

The Morality of Humanitarian Intervention

State sovereignty has long been taken to pose a strong barrier against humanitarian intervention. It can be overcome, it is said, only by the need to stop a supreme emergency. Given the dominion of states over their internal affairs, and given the significant costs of military action, only such exceptional situations are thought to enable morally permissible interventions.

Over the past decades most philosophers have come to reject this view. According to them, not all states enjoy the rights of sovereignty, but only those states that satisfy the moral requirements of *legitimacy* enjoy the rights of sovereignty. On this view, states enjoy their rights (when they do) only because they stand in a morally important relation with their citizens, and this relation does not allow for human rights violations. This implies a significantly more permissive stance to the morality of humanitarian intervention. After all, states might be illegitimate even if there is no supreme humanitarian emergency happening and thus be without rights-based protections against intervention. That is not to say intervention is morally permissible all things considered, but it does defuse a very important objection: that intervention would violate sovereignty.

No doubt, this view is a great improvement. It recognizes that human rights are the most important moral values around. And it recognizes that states are morally valuable only insofar as they serve the people. However, more recently philosophers have also started to question whether this revised view may still not take human rights sufficiently seriously. They suggest that states simply have no

rights against interventions aimed at ending human rights violations at all. Instead, whether or not intervention is morally permissible depends only on whether it can be done effectively, without excessive risks, and so on.

How should we think about these issues? Are legitimate states morally protected against intervention only if they violate no human rights? If so, what would that mean for the morality of humanitarian intervention more broadly? Most importantly: how might we know? In what follows I hope to make some progress towards answering these questions. Section 1 outlines a framework for thinking about them. Then, section 2 applies this framework to the question of the rights of legitimate states and section 3 to intervention more broadly.

1. Interstate morality

International morality at its core forms a body of regulatory norms for inter-state conduct. The rules of morality are such that, when observed by states, they render international affairs just, peaceful, and prosperous for all. Candidate moral rules can be evaluated with an eye on this goal. That is, we can ask whether this or that moral rule, if accepted, would steer the actions of conscientious (though not infallible) agents in the right direction. *Vice versa*, moral rules that would, if generally followed by conscientious agents, predictably lead to suboptimal states of affairs ought to be rejected in favor of ones that work better. Moral rules, we might say, have a point; and unless they serve their point, they are no good.

To see the how moral rules have a point, consider a homely example: property rights. Suppose we think that the point of property rights is to further

people's vitally important interests. What would be the extent of those rights? Should they prohibit or allow trespass? One suggestion might be that, given the point of property rights, all and only those actions by others that harm the interests of the possessor should be ruled out by the rights in question. So, trespass on a piece of land is prohibited unless it can be done without setting back any of the interests of its owner.

Would that be a compelling understanding of property rights? The answer, of course, is no. For one, such an understanding would leave individual agents without clear guidance about what to do. To determine whether they ought to respect the property rights of others, they would need to thoroughly investigate the likely effects of their trespass, the interests of those owners, and so forth. But given the difficulty of obtaining such information, and well-known psychological biases, such a rule would likely lead even conscientious agents to trespass even when the interests of the owner might be set back. It would fail to give owners the kind of genuine control over their property that they need, and thus fail to serve its point: protecting the interests of property owners.

The correct moral rules of property, then, should reflect the ways actual people are likely to act in real circumstances. And this means that they will have to be complex. Part of this complexity will be that property rights prohibit trespass even in cases where it might not end up setting back anyone's interests.

We can ask the same questions about humanitarian intervention and the rights of legitimate states. And just as asking these questions about property rights revealed that such rights are complex – and can prohibit even victimless trespass –

so too, I will argue, the morality of intervention is complex – and can prohibit even victimless interventions.

To understand the morality of intervention, then, we must ask what its point is: what rules and rights would lead to a morally desirable international scene? One thing we can say is that these moral rules and rights must take into account structural features of the world to which they apply. Just as individual property rights should take into account the difficulty of obtaining information about the interests of owners, the biases of would-be trespassers, and other facts, so too the rules for intervention ought to take into account structural facts about states and state officials.

The content of international morality, in other words, must be sensitive to certain empirical facts. Among these are the nature of the agents that are to follow them, the decision-making processes such agents employ, and the contexts in which they find themselves. Unless international morality is sensitive to such facts, it runs the risk of leading even conscientious agents to act in ways that are counter-productive or even self-defeating, thus bringing about morally sub-optimal states of affairs.

This is still very abstract. Let us contrast what I am proposing here with a different approach, one in which the morality of inter-state conduct is treated, by and large, as on a plane with the morality of inter-personal conduct. Here, state actions are permissible if they avoid violating people's rights, do not bring about morally undesirable consequences, and so on. And we might conclude from the

claim that a particular act would be permissible to perform for an individual that it must also be permissible for a state to perform.

Consider Christopher Wellman's proposal that "even a legitimate state has no principled objection to outsiders' intervening in its internal affairs if this interference will prevent just a single human rights violation." (Wellman 2012, 119) His main argument relies on a thought experiment. Imagine, says Wellman, that he is unjustly convicted to a long-term prison sentence in a legitimate state. Setting aside for the moment the risk of harming or wronging others in the process, would he be permitted to escape? Of course he is. And this is so despite the legitimacy of the state. What if someone else, knowing all the facts, could safely set him free? Wellman answers that surely this too would be permissible. And this would be no different if his rescuer lived in a foreign country or were a government official. This thought experiment shows, says Wellman, that if foreign regimes can undo human rights violations without thereby causing any wrongful harm, even legitimate states have no right against it.

In a similar manner, Fernando Tesón constructs what he calls the Green Button Test. (Lomasky & Tesón, forthcoming. See also Tesón in this volume) Suppose we could undo human rights violations in a foreign state by simply pressing a green button, without thereby violating any rights or causing other harms. Would pressing the button be morally wrong? Tesón says no. Does it matter if the state in question is legitimate? Again, no. But if this is right, then it seems that even legitimate states have no principled right against interference.

What are we to make of these arguments? Do they show that states have no rights against interference? The crucial issue here is whether we can infer from (a) the (true) claim that *individuals* are morally permitted to safely free unjustly imprisoned persons and press green buttons that (b) *other states* would be permitted to do the same. The inference goes through only if there are no morally important reasons for treating states and individuals differently.

But of course there are many good reasons for treating them differently. To name just a few of the more obvious ones: individuals typically do not have the armies of states, individuals typically do not occupy the positions of great domestic power and privilege of states, individuals typically do not make their decisions like states do, and so on. These facts about states make it the case that, even if it would be morally permissible for individuals to press green buttons, it need not be permissible for state officials to do so. Given the nature of states, it is not at all clear that state officials conscientiously acting on such rules would bring about morally desirable states of affairs.

More on this below. For now, my point is that these facts about states ought to play a central role in our thinking about the morality of inter-state conduct. They are features of inter-state action that critically affect the ways in which the rules of international morality will lead even conscientious agents to behave. To put it bluntly: we do not live in a world of green buttons. In our world, when states intervene they almost always cause death, harm, destruction of property, and other forms of suffering. In our world, states are run by officials who are inevitably under mainly domestic political pressures. In our world, states are liable to retaliate to

what they might reasonably see as uncalled for interventions. And so on. Asking what agents might permissibly do in a world of green buttons, then, is simply not helpful for understanding what they might permissibly do in a world like ours. Indeed, it might lead us to a set of rules that is so permissive as to become counter-productive, leading to avoidable human rights violations.

These crucial differences between states and individuals mean that the morality of actions by individuals (in their private capacities) may be different from the morality of actions by government officials (in their official capacities). When one acts as a government official, one occupies a role in a state institution, uses its coercive apparatus, and is subject to the pressures and biases that come with that. This is for a different agent to act, using different means, in a different moral context. Different rules are appropriate for evaluating such actions. And these rules must take into account the relevant facts about states, officials, and their decision-making.

The approach that I am proposing cuts across two related distinctions that are commonly made in discussions of intervention. The first is between moral rules as *guides* and *standards*. It is common to say that the facts to which I have been alluding should inform moral guides – how responsible agents should deliberate, or how good institutions and international law are to be designed – but are irrelevant to moral standards – which settle whether particular actions are prohibited, obligatory, or permissible. This is to miss the more fundamental point. For, as the analogy with property rights above shows, these facts also crucially inform the moral rules as such, the standards of morality. Morality itself is sensitive to

structural facts that affect (individual or state) action in ways influencing the outcomes that conscientious agents will end up bringing about.

The second distinction is between *prudential* and *principled* reasons. States have prudential reasons not to intervene, for example, when intervention would be counter-productive or when there is significant risk of failure. The reasons to which I have alluded are often said to be merely prudential reasons, and not capable of supporting principled reasons against intervention, such as the rights of legitimate states against intervention. Again, however, this moves too quickly. The distinction between prudential and principled reasons must be drawn with great care. Given that international moral rules and rights are supposed to function as regulatory norms applying to state institutions, certain important features of states and international interaction as such should be reflected in the content of these rules.

None of this, of course, is to deny that moral rules can serve as guides, or that there is a class of truly prudential reasons. However, we need to distinguish between those reasons that are *merely incidental* to particular international decisions or acts states might undertake (is a state's military apparatus capable of executing the task of ending a humanitarian crisis? will the local population welcome or resist intervention?) and those that are *structural* features of the international scene. The former are genuine prudential reasons, and these can inform our moral guides while remaining outside our moral standards. But the latter, if sufficiently important, should be reflected in the content of our international moral rules themselves, and can therefore come to make up principled reasons against intervention.

Those rules that appropriately negotiate the direct effects of particular state actions and these structural features of international action, therefore, are the moral rules of international conduct. Some of these rules will quite straightforwardly prohibit acts that directly lead to human rights violations. But these rules do not, on this approach, exhaust international morality. Other rules prohibit acts because doing so is (indirectly) instrumental for protecting the human rights of all. All such rules must display the sensitivity to the important structural features of international (or better: inter-state) action, including that (a) states are coercive institutions, (b) interventions employ military means, and (c) state decision-making processes inevitably suffer from predictable biases.

Of course this is only the barest of sketches of the kind of approach I am proposing. In the next two sections I will try to explicate it further by applying the view to two questions concerning humanitarian intervention. Before turning to that, let me stress one important implication of this view: moral rules and rights are necessarily relative to the nature of the context and agents to which they apply. The rights of states *vis-à-vis* other states may require different things (have different contours) than the rights of individuals *vis-à-vis* states, or the rights of states *vis-à-vis* individuals, NGOs, or international institutions. This is a result of the fact that different structural facts and features enter into the consideration of these questions. (This, of course, is merely the reverse of my point about the green button example: it does not follow from the claim that states should not push green buttons that NGOs or individuals should not either.)

2. Legitimacy and non-intervention

The first question to address is whether legitimate states have rights against outside intervention. As we saw above, some now deny that even legitimate states enjoy rights-based protections against interventions. One might be attracted to this view because we said that states enjoy their rights of sovereignty, when they do, in virtue of protecting people's rights. But if that is the point of states, then why should they be protected against interventions aimed at undoing violations of these rights?

However, as it stands, this moves too quickly. We should keep separate what are the *grounds* of the rights of legitimate states with the *extent* of the protections they provide. And while it is true that the importance of human rights grounds the rights of legitimate states, this does not entail that any human rights violation licenses forceful action. We must address the question head-on, therefore. I will do so by considering, first, what it would mean if legitimate states had no rights against interventions aimed at ending wrongdoing whatsoever. And after showing that this proves unacceptable, I will argue that allowing interventions only to end human rights violations more specifically is no better.

Consider first, then, the possibility of legitimate states lacking all rights against interventions aimed at ending wrongdoing. The problem with this is that this makes the right of non-intervention of states objectionably trivial. It takes the right of non-intervention to protect only a state's actions that are morally permissible. This is trivial since, given that permissible actions are those that a state may or is supposed to undertake, these are actions with which outside parties will have very little reason to interfere. On this view, a state's "right of non-intervention"

protects precisely nothing. When a legitimate state does what it is supposed to do, no right against interference is required. And when a right against intervention might be needed to block outside interference, no right exists. Surely the rights of legitimate states against outside interference are more robust than this, precluding certain acts that other states might otherwise undertake.

There are a number of reasons why such more robust rights against interference are important. Some of these presuppose the framework outlined above, some of these do not. Here is an example of the latter kind. Suppose that there are processes of collective self-determination that can take place within legitimate states, and that these processes are morally valuable. If so, then this value can support robust protections against outside interference. Self-determination is not valuable only when the outcomes it achieves are substantively just or correct. Its value can be present, and call for respect, even when wrongdoing is involved. Moreover, there can be additional value, of both instrumental and non-instrumental kinds, in a society (governed by a legitimate state) finding its own way towards a better state of affairs, without external interference. (Tasioulas 2010) The value of self-determination, therefore, can give outsiders principled reasons to refrain from intervening in legitimate states even when such interventions are aimed at ending injustice.

Other reasons of this kind can be given. However, I will set these aside and use the framework outlined above to formulate some additional reasons for a robust right of non-intervention. The first two of these are familiar, and I will for that reason not spend much time on them. The third is less familiar and will therefore be

discussed more extensively. In line with the argument above, I will focus on structural features of state action and decision-making that tell in favor of a moral right of non-intervention for legitimate states against other states.

The first of these refers to the benefits that come from the existence of a generally accepted international norm of non-interference with legitimate states. There is evidence suggesting that a practice of non-interference between states that are recognized as legitimate fosters both peace among states and decent internal behavior. (Clark 2005) It is not hard to see why. Interventions involve the use of military force, inevitably imposing risks of loss of life, harmful social instability, potential retaliatory acts, damage to the legitimate state's ability to govern itself, and so on. Allowing interventions in legitimate states, then, not only opens the door to the many harmful effects of military action, it will likely harm reasonably well-functioning states.

Second, denying the right of legitimate states against intervention fails the test of what we might call incentive-compatibility. It does so at both ends of the intervention. On the one hand, the decision-making processes internal to intervening states are predictably subject to important biases. Political decisions about intervention reflect the interests of the rulers, citizens, and various pressure groups internal to the intervening state, much less (if at all) the interests of the people in the foreign country. Opening the door to more interventions, then, means opening the door to more actions where the interests of stable, militarily powerful states take precedence over the interests of everyone else.

On the other hand, domestic groups looking to overthrow or upset the legitimate government under which they live would come to face perverse incentives. Domestic groups looking to overthrow their government, for example, could be tempted to initiate or escalate violent conflict in the hope that this will trigger outside intervention on their behalf. This is to invite dangerous international instability and to imperil the prospects of success for weak but legitimate regimes.

Third, these problems are exacerbated if legitimate states have no right against interventions. For in these circumstances all decision-making about interventions is to be made on the basis of judgments about the *justice or injustice* of other states and their policies. But these judgments are prone to mistakes, especially if made from a distance, and deeply contested to boot. By contrast, judgments of state legitimacy, while by no means without problems, are less susceptible to this. Part of the difference here is due to the fact that in this context judgments of justice are scalar: we can easily view states as more or less just. If decisions about intervention are based on justice-judgments, then such decisions will come down to fairly fine-grained judgments about where to draw the line between acceptable government-action and injustice, or serious and not-so serious wrongs.

Judgments of state legitimacy are not similarly scalar. Or at least they are not if we understand them as referring to states having a moral right to rule that is consistent with (some) domestic wrongdoing. Such judgments of legitimacy are binary in nature (a state either has that right to rule, or it does not) and thus avoid some of the problems that plague justice-judgments. This character of legitimacy judgments follows, again, from their point. Legitimacy judgments help us overcome

a particular kind of problem: how to coordinate action regarding states in light of widespread disagreement about justice. (Buchanan & Keohane 2006) Solving this problem requires two things. First, given that disagreement about justice is partly due to its scalar nature, legitimacy judgments must be different. Hence their binary nature. Second, to avoid the problems of justice judgments, legitimacy must be *error-tolerant*. That is, states must be able to remain legitimate even when not perfectly just.

If legitimacy judgments are binary and error-tolerant, then conscientious persons can, despite disagreeing about the justice of a state, still coordinate their actions in support or resistance of it. Legitimacy judgments of this kind can function as benchmarks – signaling whether a state is good enough to support, or so bad it needs to be opposed – and thereby enable people with deeply different background moral, ethical, and religious convictions to coordinate their actions when they have reason to do so. And while people might of course also disagree about the legitimacy of states in any given case, the error-tolerance of legitimacy ensures that such disagreements will be less frequent.

Making the permissibility of intervention rely on judgments of legitimacy that are error-tolerant, therefore, has the potential of avoiding some of the worst problems mentioned above. Consequently, we have good reason to endorse moral rules according to which the permissibility of intervention depends on the legitimacy of states. In other words, we have good reason to endorse rules that hold legitimate states to have rights of non-intervention.

What, then, of restricting the proposal? Perhaps legitimate states have rights against all interventions except those aimed at ending violations of *human rights*? Would such a proposal avoid these problems? Unfortunately, the answer is no. None of the problems above turn on the severity or nature of the injustice that intervention is supposed to undo. Instead, they stem from the nature of state institutions (from which follow the general benefits of a norm of international non-intervention), the nature of political decision-making processes (from which follow problems of incentive-compatibility), and the problems of justice-judgments. The first two of these are not addressed by restricting intervention to only those that aim at undoing human rights abuses. Things are somewhat better concerning the latter: international human rights law provides a canonical statement of human rights that is widely regarded as authoritative, and this constrains disagreement. However, as debates about so-called human rights inflation, Asian values, proposals to distinguish between basic and non-basic human rights demonstrate, the idea of human rights is still deeply contested.

The correct conclusion, then, is the straightforward one: legitimate states have a right against outside interventions even in (some) cases of domestic wrongdoing, and even in (some) cases that involve human rights violations. Legitimate states can remain rights-protected against intervention even when they act in ways that are in an important sense wrong – indeed, beyond what their legitimate authority (or *internal* right to rule) permits or enables them to do.

3. Intervention in illegitimate states

What, then, if we are dealing with an illegitimate state? When is intervention in such states permissible? Here the general permissibility conditions for the use of force apply. Reasonable non-violent measures achieving the same results must be unavailable, armed intervention must be proportional to the problem it aims to amend, and so on. However, many hold that there are also conditions particular to humanitarian intervention, such as that permissible intervention requires a severe humanitarian crisis. (e.g. Wheeler 2000)

In this section I want to argue that this latter condition is too strict. In building my case, I will depart from parts of J.S. Mill's work on intervention (Mill 1859). Mill's views are worth considering because they capture an important and often overlooked reason to be suspicious of interventionist policies. Employing the framework outlined above, I will argue that we can both honor Mill's central insight and relax the overly strict supreme humanitarian crisis-condition.

Mill opposed almost all interventionist policies, at least among what he considered "civilized" nations. Most controversial to modern readers is his prohibition of all interventions aimed at ending oppression by domestic powers. No matter how grave the oppression, Mill rejected intervention in these cases because he thought that freedom (the desired outcome) could not be achieved in this way. Freedom, he argued, cannot be brought about by outsiders, but must be earned by the people themselves:

[W]hen freedom has been achieved *for* them, they have little prospect indeed of escaping this fate [of despotism]. When a people has had the misfortune to be ruled by a government under which the feelings and virtues needful for

maintaining freedom could not develop themselves, it is during an arduous struggle to become free by their own efforts that these feelings and virtues have the best chance to spring up.

This argument raises some obvious questions. Can the virtues requisite for freedom really not be taught without bloodshed? Is freedom not good enough to be desirable to people who have known only oppression? Must outsiders really choose between taking over an entire country and doing nothing at all? Mill's view seems to lead to implausible answers to each of these. After all, we do know of successful nation-building, such as the post-war construction of Germany and Japan. And interventions can also support internal forces of resistance.

However, we can sidestep these problems by looking for another (and more charitable) reading of Mill's remarks. On this reading, Mill is making an important point: free institutions require broad support in the population. This is suggested by Mill's explanation for his views, namely that "[n]o people ever was and remained free, but because it was determined to be so; because neither its rulers nor any other party in the nation could compel it to be otherwise."

This point seems plausible enough. It is extremely difficult for free and legitimate institutions to be created and it is very difficult for these to be imposed from the top down. For such institutions to have a chance at working and surviving, they need to be supported by, and correctly align with, highly complex networks of formal and informal rules, norms, and shared expectations across civil society. These background norms, at least as much as the formal legal checks, are what actually prevent ruling elites from abusing their powers. These, at least as much as

institutional design, are what makes it possible for individuals to enjoy genuine freedom. After all, we are unfortunately all too familiar with unfree societies governed by what are formally free institutions. As Mill puts it, “unless the spirit of liberty is strong in a people, those who have the executive in their hands easily work *any* institutions to the purposes of despotism.”

The need for informal support for free institutions explains why examples of successful nation-building are, *pace* Germany and Japan, so hard to come by. Free institutions are typically created from the bottom-up; they are phenomena that emerge from the complex interplay of largely unpredictable social forces. Mill’s point, then, need not be that these must be earned the hard way, but rather that top-down impositions of such institutions are too unlikely to succeed to warrant taking the risks of intervention. Unless there is domestic support for post-intervention free institutions, intervention will not be justified.

It is significant in this regard that the examples of Germany and Japan are highly exceptional. A critical element of the post-war success was the already highly developed political cultures of these countries. And, given the very real threats of not only the Soviet Union but also retaliation by neighboring countries, both the Japanese and Germans had compelling security interests to comply with requirements for democratization. Similar conditions are very unlikely to be present in cases of interventions. Most importantly, however, the post-war commitment of resources by the Allied powers, and in particular the US, to the construction of these countries was far beyond what can be reasonably expected in any case of humanitarian intervention. Humanitarian interventions are most likely to be

undertaken by democracies and democratic publics are unlikely to be willing to bear the costs of long-term occupation necessary to build legitimate institutions. The Allied campaigns in Germany and Japan were perceived *not* as primarily campaigns of humanitarian intervention, but of self-defense. And the decision-making biases mentioned above make it much easier for governments to commit significant resources to what is seen as self-defense than to what is seen as intervention on behalf of strangers.

Mill's point is subtle. Given that success in nation-building is very much the exception to a rule of many failures, the typical case of intervention to end domestic oppression will fail. And given the high cost of such failures – including loss of life, serious harm, and damage to property and infrastructure, but also diminishing support for future interventions – it may be better to discourage such interventions altogether. Allowing interventions in these cases may prove counter-productive, and for reasons that are not just incidental but *structural*. In light of the argument above, then, this strongly tells against the moral permissibility of such interventions. For there is a real sense in which states ought not to intervene in cases like this.

We can now see one important motivation for the view that intervention requires a supreme humanitarian crisis. These perils of intervention can be outweighed, it might be said, but only by something of momentous moral import. Whereas ending a massacre, genocide, and other acts of extreme or large-scale injustice are sufficiently serious, less significant injustices do not have the same potential. In those cases, the harm of letting the crisis continue is not likely to be

greater than the harm of a failed intervention. And these, therefore, remain impermissible.

This argument deserves to be taken seriously. But it is a mistake to think that taking it seriously entails accepting the supreme humanitarian crisis-condition. We can introduce exceptions without violating Mill's insight. Such exceptions are necessary because of two important facts: (a) the great power differentials that exist, at least under modern conditions, between states equipped with extensive and sophisticated military capabilities, and potential movements of resistance, and (b) the ways in which the modern state system can render minorities within existing states vulnerable. In what follows I propose to relax the supreme humanitarian emergency-condition in two ways in order to accommodate these facts. Throughout, I will argue that these modifications are consistent with taking seriously Mill's insight about the structural features of intervention.

First, modern military capabilities create an enormous disparity between the power available to abusive regimes and those who might resist them. This disparity is so great that we often cannot expect people to rise up and earn freedom anymore than we can expect them to commit suicide. When tyrants can use chemical weapons on their own people, when carefully planned genocidal campaigns happen, when air strikes can simply wipe out pockets of resistance, the option of replacing an oppressive regime with a legitimate one is often simply not available.

One problem with the supreme humanitarian emergency-condition is that it requires outsiders to sit by idly and either wait until the massacres begin or leave the oppressed without any possibility of escape. We might try to remedy this

problem by introducing an exception. However, for this to be acceptable, it must acknowledge Mill's insight. One obvious way of doing this would be to require the presence of local support for legitimate government. This suggests the following condition: humanitarian intervention in an illegitimate state is permissible only if there is *either* a supreme humanitarian crisis, *or* a politically viable movement with a sincere commitment to establishing and living under legitimate rule.

Let us call this *the weaker condition*. The weaker condition honors Mill's insight by combining the rationale behind the supreme humanitarian crisis-condition (that stopping such crises will likely do more good than harm), with a demand in all other cases for a viable movement committed to life under legitimate institutions (assuring that intervention will not result in failure). This condition has other advantages as well. It serves, for example, to remove a troubling element of Mill's view: that the price of free and legitimate institutions must somehow involve bloodshed. A politically viable movement committed to life under legitimate institutions need not be in the process of using, or even find acceptable, violent means to overthrow the government. In fact, peaceful movements can provide such support at least as well as violent ones, and perhaps even better.

That said, the weaker condition does not yet address the second concern mentioned above. The problem with the weaker condition is that it requires domestic support for sustaining legitimate institutions within the state *as it presently exists*. This leaves oppressed minorities unnecessarily vulnerable. Sometimes minorities that are committed to life under legitimate rule remain precluded from satisfying the weaker condition because of a mere lack of numbers

within a larger state. Such minorities are willing, and possibly able, to sustain a free society if only they had a state of their own. By taking the current configuration of the state system as a given, then, the weaker condition leaves such minorities without the possibility to be freed from oppressive regimes.

This is a perverse implication. It condemns as impermissible intervention on behalf of oppressed minorities *even if* they are committed to life under free institutions. Such minorities could in principle satisfy Mill's insight, but are precluded from doing so by the current configuration of the state system. This raises a question: What reason we have to take the current shape of the state system as a given? But the answer to this question is obvious: given that we are, *ex hypothesi*, dealing with illegitimate states, there can be no such reason. Only legitimate states are worthy of moral respect. Thus, if we can rescue people from oppression and help them build a safe political environment, the non-existent moral claims of illegitimate states cannot stand in our way.

This opens the possibility of adding another clause to the weaker condition. This clause aims to make intervention permissible in support of secessionist movements by oppressed minorities that are willing and capable of supporting their own free institutions in a newly found state. Fully specified, the condition I am proposing can be summarized as follows: humanitarian intervention in an illegitimate state is permissible only if at least one of the following conditions is satisfied: (a) there is a supreme humanitarian crisis, (b) there is a politically viable movement with a sincere commitment to establishing and living in the present state

under legitimate government, or (c) there is a politically viable minority with a sincere commitment to seceding and establishing a new and legitimate state.

This condition, I claim, satisfactorily honors Mill's central insight. However, it also honors the need to address the two concerns mentioned above (uneven military capabilities, and the configuration of the state system). That is, it captures the truth that, contrary to what Mill thought, intervention can be permissible precisely *because* a group is unable to achieve freedom on its own.

Of course, this leaves many important questions unaddressed. For example, whether a viable movement that is sincerely committed to life under a legitimate regime exists in another country requires judgment on the part of would-be intervening states. Such judgment calls are extremely difficult. Groups can fail to be viable in a number of ways. They can be lack support of their fellow citizens. They can be committed to life under an illegitimate government of their own. They can be seen as the puppets of foreign oppressors. And so on. But groups can also be under pressure not to play up their commitment to legitimate rule, even if they would actually abide by it when in power. Reliance on judgment is inevitable here. However, fortunately there may be clear cases as well. Intervention protecting groups undertaking a just secession may be a case in point.

That said, I believe that the view I have proposed here adequately balances two important elements that I have argued must be part of any acceptable approach to humanitarian intervention: the need to protect those whose human rights are being violated, on the one hand, and the incentive effects and standard risks of interventions, on the other.

4. Conclusion

International morality, I have argued, should reflect certain structural features of the international scene. Taking this seriously means we cannot think of states as directly analogous to individuals. The fact that states are large-scale political institutions, and potentially dangerous ones at that, has two important implications for the debate on humanitarian intervention. First, contrary to Tesón and Wellman, all legitimate states are rights-protected against outside intervention, even when their societies fall short of being fully just in the eyes of outsiders. But second, when dealing with illegitimate states, and contrary to popular opinion, intervention can be justified even in the absence of a supreme humanitarian intervention – as long as certain other conditions are met.

In closing, I want to emphasize that these conclusions should be read as appropriate only under current conditions. I do not mean to deny that our world, and the institutions that govern it, might be and probably ought to be, significantly different than they are. The search for feasible proposals for changing institutions and their decision-making processes is tremendously important. With better institutions in place, different conclusions for state legitimacy, humanitarian intervention, and indeed military action more broadly, might follow. (For excellent discussion, see Buchanan, 2006) However, until such changes come about, my conclusions reflect a truly tragic fact about the world: we are quite frequently in a position where we simply cannot successfully act to stop human rights violations.

BAS VAN DER VOSSEN