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## Truly humanitarian intervention: considering just causes and methods in a feminist cosmopolitan frame

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In international law, ‘humanitarian intervention’ refers to the use of military force by one nation or group of nations to stop genocide or other gross human rights violations in another sovereign nation. If humanitarian intervention is conceived as military in nature, it makes sense that only the most horrible, massive, and violent violations of human rights can justify intervention. Yet, that leaves many serious evils beyond the scope of legal intervention. In particular, violations of women’s rights and freedoms often go unchecked. To address this problem, I begin from two basic questions: When are violations of human rights sufficiently serious to require an international response of some sort? What should that response be? By re-orienting the aim and justification of international law to focus on individual autonomy rather than on peace between nations, I argue that women’s rights violations other than genocide and mass rape can warrant intervention. Military intervention is often counter-productive to the aim of achieving autonomy, however. I suggest a range of responses to human rights violations that includes military intervention as one end of the spectrum, and combine this with a greater understanding of the scope of human rights violations that require international response.

**Keywords:** humanitarian intervention; gender; social contract; feminism; Rawls

### 1. Introduction

The end of the Cold War ushered in a new climate for political philosophy as well as global politics. With one military superpower in the world today, regional and intra-state conflicts have become the focus of humanitarian concern. International law governing humanitarian intervention and human rights has ascended to prominence in political philosophy after a long period of focus on domestic justice and internal political legitimacy. It is of paramount importance now to investigate what duties and obligations come with this new world order. When are violations of human rights sufficient to require an international response? What should that response be? Under what conditions may one country justly wield military or economic power to force other countries to respect human rights? What other means of intervening should international law provide or allow?

These questions raise the danger of ethnocentric and nationalistic bias as well as imperialism (Berman 1999). Perhaps less noticed, they also risk androcentric or sexist bias.<sup>1</sup> For, the conduct of war is among the most gendered of all human activities, yet its consequences are universal and profound. This paper investigates the gendered nature of a part of this emerging political philosophy, namely that portion that concerns intervention for humanitarian ends. I will argue that the scope of philosophical discourse surrounding humanitarian intervention is too narrow to lead to progressive, humanitarian outcomes that serve peace and justice. More specifically, I will

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argue that political philosophy needs to reinterpret the aims and justification of humanitarian intervention from a feminist cosmopolitan perspective in order to influence international law to serve real human needs.

International law includes two main bodies of codes concerning human rights and intervention, including military intervention: international humanitarian law, which concerns justice in the conduct of war and armed conflict, and human rights law, which applies at all times. International humanitarian law specifies the conditions under which one nation is justified in waging war on or militarily intervening in the affairs of another. Situations in which war is justified include: to repel aggression, to come to aid of countries being aggressed upon, and to intervene in severe human rights violations. Aggressive wars motivated by self-interest are never justified, although leaders often appeal to national self-interest in justifying a war to their own people. Humanitarian intervention is conceived in international law as a part of the laws of war and conflict.

Military humanitarian intervention is permitted by the international community and international law to stop genocide, aggressive wars by states on weaker neighbors, or massive human rights violations. However, there is no internationally recognized doctrine concerning the full range of options for non-military intervention. This is unfortunate both because non-military, social, or economic interventions may often be more effective and because when non-military options are ignored in the humanitarian intervention debate, the debate does not consider some of the harms women suffer at the hands of their own societies, harms which, while real, may not rise to the level of *severe* human rights violations.<sup>2</sup>

The past decade has seen some further clarification of the international consensus on humanitarian intervention. In 2001, the Canadian-established International Commission on Intervention and State Sovereignty issued a report entitled *The Responsibility to Protect* (R2P), in which it examined the ‘right of humanitarian intervention’ (The International Development Research Centre 2001). (This phrase perhaps understates its intentions because the report sets out conditions under which military intervention is not only justified, but even morally *required*.) There are five conditions under which intervention is justified or required.

- 1 *Just cause* – the state’s inability or unwillingness to protect its people from mass terror, genocide, ethnic cleansing, mass rape, or forced expulsion.
- 2 *Right intention* – to prevent those forms of violent oppression.
- 3 Military intervention must be the *last resort*, undertaken only after other means have been attempted to prevent catastrophe.
- 4 *Proportional means* – the force used is to be the minimal force necessary to secure human protection.
- 5 There must be the *reasonable prospects* of success of halting the oppression and the expected ill consequences of the military action have to be less than that of not intervening militarily.
- 6 *Right authority* – the UN Security Council must authorize military intervention.

R2P remains firmly in the ‘security’ framework of justifying intervention, in that it allows only for military intervention, and only for the aim of protecting vulnerable populations from gross human rights violations. Yet it broadens the scope of intervention to allow interference with sovereignty when governments fail to protect their population from such violations.

None of these conditions specifically mention women, but this does not mean that they are gender-neutral. The first and fifth conditions give us a place to begin our investigation of how these rules might have differential consequences for men and women. First we can ask whether the just causes that are considered are in some sense gendered. Do they include the particular concerns of women, as well as men; does women’s oppression provide a reason for

intervention, or are gender-neutral human rights<sup>3</sup> or particularly masculine concerns the only ones that count? Second, we can ask whether the consequences to be considered in the cost–benefit analysis called for by the final condition include the consequences for women as a group.<sup>4</sup> Furthermore, we can ask whether the entire framework of the ‘responsibility to protect’ has a gendered connotation or disrespectful attitude that should be subjected to critique.

## 2. Women, sex, and gender in international law

Until quite recently, international law took account of women specifically only in its requirements on how an occupying force was to provide for the protection of civilians. The Geneva Convention (IV) article 27, states:

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion. (Reisman and Antoniou 1994, 240)

While it singles out women as particularly vulnerable to sexual violence, the Convention forbids ‘adverse distinction’ or discrimination based on race, religion, or political opinion, but not sex. By not including sex, the Convention in effect permits (or at least excludes as a cause for complaint) adverse distinctions or discrimination that are based on sex or gender,<sup>5</sup> including religiously justified gender apartheid and discrimination, and repression of sexual minorities. Of course the Geneva Convention concerns situations of war, and while sex discrimination or gender apartheid may be wrong, they are not acts of war. Violations of the Geneva Convention are taken to be violations of *jus cogens* – the pre-emptory norms taken to be the fundamental principles of international law. Given that these norms, and not norms against violence against women, sex discrimination, or gender apartheid were taken to be the fundamental norms of international law, this sends the message that sex discrimination or gender apartheid are lesser wrongs than other forms of discrimination (Charlesworth and Chinkin 1993, 66). Since gender apartheid and discrimination was nearly universally accepted at the time the Geneva Convention was written, it seems likely that its authors intended that.

Much progress has been made for women in UN treaties and resolutions since that time. Two are particularly worth mentioning here. First the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979, defines what constitutes discrimination against women and sets up an agenda for national action to foster greater equality. As of 2013, 187 (of 194) countries had ratified it (the USA not among them). CEDAW is certainly a comprehensive, progressive statement of and demand for gender equality on behalf of women. It sets a standard for gender equality that no nation in the world yet achieves.

However, there are two important limits on its applicability in international law. First, it is rarely used to criticize nations that do not live up to its standards. Article 29 provides for the means of resolving disputes, which is through the International Court of Justice, a provision that has never been used. In 1999, the UN adopted an Optional Protocol for the treaty that allows for additional means of investigation and protest against violations of CEDAW, but these means have been implemented less than a dozen times (Sokhi-Bulley 2006). Second, it allows for nations to opt out of any of the articles. Now countries are not supposed to opt out of those provisions that go against the very idea of fighting discrimination against women, but that has not stopped many countries from opting out of very basic aspects of gender equality. Many nations opt out of Article 29, which is the provision for bringing complaints against states at the International Court of Justice, and at present only 103 States are parties to the Optional Protocols.<sup>6</sup>

Nonetheless, CEDAW remains an aspirational statement of gender equality, and gives substance to women's human rights claims. The second advance relevant to my topic here is Security Council Resolution 1325 on women, peace, and security, adopted in 2000, which calls for greater participation of women in peacekeeping missions and for raising concern for women and gender-based violence in post-conflict situations. It is important progress that full and equal participation of men and women in these post-conflict situations is at least on the agenda of the UN.

Despite this progress, however, international law and political philosophy still conceive humanitarian intervention too narrowly to assist in achieving the progressive goals of CEDAW. Although treaties permit some forms of dialog with and critique of states that are parties to them, coercive measures are not permitted except those permitted by the Geneva Conventions and the growing international consensus around R2P.<sup>7</sup> As I argued above, however, the Geneva Convention treats race and religion differently from sex or gender, and R2P focuses on the same severe human rights violations, so does not modify the differential treatment of gender groups that is found in the existing international law licensing humanitarian intervention. What could justify that differential treatment? To answer this question, we need to see how international law is justified.

### 3. Justifying international law

International law is generally regarded as morally binding on all states and organized groups who wish to be regarded as decent and respect-worthy members of the international community. Yet the force of this obligation must be provided by a moral argument, and not simply by the force of a proclamation of a self-appointed body, no matter how grand or international in scope. Furthermore, if international law is to be criticized and repaired, we need to examine the justificatory structure from which it derives.

These conventions and customs are derived primarily from a long history of discussions of just war theory and international relations, and in contemporary thought several types of justifications for its tenets can be found. One justification is natural law and its descendants' theories of human rights. Natural law has a long and varied history, and can be found in religiously based or secular varieties. A secular version of this can be found in Michael Walzer's *Just and Unjust Wars* (1977), and in the work of Terry Nardin, who writes of the implications of 'common morality' (Nardin 2002). Natural law can now be roughly described as a pragmatic, common sense approach to the idea that each person, by nature, deserves dignity and respect. Walzer calls his theory a 'doctrine of human rights', and explains that his theory is a practical morality that proceeds by the casuistic method. A second type of justification of international law comes from the social contract tradition, which can be identified in several variants, depending on whether it takes its inspiration from Hobbes or Locke or Kant. John Rawls, in his last book, *The Law of Peoples* presents the most significant contemporary argument for the binding nature of international law.

In my view, only the social contract tradition offers a reasonable comprehensive justification of international law. I will not give an extended argument for this claim here, but simply gesture toward the type of objections I have to natural law. First, natural law of the religious form cannot be appealed to in a pluralist world, since we cannot assume broad, shared agreements on religiously based assumptions. The secular natural law option seems likewise unworkable in a situation of pluralism, since it is too ad hoc. If there is disagreement at some point over what the natural law implies for humanitarian law, there is no foundation to appeal to in order to decide the issue. Such grounding could work only in a world of broadly shared values about human nature, peace, and justice. But we do not live in that world, at least not yet. Of particular

relevance to my argument, disagreements over the value of individuals vs. community and over the normative implications of religious and sexual difference deeply divide the peoples of the world. Of course, all reasoned argument must begin from some shared assumptions, such as, at minimum, the normative force of principles of logic. But in my view natural law assumes too much, even in its secular variations.

The social contract tradition takes the principles of justice to be the subject of agreement among equal, rational agents representing their own interests.<sup>8</sup> When this theory is extended to international law, some social contract theorists conceive of the principles of international law as an agreement between state parties, while others have continued to view individuals as the parties to the social contract. While Rawls takes the first approach, I will later argue for the second approach. Feminists, among others, raise a serious concern about this tradition of argument (Pateman 1988). If equality is in fact lacking prior to the contract, inequality in the agreed upon norms or laws will be the result of the contract. Yet, the contract tradition, on some interpretations, offers a solution: it appeals to ideal conditions of equality and ideal actors to specify principles under which persons or nations should interact, then applies those principles to the actual world. Inequality can thus be rectified through the principles derived from reasoning from equality (see Hampton 2001; Sample 2002). The problem is that the inequalities have to be recognized in advance so that the idealizations can be specified to eliminate the inequality. Unrecognized or unquestioned inequality will result in preserving the status quo inequality. Those who are considered to be of lesser worth will be left out of the contract altogether. Contractarians of the modern period, for example, failed to recognize the injustices done by their political theories to slaves, native peoples, and women.

We can correct those wrongs, and address others that become apparent, but that means that contract theory must be continually interrogated and modified. Unlike natural law theory, though, contract theory points in the direction to look for injustice in the very foundation. One of the great insights of social contract theory that can be put to use to feminist ends is to see social connections as prior to, and necessitating, morality and political institutions. Because we interact and have the ability to harm or benefit each other, we have reason to formulate agreements and norms to guide our behavior in positive ways, and to abide by our agreements. Thus, Iris Young argues, social connections can be seen as a ground of political responsibility (Young 2003, 2006; Young and Archibugi 2003).

Feminists have only begun to critically examine the ways in which women's inequalities have been allowed to remain in the very idealizations of the contract as applied to international justice.<sup>9</sup> As a result, the international rules of just war, just intervention, and just occupation remain gendered in concealed ways, and this gendered nature of the contract produces principles unjust to women. Thus, that what looks like justified military interventions and subsequent occupations may unequally affect women in both the near and long term. Although Security Council resolution 1325 addresses this point in the practice of conflict and post-conflict peacebuilding, it does nothing to realign the fundamental justification of humanitarian intervention, and thus to reform our thinking about when and how to intervene to address human rights violations directed at women. To rectify this, I argue, international humanitarian law needs to be realigned from a feminist perspective.

### 3.1 The Law of Peoples: *contractarian derivation and justification of international law*

In this section, I examine Rawls's *The Law of Peoples*, the most influential contemporary contractarian justification of international law. My aim is to show how gendered assumptions about human rights and just war restrict the meaning and legitimate uses of humanitarian intervention. Although Rawls's work provides a comprehensive philosophical treatment of international

principles of justice, I confine my discussion to the portion concerned with intervention and humanitarian law.

Rawls sets out conditions under which societies (Rawls's word is 'peoples')<sup>10</sup> can live peaceably with each other (ideal theory), and those conditions under which war is justified (non-ideal theory). The goal of the theory is to avoid the great evils of the world – unjust war, oppression, religious persecution, genocide, mass murder, starvation, and poverty (Rawls 1999, 7) – by building just institutions to secure a peaceful world, in which nations do not wage war against each other and human rights are respected throughout the world. Rawls argues that we cannot legitimately require that all states be liberal democratic ones, merely that they meet a standard of decency requiring respect of human rights and allowing some voice for internal political dissent and change. In an ideal world consisting of only such decent nations, the basic principles of international justice – the Law of Peoples – would be determined by a hypothetical contract situation, a second original position,<sup>11</sup> of suitable representatives of these peoples, behind a veil of ignorance about their nation's particular features, concerned to secure peace and human rights through rational reflection on reasonable principles (Rawls 1999, 32). Rawls enumerates eight general principles, among them a duty of non-intervention, a right to wage war only in self-defense and only under specified conditions and limitations, and a duty of assistance to nations living under unfavorable conditions (Rawls 1999, 37).

We do not live in an ideal world in which there are only these tolerable, decent societies, however. Some nations wage unjust wars on others. Some nations pose a serious, credible threat to do so. And some nations violate the human rights of their people. In these cases, the right to self-defense may lead a nation to go to war, or the duty of assistance may override that of non-intervention. Without going into the main line of argument for all these justifications of war, let us consider just the case under which military intervention in the internal affairs of another country can be justified, namely severe human rights violations. What constitutes human rights violations, and in particular, the severe ones that justify intervention? Rawls argues that the human rights that are to be singled out by the Law of Peoples ought not be the same as those rights guaranteed to citizens in a liberal democratic society, since the Law of Peoples is to apply to decent non-liberal societies as well. He writes that these rights:

express a special class of urgent rights, such as freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide. The violation of this class of rights is equally condemned by both reasonable liberal peoples and decent hierarchical peoples. (Rawls 1999, 79)

Why this list of urgent rights? Because additional rights would not be supported by the decent non-liberal societies, societies which Rawls thinks should be tolerated by the Law of Peoples. Hence we have to either condemn those societies, or accept their illiberal practices as not falling afoul of human rights.<sup>12</sup>

In order to bring about the ideal Society of Peoples, who co-exist peaceably and can be seen to honor human rights, we must restrict the list of human rights to this subset of 'urgent' rights. The point of the social contract is to *construct*, not to discover, the principles that, when enforced, secure peace among the contractors. Thus they must appeal to each, so that each wills them as reasonable grounds for peaceable coexistence. While some societies will be excluded from the contract, it is important that as many societies be included as possible, so that those outlaw states are isolated and their threat to the Society of Peoples rendered impotent.

Rawls sketches a type of society that he argues would fit the description of such a decent hierarchical, non-liberal society: a Muslim society he names 'Kazanistan'. Its principal deviation from liberal democratic societies, in Rawls's description, is that it does not fully respect religious freedom, in the sense that non-Muslims are not permitted to participate in the highest levels of

government. We can presume, however, that another significant deviation from liberal democratic rights would be a society that does not respect the rights of women to participate on an equal basis with men in all aspects of social life. Rawls's invention of a Muslim society as his idea of a possible, decent, non-liberal society, and his failure to even mention the problem of women's rights under such a regime are, I think, telling.<sup>13</sup>

The list of human rights, together with the general principles of international law, implies a specification of the conditions under which military intervention and subsequent occupation may be waged. From the list of human rights recognized by the Law of Peoples<sup>14</sup> we may derive two important conditions for feminist consideration: war may not generally be waged to eliminate gender hierarchy, nor may any occupation be extended or force applied in order to secure gender equality. Feminists, then, must be concerned about the content of international law derived from Rawls's contractarian argument in *The Law of Peoples*. As I suggested earlier, whenever a contractarian argument begins with an inequality in the specification of the contract situation, it is likely not to imply rules of justice that will eliminate that inequality. But Rawls has assumed nothing about gender in his specification of the contract.<sup>15</sup> Given that Rawls's discussion of Kazanistan does not mention the problems of women's rights under existing Islamic rule, we must infer that sanctioning a custom of gender apartheid does not amount to human rights violations. One might infer from the absence of the word 'gender' from the list noted above that women do not even constitute a group. If not, however, the violations of their rights that are inherent in the practice of religion in the society, at least as they see it, will surely not count as 'grave' human rights violations. In short, Rawls evinces no urgency or extreme caution to secure women's rights.

Martha Nussbaum offers a related critique of Rawls on the question of women's rights under the Law of Peoples (Nussbaum 2002, 293). Nussbaum argues that women's rights are sacrificed because the individuals who are party to the contract are not persons but peoples, and thus it is the *peoples as groups* who are offered equal respect and dignity. However, she points out, if the group has a tradition of ignoring women's equal dignity, through such things as unequal divorce and inheritance laws, the Law of Peoples will have no recourse against that group. In effect, then, the Law of Peoples will permit the oppression of women. Now this could happen to men or other social groups if a society that is considered decent by Rawls' criteria still oppresses them in ways that fall below the threshold of severe human rights violations. But as it happens, the list of severe human rights violations that Rawls offers seems to cover most oppression of social groups that include men.<sup>16</sup> Thus, oppression of women seems not to be one of the justifying conditions for intervention, unless that oppression amounts to a kind of oppression that is typically suffered by men.

Well, most feminists are not keen to see military interventions, either.<sup>17</sup> However, these constraints on war are also the constraints on the limits of assistance under occupation. Once the violations of (what the Law of Peoples regards as) human rights have ended, there is no duty nor is it permissible to continue occupation. Rawls argues specifically against liberal societies making any intervention or provision of incentives for non-liberal societies to become more liberal, on the grounds that this fails to adequately respect those societies. Such intervention or incentive provision is likely, he argues, to cause resentment and thus disturb international peace. Rawls insists that societies must equally respect all societies that meet the minimal standards of decency. Against the notion that liberal rights must be urged on others, he writes that 'if liberal peoples require that all societies be liberal and subject those that are not to politically enforced sanctions, then decent non-liberal peoples – if there are such – will be denied a due measure of respect by liberal peoples' (Rawls 1999, 61). Rawls opposes any form of political pressure to liberalize decent, hierarchical societies. Hence, women's specific concerns that do not rise to the level of urgent human rights violations are not recognized by Rawls as a legitimate reason for any form of intervention.



To summarize, we can raise two criticisms of Rawls's account of humanitarian intervention. First, Rawls sets the bar for any intervention at the level of the urgent rights violation that justifies military intervention. He does this because the goal is to secure peace among Peoples, and to include among those Peoples as many societies as possible consistent with that aim. This poses a general problem for agents seeking to promote humanitarian ends across national borders, since any such promotion can be seen as a unjustified intervention. Second, human rights violations that are seen as meeting this standard are not those associated with women (or men) as a group, but rather with ethnic and religious groups. Yet such groups often themselves harbor norms and customs that discriminate against women.<sup>18</sup> Feminist political philosophy, therefore, must offer an alternative account of intervention that can truly be called 'humanitarian'.

### 3.2 *An alternative justification for humanitarian intervention*

Constructing an alternative account requires us to examine where the justification of intervention goes wrong and to seek to repair or replace that justification. There are two basic problems with Rawls's construction of the contract situation. First in taking 'Peoples' to be the parties to the contract that determines the principles of international justice, he begins with nations, rather than individuals, as the politically primary units. This beginning is expedient, but mistaken.<sup>19</sup> It is human individuals who live, experience, suffer, and die. Peoples can only be said to experience anything through their individuals. A People may cease to exist when the individual persons who compose a People abandon that way of life to live what they consider to be better ones among other groups. While it is true that individual human beings find meaning only in and through their communities, there would be no meaning-providing institutions or norms without the actions and intentions of individual human beings. Finally, if we had to choose between saving an individual human being and saving other aspects of a People, it would be monstrous to say that we should opt to save the latter. If we grant that individuals are morally primary, and if we accept the equality of individuals regardless of their national identity, then the principle of non-intervention, even as a *prima facie* duty, is open to question.<sup>20</sup>

The other main problem with Rawls's view is that he assumes that the goal to be attained through the law of peoples is peace. While peace appeals to both nations and individuals, I want to suggest that there is a more primary aim for individuals, and that is autonomy. By autonomy I mean the ability to plan one's life and live according to a moral code that one can see reasons for in recognition of our inescapable human interdependency. Feminist work on relational autonomy has shown us the importance of recognizing our non-voluntary ties to others that make human life rich and meaningful (see Friedman 2003; Mackenzie and Stoljar 2000). Autonomous persons live their own lives in the recognition that they are social beings among others also striving to live their own lives. Persons' autonomy can be compromised by their social circumstances, however. Social circumstances can be so constraining that they rule out a rich and meaningful life, and oppression or war are prime examples of such circumstances. Autonomy is both a social and an individual achievement. Thus, if the parties to the social contract that determines the principles of international justice represent individual persons rather than Peoples, it would be reasonable to expect them to aim for autonomy for themselves and to expect others to do so as well. Peace and security, of course, are still very important instrumentally to individuals. If we take this moral cosmopolitan<sup>21</sup> perspective of adopting individual autonomy as the primary goal of international justice, we can see that its achievement will be enhanced by global peace.

Cosmopolitanism does not deny that individuals find communities and community life meaningful (Appiah 2006). Collective self-determination of the community's norms and rules

is valuable to individuals, and hence it has instrumental moral value. But the instrumental value of collective self-determination cannot ground a strict principle of non-intervention when individual moral rights are threatened (a point that Rawls also acknowledges). The principle of non-intervention must be weighed against other instrumental values for individuals, including rights and other goods as well.

I propose a contractarian approach to the international law governing humanitarian intervention that takes human individuals to be the parties to the contract and thus adopts as its aim maximizing individual autonomy, understood in the relational sense of the ability of each to live their own lives in the recognition that they are social beings essentially connected to others also striving to live their own lives. Given autonomy as the aim, when would intervention ever be justified? In the individual case, intervention might be justified when an individual's life is so constrained or disordered that autonomy is not achievable without intervention. The aim of achieving autonomy also sets limits on the kinds and methods of intervention that are justifiable. So, I shall argue, in the intercultural or international case, when individuals are systematically constrained or unable to achieve autonomy, intervention will be warranted, if the intervention itself does not constrain autonomy to an even greater degree. Thus, the aim of achieving autonomy will again set the limit on the kinds and methods of intervention that are justifiable.

Steven Lee argues for a similar justificatory structure for military humanitarian intervention (Lee 2008). I will adopt his balancing procedure, but argue that there is no reason to restrict it to the realm of *military* humanitarian intervention. Lee's structure allows us to justify other forms of coercive humanitarian intervention that fall short of military force. Furthermore, this structure allows us to consider all human rights violations, including those of particular concern to women, as possibly licensing intervention of some sort.

On Lee's view, coercion in the international sphere should be justified in the same way as it is in the national domestic sphere, namely to protect rights. But the scope of permissible military humanitarian intervention turns out on Lee's analysis to be just as limited as it is on standard international law by the kind of cost-benefit analysis that the potential intervener should engage in. Specifically, Lee thinks that such considerations lead to two types of limitations. *Efficiency limitations* consider the ability of the intervening power to succeed in protecting human rights and the material costs of intervening. *Rights-balancing limitations* consider the need of the intervening power to violate rights in order to succeed in protecting human rights and the tendency of the intervening power to become oppressive even when promoting some human rights. These limitations on military intervention turn out to be so restrictive that it is justified only in those cases where there are massive human rights violations by a state that is so disordered as to be incapable of mounting a serious defense of its national sovereignty. Lee summarizes his general view as follows:

Given the grim consequences of war and the risk that a general rule might be misused or abused by powerful states to rationalize military adventures it may be appropriate to accept a defeasible rule that [military humanitarian intervention] is justified only when severe and widespread rights violations are in progress. (Lee 2008, 188)

I agree with Lee's cosmopolitanism and his balancing of efficiency and rights limitations in justifying humanitarian intervention. However, he does not go far enough in the direction of measuring either the potential benefits of humanitarian interventions or the costs of military interventions. To accurately assess both the benefits and the costs, we need to frame the analysis with a feminist cosmopolitan lens. By this I mean, we need to take into account the effects of war on women as well as on men, from the perspective of autonomy as the essential goal. Instead of asking as Lee does, 'when should coercive force be used to protect human rights?' I shall ask 'when should intervention (of some sort) be used to promote autonomy?'

### 3.3 *Intervention to support autonomy: military vs. humanitarian*

Consider the costs of military humanitarian interventions. These include the killed and wounded on all sides, as well as the damage to the environment and economy of the invaded country; these are the only costs that Lee considers. We should also consider additional or new types of rights and autonomy violations that are introduced or facilitated by the intervention. Interventions often upset the social balance of power among social groups. Of course this is often the aim of an intervention: to remove or disempower a group that is oppressing another group in the society. However, there are also unintended effects in this regard. The kinds of examples I have in mind are between men and women, although in specific cases it may be between different religious sects, economic classes, or perhaps other groups. I would categorize such changes in the balance of power as important considerations, but they are not included among the rights-balancing considerations raised by Lee, where the intervening power infringes on rights. Interventions may intentionally or unintentionally give one part of the society unfair additional power or privilege. Consider the interventions in Iraq or Afghanistan, where women have clearly suffered great losses of power vis-à-vis men as a result of the military conflicts, which in turn have caused human rights violations and the imposition of laws that are opposed to the equality of women. I will call these *autonomy considerations*, because they involve compromises of the autonomy of members of social groups.

Moreover, this suggests that there needs to be greater attention to the results of military action in itself. Militarization tends to hyper-masculinize a society and may lead to greater death and oppression from that fact itself (Orford 2003, 12–13). Military intervention makes violent, lethal force the typical response to disagreement in a society, at least for some time. Since men have a near monopoly on lethal force in most societies (by possessing and wielding, whether legally or illegally, the vast majority of weapons), they tend to strengthen their power and hold on social and political power when lethal force is the currency of power.

Women are generally made more vulnerable to rape as a result of the unrest caused by military intervention. Furthermore, military defeat constitutes an affront to the honor of the defeated men, who then feel that their honor must be proven and upheld in other ways, such as through commanding absolute obedience from their women. As we have learned from the wars in Bosnia and Croatia (to mention only recent examples), rape is a means of *conducting* civil war/ethnic conflict, and it seems to be a means employed in Iraq now by ethnic gangs who wish to sully the honor of their rivals by raping ‘their’ women. Finally, women’s ill treatment is exacerbated by the presence of male soldiers. The situation of Iraqi women is worse than it was before the US humanitarian intervention, and the intervention is in large part responsible for their worsened situation (see also Chew 2010).

This loss of women’s rights and power, and therefore in many cases their autonomy, in conflict and post-conflict situations should be considered among the costs in weighing the costs and benefits of interventions. These considerations weigh heavily against military force as a legitimate means of intervening. But we need not, therefore, conclude that this is where the considerations of international law cease. Since all aspects of human rights are legitimately a concern of international law, and since we have rejected the non-intervention principle, we can now consider non-military state interventions as a legitimate subject for international law. A continuum of coercive force may be considered in humanitarian intervention, where military force is only one end point of this continuum, as well as a continuum of rights violations as justifying conditions for interventions. As Catherine Lu has argued,

we should be careful not to conflate the problem of intervention with the problem of the use of force . . . . The conflation of these two issues in international theory and practice has meant that governments have been able to claim a much stronger social convention against all types of intervention

than is supported even in international law . . . . Many situations may justify some kind of interventionary international response that violates or restricts some aspect of a state's sovereign authority while ruling out a full-scale military assault. (Lu 2005, 190)

Given the serious costs of military intervention, non-military humanitarian interventions must be prioritized in most cases of even the most severe human rights violations. For state actors<sup>22</sup>, the following might be a reasonable start on a list of intervention strategies from least to most coercive:

- (1) diplomatic persuasion
- (2) support for non-violent internal resistance groups
- (3) diplomatic criticism
- (4) propaganda
- (5) economic incentives (targeted subsidies or grants in return for progressive reforms)
- (6) economic sanctions (trade restrictions etc.)
- (7) total embargoes
- (8) support for violent internal resistance
- (9) military intervention aimed at preventing killing
- (10) military intervention aimed at removing governmental authority

In this way, the different levels of cost and risk can be weighed against the benefits foreseen by the intervention. Many of the gender injustices that I am most concerned with are probably best responded to with intervention strategies of type 2, support for non-violent internal resistance groups. This is also the kind of intervention that non-state actors will be most likely to be able to (and to legitimately) engage in. Where there are such internal groups, supporting their autonomous resistance has the benefit of not only combating oppressors, but also of building autonomy of survivors, and is likely to progressively transform a society rather than simply prevent current oppressions. More needs to be said about what it means to provide that kind of support, but that is beyond the scope of the present essay. My concern here is to argue for the recognition of this sort of preventive non-violent intervention in international law itself.<sup>23</sup> It must be noted that the second half of this continuum, beginning with economic sanctions, all involve lethal force and so must be considered as types of violent intervention, with all of the autonomy considerations that follow from that, particularly for women. Furthermore, as Laura Sjoberg has argued, economic sanctions have serious, gendered consequences for the targeted population (Sjoberg 2006, chap. 9). Such lethal interventions can only be justified by equally serious causes to intervene. Hence, a full assessment of which sort of intervention is warranted must include consideration of the benefits of these potential interventions.<sup>24</sup>

#### **4. Justifying causes for intervention: oppressive social norms**

Social norms and customs that inhibit women's autonomy can, under my proposal, justify intervention in cases where international law would now prohibit it. If autonomy is the legitimate goal for intervention, then a respectful, hands-off approach to the mythical Kazanistan needs to be reconsidered, if, as I supposed, the women of Kazanistan are confined to the domestic sphere or treated unequally, whether by custom or by law. Such customs or laws amount to gender apartheid if women are prohibited from moving about freely and taking up occupations and social positions among men.<sup>25</sup> This and other forms of gender discrimination and gender violence – many practiced or permitted in the West and by fundamentalist Christian groups, as well – are serious violations of human rights. Fundamentalist versions of many world religions privilege men as a group and constrain women's autonomy. They may portray women as seductive temptresses, or weaker, inferior beings to be protected and confined, and so harm

women by giving them an inferior self-image and making it difficult to move confidently in the world. The patronizing connotation of the language of protection is reason to avoid that terminology, but not to avoid supporting the autonomy and empowerment of those who are vulnerable to such religiously based oppression.

One might object that the kind of harm done to women by religion in this way is not severe: psychological oppression in the form of internalized inferiority and acceptance of norms that continue their oppression are not as serious as death. It certainly does not rise to the level of genocide; and may not generate serious human rights violations if the norms are not violently resisted by the women themselves. But we must consider that such oppression is passed on through generations of humanity, and there is, therefore, a kind of compound interest involved in the disutility of this harm over the generations. Women under sexist regimes may not get out from under this oppression for 10–20 generations. In that case, many generations live stunted, restricted lives, and that may begin to sound comparable to the cutting short of the lives of a single generation. And this is only to count the psychological harm to the women themselves. Since the material well-being of societies in which women are subject to gender apartheid (and therefore lowered education and ability to affect the public sphere) is also much lower, this underestimates the actual harm done. But more to the point of the present paper, a human rights violation need not rise to the level of genocide if non-military intervention strategies are also under consideration.

The situation of women in the Iraq and Afghanistan occupations shows that the practical application of humanitarian law in actual occupations of outlaw societies that seriously oppress women can make the situation of women even worse than before occupation. But the lesson of Kazanistan and the many real-world societies that resemble it in the way that women are confined is that we tend to be blind to the kinds of human rights violations that rob women of full autonomy under the guise of custom or religion. Furthermore, liberal ideology considers those to be private choices by individuals, and, therefore, not a concern of an intervening force charged with helping to devise public institutions to achieve internal security. Family, community, religion are values to men and women alike, and so seem to be the kinds of things that human rights law should aim to protect. Yet, they are also both the sites of women's daily lives, and the sites in which they are most often violated and abused. When women must choose from a bargaining position that is unequal, their choices are between bad and worse: choose this traditional religion/family structure, or none. This is the case not only in war and occupation, but also in times and places of so-called peace. While it seems that interventions should not interfere in those valuable traditional institutions, on a deeper analysis that apparent truth gives way.

Kazanistan is a mythical state, and so a full assessment of the potential benefits of humanitarian intervention would be speculative at best. I am not arguing that military humanitarian intervention is warranted wherever there is gender apartheid, of course, since militarization is likely to make matters even worse for the women who are already suffering human rights violations. I am suggesting that the violation of autonomy in a state in which gender apartheid is practiced for generations is massive and may warrant some form of intervention.

The idea that intervention should aim to support autonomy may seem paradoxical. Intervention by its nature disrupts a process, often one that has been voluntarily embarked upon. Intervention in collective decision-making or collective self-determination would itself seem to be a violation of autonomy. However, when some individuals are prevented from freely participating in collective decision-making, then the paradox of intervening in collective decisions to achieve autonomy dissolves. The collective decision process itself is the violation of autonomy, and intervention in that process may reinstate the individuals' autonomy. Collective processes that deny autonomy should be subject to intervention. Autonomy-inhibiting social norms and traditions may be supported by some and resisted by others. Deciding how to intervene to

support autonomy in these situations without violating it is a difficult question, and beyond the scope of this essay.<sup>26</sup>

I propose alternative conditions on intervention to the ones proposed by the International Commission on Intervention and State Sovereignty, which might be proposed by a mythical 'International Commission on Intervention and Cosmopolitan Autonomy'. These would be conditions that any group must meet if it intervenes within the borders of a foreign state.

- (1) *Just cause*: the state's inability or unwillingness to protect its people from mass terror, genocide, ethnic cleansing, mass rape, or forced expulsion, or systematic and serious violations of individual autonomy.
- (2) The intervening group must have the *right intention*, in particular, the intention to prevent those forms of oppression and to build capacities for individual autonomy.
- (3) Intervention strategies must be attempted in order, so that military intervention is the *last resort*.
- (4) The force used is to be the *minimal intervention necessary* to support and defend human autonomy for all individuals.
- (5) There must be the *expectation of good consequences*: there has to be a reasonable chance of halting the oppression and supporting autonomy, and the expected ill consequences of the intervention for autonomy have to be less than that of not intervening at all.

These conditions aim at halting oppression and supporting conditions of autonomy without undue respect for national sovereignty. The just cause condition includes violation of autonomy, and the right intention clause is to aim at supporting autonomy. I have argued that we should recognize the relational nature of human life and meaning, yet we must also recognize the way in which social life can seriously constrain groups of individuals for the benefit of other groups. This account of the right of intervention allows for intervention to support autonomy and aid the resistance to oppression across international borders, recognizing the great harms of longterm, non-lethal oppression.

## 5. Conclusion

If we were to take seriously the oppression of women, including the suppression of autonomy by ordinary social institutions, then we would see the estimation of the costs and the benefits of humanitarian intervention as more complex than those typically considered by either just war theory or political philosophy more generally. As under the standard just war view or Lee's theory, we could agree that military intervention is rarely warranted, but we would see failure to intervene at all as more costly than previously considered, as well.

Military intervention and occupation in seriously disordered states that also have a tradition of discrimination against women are likely to lead to worse consequences for women, even if peace and order are restored, if they are brokered on masculine terms. Yet, from a feminist perspective, it is also not acceptable to say that no intervention can ever be warranted. Indeed, feminists might insist that intervention is warranted in many more (or different) situations than current political thought seems to justify. The emphasis in international law on military intervention is misguided, however. International law informed by a feminist perspective requires that new means of social intervention, which disrupt traditional roles and gender hierarchies, must be considered to replace military intervention which tends to maintain the global dominance of military power over the freedom of autonomous individuals and of men over women. By putting all these forms on a single continuum, we can begin to see that there exist many options for intervention and many more situations where intervention is both required and permitted.

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### Notes

1. But not entirely unnoticed by feminists. See, for example, Cudd (2009), Orford (2003), Sjoberg (2008), and Sylvester (2002).
2. This is a point also highlighted by Engel (2007), who is particularly concerned about how feminist discourse has been co-opted in some cases to elevate the level of human rights violations in order to legitimize military intervention. This is the mirror image of my concern in this paper, which is to show how the focus on the military aspect of humanitarian intervention has tended to dismiss violations of women's rights (among others, such as the rights of sexual minorities or the disabled) as beneath international concern. But like her, I am arguing against human rights 'hawks' who favor military intervention for human rights abuses.
3. For a clear discussion of the problems of a 'gender-blind' human rights discourse, see Rao (1993); reprinted in Rao (2001). See also Charlesworth and Chinkin (1993).
4. Sjoberg (2006) takes up these questions in the context of just war theory more generally. See especially Chapter 5.
5. By sex I mean to refer both to biological distinctions between males and females as well as sexual behaviors. By gender I mean to refer to the social distinctions between men and women, as individuals present themselves or as they are ascribed by others.
6. Many nations opt out of Article 29, which is the provision for bringing complaints against states at the International Court of Justice, and at present only 103 States are parties to the Optional Protocols.
7. I address below the objection that the 'protection' framework of R2P licenses too much intervention and does so in a way that is disrespectful of persons on whose behalf intervention is waged. My main concern in this paper is the narrow scope of the framework, not the patronizing attitude of the term 'protection'.
8. While some feminists argue that the notion of rational agent is masculinist and exclusionary, others argue that it can be repurposed for feminist ends. For an overview of criticisms of reason see Nagl-Docekal (1999). I defend the notion of the rational agent and its use in rational choice theory for feminist ends in Witt (2002).
9. Nussbaum (2002) is an exception to this generalization. I discuss her critique of Rawls below.
10. Rawls uses the word 'Peoples' to mean a coherent group of individuals ruled by a common government, bound together by 'common sympathies', sharing a common conception of right and justice. A People is thus an idealization of shared identity and governance, and hence a moralized concept.
11. The first original position is that in which the principles of justice for a people are derived. Rawls (1971) set out this argument in *A Theory of Justice*.
12. No doubt those non-liberal decent societies will have to restrict their favored list of human rights, as well, to accommodate the liberal democracies that Rawls favors. For example, they cannot insist on egalitarian economic outcomes, as that may require liberals to give up cherished property rights.
13. It may be that differential treatment of men and women by customary or religious laws can be justified as 'separate but equal', but the argument surely has to be made in the case of gender just as much as in the case of race.
14. This list is the 'special class of urgent rights, such as freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide' (Rawls

- 1999, 79). It is important to notice for my purposes here that ‘ethnic groups’ are singled out but gender groups are not.
15. It is worth pointing out that Rawls does not mention gender in the original specification of the first original position in *Theory of Justice*. It was only after sustained critique by feminists, particularly Okin (1989), that Rawls ultimately added gender to the list of aspects of which the first original position participants are ignorant in *Political Liberalism*. The addition is critical, since it entails that participants in the contract will seek principles of justice that are sensitive to gender inequalities. In order for this to be the case, the participants in the original position must not only be ignorant of their gender, but also aware that their gender may well be a significant determinant of their status and well-being in society.
  16. Among the human rights are the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly). (Rawls 1999, 65).
  17. Indeed, Nussbaum goes on to argue that Rawls is right about not intervening in societies because of women’s rights violations. Also, Young (2005) argues for quite different reasons against military intervention.
  18. Both of these criticisms are made against the idea of *jus cogens* in Charlesworth and Chinkin (1993).
  19. Sjoberg (2006) criticizes seeing war as primarily a matter between states as a masculinist assumption that feminism can help to reveal and correct. She writes:  
 In common usage, war is the use of military force to protect state borders or advance state interests. Security then is about state safety. Feminists reinterpret security to focus on individual lives . . . Feminisms emphasize individual human safety, especially at the political margins. This re-focuses security from state politics toward peoples’ lives. (50).
  20. Wellman (2011) makes a convincing argument that sovereignty cannot override the right to intervene to prevent human rights violations, although there may be other reasons not to, of course.
  21. Reilly (2007, 182) credits Gould (2004) with the distinction between moral and political cosmopolitanism.
  22. Non-state actors, including non-governmental organizations, have other means of intervention which would yield a different range of intervention strategies. But the fundamental balancing principles would remain the same.
  23. Here my approach differs from that of care ethicists, such as Held (2008), who argues for a care ethics-guided approach to international aid that is entirely apart from international law, which she sees as coming into play only when force is considered. She writes: ‘instead of relying on military intervention to punish violators of the norms of international law, the ethics of care would counsel preventive engagements and measures aimed at deflecting violations and undercutting the need for punishment’ (14). This approach strikes me as too voluntary and lacking in force to be effective.
  24. Thoughtful concerns about positions such as the one I take may be raised, such as by McCormack (2008), however space does not allow reply.
  25. In Saudi Arabia, for example, women are not permitted by law to drive, nor may they leave their homes without a male chaperone; they face separate laws pertaining to marriage and divorce, giving them lesser power within families; and they have different and lesser rights to their guidance and custody of children. They do not yet have the right to vote. Furthermore, they are forced to engage separate forms of education and religious worship (Husain 2011). Women in Saudi Arabia resist these rules, but so far have not been successful in eliminating them. Regardless of the purported justification, the ‘separate but equal’ claim rings as hollow in this case as in the case of Blacks in the USA.
  26. An important recent attempt to address this question is Khader (2011). See also my review of this book at *Notre Dame Philosophical Reviews*, November 2011. Accessed September 15, 2013. <http://ndpr.nd.edu/news/27280-adaptive-preferences-and-women-s-empowerment/>.

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