A Christian View of Humanitarian Intervention

Nigel Biggar

Christian theology is morally realist. As monotheists, Christians believe that a single, coherent divine intelligence has ordered the world toward the fulfillment of human flourishing—that is to say, the human good. There is, therefore, an objective universal moral *reality* or order that transcends all times and places, even if its interpretation suffers historical and cultural variation. The basic, primary principles of this moral reality are the different elements of the human good. These elements are goods or objective values (for example, life). Moral laws or rules are secondary, prescribing human conduct that promotes goods, and proscribing conduct that detracts from them (for example, never kill intentionally or disproportionately).[1] Together, the goods and moral laws comprise what Roman Catholics call "natural morality."

In the academic discipline of theology, therefore, objective values and the moral laws that serve them stand in the forefront. Positive law—that is, the body of norms of conduct posited by humans to govern social relations—is a secondary consideration and is subject to criticism by natural morality. If human law were not so susceptible, there would be no moral ground upon which to complain about the viciousness of racist law, for example (as German jurisprudence recognizes in the "Radbruch Formel").[2] The same applies to social norms or normative customs that lack statutory form but nevertheless prevail in a given society: they might or might not be morally valid.

Law—natural, positive, and customary—has been considerably theorized in Christian theology, especially in the Thomist tradition stemming from Thomas Aquinas (1225–1274),[3] which has found recent expression in Anglo-American legal philosophy through the work of John Finnis.[4] In contrast, the concept of

Ethics & International Affairs, 33, no. 1 (2019), pp. 19–28.
© 2019 Carnegie Council for Ethics in International Affairs
doi:10.1017/S0892679418000886

https://doi.org/10.1017/S0892679418000886 Published online by Cambridge University Press

"interest" has received little or no analytical reflection. Insofar as Christian theologians believe in human sin, they typically think that human beings are inclined to be selfish and so immoral. Almost invariably they assume that any pursuit of self-interest is selfish. I believe that that is a mistake, as I shall explain below.

The Authority of Positive and International Law

To the Christian theologian, positive law—whether national or international—is accountable to higher, natural law. This introduces the possibility that positive law can sometimes be found so morally wanting as to justify breaking it. Notwithstanding that, there remain strong moral reasons of a prudential kind for keeping the law, even when it obstructs the doing of justice. The case for this is made with memorable rhetorical force in *A Man for All Seasons*, Robert Bolt's play about Sir Thomas More, the sixteenth-century English humanist, royal chancellor, and Catholic martyr. In one scene More is urged by his daughter, Margaret, and his future son-in-law, Nicholas Roper, to arrest Richard Rich, an informer. The argument rises to this climax:

> *Margaret (exasperated, pointing to Rich):* While you talk, he's gone!
>
> *More:* And go he should if he was the Devil himself until he broke the law!
>
> *Roper:* So now you'd give the Devil benefit of law!
>
> *More:* Yes. What would you do? Cut a great road through the law to get after the Devil?
>
> *Roper:* I'd cut down every law in England to do that!
>
> *More:* Oh? And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast—Man's laws, not God's—and if you cut them down—and you're just the man to do it—d'you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake.[5]

A state of anarchy, where all the laws have been flattened, is an evil one where the strong are free to abuse the weak with impunity and little human good can flourish. Law-breaking, however well-intentioned, can contribute to an anarchical collapse of the law's authority. There are, therefore, good moral and empirical reasons for a strong presumption in favor of obeying positive law even when it

https://doi.org/10.1017/S0892679418000886 Published online by Cambridge University Press

is morally deficient. Except *in extremis*, the pursuit of justice should suffer legal constraints—even at the expense of letting the Devil himself escape.

While Christian theology regards the authority of both national and international positive law as subordinate to natural law, the authority of international law is naturally weaker than that of national law. In part, this is because of ongoing disputes about the sources of international law and about the jurisdiction of different bodies of law. Is international law simply what is written in treaties, or does it also embrace customary law as expressed in state practice? And how should different bodies of law relate to one another? Should, for example, the battlefield be governed by the laws of war or by international human rights law?

When eminent lawyers pronounce "international law says this or that," we ought not to be overly impressed. They are behaving as advocates, making a case, pushing a particular point of view. There is often more than one reasonable view of what international law is and what it says. It has been long recognized in biblical studies that the interpretation of a text is inseparable from the views that the interpreter brings to it. Accordingly, lawyers' construal of the meaning of the texts of international law is not at all immune from the influence of their moral and political convictions. For example, take the classic dispute between Ian Brownlie and Richard Lillich over the legality of military intervention for humanitarian purposes without authorization by the UN Security Council. Brownlie was professor of public international law at Oxford; Lillich was an eminent professor of international human rights law at the University of Virginia. Appealing to the text of the UN Charter, Brownlie argued that international law's prohibition of any unauthorized military intervention is unequivocal. And he denied that the meaning of the text should be qualified by customary international law—that is, the informal consensus about a unilateral right to intervene implicit in the history of state practice.[6] Against this, Lillich argued that pre-Charter history furnishes ample evidence of relevant state practice. He observed that the Charter attributes *two* main purposes to the post-war international legal regime—the maintenance of peace *and* the protection of human rights—and that humanitarian intervention serves the latter.[7] Brownlie judged such a flexible and teleological interpretation of treaty texts to be weak;[8] Lillich criticized Brownlie's reading as aridly textualist.[9]

The struggle between textualist and contextualist lawyers for the true meaning of international law resembles nothing so much as the struggle between conservative and liberal theologians for the true meaning of the Bible. In both cases, while the text itself does constrain what can plausibly be attributed to it, the variety of

https://doi.org/10.1017/S0892679418000886 Published online by Cambridge University Press

interpretations is considerably determined by extra-textual factors. In the case of the interpretation of international law, prominent among these are the empirical, political, and moral assumptions that lawyers bring to the texts of treaties and to the history of state practice.

So it is not irrelevant to his restrictive interpretation of the law that Brownlie assumed a generally cynical view of the motives of governments, writing of "the near impossibility of discovering an aptitude of governments in general for altruistic and genuine interventions to protect human rights," and asserting that "the whole field [of humanitarian intervention] is driven by political expediency and capriciousness."[10] Nor is it irrelevant that Brownlie was highly skeptical about the efficacy of military action, arguing that civil conflicts cannot be "solved" by a use of force, and that those advocating military intervention need to produce evidence that such action achieves more benefits than costs.[11]

The interpretation offered by Richard Lillich was, of course, no less influenced by extra-textual considerations. However, unlike the textualists, Lillich thought that international law *should* be interpreted with reference to such factors. Thus, he criticized Brownlie for living "within the paper world of the Charter,"[12] complained that "there is little evidence that Brownlie has contemplated the costs in terms of life and dignity his construction of the Charter demands,"[13] and observed that Brownlie neglected the problem of "the obvious procedural defects" of the United Nations.[14]

In my opinion, Brownlie's views of the motives of governments and the efficacy of military intervention are considerably mistaken. But the point I want to establish here is that, whatever the truth of these views, they are not legal-textual ones, but empirical, political, and moral ones, which are highly controversial. Therefore, while the extension of consensus about international norms—which constitutes the development of international law—is to be warmly welcomed, we should not delude ourselves into supposing that this consensus will ever be absolute to the point of permanently transcending intractable conflicts of interpretation. The diversity of moral views and political interests is certainly a persistent feature of human life in the world as it now is, and probably a permanent one. That is why Adam Roberts and Dominik Zaum judge the 2004 report of the UN High-Level Panel on Threats, Challenges, and Change to be "hopelessly optimistic" in aspiring to set up a comprehensive security system through the United Nations, which they regard as an "impossible ideal."[15] This is because the fault lies not simply in the unruly behavior of particular states or even in the right to veto in the Security Council but in "deep and enduring problems of world politics."[16] "The Security

https://doi.org/10.1017/S0892679418000886 Published online by Cambridge University Press

Council," they write, "is not an impartial judicial body, but a deeply political organisation," whose members have "very different perspectives on the world and the threats it faces."[17]

Humanitarian Intervention, Moral Illegality, and National Interests

Because of the irreducibly political nature of the Security Council, because of the diversity of moral views among its members, and because of the veto possessed by each of the five permanent members, occasions arise when the letter of international law effectively shields the perpetration of grave and massive injustice.

Suppose there is a regime that reacts to peaceful protest by arresting and torturing a thirteen-year-old boy and then returning his corpse to his family—bruised, burned, knees smashed, and castrated.[18] Suppose this was not an eccentric case, but one of up to 60,000.[19] Suppose such ruthless repression of dissent provokes armed rebellion. Suppose the regime reacts with a military campaign that observes no limits, repeatedly deploying barrel bombs, phosphorus, bunker-busting munitions, and even chemical weapons in urban areas. Suppose it agrees to a humanitarian convoy and then attacks it. And suppose that a member of the Security Council's Permanent Five colludes in all of this by invitation. In such a case the United Nations is powerless to authorize military action to stop it, and any unauthorized action is, according to the letter of the law, illegal. It is true, as Gareth Evans writes in the introduction to this set of essays,[20] that the doctrine of the Responsibility to Protect—which follows the Christian just war tradition in viewing the paradigm of justified military intervention as the rescue of the innocent—has entered the bloodstream of international law through adoption by the UN General Assembly in 2005. Nevertheless, the question of what should happen when the Security Council is unable to act in response to a state's massive and atrocious oppression of a people within its own borders remains unanswered.[21] Quite as much as any flagrant and contemptuous transgression, such paralysis corrodes the moral authority of the law and of the United Nations. In this kind of extreme case, therefore, it is possible that the authority of the international system is best served by breaking the law's letter—albeit in a manner that respects the international community by making a cogent case before the United Nations, which, ideally, would attract widespread approval. This is exactly what happened in 1999 when, notwithstanding the lack of Security Council authorization thanks

https://doi.org/10.1017/S0892679418000886 Published online by Cambridge University Press

to Russia's threat of a veto, NATO intervened in Kosovo. As the eminent Finnish international legal expert Martti Koskenniemi has acknowledged, "most lawyers—including myself—have taken the ambivalent position that [NATO's intervention] was both formally illegal and morally necessary."[22]

The Morality of National Interest

One of the most common criticisms made of military interventions by Western powers during the last twenty years is that they have been motivated by national interests, and so have been rendered immoral. Unlike most Christian theologians, however, I do not think that the pursuit of self-interest is always selfish. And somewhat like Gareth Evans, I do not think that in order to be ethical governments must act out of pure altruism; or that whenever national interests motivate military intervention, they vitiate it.[23] Rather, I follow Aquinas's combination of Augustine's strong, biblical affirmation of the original goodness of God's creation with the philosophy of Aristotle, which holds that there is such a thing as morally obligatory self-love.[24] The human individual has a duty to care for herself properly, to seek what is genuinely her own good. As with an individual, so with a national community and the organ of its cohesion and decision, namely, its government. A national government has a moral duty to look after the wellbeing of a large political body of human individuals, and in that sense to advance their genuine interests. As the French political philosopher Yves Simon wrote during the Abyssinia crisis of 1935, "What should we think, truly, about a government that would leave out of its preoccupations the interests of the nation that it governs?"[25]

This duty is not unlimited, of course. There cannot be a moral obligation to pursue the interests of one's own nation by riding roughshod over the rights of others. Still, not every pursuit of national interest does involve injustice. So the fact that national interests are among the motives for military intervention does not by itself vitiate the latter's moral justification. This is politically important, because some kind of national interest *has* to be involved if military intervention is to attract popular support; and because without such support intervention is hard, and eventually impossible, to sustain.

One such interest, however, is moral integrity. Nations usually care about more than just being safe and wealthy. Usually they want to believe that they are doing the right or the noble thing—being what Gareth Evans calls "a good international citizen"[26]—and they will tolerate the costs of military intervention in a just cause

https://doi.org/10.1017/S0892679418000886 Published online by Cambridge University Press

that has the potential to succeed. For example, as a Briton I am proud that the British Empire played a leading role in the suppression of the Atlantic and African slave trades for over one hundred years beginning in 1807. I doubt that it profited the Treasury, and I know that it cost the Royal Navy the lives of some seventeen thousand sailors.[27] Citizens often care that their country should do the right thing. Moral integrity is part of the national interest.

However, a nation's interest in its own moral integrity and nobility *alone* will not underwrite a military intervention that incurs very heavy costs. So other interests—such as national security—are needed to stiffen popular support for a major intervention. For over six years now we have all lamented the protracted humanitarian catastrophe that is Syria. But while we British have committed ourselves to playing a low-risk military role in helping to stem and reverse the expansion of the so-called Islamic State in Iraq and Syria, we have judged the high costs and risks of deeper engagement to be disproportionate to our national interest. Were Aleppo geographically located in place of Amsterdam or Dublin, our (direct) national security interest in settling the Syrian conflict would be much more obvious.[28] But it is not.

No nation, or even an alliance of nations, has the power to intervene everywhere to stop grave and massive injustice. They do not have unlimited military or financial resources; those resources are subject to multiple claims; and democratic electorates need persuading that they should be spent in righting remote wrongs. After all—as a theologian would say—we are creatures, not gods. So we have to make choices. Surely, our deliberation about those choices should consider international responsibilities, but it should also consider domestic responsibilities and take into account the interests of the national community. National interest is not morally ignoble as such, and it need not vitiate the motivation for military intervention. Indeed, some kind of interest will be necessary to make it politically possible and sustainable. It is not at all unreasonable for a people to ask why they, rather than others, should bear the burdens of military intervention, especially in faraway parts of the world. And the answer to that question will have to present itself in terms of the nation's own interests. And it could and ought to present itself in terms of the nation's own morally legitimate interests.

Conclusion

The academic discipline of Christian theology brings to the consideration of the relationship of moral values, legal norms, and national interests a belief in the

https://doi.org/10.1017/S0892679418000886 Published online by Cambridge University Press

priority of a universal, natural morality, whose basic elements are human "goods" or objective values. This natural morality relativizes the authority of all law posited by human beings, which is seen to carry only penultimate authority. It does not follow that it is morally permissible to break the law whenever it falls short of natural morality, since the virtue of prudence obliges us to tolerate a measure of legal deficiency for the sake of avoiding the terrible evils of anarchy. Nevertheless, it does follow that it can be right to break the law when it sanctions or shields very grave wrongdoing. This applies *a fortiori* to international law, whose authority is naturally weaker than national law, both because of controversy over its sources and because its interpretation is inevitably shaped by the moral-political dispositions of its interpreters. It therefore follows that military intervention to rescue the innocent from massive and atrocious injustice can sometimes be morally justified without the legally requisite authorization by the UN Security Council—as in Kosovo in 1999. In order to be politically sustainable, however, costly intervention by a democracy must be seen to serve national interests as well. This does not necessarily vitiate intervention, however, since, if we follow Thomist thinking, the pursuit of self-interest need not be selfish and immoral.

NOTES

[1] Roman Catholic philosopher of law John Finnis has proposed seven "basic human goods": life, knowledge, play, aesthetic experience, sociability or friendship, practical reasonableness, and religion (*Natural Law and Natural Rights* [Oxford: Clarendon Press, 1981]). Alternatively, the Aristotelian philosopher Martha Nussbaum has proposed ten "core capabilities": life; bodily health; bodily integrity; senses, imagination, and thought; emotions; practical reason; affiliation; other species; play; and control over environment (*Creating Capabilities: The Human Development Approach* [Cambridge, Mass.: Harvard University Press, 2011]).

[2] Before the Second World War, Gustav Radbruch, professor of law and politician, was a legal positivist. In 1946, however, he wrote his famous essay, "Gesetzliches Unrecht und übergesetzliches Recht," (translated as "Statutory Lawlessness and Supra-Statutory Law") arguing that there can be cases where the discrepancy between positive law and justice reaches such an "unbearable" degree that the former must be deemed "erroneous" (*unrichtig*). Indeed, there may be cases where positive law does not even attempt justice, and where equality is abandoned, in which case the statute does not partake of the nature of law at all. "That," he wrote, "is because law, including positive law, can only be defined as an order and statute, whose very meaning is precisely to serve justice." Gustav Radbruch, "Gesetzliches Unrecht und übergesetzliches Recht," *Süddeutsche Juristen-Zeitung* 1, no. 5 (1946), p. 107.

[3] For recent Thomist theological work on law, see Jean Porter, *Ministers of the Law: A Natural Law Theory of Legal Authority* (Grand Rapids, Mich.: Eerdmans, 2010).

[4] Finnis, *Natural Law and Natural Rights*. Finnis's "New Natural Law" theory may be one of the few exceptions to Stefan Oeter's rule that moral values are largely unknown to legal discourse. See Stefan Oeter, "Conflicting Norms, Values, and Interests: A Perspective from Legal Academia," *Ethics & International Affairs* 33, no. 1 (2019), pp. 57–66.

[5] Robert Bolt, *A Man for All Seasons* (London: Heinemann, 1960), pp. 38–39.

[6] Ian Brownlie, "Humanitarian Intervention," in Mary Ellen O'Connell, ed., *International Law and the Use of Force: Cases and Materials* (New York: Foundation Press, 2005), p. 301.

[7] Richard Lillich, "Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives," in O'Connell, *International Law and the Use of Force*, pp. 307–308.

[8] Brownlie, "Humanitarian Intervention," p. 300.

[9] Lillich, "Humanitarian Intervention: A Reply to Ian Brownlie," p. 308.

https://doi.org/10.1017/S0892679418000886 Published online by Cambridge University Press

[10] Brownlie, "Humanitarian Intervention," pp. 303–304.
[11] Ibid., p. 304.
[12] Lillich, "Humanitarian Intervention: A Reply to Ian Brownlie," p. 313.
[13] Ibid., p. 311. Martti Koskenniemi agrees: a formalistic, strictly textual reading of international law "seems arrogantly insensitive to the humanitarian dilemmas involved." See "'The Lady Doth Protest Too Much' Kosovo, and the Turn to Ethics in International Law," *Modern Law Review* 65, no. 2 (2002), p. 163.
[14] Lillich, "Humanitarian Intervention: A Reply to Ian Brownlie," p. 313.
[15] Adam Roberts and Dominik Zaum, *Selective Security: War and the United Nations Security Council since 1945*, Adelphi Paper 395 (London: International Institute for Strategic Studies, 2008), pp. 18, 76.
[16] They point out that no veto prevented the Security Council from addressing the Khmer Rouge's autogenocide in Cambodia from 1975 to 1979, and that Council members have sometimes acted in spite of a veto, for example, over the Suez crisis in 1956. See Roberts and Zaum, *Selective Security*, p. 37. The quotation comes from p. 19.
[17] Roberts and Zaum, *Selective Security*, pp. 20, 28.
[18] Christopher Phillips, *The Battle for Syria: International Rivalry in the New Middle East* (New Haven, Conn.: Yale University Press, 2016), p. 54: "Gratuitous torture [by the Assad regime] in custody was widespread, such as the gruesome case of Hamza Ali al-Khateeb, a thirteen-year-old from Deraa whose body was returned to his family burned, shot, and castrated—a clear message to deter potential protesters." Hamza was arrested in the early, peaceful stage of the Syrian uprising on April 29, 2011, and his corpse was returned to his family on May 25, 2011.
[19] According to the *The Economist*, "human rights groups say that the [Assad] regime has tortured to death or executed between 17,500 and 60,000 men, women, and children since March 2011. See "Assad's Torture Dungeons," *Economist*, December 20, 2016, p. 75.
[20] Gareth Evans, "Introduction" to "Roundtable: Balancing Legal Norms, Moral Values, and National Interests," *Ethics & International Affairs* 33, no. 1 (2019), pp. 13–18.
[21] See Nigel Biggar, *In Defence of War* (New York: Oxford University Press, 2013), pp. 237–40.
[22] Koskenniemi, "The Lady Doth Protest Too Much," p. 162.
[23] Evans, "Introduction," pp. 13–18.
[24] See David M. Gallagher, "Thomas Aquinas on Self-Love as the Basis for Love of Others," *Acta Philosophica* 8 (1999). Protestants, with their typical emphasis on human sinfulness and self-sacrificial love, tend to regard self-love as sub-Christian. See, for example, the Swedish Lutheran, Anders Nygren, in *Agape and Eros* (Chicago: University of Chicago Press, 1982). However, Jesus' command was not simply to love God and one's neighbor. Rather, it was to love God and "your neighbor *as yourself*" (Mark 12.30–31).
[25] Yves R. Simon, *The Ethiopian Campaign and French Political Thought*, Anthony O. Simon, ed., trans. Robert Royal (Notre Dame, Ind.: University of Notre Dame Press, 2009), p. 55.
[26] Evans, "Introduction," p. 15.
[27] Siân Rees, *Sweet Water and Bitter: The Ships That Stopped the Slave Trade* (Durham, N.H.: University of New Hampshire Press, 2011), p. 308.
[28] Edmund Burke made this point before me. Against his urging for military intervention for humanitarian purposes in France, critics had argued that consistency would require intervention to punish the crimes of the Barbary corsairs. Burke responded, "Algiers is not near; Algiers is not powerful; Algiers is not our neighbour; Algiers is not infectious. When I find Algiers transferred to Calais, I will tell you what I think of that point." Edmund Burke, "First Letter on a Regicide Peace," in R. B. McDowell, ed., *The Writings and Speeches of Edmund Burke, Vol. IX: I: The Revolutionary War, 1794–1797. II: Ireland* (New York: Oxford University Press, 1991), p. 259; quoted by Brendan Simms in *Britain's Europe: A Thousand Years of Conflict and Cooperation* (London: Penguin, 2016), p. 91.

Abstract: As part of a roundtable on "Balancing Legal Norms, Moral Values, and National Interests," this essay presents a Christian view of how to think coherently about the relationships between those three elements. Christian monotheism entails the view that there is a given moral order or "natural law," which comprises basic human goods (or universally objective values) and moral rules for defending and promoting them. This natural law precedes all human, positive law. It follows that, while the authority of positive international law is important for the maintenance of the good of social order, it is still penultimate, since it can be trumped by natural law. Moreover, international law's authority is weaker than that of national law, because controversy

https://doi.org/10.1017/S0892679418000886 Published online by Cambridge University Press

over its sources gives greater scope for the interpreter's moral and political prejudices to shape its construal. Since the interpretation of international law is subject to diverse construals, occasions arise when its authority is invoked to shield the perpetration of grave injustice. In such circumstances, an appeal to natural law could supply moral justification for humanitarian military intervention, even when it violates the letter of international law. Humanitarian intervention, however, is often criticized for being motivated by national interests. A Christian view that follows Thomas Aquinas, however, does not regard national interests as immoral per se, but recognizes that self-interest can be legitimate, and that a national government has a moral responsibility to promote the legitimate interests of its people.

Keywords: Christianity, human goods, self-interest, humanitarian intervention, international law, national interests, natural law

https://doi.org/10.1017/S0892679418000886 Published online by Cambridge University Press