

COSMOPOLITANISM IN  
CONTEXT: PERSPECTIVES  
FROM INTERNATIONAL LAW  
AND POLITICAL THEORY

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economic, and legal interrelationships and commonalities, what will happen among nearly two hundred sometimes radically different states is not difficult to predict.

### Conclusion

In the previous sections I presented the promise and the reality of UN cosmopolitanism, constitutionalism, and reforms in rather stark terms. Against this background, the question of what sustains the UN and, more specifically, what sustains its legitimacy remains. I believe that ambivalence is the answer and such ambivalence derives from the contradictions that riddle the UN. To begin with, the UN and its collective security system are “neither contractual nor constitutional”<sup>105</sup> and whereas structures, rules, principles, and practices may resemble one or the other – either a contract or a constitution – they are different from either. In the same vein, whereas the UN projects a cosmopolitan air, in reality it has not abandoned statism or power politics. As far as its legitimacy is concerned, the UN has various clusters of legitimacy that appeal to different sections of its constituency. Its overall legitimacy is the sum of these micro-legitimacies which co-exist but remain uncoordinated. UN actions are also ambivalent because they try to balance multiple perceptions of legitimacy. As a result, the stakeholders of UN legitimacy confer or withdraw their support for different issues and at different times, but at no time is there total repudiation by the totality of its stakeholders.

Thus, it is my feeling that the UN will carry on regardless, because no actor has completely withdrawn their support; changes in the general assumptions that underpin the UN are not orderly or uniform; the incentives for reform are fragmented; and, above all, everyone frets about opening the Pandora’s box of radical reforms, or of negotiating a new World Order. What can be expected therefore are some incremental and modest developments, and some patchy reforms. The latter will continue to form part of UN rituals because they are necessary in managing the legitimacy of the Organization. My prediction then is that no radical mutation of the Organization is to be expected in the foreseeable future, nor any fatal assault on its legitimacy.

<sup>105</sup> Alfred Zimmern, *The League of Nations and the Rule of Law 1918–1935*, (London: Macmillan, 1945), pp. 290–91.

## Enforcing cosmopolitan justice: the problem of intervention

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### Introduction

The worry may be raised that the more demanding a conception of global justice is with respect to how states may treat their own citizens, the more readily a rationale is provided for states to intervene against each other in the name of upholding justice. Accordingly, it may be thought that to the extent that liberal cosmopolitanism, as we may call it, understands the limits of global toleration to be determined not just by how states respect and honor the basic rights of their citizens (such as the right to life, bodily integrity, basic protection of the law, basic subsistence) but also by how they promote and protect their liberal democratic political rights (such as the right of free speech and expression, democratic political participation and so on), it is a conception of global justice with strong interventionist tendencies.<sup>1</sup> In contrast to liberal cosmopolitanism (henceforth also “cosmopolitanism” for short), some commentators propose a more cautionary and modest conception of liberal global justice, one which is committed to a shorter list of universal human rights, limited to basic human needs and security. Rawls’s “Law of Peoples” is one key example of this more modest liberal internationalism.<sup>2</sup> Rawls’s liberal internationalism does not require all societies to

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<sup>1</sup> For some examples of liberal cosmopolitanism, see Darrel Moellendorf, *Cosmopolitan Justice* (Boulder, CO: Westview Press, 2002); Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2001); Simon Caney, *Justice Beyond Borders* (Oxford: Oxford University Press, 2005); Allen Buchanan, *Justice, Legitimacy and Self-Determination* (Oxford: Oxford University Press, 2004); Charles Beitz “The Law of Peoples,” *Ethics* 110 (2000): 669–96, and my *Toleration, Diversity and Global Justice* (University Park, PA: Penn State Press, 2000) and *Justice Without Borders* (Cambridge: Cambridge University Press, 2004). See editors’ introduction in this volume for helpful taxonomy of the concept of “cosmopolitanism.”

<sup>2</sup> John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999).

be liberal as a matter of justice. It recognizes that certain nonliberal but decent societies can qualify as equal members in good standing in a just Society of Peoples. Roughly, societies are judged under Rawls's theory to be decent so long as they honor basic human rights and are peaceable towards other societies; but they do not need to honor liberal principles of justice within their jurisdiction. One way the fundamental difference between Rawls and the cosmopolitans can be put is that Rawls is more concerned literally with *international justice*, that is justice between states, whereas the cosmopolitans are more truly concerned with global justice, that is justice *among persons* beyond borders.<sup>3</sup> Compared with Rawls's more accommodating idea of international justice, liberal cosmopolitanism appears dangerously interventionist to its critics.

This concern over the interventionist tendency of cosmopolitanism is understandable. Any defensible conception of global justice cannot treat intervention frivolously, and lower the bar for permissible intervention instead of keeping a tight reign on this practice. But I think the worry that liberal cosmopolitanism dangerously greases the path of intervention is unfounded. The worry conflates the making of a critical judgment with a specific method of enforcing that judgment. Liberal cosmopolitanism identifies principles of justice that, among other things, define the conditions of state moral standing and legitimacy and membership in a moral international order. That is, liberal cosmopolitan principles provide one benchmark for evaluating the legitimacy, or its lack thereof, of states. On both the liberal cosmopolitan and Rawlsian liberal internationalist views, as distinct from the tradition of international realism, the way a state treats its own citizens is one necessary condition of its legitimacy. But principles of legitimacy in themselves do not entail, or necessarily permit, a particular method of enforcement when these principles are not honored. How cosmopolitan principles are to be enforced is a further question, and is distinct from what these principles are. On the contrary, basic liberal morality will set constraints on how principles of justice may be properly enforced. Principles of justice shape our critical evaluation and judgment of a state of affairs, and so, on the cosmopolitan ideal, a society that fails to respect the basic liberal rights of its members will elicit critical disapproval. But how that disapproval is to be expressed and, more importantly, how compliance is to be enforced, is a further question the answer to which will depend on a host of other considerations, including competing moral principles. In short a distinction must

be noted between making a critical judgment (by reference to certain principles of justice) and the enforcement of that judgment.<sup>4</sup>

Humanitarian intervention – and by this term, and the term “intervention,” I mean specifically intervention by military means to defend human rights – is a special means of enforcing the demands of global justice. But whether an intervention is going to be a good strategy of protecting human rights or, more relevantly to our discussion, a morally permissible method of protection will depend on various factors and conditions, as well as the availability and feasibility of alternative non-military means of enforcement. This distinction between taking an evaluative stance on the one hand, and acting on that stance on the other is obvious enough. But it is worth explicating in the context of humanitarian intervention given the common worry that the universalistic aspirations of liberal cosmopolitanism render it intervention-prone.

The aim of this chapter, then, is to clarify that cosmopolitan liberalism is not in principle more interventionist than other forms of liberal internationalism such as Rawls's. To this end, I recount the well-known conditions under which intervention is generally agreed by most moral theorists to be morally permissible for the purpose of highlighting the very special and stringent conditions of permissibility. I explicate these well-rehearsed points for the purpose of clarifying that liberal cosmopolitanism can accept these common conditions of permissibility. My central claim is that liberal cosmopolitanism does not depart from commonly accepted accounts of just intervention.

### The morality and legality of intervention

As I will argue, cosmopolitanism accepts many of the fundamental tenets of common morality concerning just war and the limits of intervention.<sup>5</sup> Yet, common morality notwithstanding, the appropriateness of humanitarian intervention is not without controversy especially in light of recent and historical occurrences of intervention. I begin then with some brief reflections on some of this concern. Specifically, I will look at those worries that stress the potential pitfalls of permitting intervention for international relations in practice and international law.<sup>6</sup>

<sup>4</sup> I discuss this also in *Tolerance, Diversity and Global Justice*, pp. 32–33; 59–64.

<sup>5</sup> See Terry Nardin, “The Moral Basis of Humanitarian Intervention,” *Ethics and International Affairs*, 16, no. 1 (2002), pp. 57–71.

<sup>6</sup> As is the theme of this volume, I am especially interested in the gap between the morality and the legality of intervention, between intervention as a practice and the institutionalizing of intervention.

<sup>3</sup> See my *Justice Without Borders*, p. 35.

First, one might point to historical examples of interventions that are quite clearly unjust to remind proponents of the dangers of the practice.<sup>7</sup> The 2003 US invasion of Iraq provides a vivid example of an intervention widely seen as unjust, that has also, as it turns out, failed even in its political objectives. A reason why this intervention is considered unjust is that while the Saddam regime was indeed tyrannical, it is also clear that the other standard conditions for a just intervention – last resort, proportionality, urgency – had not been met.<sup>8</sup> Yet, it is important that a recent vivid experience does not cloud our general moral assessment of the practice of intervention. It is natural that the ongoing situation in Iraq, one that looms so large in the international public consciousness, tends to dominate our thinking and discussion of intervention and render the practice of intervention highly suspect. But it is important that a recent bad example does not distort our analysis of the permissibility of intervention.<sup>9</sup> The case of Iraq only shows that immoral (and in this case also illegal) interventions can occur; it does not show that all interventions are as a rule morally unacceptable.

While it is of course true that there have been abuses of cosmopolitan principles historically to rationalize military interventions, the question is whether absent these principles these immoral and illegal interventions would not have occurred. A blanket prohibition against *humanitarian* intervention would eliminate one (albeit convenient) rationalization for intervention; but it doesn't follow that other pretexts couldn't be cooked-up if the government of a country has already set its mind on invading another. The US would have invaded Iraq even if the

<sup>7</sup> Martti Koskeniemi, *The Gentle Civilizer of Nations* (Cambridge: Cambridge University Press, 2001). Koskeniemi for example calls rightly to great effect the 1965 US intervention in the Dominican Republic in the name of universal humanitarian principles as a case of such an abuse, see p. 480.

<sup>8</sup> I will return to this point in more detail below. My aim here is not to establish the injustice of the Iraq intervention but to note, as in the text, that the widely perceived injustice of that intervention has prompted increased skepticism towards interventions more generally in recent thinking.

<sup>9</sup> Recall the opposite public reaction following the NATO intervention in Kosovo. Here the mood was more optimistic, and that intervention was celebrated by some commentators as the closest real world example of an altruistic intervention or pure humanitarian intervention. Academic debates following that intervention were dominated not by questions concerning the morality of intervention but over the tension of a morally permissible but illegal intervention. See, for example, several of the papers in *Humanitarian Intervention: ethical, legal and political dilemmas*, ed. J.I. Holzgrefe and Robert Keohan (Cambridge: Cambridge University Press, 2003).

humanitarian argument weren't available; in fact the arguments from security and fight against terrorism dominated the war discourse.<sup>10</sup>

Now one might say that in general intervention has caused historically more harm than good, and so an absolute prohibition against it is desirable. But it is far from obvious how such a claim, based as it is on counterfactuals, can be properly evaluated. For one can as well construct counterfactuals to show that a world in which states simply minded their own business and not intervene would be far worse. If anything, history shows that the last presents a worse scenario. The formation of the UN, the introduction of the Universal Declaration of Human Rights, the adoption of the Genocide Convention and so on, were precisely to leave behind such a world, a world in which states could and ought to mind their own business, which the experience of WWII has proved to be morally untenable.<sup>11</sup> More specifically, there are several historical examples of moral but illegal interventions that successfully put an end to gross human rights violation: Tanzania's intervention in Uganda that toppled Idi Amin's brutal dictatorship; India's intervention in East Pakistan (which then gained independent statehood as Bangladesh), and Vietnam's invasion that ended the killing fields of Cambodia. These interventions, quite uncontroversially, succeeded in putting an end to unspeakable atrocities. These are classic textbook examples of morally permissible interventions, so there is no need to belabor their case here, suffice to note that, compared with the Iraq intervention, there were occurring wide-spread atrocities whose

<sup>10</sup> My point here is not to be pessimistic about international relations: on the contrary I hold that principles and concerns for justice can move citizens to evaluate the policies and actions of their own states. I meant only to stress that a general moral prohibition on intervention is not going to make the world any safer for aggressive states aren't moved by moral arguments.

<sup>11</sup> David Kennedy draws attention to the dangers, what he calls "the dark sides," of enforcing abstract humanitarian principles in *The Dark Sides of Virtue* (Princeton: Princeton University Press, 2005). But Kennedy's warning that agents take heed of the implications of intervention ("the pragmatism of consequences" as he calls it) and maintain "a clear-eyed focus on the purpose of our work" ("the pragmatism of intent") against a blind and impulsive enforcement of humanitarian principles is a point cosmopolitans can surely agree with (p. xx). As I suggest above, there are moral reasons why cosmopolitans will refrain from intervention just because a state is deemed intolerably unjust. That a given intervention will make matters worse is, of course, one important moral consideration against it. Kennedy's warning of the dark sides of humanitarian enforcement is not a blanket dismissal of universal humanitarian principles, but an exhortation that salient competing moral considerations not be overlooked by humanitarian agents. See Kennedy, *The Dark Sides of Virtue*, ch. 9.

seriousness required immediate action rather than more attempts at diplomatic solutions which had hitherto failed to put an end to the human misery.

Another objection is that non-military alternatives for protecting human rights are preferable.<sup>12</sup> This point is worth stressing, even if it is quite obvious. Clearly no one should prefer war when humanitarian assistance (or for that matter politics) by other means is available. This is precisely why there is a last resort condition for a permissible intervention, and why any plausible theory of just war observes this point. But it does not follow from this that we affirm the general rule that only non-military responses to humanitarian crises are morally acceptable. Imagine that there is genocide going on in country X and till now no diplomatic attempts have succeeded in putting an end to it and imagine that an intervention would correct the situation. How long more do we sit back and wait for a non-military option to present itself? Wasn't this the lesson of Rwanda, and of Darfur at the moment? To be sure, in many historical and ongoing cases, no serious attempts were made to consider non-military methods of protection, so the exhortation that the non-military option be taken seriously is certainly well-taken and serves as an important reminder to any party contemplating humanitarian rescue. But it is another thing to conclude that intervention is never permitted and that we are morally required always to consider non-military options regardless of the situation at hand. The last, taken as a general rule will have the effect of excusing inaction.

Some may say that it is more important to preempt humanitarian crises from arising, and so our attention should be on preemption of intervention not intervention.<sup>13</sup> For example, in the case of the genocide in Rwanda, one might say that among other things, it was European colonialism that laid the kindling for the events that enflamed some decades later. Indeed, a commentator might say that the past intervention by Europeans left behind the precarious political-ethnic situation in Rwanda that tipped over so easily into genocide at the slightest provocation. Leaving aside the merits of these particular causal claims (there is probably some truth to all of them), I accept that engaging in serious analysis of, and being sensitive and responsive to, historical events is

<sup>12</sup> See Anne Orford *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge: Cambridge University Press, 2003).

<sup>13</sup> *Ibid.*; see also Thomas Pogge, "Preempting Humanitarian Intervention," *Humanitarian Intervention: moral and philosophical issues*, ed. Aleksandar Jokic (Peterborough, ON: Broadview Press, 2003).

important for various obvious reasons, one of which being that we can try to learn (if we care to) how to avoid such future fatal potentialities. And it is of course morally imperative that we try to prevent bad things from happening. Still it seems equally obvious that when a situation in front of us is pressingly urgent, some immediate action may be called for regardless of how we thought the situation had come to be. Imagine offering the following response to a people in urgent need of humanitarian rescue: "We see you are in need of rescue (and we are certainly in a position to help you). But as we can all also see, it was because of certain past injustices, indeed regrettably injustices on our part, that you are now in such dire straits. The lesson to be learned is that we should not act unjustly in this way again, and will also do what we can to prevent such injustices from occurring elsewhere. There is nothing we can do for you now because our intervening will not address the root cause. That's all in the past." Surely this is an absurdity, and more so if the respondent was also the party responsible for the current dire state of affairs.

Again, to stress, I don't claim that any talk of the past is irrelevant and of no use whatsoever. Of course understanding the past is useful and important for a variety of reasons too obvious to state. But the fact that it is important to understand historical causes of a bad situation and better to prevent this from arising does not eliminate the fact that some atrocities are now occurring that call out for a response. To be sure, humanitarian defenders must realize that intervention is only a band-aid solution, but band-aids are sometimes useful and needed.

Perhaps the most challenging worry concerns the possible implications of intervention for international law.<sup>14</sup> That is, what makes

<sup>14</sup> Currently, there is no explicit provision under international law for "pure humanitarian intervention." Article 42 (7) of the UN Charter that is invoked to justify military action notes that the international community "may take action by air, sea, or land forces as may be necessary to *maintain or restore international peace and security*." The italicized portion (mine) is significant. Thus an intervention intended strictly to put a end to some violation of human rights would not be justifiable under current UN charter. This, of course, does not mean that humanitarian intervention cannot be sanctioned and in effect enacted under the present international legal regime. The built-in loop hole here is obvious: since it is not difficult to claim that a grave human rights situation in one country will have destabilizing regional and global effects. Article 42(7) can be and has been invoked by the UN to justify various humanitarian interventions. For some discussion on how the concept of "the threat to peace" has been given a broad reading, see Nicholas Tsagourias, "Cosmopolitan Legitimacy and UN Collective Security," this collection. But technically no intervention for the sole purpose of defending the human rights of the inhabitants of a country, i.e. "pure humanitarian intervention," can be justified under

intervention morally objectionable is not so much the act of an intervention itself, which taken in isolation may be granted as morally permissible. What is problematic is the impact of such actions on international law and practice. Here are two possible impacts. One is that we keep international law as it is, that is, in general, outlaw purely humanitarian intervention, but allow for its legal exemption on a case-by-case basis. On this approach, when we have a case for a morally permissible intervention, we say that the law has run out and a situation like a supreme emergency is in effect, and the law can be suspended. Or, two, we can urge that international law be reformed to grant legality to intervention, and this involves some codification of terms and conditions of a legally just intervention. On this approach, we bring closer together law and morality.

The first option may appear to some as a rather unattractive position because it displays a certain disregard and contempt for the rule of law. Moreover, it seems also to allow states to unilaterally invoke moral reasoning that purportedly transcends the law, thereby dangerously opening the way for states to disregard the sovereignty of other states.<sup>15</sup> This would suggest that we reject this possibility and accept the second option, that of reforming international law to make space for intervention. Still some assuaging remarks in defense of the first option can be made: first, it is not clear that defying the law is by definition a mark of disrespect for the rule of law. The philosophical literature on civil disobedience is instructive here.<sup>16</sup> Furthermore on the matter of intervention, Thomas Franck has proposed an international jurying process by which to determine when a legal exemption is acceptable to allow for a morally permissible intervention.<sup>17</sup> If Franck's proposal can be implemented, then the worry that making space for morally permissible

this clause. Legalizing pure humanitarian intervention would require providing legal provisions for the use of force solely for the purpose of defending human rights without the pretext that is necessary for protecting world peace.

<sup>15</sup> See Pratap Mehta, "From State Sovereignty to Human Security (via institutions?)," in *Humanitarian Intervention*, ed. Terry Nardin and Melissa Williams (New York: New York University Press, 2005).

<sup>16</sup> See Rawls's discussion on civil disobedience. The philosophically interesting feature of civil disobedience is that it involves the rejection of a law while maintaining a general respect for the rule of law. *Theory of Justice* (Cambridge: Harvard University Press 1971), pp. 36–91.

<sup>17</sup> Franck, "Legality and Legitimacy in Humanitarian Intervention," in *Humanitarian Intervention*, ed. Terry Nardin and Melissa Williams (New York: New York University Press, 2005).

interventions *through legal exemptions* will lead to problematic unilateralism in intervention is unfounded. Instead of allowing a single state to determine when it may transcend the law on moral grounds, there will be an international legal procedure in place to determine when the law ceases to apply or when an exception is to be permitted.

At any rate, even if the worry about illegality in intervention persists, there is the second option, that of attempting to make the law as it is written more consistent with moral views about the permissibility of intervention. That is, change the law to make space for pure humanitarian interventions, which I believe also to be the more attractive route.<sup>18</sup> A possible worry with this idea is that codifying humanitarian intervention will pave the ground further for its abuse. A critic might be prepared to grant that there are morally permissible interventions under the right conditions, but still worry that institutionalizing such a practice will have morally objectionable consequences. That is, one might think that even though interventions could be morally permissible *per se*, to make room for them within the law would be morally objectionable. The objections here are what we might call institutional rather than moral. This line of argument parallels an argument often made against institutionalizing and legalizing physician assisted suicide. Even if physician assisted suicide can be shown to be morally permissible, it would be a grave mistake to allow society to legalize and institutionalize such a practice. Some reasons for this conclusion are that legalizing such a practice would lead to abuses and misapplication; that it would put pressure on both patients and doctors to make rash decisions, and so on. But this institutional objection against active euthanasia works only if it can be shown that there are no feasible countervailing institutional mechanisms to block abuses and slippery slopes.<sup>19</sup> Likewise, the claim that codifying intervention has unacceptable social and legal implications holds only if there are indeed no feasible and practicable

<sup>18</sup> Such a reform will include revising Article 42 (7) of the UN Charter to say something like the International community "may take action by air, sea, or land forces as may be necessary to maintain or restore international peace and security or to defend basic human rights." In this volume, Tsagourias has incisively noted the legitimacy crisis within the UN and argues that reforms within the UN will be difficult. I don't disagree with Tsagourias that there are difficulties; my point here is only to illustrate the difference should there be a UN Charter endorsement of pure humanitarian intervention.

<sup>19</sup> Dan W. Brock, "Voluntary Active Euthanasia" Hastings Center Report 22, no. 2 (1992), pp. 10–22; Johannes J.M. Van Deiden, "Slippery Slopes in Flat Countries – a response," *Journal of Medical Ethics* 25, no. 1 (1999), pp. 22–24.

institutional safeguards that can be put in place to prevent misuses and the slide down the path to excessive intervention. This is still an open matter and calls for more discussion and examination, instead of being ruled out of court.

Moreover, it is far from clear that the world is any safer from immoral interventions in the absence of legal codification. As mentioned earlier, when countries invade one another immorally it is not the case that absent legal and moral principles no such interventions would have occurred. Abuses can take place with or without the law. Indeed, it is the gap between international law and morality that creates the widest avenue for abuses. Parties feel entitled to act on morality alone since the law seems inappropriate (or is silent) and hence feel entitled to act unilaterally as per their moral view. Codifying a law of intervention would remove this moral licensing of intervention. It will not be enough then to simply consult morality and ignore the law on the grounds that it has failed morally; a law of intervention that reflects moral sensibilities on this matter can thus better reign in and regulate its practice. Indeed, as it might be argued that legalizing certain acts such as euthanasia or abortion is morally preferable because it allows for the control and regulation of activities that would occur anyway, so one might say that establishing the legal terms of intervention rather than setting us on the slippery slope towards an interventionist world would allow for better means of controlling a dangerous but sometimes necessary practice.

In sum, it seems hard to make the case for a blanket prohibition against intervention. Not only is such a blanket claim conceptually impossible to make, for examples can easily be concocted that will strain the claim, but there have been in fact historical examples where it would be a stretch to deny that an intervention was or would have been permissible if not even required (for example, an intervention to end the Nazi Holocaust). One rather suspects that objections against intervention are really objections against this or that particular intervention, and indeed defenders of humanitarian intervention will readily agree that historically there have been too many immoral interventions. But to conclude from this fact that there should be a general absolute prohibition against intervention is not only to argue fallaciously but to support a position that is morally counter-intuitive, holding that even when force is reasonably the last resort, it still may not be used to end some wide-spread systemic violations of human rights.

### Cosmopolitanism and intervention

In *The Law of Peoples*, Rawls asks, rhetorically: under what conditions might a military intervention to protect persons against their own state (or the state's failure to protect them against elements within the state) be permitted? He continues: "Is there ever a time when forceful intervention might be called for? If the offenses against human rights are egregious and the society does not respond to the imposition of sanctions, such intervention in the defense of human rights would be acceptable and would be called for."<sup>20</sup> In such a case, a "people's right to independence and self-determination is no shield from that condemnation, nor even from coercive intervention by other people in grave cases" (*ibid.*, p. 38). Notice that it is not just human rights violations that will trigger the call for intervention, but "egregious" or "grave" violations *and* that the violators are not responsive to non-military attempts to end the violence.

So even on Rawls's internationalism, where basic human rights set the limits of state legitimacy, violation of or disrespect for basic rights per se do not warrant forceful sanctions or military action. The society that fails to honor human rights forfeits its status as a member in good standing in the Society of Peoples, but what the appropriate response is on the part of members of the Society of Peoples is a separate question. As Rawls puts it: "What to do on these questions is, however, essentially a matter of political judgment and depends upon a political assessment of the likely consequences of various policies" (*ibid.*, p. 93). The fact that principles of international justice have been violated is not sufficient cause for taking a particular kind of enforcement action against the violator. We have to evaluate the seriousness of the violation, the urgency of the situation, the available range of responses, and their respective potential consequences to determine the right and effective course of action, and here the exercise of good judgment is indispensable.

Intervention is limited to only extreme or egregious instances of basic rights violation that are not responsive to non-military attempts to halt them. On the last point, sound political judgment is most crucial: are there still possible alternative means of ending the violation short of military action relative to the urgent need to put an end to the violation?

<sup>20</sup> Rawls, *The Law of Peoples*, p. 94, fn. 6; see also the following remarks: "An outlaw state that violates these rights is to be condemned and in grave cases may be subjected to forceful sanctions and even to intervention," *ibid.*, p. 81.

If not, is an intervention going to be less costly, morally speaking, than the harm it is meant to halt? To paraphrase the common slogan, we don't want to bomb an entire village and its inhabitants in the name of protecting their human rights.

For Rawls, the permissibility of intervention under extreme cases is seen as an exception to the general rule *prohibiting* intervention. Recall that one of the eight stated principles of Rawls's internationalism holds that "Peoples are to observe a duty of non-intervention" (*ibid.*, p. 37). Rawls's discussion of intervention does not rescind the general principle of non-intervention but identifies conditions under which a departure from this general principle is acceptable. What is relevant for our purpose is that the exception is not granted simply when basic human rights are violated but only when they are violated in a particularly egregious way *and* that military offensive to stop the violation is the last resort and a proportionate response.

It is useful here to note that Rawls's view on intervention is sensibly cautious, and substantively rather similar to that of Michael Walzer's, which has been criticized by some commentators as being too protective of state sovereignty.<sup>21</sup> For Walzer, the general norm is that only wars of self-defense are justifiable.<sup>22</sup> The key reason for this general prohibition stems from the importance of respecting the self-determination and communal integrity of political societies. Hence the principle of non-intervention is a default principle. Yet, "when the violation of human rights within a set of boundaries is so terrible that it makes talk of community or self-determination or 'arduous struggle' seem cynical and irrelevant, that is, in cases of enslavement or massacre" an exemption can be made to the general rule of non-intervention (p. 90). Thus in Walzer's view, as in Rawls's, human rights violation is not a sufficient cause for intervention. What is necessary is that the rights violation be recognized as egregious or grave, or such as to shock the conscience of humanity, or such as to render cynical the idea of self-determination of a community. But even gross violations don't provide a sufficient condition for intervention. What is required are also the common conditions of just war, for example the so-called "last resort" condition (Walzer, p. 84) and the conditionality of proportionality and so on.<sup>23</sup>

<sup>21</sup> See for one example, David Luban, "The Romance of the Nation-State," *Philosophy and Public Affairs* 9 (1980): 392-97.

<sup>22</sup> Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), pp. 61-63.

<sup>23</sup> As Walzer notes in *Just and Unjust Wars* (pp. 212-13) there is no literal last resort. What the condition demands is that reasonable non-military options have been put to test and

Some might add to the egregiousness and last resort conditions a right authorization condition. For instance, adapting from the Thomist just war tradition, one might say that a morally permissible intervention must also have the proper authorization from some global body such as the United Nations. Yet, so it seems to me, the purpose of right authorization with respect to intervention is to help ensure that interventions are not undertaken for nationalist geopolitical reasons.<sup>24</sup> The requirement of right authorization serves as a useful institutional check against this problem. But perhaps this should not be treated as a moral condition in itself. For example, right institutional authorization becomes less significant and is indeed dispensable when, in spite of overwhelming moral considerations in favor of intervention, proper authorization is not forthcoming because of the ulterior interests of members of the authorizing entity. To insist on proper authorization when it is obvious that such an authorization is not going to be granted because of specific geopolitical factors is a procedural fetishism of sorts, for it confuses the means (a means of safeguarding abuses against a moral condition) for the end (that is, the moral condition itself).<sup>25</sup> These remarks are consistent with Allen Buchanan's rejection of "legal absolutism," the view that "it is virtually never justifiable to violate international law, or at least not the most basic norms of international law, even for the sake of protecting human rights."<sup>26</sup> For Buchanan, there can be moral reasons, the necessity of protecting human rights for one, for by-passing what the law regards as necessary proper authorization, and indeed morally grounded cases of overriding prevailing laws or legal norms can provide impetus for international legal reform.

The moral relevance of right authorization is of course a complex issue and in need of more discussion. I meant only to flag some problems with insisting on it as a necessary condition of permissibility. Perhaps at best, the requirement of right institutional authorization should be seen as an "operational" requirement, meaning by this that it is a requirement not of morality per se but of the limits of putting morality into practice. Moral

have failed to produce results, and the urgency of the situation does not allow further attempts.

<sup>24</sup> Recall here Franck's jurying procedure as one safeguard in his "Legality and Legitimacy in Humanitarian Intervention."

<sup>25</sup> See my "The Unavoidability of Morality," in *Humanitarian Intervention*, ed. Terry Nardin and Melissa Williams (New York: New York University Press, 2005). There is also helpful discussion of this in Nicholas Tsagourias, "Cosmopolitan Legitimacy and UN Collective Security," this collection.

<sup>26</sup> Buchanan, *Justice, Legitimacy and Self-Determination*, p. 441.



reasoning does not depend on institutional authorization for its soundness; morality stands above what institutions require or don't require. However, given the epistemic limitations of agents as well as the distorting influence of agents' diverse experiences and interests, and given the very high risks and costs of war, proper institutional authorization, appropriately defined, can be seen as a *real world* safeguard against misapplication of moral reasoning towards the end of war. Still, in this view, it remains important not to lose sight of the moral ideal and forget why institutional authorization is important in the first place. Institutional authorization is needed to help ensure that moral reasoning is adhered to in real world practice, but it does not replace moral reasoning itself. Moreover, what counts as right authority will depend on how we understand the moral basis for such an authority in the first place. It is by reference to moral reasoning that we can say of a particular practice of authorization that it is inadequate and needs to be reformed.<sup>27</sup>

At any rate, my general point is unaffected, namely, the standards by which moral legitimacy of a state is determined (basic human rights for Rawls) do not themselves furnish an answer to the question of whether it would also be legitimate to intervene against that state. Those who take the respect for basic human rights to be the benchmark of state moral legitimacy do not take the criterion of legitimacy alone to define the legitimacy of an intervention. At the very least the condition of "last resort" which is in turn tied to some judgment of the "urgency" of the situation and the idea of proportionality will have to be satisfied.<sup>28</sup>

The conditions noted above, under which the general prohibition against intervention is overruled, do not derive specifically from liberal morality but from more widely shared views about the morality

<sup>27</sup> None of this is to deny the importance of institutions as constraints on action or indeed the basic point that institutions be the subject of justice. The point merely is that there are sometimes institutional requirements on actions that are primarily for the purpose of providing safeguards and it is important to recognize these for what they are, rather than as the moral objective in themselves. See Buchanan's remarks that institutions not be neglected (Buchanan 2004: 30). Moreover, institutionalization is significant in other regards. I have argued that to properly realize the responsibility to protect (i.e. the duty to intervene to protect human rights), the international community should put in place (i.e. institutionalize) a standing humanitarian defense force. See my "The Duty to Protect."

<sup>28</sup> Contra Thomas Merten, these limiting conditions are not simply practical or pragmatic. The conditions of permissible intervention are moral conditions, and it establishes the moral (and not pragmatic political) limitations against intervention. Merten, "Defending the Rawlsian League of Nations," *Leiden Journal of International Law* 18 (2005), pp. 711–15.

of war.<sup>29</sup> As long as one accepts some notion of basic individual rights (on whatever philosophical grounding) to life, security of persons, bodily integrity, and the like, and that there are situations where most can agree that violations against these rights are occurring, the just cause condition is satisfied. The rightness of using armed means to defend basic human rights from systemic violation when this is urgent and the last resort is not uniquely a liberal moral idea. A liberal internationalist is not any more interventionist than other conceptions of global morality that affirms (and which plausible conception does not?) some idea of the inviolability of persons. Liberal internationalism, as least in the version offered by Rawls, does not open the floodgates to intervention but is in fact in line with common morality on this matter.<sup>30</sup>

Some may note that this modesty of Rawlsian Liberal Internationalism is precisely its appeal over a more *cosmopolitan* liberal position. Liberal cosmopolitanism, as I am defining it, advances an account of global justice that effectively takes liberal principles to have global validity and application for all societies. Unlike Rawls, cosmopolitans set the limits of global toleration higher. For liberal cosmopolitans, such as Buchanan, Caney, Mollendorf, it is not the case, contra Rawls, that societies that do not affirm liberal principles (including the respect for the political liberties and freedoms and basic democratic rights that citizens of liberal

<sup>29</sup> For some discussion, see Joseph Boyle, "Traditional Just War Theory and Humanitarian Intervention" in *Humanitarian Intervention*, ed. Terry Nardin and Melissa Williams (New York: New York University Press, 2005); Nardin, "The Moral Basis of Humanitarian Intervention."

<sup>30</sup> Ronald Jansse has argued that it is not clear why liberal peoples should not, contra Rawls, want other non-liberal peoples to adopt liberal values. "The Legitimacy of Humanitarian Intervention," *Leiden Journal of International Law* 19 (2006), pp. 669–92. As a comment on what it is that liberal peoples should aspire toward vis-à-vis non-liberal peoples, I agree with Jansse. But as an implicating comment about intervention, that is, that liberal peoples would want to *forcibly* impose their values on non-liberal peoples, I disagree (as argued for in the text above). There is no logical necessity that just because an agent is committed deeply to certain values that she has to go about *forcibly* imposing these values on others. (And as said, Rawls is clear too that it does not follow that liberal and decent peoples have a default right to intervene against tyrannical societies even though tyrannical societies are deemed to be outlaws.) Jansse seems to think that by default a commitment to some values entails that you enforce these values by military means if necessary, and hence he worries that unless there are strong countervailing reasons acceptable to liberals, liberals would be liable to intervene. But if we keep clear that value-commitment has no immediate logical connection to value-enforcement, Jansse's worry is muted. That is, rather than say that absent good countervailing reasons liberals should go about enforcing liberal values abroad (Jansse's worry) we say, instead, that absent good reasons, liberals should not go about enforcing liberal values abroad.

states enjoy) fall within the limits of liberal global toleration and be counted among the societies in good and equal standing in the society of peoples.<sup>31</sup> The question here, however, is whether this means that cosmopolitanism has also lowered the threshold of permissible intervention.

To begin with, it is first worth noting that cosmopolitanism does not take intervention to be a general rule, but also treats it as a general prohibition to which exceptions can be made. Cosmopolitans can as well take seriously the importance of self-determination, communal integrity, and so on. More to the point, given that war is an act of violence and highly destructive of people's lives, it is not a course of action to be taken lightly but can be justified only under extreme circumstances. The fact that liberal cosmopolitanism sets a higher standard for state moral legitimacy does not mean that it puts the burden of proof on states to justify why they should not be intervened against. The burden of proof is still on intervening states, even though the condition of legitimacy is stricter. The key issue then is whether the burden of proof for intervening is easier met under cosmopolitanism given its stricter account of what is tolerable in international affairs.

In response, it can be pointed out that the stricter conditions of state legitimacy under cosmopolitanism do not mean that justification for intervention is easier to come by. Even if the failure to attain legitimacy satisfies the just cause condition, it does not follow immediately that the other conditions of permissibility are also satisfied. Recall the other conditions noted above, that of "last resort" and "proportionality." Even if a society's failure to respect the liberal democratic rights of its citizens constitutes a just cause for intervention, it has to be shown that intervention is the last option in the sense that feasible non-military and political and economic means have been attempted unsuccessfully, and that the urgency of the situation does not permit further waiting. Furthermore, it must also be reasonably predictable that the intervention is not going to do more harm than good and be in fact successful as a humanitarian response. As Moellendorf writes, "just cause is not a sufficient condition for intervention ... because it does not require that there be good reason to believe that action will remedy the injustice, that such action is necessary to remedy the injustice, and that the greater harms will not also be done in the course of attempting to remedy the injustice" (p. 118-19).

<sup>31</sup> Buchanan, *Justice, Legitimacy and Self-Determination*; Caney, *Justice Beyond Borders*; Moellendorf, *Cosmopolitan Justice*; also my, *Toleration, Diversity and Global Justice*.

Indeed, the point about last resort can be more strongly made. Given the nature of the failure of legitimacy (on the cosmopolitan view) in the case of a society that respects the basic human rights of its citizens but fails to provide them with the full range of standard liberal rights (what Rawls would call a decent non-liberal society), it is hard to see how military action can be defended as a last resort. After all, what counts as a last resort is directly dependent on the urgency and nature of a situation; there is no literal last resort as more diplomacy and non-violent measures can always be further attempted. What the last resort criterion highlights is that relative to the urgency of the situation and given that different methods of resolution have been sincerely tried and tested, further deliberation is no longer acceptable and some forceful action is now imperative. In the case of systemic and widespread violations of human rights, such as genocide, mass murder of civilians, etc., it is easy to see how the wait for the right diplomatic response cannot be too long, if any waiting at all is appropriate. But if the case of a Rawlsian decent society where basic human rights are protected (but where liberal rights are not honored), it is hard to see how non-military means can be said to have run its course and a violent response to the failure of justice is now called for. Moreover and relatedly, it is also unclear how the proportionality condition can be satisfied for the purpose of intervening against a decent society. Intervention comes at great costs, as any military action does, not just for the intervening state but for members of the intervened state, including those whom the intervention is meant to rescue. Even surgical strikes will normally have collateral effects impacting negatively the very individuals that the intervention is meant to rescue. Intervention to prevent further acts of genocide presumably can meet the test of proportionality in the right context; but it is quite obvious that an intervention for the purpose of defending greater press freedom, freedom of speech, or democratic rights is going to be out of proportion. None of this means that liberal cosmopolitans either intervene or stand helplessly by. There are a slew of non-military options that can assist in liberal reforms between the poles of inaction and military action.

The above discussion proceeded as if failure to meet cosmopolitan justice constitutes a just cause for intervention; and that what is preventing intervention is the fact that other necessary conditions are rarely met in cases where states merely fail to honor liberal justice. But even this presumption might be too strong. To qualify further, a cosmopolitan can hold that a state that fails to meet liberal standards

fails the legitimacy test, but failure of legitimacy in itself need not even meet the just cause condition. It is the *kind of failure* of legitimacy that is relevant, how a state is illegitimate and not just that it is illegitimate. Illegitimate states are of course all open to outside criticism and some appropriate response. But whether a state's illegitimate status provides a just cause for a particular form of response depends on the nature of the failure of legitimacy. Cosmopolitans can accept that it is only in cases of egregious rights violations that the just cause condition for intervention as the appropriate response is met (and then it remains to be seen, as discussed above, whether the other necessary conditions are met). There are a number of ways a state can be illegitimate, and under liberal cosmopolitanism, Rawls's decent societies will be deemed illegitimate. But it is only illegitimacy of certain kinds, that involving grave violations of human rights, that the just cause criterion for military intervention is met. As in Rawls's liberal internationalism, cosmopolitanism need not depart from common morality on the question of intervention. As a conception of justice, cosmopolitanism establishes the principles of a just global order. But it need not contradict common moral views on how principles of justice may be militarily enforced.<sup>32</sup>

To be more precise then, one could say that a forfeiture of legitimacy does not by itself give just cause for any third state to intervene. There is no just cause because the failure of compliance, in the case of a decent society, is not egregious or so extreme as to shock the conscience of humankind. Intervention is a special kind of response for specific types of non-compliance. It involves the use of selective violence strictly for the purpose of countering ongoing violence of certain kinds. Other kinds of non-compliance with justice do not merit this violent response. That is to say, it is open to the cosmopolitan view to hold there is just cause only when the failure of legitimacy is of an extreme kind.

To illustrate some of the points above, consider the US invasion of Iraq, and for the purpose of discussion, let's focus on the rhetoric that the invasion was a humanitarian intervention whose purpose was to "liberate the Iraqi people." Is cosmopolitanism committed to this intervention?<sup>33</sup> Do its principles support it? It is far from obvious that

<sup>32</sup> For more discussion on common morality and intervention, see Nardin, "The Moral Basis of Humanitarian Intervention."

<sup>33</sup> That war was also rationalized as a just war of self-defense and a global war against terrorism. But I focus here on its presentation as a humanitarian war. Just for some legal background, it is worth noting that UN Security Council Resolution 1441 (November 2002) did not unequivocally authorize the right to wage war against Iraq for its failure

they do. Saddam's regime was clearly tyrannical and illegitimate, and the cosmopolitan and liberal internationalist positions allow us to make this evaluative claim. But does it follow from this claim of illegitimacy and tyranny that military intervention is warranted? What were the gross human rights violations that the intervention is meant to solve and what is the urgency of coming up with an immediate resolution? Is the intervention likely to do more harm, harm to the individuals the intervention is meant to rescue, than good? And most significantly, what alternatives were available for criticizing and challenging Saddam's tyrannical regime and even supporting efforts at regime change from within besides sending in foreign troops? Considerations of these questions do not immediately suggest the right to intervene. On the contrary, they suggest the impermissibility and counter-productiveness of the intervention.

Cosmopolitanism thus shares the Rawlsian Internationalist view (as I have interpreted that view) that the invasion of Iraq was unjustified. On the Rawlsian account, Saddam's regime counts as an outlaw regime. But in Rawls's theory of just war, the invasion can't be justified, as we can see from the earlier discussion. Again, the legitimacy of a state is one thing, the right to legitimately intervene militarily against it is another, and Rawls certainly does not hold that all tyrannical societies may be intervened against. Similarly with Walzer: while Walzer agrees that Saddam's regime is tyrannical (indeed it is hard to dispute this), he also holds that the intervention was morally unjustifiable. His main reason is that although Saddam was clearly a brutal dictator, there wasn't any wide-spread humanitarian atrocity at the time of the invasion.<sup>34</sup>

This decoupling of legitimacy from military intervention is important. It allows for a stronger and more demanding ideal of state legitimacy without the attendant worry that this also relaxes the condition of just intervention, hence paving the way for liberal interventionism. It also frees us to operate with a more extensive ideal of universal individual rights and freedoms without the corresponding worry that this more demanding ideal also gives states the license to intervene

to comply with UNSC Resolution 687 (April 1991) that sets the terms for a ceasefire to the Gulf War of 1991. Rather the Resolution resolves that the Security Council will discuss any further breach by Iraq. As the US Representative John Negroponte himself puts it in his remarks to the Security Council: "If there is a further Iraqi breach, reported to the Council by UNMOVIC, the IAEA or a Member State, the matter will return to the Council for discussions as required in paragraph 12."

<sup>34</sup> Michael Walzer, *Arguing About War* (New Haven: Yale University Press, 2006).

militarily against other states under the guise of protecting these rights. Cosmopolitans can affirm the universality of liberal democratic principles while side-stepping the charge that this gives liberal democratic states permission to forcefully interfere with the affairs of other (non-liberal) states. All cosmopolitanism licenses liberal states to do is to take a critical judgmental stance towards non-liberal societies; how this criticism is to be expressed through foreign policy is to be further determined by the nature of the injustice, the means for redress available, and so on. In most cases of failures of justice, non-military responses, including the offering of trade incentives, foreign aid provisions, negotiation and diplomatic pressures, short-term and selective sanctions are both more effective and morally appropriate as responses. This last point is important to keep in mind, for a non-interventionist cosmopolitanism is not irresponsive to its own commitments. It does not say that we either intervene militarily or do nothing at all.

It is worth noting the real difference between cosmopolitanism and Rawls's liberal internationalism. For cosmopolitans, the real failure of Rawls's theory, and of a theory like Walzer's, is not that it isn't interventionist enough. As I have tried to suggest, liberal cosmopolitans can accept the limitations on intervention found in both Rawls's and Walzer's accounts. The disagreement is over what the relevant principles are, not how these principles may be enforced. Against Rawls, cosmopolitans want a more exacting standard of legitimacy; even as they agree with Rawls that military enforcement of principles is limited to very extreme cases.<sup>35</sup>

The key point, that there is a distinction between principles by which to pass judgments on the one hand and methods or means of enforcing a judgment on the other, is rather obvious. But it is worth stressing especially in the context of global justice and intervention because of the common misplaced worry that cosmopolitanism is an interventionist doctrine compared to, say, the more modest internationalism of Rawls. It is also worth noting that the fear of excessive intervention is not really Rawls's reason for his more moderate internationalism. His reasons have to do with the kinds of judgments that liberal peoples may make, and

<sup>35</sup> To be sure some cosmopolitans reject Walzer's conditions of permissible intervention. See for example Luban. But these objections either seem to problematically lower the bar for intervention or are better seen as objections to Walzer's account of legitimacy rather than to the limits of intervention as such. In part this is because, as mentioned above, Walzer seems to run together a state's moral standing and the right to intervene against it, at least in the discussion in "The Moral Standing of States."

the principles to which they may appeal when making these judgments, with respect to non-liberal peoples. The dividing philosophical issue is essentially that of philosophical reasonableness, not of enforcement. At any rate, my claim is that liberal cosmopolitans can agree entirely with Rawls's remarks on intervention in Part III of *The Law of Peoples*, and accept that intervention, given its great costs, be permitted only under extreme and special circumstances. The real debate concerns that of right and not might. Indeed the conditions specified there, and in other theories (like Walzer's) are consistent with and required by the more general features of common morality concerning the appropriate use of coercive force against persons. Intervention is an emergency measure to be reluctantly and cautiously carried out, and only when warranted by the urgency and seriousness of a situation. Cosmopolitan justice does not deny this. It has a distinctive account of what global justice is, and a more demanding one that is true, but it does not hold a dangerously cavalier view of how to enforce global justice. \*