Responsibility to Protect in the Just War Tradition: The Ethics of Preventing and Responding to Human Rights Violations

Laura Elizabeth Alexander
Charlottesville, Virginia

B.A., University of Chicago, 2003
M.Div., University of Chicago, 2008

A Dissertation presented to the Graduate Faculty
of the University of Virginia in Candidacy for the Degree of
Doctor of Philosophy

Department of Religious Studies

University of Virginia
August, 2015

Contents

Acknowledgments

Like all dissertations, this one owes its existence to a great many people whose time, care, and energy has made my work on the project possible and improved my scholarship in so many ways. I have been fortunate to have known many of these people at the University of Virginia, which has provided me with many opportunities and rich experiences; I am also thankful for wonderful colleagues, family, and friends outside of the University's (very lovely) walls.

I am ever grateful to my dissertation advisor and committee for their support, collegiality, and careful reading and comments on this project, both along the way and as it came fully together. Jim Childress has been a generous and perceptive advisor, allowing me to explore ideas and find my own way in both my research and writing while offering resources, critique, and commentary that deepened my analysis, pushed me toward greater precision and coherence, and brought to my attention many of the most important sources and topics I address in this dissertation. My interest in just war as a topic for sustained ethical analysis was sparked by his course on the subject, and he is tireless in seeking out and providing research and teaching opportunities for his students; I am thankful for my share of that. He has listened patiently and offered advice on this project and in many areas of my professional and scholarly development, and in the best possible way has encouraged me to chart my own course while providing guidance that has helped keep me on solid ground.

Many thanks also to Chuck Mathewes, who has played an enormous role in guiding my research and making me feel at home at UVa. As a scholar, he has and continues to push me to think both deeply and expansively. As a mentor and colleague, he is incredibly generous in creating avenues for graduate students to come together to

workshop papers and chapters and to work with faculty and other students on scholarly projects. Chuck, it seems, knows everyone, and he is constantly finding ways to connect graduate students with nationally and internationally respected scholars and with anyone doing fascinating work. I am grateful for the many discussions we have had regarding this project as well as other areas of my work, and for all the ways in which he has welcomed and supported me and many others.

In addition to serving as a perceptive reader of this work and an invaluable resource on all things R2P, Michael Smith provided me the opportunity to serve as a graduate assistant for UVa.'s Program in Political and Social Thought. The work was intellectually stimulating; the students were thoughtful, passionate about global justice, and a lot of fun; and, most importantly, I am fortunate to have gotten to know and work with such an incredible scholar and colleague. Thanks to Paul Jones for theological insights, for the opportunity to develop pedagogically as a teaching assistant in Elements of Christian Thought, for pointing me to important resources for liberationist and feminist thought, and for many excellent conversations and critiques. And thanks to Willis Jenkins for fruitful discussions about my research – especially for his creativity of thought, as he brought to light questions that did and do push my work forward in exciting ways. I am also grateful for his energy in working to improve graduate student life and experiences in our department and at UVa., especially for conversations about the job search and about teaching in difficult circumstances. All of these committee members have provided crucial advice and insight for this project, though any errors in this work are entirely my own.

There are too many faculty in the Department of Religious Studies who impacted my academic life to name them all, but I would like to thank Margaret

Mohrmann for her scholarly influence, especially in courses and comprehensive exams, and for her generosity and conviviality. I am also extremely grateful to department staff, particularly to Elizabeth Smith, who has put up with many e-mails, drop-ins, and "oh just one more question"s with grace and cheerfulness. She was instrumental in keeping me on track with requirements, especially in the last stages of the dissertation process, and seemed always to be a step ahead *and* to be able to answer any question. And the bowl of candy she always kept stocked in her office sustained me through many a writing session!

I have also been fortunate to have supportive mentors and colleagues in other contexts. Thanks so much to the staff of the UVa. Teaching Resource Center, especially Deandra Little, Dorothe Bach, and Michael Palmer, for helping me improve my pedagogy and for their mentorship during my Graduate Associate days. Shaun Casey and Liora Danan of the Office of Religion and Global Affairs in the U.S. State Department made possible an incredible opportunity to present my research to staff there. Karlin Luedtke has been generous and encouraging, as my supervisor during my work with UVa.'s Summer Transition Program and ever since. And finally, for the past two years I have worked for UVa.s' Office of Graduate and Postdoctoral Affairs, and I am so grateful to my colleagues there for their mentorship and true collegiality. Thanks especially to my supervisor Phil Trella for making my internship in the office possible, for providing meaningful work that allowed me to develop new skills and grow intellectually and professionally, and for crucial advice and guidance related to work and career. And thanks to Davonda Smith, Melissa Hurst, Amy Clobes, Beth Beal, Keisha John, and Tamela Munzner for being such great colleagues.

Portions of this project were given as presentations along the way, and I thank all those at the American Academy of Religion and The Society of Christian Ethics whose insightful questions and comments greatly improved the work. I have had stimulating conversations with Jean Porter and Nigel Biggar, conversations that were especially valuable given the influence of their scholarship on my own. The members of the Interreligious Reflections on Immigration seminar at the American Academy of Religion provided me with opportunities to discuss my interest in religion, national borders, and sovereign obligations in the context of immigration and have been nothing but encouraging of my scholarship. Special thanks to Alexander Hwang for his leadership in the group and for bringing publication opportunities to my attention. I also appreciate the collegiality of the members of the Lutheran Ethicists Gathering, especially Roger Willer for his work on behalf of theological ethics within the Evangelical Lutheran Church in America, for good conversations, and for the many ways in which he has supported my scholarship and vocational discernment.

I was fortunate to have excellent academic mentorship prior to enrolling at UVa., and I extend my gratitude to Bill Schweiker, Kathryn Tanner, and Cynthia Lindner, as well as others at the University of Chicago Divinity School who supported and improved my scholarship.

During my doctoral studies, I have benefited from interdisciplinary conversations and collegial relationships at the Institute for Advanced Studies in Culture, and financial and scholarly support from the Institute for Practice Ethics and Public Life, both at UVa. And I especially wish to acknowledge and thank the Louisville Institute for their generous support of my research through a year-long Dissertation Fellowship. The past year of research and writing would not have been possible without

this fellowship. The Louisville Institute also provided me with an excellent venue to meet colleagues and receive feedback on my work at their Winter Seminar, and I thank the administrators, staff, and fellow grantees of the Institute for their collegiality.

A few personal thanks to graduate student colleagues at UVA, who have been wonderful classmates, readers of this project and many others, excellent to work with, and who in many cases have grown to be dear friends. I cannot possibly name everyone, but I extend my gratitude to Matthew Puffer, Mark Storslee, Gillian Breckenridge, Dan Wright, Tim Hartman, Brian Siebeking, Deborah Barer, Karen Guth, Laura Hawthorne, Philip Lorish, Christina McRorie, Kris Norris, Christine Landau, Ashleigh Elser, Joe Lenow, Travis Pickell, and Nelson Reveley.

Finally, I have been blessed with incredible support from my family over many years. Thanks to my parents, Ronald and Marilyn Koepke, for their interest in my education and area of study, and for all their encouragement of my academic and other pursuits from early on. My children, Maya and Benjamin Alexander, have kept me grounded, inspired me with their curiosity, and fortified me with their smiles. And to my husband, Bryan Alexander, who has stuck with me and offered nothing but encouragement for the past six years: nothing I could say would be enough, but you have been my rock. I think of these past years with gratitude and love and look forward to what is to come.

Introduction

How can human rights be most adequately protected? What do those who hold power and authority owe to people who have less – often very little – power, and to the political communities in which they all participate, especially regarding the protection of basic human rights?

One of the most important developments of the last fifteen years in addressing these questions for the contemporary age has been the introduction of the concept of Responsibility to Protect, whose acceptance by political leaders and analysts worldwide has been swift, though often accompanied by controversy. Responsibility to Protect, or R2P in the abbreviation used by most analysts,[1] is an emerging global norm[2] through which political authorities acknowledge and are held to a responsibility to protect the basic human rights of all people.

This work argues that R2P most fruitfully sheds light on the obligations of contemporary political authorities to protect people's rights when it is read in the context of just war thinking, as an extension and enrichment of the just war tradition. To understand R2P in this way places it in a framework of longstanding ethical reflection on the moral obligations of sovereigns to the communities they lead and to those outside their communities, both other sovereigns and individual citizens. The just war tradition focuses on the special rights and duties rulers have to use military force to

---

[1] RtoP is also a common abbreviation.

[2] "Emerging norm" is probably the most common way interpreters refer to R2P: a moral norm to guide states' and global organizations' behavior which is still in its early stages and needs further dialogue and clarification. Some consider it to be a full-fledged norm, and some argue that given its newness and the continued debate over just how it ought to guide behavior, it does not yet have the standing of a moral norm. For one discussion of R2P's status as a norm, principle, or concept see Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Cambridge: Polity Press, 2009), 4-7. For an argument that R2P is not by any means a fully fledged norm, and that it remains questionable whether it may yet emerge as one, see Theresa Reinold, *Sovereignty and the Responsibility to Protect: The Power of Norms and the Norms of the Powerful* (New York: Routledge, 2013), 86-89.

fulfill their sovereign obligations, and for just war thinkers, ethical reflection on the use of force helps to shape broader conceptions of what sovereign authority is and what its full moral obligations are. At the same time, just war thought recognizes that the use of force ought to be a last resort as rulers seek justice, and that sovereigns ought to pursue other means for promoting the good of their communities, where possible.

R2P continues in this vein: by accepting it as a norm, states and their rulers agree that human rights protection, specifically, is a responsibility of all sovereign rulers and that such protection may take a number of forms, with the use of military force allowable as a last resort. More than that, however, R2P gives further weight to an argument prevalent in just war thinking: that rulers have certain moral obligations to all people, including both those in their own communities and those outside, and that claims for protection can justly be made not only by rulers or by whole national communities, but by individuals and by smaller local communities.

If we accept R2P as a global moral norm, we agree to observe certain parameters in ethical decision-making about conflict and human rights protection. First, political rulers have responsibilities both internal and external to their own communities. They ought to protect the human rights of their own populations against the worst abuses, but they are also responsible to other sovereign rulers and other populations, in different ways. They must respect certain rights and privileges of other rulers, normally including a right to non-intervention. However, in cases where other rulers allow egregious human rights violations to take place within their borders, all political authorities are responsible for protecting the basic human rights of people in any political community whatsoever, even if, in extreme cases, that means overriding respect for a sovereign's right to non-intervention.

With this in mind, I argue that R2P both hearkens back to the historical tradition of just war thought, strengthening its influence on contemporary ethical reflection on humanitarianism and global politics, and moves just war thinking forward. R2P asserts that political authorities have moral responsibilities (possibly obligations) to protect and enhance the well-being of their own communities, to respect other sovereign authorities, and *also* to protect and enhance the well-being of individuals and smaller communities within the borders of other territories. The notion that rulers have moral obligations to people outside of as well as within their own communities is not a new idea, and most historical just war thinkers have adhered to it in one way or another, but it has been subject to heated debate in the twentieth century in particular. International acceptance of the responsibility to protect helps to resolve that debate in favor of rulers' taking responsibility for protecting the rights of people worldwide against the worst abuses. In keeping with centuries of moral thought about the possibility of using force to seek justice, leaders of nation-states and international leaders have agreed that they ought to work together – or challenge each other when necessary – for the sake of rights protection for all.

The protection of rights is not only an issue at the exact moment that a conflict or an instance of terrible rights violation arises, however, and the international acceptance of Responsibility to Protect provides an opening to critique and add to the tradition of just war thought by examining sovereign obligations not just to stop ongoing rights violations, but to prevent such violations from happening in the first place. Intuitively, many people will agree that of course preventing violence is better than scrambling to deal with it once it is underway, but the just war tradition has not generally focused on mid- or long-term prevention of conflict and violence. Reading

R2P as a move within the just war tradition opens that tradition up to deeper engagement with questions about sovereign obligations to prevent terrible rights violations and, where possible, many kinds of conflicts and acts of violence.

Furthermore, R2P represents an agreement at the international level to take meaningful action to protect the human rights of all – those who are inside or outside, wealthy or poor, powerful or oppressed. If such a commitment is genuine, it has the potential to call our attention to an area in which just war thinking, and R2P itself, might fruitfully be subject to critique, in particular from liberationist and feminist strands in religious ethical thought and political theory. It is very often people who are already oppressed and marginalized in political communities whose human rights are vulnerable to the abuses that R2P condemns. Ethical thinkers in the just war tradition, those who study R2P, and political leaders thus have obligations to listen to and take counsel from people who are most at risk of rights violations. They further ought to support grassroots and peacebuilding movements whereby people who are oppressed seek to end rights abuses and gain more of a say in how their leaders work to enhance their well-being. This sort of listening to and support for people who are marginalized can contribute, and has contributed in specific instances, to the goal of preventing or stopping human rights violations. It also makes it more likely that the implementation of the responsibility to protect will genuinely focus on the well-being of people and communities, mitigating the risk of R2P being used as a cudgel by powerful actors against less-powerful ones, in a kind of humanitarian imperialism. It is not enough for powerful leaders to debate amongst themselves how to protect rights; the obligations of political leaders extend to crafting political structures that support grassroots

movements and enable people who are too often voiceless to speak up and advocate for their rights and for the well-being of their communities.

In fleshing out these arguments, I draw on a wide variety of sources, including international agreements and news articles, but especially inter- and multi-disciplinary works of scholarship in politics and ethics. This project interacts with scholarship in political philosophy and theory, history, and philosophical ethical thought, and in particular it employs and sheds light on Christian ethical thinking about just war, sovereign obligations, and peacebuilding. I focus on sources in the field of Christian ethics in order to show how thinkers in this field engage with, influence, and are influenced by a global and interdisciplinary conversation about the morality of human rights protection – especially given that Christian ethical thinking has historically been influential in shaping Western thought about sovereignty and the justice of war. I am also interested in showing how ethicists in a particular religious tradition draw from the theological and metaphysical roots of their tradition in order to make claims about sovereign obligations.

History of Responsibility to Protect and Outline of the Project

Responsibility to Protect originated in the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS)[3] and was adopted by all member nations of the United Nations at the World Summit of 2005.[4] It responds to and addresses concerns about extreme violations of human rights, especially the "hard

---

[3] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa, ON: The International Development Research Centre, December 2001). Hereafter referred to as ICISS.

[4] U.N. General Assembly, *2005 World Summit Outcome: Resolution/Adopted by the General Assembly*, 24 October 2005, A/RES/60/1. R2P is adopted in paragraphs 138-140, p. 30. Accessed August 2014, http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf. Hereafter referred to as World Summit.

cases" of rights violations that happen within the borders of a single nation-state, and/or in situations of civil war or attempted secession, in which the borders and governance of states are not clear. Chapter One of this work deals first with the conceptual and historical context of R2P, focusing on discussions of sovereign obligations related to just war and the protection of people. It then examines the post-World War II history of the arguments leading up to the development of Responsibility to Protect. In the 1990s, especially, there was heated debate over whether other states, or the United Nations, could breach a nation-state's sovereignty in order to stop rights violations. The developers of R2P sought to move past any supposed contradiction between state sovereignty and human rights protection by introducing into international dialogue the concept of "sovereignty as responsibility." In the ICISS report, sovereignty was envisioned as encompassing the responsibility to protect the human rights of a state's population against egregious violations. That responsibility included preventing such violations, responding to them if they did occur, and rebuilding afterward. At the World Summit, member nations of the U.N. committed, individually and as a community, to preventing rights violations, as well as to acting through the U.N. and the Security Council to stop violations when they arose, by means up to and including the use of force.

Responsibility to Protect does not solely, or even primarily, have to do with military intervention: both the ICISS commission and the World Summit agreement emphasized the importance of proactive prevention of human rights violations, with the use of force as a last resort only. Nevertheless – and even, in part, precisely because of its emphasis on prevention – R2P, as a moral norm, is best understood as an extension and an enrichment of the just war tradition. For one thing, since it does allow for the

possible use of force to protect people's rights and to make the conditions in which we live more just and peaceful, R2P benefits from the use of just war criteria to guide judgments about whether and how forceful measures ought to be used in service of those ends. Without moral criteria to govern the use of force, R2P can easily become either another feel-good, but toothless, pronouncement about the importance of human rights, or it may serve as a moral cover for powerful nations and groups to throw their weight around under the guise of "protecting rights." Just war criteria provide a widely agreed-upon moral foundation that can help influence decision-making about when the use of military force is justified to stop rights violations, and they also can hold us back when actors are improperly resorting to the use of force, or when nonmilitary measures ought first to be tried. These concerns are addressed in Chapter Two.

Even as it benefits from a connection to the moral principles of the just war tradition, Responsibility to Protect enhances that tradition. It pushes those who think about the morality of war to follow the historical just war tradition in connecting the use of military force to the broad obligations of sovereign authorities; to ask how to prevent conflict and rights violations (and thus make it less likely that military force will need to be deployed); and to incorporate the moral wisdom of grassroots movements and peacebuilding practices into consideration of justice in war. The widespread acceptance of Responsibility to Protect as an appropriate norm for guiding the actions of political authorities points to an equally widespread belief that governments of nation-states, and other international authorities, have responsibilities both to the people they govern and, at times, to others. R2P emphasizes that one significant responsibility held by governments and political authorities is the responsibility to *prevent* rights violations. Especially at a time when a sizeable

proportion of just war thinkers believe that human rights ought to be the primary moral value that animates decisions about war, and many others support the protection of human rights even if they do not think of rights protection as primary, the focus on prevention of rights violations expands, or should expand, the way we talk about the justice of war. Instead of asking what ought to be done when a conflict is underway or is imminent, we should particularly ask how conflict (and the rights violations that so often accompany it) can be prevented.

Asking this question leads to us to examine multiple moral obligations of political sovereigns to promote the good of their populations and of people worldwide, both because sovereigns can better protect human rights by fulfilling certain other obligations and because discharging these obligations relies, minimally, on sovereigns' protecting the most basic rights of their populations, in a kind of "virtuous circle" of rule. Chapter Three addresses these obligations in detail, as I examine the work of contemporary Christian ethicists to elucidate three of the most significant duties sovereigns ought to fulfill, if they are to craft a just social and political order in which rights violations become less likely. Specifically, sovereigns have an obligation to participate in reasoned deliberation in the service of forming fair and transparent laws, and to make it possible for all members of a political community to engage in such deliberation; to ensure that the political processes and structures of the community allow for representation of all members; and to work to discern and uphold a common good – a state of well-being that contributes positively to the flourishing of each individual and the community as a whole – where the use of force is understood as one possible, though certainly not the only or even the preferred, means of upholding the good.

Sovereigns' fulfillment, to the fullest extent possible, of their moral obligations to promote deliberation, representation, and commitment to the common good, goes a long way toward creating a just political order in which the human rights of all people are protected and where force is used to protect rights only as a last resort. However, if we stop there, we run the risk of ignoring injustices and power dynamics within and between political communities, which can make these obligations nearly impossible to fulfill. We also risk blessing incursions upon states, local communities, and individuals which, even with the best of humanitarian intentions, problematically ignore the stated needs and conceptions of well-being of some people and communities, instead imposing the humanitarian concerns of more-powerful states and organizations. Responsibility to Protect itself tries to guard against this sort of imposition by carefully demarcating the circumstances under which it permits military force to be used, but on its own it does not have the specificity to stop all well-intentioned but tone-deaf incursions into the lives of people for whom outside "humanitarian" actions (military or otherwise) may mean trading one kind of oppression for another.

Groups who are poor, oppressed, and marginalized tend to be at greatest risk of suffering extreme human rights violations of the kind R2P seeks to prevent, and suffering such violations oppresses even further the groups against whom they are directed. Sovereigns who seek to fulfill their obligations to protect the rights of *all* people, and to recognize the power dynamics that render the rights of some people more vulnerable than others, therefore have a concomitant obligation to mitigate social and economic factors which keep certain people and groups oppressed, while others hold wealth and influence. Leaders of powerful states and international leaders also should recognize and address these factors, so that their humanitarian aims do not become –

intentionally or not – imperialistic, and/or dismissive of the concerns of the very people they intend to protect.

Fulfilling both of these obligations requires listening to those who are poor: attending to their expressed needs and taking counsel from them when situations arise in which rights violations seem likely. It likewise involves facilitating the building of relationships among all people in a political community, and especially between people who have great power and those who have very little. These ethical obligations are spelled out in the work of liberationist and feminist thinkers, which I examine in Chapter Four.

Listening to and building relationships with people who are most poor and marginalized is both a moral obligation of sovereign rulers and a means by which political authorities can ensure that they are crafting structures of deliberation and representation that promote the common good of all people – not just the wealthy and well-connected. We rightly ask, however, how this can be done. How can political authorities, with all the demands on their attention, really listen to people and groups who are oppressed? How can they find ways to build relationships, within and among communities, which promote prevention of rights violations and foster a just peace?

These questions point to a way in which the just war tradition, especially as it is related to the protection of human rights, can benefit enormously, in both theory and practice, from incorporating peacebuilding and reconciliation literature. In the last several decades, scholarship on peacemaking, peacebuilding, reconciliation and the like has proliferated, and practices of truth and reconciliation, local and communal justice, peacebuilding, and grassroots activism have been deployed in places like South Africa, Chile, and Rwanda. Among the most heartening of these movements, we have the

example of the Liberian Women's Mass Action for Peace, a group which demanded and eventually received the attention of powerful leaders of two warring sides in a civil conflict, thus succeeding in actually stopping a conflict in progress. However, even with this example in mind, practices of reconciliation tend to be implemented, and certainly tend to be encouraged by governments, only after horrific rights violations have already taken place. In the interest of *preventing* rights violations, political authorities ought to attend to existing grassroots efforts at peacebuilding and reconciliation between adversarial groups and ought to set up such efforts where they do not already exist. Making conversations possible that lead to reconciliation and the recognition of the needs of marginalized groups – and, importantly, listening carefully to those conversations – allows those who hold power to hear the ideas of and most adequately to protect people who are oppressed. Just war thought, therefore, benefits from incorporating ethical thinking about peacebuilding practices and the obligations of sovereigns to promote them. This is true both because fostering such practices is a long-term means of ensuring that any resort to military force to deal with conflict is truly a last resort, and because just war thinkers who attend to peacebuilding practices can better theorize about what actions are most just immediately before, during, and immediately after conflict.

Focusing on which actions promote peaceful reconciliation – namely, those which build relationships at the grassroots level and between the oppressed and the powerful – enriches our understanding of how to do justice at all stages of conflict. Even more broadly, it provides depth and insight for just war thinkers' and other political theorists' comprehension of the moral obligations of sovereigns to protect their people and avoid conflict and rights violations. At the same time that just war thinking

illuminates issues around Responsibility to Protect, the moral concern expressed in R2P for the protection of the human rights of all can bring to just war thought a broader understanding of what it means to do justice related to issues of conflict and protection. Reading the two together, and placing them in mutual critique, thus enhances moral clarity on contemporary conflict and potentially improves the protection of human rights for all. It does so by holding sovereigns accountable for basic obligations to their people, by encouraging the building of relationships between and within political communities, and by seeking ever more effective practices through which rights violations can be prevented by peaceful means.

Responsibility and Obligation

A note on terminology. Both the ICISS report and the World Summit Outcome Document speak of the "responsibility" of states (individually or collectively) to protect human rights and deal with rights violations. The term "responsibility," in everyday language as well as in scholarly and political dialogue about ethics, has a slightly softer connotation than words like "duty" or "obligation." It is possible that concerns about committing to an obligation to protect rights may have influenced states' decision to embrace the phrase "responsibility to protect." Furthermore, in international affairs, to say that something is an "obligation" of a state or international actor is often to claim that it is legally binding, so speaking of "responsibility" avoids confusing R2P, which is arguably instantiated in international customary law but remains a moral norm and not a legal requirement, for a binding norm of international treaty law. However, the terms "responsibility" and "obligation" are not always clearly distinguished in discussions of R2P: while the U.N. member states are careful to ensure that the World Summit

document speaks only of "responsibility," the ICISS report at times seems to use "responsibility" and "obligation" interchangeably.

In this work, I will attempt to distinguish the two terms. I will frequently examine the "obligations" of sovereigns, citizens, or policy makers as they relate to R2P and to the protection of human rights generally. As an ethical norm, R2P may, arguably, impose certain moral obligations on political authorities and on all of us. Even more importantly, it certainly *responds* to and specifies moral obligations of sovereigns and citizens, which have been set forth and discussed over centuries by ethicists and political theorists, among others.[5] These may or may not also be legal obligations, but failure to fulfill them is a moral failure, whether or not it is legally punishable. So when I discuss "responsibility" or "responsibility to protect," I will be speaking specifically of states' and the international community's commitment to protect human rights against the four abuses named in the relevant paragraphs of the 2005 World Summit Outcome Document: genocide, ethnic cleansing, war crimes, and crimes against humanity. Meanwhile, I will use the term "obligation(s)" to discuss moral obligations of sovereigns and others. Although I will normally speak of "obligations" rather than "duties," I will not attempt to make a distinction between obligations and duties, but will treat the terms as equivalent. When I do discuss *legal* obligations specifically, I will make every attempt to distinguish clearly between moral and legal obligations, or to make it clear when a particular obligation is both a moral and a legal one.

[5] Precisely what these obligations are is of course subject to debate, and the global scholarly, policy, and legal conversation about sovereign obligations is ongoing, but we generally assume that sovereigns do have certain moral obligations. I will examine particular arguments about those obligations in later chapters.

Chapter One

Responsibility to Protect as a Development in the Just War Tradition

International Order and Institutions: Cooperation between Nation-States after the Second World War

Considering the historical and conceptual background of Responsibility to Protect helps us understand more clearly how it both draws upon and provokes developments in just war thinking. A brief overview cannot do justice to the intricate details of R2P's political context and conceptual formation, but even an admittedly limited and partial retelling of the recent history of thought about international relations and about sovereign obligations related to war and human rights can illuminate why R2P arose in the early 2000s, why it was so quickly adopted at the level of international diplomacy, and why it continues to spark intense debates among individuals, states, policymakers, activists, and scholars.

At one level, R2P arose primarily out of debates over the ethics of humanitarian intervention. Such debates are longstanding – they certainly did not arise only in the 1990s or even in the last half of the twentieth century – but I will here focus on the question of humanitarian intervention as it took shape in the period following World War II, through the Cold War, and into the 1990s.

The Charter of the United Nations was signed in June 1945, just after the end of the fighting in World War II's European theater and just before the conclusion of fighting in the Pacific. It came into force in October 1945.[6] While this was not the first time that nations of the world had come together to pledge to work collaboratively to

[6] United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, "Introductory Note," accessed July 2014, http://www.un.org/en/documents/charter/intro.shtml.

promote human rights and the collective well-being of humankind, and specifically to find non-violent ways of resolving conflict,[7] it was nevertheless a watershed moment in international relations. By forming and agreeing to participate in the U.N., states agreed to work together as members of a viable, if far from perfect, international political institution. They affirmed that they would cooperate through the structures of that institution (among others)[8] to deal with each other on friendly and, most importantly, unfriendly matters. In signing and ratifying the U.N. Charter, states gave up a certain (small) amount of independence for the sake of cooperation, with a special concern to avoid violent conflict. The agreements hammered out in the 1940s and beyond acknowledged that the well-being of the global community was not best pursued by means of individual, atomized nation-states doing diplomacy (or going to war) with each other, but rather by means of intentional, international structures of cooperation.

The U.N. serves multiple purposes, two of which have been most crucial for discussions of humanitarian intervention and, eventually, R2P. First, the U.N. Charter includes language expressing a commitment to human rights[9] on the part of all member nations. This commitment was further acknowledged and specified through the adoption of the Universal Declaration of Human Rights in December 1948, which itself was a defining moment in international cooperation around the specific issue of rights protection. This is of course not to say that the idea of human rights is a new one.

---

[7] The League of Nations is an obvious example of an earlier attempt at international cooperation, and nations have been making treaties for millennia.

[8] I will speak of the United Nations almost exclusively, given the political importance of the U.N. and its role in fostering and adopting R2P, among other global moral norms. However, multiple other international organizations exist to promote various kinds of cooperation between nations. The World Bank and International Monetary Fund, for instance, seek to promote global trade and development, and they certainly *should* play a substantial role in enhancing global justice and peace, though the question of whether they *do* enhance these is hotly contested. The International Criminal Court was created more recently as a legal mechanism for prosecuting breaches of international law.

[9] U.N. *Charter*, "Preamble," accessed July 2014, http://www.un.org/en/documents/charter/preamble.shtml.

Whether such things as "human rights" exist, and if so, what rights are properly described as "human rights," has been a topic for international ethical and policy debate for centuries. In particular, the religious traditions of the world have all, in principle if not always in practice, promoted respect for individual human beings precisely as human. Many adherents of those traditions have believed and do believe that such respect is best expressed, at least in our current age, by promoting human rights.[10] The UDHR, however, served as a specifically political and international agreement, recognized by all the countries of the world. It thus solidified a global commitment to human rights on the part of states acting cooperatively at the international level, and it named certain fundamental rights upon which future dialogue – and many debates – about rights would be built. The U.N. itself serves as an arena for discussion of human rights among member states and as a place where rights are championed by both national and international leaders.

Secondly, membership in the U.N. serves a legitimizing purpose for the nation-states of the world. This is an especially crucial point in a postcolonial era, when the history of imperialism and of the failure of strong states to recognize the self-determination of weaker ones looms large. It takes no great mental stretch to recall the centuries of colonialism in which Western powers ruled African, Asian, and South American nations by force, for the purpose of grabbing land and looting resources, exploiting the labor of colonized people, and "outdoing" each other; the "humanitarian interventions" of the late nineteenth and early twentieth centuries, conducted only

[10] Historically, respect for human beings has often been expressed in the language of duties, but many contemporary religious thinkers accept the language of rights as an appropriate way to talk about respect for all people. Some argue that our holding rights is fundamental to who we are as human beings, while others argue that rights are derivative of the duties people have to respect each other.

against non-Western nations;[11] the United States and Soviet Union's invasions and abuses of multiple states, without regard to self-determination or territorial integrity, as they jockeyed for position during the Cold War; and the selective human rights enforcement of the last several decades, in which the United States, for instance, commits acts of torture and rendition leading to torture while condemning other nations for rights abuses.[12] It is no surprise that the many newly sovereign states of the post-World War II era (India, Libya, and Ghana, to name a few examples – we can easily find more) have been adamant that the U.N., and all states of the world, should treat every nation-state as equally worthy of recognition and self-determination. Newly-independent states have viewed their U.N. membership as legitimating their sovereign status.[13] We might argue that not all states are equal at the United Nations: the five permanent members of the U.N. Security Council certainly have more power in some respects – especially those pertaining to the use of force – than other states. And powerful states simply do have more influence in international diplomacy, at the U.N. as elsewhere. The United States, for instance, can throw its weight around in ways that

---

[11] For a discussion of this, see Martha Finnemore, *The Purpose of Intervention: Changing Beliefs about the Use of Force* (Ithaca: Cornell University Press, 2003), 3, 21, 46-47, 58-66.

[12] A discussion of the "torture memos" crafted after the attacks of September 11, 2001 can be found in "Memo Offered Justification for Use of Torture" by Dana Priest and R. Jeffrey Smith in the *Washington Post*, 8 June 2004, accessed February 2015, http://www.washingtonpost.com/wp-dyn/articles/A23373-2004Jun7.html. Information about the Senate Intelligence Committee's investigation into CIA torture practices can be found, among other reports, in *The Guardian*, "Senate report on CIA torture claims spy agency lied about 'ineffective' program." Spencer Ackerman, Dominic Rushe, and Julian Borger, 9 December 2014, accessed February 2015, http://www.theguardian.com/us-news/2014/dec/09/cia-torture-report-released.

[13] The legitimizing power of United Nations membership – or U.N. recognition of any kind – comes through in the debates over whether the U.N. should recognize Palestine as a sovereign nation. Palestinian leaders certainly crave this recognition, which was in a way achieved in November 2012, as discussed in Louis Charbonneau, "Palestinians win implicit U.N. recognition of sovereign state," *Reuters*, 29 November 2012, accessed February 2015, http://www.reuters.com/article/2012/11/29/us-palestinians-statehood-idUSBRE8AR0EG20121129. Not surprisingly, Israeli leaders condemned the decision.

smaller, less powerful states cannot.[14] But U.N. membership nevertheless provides legitimacy for states, including many former colonies which became fully recognized as properly self-determining during the mid-twentieth century. The meetings of the General Assembly provide a platform where all states can argue for their interests and concerns on the world stage, on (in principle) equal standing with all others.

The commitment to sovereign equality among states has influenced rules in the U.N. Charter that forbid individual states (or even groups of states) from using force against other states, except when a state is first attacked or when a military action is authorized by the U.N. Security Council. Article 2.4 of the Charter states, "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state."[15] Article 39 then states, "The *Security Council* shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken…to maintain or restore international peace and security"[16] [emphasis mine]. The Security Council may call upon the nations of the U.N. to use economic, diplomatic, and/or military measures to deal with a threat to peace, and it appears that member states are compelled to act when called upon,[17] but states generally may not take matters into their own hands. The Charter does explicitly allow a state to defend itself: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain

---

[14] This statement likely needs no proof, but Theresa Reinold's discussion of the outsize influence of the United States on the development and acceptance of Responsibility to Protect at the United Nations elucidates one important case in which the U.S. clearly has and can throw its weight around. Reinold, *Sovereignty and the Responsibility to Protect*, especially 50-51 and 151-55.
[15] United Nations, *Charter*, Chapter 1, Article 2.4.
[16] United Nations, *Charter*, Chapter 7, Article 39.
[17] United Nations, *Charter*, Chapter 7, Articles 41 and 42.

international peace and security."[18] But even here, while states may defend themselves at the outset, the Security Council still has authority to take the lead in promoting peace once it is able. In short, the member states of the U.N. have set up their agreements to strongly favor the Security Council as the appropriate authority if force needs to be used, and to strongly disfavor the use of force by any single state or group of them. States simply are not to interfere with other states' territorial integrity or self-determination. If something needs to be done, it needs to be done through the Security Council.

These dual concerns – an extremely strong moral and legal commitment to human rights and an equally strong commitment to the sovereignty and self-determination of all states, such that no one state is permitted to employ force against another except in self-defense – both became central to international law once the UDHR and U.N. Charter were ratified in the mid-twentieth century. And with that, the stage was set for later debates over whether and how it was possible to uphold human rights while respecting the sovereignty of all states. It was not at all clear how other states might ethically and legally respond if and when a state was either committing human rights violations or allowing them to take place within its borders, at least in the (multiple) cases in which the Security Council did not act.

In a later portion of this chapter I will show how assumptions in favor of state sovereignty over the protection of human rights, when the two came into actual or perceived conflict, began to change toward the end of the twentieth century. If we take Responsibility to Protect to be an outgrowth of the just war tradition, however, it will help first to discuss the development of just war thinking as it emphasizes sovereign

---

[18] United Nations, *Charter*, Chapter 7, Article 51.

duties to protect people and communities from harm. I will first outline a brief history of just war thinking and then focus on its contemporary form. Looking back to important historical just war thinkers helps to show how past ethical thinking about war provides a foundation for present developments, including R2P. Then, since contemporary just war thinking began to take on its current shape during the Cold War period, it is instructive to consider how questions about human rights and sovereignty were addressed in that period, and how the most commonly accepted moral criteria governing acts of war emerged during it.

A Brief History of Just-War Thinking about Sovereign Responsibility for Individuals and the Common Good

Responsibility to Protect reflects ethical thinking about conflict and the use of force, asking specifically how human rights can best be protected. A particularly thorny aspect of that question is whether and when to use military force in cases of egregious human rights violations. Here I will examine how major thinkers in the historical just war tradition understand the obligations of sovereign rulers to protect people by forceful means, in order to highlight some of the most crucial ethical considerations that shape global discussions about protection, the proper use of force, and ultimately about R2P.

Just war thinking has adapted and changed over its history, but there are common themes that run throughout: the protection of the innocent and/or vulnerable; responsibility of sovereigns for the good of their communities; the idea that only the sovereign has the authority to declare war; and debate over whether a (non-tyrannical) political ruler might have the obligation to "rescue" people living under the tyranny of a different ruler. In the West, the conversation about the justice of war was largely

shaped by Christian thought, [19] though it drew on Roman law and philosophical writings and gradually took on a more secular character during the early modern era. Therefore, I focus here primarily on Christian thinking about war, although some of the thinkers I will highlight are commonly considered to be legal and political theorists as well as, or in preference to, religious thinkers.

Moral thought about justice in war in the Christian tradition has either emphasized the command to love the neighbor and thus to protect the neighbor against harm and injustice, including by force if necessary, or it has emphasized war as one possible means by which the sovereign of a political community pursues justice and the good of that community. Speaking broadly, thinkers who more closely follow the work of Augustine of Hippo tend to stress love of neighbor as a possible moral justification for war, while those who follow Thomas Aquinas tend to stress the obligation of the sovereign to pursue the good of the community, by nonviolent means if possible but by violent means if necessary.

---

[19] This is not to say that only Western, or only Christian, thinkers have pondered the moral questions that war provokes – far from it. In the West, scholars have recently begun to shed light on ethical thinking about war in non-Christian traditions, including, for instance, Islam (see John Kelsay, *Arguing the Just War in Islam* (Cambridge, Mass.: Harvard University Press, 2007)) and Confucianism (see Sumner Twiss and Jonathan Chan, "Classical Confucianism, Punitive Expeditions, and Humanitarian Intervention," *Journal of Military Ethics* 11.2 (2012): 81-96 and Aaron Stalnaker, "Xunzi's Moral Analysis of War and Some of Its Contemporary Implications," *Journal of Military Ethics* 11.2 (2012): 97-113). Jewish thinkers have long dealt in some way with questions of war, although the absence of a Jewish state until 1948 and the frequent exclusion of Jews from positions of political power meant that Jewish thinkers did not feel the need to articulate a just war framework that would guide the leaders of sovereign states in quite the same way that Christian or other thinkers did. For Jewish thought on issues of war, see Adam Afterman and Gedaliah Afterman's essay "Judaism" in *Religion, War, and Ethics: A Sourcebook of Textual Traditions*, ed. Gregory M. Reichberg and Henrik Syse (New York: Cambridge University Press, 2014); Lawrence Schiffman and Joel B. Wolowelsky, eds., *War and Peace in the Jewish Tradition* (New York: Yeshiva University Press, 2004); and several influential works of Maimonides, gathered and translated in texts such as *The Guide for the Perplexed*, trans. M. Friedländer (New York: Dover Publications, Inc., 1956), "Kings and Wars" in *A Maimonides Reader*, ed. Isadore Twersky (New York: Behrman House, Inc., 1972), and *The Book of Divine Commandments, Volume 1: The Positive Commandments*, trans. Rabbi Charles B. Chavel (London: Soncino Press, 1940), Commandments 184-193. It is fair to say that the tradition of just war thinking that retains the most influence over international policy discussions has roots in European and especially European Christian traditions of thought, but with increased communication and collaboration among interpreters of just war as well as global leaders, just war thinking is likely to continue to adapt as more voices come into conversation with each other.

For Augustine, justified war is fought in order that human beings may have just peace, and it is most properly fought by some on behalf of others. That is, if war is necessary for promoting peace and justice, it should be authorized by the leader of the political community and it aims truly should be those of peace and justice. It is possible for a ruler to make war "without lust" (*cupiditas*) if he acts "in accordance with the mandates of eternal justice," and soldier may likewise fight without *cupiditas* when they act as "agent[s] of the law."[20] War must, however, be fought for the good of all, including the enemy. Augustine explains in his Letter to Boniface,

> When you pledge your faith, it must be kept even with the enemy against whom you are waging war – how much more with the friend for whom you are fighting! You must will to have peace, and be compelled by necessity to wage war, in order that God may free us from the necessity and preserve us in peace….Be a peacemaker even when you are waging war."[21]

Similarly, to Marcellinus he writes, "if the earthly city observes Christian principles, even its wars will be waged with the benevolent purpose that better provision might be made for the defeated to live harmoniously together in justice and godliness."[22]

Peace and justice for others' sake is really the only proper intent Augustine allows if a war is to be just. He criticizes the Roman Empire's and its citizens' willingness to praise military victories simply because they show strength or allow the empire to conquer and rule over others.[23] Augustine does accept a somewhat troubling vision of the wars of empires: for him, war that extends the empire's territory is not precisely a good thing (it is only "happiness" to "the wicked"), but empires should not exactly refrain from it, either; for the sake of "the good," wars of expansion are at times

---

[20] Augustine, "On Free Choice of the Will" I. 5-6, in *The Ethics of War: Classic and Contemporary Readings*, ed. Gregory M. Reichberg, Henrik Syse, and Endre Begby (Malden, MA: Blackwell Publishing, 2006), 75.
[21] Augustine, "Letter to Boniface, Count of Africa," in *Letters of Saint Augustine*, trans. and ed. John Leinenweber (New York: Triumph Books, 1992), 211.
[22] Augustine, "Letter 138, to Marcellinus," in *The Ethics of War*, 73.
[23] Augustine, *Concerning the City of God against the Pagans*, trans. Henry Bettenson (New York: Penguin Books, 1972), 67, 196-98.

a "necessity."[24] Augustine's thought here is that it is preferable to live in peace with neighboring political communities, but if a neighboring community is unwilling to live in peace or to do justice, it may be necessary to "subjugate" it through war. While he does not think it is ideal that these wars must happen, his acceptance of the idea that one political community can at times rightly conquer and rule over another is ethically concerning in a postcolonial world, especially for those who live in less-powerful nations who have every reason to fear the interference of powerful nations, even when it comes cloaked in "good intentions."

Thomas Aquinas, in the thirteenth century, agrees with Augustine that rulers should not go to war for personal gain or out of the love of violence or glory.[25] While Augustine focuses on war as sometimes necessary to bring about just peace for all, Aquinas relates just war to the goal of upholding the good of a particular political community. He believes that there is at least a relatively-attainable "common good" within properly-functioning political communities, and he argues for justified war as a means to protect or advance that common good against those who would violate it. He writes in the *Summa Theologia*: "As the care of the common weal is committed to those who are in authority….It is their business to have recourse to the sword of war in protecting the common weal against external enemies."[26] Just causes for war, according to Aquinas, include avenging wrong done to the good of the community, punishing an attacker for a wrong done, or restoring unjustly seized goods.[27] The main point is that the common good of a political body needs to be protected, and the ruler whose political

---

[24] Augustine, *City of God*, 154-55, 861-62.
[25] Thomas Aquinas, *Summa Theologia*, II-II, Question 40, Article 1, in *The Ethics of War*, 177. Here Aquinas is directly quoting Augustine.
[26] Aquinas, 177.
[27] Aquinas, 177.

responsibility and task is to uphold that common good is therefore authorized to make war on the community's behalf.

The early modern period saw the development of several seminal works on just war, often tied to debates among European thinkers and leaders over how to relate to the indigenous peoples of the Americas and (not entirely unrelatedly) to the rise of thinking about the relationship between natural law and international relations, including between Christians and non-Christians. Francisco de Vitoria, Francisco Suárez, and Hugo Grotius are widely credited for relating the idea of justice in war to a conception of natural law in this period.[28] Making this connection allowed these thinkers to argue that certain moral principles governed all acts of force and that every leader and every people should both follow these principles and benefit from others' adherence to them. Of particular relevance to our discussion of intervention and the danger of imperialism is the debate over whether Europeans could morally justify ruling over the peoples of the Americas. Vitoria argued that Spanish rulers could not go to war with indigenous American peoples and seize their land if those peoples had not aggressed in some way. He considered the indigenous peoples to be fully human and to have all the natural rights any other human being had, no matter if their culture and religion differed from those of the Europeans, and he drew on the idea that under natural law, all people are free to rule themselves and to claim the property they use, to make his arguments.[29] Other thinkers, most prominently Juan Ginés de Sepúlveda, disagreed with the idea that people of such different culture and religion held the same

---

[28] For one discussion of these thinkers' considerations of war and natural law, see Keith J. Gomes, "An Intellectual Genealogy of the Just War: A Survey of Christian Political Thought on the Justification of Warfare," *Small Wars Journal* (August 2008), accessed May 2015, http://smallwarsjournal.com/jrnl/art/an-intellectual-genealogy-of-the-just-war.

[29] Francisco de Vitoria, "On the American Indians," in *Francisco de Vitoria: Political Writings*, ed. Anthony Pagden and Jeremy Lawrance (New York: Cambridge University Press, 1991), 239-92.

rights as Europeans. Sepúlveda referred to indigenous Americans as barbaric and hardly even human; therefore, he claimed, the Spanish had every right to subdue and rule them by force, and to do so without regard for moral principles which might govern either the recourse to war, or conduct therein.[30] The argument between these two thinkers, among others, points to a somewhat paradoxical development in ethical thinking during this period: there was a turn to the idea of natural law as governing all people, with consequent specification and discussion of just war criteria as applying to all, yet the actions and arguments of some of its leaders – both political and intellectual – also heralded centuries of violence, dehumanization, and colonial rule of non-European peoples. Contemporary just war thinking, especially its claim to universal moral norms, owes much to the early modern period, and yet the emergence of just war thinking with a recognizably global character was marred by justifications of colonialism and oppression that relied on dehumanizing groups of people, placing them beyond the pale of natural law and of humanity itself.

In the contemporary period, we see the influence of Augustine's work especially in the writings of Paul Ramsey and, more recently, Jean Bethke Elshtain and Nigel Biggar. Ramsey argues that justified war is an "*expression* of the Christian understanding of political responsibility in terms of neighbor-regarding love." Force can be used to repel unjust attack "lest many more of God's little ones should be irresponsibly forsaken and lest they suffer more harm than need be."[31] It is this concern for protection of the vulnerable that leads Ramsey to focus more on the conduct of war than its aims: "the

---

[30] See John Christian Laursen, ed. *Religious Toleration: "The Variety of Rites" from Cyrus to Defoe* (New York: St. Martin's Press, 1999), 77-79. The online "Latin Library" provides a brief excerpt, translated into English, from Sepúlveda's discussion of American Indians in *Concerning the Just Cause of the War against the Indians*, accessed May 2015, http://www.thelatinlibrary.com/imperialism/readings/sepulveda.html.
[31] Paul Ramsey, *The Just War: Force and Political Responsibility* (New York: Charles Scribner's Sons, 1968), 151.

ends for which wars may legitimately be fought are not nearly so important in the theory of the just war as is the moral and political wisdom contained in its reflection upon the *conduct* or means of warfare"[32] [all italics in original text]. Elshtain, meanwhile, builds on the Christian mandate to care for the neighbor in setting forth an argument for war as one way of preserving equal regard: "human beings qua human beings deserve equal moral regard" because all possess "an inalienable dignity" simply by virtue of being human.[33] She shares the concern for equal regard with multiple political philosophers and human rights thinkers, but she argues that the Christian tradition is the primary (though perhaps not the only) influence that brings the concern for the equal human dignity of all into Western thinking about the use of force and the need to protect those who are in danger.[34] Biggar, like Ramsey, speaks of war as a possible, and sometimes necessary, means of expressing love for all. He particularly emphasizes the Augustinian line that rulers who go to war justly are showing love both for those protected by the use of force and for those against whom force is used. Though just war is "an extreme form of retributive punishment,"[35] according to Biggar, it is, following Augustine, a type of "kind harshness."[36] Most will accept that sovereigns who authorize war in order to protect some group of vulnerable people are showing love for those people, but Biggar also argues that when sovereigns make war which "intends to stop the wrongdoer doing wrong, intends that he should not resume it, would be content to achieve that by persuading him to surrender, and restrains its use of violence

---

[32] Ramsey, *The Just War*, 152.
[33] Jean Bethke Elshtain, "International Justice as Equal Regard and the Use of Force," *Ethics & International Affairs* 17.2 (2003): 63-75, p. 67.
[34] Elshtain, "International Justice," 65-67, and "The Responsibility of Nations: A Moral Case for Coercive Justice," *Daedalus* 132.1 (Winter 2003): 64-72, pp. 65-67.
[35] Nigel Biggar, *In Defence of War* (New York: Oxford University Press, 2013), 11.
[36] Biggar, 13.

according to its intentions,"[37] they do indeed demonstrate forgiveness (understood as compassion) toward wrongdoers, thus, particularly in a Christian theological sense, showing love.

Catholic thinkers George Weigel and John Finnis similarly look to Augustine and to the long Christian tradition of deliberating over sovereign obligations regarding war and justice in it, but both draw more fully and explicitly on Aquinas than the Protestant thinkers named above. Weigel situates his work in part as a response to contemporary thinkers – especially the United States Conference of Catholic Bishops[38] – who regard just war principles as means of determining when a "presumption against violence" may be overcome.[39] He argues that both Augustine and Aquinas locate the decision to go to war within the framework of an obligation to love. Just war is a form of statecraft undertaken by a sovereign who has assumed responsibility for a community and must protect it.[40] Here his concerns sound much like Biggar's, Elshtain's, and Ramsey's, with perhaps a stronger emphasis on the defense of a particular community, as opposed to any group of vulnerable individuals who are in need of protection. Finnis discusses war in terms of hostilities (and eventual peace) between two nations or political communities, arguing that rulers who make war must seek the common good of the "imperfect community constituted by any two interacting human societies." To seek peace, through war if necessary, is to seek "integral human fulfillment," understood

---

[37] Biggar, 75.
[38] United States Conference of Catholic Bishops, "The Challenge of Peace: God's Promise and Our Response," USCCB, 3 May 1983, accessed June 2015, http://www.usccb.org/upload/challenge-peace-gods-promise-our-response-1983.pdf. Note that the USCCB document uses the term "presumption against war," where Weigel uses the term "presumption against violence." The USCCB's contribution to the development of contemporary just war criteria will be discussed below.
[39] George Weigel, "The Just War Tradition and the World after September 11," *Logos: A Journal of Catholic Thought and Culture* 5.3 (2002): 13-44. See especially pp. 22-23.
[40] Weigel, 23.

as "the flourishing of all human persons and communities."[41] Again, this search is grounded in the call to love the neighbor.[42] Finnis, like Weigel, focuses on the protection of discrete human political communities (in the contemporary age, nation-states), though he more explicitly argues that discrete communities share some kind of "imperfect" common good and that individual sovereigns have obligations to the good of their own communities as well as to the shared good that states participate in together.

Examination of these thinkers' work shows how Christian ideas regarding love of neighbor and the duty of rulers for the common good have influenced the development of the just war tradition, and have in turn been influenced by historical events and philosophical thinking about, for instance, international law and the relationship between individuals and the state. It also provides context for contemporary debates over war, especially over the protection of people. Just war thinkers believe that war can uphold some sort of good – otherwise they would presumably not be just war thinkers! – but whether that good is best served when sovereigns protect anyone who needs protection, or when they focus on the common good of either their own political communities or the broader community of nations, is a matter of dispute. And the very idea of universal moral standards that grounds much thinking about just war (and international law), in both the Christian and the more-secular tradition of Vitoria, Grotius, and others, can be a double-edged sword. On the one hand, if human beings are universally dignified and subject to the natural law, then the moral principles of just war apply no matter who the enemy is. On the other hand, if "they" vitiate themselves by failing to follow the moral laws that "we" follow and know to be universal, then perhaps "they" are less than human and "they" deserve to be

[41] John Finnis, "War and Peace in the Natural Law Tradition," in *Human Rights and Common Good: The Collected Essays of John Finnis: Volume III* (New York: Oxford University Press, 2011), 185.
[42] Finnis, 186.

subjugated and subject to violence and torture. This problem comes up again in discussions of R2P: is it simply another supposedly "universal" moral norm used as an excuse to subjugate states and groups who the powerful nations of the world do not approve of? I will turn to those questions after filling out the background of R2P by discussing the development, in the past six decades, of a set of criteria intended to guide decisions about the just use of force.

The Emergence of Contemporary Just War Criteria

Moral, and legal, thought about war in the latter half of the 20th century was heavily influenced by the experience of World War II and the circumstances of the Cold War. Thinkers, policy makers, and activists had to deal with questions of obliteration bombing (nuclear and otherwise); whether the ends justified the means when fighting "evil" regimes; the stockpiling of nuclear weapons; the major Cold War powers' support of proxy wars and refusal to call out "friendly" regimes which committed major human rights abuses; a precarious balance of power which in some ways held in check the possibility of violent hostilities between the two great world powers but whose stability was, at best, uncertain; and various national and ethnic groups' continued desire for self-governance. Around the time of WWII and after, Roman Catholic thinkers including Elizabeth Anscombe[43] and John Ford[44] discussed the decision to enter the war and especially the means by which the fighting was conducted. Beginning in the 1950s, but particularly during the 1960s, just war thinking about both *jus ad bellum* and *jus in bello* questions underwent a contemporary resurgence of sorts. Work continued among

[43] See, for instance, G.E.M. Anscombe, "War and Murder," "Mr. Truman's Degree," and "The Justice of the Present War Examined," in *The Collected Philosophical Papers of G.E.M. Anscombe, Volume 3: Ethics, Religion, and Politics* (Minneapolis: University of Minnesota Press, 1981), 51-81.
[44] John Ford, "The Morality of Obliteration Bombing," *Theological Studies* 5.3 (1944): 261-309.

Roman Catholic thinkers, such as John Courtney Murray. Non-Catholic thinkers began to examine the justice of war and reconsider the just war tradition, inspired by the work of Protestant ethicists such as Paul Ramsey (who embraced the tradition of just war thought)[45] and Reinhold Niebuhr (who engaged with but rejected it, arguing that it too readily took the distinction between justice and injustice in war to be obvious, when all of our judgments about war and aggression are influenced by our "passions and interests").[46] Ramsey's writings especially, developed in the context of the moral questions brought up by the politics of the Cold War and the U.S. engagement in Vietnam, sparked renewed widespread interest in just war thinking that has only grown through the present day.

It was in the 1960s and 1970s that the groundwork was laid for the way leaders, commentators, and activists in the United States now think and talk about war.[47] The scope of just war thinking, and the criteria embedded in it, were explicitly elucidated by, among others, Ralph Potter[48] in the late 1960s and James Childress[49] in the late1970s.

---

[45] I should again note that while Ramsey acknowledged *jus ad bellum* concerns, he largely left the adjudication of questions of *jus ad bellum* up to the political authorities of the time, making little effort himself fto evaluate particular decisions about going to war from an ethical standpoint. Ramsey thought that to try to weigh the ethical and military concerns involved in *jus ad bellum* decisions was simply not within the scope of the moral thinking of citizens who were neither high-level military officers nor elected officials. Still, he named *jus ad bellum* issues as moral issues that needed to be decided with reference to ethical principles of just cause and so on.

[46] Reinhold Niebuhr, *The Nature and Destiny of Man: Volume II* (New York: Charles Scribner's Sons, 1964), 283. James Turner Johnson argues that Niebuhr "derided and rejected what he called 'the Catholic theory of a "just war"', and Keith Pavlischek notes that Niebuhr's rejection of just war thinking was "part of a polemic against Roman Catholic natural law doctrine." Johnson, "Contemporary Just War Thinking: Which Is Worse, to Have Friends or Critics?" *Ethics & International Affairs* 27.1 (2013): 25-45, p. 26. Pavlischek, "Reinhold Niebuhr, Christian Realism, and Just War Theory: A Critique," in *Christianity and Power Politics Today: Christian Realism and Contemporary Political Dilemmas*, ed. Eric Patterson (New York: Palgrave Macmillan, 2008), 53-71, p. 54.

[47] This resurgence in just war thought, and the influence of these and other just war thinkers, have not been limited to the United States, of course, but I will on the whole limit my remarks to just war thinking in the United States, and to some extent in the United Kingdom.

[48] See Potter, *War and Moral Discourse* (Richmond, VA: John Knox Press, 1969).

[49] See Childress, "Just-War Theories: The Bases, Interrelations, Priorities, and Functions of their Criteria," *Theological Studies* 39.3 (1978): 427-45.

Michael Walzer's *Just and Unjust Wars,*[50] first published in 1977, pushed the conversation further in the direction of rights-based considerations of justice (and greatly contributed to bringing just war considerations into the work of political philosophers and philosophical ethicists, where for a time they had seemed to be the sole provenance of theologians and religious ethicists). Potter's work was influential for John Rawls, who grounded both *jus ad bellum* and *jus in bello* principles in a commitment to the political equality of people and of states.[51] In its important pastoral letter *The Challenge of Peace*, addressing ethics of war and peace in the nuclear age, the U.S. Conference of Catholic Bishops employed criteria articulated by Potter and Childress. Catholic scholars, including Weigel[52] and Finnis, whose work I cited above, drew both on the Catholic tradition and the contemporary conversation about the ethics of war. Other thinkers, most prolifically James Turner Johnson, mined the deep history of just war thought for past insights that might be applied to present concerns. More recently, Brian Orend[53] has taken up questions of war in the early 21st century, in particular regarding the role of human rights in grounding just war criteria as well as moral issues of justice after war. In short, a tradition of making judgments about the morality of war, which began at least with Cicero but, in the West, was carried through the centuries largely by Christian thinkers, suddenly saw a surge of interest in the U.S. and very quickly has become a, often *the*, resource for both religious and non-religious ethicists who seek to make clear and morally grounded judgments about justice in war.

---

[50] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977).
[51] John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard/Belknap, 1971), 378-79.
[52] In addition to the article cited above and others, see Weigel, *Tranquillitas Ordinis: The Present Failure and Future Promise of American Catholic Thought on War and Peace* (Oxford: Oxford University Press, 1987).
[53] See Orend, *The Morality of War* (Peterborough, Ont: Broadview Press, 2006).

Out of all this new thinking about morality and justice in war arose a set of criteria governing the use of force, which are relatively widely agreed upon as most relevant for contemporary Western, and often global, ethical discussions of just war.[54] All of the criteria can arguably be teased out of the thought of Thomas Aquinas, and some can be shown to have their roots in the thought of Augustine or even Cicero,[55] but the enumeration and specific descriptions of the criteria listed below have really been developed since the 1960s and 1970s. Some aspects of these criteria remain open to debate: for instance, the question of whether all of them bear *morally* upon just war thinking (as opposed to practically or prudentially). Johnson insists that the historic tradition of just war thought names only three moral criteria that must be taken into account when going to war: sovereign authority, just cause, and right intention.[56] He argues that the *jus ad bellum* criteria of last resort, probability of success, and proportionality, while "arguably" worth including in a list of just war criteria, are best understood as prudential criteria a sovereign might take into account when determining whether to go to war. They do not, however, appear in the historical just war tradition as formal, ethical criteria (and Johnson at least strongly implies they should not appear so now).[57] Childress, meanwhile, understands all of the *jus ad bellum* criteria listed below to be ethical criteria: all enter—or should enter—into the moral deliberations of an authority who is deciding whether to go to war (and similarly, into the thinking of

---

[54] Western notions of just war are influential on a global scale, but again, I draw on these sources as a contribution to a conversation that includes thinking about the ethics of war from multiple traditions worldwide. Insofar as these criteria play an important role in global debates over conflict, rights, and war, they are important for my work, and they are certainly relevant to thought about R2P, as I shall argue below. They are not the final word, however, as the just war tradition (and thought about R2P as well) continues to evolve.

[55] See Cicero, "The Just War" and "Natural Law and Just War," in *War and Christian Ethics: Classical and Contemporary Readings on the Morality of War*, ed. Arthur Holmes (Grand Rapids: Baker Publishing Group, 1975), 24-31.

[56] Johnson, "The Just War Idea: The State of the Question," *Social Philosophy and Policy* 23.1 (January 2006): 167-95, p. 177.

[57] Johnson, "Just War Idea," 177.

political and military advisors and of scholars who reflect, in advance or after the fact, on decisions to go to war). Furthermore, the United States Conference of Catholic Bishops actually lists seven moral criteria that must be considered when deciding whether to go to war; these include the six listed below alongside a criterion of "comparative justice."[58] The notion of "comparative justice" can helpfully clarify questions about just cause when multiple parties to a conflict seem to have justice on their side, but I would argue that it can be understood as a sub-criterion of just cause. These debates are ongoing, but scholars and policy makers concerned about ethical issues in war most generally consider a set of six *jus ad bellum* and two *jus in bello* criteria to be relevant for guiding moral deliberation in matters of conflict.[59] I list and briefly describe them here:

Jus ad Bellum

- Proper authority: the war must be authorized by a legitimate political authority
- Just cause: the war must be fought for a just cause; self-defense of a state which has been attacked is often cited as the primary just cause for war, but the tradition (and contemporary conversation) about war includes protection of the innocent, redress for wrongs suffered, and recovery of territory or other possessions taken by an aggressor as possible just causes for war
- Right intention: the leader or leaders who engage in war must intend that the war will end in a just peace, generally taken to mean that the state of affairs after the war is over will be somehow better (more just, more peaceful) than the state of affairs before war. Scholars have stressed that *intention* is not exactly the same thing as *motivation*: a leader may be motivated to go to war for personal recognition, for instance, yet he may still intend that the war will end with a just peace

[58] USCCB, 19.
[59] For instance, Brian Orend takes it as well-established that the six *jus ad bellum* criteria listed below are the relevant contemporary moral criteria for decisions about going to war and devotes several pages of his *The Morality of War* to each of the six. See *The Morality of War*, Ch.Two. Orend lists more than the two *jus in bello* criteria discussed here (see *The Morality of War*, Ch. Four), but as I am not so concerned with *jus in bello* as *jus ad bellum* criteria, I will not go into detail regarding his discussion of *jus in bello*.

- Last resort: all other possible avenues than war must have been considered (not necessarily attempted; most just war thinkers require only that all *reasonable* possibilities be exhausted prior to a declaration of war)
- Reasonable chance of success: the authority must anticipate that the proposed course of action will be successful; if not, it is a waste of lives and resources to go to war for a futile cause
- Proportionality: the overall bad consequences of going to war must be foreseeably outweighed by the good to be realized (that is, a proper political authority with all possible information must be able to reasonably predict that this will be the case)

Jus in Bello

- Proportionality: in war, combatants may use only an amount of force proportional to their (just) aims; anything more is unjust
- Discrimination: in war, combatants must discriminate between appropriate targets of violence and those which cannot justly be targeted. Civilians should never be killed unless they are unintended casualties of a properly proportional attack on a military target

Commentators and policy makers in the United States have drawn heavily upon these criteria when arguing over the nation's military engagements,[60] and, for the most part, even thinkers who are critical of current trends in just war thought or who hope to add to or modify it in some way use the above criteria as a starting point.[61] Certainly we may say that this list of criteria is a central focal point in arguments over the ethics of war. It also bears on discussions about R2P, as we shall see below.

---

[60] For just one example, see the exchange between Walzer and Elshtain in *Dissent*, over the 2003 war in Iraq, which focuses on what makes for a just cause among other things; but further examples abound. Walzer, "Regime Change and Just War," *Dissent* 53.3 (2006): 103-08; Elshtain, "Jean Bethke Elshtain Responds," 109-11.

[61] To take a couple of examples, Brian Orend seeks to modify traditional just war thinking by incorporating *jus post bellum* considerations into thought about the justice of war, but as we have seen he certainly accepts the criteria we have discussed. See Orend, "*Jus Post Bellum*," *Journal of Social Philosophy* 31.1 (Spring 2000): 117-37. Laura Sjoberg, a feminist just war thinker (and critic) whose work I will discuss at greater length in Chapter Four, takes *jus ad bellum* and *jus in bello* criteria as a starting point for "critiqu[e] and reformulat[ion]." Sjoberg, *Gender, Justice, and the Wars in Iraq: A Feminist Reformulation of Just War Theory* (Lanham, MD: Lexington Books, 2006), 14.

The Changing Nature of War: Debates over "Humanitarian Intervention" at the End of the 20th Century

As the Cold War came to an end, the relative consensus among international leaders that nation-states should determine their own destiny in all cases not involving aggressive war[62] began to fracture. At the same time, just war criteria began to appear to be less than adequate moral guidelines for decision-making about whether to go to war and how to act during it. The reasons behind these two developments were the same: it suddenly seemed that the face of war had changed, and that new guidelines or at least new interpretations were called for. The vast majority of conflicts no longer involved one nation-state invading or attacking another (the Iraqi invasion of Kuwait in 1990 was the one notable exception, and that invasion occurred just as the Cold War was ending), nor were thinkers now primarily worried about proxy wars and questions of nuclear deterrence.[63]

Instead, the majority of conflicts over the past two and a half decades have occurred within the borders of a state or between ethnic groups whose populations and territory do not map neatly onto state lines. Conflicts have been civil wars or struggles for independence, often along ethnic and sometimes along cultural or religious lines, or they have taken the form of guerrilla warfare waged by a less militarily powerful group against a governing power, which then meets resistance with counterinsurgency tactics. Furthermore, though civilians have never been fully protected from danger during war, the wars we see in the late 20th and early 21st centuries often feature intentional targeting of civilians and extremely blurry lines between combatants and

---

[62] That is, as a matter of principle. In practice, this relative consensus did not stop the great powers from meddling in the affairs of less-powerful sovereign states.

[63] I hasten to note, though, that the presence of nuclear weapons stockpiles remains a troubling question for ethical thought in many areas.

noncombatants (though not as blurry as some leaders, who believe that slaughtering noncombatants will bring them closer to victory but who also do not want to be seen as intentionally targeting noncombatants, would claim). Often, wars begin to look alarmingly like conflicts between populations, rather than between groups of soldiers under some political authority. In such scenarios, the international community must address several questions, some old and some new – or at least more pressing now than they seemed to be in decades past. How can the international community stop conflicts and rights violations, if it even can, when individual states fail to do so? How can states or international institutions help to build peace and work toward reconciliation and justice, without problematically "taking sides" in intrastate conflicts? Finally, how can the international community continue to enforce the rules of war in contemporary conflicts, asserting, for example, that it is still morally required that we find ways to protect and spare those who are not directly involved in fighting?[64]

The unresolved ethical – and practical – issues that arise when war takes the form of civil conflict between ethnic or other identity groups came tragically to the foreground in three crises of the 1990s: the Rwandan genocide of 1994; the war in Bosnia from 1992 to 1995; and the war in Kosovo from 1998 to 1999. The conflicts in Bosnia and Kosovo involved competing claims to particular territories by different ethnic/religious groups,[65] whereas the Rwandan massacre was an outgrowth of a civil

---

[64] For well-known discussions of issues of noncombatant immunity (including, in Walzer's case, an analysis of noncombatant immunity during guerilla warfare), see Walzer, *Just and Unjust Wars*, Chs. 9-11, and Ramsey, *The Just War*, 156ff.

[65] As Robert Jackson shows, there was disagreement in international discussions about intervention in Bosnia as to whether that conflict was a civil war or a case of aggression against the sovereign state of Bosnia by Serbian and Croat forces. Jackson, *The Global Covenant: Human Conduct in a World of States* (Oxford: Oxford University Press, 2003), 273-74. Kosovo, on the other hand, did not have as strong a claim as Bosnia, under international law and the political conditions of the time, to independent statehood, so although Kosovar forces desired an independent state, NATO's justification for intervention cited the Genocide Convention and, in general, relied more on humanitarian arguments than on the argument that

conflict along ethnic lines, within the boundaries of a single nation-state. The Rwandan genocide, and the war crimes and ethnic cleansing in Bosnia and Kosovo, undoubtedly "outraged the conscience of mankind," to use the language of the UDHR, once the extent of their horrors became known. Yet under the political, legal, and ethical categories available to scholars and policy makers at the time, there seemed to be no good solution to the question of what outsiders should do in the case of a horrific civil war or intrastate genocide. It was far from clear, even after much debate, whether outside forces could rightly intervene to stop such acts. Especially thorny were debates over whether single states or groups of states could rightly become involved, if the United Nations Security Council either determined that intervention was not warranted, failed to bring together a coalition of powers to intervene (warranted or not), or was simply ineffective.

Thus, arguments over humanitarian intervention intensified, in just war literature and policy debates more generally. The tug-of-war between respect for state sovereignty and a commitment to human rights grew ever more contentious. Proponents of intervention had to deal with the fact that international law, in the form of the U.N. Charter, prohibits states from using military force against each other absent an attack on their own sovereignty or a Security Council resolution. Furthermore, there was strong reluctance to bless the incursions of one or more nations into the territory and internal affairs of another, for four main ethical-political reasons.

First, respect for the self-determination and territorial integrity of nation-states plays a crucial role in maintaining good international order. Under normal circumstances, when states show respect for each other's territorial integrity and self-

---

the (at the time) Federal Republic of Yugoslavia was committing illegal aggression. Jackson, *The Global Covenant*, 28587.

determination, it strengthens the bonds of trust between them and better upholds the rights of the people within them – rights to their chosen form of government and to their way of life, without meddling from outsiders. Ideally, states engage in international affairs by building ongoing relationships of trust with each other, for instance undertaking trade, joint projects, and diplomacy. The ties they build with great care can be torn apart the moment one state attempts to influence the internal affairs of another. This can prove true even if the meddling does not involve military force; consider the chilling of relations between the United States and Germany after the 2013 National Security Agency leaks made known the extent of the U.S.'s surveillance of German authorities and communications.[66] And of course relations can be even further strained when one country uses force against or inside another country, as the tension in Pakistan regarding U.S. drone attacks demonstrates.[67] A stable international community, composed of states able to come together to make plans for mutual benefit or to assist communities that are stricken by famine or disaster, plays a necessary – and significant – role in human flourishing worldwide. To weaken trust between states weakens the stability of that community, and interference with others' affairs – be it ever so well-intentioned – makes it that much more difficult to seek global justice and peace by working cooperatively in the future.

Secondly, thinkers who are committed to equality and the political freedom of persons also recognize that states which try to control other states' internal affairs are, for one thing, denying those states' citizens the right to choose their own form of government, leaders, and way of life. Rawls, applying his "original position" argument

---

[66] For one media report on the surveillance and fallout after the 2013 leaks, see Alison Smale, "Germany Begins Inquiry of U.S. in Surveillance Case," *New York Times*, 4 June 2014.
[67] Again, for one media report, see Riaz Khan, "Officials: US Drone Strike Kills 11 in NW Pakistan," *Associated Press* (ABC News), 19 July 2014.

to relations between (ideally) equal states, writes that "one consequence of [the] equality of nations is the principle of self-determination, the right of a people to settle its own affairs without the intervention of foreign powers."[68] The citizens of any one nation must have as much freedom to make determinations about their political way of life as the citizens of any other. In an essay on the American occupation of Iraq in *Arguing about War*, Walzer cautions that those who plan for war, especially its aftermath, must ground their policies in the moral commitments that arise out of democratic political theory, including "self-determination, popular legitimacy, civil rights, and the idea of a common good."[69] Again here, the people of any given nation have the knowledge and the right to envision the common good they seek and to set up (or elect, or allow to remain in place) the kind of government that will help them achieve their aims. Even further, for Walzer (going back to *Just and Unjust Wars*), the self-determination of the people of a particular state is such an important good that in some instances it can trump even a well-meant desire to help individuals gain other kinds of political freedoms within their polities. For instance, powerful nations should not decide to attack even a dictatorship or authoritarian regime *simply* because it is authoritarian, as long as the regime is not committing extreme violations of freedom or rights.[70] In other words, self-determination is too important a good to be lightly cast aside, even in an instance where a population does not have its full civil and political

---

[68] Rawls, *Theory of Justice*, 332.
[69] Walzer, *Arguing about War* (New Haven: Yale Nota Bene, 2005), 164. The essay cited is "Just and Unjust Occupations" (2003), 162-68. I emphasize that his argument is from 2003 because it is certainly the case that arguments about self-determination, and in general regarding moral questions of humanitarian intervention, continue even after the advent of R2P. Arguments of this sort stretch into the past as well – Walzer himself discusses self-determination and the limits of intervention, through analysis of the work of John Stuart Mill, in *Just and Unjust Wars*, 86-90.
[70] Walzer, *Just and Unjust Wars*, 89-90.

rights as outlined in United Nations treaties.[71] Only in extreme cases may self-determination be subordinated to other concerns.

Third and perhaps most worrisomely, especially from the perspective of those whose political freedom has too often been infringed upon by outsiders, the "good intentions" of powerful, wealthy states who are "just looking out for" those in other states can have a distasteful flavor of colonialism. As noted above, powerful nations have not been shy about using their military and economic power to influence, or even outright invade, other states, whether in the ancient period, the modern, or even during the Cold War, when most leaders at least paid lip service to the idea that commitment to the self-determination of states should most strongly influence decisions about the use of force. The less powerful states of the world rightly worry that if they give an inch on the idea that other states (or even the "international community," on which powerful states have, arguably, disproportionate influence) ought sometimes to have a hand in their affairs, then they will invite a return to the bad old days, when colonial powers too often used the "good of the people" excuse as a thin cover for conquest and exploitation. Diplomats from states whose people had experienced colonization firsthand certainly raised this worry in debates leading up to the development of R2P. At the roundtable convened in Cairo during discussions leading up to the ICISS report, for example, "reservations were expressed about use of the term 'humanitarian intervention,'" noting the term "is regarded sceptically in most Third World countries. It has brought back bad memories from the colonial era, when Western colonialism was portrayed as a sort

---

[71] Most obviously, in the *International Covenant on Civil and Political Rights*. United Nations General Assembly, *International Covenant on Civil and Political Rights*, New York, 16 December 1966, United Nations Treaty Series, v. 999, p. 171. Accessed July 2014, http://www.refworld.org/docid/3ae6b3aa0.html.

of humanitarian effort."[72] Participants in the roundtable in Santiago, Chile, discussed similar concerns related particularly to the United Sates, citing "the region's direct experience with past US military interventions that claimed to have been aimed at protecting democracy" as a reason the world must show caution before blessing the use of military force with supposedly good intentions.[73] Robert Jackson picks up on these concerns when he notes that the twentieth century came to define *consent* as the primary (perhaps only) justification for military intervention by one state in another's internal affairs, due precisely to the historical experience of many Asian and African countries of colonial rule by European governments, without consent.[74]

Fourth and finally, there is the question of legality. Humanitarian intervention not authorized by the Security Council appears to be illegal under the terms of the U.N. Charter. Some scholars do argue that there may be a shift in the way the Charter has been interpreted, such that humanitarian intervention authorized by single states or groups of them *might* be thought to be allowable under international law in very specific cases. Ian Hurd asserts that even in 2011, six years after the adoption of R2P, the question remains open. He argues that while the letter of the law indicates that any intervention not authorized by the Security Council is illegal, state practice seems to alter the way we interpret international law – and, he says, rightly so, or at least not inappropriately. For Hurd, it may be possible to consider humanitarian intervention legal, in some cases, if we understand international law to be a resource used by states in an ongoing dialogue about appropriate international actions, rather than as a measuring

---

[72] ICISS, *Regional Roundtable Consultation with Nongovernmental and Other Interested Organizations*, 21 May 2001, 2.
[73] ICISS, *Regional Roundtable Consultation with Nongovernmental and Other Interested Organizations*, 4 May 2001, 5.
[74] Robert Jackson, *The Global Covenant*, 253.

stick to decide who is on the right side of the law and who on the wrong.[75] Finnemore adds that "the balance seems to have shifted since the end of the cold war, and humanitarian claims now frequently trump sovereignty claims."[76] Still, the language of international law on the whole discourages individual states or groups of them from taking military intervention into their own hands. Without action by the Security Council, intervention remains illegal, or questionably legal, even under the most generous interpretations of international law.

Given all these concerns, some scholars of international affairs argue that single states, or even groups of states, must never, or almost never, intervene with military force in the affairs of other states. Jackson grants a bit more leeway to arguments for intervention in the case of Bosnia than that of Kosovo, but he concludes his discussion of humanitarian intervention by arguing that when a potential humanitarian intervention threatens good relations in the international community, the humanitarian concern must be subordinated to concerns for peace and harmony, particularly among the powerful nations of the world. Peace and security between states are of utmost importance in any case, but Jackson argues that to avoid conflict and loss of cooperation between the "great powers" is actually to adhere in the strongest way possible to humanitarian concerns. "Humanitarian values are never under greater threat than when states get involved in wars and international peace and security are placed in jeopardy. War is the biggest threat to human rights. War between the great powers is the biggest humanitarian threat of all."[77] Since any intervention, for a purpose other than to repel aggression by one state upon another, has the potential to jeopardize peace *between*

---

[75] Ian Hurd, "Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World," *Ethics & International Affairs* 25.3 (2011): 293-313.
[76] Finnemore, *The Purpose of Intervention*, 79.
[77] Jackson, *The Global Covenant*, 291.

states, Jackson thinks that humanitarian crises *within* states must, on the whole, be tolerated as the lesser of two evils. Even at the level of the Security Council, which may authorize intervention, the intent behind any decision must be the highest level of peace and security between states; as Jackson remarks, "the role of the Security Council has not conventionally been understood as one of defending human rights," but instead, of "safeguarding international peace and security."[78]

The vast majority of just war thinkers, however, argue that an option for humanitarian intervention must be built into our ethical thinking about issues of rights and conflict, even if the number of ethically permissible humanitarian interventions is in practice quite small. Most also argue that intervention can be morally right in some circumstances even without the blessing of the U.N. Security Council. Walzer writes that massive human rights violations – not simply "the common brutalities of authoritarian politics," but oppressive and violent acts which truly shock the conscience – do, morally, merit intervention, by military means if necessary. And when genocide or ethnic cleansing is ongoing, Walzer thinks the use of military force is in fact likely to be necessary; at that point, the time for sanctions and pressure has passed.[79] Walzer turns to the cases he calls "the most successful interventions in the last thirty years" to argue that unilateral interventions can be morally permissible and that there are times when intervention ought to be undertaken even if the Security Council does not authorize it. The cases he lists are Vietnam's intervention in Cambodia, India's in East Pakistan/Bangladesh, and Tanzania's in Uganda. From a moral viewpoint, he argues,

---

[78] Jackson, *The Global Covenant*, 262.

[79] Michael Walzer, "The Argument about Humanitarian Intervention," *Dissent* 49.1 (2002): 29-37, p. 30. Walzer makes a similar argument in *Just and Unjust Wars*, 90, where he names terrible violations of rights as justification for "unilateral suspension" of the "ban on boundary crossings." Walzer discusses questions of humanitarian intervention at greater length, and with more explicitly articulated support for interventions to protect human rights, in the new "Preface to the Fourth Edition" (2006), x, xvi-xviii.

these examples represented "horrifying acts that should have been stopped and agents who succeeded, more or less, in stopping them." [80] The U.N. Security Council, or General Assembly for that matter, would almost certainly have rejected proposals for these interventions. Yet when rights are violated as they were in Cambodia, in Bangladesh, and in Uganda, Walzer argues that there is at least an "imperfect duty" to intervene to stop the violations.[81] That is to say, *someone* ought to step in, even though we may not be able to pinpoint one entity on whom the duty clearly falls. It does not make as much of a difference as many often claim, Walzer thinks, whether the intervention is multilateral or unilateral.[82]

Other scholars agree with Walzer that there can, indeed, be a "right" to engage in humanitarian intervention, and some go farther to claim that there is a strict duty. James Turner Johnson supports the idea that humanitarian intervention may at times be required to uphold the common good of humankind, even though he does not believe that contemporary discourses about rights and even R2P provide the best foundation for this argument.[83] James Pattison, writing in the *Journal of Military Ethics*, accepts that humanitarian intervention can be the morally appropriate response to egregious rights violations and seeks ways to overcome the problem of an imperfect duty to intervene by assigning that duty to particular international actors.[84] All, or very nearly all, just war thinkers agree that there can come a point at which the protection of human beings against serious oppression, violence, and/or rights violations justifies war. That is, protection does, at some point or other, trump other concerns, including Jackson's

---

[80] Walzer, "Humanitarian Intervention," 31.
[81] Walzer, "Humanitarian Intervention," 32.
[82] Walzer, "Humanitarian Intervention," 32-33.
[83] James Turner Johnson, "Religion, Violence, and Human Rights: Protection of Human Rights as Justification for the Use of Armed Force," *Journal of Religious Ethics* 41.1 (2013): 1-14, see especially 9, 12.
[84] James Pattison, "Whose Responsibility to Protect? The Duties of Humanitarian Intervention," *Journal of Military Ethics* 7.4 (2008): 262-83.

worry about peace and security between states. If, as some just war thinkers say, intervention is even at times a *duty*, this would be all the more true.

Humanitarian Intervention as a Positive Duty?

But the idea of humanitarian intervention as a "duty" has proved to be yet another sticking point, as we saw in the discussion of imperfect duties above. It may be that serious rights violations justify an act of war – that the U.N. Security Council, in particular, and possibly single states or groups of them, can point to terrible crimes against humanity as a *casus belli*. But not every action that can be justified as morally appropriate is a positive duty. It was not clear, especially in the cases of Bosnia and Kosovo (and others too numerous to name – Somalia, for instance, and Sudan in the early-to-mid 2000s, to bring up just two; I will discuss the case of Rwanda in a moment) whether even the Security Council actually had a *duty* to authorize military intervention.

Based on current interpretations of international law, there is not an obvious legal duty to intervene militarily in any situation that is confined within the borders of a sovereign nation-state, with the important exception of genocide. The Genocide Convention of 1948 does set a precedent by stating that the world's nations recognize not only a right, but a duty, to prevent the particular crime of genocide, with the nations of the U.N. General Assembly committing to "undertake to prevent and punish" genocide.[85] This is one reason why the case of Rwanda ought not to be considered such a "hard case" as those of Bosnia or Kosovo. Because what happened in Rwanda was

[85] United Nations General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, New York, 9 December 1948, *United Nations Treaty Series*, v. 78, p. 277. The cited quotation can be found in Article I of the treaty, on p. 280 of the Treaty Series.

indeed a genocide, as world leaders have belatedly acknowledged,[86] the question was not whether there was both a moral and a legal duty to intervene (there was), but how to muster the political will to convince powerful nations to act. However, even the Genocide Convention lacks detail regarding precisely *whose* duty it is to prevent genocide in a given case and how that duty might be fulfilled. Nor does it address ethnic cleansing or other crimes that have given rise to debates over issues of duty among commentatorss and policy makers. It is fair to say that international law provides for an explicit, written duty to intervene[87] only in the case of genocide, and even there, the details are fuzzy.

But when we come to *moral* evaluation of circumstances that might give rise to a duty to act, including to use military force, thinkers are divided. Many interpreters of the just war tradition argue that there is a duty to intervene in cases of widespread and egregious human rights violations of any kind. Walzer and Johnson, as mentioned, believe that some egregious cases of rights violations do give rise to such a duty. Jean Bethke Elshtain is well-known for her arguments that the world – often the United States in particular – has a duty to fight back against human rights violations (as well as certain other crimes, like terrorism). She writes, for instance, that "in recent years,

---

[86] See Kofi Annan's statement of regret over failing to stop genocide in Rwanda, in remarks given at the Memorial Conference on the Rwanda Genocide, United Nations Press Release SG/SM/9223, AFR/870, H/631, 26 March 2004, accessed August 2014, http://www.un.org/News/Press/docs/2004/sgsm9223.doc.htm. See also former U.S. President Bill Clinton's expressed regret over failing to send more troops, earlier, to stop the genocide, at http://www.cnbc.com/id/100546207 among other places (accessed August 12, 2014). I have not been able to find an instance in which Clinton himself uses the word "genocide" to describe the massacres in Rwanda, which may be significant given that his administration famously used the phrase "acts of genocide" to describe the killing as it was ongoing, in order to avoid taking responsibility for stopping it. However, the American media now describes the event as a "genocide," including in connection with Clinton's remarks of regret.

[87] I emphasize the "written" qualification because many scholars distinguish between international law as written into treaties and customary international law, which depends upon unwritten (or at least not written into treaties) but widespread agreements among nations regarding their rights and duties. Many just war norms fall into the category of customary international law, and in this project I deal as much or more with customary law as with written treaty law.

stopping brutality and arbitrary violence…has become both a strategic necessity and a moral requirement of the highest priority."[88] And intuitively, when people across the world – whether citizens, policy makers, activists, or scholars – hear about violence like that in Rwanda, in Kosovo, or more recently in Syria and Iraq and Ukraine, we generally think, "Something has to be done. *Someone* ought to do *something*."

On the other hand, we have already seen that some scholars think there is no moral duty for states or the international community to intervene within the borders of a sovereign state (with, perhaps, an exception in the case of genocide, if one thinks that the legal agreements set forth in the Genocide Convention give rise to moral duties). A thinker like Jackson, who believes there is no right to engage in humanitarian intervention, surely also believes there is no duty. Jean Porter, writing from a theological perspective, makes similar claims for similar reasons. She argues that nations, or the international community, should "almost never" intervene in the affairs of other nations for humanitarian or policing purposes, since such interventions often do more harm than good and tend to strain both the parameters of international law and relations between nations. Porter hedges a bit about the possibility that there might be a "clear *casus belli*" that could justify or necessitate an intervention, but she seems still to be talking about traditional justifications for war – aggression, egregious breaches of international law – or humanitarian interventions *if* authorized by the U.N. Security Council and conducted strictly within the bounds of international law.[89] At the very least, we may say that both these thinkers believe there can hardly ever be a duty to go

---

[88] Jean Bethke Elshtain, "Responsibility of Nations," 64. Elshtain's post-2001 work on just war questions has been criticized for its relatively uncritical support for the 2003 U.S. invasion of Iraq, but her work on the moral underpinnings and particularly her concern for the religious (Christian) foundations of just war thinking remains important for contemporary just war thought generally, and for Christian thought about war in particular.

[89] Jean Porter, *Ministers of the Law: A Natural Law Theory of Legal Authority* (Grand Rapids, Mich: Wm. B. Eerdmans Pub. Co., 2010), 304-05.

to war for humanitarian purposes. That other moral claims – claims about the moral necessity to promote good faith between nations and respect for state sovereignty – can trump humanitarian ones indicates that for some thinkers, even quite serious humanitarian claims do not give rise to an unconditional duty to act.

Furthermore, even if we were to agree with Walzer, Johnson, and others that there is a moral duty to intervene when things get very bad, there remains the question of *whose* duty it is.[90] The letter of international law would indicate that only the United Nations Security Council can ever assume a duty to authorize intervention if massive violations are occurring,[91] but as we have seen with Rwanda and now with Syria, the Security Council is notoriously divided and slow to act. The question becomes whether, morally, the duty to act devolves to a state or states (or, in any case, to *some* other actor) in the absence of Security Council action. Walzer is well aware that this question must be addressed, and he entertains the idea that the duty to intervene in a humanitarian crisis may be an "imperfect duty" – someone is responsible, but we can't say exactly who. But, for Walzer, that either means that the international community should create a process to assign duty, or, more likely, that the "perfect duty" to intervene should simply fall on whoever is able to intervene most successfully.[92] Walzer appears to think that the duty to intervene can fall to the U.N. *or* to any state or group of them, and he is not so interested in parsing the nuances of allocating duty as in defending the actions of

---

[90] Questions about obligations of rights protection are rampant in the human rights literature in general. They go back to the drafting of the Universal Declaration of Human Rights; for a chronicle of many of the discussions that took place during that process, see Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001). In scholarly literature on "human rights" or the "rights of man," discussions of whether there is a duty to protect rights and, if so, whose duty it is, can be found in thinkers from Edmund Burke, to Hannah Arendt, up through the writings of Henry Shue and others. Burke, *Reflections on the Revolution in France*, ed. Frank M. Turner (New Haven: Yale University Press, 2003). Arendt, *The Origins of Totalitarianism* (San Diego/New York/London: Harcourt, Inc., 1985), cf. pp. 296-302. Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, NJ: Princeton University Press, 1996).

[91] See again the U.N. Charter, Art. 39 and 42, and U.N. Charter, Art. 2, para. 4.

[92] Walzer, "Humanitarian Intervention," 32.

those who do step in when rights violations occur.[93] Elshtain's thinking falls along these lines as well, though she more explicitly names the United States as the actor who most often can intervene successfully and therefore should intervene – that is, the actor who acquires a perfect duty to step in because it is most able. She sees no reason that the U.S., with "both the means to enforce international justice as an equal regard norm and a strong motive to do so," should not be bound by the moral imperative to combat terrible crimes worldwide, alone if necessary, even if others ought also to take their share of responsibility.[94]

Pattison's work is perhaps most interesting here, as he looks for criteria by which responsibility for humanitarian intervention, and particularly for rights protection under R2P, could be assigned. He acknowledges that most agree that the United Nations Security Council is considered the proper body to *authorize* interventions, but argues that this is simply a procedural rule; it does not give us any substantive moral or legal foundation for choosing one national, regional, or international body over another to shoulder the responsibility. After considering the role of special relationships in giving rise to duties (the state/entity with the most responsibility for a crisis intervenes; the state/entity with a special bond to those suffering in a crisis intervenes) and the possibility of institutionalizing duty by assigning it to some particular body in all cases, Pattison argues that when the cause of intervention itself is justified, the most feasible way we can assign duty and make sure it is fulfilled is simply by making an intervention the duty of whichever intervener is most likely to be effective.[95] I do not take up his arguments and possible objections to them at

---

[93] Walzer, "Humanitarian Intervention," 32.
[94] Elsthain, "Responsibility of Nations," 71.
[95] Pattison, "Whose Responsibility to Protect?," 262ff.

length here, and others might disagree with his conclusions; I simply want to show that thinkers recognize the problem of "whose duty" and have attempted to find ways to show who, exactly, ought to intervene to stop egregious rights violations. Pattison, for one, is trying to find a way that the duty to intervene can become, instead of an imperfect duty, a "perfect duty" clearly assigned to some actor. Not surprisingly, of course, such attempts have not resolved the problem. Analysts and policy makers still argue over who has a duty to respond to human rights violations, and even if there is some agreement that the U.N. Security Council is the best respondent, the questions of who actually sends in the troops, and of what to do when the Security Council fails, remain.

As I have argued, just war thinking has its roots in historical conceptions – often, though not always, religiously grounded – of the duties sovereigns have toward their own and possibly other populations. Contemporary just war theorists, including Walzer as well as several others,[96] have sought to show when political authorities have the obligation to go to war by positing the protection of rights as a moral duty. One of Walzer's major purposes in *Just and Unjust Wars* is to find ways that states can conduct war so as best to honor individual rights, given his assumption that "states exist to defend the rights of their members" alongside the reality that the defense of community rights, through war, itself often violates the rights of individuals.[97] For the just war tradition as a pluralistic moral tradition (which, I would argue, is its appropriate contemporary form), there seems to be no better ethical foundation for the norms and criteria that ought to guide warfare than a deep commitment to human rights. Human

[96] See, for instance, Orend's *The Morality of War* as well as Jeff McMahan, *Killing in War* (New York: Oxford University Press, 2009).
[97] Walzer, *Just and Unjust Wars*, 136-37.

rights language and norms are the closest our world has to a *ius gentium* to which all nations can commit,[98] and the laws of war do and ought to find their foundation in the international *ius gentium*, wherever else they may also find it. R2P here contributes to the development of just war thinking by shoring up the idea that all political authorities ought to take, at least, responsibility for rights protection, thus raising the question of whether there is an *obligation* to protect, at least if we are fully committed to the duty to uphold rights. Yet human rights as a possible foundation for moral thought about war also suffer from a "duty problem." If we cannot, more generally, demonstrate that particular actors have duties to uphold human rights by whatever means are most applicable, then we cannot ground a specific duty to use force to protect rights in the broader obligation to uphold rights by any and all means. The debate over whether rights and obligations can be fully coordinated rages on.[99]

Beyond Humanitarian Intervention: The Development of R2P

Kofi Annan concisely summarized and addressed concerns about sovereignty, humanitarian impulses, rights, and duty when he asked in his "Millennium Report" of 2000, "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, a Srebrenica – to gross and systematic violations of rights that offend every precept of our common humanity?"[100] Responding to

---

[98] For one helpful discussion of human rights as a *ius gentium*, arguing that human rights concepts do not have a metaphysical foundation of their own but intersect with and in a way rely on the metaphysical foundationalism of the majority of the world's population's deepest-held beliefs, see John Witte, Jr. and M. Christian Green, "Religious Freedom, Democracy, and International Human Rights," *Emory International Law Review* 23.2 (2009): 583-608, pp. 589-90.

[99] For examples of thinkers who seek to theorize connections between rights and the obligations of specific actors, not specifically related to the use of force, see the work of Thomas Pogge and Henry Shue.

[100] The Secretary-General, *We the Peoples: The Role of the United Nations in the 21st Century (Millennium Report of the Secretary-General)*, Ch. 4, at 48, delivered to the General Assembly (3 April 2000) UN Doc No A/54/2000, accessed July 2014, www.un.org/millennium/sg/report/full.htm.

Annan's question, the Canadian government created the International Commission on Intervention and State Sovereignty, tasked with studying the issue and producing a report. The ICISS and its 2001 report are by now quite well known among policy makers and those interested in human rights practice and thought. The Commission was inaugurated on September 14, 2000, with the stated purpose of "foster[ing] global political consensus on how to move from polemics, and often paralysis, towards action within the international system, particularly through the United Nations….It was hoped that ICISS would be able to find new ways of reconciling the seemingly irreconcilable notions of intervention and state sovereignty."[101] In the course of producing their December 2001 report, the Commission members held five full meetings, alongside eleven regional roundtables and national consultations.[102] The Commission also sponsored research into previous debates and discussions hosted by the U.N. and other institutions, and it solicited papers and studies expressly commissioned to assist Commission members' reflection and discussion.[103]

It is important to note that the Commission's roundtable discussions were held all over the globe, and that diverse groups of policy-makers and citizens were invited to each. Leaders of nonprofits and community groups, journalists, and members of the judiciary attended alongside scholars and diplomats. The Commission was quite intentional about this, stating that it intended "that our work process should be transparent, inclusive, and global."[104] The Report continues, "Particular emphasis was placed on the need to ensure that views of affected populations were heard and taken into account, in addition to the views of governments, intergovernmental and non-

[101] ICISS, Background Materials, "How the Commission Worked," 1.
[102] "How the Commission Worked," 2-3.
[103] "How the Commission Worked," 4.
[104] ICISS, 2.

governmental organizations (NGOs), and civil society representatives. The Commission was strongly committed from the outset to consulting as widely as possible around the world."[105] With diversity among the roundtable attendees in both nationality and occupation, the Commission was certainly exposed to many of the worries that people still have about R2P today: that so-called "humanitarian" intervention is simply a nice word for an illegal and immoral breach of sovereignty[106]; that intervention is unevenly and hypocritically undertaken[107]; that it threatens to re-introduce colonialism[108]; and that any attempt to prevent human rights violations must look to the deep roots of conflict, in poverty, exploitation, and other social ills.[109] Still, despite the attempt to incorporate a wide variety of perspectives, those who participated in the roundtables tended to be leaders of organizations or in relatively elite positions of power, and the ratio of men to women at the roundtable discussions was quite high.

The ICISS report drew together the ideas aired within the Commission's meetings, roundtables, and research. Not surprisingly, the report takes protection of human rights, at least against egregious abuses, to be the most fundamental commitment upon which its ethical and policy prescriptions are based. However, the report does not simply lay out the bare question of state sovereignty vs. human rights and choose a side. Instead, it attempts to move past arguments over whether human rights or state sovereignty "trump" the other, by defining sovereignty itself in terms of responsibility for the protection of human rights. To have sovereignty, the report argues, is to have the responsibility to protect the rights of the population over whom one is sovereign. Primary responsibility for protecting human rights of a state's

---

[105] ICISS, 2-3.
[106] ICISS Regional Roundtables and Consultations, "Bejing," 14 June 2001.
[107] Regional Roundtables, "Cairo," 21 May 2001, and "Bejing."
[108] Regional Roundtables, "Geneva," 31 January 2001, and "Cairo."
[109] Regional Roundtables, "Maputo," 10 March 2001.

population thus falls to the state itself, with the international community taking secondary responsibility should a state be unwilling or unable to protect its population.[110]

One consequence of defining sovereignty in such as way as to include responsibility for rights protection is that concern for rights protection may, under specific circumstances, override respect for certain commonly-recognized sovereign rights – most especially a state's right to freedom from forceful intervention from the outside. The ICISS states, "Where a population is suffering serious harm…and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect."[111] Under R2P, the commitment to protect human rights is understood as a crucial element of sovereignty, and human rights protection is so important that even a political community's rights to self-determination and territorial integrity can be overridden when human rights are violated in terrible ways.

In such cases, the ICISS tasks the "international community" with doing what it takes to protect rights. By my count, the ICISS report uses the phrase "international community" forty-six times. It uses the term expansively and intentionally does not equate the international community with the U.N., with all nations of the world acting in agreement, or with some other specific political institution or configuration. While the U.N. has a significant role to play in expressing the moral concerns of the international community and especially in authorizing any use of military force, the report operates with a broad conception of the cooperation and customary moral agreement among the nations of the world that drives the development of moral norms

[110] ICISS, XI.
[111] ICISS, XI.

and their implementation. The "international community," broadly understood, must understand the ethical issues at stake in rights protection,[112] and that community, as a whole, bears the responsibility for protecting rights if states fail in their responsibility.[113]

In practice, of course, responsibility needs to be specified, and the ICISS report names and evaluates the United Nations as the institution that does, or at least should, most meaningfully represent the international community when it comes to rights protection. In particular, the U.N. Security Council should and must take responsibility for determining whether the use of military force is justified and for authorizing its use, in cases where extreme and ongoing rights violations seem at least potentially to justify the use of force. The "responsibility of the Security Council, under Article 24 of the UN Charter, for the maintenance of international peace and security" is one of the foundations of R2P according to the ICISS, as is "the developing practice of states, regional organizations and the Security Council itself." [114] The ICISS makes a calculated refusal to look much beyond the Security Council in search of political authorities who might properly authorize the justified use of force, stating that its task is "not to find alternatives to the Security Council as a source of authority, but to make it work much better than it has."[115] While the report calls upon the U.N. General Assembly to affirm

---

[112] For instance, see ICISS, VII, IX, and 1.
[113] Again for examples of this line of thought, see ICISS 1, 2, and 5.
[114] ICISS, XI.
[115] ICISS, 69. On pages 53-55 of their report, ICISS lays out possibilities for action should the Security Council fail to authorize intervention in a truly conscience-shocking situation: the U.N. General Assembly may convene an Emergency Special Session to debate the issue, and if the General Assembly indicates overwhelming concern that action be taken, it may goad the Security Council into action. Regional organizations may also play a role (though this possibility comes with its own set of issues), or an ad hoc coalition of states or even an individual state may take matters into their own hands. ICISS warns, however, that action on the part of one or a few states which legitimately addresses egregious human rights concerns runs the risk of threatening international order by bypassing the Security Council. This could lead to interventions which, though possibly well-intended, fail to meet appropriate criteria for the use of force, or to diminished "stature and credibility" for the U.N. if single states are thought to have

R2P as an international norm and to specify, conceptually, both the threshold at which violations justify invocation of R2P and criteria for the use of force, the Security Council is envisioned as *authorizing* the use of force. Thus, the report asks the Security Council members to reach agreement on a specific set of guidelines to which they will adhere when military intervention for the purpose of rights protection is debated. It furthermore asks (pleads with, we might even say) the Permanent Five members of the Security Council to find a way to agree not to use their veto power to block resolutions authorizing military force to protect human rights, when there is otherwise majority support for such resolutions and when their vital state interests are not involved.[116] Here, the ICISS recognizes that even if it has achieved some kind of conceptual clarity regarding human rights protection, the world – and especially the U.N. – must improve its political will and cooperation if rights are to be better protected in practice. And while the report does express optimism,[117] the Commission seems not at all certain that the Security Council, in particular, will step up to lay aside narrow considerations of national interest and to have genuine conversations about the use of force in extreme situations. The problem is still with us today.

The ICISS report does help bring clarity to international dialogue regarding the rules and guidelines that should govern the decision to use force. The report does not explicitly acknowledge its indebtedness to the just war tradition, yet the criteria it sets out directly mirror the criteria for the use of force found the contemporary just war

---

fulfilled a moral duty that the U.N. refused to take on (ICISS, 55). Even as the report discusses possible non-Security Council means of authorizing (or at least undertaking) force to protect human rights, its focus is on warning the Security Council that it must follow the moral imperative of rights protection, or risk delegitimization. In short, the appropriate authoritative body remains the Security Council.

[116] ICISS, 75. I believe we can assume that the term "vital state interests" here refers to concerns about the survival of the state itself – not simply protection of a trading partner or ideologically friendly ally.

[117] ICISS, 75.

tradition. The opening synopsis of the report includes "Principles for Military Intervention,"[118] which are as follows:

- Just cause, here identified as "large scale loss of life" or "large scale ethnic cleansing"
- Right intention, understood as "halt[ing] or avert[ing] human suffering"
- Last resort
- Proportional means
- Reasonable prospect of success
- Right authority, understood as the U.N. Security Council, with the warnings and caveats indicated above

The "operational principles" for use of force do not quite so explicitly use the same wording as commonly agreed-upon *jus in bello* principles, but they can be understood as specifications of those principles: forces must have clear objectives; involved partners must have a common military approach and well-understood chain of command; interveners must accept limitations on what they can and cannot do, given that their only objective should be protection of people; rules of engagement should be clear, reflect the "operational concept" and the principle of proportionality, and adhere to international law; protection of intervening forces may not be the principle objective; and coordination with humanitarian organizations must be as complete as possible.[119] Other than the last, all of the criteria in this list deal with issues of proportionality or of discrimination between combatants and noncombatants. The concern for cooperating with humanitarian organizations may reflect the humanitarian impulses of R2P, but it also arguably reflects the desire to work with such organizations to minimize or repair damage to civilian populations, which again falls under the goals of discrimination and proportionality.

---

[118] ICISS, XII.
[119] ICISS, XIII.

But the report of the ICISS goes far beyond discussion of how and when military intervention is conducted. In fact, it argues that the use of military force is *not* the fundamental concern of Responsibility to Protect. Protection of human rights *is* the fundamental concern, and the report divides R2P into three primary responsibilities: to prevent rights violations, to react to them, and to rebuild after they occur.[120] The section of the report entitled "The Responsibility to Prevent" is placed prior to the other two, and though this may reflect a simple chronological choice – surely preventive activities would take place before reactive or rebuilding activities, if they were necessary – it also reflects a commitment to the primary importance of preventing rights violations. The Commission writes, "The need to do much better on prevention, and to exhaust prevention options before rushing to embrace intervention, were constantly recurring themes in our worldwide consultations, and ones which we wholeheartedly endorse."[121]

Furthermore, "prevention" does not mean only last-minute diplomatic scrambling when a conflict or act of violence is clearly on the horizon. Prevention certainly may, at times, entail work to forestall a clearly foreseeable conflict, but as the ICISS report says, "A firm national commitment to ensuring fair treatment and fair opportunities for all citizens provides a solid basis for conflict prevention."[122] Beyond that, the international community ought to provide "development assistance and other efforts to help address the root cause of potential conflict"; help to "advance good governance, human rights, or the rule of law"; and other measures that lead to social stability and the promotion of human rights. The report continually emphasizes the

---

[120] ICISS, XI.
[121] ICISS, 19.
[122] ICISS, 19.

importance of addressing both immediate triggers of conflict *and* root causes that underlie it.[123] It chastises the powers of the world for spending billions of dollars on warmaking and reaction to conflict while too often paying mere lip service to prevention, and it calls for greater political will – and more money – devoted to development as well as early warning mechanisms, which the authors claim will lead to cost savings in the long run as conflicts are prevented.[124]

After ICISS: R2P at the 2005 World Summit and Beyond

The United Nations General Assembly agreed to debate R2P in the course of its 2005 World Summit meeting. R2P, as a global moral norm, was eventually accepted by the General Assembly and adopted by means of the World Summit Outcome Document. It receives only three paragraphs in that document, and the description of what R2P entails is in some ways more and in some ways less specific in the World Summit document than it is in the ICISS report. As Edward Luck points out in a 2013 speech to a conference of Christian peace ethicists and activists, the ICISS report does not take a firm stand on precisely which acts of egregious human rights violation will trigger action based on R2P, whereas the nations of the General Assembly did think it necessary to name these acts: genocide, ethnic cleansing, war crimes, and crimes against humanity.[125] The World Summit articulated more clearly what sorts of violations states and the international community should undertake to prevent or stop, as well as what

[123] ICISS, 19.
[124] ICISS, 19-20.
[125] Edward Luck, "The Underestimated Strength of Civil Prevention – Taking Forward the Responsibility to Protect," in *Protecting People – and Losing Just Peace? Debates on the Responsibility to Protect in the Context of Christian Peace Ethics*, ed. Ines-Jacqueline Werkner and Dirk Rademacher (Lit Verlag GmbH & Co. KG Wien, 2013), 129.

circumstances might trigger a military response authorized by the Security Council if no other recourse were available.

On the other hand, only so much will fit into three paragraphs (one of them a single sentence), and so the World Summit document is much less clear than the ICISS report on how the international community might assist states in protecting their populations' rights; what sorts of circumstances are most likely to lead to conflict and rights violations; and the likely problems and debates that the norm has and will run into as states protect their national interests even while trying (we hope) to uphold human rights. Most significantly, and Luck points this out as well, the ICISS report draws heavily upon just war principles as guiding norms for any possible military action, while the World Summit document does not go beyond indicating that the Security Council is tasked with authorizing collective action in accordance with the U.N. Charter should coercive action be required. Luck argues that the Security Council is intended to be a political body, not one that creates or even "enforces international law per se"[126]; its mandate is tied directly to the provisions of that U.N. Charter. Thus, Luck does not think it is appropriate for the General Assembly, or anyone else, to include restrictions on the Security Council's use of force beyond those set out in the Charter. The ICISS report, on the other hand, has, in Luck's words, "a lot of language…about Just War doctrine"[127] (though Luck does not mention that the ICISS report never actually uses the term "just war"). Luck also argues that leaving rules for military action out of the World Summit document is another sign that the General

[126] Luck, 130.
[127] Luck, 130.

Assembly understands R2P to be focused on rights protection by many means, not exclusively or most importantly by military force.[128]

This is all understandable when we talk about what the U.N. can or cannot say in its official documents, but a just-war analysis of R2P still provides a crucial evaluation and critique of the norm (and vice versa). This is first because R2P does sometimes involve the use of military force, and even more importantly because it integrates the possibility of the use of force into a framework of thought about how the root causes of rights violations can be addressed, which is a crucial move for both R2P and the just war tradition. Secondly, we do need some set of rules for whether force is appropriate and how it may be ethically used, and the just war tradition provides such a set.[129] Nor should an appeal to the just war tradition lead us to believe that there are no options other than the use of military force for protecting human rights. I have and will continue to argue that R2P helps to expand our view of the just war tradition, including the possibility of thinking about just war in ways that go beyond attention to the immediate use of force. Even leaving that argument aside, however, the criterion of "last resort" and the well-established understanding that there are sanctions, diplomacy, and use of force short of war[130] demonstrate that just war thought is in no way blind to the fact that measures other than war can and often should be used to address conflict or potential conflict.

---

[128] Luck, 130.

[129] As I try to emphasize throughout, this is not to say that just war is not an evolving tradition; it is, and hence I name it as a "tradition" rather than a theory or an unchanging list of rules. I believe and hope that just war thinking benefits from ongoing debate and conversations among the cultures and religions of the world. But when decisions must be made in the moment about the use of force, policy makers must work with the criteria they have, and just war thinking offers the most widely-accepted and morally appropriate set of criteria governing the use of force at a given time. More on that in the next chapter.

[130] For a discussion of force short of war in particular, see Daniel Brunstetter and Megan Braun, "From *Jus ad Bellum* to *Jus ad Vim*: Recalibrating our Understanding of the Moral Use of Force," *Ethics & International Affairs* 27.1 (2013): 87-106. The article references Walzer's "Preface to the Fourth Edition" of *Just and Unjust Wars*, xiii-xviii, where Walzer examines the difference between war and forceful measures short of war.

The World Summit Outcome Document and ICISS report likewise differ slightly in the way they discuss the Security Council as the body with the authority to approve the use of military force, if force becomes necessary to protect rights. The ICISS report calls upon the Security Council to make decisions about the use of force based on moral principles, not on narrow motivations of self-interest. It leaves some small window of possibility open to the idea that some other body than the Security Council might act in a clear case of egregious rights violations – but it warns the Security Council not to let this happen through narrow-minded votes (especially vetoes from the Permanent Five), lest it lose its moral authority. The World Summit document does not take up the troublesome question of what to do if the Security Council clearly fails to act appropriately based on R2P, instead pledging to take collective action "through the Security Council" and "in accordance with the Charter" should peaceful means prove inadequate against large-scale rights violations. The General Assembly also acknowledges that each state bears responsibility for protecting its population from the violations listed and pledges to help states exercise this responsibility as needed.[131] So R2P has entered into international documents in a way that relies on the well-functioning (at least the moderate functioning) of the U.N., particularly the Security Council. This is not surprising, but it means that some of the most troubling moral questions about humanitarian intervention – namely, those having to do with U.N. authorization and concerns about unilateralism and multilateralism – remain a concern for R2P, should the General Assembly and especially the Security Council fail to act in accordance with the U.N. Charter, the World Summit Outcome Document, and the

[131] World Summit, 30.

general moral sense that crimes such as genocide and ethnic cleansing must not be ignored.

Post-2005, it has not been all smooth sailing for R2P, though the norm has generally been reaffirmed each time it has been discussed at the international level. It was debated, and largely endorsed, by the U.N. General Assembly in 2009 based on U.N. Secretary-General Ban Ki-Moon's statement "Implementing the Responsibility to Protect," which focused on prevention, building states' capacities for protection, and international cooperation much more than on the use of force.[132] Ban continued to release reports on R2P through 2014,[133] and the U.N. General Assembly has held dialogues each year with reference to these reports. At this point R2P is well-established as an international norm, especially given its relative newness. It has inspired conversation, if not always action, on the specific responsibilities of states and other political and diplomatic organizations when it comes to massive rights violations.

The question remains whether R2P has made a difference in the way the world prevents, responds to, or rebuilds after such violations. The unconvincing appeal to humanitarian concerns by the architects of the 2003 Iraq War only bolstered the

---

[132] See Alex Bellamy, "The Responsibility to Protect – Five Years On," *Ethics & International Affairs* 24.2 (2010): 143-69. Ban Ki-Moon's statement is here: U.N. General Assembly, *Implementing the Responsibility to Protect: Report of the Secretary-General*, 12 January 2009, A/63/677, accessed August 2014, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/63/677.

[133] These reports can be found at the following links. 2010: U.N. General Assembly, *Early Warning, Assessment, and the Responsibility to Protect: Report of the Secretary-General*, 14 July 2010, A/64/864, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/64/864; 2011: U.N. General Assembly, *The Role of Regional and Subregional Arrangements in Implementing the Responsibility to Protect: Report of the Secretary-General*, 28 June 2011, A/65/877, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/65/877; 2012: U.N. General Assembly, *Responsibility to Protect: Timely and Decisive Response: Report of the Secretary-General*, 25 July 2012, A/66/874, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/874; 2013: U.N. General Assembly, *Responsibility to Protect: State Responsibility and Prevention: Report of the Secretary-General*, 9 July 2013, A/67/929, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/929; 2014: U.N. General Assembly, *Fulfilling Our Collective Responsibility: International Assistance and the Responsibility to Protect: Report of the Secretary-General*, 11 July 2014, A/68/947, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/68/947&referer=/english/&Lang=E. All links accessed September 2014.

arguments of those who see in R2P – or in any use of coercive force for humanitarian purposes – a power grab on the part of wealthy and powerful nations. Many thought that the humanitarian crisis in Darfur showed that R2P fails to spur action to address ongoing rights violations, though Alex Bellamy, for one, pushes back against the critiques.[134] R2P was first cited in a Security Council resolution in 2011, when Resolution 1973 authorized the creation of a no-fly zone and the use of force to protect civilians threatened by Muammar Gaddafi's forces during the civil war in Libya. Some argue that in the Libya case R2P succeeded in preventing mass violations of human rights,[135] but other commentators have responded either that the intervention in Libya failed to protect civilians appropriately, or that it demonstrates how R2P tends to encourage a morally black-and-white mindset in its supporters, who fail to grasp the moral messiness of civil war, in which no party is wholly innocent.[136] A less-publicized appeal to R2P was made in the aftermath of disputed elections in Kenya in 2007, and supporters of R2P have pointed to this case as one in which preventive measures actually did prevent some rights violations. Though thousands were killed or displaced after the elections, an international diplomatic operation involving U.N. leaders as well

---

[134] Bellamy, "R2P Five Years On," 153. He argues both that the Security Council did respond to the crisis with targeted sanctions and others measures short of the use of force and that use of force in the case of Darfur might have derailed a peace process and negatively affected other crises in the region.

[135] For an analysis of Resolution 1973 and the impact it had on thought about R2P, see Bellamy, "Libya and the Responsibility to Protect: The Exception and the Norm," *Ethics & International Affairs* 25.3 (2011): 263-69.

[136] See Patricia de Vries, "Just War: The Naiveté of 'Responsibility to Protect,'" in the blog of *World Policy*, May 24, 2012, accessed September 2014, http://www.worldpolicy.org/blog/2012/05/24/just-war-naivet%C3%A9-responsibility-protect. To my mind, de Vries is simply wrong to accuse R2P supporters or policy makers who appeal to R2P of naiveté. She argues that the influence of "realpolitik" on military interventions, including those authorized by appeal to R2P, should be recognized, but this recognition is already heavily present in R2P literature and discussions of policy. However, her description of ethical concerns during the conflict in Libya helpfully details possible objections to the way that force was used by outside powers during that conflict. I will say more about de Vries's concerns in the next chapter.

as Kenyan political leaders may have helped forestall greater violence.[137] On the other hand, actions in this case were limited to diplomacy, and diplomats had consent for their involvement from the host state. It is not clear that harsher measures would have been used had diplomacy failed.[138]

In short, as Bellamy notes, R2P's influence on humanitarian efforts – of whatever kind – since 2005 has been "patchy" at best.[139] It may have played a role, for some actors, in the decision of the United States in 2014 to attack the so-called "Islamic State"[140] when its violence threatened members of the Yazidi minority religious group in Iraq with death by starvation. R2P has certainly been invoked in discussions of the attack,[141] and the use of limited force to rescue civilians in immediate danger is in some sense a paradigmatic example of R2P's effectiveness as a norm to guide international action. As we well know, however, the deadly march of the Islamic State and the turmoil in both Iraq and Syria continue, and it is not clear whether or how R2P can be effectively invoked to find a workable solution to the conflicts as a whole.

---

[137] In Kenya, Ban Ki-Moon and his Special Adviser for Prevention of Genocide, Francis Deng, impressed upon Kenyan leaders the importance of their responsibility to their citizens and stressed that they would be held accountable by the international community, and a power-sharing agreement was reached.
[138] Bellamy, "R2P Five Years On," 154-55.
[139] Bellamy, "R2P Five Years On," 155.
[140] I use the term "Islamic State" rather than the more commonly used acronym ISIS, short for the Islamic State of Iraq and Syria, or the somewhat less commonly used ISIL, the Islamic State of Iraq and the Levant. This is because many Muslims, and others, have deep reservations about or often take great offense to the idea that the group calling itself ISIS represents anything like an Islamic state. I will not here undertake to parse arguments about what makes for an Islamic state and whether such a state exists or is possible (to address that debate would require an entire book and more!), but I use quotation marks to suggest that the use of the term "Islamic State" to refer to this group is extremely problematic, at best.
[141] See, among others, "Leader: we have a responsibility to protect the Yazidis of Iraq," *New Statesman*, 14 August 2014, http://www.newstatesman.com/politics/2014/08/leader-we-have-responsibility-protect-yazidis-iraq; Corrie Hulse, "The 'Responsibility to Protect' Is Buried in Iraq," *Foreign Policy in Focus*, 1 August 2014, http://fpif.org/r2p-iraq/ , which argues that invocations of R2P are all but ineffective in the case of Iraq because of the misuse of R2P in regards to the 2003 Iraq War; and Bellamy's article in *Global Observatory*, "Aiding Iraqis Meets Responsibility to Protect and Could Lead to Common Ground on Syria," 11 August 2014, http://theglobalobservatory.org/analysis/799-aiding-iraq-responsibility-to-protect-common-ground-syria.html. All articles accessed September 2014.

But these concerns are precisely why it is so crucial that scholars, policy makers, diplomats, and others recognize R2P as an extension of the just war tradition. Clearly, just war thinking has not kept war – or war crimes – from happening, yet it offers principles through which the use of force in a complex situation can be evaluated. R2P is not only about war, but when violent conflict does happen – in Iraq, in Libya, in Syria – just war thinking provides a framework for judging the actions that nations and the international community take. For instance, the argument that the United States's decision to go to war in Iraq in 2003 was not ethically sound can be articulated using just war criteria: the war was not fought for a just cause, nor was it a last resort. R2P provided one moral foundation for the argument that Gaddafi's forces had to be stopped in 2011, but just war considerations can (and could have in the moment) provide specific guidance regarding which forces could rightly have been targeted and how far the nations which attacked Gaddafi's forces could rightly press their attack. Edward Luck is correct that under the U.N. Charter, the Security Council is not strictly bound to the rules of the just war tradition, yet the Security Council, and any policy makers who contemplate the use of force, do best to make their decisions according to some relatively detailed, refined, and agreed-upon set of rules. The just war tradition is unparalleled in providing such a set of rules, and R2P fits into the tradition in that it provides clarification of what it means to have a just cause – and perhaps a right intention – for the use of force, while depending for its own ethically sound application on the tradition's long history of judging acts of war.

Chapter Two
How Just War Thinking Answers R2P Questions

R2P and the Just War Tradition

As we have seen, Responsibility to Protect draws upon the just war tradition of thought in several important ways. Though R2P does not focus solely or even primarily on the use of military force, it does lay out moral principles governing the use of force when that use is needed to protect human rights. By accepting the R2P-related responsibilities laid out in the World Summit document, including the responsibility of working through the Security Council to respond with force, as necessary, in extreme cases of egregious human rights violations, the nations of the U.N. have agreed to consider genocide, ethnic cleansing, war crimes, and crimes against humanity as just causes for war. Interpreters of R2P should continue to take into account its indebtedness to just war, and diplomats and leaders who make decisions related to R2P should draw from just war thought to guide debates and decisions about the possible use of military force to respond to R2P-related violations of human rights.

Just War and Debates over R2P-Triggered Uses of Military Force

Responsibility to Protect and just war thinking, placed in mutual critique, point scholarly and policy debates toward properly ethical ways to defend human rights and make judgments about the justice of a given resort to force. Analysts have seized upon the ICISS report's indebtedness to just war thought as a locus of exploration,[142] and it

[142] For examples of such scholarship, see Michael Walzer, "What is the Responsibility to Protect?" *Dissent* blog, 20 September 2013, accessed June 2014, http://www.dissentmagazine.org/blog/what-is-the-responsibility-to-protect; Henrik Friberg-Fernros, "Allies in Tension: Identifying and Bridging the Rift

seems clear that R2P will continue to be treated as deeply related to the just war tradition – certainly in scholarship, and likely also in international policy debate. This is all to the good; R2P *should* be considered an extension of the just war tradition in the contemporary era. It is a move within just war thought and not a break from it. Even recognizing that the just war tradition encompasses multiple ways of conceptualizing the foundations of just war criteria and which criteria are morally salient, R2P is compatible with all strands of mainstream contemporary just war thinking. Like just war, it locates the use of military force in a broader analysis of justice within and between nations; it provides moral guidance for both the resort to force and the conduct of war; and it is built upon concern for the inalienable dignity of all human beings – dignity which, when threatened, needs defending, sometimes by force. R2P changes, or expands, contemporary criteria for determining the justice of a particular war only in the sense that it resolves certain aspects of debates over humanitarian intervention by clarifying that the protection of human rights can, in very specific circumstances, serve as a just cause to go to war. In this chapter I will draw upon just war principles and criteria to address some of the most common arguments against and questions about the use of military force to achieve R2P-related goals.

Debates naturally arise whenever the world confronts a case of genocide, ethnic cleansing, war crimes, and/or crimes against humanity: should military force be used? By whom and how? Will it do more harm than good? How can we decide? A turn to Responsibility to Protect alone cannot give us definitive answers to all these questions in every instance; it can only tell us that either a state or the international community has a responsibility to react to human rights violations in some way. Still, recognition

---

between R2P and Just War," *Journal of Military Ethics* 10.3 (Sep. 2011): 160-73; and Luck's "Underestimated Strength of Civil Prevention."

that Responsibility to Protect provides a framework for understanding human rights protection as a legitimate just cause for the use of military force, in combination with application of the moral criteria of the just war tradition, can improve ethical clarity and help to guide action in many cases where we might otherwise throw up our hands and either rush headlong into war or approach it too cautiously.

Recalling the discrepancies between the ICISS report and the World Summit document, with the ICISS appealing implicitly but very clearly to just war thinking and the World Summit saying nothing about it, it is helpful to look more closely at how R2P and just war thinking relate to each other, and in particular whether they can be brought together to mutual benefit. I have not yet seen a book-length, systematic treatment of the relationship between R2P and just war, but thinkers who do examine their connection differ on the question of whether the two complement and/or even enrich each other.[143] Since I will argue that they do both, I will first consider Henrik Friberg-Fernros's argument that currently we cannot justify bringing R2P and just war together, analytically, for mutual enrichment. Though Friberg-Fernros is sympathetic to the idea that just war and R2P *should* be considered in tandem, he argues that they are currently in "tension" with each other and need reconciliation if we hope to understand R2P as somehow part of just war thought. Specifically, Friberg-Fernros sees R2P as incorporating a *duty* to protect when rights are violated egregiously, whereas just war thought never imposes a duty, dealing only with *permission* to go to

---

[143] Though Carlo Focarelli thinks the relationship between just war and R2P remains ambiguous, he remarks that "it is almost commonplace to observe" that the criteria to govern military action in response to R2P-related rights violations "reflect faithfully enough those elaborated upon by the Christian theological tradition of just war." Focarelli, "The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine," *Journal of Conflict and Security Law* 13.2 (2008): 191-213, p. 197. Elshtain writes that because early formulations of just war thought (e.g. in the work of Augustine) allowed for preventing harm to the innocent as justifiable reasons to use force, R2P does clearly connect to the just war tradition. Elshtain, "Terrorism, Regime Change, and Just War: Reflections on Michael Walzer," *Journal of Military Ethics* 6.2 (2007): 131-37, p. 137.

war. He therefore argues that R2P is too stringent in the obligations it imposes, whereas just war thought is too permissive.[144]

While Friberg-Fernros is certainly right that R2P and just war are not identical and do not impose exactly the same kinds of permissions and/or duties, his analysis divides the two too strongly. I hasten to note that he makes his arguments in service of finding a way to "bridge" the two, indicating that he thinks R2P and just war *should* say more to each other – so my critique of his argument is that the two already *do* have a lot to say to each other, enough that R2P can indeed be considered an extension of just war thinking. Friberg-Fernros's argument fails to show as great a "rift" between R2P and just war as he claims, because R2P is neither as strict, nor just war thought as permissive, as he understands them to be. First, Friberg-Fernros draws almost exclusively from the ICISS report when he argues that R2P sets forth a "duty" to intervene in cases of terrible rights violations. He is correct in his claim that the ICISS report provides a more comprehensive set of principles and rules to govern the application of R2P than does the World Summit Outcome document and that "the content of the ICISS report is still very relevant to the general discussion about R2P."[145] Nevertheless, for better or worse, R2P on the world political stage is governed by the World Summit document, which posits no obvious "duty" to protect, only a right. Friberg-Fernros to an extent acknowledges this, but it does not appear to make much of an impact on his argument, even though it seems to be a crucial point.

Furthermore, it does not do full justice to the just war tradition to claim that its principles are only ever permissive and not obligatory. There is certainly a way to use just war criteria simply to answer the question, "is this plan to go to war permitted?"

---

[144] Friberg-Fernros, 164-67.
[145] Friberg-Fernros, 163.

But the tradition of just war thought at the very least includes, and is in some ways indebted to, a host of norms under which political authorities are indeed obliged to protect the innocent and/or to uphold the common good of one or more political communities. Any of these norms may be subject to debate, but all influence both historical and contemporary thinking about war. Friberg-Fernros touches on this heritage but dismisses it by claiming that the connection between just war thought and ideas of duties to protect "has been made in a specifically Christian context" or, if it extends beyond Christian thought, is only used by natural law thinkers.[146] This claim does not withstand scrutiny. If nothing else, Walzer's work on humanitarian intervention would seem to contradict it. With Walzer, we have a case of an enormously influential just war thinker who locates his work within neither the Christian nor the natural-law tradition, yet who thinks there can be a duty to go to war to protect people who are threatened.[147] It is also simply not as possible as Friberg-Fernros seems to think to separate just war thinking into its "Christian" and "not Christian" elements. We cannot erase the conceptual history of the just war tradition, and as the existence of R2P itself demonstrates, our political and ethical conversations about war clearly continue to incorporate *some* sort of notion that those in authority need to protect people, even outside their own political communities, whose lives and well-being are threatened.

So I take the relationship between R2P and just war to be one that is sometimes fraught, certainly in need of parsing and continued debate, but nevertheless extremely close. R2P draws on and extends the moral concern, found throughout the history of

---

[146] Friberg-Fernros, 166.

[147] See, for instance, "Humanitarian Intervention." Like much of Walzer's work, the article is less than completely systematic, but note p. 32 on which he writes, "I am inclined to say that intervention [in the case of massive rights violations] is more than a right and more than an imperfect duty." Walzer does not make such a strong claim in the body of *Just and Unjust Wars*, but his "Preface to the Fourth Edition" comes close, saying that "there surely should have been" a military intervention to stop the Rwandan genocide of 1994. Walzer, *Just and Unjust Wars (Fourth Edition)*, x.

just war thought, that human lives (and by the end of the 20th century, specifically also human rights as articulated in the U.N. Charter and Universal Declaration of Human Rights) must be protected, and that the good of political communities ought to be upheld. If we consider its relationship to the use of military force (leaving aside, for now, issues of prevention of rights violations and the questions about global justice that come alongside them), we can make the simple enough statement that R2P provides those who hold political authority in our contemporary world with an agreement on one set of just causes for war: if human rights are being violated through genocide, ethnic cleansing, war crimes, or crimes against humanity, then the "just cause" threshold has been met, and discernment may proceed as to whether the other criteria of just war are likewise met, or not.

How Just War Thinking Helps in Applying R2P

Reading Responsibility to Protect as an extension of just war thought is helpful in multiple ways, some of which I elaborate upon in other chapters. Here I will focus on the usefulness of just war principles to provide guidance for the application of R2P in particular cases. When debates over an R2P-triggered use of military force arise, contemporary just war thinking provides a well-articulated and widely agreed-upon set of ethical norms that do, or ought to, clarify the moral concerns involved and assist policy makers in coming to considered judgments about difficult situations.

It remains important that the World Summit Outcome Document does not mention just war criteria. It is the World Summit Outcome document which governs international debate and action on R2P, and there is certainly no legal obligation for world leaders to invoke these criteria when discussing the use of force to protect rights.

However, although I criticized Friberg-Fernros for focusing too single-mindedly on the ICISS report, that report, and just war principles, do remain significant for *moral* debates over R2P, which are as much a part of international diplomacy as legal or practical debates. And the World Summit document is brief and vague enough that in concrete cases of rights violations, we must look back to the ICISS report as well as to political and ethical scholarship in order to have a meaningful conversation about proper moral responses. My argument is not that R2P, as articulated at the U.N. level, explicitly incorporates just war criteria, but that debate over the use of military force to react to and stop rights violations *ought* to draw explicitly on just war criteria, despite their absence from the World Summit document.

However, just as Friberg-Fernros critiques the connection between the moral demands of R2P and the just war tradition, other supporters of R2P argue that just war criteria, specifically, ought not to be incorporated into the norm. Alex Bellamy, for instance, argues against the incorporation of criteria for military intervention (that is, criteria of any kind – just war or otherwise) into U.N.-level diplomatic debates over R2P.[148] His work seeks to check the ambitions of some R2P supporters who want the norm to be more than it is, especially as it relates to the U.N. Charter and the Security Council. Specifically, he emphasizes that R2P does not amend or circumvent anything in the Charter, nor does it constrain the Security Council any more or less than the Charter and other U.N. agreements do. As Bellamy puts it,

> R2P does *not* set out criteria for the use of force, suggest that there are 'just causes that justify the use of force beyond the two exemptions of the U.N. Charter', offer pathways for intervention not authorized by the Security Council, amend the way the Council does business, apply more widely than to the four specific crimes [named in the World Summit Outcome Document], or promise intervention in every case.[149]

---

[148] Alex Bellamy, "The Responsibility to Protect and the Problem of Military Intervention," *International Affairs* 84.4 (2008): 615-39.
[149] Bellamy, "Problem of Military Intervention," 624.

The ICISS report, he says, does some of these things,[150] but R2P as it actually exists on the world scene does not.

In my view, Bellamy is absolutely right to insist that R2P, in the form adopted by the 2005 World Summit, does not include criteria for intervention, and moreover that any attempt to incorporate such criteria into an updated international agreement on R2P would fail.[151] The World Summit agreement upholds the status quo set by important international treaties: it does not modify either the U.N. Charter or the power and processes of the Security Council. Furthermore, it contains language which, far from spelling out specific criteria for action, is quite abstracted from the moral and practical judgments that must be made in any specific case of rights violations.

When those specific cases do arise, however, political leaders who wish to act ethically must base their decisions on some sort of moral foundation or set of agreements. If Friberg-Fernros focuses too much on the ICISS report, Bellamy perhaps focuses too strongly on the World Summit and defers too much to written international agreements on R2P, problematically leaving aside the moral claims that might influence debate over its application in particular cases. That is, there can be more and less ethically sound ways of acting on the responsibilities that states and the international community have agreed to take on under R2P. I am arguing that just war criteria, as they are articulated in the most widely-accepted contemporary thought on the justice of war, are the best ethical foundation upon which to make judgments about a possible, or

---

[150] Bellamy, "Problem of Military Intervention," 625.

[151] See Bellamy, "Problem of Military Intervention," 626, for his discussion of why criteria for intervention were opposed, in discussions leading up to the 2005 World Summit, by Security Council members including the U.S., Russia, and China. The U.S. worried that criteria would "limit its freedom of action"; Russia and China (and quite a few others) "feared that criteria might be used to circumvent the Council." There is no reason to think that powerful states will cease to bring up these sorts of reservations in any further discussions of R2P, or that they will cease to argue against inclusion of criteria in global agreements about R2P.

proposed, military intervention. Just war criteria do not need to be built into the World Summit Outcome Document to be used in moral decision-making about whether and how the international community ought to bring military force to bear on a situation of genocide, ethnic cleansing, war crimes, or crimes against humanity.

To put it another way, criteria for intervention may not ever be spelled out in international agreements about Responsibility to Protect. However, if they are not used for guidance at moments when the international community must make decisions about how to protect basic human rights using military force, then we face serious problems in coming to even roughly morally-sound agreements on how to act in such cases. If just war criteria are not the ones used, then we might look to another set of criteria, but I am not sure what those would be – no other set of criteria governing the use of force is so widely recognized. Policy makers and diplomats might and do bring to the table their own unique moral values and systems, and these certainly ought to be respected and honored, but to reach agreement on action the international community needs to find *some* starting point for dialogue about the differences and similarities in their moral values. In debates over military intervention, just war criteria would seem to be the best place to start. As a final alternative, we could simply accept that policy makers and diplomats will make decisions about the use of force with reference to national and/or self-interest alone, but most commentators (and most people) find this unacceptable, instead insisting that we continue to hold dialogue about moral norms and to hold political leaders to such norms. Certainly this is the stance of nearly all U.N. leaders, as well as those who, like Bellamy and many other thinkers, care deeply about R2P and its influence on global moral dialogue.

I argue, then, that as a *moral* norm, Responsibility to Protect ought to be read as an extension of just war thinking. As such, when R2P is invoked to justify the use of force, authorities who make decisions about how force should be used ought to begin with just war criteria as a guide for debate and decision-making. Bellamy is right that the international community will likely never come to agree on just war (or any other) criteria, in the sense that those criteria will never be incorporated into official documents on R2P. However, the criteria still provide useful guidance, and ought to be used, in debates among policy makers over how best to act morally when human rights are violated in terrible ways and military force seems to be the only feasible way of stopping the violations.

Just Cause and R2P: Human Rights Protection as a Reason to Use Military Force

If we take Responsibility to Protect as an extension of just war thinking, the first and simplest way to understand the relationship between R2P and just war criteria is to view R2P as a discursive framework that expands, or perhaps more accurately specifies, our understanding of what counts as "just cause" to go to war. The agreement that four specific types of rights violations, if committed or unchecked by a nation-state, can give rise at least to a *right* to use military force, clarifies that human rights protection (in certain particular circumstances) does function as a just cause in our day and age.

To take just a couple of examples, it seems clear that in R2P terms, there was just cause behind the summer 2014 campaign against the so-called "Islamic State," based on its genocidal intentions toward Yazidis who had been driven out of villages and cities and were under siege on Mount Sinjar, on the border of Iraq and Syria. That is not to say that all other just war criteria were adhered to in that campaign (though the justice

of the campaign has not been subject to much debate, at least in U.S. media and commentary), and it is certainly arguable that under a strict interpretation of international law, the U.S. and other forces involved in the campaign needed further authorization from the Security Council to take the steps they did (though again, there have not been many complaints about the use of force in this case). But the adoption of R2P as an international norm means that when one group threatens or carries out genocide or ethnic cleansing against another, a military campaign like the one undertaken against the "Islamic State" is at least morally permissible.

On the other hand, the restriction of R2P-related action to situations of genocide, ethnic cleansing, war crimes, and crimes against humanity means that the U.N. member nations who adopted R2P have agreed that lesser abuses do not, for better or worse, give rise to a just cause for war. One reason many analysts say the 2003 U.S. invasion of Iraq was unjustified is that as abusive as Saddam Hussein's regime undoubtedly was, none of these particular abuses was clearly happening in 2003 when the U.S. attacked. Ethnic cleansing and war crimes may have taken place in previous years, but the U.S. does not appear to have had a just cause for war at the time it invaded, at least under R2P standards.[152]

In one sense these examples simply show how R2P helps move just war thinking forward by specifying what counts as a just cause (not the only possible just cause, since states certainly retain the right to fight back if attacked). But to argue that the protection of human rights, under the framework of R2P, counts as a "just cause" for war also serves to embed R2P in the just war tradition. It then becomes subject to

[152] I will not here discuss other possible justifications for the 2003 war in Iraq – suffice it to say that I agree with most commentators that there was not a clear just cause for war, related to either security or humanitarian concerns. My point is simply to show that R2P clarifies what serves as a just cause for war, whether in a given situation that just cause exists or not. Hussein's abuses did not, in 2003, clearly rise to the level of R2P-related crimes, so just cause would need to be found elsewhere, if at all.

critique from that tradition even as it adds to our understanding of it. Considering R2P in this way, as embedded in the tradition of ethical thinking about war, allows us to turn to that tradition for guidance when it appears that military force might be needed to protect human rights under the rubric of R2P. That is to say, when we understand R2P as an extension of just war thinking, we have a basis for evaluating R2P-related military actions in terms of the broader set of just war criteria, as elaborated below.

Is R2P Just Another Cover for Imperialism?

One of the most important objections to the development and application of R2P is what I call the "neo-colonialist" or "neo-imperialist" objection: that R2P provides a cover for powerful, usually Western states to meddle in the affairs of less-powerful states by claiming humanitarian intentions. I have discussed this objection in the previous chapter and it is a serious one: powerful states *have*, frequently, cited "humanitarian" concerns when they embark on programs of colonialism, backed up by military force.[153] Less-powerful states are right to worry about this, as political and social leaders of previously colonized states made clear in conversations leading up to the development of R2P. On the one hand, it is not obvious that R2P truly makes a difference in behavior in this matter: powerful states are likely to try to assert their will and interests using whatever sort of justification is available, and if R2P were not available, some other justification would be tried. On the other hand, it does seem that since R2P has been explicitly adopted as a global moral norm, invoking it could put an especially troubling "moral" veneer on actions which claim humanitarianism but are in fact self-interested and not particularly humanitarian at all. Russia's attempt to claim

[153] See again Finnemore, especially 67.

R2P-related motivations when it engaged with Georgian troops over the territory of South Ossetia in 2008 comes to mind, as do the supposed "humanitarian" justifications for the U.S. war in Iraq in 2003, although the U.S. did not directly invoke R2P in its statements about Iraq.

Such concerns are exactly why just war thinking is so necessary when evaluating the possible use of military force to protect human rights. Agreement to abide by just war criteria can place constraints on states which would use force to influence the affairs of other states, including when the claimed "just cause" for war is a humanitarian one. As a thought experiment, let us say that the wealthy, Western state of United Provinces claims that the ruling regime of the developing state of Zaharistan, which has been embroiled in sometimes-violent conflict between the regime and rebels who are attempting to gain greater political power, is committing crimes of ethnic cleansing. United Provinces argues that under R2P, the United Nations has the right to authorize the use of military force against the government of Zaharistan, and it uses its power and influence to push the Security Council to craft a resolution to this end. Should the Security Council fail to agree on such a resolution, United Provinces insinuates that it may take matters into its own hands and intervene in the conflict in Zaharistan, because ethnic cleansing is too great a human rights violation to be ignored. The government of Zaharistan, meanwhile, and diplomats from multiple other states, argue that United Provinces is not at all concerned with ethnic cleansing: instead, its goal is to overthrow the governing regime in order to "assist" in setting up a government which will be friendly in its trade agreements with United Provinces.

How can the debate be resolved? The first question to be addressed is simply empirical: whether ethnic cleansing really is going on. If this is not clear, however, or if

ethnic cleansing truly is happening and yet it is not clear that United Provinces' plan for intervention is going to ameliorate the situation (for anyone but United Provinces, perhaps), then in addition to the legal arguments that make up a large portion of any debate over intervention, just war thinking gives us a firmer grounding than we would otherwise have upon which to base a moral debate over whether intervention is right.

Policy makers and others who are concerned may start by asking: is there a just cause for a military intervention here? Again, under R2P this becomes something of an empirical question, assuming that United Provinces is accusing Zaharistan of genocide, ethnic cleansing, war crimes, or crimes against humanity. If some other just cause is alleged, then we are out of the realm of R2P, though just war criteria will still provide a moral foundation for argument. It is the responsibility of the United Nations and its member states to determine whether, in this hypothetical case, ethnic cleansing really is happening. If it is, then the U.N. does have a just cause for authorizing military intervention.

But a just cause may still be used by United Provinces as a cover for taking a leading role in overthrowing or intimidating the ruling regime of Zaharistan in order to gain more favorable treatment. So we must take into account further criteria for intervention. Who is the proper authority to determine whether an intervention is justified? I will devote the next two chapters to issues of authority and sovereign responsibility, so let me say here only that this question is complicated and deserves attention both in ongoing and rigorous discussion and on a case by case basis. Under the U.N. Charter, the United Nations Security Council is the most proper body to authorize an intervention. If the Security Council can come to agreement on whether military intervention is justified or not, then some of the power is taken out of the hands

of United Provinces to act as it pleases, which can help allay fears of a unilateral intervention or one in which United Provinces uses its power to set up a puppet regime. When a state has to work within the boundaries set by the Security Council, its ability to pull strings and exert influence in a neo-colonialist way is at least diminished.

On the other hand, the Security Council is often paralyzed in its response even to clear cases of massive rights violations, and United Provinces might argue that if circumstances are bad enough, it becomes incumbent upon some state or other to act. United Provinces might try to win other nations over to its cause, arguing that a multilateral intervention can help alleviate some concerns about unilateralism even if the Security Council has not authorized intervention. Unless we think that *only* the Security Council can ever properly authorize a military intervention by one or more states against another to protect human rights – which, as we have noted, is a position held by some thinkers[154] – the question of whether United Provinces, or a coalition it has assembled, can rightly authorize intervention must be debated with attention to the particular circumstances of the case. What is important here is that the criterion of "proper authority" forces policy makers, ethically, to *have* these debates: not just anyone (even any state) can declare, in a given case, that it has the authority to make war under the auspices of R2P and proceed to "authorize" an intervention.

We can continue down the line. Does United Provinces, and do any other states which might want to join it in intervening in the conflict in Zaharistan, have a proper intention as they seek to go to war? We may recall that "intention," here, is not

---

[154] See Mary Ellen O'Connell, "The UN, NATO, and International Law after Kosovo," *Human Rights Quarterly* 22.1 (2000): 57-89. O'Connell does recognize that there are weaknesses in the way the Security Council is constituted and operates, and she is open to the idea of Security Council reform. However, she insists that NATO did not have the authority to decide to use force to influence the conflict in Kosovo. She writes that though few have condemned NATO for its actions, its intervention in Kosovo is considered even by supportive commentators to be an exception to the rule – the rule being that only the Security Council can rightly authorize the use of force, except when a state goes to war to defend itself.

precisely the same thing as "motivation." This is an area in which I again quibble with Friberg-Fernros: he seems to believe that "proper intention" is another way of talking about the "right state of mind." If this were true, we would have to parse the state of mind of each of the actors involved in planning an intervention, and the intervention would be vitiated if any one actor did not have the right state of mind.[155] However, in just war thinking, an actor has a "proper intention" if she aims at what she believes to be a just cause and if she believes her actions will eventuate in a just peace. It does not (necessarily) mean that her motivations are wholly pure. An actor may have self-interested reasons for intervening with force in a given context, but if she can rightly anticipate that her intervention will indeed lead to a just peace and a better state of affairs than before, then her "intention" may be proper even if her motivation leaves something to be desired. So it is not an absolute dealbreaker if the government of United Provinces has the hope that intervention in Zaharistan might gain it a friendly, stable trading partner. The question is whether, leaving aside those motivations, an intervention will most probably bring about a better state of affairs than before, and one that includes a relatively just peace. This peace would not be 'just" if the regime installed in Zaharistan turns out to be a puppet of United Provinces, but in that case we may say that the intention itself was not proper, and certainly that the outcome of intervention has turned out poorly. Since we actually cannot parse the motivations of international actors down to the mindset of each individual leader of government, we must evaluate the arguments the relevant actors make as to how, if at all, their actions will lead to a just peace and a better state of affairs than before.

---

[155] Friberg-Fernros, 164.

And similarly with questions of last resort, proportionality, and reasonable prospect of success. Even if an intervention seems to be based on a just cause, those who would plan and execute it must have, and make, a case that military intervention is the only feasible way to stop rights violations. They must show that the foreseeable good to be done through intervention outweighs the foreseeable bad – that the achievable goals of intervention are worth the infringement on a state's sovereignty, the possible increase in violence that intervention may trigger, the risk to soldiers and civilians on all sides of a conflict. And the goals themselves must truly be achievable – an intervener needs to have a clear idea of what a "successful" intervention would accomplish and, roughly speaking, what form it would take, as well as a plan for how to achieve that success. Particular restrictions are placed on intervention under R2P, in that "success" in an R2P case means *only* stopping whatever rights violations are taking place. The intervener must show that all the actions he takes are geared toward that aim: for instance, if regime change is not necessary to stop ethnic cleansing, then United Provinces may not intervene with the goal of regime change (and as time goes on, must resist "mission creep" and stay focused on the goal of stopping ethnic cleansing). All of these criteria for just intervention place restrictions on a would-be intervener, restrictions which allow us to evaluate whether an intervention truly is justified – and, in particular for a case such as the one I have described, whether human rights violations are being used as a cover for a neo-colonialist scheme to gain power or resources at the expense of a less-powerful state and its people.

Is R2P Too Naïve about the Realities of War?

It is not unusual to hear arguments, from many quarters, that R2P is yet another example of a feel-good principle that sounds nice and is vague enough to get approval but does very little good, perhaps even harm, in the messy world of political maneuvering, dirty hands, and conflicts without obvious "good guys" and "bad guys." There certainly is a sense in which *any* ethical principle, especially at an international level, is "naïve," since no such principle will likely ever be followed to the letter. For instance, the very fact that R2P was developed as an attempt to deal with egregious human rights violations demonstrates that rights violations did not suddenly cease with the ratification of the Universal Declaration of Human Rights. All international moral principles are in a sense aspirational, but invocation of just war principles actually gives supporters of R2P a relatively concrete way of addressing the "naïveté" objection. Just war thinking provides more specific ways to guide and evaluate R2P-related action than does a simple invocation of R2P (though I would also argue that the advocates of R2P are quite aware that its invocation is never "simple"), and this allows for a nuanced and realistic approach to situations in which human rights are not being protected.

Patricia de Vries provides a clear and succinct encapsulation of the worry that R2P is too simplistically invoked in a complex world, in a blog post written for the *World Policy Journal* in 2012, interestingly titled "Just War: The Naiveté of Responsibility to Protect."[156] De Vries argues that the World Summit's attempt at clarity, when it named genocide, ethnic cleansing, war crimes, and crimes against humanity as triggers for action under the aegis of R2P, fails to recognize the muddiness of conflict and the influence of propaganda and the media, leading us to believe that

[156] De Vries, "The Naiveté of 'Responsibility to Protect.'"

these sorts of actions (genocide, etc.) are always clearly recognizable. Secondly, de Vries thinks that the distinction R2P tries to draw between "perpetrators" and "civilians" is both too sharp *and* too ambiguous. It is too sharp a distinction in that the same person or group can easily be both civilian and a perpetrator of crimes; it is too ambiguous in that it leaves the determination of who counts as a "civilian to be protected" largely up to the whim of political authorities making politically-motivated decisions (i.e., if we want to help your side of the conflict, you're a civilian; if we don't, you're an armed actor and a perpetrator). Finally, de Vries points to the use of the just war criteria in discussions of R2P to argue that R2P problematically tries to distinguish between "just" wars, where civilians are heroically protected against atrocities, and "grubby" wars, where fault lies on all sides and protection is questionable – although in truth, such "grubby" wars are the only kind that truly exist.

De Vries's concerns are fair in the sense that it is possible to take an overly naïve view of military action that accords with R2P: there is a risk of thinking that R2P somehow makes it easy to determine what is the right action to take, and who are the right actors to support, in an incredibly complex world. To the contrary, conflict is never straightforwardly a matter of "the good guys" versus "the bad guys"; civilians and perpetrators are not always obviously separable; and national interest and realpolitik always play a role in states' decision-making and action. De Vries tries to find a partial solution to these problems by advocating for awareness of the "undemocratic and imbalanced decision-making processes in the [U.N. Security Council]" and recognition of the messiness of conflict and of the problems that arise when military force is used (it can escalate conflict; it can wrongly privilege one side in a civil war or rebellion at the

expense of another, and so on). She argues for Security Council reform, as well as changes to global economic structures that can contribute to conflict.

All of these ideas are good ones, and many analysts will agree that de Vries's suggestions should be heeded. We might recall that the ICISS report on R2P similarly calls for, if not exactly reform, then at least a renewed commitment to collaboration within the Security Council, as well as for the promotion of just economic and political structures.[157] However, de Vries underestimates the extent to which supporters of R2P already recognize and work to deal with the issues she raises, and she especially overlooks how just war thinking already addresses many of her concerns. It is simply incorrect to claim that by bringing just war into moral debates about applying R2P in a given situation of conflict – de Vries takes the conflict in Libya as her example – we move away from recognizing that politics, and especially war, are messy, or that the invocation of just war criteria demonstrates a desire to find some supposedly "pure" realm of thinking about conflict. Just war thinking has been developed precisely *to* recognize the "grubbiness" of war, while crafting a set of moral criteria upon which hard decisions can be based. That is why a proposed military intervention must meet several quite stringent criteria in order to be approved, since going to war always has bad, messy consequences, even when its effects are on the whole good. Just war thinkers argue that war must be governed by clear principles, lest we either take an "anything goes" attitude where all that matters is power, or swear off completely the idea that any good can ever be done using military force.[158] Just war criteria have been developed not

---

[157] See, for instance, ICISS, 19 and 22.

[158] Both of these positions have of course been taken – relatively often – by scholars or by various religious or cultural groups, so this is not to say that they are untenable positions, particularly the pacifist position that says war can never do any good. However, for those who do think there can possibly be moral reasons to go to war, just war thinking helps govern our weighing of those reasons and of the consequences of war.

because there is some perfect and wholly just war that can be fought, but in order to draw *some* lines around what can be done – for instance, genocide may not be committed and whole cities may not be bombed. The criteria help guide decision-makers as they try to make the *most* ethically-sound judgments possible, even under the terrible circumstances of war.

There is no reason to suppose that accepting R2P as an ethical norm necessarily leads us to believe that human rights violations are always clear and straightforwardly recognizable, and thus easy to deal with. Analysts and policy makers are well aware that the question of whether rights violations are actually happening, especially at a level that constitutes a breach of R2P, can be a thorny one. There is a long and storied history of propaganda stemming from each side of a conflict, accusing the other side of crimes including serious human rights violations, and we would be hard pressed to find any instance of conflict in which such propaganda was not used.[159] The empirical question of "what is actually happening" is crucial for just war-related decisions, and it is not always or even often an easy one. The same is true in relation to R2P. Human rights violations cannot be prevented or stopped if we do not know where and whether they are actually happening, and policy makers are tasked with gaining all possible information about a situation before making ethical judgments about how they are to approach it.

---

[159] Thanks to Paul Morrow for a helpful talk on "atrocity propaganda," which provided a systematic review of concerns about such propaganda. Morrow traces scholarly attention to the phenomenon back to the First World War and its immediate aftermath, citing, for example, John Horne and Alan Kramer, *German Atrocities, 1914: A History of Denial* (New Haven, CT: Yale University Press, 2001); Celia Malone Kingsbury, *For Home and Country: World War I Propaganda on the Home Front* (Lincoln, NE: University of Nebraska Press, 2010), Chs. 4 and 5; and David Welch, *Germany, Propaganda and Total War, 1914-1918* (London: The Athlone Press, 2000). Paul Morrow, "Atrocity Propaganda and the Moral Justification of Humanitarian War," unpublished paper.

Meanwhile, it is a truism that politics plays a role in any decision to go to war. Again, this is precisely why just war criteria are needed to inform such decisions. States which intend to make use of military force should have to make the case, to their own citizens and to the international community, that their reasons for using force are in line with criteria which are widely accepted as morally appropriate to govern such decisions. This is true whether or not a state which intends to use force is also influenced by national interest (which surely it will be). A state which disagrees with another's decision to intervene can then make an argument against intervention by pointing out, say, that the first state's intentions are wholly self-interested, or that there is no reasonable prospect of succeeding in bringing about a just peace (which, in hindsight, was at least a reasonable objection to intervention in Libya, even if it might have been overridden by the immediate need to protect the rights of anti-Ghaddafi rebels and civilians in the Benghazi area).

What Counts as Success, and Is There a Reasonable Prospect of It?

Finally, I would like to highlight the criterion of reasonable prospect of success, taken together with considerations of proportionality, as particularly helpful for addressing concerns about the use of force to protect human rights. As I have argued, all of the just war criteria are ethically important in guiding the use of military action under the rubric of R2P, and all ought to be central to debates over possible military intervention in situations of egregious rights violations. But it seems to me that many objections or concerns regarding the possible use of military force to protect human rights can be alleviated if policy makers deciding about the use of force are especially attentive to whether success in a military endeavor to protect rights is possible and

what it will cost, assessing carefully the consequences of using force and the possibility of protecting human rights by other means. There are certainly times when only forceful action can protect rights against R2P-related violations. But calling in the troops has its own dangers, and those who seek justice in war must guard against the possibility that a too-hasty intervention or overreliance on force to solve problems will make things worse for the very people whose rights are supposedly being protected, and possibly for others as well.

Some commentators who object to linking R2P and the use of military force seem to assume that anytime rights violations within the relevant four categories are being committed, R2P gives states or the United Nations blanket permission to go storming in with the troops. Like many others committed to the protection of human rights, I would certainly want to see action taken to uphold rights when they are violated, with military intervention as one possible course of action among others. However, even if R2P imposes or should impose some sort of obligation to act when rights are violated, and to act forcefully in some instances, the World Summit agreement on R2P is very careful only to say that states are "prepared" to act collectively using other than peaceful means ("military force" is not even explicitly mentioned) "on a case-by-case basis." It does not commit to the use of force in any clearly spelled-out set of circumstances.[160] I further argue that where R2P does seem to impose a moral obligation to use force to protect rights, such an obligation ought to hold only insofar as the use of force can be justified under just war criteria. It is perhaps easiest to show that military force is *not* always the answer if we consider that those who would use it ought only to do so when they have a reasonable chance of succeeding

[160] World Summit, paragraph 139.

in their aims and when the good an intervention will do can reasonably be foreseen to outweigh the suffering that accompanies even the most morally sound use of force.

In order to have a reasonable prospect of success, political authorities who advocate for the use of military force must first define what "success" means, and they must ask whether achieving their aims will increase or decrease the suffering of those who fight the war as well as those they seek to protect. Leaders have obligations to develop clear, actionable, and realistic goals, and those goals must be achievable without causing unacceptable pain and suffering, while also meeting the requirements of the rest of the just war criteria. For instance, as I discussed with regard to the hypothetical United Provinces example, regime change is not a just goal of intervention if human rights can be adequately protected in a state without overthrowing its governing regime. Walzer has made this point emphatically in his discussion of humanitarian intervention: a regime that is by its nature murderous, and is currently murdering large groups of people, has to be overthrown in order to protect rights, but regime change is a *consequence* of the commitment to rights protection, not a goal in and of itself.[161] Rights protection, not regime change, provides the cause for war, and "success" of an intervention is understood to be the protection of rights, even if protection does require regime change.

To take a real-world example, two major ethical problems that have consistently faced policy makers grappling with how to react to the ongoing war in Syria – a war that is further complicated and rendered even more horrifying by the presence of the "Islamic State" in the region – are, first, the absence of a clear understanding of what the "success" of any military intervention would look like and, second, the likelihood that

[161] Walzer, *Just and Unjust Wars*, ix-xi. A nearly identical argument appears in Walzer's "Regime Change and Just War," especially pp.103-04, and a very similar one in "Humanitarian Intervention," 34-35.

conducting an all-out intervention in Syria will even further destabilize that country and the surrounding region and will make things worse, not better, for a great number of people. Routing the "Islamic State" and the rebels and allowing the Assad regime to stay in place, unreformed, does not seem likely to lead to a just peace. Nor does striking at the Assad regime in an attempt to remove and replace it, since the likelihood is very high that even more murderous leaders would rise to power in the absence of Assad. There seems to be little hope either of convincing the Assad regime to reform or of installing "moderates" who will uphold human rights and stabilize the country in the highest positions of power. The conflict in Syria clearly contains elements of violence that violate the responsibility to protect: war crimes by the regime and some rebel groups, as well as the threat of genocide on the part of the "Islamic State." Yet even in such a devastating context, the international community does not have a blank check for intervention if it cannot help rebuild the country toward a just peace. Attention to questions of whether a reasonable prospect of success exists, and whether intervention will truly improve the lives of people whose human rights are under attack, clarifies the intuition of many policy makers and commentators that military intervention in Syria would not achieve the goals human rights advocates might hope for. Other methods of protecting rights must therefore be tried.[162] Reference to these just war criteria – prospect of success and proportionality – in debates over the use of force in other, similarly difficult, cases can remind those who advocate for intervention that they must do the work of determining what "success" means, how it can feasibly be achieved, and

[162] This is not to say that the international community is doing an especially good job of trying other methods. For instance, nation-states, including the U.S. and other wealthy states, should be much more proactive in assisting refugees from the Syrian conflict, up to the point of accepting many more refugees than we have yet done for resettlement. The permanent members of the Security Council also ought to work together more closely to find solutions – for instance, engaged diplomacy, further sanctions against groups that offend human rights norms, or both – that best uphold human rights in Syria, but the prospect of better cooperation at the moment seems dim.

whether it is worth the cost. Such an analysis helps guide debates over R2P and military intervention in a more realistic direction – what can the international community actually do? – and pushes policy makers to plan for the future as they consider the possibility of using force to stop human rights violations – how can similar violations be avoided once an intervention has begun, and/or once it is over?

Conclusion: (Complicated) Just War Solutions to (Difficult) R2P Questions

Understanding Responsibility to Protect as an extension of just war thinking, and applying just war criteria to R2P-related uses of military force, thus helps to allay many of the objections that are raised when R2P is invoked as a potential justification for the use of force. Responsibility to Protect clarifies that the protection of human rights against genocide, ethnic cleansing, war crimes, and crimes against humanity does constitute a just cause to go to war. Just war criteria can then be usefully employed to provide ethical guidance for those who must make decisions about whether and when to go to war to protect rights. Difficult judgments must always be made in the midst of the "fog of war" – the messy realities of conflict and violence – but if we maintain any hope that the resort to force can be guided, even to some small extent, by moral principles, then just war thinking currently provides the best foundation for debates over those difficult judgments.

The tradition of thought about the justice of war is itself an ongoing, and changing, tradition. Recognizing Responsibility to Protect as a move within that tradition contributes to ethical dialogue about the use of force in service of the protection of rights. It also has the potential to push contemporary just war thinking forward in new and fruitful ways, as I will discuss in the next two chapters.

Chapter Three
Sovereign Obligations and the Prevention of Rights Violations

Introduction

As we have seen, there are times when R2P seems to allow for – even possibly require? – the use of force to protect human rights. Debates over the use of force under the auspices of Responsibility to Protect greatly benefit when we draw on the moral thinking and criteria developed in the just war tradition. Just war thinking is itself a tradition – that is, it is an ongoing conversation whose components are open to reinterpretation and revision as new voices join and dialogue develops over time. Still, it provides the clearest and most widely accepted set of moral principles for judging when and how force can be ethically used in a given set of circumstances. The acceptance of R2P by all U.N. member states makes it clear that egregious human rights abuses *can* serve as a just cause for war in at least some cases. Careful application of just war thinking in given cases then helps us recognize when force *should* actually be used and address some of the most common questions asked and critiques raised of R2P.

Just as importantly, however, just war thinking itself is significantly enriched when we read Responsibility to Protect as an extension of the tradition. The widespread international commitment to R2P demonstrates that the world, broadly speaking, has accepted moral responsibility for human rights protection. Given the strong emphasis of both the ICISS report and the World Summit Outcome Document on the prevention of rights violations, the acceptance of R2P as a global moral commitment implies the acceptance of the "responsibility to prevent"[163] violations. And the responsibility to prevent brings a new concern to the just war tradition: namely, just war thinking must

[163] ICISS, 19ff.

incorporate into its moral considerations a concern for the prevention of conflict and rights violations, as opposed to dealing with conflict only at the moment it arises. Because political authorities are responsible both for making decisions about war and, under R2P, for protecting human rights, the question of what sorts of specific moral obligations sovereigns[164] have, which might both undergird and contribute to their protection of human rights, looms large. Just war thinking emphasizes that any resort to force must be authorized by a proper political authority, but R2P pushes us further to ask what sorts of obligations political authorities have regarding the *prevention* of, as well as the reaction to, atrocities.

That is to say, R2P helps us take a step back from debates which focus solely on questions about the use of force. The existence of this norm, alongside the debates it has sparked among scholars and leaders, prompts us to ask: what responsibilities, even obligations, do political leaders have to uphold strong communities – communities which are unlikely or less likely to suffer divisions, violence, and terrible rights violations? And how can we avoid the use of force as far as possible, particularly by preventing instances of rights violations which might spark a justified resort to force? To address these questions requires examining the nature of political sovereignty, naming the moral obligations sovereignty entails, and relating those obligations to human rights protection. With greater clarity in this area, political leaders can better live up to their obligations, and their populations can better hold them accountable for

[164] I will use the terms "sovereign," "political sovereign," "political authority," "ruler," and "political leader" interchangeably in this chapter. Here all these terms refer to the governing power of a political community, most commonly but not necessarily a nation-state. I also use terms such as "sovereign" and "ruler" regardless of the system of government in any given community, and of whether power resides in one person or more than one.

doing so, toward the goal of a more peaceful world where rights violations are at least lessened, or mitigated.

To think through the nature of political sovereignty and its obligations, this chapter will elucidate and evaluate the thought of several contemporary Christian ethicists who have laid out clear arguments for sovereigns' particular obligations, to their own political communities and to the international community. I focus on these thinkers for several reasons. First, they bring to light some of the most basic and crucial obligations of political sovereigns, obligations which resonate with the thought of scholars in multiple disciplines and with the moral intuitions of many citizens and leaders, especially in the Western world. This is true in part because Christian thought has historically shaped much deliberation in the West about sovereigns and their obligations, and in part because contemporary Christian ethicists are influenced by present-day political and philosophical discourse on these issues. Second, addressing sovereign obligations from a Christian ethical perspective shows, as I have mentioned in the introduction, how this particular group of thinkers engages conversations about sovereignty from their particular theological and ethical tradition and the strands of thought within it, including natural-law thinking, Biblically-informed concerns about human judgment and political leaders as representative of a community, and commitment to the shaping of a common good.

I will begin more broadly, however, by describing the most common ways that thinkers have understood the nature of sovereignty, particularly the obligations of sovereigns both toward the people they rule and toward other political entities. I will then argue for a critical and historically-informed appraisal of the "Westphalian" understanding that sovereigns of political communities should never interfere,

especially with force, in the internal affairs of other communities. This understanding is enormously influential for international relations – both in theory and in practice – and it properly restrains some actions of political authorities. Yet it has not served as the *only* way of conceptualizing the relationship between political communities during the modern period. In particular, the question of whether one ruler who knows that another ruler is badly abusing his people ought to step in, possibly forcefully, has been a live question throughout the modern period, and as we know it remains significant in our time.

After this beginning, I will turn to the work of Christian ethicists Jean Porter, Oliver O'Donovan, and James Turner Johnson. I will attempt to show how the fundamental theological assumptions of these thinkers influence their analysis of the obligations of political authorities. I will then follow each thinker in arguing that sovereigns have key obligations to engage in and set up structures of deliberation over fair and transparent laws; to ensure that all people in a given political community are equally and properly represented by their government; and to promote a common good within their community, including through the use of force if necessary. Fulfilling these obligations is one way rulers can actively work to prevent human rights violations, and morally, acceptance of these particular obligations also undergirds the responsibility to protect, in the sense that a sovereign cannot fulfill any of these obligations without, at a minimum, protecting his population from the most egregious rights abuses. Discussion of the work of these three thinkers both shows how the metaphysical assumptions within a given tradition influence the political arguments of its adherents and helps us articulate important obligations of political rulers which relate to, among other things, the protection of human rights.

Do Rulers Have Obligations to the Ruled?

Ever since the European powers which had fought the Thirty Years' War signed the series of treaties known as the "Peace of Westphalia" in 1648, the most widespread understanding of political sovereignty has located it in the modern state. Sovereignty has been thought to entail the territorial integrity of a state and the self-determination of its population, with the ruler or government of the state understood as its supreme authority and as representative, in some way, of its people.[165]

This way of understanding sovereignty allows for a diversity of ideas about how rulers and the populations they rule relate to each other. In particular, it leaves open the question of whether sovereigns have obligations to their populations, and if so, what those obligations are. Most thinkers have claimed that sovereign authorities have at least *some* obligations to their people. For instance, one common way of conceptualizing sovereignty is as the product of a social contract between the people of a political community, most famously in the work of Thomas Hobbes, John Locke, and Jean-Jacques Rousseau. Hobbes's prototypical political community arises when a set of people give up their own personal sovereignty to a ruler in exchange for safety. Hobbes's work is, and is generally read as, a type of defense of absolute rule. As Luke Glanville points out, this line of argument imposes at least one obligation on the sovereign: if he is not able to keep the people safe, then his authority is lost, since the need for safety grounds a people's willingness to give up their personal sovereignty to another.[166] Locke, meanwhile, provides a defense of popular sovereignty by which individuals contract

---

[165] See the Stanford Encyclopedia of Philosophy for a concise summary of thinking about sovereignty in the modern period. Dan Philpott, "Sovereignty," *The Stanford Encyclopedia of Philosophy* (Summer 2014 Edition), ed. Edward N. Zalta, accessed May 2015, http://plato.stanford.edu/archives/sum2014/entries/sovereignty.

[166] Luke Glanville, *Sovereignty and the Responsibility to Protect: A New History* (Chicago: The University of Chicago Press, 2014), 41-43.

together to set up a government and then to choose who should hold authority within that government. Rousseau, too, understands government to be formed through contract, but he posits a "general will" of the nation upon which sovereign authority is based, which stands in some tension to Locke's more individualistic notion of government as based on individual rights and the will of the people.[167] It is clear that Locke's sovereign has a responsibility to uphold individual rights and to listen to individuals. Rousseau's ruler is tasked with upholding the good of "the people" or "the nation," although he seems to have more power and is subject to less oversight as he interprets what that good is and undertakes to serve it.

On the other hand, in contrast to conceptions of sovereignty in which a ruler must pursue some good for his people – safety, the people's will, their rights, etc. – it is possible to argue that political sovereignty is about power solely. In this line of argument, the sovereign is the one who makes the rules, and she may make whatever rules seem good to her, living within and governing the community as she pleases. Such a sovereign has no moral obligation to the people she rules. Perhaps the most widely-known version of this argument can be found in the early twentieth-century work of Carl Schmitt. For Schmitt, the existence of a political community is always grounded in a division between those who are inside and those who are outside, and he insists that insiders and outsiders do not have any particular responsibilities toward each other. Whatever entity (person or group) is politically sovereign is "always the decisive entity, and it is sovereign in the sense that the decision about the critical situation, even if it is the exception, must always necessarily reside there."[168] Schmitt relates this notion of

---

[167] Glanville, 61-69.

[168] Carl Schmitt, *The Concept of the Political*, trans. George Schwab (New Brunswick/New Jersey: Rutgers University Press, 1976), 38. See also Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans George Schwab (Chicago: The University of Chicago Press, 2005), 5-6.

sovereignty explicitly to considerations of the justice of war: in a system where the sovereign and community have no responsibilities toward outsiders and the sovereign has no clear responsibility to protect the rights or even the lives of citizens, the only just war is one that responds to an existential threat against the community.[169] There is no other responsibility that could inspire a ruler to use force. And it is the sovereign's prerogative to determine what constitutes an existential threat to the community, who is the enemy that is making the threat, and how to respond.[170] While we might initially think that such a sovereign at least has a responsibility to keep the community together, it is not clear that the sovereign is actually morally obligated even to do this: a war to save the community is permissible but not obligatory. Certainly the sovereign does not seem to be answerable to anyone for his decision, since he is the only one who can determine whether the community is under threat and how to respond. The idea that the nation-state is its own self-determining entity and that its ruler has complete power over its laws and decisions, including the decision to go to war or not, makes its appearance most clearly here.[171]

A political sovereign may also be thought of as an authority among equals, whose primary responsibilities are to his own people and to other sovereigns (i.e. not to the people ruled by those sovereigns). In such a case, a ruler's obligation to respect the sovereignty of other political authorities trumps obligations to individuals outside his

---

[169] Schmitt, 49.
[170] Schmitt, 45.
[171] In fact, against the idea that humanitarian intervention or obligations to "humanity" are ever ethically appropriate, Schmitt argues that the ideal of "humanity" is not a political one, but actually serves as "an especially useful ideological instrument of imperialist expansion." He writes, "the concept of humanity excludes the concept of the enemy" and thus is not a political concept, since all political communities require insiders and outsiders. "When a state fights its political enemy in the name of humanity, it is not a war for the sake of humanity, but a war wherein a particular state seeks to usurp a universal concept against its military opponent." Schmitt, *The Concept of the Political*, 54. While we might take Schmitt's arguments with a grain – or a bucket – of salt given his affiliation with Nazism, the idea that "humanity" becomes a bludgeon used in attempts to justify imperialism certainly resonates with the concerns about neocolonialism we have seen raised in many quarters.

own political realm. His responsibility in the international sphere is, therefore, mainly limited to keeping peace with other sovereign authorities. Robert Jackson seems to envision contemporary sovereignty in this way, arguing that political authorities are responsible for keeping peace among nations at almost any cost. (To be fair, we must again recognize, as in Chapter One, that Jackson bases his opposition to using force even in cases of egregious rights violations on the argument that keeping peace between powerful nations best fulfills sovereign responsibilities to promote rights in the long term, even when it means allowing rights violations to happen in the short term.)[172] Glanville argues that national and international leaders primarily envisioned sovereignty in this way during the Cold War period. Sovereigns were thought to be responsible for the rights of their own populations, but they were not to interfere with the inner workings of other nations. The basis for such arguments in large part arose from the neo-colonial worries we have discussed: newly independent nations asserted that they had as much right to independence and self-determination as former colonizers and demanded recognition accordingly.[173] Not surprisingly, Western nations and the Soviet Union at times pushed back against the idea that sovereign states should resist interfering with other states, but they too took up arguments in favor of noninterference when it suited them, and in particular they joined others in "condemning India and Vietnams for actions [against oppressive regimes in East Pakistan and Cambodia, respectively] that are today widely considered to be legitimate examples of humanitarian intervention."[174] The leaders of powerful states have not always matched their actions to their rhetoric regarding the obligation to respect the sovereignty of other states, but the idea that rulers have obligations internally to their

[172] Jackson, 291.
[173] Glanville, 160-62.
[174] Glanville, 162.

own people and externally to other sovereigns (but not to the populations of other states) has been and remains influential in global discourse, especially regarding rights protection.

And finally, agreements about Responsibility to Protect and the work of its supporters draw upon, and model, an image of the sovereign who is responsible for upholding the good of her community, especially for protecting the human rights of its members, and is also in some circumstances responsible for protection of those outside her community. Such a sovereign has multiple responsibilities, which may at times compete: the responsibility to protect human rights globally, as well as the responsibility to maintain peace between nations and to respect the sovereignty of other rulers of states. The World Summit Outcome document conceptualizes sovereignty in roughly this way, with sovereign nations committing themselves to protect the rights of their own citizens and to take on certain responsibilities for the human rights of individuals around the world. At the same time, the fact that nations pledge to work *through the United Nations* to undertake diplomatic measures or sanctions against states that do not uphold rights, and through the Security Council specifically if the use of force seems called for, demonstrates a strong measure of respect for national sovereignty and the privileging of international diplomacy over the use of force by one nation against another.

Various thinkers who are committed both to rights protection and to strong respect for national sovereignty strike this balance in different ways: Michael Walzer, for instance, seems to privilege rights protection in cases where humanitarian intervention is clearly only going to happen if one or a few nations take matters into

their own hands,[175] while Robert Jackson again provides a counterpoint that privileges respect for sovereignty and international order in nearly all cases,[176] and Jack Donnelly agrees with Jackson in part, with an exception for cases of obvious genocide.[177] R2P certainly has not put an end to these debates, though it does change the tenor of global conversations about sovereignty by prioritizing the rights of individuals more explicitly than do most of the conceptions of sovereignty discussed above (Locke's thought is, perhaps, an exception). It both reflects and encourages the contemporary notion that sovereigns ought to uphold human rights in all parts of the world: most especially in their own communities, but in other communities as well. Within the framework of Responsibility to Protect, political authorities remain obligated to respect the sovereignty of other states and rulers, but a new understanding of sovereignty means that certain rights held by sovereigns may be overridden in situations of extreme human rights violations.

Sovereignty and The Nation-State System: How "Westphalian" Are We, Really?

Some argue that by advocating this way of understanding sovereignty – where commitment to the protection of human rights can at times override respect for certain sovereign rights, most strikingly the right to non-interference – Responsibility to Protect represents a break from the thought and practice of the modern era. One way to conceive of R2P is as a disruption in what is often called a "Westphalian" understanding of sovereignty, which is thought to have prevailed from 1648 until the mid-twentieth century. Thinkers who view R2P in this way claim that for three centuries sovereigns

---

[175] Walzer, "Humanitarian Intervention," 31-33.
[176] Jackson, 297-301, 308-15.
[177] Jack Donnelly, *Universal Rights in Theory and Practice, 3rd Ed.* (Ithaca: Cornell University Press, 2013), 260-64.

were understood to have moral obligations toward their own people, but not toward anyone else's. It was unfortunate when a ruler mistreated his own people, but no other political authority could legitimately do anything about it. The widespread modern conception of sovereignty as encompassing territorial integrity and self-determination meant that a state's territory was inviolable and that the people of each state had to be allowed to determine their own destiny, even if they "chose" to live under a government that did not fulfill moral obligations toward its people or even actively mistreated them. Many commentators share the assumption that prior to World War II, thinkers, sovereigns, and the majority of people agreed that nation-states ought to be left alone to act in the way they chose within their own borders, so long as they played well with other states at the international level. This idea certainly influenced the global debates over humanitarian intervention preceding the adoption of R2P, insofar as those debates were often characterized as pitting state sovereignty against the moral obligation of all rulers to uphold human rights in any place.[178]

However, it is possible to make too much of the "Westphalian" character of modern sovereignty. In his important and largely helpful recent work *Sovereignty: Moral and Historical Perspectives*,[179] for instance, James Turner Johnson characterizes modern-era attitudes toward sovereignty as almost completely committed to the idea that every nation-state had an absolute right to self-determination and territorial integrity, with the corollary that no state should use force against another except in self-defense.

---

[178] Gareth Evans refers to and seems to take this view when he writes, "For an insanely long time – centuries in fact, going all the way back to the emergence of the modern system of states in the 1600s – the view had prevailed that state sovereignty is a licence to kill: that it is no one's business but their own if states murder or forcibly displace large numbers of their own citizens, or allow atrocity crimes to be committed by one group against another on their soil." Evans, "The Responsibility to Protect: An Idea Whose Time Has Come…and Gone?" *International Relations* 22.3 (2008): 283-98, p. 284.
[179] James Turner Johnson, *Sovereignty: Moral and Historical Perspectives* (Washington, D.C.: Georgetown University Press, 2014).

Johnson writes that "the modern state system is generally understood to be built on the terms of the Peace of Westphalia," and that "the essentials of this conception of sovereignty were a particular national territory inhabited by a particular people with their particular history, expressed in the patterns of everyday life and in their laws, customs, and institutions, and the right of the people to defend all this against any challenge to it."[180] However, Sean Murphy (responding to an article by Johnson) shows that modern thinking about state sovereignty does not so straightforwardly allow a nation-state to defend all of its customs against *any* challenge. The modern " 'founders' of international law" – Vitoria, Suarez, Gentili, Grotius – allowed that states might engage in war for reasons other than self-defense. Grotius, for instance, argued that one state could use force against another as punishment for crimes inflicted against the former *or* the latter state's subjects, if those crimes "excessively violate[d] the law of nature."[181] Martha Finnemore's work further shows that the rulers of powerful nation-states in the modern era never consistently argued for the right of particular peoples (most obviously, but not only, the peoples of colonized or less-powerful nations) to maintain their customs and laws, free from external interference. In fact, those rulers have often argued – and acted upon the argument – that force could rightly be used to oppose "barbaric" customs, not simply for self-defense.[182]

So the assumption that "Westphalianism" was the reigning political philosophy from the seventeenth to the twentieth century, in the sense that thinkers and rulers agreed that nations should not interfere in each other's internal dealings and should use military force only in self-defense, has been fairly decisively shown by political theorists

---

[180] Johnson, 1.
[181] Sean D. Murphy, "*Jus ad Bellum*, Values, and the Contemporary Structure of International Law," *Journal of Religious Ethics* 41.1 (2013): 20-26, p. 21.
[182] Finnemore, especially Ch. 3.

and ethicists to be, at best, an oversimplified reading of Western ideas about sovereignty in the modern period – certainly one that needs further analysis and explanation. Luke Glanville seeks to complicate and deepen the story, and to relate historical thinking about sovereignty to R2P specifically, in his work *Sovereignty and the Responsibility to Protect: A New History*. He notes that the supposedly " 'traditional' right of nonintervention" was not even fully articulated as such until the middle of the eighteenth century.[183] From the seventeenth to the twentieth centuries, the responsibilities of sovereigns and the morality of intervention were certainly subject to debate, but there was no consensus that sovereign nations ought to be free from interference when their rulers mistreated the people they governed. Even thinkers like Bodin and Hobbes, who sought to provide a philosophical foundation for absolute rule, believed that rulers had duties to obey divine and natural laws, and international treaties have long bound rulers to protect first minority and then human rights. [184] Far from a consensus on noninterference, debate flourished through the eighteenth and nineteenth centuries over the rights of nations and how they intersected, or came into conflict with, the rights of individuals.[185] This included debates specifically over whether humanitarian intervention represented an unwarranted attack on sovereignty or, in some cases, a responsibility to protect people against tyranny and abuse.[186] Throughout the twentieth century, "the tension inherent in the idea of popular sovereignty – that is, the tension between the right to self-government, free from

---

[183] Glanville, 3.
[184] Glanville, 3.
[185] Glanville, Ch. 3.
[186] Glanville, 76ff. Glanville notes that during these centuries, "humanitarian intervention" was in practice conducted by European against non-European states, a troubling consideration for past and current debates over Eurocentrism and neocolonialism. At this point, however, my only argument is that there did exist during the modern period the idea that military intervention against another nation and/or ruler might be morally licit and even necessary for sovereign rulers, as a mean of fulfilling their responsibilities toward humanity.

outside interference, and the responsibility to secure the rights of individuals – had begun to be internationalized and positivized in law by the society of states."[187] This tension, found both in law and in popular imagination and discussion, continued through the mid-twentieth century and the Cold War period,[188] up to the point, of course, of arguments over Responsibility to Protect.

The history of the modern era, then, looks more like the history of the late twentieth and early twenty-first centuries than the common narrative of modern "Westphalianism" might have us believe. The tension between respect for state sovereignty and commitment to human rights, which R2P attempts to address, has been there all along (though some thinkers might speak of human well-being or the common good rather than rights). This is not at all to say that commitment to states' territorial integrity and self-determination is unimportant; far from it. Conceptions of sovereignty that allow political rulers to intervene in each other's affairs for weak or spurious reasons can lead us into a neo-colonialist trap where we risk excusing powerful states who seek to unduly influence weaker ones, simply because those powerful states claim "ethical" or "humanitarian" concerns. Such meddling is shown to be even more insidious if we consider that political sovereigns are not the only ones whose agency is threatened when powerful states try to interfere with weaker ones: as Walzer points out, the *members* of nation-states have a right to determine their own political structures and governance, even if those structures are not wholly democratic.[189] Nevertheless, the

---

[187] Glanville, 99.
[188] Glanville, 169-70.
[189] See Walzer, "Humanitarian Intervention," 29: "The common brutalities of authoritarian politics, the daily oppressiveness of traditional social practices – these are not occasions for intervention; they have to be dealt with locally, by the people who know the politics, who enact or resist the practices….Social change is best achieved from within." Here Walzer is speaking about changes in governing structures made by people who are part of the political communities they seek to change, but his argument entails the idea that if the members of a community choose not to (or even cannot, for now) change the structures

territorial integrity and self-determination of states have not been taken, even in the modern period, to be absolutely unimpeachable. In sum, R2P does not represent a break with long-held notions of sovereignty as freedom from external interference. Instead, it is another step in a long-running discussion in which populations, thinkers, and political authorities attempt to balance respect for sovereignty – especially of historically colonized and meddled-with peoples – against the sense that rulers ought to seek the good and/or protect the rights of all human beings, those they rule and those they do not.

Deliberation, Representation, and the Common Good: Christian Ethical Thinking about Sovereignty

Responsibility to Protect does move this long-running discussion forward, and it specifically contributes to debates over the use of force by shifting focus to the importance of preventing rights violations. Under the global agreement represented by R2P, sovereign authorities do not only, or even primarily, have a responsibility to step in with force when rights are violated. They must also actively work to prevent such violations, within their own communities and on the international scene. To discharge their "responsibility to prevent," sovereigns must seek to build up strong and well-functioning political communities where human rights are respected as a matter of

---

under which they live, they are still entitled to continue living under their own government, rather than be subject to intervention. We see a similar concern in John Rawls's *The Law of Peoples*, where liberal societies "are to cooperate with and assist all peoples in good standing" lest they "fail to express due toleration for other acceptable ways…of ordering society." Toleration is important both because it is a liberal value, and because Rawls argues that "decent peoples" deserve and should receive respect. Respect is due, at least in part, because lack of respect "wounds the *self*-respect of decent nonliberal peoples as peoples, as well as their individual members" (emphasis mine). So due recognition of the agency and self-respect of members of nation-states worldwide is an important value, even as it might at times be overridden by concern for basic rights (Rawls is speaking about respect for "decent" nonliberal peoples, whose governments do not routinely violate their people's human rights). Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2002), 59-61.

course. I now turn to a more detailed discussion of precisely what sorts of obligations sovereigns have to their communities and to the international community, drawing upon the work of contemporary scholars who elucidate specific moral obligations of political rulers and argue for how those rulers can most properly and adequately promote human rights and well-being. Perhaps not every diplomat or policy maker, or every leader of an international institution, needs to have a fully worked-out theory of sovereignty in order to make decisions and collaborate with others toward the end of protecting rights. Yet the decisions leaders make about preventing rights violations are in some way grounded in an understanding of the obligations of sovereigns in general. Where does sovereign authority come from; how is it wielded within and outside of the political community it governs; what obligations do sovereigns have, to their own communities and to the international community; and how do these obligations relate specifically to human rights?

I will draw upon and evaluate the work of three Christian ethicists who, in answering these questions, contribute both to scholarly conversations and to policy and diplomatic debates over the nature of sovereignty, especially as it relates to R2P and to the prevention of human rights violations. These thinkers name and describe sovereign obligations that, if fulfilled, can contribute to building strong and peaceful political communities in which rights are protected. Sovereigns must also, minimally, ensure that human rights are protected against the worst violations in order to discharge the duties these thinkers elucidate, so recognition of these obligations provides a foundation for the responsibility to protect, as well.

In the work of Jean Porter,[190] a theologically-grounded natural-law understanding of sovereign authority leads to an emphasis on the importance of deliberation toward fair and transparent laws, both within political communities and between policy makers at the international level. Porter argues that a commitment to the rule of law, and to deliberation over laws, best protects human rights. Indeed, her own commitment to the rule of law is so strong that she argues against any extra-legal or questionably legal use of force to stop rights violations, claiming that in the long run peaceful deliberation best preserves respect for national and international law, and thus respect for human rights.

Oliver O'Donovan[191] conceives of political authority as derived from the authority of God, in the sense that recognition of God's proper authority restricts a sovereign to performing acts of judgment; God's own revealed judgment then guides sovereign (human) judgments. For O'Donovan, political sovereigns may do neither more nor less than pass judgment on past actions in order to shape a community toward a better context for the future. As they do so, they must take into account the fundamental theological equality of all people – the infinite worth of all. This equality between people mandates that sovereigns show care for all, which means they must make it possible for all people to participate in the political community, in particular by ensuring that the government properly represents all people. A political ruler is required to hear and be responsive to all, including and especially the poor. Those who are poor tend to lack the resources that allow them to live and communicate fully within

---

[190] Porter, *Ministers of the Law.*

[191] O'Donovan discusses aspects of just war thinking in his work *The Just War Revisited* (New York: Cambridge University Press, 2003), but for the purposes of this chapter, his work in *The Ways of Judgment: The Bampton Lectures, 2003* (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 2005) is more systematic and more useful for discussing sovereign obligations.

the political body, and rulers therefore must find ways to ensure that the poor are properly represented just like everyone else.

Finally, James Turner Johnson[192] ties the rights and responsibilities of sovereignty directly to the just war tradition. In a way, his historical treatment bridges the gap between O'Donovan's understanding of sovereignty based in God's authority and revelation and Porter's natural-law discussion, as Johnson argues for a revival of a conception of sovereignty based both in Augustinian notions of the political order as fundamentally moral and in Roman ideas of natural law and the law of nations/peoples (*ius gentium*). Johnson argues that rulers of political communities were historically understood to be obligated to do justice in and for their communities, since there was no one with greater authority to take on that responsibility. One aspect of doing justice was acting upon the obligation of going to war, if necessary, to defend the community and the natural rights of its people. Johnson's conception of war as a possible means of doing justice can help us to think about the use of force as one aspect of a sovereign's obligations – at the same time that "doing justice" by peaceful means, including prevention of rights violations, is surely preferable to making war. Viewed in this way, his conception of the role and responsibility of sovereign authorities can provide a historical grounding for recognition of R2P as an extension and enrichment of just war thought: the use of force in service of human rights can be understood as fulfilling an obligation to do justice, but since the obligation to do justice is foundational, so much the better if justice can be done without a resort to force.

---

[192] Johnson, *Sovereignty.*

Jean Porter: Deliberation over Proper Laws as Sovereign Obligation

Jean Porter's masterful *Ministers of the Law* ties a theologically-grounded understanding of natural law to the importance of well-crafted human law and the idea of the political sovereign as most fundamentally a lawgiver. Her work provides insight particularly into the obligations of political authorities to uphold norms of international written and customary law, including, I presume, a norm such as Responsibility to Protect, although she does not mention it by name. The most important obligation entailed by sovereignty is the obligation both to structure and to participate in reasoned, morally serious deliberation that leads to the creation of fair, transparent, and ethically sound laws. Sovereign authorities have these obligations both as rulers of their particular political communities (which Porter takes to be nation-states) and as participants in the diplomatic and moral debates that take place in the international sphere.

For Porter, sovereigns have obligations to make, deliberate over, and follow fair and transparent laws because they are, at root, lawmakers responsible for the good of human beings. And human beings properly live under such laws, she says, because they are created by God as rational,[193] social creatures. As such, human beings are formed to

[193] Quite late in the work, Porter addresses the concern that describing human beings as characteristically "rational" might devalue those people whose rational capacities are diminished for some reason. Her explanation is worth quoting at length: "The human person is said to be created, constituted, or set up in the image of God, in virtue of his or her creation as an individual substance of a given kind of nature. The constitutive structural capacities of the creature remain as long as the creature exists at all, even though at any given point she may be too immature, or too sick, or otherwise impeded from expressing her full potential as a rational agent. For this reason, the scholastics would not have shared our worries that the normative claims, including rights claims, proper to us as rational animals might apply only to those who are actually capable of exercising the relevant capabilities at any given time (or, indeed, at all)." Porter, 333. I would have liked to see Porter delve, both earlier and more deeply, into debates over whether a capacity-based understanding of rights leads to the devaluation of particular human beings in whom those capacities seem to be lacking. However, she does here indicate that she understands the category of "human beings" to include all who have the "structural capacities" of rationality, freedom, and sociality – presumably encompassing all who share human DNA. All would be understood as human individuals who live within human political communities, with subjective rights and claims to certain kinds of treatment.

participate in God's natural law, which is an expression of the eternal law of the universe in a form in which human beings can in some sense understand and follow it. So by nature, human beings are law-governed creatures, participating in natural law no matter what sort of government we live under or what sort of culture shapes us.

For Porter, all human being participate in some way in natural law, but it is crucial to note that she does not think natural law represents a set of clear principles or propositions that a person can tap into and straightforwardly apply in any given situation. Rather, human beings participate in natural law as free creatures, capable of deliberation and decision-making of our own. Human beings draw upon our creaturely capabilities of reason and sociality to live ethically and freely in the contexts in which we are placed. Natural law shapes our moral and social lives insofar as we properly live in communities governed by laws, and we ought to value the way that laws, when properly crafted, applied, and followed, guide us toward good ends. There is not only one set of laws that can do this; instead, individuals and communities of people work out what sorts of laws best govern their lives together. To craft and come to agreement upon what these laws are, members of communities above all engage in dialogue with each other to discern what is morally right and proper in the social contexts in which they live.

In Porter's view, appeal to natural law does not give us an ethical roadmap for all human interactions, since human beings are free creatures who can properly deliberate over and create diverse laws in diverse contexts. Yet Porter also states that certain basic facts about human existence lead all people and communities toward

certain tendencies in our moral and social lives. [194] Most basically, because human beings are in fact rational and social, we are made to live in community and to use our reason to discern moral practices and rules and live together under them. All people do this, whatever their particular practices and rules may be. In a *political* community, these practices and rules should be articulated and promulgated as laws.[195] Positive human laws – the laws human beings create, promulgate, and enforce – are good for political communities since, at its best, the rule of law sets and enforces clearly spelled-out and consistently enforced rules that apply equally to all. It befits human beings to live under laws that coordinate our collective activities while maintaining our equality as human beings, and to be able to evaluate, deliberate about, and recognize the good purposes of those laws. Therefore, those who hold sovereign authority in a political community should pursue laws that guide human behavior among equals, and that encourage and respond to deliberation within the community.

Again, these laws will not look exactly alike from one community to another, However, Porter argues that the natural law *does* put *boundaries* around what we can and cannot do. Participation in the natural law tells us that there are points past which we cannot go in our treatment of each other. We cannot, for instance, kill innocent people, no matter what our social or cultural standards, since as human beings we naturally value our lives. We cannot isolate people and remove them from all meaningful human

---

[194] Porter names a few of the natural purposes to which we all feel drawn: certainly to preserving our own lives through eating, drinking, sleeping, and staying sheltered; to reproduce our own kind; to raise and educate our offspring; and, specifically as human beings, to live in societies. Most would agree that these are in some sense "natural" human purposes, and certainly other natural-law thinkers would agree with the gist of Porter's thinking. Porter also follows Aquinas in arguing that natural human inclinations include our inclination to see truth and to worship God. While non-religious thinkers might depart from her on these points, she has made an argument from both a theological and non-theological point of view that human beings do have a set of shared natural purposes, some of which we share with plants and/or non-human animals, but some of which are ours as humans alone. Porter, 92-93.

[195] Here I follow Porter in speaking primarily about nation-states as political communities, although they are not the only ones possible.

contact by force, since human beings are naturally social creatures. We cannot torture others, because we are created to be free creatures, and torture takes away human freedom at a most basic level. Sovereigns who make and uphold laws have quite a bit of freedom in their lawgiving, but they do not have the freedom to contradict basic truths about human life, sociality, and freedom or to try to force their subjects to live a less-than-fully-human life. Human rights conventions are therefore a crucial element of international law: Porter argues that although human rights conventions are themselves in a sense contingent, for our day and age these conventions appropriately articulate the most important boundaries that, in light of the natural law, must in all ages be drawn around human behavior. Therefore, these conventions should be followed and upheld.[196]

As the most widespread and effective contemporary articulations of the boundaries of human moral behavior, human rights agreements are thus an essential part of the law of nations which all sovereigns should recognize, follow, and enforce within their communities. For Porter, the law of nations is a set of moral agreements which arises out of shared global commitments, ideals, common concerns, and mutual activities.[197] The international community is most certainly not the same sort of community as a nation-state, but the mutual agreements and practices that exist globally do provide a context for a kind of political authority at the international level.

---

[196] As Porter puts it, human rights are contingent sets of norms that have arisen out of human deliberation, but having arisen, they do place normative limits on proper human behavior, especially the behavior of sovereign authorities. Insofar as Porter names specific rights that she considers natural human rights, those she names are in substantial agreement with those rights set forth as human rights by contemporary liberal thinkers including Martha Nussbaum, John Rawls, Ronald Dworkin, and Neil MacCormick. However, Porter retains a difference in emphasis from at least some of these thinkers. See Porter, 337-38. She does not fully theorize a list of basic human rights, focusing instead on the intersection of the idea of natural rights and the idea of the place and proper function of political authority.

[197] Porter, 296. Again, these commitments and activities are in a sense contingent, but they reflect the natural law in which we all participate.

Leaders of nation-states and of international institutions like the United Nations have the authority – and the responsibility – to deliberate over and enforce laws and norms that draw upon global agreements and practices. Since Responsibility to Protect is an international norm based on human rights commitments, it seems clear that Porter would understand it to be an appropriate norm to guide international action, so long as leaders apply R2P through proper channels of law and authority, including the United Nations Security Council and General Assembly.

Porter's emphasis on the importance of law and on deliberation about fair and transparent laws implies that we need clearly articulated *legal* mechanisms for applying R2P and other moral norms, as well as the willingness to undertake hard deliberations over how to act in accord with the law of nations, in cases where states fail to stop egregious violations of human rights. This may mean, for one thing, that R2P needs further specification at the international level. Deliberation over R2P is certainly ongoing, and the Secretary-General and other actors have made efforts to clarify how states, regional and international institutions, and multiple other entities (private sector and civil society organizations, for instance) can work together to prevent and respond to human rights violations. [198] But the problem of inaction at the level of the Security Council, in situations where a forceful response appears warranted – for instance, the civil war in Kosovo, or the genocide in Rwanda – unfortunately remains. Using Porter's emphasis on the rule of law as a jumping-off point, I would argue that further deliberation specifically over how to deal with Security Council inaction is needed. The authors of the ICISS report called, and the Global Centre for the Responsibility to

[198] As we have discussed, the Secretary-General has delivered a report on R2P, which has been considered by the General Assembly, every year since 2009. The United Nations also maintains a Special Advisor on the Responsibility to Protect, and the General Assembly continues to hold dialogue and hear speakers on R2P. See the discussion of R2P, accessed March 2015, http://www.un.org/en/preventgenocide/adviser/responsibility.shtml.

Protect continues to call, for the permanent members of the Security Council to agree to restrain their use of the veto in situations of mass atrocity.[199] This is certainly one possibility for moving forward. Empowering regional organizations or the General Assembly to do more might be another. But as difficult as it may be to overcome the permanent members' reluctance to commit to a course of action that might constrain their agency or self-interest, policy makers need to continue to push all U.N. member nations and especially the permanent members of the Security Council to work toward agreement on questions such as the use of the veto and the crafting of resolutions that adhere to international norms and ethical principles, at the very least in addition to reflecting national interest – and ideally in preference to national interest. And the citizens of these nations, insofar as they profess concern for the protection of human rights, need to press their governments in similar ways. For all the ink that has been spilled over R2P, concerns over the use of veto power and the inconsistency of responses to egregious rights violations have not been resolved. Porter's work pushes us to continue to address these issues at the U.N. level and to refuse to give up on deliberation toward fair, transparent, and morally sound policies regarding, not simply the nature, but especially the application of the Responsibility to Protect.

Not surprisingly, Porter's emphasis on international law and the primacy of deliberation over laws implies that when we think about how to apply any international norm, R2P included, we should primarily focus on the role of the U.N. as a clearinghouse for nations to argue and come to consensus about how to deal with rights violations. As I have suggested, Porter would continue to press on the importance of international deliberation even when the U.N. seems not to function so very well,

---

[199] See ICISS, Section XII, and Simon Adams, *Failure to Protect: Syria and the UN Security Council*, written for the Global Centre for the Responsibility to Protect Occasional Paper Series No. 5, March 2015, accessed March 2015, http://www.globalr2p.org/media/files/syriapaper_final.pdf.

arguing for dialogue toward better functioning of, for instance, the Security Council, rather than any attempt to bypass it. Here Porter breaks with just-war thinkers such as Walzer and Biggar, who argue that egregious rights violations ought to be addressed even if states have failed to come to consensus about what to do, or the Security Council has failed to act. Walzer and Biggar both stick to this argument even regarding cases where a single state or small group of them might engage in the use of force, without authorization from the United Nations, to respond to human rights violations.[200] Porter, on the contrary, argues that respect for the rule of law (here international law) and the goal of peaceful, trusting relations between nation-states almost always outweigh our very legitimate concern and even horror at terrible rights violations: in the long run, upholding the rule of law and undertaking the hard work of deliberation strengthen the law's force and legitimacy, leading to greater global respect for human rights.[201]

In one way, Porter's work is extremely helpful for the further development and enforcement of R2P as a global moral norm. R2P is not designed to be primarily about the use of force. Instead, at its best, it gives rise to deliberations and the creation of structures by which prohibitions on certain kinds of rights violations are clearly laid out; by which conflict is anticipated and avoided, as far as possible; and by which post-conflict reconciliation is designed to prioritize the prevention of future human rights violations. Furthermore, Porter's use and development of a theological anthropology and theistic commitment to the natural law that states 1) why rights violations are out of bounds and 2) why such violations must be addressed through processes of reasoned political deliberation that eventuate in *legal* mechanisms to protect rights is helpful both

[200] See Walzer, "Humanitarian Intervention," 31-33, and Biggar, 223-24.
[201] Porter, 304-05.

for those who share her commitments and for those who are interested in how deliberations over R2P can be grounded in certain kinds of foundational metaphysical thought. Her emphasis on the importance of legal structures, contingent but not entirely positivist, is very welcome.

Porter's recognition of human diversity is also extremely helpful in defending an emerging global norm like R2P against the charge that it is *simply* an imperialist scheme by which powerful nations will continue to meddle in the affairs of less powerful ones. The danger of imperialism remains, but Porter's reading of natural law to allow for diverse purposes and values among various political communities helps us understand how we might frame debates over the protection of rights. Porter is clear both that there are limits past which a particular authority or community cannot go – in particular, a sovereign or group simply cannot justly violate the most basic human rights – while allowing for a great deal of flexibility and freedom in the various ways that individual communities press toward their goals and influence their constituents. Indeed, she is skeptical about the possibility that a global political community – versus the rough collaborations between nation-states we now see – can truly emerge anytime soon.[202] This skepticism provides a corrective to certain types of liberal as well as, particularly, Catholic thinking,[203] which seem to take the diversity of nation-states and human communities insufficiently into account when making prescriptions about how the "international community" ought to act or to arrange itself. Recognition that even natural-law thinking can allow for diversity while drawing some, but not too many,

---

[202] Porter, 341-42.

[203] Porter refers on p. 203 to Catholic interpretations of the "common good" which take the paradigmatic ideal of the common good to be a global good, without reference to political boundaries. As we have seen, Porter is more concerned with the common good as expressed and sought within bounded political communities, primarily nation-states. She thinks the ways in which human beings can pursue an international or global common good are quite limited.

well-defined boundaries around our treatment of each other is one important step in resolving questions about R2P as an imperialist tool.

In another way, however, Porter's strong emphasis on legal mechanisms may betray an overly optimistic conception of what can be done at the level of international diplomacy regarding conflict and the protection of human rights. Certainly, reasoned deliberation that eventuates in the recognition of norms and the articulation of laws and legal processes can occur, even if it moves slowly. We have seen it happen in the creation of the United Nations Charter, the Universal Declaration of Human Rights, the instantiation of the International Criminal Court – and with Responsibility to Protect itself, whose relatively rapid adoption can give us hope that not all attempts to recognize and shore up the boundaries of acceptable governance and behavior need to move at a glacial pace. But this kind of useful deliberation sometimes comes in the wake of quasi-legal or outright illegal uses of force, which has certainly been true with R2P. It is not clear that deliberations over the responsibility to protect would have the same character and urgency if some nations and groups were not at times willing to step in, with force, to stop egregious human rights violations. NATO's involvement in the conflict in Kosovo, for instance, was not strictly legal under the U.N. Charter. The execution of that use of force was far from perfect, and arguments about "what would have been" had force not been used are in a sense impossible to prove, yet I would argue that some kind of involvement to stop civil war and genocide in that situation led to a better outcome than inaction. Certainly Walzer and Biggar, for instance, would argue that at some point ethnic cleansing simply has to be stopped, and the fallout dealt with as needed; otherwise, the U.N. has put itself in the unenviable position of presiding over such heinous acts.

This might be seen as a pushback by non-Catholic thinkers (including some Protestants as well as philosophical and political theorists) to Porter's Catholic arguments about the pursuit of the common good. Where she critiques thinkers who, she says, believe that political authority is *only* capable of restraining evil in the world and cannot promote the good, she may fail to recognize that there are moments when political authorities must step in and stop certain great evils, even at the risk of doing a lesser harm to international processes which on the whole do promote something like an international common good. The concerns for international deliberative processes and for stopping present violence must be balanced. Porter is obviously committed to the rule of law at an international as well as a national level. Since the protection of human rights is supported by international law,[204] respecting the rule of law in international affairs is crucial for those who support human rights. However, her position, taken far enough, can imply something like Robert Jackson's claim that peace between the strong nations of the world must be maintained at all costs, even the cost of genocide. Not only does this look uncomfortably like throwing the weak and downtrodden of the world under the bus for the sake of good relations between the strong, but it is also not obvious that refusal to stop egregious human rights violations promotes good international relations in all cases; this would seem to be a concern that needs to be considered on a case by case basis. Porter's work is quite admirable, but it perhaps emphasizes too strongly the ongoing processes through which leaders work toward promoting the common good, at the expense of a willingness to take discrete actions that stop what is evil here and now.

---

[204] R2P is not incorporated into international treaty law, but the UDHR, U.N. Charter, and other elements of international law spell out and provide a legal foundation for the protection of human rights. The legal foundation is of course not the only possible one, but it is crucial for influencing states and their governments to uphold rights.

Oliver O'Donovan: Judgment as Sovereign Obligation, and the Duty to Care for the Neighbor

Where Porter points to the importance of reasoned deliberation, Oliver O'Donovan's work contributes to a deeper understanding of R2P (and other international norms) by emphasizing the importance of political representation of all people in the processes by which sovereign authorities make judgments. O'Donovan argues that in its essence, political authority just *is* the authority to pass judgment. Most significantly for our discussion, he particularly emphasizes that political authorities are to express judgments and make laws as *representatives* of their people, with responsibility for taking counsel from those whom they represent.

In *The Ways of Judgment*, O'Donovan argues that political authority is instituted by God to defend the common good, and the common good is defended through the exercise of authoritative judgment. Sovereigns are called upon to make judgments, nothing more and nothing less. This way of conceptualizing sovereignty, for O'Donovan, arises out of God's revelation to human beings in Scripture and in the person of Jesus Christ as spiritual sovereign of the world (whose own sovereignty demonstrates that human sovereigns have no spiritual authority). He writes that the idea of sovereign as (only) judge is "a characteristic biblical approach to government,"[205] rooted in Hebrew Scripture but most explicitly elucidated by Paul, who says that "the function of civil authority [is] to reward the just and punish the evil [Rom. 13:4]".[206] As judges, tasked with passing worldly judgment and nothing more, sovereigns must view and describe accurately a state of affairs regarding their communities, determine whether something has gone wrong, and work to make things right and punish offenders. In so doing, they provide a new and presumably better context for human

[205] O'Donovan, 3.
[206] O'Donovan, 4.

action in political communities. Those who do anything less fail to live up to their responsibilities, while those who try to do more arrogate to themselves judgments that can only be made by God, or that are assigned by God to other people or groups within the human community.

Sovereign judgments very often take the form of laws passed to defend the political community against threats to its well-being.[207] The laws that rulers are called to make reflect their context and the values and concerns of the particular community for whom they are made, yet at the same time such laws are properly derived from the law of God, both natural and revealed. The laws of a given political community therefore draw upon our human understanding of God's unchanging laws, but positive law does also arise out of prior human decisions and customs. In this way, O'Donovan's understanding of positive law as contingent, but bounded by certain norms, is not far from Porter's.

But where Porter analyses the role of law, and deliberation over laws as a sovereign obligation, in a political community, O'Donovan goes into less detail regarding the relationship of sovereignty to lawgiving. Instead, he emphasizes particularly that national lawmaking bodies have, in addition to their responsibility to pass appropriate laws, the duty to represent properly the communities they govern. In order to pass judgment that truly defends the good of a particular community, a lawmaking body must hear and respond to the people of the community. O'Donovan focuses his discussion of political judgment on political systems in which laws are passed

[207] O'Donovan, 5, 8. O'Donovan argues on page 5 that political authority takes multiple forms, one of which is that of lawmaking (others include "war-making, welfare provision, education"). From then on he speaks, without comment, of laws as resulting from (or in a sense constituting) acts of judgment. He does not understand the sovereign as fundamentally a lawgiver in the way Porter does, but certainly lawmaking is an important aspect of sovereign authority and responsibility in O'Donovan's estimation.

by legislative bodies.[208] In such systems, he argues, a legislature is not just a sovereign government; it is a place where people can raise their voices. It mediates by speaking *to* the government *for* the people about their concerns regarding threats to their own and to the common good.[209]

In keeping with this concern for representation, O'Donovan argues that laws must apply equally to all people and must recognize the equality of individuals. He has little patience for laws that attempt to provide particular rights or privileges to identity groups, but he argues that for Christians in particular, one important way of expressing concern for "the poor" is the crafting of and support for laws that treat all people equally. This is true not only on an individual level: O'Donovan appreciates the insights of liberation theologians that unjust social structures put up obstacles to equal recognition and treatment for all.[210] While his solutions to the problem of unjust structures may be quite different from those of most liberationist thinkers, O'Donovan believes that one function of good law is the dismantling, not of *all* practices of inclusion and exclusion,[211] but certainly of structures that are so exclusive as to eliminate the possibility of equal treatment and care for the poor.

---

[208] O'Donovan does not go into detail regarding the possible workings of a political community which does not have a "legislature" in the way that the United Kingdom has Parliament or the United States has Congress, yet he thinks that the British constitutional framework for government arises out of a basic political need that laws properly represent the people who live under them: "In order that no deep cleavage be allowed to develop between the general sense of what is right and what the law demands, something more is required in legislation than bare acquiescence in the authority of government: there must be a positive assent to the principles on which reform is proposed. Proposals for legislation need examination…to test them against the attitudes and convictions of those who will be governed by them." O'Donovan, 195. So whatever system of government is present in a political community, laws need to be tested against the community's values and needs. Thus it is crucial that the whole community be represented whenever laws are passed. Western states happen to have honored this requirement of representation by designing governments with representative legislative bodies.

[209] So the law-giving function of a sovereign authority is distinct from and yet tied to its role as representative of all people within a community.

[210] O'Donovan, 82-83.

[211] This is impossible, he says.

On an international scale, meanwhile, O'Donovan argues that there is no one sovereign authority to make laws, and so legal agreements rely heavily on God's natural and revealed law and on the customary law of nations. The so-called "international community" is a community only in the most abstract sense, he says, and institutions like the United Nations function only as a clearinghouse for cooperation between sovereign nation-states; it stretches the imagination too far to claim that these institutions have sovereign authority of their own. And yet, international authority *is* a kind of political authority, and the community of nations does in fact have some standing to exercise judgment even over sovereign states, when they dissent from the widely-held norms of the community. For O'Donovan, this is possible because there is "an authority of the law that is prior to any international institution and prior to any international convention, the 'law of nations,' an aspect of the natural right of God within creation, confirmed as such by the time-honored customs and usages of states in their dealings with each other."[212] This law of nations is limited in scope, but norms against horrific acts like genocide and ethnic cleansing are appropriate for nations to follow and hold each other accountable to.

Interestingly, where Porter's commitment to governance and deliberation through law makes her extremely reluctant to bless quasi- or extra-legal military actions to prevent or stop human rights violations, O'Donovan's somewhat more modest understanding of the potential of international law and institutions leads him to argue that nation-states may act in ways that honor the law of nations but are not obviously allowed under written international law.[213] He agrees with Porter that the

---

[212] O'Donovan, 218-19.

[213] O'Donovan similarly argues that the U.N. Security Council does have the authority to authorize or condemn actions by the nations of the world, as long as the Council's judgments are consistent with

United Nations is a place where states come together to hold deliberations and make decisions, and he views these decisions as judgments held in common.[214] However, he does not think that international law can be a "vehicle for broadly defined practical goals for which it is difficult to secure cooperation" – in other words, international law can only govern those aspects of international affairs on which states can actually come to some agreement. Furthermore, the Security Council does not have the power to declare international actions "legal" or "illegal" – it may only "coordinate the provisionary response to dangerous events," not "enunciate and apply accepted law."[215] In cases of mass murder specifically, while the response to such a dangerous event should be "consistent" with international law, it may well go beyond the scope of international law in order to stop horrific crimes. At such times, O'Donovan writes, "It is for the provisionary branches of government, acting by international consensus, to go beyond codified law and authorize one another to do what God's law has clearly imprinted on the conscience of mankind."[216] Here O'Donovan seems to agree with the just war thinkers cited above (Walzer and Bigger) that conscience trumps the specifics of international legal processes when necessary. As he puts it, asking people to "stand idly by and watch [their] neighbors be slaughtered"[217] brings all of international law into disrepute, and so the international community should act as necessary based on consensus around the need to stop terrible crimes.

What is not so clear in O'Donovan's writing, however, is what to do when there *is* no international consensus – for instance, when people are suffering so terribly that it

---

international law, but those judgments do not have to have a written foundation in the law. O'Donovan, 222.

[214] O'Donovan, 218.

[215] O'Donovan, 222.

[216] O'Donovan, 223.

[217] O'Donovan, 222-23.

seems clear the Security Council *could* authorize the use of military force to stop the slaughter of neighbors, and yet no international authorization is forthcoming, or even more to the point, when leaders disagree on whether such authorization is justified at all.[218] O'Donovan's confidence that God's law influences the conscience of all people seems to imply that he would say *something* should be done – perhaps that "the nations," broadly construed, can authorize even the use of military force if the Security Council or General Assembly will not. And he even argues that it can be useful to have a superpower situation in which a nation, currently the United States, is powerful enough to build a coalition in extreme instances that call for quick action, though he hopes that these sorts of coalitions will be built through the U.N. and laments that the U.S. and U.N. have seen their partnership fray in the last couple of decades.[219] O'Donovan does not clearly articulate how we might best approach a situation in which there is dissent among "the nations" regarding the ethical course of action in a given set of circumstances, and this is a troubling omission. But in cases where it *is* clear to the international community[220] that people are suffering and something ought to be done, O'Donovan has less confidence than does Porter that adherence to strict international legal protocol will, in the end, have better effects than will quickly addressing egregious

---

[218] O'Donovan would likely not characterize such a situation in terms of human rights violations; he would focus on the suffering of people whose dignity should be respected, or on the failure of some group of people to live up to their duty not to harm their neighbors. However, since his concern for human suffering leads him in practice to condemn many of the same actions that human rights supporters condemn, it seems clear that he would support action to stop what I have been calling "egregious human rights violations."

[219] O'Donovan, 224.

[220] Here I leave aside the problem of states refusing to admit that a case of rights violations exists because they believe that to make the admission would be detrimental to their national interest. States need not unanimously agree on the nature of and proper response to egregious rights violations for the "international community" to see a problem. I here refer to cases in which right violations are obviously happening and should be stopped, and in which any states which deny this, or seek to deflect blame, are quite apparently doing so for self-interested reasons, versus cases in which the details of rights violations are under dispute, or in which it is not clear that "doing something" will lead to a better outcome than waiting and watching.

criminal acts that clearly violate humankind's God-given conscience. Consequently, he would seem to be more willing to argue that one or more states can claim authority to address mass killing by use of force, even when their actions are not legally authorized under the U.N. Charter and other international written documents. His criteria for whether the use of force is appropriate would again be that of judgment: does the sovereign rightly judge that force is the only means by which the common good can be defended, and has the sovereign taken sufficient counsel from the people he represents so that he knows his community is willing to take on such a task? If this is the case, the obligation to act would seem to be strong.

James Turner Johnson: Sovereign Obligations to Uphold the Common Good, and the Use of Force as a Means to Promote the Common Good

James Turner Johnson takes a primarily historical view of both the just war tradition and sovereign obligations. In *Sovereignty: Moral and Historical Perspectives*, he states that one of his primary goals is to demonstrate how just war, and, relatedly, sovereignty, have been conceptualized historically. In addition, however, he seeks constructively to recover the virtues of pre-modern conceptions of sovereignty to inform contemporary views of sovereign roles and obligations, while avoiding the vices of older models.[221] I have suggested that Johnson gives too much credence to the notion that modern thinking about sovereignty is fundamentally "Westphalian," but his discussion of pre-modern conceptions of sovereignty is nevertheless informative for a contemporary understanding of the role and responsibilities of political authorities. Johnson argues that sovereignty was once thought to entail a duty to uphold the common good of the political community governed. Proper political order, if maintained

[221] Johnson, 113.

in a spirit of justice and peace, was understood to be a moral good, and to keep proper order was a sovereign duty. A sovereign's right to use force was tied to his obligation to promote the common good by maintaining justice and peace: with no authority above him, a sovereign was considered to have "proper authority," and even the obligation, to use force "to protect and preserve justice by restoring it when it ha[d] been violated and by punishing those persons responsible for the violation." This obligation holds both within and outside of a given political community: a ruler is obligated to uphold the common good of the people he rules, but is also responsible for the good of the community that comprises all individual political communities, in order that justice might be pursued globally.[222]

While Johnson focuses on the responsibility of sovereigns for the communities they rule, it is apparent that he thinks that all political leaders have an obligation, as far as possible, to maintain global justice within all political communities as well as between them.[223] In his historical study, Johnson draws significantly on the work of Thomas Aquinas to make this point among others. Aquinas, he says, states that tyrannical rulers may justly be resisted, though he recognizes that Aquinas is not entirely clear on the question of precisely *who* can resist or depose such a ruler. It may be that "lesser authorities" in the community are best placed to resist tyranny; or that a superior ruler, where there is one, should remove a tyrant; or, at least as "a possible reading of…the *Summa theologiae*…the tyrant's violations of justice make him subject to just rulers of other political communities, who thereby have the right to remove him to defend

[222] Johnson, 2.
[223] In the contemporary world these communities would be nation-states, so I will use the term "state" or "nation-state" to describe political communities, although at times different terms may be more historically accurate.

against the threat to the good of their own communities."[224] Johnson's emphasis on this possible reading of Aquinas hints at his intention to explore it further. Subsequently, when he turns to a discussion of R2P, he indicates that protection of populations ought to be considered an obligation, and ought to be legally allowed, for individual states or groups of states as well as for the U.N.:

> To define the possibility of using military force to respond to flagrant failure to exercise [R2P-related responsibilities] as limited to the international order takes no account of the responsibility and denies the right of well-governed individual states capable of acting alone or in regional groups to deal with such failures. A proper balance between the two conceptions of sovereignty we have been discussing [sovereignty in its historical and its contemporary sense] needs to allow for such action by individual states and groupings of states apart from the international order as a whole.[225]

If use of force is one possible way that political sovereigns uphold the common good, Johnson thinks that sovereigns who govern well retain an obligation to act against rulers who commit or allow serious violations of the good of their own people, whether such "good" sovereigns act within the bounds of international law or whether they go it alone.

For Johnson, in fact, the right and obligation to use force is not simply one way that political sovereigns uphold the common good. Instead, there is a sense in which the use of force is *the* characteristic right and obligation of a political sovereign, since (according to the historical, primarily Christian sources Johnson draws on) only the sovereign is permitted to use force to promote justice and peace, whereas other means for promoting these things are allowable to multiple kinds of actors. Johnson writes that the twelfth- and thirteenth-century canonists and Scholastic writers who first systematized just war thinking tied the very word for "prince" or "sovereign" – *princeps* – to the idea of a "temporal ruler with no temporal superior, one who alone had the

---

[224] Johnson, 42.
[225] Johnson, 161.

right (*ius*) to wage *bellum iustum.*"[226] The responsibility of the ruler to act as necessary to uphold the common good – including to wage war, if necessary, a task only the ruler could undertake – was a responsibility not exactly to the people of the community or to some other person or group, but to "the moral order itself."[227]

So there is a sense in which, for Johnson, the responsibility of other political sovereigns to react with forceful measures to the breach of the moral order that occurs when a ruler allows people to be killed or oppressed in large numbers represents their *primary* obligation. He would seem to support whatever measures are necessary to uphold a moral order in which people are kept safe, and rulers should take such measures certainly within their own states, but also possibly regarding other states as well. Such measures might include actions short of force – certainly Johnson thinks that political sovereigns have the responsibility to uphold the common good in multiple and varied ways – but in some sense they may also characteristically include a resort to force, if a sovereign has the resources and ability to do good by intervening forcefully.[228]

With his strong sense of sovereign obligations to the moral order and for the common good, it is not surprising that Johnson thinks Responsibility to Protect does not really go far enough in naming and enforcing international norms for the protection of people. He thinks that the implications of R2P for international conceptions of sovereignty are not yet apparent,[229] but that our current articulation of what kinds of situations can trigger R2P-related actions is overly narrow, especially in the World Summit Outcome document. Indeed, even those who seek to promote human rights

---

[226] Johnson, 19.
[227] Johnson, 20.
[228] Johnson does note that legal and political considerations must be balanced against moral ones when determining whether to intervene in a given case, and that sovereigns rightly weigh the interest of their own people as well as the interest and well-being of the intervened-upon people in their moral considerations about how to deal with threats to the common good. Johnson, 152.
[229] Johnson, 152.

protection in general – not just in cases of genocide and similar crimes – define the common good much more narrowly than the historical sources whose moral insights Johnson hopes to bring into contemporary conversations.[230] Johnson describes the R2P triggers as a "low bar for the idea of the exercise of sovereignty as responsibility" which "leaves the door open to all sorts of oppression that do not amount to genocide, war crimes, ethnic cleansing, or crimes against humanity."[231] He accepts that R2P is a way for contemporary leaders and citizens to try to envision moral obligations for sovereigns that go beyond the simple preservation of the political community and its territory. Nevertheless, he advocates for renewed conceptions of sovereign obligations that emphasize the preservation of a moral order of justice and peace.

Moving the Conversation Forward: Sovereignty and the Common Good

Johnson's concerns, coupled with Porter's and O'Donovan's use of theological foundations to ground their conceptions of sovereign roles and obligations, point to and may influence the future direction of R2P-related debates in two different ways. For one thing, the way political authorities discharge their obligations to prevent and/or respond to human rights violations can take a number of forms. Those who are committed to upholding R2P have to face the question of how rights violations are best prevented, as well as whether individual states can ethically (if not legally) use forceful measures to react to rights violations when they do happen. Porter is not alone in emphasizing the importance of deliberation and insisting that leaders *must* come to decisions by consensus[232] and authorization at the level of the United Nations. Nor is

---

[230] Johnson, 152-53.
[231] Johnson, 153.
[232] For instance, consider again Jackson's discussion of preservation of peaceful relationships between nation-states as the primary way to preserve human rights. In the world of Christian ethical thought (and

O'Donovan the first to stress the importance of political representation,[233] though the question of how all people can properly be represented in decision-making and in the crafting of law at both the national and the international levels is still subject to debate, and O'Donovan contributes to this debate in part by grounding his concern for representation in the theological-ethical mandate to love the neighbor, a mandate of concern to many people (certainly, but not only, those who are Christian) worldwide. And Johnson asks us to consider precisely how the right (and possibly the responsibility) to use force intersects with sovereign authority. His claim that national sovereigns may well have obligations to use force in the service of justice and peace, within or outside of their own political communities, is not so different from Walzer's claim about the "more than imperfect duty" to intervene in humanitarian crises, though the two thinkers have quite different philosophical starting points. R2P provides a helpful jumping-off point for the work these thinkers are doing toward advancing our understanding of contemporary political authority. Their scholarship helps us recognize the importance of sovereign obligations of deliberation over laws and representation of all people within political communities. It also helps clarify where the fault lines are in debates over R2P and in thinking about conflict more generally: around questions of consensus versus swift action in the face of humanitarian crises; whether and how national *and* international bodies can be said to be appropriately representative of the people and communities they, in one way or another, govern; and whether it is enough to talk about sovereign responsibility to protect human rights, or whether we must

---

cross-disciplinary scholarship on international law), Porter is joined by Mary Ellen O'Connell in arguing that states and regional organizations must gain U.N. Security Council authorization for any use of force, though O'Connell also argues for Security Council reform: see O'Connell, 87-88.

[233] In addition to Locke and other influential thinkers from the modern period, well-known contemporary scholars such as Rawls and Martha Nussbaum, among many others, have analyzed questions of political representation.

incorporate conceptions of something like a "common good" in our discussions of responsibility.

The second point regards questions of the "common good." While human rights are a useful rallying point for those who care about preserving human life and well-being for a number of reasons, the questions that R2P leaves open – should any use of force be authorized by the Security Council? are political rulers *obliged* to get involved in situations of rights violations in political communities beyond their own? – are questions that cannot be answered by appeal to human rights norms alone, absent more fundamental considerations regarding what a sovereign's role is and what her duties are. That is to say, leaders, scholars, and citizens cannot wholly escape conversations that involve foundational ethical and metaphysical thinking of the kind we see in Porter, O'Donovan, and Johnson.[234] In the next chapter I will attempt to show where one kind of foundational thinking can take us, by arguing that consideration of Christian liberationist thought – specifically on a "preferential option for the poor" inspired by Scriptural and theological interpretation – leads to a mandate for sovereigns to take counsel preferentially from those who are on the margins of society (particularly those whose human rights are most threatened) in order to prevent rights violations and preserve justice and peace. I will further consider feminist thinking, drawing on the work of a Christian ethicist who grounds her political recommendations in theological concerns for love of neighbor as well as the preferential option for the poor, and on the writings of a political theorist whose feminist commitments arise from fundamental anthropological assumptions: first that all human beings are equally valuable and should

[234] It is interesting to note that Johnson devotes a chapter to discussing possible Islamic responses to R2P and similar norms. Based on the sources he cites and on other responses to R2P, it is not only Christian thinkers who are considering questions of human rights and sovereign obligations, and certainly the relationship of Islamic thought to human rights norms is one that is important and subject to a great deal of debate in political thought, scholarship, and media.

be treated as such, and second that human beings are basically interconnected and must pursue our goals by forging authentic human relationships. These thinkers, and others, work from conceptions – articulated or not – about what it means to be a human being and how human beings are made to live in community – in other words, conceptions about what constitutes a "common good." Thinkers like these may be able to come to agreement on the importance of human rights and perhaps the value of a norm like R2P, but ongoing debates over the meaning and application of R2P give us reason to attend to the background commitments and conversations that shape the concerns of those who participate in the debates. In short, it helps – in fact it is necessary – to know what sort of "common good" each of us is talking about, when we seek ways to advance the "common good," defined as human rights protection or as something different, or perhaps more, than that.

Chapter Four
Preventing Rights Violations by Prioritizing the Voices of the Oppressed

Introduction

I have been arguing that those who hold authority within political communities have certain moral obligations, both to the people of the communities they govern and to the wider global community. In particular, by signing onto the 2005 World Summit Outcome document, the governments of U.N. member nation-states have acknowledged, if not quite an obligation, then a *responsibility* to protect human rights. Accepting this responsibility governs how they should treat the populations of their own states, and, in certain specific contexts, how they should treat populations of other states. However, sovereign have obligations, to their own populations and to others, beyond the relatively narrow set of responsibilities explicitly articulated in the World Summit Document. Some key obligations of sovereignty are elucidated in the work of the ethicists discussed in Chapter Three (Porter, O'Donovan, Johnson), who advocate for particular political practices and structures based in fundamental theological and moral concerns about the nature of human life in community. These scholars take practices of deliberation (Porter), proper representation (O'Donovan), and a commitment to the common good which may include the use of force (Johnson) to be key obligations of political rulers, for a number of reasons. For our purposes, their work helps us examine what sorts of political mechanisms might best advance and defend human rights. Therefore, their discussions contribute to a broad, global dialogue about the connection between sovereign obligations and Responsibility to Protect.

Evaluating the work of Porter, O'Donovan, and Johnson , however, takes us only part of the way toward articulating the moral obligations of political authorities and relating these obligations to human rights protection. All three of these thinkers describe ways in which powerful leaders can shape laws and other political structures, but they do not fully explore how such political structures might most positively affect – and be affected by – *all* members of a political community, particularly those who have the least power and often are least included in practices of political deliberation and representation. Nor do they fully address concerns about humanitarianism as a tool of the powerful – about the neo-imperialistic practices that can come along with even well-intentioned acts of humanitarianism by powerful nations.

In this chapter I argue that to build political structures which are morally sound and which fully advance the cause of human rights protection while mitigating the risk of imperialism, those who hold political power have further obligations to find ways to listen to, and even prioritize, the voices and counsel of people who are most poor and oppressed[235] – who are, not coincidentally, also those whose human rights are most likely to be threatened. Taking counsel from people who are poor and oppressed is an obligation of any political leader, whether that person holds office in a national government or an international institution. To show why these obligations are, indeed, moral obligations, both in the Christian theological-ethical tradition and in several political philosophies, I will draw on the work of liberationist and feminist theological

[235] The terms "poor," "oppressed," and "marginalized" do not have identical meanings, but I will use them all in this chapter without significant distinction. In a given context, a person or group may be poor, oppressed, or marginalized, or some combination of the three. I am not here attempting to define exactly who "counts" as most poor, most oppressed, or most marginalized in a given context, nor whether the "poor" are always the same people as the "oppressed" or "marginalized" and who takes precedence. What I want to stress is that political authorities are morally obligated to prioritize hearing the voices and acting to meet the needs of people who are poor, oppressed, and/or marginalized within political communities. Part of the task of hearing those voices is discerning, in a given context, which voices are most important to hear.

scholars as well as a feminist political theorist. I will analyze the foundations of their arguments in favor of giving priority to the counsel of people who are oppressed and marginalized and will describe the political actions that (they argue) political leaders ought to undertake in order best to prioritize listening to these individuals and communities. I will then examine in further depth how leaders can realistically undertake such practices by drawing on scholarship about, and examples of, peacebuilding and reconciliation practices.

My full argument is that feminist and liberationist thought shows us that political authorities have a moral obligation to first (chronologically and in order of importance) take counsel from people who are most oppressed. Prioritizing the voices and counsel of the oppressed is a moral obligation of sovereignty in and of itself, as both the theological thinkers and the political theorist whose work I examine here argue, for diverse reasons. It is also an essential means by which sovereigns fulfill other obligations, including duties to set up proper structures of deliberation and representation and to make ethical determinations about the use of force in defense of the common good. With regard to the ethical use of force specifically, this sort of listening also enables rulers fully to engage with – and meet – the just war criteria of last resort and right intention. By taking the counsel of people who are most oppressed and whose rights are most at risk, they will have attempted to resolve conflicts within or between communities through practices of listening prior to going to war, and they will better comprehend how to use force in the service of a just peace for all, both the powerful and the oppressed.

For examples of what "taking counsel" in this way may look like on the ground, we should attend to practices of peacebuilding and reconciliation. Such practices, at their

best, involve grassroots dialogue and collaboration and bring into political discourse the voices and agency of people who are oppressed. Just as importantly, they involve investment and careful listening by national and international authorities, who then (ought to) incorporate the insights gained from such processes into their laws and policies, in order to protect rights most successfully while honoring the agency of people and communities and avoiding imperialism in the name of human rights. If these practices are undertaken thoughtfully and if care is taken to coordinate the many actors involved and their concerns, the collaboration they (can) promote between people who have very little power and those who have great power has the potential to contribute to the prevention of rights violations and increase the stability of political communities.

Liberation Theology and Responsibility to Protect: Preventing Human Rights Violations by Prioritizing the Voices of the Oppressed

Those who are committed to the importance of political representation – in particular, to democracy as the best political system for our era – will agree that all people should have a voice in the laws, policies, and political deliberations that affect their lives and well-being. But when we are talking about situations of intense violence and oppression – the kinds of circumstances Responsibility to Protect tries to deal with – it is not enough to argue that "all people" ought to have a voice, at least not without further explanation. All too often, many people do not, in practice, have the power to shape laws and political dialogue. This can be true even when a polity is relatively stable, but the problem is magnified in circumstances of conflict or ongoing rights violations. By their nature, egregious acts of rights violation are oppressive, contributing to the impoverishment and marginalization of groups of people, and often to injury and death. Violations of human rights are also very often aimed at people who

are already in some way marginalized in a particular society, if only because it is easier to do violence against people who do not have the power and connections to easily fight back. In the case of the horrific civil wars in El Salvador and Guatemala, for instance, indigenous peoples, who had little political and military power, bore much of the extreme violence committed by military and paramilitary groups.[236] In the Sudanese region of Darfur, though the conflict that began in 2003 was supposedly fought between armed rebel groups and the Sudanese government, it was civilians and unarmed villagers who bore the brunt of mass killings and rapes carried out on a frightening scale.[237] In Rwanda, similarly, violence took place ostensibly in the context of a civil war between the Hutu-led government and Tutsi rebels, yet most of the Tutsi killed in the 1994 genocide were civilians. In this case, genocide was incited by powerful government voices against people who were ethnically in the minority and who were not well represented in the political arena.[238] This is not to mention human rights violations committed on an ongoing basis by governments against ethnic or religious minorities within their territories, for instance in China against the Ugyhur population[239] and in Russia against the Chechen population.[240]

---

[236] See Beatrice Manz, *Central America (Guatemala, El Salvador, Honduras, Nicaragua): Patterns of Human Rights Violations*, commissioned by United Nations High Commissioner for Refugees, Status Determination and Protection Information System (August 2008), 8, 18. Accessed March 2015, http://www.refworld.org/pdfid/48ad1eb72.pdf.

[237] "Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General," Geneva, 25 January 2005: 3. Accessed March 2015, http://www.un.org/News/dh/sudan/com_inq_darfur.pdf#search=%22un%20report%20darfur%20genocide%22.

[238] For a summary of the origins of genocide and the genocide itself, see BBC News, "Rwanda: How the Genocide Happened," 17 May 2011. Accessed March 2015, http://www.bbc.com/news/world-africa-13431486. During the colonial period in Rwanda, Tutsi were generally favored over Hutu and given more powerful political positions by the Belgian colonialists, so the question of power and marginalization in the country is a complex one. However, by the time of the 1994 genocide, the government was unquestionably Hutu-dominated.

[239] Human Rights Watch, "China: Religious Repression of Uighur Muslims," 13 April 2005, accessed March 2015, http://www.hrw.org/news/2005/04/10/china-religious-repression-uighur-muslims.

[240] Svante E. Cornell, "International Reactions to Massive Human Rights Violations: The Case of Chechnya," *Europe-Asia Studies*, 51.1. (1999): 85-100.

Human rights violations, then, often take as their targets those who are poor and oppressed, and they certainly tend to contribute to the marginalization of people who suffer them – for instance, if a person whose ethnic or religious group is targeted for ethnic cleansing or war crimes like torture and rape is not killed, she or he is often rendered homeless, stateless, and/or destitute. If governments, political authorities, and citizens are serious about preventing human rights violations, it would seem we need to attend most closely to the needs and concerns of people who actually experience these violations. In other words, we need to prioritize the needs of people who are oppressed and marginalized – including by listening to people's own articulation of what their needs are. Ideally, this sort of listening will happen *before* rights are violated, in addition to (we may hope in place of) during or after incidents of rights violations.

Christian liberation theologians have been saying for decades that an ethical mandate for those who hold power is to "prefer" the poor by recognizing their agency, listening to their needs and ideas, and making common cause with them. This sort of "preference" is itself an ethical mandate; it also represents a means by which political sovereigns ought to fulfill their obligations to properly deliberate over laws and policies, represent their people, and pursue the common good. The work of liberation theologians is certainly directed toward Christians who share their theological background, but it is aimed at all who wield privilege and power. Their prescriptions for how those who are powerful and wealthy ought to care for the poor intersect with multiple strands of ethical thinking that prioritize the needs of people who are marginalized; feminist thought, which we will address below, is one such strand. A study of liberation theology thus furthers our understanding of the ethical obligations of

political authorities, and it shows how theologically-based concerns for people with the least power can influence discussions about political ethics.

Gustavo Gutiérrez is the best-known of the Latin American liberation theologians responsible for popularizing and explaining this theology to a wide audience from the late 1960s until the present day. While Gutiérrez was not the very first to use the phrase "preferential option for the poor,"[241] he was one of the first theologians to examine the idea in depth and to use it in a relatively systematic way. A "preference" for the poor does not imply treating people who are non-poor badly or excluding them from consideration: the idea of a preference simply shows Christians, and perhaps others, with whom they should prioritize standing in solidarity. Gutiérrez seeks to maintain a strong sense of both "the universality of God's love" and "God's predilection for those on the lowest rung of the ladder of history."[242] Theologically, for Christians, because a preference for the poor reflects God's goodness and God's own predilection, to opt for the poor is to opt for the God proclaimed by Jesus.[243] Consequently, Gutiérrez says, Christians are to take on poverty (often, but not only or always, material poverty) in order to witness to (that is, attend to *and* speak about) the social evils that make and keep people oppressed.[244] They must show real love for the poor, by attending to their "sufferings… comraderies… plans… hopes," and, importantly, by demonstrating a willingness to hear new voices as they speak up to ask

---

[241] The phrase was first used by Father Pedro Arrupe in a letter written to the Jesuits of Latin America in 1968. See Peter Hebblethwaite, "Liberation Theology and the Roman Catholic Church," in *The Cambridge Companion to Liberation Theology*, ed. Christopher Rowland (Cambridge: Cambridge University Press, 2006), 179-98, p. 179. Gutiérrez also quotes from a document produced by the Medellín Conference in 1968 which emphasizes giving "preference to the poorest and most needy sectors and to those segregated for any cause whatsoever." Gutiérrez, "Introduction to the Revised Edition: Expanding the View," in *A Theology of Liberation: History, Politics, and Salvation*, trans. Sister Caridad Inda and John Eagleson (Maryknoll, NY: Orbis Books, 1988), xxv.
[242] Gutiérrez, xxvi.
[243] Gutiérrez, xxvii.
[244] Gutiérrez, 172.

for consideration and inclusion. For instance, Gutiérrez mentions women, racial and cultural minorities, and citizens of diverse nations as groups whose needs and agency even liberation theology has not always recognized, though it is beginning to do so.[245] So a key feature of solidarity is the element of listening: that is, allowing those who are poor and oppressed to speak for themselves, recognizing their worth and personal agency, and witnessing to what one has seen and heard and to the movements for solidarity and change that one has participated in.

Jon Sobrino focuses similarly on the poor and oppressed, arguing that there is a moral mandate for Christians to "uphold the centrality of the poor, their suffering and their closeness to death."[246] For Sobrino, the Christian church's mission is to "sav[e] the poor from the slow death of poverty, or from the quick death of violence, repression, or war."[247] One way to "save" those who are poor and oppressed is precisely to listen to what they have to say and make it available to others to hear,[248] recognizing people who are poor and oppressed by name and remembering them.[249] These obligations are grounded not only in the mandate to love the neighbor, but also in the fact that the poor themselves are a saving force for Christian churches and individuals and for the world. Sobrino writes: "In order to heal a gravely ill civilization there is required, in some form or other, the contribution of the poor and the victims."[250] The salvation of people and the world is certainly a theological concern, but given Sobrino's commitment to pursuing theological aims on earth, salvation is also, as he puts it, "historical/social"[251]:

---

[245] Gutiérrez, xxii-xxiii.
[246] Jon Sobrino, *No Salvation Outside the Poor: Prophetic-Utopian Essays* (Maryknoll, NY: Orbis Books, 2008), 26.
[247] Sobrino, 27.
[248] Sobrino, 27.
[249] Sobrino, 28-29.
[250] Sobrino, 36.
[251] Sobrino, 57.

the world that we live in can only be saved – made more just and humane – if people who are poor and oppressed make, and are trusted and allowed to make, contributions to social change. Those who are poor build, out of necessity, "a civilization of solidarity"; humane elements of our shared humanity are found not among the affluent but among the poor, including "joy, creativity, patience, art and culture, hope."[252] Just as importantly, their experiences and stories shed light on the truth of how the world really is, and the determination of so many people to live and thrive despite poverty and oppression gives hope to all people.[253] One sign of this determination, Sobrino writes, is the creation of grassroots communities, with communal economies, health care, human rights, and so on.[254] In short, when those who have wealth and power are willing to understand the experiences of and listen to the stories and ideas of people without wealth and power, communities of solidarity and respect for human rights and dignity can be created across lines of class, race, and so on, and the social and political world can be renewed, rendered more equal and just.

Gutiérrez and Sobrino point to several reasons that political authorities – and others with wealth and power – ought to take counsel from people who are poor and oppressed. For some authorities, and some others, there are theological concerns that support the ethical mandate to listen to the poor. At a social and political level, meanwhile, prioritizing the voices of the poor humanizes groups of people who are very often dehumanized and left out of the normal functioning of political communities. Simply recognizing the human stories, hopes, and activities of the poor is already a step toward fulfilling the responsibility to protect human rights, and making it a priority to hear those stories and attend to those hopes and activities allows political authorities to

[252] Sobrino, 52.
[253] Sobrino, 60-61.
[254] Sobrino, 62.

observe and tap into a wellspring of community organizing and grassroots solidarity that can teach those in power about ways to strengthen the political community as a whole.

Finally, when it comes to crafting appropriate processes of deliberation and representation, listening to the poor serves as a simple corrective: it is no secret that those with wealth and power tend to have the most influence in political processes. Political authorities who intentionally cultivate attitudes of attending first to the needs and voices of those who do not have wealth and power are in one sense simply making sure that all people in a political community are equally represented and have an equal say in deliberations about laws and policies. Realistically, we can recognize that people who have wealth and power will always find a way into such deliberations; it is those who are poor and oppressed, who are on the margins, whose counsel and ideas need to be intentionally sought out. Gutiérrez and Sobrino, among other liberation thinkers, show how making a priority of listening to the poor and incorporating their insights into political and social community building moves political leaders – among others – toward practices of solidarity that humanize all members of the community and thus make it more likely that human rights will be respected and protected.

Feminist Ethics and Responsibility to Protect: Building Community Relationships

Feminist thinkers incorporate many of the same insights into their work as liberationists: those with power ought to attend to the voices of those without; a certain priority is given to the stories and experiences of poor and oppressed groups (for feminist thinkers, women in particular); groups that are historically oppressed and marginalized have built bonds of solidarity, hope, and survival that can serve as useful

examples for authorities who wish to promote justice and human rights. But perhaps more than other liberationist thinkers, feminists have focused on the obligations of all people, sovereigns included, to build up relationships between individuals and groups, both within and between various political communities. Strengthening relationships enhances the work of preventing human rights violations in several ways. Most obviously it builds up goodwill between people and groups, making it less likely that these groups will come into conflict with each other. It can strengthen ties within a particular political community so that the community is better able to make political decisions without rancor. Finally, it can help people in different political communities better understand each other and work to live peacefully alongside each other. What the works examined below especially show is that building relationships is one crucial way that sovereigns can listen to the poor and oppressed and can work toward equal representation of all members of the community in political processes. The building up of such relationships allows people who have very little power to advise sovereigns on how their rights can best be protected, and it enables their practices of solidarity and community building to serve as models for community building on a larger scale.

Lisa Sowle Cahill describes well how people can band together in relationships that cross boundaries of gender, class, race, and so on, and how the building of such relationships can influence political and social processes. Her work largely begins "from below," in the sense that she examines how ordinary citizens and people with little power can influence political and other institutional processes, but she certainly calls for

those in power to work for justice and to respect the work done at grassroots and local levels toward justice and the inclusion of all.[255]

Cahill has written eloquently on conflict and just war,[256] but her analysis of solidarity and political relationships comes through most strongly in her *Theological Bioethics*. In this work, Cahill calls for an ethics that is "politically engaged on behalf of a 'preferential option for the poor' and of gender equity, and confident about the possibility and potential of concerted action for change."[257] She thus makes clear her indebtedness to Gutiérrez and other liberation thinkers, while incorporating a concern for gender justice from the very beginning of her work. Her commitment to solidarity with the poor and among communities likewise takes inspiration from liberation theology, but she more strongly emphasizes both gender justice and the power of personal relationships to ground social change. In *Theological Bioethics*, Cahill argues that it is crucial to focus on women's experiences if we are to justly shape systems and policies. She shows how the field of bioethics is indebted to feminist scholars, particularly for their contributions in bringing the idea of a preferential option for the poor into bioethical conversations.[258] Concern for women's and oppressed groups' experiences undergirds a "participatory discourse" through which people with similar ethical commitments and/or similar practical goals cooperate to spark social change. One way they do this is to build communities of action, which creates a context in which social policy, while not perfectible, can be shaped to better treat all people equally and especially to lift up people who are oppressed.[259]

---

[255] Lisa Sowle Cahill, *Theological Bioethics: Participation, Justice, and Change* (Washington, DC: Georgetown University Press, 2005), 4.
[256] Cahill, *Love Your Enemies: Discipleship, Pacifism, and Just War* (Minneapolis: Fortress Press, 1994).
[257] Cahill, *Theological Bioethics*, 4.
[258] Cahill, *Theological Bioethics*, 40-41.
[259] Cahill, *Theological Bioethics*, 6-7.

Cahill hopes that what she calls "theological bioethics" will "become a self-conscious mediator between participatory movements for equity in health care; religious and philosophical worldviews and language; dominant institutions of civil society, state, and market; and policy-setting agencies at the grassroots, local, national, regional, and global levels."[260] She thus looks to theology, in particular, as a foundation for communication and relationships between diverse people, communities, ideas, and policies. Certainly she believes that only strong bonds of communication, participation, and relationships between diverse groups can change ethical behavior as well as social policy. Though her practical prescriptions are directed at grassroots communities, she hopes and intends that relational, grassroots activism, founded on a preferential option for the poor and especially for women who are oppressed, will awaken policy makers to their obligations to do justice for all and will push authorities to craft laws and structures by which they can fulfill these obligations.

Like Cahill, political theorist Laura Sjoberg emphasizes relationship-building, but her work self-consciously re-evaluates the just war tradition through a feminist lens. In doing this, she articulates a feminist theory of the sovereign obligation to protect people in an ethical manner during times of conflict. In contrast to Cahill's grassroots focus, Sjoberg asks primarily what sovereign authorities can do to conduct war justly – especially how authorities can build political relationships that either render war unnecessary or, when it is necessary, make it more truly justified. She pushes for attitudes and practices of what she calls "empathetic cooperation" – among all people, but most especially among sovereign authorities in their dealings with their own citizens and with other leaders and communities.

---

[260] Cahill, *Theological Bioethics*, 69.

Empathetic cooperation is grounded in a commitment to "relational autonomy," a concept Sjoberg draws from feminist thought and describes as a structure of human relationships whereby people preserve the independence of their own identities – that is, maintain their autonomy – while "recognizing the interdependence of self and other and the political and social relationships that one has with others." Ideally, a commitment to relational autonomy enables people to recognize that they act under various constraints in a world of unequal power relations, yet that they do have the potential to make their own choices (subject to these constraints) and that they and others can benefit by acting cooperatively. [261] For those who hold political power, cooperative work includes power-sharing, both with other sovereigns and with all members of the political community, especially the vulnerable. In fact, in this model, political sovereigns are not the only holders of authority in a political community: authority is understood as a process in which all people, ideally, participate. In reference to conflict, Sjoberg admits that "it is not possible to obtain individual free consent to the decisions that states make about war," yet she maintains that "consent of those who are affected by the war is key." [262] Obtaining this consent, as far as possible, includes "legitimating voices that are not generally heard, either for lack of power or lack of confidence," and dialogue that gauges consent must incorporate the communication of feelings as well as words and ideas.[263] Finally, those who hold power are morally obligated to seek to act cooperatively with other power-holders as far as possible – to listen to them, too, with empathy, even those who are "the enemy" in a current or potential conflict. Most especially they ought to recognize the insights, feelings, and experiences of the members of whatever state or

[261] Sjoberg, *Gender, Justice, and the Wars in Iraq*, 48.
[262] Sjoberg, 71.
[263] Sjoberg, 72.

organization their own state is in conflict with. "Governments should *seek out* the opinions of those voices usually marginalized in political discourses and hold them in equal regard in a debate about war-making."[264]

Sjoberg and Cahill, drawing on feminist and, for Cahill, theological foundations, thus underscore the moral importance of political authorities' taking counsel from and listening to people who are vulnerable and marginalized – and doing so at least in part by building up relationships between people at all levels of power. In particular, sovereigns who hope to do justice (during conflict, but also as a way of preventing conflict and rights violations) have an obligation to listen to people whose rights truly are the most threatened and to shape their decisions about whether to go to war, and how to conduct war, accordingly. When conflict erupts, authorities who consider intervention have a moral obligation to attend to the concerns of civilians living in war zones and those who are threatened with violence, and they also ought to hear and consider the concerns of military servicepeople who are most likely to be in harm's way if a military intervention is conducted. This is certainly true for a state like the United States with its powerful military: in a case where human rights are being egregiously violated somewhere in the world, U.S. leaders ought to seek out as much information as possible from people who are threatened with violence, but they also ought to seek counsel from enlisted members of the U.S. military and from officers of relatively low rank: those whose lives will be on the line if any intervention does take place.

In any case, whether a state happens to be in the midst of conflict or not, Cahill in particular emphasizes that ordinary citizens, including people who are marginalized, ought to work together to influence authorities and shape policies in just ways. Political

---

[264] Sjoberg, 72.

authorities should pay particular attention to this kind of work, as it lifts up the voices of ordinary people in a way that helps authorities to hear them. The following section will deal especially with ways that sovereigns can properly attend to marginalized people who come together at the grassroots level to affect political change – and ways that sovereigns can encourage and build communal relationships that make attention to oppressed and marginalized groups more possible.

How Can Authorities Listen? Engaging Peacebuilding and Reconciliation Practices as Acts of Taking Counsel from the Oppressed

I have argued that political sovereigns have a moral obligation to listen to the voices and attend to the needs of people who are most marginalized, and that this act of listening has the potential to prevent rights violations and create just communal processes of deliberation and political representation. To listen to people who are poor and oppressed seems to be a large task, though, particularly for a nation-state of any reasonable size. How can authorities properly hear people who have very little voice or power, given the varied responsibilities they must meet and the sheer number of people who might seek to command their attention?

Fortunately, there is some precedent for setting up structures of dialogue and deliberation that give voice to people who are oppressed, providing opportunities for political leaders to build relationships with people who normally have little access to the halls of power. One precedent appears in recent rebuilding and peacemaking processes in nation-states where egregious human rights violations have already occurred. It is unfortunate that it commonly takes a war, or even a genocide, to spur citizens and leaders to engage seriously in processes of reconciliation, when such processes,

undertaken earlier, might well prevent at least some acts of violence. Nevertheless, the example of these states may be useful.

Certain pioneers in peacebuilding literature from roughly the last twenty-five years have also argued that our ethical thinking about just war needs to incorporate a commitment to peacebuilding. I want to emphasize that peacebuilding needs to take place *before* as well as during and after war. A commitment to peacebuilding does not replace a commitment to just war thinking, but the two ways of thinking about violence and conflict should most certainly complement each other. There are times when the use of force is the only possible response to an ongoing conflict or a set of egregious rights violations, and yet those instances may grow fewer as political authorities, and the rest of us, commit to reconciliation and relationship-building within and among political communities. Cahill's very recent work proves helpful here. In a response article to Biggar's *In Defence of War*, she argues for a conception of just war that incorporates the Christian ethical mandate to love the neighbor: "the [Christian] meaning of love of neighbor is abundantly illustrated in the gospels…as compassionate care for the vulnerable and excluded"; thus (among other reasons), "a Christian evaluation of war should always pay attention to the priority of peace and peacebuilding," since love of neighbor is better expressed in these practices than in practices of violence, necessary though war may sometimes be.[265]

To take a few examples of peacebuilding practices, we might look to the structures of conversation and reconciliation that have been relatively successful in

[265] Cahill, "How Should War Be Related to Christian Love?" *Soundings: An Interdisciplinary Journal*, 97.2 (2014): 186-95, p 187.

Rwanda, South Africa, or Chile.[266] Practices that might be emulated in international deliberations over potential or ongoing situations of rights violations include reconciliation panels, the creation of local courts where stories can be told and justice done at the level of local communities, methods for allowing survivors of violence to tell their stories that can then be kept (if desired) on record, counseling for survivors, intentional and public seeking of forgiveness by perpetrators of violence, the creation of art and literature that responds to violence or community upheaval, and funding and support toward rebuilding and/or equitable development. These practices always need to be evaluated and critiqued – simply calling something "peacebuilding" does not mean it is a just practice or is immune to improvement – but their use in post-conflict zones does show that it is possible to work toward building relationships among all people, at the highest and lowest levels of power.

For those who ask whether peacebuilding practices can actually prevent rights violations, I must grant that is it impossible to say with complete certainty whether a given action (or decision not to act) was the primary reason a violation of rights did not happen. Just war thinking, and all moral thought about global political concerns, suffers from this uncertainty as well: we cannot prove a counterfactual, so we cannot say for certain that a conflict or set of rights violations *would* have happened had actor X not done A, B, or C. However, we do have one encouraging and noteworthy example of a grassroots movement that played a clear role in *stopping* violence and rights violations during a civil war: the Women of Liberia Mass Action for Peace. This movement has become relatively widely known through the documentary film *Pray the Devil Back to*

[266] Including the work of the National Unity and Reconciliation Commission and the use of *gacaca* courts in Rwanda, the well-known South African Truth and Reconciliation Commission, and the Chilean National Commission on Truth and Reconciliation.

Hell, and its story is quite remarkable. Women of Liberia Mass Action for Peace was organized in 2002 by Leymah Gbowee, Comfort Freeman, and Asatu Bah Kenneth.[267] The movement began during, and as a response to, the 1999-2003 Second Liberian Civil War, in which hundreds of thousands were killed by both government and rebel forces. Many more were injured, tortured, and raped. In response, women held sit-ins, attended demonstrations, and, as Cahill notes, even organized "what they regarded as a uniquely female tool: a sex strike."[268] After months, members of the movement were able to pressure both Charles Taylor, at the time the president of Liberia, and rebel leaders to attend peace talks in Ghana. Members then traveled to Ghana to monitor the talks and finally "formed a human wall around the peace hall, declaring that no one would have food or drink or leave the site until progress had been made." After that – and a memorable moment when Gbowee began to strip naked in order to shame one general who tried to break through the crowd of women – Taylor and the rebels began to agree on terms, ending the war and Taylor's reign. [269]

Violence and instability in Liberia has not disappeared, of course, but with the overthrow of the Taylor regime and subsequent election of Ellen Johnson-Sirleaf as president of Liberia, the country is a much more peaceful place, with better protection of

---

[267] Gbowee and Freeman were presidents of different Lutheran churches who together organized the Women in Peacebuilding Network. Kenneth was inspired by their example to found the Liberian Muslim Women's Organization, and the two organizations together formed the Mass Action for Peace. See Mahlon Dalley, Jennifer Heinecke, Jacqueline Akhurst, Abdelkader Abdelali, Natoschia Scruggs, Raquel DeBartolo, Adeniyi Famose, Helena Castanheria, Eduardo Correia, and William Tastle, "Definitions of Peace and Reconciliation in Africa," in the *International Handbook of Peace and Reconciliation*, ed. Kathleen Malley-Morrison, Andrea Mercurio, and Gabriel Twose (New York: Springer Science+Business Media, 2013), 82-83, as well as Elisha Foust, "Breathing the Political: A Meditation on the Preservation of Life in the Midst of War," in *Breathing with Luce Irigaray*, ed. Lenart Skof and Emily A. Holmes (New York: Bloomsbury Academic, 2013), 196.

[268] Cahill, *Global Justice, Christology, and Christian Ethics* (New York: Cambridge University Press, 2013), 296.

[269] Cahill, *Global Justice*, 97-298.

human rights.[270] The Women of Liberia Mass Action for Peace provides us with a model of a grassroots campaign which brought together people whose rights were being violated in horrendous ways, facilitated cooperation between multiple religious and ethnic groups, and forced the hand of political authorities and those who held the tools of power and violence. Political authorities did not, in this case, willingly meet their obligations to listen to their people, but when they did listen, an entire country was stabilized and human rights protection was greatly improved. Somewhat ironically, it was only after the grassroots movement had succeeded in its aims that U.N. peacekeepers entered Monrovia to oversee the transition in rule and to protect Liberian civilians[271] – so in this case, activists banding together accomplished what the U.N. perhaps ought to have done, but did not.

It undoubtedly takes much effort and courage for a movement like the Women of Liberia Mass Action for Peace to sustain its actions, especially up to the point of regime change. But the success of this movement can give us hope that coordinated peacebuilding efforts by people who, alone, have very little power, can significantly enhance rights protection. Such an outcome is even more likely – and can perhaps be accomplished without the bloodshed of civil war – if political leaders, without having to be forced, listen to and act on the ideas and expressed needs of such groups. Both citizens and leaders should draw inspiration from the women of Liberia, whether it is to organize and participate in community peacebuilding practices, to recognize and listen to those who do, or to encourage their political rulers to do this sort of listening.

---

[270] For a discussion of the greater stability Sirleaf's government has afforded Liberians, and yet the challenges the country still facts, see Michael Fleshman, "Even with Peace, Liberia's Women Struggle: A Conversation with Activist Leymah Gbowee," *Africa Renewal* (2010), 8, accessed June 2015, http://www.un.org/africarenewal/magazine/april-2010/even-peace-liberia%E2%80%99s-women-struggle.

[271] Cahill, *Global Justice*, 298.

For further resources that can help both citizens and leaders undertake peacebuilding practices from the local to the international level, Glen Stassen's edited volume *Just Peacemaking*[272] is a useful handbook, both theoretically and practically. The authors whose work appears in the volume advocate for a total of ten practices that in various ways can help nations, and communities within nations, improve relationships and dial down tensions that may lead to violence. These practices include supporting nonviolent direct action against injustice and grassroots efforts toward peace and reconciliation; encouraging parties involved in conflict to admit their roles and even to seek forgiveness; promoting sustainable economic development; and respecting and strengthening the United Nations, regional organizations, NGOs, and other groups or forces for cooperation at an international level.

In addition to the Women of Liberia movement and the post-conflict rebuilding efforts mentioned above, we can discover instances in which all of the activities that Stassen and his co-contributors advocate have helped to foster peace among nations or communities. They include the nonviolence of the independence movement in India in the mid-twentieth century and the Civil Rights movement in the U.S. in the 1960s, both of which achieved (many of) their aims without armed conflict; debt relief in Uganda allowing for greater spending on infrastructure and education in that country;[273] and instances of cooperation at the United Nations and regional levels, including, for instance, the involvement of the African Union in efforts to avoid conflict in various

---

[272] Glen H. Stassen, ed. *Just Peacemaking: The New Paradigm for the Ethics of Peace and War* (Cleveland: The Pilgrim Press, 2008).

[273] The process of debt relief in Uganda has had its problems, as outlined in Orla Ryan, "Uganda Still Struggles to Pay its Way," BBC News, 20 February 2005, accessed March 2015, http://news.bbc.co.uk/2/hi/business/4245629.stm . Nevertheless, as the article makes clear, the government of Uganda did significantly improve its education system, in particular, after receiving debt relief beginning in 1998.

African nations,[274] cooperation among U.N. member nations to assist and resettle refugees,[275] and even the recent diplomatic talks between Iran and the permanent nation-state members of the U.N. Security Council, plus Germany.

All of these peacebuilding activities do or at least can (and should) include listening to people who are oppressed and who, sometimes, are involved in building grassroots relationships to advocate for their rights and needs. The Civil Rights and Indian independence movements are obvious examples. Nations and workers who resettle refugees can better honor human rights if they dialogue with refugees regarding their needs and if they seek to work alongside refugees. For instance, countries that resettle refugees do better to place people in areas where communities of refugees from their home countries have already been established. Practices of relationship-building and communication can also help staff as well as political leaders recognize where fault lines of potential conflict lie even in refugee camps, since examples of camps becoming training grounds for fighters in ongoing conflicts certainly exist.[276] When the African Union, the United Nations, or other organizations and groups of nations undertake diplomatic negotiations, the conversations most often take

---

[274] The African Union Commission maintains a "Peace and Security Department" with resources dedicated to prevention of violence, reaction to instances of conflict, and post-conflict rebuilding. See http://www.peaceau.org/en/page/2-divisions, accessed March 2015. The AU has been involved in peacekeeping operations in Somalia and Darfur, among other places, and a significant part of its mission involves diplomacy, among African nations as well as globally, to prevent conflict. Related to R2P in particular, AU diplomats were involved in helping to keep violence in Kenya at a low level after the disputed 2007 election, as reported by Bellamy in "The Responsibility to Protect – Five Years On," 149.

[275] Information about the work of the U.N. High Commissioner for Refugees can be found at http://www.unhcr.org/cgi-bin/texis/vtx/home, accessed March 2015.

[276] Rebels in Syria have recruited fighters from a refugee camp in Jordan, as detailed in Denver Nicks, "Syrian Rebels Illegally Recruiting from Jordan Refugee Camp," *TIME*, 11 November 2013, accessed March 2015, http://world.time.com/2013/11/11/syrian-rebels-illegally-recruiting-from-jordan-refugee-camp/. Hutu refugees living in the Democratic Republic of Congo after the Rwandan civil war and genocide were accused of launching raids in Rwanda, and the government of Rwanda participated in the beginning of the civil war in Congo in 1996 because of its claimed belief that Hutu fighters were being allowed to train and conduct raids with impunity. See John Pomfret, "Rwandans Led Revolt in Congo," *Washington Post*, 9 July 1997, accessed March 2015, http://www.washingtonpost.com/wp-srv/inatl/longterm/congo/stories/070997.htm.

place among authorities at a high level of power, yet as I have been arguing, those authorities have a moral obligation to take counsel from the people whose rights and lives are most affected by their agreements, and in some instances openness to such counsel can gain leaders the support they need to shape agreements that promote reconciliation at all levels.[277] These examples represent just a few ways in which taking counsel from those who are poor and oppressed has shaped, or could shape, leaders' fulfillment of their responsibility to protect human rights and promote human well-being, while recognizing the agency and drawing upon the cultural experiences of less-powerful people and groups.

Justice in Global Economic Relations

Finally, while I have touched on the relationship of ongoing global economic concerns to human rights protection, it is important to emphasize again that listening to and taking counsel from people who are poor and oppressed is not only a moral concern immediately before, during, and immediately after conflict, nor can we focus our attention only on political and military matters. Prevention of rights violations involves an ongoing commitment to building just structures which promote strong relationships,

[277] While the diplomatic work in Kenya in 2007 kept levels of violence relatively low and achieved a power-sharing agreement, Kenyans who participated in or were threatened by violence expressed concerns about how to go back to living normally alongside neighbors of other ethnicities; see Stephanie McCrummen, "Kenyan Rivals Sign Power-Sharing Agreement," *Washington Post*, 29 February 2008, accessed March 2015, http://www.washingtonpost.com/wp-dyn/content/article/2008/02/28/AR2008022801040.html. The United States Institute of Peace has conducted a follow-up report, which argues that attempts at peacebuilding post-2007 have been cursory at best and need to extend beyond small urban projects, taking into account the experiences and continued fears of all people whose lives were touched by post-election violence. The recognition that peacebuilding efforts needed to accompany the power-sharing agreement among leaders has led to some reduction in post-election turmoil; however, greater attention to the needs of all those who were and are vulnerable to violence, both before and after the power-sharing agreement was signed, helps us recognize these problems and ought to provoke leaders to engage in further efforts at reconciliation. See Jacqueline M. Klopp, Patrick Githinji, and Keffa Karuoya, "Internal Displacement and Local Peacebuilding in Kenya: Challenges and Innovations," United States Institute of Peace Special Report, September 2010, accessed March 2015, http://www.usip.org/sites/default/files/SR251%20-%20Peace%20building%20in%20Kenya.pdf.

fairness, and equality among all people. The thinkers I have cited understand sovereign obligations to be constant: Porter argues for structures of deliberation that are present at all times in the life of a political community; O'Donovan argues for ongoing representation of the population in law- and policy-making; and the liberationist and feminist thinkers cited above argue for a preferential option for the poor expressed in ongoing solidarity and for the building of enduring relationships between and among populations and political leaders. All of these are important ethical concerns when political authorities are building political structures.

But just as important, and in some ways even more so, are just economic structures: ways of conducting our economic life that ensure that people are not living in grinding poverty day to day, or in situations of vast inequality, or in precarious circumstances that give rise to constant anxiety and fear over potential loss of livelihood and economic well-being. I will not here go into great detail, but much helpful work on the ethics of global economic structures has been and is being conducted by scholars of ethics, economics, politics, and so on.[278] As the ICISS report recognized, just global economic structures are as important as just political structures.[279] The obligations of rulers – and, in the case of economic life especially, other powerful actors – laid out in this and the previous chapter extend to the laws and arrangements they make that affect people's economic well-being. Practices of building up the common good, proper deliberation and representation, building relationships, and listening to the oppressed all have significant economic components. Thus, prevention of rights violations worldwide relies on the crafting of a just global economy, just as much as it relies on fashioning just political arrangements.

---

[278] See the work of Henry Shue, Thomas Pogge, Kathryn Tanner, Amartya Sen, and Peter Singer, to name just a few.
[279] ICISS, 15, 19.

Conclusion

The just war tradition provides moral guidance for political authorities, and others, on issues of conflict and the protection of people, even as it changes and develops when new circumstances arise and new voices enter the dialogue. It offers a widely agreed-upon set of principles for thinking ethically about the use of force, which can help to shape action in morally fraught situations. Yet it is also an ongoing conversation, providing a framework for discussion whereby the ways we comprehend and respond to conflict are continually revisited and revised. The introduction of Responsibility to Protect into just war thought, as an extension and enrichment of the tradition, has the potential both to benefit from the long tradition of thinking about the justice of war and to expand our moral thinking about conflict, particularly about the prevention of conflict and of the human rights violations so often associated with it. Some of the benefits of reading R2P in light of just war and vice versa have already been discussed in scholarly analyses of R2P, but both scholarship and policy analysis still stand to gain more from further integration of R2P and just war thinking. In this work, I have tried to make the case for why that is.

Responsibility to Protect is an attempt to move beyond longstanding debates over humanitarian intervention, which in certain cases seem to pit the sovereignty of nation-states against a commitment to human rights. It provides a way for global leaders, commentators, and citizens worldwide to conceptualize sovereignty as incorporating a responsibility to protect the rights of a population, and it acknowledges that some of the rights of sovereign states may be overridden by the international community in cases where human rights are being violated in particular ways. It thus furthers the global ethical conversation about the protection of human rights.

At the same time, R2P remains subject to legitimate questions and critiques as national and international leaders attempt to adhere to it in particular situations and as commentators ask what good, or ill, it has done toward preventing and stopping egregious rights violations. Many questions that have to do with the use of military force under the framework of R2P can be fruitfully addressed when R2P is read as an extension of the just war tradition. Just war criteria can provide guidance for military action undertaken by the international community as part of its responsibility to protect human rights – guidance which helps guard against R2P's being invoked hypocritically as a way for powerful nations to push around those which are weaker, against naïveté in the way we conceive of the moral issues at stake in intervention, or against a rush to war as a means for protecting rights without a clear idea of what "success" in that war means, whether there is a reasonable prospect of it, and whether the costs of intervention, especially those borne by people already suffering or at risk of rights violations, are too great. No circumstance of horrific rights violations or the use of force is morally clear-cut. Yet just war does help to clarify the ethical concerns that arise when military power is used to enforce human rights norms, and it furnishes a set of criteria that can ground the moral decisions leaders must make about enforcement.

Just as importantly, reading Responsibility to Protect as a move within just war thought enhances the just war tradition itself. R2P contributes to, and in some ways reshapes, the ongoing conversation whereby just war thinking can better respond to contemporary circumstances and incorporate new ideas and voices. It does this by emphasizing the responsibility to prevent – not simply to respond to – human rights violations, as well as by focusing our attention on foundational moral obligations of

sovereigns, which ground their responsibility to protect their (and at times other) populations against the worst human rights violations.

In Chapter Three I discussed the work of three ethicists who examine political rulers' moral obligations of deliberation over laws, representation of all people within a political community, and action to build and uphold the common good of the community. These obligations ground a responsibility to protect human rights in the sense that a sovereign cannot fulfill them without, at minimum, ensuring that her or his people are protected against egregious rights violations. They also represent means by which sovereigns can work to protect human rights, since communities with rulers who engage in and encourage deliberation, properly represent their people, and seek the common good are communities in which rights are likely to be honored. The thinkers whose work I examined are all Christian ethicists, and it is clear that their conception of sovereign obligations arises from specific theological concerns. As global discussion over the protection of rights and sovereign responsibilities and/or obligations develops, we can see how it may be important to attend to the connection between particular metaphysical understandings of human political life and the way commentators describe sovereign obligations. In addition to drawing on the work of these ethicists to highlight the most important obligations sovereigns have to their own, and sometimes other, populations, I have attempted to show how attention can be paid to the theological underpinnings of their thought.

It does not suffice, however, to stop at a general discussion of obligations toward deliberation, representation, and upholding the common good. Rulers' ability to fulfill these obligations are affected by the power structures of the communities they lead, and in any case political authorities, like the rest of us, have duties to lift up (or in more

theological terms, to love and care for) people who are poorest and most oppressed. Listening to the counsel and concerns of oppressed people and groups also helps mitigate the risk that powerful leaders, even when they act on humanitarian impulses, will behave in imperialistic ways. I have highlighted examinations of these obligations in the work of liberationist and feminist thinkers, some of whom base their analyses in Christian theological assumptions, others in attention to the needs and concerns of women and to the importance of multiple kinds of human relationships. For these thinkers, sovereigns' moral duties include the obligation to prioritize the needs of and to listen, first, to the voices of people who are oppressed (and who are thus most at risk of suffering human rights violations). To realize these duties, sovereigns should build political structures whereby relationships can be developed and maintained between rulers themselves, people with significant political and social power, and people with very little or no such power. Fulfilling these duties is also a means by which sovereigns properly address their obligations of deliberation, representation, and upholding the common good.

To accomplish all these tasks, political authorities can best begin by considering peacebuilding and reconciliation practices and the ethical thinking that accompanies them. Such practices are designed to build strong relationships between members of a political community, and at their best they involve grassroots-level organizing, supported by political leaders and eventuating in speech and action which shapes the political structures of the community and its leaders' actions. Engaging these practices can make it more possible for national and international leaders to prioritize hearing the voices and acknowledging the agency of people who are normally marginalized. And although the two may seem very different, just war thinking benefits greatly from

incorporating theories of peacebuilding into its ethical considerations. In particular, peacebuilding theories can point just war thinkers toward ways to prevent violence and rights violations and to rebuild after they happen, thus extending the scope of our moral consideration of conflict and rendering it more likely that leaders can act in keeping with the criteria of last resort and right intention. Peacebuilding and reconciliation practices can be morally fraught just as are practices we engage in when we go to war, but they do contribute to stopping conflict and human rights violations and to rebuilding after they happen. It is always difficult to say for sure whether a particular practice has prevented a conflict that never happened, but if grassroots efforts at building peace can stop conflict, it is likely they can also stop the buildup toward conflict. Political authorities can fulfill their various moral obligations, and can address their responsibility to protect human rights, by encouraging these practices and acting on their outcomes, and citizens can participate in peacebuilding and hold their leaders accountable for how they promote and attend to it.

In a sense, all of these obligations – to encourage peacebuilding practices, to listen to the voices of people who are poor and oppressed, to craft structures of deliberation and proper representation, and to uphold the common good – are shared by all political authorities, from state governments to regional authorities to international diplomats. However, the question of whether military force can be used by any leader, if necessary, to meet these obligations remains hotly contested. Some argue that any leader who is capable also has an obligation to use force, if necessary, in *any* situation in which human rights are being violated in terrible ways. (Some commentators limit what counts as "terrible" to R2P-related violations; some argue that there are rights violations beyond the four named in the World Summit Outcome document that justify

the use of force.) Others argue that all leaders must obey international legal strictures, which state that force can only be used against a sovereign state in response to a direct attack or when it is authorized by the United Nations Security Council. At this time there is no clear way of resolving the debate: it seems horrible to allow genocide or torture, for instance, to continue on and on if the Security Council is paralyzed, and yet unilateral (or even multilateral) interventions can easily be self-serving and may do more harm than good, both to particular states and to international diplomacy. I am inclined to argue that there are particular circumstances in which human rights violations are terrible enough that authorities' moral obligation to do something – up to and including military intervention – outweighs their obligations to international law and harmony between powerful nations. But this argument must be made carefully, and I do not have the space to make it here.

Responsibility to Protect is not, in the end, only about the use of military force. Precisely because of that fact, it both benefits from and adds a great deal to the ongoing ethical conversation that is the just war tradition of thought. Those who think morally about justice in war do well to consider the responsibilities contemporary political authorities have taken on by agreeing to abide by R2P. Beyond that, just war thinkers should especially consider the sovereign obligations that ground the responsibility to protect human rights and make that protection more possible. And those who seek to strengthen the theory and practice of Responsibility to Protect in the contemporary global political context will better succeed if they incorporate just war principles and criteria into their arguments about R2P-related uses of force. For all the arguments it has provoked, R2P is an exciting development in ethical, philosophical, and political considerations worldwide because of its status as a global norm accepted at a truly

global level, by the governments of states large and small, powerful and weak. Understanding it in light of the just war tradition – and vice versa – has the potential to enhance both the theory and practice of human rights protection, particularly for those whose rights are most at risk.

Bibliography

Books

Arendt, Hannah. *The Origins of Totalitarianism*. New York: Harcourt, Inc., 1985.

Augustine. *Concerning the City of God against the Pagans*. Translated by Henry Bettenson. New York: Penguin Books, 1972.

—. *Letters of Saint Augustine*. Translated and edited by John Leinenweber. New York: Triumph Books, 1992.

Bellamy, Alex. *Responsibility to Protect: The Global Effort to End Mass Atrocities*. Cambridge: Polity Press, 2009.

Biggar, Nigel. *In Defence of War*. New York: Oxford University Press, 2013.

Burke, Edmund. *Reflections on the Revolution in France*. Edited by Frank M. Turner. New Haven: Yale University Press, 2003.

Cahill, Lisa Sowle. *Global Justice, Christology, and Christian Ethics*. New York: Cambridge University Press, 2013.

—. *Love Your Enemies: Discipleship, Pacifism, and Just War*. Minneapolis: Fortress Press, 1994.

—. *Theological Bioethics: Participation, Justice, and Change*. Washington, DC: Georgetown University Press, 2005.

Donnelly, Jack. *Universal Rights in Theory and Practice, 3rd Ed*. Ithaca: Cornell University Press, 2013.

Finnemore, Martha. *The Purpose of Intervention: Changing Beliefs about the Use of Force*. Ithaca: Cornell University Press, 2003.

Glanville, Luke. *Sovereignty and the Responsibility to Protect: A New History*. Chicago: The University of Chicago Press, 2014.

Glendon, Mary Ann. *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*. New York: Random House, 2001.

Gutiérrez, Gustavo. *A Theology of Liberation: History, Politics, and Salvation*, translated by Sister Caridad Inda and John Eagleson. Maryknoll, NY: Orbis Books, 1988.

Horne, John and Alan Kramer. *German Atrocities, 1914: A History of Denial*. New Haven, CT: Yale University Press, 2001.

Jackson, Robert. *The Global Covenant: Human Conduct in a World of States*. Oxford: Oxford University Press, 2003.

Johnson, James Turner. *Sovereignty: Moral and Historical Perspectives*. Washington, D.C.: Georgetown University Press, 2014.

Kelsay, John. *Arguing the Just War in Islam*. Cambridge, Mass.: Harvard University Press, 2007.

Kingsbury, Celia Malone. *For Home and Country: World War I Propaganda on the Home Front*. Lincoln, NE: University of Nebraska Press, 2010.

Laursen, John Christian ed. *Religious Toleration: "The Variety of Rites" from Cyrus to Defoe*. New York: St. Martin's Press, 1999.

Maimonides. *The Book of Divine Commandments, Volume 1: The Positive Commandments*. Translated by Rabbi Charles B. Chavel. London: Soncino Press, 1940.

—. *The Guide for the Perplexed*. Translated by M. Friedländer. New York: Dover Publications, Inc., 1956.

—. *A Maimonides Reader*. Edited by Isadore Twersky. New York: Behrman House, Inc., 1972.

McMahan, Jeff. *Killing in War*. New York: Oxford University Press, 2009.

Niebuhr, Reinhold. *The Nature and Destiny of Man: Volume II*. New York: Charles Scribner's Sons, 1964.

O'Donovan, Oliver. *The Just War Revisited*. New York: Cambridge University Press, 2003.

—. *The Ways of Judgment: The Bampton Lectures, 2003*. Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 2005.

Orend, Brian. *The Morality of War*. Peterborough, Ont: Broadview Press, 2006.

Porter, Jean. *Ministers of the Law: A Natural Law Theory of Legal Authority*. Grand Rapids, Mich: Wm. B. Eerdmans Pub. Co., 2010.

Potter, Ralph. *War and Moral Discourse*. Richmond, VA: John Knox Press, 1969.

Ramsey, Paul. *The Just War: Force and Political Responsibility*. New York: Charles Scribner's Sons, 1968.

Rawls, John. *The Law of Peoples*. Cambridge, MA: Harvard University Press, 2002.

—. *A Theory of Justice*. Cambridge, MA: Harvard/Belknap, 1971.

Reinold, Theresa. *Sovereignty and the Responsibility to Protect: The Power of Norms and the Norms of the Powerful*. New York: Routledge, 2013.

Schiffman, Lawrence and Joel B. Wolowelsky, eds. *War and Peace in the Jewish Tradition*. New York: Yeshiva University Press, 2004.

Schmitt, Carl. *The Concept of the Political*. Translated by George Schwab. New Brunswick/New Jersey: Rutgers University Press, 1976.

—. *Political Theology: Four Chapters on the Concept of Sovereignty*. Translated by George Schwab. Chicago: The University of Chicago Press, 2005.

Shue, Henry. *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*. Princeton, NJ: Princeton University Press, 1996.

Sjoberg, Laura. *Gender, Justice, and the Wars in Iraq: A Feminist Reformulation of Just War Theory*. Lanham, MD: Lexington Books, 2006.

Sobrino, Jon. *No Salvation Outside the Poor: Prophetic-Utopian Essays*. Maryknoll, NY: Orbis Books, 2008.

Stassen, Glen H., ed. *Just Peacemaking: The New Paradigm for the Ethics of Peace and War*. Cleveland: The Pilgrim Press, 2008.

Vitoria, Francisco de. *Francisco de Vitoria: Political Writings*. Edited by Anthony Pagden and Jeremy Lawrance. New York: Cambridge University Press, 1991.

Walzer, Michael. *Arguing about War*. New Haven: Yale Nota Bene, 2005.

—. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. New York: Basic Books, 1977.

Weigel, George. *Tranquillitas Ordinis: The Present Failure and Future Promise of American Catholic Thought on War and Peace*. Oxford: Oxford University Press, 1987.

Welch, David. *Germany, Propaganda and Total War, 1914-1918*. London: The Athlone Press, 2000.

Journal Articles/Book Chapters

Afterman, Adam and Gedaliah Afterman. "Judaism." In *Religion, War, and Ethics: A Sourcebook of Textual Traditions*. Edited by Gregory M. Reichberg and Henrik Syse, 8-74. New York: Cambridge University Press, 2014.

Anscombe, G.E.M. "The Justice of the Present War Examined," In *The Collected Philosophical Papers of G.E.M. Anscombe, Volume 3: Ethics, Religion, and Politics*, 72-81. Minneapolis: University of Minnesota Press, 1981.

—. "Mr. Truman's Degree." In *The Collected Philosophical Papers of G.E.M. Anscombe, Volume 3: Ethics, Religion, and Politics*, 62-71. Minneapolis: University of Minnesota Press, 1981.

—. "War and Murder." In *The Collected Philosophical Papers of G.E.M. Anscombe, Volume 3: Ethics, Religion, and Politics*, 51-61. Minneapolis: University of Minnesota Press, 1981.

Augustine, "On Free Choice of the Will." In *The Ethics of War: Classic and Contemporary Readings*, 75-77. Edited by Gregory M. Reichberg, Henrik Syse, and Endre Begby. Malden, MA: Blackwell Publishing, 2006.

—. Augustine, "Letter 138, to Marcellinus," in *The Ethics of War: Classic and Contemporary Readings*, 73-74. Edited by Gregory M. Reichberg, Henrik Syse, and Endre Begby. Malden, MA: Blackwell Publishing, 2006.

Bain, William. "Responsibility and Obligation in the 'Responsibility to Protect.'" *Review of International Studies* 36.S1 (2010): 25-46.

Bell, Jr., Daniel M. "JustWar Engaged: Review Essay of Walzer and O'Donovan." *Modern Theology* 22.2 (2006): 295-305.

Bellamy, Alex. "Aiding Iraqis Meets Responsibility to Protect and Could Lead to Common Ground on Syria." *Global Observatory*, 11 August 2014. Accessed September 2014, http://theglobalobservatory.org/analysis/799-aiding-iraq-responsibility-to-protect-common-ground-syria.html.

—. "Ethics and Intervention: The 'Humanitarian Exception' and the Problem of Abuse in the Case of Iraq." *Journal ofPeace Research* 41.2 (2004): 131-47.

—. "Libya and the Responsibility to Protect: The Exception and the Norm." *Ethics & International Affairs* 25.3 (2011): 263-69.

—. "The Responsibility to Protect – Five Years On." *Ethics & International Affairs* 24.2 (2010): 143-69.

—. "The Responsibility to Protect and the Problem of Military Intervention." *International Affairs* 84.4 (2008): 615-39.

—. "The Responsibility to Protect Turns Ten." *Ethics & International Affairs* 29.2 (2015): 161-85.

Brown, Davis. "Judging the Judges: Evaluating Challenges to Proper Authority in Just War Theory." *Journal of Military Ethics* 10.3 (2011): 133-46.

Brunstetter, Daniel and Megan Braun. "From *Jus ad Bellum* to *Jus ad Vim*: Recalibrating our Understanding of the Moral Use of Force." *Ethics & International Affairs* 27.1 (2013): 87-106.

Buchanan, Allen and Robert O. Keohane. "Precommitment Regimes for Intervention: Supplementing the Security Council." *Ethics & International Affairs* 25.1 (2011): 41-63.

Cahill, Lisa Sowle. "How Should War Be Related to Christian Love?" *Soundings: An Interdisciplinary Journal* 97.2 (2014): 186-95.

—. "Just Peacemaking: Theory, Practice, and Prospects." *Journal of the Society of Christian Ethics* 23.1 (2003): 195-212.

Chandler, David. "*The Responsibility to Protect?* Imposing the 'Liberal Peace.'" *International Peacekeeping* 11.1 (2004): 59-81.

Chesterman, Simon. " 'Leading from Behind': The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention after Libya." *Ethics & International Affairs* 25.3 (2011): 279-85.

Childress, James F. "Just-War Theories: The Bases, Interrelations, Priorities, and Functions of their Criteria." *Theological Studies* 39.3 (1978): 427-45.

Cicero. "The Just War." In *War and Christian Ethics: Classical and Contemporary Readings on the Morality of War*, 24-25. Edited by Arthur Holmes. Grand Rapids: Baker Publishing Group, 1975.

—. "Natural Law and Just War." In *War and Christian Ethics: Classical and Contemporary Readings on the Morality of War*, 25-31. Edited by Arthur Holmes. Grand Rapids: Baker Publishing Group, 1975.

Cook, Martin L. "Just Peacemaking: Challenges of Humanitarian Intervention." *Journal of the Society of Christian Ethics* 23.1 (2003): 241-53.

Cornell, Svante E. "International Reactions to Massive Human Rights Violations: The Case of Chechnya." *Europe-Asia Studies*, 51.1. (1999): 85-100.

Dalley, Mallon, Jennifer Heinecke, Jacqueline Akhurst, Abdelkader Abdelali, Natoschia Scruggs, Raquel DeBartolo, Adeniyi Famose, Helena Castanheria, Eduardo Correia, and William Tastle. "Definitions of Peace and Reconciliation in Africa." In the *International Handbook of Peace and Reconciliation*, edited by Kathleen Malley-Morrison, Andrea Mercurio, and Gabriel Twose. New York: Springer Science+Business Media, 2013.

de Vries, Patricia. "Just War: The Naiveté of 'Responsibility to Protect.'" *World Policy* blog, 24 May 2012. Accessed September 2014, http://www.worldpolicy.org/blog/2012/05/24/just-war-naivet%C3%A9-responsibility-protect.

Donnelly, Jack. "State Sovereignty and International Human Rights." *Ethics & International Affairs* 28.2 (2014): 225-38.

Elshtain, Jean Bethke. "International Justice as Equal Regard and the Use of Force." *Ethics & International Affairs* 17.2 (2003): 63-75.

—. "Jean Bethke Elshtain Responds." *Dissent* 53.3 (2006): 109-11.

—. "The Responsibility of Nations: A Moral Case for Coercive Justice." *Daedalus* 132.1 (2003): 64-72.

—. "Terrorism, Regime Change, and Just War: Reflections on Michael Walzer." *Journal of Military Ethics* 6.2 (2007): 131-37.

—. "Women, the State, and War." *International Relations* 23.2 (2009): 289-303.

Evans, Gareth. "The Responsibility to Protect: An Idea Whose Time Has Come…and Gone?" *International Relations* 22.3 (2008): 283-98.

Evans, Gareth and Mohamed Sahnoun. "The Responsibility to Protect." *Foreign Affairs* 81.6 (2002): 99-110.

Fassin, Didier. "The Predicament of Humanitarianism." *Qui Parle: Critical Humanities and Social Sciences* 22.1 (2013): 33-48.

Finnis, John. "War and Peace in the Natural Law Tradition," in *Human Rights and Common Good: The Collected Essays of John Finnis: Volume III*, 183-207. New York: Oxford University Press, 2011.

Fleshman, Michael. "Even with Peace, Liberia's Women Struggle: A Conversation with Activist Leymah Gbowee." *Africa Renewal* (2010). Accessed June 2015, http://www.un.org/africarenewal/magazine/april-2010/even-peace-liberia%E2%80%99s-women-struggle.

Focarelli, Carlo. "The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine." *Journal of Conflict and Security Law* 13.2 (2008): 191-213.

Ford, John. "The Morality of Obliteration Bombing." *Theological Studies* 5.3 (1944): 261-309.

Foust, Elisha. "Breathing the Political: A Meditation on the Preservation of Life in the Midst of War." In *Breathing with Luce Irigaray*, edited by Lenart Skof and Emily A. Holmes, 186-201. New York: Bloomsbury Academic, 2013.

Friberg-Fernros, Henrik. "Allies in Tension: Identifying and Bridging the Rift between R2P and Just War." *Journal of Military Ethics* 10.3 (2011): 160-73.

Glanville, Luke. "The Myth of 'Traditional' Sovereignty." *International Studies Quarterly* 57.1 (2013): 79-90.

Gomes, Keith J. "An Intellectual Genealogy of the Just War: A Survey of Christian Political Thought on the Justification of Warfare." *Small Wars Journal* (August 2008). Accessed May 2015. http://smallwarsjournal.com/jrnl/art/an-intellectual-genealogy-of-the-just-war.

Gorman, Ryan R. "War and the Virtues in Aquinas's Ethical Thought." *Journal of Military Ethics* 9.3 (2010): 245-61.

Gutiérrez, Gustavo. "Notes for a Theology of Liberation." *Theological Studies* 31.2 (1970): 243-61.

—. "The Option for the Poor Arises from Faith in Christ." *Theological Studies* 70.2 (2009): 317-26.

—. "Renewing the Option for the Poor." In *Liberation Theologies, Postmodernism, and the Americas*, edited by David Batstone, Eduardo Medieta, Lois Ann Lorentzen, Dwight N. Hopkins, 69-82. New York: Routledge, 1997.

Hebblethwaite, Peter. "Liberation Theology and the Roman Catholic Church." In *The Cambridge Companion to Liberation Theology*, edited by Christopher Rowland, 209-28. Cambridge: Cambridge University Press, 2006.

Hendrickson, David C. "International Peace: One Hundred Years On." *Ethics & International Affairs* 27.2 (2013): 129-46.

Hostetter, Doug. "Responsibility to Protect: Development of the Concept, and a Critique." *The Conrad Grebel Review* 28.3 (2010): 39-56.

Hurd, Ian. "Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World." *Ethics & International Affairs* 25.3 (2011): 293-313.

Ilesanmi, Simeon O. "So that Peace May Reign: A Study of Just Peacemaking Experiments in Africa." *Journal of the Society of Christian Ethics* 23.1 (2003): 213-26.

Johnson, James Turner. "Contemporary Just War Thinking: Which Is Worse, to Have Friends or Critics?" *Ethics & International Affairs* 27.1 (2013): 25-45.

—. "The Just War Idea: The State of the Question," *Social Philosophy and Policy* 23.1 (2006): 167-95.

—. "Religion, Violence, and Human Rights: Protection of Human Rights as Justification for the Use of Armed Force." *Journal of Religious Ethics* 41.1 (2013): 1-14.

Kelsay, John. "Just War Thinking as a Social Practice." *Ethics & International Affairs* 27.1 (2013): 67-86.

Kimball, Charles. "The Just Peacemaking Paradigm and Middle East Conflicts." *Journal of the Society of Christian Ethics* 23.1 (2003): 227-40.

Luck, Edward. "The Responsibility to Protect: The First Decade." *Global Responsibility to Protect* 3.4 (2011): 387-99.

—. "The Responsibility to Protect: Growing Pains or Early Promise?" *Ethics & International Affairs* 24.4 (2010): 349-65.

—. "The Underestimated Strength of Civil Prevention – Taking Forward the Responsibility to Protect." In *Protecting People – and Losing Just Peace? Debates on the Responsibility to Protect in the Context of Christian Peace Ethics.* Edited by Ines-Jacqueline Werkner and Dirk Rademacher. Lit Verlag GmbH & Co. KG Wien, 2013.

Manfredi, Zachary. "Recent Histories and Uncertain Futures: Contemporary Critiques of International Human Rights and Humanitarianism." *Qui Parle: Critical Humanities and Social Sciences* 22.1 (2013): 3-32.

Mathewes, Charles. "Just War and Tragedy: A Response to Nigel Biggar, *In Defence of War.*" *Soundings: An Interdisciplinary Journal* 97.2 (2014): 195-207.

McMahan, Jeff. "The Sources and Status of Just War Principles." *Journal of Military Ethics* 6.2 (2007): 91-106.

Morrow, Paul. "Atrocity Propaganda and the Moral Justification of Humanitarian War," unpublished paper.

Moses, Jeremy, Babak Bador, and Tessa Wright. "The Iraq War and the Responsibility to Protect: Uses, Abuses and Consequences for the Future of Humanitarian Intervention." *Journal of Intervention and Statebuilding* 5.4 (2011): 347-67.

Muldoon, James. "Francisco De Vitoria and Humanitarian Intervention." *Journal of Military Ethics* 5.2 (2006): 128-43.

Murphy, Sean D. "*Jus ad Bellum*, Values, and the Contemporary Structure of International Law." *Journal of Religious Ethics* 41.1 (2013): 20-26.

O'Connell, Mary Ellen. "The UN, NATO, and International Law after Kosovo." *Human Rights Quarterly* 22.1 (2000): 57-89.

Oh, Irene. "Muslim Governance and the Duty to Protect." *Journal of Religious Ethics* 41.1 (2013): 15-19.

Orend, Brian. "*Jus Post Bellum.*" *Journal of Social Philosophy* 31.1 (2000): 117-37.

Pattison, James. "Whose Responsibility to Protect? The Duties of Humanitarian Intervention." *Journal of Military Ethics* 7.4 (2008): 262-83.

Pavlischek, Keith. "Reinhold Niebuhr, Christian Realism, and Just War Theory: A Critique." In *Christianity and Power Politics Today: Christian Realism and Contemporary Political Dilemmas*, ed. Eric Patterson, 53-71. New York: Palgrave Macmillan, 2008.

Peach, Lucinda J. "An Alternative to Pacifism? Feminism and Just-War Theory." *Hypatia* 9.2 (1994): 152-72.

Philpott, Dan. "Sovereignty." *The Stanford Encyclopedia of Philosophy* (Summer 2014 Edition). Edited by Edward N. Zalta. Accessed May 2015, http://plato.stanford.edu/archives/sum2014/entries/sovereignty.

Roff, H.M. "Response to Pattison: Whose Responsibility to Protect?" *Journal of Military Ethics* 8.1 (2009): 79-85.

Ruddick, Sara. "Feminist Questions for Peace and War: An Agenda for Research, Discussion, Analysis, Action." *Women's Studies Quarterly* 12.2 (1984): 8-11.

—. "Pacifying the Forces: Drafting Women in the Interests of Peace." *Signs* 8.3 (1983): 471-89.

Schlabach, Gerald W. "Just Policing, Responsibility to Protect, and Anabaptist Two-Kingdom Theory." *The Conrad Grebel Review* 28.3 (2010): 73-88.

Sjoberg, Laura. "Viewing Peace Through Gender Lenses." *Ethics & International Affairs* 27.2 (2013): 175-87.

Sobrino, Jon. "A Critique and Unmasking of Current Democracies and Ways of Humanizing Them from the Biblical-Jesuanic Tradition," translated by Paul Burns. In *Christianity and Democracy*, *Concilium* 2007/4, edited by Felix Wilfred and Luiz Carlos Susin, 69-82. London: SCM Press, 2007.

—. "The Foundation of All Ministry: Service to the Poor and Victims in a North-South World," translated by Paul Burns. In *Ministries in the Church*, *Concilium* 2010/1, edited by Susan Ross, Maria Clara Bingemer, and Paul Murray, 11-21. London: SCM Press, 2010.

—. "Salvation from Below: Toward a Humanized Humanity." In *The New Pontificate: A Time for Change?*, *Concilium* 2006/1, edited by Erik Borgman, Maureen Junker-Kenny, and Janet Martin Soskice, 23-34. London: SCM Press, 2006.

Stalnaker, Aaron. "Xunzi's Moral Analysis of War and Some of Its Contemporary Implications." *Journal of Military Ethics* 11.2 (2012): 97-113.

Stassen, Glen. "The Unity, Realism, and Obligatoriness of Just Peacemaking Theory." *Journal of the Society of Christian Ethics* 23.1 (2003): 171-94.

Stone, Ronald H. "Realist Criticism of Just Peacemaking Theory." *Journal of the Society of Christian Ethics* 23.1 (2003): 255-67.

Subotic, Jelena. "Expanding the Scope of Post-Conflict Justice: Individual, State and Societal Responsibility for Mass Atrocity." *Journal of Peace Research* 48.2 (2011): 157-69.

Thakur, Ramesh. "Iraq and the Responsibility to Protect." *Behind the Headlines* 62.1 (2004): 1-16.

Thomas Aquinas. *Summa Theologia*, excerpted in *The Ethics of War: Classic and Contemporary Readings*, 176-178. Edited by Gregory M. Reichberg, Henrik Syse, and Endre Begby. Malden, MA: Blackwell Publishing, 2006.

Tronto, Joan. "Is Peacekeeping Care Work? A Feminist Reflection on 'The Responsibility to Protect'." In *Global Feminist Ethics: Feminist Ethics and Social Theory*,

edited by Rebecca Whisnant and Peggy DesAutels, 179-200. Lanham, MD: Rowman & Littlefield, 2008.

Twiss, Sumner and Jonathan Chan. "Classical Confucianism, Punitive Expeditions, and Humanitarian Intervention." *Journal of Military Ethics* 11.2 (2012): 81-96.

Vennen, Mark Vander. "Following Ways of Life: The Responsibility to Protect." *The Conrad Grebel Review* 28.3 (2010): 108-24.

Waldron, Jeremy. "A Religious View of the Foundations of International Law." Working Paper 11-29 (Public Law & Legal Theory Research Paper Series), May 2011.

Walker, Margaret Urban. "Restorative Justice and Reparations." *Journal of Social Philosophy* 37.3 (2006): 377-95.

— "Truth Telling as Reparations." *Metaphilosophy* 41.4 (2010): 525-45.

Walzer, Michael. "The Argument about Humanitarian Intervention." *Dissent* 49.1 (2002): 29-37.

—."Regime Change and Just War." *Dissent* 53.3 (2006): 103-08.

—. "What is the Responsibility to Protect?" *Dissent* blog, 20 September 2013. Accessed June 2014, http://www.dissentmagazine.org/blog/what-is-the-responsibility-to-protect.

Weigel, George. "The Just War Tradition and the World after September 11." *Logos: A Journal of Catholic Thought and Culture* 5.3 (2002): 13-44.

Weiss, Thomas G. "RtoP Alive and Well after Libya." *Ethics & International Affairs* 25.3 (2011): 287-92.

Weiss, Thomas G. and Karen E. Young. "Compromise and Credibility: Security Council Reform?" *Security Dialogue* 36.2 (2005): 131-52.

Welsh, Jennifer M. "Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP." *Ethics & International Affairs* 25.3 (2011): 255-62.

—. "Implementing the 'Responsibility to Protect': Where Expectations Meet Reality. *Ethics & International Affairs* 24.4 (2010): 415-30.

Witte, Jr., John and M. Christian Green. "Religious Freedom, Democracy, and International Human Rights." *Emory International Law Review* 23.2 (2009): 583-608.

News Articles

Ackerman, Spencer, Dominic Rushe, and Julian Borger. "Senate report on CIA torture claims spy agency lied about 'ineffective' program." *The Guardian*, 9 December 2014. Accessed February 2015. http://www.theguardian.com/us-news/2014/dec/09/cia-torture-report-released.

BBC News. "Rwanda: How the Genocide Happened," 17 May 2011. Accessed March 2015, http://www.bbc.com/news/world-africa-13431486.

Charbonneau, Louis. "Palestinians win implicit U.N. recognition of sovereign state." *Reuters*, 29 November 2012. Accessed February 2015. http://www.reuters.com/article/2012/11/29/us-palestinians-statehood-idUSBRE8AR0EG20121129.

Hulse, Corrie. "The 'Responsibility to Protect' Is Buried in Iraq." *Foreign Policy in Focus*, 1 August 2014. Accessed September 2014, http://fpif.org/r2p-iraq/.

Khan, Riaz. "Officials: US Drone Strike Kills 11 in NW Pakistan." *Associated Press* (ABC News), 19 July 2014.

McCrummen, Stephanie. "Kenyan Rivals Sign Power-Sharing Agreement." *Washington Post*, 29 February 2008. Accessed March 2015, http://www.washingtonpost.com/wp-dyn/content/article/2008/02/28/AR2008022801040.html.

New Statesman. "Leader: we have a responsibility to protect the Yazidis of Iraq," 14 August 2014. Accessed September 2014, http://www.newstatesman.com/politics/2014/08/leader-we-have-responsibility-protect-yazidis-iraq.

Nicks, Denver. "Syrian Rebels Illegally Recruiting from Jordan Refugee Camp." *TIME*, 11 November 2013. Accessed March 2015, http://world.time.com/2013/11/11/syrian-rebels-illegally-recruiting-from-jordan-refugee-camp/.

Pomfret, John. "Rwandans Led Revolt in Congo." *Washington Post*, 9 July 1997. Accessed March 2015, http://www.washingtonpost.com/wp-srv/inatl/longterm/congo/stories/070997.htm.

Priest, Dana and R. Jeffrey Smith. "Memo Offered Justification for Use of Torture." *Washington Post*, 8 June 2004. Accessed February 2015. http://www.washingtonpost.com/wp-dyn/articles/A23373-2004Jun7.html.

Ryan, Orla. "Uganda Still Struggles to Pay its Way." BBC News, 20 February 2005. Accessed March 2015, http://news.bbc.co.uk/2/hi/business/4245629.stm.

Smale, Alison. "Germany Begins Inquiry of U.S. in Surveillance Case." *New York Times*, 4 June 2014.

Reports/Agreements

Adams, Simon. *Failure to Protect: Syria and the UN Security Council*. Global Centre for the Responsibility to Protect Occasional Paper Series No. 5, March 2015. Accessed March 2015, http://www.globalr2p.org/media/files/syriapaper_final.pdf.

Human Rights Watch. "China: Religious Repression of Uighur Muslims," 13 April 2005. Accessed March 2015, http://www.hrw.org/news/2005/04/10/china-religious-repression-uighur-muslims.

International Commission of Inquiry on Darfur. "Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General." Geneva, 25 January 2005. Accessed March 2015, http://www.un.org/News/dh/sudan/com_inq_darfur.pdf#search=%22un%20report%20darfur%20genocide%22.

International Commission on Intervention and State Sovereignty. *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*. Ottawa, ON: The International Development Research Centre, December 2001.

—. *Regional Roundtable Consultations with Nongovernmental and Other Interested Organizations*. "Geneva," 31 January 2001, "Maputo," 10 March 2001, "Santiage," 4 May 2001, "Cairo," 21 May 2001, "Bejing," 14 June 2001.

Klopp, Jacqueline M., Patrick Githinji, and Keffa Karuoya. "Internal Displacement and Local Peacebuilding in Kenya: Challenges and Innovations." United States Institute of Peace Special Report, September 2010. Accessed March 2015, http://www.usip.org/sites/default/files/SR251%20-%20Peace%20building%20in%20Kenya.pdf.

Manz, Beatrice. *Central America (Guatemala, El Salvador, Honduras, Nicaragua): Patterns of Human Rights Violations*. Commissioned by United Nations High Commissioner for Refugees, Status Determination and Protection Information System, August 2008. Accessed March 2015, http://www.refworld.org/pdfid/48ad1eb72.pdf.

The Secretary-General. *We the Peoples: The Role of the United Nations in the 21st Century (Millennium Report of the Secretary-General)*, 3 April 2000. UN Doc No A/54/2000. Accessed July 2014, www.un.org/millennium/sg/report/full.htm.

Teitt, Sarah. *China and the Responsibility to Protect.* Asia-Pacific Centre for the Responsibility to Protect, 19 December 2008.

United Nations. *Charter of the United Nations*, 24 October 1945.

United Nations General Assembly. *2005 World Summit Outcome: Resolution/Adopted by the General Assembly*, 24 October 2005, A/RES/60/1.

—. *Convention on the Prevention and Punishment of the Crime of Genocide.* New York, 9 December 1948, *United Nations Treaty Series*, v. 78, p. 277. Accessed July 2014, https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-English.pdf.

—. *Early Warning, Assessment, and the Responsibility to Protect: Report of the Secretary-General.* 14 July 2010, A/64/864. Accessed September 2014, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/64/864.

—. *Fulfilling Our Collective Responsibility: International Assistance and the Responsibility to Protect: Report of the Secretary-General.* 11 July 2014, A/68/947. Accessed September 2014, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/68/947&referer=/english/&Lang=E.

—. *Implementing the Responsibility to Protect: Report of the Secretary-General.* 12 January 2009, A/63/677. Accessed August 2014, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/63/677.

—. *International Covenant on Civil and Political Rights.* New York, 16 December 1966. *United Nations Treaty Series*, v. 999, p. 171. Accessed July 2014, http://www.refworld.org/docid/3ae6b3aa0.html.

—. *Responsibility to Protect: State Responsibility and Prevention: Report of the Secretary-Genera.*, 9 July 2013, A/67/929. Accessed September 2014, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/929.

—. *Responsibility to Protect: Timely and Decisive Response: Report of the Secretary-General.* 25 July 2012, A/66/874. Accessed September 2014, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/874.

—. *The Role of Regional and Subregional Arrangements in Implementing the Responsibility to Protect: Report of the Secretary-General.* 28 June 2011, A/65/877. Accessed September 2014, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/65/877.

United States Conference of Catholic Bishops. "The Challenge of Peace: God's Promise and Our Response," USCCB, 3 May 1983. Accessed June 2015. http://www.usccb.org/upload/challenge-peace-gods-promise-our-response-1983.pdf.

Online Translation

Sepúlveda, Juan Ginés de. *Concerning the Just Cause of the War against the Indians.* "Latin Library." Accessed May 2015. http://www.thelatinlibrary.com/imperialism/readings/sepulveda.html.