ideal* in international affairs, the severity of the situation should also impose an obligation on other states to end the violation. If the right of the offending state to nonintervention may be overruled in the name of human rights, so too, it seems to me, may the right of other states to stay disengaged.

This seems to me to be uncontroversial. Human rights generate corresponding obligations of different kinds on all parties to

conduct themselves in the appropriate ways. Following Henry Shue's well-known typology as one illustration, human rights generate the duty to avoid depriving (a duty that the offending state has failed to live up to); a duty to protect from deprivation (which an indifferent agent fails to live up to); and a duty to assist those who are deprived.<sup>14</sup> The first duty, the duty to avoid depriving, imposes duties on agents not to violate human rights; because the offending state has failed in this regard, it may be acted against, its claim to state sovereignty notwithstanding. The second, the duty to protect, would require that agents take the necessary steps to counter the rights abuses, and this can, it seems to me, include military action under the right conditions. Rights, as Shue argues, entail both positive and negative duties. People whose rights are being violated have a right to protection, and this right will require that others *act* in the appropriate ways to provide the protection.

The force of human rights can, therefore, impose a duty on the part of third parties to intervene to combat rights abuses where necessary; human rights, as James Nickel puts it, "generate corresponding duties," including the duty to protect.<sup>15</sup> Taking rights seriously entails taking seriously the duties generated by these rights. The duty to protect derives from the commitment to human rights, and this commitment can overrule the presumptive right of states to remain neutral.

Now, the right of states to neutrality in war is an aspect of their sovereignty, and it is often accepted as a convention in just war theories that no state may be forced to enter into a war.<sup>16</sup> In examining the issue of obligatory intervention, we are therefore confronting another aspect of the ideal of sovereignty. Although addressing the question of permissible intervention means addressing the sovereignty (and its limits) of the offending or failing state, discussions of obligatory intervention must also address the sovereignty of the neutral state and its presumptive prerogative, as a sovereign state, not to engage in a war for humanitarian ends. In asking whether there is a duty to protect, we are in effect asking whether a state in fact has the sovereign right to remain neutral in the face of a humanitarian crisis, even if military engagement is a necessary means of combating the crisis.

As there is a presumptive right of sovereignty to noninterven-

tion, so too there is a presumptive right of sovereignty to neutrality. But if serious human rights violations can overrule a state's sovereignty and its right to nonintervention, it can, it seems, also overrule a state's sovereign right to remain neutral. When human rights violations are "terrible" enough to constitute sufficient grounds for overriding the claims of sovereignty in one case, it should also be sufficient for overriding the claims of sovereignty in the other. As a matter of consistency, one must conclude that a permissible intervention also generates a duty (on other states) to intervene.<sup>17</sup> If the principle of sovereignty yields for one, it should also yield for the other.

It might be objected here that there is an important moral difference between the offending state and the neutral state such that the sovereignty of one may be overridden but not that of the other. The alleged difference is that the offending state has *acted* in ways that make it *deserving* of the forfeiture its sovereignty, whereas the neutral state has not.

But this objection mistakes the normative basis that motivates humanitarian interventions and the overturning of the principle of sovereignty. It is not the *active violation* per se of human rights that has overturned the sovereignty of the offending state but the fact that basic human rights are not being protected. It is a rights-generated duty to avoid harming that allows for an intervention against the offending state. Similarly, it is the rights-generated duty to protect that imposes a duty on a third state to take action against the offending state. Whether states have positively acted in ways as to *deserve* the forfeiture of their sovereignty is a morally irrelevant point in this analysis of intervention.

Intervention, I would argue, is not about punishing an offending state for its human rights failures; it is grounded on the need to protect the rights of persons. Intervention gains its moral legitimacy not as a claim about punishment but as a claim about protection. It is the need to protect human rights that allows for the forfeiture of the sovereignty of the offending state. And this need to defend human rights, I am suggesting, will limit the claim of neutral states (at least, those in a position to do something about the rights violation) to stay out of the conflict. So it is not that the active violation of rights on the part of a state causes it to forfeit its sovereignty, which in turn renders permissible an intervention

by outsiders. Rather, it is the need to protect human rights, which compels outsiders to intervene, that explains the bypassing of sovereignty when the protection requires it.

Understanding the limits of sovereignty in terms of rights protection rather than in terms of punishment is consistent with the widely held view that a state that is unable to protect its own people against severe violations by substate elements within its borders may also be intervened against (e.g., in Somalia and Rwanda). That is, the territorial integrity and the political sovereignty in the case of a failing or failed state can be legitimately transgressed when the abuses against its population are serious enough, regardless of whether the foundering state regime itself is *actively* doing the violating or is simply *unable* to stop the abuses that are being carried out by substate elements. An account of intervention based on the deserved "forfeiture" of sovereignty does not square with this wide endorsement in international practice of the permissibility to intervene against failing or failed states to protect human rights, where these states cannot be said to have acted in ways as to forfeit their formal right to sovereignty.

To be sure, there is a difference between an offending state and a neutral state. An offending state may be *coercively thwarted* in order to protect the rights of the population it is violating. One need not treat this forceful coercion as a case of punishing the state but as a case of doing what is necessary for protecting the rights of persons. And because intervening in the offending state is necessary to end the rights violation, there is a right to use force within its jurisdiction without obtaining its consent. Still, the important distinction remains that there is no right to coerce a neutral state, as there is to coerce an offending state. But my discussion above respects this morally intuitive distinction. I am not suggesting that the neutral state may be attacked like the offending state just because it can no longer appeal to the principle of sovereignty. I am claiming only that the neutral state cannot appeal to the principle of sovereignty to maintain its neutrality.

Both offending and neutral states lose their appeal to sovereignty in situations of severe rights abuse. For the offending state, this can include losing the right not to be attacked, if attacking it is necessary for ending the violations. For the neutral state, there is no such need to attack it. Losing its claim to sovereignty means

only that it loses the right to continue its neutrality, not that it may be attacked—attacking it serves no purpose toward ending the human rights abuse. Now, one may say that when we insist that a country has a moral duty to wage war, we are subjecting its people to force in some sense, for we are demanding that they expose themselves to violence. But this raises the different question of the risks of military engagement and the limits of obligation, a point to which I will turn in section 5.

In short, if human rights are important enough to trump the principle of state sovereignty, they can trump the right of states to neutrality, and so can impose on states the duty to protect. Thus, although ordinarily a permissible act need not be obligatory, humanitarian intervention presents a special case. Given the stringent conditions that are *necessary* for an intervention to be permissible, it follows that these same conditions are *also sufficient* for making that intervention obligatory. One might say that the moral gap between permissibility and obligation is always bridged in the special case of humanitarian intervention. Given the moral seriousness of humanitarian intervention, it can never merely be a prerogative. By default, all permissible interventions generate a duty to protect.<sup>18</sup>

So, as a first formulation, one might say that whenever it is permissible to intervene in a country to stop severe human rights violations, there is an obligation on the part of the international community or some state to intervene. On first glance, then, it might appear that the implication of the ICISS report, that a permissible intervention straightforwardly generates a duty to protect, is not unwarranted, once the underlying premises are spelled out.

The phrase “international community” or “some state,” however, underlines a possible shortcoming in the formulation. Since it is not clear which particular state in the international community (only *some* unspecified state) should perform the task of intervening, it appears that there can be no perfect duty on the part of any state to act. As Walzer points out, “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 an imperfect duty—a duty that

doesn't belong to any particular agent. Someone ought to intervene, but *no specific state* in the society of states is morally bound to do so.”<sup>19</sup> The duty to protect, unless some agent is identified as the primary agent of protection, is at best an imperfect one—it is a duty that cannot be morally demanded of any particular state.

What this means is that the duty to protect is not effectively claimable unless it “is actually allocated to specified agents and agencies.” Absent such an allocation, any right to protection (such as violated individuals might have) would be what Onora O'Neill, borrowing Joel Feinberg's terminology, calls a “manifesto right.”<sup>20</sup> A manifesto right is a right that a claimant has but that nonetheless cannot be effectively enforced because no specific agent has a duty to provide that right. People whose rights are being violated have a right to be protected, as I have argued. Unfortunately, no specific agent bears the duty to provide that protection. What would change the prospects of the claimant is that “specified others” are earmarked as the agents responsible for carrying out the protection.

The distinction between perfect and imperfect duties is central to Kantian ethics. For Kant, a perfect duty “allows no exception in the interest of [an agent's partial] inclinations,” whereas an imperfect duty allows an agent discretion and latitude as to when and how, and for whom, the duty is to be discharged.<sup>21</sup> Among Kantian scholars, the basis for this distinction is sometimes said to rest on the distinction between duties that are owed to specifiable persons on the one hand, and duties that are not owed specifically to anyone on the other, rather than on the distinction between duties for which agents are specified and duties for which there are no specific agents. That is, on this view, imperfect duties are imperfect more because of the lack of specificity of *claimants* than the lack of specificity of *agents*. Accordingly, on this interpretation of Kant's distinction, it might not be quite accurate to say that a duty to intervene is an imperfect one, for, in this case, it is clear to whom this duty is owed—it is owed to the people whose basic rights are being seriously violated by their own state. Still, I think that treating a duty as imperfect on the grounds that no agent has been specified, as Walzer and O'Neill do, is not inconsistent with the spirit of the Kantian distinction. If agency is not

specified, one can easily see why potential agents can have the discretion of not acting in *all* cases of humanitarian crisis if for each case there are alternative agents who can as well perform the action required by duty. At any rate, what is of significance for my discussion is not whether the duty to intervene is imperfect in the technical Kantian sense but, rather, the substantive moral claim, following Walzer, that in the absence of a clear specification of which country is to intervene, it is not clear if any can be morally bound to do so. For consistency, I will follow Walzer in referring to this as a problem of imperfect obligation.<sup>22</sup>

It seems that for a permissible intervention to generate a perfect duty to protect—that is, a duty that can be demanded of a specific agent and is therefore effectively claimable—a further condition (in addition to the permissibility conditions) must be satisfied. This is the condition that an agent (or class of agents) be *identified* as having the defined duty to carry out the intervention. Call this *the agency condition*. A morally demandable intervention, then, is an intervention that satisfies the permissibility conditions as well as the agency condition. It must be a permissible intervention in which it is also clear who the agent of protection is.

One obvious way the agency condition is satisfied is by some form of institutionalization of responsibilities through which the different requirements of the duty to protect are specified and assigned to specific states or international agencies, and each then can be morally bound (in other words, have a perfect duty) to carry out its assigned tasks. Before discussing the issue of institutionalizing responsibilities, however, I want to consider two situations in which the agency condition might be thought to be met, antecedent to any institutional arrangements. In the first, there is a capable agent who stands in a *special relationship* of some sort to the people needing the protection. In the second, there is an agent who is clearly the *most capable* among potential actors of successfully carrying out the protection duty. The assumption that special relationship and/or special capability can identify an agent of protection is sometimes alluded to in public discussions on intervention. It is therefore worthwhile uncovering and examining the underlying arguments behind this assumption to evaluate its plausibility.

## 3.

A state (or more precisely the people of a state) can stand in a special relationship to a people needing protecting by virtue of their shared historical ties. The historical relationship between the United States and Liberia is one obvious example. Because of this special tie, the United States is widely seen (by international organizations and by prointervention Liberians themselves) to have the special obligation to intervene to put a stop to the thirteen-year-long civil war ravaging that country. As the British ambassador to the U.N. puts it, the United States is “the nation that everyone would think would be the natural candidate” to intervene given its historical ties with Liberia.<sup>23</sup> Indeed, there is the general sentiment in international practice that as former colonial powers, certain countries have continuing special responsibilities to take action to ensure stability and peace in their former colonies (Britain in Sierra Leone, France in the Ivory Coast, and Portugal in East Timor, for example).

Although this argument is sometimes presented as an argument for reparations—that is, the special responsibility to intervene is thought to derive from an obligation to make amends for the past injustices of colonialism—it need not take this form.<sup>24</sup> Indeed, it is not immediately obvious how a duty of reparation can generate a duty to intervene to protect human rights, especially where the injustices are historic ones. It is controversial whether there can even be any general duty of reparation for historic injustices (such as colonialism or slavery), let alone a duty of reparation that can take specific forms, such as military action. In fact, in the case of Liberia, the emphasis in the popular debate has been on the historical ties between Americans and Liberians—ties based on cultural affinity and a shared past—rather than on colonial exploitation. I am not saying that an argument for intervention based on the duty of reparation for colonial exploitation can never be made. I want only to note that the argument from special relationship need not limit itself to the problem of past injustice and be understood exclusively as an argument for reparation but that it can also be an argument that appeals to a shared culture, a common history, and other common ties that are unrelated to past injustices.



The sentiment behind this claim is not that the United States *alone* has the duty to protect because of its special ties; the duty to protect in this case is generally recognized as a duty that falls on the international community as a whole. Rather, its historical ties with the people needing protection presumably *identify* the United States as the country that has the special responsibility to carry out the protection. This argument has some plausibility. A special relationship can rightly identify an agent who can be said to have the perfect duty to act.

As an analogy, consider Joel Feinberg's well-known example of a swimmer drowning off a beach that has no lifeguard. For Feinberg, every bystander keen to the situation has the duty to cooperate and coordinate his or her efforts to rescue the drowning swimmer. I will return to the details of Feinberg's example later. For now, imagine that among the bystanders is the swimmer's spouse, and that the bystanders know this. Assume also that none of them is especially capable of rescuing swimmers in distress but that they are equally capable. It would not be unreasonable to say, and for members of the group to expect, that the spouse of the swimmer is the primary agent of rescue in this case, absent any arrangement or coordination to the contrary. There is no problem of agency because there is an identifiable agent who has the perfect obligation to rescue, given the agent's special (in this case, spousal) relationship with the drowning swimmer.

The special relationship does not mean that no other bystander has an obligation to assist; indeed others are obliged to do what they can to assist the agent's rescue effort. It only means that an agent "morally stands out" from the crowd as having the special responsibility to act. The rest of the bystanders (should they know that the spouse of the swimmer is among them) can have the *reasonable expectation* that the spouse will carry out the rescue. To be sure, if the expected agent does not act, then others must accept the duty to act, and some allocation of responsibilities would be necessary to specify each person's responsibility. I will return to this issue in section 4.

The point here is only that there is an identifiable agent who can be reasonably expected to act on the group's behalf (or to discharge the duty that the group as a whole has), given the agent's special ties with the claimant. "Everyone would think" that the

spouse would be the "natural candidate" for carrying out the rescue, and, indeed, everyone would be entitled to think that the spouse acted poorly and oddly if he did not assume a primary role in the rescue effort, if he did not show and express through his actions more concern for the drowning victim than did strangers, and so on.

The agency problem is that because the duty to protect falls on some unspecified agent, *no one* can be said to have the perfect duty to protect even though the collectivity (the international community in the case of humanitarian intervention) has a duty to act. But if some members of the international community stand out because they have a special relationship with the people whose rights are being abused, the agency question is, it seems, overcome. The special relationship can generate the expectation, among the victims and in the potential actor, that a particular agent actually carries out the duty. The exact content of the special relationship need not be an issue. The historical relationship could be one based on past ties or even on past injustices. What is sufficient is that the relevant parties perceive the relationship as one in which those related treat each other in a particular way. The existence of these ties generates a reasonable expectation among all in a situation that from a group of agents who are morally obliged to assist, the agent related to the person in need of assistance will be the one to act. It is the reasonable expectation that a particular agent will act that identifies the agent as the primary actor.

This is not to say that the special relationship *alone* generates the duty to protect—that is a different claim, and different arguments would be needed to support it. The claim can be read, more modestly, as saying only that the special relationship *identifies* the specific agent of protection in the context where it is already acknowledged that *someone must act*. The fact of a special relationship is invoked here to solve the agency problem, that is, to determine who is to act, and not to generate the obligation itself. The moral need to protect human rights generates the duty to intervene, but this duty is only imperfect. This is the problem that appealing to the existence of a special relationship between victim and agent is meant to resolve.

The other common way of attempting to solve the agency problem is to appeal not to the relationship between the protector and

the victim but to the capability of the protector. A particular state might be said to have the special responsibility to act because it is the best candidate, compared to others, for doing the protecting. This might be because of its military capacity or its geographical location, for example. Thus, one might say that the neighbors of Rwanda or Liberia or Kosovo are the natural agents of protection, given their geographical proximity, which could give them a deployment advantage over more distant countries. Or that the United States, because of its military strength, is the obvious agent to be asked to use force to counter human rights violations when there are no obvious equally capable agents. Of course, spatial proximity need not single out an agent if that proximate agent is clearly unable to perform the protective task; similarly, the most capable agent may be ruled out as a "qualified" agent if that agent's past record makes it an unsuitable protector. But the point here is that independent of institutionalizing responsibilities, a state's special capability can cause it to meet the agency condition under the appropriate conditions.

In short, special capabilities, like special relationships, can distinguish one potential agent from others as the proper agent to perform the duty. To illustrate, let me return to the drowning example. This time, assume that no particular bystander has a special relationship with the drowning swimmer. However, imagine that it is known that there is a qualified but off-duty lifeguard among the bystanders. It seems to me that the agency problem is here solved. There is a collective duty of rescue that is not assigned to any particular agent. But even though no one from the collectivity has been previously designated as the actual rescuer, it is reasonably clear that the off-duty lifeguard should be given this assignment because she is the person best qualified to get the job done. Furthermore, the other bystanders can reasonably expect that this member of the group will initiate the rescue. Or, suppose that near the swimmer is a person in a boat who is aware of the emergency, and that the crowd on the beach knows that the boater is alert to the situation. Here, it is not unreasonable for the bystanders to expect the boater to attempt the rescue of the swimmer in the absence of any explicit coordination of efforts. In short, an agent's ability, proximity, and other such relevant factors can generate a reasonable expectation among potential agents as

to *who* should act in a given situation.<sup>25</sup> Again, there is no implication here that others besides the most capable agent need do nothing at all. The rest are required to do their best to assist the capable agent who is undertaking the rescue operation.

The presence of a reasonable expectation, on the part of those on the scene, that the agent with the special capacity should be the first to act can be explained in this way. All parties in the group, including the most capable agent, if they take their collective duty seriously, would want the rescue effort to be successful. The rescue effort is more likely to succeed if the most qualified agent carries out the rescue. Therefore, absent any arrangement to the contrary, the agent best positioned to ensure the successful discharge of the group's duty is the natural candidate for carrying out the duty, given the objective of the group. In other words, on the assumption that a group has a duty to protect, and given the importance of how effectively the duty is carried out and the degree to which proximity or ability increases the chance of success, members of the group can reasonably expect that the most proximate or capable agent will be the one to act. This expectation naturally arises, even in the absence of any explicit assignment of the duty, given the shared desire of the group that the rescue effort should succeed.

As above, the claim here is not that special capability (due to expertise or proximity or some other relevant fact about the agent) generates the duty to protect. Rather, the claim is if a duty to protect is acknowledged, having a special capability identifies who could be expected and called on to perform the actual protection. Put weakly in this way, as an identifying feature rather than an obligation-creating one, special capability can point out the agent on whom others can reasonably expect to act on the group's behalf.

As I noted, these claims about special relationship and special capacity are often invoked in public discourse, and I have tried to identify some possible moral arguments (sometimes already implicit in these claims) that might be given to support them. While these arguments are plausible, as I contend they are, it is important to acknowledge their limitations. Claims of special relationship are sometimes tenuous (how far back can these historical ties go?) and vague (what are the criteria of such ties?). Moreover,

there may be more than one potential agent with historical ties to those in need of protection, in which case the agency problem reappears. The problem reappears because it is now unclear *who* is to act, given that there is more than one equally suitable candidate. As for the second case, the appeal to special capacity might appear to impose unreasonably heavy burdens on a country just because it is capable of acting. The U.S. government often explains its inaction by declaring that its foreign military commitments are already overextended and that it "can do only so much." Whether or not the claim is reasonable, the general principle behind it is not unattractive. It tracks our moral intuition that an agent should not be given a significantly larger share of the collective moral burden just because it happens to be the most capable agent (while others are also capable even if not equally so).

## 4.

A surer way of solving the agency problem is by institutionalizing the duty to protect. That is, there can be an explicit assignment of roles and responsibilities specifying who should act and what they should do. This means that a duty to protect need not remain imperfect just because a protecting agent has not (yet) been designated. What is important is that the agency problem is not a conceptual one; that is, it does not deny that there is a duty and that someone ought to act. It is a strategic problem: there is no identifiable agent who can be called upon to act. Resolution of the problem requires that some agent be identified and assigned the task of protecting. As Onora O'Neill puts it, that some duties are imperfect means that they should be institutionalized to make their assignment and content clear. The crucial question, then, is whether there is an obligation to assign and allocate the duty to protect, and who has this obligation.

Let us return again to Feinberg's example, this time referring also to his analysis of the problem. When a group of bystanders sees a person drowning (and no one stands out from the crowd in either of the ways described above), then, according to Feinberg, "everyone should use his eyes and his common sense and cooperate as best as he can. If no one makes any motion at all, it

follows that no one has done his best within the limits imposed by the situation, and *all* are subject at least to blame."<sup>26</sup> In other words, *all* persons present at the scene have a moral obligation to act; they may be held morally culpable if, because of their collective inaction, the swimmer drowns. This, of course, does not mean that everyone ought to rush into the ocean to attempt the rescue; indeed, a nonswimmer certainly does not have the obligation to attempt the actual rescue. What it does mean, though, is that all parties are to contribute to the rescue in ways commensurate with their ability and the needs of the rescue operation. They may have to coordinate their efforts, appoint a primary rescuer from among their ranks if necessary, and provide support to the primary agent and the victim in the different ways that a rescue effort of this sort would need. That is, the duty to rescue, though initially an imperfect one because it is not clear which person(s) from among the crowd is to act, need not remain imperfect (that is, unallocated); all bystanders are duty bound to ensure that the duty is made perfect (in other words, that someone is assigned to carry out the rescue).

What Feinberg's analysis suggests is this: that a duty is imperfect does not mean that no one has an obligation to do anything, or that everyone may act as he or she wishes or not act at all. On the contrary, the fact that there is a duty, even though imperfect, would mean that relevant parties have an obligation to take the necessary steps to make sure that the imperfect duty can be properly discharged. This usually implies that the parties would have the immediate duty of cooperation and coordination, that is, to assign and allocate the duty in order to facilitate its performance.

So the fact that it might not be obvious, when the international community is confronted by a given abuse of human rights, which state has the duty to act does not mean that no state is obliged to act. All states in a position to do something are to coordinate their efforts so as to effectively discharge the protection duty. This will require identifying who is actually to perform the intervention. And in an era in which organizations, such as the U.N., can provide a ready-made forum for internationally coordinated responses to human rights crises, the failure of their member states to do anything can hardly be excused. If no state does its "best within the limits imposed by the situation" then all are subject to

moral blame.<sup>27</sup> To acknowledge that a duty is imperfect is not to deny the force of that duty but simply to recognize that some intermediate steps must be taken before the obligation can be effectively discharged. There is, in short, a duty to make what starts as a "manifesto" right into a right that is enforceable and claimable. That a duty is imperfect need not be seen as limiting that duty, as some commentators suggest. On the contrary, to describe a duty as imperfect is to announce the commitment to take the intermediate steps necessary to allocate and specify it.<sup>28</sup> Some duties are just too important to be left imperfect, to paraphrase O'Neill.

There is, therefore, an obligation on the part of the international community to institutionalize the duty to protect (if we accept that there is such a duty) so that it may become a morally claimable one. And this obligation to institutionalize the protection duty is one that falls on all relevantly situated members of the international community. Each is to coordinate its efforts so as to facilitate the performance of the duty to protect. Just as everyone in the crowd in Feinberg's example is morally obliged to do what is necessary to advance the rescue of the drowning swimmer, so all members of the international community are to do what is necessary to ensure that the abused are protected. We can say that members of the international community have the obligation to *make perfect*, through cooperation and coordination, what might be otherwise an *imperfect* duty to protect.

Whether the duty to institutionalize an imperfect duty to make it perfect is itself, strictly speaking, a perfect duty or imperfect duty will depend on our precise definition of the terms "perfect" and "imperfect." But, fortunately, this quibble over definition need not distract from the substance of my point: that the duty to institutionalize the duty to protect is one that falls on *all members* of the international community (or, at least those able to cooperate with one another, as all members of organizations such as the U.N. are), and that all members are obliged to *do what is necessary* to establish and support the cooperative arrangement required to carry out the duty to protect. Unlike a duty to protect that is imperfect in this very definite sense—no one has been assigned the duty, and it is not specified what anyone is to do (which presents a practical problem about the claimability of the right to pro-

tection)—the duty to create whatever arrangements are needed for enforcing the duty to protect does not raise this problem of agency and responsibility, and so is not imperfect in this way.

In Feinberg's example, the coordination of efforts is ad hoc, that is to say, undertaken as and when an emergency presents itself. Those on the beach must act together only when the need arises. What is required is that something be done, some duty assignment be made, when a situation calls for it. No institutionalization of responsibilities is actually required. But if it can be reasonably predicted, based on experience, that many such emergencies will arise, and that a prior assignment of role and responsibilities is needed if the response is to be successful, there arises an obligation to *institutionalize* the duty of rescue so as to have, on a standing basis, a prior assignment of roles and responsibilities.

The recurrence of humanitarian crises suggests the need to institutionalize the protection duty before a crisis occurs. If experience has shown that the international community cannot respond effectively to a crisis when it arises (because influential countries are indifferent, troops cannot be quickly mobilized, or for any other reason), the community has a duty to clarify, in advance of any crisis, how the collective duty to respond is to be performed. This will require putting in place institutional arrangements to allocate and distribute responsibilities to ensure that the duty to protect is effectively performed when the situation demands it.

This might mean establishing a permanent international humanitarian defense force whose role is to protect human rights where the need arises. If, without such a force, human rights cannot be effectively protected, the creation of this force is morally obligatory. Failure to establish the necessary arrangements beforehand, when it is reasonably foreseeable that such arrangements are necessary for the proper discharge of an imperfect duty, is to fail to treat the imperfect duty as a *duty*. The duty to protect, in spite (or, rather, because) of its being imperfect, can generate the duty to create a global humanitarian defense force if the creation of this force is required to ensure that the response to humanitarian emergencies is acceptably efficient.<sup>29</sup>

It is generally accepted that (most) states require a standing army and cannot afford to wait until they are under attack before

assembling a military force. Military preparedness for national self-defense requires carefully planned and coordinated allocations of responsibilities and a permanent readiness to act if necessary. Military preparedness to defend human rights should be no different.

Interestingly, then, the claim that the duty to protect is imperfect can be turned to the advantage of defenders of humanitarian protection. They should press the point that an imperfect duty is still a duty, and the fact that it is a duty means that necessary steps must be taken to facilitate its performance. Failing to do so might imply the adoption of a principle not to comply with the duty. And if these necessary steps include the creation of a humanitarian defense force, there is an obligation to establish such a force. 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.<sup>30</sup>

##### 5.

Because it involves the use of military force, humanitarian intervention is clearly a high-risk activity. This might be taken to imply that there can be no obligation to intervene, on the ground that one cannot have a duty to rescue others at great risk to oneself. Or, at the very least, interveners have the prerogative to minimize the risks to themselves, as they see fit, allowing this consideration to determine their intervention strategy, if they intervene at all. This objection follows from ordinary morality. We ordinarily accept that individuals do not have an obligation to seriously risk their own lives to protect the lives of others. Such sacrifices are supererogatory, not morally obligatory.<sup>31</sup>

But the individual-state analogy suggested by the objection does not quite work. Although no natural person can be expected to risk his or her life to save others (other things being equal), it is not clear what the equivalent of such a risk might be for a collective entity like the state. Perhaps we can assume that a state ceases to exist if it loses its identity—as it might, if it were to be annexed by another state or broken up into different states. Still, a state need not risk its identity in this way by intervening in most historical cases.

There are, to be sure, some cases where the risks of getting involved are significant—Norway's refusal to enter into a war against Nazi Germany is one example. But humanitarian crises often involve failed states, and intervening in these situations scarcely endangers the independent statehood of those countries that are most capable of dealing with the crisis. Indeed, given that a permissible intervention is likely to enjoy broad international support, it seems that the worry that the offending state may *fatally* retaliate against the intervening state is quite unfounded. The intervening party has the international community on its side, whereas the offending state is often on its own. In any case, a proper allocation of the duty will ensure that the duty actually falls onto a state that is capable of intervening without risking a serious retaliation from the targeted state that it cannot defend itself against. Of course, if the cost of intervention is high not only for the intervener but also for international peace and stability, there can be no duty to intervene, but only because it cannot be *permissible* to intervene in such cases. An intervention that has met the strict permissibility criteria—for example, it is intended to thwart a looming genocide—is likely to be one whose costs are within acceptable limits, given the importance and limited character of its end.

If intervention does not necessarily present a meaningful risk to the intervening *state*, however, it might be argued that it does risk the lives of the *individuals* who are called upon to perform the intervention. On this interpretation of the objection, what can place an intervention beyond the call of duty is not so much the risks a state as a corporate entity faces by intervening, but the risks its soldiers face when it commits them to an intervention. By intervening, the state “condemns an indefinite number of its citizens to certain death,” as Walzer puts it.<sup>32</sup> The real concern of the objection, then, is with the physical risk of intervention that falls directly on the soldiers doing the intervening. So, the objection may be redescribed as saying that it is beyond the call of duty for a soldier to risk his or her life to protect the lives of foreigners.

To be sure, soldiers are expected to risk their lives; this is part of what it means to be a soldier. When a country's vital interests are at stake, soldiers must assume certain risks to protect these

interests. This is, in fact, the *raison d'être* of the soldier's office. But it is different, the objection argues, in wars defending the human rights of foreigners. It follows that soldiers cannot be called upon to risk their lives for humanitarian ends. It is not part of their "role obligation." For this reason, Samuel Huntington writes, "[I]t is morally unjustifiable and politically indefensible that members of the [U.S.] armed forces should be killed to prevent Somalis from killing one another."<sup>33</sup>

But the objection rests on an unduly and arbitrarily narrow view of the soldier's professional duty, a view that, I think, is rapidly changing (assuming that it was ever the norm, historically speaking, that a soldier's duty is limited to national defense).<sup>34</sup> This is evidenced by the number of countries that have routinely committed their troops for peacekeeping operations in recent years. Indeed, for a country like Canada, peacekeeping missions seem now to be the primary function of its military. United Nations peacekeeping operations constitute a major aspect of the U.N.'s global role. Since 1956, more than 750,000 troops from different countries have participated in as many as forty-two U.N. peacekeeping operations.<sup>35</sup> Given this precedent, soldiers in many democratic countries today cannot in good faith claim that their job does not include humanitarian protection.

Moreover, even if it were true that a soldier's present role obligation does not include protecting human rights, this does not entail that the soldier's job description cannot be revised and expanded to include this role. Nothing about humanitarian protection is conceptually at odds with the definition of soldiering, and the risks that humanitarianism would impose are not different from those already imposed on soldiers as a (professional) class. As Walzer puts it curtly, soldiers, unlike ordinary citizens, "are destined for dangerous places, and they should know that (if they don't they should be told)."<sup>36</sup>

Indeed, were the limited view of the soldier's duty to be accepted, it would follow that there can be no permissible intervention. For, if we grant that a state cannot have a duty to intervene *because* this would offend against the rights of its soldiers not to be risked for humanitarian ends, this reason would also block the state's prerogative to intervene. That is, the state would act imper-

missibly when intervening because it has violated the limits of its soldiers' duty. So, the objection, if sound, actually proves too much.<sup>37</sup>

It might be argued that leaders of a democratic state are specially obligated to their own citizens not to commit their country to a war solely to protect strangers. Although soldiers in a democracy may be told that it is part of their job to go to "dangerous places" to protect their country's interests, they should not be told that it is also part of their job to go to dangerous places to protect foreigners. The definition of the soldier's duty should not be expanded to include human rights protection, lest democratic ideals are violated. This argument is not concerned, to be exact, with the risks that are imposed on soldiers in sending them to war but with the alleged breach of democratic trust between leaders and the people that have elected them to represent and protect their interests. There are limits to what state leaders of democracies can expect their own citizens, whose interests they are democratically elected to represent, to do for foreigners. As Jack Goldsmith and Stephen Krasner write in defense of realism, "[E]lectorates in advanced industrialized democracies have been reluctant to expend blood and treasure to deal with humanitarian catastrophes that do not affect their material interests."<sup>38</sup> Thus "political leaders cannot engage in acts of altruism abroad much beyond what constituents and/or interest groups will support."<sup>39</sup> A purely humanitarian intervention (that is, an intervention that is not also motivated by national security considerations) would be in violation of the democratic ideal, according to this argument.

Again, as it should be clear, this objection against obligatory intervention, if correct, tells against the permissibility of intervention as well. So the objection, if successful, proves more than its proponents might like. But the argument, at any rate, is refutable. Its premise, that democratic citizens are reluctant "to expend blood and treasure," is an inaccurate description of actual democratic citizens. Moreover, it does not follow that democratic ideals, properly understood, can allow a citizenry to stand idly by while serious atrocities are going on elsewhere. I will explain these two points in turn.

The democratic citizen is not narrowly self-interested in the way the objection describes. Indeed, democratic citizens have historically been critical of overzealous interventions on the part of their countries, but they have also been critical when their leaders do not act to protect human rights. The motivations and moral interests of democratic citizens are more complex and varied than the objection implies. It is not true that electorates in democracies have a narrow view of their interests such that these interests must exclude human rights concern. Some do hold this narrow view of their interests; others do not. The relatively broad public support for the NATO intervention in Kosovo among North Americans, which many commentators describe as a rare example of a purely altruistic intervention, shows that electorates in democracies have a broader view of their moral commitments and their militaries' role in fighting for these commitments than the argument suggests. The interests of Americans, as members of a democracy, can include the commitment to global justice and human rights. Historically, democratic citizens have renounced their own country's unjust interventions (e.g., the opposition to the war in Vietnam) and criticized their country's failure to intervene in other cases (e.g., criticism of the indifference with regard to Rwanda).<sup>40</sup>

But even if actual citizens in a democracy do in fact oppose their country's involvement in the protection of human rights, as of course some would, or even if they would consent to an intervention only if the risks to their own troops were strategically kept to a minimum (as in the case of the aerial intervention in Kosovo), it does not follow that leaders who commit their troops to combat in spite of this lack of popular support are violating democratic norms. The democratic citizen, ideally conceived, is one who is able to take the global point of view and able to appreciate that the scope of his or her moral concern extends beyond the borders of her state. One of the central virtues of democratic citizenship is the commitment to justice and to further its cause around the world.<sup>41</sup> There is nothing at odds with democratic responsibility when a leader of a democracy commits troops to protect human lives elsewhere. The objection that intervening to protect the rights of foreigners violates democratic trust is ulti-

mately premised on an impoverished account of democracy. So, even if it is true that actual democratic citizens never support humanitarian intervention, the normative conclusion, that leaders of democracies should not commit troops to protect human rights, does not follow.

"[I]t is the task of the [ideal] statesman," John Rawls writes, "to struggle against the potential lack of affinity among different peoples. . . . Since the affinity among peoples is naturally weaker (as a matter of human psychology) as society-wide institutions [cover] a larger area and cultural distances increase, the statesman must continually combat these shortsighted tendencies."<sup>42</sup> Rawls is not speaking about intervention here, but the point of his remarks is that when democratic citizens endorse a form of patriotism that always puts the interests of compatriots before the needs of strangers, this is not an aspect of the democratic ideal. On the contrary, the task of democratic leaders is to overcome this form of moral favoritism and to avoid letting it determine their foreign policy decisions. The underlying principles and commitments of democratic citizenship—equal respect, mutual trust, and a shared commitment to justice—defy the parochial reading of democratic citizenship suggested by this objection.

I have argued that given the stringency of the conditions for permissible intervention, these conditions are also sufficient for making intervention obligatory. If it is permissible to override the ideal of sovereignty to put an end to a serious violation of human rights, it is also permissible to override the right of neutral states to keep out of the fighting. Although this duty is generally imperfect, the fact that it is imperfect means that the international community has an obligation to assign responsibilities so that this duty will be discharged. That the duty to protect is imperfect in the absence of institutionalized procedures for intervention should not be seen as a limitation against arguments for obligatory humanitarian intervention but as a case for greater international cooperation to protect human rights, including, if necessary, the creation of a permanent humanitarian defense force. That a duty is imperfect points only to the need for coordinating efforts and the need to cooperate. It does not mean that the duty need not be taken seriously by anyone.

## NOTES

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1. I will be using the terms "duty" and "obligation" interchangeably, for stylistic reasons. As will be clear, I am ultimately interested in whether there can be a moral duty to protect, independent of whether this duty is voluntary assumed, legislated, and so on. The standard distinction between duty as nonvoluntary and obligation as voluntary does not affect the discussion.

2. See Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2003).

3. Generalizing and adapting loosely from Kant, one might say that there is no urgent need to talk about an "ought," a duty, when the agent is already disposed to act as the duty would command. See Kant, *Groundwork of the Metaphysics of Morals* (1785), trans. H. J. Paton (New York: Harper and Row, 1964), chap. II, 413–14.

4. Thus, if one believes that "Operation Iraqi Freedom" is an unjust intervention, nothing I say here about the obligation to intervene will apply to this intervention. Arguing that an intervention can be a duty does not prove that every intervention is permissible; rather, it assumes only that some are permissible. The question is whether such interventions are also morally obligatory.

5. For one discussion on this point, see Michael Ignatieff, "State Fail-

ure and Nation-Building," in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, ed. J. L. Holzgrefe and Robert O. Keohane (Cambridge: Cambridge University Press, 2003).

6. Regarding Rwanda, see Power, *A Problem from Hell*, chap. 10. Senator Robert Dole opposed the U.S. participation in the United Nations-sanctioned operation to restore democracy in Haiti, saying that "risking American lives to restore Aristide to power is not in America's interest." See "Administration Determined to Send U.S. Forces to Haiti," *Washington Post*, September 2, 1994, 2.

7. See the ICISS report, *The Responsibility to Protect* (December 2001), available at [www.dfait-maeci.gc.ca/iciss-ciise/report2-en.asp](http://www.dfait-maeci.gc.ca/iciss-ciise/report2-en.asp).

8. For example, the report says, "Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of nonintervention yields to the international responsibility to protect" (1B). That there is a gap in this reasoning is clear. The "yielding" of the principle of nonintervention means only that intervention in the offending state is permissible; the responsibility to intervene does not necessarily follow. The responsibility to protect is simply assumed here.

9. See Joseph Boyle, "Traditional Just War Theory and Humanitarian Intervention," this volume, chap. 1.

10. On this point, see Pratap Mehta, "From State Sovereignty to Human Security (via Institutions?)," this volume, chap. 10. But, contra Mehta, I think one should not take multilateralism to be more than a means of ensuring that an intervention meets certain moral requirements. To make it a necessary condition of a permissible intervention that it is not unilateral seems to confuse means for ends. For more discussion on this, see Terry Nardin, "The Moral Basis of Humanitarian Intervention," *Ethics and International Affairs* 16, no. 1 (2002): 57–71. See also Joseph Boyle, "Traditional Just War Theory and Humanitarian Intervention," this volume, chap. 1; Thomas Franck, "Legality and Legitimacy in Humanitarian Intervention," this volume, chap. 5; and my commentary on Mehta, this volume, chap. 11.

11. Michael Walzer, "The Moral Standing of States," *Philosophy and Public Affairs* 9 (1980): 211.

12. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd ed. (New York: Basic Books, 2000), 90.

13. See, e.g., John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1998), 25–27. The ICISS report also stresses this point.

14. Henry Shue, *Basic Rights* (Princeton: Princeton University Press 1980).



15. James Nickel, "How Human Rights Generate Duties to Protect and Provide," *Human Rights Quarterly* 15, no. 1 (1993): 83–84.

16. Walzer, *Just and Unjust Wars*, 233; also chap. 15.

17. Thus, although Walzer defends the right of neutrality, he wonders about the limits of this right in the case of intervention: "But can a state claim neutrality when one nation or people is massacring another?" *Just and Unjust Wars*, xv.

18. This conclusion, that permissible interventions are also obligatory, is also defended by Darrel Moellendorf, *Cosmopolitan Justice* (Boulder: Westview Press, 2002), 122–23. See also John W. Lango, "Is Armed Humanitarian Intervention to Stop Mass Killing Morally Obligatory?" *Public Affairs Quarterly* 15, no. 3 (2001): 173–92.

19. Walzer, *Just and Unjust Wars*, xiii.

20. I rely here on this passage by Onora O'Neill: "[U]nless the obligation to provide food to each claimant is actually allocated to specified agents and agencies, this 'right' will provide meagre pickings. The hungry know that they have a problem. What would change their prospects would be to know that it was others' problem too, and that specified others have an obligation to provide them with food. Unless obligations to feed the hungry are a matter of allocated justice rather than indeterminate beneficence, a so-called 'right to food', and the other 'rights' of the poor, will only be 'manifesto' rights." O'Neill, *Faces of Hunger* (London: Allen and Unwin, 1986), 101.

21. Kant, *Groundwork*, 421.

22. I thank Alan Patten for helpful discussion on this point. See also Kok-Chor Tan, "Kantian Ethics and Global Justice," *Social Theory and Practice* 23, no. 1 (1997): 53–73.

23. See Kathryn Westcott, "Liberia's Historical U.S. Ties," *BBC News Online*, June 26, 2003, available at <http://news.bbc.co.uk/1/hi/world/africa/3022740.stm>. President George W. Bush himself concedes that the United States' "unique history with Liberia" has "created a certain sense of expectations" that the United States should be more actively involved in stopping the massacres in that country. He quickly noted, however, countervailing factors and conditions to rationalize U.S. limited involvement. "Bush Insists Liberian President Go before Troops Come," *New York Times*, July 4, 2003, A3.

24. For one discussion on responsibility for injustices and intervention, see Erin Kelly, "The Burdens of Collective Liability" in *Ethics and Foreign Intervention*, ed. Deen K. Chatterjee and Don E. Scheid (Cambridge: Cambridge University Press, 2003), 121. Although Kelly is primarily concerned with the responsibility of members of the rights-violating state to

accept the costs of being intervened against, she also suggests in passing that "a state has an obligation to intervene on behalf of a group whose unjust suffering it has helped to cause."

25. See Larry May, *Sharing Responsibility* (Chicago: University of Chicago Press, 1992), 114–15.

26. Joel Feinberg, *Doing and Deserving* (Princeton: Princeton University Press, 1970), 244.

27. *Ibid.*

28. This is the point behind O'Neill's discussion of imperfect duties. The importance of institutions in mediating duties is discussed in Henry Shue, "Mediating Duties," 88 *Ethics* (1998): 687–704.

29. The still nascent Multinational Stand-by High Readiness Brigade for U.N. Operations (SHIRBRIG) launched in 1994 (in part as a reaction to the inaction regarding Rwanda) can provide the institutional motivation and framework toward a global humanitarian defense force. For some background on SHIRBRIG, see United Nations, "Multinational Stand-by High Readiness Brigade for United Nations Operation" (Norway: Presidency, SHIRBRIG Steering Committee, MOD Norway, n.d.), available at <http://odin.dep.no/archive/fdvedlegg/01/01/Shirb044.pdf>. I thank Katherine Cinq-Mars and Nicholas Ward for helpful discussion and the reference.

30. Kant, *Metaphysics of Morals*, 390, writes of imperfect duties that "failure to fulfill them is not itself culpability . . . unless the subject should make it his principle not to comply with such duties." That is, while an imperfect duty allows a certain discretion on the part of the agent (as to when, how, and for whom) the duty is to be performed, there is a moral violation, a culpability, if the agent makes it a point of hers not to carry out the duty. If it is known that failing to create an international humanitarian defense force means, in consequence, that there can be no effective performance of humanitarian protection duty, this would sufficiently suggest, it seems to me, that parties opposing the creation of such a force have made it their "principle not to comply with" this duty, and thus are morally culpable.

31. See James Fishkin, *The Limits of Obligation* (New Haven: Yale University Press 1982); J. O. Urmson, "Saints and Heroes," in *Moral Concepts*, ed. Joel Feinberg (Oxford: Oxford University Press, 1969).

32. Walzer, *Just and Unjust Wars*, 236.

33. Huntington, "New Contingencies, Old Roles," *Joint Forces Quarterly* 2 (1993): 42. Quoted in Michael J. Smith, "Humanitarian Intervention: An Overview of the Ethical Issues," *Ethics and International Affairs* 12 (1998): 63. In his article, Huntington goes on to say that "[t]he military

should only be given military missions which involve possible combat . . . when they advance national security interests and are directed against a foreign enemy of the United States.”

34. Historically, soldiers, conscripted or professional, have fought for causes (such as the Crusades), rightly or wrongly, and not just for the protection, narrowly conceived, of their homeland. Some just war traditions explicitly note the responsibility of soldiers to protect victims of religious persecutions even if these victims are not fellow citizens or subjects of the same political authority.

35. See UNA-Canada, “The U.N. and Peacekeeping,” available at [http://www.unac.org/en/link\\_learn/fact\\_sheets/peacekeeping.asp](http://www.unac.org/en/link_learn/fact_sheets/peacekeeping.asp).

36. Michael Walzer, “The Politics of Rescue,” *Dissent* 42, no. 1 (1995): 38.

37. See also Moellendorf, *Cosmopolitan Justice*, 124.

38. Jack Goldsmith and Stephen Krasner, “The Limits of Idealism,” *Daedalus* 132, no. 1 (2003): 58.

39. *Ibid.*, 59.

40. Consider also the relatively wide public support for the U.N. intervention in Haiti in 1994. The recent war against Iraq is justified to the American public and its military not only as a war against terrorism but also as a war of liberation (for the Iraqi people). My point is not that this justification is beyond scrutiny but only that it is not true that citizens of democracies are in practice unwilling to expend blood and resources to protect the human rights of strangers.

41. See, e.g., Amy Gutmann, “Democratic Citizenship,” in *For Love of Country*, ed. J. Cohen (Boston: Beacon Press, 1996).

42. Rawls, *The Law of Peoples*, 112. And if a leader risks making an unpopular decision in committing her country to a purely altruistic intervention, this is not to be seen as a political risk that is beyond the call of the statesman’s duty: “[T]he politician looks to the next election; the statesman looks to the next generation” (*ibid.*, 97). The leader does not shy away from her moral duty, even if doing her duty means she will lose her job at the next election.

## 4

## HUMANITARIAN INTERVENTION AS A PERFECT DUTY: A KANTIAN ARGUMENT

CARLA BAGNOLI

### 1. INTRODUCTION

Humanitarian intervention is generally treated as an exception to the nonintervention principle, which requires us to respect the integrity of a foreign country and not to interfere in matters of domestic jurisdiction.<sup>1</sup> The appeal of this principle is apparent, but the reasons for treating it as exceptionless do not seem equally compelling. Indeed, when a foreign government commits unspeakable atrocities against its own citizens, the burden of justifying nonintervention may seem as weighty as the burden of justifying intervention.

It is tempting to cast these cases as moral dilemmas. On the one hand, we should respect the integrity of another country out of respect for the principle of national self-determination and in order to sustain a stable international order. On the other hand, we should defend the rights of the oppressed, regardless of their nationality. According to this approach, humanitarian intervention represents a situation in which the principle of state integrity conflicts with the requirements of universal morality. Attempts to overcome the dilemma are ultimately efforts to show that the requirements of universal morality are overriding, and therefore to provide a moral grounding for an exception to the principle of