Reconciling Sovereignty and Humanitarian Intervention in
Contemporary International Society

Introduction

In 1999, the North Atlantic Treaty Organization (NATO) launched an air campaign

against the Federal Republic of Yugoslavia, justifying it as a response to the rapidly accelerating

humanitarian crisis in Kosovo. NATO's intervention proved to be highly controversial as it

overrode the most basic principles of the UN Charter by violating the sovereignty of the

Yugoslav state through the use of military force on the basis of an "overwhelming humanitarian

necessity."[1] NATO's actions were largely perceived as illegal since they were not sanctioned by

the UN Security Council, nor did it have the consent of the Yugoslav government. Despite this,

the Security Council intervention never condemned the intervention, and much of the

international community deemed it warranted.[2] The Kosovo Intervention represents a critical

juncture in the history of humanitarian intervention. It capped off a decade that bore witness to a

series of controversial interventions and non-interventions, leading the international community

to question the very meaning of sovereignty and when humanitarian concerns necessitated its

withdrawal.

Humanitarian intervention is nothing new; it has existed notionally and in practice for

centuries. Nevertheless, it remains hugely controversial and generates intensely divisive debates

among academics, international lawyers and policy makers alike and raises questions of the

upmost legal and moral complexity. Humanitarian intervention "poses a hard test for an

international society built on principles of sovereignty, non-intervention, and the non-use of

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[1] Robert Jackson, *The Global Covenant: Human Conduct in a World of States* (Oxford: Oxford University Press, 2000), 278.
[2] Alex Bellamy & Nicholas Wheeler, "Humanitarian intervention in world politics," in *The Globalization of World Politics*, ed. John Baylis, Steve Smith & Patricia Owens (Oxford: Oxford University Press, 2014), 485.

force."[3] Sovereign equality and inviolability, as articulated by the UN Charter, is meant to ensure the peaceful coexistence of states and protect inherent diversity among human communities.[4] However, to what end? Should a state which imposes tyrannical rule upon its population be recognized as a legitimate member of international society, or should sovereignty be conditional upon a state's responsibility to its citizens?

Employing an English School of International Relations lens, and understanding humanitarian intervention within its ontological conception of states forming an International Society, along with incorporating a teleological understanding of society (and the state), this paper argues a state's sovereignty is indeed conditional upon a responsibility to its citizens. Comparing the social contract theories of Thomas Hobbes, Jean-Jacques Rousseau and John Rawls, it is shown that states are social constructions that developed to meet some basic goal(s) of society – at minimum, to ensure life is secure against violent death or bodily harm. Further, by placing this conception of the state within international society, the right to external sovereignty, and its corollary, non-intervention, becomes dependent upon the fulfillment of said basic goals. Should a state fail in this duty, it loses its right to sovereignty, and humanitarian intervention becomes legal and legitimate.

This paper is a theoretical and conceptual study that seeks to reconcile the notion of humanitarian intervention with that of sovereignty. It begins with a discussion of the English School's central concepts in order to provide an examination of both the basis and teleology of sovereignty within international society. This is followed by an overview of humanitarian

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[3] Ibid, 480.
[4] "The Organization is based on the principle of the sovereign equality of all its Members." (Article 2:1). "The purposes of the United Nations are to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." (Article 1:2).
The United Nations, Charter of the United Nations (San Francisco, 1945), Accessed: https://www.un.org/en/charter-united-nations/.

intervention itself, its legal standing, and historical origins to provide context of its Western/European genealogy and contemporary controversy. Humanitarian intervention, along with state sovereignty, is then placed within the English School's normative debate of pluralism vs. solidarism to determine the normative extent of sovereignty within international society and on what grounds humanitarian intervention becomes legitimate. This paper is not, however, an empirical study on which humanitarian interventions throughout history were, or were deemed to be, legitimate or successful, and it is not a discussion on when it is prudent to intervene. Further, this study focuses primarily on the external sovereignty, or right of non-intervention, of states and not the internal sovereignty (the final authority on whether to intervene) of those states who carry out an intervention.

<u>The English School, State Sovereignty, and International Society</u>

This paper works within the established theoretical paradigm of the English School of International Relations (ES) and its concept that states, in their behaviour among each other, form an international society. The ES originates from an undeniably European philosophical tradition, and consequently contains a particular Western ontological bias towards its understanding of international history and notions of the state. Further, the ES relies upon a set of terms with a specific definitional nuance, specifically those of the state, sovereignty, system of states and international society (interchangeable with society of states).

The state, within the ES, is defined as an independent political community which "possesses a government and asserts sovereignty in relation to a particular portion of the earth's surface and a particular segment of the human population."[5] The state is internally sovereign insofar as the state's authorities recognize no superior authority within that territory, and is

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[5] Hedley Bull, The Anarchical Society (New York: Columbia University Press, 1977), 8.

externally sovereign insofar as it is independent of outside authorities.[6] In other words, internal sovereignty is concerned with the relationship between a sovereign power (political authority) and a political community and refers to the particular geographical territory of said political community. External sovereignty, on the other hand, is concerned with the relationship between multiple political communities and is connected to questions of international law – such as a political community's status within international law and when, if ever, its territorial authority may be overridden, including through military intervention.

The existence of a plurality of independent political communities (hereafter states) then forms a "system of states" insofar as they have sufficient contact between them to influence each other's decisions, and to "cause them to behave – at least in some measure – as parts of a whole."[7] Therefore, it is a system of states (or international system) that is the most basic and enduring structural feature of world politics. The existence of an international society, on the other hand, presupposes the existence of an international system. In other words, a collection of states has moved past a condition of interaction based solely on the recognition of each other's existence (system), to one of mutual rules, perhaps values, minimally conceived as the recognition of each other's *right* to exist (society). In this sense, state sovereignty forms the basis of international society as the normative institution that ensures the reciprocal recognition of a state's right to exist.[8]

Despite the English School's assertion that states are the primary actors and composite members of international society,[9] it is in its most fundamental sense still a human society.

[6] Martin Wight, Systems of States (Leicester University Press, 1977), 23.
[7] Ibid, 9-10.
[8] Barry Buzan, *An Introduction to the English School of International Relations* (Cambridge: Polity Press, 2014), 102
[9] Bull, *The Anarchical Society*, 8.

International society does not count individual human beings as its members, but rather sovereign states which act as "notional persons."[10] Humans are members of international society by extension of, and through, the sovereign state. Further, states are not entities in their own right but exist as a totality of a human political community. Thus, states are members only by virtue of the sovereignty they possess in relation to the populace they contain (internal sovereignty). Additionally, as a member of international society, states benefit from, and are subjected to, a body of rules (norms, procedures and laws) that define proper behaviour among themselves.[11] Thus, international society, at its most fundamental level, is a social construct of the human communities its member-states embody. This conception of international society allows it to be understood in a teleological sense similar to that of the state, a point which will be elaborated upon in greater detail later.

What is Humanitarian Intervention?

Just as there exists intense debate surrounding the legality and legitimacy of humanitarian intervention, so too does there exist debate over its very meaning. The term is widely used in legal, ethical, and political literature, where the field of analysis often influences the definition that is chosen.[12] Similarly, how and when the term is used also influences its meaning (e.g. used instrumentally or rhetorically). For the purposes of this study, humanitarian intervention will be understood as:

> the threat or use of *force* by a state (or group of states) aimed at preventing or ending
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> widespread and grave violations of the fundamental human rights of individuals other

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[10] Alan James, "International Society," *British Journal of International Studies* 4, no. 2 (1978), 91-106, https://doi.org/10.1017/S0260210500117140.
[11] Jackson, *Global Covenant*, 102.
[12] Ibid, 15.

than its own citizens, *without the permission* of the state within whose territory force is applied.[13] [*Emphasis* added]

It is important to note three central aspects of this definition: the use of force, the issue of consent, and humanitarian justification. First there is the use of force. The definition above is intentionally narrowed by excluding non-forcible interventions, such as economic or diplomatic sanctions, despite other definitions including such means.[14] The specific question being answered here is whether humanitarian intervention can be reconciled with the normative principle of sovereignty within international society. Humanitarian intervention by non-forcible means, despite attempting to influence a state's actions, is not a violation of sovereignty, but rather is a violation of a state's autonomy. The use of force (i.e. military intervention), on the other hand, to protect the human rights[15] of another state's citizens is a direct contravention to a state's external sovereignty and the accompanying notion of territoriality.[16]

Second, the issue of consent is fairly straightforward. As Jennifer Welsh notes, "for intervention to truly be intervention, the state on the receiving end must *not* consent to the action."[17] Further, the absence of consent delineates humanitarian intervention from something closer to a peacekeeping mission (an intervention sanctioned by the UN Security Council and invited by the host state's government).

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[13] J. L. Holzgrefe, "The Humanitarian Intervention Debate," in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas,* ed. J. L. Holzgrefe & Robert O. Keohane (Cambridge: Cambridge University Press, 2003), 18.
[14] See David J. Scheffer, "Towards a Modern Doctrine of Humanitarian Intervention," *University of Toledo Law Review* 23 (1992), 253-293; Fernando R. Téson, "Collective Humanitarian Intervention," *University of Michigan Law School Journal* 17, no. 2 (1996), 325-371.
[15] Human rights here is used in a conceptual sense. However, the common usage of human rights in world politics, particularly in regards to justifying intervention, originate from an undeniably Christian naturalist genealogy and codified in the UN Declaration of Human Rights. See https://www.un.org/en/universal-declaration-human-rights/.
[16] Territoriality is the territorial integrity of a sovereign state.
[17] Jennifer M. Welsh, "Taking Consequences Seriously: Objections to Humanitarian Intervention," in *Humanitarian Intervention and International Relations*, ed. Jennifer M. Welsh (Oxford: Oxford University Press, 2004), 56.

Finally, any intervention must be justified on *legitimate* humanitarian grounds, even if the underlying motives of the intervening state (or states) are mixed. [18] This is not to say that any intervention described by the intervening state(s) as humanitarian makes it a humanitarian intervention. As Barnett notes, what is considered 'humanitarian' is often itself controversial and in question, and can and has been co-opted towards state interests.[19] Instead, motives can be mixed in the sense that the humanitarian impetus to resolve a crisis may come from self-interest (e.g. prevent spill-over effects of greater regional insecurity) or from a principled moral stance, but not to mask motives altogether separate from a humanitarian cause. By legitimate humanitarian grounds, there must be a pre-existing humanitarian crisis[20] in the state subject to intervention. To summarize, humanitarian intervention, as used below, is an uninvited, *military intervention* in a state intended to alleviate extensive human suffering.

Legal Standing of Humanitarian Intervention

The contemporary controversy over humanitarian intervention emerged in light of changes in positive international law during the 19th and 20th centuries, particularly with the codification of sovereign equality and non-intervention in 1945.[21] Before this, few legal restraints existed against armed intervention, as the "right of conquest was recognized, and war was not outlawed."[22] Nevertheless, the resort to war has often been justified in some way by the instigators through moral or strategic claims.[23] Indeed, what we now conceive of as humanitarian

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[18] Thomas Weiss, *Humanitarian Intervention,* 2nd ed. (London: Polity Press, 2007), 7.

[19] Michael Barnett, *Empire of Humanity: A History of Humanitarianism* (New York: Cornell University Press, 2011), 178.

[20] A humanitarian crisis "is an event or series of events that represents a critical threat to the health, safety, security or wellbeing of a community or other large group of people, usually over a wide area." Humanitarian crisis can be the result of a natural disaster, man-made, or the combination of the two. This study focuses primarily on those man-made. https://www.humanitariancoalition.ca/.

[21] Simon Chesterman, *Just War or Peace?* (New York: Oxford University Press, 2001), 7-8.

[22] Miles Kahler, "Legitimacy, Humanitarian Intervention, and International Institutions," *Politics, Philosophy & Economics* 10, no. 1 (2011), 20-45, doi: 10.1177/1470594X10386570.

[23] Hehir, *Humanitarian Intervention: An Introduction*, 187.

intervention can trace its genealogy from two such moral justifications – Just War theory, and a "standard of civilization." Both justifications are steeped in a Western European concept of civilisation, contributing to the contemporary controversy of humanitarian intervention.

The Western Just War tradition emerged in Medieval Europe as a response to a seeming contradiction within Catholic theology when evaluating war. Theologians sought to reconcile the notion that violence is a sin with the recognition that inaction in the face of evil is equally sinful. Thus, the concept of a "Just War" was developed to provide a way of moral reasoning to discern the ethical limits of resorting to war.[24]

The idea of a "standard of civilisation" originated in the late colonial era with the European practice of "differentiating among states and peoples in hierarchical terms of 'civilized,' 'barbarian' and 'savage.'"[25] Consequently, these labels were used as a qualification to the rights and privileges of European international society as sovereignty was applied unevenly between 'civilized' and 'uncivilized' states. A justification for both colonialism and extra-European wars, the standard of civilization was withheld from a society based on race and religion. Therefore, interventions in these territories were often justified as civilizing missions. Today, scepticism persists surrounding the motivations of humanitarian intervention as simply a tool for the veiled continuation of the standard of civilisation logic towards imposing a Western set of values on the rest of the world.[26]

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[24] Nicholas J. Wheeler, "Legitimating Humanitarian Intervention: Principles and Procedures," *Melbourne Journal of International Law* 2, no. 2 (2001), 555. https://link-gale-com.libproxy.uregina.ca/apps/doc/A81763319/EAIM?u=ureginalib&sid=EAIM&xid=c2814c02.

[25] Barry Buzan, *An Introduction to the English School of International Relations*, (Cambridge: Polity Press, 2014), 17.

[26] Mohammed Ayood, "Humanitarian Intervention and State Sovereignty," *International Journal of Human Rights* 6, no. 1 (2002), 81-102.

Within modern positive international law[27], the legality of humanitarian intervention is ambiguous. Sovereignty forms the cornerstone of international law, as the United Nations is based on the sovereign equality and inviolability of all its members.[28] The use of force is illegal unless as a means of self-defence, and a 'Just War' logic is now limited to the parameters of the UN charter and determined through the authority of the UN Security Council.[29] However, the new framework of international law also imbues international society with the determination "to save succeeding generations from the scourge of war" and "reaffirm faith in fundamental human rights."[30] Additionally, through the ratification of the 1948 Genocide Convention, states have an obligation "to prevent and punish" such acts, supposedly establishing an instance (genocide) where a state's sovereignty may be withheld. Thus, establishing a contradiction between sovereign inviolability and a commitment to fundamental human rights within positive international law defines the debate and controversy surrounding Humanitarian intervention.

At the end of the 20th century, born out of international society's impotence in the face of massacres such as the Srebrenica and Rwanda genocides, and along with the controversial NATO intervention in Kosovo, Kofi Annan, then Secretary General, posed the question: "if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond[…] to gross and systematic violations of human rights that offend every precept of our common humanity?"[31] In response, the Canadian government established the International

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[27] Positive international law refers to a body human-made laws, borne of rational design and consensus, such as treaties. Examples include the United Nations Charter, Treaty on the Non-Proliferation of Nuclear Weapons (NPT), and the United States–Mexico–Canada Trade Agreement (USMCA).

[28] United Nations, "Chapter 1: Article 2," *Charter of the United Nations,* October 1945, available at: http://www.unwebsite.com/charter.

[29] Outlined in Chapter VII of the UN Charter.

[30] United Nations, "Preamble," *Charter of the United Nations,* 1945, available at: https://www.un.org/en/charter-united-nations.

[31] Kofi Annan, *We the Peoples: The Role of the United Nations in the Twenty-First Century Report of the Secretary-General,* report, General Assembly, United Nations (United Nations, 2000), 34, http://unpan1.un.org.
See also Kofi Annan, "Two Concepts of Sovereignty," *The Economist* 352, no. 8137 (1999), 49.

Commission on Intervention and State Sovereignty (ICISS), resulting in the formulation of the

"Responsibility to Protect" (R2P) doctrine. The commission sought to reconcile the contradiction

within international law between sovereign inviolability and a commitment to fundamental

human rights by defining minimum responsibilities a state has to its citizens and the limits of

sovereignty. It set out to refine the consequences of state sovereignty and to reconcile it with the

protection of human rights and a conceptual notion of humanitarian intervention. The

commission argued that sovereignty is not absolute and "implies [an internal] responsibility […]

to respect the dignity and basic rights of all the people within the state."[32] Additionally, should a

state fail in this responsibly, R2P imbues the wider international community with the

responsibility to rectify this failing through a variety of means, up to and including the use of

force.[33] Nevertheless, despite achieving widespread ratification, R2P has remained relatively

inconsequential as a tool of humanitarian intervention and ultimately failed to remedy its

controversial legal standing as exemplified by the ongoing humanitarian crisis in Syria and

Yemen.

Humanitarian Intervention within International Society

Intervention in world politics "raises questions of the utmost moral complexity: adherents

of every political belief will regard intervention as justified under certain circumstances."[34]

Because of this, no one school of thought encapsulates this debate, its controversies, ethical

dilemmas and nuances quite like that of the English School of International Relations and its

notion of "international society." English School scholars maintain that contemporary world

politics constitute an international society where states "conceive themselves to be bound by a

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[32]ICISS, *The Responsibility to Protect*, report, International Commission on Intervention and State Sovereignty (2001), 8.
[33] Ibid, XI. Pillar II: 'The Responsibility to React' of the three pillars of Responsibility.
[34] Martin Wight, *Power Politics* (Penguin Books, 1979), 191.

common set of rules in their relations with one another, and share in the working of common institutions" towards the end of creating and maintaining some level of international order.[35] When they talk of rules and institutions, they are not referring to the current UN system (although it plays a procedural role), but rather deep and durable social practices and norms that have evolved over time according to the shared identity of the members of international society and define legitimate behaviour in inter-state relations.[36] The most critical of these institutions are those of sovereignty and territoriality, which form the constitutive principles of international society. The question of humanitarian intervention in international society exposes the starkest divide within the English School, that of pluralism versus solidarism, or order versus justice.[37]

Pluralism

Pluralism takes a minimalist view of international society. Pluralists assert that order is best preserved and ensured in a state-centric society governed by the normative principles of sovereignty and non-intervention, thus emphasizing order over justice.[38] Specific to humanitarian intervention, pluralism is extremely skeptical of any intervention in world politics, including those on humanitarian grounds. That is not to say pluralists deny the potential existence of fundamental human rights; however, they reject them as the basis of international order and dismiss the idea of individuals as subjects of international society in their own right.[39] For pluralists, "the bases for international order begin and end at state frontiers, and do not extend to a deeper homogeneity in political, social, or cultural values."[40] To promote human

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[35] Hedley Bull, *The Anarchical Society: A Study of Order in World Politics,* (London: Macmillan, 1977), 10.
[36] Buzan, *An Introduction to the English School of International Relations*, 16-17.
[37] Wheeler, Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, (Oxford: Oxford University Press, 2000), 11.
[38] Jackson, The Global Covenant,
[39] Hedley Bull, "The Grotian Conception of International Society," in *Diplomatic Investigations,* eds. Herbert Butterfield & Martin Wight (London: Allen & Unwin, 1966), 50-73.
[40] Welsh, "Taking Consequences Seriously," 64.

rights as a normative principle, to the extent that it can legitimize intervention, will not only undermine sovereignty, and consequently international society, but also international order.[41] This is because to set the precedent of eroding the protections of sovereignty, which pluralists argue is the sole basis of international order, endangers global security and the stability of international society on the whims of intervening states.[42]

There also exists a strong variant of pluralism, articulated by Robert Jackson in *The Global Covenant* (2000), which reflects an ethical concern for justice through the acceptance and defence of diversity in human communities. Jackson argues that justice is achieved not through homogeneity of values, but through the respect of cultural and political diversity.[43] He contends that sovereignty and non-intervention are more important today than ever before. With decolonization and the subsequent rise in the number of independent states, international society has seen a rapid increase in its membership and the "erosion of the European culture that once underpinned it."[44] Indeed, despite the notion of sovereignty originating in Europe to the exclusion of everyone else, it is now defended jealously in post-colonial states. Similarly, Mohammed Ayoob, another of pluralism's most prominent thinkers, argues that the promotion of human rights is a redecorated form of colonialism imposing Western values on the rest of the world. [45] Within this context, humanitarian intervention is a tool of neo-imperialism and a continuation of the "standard of civilization" mindset, and sovereignty is the only protection in an empirically unequal world. For Ayoob, humanitarian intervention, through military intervention, undermines the foremost structure of international society – sovereignty –

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[41] Jackson, *The Global Covenant*, 249-254.
[42] Alan James, "The Practice of Sovereign statehood in Contemporary International Society," *Political Studies* 47, no. 3 (1999), 468.
[43] Ibid, 22.
[44] Welsh, "Taking Consequences Seriously," 65.
[45] Ayood, "Humanitarian Intervention and State Sovereignty," 81-102.

ultimately leading to a condition of "unadulterated anarchy (absence of international order) or unmitigated hegemony (order ensured through the domination of one or more powers)."[46]

Despite these formidable objections, humanitarian intervention is not incompatible with pluralist thought. First, pluralists, at times, conflate the moral question "can humanitarian intervention be a legitimate and justified exception to sovereignty,'"with the practical question of whether it is prudent to intervene on humanitarian grounds. The latter is perfectly valid in determining when to pursue intervention; however, the argument that intervention will not always be practical should not be used to preclude humanitarian intervention absolutely. Second, and more profound, pluralism fails to adequately respond to the potential paradox of state sovereignty "which tells us that states deserve legal protection because they are the guarantor of human welfare and security even when it is often the state itself that threatens the security of its citizens."[47] Sovereignty in international society is intended to facilitate coexistence, protect diversity, and act as a bulwark against imperial tendencies and predatory states. It should not be considered a right bestowed upon states to allow them to violently abuse or kill their citizens arbitrarily and with impunity.

Solidarism

Solidarism, on the other hand, is "about the possibility that states can collectively reach beyond a logic of coexistence to construct international societies with a relatively high degree of shared norms, rules and institutions among them."[48] Solidarism tends towards a cosmopolitan concern for human justice,[49] emphasizing individual rights as a normative consideration. It is

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[46] Ibid, 82-3.

[47] Alex J. Bellamy, "Humanitarian Intervention and the Three Traditions," *Global Society* 17, no. 1 (2003): 5, doi: 10.1080/0953732032000053971.

[48] Buzan, *An Introduction to the English School,* 116.

[49] The view that humanity forms one community and is subject to universal set of rights and responsibilities, often drawn from a Christian conception of natural law. James Mayall, *World Politics: Progress and its Limits* (Cambridge: Polity Press, 2000), 14.

important to note that solidarism is not a "post-statist conception of international society; rather, it is one that is driven by states for the purposes and interests of the peoples they serve."[50] Like pluralists, solidarists agree that, in practical terms, individual human beings possess and exercise rights ultimately through the state and not through international society. However, they chafe at the notion that this means the state can decide its obligations towards its citizens. They view the state as subject to certain immutable "laws" (not in a positive legal sense, but in a naturalist sense) in which its sole purpose is to promote the welfare and security of its citizens.[51] In other words, sovereignty remains a protection of pluralism in the society of states, though not at the expense of these "natural laws" – foremost of which is the obligation to not indiscriminately kill or harm its citizens.

From this, the normative standing of humanitarian intervention within a solidarist international society becomes exceedingly apparent. Sovereignty is subject to pressure from below and above. From below, states have a minimum degree of responsibility to their citizenry.[52] From above, membership to international society requires the fulfillment of said responsibilities to the citizenry. Should a state be "utterly delinquent in this regard (by laying waste to its citizens)" and through "its conduct [outrage] the conscience of mankind,"[53] its entitlement to sovereignty and non-intervention may be suspended and humanitarian intervention permitted to occur. However, solidarists still acknowledge the centrality of sovereignty to international society and order. They do not dislodge sovereignty as the primary ordering principle of international society and replace it with human rights. Solidarism simply urges the

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[50] Tim Dunne, "The English School and Humanitarian Intervention," in *System, Society, and the World*, ed. Robert Murray, 2nd ed. (Bristol: E-International Relations Publishing, 2015), 62.
[51] Buzan, *An Introduction to the English School,* 126.
[52] John R. Vincent, *Human Rights and International Relations: Issues and Responses* (Cambridge: Cambridge University Press, 1986), 115.
[53] Ibid.

global community not to lose sight of what they argue is the purpose of states, and human societies in general – to create a condition better with than that without.

Solidarism is criticized for the ambiguities around what constitutes the "minimum responsibilities" states hold, and the dangers of permitting the erosion of sovereignty for intervention on these grounds.[54] The fear stems from the risk of leaving too much room for interpretation, thus facilitating the instrumentalization of intervention under dubious claims of humanitarianism. Critics argue that the diversity inherent in international society makes it unlikely that states can agree on what counts as intolerable levels of injustice and oppression that would justify humanitarian intervention.[55] Therefore, one should not undermine the fragile order of international society by "jeopardis[ing] the rules of sovereignty and non-intervention" without "any agreed doctrine as to what human rights are."[56]

A second, and what might be considered contradictory to that above, criticism of solidarism is its vulnerabilities towards expansionist "universalism." Inherent in the modern conception of solidarist thought is the cosmopolitan notion of universal human rights and a belief in the existence of natural law, where all humans, by virtue of being human, hold certain inalienable rights. Further, as demonstrated by Barry Buzan,[57] solidarism draws from the intellectual tradition of the "revolutionist" iteration of cosmopolitanism, which believes so passionately in the moral unity of all humankind that it demands homogeneity among the members of international society.[58] In particular, history has shown that the tangible political manifestations of revolutionist thought have tried to actualize uniformity through a sort of

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[54] Andrew Mason & Nicholas Wheeler, "Realist Objections to Humanitarian Intervention," in Barry Holdern (ed.) *The Ethical Dimension of Global Change* (Basingstoke: Macmillan, 1996), 102.
[55] Overview of critique in Welsh, "Taking Consequences Seriously," 64.
[56] Hedley Bull, *Intervention in World Politics* (Oxford: Oxford University Press, 1984), 193.
[57] Barry Buzan, *From International to World Society?*, (Cambridge University Press, 2004), 139-60.
[58] Martin Wight, *International Theory: The Three Traditions*, eds. Gabriele Wight & Brian Porter (New York: Holmes & Meier, 1992), 41-2.

ideological imperialism – the spread of a creed through the conquest or influence of a great power or civilisation (e.g. *Res Publica Christiana,* the First French Republic and Stalinism).[59] Pluralist critics argue that, in modern international society, the West will seek to enforce ideological conformity through humanitarian intervention justified by the assertion that anything but liberal democracy prohibits a state from being properly sovereign.

Reconciling Sovereignty and Humanitarian Intervention

Despite the formidable pluralist objections to humanitarian intervention and differences with the solidarist position, this paper argues that pluralism and solidarism may be reconciled and so too humanitarian intervention with sovereignty. Rather than premising humanitarian intervention upon the existence of natural law and an assertion of immutable human rights (which, as seen above, are themselves in question and embody distinctly Western values), it should be built upon a logic of the state as a social construction. In other words, the solidarist stance is fleshed out by giving greater articulation to the minimum relationship between society and its component membership. This is done both with reference to the state (and society in general) and its citizens, and then international society and its member states. Thus, the criticism of ambiguities of "minimum responsibilities" is answered by providing an absolute minimum social duty and refutes claims of imperial universalism through a discussion of the social sources of authority.

Social Basis of Sovereign Authority

Basis of sovereign authority, here, does not mean the procedural decision-making apparatus of the state (political system), the institutional formations of state authority (police, legal system, etc.) or the process by which political leadership is chosen. Rather, basis of

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[59] Ibid.

sovereign authority speaks of deep social motivations that prompted humans to organize into collective societies and gives logic and legitimacy to the concept of society – otherwise thought of as a "social contract." A similar logic is intrinsic in the modern state and legitimizes its monopoly of authority. A social contract is a hypothetical compact among peoples that precedes the inception of a political community. It defines the rights and obligations between those ruled and those ruling, along with the legitimate political and moral bases of sovereignty. In other words, social contract theory recognizes that the state, like society in general, is a social construct that developed, to some measure, to meet the basic need(s) of society.

Two competing notions of sovereignty have spawned from the endeavour of tracking the social bases of political authority: absolutism and popular sovereignty. Absolutism (absolute sovereignty or authority) is often associated with Thomas Hobbes and represents the minimum position of legitimate political authority. Hobbes, an English philosopher, lived in the 17th century during one of the bloodiest periods of English history (the English Civil War, 1642 – 1651), which no doubt influenced his thought. According to Hobbes, before political societies, people lived in what he called a "state of nature," where everyone unrestrictedly followed their self-interest, inevitably causing conflict and life to be characterized as "solitary, poor, nasty, brutish and short."[60] Hobbes' justification for political authority is as follows: given that humans are rational, self-interested beings, they will cede their natural liberty in the state of nature and choose to submit themselves to the authority of a sovereign in return for the preservation of an orderly society.[61] As the sovereign is the embodiment and personification of the multitude, its authority sees no limits and is absolute. The source of sovereign authority is the collective, and its legitimacy rests on the logic that any political order is preferable to a condition without (the

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[60] Thomas Hobbes, *Leviathan,* ed. J. C. A. Gaskin (Oxford: Oxford World Classics, 1996), 84.
[61] "Social Contract Theory," Internet Encyclopedia of Philosophy. Accessed at: https://www.iep.utm.edu/soc-cont.

state of nature). This conception of sovereignty continues today to provide the philosophical basis of some humanitarian intervention's most ardent critics.[62] It also most closely aligns with the stance of pluralism where sovereignty provides the basis of international order, and to override it would undermine order and risk descent into chaos.

Popular sovereignty, on the other hand, draws its intellectual genealogy from Jean-Jacques Rousseau's conception of the "general will."[63] Like Hobbes, Rousseau begins from a hypothetical state of nature. However, Rousseau, writing in the 18th century, was subject to the Enlightenment fervor that dominated Europe during this time and characterised by humanist ideas.[64] For Rousseau, when individuals agreed to surrender their natural freedom to establish a state, they did so to "institute rules of *justice* and peace, to which all without exception may be obliged to conform… subjecting equally the powerful and the weak to the observance of reciprocal obligations… *collect them [our individual forces] in a supreme power* which may govern us by *wise laws* … and *maintain eternal harmony* among us" [*Emphasis* added].[65] Within this conception, sovereign authority derives from the will and interest of the people as a whole, and is legitimate only so long as it abides by it. This position is similar to that of solidarism, where sovereignty is made conditional upon a state observing some minimum level of basic rights for their citizens.

A criticism of popular sovereignty is that some interpret it to imply that the only legitimate form of government is democracy, and indeed many of its advocates maintain this. However, the general will or interest of society is an abstract concept that can be understood in

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[62] Wight, *International Theory*, 18.

[63] Jean J. Rousseau, "The Social Contract," ed. Steven M. Cahn, in *Political Philosophy: The Essential Texts*, trans. G. Cole, 3rd ed. (New York, NY: Oxford University Press, 2015), 437-65.

[64] Humanism is a philosophical system that places emphasis and value on both individual and collective human agency.

[65] Jean J. Rousseau, "Discourse on the Origin of Inequality," ed. Steven M. Cahn, in *Political Philosophy: The Essential Texts*, trans. G. Cole, 3rd ed. (New York, NY: Oxford University Press, 2015), 435-436.

many ways. For certain, it references the constructivist argument that society was formed to perform a certain function in the fulfilment of basic needs; thus, the general will should be minimally interpreted as said function. This position is not incompatible with absolutism, as an individual's consent to submit themselves to a sovereign is based upon the desire to escape the dangers and insecurity of the state of nature. Therefore, the sovereign's authority and legitimacy depend on its ability to protect those who consented to it. In both conceptions, undemocratic regimes may be legitimate insofar as they protect the lives of their citizens.

From this point of agreement, it is possible to theorize a minimal principle of sovereignty as the responsibility to "ensure that life be in some measure secure against violence resulting in death or bodily harm"[66] to the extent it does not outrage the conscience of humankind.[67] John Rawls, a more contemporary social contract theorist writing in the 1990s, articulates this point in what he describes as the toleration of "decent peoples." Compared with Hobbes' and Rousseau's conceptions of a social contract, Rawls' is the most expansive in its obligations to justice, summarized in what he calls principles of justice, which span from issues of basic human security and liberty to those of socio-economic inequalities and democratic/political freedoms.[68] In his book, *The Law of Peoples,* Rawls extends this social contract to the realm of international relations.[69] Rawls distinguishes between liberal and non-liberal peoples ("peoples" here means society), arguing only the former can satisfy the principles of justice and facilitate a truly just society.[70] Nevertheless, Rawls argues that, provided a non-liberal people's "basic institutions meet certain specified conditions of political right and justice and lead its people to honor a

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[66] Bull, *The Anarchical Society*, 4.
[67] Vincent, *Human Rights and International Relations,* 125.
[68] Rawls, *A Theory of Justice*, 47-86.
[69] John Rawls, *The Law of Peoples*, 4th ed. (Cambridge: Harvard University Press, 2002), 59-60.
[70] See John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1999).

reasonable and just law for the Society of Peoples, a liberal people is to tolerate and accept that society" in their international relations. Rawls refers to these societies as "decent peoples."[71]

Specifically, Rawls identifies two basic conditions for when a non-liberal society can be considered a decent people and deserve toleration.[72] First, it does not have an aggressive foreign policy to its neighbors. Second, they internally secure a *core* list of human rights, at the base of which is the "freedom of person, which includes freedom from […] physical assault and dismemberment (integrity of the person)."[73] Alternatively, when a society is delinquent in observing these basic conditions of justice, the society is no longer deserving of toleration and no longer subject to the protections of the eight ordering principles for the basic structure of international relations that Rawls identifies, or the "Law of Peoples,"[74] the two relevant principles being: 1) "(p)eoples are to observe the duty of non-intervention;" and 2) "(p)eoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime."[75]

<u>Sovereignty as a Right</u>

The discussion above has made it evident that there is broad, albeit shallow, agreement that states carry certain responsibilities towards their citizens. Society, and therefore the state, is socially constructed on the basis of certain primary needs. Legitimate political authority, and with it, sovereignty, is not obtained simply by virtue of holding supreme authority within a given territory, but rather, it is dependent upon the fulfillment of said needs – minimally conceived as security against violence resulting in death or bodily harm. In instances where a population is

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[71] Rawls, *The Law of Peoples*, 59-60.
[72] Ibid, 64-70.
[73] Rawls, *A Theory of Justice*, 53.
[74] Rawls, *The Law of Peoples*, 37.
[75] Ibid.

suffering serious harm, and the state is unable or unwilling to halt it, or indeed is complicit, the state's authority is no longer legitimate and it should no longer be considered sovereign. Thus, humanitarian intervention becomes legitimate and legal as the state in question is no longer a privileged member of international society.

Conclusion

Humanitarian intervention is one of the most polarizing issues in contemporary global politics. It embodies heated and immensely complex debates of law, morality, and prudence. It questions the value of pluralism against that of human rights, tests our current framework of positive international law and cooperation, and, finally, it challenges the teleological logic of a state-centric international society. Absolute state authority and sovereignty has held its social legitimacy in the belief that peace and security are best ensured when there exists a supreme, or sovereign, political authority to guarantee it. In the realm of international relations, the lack of a guarantor of order (sovereign world-authority) creates a condition of anarchy where the preservation of state-sovereignty is seen as the bulwark against unmitigated conflict, thus providing the normative basis for peaceful coexistence.

However, as argued above, this has laid bare the potential for dangerous dogmatism when there exists a contradiction between the logic of state-sovereignty and abuse of state authority towards its citizens. Sovereignty is not a right of impunity or a licence to tyranny. Rather, by drawing from the social contract theories of Hobbes, Rousseau, and Rawls, sovereignty is shown to be a right that requires qualification from domestic society through upholding the minimum goals of society. Moreover, by extending this logic within the English School's conception of states, in their relations with one another, constituting an international society, it is shown that the benefits of international society, too, require qualification, that being by virtue of being

sovereign. Therefore, sovereignty and humanitarian intervention may be reconciled, and indeed mutually reinforcing, in instances where a population is suffering serious harm, and the state is unable or unwilling to halt it, or is complicit. The state's authority would lose its legitimacy and no longer be considered sovereign, consequently allowing intervention to become legal.

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