The Moral Basis of Humanitarian Intervention[1]

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Humanitarian intervention is usually discussed as an exception to the nonintervention principle. According to this principle, states are forbidden to exercise their authority, and certainly to use force, within the jurisdiction of other states. The principle finds firm support in the United Nations Charter, which permits a state to defend itself from attack but forbids the use of armed force against the territorial integrity or political independence of other states. Taken literally, these provisions forbid armed intervention, including intervention to protect human rights. And, in general, humanitarian intervention finds scant support in international law.

There is, however, a much older tradition in which the use of force is justified not solely by self-defense but also by the moral imperative to punish wrongs and protect the innocent. This tradition exists in some tension with modern international law and especially with the UN Charter. It holds that armed intervention is morally justified when people are violently mistreated by their rulers, and is reflected in the widely-held opinion that states, acting unilaterally or collectively, are justified in enforcing respect for human rights. It is this enduring tradition, not current international law, that best explains the moral basis

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of humanitarian intervention.

My strategy in this paper will be to relocate the discussion of humanitarian intervention, moving it out of the familiar discourse of sovereignty and self-defense and into the discourse of rectifying wrongs and protecting the innocent. I do this in two ways. First, I examine arguments made in early modern Europe for using armed force to uphold natural law. I want to understand how what we now call humanitarian intervention was conceived by moralists, theologians, and philosophers writing before the emergence of modern international law. My aim is not to read current concerns back into a period that might not have shared them, but to see whether earlier ideas about the use of force to protect people from injuries inflicted or tolerated by their own governors might illuminate current debates. Second, I consider how humanitarian intervention is justified within a powerful reformulation of natural law worked out by philosophers influenced by Immanuel Kant. This post-Kantian version of natural law suggests why, despite modern efforts to make it illegal, humanitarian intervention remains, in principle, morally defensible.

Humanitarian intervention in early modern natural law

In twentieth-century international law, a just war is above all a war of self-defense. But sixteenth- and seventeenth-century European moralists justified war as a way to uphold law and protect rights, of which self-defense was only one. Rulers, these moralists argued, have a right and sometimes a duty to enforce certain laws beyond their realms. Some of these belong to the "law of nations" (ius gentium), understood not as international law but as general principles of law recognized in many different communities. This law of nations is an inductively-established body of norms common to all or most peoples. But the most important class of universally-enforceable laws is "natural law," understood as comprising precepts that are binding on all rational beings and that can be known by reason. What the law of nations and natural law have in common is that each identifies principles more general than

the often idiosyncratic norms of particular communities. And in many respects, their principles are similar, though there are glaring exceptions. Slavery, for example, was long regarded as permitted by the law of nations, simply because it was widely practiced. But slavery cannot be defended as permissible under natural law, though many have, mistakenly, so defended it. The right to enforce these laws was understood to justify rulers in punishing moral wrongdoing and defending the innocent, wherever such action is needed.

Moralists do not always distinguish the ideas of punishment and defense. They often speak of punishing wrongdoing when they have in mind preventing as well as avenging it. But this is not necessarily a sign of confusion. Self-defense usually means responding to an attack that is already under way, but anticipation can be a means of defense: it can be expedient to attack preemptively or to provoke war with a rival whose power is increasing. And punishment has a role in defense when its aim is to deter.[2] One reason for prosecuting war criminals or establishing an international criminal court is to defend future victims of oppression by deterring would-be oppressors.

The medieval literature on just war, like that of modern times, is most often concerned with wrongs done by one community to another. When Aquinas suggests that a "just cause" is required for a war to be waged without sin, he is thinking of situations in which one community makes war to punish another. "Those who are attacked," he says, "should be attacked because they deserve it on account of some fault."[3] And he goes on to quote Augustine, for whom a just war is one that "avenges wrongs"–for example, when a state "has to be punished for refusing to make amends for the wrongs

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[2]John Finnis, "The Ethics of War and Peace in the Catholic Natural Law Tradition," The Ethics of War and Peace: Religious and Secular Perspectives, ed. Terry Nardin (Princeton: Princeton University Press, 1996), 21-22.

[3]Summary of Theology II-II, Q. 40, a. 1.

inflicted by its subjects or to restore what it has unjustly seized."[4] To get to the idea of humanitarian intervention, we must shift our attention from wrongs done by one community to another to those done by a government to its own subjects, either directly or by permitting mistreatment. And if the justification of war is to prevent or punish wrongdoing, it is not hard to make this shift. Thomas More accomplishes it effortlessly when he reports that the Utopians go to war only "to protect their own land, to drive invading armies from the territories of their friends, or to liberate an oppressed people, in the name of humanity, from tyranny and servitude."[5] In the absence of a norm of nonintervention, no special justification for humanitarian intervention is needed. Even those who treat "the liberation of an oppressed people" as needing further justification will have an easier time making their case if the core justification of war is to "avenge wrongs."

One kind of oppression that medieval moralists thought justified armed intervention was the mistreatment of Christians in non-Christian ("infidel") kingdoms. And some realized that this parochial concern could be generalized to include situations in which infidels injure one another, and even situations in which Christians injure infidels. In medieval discourse, the question of whether a Christian ruler might properly use force to protect the victims in these situations was often framed as a question of whether the pope, as the recognized universal authority, should intervene. Because the pope was responsible for seeing that <u>all</u> human beings obeyed God's laws, he could punish violations by anyone, infidel or Christian. Papal intervention, here, meant that the pope would authorize princes to intervene, just UN intervention means that states to use armed force under its mandate.

A key figure in this discussion, upon whom sixteenth- and seventeenth-century moralists relied, is the thirteenth-century canon lawyer Sinibaldo Fiesci, who wrote authoritatively as Pope Innocent IV

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[4]<u>Questions on the Heptateuch</u> 6.10.

[5]<u>Utopia</u> (1516), ed. George M. Logan and Robert M. Adams (Cambridge: Cambridge University Press, 1989), 87-88.

on relations between the papacy and non-Christian societies. The immediate context of Innocent's discussion is the crusades, which raised the issue of whether it is morally justifiable for Christians to invade lands ruled by non-Christian princes. He argues that infidels, being rational creatures, are capable of making their own decisions, including forming civil societies and choosing rulers. Furthermore, infidels cannot be forcibly converted. But because the gospel is addressed to everyone, the pope must be concerned with infidel as well as Christian souls. And all men are under the jurisdiction of natural law.

Putting these arguments together, Innocent concludes that the pope has authority to act when infidels violate natural law. This might happen if infidel rulers violate this law, or if infidel subjects violate it and their rulers do not prevent or punish them. So, for example, if infidels practice idolatry or sodomy, which Innocent thinks are forbidden by natural law, Christians are justified in punishing them. Christians can also seek to promote the spiritual good of infidels by preaching the gospel among them. And should infidels interfere with Christian missionaries, their right to preach can be defended by armed force. Finally, force can be used to prevent persecution of Christians in infidel kingdoms. In short, the pope can intervene in any community to enforce natural law. Innocent IV, no naif in these matters, understood that Christian rulers would twist these principles to justify the conquest of infidel societies. He therefore insisted that Christians could wage war against infidels to enforce natural law only with papal authorization.[6]

These principles were applied three centuries later to the Spanish conquest of America by Franciso de Vitoria. This brutal conquest was the subject of a long-running debate concerning the conduct of the conquerors. A new element arose in this debate: Europeans viewed the indigenous inhabitants not only as infidels but as barbarians, that is, as uncivilized, even subhuman. These

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[6]James Muldoon, Popes, Lawyers, and Infidels: The Church and the Non-Christian World 1250-1550 (Philadelphia: University of Pennsylvania Press, 1979), 10-11, 12.

barbarians were distinguished from civilized peoples by their cannibalism and rituals of human sacrifice, which Europeans often invoked to justify subjecting them to Spanish rule.

Drawing explicitly upon Innocent IV, Vitoria considers whether cannibalism and human sacrifice provide grounds for the conquest. He argues that although natural law prohibits these acts, this does not necessarily justify war against those who practice them. Other crimes–adultery, sodomy, perjury, and theft, for example–also contravene natural law, but one cannot justly wage war against countries in which these crimes occur. "Surely," he writes, "it would be strange that fornication should be winked at in Christian society, but used as an excuse for conquering the lands of unbelievers!"[7] If armed intervention is a permissible response to cannibalism and human sacrifice, it must be because these crimes are especially shocking and endemic. In such cases, outsiders are justified in defending the victims, even if they have not invited such assistance.

Like modern defenders of humanitarian intervention, Vitoria insists that a war to protect the innocent must be strictly limited. If the Spaniards wage war to suppress crimes against natural law, they cannot lawfully continue the war once it has achieved its goal, nor can they seize the property of the Indians or overthrow their governments. In other words, a lawful intervention cannot, without additional justification, become a lawful conquest. Moreover, if Europeans do, for whatever reason, come to rule the Indians, they must govern them for their own good.[8]

Some defenders of the conquest held that because barbarians were subhuman "brutes," it was lawful to hunt and kill them at will. Others argued that the barbarians, though human, were intellectually deficient and culturally primitive. These "brutish men" were what Aristotle called "natural slaves"–human beings who have enough reason to follow commands but not enough to assume responsibility for their

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[7]Francisco de Vitoria, "On Dietary Laws or Self-Restraint" (1537), in Political Writings, ed. Anthony Pagden and Jeremy Lawrance (Cambridge: Cambridge University Press, 1991), 230.

[8]Vitoria, "Dietary Laws," 225-26, and "On the American Indians" (1539), in Political Writings, 288.

own affairs. They were, moreover, slaves without masters, an anomaly for which the Spanish conquest seemed an obvious remedy. Vitoria rejects these claims. The Indians are not natural slaves. Though their thought and conduct are strange and offensive, they have cities, laws, governments, and property, and in this respect are no different from other human beings. But even if the Indians were incapable of governing their own affairs, this would hardly justify killing, enslavement, or expropriation. Like that of children, madmen, or the senile, their incapacity implies paternal care.

Another defender of Indian rights, the missionary priest Bartolomé de las Casas, argues that one is not justified in harming many to rescue a few. Such injury is disproportionate and, when its victims are innocent, inherently immoral. "In those provinces where unbelievers eat human flesh and sacrifice innocent persons, only a few persons commit these crimes, whereas innumerable persons . . . do not participate in these acts in any way."[9] The conquistadors wage war on the pretext of freeing the innocent, but they annihilate thousands of innocents. Molina, De Soto, and other contemporary critics of the conquest make similar points.

The Protestant Hugo Grotius is another key figure in these debates about intervention to uphold natural law. The international morality he defends is one that permits such intervention but does not demand it. Grotius's "thin" or minimal morality requires human beings to refrain from injuring one another but does not require that they help one another. The basis of this morality, which he expounded in an unpublished early work, is self-preservation. Because the desire for self-preservation is inherent in their nature, human beings cannot be blamed for acting on it. And if they have a right to preserve themselves, they must also have the right to acquire the things needed for life and to defend their lives and possessions.[10] These pre-social rights, which are the foundation of natural law, are enjoyed not

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[9]Bartolomé de las Casas, In Defense of the Indians (1552), trans. Stafford Poole (DeKalb: Northern Illinois University Press, 1992), 207.

[10]De jure praedae (1604), published in English as Commentary on the Law of Prize and Booty, trans. Gwladys L. Williams (Oxford: Oxford University Press, 1950), 10.

only by natural persons but by artificial persons, like states, that coexist in a condition (a "state of nature") that is not itself a civil society. Because it rests on self-preservation, natural law is a morality of coexistence, not beneficence. Natural law requires only that persons leave one another alone; it does not demand that they assist or protect one another. But they may assist or protect one another. It would contravene the teaching of Christ, Grotius argues, to say that Christians have nothing in common with non-Christians, for the injunction to love one's neighbor means that a Christian must love every human being. It follows that "the protection of infidels from injury (even from injury by Christians) is never unjust."[11] Grotius is arguing here that the Dutch East India Company might justly wage war on the Portuguese for seeking to prevent the Sultan of Johore from trading with the Dutch.[12] These circumstances may cause us to raise an eyebrow with respect to Grotius's motives, but it does not undermine the argument itself.

In a subsequent work, Grotius asks whether a sovereign can rightly wage war to punish violations of natural law that do not affect him or his subjects. His answer is that sovereigns have the right to punish any acts that "excessively violate the law of nature or of nations in regard to any persons whatsoever." He invokes Innocent IV against Vitoria, Molina, and others who argue that punishment is a civil power and therefore that a sovereign has no right to wage war to defend those over whom he has no legal jurisdiction. If we accept this view, Grotius argues, no sovereign would be able to punish another for harming him or his subjects. The right to punish is based not on the civil power but on the law of nature, which existed before there were civil societies. Therefore, wars are justly waged on those who "sin against nature" by engaging in cannibalism, piracy, and other barbaric practices. "Regarding such barbarians, wild beasts rather than men, one may rightly say . . . that war against them was

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[11]Grotius, Law of Prize, 315.

[12]Richard Tuck, The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant (Oxford: Oxford University Press, 1999), 93-94.

sanctioned by nature; and . . . that the most just war is against savage beasts, the next against men who are like beasts."[13] Because Grotius does not distinguish between bestial men and bestial societies, sentences like these justify punitive wars that go far beyond humanitarian intervention, narrowly defined.

According to the new understanding of international relations that was emerging together with the idea of the sovereign state, any sovereign has the right to enforce natural law against any other sovereign who is guilty of violating it. In the "state of nature" postulated by Grotius and other seventeenth-century natural law theorists, there is no enforcing power superior to that of the sovereign of each state. Because in the state of nature unpunished violations of natural law by one sovereign harm every other sovereign by undermining that law, any sovereign can punish such violations. A sovereign is even justified in punishing crimes committed by another against his own subjects, provided the offense is "very atrocious and very evident."[14] This general "right of punishment" possessed by every sovereign in the international state of nature therefore justifies humanitarian intervention, at least in some situations.

The nonintervention principle, which became increasingly important in international law during the eighteenth and nineteenth centuries, can be understood as a reaction against the view that every state has a right to enforce natural law. The chief objection to this doctrine was made by Samuel Pufendorf in works published during the 1670s. "We are not to imagine," Pufendorf writes, "that every man, even they who live in the liberty of nature, has a right to correct and punish with war any person who has done another an injury," for it is "contrary to the natural equality of mankind for a man to force himself upon the world for a judge and decider of controversies. . . . Any man might make war upon

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[13]De jure belli ac pacis (1625), On the Law of War and Peace, 1646 edition trans. Francis W. Kelsey (Oxford: Oxford University Press, 1925), 504-506.

[14]Law of War and Peace, 508.

any man upon such a pretense."[15] Nevertheless, any person may justly assist any victim of oppression who invites assistance. "Kinship alone"–the mere fact of common humanity–"may suffice for us to go to the defense of an oppressed party who makes a plea for assistance, so far as we conveniently may."[16] For Pufendorf, to come to the aid of the oppressed is not only a right but in some cases a duty. It is, however, an "imperfect duty"–not a specific obligation like that prescribed by a contract but a duty of beneficence to be performed in so far as it can be performed without disproportionate inconvenience. The proviso that the victim must have invited assistance cannot, however, bear the weight Pufendorf gives it in distinguishing justifiable humanitarian intervention from unjustifiable interference by a sovereign who has usurped the office of judge over other sovereigns.

The natural law argument for humanitarian intervention continued to erode during the eighteenth and nineteenth centuries as the view that international law is "positive law" based on the will of states emerged. The enlightenment philosopher Christian Wolff and his popularizer, Emmerich de Vattel, are among the last to treat international law as part of natural law (that is, as belonging to morality rather than to positive law), and both dismiss the classic argument justifying humanitarian intervention. According to Wolff, "a punitive war is not allowed against a nation for the reason that it is very wicked, or violates dreadfully the law of nature, or offends against God." And he explicitly asserts the principle of nonintervention, even in cases where a sovereign abuses his subjects.[17] Vattel agrees, though he adds a qualification: if "by his insupportable tyranny" a prince "brings on a national revolt against him," any

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[15]Samuel von Pufendorf, The Law of Nature and Nations (1672), trans. C. H. and W. A. Oldfather (Oxford: Oxford University Press, 1934), 847. I have modernized the spelling and punctuation.

[16]On the Duty of Man and Citizen, ed. James Tully (Cambridge: Cambridge University Press, 1991), 170.

[17]Christian von Wolff, The Law of Nations Treated according to the Scientific Method (1748), trans. Joseph D. Drake (Oxford: Oxford University Press, 1934), Section 637; Sections 258 and 1011.

foreign power "may rightfully give assistance to an oppressed people who ask for its aid."[18] But in the absence of armed rebellion, intervention must be condemned: to say that one nation can use force to punish another for grave moral abuses is to open the door to war motivated by religious zealotry or economic ambition.[19] Here we have a new principle, added to Pufendorf's requirement that the victims of oppression must request outside assistance: they must mount their own armed resistance. By the middle of the nineteenth century, this principle was being used to argue against humanitarian intervention. In his essay, "A Few Words on Non-intervention, " J. S. Mill argues that the subjects of an oppressive ruler must win their own freedom, without outside assistance, and they must suffer the consequences if their struggle is unsuccessful. Not even bloody repression can justify armed intervention by foreign powers, for were such intervention permissible, the idea of "self-determination," which for Mill is basic to political community, would be meaningless.[20]

Though he writes as a moralist, not an international lawyer, Mill perfectly articulates the view of humanitarian intervention we find in nineteenth-century international law. W. E. Hall, the author of a standard English work on international law at end of the century, treats humanitarian intervention under the heading "interventions in restraint of wrongdoing," a precise title from the standpoint of morality. He argues that "tyrannical conduct of a government towards its subjects, massacres and brutality in a civil war, or religious persecution" have nothing to do with relations between states. If international law is to take cognizance of such acts, their repression must be "authorized by the whole body of civilized states." Hall insists that we must not confuse outraged public opinion with the requirements of

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[18]Emmerich de Vattel, The Law of Nations or Principles of Natural Law applied to the Conduct and Affairs of Nations and Sovereigns (1758), trans. Charles G. Fenwick (Washington, D.C.: Carnegie Institution, 1916), p. 131; see also p. 340.

[19]Vattel, Law of Nations, 116.

[20]In Dissertations and Discussions, 2nd edn. (London: Longmans, 1867), vol. 3, 153-78. The essay was first published in 1859.

international law. Some authorities, he writes, hold that states can lawfully intervene "to put an end to crimes and slaughter," but in the absence of consensus on this point, their judgment is not law.[21] If there is any legal basis for humanitarian intervention, it must rest not on principles of international morality themselves, but on general agreement among states to recognize such principles as law. This is the doctrine that international law is enacted by the joint will of sovereign states. Just as legislation is the criterion of law within each state, so agreement between states is the criterion of international law. The age of natural law had come to an end.

Common morality and humanitarian intervention

Though it had been banished from the realm of positive law, natural law did not disappear. It simply continued to march under the banner of morality. To distinguish this latter-day natural law, stripped of its religious and legal connotations, from the moral customs of particular peoples, the philosopher Alan Donagan has revived the Stoic expression koinos nomos, which he translates as "common morality," to identify principles of human conduct that are established neither by positive law nor by custom but by critical reflection on law and custom. These principles provide a standard of conduct and a standard we can use to criticize the practices of various communities. As Donagan puts it, they provide a standard "by which everybody ought to live, no matter what the mores of his neighbors might be."[22] We must, in other words, distinguish between the moral practices of particular communities and principles abstracted from those practices to compose a critical morality possessing

[21]William Edward Hall, A Treatise on International Law, 6th edn. (Oxford: Oxford University Press, 1909), 284; 287-88; 285n.

[22]Alan Donagan, The Theory of Morality (Chicago: University of Chicago Press, 1977; reprinted with corrections, 1979), 1. My sketch of common morality draws freely on Donagan.

wider authority.[23]

Underlying the idea of common morality is a conception of human beings as thinking, choosing beings: "moral agents." Morality presupposes the freedom that is inherent in agency. This presupposition cannot be proved: if determinism is true, the belief that human beings are agents making real choices is an illusion. Morality also presupposes that human beings have an equal right to enjoy the freedom inherent in agency. The first principle of morality, accordingly, is that each person must respect the agency of every other. This is Kant's principle of respect. It requires us to recognize the inherent capacity and therefore the right of each person to make choices of his or her own.[24]

Common morality is essentially a morality of restraint. That is, although it contains both permissions and prohibitions, its core lies in a small number of prohibitory precepts, approximated in codes like the seven "Noahide laws" identified by Maimonides as binding on all human beings or the ten commandments revealed to Moses. How these precepts are to be interpreted and which of them really belongs to common morality are matters of continuing debate, but theorists of common morality agree that the answer to these questions is to be found in their relationship to something like the golden rule or the Kantian principle of respect, understood as the fundamental principle of morality.

Unlike some moral codes, common morality does not purport to regulate every aspect of life. In any situation there is always a wide range of morally permissible responses. And many situations present alternatives with which common morality is unconcerned. Common morality is a minimal morality. It regulates choices that affect our conduct toward ourselves and others, choices we make as rational agents whose agency must be respected. Precisely because it rests on a view of human beings

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[23]Grotius offers a statement of this distinction in Christian tradition when he writes that in the "holy law" of the New Testament "a greater degree of moral perfection is enjoined upon us than the law of nature . . . would require." Law of War and Peace, 27.

[24]Immanuel Kant, Foundations of the Metaphysics of Morals (1785), trans. Lewis White Beck (Indianapolis: Bobbs-Merrill, 1959), 66-67.

as rational agents, common morality permits us wide freedom to choose as we will. It imagines a human community in which individuals pursue their own self-chosen ends, and seeks to regulate this pursuit so that the activities of one person do not unjustly interfere with the activities of others.

Common morality forbids us to use others coercively to achieve our ends. Using force, without good reason, violates the principle of respect. This explains not only the prohibition of murder and of slavery but also the justification for self-defense. But common morality does not limit the use of force to self-defense. It permits us to defend the rights of others when those rights are threatened. We are justified in using force to thwart violence against innocent persons, that is, persons who are not themselves engaged in unjust violence. The point can be restated from the victim's perspective by saying that everyone has a moral right not to be physically injured by others, unless they have lost that right through some act of their own. In other words, those who use violence to further their own ends may be forcibly restrained because they cease to satisfy the premise of this right to immunity. By violating the immunity of others, they forfeit their own.[25] Those who attack the innocent may themselves be attacked without violating their rights as free human beings. This permission includes the right to kill the attackers, if necessary, to defend the lives of their victims. We are justified in using as much force as is needed to thwart the attack, but not more–bearing in mind that precise calculations about such matters are impossible.

Though derived ultimately from the principle of respect, the right to use force to defend the innocent from violence rests more proximately on the idea of beneficence–the idea that human beings should assist one another in appropriate ways. To respect other human beings as rational creatures means not only that we must not interfere with their freedom but also that we should help them to achieve their own ends. Common morality is at its core a morality of constraint, but its precepts are not limited to those that constrain us. It also requires us to further the well-being of others in ways that are

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[25]Donagan, Theory, 85.

morally permissible and not disproportionately costly. In other words, we are forbidden to do wrong for the sake of others and we are not required to do more than we can reasonably afford.

In consequence of this general principle of beneficence, common morality may require us to act when others are in danger, whether by accident or as victims of wrongdoing. This demand is expressed in the parable of the good Samaritan (Luke 10:29-37) and, more pointedly, by the divine injunction that we must not permit violence to be done to our neighbors (Leviticus 19:16). Maimonides interprets the latter not only as allowing us to use force where it is needed to restrain the violent but as making it our duty to do so, if we reasonably can. The duty to protect others from grave harm is one that philosophers, using the language of natural law, call a "natural duty." Natural duties do not depend on contracts, laws, or other institutions.

Maimonides interprets the passage from Leviticus as follows: "If one person is able to save another and does not save him, he transgresses the commandment, Neither shalt thou stand idly by the blood of thy neighbor."[26] The principle of beneficence, which underlies this command, prescribes that everyone should promote the well-being of others, but leaves it to each person to decide how to pursue that goal. Nevertheless, Donagan explains, if you encounter someone "who then and there needs help which only [you] can give without disproportionate inconvenience," you must give it. And this implies that we must not permit anyone to be harmed by violence if we can reasonably prevent it. In other words, it is "not merely permissible but a duty to employ force against the violent if their victims cannot otherwise be protected."[27]

Maimonides' principle addresses four aspects of the decision to act on behalf of persons

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[26]Donagan, Theory, 86, quoting Maimonides, Mishneh Torah XI, 5, 1, 14. "Blood" here means a life-endangering situation. Maimonides is expounding Jewish law, not common morality, and he doubted that morality could be established on the basis of reason. But the principle in question is one that arguably belongs to common morality as well as to Jewish law.

[27]Donagan, Theory, 86.

threatened by violence. First, we must ask who should intervene. Who is the "thou" forbidden to stand idly by when another's life is in danger? Second, who should be protected? Who is my "neighbor"? Third, from which harms must they be protected? And, fourth, what must we do to avoid the charge that we are standing idly by? We can use these four questions as a guide to the morality of humanitarian intervention. But in doing so we must bear in mind that Maimonides is interpreting Jewish law, not common morality, and that he presumes, as his context, relations between individual human beings who are living in proximity to one another. One cannot apply the principle directly to complex foreign policy decisions. Humanitarian action may require anything from relief or rescue to restoring a civil society which has collapsed into barbarism. Deliberating about what to do in particular situations demands judgment and prudence, and this task belongs to politics, not moral philosophy. But political choices are constrained by morality, and Maimonides' principle suggests where arguments over such decisions can and cannot go.

(1) Who should intervene? Humanitarian intervention is traditionally defined as the use of armed force by states to protect human rights. This definition presumes that it is states that should intervene. It is sometimes argued that the traditional definition is obsolete because humanitarian intervention is increasingly a matter of collective action under UN auspices, not action undertaken by states on their own authority.[28] But to say that humanitarian intervention should be collective is simply to offer a different answer to the question "Who should intervene?" Maimonides' principle is general: you shall not stand idly by, whoever you are, if you can provide effective assistance at reasonable cost and without neglecting other duties. There are prudential arguments for insisting that humanitarian interventions be authorized by the international community. Such interventions are perhaps more likely than unilateral actions to benefit from collective wisdom and to gain wide support. And unilateral

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[28]For criticism of the traditional definition, see Oliver Ramsbotham and Tom Woodhouse, Humanitarian Intervention in Contemporary Conflict (Cambridge: Polity Press, 1996), 113-14.

intervention may make it harder to establish more effective international procedures for protecting human rights.[29] But is collective authorization morally required? A shift to collective intervention may reflect new legal and practical realities, and these may have moral implications, but the shift itself is not required by common morality.

There are, however, moral reasons why states should adhere to international law and therefore why unilateral intervention should be condemned if international law forbids it. It is disturbing that NATO's decision to intervene in Kosovo was made outside the framework of the UN and in violation of its own charter.[30] (The action must be regarded as "unilateral" because, with respect to Kosovo, NATO is a member of the community of states, not the government of this community.) But if unilateral intervention is illegal and procedures exist for collective action, yet the international community as a whole is unable to act effectively, must individual states also "stand idly by"? To say "yes" is to repudiate Maimonides' principle. Notice that the issue here is not whether intervention must be condemned because it violates the sovereignty of the target state. It is not whether Yugoslavia, for example, can claim immunity from intervention, but whether NATO's intervention must be condemned because it violates established international procedures for authorizing intervention.

Some moralists argue that only a government that is itself morally legitimate and respects human rights is entitled to intervene to protect human rights.[31] There will be reasons for favoring such a requirement in many cases, but the rule is not part of common morality. A thief is not forbidden to save

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[29]Stephen A. Garrett, Doing Good and Doing Well: An Examination of Humanitarian Intervention (Westport, Conn.: Praeger, 1999), chap. 7; Michael Akehurst, "Humanitarian Intervention," in Hedley Bull, ed., Intervention in World Politics (Oxford: Oxford University Press, 1984), 112.

[30]Louis Henkin, et al., "Editorial Comments: NATO's Kosovo Intervention," American Journal of International Law 93 (1999), 824-62.

[31]Fernando R. Tesón, A Philosophy of International Law (Boulder: Westview Press, 1998), 59.

a drowning child.

(2) Who should be protected? Who is my neighbor? Because Maimonides is interpreting Jewish law, he is concerned with relations between members of the community of Jews, who are the subjects of this law. The context of his discussion largely excludes situations in which those who need assistance are outsiders.[32] Christian tradition, in contrast, often holds explicitly that all human beings are "neighbors." Thus Vitoria: "The barbarians are all our neighbors, and therefore anyone, and especially princes, may defend them from . . . tyranny and oppression."[33] According to common morality, also, everyone is in principle my neighbor, though practically speaking I may be limited to helping those to whom I am connected in some way. The range of concern may be wider for NATO or an organization like Doctors without Borders. But even here there are limits: a charitable agency may rightly limit its "interventions" to situations in which it can operate safely and effectively, an alliance to operations related to its mission, etc.

(3) From which harms should those who are endangered be protected? For Maimonides, glossing the passage from Leviticus, the injunction is to "save" another, and the implication is that the victim's life is endangered. If humanitarian intervention means intervention to protect human rights, there are many such rights, besides the right to life, that might be threatened, including rights against torture, arbitrary detention, and racial discrimination. But usually only the gravest violations, like genocide and mass expulsions, are held to justify armed intervention. Such inherently immoral practices affect the lives of many people and the fate of entire communities. In the classic phrase, they "shock the conscience of

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[32]A Jew is not obligated to save an idolator who is threatened with death, though it is not clear whether this is because such a person is not a Jew or is morally corrupt. In the tradition of rabbinic commentary, an "idolator" is someone who violates the commandments that distinguish civilized human beings from savages, and the word usually implies moral corruption. Maimonides did not regard Muslims as idolators. Aviezer Ravitzky, "Prohibited Wars in the Jewish Tradition," in Ethics of War and Peace, 116.

[33]"On the American Indians," in Political Writings, 288.

mankind."

It is consistent with common morality to argue that humanitarian intervention is justified, in principle, in a wide range of situations, but that prudential considerations usually override this justification. But one can also justify limiting intervention to gravest abuses by invoking moral considerations that arise from the existence of civil society. Civil society is justified by common morality because it enables human beings to fulfill their potentialities by living together according to common rules. But once a civil society has been established, people must obey the laws it adopts for this purpose, assuming they are not substantially unjust. And a substantially just civil society is entitled to respect by outsiders, who are barred from interfering with its government. The nonintervention principle is therefore basic to relations between civil societies. The principle is not a mere custom of the states system. There are moral reasons why a state should be recognized as having rights, in particular the right that its independence and boundaries be respected by outsiders. But the same principles that justify the nonintervention principle justify exceptions to it. If a state seriously violates the rights of its citizens, other states may defend those rights, using force if necessary. The nonintervention principle is not a shield behind which an unjust government can hide while it violates the moral rights of those it governs. Such violations, if serious enough, permit humanitarian intervention and in some situations may require it. But respect for the rights and laws of civil society requires that those violations be truly grave.

(4) What means are called for? Maimonides' principle says that we are not to stand idly by when the lives of our fellows are endangered, but this is a very general injunction. The decision about what to do in any particular situation involves prudential as well as moral considerations. Implicit in the injunction, of course, is the moral constraint that good ends must not be sought by immoral means. Coercive action is not immoral if it is aimed at those who are themselves acting immorally, and provided the means we use are not disproportionate.

The responses we might choose are not limited to those requiring armed force. Force is, in fact,

an extreme remedy. Most of the examples Maimonides uses to illustrate his principle do not involve it. These include rescuing someone from drowning, warning someone against a violent plot, or arguing with the plotters in an effort to dissuade them. Recently, the label "humanitarian intervention" has been applied to transnational charitable efforts to relieve human suffering as well as to forcible intervention to protect human rights. Those who see armed intervention as a kind of just war sometimes protest that using a common label muddies the waters by linking modes of international action that raise different issues and should be handled in different ways. Common morality certainly recognizes the distinction between coercive and noncoercive action as morally relevant. But it also prescribes assisting fellow human beings in any effective and morally permissible manner. It therefore allows a wide range of responses to situations in which lives are endangered, even though those that involve armed force require additional justification.

In considering what to do, one is not barred from weighing the costs and from deciding not to act if those costs are too high. According to one of his interpreters, Maimonides doubts that "commonly accepted opinion" would require a person to risk his life to save someone from drowning or even to prevent a murder. But Jewish law makes such actions a duty, even at the risk of death, and therefore Maimonides insists that "all Israel" must "come to the aid of a fellow Jew."[34] But Jewish law is not identical with common morality. Donagan supports Pufendorf's less demanding conclusion that although beneficence is a duty, it is an imperfect duty: even if one is present "then and there," one is not obligated to intervene "at the cost of one's own life or fundamental well-being."[35] Giving one's life to save another

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[34]Raymond L. Weiss, Maimonides' Ethics: The Encounter of Philosophic and Religious Morality (Chicago: University of Chicago Press, 1991), 74.

[35]Donagan, Theory, 86. Michael Walzer, in his preface to the third edition of Just and Unjust Wars (New York: Basic Books, 2000), agrees that intervention is an "imperfect duty," but he is bitter about it: "the massacres go on, and every country that is able to stop them decides that it has more urgent tasks" (xiii).

may be praiseworthy, even saintly, but common morality does not demand it.

What do these considerations imply for humanitarian intervention? If no country can be asked to risk its own independence to assist another, what can we reasonably ask it to do? If I save someone's life, I am not supposed to have taken on a long-term obligation to care for that person. But the injunction to "save" my neighbor, if my neighbor is a community, might entail continued involvement. Armed intervention to halt a massacre, for example, is likely to be only the first of many measures needed to restore order to a chaotic society and prevent subsequent massacres. If prevention is important, the challenge for humanitarian policy is to move from responding to humanitarian crises to forestalling them. And if "civil society" is morally required, a general policy of progressively strengthening civil institutions at the international level may itself, as Kant argued in Perpetual Peace, be morally required.

Conclusion

I began by contrasting two traditions of thought regarding humanitarian intervention. The first, embedded in the UN Charter and in modern international law generally, sees intervention as inherently problematic, given the importance attached to preserving the political independence and territorial integrity of states. The second, the tradition of natural law and common morality, sees intervention as an extension of the basic moral imperative to protect the innocent from violence. The tension between these traditions raises the issue of how to reconcile the complex institutional duties prescribed by international law with the more primitive, noninstitutional, duties of common morality. For common morality requires that we respect institutions established through the free exercise of human capacities–the family, property, civil society, and international law–assuming these institutions are reasonably effective and just. The problem of humanitarian intervention, then, is analogous to the problem of political obligation. The question "Are citizens morally obligated to obey the laws of the civil

society in which they live?" becomes "Are states obligated to obey the law of international society?" Precisely how ineffective or unjust the relevant laws and institutions must be before states are entitled to override the nonintervention principle or to ignore the UN Charter is a practical question to which no general answer can be given. But it is helpful to see that this is the right question to ask in deliberating on humanitarian intervention. Moral guidance can be had neither by asserting existing law, as if its authority were unquestionable, nor by asserting elementary moral principles, as if in obeying humanitarian imperatives no attention need be given to obeying laws, but only by giving careful attention to the claims of each in the particular situations to which the international community is called to respond.

As I have emphasized, common morality does not prescribe answers to the many practical questions raised by particular interventions, except within very wide limits. There may be answers to these questions but they are not necessarily morally answers, if by "moral" we mean prescribed by the minimal morality that is binding on all human beings. Common morality has little to say about whether acts of beneficence, and therefore humanitarian interventions, should be unilateral or collective, beyond requiring that collective procedures be respected, where they exist and are not ineffective or unjust. Although it forbids us to deny any human being the status of neighbor, it leaves us wide latitude in deciding whom we can assist, by what means we can assist them, and how much assistance we can provide. What common morality does provide is a way of viewing the ethics of humanitarian intervention that is rooted in a widely shared and rationally defensible conception of human freedom, and for these reasons relatively independent of the contingencies of particular situations. It follows that the moral principles underlying humanitarian intervention do not need to be rethought "in the post-Cold War world" or "after Kosovo." These principles have been known for centuries, if not millennia. They acquire new meanings in each situation to which they are applied, and they will continue, as in the past, to be often misapplied, but the principles themselves will not soon be replaced.