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## The Morality of Intervention in International Theory

Humanitarian intervention presents a difficult moral dilemma and invites moral appraisal for at least two reasons. First, through the use of military force it is tantamount to war, which disrupts international order, destroys human life, and inevitably brings about human suffering. Moral reasoning in this vein tells us that humanity is best served by limiting the occurrence of such war. Second, humanitarian intervention may be morally desirable insofar as it is the only way to rescue innocent people from gross mistreatment by abusive authorities. While one position aims to prohibit that which the other wishes to permit, both positions are inevitably the products of moral reasoning because both take human life as the fundamental value worth preserving.<sup>1</sup> When each of these moral positions is articulated in the form of a normative theory, both appeal to human welfare as a normatively privileged approach to moral discourse that confers definite moral value on the well-being of individuals.

As a starting point for this inquiry, I examine the reasoning of theorists on opposing sides of the general debate on the moral foundations of the nonintervention principle. This chapter considers two general theoretical dispositions in international thought that encompass both veins of moral reasoning, each making normative arguments about the desirability of the nonintervention principle in general and humanitarian intervention in particular. These two theories are statism, which is by and large noninterventionist, and cosmopolitanism, which has a more interventionist ethos and tends to perceive state boundaries as having a merely derivative significance. While international theory has been plagued by accusations of “intellectual and moral poverty,”<sup>2</sup> I focus on these schools of thought because each contends that making moral judgments about relations among sovereign political communities is just as appropriate as making such judgments about human relations within

them. Theorists of these schools recognize the possibility that the rules of international relations might sometimes require states and individuals to act in ways that are not always exclusively self-serving. States either refrain from or engage in military intervention out of a sense of moral obligation to others. This is not to say that states always (or even often) behave this way in practice, or that there is anything approaching a true universal morality that governs their relations. Rather, at some level of abstraction, "everyone seems to think that the establishment of such a morality would be a good idea."<sup>3</sup> From the point of view of states, the moral obligation to comply with the norm of nonintervention is desirable, while individuals might prefer that international society have a moral obligation to rescue them from violence perpetuated by their own government. Statists hold that this moral obligation is to other states, while cosmopolitans argue that there is a moral obligation to individuals. Both, however, consider states fundamentally capable of moral responsibility.

Statism, also referred to as liberal statism, communitarianism, or morality of states theory, argues for the primacy of nonintervention because human beings can create their own meaningful political community within sovereign states.<sup>4</sup> While most commonly associated with the political theorist Michael Walzer in his seminal work *Just and Unjust Wars*, statism is well represented in the scholarship of others, including R. J. Vincent, Hedley Bull, and Charles de Visscher.<sup>5</sup> The noninterventionist premises of statism, however, are best articulated by Walzer. His is the most comprehensive account of statism, while also having the most direct relevance to the morality of humanitarian intervention. Therefore, this analysis of statism focuses on Walzer's writings, and makes reference to other representatives of statism where appropriate.

Cosmopolitanism takes global distributive justice as one of its chief concerns, but it also speaks to questions of intervention. Thomas Pogge's institutional cosmopolitanism, for example, argues that participants of the existing global order share a responsibility for the human rights violations brought about by this order, and as such, are obligated to rectify these injustices by intervention, if necessary.<sup>6</sup> Charles Beitz's more systematic theory of cosmopolitan morality shares such sentiments, although it is more concerned with reforming unjust institutions at the state level.<sup>7</sup> Beitz even demonstrates certain Rawlsian tendencies when dealing with the morality of the nonintervention principle, as does Fernando Tesón in his influential dissertation on the morality of humanitarian intervention.<sup>8</sup> Nevertheless, to the extent that a cosmopolitan morality suggests the state is rightfully the subject of external moral scrutiny for how it treats its citizens, this study equates cosmopolitanism most directly with the writings of Beitz. Because his writings represent

the most complete account of an international cosmopolitan morality, Beitz is the main focus of the discussion of this theory and its criticisms. However, it also references Tesón's work because it applies this understanding of cosmopolitanism specifically to humanitarian intervention.

This chapter discusses the implications these two theories have for when, why, and under what conditions, humanitarian intervention is morally permissible, and judges the extent to which each theory employs moral reasoning that treats human well-being as the highest moral good—as it relates to the conduct of humanitarian intervention. If one accepts that human life and well being have definite cross-cultural moral significance, then it reasonably follows that the discourse on human rights encompasses much of the current moral reality of international political life.<sup>9</sup> There are powerful pragmatic reasons for grounding moral reasoning on humanitarian intervention in the language of human rights, although as demonstrated in chapter 2, rights-talk is not the only conceptual discourse that grants moral priority to human welfare. The theories at issue generally agree that a human rights based account of humanitarian intervention requires limiting the conduct of intervention to exceptional cases. The argument of this chapter is that the moral underpinnings of such normative prescriptions are derived from a consequentialist form of moral reasoning that both theories explicitly reject, but that both theories implicitly rely upon to be logically and morally consistent.

### Understanding Statism and Cosmopolitanism

The most distinguishing element of statism is the idea that the rules of international relations are derived analogously from domestic society. States are the international analog of individuals in domestic society and as such, states maintain the same rights and privileges in the international arena as individuals do in the domestic setting. The difference is that there is no authority in the international arena analogous to the state in the domestic setting. To address the problem of maintaining order in international society absent a global sovereign, statistes emphasize the principle of nonintervention. R. J. Vincent argues that observance of the rule of nonintervention is a minimum condition for states' orderly coexistence. According to this view, because states are constitutive of an international society, tranquility can only be preserved if states respect the juridical boundaries that delineate discrete spheres of authority and tolerate the diverse institutional arrangements and political behavior that transpire within them.<sup>10</sup> Thus states, have a legal and moral claim against outside interference and are free to organize their domestic politics free from interference by other states.

Walzer's formulation of the domestic analogy follows this logic, though as a contrast to Vincent's advocacy of a mostly legal right to sovereignty, Walzer champions a moral appeal. Walzer argues that nonintervention and territorial integrity maintain moral value because it is only within states where men and women can build a political community they can call their own.<sup>11</sup> These rights of states to territorial integrity and nonintervention are therefore founded upon the rights of individuals living in a political community within the state—specifically, the right to an autonomous process of social development. The moral character of the state is thus viewed in terms of the social contract, in that the “rights of states rest on the consent of their members.”<sup>12</sup> Consent, however, is not to be taken as actual consent, but rather understood metaphorically as “a process of association and mutuality, the ongoing character of which the state claims to protect against external encroachment.”<sup>13</sup>

It is easy to see why Walzer underscores the metaphorical nature of consent, because, if he meant it literally, there would be a significant number of states that could not make a claim to territorial integrity or political sovereignty on this basis. Walzer qualifies this metaphor in his later writings as “fit.” In other words, there is a certain union between a state's government and its subjects that does not necessarily rest on explicit or even implicit consent in the liberal democratic sense, but rather is most appropriately characterized as “a people governed in accordance with their own traditions.”<sup>14</sup> A state may not enjoy internal legitimacy construed in the democratic sense, but the society of states is obligated to treat it in international relations as if it were legitimate in the eyes of its own subjects. That is, a government's internal illegitimacy is no reason to deny it external recognition as a sovereign state. The concept of fit therefore serves to conceptually distinguish internal legitimacy from its external counterpart, while the presumption that there is fit is one that foreigners owe to an historic community out of a sense of morality. A state enjoys full sovereign rights, including the right of nonintervention, because of the existence of fit, regardless of the justice of that state's internal institutions. For Walzer, foreigners are in no position to criticize the internal legitimacy of a state's institutional composition because they simply lack the knowledge to adequately judge the reality of a meaningful political union between government and the governed.<sup>15</sup> International society is morally required to allow for the political processes within states to take their course, despite their “messiness and uncertainty . . . and frequent brutality.”<sup>16</sup>

If the central claim of statism is that the international community of states should maintain a certain mutual disinterestedness to one another's internal politics, then the cosmopolitan critique of statism is

one that demands more sensitivity to the wrongdoings of states in the interest of global justice. As a direct challenge to statism, cosmopolitanism opens the state up to external criticism and treats individuals (as opposed to states) as the principal subjects of international morality. Cosmopolitanism does not make the distinction between internal and external legitimacy, or it at least suggests that this distinction is morally unfounded. Under what conditions, the cosmopolitans ask, should states have the right to be respected as autonomous sources of ends in the same way as do persons?<sup>17</sup> The cosmopolitan view therefore challenges the statist domestic analogy on both empirical and normative grounds. That states are as free in international society as individuals are in domestic society is an empirical question, not an a priori assumption, and is to be settled by observation.<sup>18</sup> As one critic of statism suggests, since states (governments) are largely composed of men who are enamored with the exercise of power, it makes more sense to assume that states are not entitled to any presumptive legitimacy.<sup>19</sup>

Beitz's theory of cosmopolitan morality—outlined most clearly in his book, *Political Theory and International Relations*—is largely inspired by these familiar criticisms of statism. Beitz's own theory of international morality takes statism to task on the two analogies fundamental to statist reasoning: the analogy of states and persons, and the resulting analogy of nonintervention and individual autonomy.<sup>20</sup> This criticism essentially amounts to a moral critique of the principle of nonintervention enshrined by Walzer and other statist. Beitz is sympathetic to the view that a state might obtain moral standing by constructing its own rights and liberties on a foundation of individual rights, as it is reasonable enough that consent by a state's citizens justifies the possession of the right of nonintervention for their government. However, Beitz rejects the notion that consent—either explicit or tacit—is sufficient to establish the legitimacy of government.<sup>21</sup>

Though Beitz does not pursue this line of reasoning, a powerful objection to consent as the basis of legitimacy comes from John Stuart Mill's notion of tyranny of the majority.<sup>22</sup> Such an objection is simply that a democratically elected government can brutalize a despised minority just as easily as an authoritarian one can. As such, majoritarian democracies are founded on consent as an empirical reality, but it is hard to say that such a state has rights by virtue of the rights of its citizens if significant portions of them are denied basic individual rights, or even massacred. What is important for Beitz, however, is that the weakness of the link between consent and legitimacy also undermines that between consent and nonintervention. For statist, a state supposedly maintains the right of nonintervention because it seeks to protect its citizens against (external) coercion against their will.<sup>23</sup> Beitz counters that if legitimate

governments exercise coercion against their populace without consent—even in carrying out the everyday operations of government—one needs a justification for why this type of coercion is legitimate and external coercion is not, since neither take place under the auspices of consent.<sup>24</sup>

Beitz's answer to this conundrum is that "only those states whose institutions satisfy the appropriate principles of justice can legitimately demand to be respected as autonomous sources of ends"—that is, to claim the right of nonintervention.<sup>25</sup> In other words, only states that treat their citizens as autonomous sources of ends can demand the right of nonintervention. Beitz is cryptic here. He references a hypothetical contract, which suggests he is arguing that the only kind of legitimate political association is one that conforms to principles chosen by individuals in some sort of original position, á la John Rawls.<sup>26</sup> While he is sympathetic to the Rawlsian argument, Beitz does not explicitly put it forth as his own position. However vague the notions of just institutions and autonomous sources of ends are, in his argument, it is clear that what Beitz requires, for states to be able to claim nonintervention, is a higher standard of human rights protection than is entailed by Walzer's notion of fit. It is also clear that Beitz consciously employs the language of individual human rights, broadly construed, as a condition for state sovereignty and its corollary nonintervention. Walzer's claim for nonintervention rests on the state as the arena in which a political community can thrive, though his critics have charged that this is simply the invocation of the well-known right to freedom of association.<sup>27</sup> Beitz counters that if Walzer had taken the right of political association seriously, he would have considered other rights that are indispensable to realizing such association in practice, such as freedom of speech and press, and a minimum standard of living.<sup>28</sup> While both theorists claim to justify the right of nonintervention with the language of human rights, it is clear Beitz would permit intervention as a response to specific human injustices that Walzer certainly would not. Exactly where and how each author draws this line is the subject of the remainder of this chapter.

### Implications for Humanitarian Intervention

#### *The Moral Poverty of Statism*

For Walzer, state sovereignty is valued because it provides an "arena within which freedom can be fought for and (sometimes) won," not because the governments within it conforms to a particular institutional arrangement.<sup>29</sup> Intervention violates a state's rights because it is violating the right of a people to live undisturbed by foreigners in a political community of their own. Walzer is therefore suggesting that the

mere existence of a political community within a state means that there is fit between that community and its government. So as long as there is a political community whose government fits it, a government's sovereign prerogative gives it a moral license to treat its subjects however it wishes, with one important exception. According to Walzer, "the ban on boundary crossings is subject to unilateral suspension . . . when the violation of human rights is so terrible that it makes talk of community . . . seem cynical and irrelevant, that is, in cases of enslavement and massacre."<sup>30</sup>

Walzer's reasoning is plainly relevant to humanitarian intervention but serves to prohibit it unless governments are engaged in the widespread massacre or enslavement of their people. However, the reason for Walzer's exception to the general prohibition of intervention is curious. The crux of his argument is that the international community must be prepared to tolerate unjust states and presume that such governments have legitimacy in the eyes of their own citizens. This, of course, is the concept of fit and is grounded in human rights only insofar as the principle of nonintervention exists to protect the right of a people to build a political community unmolested by foreigners. While other statist take this argument a step further and claim that the existence of such communities within states is the foundation for order among them,<sup>31</sup> Walzer places value solely on political communities, full stop. For Walzer, it is only in cases of massacre and enslavement—when talk of a political community is cynical and irrelevant—that the presumption of legitimacy is reversed. In such cases, observers are entitled to presume that there is either no fit between the government and the community, or that there is no community at all, in which case a state's right to nonintervention is revoked and external intervention would presumably be permissible. What is striking about this reasoning is that while the moral basis for intervention in such instances is ostensibly premised on human rights (i.e., right to community), Walzer writes as if intervention is only justified when the existence of massacre and enslavement leads one to question the existence of fit, and not necessarily as a response to egregious human rights violations.<sup>32</sup> In this sense, massacre and enslavement do not themselves justify the forfeiture of a state's sovereignty, but lead us to question the existence of fit, which does provide sufficient grounds for revoking a state's claim to nonintervention. It is therefore fit that Walzer suggests gives state boundaries their moral content, not the fact that the governments operating within them refrain from massacre, enslavement, and mass expulsion.

A common criticism of Walzer that flows from this reasoning is that that there have been, and currently are, many states that do not permit their citizens to organize a community or a political association

according to a preferred tradition.<sup>33</sup> For instance, it is difficult to argue that Saddam Hussein's regime in Iraq fit its Kurdish or Shiite Muslim populations, (who constitute a majority in Iraq), or that they were "a people governed in accordance with their own traditions."<sup>34</sup> Consequently, if the protection of the right to a political community is the *raison d'être* of Walzer's prohibition on intervention, then such a concern is scarcely served by the nearly unconditional protection of sovereignty that Walzer advocates.

Furthermore, Walzer's implicit connection between massive human rights violations and the absence of fit does not necessarily follow. There are indeed a number of states that have fit—often in the democratic sense of the term—that have violently oppressed religious or ethnic minorities. Nor is it entirely obvious that even violations of genocidal proportions demonstrate the absence of fit as Walzer construes it. The existence of fit cannot automatically be assumed to be a morally compelling reason to grant an oppressive government the right of nonintervention. Indeed, if fit is the only criterion for nonintervention, then a majoritarian democracy that commits genocide is morally shielded from any external interference.<sup>35</sup> A more consistent position would be to directly appeal to human rights and welfare—without the detour of fit—in order to justify revoking nonintervention and permitting humanitarian intervention. Walzer attempts this, but succeeds only in part.

Walzer perceives that independence from external military intervention is one of the highest goods for states in international relations—if not the highest good—for it is this independence that allows people to create a political community of their own that is not influenced by foreigners.<sup>36</sup> The qualification that this independence is forfeited in cases of massacre and enslavement, however, seems to be less motivated by a concern for human rights and human welfare than by the need to provide an account of when the absence of fit is "radically apparent."<sup>37</sup> Given the difficulties with this concept of fit, as it pertains to a state's presumed legitimacy when dealing explicitly with the question of humanitarian intervention, Walzer provides a slightly different exception to the nonintervention rule. That is, humanitarian intervention is justified in response to acts that "shock the moral conscience of mankind."<sup>38</sup>

There are two other possibilities for why Walzer suggests such a criterion for humanitarian intervention instead of relying on the presence or absence of fit. First, it makes Walzer's general prohibition of military intervention more plausible by removing an obvious objection to it—that Walzer's theory could plausibly condone genocide.<sup>39</sup> The second possibility is that he is attempting to more firmly ground his non-intervention theory in the moral discourse of human rights. However,

as Jerome Slater and Terry Nardin rightly indicate, Walzer fails in this attempt because once he opens up the door to humanitarian intervention, he provides no compelling reason for closing it as restrictively as he does.<sup>40</sup> On the surface, Walzer's argument might benefit from the conscience shocking criterion, but if it is the shocking character that makes certain human rights violations subject to humanitarian intervention, the arbitrary nature of such a criterion actually weakens Walzer's overall argument. As Peter Singer aptly points out, the conscience of mankind, at various times and places, "has been shocked by interracial sex, atheism and mixed bathing."<sup>41</sup> There is no end to the list of abuses by governments that shock our moral conscience; and if the logic of Walzer's theory obliges him to permit humanitarian intervention in response to all of these abuses, he completely undermines the strong moral case for nonintervention that is the cornerstone of his entire theory.

Where Walzer errs in formulating his theory is his attempt to articulate human rights exceptions to his argument for nonintervention without appealing to the consequences of intervention. To put it simply, if the goal is to promote human rights or maximize human rights enjoyment, a consequentialist argument suggests that humanitarian intervention is permissible only if it is likely to promote human rights enjoyment more than it impedes it. While it is true that Walzer's general theory of aggression draws from J. S. Mill—who is himself a utilitarian—Walzer believes it a mistake to embrace utilitarianism.<sup>42</sup> Some have even argued that Walzer has conceded that the tension between a utilitarian calculation and respect for human rights is irresolvable.<sup>43</sup> Walzer's conscience shocking criterion is nevertheless meant to lead us to the conclusion that humanitarian intervention is a permissible response to genocide-type activities, but not routine political repression. In this way, the argument limits intervention to exceptional cases, by ensuring war does not occur in response to everyday abuses. However, there is nothing inherent in Walzer's reasoning to suggest this is the conclusion his theory will produce, because it can only produce such a conclusion if it delineates what specific quality of conscience shocking crimes creates reasonable grounds for humanitarian intervention. The consequences of war, in terms of human rights, are only rightly paid if the consequences of not going to war are likely to be worse. Such reasoning is undeniably consequentialist.

Walzer wants to limit the occurrence of armed conflict, but if not for the sake of overall human well-being, then why? His argument seeks to preserve the autonomy of political communities, and he does so with his concept of fit. But, as Walzer construes it, the presence of fit can still plausibly exist in harmony with a genocidal regime. A more consistent

position is to argue that states that massacre or enslave their citizens forfeit their claim to nonintervention, not because this is evidence of the absence of fit, but because these crimes are so terrible that the well-being of more individuals in such a state would be better protected by the initiation of war intended to stop such abuses rather than by unqualified respect for state sovereignty. Walzer hints at such consequentialist logic when he deals directly with humanitarian intervention, but he consciously refrains from invoking a consequentialist argument when he appeals to acts that arbitrarily shock moral conscience. This is precisely why, as Slater and Nardin point out, that when Walzer allows the exception of humanitarian intervention for conscience shocking crimes, he provides no plausible argument for allowing it in response to genocide-type crimes but not to the everyday brutalities perpetuated under authoritarian rule.<sup>44</sup>

However, a consequentialist approach could make this case. A consequentialist could consistently argue that massacre, enslavement, and mass expulsion are among the only crimes that warrant humanitarian intervention because, if left unchecked, these crimes are likely to do more harm than a war aimed at averting such crimes (whereas a war aimed at securing free speech rights, for example, would do more harm than good). Because there are far more regimes that commit lesser human rights violations than there are states that massacre, enslave and expel their citizens, the occurrence of war is therefore limited, and it is done successfully by appealing to human rights and human welfare as the most relevant moral issues.

#### *Cosmopolitanism and Excessive Permissibility*

If the problem with Walzer's statism is its dubious consideration of human welfare, via human rights, as the central concern in justifying intervention, then cosmopolitanism suffers from a similar deficiency, although beginning with different assumptions. Beitz's appeal to just institutions, as a criterion for states' claiming the right of nonintervention also has clear implications for the human rights conditions under which he would allow for humanitarian intervention. It must be said, however, that in his book that most clearly lays out his international theory, humanitarian intervention is not his primary concern, although he does apply his theory to humanitarian intervention in his later writings.<sup>45</sup> Both Beitz and Walzer lay out the conditions under which a state's claim to the right of nonintervention may be forfeited, though Beitz suggests that this is when a state's institutions do not conform to the appropriate principles of justice, or at least when institutions fail to be as just as their

circumstances permit. It is unclear as to what is meant by just institutions other than that these institutions must be something approaching democratic and respectful of human rights, construed rather broadly. Unlike Walzer, however, Beitz explicitly requires that a state's sovereignty (and its corollary nonintervention) is contingent on whether it respects human rights. The question is whether this eagerness to undermine sovereignty potentially undermines human rights to the extent that respect for sovereignty can be said to be beneficial to human rights.

According to Beitz's theory so far, a potentially large number of states remain whose governments are not protected against military intervention because of their institutional composition and human rights performance. Carrying such reasoning to its logical theoretical conclusion suggests that states whose governments do not possess an ideal complement of human rights appear to be the legitimate targets of armed intervention aimed at reforming internal institutions so that they conform to appropriate principles of justice.<sup>46</sup> To the extent that Beitz's notion of just institutions implies justice in the Rawlsian distributive sense—and there are reasonable grounds for concluding this is the case—there would be no reason in principle why a democratic state with Nozickian (read: libertarian) institutions would not be equally subject to reform intervention just as much as a totalitarian state would.<sup>47</sup> An obvious objection to cosmopolitanism is that it permits humanitarian intervention in too many instances and creates a prescription for global instability and potentially provides moral sanction for what might otherwise be self-serving aggression. Such an outcome would undermine global order and as a result, have a detrimental effect on the overall enjoyment of human rights. Like Walzer, then, Beitz puts forth a set of qualifications aimed at removing the obvious objections to his theory.

Beitz argues that while reform intervention is legitimate when aimed at states whose governments fail the just institutions test, such intervention might still be wrong for "other reasons."<sup>48</sup> Short of these other reasons, however, Beitz seems to prefer a general presumption in favor of intervention, as reform intervention is morally permissible when a state's institutions are unjust or do not respect human rights. Beitz argues, however, that a potential intervening agent may wish to not make use of this permission because of a plethora of what he calls strategic calculations, which might include considerations of the likelihood of a successful intervention as well as concerns for international stability (both of which have implications for human rights).<sup>49</sup> It therefore seems that Beitz is attempting to exploit consequentialist considerations, though without making a consequentialist argument. Since he does not invoke consequentialist reasoning as part of his general theory, the logic of his own reasoning is only insulated from crippling objections (on conse-

quentialist grounds) because it appeals to the assumed prudence of the states that might potentially be the intervening agents. That is, instead of making the consequentialist case himself in order to elevate the primacy of human welfare by limiting humanitarian intervention (i.e., for the sake of international stability), the determining factor for whether intervention actually occurs against unjust states lies outside his theory and is left to the discretion of the states that would presumably be conducting the intervention.

Beitz does not adequately consider that the human rights implications of permitting intervention as a legitimate response to all unjust regimes requires the precarious assumption that states have both the ability and the desire to subject their decisions to intervene to moral considerations of aggregate human rights enjoyment. It is presumptuous at best to assume that when given a *carte blanche* to intervene, states will restrict themselves based on such moral considerations. In other words, the way Beitz has structured his argument actually gives states more of an opportunity to conduct self-interested nonhumanitarian interventions under the guise of reform intervention. As a theory that justifies humanitarian intervention by appealing to human rights, Beitz's cosmopolitanism is dangerously permissive, even given his strategic calculation qualification. The theory does not adequately consider the full range of human rights concerns that arise when one seeks to permit war as a legitimate way to reform the numerous unjust states of the world, while attempting to mitigate such sweeping permissibility with the hope that states might not want to intervene for other reasons.

Fernando Tesón adopts a similar cosmopolitan logic in his influential dissertation on humanitarian intervention, and like Beitz's reasoning, Tesón's suffers from a similar deficiency. Tesón's main argument is that because the ultimate justification for the existence of states is the protection and enforcement of individual rights, a government that abuses individual rights "betrays the very purpose for which it exists" and is therefore subject to humanitarian intervention.<sup>50</sup> He also requires that the intervention be proportionate to the abuse it is intended to suppress, and that the intervention is welcomed by those citizens it is aimed at protecting. Tesón questions the moral preference of order and peace over justice and rights, and is largely motivated by a desire to revoke the right of nonintervention for those states who fail to protect human rights, but allow for the use of military force only in response to "egregious cases of human rights violations, such as genocide, enslavement or mass murder" and other "serious oppression."<sup>51</sup>

Like Beitz, Tesón demonstrates certain consequentialist tendencies, but he does not explicitly employ consequentialism as part of his theory. In fact, Tesón is loath to use consequentialist reasoning. He consciously

provides “a nonutilitarian account of those interventions in which, although we expect that innocent persons will die, we still want to claim that the war effort is morally justified.”<sup>52</sup> While he wishes to avoid making cold utilitarian calculations, Tesón’s aversion to utilitarianism exists for very compelling moral reasons, because the problems with consequentialism are well-known.

In its purest form, and when applied to human rights, consequentialism concerns itself with only aggregate enjoyment of human rights, offering no real moral consideration of the fact that it promotes an ends justify the means ethos. For example, a pure utilitarian ethos would sanction the deliberate slaughter of thousands of innocent civilians by an intervening agent as a means to rescuing a million others. However, Tesón provides no reason, other than consequentialist concerns, for his proposition to revoke the claims of nonintervention by illegitimate states that abuse human rights, only allowing humanitarian intervention in egregious cases. Even though he explicitly rejects consequentialism, at times Tesón relies on consequentialist reasoning to make his case. Aside from the consequentialist undertones in the doctrine of proportionality that Tesón advances, he also argues that “[w]hile racial discrimination is a serious human rights violation, there is little doubt that, say, genocide and widespread torture are worse,” thereby suggesting he would permit humanitarian intervention only in the latter case and not in the former.<sup>53</sup> There is no other plausible reason why Tesón should permit intervention to stop genocide—but not racial discrimination—other than the likelihood that intervention in the latter instance would have a detrimental effect on overall human rights enjoyment, or, that if we sanctioned intervention against all states that engaged in racial discrimination, the resulting disruption of international order would be to the detriment of human welfare throughout the world. If Tesón’s aim is to limit the occurrence of humanitarian intervention for some other reason, then it is insufficiently argued in his overall theory. Tesón’s aversion to consequentialism is therefore peculiar since he wishes his theory to produce a specific outcome (permitting humanitarian intervention for egregious cases only) for a specific reason (to avoid disproportionate harm) that can only be reached using some form of consequentialist reasoning.<sup>54</sup>

### Statism, Cosmopolitanism and the Invasion of Iraq

The U.S.-led invasion of Iraq in 2003 has entered the discourse on humanitarian intervention with much controversy.<sup>55</sup> The reason being that the invasion was not initially justified as a humanitarian intervention, but

rather as an act of preemptive self-defense, whereby the United States perceived Saddam Hussein's alleged illegal weapons programs and his potential ties with al Qaeda terrorists as an intolerable threat to its security. But in neutralizing this threat, the United States and its allies would also be deposing a cruel and brutal tyrant who had routinely engaged in serious human rights abuses. Once the original justification for the invasion turned out to be largely overstated and based on faulty intelligence, the George W. Bush administration continued to insist that the invasion was still justified on humanitarian grounds because it liberated Iraq from the yoke of tyranny.<sup>56</sup> Aside from the troubling concern that the Bush administration seemingly abused the humanitarian rationale for ulterior, and self-serving ends, the question of whether or not this invasion was justified permits an illustrative application of the theoretical approaches examined in this chapter.

Applying Walzerian statism to the question of whether the Iraq war constitutes a legitimate humanitarian intervention yields some rather curious conclusions, not surprisingly regarding the idea of fit. If it is the fit between the government and the governed that gives states the right to nonintervention, then Iraq under Saddam Hussein had no moral right to this claim and was thus a legitimate target of intervention in the spring of 2003. By no stretch of the imagination could one argue that Saddam's regime fit with the traditions of the Kurds, who Saddam attempted to exterminate in the 1988 Anfal campaign, and the Shia, who were brutalized following the first Gulf War.<sup>57</sup> On this basis, then, the 2003 invasion was justified, not necessarily as a humanitarian intervention intended to alleviate acute human suffering, but because Saddam's regime had forfeited its moral claim to nonintervention by massacring its own civilians, making the absence of fit radically apparent. Again, according to Walzer's argument, the basis for denying Saddam's regime the right of nonintervention was not necessarily the atrocities perpetrated against innocent people, but rather the fact that such brutality was indicative of an absence of fit between the government and the governed. But in the debate building up to the invasion of Iraq in 2003, Walzer himself argues that "there is no compelling case to be made for humanitarian intervention in Iraq," since neither massacre nor enslavement were occurring or impending.<sup>58</sup> Walzer here is relying not on an application of fit, but rather his conscience shocking criterion for humanitarian intervention. In other words, at the time the invasion was being considered, Saddam's regime was not engaging in crimes that shock the moral conscience of mankind. But an application of Walzer's theory fails to adequately address two fundamental concerns in this regard.

First of all, in determining the justice of the invasion of Iraq, Walzer provides no reason for privileging the conscience shocking criterion over

the fact that the lack of fit was radically apparent, which would abolish Iraq's moral right to nonintervention. On the one hand, Walzer's argument serves to justify the 2003 invasion of Iraq on the basis that Saddam's regime did not fit with the traditions of a majority of the population of Iraq (the Kurds and Shia). Yet on the other hand, Walzer wants his theory to prohibit this invasion on humanitarian grounds because at the time the invasion was being considered, Saddam's regime was not engaging in what he considers to be conscience shocking crimes. Walzer thus utilizes a temporal element to reach the conclusion that the Iraq war was not justified. That is, a justified humanitarian intervention now seems to require that the conscience shocking crimes are ongoing at the time the intervention is undertaken, whereas the absence of fit as justification for intervention can refer to atrocities that took place in the past as evidence of the lack of fit. The conclusion Walzer wishes to reach about the justice of the Iraq invasion thus dictates which principal he uses to appraise it.

But even if we accept his preference for using the conscience shocking criterion, Walzer still gives no reason why crimes of this nature would not include the daily barbarities of life in Saddam Hussein's Iraq, with routine extra-judicial executions, torture, amputations and acts of arbitrary violence against political enemies.<sup>59</sup> The only way that applying the conscience shocking criterion leads to the conclusion that the Iraq invasion was not justified as a humanitarian intervention is if one assumes a consequentialist logic in Walzer's argument. Such logic is implicit in his insistence that the conscience shocking crimes be in progress, as well as his assumption that these, and not lesser crimes, are grounds for intervention. In other words, Walzer wants us to conclude that the Iraq invasion was not justified because there were no large-scale atrocities occurring or imminent in Iraq at the time, presumably because a humanitarian intervention to avert lesser crimes would not prevent large-scale suffering, but only bring about the death and destruction that accompanies military force. This may be correct, but there is nothing in Walzer's exposition of statism that necessarily leads to this conclusion unless one incorporates a consequentialist logic into the conscience shocking criterion, which Walzer is loath to do.

Cosmopolitanism applied to the Iraq invasion leads to more consistent prescriptions than Walzerian statism, but nevertheless to morally dubious outcomes. First, it is clear that Saddam Hussein's Iraq at the time of the invasion would not meet Beitz's just institutions test, thus forfeiting its claim to nonintervention and opening itself up to intervention aimed at reforming its unjust institutions. The first problem with this, of course, is that Saddam's Iraq in the spring of 2003 was not engaging in large-scale massacres. So unless such conditions were

transpiring at the time the invasion was being considered, a reform intervention would not immediately serve to rescue large numbers of people from imminent abuse and/or murder, but rather only bring about the destruction that accompanies a military invasion intended to depose a regime. In the case of the U.S. invasion of Iraq, according to a 2006 study by the Johns Hopkins Bloomberg School of Public Health, as many as six hundred thousand Iraqi civilians have died in violence across Iraq since the United States invaded in 2003.<sup>60</sup> Beitz was no doubt concerned that his theory might be construed in this way as overly-permissive, which is why he argued that there are other reasons that states may not wish to make use of this permission.<sup>61</sup> In the case of Iraq, however, we can only conclude that the United States and its allies did not make any strategic calculations that might have advised restraint in the decision to invade and overthrow the Iraqi regime, or at least that such calculations were either ignored or were far off the mark. By leaving it to states to make these consequentialist calculations and not doing so in his own argument, applying Beitz's prescriptions would actually create more opportunities for states to abuse humanitarian justifications in order to engage in self-aggrandizing aggression. Leaving aside the actual sincerity of the United State's humanitarian justification for invading Iraq, the fact that Iraq under Saddam Hussein was unjust—and would therefore have no moral claim to nonintervention according to Beitz—would provide a convenient moral cover if the United States did, in fact, want to invade for exploitative or otherwise selfish reasons. Not only does this serve to justify armed conflict in situations where there is tyranny but no ongoing atrocities or massacre to avert, it also serves as a basis for justifying intervention that seems to be particularly morally problematic, given the number of governments in the world today that demonstrate something less than the ideal compliment of human rights protections.

Tesón's cosmopolitan approach has similar implications. In applying his general theoretical approach to the Iraq war, Tesón has concluded that the invasion of Iraq was justified because it ended "severe tyranny," which he defines as involving past and present atrocities as well as "pervasive and serious forms of oppression."<sup>62</sup> While Tesón is correct that tyrannies like Iraq are more likely to engage in genocide and massacre than other regime types, he nevertheless treats the existence of tyranny, not the existence of genocide or massacre, as grounds for humanitarian intervention, even though the tyrant Saddam Hussein was not engaging in such crimes when the United States invaded. Like Beitz, Tesón thus chooses to focus on the character of the regime to be overthrown as opposed to averting specific massacres or atrocities. Furthermore, according to Tesón the fact that a regime has committed

atrocities in the past is sufficient grounds for invasion, thus rendering humanitarian intervention a tool for punishing the bad behavior of a government rather than a means to halt or avert large-scale suffering of innocent people.<sup>63</sup> In justifying the Iraq war, Tesón's argument, like Beitz's, dangerously lowers the bar for the conditions under which humanitarian intervention is thought to be permissible and casts serious doubt on the moral value that cosmopolitanism gives to the imperative that humanitarian intervention should seek to minimize overall human suffering, not just depose tyrants.

### Conclusion

Both Walzer's statism and Beitz's and Tesón's cosmopolitanism consciously avoid making consequentialist arguments in their efforts to subject the conduct of humanitarian intervention to moral scrutiny. However, both theories implicitly rely on some form of consequentialist calculation in order to achieve the desired outcome when put into practice. This aversion to consequentialist reasoning among these representatives of statism and cosmopolitanism is not unfounded. In avoiding such reasoning, these theorists have successfully avoided the common criticisms of consequentialism as it relates to human rights. One of the most damaging criticisms is that such an approach fails to prohibit some actions that intuitively seem quite wrong, such as condoning the murder of innocent civilians, if doing so would prevent the same evil being done to even more innocent people by others. It is this criticism of utilitarian versions of consequentialism that has resulted in it being referred to as cold, harsh, and callous.<sup>64</sup> Nevertheless if one's interest is to achieve the best possible human rights outcome that a given situation permits, consequentialist reasoning must be employed in some form, even if not in its most unqualified variety.

Most theoretical and empirical treatments of humanitarian intervention, while agreeing that it should only take place under the most extreme human rights conditions, fail to outline, justify, or even identify the underlying logic involved in arriving at such a conclusion, presumably for fear of being accused of making cold utilitarian calculations.<sup>65</sup> As a result, there is a pronounced gap in the literature with respect to a precise account of the human rights conditions under which humanitarian intervention is morally permissible. We are thus left with the vague assertion that it must only occur when human rights violations are severe or extreme, while lacking reasoned moral principles that prescribe action based on empirical conditions of human well-being. This makes it unknowable whether the reasoning of those who suggest

that humanitarian intervention is only permissible in response to egregious human rights violations is genuinely grounded in a fundamental concern for the welfare of individual human beings, or out of a concern for preserving political communities or ending tyranny. One is thus left with the question of which rights and how severe or egregious they must be violated before humanitarian intervention is a morally permissible way to avert such abuses.

The concept of basic rights, famously propounded by the philosopher Henry Shue, provides a useful starting point for addressing this question and is concerned mainly with the human rights that are the most fundamental to human well-being.<sup>66</sup> The idea of basic rights has certain sympathies with consequentialism, in that both take certain values or goods (rights in Shue's case) as lexically prior to others. More importantly, however, since consequentialism requires that we elevate a certain value or good, and then act to maximize that good, consequentialist reasoning on when to employ military force requires a conception of human well-being, as well as an account of the conditions under which the use of military force is likely to promote this conception.<sup>67</sup> This is particularly the case since human well-being is itself imperiled by humanitarian intervention. Therefore, the purpose of the next chapter is to provide an empirical account of human welfare or well-being and articulate moral principles that appeal directly to such a condition to describe the type and extent of human suffering under which humanitarian intervention would promote this condition.