

JUSTIFYING HUMANITARIAN INTERVENTION TO THE PEOPLE WHO PAY FOR IT

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Abstract

The practice of humanitarian intervention, which involves one state (or coalition) intervening militarily into another state in order to prevent abuses of human rights, raises a plethora of ethical and political issues. How is foreign intervention to be reconciled with state sovereignty? Is intervention a threat to international peace and stability? Are alien values being imposed on the target society? Each of these questions has been thoroughly explored by both philosophers and jurists. But the notion that a state infringes the rights of its own citizens by waging war to defend the human rights of foreigners has received relatively little attention. The only thorough philosophical exploration of this problem to date – Allen Buchanan’s “The Internal Legitimacy of Humanitarian Intervention” (1999) – is the focus of this paper. My aim here is not to offer a resolution to the “internal” problem, but simply to show that Buchanan misrepresents it in several important respects. First, Buchanan understates the strength of this objection: it is much more resilient than he gives it credit for. Secondly, he overstates its scope, or the range of humanitarian interventions to which it applies. And finally, Buchanan is mistaken to think that whether or not an intervening state fulfils the rights of its own citizens can be determined prior to, and therefore independently of, the question of whether its actions are consistent with the rights of the society targeted by the intervention.

Introduction

The practice of humanitarian intervention, which involves one state (or coalition) intervening militarily into another state in order to prevent abuses of human rights,

raises a plethora of ethical and political issues. How is foreign intervention to be reconciled with state sovereignty?¹ Is intervention a threat to international peace and stability? Are alien values being imposed on the target society? Each of these questions has been thoroughly explored by both philosophers and jurists. But the notion that a state infringes the rights of its own citizens by waging war to defend the human rights of foreigners has received relatively little attention. Since the concern here is with the citizens of the intervening state, rather than the rights of the target government or the intended beneficiaries of the action, we can call this the *internal* objection to humanitarian intervention. The only thorough philosophical exploration of this problem to date – Allen Buchanan’s “The Internal Legitimacy of Humanitarian Intervention” (1999) – is the focus of this paper. My aim here is not to offer a resolution to the internal problem, but simply to show that Buchanan misrepresents it in several important respects, providing an inaccurate account of 1) its strength; 2) its scope, and; 3) its priority.

For Buchanan, the internal objection issues from a particular understanding of the social contract that binds a government to its citizens, which he calls the “discretionary association” view. On this view, citizens empower their government to act as an agent or trustee *for the sole purpose of promoting their interests*. They submit to the authority of their state and relinquish a portion of their earnings in tax in return for this service. The contract says nothing about using public resources to vindicate moral ideals or to defend human rights in foreign countries (1999, p. 74). Thus a government that prosecutes a humanitarian intervention tramples on the rights of its own taxpayers in the process, by breaching the terms of its contract with them.

¹ Whether or not foreign intervention necessarily compromises state sovereignty depends partly on how one defines intervention. According to some definitions, intervention is something that occurs without the consent of the target state. According to others, a state can invite humanitarian intervention into its territory. On the latter definition state sovereignty can obviously be left in tact by foreign intervention.

Buchanan attempts to undercut this objection by dismantling the account of the social contract on which it relies. But I shall argue that the discretionary association view is more resilient than Buchanan gives it credit for. Moreover, Buchanan is mistaken to think that consistency with the terms of the social contract is sufficient for internal legitimacy. Obstacles to intervention arise also out of the state's distinct moral contract with its armed forces, which Buchanan does not consider. It is in this sense that he understates the strength of the internal objection.

But at the same time he seems to overstate its scope. Apparently, the discretionary association view makes internally legitimate humanitarian intervention "impossible" (Buchanan 1999, p. 73). If we accept this version of the social contract, every humanitarian intervention constitutes a breach of the citizens' trust. I will argue that this is true only if we adopt an outdated and implausible definition of "humanitarian intervention". Once this error is corrected, the internal objection will be seen to apply to a rather narrow range of all humanitarian wars – possibly to none at all.

Finally, Buchanan is mistaken to attribute logical and moral priority to the internal over the external dimension of legitimacy. The question of external legitimacy is simply the question of whether an intervention wrongs the inhabitants of the target country and/or their government. Buchanan seems to suggest that this question can be addressed only after the internal question has been settled. I shall argue that, on the contrary, we cannot determine whether an intervening state honours the rights of its own citizens without first determining whether its actions are externally just.

Strength

If the discretionary association view introduced above is an accurate account of the social contract, then it turns out that any state which prosecutes a humanitarian intervention infringes the contractual or fiduciary claims of its citizens. In order to

show that it is possible for a humanitarian intervention to be internally legitimate, then, it is necessary to rebut the discretionary association view. Buchanan's paper is devoted in large part to this task. Due to limited space, I will provide only a crude sketch of Buchanan's argument below.

Buchanan builds his case around the premise that we are each obliged, independently of our prior transactions and undertakings, to defend human rights when we are able to do so at no significant cost to ourselves. From this he infers that people in the world's most affluent countries will, at least sometimes, be obliged to make their collective resources available for the defence of human rights beyond their borders. Acknowledging this, however, seems to make the discretionary association view untenable. For if a community is morally obliged to finance an intervention, its members cannot possibly transfer all of their money to an agent, and then bind that agent to a contract which absolutely forbids her to use that money for the purposes of humanitarian intervention. We simply have no right to do this with our resources given our obligations, and so a contract to this effect must be invalid. Were it otherwise, individuals and groups would be able to shun their moral obligations simply by empowering an agent to act on their behalf (Pogge 2002, p. 126). The upshot of this is that a humanitarian intervention cannot breach any valid terms of the social contract, and thus cannot breach the citizens' trust, where these citizens are duty-bound to financially support the intervention.

Unfortunately, Buchanan's argument is unlikely to convince those advocates of the discretionary association view who are most in need of convincing: the political realists.² Buchanan acknowledges that a high-cost proviso comes attached to whatever duties we owe to oppressed foreigners. We are only obliged to finance humanitarian operations where we can to do so without sustaining too high a

² Due to limitations of space I will not provide a thorough exposition of political realism here, but will simply focus on certain aspects of it. For a detailed introduction to political realism, see Tim Dunne and Brian T. Schmidt (2001).

cost or taking too great a risk. Buchanan simply assumes, (understandably), that the citizens of at least some countries will, at least sometimes, be in a position to render assistance to foreign nationals without great risk or sacrifice. But the realist is notorious for his denial of this very premise.

Proponents of the realist theory of international relations are characterised by their fierce opposition to the intrusion of morality into foreign policy. This opposition is based on the belief that a government jeopardises the security of its people by pursuing moral goals and ideals in its dealings with other states. This belief, in turn, stems from a Hobbesian view of the international arena. Because there is no overarching world government capable of enforcing moral standards in international relations, it is reasonable to expect that states will relentlessly seek “power after power” to bolster their own security, says the realist. In this setting, any state that diverts resources away from this project and towards international philanthropy exposes its citizens to prey by allowing potential aggressors to acquire a relative advantage in terms of strategic positioning and resources that can then be translated into a military advantage. Thus every state must devote itself purely to self-aggrandizement in order to avoid making its citizens vulnerable to attack.

The following passage from prominent realist George Kennan illustrates this attitude well:

Whoever looks thoughtfully at the present situation of the United States in particular will have to agree that to assure these blessings to the American people is a task of such dimensions that the government attempting to meet it successfully will have very little, if any, energy and attention left to devote to other undertakings, including those suggested by the moral impulses... of its citizens. (1985-6, pp. 206-7)

Though Kennan does not appeal to the anarchical nature of the international system in this passage, the implication is clearly that a state cannot ensure the security of its people and still have time and money left over to defend human rights abroad. It follows that a state which does pursue moral ideals must compromise the security of its own citizens in the process.

If the realist is right about this, then the high-cost proviso admitted by Buchanan is perpetually in effect. Even if we sometimes have a *prima facie* duty to make our resources available for the defence of human rights abroad, this duty need not ever be discharged, since the anarchical nature of the international system means that acting on it always includes great risk.³ Buchanan's first mistake is thus to assume that the discretionary association view cannot withstand the admission of a *prima facie* positive duty towards foreigners. The realist will simply grant the existence of this duty, but add that the high-cost proviso consistently exempts states from the requirement to fulfil it.

Buchanan's second mistake is to assume that the only internal constraints on altruistic war are those that arise out of the social contract, such that consistency with the terms of this contract is sufficient for internal legitimacy. Buchanan says nothing of the distinct moral contract between the state and its armed forces more specifically, to which any military operation must also conform. Martin L. Cook, Professor of Philosophy at the US Airforce Academy, sketches an account of this contract that closely mirrors the discretionary association view:

The military contract obliges military personnel to run grave risks and to engage in morally and personally difficult actions. They do these things on the basis of the implicit promise that the circumstances under which they must act are grounded in political leadership's good faith judgment that the

³ By "anarchic" I simply mean absent an overarching power capable of enforcing rules of peaceful cooperation.

defense of sovereignty and integrity of the nation (or, by careful extension, the nation's vital interests) require their action (2000, p. 62).

The crucial point here is that soldiers implicitly agree to fight and die for their country and its interests, *not* for the human rights of foreigners. If this is correct, then a state's fiduciary obligations are transgressed by humanitarian intervention even when its taxpaying citizens are obliged to foot the bill. And it is important to note that Buchanan's argument against the discretionary association view cannot simply be reformulated and reapplied here. "Distributive justice may require your money, but it cannot require your life" (Luban 2002, p. 94). Thus we cannot say that, just as taxpayers are naturally obliged to finance humanitarian wars under certain circumstances, soldiers can be naturally obliged to fight in them.

Having said this, the obstacle presented by Cook's account of the soldier-state contract can I think be overcome. Humanitarian intervention has become one of the primary functions that militaries serve, at least in the West. Some of the most recent engagements of the Australian Defence Force, for example, include Operation Astute, aimed at restoring peace in East Timor, Operation Anode, geared towards a similar end in the Solomon Islands, peace-keeping operations in Sudan, and of course the "rehabilitation and reconstruction" of Iraq.⁴ One cannot join the ranks of some such force, in full awareness of its history and policy of humanitarian intervention, and then protest that this was not what he or she signed up for.

And even if we accept the position outlined by Cook, it does not seem to yield a blanket prohibition of all humanitarian wars. Consider the following two means of carrying out an intervention: 1) By "riskless" or "post-heroic" means, characterised by reliance on long-range or high-altitude bombing and the absence

⁴ To be sure, some of these do not technically count as humanitarian interventions given the prevailing definition, according to which an intervention necessarily takes place against the will of the target state. (Australian forces have been invited by the governments of Timor-Leste and the Solomons).

of ground forces, such that military casualties are avoided entirely. 2) Using a special expeditionary force comprised of volunteers. If either of these conditions were met, humanitarian intervention could be carried out consistently with the intervening state's fiduciary obligations toward its armed forces. Troops deployed on a riskless humanitarian mission could still remonstrate that "this was not part of the deal", but in this case their dissent would have lost much of its force. What is problematic is "ask[ing] someone who volunteered to die for America to die for Father Aristide", not asking a soldier to drop bombs from a position of perfect safety (Kaus 1994, p. 61).

Thus I do not mean to suggest that the internal objection is insurmountable, only that Buchanan understates its strength. The cogency of his case against the discretionary association view rests on a premise that is likely to be rejected by the most stubborn advocates of this view: namely that states can devote substantial resources to the promotion of human rights abroad without putting their own citizens at risk. Apart from this, Buchanan is mistaken to think that by rebutting the discretionary association view, the internal objection is done away with.

Scope

Although Buchanan understates the strength of the internal objection, at times he seems to overstate its scope. The discretionary association view is said to make "internally legitimate humanitarian intervention impossible", as if to suggest that all such wars are liable to the charge of constituting a breach of the social contract. But this is simply not the case.

Let us grant for the sake of argument that the discretionary association view, and the corresponding account of the soldier-state contract, are correct. It follows that a government has the authority to wage war only in pursuit of the national interest – that is, only with the intention of advancing the security and wellbeing of its own

citizens. What this means is that humanitarian intervention is consistent with the state's fiduciary obligations only on the condition that it is motivated by national self-interest. But this, some would say, is logically impossible. Humanitarian intervention is by definition driven by humanitarian sentiments. Any intervention that is motivated by national self-interest is therefore disqualified.⁵

This is very much in line with the way that humanitarian intervention has traditionally been defined, but the view that mixed motives do not necessarily disqualify a military action from being classified as humanitarian is gaining wider acceptance. For Nicholas Wheeler, as long as the political and economic motives do not obstruct the achievement of the humanitarian objective, their presence does not affect the character of the action (2000, pp. 37-39). Tony Coady agrees: "It may indeed be too much to require that the humanitarian reasons should constitute sufficient conditions for the intervention, but they should at least be necessary and prominent" (2002, p. 11). Surely this *is* too much to ask. The traditional definition has the counter-intuitive implication that Vietnam's intervention into Cambodia, which put a stop to Pol Pot's savagery, was not a humanitarian intervention since one of the main reasons it was waged was to prevent massive numbers of Cambodian refugees from spilling over onto Vietnamese territory.

Some would even go so far as to say that humanitarian motives need not be in the mix at all. Teson emphasises a distinction that is all too often overlooked in the literature on humanitarian intervention: that between *intentions* and *motives*. An intention covers the contemplated act; "what the agent wills to do". By contrast a motive is a further goal that one wishes to accomplish with the intended act (Teson 2005, p. 5). Suppose that I rescue a drowning kitten solely because I expect to receive a reward from its owner. To be rewarded is my *motive*, but my *intention* (the act contemplated and

⁵ Bhikhu Parekh, for instance, argues that intervention aimed at protecting the national interest is "an act of self-defence and not a case of humanitarian intervention". The latter by definition involves the state acting "in a more or less disinterested manner". (Parekh 1997, p. 57).

carried out as a means to my end) is to rescue the cat. The important thing to notice is that the character of the action is determined by the character of the intention, not that of the motive, (it is, after all, still an act of *rescue*). Teson extrapolates that a government that deposes a tyrant ultimately for self-interested reasons, say to secure continued access to his country's natural resources, is still engaged in humanitarian intervention as long as there is an intention to unseat the tyrant and with this to liberate his people as a means to this end (1988, p. 115).

Now where humanitarian intervention *is* motivated by national self-interest, it seems to be perfectly consistent with the terms of the social contract as delimited by the discretionary association view, and with the corresponding soldier-state contract. If the state is empowered for the sole purpose of obtaining optimal conditions for its citizens - ensuring their security and freedom, improving their standard of living - then if a course of action adopted by a government is geared towards this end, it falls squarely within the perimeters of the state's mandate. But then how can the fact that it is *also* expected to benefit foreigners, as a means to, or a side effect of this, possibly make a difference? Surely this additional effect cannot mean that the action is no longer one that the state is authorised to pursue. Likewise a soldier cannot sensibly protest that he did not enlist to fight for the national interest in cases where this is to be promoted via the provision of humanitarian assistance, or where foreigners are also to be advantaged.

One might of course retort that even where intervention is expected to serve the national interest, there will often be some alternative course of action that would prove even more domestically advantageous, and this may very well be true. But when we empower a statesperson, we authorise him to use the state's resources in whichever way best serves the national interest *in his judgment* (Pennock 1979, p. 316). The state is not merely a delegate whose role is to transmit the direct instructions of its principals or authors. It is what Joel Feinberg refers to as a "free

agent”, defined as “an expert hired to exercise his professional judgment on behalf of, and in the name of, his principal” (1968, p. 675).

And it is important to emphasise that the specifics of *how* the intervention will promote the national interest are immaterial in this connection. Neo-conservative political realist Charles Krauthammer proposes that if and only if humanitarian intervention is “strategically necessary” does the intervening government act within the limits of the authority vested in it by its people. “To intervene solely for reasons of democratic morality is to confuse foreign policy with philanthropy”, writes Krauthammer. “And a philanthropist gives out his own money. A statesman is a trustee. He spends the blood and treasure of others.” But “strategic necessity” is an ambiguous term needing delimitation. Krauthammer offers no clear definition, but gives us some examples of what he has in mind. If an intervention will “defend the perimeter or sea lanes or chromium mines” of a state, it passes the test. On the other hand if the decision to intervene is a response to “international law, world public opinion, and the public sentiments of our (America’s) allies”, it does not (1985). These are not encompassed by the term “strategic necessity”.

Furthermore, Krauthammer appears to suggest that there needs to be a threat to the national interest that intervention would avert for this criterion to be met. “We should commit ourselves only in those places where our interests are *threatened*” he writes (1985). And again:

We will support democracy everywhere, but will commit blood and treasure only in places where there is a strategic necessity – meaning, places essential to the larger war against the existential enemy, the enemy that poses a global mortal threat to freedom (2004).

With this, Krauthammer effectively rules out intervention that would

positively improve conditions in the country doing the intervening. For example, intervention that would secure future access to a valuable market or resource from which a state already profits is covered, but intervention that would tap in to *new* resources and markets is not. It is unclear whether Krauthammer sees this implication of his remarks, and whether he would be willing to accept it.

If Krauthammer is simply concerned about intervention conforming to the terms of the state's domestic contracts, I do not see any reason or justification for these restrictions. Why must the national interest be served by the containment of a threat? And why can it not be advanced by improving the state's relations with - and winning it the respect of - its friends, allies, and even its enemies? After all, developing a positive international reputation is advantageous in terms of national security and also tends to facilitate a country's economic flourishing. Furthermore, as Joseph Nye observes, "if a state can make its power legitimate in the eyes of others, it will encounter less resistance to its wishes" (1990, p. 182). Responsiveness to international law and world public opinion would therefore seem to be recommended by an enlightened, far-sighted national self-interest.⁶

Humanitarian intervention thus need not be "strategically necessary" in Krauthammer's sense. As long as it is expected to advance the national interest, it conforms to the terms of the social contract *even on the discretionary association view*. The internal objection cannot be brought to bear against every humanitarian intervention, then, but only against those that are *disinterested* or unadulterated by national self-interest. At times Buchanan does seem to realise this, referring specifically to "pure" humanitarian intervention, rather than humanitarian intervention *per se*.⁷

⁶ Krauthammer might of course retort that any benefit a state gets from improving its reputation is likely to be outweighed by the disadvantages associated with prosecuting a humanitarian intervention that is not strategically necessary. Again, however, it is the role of the state *qua* free agent to determine how best to promote the national interest.

⁷ Buchanan 1999, p. 78

But if the internal objection applies only to “pure” humanitarian interventions, then there is an acute possibility that it has no purchase on reality. Two varieties of political realism can be distinguished: normative and descriptive. The former, on which we have focussed so far, says that states *ought* to look only to the national interest in their dealings with other states. According to the descriptive realist, states *cannot*, by their very nature, act on motives other than the national interest. The pursuit of security, wealth and power underlies all political action, despite appearances. On this view, a state waging war without sincerely believing that this is the best way to promote the national interest in the circumstances is about as likely as one of the scientific laws of nature failing to obtain.

If the descriptive realist is right, then the internal objection advanced by the normative realist is purely academic. Since all wars are motivated by national interest, we can rest assured that the terms of the social contract will be honoured. And even if the descriptive realist is excessively cynical, we can still be confident that the range of cases that are liable to the internal objection is narrowly circumscribed, given that a large proportion of interventions can be reasonably presumed to be motivated by the national interest. Far from rendering internally legitimate humanitarian intervention “impossible”, then, the discretionary association view at most rules out a subclass (and a potentially very small subclass) of all such interventions.

Priority

The problem of internal justification “remains after all the familiar questions [about humanitarian intervention] are answered satisfactorily” says Buchanan. Yet it “precedes” all of these familiar questions “because unless it can be answered the other questions do not arise”. (1999, p. 72). What Buchanan seems to be saying here is that just because an intervention does not wrong the target society, its government, or the international community more generally (or just because it is *externally* legitimate, which is what most of the familiar questions are concerned with) – it

does not follow that it is internally legitimate. This is quite right. But the notion that internal legitimacy can be determined *prior* to, and therefore independently of external legitimacy, is wrongheaded. The case could be made that an externally unjust war is *ipso facto* internally unjust. Therefore internal legitimacy cannot be addressed before the question of external legitimacy has been settled.

We have seen that where citizens are morally obliged to finance an intervention, their government cannot be said to wrong them by using public resources to prosecute that intervention. Where citizens are *not* under any such obligation, however, they are forced to make a sacrifice that they are within their rights to refuse, and this does give them grounds for complaint. Now obviously we cannot be morally obliged to facilitate our government's immoral actions. A state that prosecutes an externally unjust intervention therefore necessarily compels its taxpayers to make a sacrifice that is not required of them.

But this is just one of the harms that a wrongfully intervening government could be said to inflict on its constituents. The victims of unjust war have a claim to reparations against the party responsible for that war. A state could be said to wrong its citizens by putting them at risk of one day having to compensate for its military misadventures.

On top of all this, the case could be made that a government damages its citizens *morally* by invading a foreign country without justification. By electing a government, individuals empower an agent to act in their name and on their behalf. What bearing does this have on their moral status in the event that this government wages an (externally) unjust war? Joel Feinberg tells us that an agent's acts "are binding on [his] principal as if he had done them himself" (1968: 675). Taking this at face value would seem to imply that where an agent acts in a harmful manner within the scope of his specified duties, his guilt simply transfers to his author as if the author had himself engaged in the harmful conduct. But this will not do. Moral guilt is not

the sort of thing that admits of being transferred from one party to another, since one of its necessary components is a guilty mind or “mens rea”.

But there are other ways for citizens to be morally compromised by the wrongdoing of their government. A number of contemporary philosophers subscribe to the notion of “moral taint”: the idea that an individual can be blemished by immoral actions for which he is not responsible, simply in virtue of his relationship to the guilty party. Writes Gregory Mellema:

The wrongful acts of one’s spouse, sibling, or co-worker sometimes appear to strike at our moral integrity in a way that goes far beyond embarrassment or damage to our reputation. We feel a type of moral involvement in these acts that is hard to explain with the categories and concepts of traditional moral philosophy (1997, p. 80).

In addition to this, an elected government that goes to war unjustly could be accused of putting its people in a position where they are liable to *become* culpable or morally guilty, thus exposing them to even more serious moral damage. Consider a bank manager that hires a teller to deposit customers’ cash into their accounts. Shortly after being employed the teller begins to steal from clients, putting part of every deposit into his own pocket. Despite being aware of what his employee is up to, the manager does not fire the teller or take steps to prevent any further theft, say due to laziness or indifference. The manager is certainly culpable for his employee’s crime, not simply because he was in a position to stop it (as a regular customer might also have been), but because he had independently assumed a duty to do so by employing the guilty party.

One might say that democratically active citizens are in an analogous position: they assume a responsibility for the actions of their government by electing it. If an

elected government is using its power to violate the rights of some third party (the society targeted by an unjust intervention), then the authors of this government have a duty to revoke its authority or to at least take steps to prevent further wrongdoing. Should they fail to do so, those members of the collective who are responsible for the failure – most obviously those who vote to re-elect the warring government – become complicit in their government's crimes. By exposing its citizens to moral damage in this way, an unjustly intervening government could plausibly be said to harm them.

We have, then, a number of reasons to think that internal legitimacy cannot be addressed prior to external legitimacy. The former seems to presuppose the latter, or to have it as a necessary condition. What this means is that the internal dimension of legitimacy does not have the logical and moral priority that Buchanan attributes to it.

Conclusion

By turning the spotlight away from the intended beneficiaries of humanitarian intervention and towards the men and women whose sacrifices make it possible, Buchanan has disinterred an issue that has remained well and truly buried in the scholarly debate around altruistic war. For this he is to be commended. My aim here has simply been to offer a more accurate depiction of the problem. I have suggested that the range of cases in which the internal objection arises to begin with is much narrower than Buchanan lets on. But at the same time, where it does arise, it seems to withstand Buchanan's rebuttal. It is not enough to show that we are obliged to make our resources available for the defence of human rights when we can do so without taking too great a risk. To convince those in need of convincing, it is also necessary to show that such circumstances might actually arise in the real world. Furthermore, the fact that an intervention is consistent with the fiduciary rights of the taxpayer does not guarantee that it leaves the fiduciary rights of the soldier intact. By saying nothing of this, Buchanan reduces military personnel to

just another kind of public resource whose expenditure needs to be justified only to those who pay their wage. This is wrongheaded. Finally, Buchanan is mistaken in attributing precedence to the internal over the external dimension of legitimacy. The internal status of a humanitarian intervention cannot be determined before its external status is well and truly settled.

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