Rights, Rules and World Order

Raymond Plant

> There are few questions which more require to be taken in hand by ethical and political philosophers, with a view to establish some rule or criterion whereby the justifiableness of intervening in the affairs of other countries, and (what is sometimes fully as questionable) the justifiableness of refraining from intervention, may be brought to a definite and rational test.[1]
>
> John Stuart Mill

The aim of this chapter is to examine the question of whether an approach by the United Nations which was based on a commitment to intervene more and more in the trouble spots of the world could be put on a firm basis of moral and political principle.[2] The chapter will be long on diagnosis but short on prescription. Its guiding assumption is that we may be at a transitional stage in international affairs in which one set of beliefs about the international system, based upon a recognition of the right to sovereignty and non-intervention among and between states, looks as though it may be superseded by another which involves a greater readiness to support intervention for humanitarian reasons, expressed primarily in terms of the protection of human rights. What I want to do is to explain at least some of the aspects of these two sets of beliefs. I shall then discuss the extent to which the potential shift from one set to the other is desirable and the extent to which a viable international system, based on secure and predictable rules, could be built on the set of assumptions which sanctioned a greater degree of intervention in the affairs of states which would hitherto have been regarded as sovereign. Any attempt to ground intervention on a general set of principles of the sort which Mill regards as desirable in the passage quoted as the epigraph to this chapter will certainly be an uphill struggle; a more interventionist approach by the UN would not only challenge practical assumptions about the international order which have prevailed since 1945, but would also challenge the philosophical roots of these assumptions which go back much further and certainly to the Peace of Westphalia which ended the Thirty Years War in 1648.[3] My arguments will be of a philosophical

sort, partly because this approach reflects my own interests and expertise, and partly because I believe that it is important to try to bring out some of the principles implicit in political practice and subject them to analysis.

States, Sovereignty and Non-Intervention

For over three hundred years the international system has been characterised by several features which basically turn on the recognition of the centrality of the state and its sovereignty. States have been assumed to be sovereign and to be formally equal to one another as sovereign entities. States have been thought to be autonomous entities and to have supreme authority within their territorial jurisdiction and to be legally equal. It is no accident that these assumptions about the nature of the international relations between states were first recognised in the Peace of Westphalia because it was in that treaty that the authority of the Catholic Church and that of the Emperor was finally challenged in an agreed, multilateral treaty. Of course, the Treaty (of Westphalia) and its principles did not just emerge from a void. There had been for some time before 1648 an assertion of principles which we would now call principles of sovereignty, such as the principle *Rex in regno suo ist imperator* which was used to justify the French declaration of *de jure* independence from the Holy Roman Empire; and *Civitas superiorem non recognoscens est sibi princeps* was also invoked.[4] Nevertheless the Treaty, in recognising the *cuius regio eius religio* principle, saw the rejection of some kind of transcendent, supra-national moral basis to political authority as, for example, Pope Boniface VIII had tried to enunciate in his bull *Unam Sanctam*. In contrast it rooted political authority in that of the ruler of autonomous and independent territories.[5] There was the implicit recognition that the moral and political power of the sovereign state was absolute and could not be challenged by an appeal to some kind of overarching authority, as had been the case in Europe prior to the reformation with reference to the papacy and the doctrines of the Catholic Church. In *Studies of Political Thought from Gerson to Grotius*, J.N. Figgis argues that:

> When the Peace of Westphalia is spoken of as foundation of the modern public law of Europe, the meaning of the assertion ought to be more closely apprehended than it commonly is. What the Treaties of Münster and Osnabrück really did was legally to consecrate the international liberties of Europe, as they had been secured by the religious revolution. The idea of a united Christendom was abandoned. Internationally religions were made equal. Pope and Emperor lost theoretically what they had long lost practically, their hegemony . . . The Canon Law ceased in fact to be international, which it most distinctly was in the Middle Ages; became (subject to concordats) merely the conceded machinery for regulating a department of particular States . . . In theory the dogma that all States are equal begins to supersede the medieval conception of a universal hierarchy of officials.[6]

These assumptions, first brought into the realm of public law in the Peace of Westphalia, continue to characterise international politics even after three hundred years. The period since 1945 has seen the emergence of a large number of new independent states after decolonisation. These new states have entered an international system characterised by the implicit assumptions of 1648: the territorial integrity of the state, state sovereignty, and the formal moral and legal equality of states. There is, however, one corollary of the 1648 principles which has also characterised the international system both then and now: that is the crucially important principle of *non-intervention* in the domestic affairs of other states.[7] This is really a corollary of state sovereignty and the supreme moral and political authority of the state. In the absence of some transnational, mutually agreed set of moral principles of the sort that characterised Christendom in the medieval world, there could be no moral basis for intervention in the domestic affairs of State X by State Y. The basic rule, therefore, so far as domestic politics was concerned was a rule of non-intervention. This rule has been vitally important in two central respects.

First of all it can be argued that it gives some kind of predictability to international affairs. It is a rule which does not have to be underpinned by a set of shared moral beliefs between states because, as I have argued, since 1648 the assumption in international affairs has been that there is no such degree of moral agreement. However, the rule of non-intervention, it has been argued, is a necessary consequence of accepting the principle that states are sovereign and possess their own intrinsic moral authority; as such, it does not require any kind of moral agreement beyond the recognition of differences. In a morally diverse world, non-intervention provides a predictable and acceptable guide in international affairs in a world marked by fundamental differences of religious and ideological beliefs; it is a principle to which assent can be secured within all of this moral and ideological pluralism.

Secondly, it is arguable that the principle of non-intervention can always be adopted. After all, forbearance or non-intervention is not limited by resource constraints. As a form of inaction it cannot be limited by lack of resources, and non-intervention is not a resource that we can run out of. Hence as a basic principle of the international relations between states, it is predictable in that its observance is independent of questions and issues about resources. Furthermore since non-intervention does not involve resources, adherence to the principle does not require states, whether individually or collectively, to exercise discretion as to whether they will abide by the principle, since there are no resource implications of adhering to it. Equally, it also means that the obligation to abstain from intervention can be regarded as categorical and is not subject to utilitarian calculation as it would be if it involved the discretionary deployment of scarce or limited resources.

The salience of the principle of non-intervention is reflected in many of the documents which seek to regulate international and regional relations

between states. Not only is this so, but small states have a strong incentive to try to sustain this principle since it is one way in which the formal equality of sovereign states can be secured. If intervention were to become more the norm, then small states and those with little power might well believe that they and they alone would become the object of such intervention and thus the formal equality of sovereign states would be infringed. This is perhaps why the principle of non-intervention has been a central feature of inter-American Treaties, the OAU and the UN. Indeed, it is worth quoting the UN Charter, Article 2.7, on this point:

> Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; . . .

The importance of the principle could hardly be more clearly stated.

It would, however, be a mistake to think that the only justification of non-intervention is essentially to see it as the appropriate international response to moral pluralism – that since there are no overarching values which are agreed by all states, then the only principle in international affairs which can be agreed to is that of mutual forbearance. Some have argued that sovereign states are the only forms of organisation which we know that can provide the vehicles within which individual freedom and rights can in fact be protected; that we should therefore defend the principle on intervention because a move towards interventionism would in fact threaten the whole system of states, and with that threaten the whole framework of political institutions within which individual rights can in fact be protected. The most distinguished modern thinker who argues for this view is Michael Walzer in *Just and Unjust Wars*, in which he argues as follows:

> the recognition of sovereignty is the only way we have of establishing an arena within which freedoms can be fought for and (sometimes) won. It is this arena and the activities that go on within it that we want to protect, and we protect them as we protect individual integrity, by marking out boundaries that cannot be crossed and rights that cannot be violated. As with individuals, so with sovereign states: there are things that we cannot do to them, even for their own ostensible good.[8]

The sovereign state, despite its many imperfections, is the only arena we know within which individuals can live with their right to liberty recognised and secured under the law. This is far from seeing non-intervention as a convenient principle to adopt in the light of moral diversity; it is rather a positive defence of the integrity of the sovereign state as the framework for individual freedom, respect for rights and individual fulfilment. The argument trades upon an analogy with the person and how within liberal political

thought a person should be treated. In liberal political thought persons have diverse goals they wish to pursue and diverse ends to which they devote their lives. This pluralism and diversity is part of what being a free person means. It is an infringement of the right of a person to pursue their own good in their own way (so long as in so doing the freedom of others is not infringed) if others intervene in their life ostensibly for their own good. The freedom and autonomy of the person requires non-intervention and non-coercion: so does the sovereignty of the state, given that if the liberty and autonomy of individuals is to be secured it is only within such states. We shall return to this argument later.

There is, however, in Walzer's argument also an emphasis upon moral pluralism and its role in justifying the norm of non-intervention. In *Just and Unjust Wars*, he draws upon ideas about moral pluralism and moral diversity which were subsequently developed more fully in *Spheres of Justice*.[9] Walzer takes a highly contextual view of morality, rooting moral values, moral rules and norms in the way of life of particular societies. There are no general, universal, transcultural values, or if there are, they are so thin and unspecific that they cannot provide a determinate guide to political action. This very moral pluralism justifies a norm of non-intervention. He argues that:

> Foreigners . . . don't know enough about . . . [a state's] history, and they have no direct experience and can form no concrete judgments, of the conflicts and harmonies, the historical choices and cultural affinities, the loyalties and resentments, that underlie it.[10]

Intervention neglects these highly contextual but extremely powerful motivating factors at the level of the individual state.[11] As such, intervention can be unjust since it may involve riding roughshod over these particular contextual values and identities. Equally, such intervention may be fraught with dangers at even the most utilitarian level of analysis since those who intervene are not likely to be aware of the nuances of situations rooted, as beliefs are, in the particular culture of specific societies.

The idea of the sovereignty of states, non-intervention and of the supreme political authority of the state in the absence of some kind of transnational moral basis for politics, has led to the view that such a set of assumptions guiding the relations between states will also lead to a degree of predictability in understanding the motivations behind state actions in the international realm. That is to say that states will act on a sense of their interests and not out of concern with general moral principles, on which cross-national agreement in any case is not forthcoming. This gives a degree of predictability to the behaviour of states. As Denis Healey once famously remarked in *New Fabian Essays*:

> . . . nation States are political entities, not moral entities; with interests and desires, not rights and duties. . . . The relations of nation States are determined primarily by

> their power to pursue their interests, and they usually conceive their interests in narrowly selfish terms.[12]

The only rights and duties which states have are those which are freely entered into through contract in concluding treaties. They do not have more general rights and duties arising from some assumed transnational moral framework within which states should operate. Because one of the most basic, and perhaps *the* most basic interest of the state is the protection of its own sovereignty and protecting itself from interference in its domestic affairs by other states, each state therefore has a self-interested reason to maintain the norm of non-intervention. This is not so much for reasons of basic moral principle, but as a way of sustaining an international set of relationships between states, based on sovereignty and non-intervention which serve the basic interest of all. Hedley Bull argues this point as follows:

> Ultimately we have a rule of non-intervention because unilateral intervention threatens the harmony and concord of the society of sovereign States.[13]

The alliance between non-intervention and self-interest by states is thought by those who defend this view of international affairs to have a further advantage. It is argued that when a state does act against another state, it is because that state has encroached on the vital interests of the state or the collection of states undertaking the action; this action is therefore something that both ordinary citizens, who will be called upon to give political support to possible military action, and the soldiers who will have to be involved in that action, can support and to which they can respond. It is a real and concrete reason for action. Whereas, it is argued, if intervention occurs for other reasons, say for example in an attempt to get rid of an unjust or tyrannical regime, when that regime is not threatening the vital interests of the country or group of countries undertaking the action, then political support for the action is likely to be more mixed and lukewarm. The point here was, of course, made most obviously when Chamberlain notoriously referred to Czechoslovakia as a 'far away country of which we know nothing'. If governments are to act effectively in the international arena, they need political support so to do. This support is more likely to be forthcoming in respect of defending the sovereignty of the state against encroachment than it is if intervention is supposed to be in the service of rather general and abstract principles, such as defending human rights or responding to humanitarian concerns.

The fundamental role of the norm of non-intervention can also be seen in some of the notable exceptions to it. I am not here referring to those cases in which one state intervenes in another because the second has encroached on the interests of the first. Rather I am talking about the few cases post-1945 where one state has interfered and intervened in the

domestic affairs of another state. However, far from breaching the non-intervention norm, it has typically been the case that the justification for the action has been claimed to be that the action of the state which has been the object of intervention has encroached on the interests of the state which has undertaken the intervention. That is to say that while the intervention might seem as though it has been directed to the internal affairs of another state, the justification of the act of intervention has in fact been couched in quite different terms. This is obviously not the place to discuss the point in great detail, but if I just refer to two examples to make my point in the most general of terms: the intervention of Tanzania in Uganda and the intervention of the USA in Panama to remove General Noriega. In the case of Tanzania, the official reason given for the intervention in 1978–79 was that Ugandan forces had in fact invaded the Kegera Salient and that Tanzania was acting out of self-defence. As such, Tanzania both had a right under international law to take the action that it did and also its own justification of its intervention was couched in terms which sought not to breach the general norm of non-intervention. Rather it claimed to be acting in self-defence to defend its territorial integrity and hence its sovereignty. In a sense, therefore, the justification of intervention was such as not to be obviously in breach of the norm of non-intervention despite the atrocities which General Amin had perpetrated on the Ugandan people. The case for intervention was not the humanitarian defence of the Ugandan people but rather the defence of Tanzanian sovereignty following the alleged invasion of the Kegera Salient. This is not to say that humanitarian considerations were absent from the Tanzanian case, but the ultimate claimed justification for the action was not one which breached the norm of non-intervention.

The same argument was used in relation to General Noriega of Panama following the intervention of the USA. The claim in this case was not that the USA was attempting to free the Panamanian people from an unjust ruler, which would have breached the norm of non-intervention and would have embodied a claim to be acting in accordance with principles of morality higher than those of the state, but rather that General Noriega was a known large-scale drug trafficker whose actions were having baleful consequences in the USA. Hence the intervention was couched in terms of undertaking the action necessary for General Noriega to stand trial in the USA on drug charges relating to the impact of his activities within the USA. So again, although the freeing of Panama from an unjust ruler, as happened also in Uganda following the intervention of Tanzania, was a reasonably foreseeable consequence of the intervention, the justification of intervention in Panama was such as to try at least to avoid the charge that the basic norm of non-intervention was being infringed.

In the context of collective action under resolutions of the UN Security Council, the most recent example of the confirmation of the norm on

non-intervention was, perhaps paradoxically, the Gulf War. As soon as Kuwait was liberated and made free from further threat from Iraq, the war was stopped by President Bush on the grounds that it was not part of the brief of the coalition, acting under the UN resolutions, to free Iraq from a tyrannical ruler. This would have been an invasion of sovereignty. However, the situation was complicated somewhat by subsequent events when action was taken to secure safe havens for Kurds in northern Iraq and a no-fly zone was imposed on southern Iraq to secure some protection for the Marsh Arabs.

These examples demonstrate the power and salience of the principle of an intervention, given the attempt to make intervention at least compatible with it. As I have argued, the principle of non-intervention is a powerful consequence of the emergence of the modern state system, with both the idea of state sovereignty and the idea that there is no source of moral authority to back political action above that of the state. It is also worth pointing out that even in Cold War days, when the Soviet Union hardly had the need to provide moral legitimacy for its actions in relation to satellite states, nevertheless intervention, in Hungary, in Czechoslovakia and in Afghanistan, was justified by means of a claimed invitation by the government to intervene to protect its socialist integrity; or was justified by the invitation from some sort of committee of citizens anxious to preserve the socialist character of the state. Again the lip service paid to the idea of being invited to intervene only demonstrates the anxiety of states to avoid being accused of breaching the norm of non-intervention.

Defenders of this approach to international affairs stress the extent to which it provides a clear, predictable and rule-governed framework to international politics; they go further and claim that any attempt to replace this with an alternative approach which would provide some kind of basis for active intervention in world affairs would have disastrous consequences. There are several elements to this critique:

- that there could be no agreed moral basis for a more interventionist approach;
- that even if some general principles could be agreed, there would be substantial and possibly catastrophic differences in interpreting what might be sanctioned under general principles;
- that the large and more powerful states would be immune from such intervention;
- that intervention would infringe the equality of sovereign states because any such interventionist doctrine would have highly differential effects between rich and poor, powerful and non-powerful states; and
- that the consequences of intervention would be likely to be as bad as the circumstances which the intervention was originally designed to overcome.

However, before going on to discuss this critique in more detail and to assess its force, it is important to set out the case for intervention so that the critique can be considered alongside a substantive counter case.

Human Rights and the Case for Intervention

The counter case for intervention is, in the modern world, most likely to be couched in terms of ideas about human rights: that the failure of particular states to protect rights or systematically to violate such rights might be thought to provide an authoritative moral basis for intervention. This case is much more complicated than it looks and needs to be explained in some detail. First of all I shall look at the way arguments about human rights could be used to support the case for intervention. I shall also consider the extent to which a rights-based view of intervention might be used to develop rules or norms to parallel the norm of non-intervention.

The basic question at issue is this: if we assume that there are basic human rights, such as those, for example, adumbrated in the *UN Declaration of Human Rights* which all individuals possess *qua* individuals, then what obligations do such rights impose on other human beings who may be members of other states? How might this recognition of obligation relate to the justification of action by one state, or for that matter the community of states acting through the UN to intervene in the affairs of another state to protect rights?

In this chapter I shall just assume that human rights refer to rights which all human beings ought to possess in virtue of their humanity; I shall not discuss the view that rights are the creation of particular political institutions and arrangements and are therefore the creatures of particular political regimes. On this view, ideas about rights do not, as it were, track some kind of transnational moral order; rather they are just the contingent creations of particular regimes. If rights are understood in this way then they do not give rise to the problems of recognition, protection and enforcement across borders which a more general view of rights might be thought to imply. Just because they are the positive creations of *particular* political regimes, they do not, even at the most abstract level of philosophical argument, impose obligations on members of *other* states to protect them when they are infringed. On this view the boundaries of states are also boundaries to morality. Ideas about rights and obligations make sense *within* but not *across* boundaries (cf. Windsor, this volume).

I shall concentrate rather on the idea that there are fundamental, moral, basic or human rights which individual human beings possess in virtue of being human. This idea of human rights as embodied for example in the UN Declaration seem, at least potentially, to imply some limitation on the sovereignty of states in two respects.

First of all, as members of the UN, such states have chosen to accept a commitment to such rights. If this commitment is more than rhetorical, that commitment may then restrict the limits of a state's domestic policy in respect of its own citizens, in that it will be acting unjustly in terms of its own commitments if it infringes their rights.

Secondly, the idea that human beings have rights in virtue of their humanity implies that there is some sort of transnational moral order which is captured in the idea that all human beings, irrespective of their race, religion, culture, ethnic origin and identity, gender and citizenship, share these rights in common. The recognition of this moral order and the rights which follow from it seems to imply at least the possibility that states can have a genuine moral interest in whether another state is infringing such rights; in extreme circumstances that the authority of the idea of human rights can in fact provide a basis for intervention, in the sense that how a state treats its citizens is not a matter of domestic sovereignty if citizens have rights as human beings and not just as members of a particular state.

This point stands in stark contrast to the post-1648 assumption that the international sphere is one of moral pluralism and that at least in the sphere of public morality the state is the supreme moral authority. Doctrines about human rights imply the opposite, namely that there is a transnational standard of morality; salient in that member states of the UN have accepted it and thus could be held to account in terms of this commitment. The principle of *cuius regio eius religio* may have been central to the Treaty of Westphalia but the principle of *cuius regio, eius jus* is not compatible with the idea that there are basic human rights, the moral authority of which crosses frontiers.

The potential conflict between rights and state sovereignty and non-intervention is thought out very clearly in the writings of Perez de Cuellar, in the *1991 Yearbook* of the UN, just before he ceased being Secretary-General of the United Nations:

> It is now increasingly felt that the principle of non-interference with the essential domestic jurisdiction of States cannot be regarded as a protective barrier behind which human rights could be massively and systematically violated with impunity. . . .
>
> The case for not impinging on the sovereignty, territorial integrity and political independence of states is indubitably strong. But it would only be weakened if it were to carry the implication that sovereignty . . . includes the right of mass slaughter or of launching systematic campaigns of decimation or forced exodus of civilian populations in the name of controlling civil strife or insurrection.[14]

This chapter is not the place to focus fully on what might be thought to be the moral basis of such rights, although as we shall see later, this is a question which can hardly be avoided, and indeed has come into prominence in the light of the UN Conference on Human Rights in Vienna in the early summer of 1993. It is, however, perhaps worth making two general points on

the issue of the moral basis and thus the moral authority of doctrines about human rights.

The first is that claims about human rights cannot really be treated as being self-evident (as the UN Declaration tends to do); nor can they be considered as merely recording the preferences of various states. The claim to self-evidence is weak in that the government of a particular state might deny the self-evidence of certain rights to them and go ahead and infringe them – justifiably from their own moral, religious or ideological point of view. If self-evidence is all that there is to rights then this provides a very weak basis for rights in the context of international politics marked by divergent religious and ideological outlooks.

Self-evidence would also provide a very weak basis for intervention to protect rights. The state which is infringing rights may simply not recognise their self-evidence and intervention is going to look like either cultural imperialism or *force majeure*; in the sense that the intervening state or states are acting on what they, from their standpoint, take to be self-evident, but equally might seem far from self-evident from the point of view of the state experiencing the intervention. This is part of Walzer's point which was discussed earlier. The same point would apply to the idea that doctrines about rights are matters of subjective preference. The political philosopher Margaret MacDonald once argued this case when she said:

> To assert that 'Freedom is better than slavery' or 'All men are of equal worth' is not to state a fact but *to choose a side*. It announces *This is where I stand*.[15]

If indeed ideas about rights are just a matter of preference, then it would make justification for intervention in the domestic affairs of another state look like imperialism. At least before 1648 states were thought to have moral relations defined by natural law and the will of God. If sovereignty is to be limited by rights and if all there is to rights are claims to self-evidence or the idea that they are based on preference, then the moral basis of the limitation of sovereignty and the possible justification of intervention is going to look exceedingly weak when placed alongside the power of the idea of self-interest, sovereignty and non-intervention, the force of which we have already considered, particularly in the context of the idea that there is no overarching moral framework to constrain the relations of states.

The second general point about the moral authority of the idea of rights is that if we believe that human beings are bearers of the same sorts of rights irrespective of their culture, religion, ethnic origin, gender and so forth, then it would seem that the justification would have to be in virtue of some idea of common humanity.[16] That is to say that there are certain common features which human beings share irrespective of the vast array of their differences and furthermore, that these similarities are of overriding moral importance when compared with the differences. This means that the universal features of

human life which are supposed to ground a claim to rights and to provide the foundations for an international political morality have to be seen in one of two possible ways:

1. That it is a product of liberal democracy which is then regarded as being a moral universal. Those who subscribe to the Fukuyama thesis about the end of history might take this view.[17] This recognises that ideas about rights are in fact culturally specific to Western Liberalism, while at the same time claiming that this is a political paradigm to which all states are and will be moving, although the stages of development towards it are many and various.
2. That whatever the differences between cultures, religions and ideologies, they are sufficiently similar in the sense that these different beliefs can still underpin a universal doctrine of rights. Human being have things in common despite all their other differences and these common human attributes can ground a set of rights as a basis of internal morality which might in turn justify a doctrine of intervention to secure such rights.

Whichever approach is taken, there is a strong foundationalist aspect to claims about the universal validity and salience of a rights-based approach. In the view of critics such as N. Rengger this is the key problem involved in a rights-based justification of intervention.[18] Such an approach to intervention on this view neglects the facts of cultural and moral relativity and at the same time neglects the enormous problems in giving some kind of universal foundation to doctrines about rights.

Possibility '1' would in fact recognise that ideas about rights are a product of a particular ideology, coupled with the claim that this ideology has the capacity to become a universal one. However, this is a dubious moral claim and a dubious claim about the shape of the future. It is unlikely to legitimise itself to non-liberal states and likely to make any justification for intervention look like a form of cultural and ideological imperialism.

Possibility '2' looks very implausible and was in a sense the background to many of the disagreements at the conference in Vienna already referred to, in the sense that many Islamic countries and countries such as China argued that the interpretation given to ideas about rights favoured the cultural assumptions of western liberal states and involved overriding local cultures, experiences and traditions in an unjust way. This point is important in two

approaches to politics, which goes back to Burke in *Reflections on the Revolution in France*, namely that people are motivated to act in politics by interests, habits and prejudices which are part of the everyday experience, traditions and specific culture of a society. They can never be properly motivated nor their loyalty be engendered by abstract ideas, as ideas of

human rights inevitably are, since they are, of necessity, abstracted from all the specific circumstances of human life which is what people value. This relates to part of the point of the non-interventionist critique, namely that states will not be able to mobilise citizens' loyalty around individual or collective schemes for intervention when these are couched in terms of protecting rights or serving humanitarian goals. The authentic voice of this position was to be found in the House of Commons when Mr Nicholas Budgen, a Conservative MP, asked the Foreign Secretary what vital British interest was at stake in Bosnia and Mr Hurd seemed stumped for an answer. On this view rights are too abstract to be used as a basis for political action and when they are given a more specific interpretation they become much more controversial.

This relates to the second point arising out of the claim that the interpretation of the demands made by rights will involve riding roughshod over local and specific values. It is argued by critics of a rights-based approach to intervention that the interpretation to be given to rights and the demands of their enforcement will in fact be the interpretation which the rich and powerful states put on the demands of rights; this in turn will undermine the formal equality of states which can be guaranteed better under a regime of equal sovereignty and non-intervention.

It might be argued by the defender of rights/humanitarian-based intervention at this point that I am making far too heavy weather of the issue of the moral authority of ideas about human rights and vital humanitarian interests. Whatever the niceties of the philosophical arguments about the basis of the moral authority of rights and the principles of humanitarianism, the fact remains that we can see humanitarian needs when they stare us in the face, as in Bosnia or Somalia; and we can see rights abuses when they are obvious, as in Iraq, in relation to the Kurds or the Marsh Arabs. We do not need theoretical arguments to justify action here. The humanitarian need and the infringement of rights is so obvious that self-evidence itself provides a basis for action.

Indeed, this was precisely the point made by the US Secretary of State at the UN Conference in Vienna when he argued that: 'We cannot let cultural relativism become the last refuge of repression.'[19]

However, this will hardly do. Take the humanitarian point first. The fact is that there have been very selective responses to humanitarian disasters: Somalia provoked intervention; Ethiopia did not. If a more interventionist phase of international politics is to succeed the non-intervention norm, then it might be argued that it has to be based upon some idea of there being rules or foundations to justify intervention which should go beyond the calculation of political convenience by either the UN members or, for that matter, by individual countries or by the claimed obviousness of the case for intervention. Defenders of the non-interventionist norm, as we saw, argued that because it required forbearance and did not involve resources, it provided a

rule or norm which could always be kept and that its force is shown by the fact that when countries broke the norm they tried to make their behaviour justifiable with reference to it, however implausibly. If however there is no agreement beyond the supposed self-evidence of the humanitarian need or the abuse of rights to underpin the case for intervention, then it is not clear that a more interventionist world order can be put on a rule- or norm-governed basis. As we shall see later, however, in the view of some commentators the search for general rules or norms in international relations is a misconceived and mischievous enterprise.

The second point about the impact of moral pluralism on the interpretation of rights is that in the absence of an agreed moral basis for the interpretation of humanitarian need or for rights, it will, as we saw earlier, be the interpretation or the view of the self-evidence from the rich and powerful states which is likely to determine the case for intervention, rather than it being a rule-governed process. The core intuition here is that if greater intervention in the interests of humanitarian considerations and human rights is to characterise the new world order, then this must be rule-governed, otherwise it will depend on the discretion of the rich and powerful. Rules however have to be based on something, and the hard question here is whether or not states can agree on the moral basis for rules of intervention. Vague ideas about humanitarian concerns and ideas about rights and what they require for their protection and enforcement have to be given a specific interpretation if they are to be of any use, yet their interpretation makes them more controversial and increases the role of political discretion. This in turn undermines the idea that there could be a rule-based approach to intervention.

So the question of the moral basis of rights, if this is to be invoked as a basis for intervention, is far from the arcane philosophical question that it might appear. It is bound up with the possibility of there being a rule-governed basis for intervention as the analogue to the norm of non-intervention. Such rules would have to be based on the moral authority of rights and their interpretation and that moral authority stands in need of justification.

Rights: Recognition, Respect and Obligation

So far I have not provided much by way of argument to explain why it might be thought that ideas about rights could support intervention in the first place. It is certainly not the view of all rights theorists that an appeal to rights could make a case for intervention. My own view, to state it at the outset of the argument, is that intervention to enforce rights is in fact a logical or necessary feature of talking about rights at all and that doctrines about human rights do imply not only the possibility of intervention, but indeed the

obligation to do so; and that rights discourse must involve a radical modification of state sovereignty and non-intervention, or to use the words of Luban, this approach to rights undermines the 'romance of the nation state'.

The basic issue here is this: assuming that there is a set of basic moral rights which can be universally justified, against whom does an individual hold such rights and what are the duties corresponding to those rights which other individuals hold?

The obvious initial answer here is that rights are held by individuals against governments. Governments have two responsibilities on this view:

1. to ensure that their own actions do not infringe the rights of citizens;
2. to protect individuals from having their rights infringed by other individuals within the same state.

If, however, one takes the universalist view of rights, it is not at all clear why this should be so. If rights define fundamental political relations between individuals, then why cannot one individual be thought to bear such rights against all other individuals, so that all other individuals have the duty to respect such rights and to be concerned about whether they are protected. It is not at all clear that respecting rights is solely a matter for governments respecting the rights of the citizens within a particular state. The legitimacy of the state is rooted in the protection of rights; when it does not protect or secure such rights, because they are human rights, this becomes a matter of moral concern both to other states and their citizens. Indeed, this does not only represent the consequences of theoretical reasoning but may reflect a growing public mood, as summed up by Perez de Cuellar in his final report as Secretary General of the UN, cited previously. He argues in this report that:

> With the heightened international interest in universalising a regime of human rights, there is a marked and most welcome shift in public attitudes. To try to resist it would be politically as unwise as it is morally indefensible.[20]

It is partly this idea that can provide one element of the notion that if we believe in universal rights then we have a direct moral concern over the ways in which rights are respected in states other than one's own and that this moral concern which arises out of our mutual obligations as individuals to respect rights is one source of the justification of intervention. However, this argument needs to be handled with care.

We need first of all to distinguish between *respecting* rights and *protecting* rights. On one understanding of the idea of rights deriving from Kant, respect is best understood as abstaining from actions which would interfere with rights. This treats the obligations of individuals arising from rights in essentially a negative way: not to kill, not to coerce, not to assault, not to interfere, etc. Such duties can be perfect duties in the sense that they can

always be carried out because abstaining from action is essentially costless, a point put very forcefully in Charles Fried's *Right and Wrong*.[21] Hence simply by being we are all fulfilling the perfect duty of respecting the rights of every other individual in the world since we are abstaining from killing, coercing, assaulting, etc. Hence on this view the idea of individuals in one state respecting the rights of those in another state could not very easily justify intervention, since the duty corresponding to rights is the *negative* duty of abstaining from action in infringing those rights and that duty is being performed by those outside the state within which rights are not in fact being respected. On this view of the duties corresponding to rights, therefore, there is no very clear case for intervention in terms of duty, since that duty as it concerns those in other states is being performed by non-interference.

It is, however, worth noting that treating rights and the corresponding obligations in this way already begs a big question in regard to the nature of rights. It assumes that the rights in question are essentially negative rights to various sorts of non-interference rather than positive rights to resources. If, however, one takes the view, as does the UN Declaration, that rights also imply social and economic rights – for example, to food, shelter, education, etc. – then it is clear that respecting rights cannot just consist in the negative duty of non-interference, but rather in positive duties requiring the commitment of resources. This issue goes to the heart of some intense debates about the nature and scope of rights which was frequently a bone of contention between West and East during the period of the Cold War. These issues are of great complexity, with which I cannot deal, although I have tried to defend positive rights elsewhere. What is worth noting at this stage of the argument, however, is that the question of what comprises respecting the rights of individuals takes us to some central questions about the nature and scope of rights. These in turn relate to questions about the justification of rights and the capacities, needs and interests which rights are supposed to protect, mentioned earlier.

The defender of negative rights will argue that to extend the idea of rights to resources, rather than rights to non-interference of various sorts, creates a range of paradoxes about the obligations which would be the concomitant of such rights. The central claim here is that the idea of positive rights, or rights to resources, extends the idea of obligation and responsibility in wholly irrational ways. On the negative rights view, the obligations relating to, and the related degree of responsibility for respecting, such rights can always be discharged: because they are negative, rights involve forbearance and thus have no resource implications. This is not true of positive rights. If I am thought to have an obligation to respect the human rights of everyone else, then if these rights involve rights to resources, the degree of my obligation and thus my responsibility is extended in an irrational way in that I will become responsible for all those infringements of rights which my not giving of resources will in fact produce. I would have to work night and day to

render aid if I really believed that rights involve resources. At the same time because the need is so great and resources are so limited, my response to the rights to resources of others will be based on discretion and I will have to *choose* to whom to give and yet rights should give rise to *categorical* obligations.

Equally, because we have no clear idea of what level of resources would actually meet the supposed rights to resources, we have no clear idea when the obligation to provide resources as the way of respecting rights is in fact discharged. Hence, instead of a clear, limited and categorical duty to abstain from various kinds of interference as being what respecting rights consists in, the positive rights view links respecting rights to the provision of resources. Also, some critics of positive rights argue that this leads to a clear conflict between social and economic rights on the one hand, and civil and political rights such as rights to property and free exchange on the other. If human political relationships are defined in terms of rights, then on the negative view this produces a morally sustainable concept of respecting rights as requiring forms of forbearance. On the positive view, however, this obligation to respect rights collapses into positive provision to protect rights and it makes no sense then to say that rights are held against all members of the human race, a concept which *can* be made sense of on the negative view of respect. In a sense, the negative rights argument is analogous to the non-intervention norm and would lead to similar consequences in international affairs.

One way in which this debate could have a very practical effect in the context of intervention is as follows: imagine a case in which there has been UN intervention to alleviate famine, but assume also that the famine has been caused not by an absolute shortage of food, but by a maldistribution of property rights and the right of access to food. To deal with the problem as opposed to alleviating the symptoms might require the UN to try to create political negotiations with the aim of increasing the positive rights of some sections of the society (the victims of the famine) at the expense of some of the civil and political rights of others, namely their property rights and their rights to free exchange. If the famine is of the sort described and if intervention is to have an effect in confronting its causes, then there might be a need to have a clear view about the relationship between the famine and the pattern of rights in that society and economy.

In this chapter I do not want to focus on whether one can in fact sustain a categorical distinction between negative rights as genuine rights and positive rights as pseudo rights. I do, however, want to look at a related issue which throws the distinction into doubt and in particular the idea that respect can be construed negatively, thus requiring only forbearance and non-action in the international field to justify the claim that other states are in fact respecting those rights which are being infringed in another state. This point focuses on the relationship between a right and its enforceability. The conditions of enforcing rights obviously implies resources however one

understands rights. Take, for example, the right to life understood negatively as the right not be killed. In order to make this right enforceable then there have to be police forces, courts, prisons, etc., and these obviously involve resources. The crucial question is whether the conditions of enforceability are a *contingent* feature of negative rights – that is to say, logically detachable from the idea of the right in question. It is very difficult to see how this can be so. The idea of a right is linked to that of an obligation which is enforceable. We have all sorts of desires, interests, needs, preferences and so forth, and those which are picked out as underpinning rights are those which we believe can or should give rise to enforceable obligations. If the very idea of a right is linked to the idea of enforceability, in that without the concept of enforceability we would not be able to pick out which interests, etc. should be seen as grounding rights, then two things follow. The first, on which I do not wish to dwell in this chapter, is that all rights involve resources as embodied in the enforceability conditions of rights and these conditions are not a contingent feature of rights. The second is that if the conditions of enforceability are not a contingent feature of rights, then the idea of respecting rights *cannot* be treated in a negative way, as non-interference in right-holders' lives, but is also logically linked with the enforceability conditions. I cannot claim to be respecting the rights of X by abstaining from action if this neglects the enforcement conditions of those claims being regarded as rights in the first place.

This would then link a recognition and respect for rights between individuals to a concern for these enforceability conditions. Our responsibility for the rights of others is therefore not confined to *non-interference* in those rights, but also has to involve responsibility for doing what we can to secure those *enforceability* conditions, just because these are part of having a right and therefore must be involved in what respecting rights means. This seems to me to be the best way of linking a concern for rights and the possibility of intervention in a particular country which may not be securing the enforcement conditions; and this concern cannot be avoided by defining respect for rights in relation to the citizens of other states in wholly negative terms.

Rights, Rules and Intervention

Nevertheless, the critic will argue that the linkage between rights and intervention which has just been forged is in fact largely rhetorical in respect of practical politics; it is just not possible to devise rules or, what Mill in the epigraph to this chapter calls, 'definite' and 'rational tests' for intervention. As we saw earlier, it has been argued that it makes sense to talk in terms of a norm or a rule of non-intervention, but in the view of the critic it does not make sense to talk about devising norms or rules for rights-based

intervention. This point has been made forcefully by N. Rengger in the essay cited previously. He argues as follows (the quotation is long, but it is worth relating since a number of issues are raised within it):

> The problem then is how to characterise the view of the ethical required by the new and evolving circumstances of the international system. The answers offered by the various approaches outlined here are inadequate because, whatever the differences that separate them they all rely on a certain minimum foundationalism. The essentials of this minimal foundational case are that, in principle all ethical claims are commensurable. In other words, they are 'able to be brought under a set of rules which will tell us how rational agreement can be reached on what would settle the issue on every point where statements seem to conflict'. This minimal foundationalism does not hold that there is a specific content to a set of rules, only that such a set is possible. In the case of intervention this could mean a set of rules based on the idea of minimal norms. . . . If one suggests, however, that the ethical state of the contemporary international system is a fragmented one, then it is possible under certain circumstances to make statements such as 'this is a justified intervention' but that no 'set of rules' with universal applicability could be drawn up to tell us what those circumstances might be . . . all sets of rules are necessarily wrong. They must ignore the culture-specific elements of a particular instance of intervention and so cannot adequately account for, explain, justify, or criticise it. This implies that we need to view ethical questions in the light of both systemic and ethical fragmentation.[22]

Thus for Rengger the moral pluralism and fragmentation of the modern world make it impossible to devise a set of rules or norms to justify intervention. A contextualist critique of a rule/rights-based approach such as his would be likely to focus on the following features about rights arguments, which, it is claimed, cannot in fact sustain a rule-based system of intervention.

1. Ideas about rights have to be universal and foundational. Their interpretation is not likely to command universal assent as the 1993 Vienna Conference showed. Equally we lack the epistemological resources to provide a cognitive basis for a universal framework of human rights and, even if we had it, this would be inert in international politics because of its necessarily arcane and theoretical nature.
2. So long as ideas about rights are kept very general, they may command more international consent. However, the more specific they become, the more controversial they will be. If rights are to support rules or norms of intervention, they will have to be rather specific if they are to do this job. However their very specificity will increase their tendentiousness.
3. There are different ideas about rights and their priorities, for example, between civil, political, welfare and economic rights. If they are all human rights, they could all be relevant for a basis of intervention, but this would make devising rules covering possible intervention across the whole range of rights impossibly complex and controversial.

In the view of the contextualist, therefore, this shows that it is impossible to devise norms or rules underpinned by rights as a basis for intervention. If this view is thought to be cogent, there appear to be only two other approaches available, both of which reject the idea of creating rules and norms. The first is a utilitarian and consequentialist account; the other is a fuller version of the contextualist account invoked by Rengger in his critique of the universalism and foundationalism of the rights-based approach.

Consequentialism and Intervention

This is a view which has been expounded by Dr Caroline Thomas in *New States, Sovereignty and Intervention*. The guiding idea here is that the question of intervention should not be considered in the light of general rules based on rights, because Thomas largely accepts the cultural and contextual critique of rights-based approaches to intervention. She does, however, add one additional critical ingredient to the critique. As a matter of fact *states* and not *individuals* are the recognised actors in the international arena.[23] Rights are essentially rights held by individuals, but individuals have no standing in the international system. Rather we should accept the fact that states have an interest in maintaining sovereignty and the absence of intervention in their affairs, as well as their formal equality with other states, which these two ideas bring in their wake. If there are any universals or foundations in international relations, then these are more powerful than liberal-inspired ideas about rights. It makes no sense to place a concern with the rights of individuals above the morality of states. If intervention is contemplated, it should not be judged against categorical rights-based principles, but rather assessed alongside the fact that states have the interests previously mentioned, a judgement made about the likely costs and benefits of intervention and thus its likely effectiveness.[24] These judgements have to be made against a background which brings into play previous evidence both from collective and unilateral acts of intervention. Thomas's case studies lead her to the view that the weight of evidence is against intervention even when it is well intentioned and relatively free from power political motives.

Secondly, the judgement about likely effectiveness has to take into account the facts of cultural diversity of the sort that were discussed earlier in the context of Walzer's argument. Intervening states are likely to have very little sensitivity to the values and identities, loyalties and religious beliefs of those in other societies and well-intentioned intervention can go disastrously wrong (Somalia might support the case here). There is a need to judge consequences and to reject the over-moralisation of international affairs which would follow from the rights-based approach. Since possible consequences will vary from case to case, it is futile and dangerous to try to devise general norms and principles in relation to intervention. Indeed Thomas' view of the kinds

of dangers intervention runs, puts her firmly in favour of the non-interventionist position.

There is a danger in the argument becoming too polarised at this point. First of all, it is not all that self-evident that sovereignty and self-determination are the only universals in the international system and indeed these are heavily constrained in the economic sphere. Despite all the difficulties identified in the previous section in relation to rights, the UN's *Universal Declaration of Human Rights* does exist and does count for something in international affairs. While I do not feel that we have got anywhere near understanding the relationship between a set of internationally recognised rights on the one hand, and a view about state sovereignty on the other, I doubt whether a concern with human rights and their abuses can be quite so easily sidelined. This is not only for the theoretical reasons which I have tried to set out, but also because the UN is more likely to consider rights issues because the Declaration is one of its own foundational documents and its capacity for positive action has been increased since, at least for the moment, the Security Council is not impeded by being the arena within which superpower rivalries are played out.

Secondly, in this context at least, it is a mistake to counterpose rights versus utility or consequentialism. Since I have already argued that all rights involve resources as part of their non-contingent enforceability conditions, then there will always be a place for judgements about how and when to deploy resources, given that resources are finite. These judgements are bound to include some kind of assessment of the consequences.

Finally, although no friend of the rights-based approach, Rengger makes the point that such a vigorous attempt to deny the relevance of any sort of universalist principles in international affairs other than those of state sovereignty and self-determination, is likely to lead to what he calls 'an almost inhuman passivity in international affairs'.[25] I shall return to the moral problems involved in passivity and a failure to act in the final section of the chapter.

Contextualism and Judgement

The core intuition of this approach is one which recognises moral pluralism and moral fragmentation as a feature of international political life, and which rejects any attempt to produce universal foundations for a set of rules to govern intervention. Other than saying what it is not, it is difficult to characterise this approach in general just because it is a pluralist and contextual approach. Rengger, who supports it, describes it as follows:

> The question, 'When is it legitimate for one State to intervene in the affairs of another?' thus becomes an investigation into the contextual setting of a particular

instance of conflict, its relation to other instances and to our own understanding of the appropriate ethical response.[26]

This involves not only a rejection of the universalism of rights-based theories, but also of what he sees as the rather attenuated morality of the consequentialist approach. In place of these Rengger seems to come quite close to recommending what Aristotle called 'Phronesis',[27] the practical judgement of a wise person who has weighed all the issues. This judgement is not the attempt to apply general rules to particular cases as the rights-based approach would imply, nor does it involve just the assessment of consequences as the utilitarian would have us accept. It is rather the attempt to reach a reasoned judgement, having tried to take into account all the factors relevant to that particular case.

In its rejection of both universalism/foundationalism and also the calculative approach of consequentialism, this point of view shares a lot in common with post-modernism. In stressing its lack of universalism, its distrust of general laws, rules and principles, and its openness to difference, post-modernism in international relations theory has to emphasise judgement and the complexity and possible incommensurability of the factors which bear upon a judgement.

This view is, however, open to the same charge as is made against one aspect of the rights-based theory, namely that it is intrinsically discretionary. The point is not so much that discretion in itself is a bad thing, so much as who is exercising the discretion in making the judgement to intervene in *this* case but not in *that* one. If it is the rich and powerful nations then this is likely to mean that a post-modern contextualist norm of intervention will be open to abuse by the rich and powerful states. A rights-based theory which seeks to provide a set of rules and norms for intervention tries to get away from discretion, but cannot for reasons which we have considered. A post-modern theory has to place discretion at the centre of its approach to the justification of intervention. Perhaps this just has to be accepted as an inherent hazard of the whole approach to intervention, whatever is seen as its philosophical basis. However, once this is admitted it strengthens the position of those who believe that the norm of non-intervention is the best way of securing the equality of states because large and powerful states will have the dominant influence over how discretion will be exercised.

The thrust of the argument so far has been to place a question mark over whether there could be any universal basis for intervention, as well as a question over whether it is feasible to try to devise rules or norms to guide intervention. It might be concluded from these considerations that, in fact, the norm of non-intervention still has a good deal to be said for it. However, as we saw earlier in a comment by Rengger, a non-interventionist stance is very difficult to square with the pressures brought, particularly by the media, for intervention to protect persecuted groups and victims of famine or civil wars.

In the final section of this chapter I want to explore some of the moral and philosophical issues surrounding the idea of what are our moral responsibilities to act to meet needs and protect rights, and what are the moral consequences of a failure to act which would flow from adopting a non-interventionist stance.

Intervention, Non-intervention and the Scope of Responsibility

What I want to focus on here is the nature of our moral responsibility in relation to a failure to act to meet needs and protect rights (perhaps the thought behind Baroness Thatcher's claim that if we fail to act the West would be accomplices to murder in relation to Bosnia). Mill famously argued in *On Liberty* that 'a person may cause evil to others not only by his actions but his inaction, and in either case he is justly accountable to them for the injury'.[28] The issue of the moral framework within which acts of omission or forms of non-intervention should be seen is a highly disputed one in moral philosophy, and I want to consider two possible models which apply to the case of failing to act to secure the enforcement conditions of rights.

The first element has to do with the moral relations surrounding a failure to act. The second has to do with negative causation and the issues of responsibility which flow from this.

In his book *Reason and Morality*, which is one of the most impressive works on the nature of rights, Alan Gewirth argues as follows:

> an event . . . may be caused by a person's inaction . . . as well as by his positive action. A train wreck may be caused by a signalman's omitting to move a switch . . . If the signalman's pulling the switch is expected and required in the normal operation of the railroad line . . . then his failure to pull it is the cause of the ensuing wreck.[29]

People are responsible for the consequences of their inactions on this view if they stand in a certain kind of relationship with the event and this kind of relationship underpins a notion of what is the normal and expected course of action.

It is easy to see why one might want to argue this. If we were morally responsible for all the consequences of our inactions, whatever they may be, then the realm of moral responsibility would be irrationally extended since there is an indefinitely large number of things that I am currently not doing. If I am morally responsible for all the consequences of what I am not doing, then we do not have a firm idea of what the sphere of moral responsibility is. The range of things for which I can be held to be morally culpable for inaction has to be limited, and it is limited by some idea of what my antecedent obligation is, which I have failed to discharge. This is the force of

the signalman example. It is because he has an antecedent obligation to act, i.e., to pull the lever, that his failure to act is morally culpable. By parity of reasoning it might be argued that a failure to intervene to meet needs or to protect rights is only morally culpable if there is an antecedent duty to act. Of course, this is precisely the point that has been at issue in the long discussion of rights in this chapter, namely, whether the failure of one state to protect basic rights creates an obligation or an antecedent duty in other states to act, so that their failure to act, by adhering to the norm of non-intervention makes them morally culpable for the consequences which flow from this failure to act. In commenting on Gewirth's argument Jan Narveson makes the point in a clear and important way:

> The signalman has an antecedent, professional (in this case) duty to pull switches at crucial times. His inaction is a cause because there is an antecedent basis for the positive duty, and thus for positive expectations for action on the part of affected persons. But whether there is such a duty is precisely what is at issue when the question is whether there is a general duty of aid. To argue that our negative duty to refrain from harming entails a positive duty to help when needed on the ground that not helping is in effect a kind of harming is to beg the question.[30]

Narveson puts this argument at the service of the claim that there is no positive duty to aid and to intervene. However, on the points made earlier about rights, this would not be so. If respecting rights involves a responsibility to be concerned with the non-contingent enforceability conditions of rights, then respect for rights involves a commitment to trying to sustain enforceability conditions in other states where they are weak or under threat of becoming non-existent, rather than just construing respect, as Narveson does, as non-interference. On this view, therefore, a failure to act would involve moral culpability for the consequences of the failure, since there is precisely an antecedent moral condition, namely that of respect for human rights involving concern for enforcement conditions. On this view, therefore, intervention, if it was judged likely to have a positive result and pursued in such a way as to protect rights, would not only be morally justified within a rights-based framework, but would actually be *required* in such circumstances by the kind of moral responsibility which the view set out here respecting rights actually involves. On this view, therefore, respecting rights considerably increases the responsibility of states and citizens within states to do what they can by intervention when necessary as a way of providing some clear embodiment of the principle of respecting rights. To come back to an earlier way of putting the point: rights would underpin an interventionist approach to international politics and would be a clear constraint on the sovereignty of states. However, as we have seen, it is very difficult to set out in detail how such an approach would not fall victim to the criticisms made by non-interventionist critics.

There is an alternative approach to the question of responsibility for acts of

omission which does not require the establishment of a moral relationship of the sort set out above as the framework within which moral responsibility is assigned. This focuses much more on the idea of causation rather than that of moral responsibility; or rather it would take the view that moral responsibility should be assigned on the basis of causal responsibility. In some ways it can be seen as the reverse of the position of Narveson stated above. For Narveson, inaction is the cause of an event because 'there is an antecedent basis for the positive duty'. It is the moral relationship, or, in the case of the signalman, the professional relationship, between people which provides the framework for assigning causal responsibility for the failure to act. Outside of this moral relationship there is no causation (if one takes his words literally). The point of the previous paragraph was to argue that the idea of rights and the nature of the obligation to respect rights provides such a basis for saying that a failure to act causes harmful effects. However, the alternative approach here is quite different and involves a rejection of the view that inaction can only be a cause within a moral, professional or contractual relationship. The basic intuition here is that causation is not a product of relationships, but is in some sense a fact about the world which cannot be changed by human relationships or marks on paper such as a contract. Indeed, far from moral responsibility for something being a precondition of identifying a failure to act as a cause, causation is the basis to which moral responsibility should be ascribed. The issues here are very complex, but an example might make the basic intuition clear. Take the following two cases which are alike in every respect except that in Case A there is a contract.

Case A
A lifeguard has a contract to save lives on a beach. On a particular day he sees a child blown into shallow water face down. There is no one else on the beach. If he fails to act, the child will drown. He fails to act and the child drowns.

Case B
There is a person passing on a beach, deserted except for a child blown into shallow water by the wind and face down. If he fails to act the child will drown. He fails to act and the child drowns.

On the Narveson view only the first example is a case of inaction causing the harm because the inaction is a cause with an antecedent basis (the lifeguard's contract) for the positive duty. However, on the alternative view, in each case the failure to act must be the same causal factor in the death of the child, since had the individual acted the child would not have drowned. In *Violence and Responsibility*,[31] John Harris defines negative causation as follows:

- A's failure to do X caused Y where A could have done X and X would have prevented Y.

In the two cases outlined above it would seem that the causal circumstances are identical except for the contract, and the question arises: what difference can contract (or any other relationship) make to the sequence of negative causation?

The reason why people want to resist this is, as Harris points out, that there must be some feature of the situation that raises the issue as to A's failing to do X, and of A's thereby causing Y. Without this we would all be morally responsible for the cases where we might have acted differently and this extends our responsibility irrationally. This leads Harris to produce a definition of negative action:

- A's failure to do X with the result Y, will make the doing of Y a negative action of A's only where A's doing X would have prevented Y and A knew, or ought reasonably to have known this, and where A could have done X and knew, or ought reasonably to have known this. (p. 45)

There are several points here that are relevant to the present argument:

1. As Harris makes the point, neither negative causation nor negative action implies a moral relationship between the parties involved in the harm.
2. The causal antecedents to the harmful event can be identified independently of any moral relationship.
3. Following Hart, we need to distinguish between causal responsibility and 'moral liability'. As Hart[32] points out, it is the causal responsibility for bringing about Y as the result of inaction which raises the question of whether A is morally responsible for the harm which Y causes.

However, contra Narveson and Casey, causal responsibility can be assigned outside a moral framework. From this it would follow that a failure to intervene when rights are threatened can be treated as a case of causal responsibility and that there would be no logical space to claim, as Narveson does, that causation has to be embedded in a moral framework before it can be causation. Thus on this view a failure to intervene can still be something for which we can be held causally responsible even if one rejected the moral framework which I set out in my answer to Narveson. The moral framework would come in only in a secondary way in trying to determine the moral responsibility which we bear, but one could not deny causal responsibility.

The conclusion which follows from this last point is that whatever the difficulties involved in setting out the case for a rights-based approach to intervention, a retreat into a non-interventionist stance cannot absolve us from the moral responsibilities involved in our failures to act. Both

intervention and non-intervention bring with them enormously complex moral and philosophical problems, but the arguments in this last section show, I believe, that there is no escape from these into a kind of state passivity, because that involves just as many moral costs as does intervention. I therefore believe that we face a formidable dilemma in world affairs as the pressure for greater intervention to prevent humanitarian disasters and human rights abuses continues. I favour the rights-based approach but my major worry is that, without being able to generate a rule-governed framework for enforceability, concern for rights can in fact become an instrument for undermining the formally equal relations between states characteristic of the non-intervention regime, and that this will be to the disadvantage of small, relatively powerless states. However, for reasons that I have given, it becomes extremely difficult to see how a framework of rights-based rules for intervention could be generated.

Latin Translations

rex in regno suo ist imperator The king is 'supreme' in his own realm.
de jure by right.
civitas superiorem non recognoscens est sibi princeps A citizenry owing no obligation to superiors is to itself a prince.
cuius regio eius religio Whatever the king, there his religion.
cuius regio, eius jus Whatever the king, there his law.

Notes

1. 'Few Words on Non-Interventionism', *Dissertations & Discussions*, Vol. III, 2nd edn 1875, London, Longman, p. 166.
2. I should like to thank my colleagues in Southampton, particularly Caroline Thomas and Ian Forbes for their help in defining some of the issues in this paper. Caroline Thomas, who takes a very different view of these issues, has been particularly helpful in letting me see some of her recent writings on the subject. It was Ian Forbes who first interested me in the topic when he and Mark Hoffman invited me to participate in a series of seminars on the 'Ethics of Intervention', funded by the Ford Foundation. This seminar led to the publication recently of a book edited by Forbes and Hoffman, *Political Theory, International Relations and the Ethics of Intervention*, London, Macmillan, 1993. I should also like to thank Frank (Lord) Judd and Meghnad (Lord) Desai who contributed to a debate in the Lords which rekindled my interest in the topic.
3. For a clear, factual account of what was agreed in Westphalia, see D. Maland, *Europe at War 1600–1650*, London, Macmillan, 1980.
4. For a discussion of these principles see A.P. d'Entreves, *The Notion of the State*, Oxford, The Clarendon Press, 1967, Ch. 5.
5. Indeed as M. Oakeshott points out in *On Human Conduct*, the principle of *cuius regio eius religio* applied between Catholic states too, in that the form of Catholic settlement varied a good deal between states. The outcome of this process he

argues was that 'Christendom had become Europe, a manifold of independent states, devoted to their multiplicity'. *On Human Conduct*, Oxford, The Clarendon Press, 1975, p. 229.

6. J.N. Figgis, *Studies in Political Thought From Gerson to Grotius*, Cambridge, Cambridge University Press, 1956, p. 123.
7. This section is indebted to the work of my colleague Caroline Thomas, particularly *New States, Sovereignty and Intervention*, Aldershot, Gower, 1985.
8. M. Walzer, *Just and Unjust Wars*, New York, Basic Books, 1977, p. 89.
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