

**BEING AND BECOMING: HUMANITARIAN
INTERVENTION AND THE CONSTRUCTED
DUTY OF JUSTICE**

CLAIRE MALCOLM

99-123-125-4

**CARDIFF UNIVERSITY
SCHOOL OF EUROPEAN STUDIES**

PhD IN POLITICS

2009

A dissertation submitted at the School of European Studies, Cardiff University
in candidature for the degree of Doctor of Philosophy

UMI Number: U585356

All rights reserved

INFORMATION TO ALL USERS

The quality of this reproduction is dependent upon the quality of the copy submitted.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if material had to be removed, a note will indicate the deletion.



UMI U585356

Published by ProQuest LLC 2013. Copyright in the Dissertation held by the Author.
Microform Edition © ProQuest LLC.

All rights reserved. This work is protected against
unauthorized copying under Title 17, United States Code.



ProQuest LLC
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106-1346

“... dedicated to my Parents, my Brother, Leigh, Vicky, and Oscar”

Contents

Dedication	i.
Table of Contents	ii.
Abstract	vi.
Acknowledgements	vii.
Glossary	viii.
Chapter One: Introduction	1
I. Traditional Conceptions of International Justice	5
II. Why Social Constructivism?	9
III. Why Humanitarian Intervention?	12
IV. Humanitarian Intervention, the Ontology of Becoming and the Constructed Duty of Justice	16
V. Outlining the Project	23
Chapter One: Hybridising Constructivism	25
I. Introduction	25
II. Humanitarian Intervention: Illegal but Moral?	28
III. Conventional Constructivism	35
i. The Significance of Norms	35
ii. Continuity and Change	37
iii. The 'Middle Ground'	39
iv. Empirical Constructivism	45
v. The Limitations of Conventional Constructivism	46

IV.	Cosmopolitan Constructivism	48
	i. Post-Rawlsian Constructivism	51
	ii. Thomas Pogge	52
	iii. Allen Buchanan	56
V.	Communitarian Constructivism	60
	i. Robert Jackson	62
	ii. Emanuel Adler	68
	iii. Michael Walzer	70
VI.	Solidarist Constructivism	75
	i. RJ Vincent	79
	ii. Nicholas Wheeler	82
VII.	Feminism and Humanitarian Intervention	86
	i. 'Mainstreaming' Feminism	89
	ii. J. Ann Tickner	91
	iii. Birgit Locher and Elisabeth Prügl	94
	v. Feminism Constructivism and Humanitarian Intervention	97
VIII.	Conclusion	99

Chapter Two: Feminist Constructivism, Gender Constructivism

and Humanitarian Intervention 102

I.	Introduction	102
II.	Hybridising Feminism	103
III.	The Theoretical Basis for Intervention	109
	i. Feminism(s) and Humanitarian Intervention	109
	ii. Humanitarian Intervention and Feminist Empiricism	110
	iii. Humanitarian Intervention and Feminist Standpoint	114
	a. Care Feminism	115

	b. Post-Colonial Feminism	120
	iv. Humanitarian Intervention and Post-Modern Feminism	121
IV.	The Components of Humanitarian Intervention	125
	i. Feminism and the Transition to R2P	125
	ii. Feminist Constructivism and Humanitarian Intervention	131
V.	Gender Constructivism	136
VII.	Conclusion	144

Chapter Three: Allen Buchanan, Cosmopolitan Constructivism

And Humanitarian Intervention 148

I.	Introduction	148
II.	The Theoretical Basis for Intervention	149
	i. The Traditional Liberal Defence of Humanitarian Intervention	149
	ii. The Foundations of Institutional Moral Reasoning	157
	iii. Institutional Moral Reasoning and the Natural Duty of Justice	162
III.	The Components of Humanitarian Intervention	168
	i. 'Institutionalising' Intervention	168
	ii. Rejecting State Majoritarianism	170
	iii. Agency	174
	(a) Beyond the UNSC	174
	(b) Illegal Legal Reform	177
	(c) Arguing for a League of Democracies	178
	(d) Membership of a League of Democracies	181
	(e) Governing the League of Democracies:	

	ex ante and ex post Accountability Mechanisms	183
III.	The Limitations of Buchanan's Position	187
	i. The Practical Limitations of a 'League of Democracies':	
	Charles A. Kupchan's critique	187
	ii. The Theoretical Limitations of a 'League of	
	Democracies': Institutional Moral Reasoning and	
	Liberal Cosmopolitanism	191
V.	Conclusion	195
Chapter Four: Nicholas Wheeler, Solidarist Constructivism		
and Humanitarian Intervention		201
I.	Introduction	201
II.	The Theoretical Basis for Intervention	204
	i. The Developing Norm of Humanitarian	
	Intervention	204
III.	The Components of Humanitarian Intervention	207
	i. Just Cause	207
	(a) Morality, Legitimacy and 'Becoming'	214
	ii. Agency	218
	(a) Constructive Abstention	224
	(b) 'Uniting for Peace'	225
	(c) United Nations Armed Force	226
	(d) Agency and the R2P	230
	(e) The Quandary of Solidarism	231
	(f) The Role of 'Mitigation'	235
	iii. Motivation	239
	iv. Just Settlement	242
IV.	Conclusion	247

Chapter Five: Michael Walzer, Communitarian Constructivism and Humanitarian Intervention	254
I. Introduction	254
II. The Theoretical Basis for Introduction	257
i. Self-Determination	257
ii. Reiterative Universalism	263
iii. The Evolution of Reiterative Universalism	267
iv. Reiterative Universalism and 'Becoming'	271
II. The Components of Humanitarian Intervention	272
i. Just Cause	272
(a) The Limitations of Non-Intervention	276
ii. Agency	279
(a) US Hegemony	285
(b) The Limitations of Unilateralism	287
iii. Motivation	290
(a) Selectivity	292
iv. Just Settlement	295
IV. Conclusion	303
Conclusion	308
I. The Theoretical Basis for Intervention	309
II. The Components of Humanitarian Intervention	315
i. Just Cause	315
ii. Agency	317
iii. Motivation, Means and Settlement	319
III. The Ontology of Becoming and the Constructed Duty of Justice	322

IV.	Concluding Remarks	326
	Bibliography	329
	Appendix	
I.	E-mail addressed to Professor Nicholas Wheeler	344

Abstract

Debates concerning international justice are now integral to the discipline of international relations. Among the most pressing of these ethical and legal dilemmas is the matter of whether the use of force can be justified for humanitarian purposes, or for the protection of human rights. Although a wealth of theorists have taken aim at this issue, it is the contention of this thesis that only the 'ontology of becoming' (an idea which is traced through all branches of constructivist theorising) boasts the conceptual and analytical force to successfully and thoroughly appraise the relationship between humanitarian intervention and international justice. In developing this claim, this thesis seeks to hybridise constructivism with a number of other theories which employ the arguments associated with the ontology of becoming, including: cosmopolitanism, communitarianism, solidarism and feminism. The purpose of this process is to demonstrate the ways in which this branch of international relations theory can both enrich, and be enriched by an account of what might be thought of as a 'constructed duty of justice'.

Ultimately, this thesis asserts that adherence to the requirement of institutional feasibility dictated by the ontology of becoming necessarily limits the agenda for the reform of international society. However, those normative developments which can withstand the restrictions brought to bear by the consensual nature of international politics do provide the means for international society to advance, albeit incrementally and inconsistently, toward an increasingly prominent role for considerations of justice.

Acknowledgements

I am indebted to the Cardiff University European Studies Department and, in particular, to my supervisors Dr Peter Sutch and Professor David Boucher for their invaluable and immeasurable contribution to this thesis.

I would also like to express my sincerest thanks to Professor Nicholas Wheeler of Aberystwyth University for graciously agreeing to participate in this project.

Finally, words cannot convey my gratitude to my incredible family and to Leigh whose unfailing support and encouragement made completion of this project possible.

Glossary

GA	General Assembly
HI	Humanitarian Intervention
HR	Human Rights
ICISS	International Commission on Intervention and State Sovereignty
IR	International Relations
JW	Just War
NATO	North Atlantic Treaty Organisation
NS	National Sovereignty
PIL	Public International Law
R2P	Responsibility to Protect
UN	United Nations
UNAF	United Nations Armed Force
UNSC	United Nations Security Council
US	United States

Introduction

*If there is to be a sense of reality, then there must also be a sense of possibility.*¹

Robert Musil *The Man Without Qualities*

The purpose of this thesis is to analyse and appraise the nature and limits of a duty of justice in international society, through the conduit of humanitarian intervention (HI) and the theoretical lens of social constructivism. As David Boucher has persuasively argued, a comparable agenda unites almost all political theorists concerned with the parameters of international justice.

[t]he same substantive end is desired by many political theorists of international relations, an extension of the moral community which posits a certain degree of universalism, while at the same time seeking to preserve difference and respect for diverse identities.²

It is this attempt to balance: human rights (HR) with cultural diversity; individual well-being with the territorial integrity of states; and a realistic appreciation of the status quo with the pursuit of tenable and durable moral reform to the international system which informs efforts to define, and if necessary restrict, our conceptions of an international duty of justice. One of the principal contentions of this thesis is that, of the myriad theoretical approaches which govern the study of international relations (IR), social constructivism is the most effectively equipped to provide the conceptual tools for these complex debates. This is due to the fact that all subsets of

¹ (Cited) Andrew Hurrell, *On Global Order*, (Oxford, Oxford University Press, 2007), p.18

² David Boucher, *Political Theories of International Relations*, (Oxford, Oxford University Press, 1998), p.395

constructivism share a commitment to an “ontology of becoming”;³ a notion which is drawn from feminist IR theorising and which encourages an engagement not only with what *is* but also with *what might be*. In other words, the analytical scope of constructivism is such that it incorporates both ‘being’ and ‘becoming’ and facilitates investigation into “how society has changed, what the principal difficulties and challenges are, and what the way forward might look like”.⁴ The ontology of becoming, as defined in this thesis, rejects realist claims that inter-state relations are characterised by an unchanging pattern of self-help and mutual insecurity, in which moral progress is both meaningless and inconceivable. Neither are its advocates persuaded by the liberal assertion that certain *a priori* first principles regarding the universal nature of a broad raft of HR have already served fundamentally to alter the nature of national sovereignty (NS) and the scope of public international law (PIL).

Instead, the ontology of becoming suggests that through a focus on incremental normative developments and the subtle linguistic modifications which so often accompany or precipitate them, it is possible to analyse change where it has already taken place and to identify the potential for the future development of international society. In so doing, it is imperative to take account of the reality: that states remain the principal subjects of a consensual framework of PIL; that power and national self-interest, (albeit defined much more broadly than reductivist realist terms would allow) remain

³ Birgit Locher and Elisabeth Prügl, ‘Feminism and Constructivism: Worlds Apart or Sharing the Middle Ground?’, *International Studies Quarterly*, 45(1), 2001, pp.111-129

⁴ Hurrell, *Global Order*, p.8

foundational elements of IR; and that the relationship between morality and law is key to executing and consolidating lasting moral progress. So it is that the constructivist ontology of becoming both encourages and places necessary limits upon moral theorising. Those commentators who are constrained by its confines are necessarily inclined toward a certain degree of conservatism in their conception of the international duty of justice owed by citizens to strangers. However, those who fail to respect the requirement of feasibility dictated by this ontological framework tend ultimately to misunderstand the relationship between law, politics, and ethics and to arrive at moral prescriptions which are fundamentally unrealistic.

In order to explore the hypothesis that constructivism provides the most compelling and engaging insights into the discourse of international justice, it is necessary to refine both these otherwise immeasurably broad concepts. In this context, constructivism will be viewed as “a group of *related* approaches, rather than one completely coherent approach”.⁵ It will be subdivided and hybridised in accordance with the suggestion that the “sources of constructivist theorising are many and varied”⁶ and that “a number of different broad orientations”⁷ can be identified “in constructivist scholarship”. Exploring and analysing the overlap between constructivism and four alternative theoretical appraisals of international politics – feminism, cosmopolitanism, solidarism and communitarianism - will establish both the breadth and depth of constructivist analysis. It will demonstrate the ability of constructivism to

⁵ Nicholas J. Rengger, *International Relations, Political Theory and the Problem of Order: Beyond International Relations Theory*, (London, Routledge, 2000), p.81

⁶ Ibid

⁷ Ibid

assimilate elements of both the positivist and post-positivist projects and to assess the current constraints imposed upon interaction between global political actors, as well as the potential for the crystallisation of the normative developments which might ultimately come to erode them.

In the context of this project, HI will serve as a microcosm of international justice more generally. There are several reasons for this, the most self-evident being that brevity does not allow for a thorough engagement with all aspects of an issue as vast as international justice. However, since it draws upon matters as diverse and controversial as: the use of force, gender and racial inequality, regime change, and economic deprivation, HI can certainly be said to represent, to varying extents, the majority of the most pressing debates in IR theory.

This chapter will serve to introduce and investigate some of the key conceptual categories which will form the basis of the project. It will begin by sketching the traditional approach to international justice, so as to establish the ways in which the findings of this thesis may be situated within the wider canon of IR theory. This will be followed by a detailed engagement with the development of constructivism and a brief overview of the notion of human protection which has given rise to both HI and, in more recent years, the Responsibility to Protect (R2P). Taken together, this analysis will seek to draw out the relationship between the ontology of becoming and what will be referred to throughout this project as the 'constructed duty of justice'; thereby

serving to assess both the demands and the limitations of our obligations to those beyond our borders who find themselves persecuted or destitute.

I. Traditional Conceptions of International Justice

In order to appreciate the overall purpose of a project of this nature, it is necessary to map the development of norms of international justice, not least the evolution of the concept itself from a relatively peripheral element of IR theorising (deemed as the exclusive preserve of political philosophers), to a viable category of analysis. From the time of its inception until at least the 1970s, IR was dominated by the hegemonic discourse of realism, proponents of which saw international politics as akin to the natural sciences. On this basis, it was believed that the power-seeking behaviour of states, the only currency of any value to theorists of IR, could be measured, assessed, and even predicted using positivist tools of analysis and assumptions of rational choice. States were considered to be inherently self-serving, governed by a fixed set of exogenously given interests concerned with increasing the power and influence which they could exercise over their rivals. Throughout this period of realist dominance, the foundational principle of 'raison d'état' (the notion that a leader owes their allegiance exclusively to their own state and citizens and that this loyalty permits any range of behaviours which might guarantee the survival of that state) was continually challenged by liberals who argued that cooperation between states could serve to fulfil a 'harmony of interests' and engender the conditions for peaceful coexistence. Nevertheless, the ontological and epistemological similarities between the two theories, and in particular their shared conviction that anarchy was the

inevitable consequence of NS, ensured that the substantive differences between them (especially in their respective guises of neo-realism and neo-liberalism) were relatively few. In this context, responses to the concept of universal HR tended to be somewhat hostile and during the Cold War in particular considerations of justice were necessarily deferential to the demands of international order with which they were said to conflict. Against the backdrop of mutually assured destruction HR infringements abounded and, despite the codification of HR standards in the Universal Declaration on Human Rights (1948), the Genocide Convention (1950); the Covenant on Civil and Political Rights (1966), and the Covenant on Social, Economic and Cultural Rights (1966), self-determination and non-intervention remained firmly in place as the peremptory norms of international society.

However, as the Cold War drew to a close, formerly marginal theoretical approaches benefited from the decline of neo-realism, advocates of which had failed to predict the end of the conflict. The neo-neo synthesis⁸ was exposed as suffering the consequences of its own methodological reductivism and over-estimating and under-investigating the concepts of power and interest. As a consequence, international justice emerged as a contested and fascinating concept which elicited a range of conflicting responses. Increasingly, an engagement with international order began to entail some consideration of justice as an analytical factor and the suggestion that

⁸ Ole Waever, 'The Rise and Fall of the Inter-paradigm Debate' Steve Smith, Ken Booth and Marysia Zalewski (eds), *International Theory: Positivism and Beyond*, (Cambridge, Cambridge University Press, 1996), p.163-164

individuals, as well as the states which they constituted, might be an appropriate referent for IR and PIL, began to gain ground.

As a consequence, the contest between realists and liberals was partially displaced in favour of Chris Brown's groundbreaking distinction between cosmopolitanism and communitarianism;⁹ a demarcation which runs as follows. Cosmopolitans tend to base their appeals to universality on a form of "covering law universalism"¹⁰, which suggests that a broad range of *a priori* moral principles can be said to exist across time and space. These principles transcend political society and are not contingent upon institutionalisation or formalised cross-cultural consensus. According to cosmopolitan theorising, we live, or should aspire to live, in a world society in which our duty of care does not depend upon membership of "bounded political communities".¹¹ Thus, there is no marked disparity between the obligations which we accept toward our fellow citizens and those which we would willingly extend to global humanity. By way of contrast, communitarians would argue that our identities and interests are defined, and find expression, within our individual political communities. This does not entirely preclude the possibility that certain universal standards of morality or justice might emerge but it does ensure that their legitimacy can only derive from extensive agreement - explicit or tacit - amongst a wide range of cultures or societies. According to this line of

⁹ See Chris Brown, 'Borders and Identity in International Political Theory' Mathias Albert, David Jacobsen and Yosef Lapid (eds) *Identity, Borders, Orders: Rethinking International Relations Theory*, (USA, Minnesota University Press, 2001), p.117-137

¹⁰ Michael Walzer, 'Nation and Universe' *The Tanner Lectures on Human Values*, Brasenose College, Oxford University, 01/05/89 and 08/05/89, <http://www.tannerlectures.utah.edu/lectures/documents/walzer90.pdf>, pp.510-556, [01/03/06], pp.510

¹¹ Andrew Hurrell, 'Order and Justice in International Relations: What is at Stake?' Rosemary Foot, John Lewis and Andrew Hurrell (eds), *Order and Justice in International Relations* (Oxford, Oxford University Press, 2003) p.34

argument, true universality is inordinately rare and attempts to impose values upon those elements of international society which might, on particularist grounds, reasonably reject them will inevitably undermine the conditions for order and provoke conflict within and between states. This viewpoint is rebuffed by cosmopolitans who argue that respect for diverse cultures must depend upon the willingness and ability of such political communities to protect HR standards and that the failure to acknowledge this risks turning defenders of cultural diversity into apologists for state-sponsored repression.

The dominance of such entrenched and apparently irreconcilable convictions on either side of the debate has tended to reinforce a somewhat defeatist perception. Specifically, that

... discussions of international justice... pose an unwelcome choice. Either we can abstract from the reality of boundaries and think about principles of justice that assume an ideal, cosmopolitan world, in which justice and human rights do not stop at the boundaries of states; or we can acknowledge the reality of boundaries and construe the principles of justice as subordinate to those of national sovereignty.¹²

The assumption that debates surrounding international justice are necessarily constrained by this theoretical choice has impacted upon the discipline in a number of ways. The most compelling development from the perspective of this project is the emergence of a so-called 'third' or 'middle way'¹³. This thesis contends that the balance implied by the middle way can be

¹² Onora O'Neill, 'Gender and International Relations', *British Journal of Political Science*, 20(4), October 1990, pp.439-459, pp.445

¹³ Chris Brown, 'Towards a neo-Aristotelian Resolution of the Cosmopolitan-Communitarian Debate', Chris Brown, *Practical Judgements in International Political Theory: Selected Essays*, (Oxford, Routledge, 2010), p.40-52

successfully struck by means of constructivist theorising. This is because constructivism can be “profitably synthesised”¹⁴ with both cosmopolitanism and communitarianism to produce a hybridised account of international justice, which subscribes to neither theoretical extreme. This process of hybridisation can be substantially enriched through the incorporation of ideas espoused by solidarists and feminists, both of whom are principally concerned, in Boucher’s terms, with the ‘extension of the moral community’¹⁵ and the establishment of standards of international justice. Hybridisation is a core element of this project since it is the ability of constructivism to augment and be augmented by alternative theories which ensures that it offers the most promising route to a nuanced understanding of international justice. Moreover, hybridisation will demonstrate that whilst the analytical framework of the ontology of becoming is utilised to varying extents by a range of IR theorists, only constructivists or those who incorporate constructivism into their theorising, can balance the requirement of feasibility with a relatively ambitious agenda for reform.

II. Why Social Constructivism?

Although the decision to add to the growing literature on international justice is relatively uncontroversial, the theoretical lens through which this project will be envisaged requires further explanation. Therefore, the first issue which this thesis must address is the matter of why social constructivism should form its theoretical basis. The answer lies in the fact that, for constructivists, “[A]ll

¹⁴ Tony Evans and Peter Wilson, ‘Regime Theory and the English School of International Relations: A Comparison’, *Millennium: Journal of International Studies*, 21(3), 1992, pp.329-351, pp.329

¹⁵ *Political Theories*, 1998, p.395

politics is shaped through the webs of meaning that are developed both intentionally and otherwise, through time and chance".¹⁶ As such, the source of reform in international politics lies in the changing identities and interests of global political actors and it is this dynamic conception of HR which gives justice claims their purchase. This approach to 'becoming' in IR is key to an understanding of the development of the discourse of justice in international society.

Constructivism, a theoretical framework which rose to prominence in the early 1990s, posits the notion that the choice between accepting, or rejecting, boundaries as barriers to justice is an unrealistic and unnecessary dichotomy. Instead, proponents of this emerging viewpoint argue that boundaries are constructed through processes of interaction between global political actors and, in particular, states. This is not to suggest that such limits are, in some sense, *unreal*, or lacking in significance but rather the assertion is that, as social constructs, they can be redrawn or re-envisaged in line with incremental normative developments. This middle ground seeks to illuminate the relationship between international order and international justice, by proving that these values, far from being diametrically opposed to one another, are inter-related. In short, "justice is part of the constitution of order, so that the two cannot be contrasted straightforwardly".¹⁷

¹⁶ Nicholas Rengger, 'On the Just War Tradition in the Twenty-First Century', *International Affairs*, 78(2), April 2002, pp.353-363, pp.353

¹⁷ Ian Harris, 'Order and Justice in 'The Anarchical Society'', *International Affairs*, 69(4), October 1993, pp.725-741, pp.725

As well as unpacking the relationship between international order and international justice, constructivists reject more traditional conceptions of NS, claiming that “sovereignty is a social construct, and like all social institutions its location is subject to changing interpretations”.¹⁸ These developments are precipitated as much by ideational shifts as by changes in the material environment and for this reason constructivists have always warned against the dangers of under-estimating “the power of ideas, in particular of so-called soft-hearted and soft-headed ones like human rights and humanitarian action”.¹⁹ In this respect, constructivism challenges the dominance of realism inasmuch as it indicates that any theory which sacrifices the ideational to the material will inevitably understate the value and influence of normative developments.

This focus on the changing nature of norms informs an understanding of the ontology of becoming. A norm is most succinctly defined as “a standard of appropriate behaviour for actors with a given identity”²⁰ and, according to constructivists, once a particular standard or set of expectations becomes embedded in inter-state relations, global political actors become constrained by its terms. The need to maintain reputation and influence restricts the options available to even the most powerful of states and can ultimately come to modify or reconceptualise the ‘rules’ which govern international society. In this sense, notions as fundamental to international politics as NS or anarchy

¹⁸ J. Samuel Barkin and Bruce Cronin, ‘The State and the Nation: Changing Norms and the Rules of Sovereignty in International Relations’, *International Organisation*, 48(1), Winter 1994, pp.107-130, pp.109

¹⁹ Thomas G. Weiss, ‘Researching Humanitarian Intervention: Some Lessons’, *Journal of Peace Research* [online], 38(4), July 2001, pp. 419-428, pp.425

²⁰ Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’, *International Organisation*, 52(4), 1998, pp.887-917, pp.891

are, in fact, the by-product of shared normative, linguistic, legal, political and social understandings. From the perspective of the ontology of becoming, it is this developing and overlapping consensus which sows the seeds for change at the international level and which can lead to the universalisation of certain rights claims, without relying upon metaphysical characterisations of *a priori* entitlements. In this sense, the constructivist ontology of becoming boasts the potential to strike the balance between the universalising instinct of the cosmopolitan and the commitment to cultural sensitivity which typifies the communitarian project. As such, constructivism offers a unique insight into changing conceptions of international justice and the moral obligations which they may imply.

III. Why Humanitarian Intervention?

This chapter has so far sought to establish that an investigation of continuity and change at the international level is incomplete without a thorough engagement with issues of international justice. Similarly, it has advanced the claim that social constructivism, in the hybridised forms which this project will outline, and with its reliance upon the ontology of becoming, offers the most effective tools for such an investigation. What remains at issue is the choice of HI as the norm of international justice most appropriate to this endeavour. HI, defined as “the violation of a nation state’s sovereignty for the purpose of protecting human life from government repression... or civil breakdown”,²¹ is riddled with contrasting and contradictory imperatives. Whilst sustained and systematic HR abuses in every corner of the world prompt emotional pleas for

²¹ Alex de Waal and Rakiya Omaar, ‘Can Military Intervention be ‘Humanitarian’?’, Middle East Report, 187/188, pp.3

any effective response to alleviate human suffering, concerns that the institutionalisation of a so-called 'right to intervene' would invite abuse by the self-interested and the powerful are as established and compelling, as these calls to action. This seemingly intractable quandary speaks to a broader debate which has long echoed through IR, namely the relationship between the values of order and justice and the matter of the existence and extent of the obligations owed to persecuted or desperate strangers. It is for this reason that the issues surrounding HI are in such desperate need of exploration and resolution; a task for which constructivism is uniquely equipped.

However, whilst no one would contest the extent of human tragedy which the 'loud emergencies' of ethnic cleansing and genocide engender, there are still those who might resist the conflation, for the purposes of this thesis, of HI and international justice. In fact, an analysis of HI has the potential to meet with some derision, either from realists who argue that it simply numbers among a series of political manoeuvres or rhetorical devices which are designed to promote the interests of powerful states, or from the largely post-positivist perspectives of those who have striven to ensure that the discipline of IR must move beyond the traditional focus on matters pertaining to the use of force.

This thesis contends that both objections are without foundation. HI is intrinsically connected to the incremental, inconsistent, yet vital development of HR norms which are, themselves, linked to a reconceptualised notion of the limitations of NS. As such, it is mistaken to assume that this discourse is

simply the latest incarnation of power politics. It has its basis in an institutional and philosophical consensus, albeit an extremely limited one, concerning the basic rights of all human beings and the matter of how and when international society ought to respond to the systematic infringement of such rights. Equally, the very notion of 'power politics' necessitates and demands a much deeper analysis than realism has traditionally afforded its proponents, since insufficient consideration has generally been given to the factors and processes which shape the national interest and the normative framework which so profoundly influences the behaviour of global political actors.

Similarly, those concerned that a focus on HI threatens to narrow the agenda of IR research in favour of militarism, overlook two key issues: the enduring moral significance of debates surrounding the resort to force and the relevance of intervention to the discourse of human security. The first of these issues is based on the practical consideration that, as unpalatable as many commentators may consider political violence to be, it remains a feature of international society. As such, violence demands ethical reflection. Even those whose agenda is predominately pacifist must concede that understanding the conditions which can result in conflict is a necessary component of restricting its outbreak.

The second issue relates to the definition of security which informs an account of HI. Although still a relatively novel concept (first summarised in the report of the 2003 United Nations Commission on Human Security), the language from which human security derives its meaning has been employed by many

philosophers and practitioners of international politics to draw attention to the need to address two dimensions of security, “freedom from fear”²² (physical security) and “freedom from want”²³ (economic security). Some commentators have even gone so far as to suggest that because human security emphasises that individuals as well as states ought to be considered as subjects of PIL, it could be said to undermine some of the core assumptions on which the state system is based.

The underlying issues of human security – a focus on the individual, the waning of state sovereignty and the rise of new actors, the shift in our understanding of security, the need and risks of ‘saving strangers’ through humanitarian intervention, the reform of the Security Council, the conduct of complex peace missions, and the adequate reaction to new threats – pose a challenge to international law.²⁴

An acknowledgement of the inter-related nature of these varying dimensions of security indicates that an investigation into HI allows for and arguably even necessitates an engagement with any number of competing issues in IR. These include matters of distributive justice, since one may argue that the widespread violation of HR often occurs in regions of the world beset by extreme poverty. Similarly, it is impossible to divorce debates surrounding HI from a consideration of gender or racial justice, since institutionalised patterns of discrimination often inform genocidal acts or inclinations. So it is that an analysis of both the nature and the necessary limits of a constructed duty of justice in the arena of HI speaks to demands for justice across the board and

²² Heidi Hudson, ‘Doing Security as if Humans Matter: A Feminist Perspective on Gender and Human Security’, *Security Dialogue*, 2005, pp.155-171, pp.164

²³ Ibid

²⁴ Gerd Oberleitner, ‘Human Security: A Challenge to International Law?’, *Global Governance*, 11, 2005, pp.185-203, pp.185

provides us with an appreciation of the practical and moral constraints at work in the order versus justice debate.

IV. Humanitarian Intervention, the Ontology of Becoming and the Constructed Duty of Justice

Much debate concerning HI is based on appeals to the just war (JW) tradition, principally associated with “the writings of Ambrose and Augustine in late antiquity and those of later scholastics like Suárez and Vitoria and Protestant natural lawyers like Grotius”.²⁵ Although not originally framed as a defence for HI, its terms have been appropriated by those who wish to encourage or to constrain the development of a norm of human protection. It is generally accepted that if a military incursion is to conform to moral exigencies it must fulfil the following criteria:

1. Presence of just cause,
2. Presence of competent authority to act,
3. Right intention in action,
4. Reasonable hope of success, and
5. Overall proportionality of good (in ends desired).²⁶

Most commentators would interpret the final requirement as the expectation that, in as far as possible, non-combatants should be protected during conflict. These principles have been embraced by modern theorists of intervention and warfare and even formed the basis of the 2001 International Commission on

²⁵ Rengger, ‘The Just War’, pp.354

²⁶ Michael J. Butler, ‘US Military Intervention in Crisis, 1945-1994: An Empirical Study of Just War Theory’, *Journal of Conflict Resolution*, 47(2), April 2003, pp.226-248, pp.232

Intervention and State Sovereignty (ICISS) Report, forerunner to the 'Responsibility to Protect' (R2P).

However, in many respects, the ICISS Report and the R2P represented a response to the inability of the international community to implement these standards effectively or consistently. In fact, it was the succession of high profile failures in the face of humanitarian disaster which led then Secretary General Kofi Annan publically to state that the assumption in favour of NS must be subject to some degree of revision. As a result, in 2000, he issued an impassioned plea, asking in his Nobel Lecture *We, the Peoples*:

[i]f humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica - to gross and systematic violations of human rights that offend every precept of our common humanity? . . . Surely no legal principle - not even sovereignty - can ever shield crimes against humanity.²⁷

For many, Annan's comments were of incalculable normative significance. After all, "[w]hen one recognises that the sanctity of state sovereignty is the foundation of the United Nations, to have its principal appointed officer plea for intervention is a profound shift in itself".²⁸ In an international society hitherto structured around notions of non-intervention and self-determination,

²⁷ Michael Levine-Clark, Review Article: 'We, the Peoples' The Role of the United Nations in 21st Century', *Journal of Government Information*, 28(5), September-October 2001, pp.571-574, pp.574

²⁸ Lieutenant General John M. Sanderson (Ret'd), 'The Need for Military Intervention in Humanitarian Emergencies', *International Migration Review*, 35(1), Spring 2001, pp. 117-123, pp.122

the suggestion that NS could no longer function as a “license to kill”²⁹ represented a substantial legal and ethical challenge.

Of particular significance from the perspective of the ontology of becoming is the manner in which Annan’s bold statement laid the foundations for the discourse of ‘conditional sovereignty’. Although it was hoped that, in shifting the emphasis from interveners to those in need of rescue, the R2P would divest humanitarianism of its neo-imperialist overtones, even those who doubt whether this was achieved would nonetheless acknowledge the normative resonance of the notion that NS implies both power and responsibility. Conditional sovereignty or ‘sovereignty as responsibility’ renders respect for territorial integrity contingent upon evidence of good governance and concedes that where states fail to discharge their most basic duties to their citizens, the international community has cause to accept a default responsibility on their behalf. For constructivists, this points to the concept of becoming in action. From both a linguistic and a practical point of view, the framers of the R2P have attempted to infuse the word ‘sovereignty’ with a new meaning; a meaning which might potentially be employed to enable or legitimate a new range of political behaviours. As such, the same expression which has been used to guard against HI for generations is now argued, by some, to justify it in certain instances. A term once associated exclusively with power, is now designed to call to mind the necessary limits which must be placed upon the exercise of such power. The process of assigning and reassigning meaning in this way is integral to the ‘construction’ of standards of

²⁹ Nicholas J. Wheeler, ‘Humanitarian Intervention and World Politics’, John Baylis and Steve Smith (eds), *The Globalisation of World Politics*, (Oxford, Oxford University Press, 2001), p.471

international justice. As new normative commitments emerge and are reiterated among and between global political actors, they may eventually gain an increased sense of legitimacy until they begin to form part of the fabric of international society itself, displacing the norms to which they once posed a challenge. It is by means of this process, that the understandings and expectations associated with international justice and the obligations which derive from them might come to evolve, and the moral progress of international society may be secured. Such is the relationship between the ontology of becoming and the constructed duty of justice.

Significantly, this thesis does not claim that conditional sovereignty has attained the status of 'emerging norm', or even that it could or should. Very few commentators beyond the most radical elements of the liberal cosmopolitan tradition would argue that this changing conception of NS (or the norms of human protection associated with it) has attained what the constructivist "norm life cycle"³⁰ would define as the impending ability to implement a broad "systematic shift"³¹ in IR and PIL, capable of overturning the dominance of non-intervention and self-determination. After all, the vast majority of the international community remains wedded to more traditional understandings of inter-state relations. However, for constructivists, who seek to "describe the world not as one that is, but as one that is in the process of becoming",³² the very fact that a reconceptualised understanding of NS has

³⁰ Finnemore and Sikkink, 'International Norm Dynamics', pp.891

³¹ Carsten Stahn, 'Responsibility to Protect: Political Rhetoric of Emerging Legal Norm?', *The American Journal of International Law*, 101(1), January 2007, pp.99-120, pp.100

³² Locher and Prügl, 'Feminism and Constructivism', pp.114

entered, to some extent, into the diplomatic dialogue of the society of states is engaging in itself.

As further exposition will reveal, the development of legal and political norms is a painstaking and incremental process and one which is fraught with complications and conflicting agendas; something which is illustrated by the diverse responses to the establishment of the R2P. For some, the framing of the ICISS is indicative of the fact that “conservative interpretations of positive international law do not cover the full spectrum of moral reasoning on matters of war and peace”³³ and must be supplemented through the assimilation of developing norms of human protection. For others, the ICISS represented the most coherent attempt to date to draw up criteria to govern HI which could strike the balance between humanitarian impulse and political reality. For these commentators, “the moral and the strategic are intimately connected; what is required is a framework of argument that embraces both”.³⁴ Still others continue to cling to a pluralist account of the relationship between states’ rights and HR arguing that the principles of territorial integrity and non-intervention should be protected by the apparatus of international politics. For these critics,

[h]owever imperfectly observed, the presumption against military intervention, including even humanitarian intervention, has not served badly as an ordering principle of international relations. The protection which it provides has been one basis for so many states joining, and staying within, the United Nations. It

³³ Alex J. Bellamy, ‘Ethics and Intervention: The ‘Humanitarian Exception’ and the Problem of Abuse in the Case of Iraq’, *Journal of Peace Research*, 41(2), March 2004, pp.131-147, pp.132

³⁴ Mona Fixdal and Dan Smith, ‘Humanitarian Intervention and Just War’, *Mershon International Studies Review*, 42(2), November 1998, pp.283-312, pp.284

is, notoriously, a principle based more on order than on justice, but as such it does have a serious moral basis. It provides a clear rule for limiting the use of force and reducing the risk of war between the armed forces of different states. It involves respect for different societies.³⁵

This perception is particularly popular among developing states which have the most to gain from a continuing respect for territorial integrity. These states,

being very proud of their newly won sovereignty, very conscious of their fragility, and all too conscious of the way in which they had been on the receiving end in the past of not very benign interventions from the imperial and colonial powers, [are] not very keen to acknowledge their right to do so again, whatever the circumstances.³⁶

This accounts, in part, for the fact that much of the substantial agreement carved out in the formation of the ICISS report has failed to enter into force, even in the loosest of senses. As Emma McClean claims “[t]he central tenets of the responsibility to protect as articulated by the ICISS – such as the guidelines for military intervention” and the matter of how to proceed in the face of UNSC deadlock “were lost in transition from the ICISS report to the [World Summit] Outcome Document”.³⁷ This has led many commentators to reject the suggestion that R2P bears the hallmarks of an emerging norm.

The quick rise of the concept of responsibility to protect from an idea into an alleged emerging legal norm raises some suspicions from a positivist perspective. How can a concept that is labelled as a ‘new approach’ and a ‘recharacterisation’ of sovereignty in 2001 turn into an emerging legal norm

³⁵ Adam Roberts, ‘Humanitarian War: Military Intervention and Human Rights’, *International Affairs*, 69(3), July 1993, pp.429-449, pp.434

³⁶ Gareth Evans, ‘Responsibility to Protect: An Idea Whose Time Has Come... and Gone’, *International Relations*, 22(3), 2008, pp.283-298, pp.285

³⁷ ‘The Responsibility to Protect: The Role of International Human Rights Law’, *Journal of Conflict & Security Law*, 13(1), 2008, pp.123-152, pp.151

within the course of four years, and into an organising principle for peace and security in the UN system one year later?³⁸

However, the fact that 'sovereignty as responsibility' has not yet gained the status of emerging norm does not definitely indicate that it will not find favour in the future. Equally, it is possible to contend that those who are already prepared to dismiss the potential of conditional sovereignty to meaningfully impact upon relations between states have adopted an unrealistic view of the time it takes for new normative ideas to disseminate across an international system which is ultimately based on consent and compromise.

Although controversy continues to rage over the proper interpretation of human protection, what is clear is that throughout the development of the society of states, the suggestion that justice may occasionally necessitate some degree of HI has recurred. Never universally embraced, often misappropriated, and almost always deemed to be incompatible with other foundational normative principles, the discourse of HI numbers among the most contentious elements of the international justice debate. As such, it offers the means to demonstrate that justice is a contingent but powerful concept, which can be constructed and reconstructed in terms of the ontology of becoming and that the key to moral progress lies in the incremental development of legal and political norms.

³⁸ Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?' pp.101

V. Outlining the Project

So far, this thesis has sought to establish: that an evaluation of international society necessitates an engagement with international justice; that the social constructivist ontology of becoming is the element of IR theory which is sufficient to this task, and that the historical and normative development of HI offers a way into this complex debate. Exposition has also revealed that the development of the R2P has served as evidence of the role of language and negotiation among global political actors in sowing the seeds for change; a principle which demonstrates the practical causes and consequences of becoming in IR.

The remainder of the project will be given over to an analysis of how various hybridised forms of constructivism are positioned to flesh out the relationship between the ontology of becoming and the necessary limits of an international duty of justice. Following a comprehensive survey of the literature surrounding international justice and HI, designed to illustrate the pervasive and persuasive nature of the ontology of becoming among IR theorists, each chapter will focus on the work of one or more prominent and influential thinkers, who has incorporated constructivist principles into their analysis. Throughout the course of this endeavour, the gender-lens of the ontology of becoming, as defined by the feminist theorists who first identified its analytical force, will be reiterated and explored as a means to unpack and problematise the range of unequal power relations which tend to preclude the establishment of international justice. However, this thesis will also serve to demonstrate that those commentators with the most sophisticated and

instructive appreciation of the international justice debate are those who operate within the restrictions imposed by the ontology of becoming and that, the principles arrived at within this framework are, at times, substantially more radical than detractors of constructivism might be inclined to suggest. Although the scope of the project does not allow for the formation of definitive conclusions as to the appropriate content or applicability of norms of international justice, it is hoped that it may provide some indication as to the minimal standards of morality which currently govern the discipline and practice of IR, as well as the possibility that, in the future, this international 'code of conduct' may evolve still further.

Chapter One: Hybridising Constructivism

I. Introduction

This project asserts that social constructivism, with its unique appreciation of the ontology of becoming, is better equipped than alternative IR theories to define and contend with the demands of international justice. This is due to the ability of constructivists to balance competing claims and produce a hybridised account of justice which is both innovative and realistic. The task of this chapter is, therefore, to demonstrate the ways in which the ontology of becoming permeates justice theory in general but is most effectively executed within the confines of constructivist theorising.

The conviction at the heart of this thesis is that any obligation, or set of obligations, framed in terms of justice, is 'constructed', at least in part, through interaction among state actors, non-state actors, and individuals. The evolution and crystallisation of norms of international justice (the processes of becoming) therefore depend for their efficacy and legitimacy on some degree of consensus and shared understanding among global political actors. This stands in stark contrast to the liberal cosmopolitan contention that the demands of justice, and the raft of HR which they inform, exist *a priori* and that their successful implementation through institutional mechanisms would provide the blueprint for a just and equitable international society. It is also at odds with the assertion common among pluralists that the sole purpose of international society, both from the perspective of that which is conceivable

and that which is desirable, is the maintenance of order. The associated claim is that when this singular purpose appears to conflict with the demands of justice, it is fidelity to order, and to the peaceful conditions arguably associated with it, which must prevail.

However, this project combines an exposition of the development of HI among the society of states, with a detailed analysis of constructivist theorising, in an attempt to demonstrate the ways in which considerations of justice have entered and influenced the diplomatic dialogue, challenging the assumed supremacy of order. It contends that, in so doing, they have effectively served to establish a limited framework for an international duty of justice, which is self-consciously less demanding than that advocated by the cosmopolitan tradition but notably more ambitious than pluralist, and certainly realist, parameters would allow. This conception of the international duty of justice, or the obligations which may be said to exist between citizens and strangers, is best appraised using constructivist tools of analysis since an account of international justice, viewed through the lens of constructivism, may serve to strike the balance between the interrelated values of being and becoming.

Since each of the key elements at work in this thesis (constructivism and HI) is so vast, a formative task of the project is to establish and provide justification for the inclusion of those elements or individual theorists which have been incorporated and, conversely, for the exclusion of certain other perspectives. The following overview of the literature surrounding HI and constructivism will explore the ontological and epistemological positioning of a

number of theorists and provide an explanation for what might otherwise be considered the controversial omission of certain world renowned contributors to the field. It will be argued that each of the thinkers whose accounts of international justice will ultimately infuse the constructed duty of justice at which this thesis takes aim, has attempted to synthesise and amalgamate some element of constructivist theorising with insights drawn from a competing theoretical perspective. Equally significantly, each engages with the obligations incumbent upon international society in the face of humanitarian crisis; thereby providing the foundations for a wider appreciation of international justice. Alternatively phrased, each of the featured thinkers has employed the framework of the ontology of becoming (albeit with varying degrees of success) to consider the possibility of reform in the arena of HI, or international justice more generally.

This chapter will begin with a brief summary of the issues underpinning humanitarian intervention. This will be followed by an exploration of what might be thought of as 'conventional constructivism' and the contribution of its advocates to the key debates within IR. The remainder of the chapter will seek to demonstrate the ways in which certain key theorists have attempted to develop, situate or reinterpret constructivist insights, or to hybridise constructivism with: cosmopolitanism, communitarianism, solidarism and feminism respectively, with a view to establishing or defending certain standards of international justice. A more detailed analysis of the work of each of these theorists will form the basis of the forthcoming substantive chapters, as will an appraisal of whether constructivism can be hybridised without

compromising its own analytical scope or integrity. Taken together, this analysis will attest to the unique value of the constructivist ontology of becoming to an understanding of the obligations which derive, or may come to derive, from taking seriously the terms of international justice.

II. Humanitarian Intervention: Illegal but Moral?

Chief among the many reasons that an analysis of HI provides such valuable insight into the issue of international justice is the fact that it “poses the conflict between order and justice in its starkest form for the society of states”.³⁹ In incorporating any number of debates within and beyond IR, it presupposes and demands a multidisciplinary approach to the regulation of the use of force and allows for the mapping of complex and sometimes contradictory normative developments. This focus on cross-disciplinary analysis lends itself to constructivist theorising, since a constructivist conception of becoming entails political, legal, and ethical dimensions. The requirement of feasibility which this thesis interprets as a key component of the ontology of becoming is dictated by the confines of PIL, which are themselves determined by the consensual nature of the international system. Assessing the potential for moral development within international society, therefore, necessitates a pragmatic consideration of current legal constraints. Changing political norms can certainly lay the foundations for developments in PIL. However, it is equally possible for existing legalistic standards to preclude the institutionalisation of ethical prescriptions. As such, the intriguing legal

³⁹ Nicholas J. Wheeler, ‘Pluralist or Solidarist Conceptions of International Society’, *Millennium: Journal of International Studies*, 21(3), 1992, pp.463-487, pp.486

status of HI is a key element of the unique perspective which it provides into the machinations of the international system.

At least from the perspective of PIL, customary and conventional, the assumption in favour of non-intervention is well-rehearsed. It is enshrined in Article 2(4) of the UN Charter:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.⁴⁰

Acts of aggression of this nature produce a concomitant right of self-defence on the part of the state which has been offended against, or indeed, among any state which might be allied to it. This right finds expression in Article 51 of the Charter.⁴¹ Conversely, the limitations placed upon the UN itself in its relations with its members guard against HI.

Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.⁴²

One further exception to this principle is: "Security Council enforcement action under Chapter VII, but this requires a finding that there is 'a threat to the peace, breach of the peace, or act of aggression (that threatens) international

⁴⁰ Charter of the United Nations, Article 2(4), [<http://www.un.org/aboutun/charter>],[02/10/06]

⁴¹ The article reads: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. (Ibid)

⁴² UN Charter, Article 2(7)

peace and security”⁴³. If the case can be made that the actions of a domestic government imperil global stability, the Security Council (UNSC) is empowered to intervene on the grounds of restoring order but no other body, be it an individual state, a coalition, or a regional organisation has the requisite legal authority to take such action without the explicit endorsement of the UNSC. Thus,

[It] is difficult to escape the conclusion that international law forbids the unilateral use of force to rescue victims of a humanitarian catastrophe. As a matter of treaty law, the UN Charter does not exempt unilateral humanitarian intervention from the prohibition on the use of force, and prominent General Assembly resolutions clearly support this interpretation. As a matter of customary international law, the International Court of Justice in *Nicaragua vs. United States* concluded that custom does not permit unilateral humanitarian intervention.⁴⁴

However, there is evidence to suggest that a normative shift resulting in a reconceptualisation of ‘sovereignty as power’ to ‘sovereignty as responsibility’ is generating increased support for the practice of HI, at least in its multilateral form. Since the 1990s in particular, humanitarian imperatives have featured with marked frequency in the diplomatic dialogue of international society and, consequently, the language of HR has been reiterated and incorporated, to a certain extent, into state practice. As a result, those states which routinely violate the HR of their citizens are said potentially to forgo their right to territorial integrity and the definition of ‘threats to international peace and security’ has been recast, to some extent, to incorporate the massive refugee

⁴³ Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, (Oxford, Oxford University Press, 2002), p.15

⁴⁴ Ryan Goodman, ‘Humanitarian Intervention and the Pretexts for War’, *The American Journal of International Law*, 100(1), January 2006, pp.107-141, pp.111

flows and potential spread of disease which can result from humanitarian crisis.⁴⁵

However, the disjuncture between legal and moral perceptions of HI persists and has recently been revisited by the contributors to the R2P which, in 2005, reinvigorated debate surrounding the appropriate response to egregious violations of HR, or acts of state-sponsored oppression. R2P, which secured some degree of support from the vast majority of UN member states, represented an explicit attempt by the international community to reconcile its conflicting imperatives to respect and maintain both states' rights and HR and was instrumental in the development of conditional sovereignty; the suggestion that the privilege of territorial integrity is contingent upon respect for 'basic' HR. Perhaps the most significant finding of the Commission, chaired by Gareth Evans and Mohamed Sahnoun, was that, whilst the primary responsibility for the welfare of citizens rests with their home state, at times of humanitarian crisis, this is negotiable.

[W]here a population is suffering serious harm, as a result of internal war, insurgency, repression, or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.⁴⁶

In other words, if a state fails to discharge its duties, the responsibility passes to the international community.

⁴⁵ It was this principle which allowed representatives of the international community to take action to establish Kurdish 'safe havens' in Iraq in 1991

⁴⁶ ICISS Report, Synopsis, *Basic Principles*,(1B) <http://www.iciss.ca/pdf/Commission-Report.pdf>, [02/02/07]

Notwithstanding the arguable increase in support for acts of forcible HI conducted under the auspices of the UN, the fact remains that no legal justification exists in defence of *unilateral* HI (defined in PIL as any intervention lacking UNSC authorisation). There can be little doubt that, in recent years, the framing of the R2P has brought the issue to increasing prominence. However, all references to the possibility of alternative sources of 'proper authority', the element of the ICISS report deemed by many to be its most pioneering dimension, were ultimately excluded from the 2005 World Summit Outcome Document. This indicates that the international community and the framers of PIL are no closer to agreement over the infringement of national sovereignty, in the absence of UNSC endorsement. However, operational and logistical restrictions almost always act as barriers to successful multilateral HI and it is the failure to generate consensus within the UNSC, or the crippling dearth of political will, which often leads to the perception that legal and moral standards are irreconcilable.

The stalemate which results is testament to the inability of current PIL to honour legalistic commitments whilst maintaining a balance between the prohibition of force and the protection of citizens in human rights abusing states. It is the contention of this thesis that the constructivist ontology of becoming may offer potential solutions to this quandary. The urgency of outlining and implementing such solutions is clear to those commentators concerned with HI. The matter of how to proceed when the mandate for multilateral HI is not forthcoming but large-scale loss of life appears to demand it illuminates the disjuncture between the restrictions of PIL and

moral intuition. It is the appeal to the emotive notion of 'common humanity' which informs the belief, however nascent and loosely defined, that human beings threatened with annihilation at the hands (or with the acquiescence) of their own government ought to be defended, if necessary by force. It would appear that normative principles concerning HR, as well as the legal and political debates which infuse them with their meaning, have outstripped the development of PIL, leading many commentators to argue that legal parameters may need to be redrawn, or at the very least, strongly reconsidered in the name of international justice. As Charles Beitz claims:

An ideal theory of global justice has implications for traditional doctrines of international law... Consider, as a representative example, the rule of non-intervention. It is often remarked that this rule which is prominently displayed in a number of recent authoritative documents of international law, seems inconsistent with the international community's growing rhetorical commitment to the protection of human rights, which is prominently displayed in the same documents⁴⁷.

This contradiction ensures that almost all IR theorists who concern themselves with justice are committed to projects which have at their basis some sense of becoming. The pervasive nature of injustice in international society and the potential for conflict between legal and moral considerations drives the desire to reform international politics. There remains contention, however, as to whether cross-cultural consensus and some limited respect for existing legal parameters must constrain the pursuit of this goal. If they must then change is necessarily piecemeal and inconsistent but if 'universal' values

⁴⁷ 'Justice and International Relations', *Philosophy and Public Affairs*, 4(4), Summer 1975, pp.360-389, pp.386

claim their own transcendent legitimacy then barriers to reform are far from insurmountable. Once again, a balanced response to this issue can be extrapolated from the constructivist conception of becoming. In line with this framework, as further exposition will reveal, it may be possible to impinge upon certain aspects of existing legal doctrine, provided that it can be demonstrated that the law itself no longer reflects the prevailing normative standards at work across the international system. After all, as Stephen J. Toope has argued:

International lawyers can also learn about the incremental evolution of norms – the behaviour of international actors is not ‘determined’ by the existence or non-existence of a legal rule, but by norms which may *harden* over time into binding obligations.⁴⁸

In sum, there can be little doubt that at present HI, particularly that which lacks UNSC authorisation, is prohibited under the terms of PIL. However, there may be scope for constructivism, with its understanding of the relationship between being and becoming, to address the ethical gap which this commitment to law over morality threatens to engender. In exploring this possibility, each of the forthcoming substantive chapters will consider the issue of HI from a number of perspectives, taking account of each of its most controversial dimensions. As well as the issue of agency – in essence the matter of whether intervention which lacks UNSC authorisation may ever be considered legitimate - each chapter will also analyse: the definition of ‘just cause’; the most appropriate military means for a campaign orchestrated for

⁴⁸ ‘Emerging Patterns of Governance and International Politics’, Michael Byers (ed), *The Role of Law in International Politics*, (Oxford, Oxford University Press, 2001), p.98-99

humanitarian ends; and the most durable and reasonable post-conflict settlement available to interveners and target states. Only in investigating each of these separate debates can the contribution of constructivism to their resolution effectively be determined.

III. 'Conventional Constructivism'

In order to appreciate the ability of constructivism to underpin a hybridised understanding of HI and international justice, it is first imperative to establish both its basic tenets and its commitment to becoming. Much of the analytical capacity of constructivism concerns the understanding of norms which the theory informs.

i. The Significance of Norms

Constructivism focuses enquiry "[o]n the ideational processes that construct the world rather than on given agents and material structures typical of conventional international relations".⁴⁹ As such, it is predominately concerned with the legal and political norms upon which international society is structured. The nature and significance of norms has been summarised by Nicholas Wheeler.

Constructivist theorising in international relations defines a norm as the existence of shared understandings as to the permissible limits of state action, and an acceptance that conduct should be justified and appraised in terms of that norm.⁵⁰

⁴⁹ J Ann Tickner, 'Gendering a Discipline: Some Feminist Methodological Contributions to International Relations', *Signs: Journal of Women in Culture and Society*, 30(4), June 2005, pp.2173-2188, Chicago Press, pp.2179

⁵⁰ Nicholas J Wheeler, 'The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in

For constructivists, the emergence, development, and crystallisation of these norms provides the basis of the 'shared understandings' which bind together international society and which give meaning to the constitutive "rules of the game".⁵¹ Not only do changing norms both restrict and enable the behaviour of states, they also serve to infuse the ubiquitous yet ill-defined currency of 'power' with a more sophisticated awareness of social context than positivism has tended to allow. This is because constructivists acknowledge that

[j]ust as the relationship of the individual to society is defined by a network of norms and values, the relationship of the state to other actors in the international system can be thought of as being governed by a network of permissions and constraints.⁵²

Against such a backdrop, "norms are not material barriers" and, as such, their "constraining power derives from the social disapproval that breaking them entails".⁵³ A clear example of this can be drawn from PIL, an arena governed by compliance rather than enforcement, in which infringements of the 'rules' rarely result in direct punishment but persistent deviation from established standards can severely damage the reputation of a given political actor. Thus, factors such as the fear of opprobrium, or the desire for acceptance, can be as powerful in terms of their ability to incentivise compliant behaviour as can a preponderance of economic or military influence and, as a norm becomes increasingly embedded in the behaviour and expectations of global political

International Society', Jennifer M Welsh (ed), *From Right to Responsibility: Humanitarian Intervention and International Society*, (Oxford, Oxford University Press, 2002), p.30

⁵¹ See Raymond Cohen, 'Rules of the Game in International Politics', *International Studies Quarterly*, 24(1), March 1980, pp.129-150

⁵² Cohen, 'Rules', pp.129

⁵³ Wheeler, *Saving*, p.5

actors, this “compliance pull”⁵⁴ increases incrementally. Therefore, as the shared understandings which underpin international society begin to evolve, a new range of behaviours are legitimated and actions deemed to be at odds with these normative standards are rendered socially unacceptable. Such is the constructivist understanding of the nature of becoming in IR.

Constructivists also argue that the sense of belonging and legitimacy which derives from compliance can impact directly on the nature of the national interest. This is because

Interests flow from a constructed identity and the identities of all actors in IR fluctuate either through different associations with others (through participation in an international organisation) or through changing self-perceptions.⁵⁵

ii. Continuity and Change

One of the principal advantages of a constructivist approach, framed in terms of norm dynamics, and drawing upon influences beyond the traditional confines of IR, is its ability to account with equal clarity for both change and continuity in international politics. In fact, it is the constructivist appreciation of the processes which govern change at the international level which is arguably the most compelling element of the theory. This is because constructivists take account of the development of normative expectation, state practice, and the interplay between the two. This ensures that they are uniquely placed to assess and appraise the development of international politics.

⁵⁴ Beth A. Simmons, ‘Capacity, Commitment and Compliance: International Institutions and Territorial Disputes’, *Journal of Conflict Resolution*, 46(6), December 2002, pp.829-856, pp.846

⁵⁵ Henry Steiner, Philip Alston and Ryan Goodman, *International Human Rights in Context: Law, Politics and Morals: Third Edition*, (Oxford, Oxford University Press, 2007) p.684

By focusing on social epistemology, the role of collective knowledge in international social life, and the communities in which knowledge originates and is then diffused, politically selected, and institutionalised, this approach helps explain where international practices and institutions – more broadly, global governance – come from and why certain ideas congeal into human practices and institutions whereas others do not.⁵⁶

As a consequence, the theory also provides the tools for a comprehensive critique of the limitations of the current state system and of PIL. This is chiefly because constructivists derive their understanding of the nature of international politics from the shared meanings and expectations produced through negotiation and interaction between global political actors and from the impact of these changing expectations on perceptions of morality. A further appeal of a normative, constructivist, framework for research is, therefore, the fact that it allows for and encourages an engagement with the morality of international politics. Constructivists acknowledge that, in many respects, reifying normativity, rather than apologising for it, actually increases the amount of source material which can be incorporated into a given debate. In essence,

because norms by definition embody a quality of ‘oughtness’ and shared moral assessment, norms prompt justifications for action and leave an extensive trail of communication among actors that we can study.⁵⁷

⁵⁶ Emanuel Adler, *Communitarian International Relations: The Epistemic Foundations of International Relations*, (London and New York, Routledge, 2005), p.3

⁵⁷ Finnemore and Sikkink, ‘Norm Dynamics’, pp.892

iii. The 'Middle Ground'

The ability of constructivism to assimilate political, legal, social and ethical considerations has led Emanuel Adler to argue that it may lay successful claim to the coveted theoretical space between competing traditions.⁵⁸

Constructivism occupies the middle ground between rationalist approaches (whether realist or liberal) and interpretative approaches (mainly post-modernist, post-structuralist and critical), and creates new areas for theoretical and empirical investigation⁵⁹.

This view is based upon the constructivist preoccupation with "understanding how the material, subjective and intersubjective worlds interact in the social construction of reality",⁶⁰ as opposed to the rationalist dismissal of any factor beyond the material, and the post-structuralist blanket mistrust of positivism. Furthermore, the claim at the heart of constructivism that actors and structures are mutually constituted also represents a theoretical midpoint between two extremes. In fact, Adler is as resistant to attempts to define constructivism as an element of the post-structuralist project as he is to those who might wish to locate it in the rationalist camp. He argues that the "purely materialist ontology"⁶¹ of realism, neo-realism and dependency theories is of little scholarly merit in this context and that the neo-liberal attempt to treat

⁵⁸ This position can arguably also be associated with John Ruggie who subdivides constructivism into three categories: 'neo-classical' (a pluralist, largely positivist account of IR which promotes a commitment to a social science agenda); post-modern constructivism (a constitutive or post-structuralist approach which rejects social science premises); and 'naturalistic constructivism', which represents a balance between the two and, as such, occupies the same ontological 'middle ground' identified by Adler. See Emanuel Adler 'Seizing the Middle Ground: Constructivism in World Politics' *European Journal of International Relations*, 3(3), 1997 and John Ruggie, *Constructing the World Polity: Essays on International Institutionalisation*, (London, Routledge, 1998), p.35

⁵⁹ Emanuel Adler, 'Middle Ground', pp.319

⁶⁰ Ibid, pp.330

⁶¹ Ibid, pp.331

ideas and interests as separate entities undermines and devalues its regrettably “minimalist and therefore weak epistemological approach”,⁶² consolidating its limitations as a theory already overly reliant on “methodological individualism”.⁶³ However, Adler argues with equal veracity that the constitutive approaches, with which constructivism is often associated, are also subject to significant flaws, which do not impact upon constructivist theorising. The over-arching commonality between all constitutive or post-structuralist theories is their rejection of the search for objective ‘Truth’ claims, anchored in their assertion that no conception of the ‘Truth’ can exist independently of the language in which it is framed. On this side of the debate, structures are entirely ideational and material considerations are relegated in favour of discourse analysis. It is Adler’s claim that

[c]onstitutivists... concede too much to ideas; unless they are willing to deny the existence of the material world, they should recognise, as constructivists do, that ‘a socially constructed reality presupposes a nonsocially constructed reality’ as well and that, consequently, the question of how the material world affects and is affected by the conceptual world is crucial for social science.⁶⁴

In support of his assertion, Adler develops an argument first mooted by Alexander Wendt; namely that an ‘ontological map’ could be employed to identify the character and scope of various IR theories. According to Wendt’s version of the map, constructivism shares with a number of other theories (including post-modernism and the English School) a dual commitment to Holism and Idealism, which distinguishes it from more individualistic or

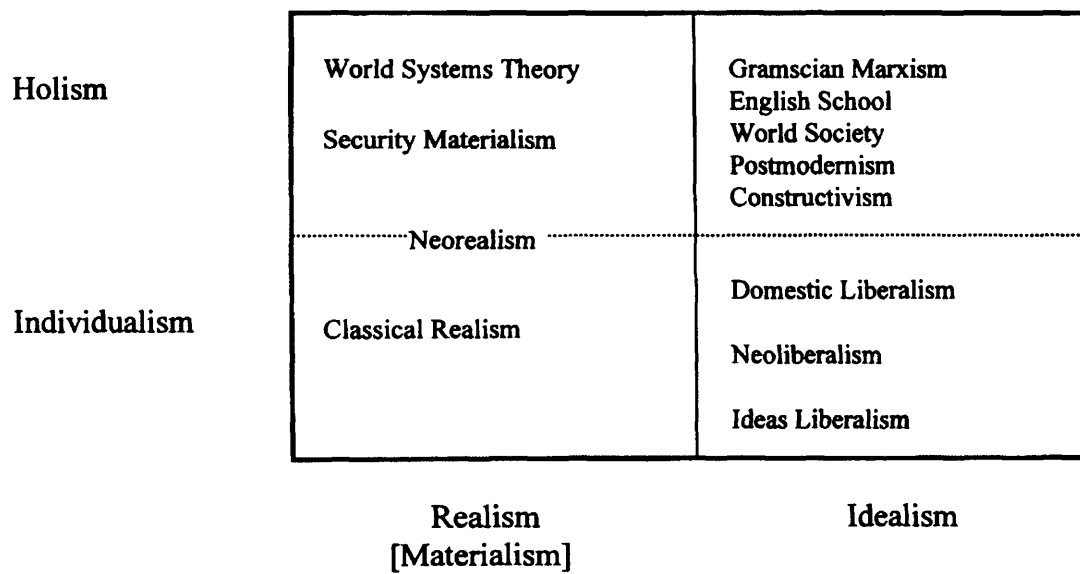
⁶² Ibid

⁶³ Ibid

⁶⁴ Ibid, pp.332

materialist theories. In other words, constructivism favours the ideational over the material and is more concerned with the constitutive nature of community values and identities, than with individuals *per se*.

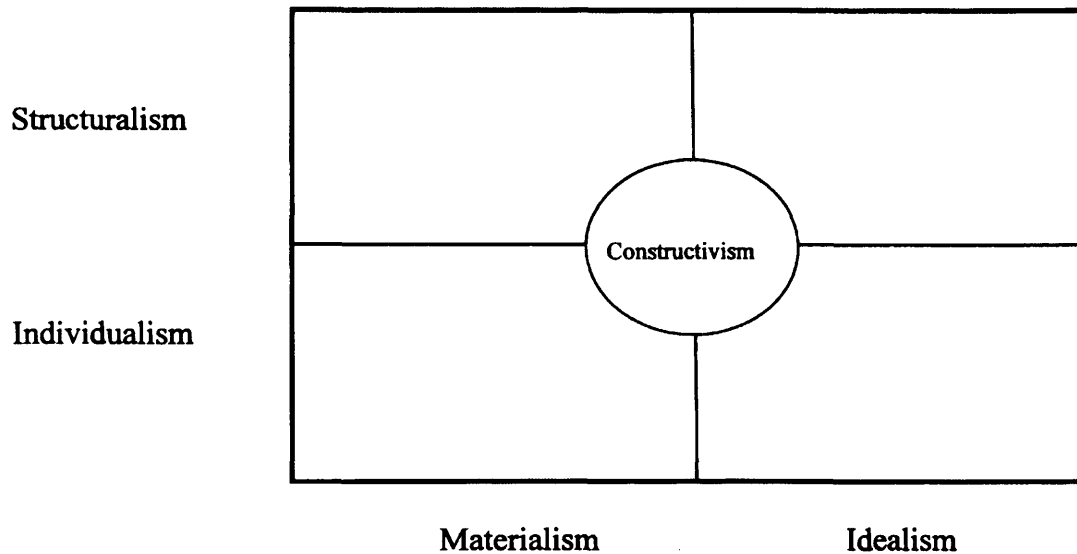
Figure 1: The Ontological Position of Constructivism according to Alexander Wendt's Map of International Theory⁶⁵



According to Adler, Wendt's understanding of the ontological positioning of constructivism understates the degree to which the theory is capable of balancing all four factors: Holism, Individualism, Materialism and Idealism. Adler's own diagrammatic representation demonstrates his claim.

⁶⁵ Ibid, p.331

Figure 2: Emanuel Adler's Reconceptualisation of Wendt's Map of International Theory: Constructivism as the Middle Ground⁶⁶



However, it is the contention of this thesis that Adler's characterisation is slightly misleading. Constructivism is not precisely equidistant to rationalist and reflectivist (or constitutivist) theory. Neither does it perfectly combine elements of both traditions. Instead, the broad theoretical school of constructivism is most accurately described not as a map but as a spectrum which connects state-centric branches of the theory with more constitutivist conceptions of IR. Thus, a range of approaches to international politics can be considered to form part of the constructivist project.

There can be little doubt that many commentators would associate Wendt himself with one end of the constructivist spectrum. After all, his now famous claim, that "anarchy is what states make of it",⁶⁷ represents nothing less than an attempt to overturn the assumption that the interests of states are fixed,

⁶⁶ Ibid

⁶⁷ See Alexander Wendt, 'Anarchy is What States Make of It: The Social Construction of Power Politics', *International Organization*, 46(1), 1992

predictable, and concerned exclusively either with the consolidation of their own power, or with containing the influence of others. He is also credited with the suggestion that identity and interests share a symbiotic relationship, which can fundamentally alter the expectations and behaviours of state actors.⁶⁸ Therefore, it is fitting that an understanding of Wendt is considered by many to be so crucial to an understanding of constructivism and the justice-claims for which it might provide grounds. However, Wendt is not without his critics. Influential commentators from within the constructivist tradition itself have identified the ways in which his determination to operate within the confines of what he considers to be the 'scientific' basis of the discipline limits the scope of his appreciation of becoming and has even lead to suggestions that "the promise of constructivism"⁶⁹ remains unfulfilled. For these detractors, Wendt appears to have identified an approach which is perfectly positioned to challenge conventional IR theory (by unpacking privileged assumptions of power and interest) but has fallen short of the potential implicit within it by demonstrating an unnecessary deference to the dominance of states and to 'scientific' modes of enquiry. As Christian Reus-Smit claims,

Wendt's state-centrism, systematic theorising, and scientific realism are hotly contested by other constructivists.⁷⁰

Many of Wendt's critics are more persuaded by the views of Mervyn Frost, a constructivist who is notably more committed to the post-structuralist element of the tradition. Frost's conception of international ethics as *constitutive* of the

⁶⁸ Ibid

⁶⁹ See Ted Kopf, 'The Promise of Constructivism in International Relations Theory', *International Security*, 23(1), Summer 1998, pp.171-200

⁷⁰ 'Imagining Society: Constructivism and the English School', *British Journal of Politics and International Relations*, 4(3), October 2002, pp.487-509, pp.491

actors which participate in it claims that states become socialised in certain common practices or codes of ethics, which ultimately permeate their identity and can lead to changes in their behaviours and expectations⁷¹. For Frost,

[a]lthough the national society is the most important community for realisation of the individual, the state, which is the highest form of community in which individual realisation occurs, is also constituted intersubjectively within a society of states. Thus, just as domestic communities help constitute the normative understanding of individuals within states, the community of states helps constitute normative discussion among states⁷².

Although framed in terms of differing methodologies, both Wendt and Frost's arguments can be considered as elements of the normative constructivist tradition, in that, implicit in both approaches, is the possibility of change and moral progress. In each case, shifting the focus from power politics or a preoccupation with security, to the suggestion that global political actors are able to frame and reframe their own international relations based on appeals to oscillating interests, creates a theoretical space for normative concerns. Different elements of the constructivist project also lend themselves to hybridisation in different ways, with Wendt's focus on the practical realities of states as the core actors of international politics compatible with communitarian convictions and Frost's approach to the constitutive nature of ideas, sharing theoretical ground with feminist views concerning self-perpetuating and unequal power relations; a response to which informs much of the remainder of this project.

⁷¹ *Ethics in International Relations: A Constitutive Theory*, (Cambridge, Cambridge University Press, 1996)

⁷² Adler, *Communitarian International Relations*, p.8

Although Adler's notion of constructivism as the perfect equilibrium of rationalist and reflectivist traditions is an oversimplification, there are many respects in which employing the constructivist spectrum to analyse international justice does offer balance between competing claims. The ability to unpack the relationships: between positivism and post-positivism; between the material and the ideational; and between states' rights and HR, rather than to embrace them as inescapable dichotomies represents one of the main strengths of constructivist theorising. It is the reason that

Constructivism offers alternative understandings of a number of the central themes in international relations theory, including: the meaning of anarchy and the balance of power, the relationship between state identity and interest, an elaboration of power, and the prospects for change in world politics⁷³.

iv. Empirical Constructivism

It is this final claim, that constructivism offers a unique appraisal of the 'prospects for change in world politics' which informs the hypothesis that it is the most appropriate theory for an appraisal of international justice. This is because constructivism boasts both an ethical and an empirical component; the latter of which is illustrated by Martha Finnemore and Kathryn Sikkink whose collaboration has produced an outline for the likely patterns of the process of norm formation. Indicating that constructivism, whilst capable of extensive normative analysis, is nevertheless anchored in an appreciation of the realities which govern interaction between state actors, Finnemore and Sikkink argue that in order for a norm to be incorporated into the practices of IR, it will likely pass through three distinct phases: emergence, acceptance (a

⁷³ Kopf, 'Promise', pp.172

so-called “norm cascade”⁷⁴, resulting from a “tipping point”⁷⁵ whereby at least a third of the states which constitute international society embrace the terms of the new norm), and finally internalisation⁷⁶. They assert that once the development of any new set of behaviours or values reaches this final stage, the process of crystallisation will result in the norm acquiring a “taken-for-granted quality”⁷⁷ which will consolidate its place in state practice and allow for the possibility that it may become the “prevailing standard of appropriateness against which new norms emerge and compete for support”.⁷⁸ This process accounts for, among other key developments in international society, the institutionalisation of female suffrage and the establishment of the Geneva Convention, both of which appear to evidence the validity of Finnemore and Sikkink’s analysis; an analysis which, in and of itself, suggests that the empirical framework of constructivist theorising grounds its ethical component in a sophisticated understanding of the ways in which social mores develop into normative standards through the mechanisms of *real world* politics.

v. The Limitations of Conventional Constructivism

For detractors of constructivism, this focus on the realities of international politics is the basis of critique. Even those persuaded by the ability of constructivism to assess both ‘what is’ and ‘what could be’ have tended to express concern over whether it is conceptually capable of envisaging what ‘ought to be’. Those who doubt the normative credentials of the theory have

⁷⁴ Finnemore and Sikkink, ‘Norm Dynamics’ pp.895

⁷⁵ *Ibid*

⁷⁶ *Ibid*, pp.891

⁷⁷ *Ibid*, pp. 895

⁷⁸ *Ibid*

suggested that the work of those commentators who have attempted to trace the development of certain norms and trends amounts to little more than sociological description and that those who have failed either to acknowledge or to explore “the subterranean normativity that motivates much of their work”⁷⁹ risk squandering the opportunity to generate progress in international politics. For these critics, simply to explain how IR functions without engaging in the requisite moral critique as to whether it does so successfully is inadequate and welcomes attempts to amalgamate the descriptive power of constructivism with a more normatively demanding theoretical framework.

The remainder of this chapter takes aim at this accusation and provides a detailed exposition of the various ways in which conventional constructivism has evolved in response to alternative theoretical influences. This analysis of the subdivision, redefinition, and hybridisation of constructivism is a core element of the wider thesis. As well as providing an innovative and unusual lens through which to appraise the strengths and limitations of constructivism itself, it also offers a means by which to assess the degree to which the nature, and limits, of an international duty of justice may be reflected in a convergence between a range of theoretical traditions, or among notions of becoming rather than being.

⁷⁹ Ibid, pp.488

IV. Cosmopolitan Constructivism

The first theory with which constructivism will be hybridised is cosmopolitanism. This is partly because it is the approach most readily associated with international justice, since all proponents of the theory share an explicit commitment to the dissemination of HR. In many respects, it is also the most challenging form of hybridisation since, ostensibly, cosmopolitanism and constructivism are fundamentally opposed to one another. After all, in cosmopolitan terms ‘basic HR’, albeit defined very differently by various adherents of the tradition, represent an *a priori* commitment to the moral equality of persons and are therefore not contingent upon the processes of socialisation and crystallisation which are so vital to the constructivist outlook. Nevertheless, the relationship between the two theories is instructive and certain commentators have attempted, though not necessarily consciously, to fuse the respective terms of both positions.

For those inspired by the suggestion that the changing tone of IR theorising (represented by the developing critical perspective of the ‘third debate’) has the potential to affect change, conventional constructivism’s continued focus on states, as against the individuals which constitute them is insufficiently far-reaching. In response to this, an argument has emerged which asserts that the appreciation of norm dynamics engendered by constructivism might be successfully combined with an explicit attempt to build and codify a set of universal HR. This has led certain commentators to embrace what might be thought of as “the clear cosmopolitanism that motivates”⁸⁰ many constructivist

⁸⁰ Ibid, pp.491

projects. In simple terms, some ‘cosmopolitan constructivists’ seem to suggest that the development of norms might be manipulated in an attempt to expedite the dissemination of HR. Having established that the desire to maintain a reputation as a state which ‘plays by the rules’ can constrain even the most powerful of actors, cosmopolitan theorists often argue that the key to progress lies in adapting these rules so that they might more accurately reflect the dignity owed to all individuals, by virtue of their humanity. This may result in deliberate attempts to exclude or shame pariah states and in the building of new institutions, or the adaptation of existing mechanisms, to systematise this process of exclusion. For advocates of this approach: state boundaries do not dictate the nature of morality, or the limits of an international duty of justice; state majoritarianism is not a good unto itself; and the norms which find favour in international society ought to be those which take aim at guaranteeing the conditions which are necessary for all individuals to be able to live “decent human lives”⁸¹. In other words, the processes of ‘becoming’ ought to follow a teleological path constructed in line with HR standards.

Fundamental to cosmopolitan constructivism (as against traditional cosmopolitanism or conventional constructivism) is the related assertion that certain HR norms are already firmly established within the fabric of international society. However, from the perspective of liberal cosmopolitanism in its traditional form, it is the content of HR norms, not their widespread acceptance, which infuses them with their moral authority. These standards transcend the formal establishment of PIL and the international

⁸¹ Allen Buchanan *Justice, Legitimacy and Self-Determination: Moral Foundations for International Law*, (Oxford, Oxford University Press, 2004), p.109

community and, therefore, cannot be said to derive their legitimacy from acceptance within this community. By way of contrast, a conventional constructivist approach assumes that there is something implicit in the patterns of norm formation which imparts legitimacy to those norms which survive the processes of selection and diffusion; since these are the values around which international society has tended to converge.

Cosmopolitan constructivism attempts to synthesise these viewpoints by contending that certain HR standards ought to be regarded as foundational and are, in fact, already firmly established within the normative expectations of the international community. Nevertheless, their continued influence and development are dependent upon the institutional mechanisms which operate within international politics and, as such, the task of IR theorists and practitioners is to address the institutional shortcomings which threaten the content and scope of HR norms. In the case of HI, for example, cosmopolitan constructivists contend that the norm of human protection, or the standards governing 'sovereignty as responsibility' have generated sufficient consensus to indicate that the inability to enact their terms must logically be due to the political deadlock generated by the structure of the UNSC, or a lack of political will amongst particular, intransigent, global political actors. In short, the normative commitment exists but the political commitment does not and only thorough-going institutional change which introduces accountability mechanisms or compliance monitoring can force the hand of those who refuse to acknowledge the moral and normative shifts which the universalisation of HR has already engendered.

From this perspective, the suggestion that HR norms exist *a priori* is, seemingly, relatively incidental since, even if this were not the case, they have come to exist and, as such, there is now a moral imperative to bring institutions in line with the values which give them purpose. This conception of becoming as a normative process which is, nevertheless, constrained by the political and legal realities of a consensual system is more restrictive than an overtly cosmopolitan commitment to reframing international society in opposition to existing PIL. However, breaching PIL may be permitted, in certain cases, if the mismatch between normative and legal considerations is sufficiently marked to justify such a deviation. This is because, for cosmopolitan constructivists the value of PIL lies in its ability to codify and enforce moral standards. As such, when its terms conflict with these moral imperatives its legitimacy may be called into question. Nevertheless, the constructivist component of the hybridised theory tends to place limits on the circumvention of PIL by emphasising the need to respect the consensual nature of the system and avoid imposing liberal values with no regard for cultural diversity.

i. Post-Rawlsian Constructivism

This thesis asserts that the cosmopolitan constructivist position might equally be described as a form of 'post-Rawlsian constructivism' which seeks to retain the constructivist framework of John Rawls' *Political Liberalism*⁸² whilst also liberating an analysis of justice from the restrictions put in place in *A Law of*

⁸² See John Rawls, *Political Liberalism*, (New York, Columbia University Press, 1996)

Peoples.⁸³ The suggestion is that in distinguishing between national and international justice and claiming that the former is necessarily deferential to the latter Rawls arrives at an account of justice which is often considered to place excessive emphasis on the perceived practical and moral authority of states. Consequently, the range of HR standards which his theory allows him to endorse as universal or universalisable is, by cosmopolitan standards, relatively narrow. Post-Rawlsian constructivists take aim at expanding the conception of 'justice as fairness' to render it more amenable to the arena of international politics.

ii. Thomas Pogge

Perhaps the best known commentator to engage in this endeavour is Thomas Pogge, Rawls' one-time student. Troubled by the statist parameters of his mentor's work and arguing that it is conceptually incoherent to treat national and international justice as separable entities, Pogge attempts to: appropriate the Rawlsian contention that "Justice is the first virtue of social institutions"⁸⁴; emphasise that, despite Rawls' assertion to the contrary, this is as compelling an argument at the international level as it is domestically; and move beyond what he considers to be the unrealistic focus on 'bounded political communities'; and the associated contention that "justice belongs inside national borders",⁸⁵ to draw attention to the causal mechanisms which perpetuate injustice and misery throughout international society. For Pogge, the standards which govern the 'domestic basic structure' as identified by

⁸³ See John Rawls, *The Law of Peoples*, (Cambridge Massachusetts, Harvard University Press, 1999)

⁸⁴ Hurrell, *Order and Justice*, p.24

⁸⁵ Buchanan, *Justice*, p.30

Rawls (specifically the suggestion that institutional mechanisms which profoundly and unavoidably impact upon the life prospects of individuals must be subject to the demands of justice) also applies internationally. His claim is twofold. The first premise is:

that there is a global basic structure – a worldwide co-operative scheme consisting of a complex pattern of institutions, including the international legal system, whose workings have profound, pervasive, and lifelong effects on individuals and groups⁸⁶.

The related assertion runs as follows:

because these effects are for the most part neither chosen nor consented to by those affected – the global basic structure is... [also]... subject to assessment from the standpoint of justice⁸⁷.

Accordingly, Pogge argues that injustice is perpetuated by our tendency to accept the inequalities engendered by this global basic structure as a given, without exploring the consequences of our own participation in this system, or the possibilities of modifying its terms in favour of the world's poorest people. Whilst he acknowledges that Rawls' "conception of justice is self-consciously parochial",⁸⁸ he places no such limits on his own agenda, which is, ultimately, to provide the basis for constructing an alternative world order which might not be subject to the limitations of the loose association of self-interested states, which currently characterises international politics.

⁸⁶ Ibid

⁸⁷ Ibid

⁸⁸ Thomas Pogge, *Realizing Rawls*, (Ithaca, Cornell University Press, 1989) p.212

This emphasis on ‘value-overlap’⁸⁹ as a development of “overlapping consensus”⁹⁰ leads Pogge to reject the two-step contract identified by Rawls, (in which individuals contract together to form a political community and then such communities contract to agree upon standards of international justice). Instead he claims that individuals in the ‘Original Position’, would not adopt the same standards of justice as the ‘peoples’ empowered to make such choices on their behalf in the Rawlsian construct. In fact, he goes as far as to claim that the modus vivendi structure of international society does not adequately represent the interests of individuals; especially those who are the worst off in society. For Pogge, the persistence of this modus vivendi – in which states interact based on considerations of expediency and compromise, rather than shared values, encourages statespeople to: abandon their own moral compass in the name of competition; respect assumptions regarding spheres of influence and turn a blind eye to HR violations which take place therein; focus on increased defence expenditure to the detriment of other more pressing concerns; create an atmosphere of mistrust which tends to result in violence; induce crises in other states to increase their relative strength; and maintain a vicious circle of violence and instability which realists take to be inevitable but which could be counter-acted in a system based on shared values.⁹¹ The continued predominance of the modus vivendi framework also has direct consequences for HI in the sense that it consolidates the lack of political will and unflinching commitment to the national interest, which renders consensus on this issue so difficult to

⁸⁹ Ibid, p.211

⁹⁰ John Rawls, *Theory of Justice: Fourth Edition*, (Cambridge Massachusetts, Harvard University Press, 1999) p.340

⁹¹ Pogge, *Realizing*, p.211-226

generate. This is because “risk-averse players” in the international system are unlikely to “make unilateral sacrifices for human needs and welfare”.⁹²

It is in response to these issues that Pogge takes aim at a bold project; the building of new institutions designed to bring balance to the global inequalities which cause and consolidate human suffering. In order for such institutions to function effectively, they must embody a commitment to an extensive set of HR standards. Furthermore, they cannot derive their normative legitimacy, or their effectiveness, from a continued deference to the balance of power. Instead,

An institutional scheme is value-based only if its participants hold in common some important ultimate values (including some principles for balancing or ordering them) that are significantly embodied in the institutions regulating their interactions.⁹³

In terms which reflect the theme of ‘becoming’ rather than ‘being’, this would seem to suggest that progress in international society would be facilitated if institutions were restructured to reflect existing normative commitments. In response to critics who claim that justice is too contested a notion to provide the building blocks for effective institutions, Pogge argues that

[o]ur primary predicament is not that there is no value overlap, or even that there is too little, but that even those core values that are widely shared play too marginal a role in the design of international institutions and in the conduct of foreign policy.⁹⁴

⁹² Ibid, p.228 (emphasis added)

⁹³ Ibid

⁹⁴ Ibid

In simple terms, the imperative outlined by Rawls to construct just institutions at the national level is expanded by Pogge to the international plain. In this respect, it is reasonable to assert that Pogge's approach to international justice is post-Rawlsian in nature. Furthermore, the fact that those institutions must reflect what Pogge characterises as an *existing* normative consensus across international society (and cannot simply be seen as a means to impose liberal or western values on the rest of the international community) is consistent with his association with constructivists, who would insist that values derive their legitimacy from the consensus which surrounds them. In essence, Pogge is attempting to frame his argument in terms of institutional rather than interactional cosmopolitanism, thereby limiting his prescriptions for reform in international society to those which can be reconciled with the normative convergence, so highly prized among constructivist commentators and so vital to the processes of institutionalisation. His position remains considerably more ambitious than that of Rawls, however, because he contends that the extent of 'value-overlap' is far broader than his mentor would have been prepared to concede. In this respect, Pogge has laid the foundation for a more expansive reading of Rawlsian principles; one which has influenced the work of Allen Buchanan.

iii. Allen Buchanan

In recent years, Buchanan has attempted to formulate a framework for HR and HI which seeks to combine a respect for the realities governing norm formation with a conviction that certain HR are so fundamental to the fabric of international society that they ought to be enforced by institutions of global

governance. In other words, like so many theorists of justice, he has attempted to imbue his understanding of universal standards of morality with a practical appreciation of the dynamics of becoming at the international level. Accordingly, Buchanan outlines the terms of a “moral theory of international law”⁹⁵ capable of anchoring extensive obligations of justice between citizens and strangers and comprehensible from any number of theoretical or ethical perspectives. Although one element of his project, like that of Pogge, takes aim at ‘internationalising’ the Rawlsian principles of the ‘basic structure’ and ‘justice as fairness’, what is particularly engaging, from the perspective of attempts to hybridise his views with constructivism, is Buchanan’s assertion that this can be achieved without a reliance on cosmopolitan first principles. This bold claim, together with his extensive exploration of the issue of HI, renders Buchanan an invaluable contributor to an overview of international justice. His conception of becoming as practical as well as moral informs the principle of “institutional moral reasoning”⁹⁶ which underpins his approach to both international politics and PIL. This thesis asserts that institutional moral reasoning is based on a constructivist understanding of the relationship between becoming and the socialising power of institutions of global governance. Like Pogge, Buchanan argues that the key to progress lies in the notion of ‘value overlap’. However, through his principle of institutional moral reasoning (the twin beliefs that the *institutions* of international society should reflect the *values* of international society and that moralising must be constrained by feasibility) Buchanan claims that this focus on values is accessible even to those who reject specifically liberal ideals.

⁹⁵ Buchanan, *Justice*, p.97

⁹⁶ *Ibid*, p.22

Reiterating the familiar criticism of Rawls that the statist focus and narrow conception of HR at the heart of *The Law of Peoples* undermine the scope and success of the arguments therein, Buchanan calls for an expanded (and expanding) conception of HR. The gulf between the normative consensus which he identifies in international society and the ill-conceived political and legal compromises which he believes serve only to stifle it, is one which troubles Buchanan and motivates much of his enquiry. However, despite his undeniable cosmopolitan convictions, he maintains, in a manner which is akin to conventional constructivists, that a realistic appreciation of norm formation must steer the processes of change which he advocates.

In effect, Buchanan's institutional moral reasoning is defined in the same terms as this project: it is inter-disciplinary in its focus on law as well as morality; it is concerned with the balance between continuity and change; and it acknowledges that moral progress in the international system is contingent upon a realistic understanding of the consensual nature of the society of states. Nonetheless, allied to this apparently conservative approach to the issue of international justice is a radical agenda for reform. Buchanan believes that there exists sufficient value overlap and normative consensus in international society to justify extensive reform to the current state system. In fact, he is prepared to argue that, in certain circumstances, the conscious and calculated breaching of PIL is justified, provided that the intention informing this infringement is the long-term improvement of the status quo and the

implementation of the values which, he believes, the UN in particular came into existence in order to promote.

Like Pogge, Buchanan presents a dynamic conception of HR standards which, rather than being embedded in a fixed and limited overlapping consensus among states, is capable of evolving in response to changing normative and moral imperatives. The suggestion, which will be explored in much greater detail in the forthcoming chapter on Buchanan, is that the set of norms surrounding the moral equality of persons and the HR to which this entitles all individuals are now so intrinsic to human relations that they provide a significant challenge to notions of NS. As such, the institutional framework of international society will continue to fail the individuals to whom it ought to be answerable, until such time as it comes to embody this normative transition, or to reflect the processes of becoming of which it is indicative.

It is on this basis that Buchanan has framed his response to the issue of HI, a further dimension of his work which is compatible with the scope of this project. His views amount to a defence of a rule-governed 'League of Democracies' which, he claims, could and should take responsibility for HI. His argument is based on the suggestion that recent normative developments dictate that states which do not represent the interests of their citizens ought not to be empowered to overturn the convictions of those with a democratically obtained mandate. Calling into question the assumption that multilateralism and HR are necessarily inherently compatible, Buchanan criticises the foundational assumption that state majoritarianism is the most

just form of international decision-making and suggests that for as long as the UNSC continues to demonstrate that it is neither effective, nor legitimate, its privileged position, and the disproportionate power and authority which it confers upon the Permanent Five (P5) will remain profoundly unjust.

Buchanan believes that agreement over core values gives rise to normative constraints, and although those values may derive their 'normative legitimacy' from an *a priori* commitment to the moral equality of persons, (hence Buchanan's cosmopolitanism) they gain their 'sociological legitimacy', or their efficacy, through reiteration and crystallisation (hence his characterisation as a constructivist). In this respect, moralising is of little long-term value, for Buchanan, unless it can be reconciled with the demands of institutionalisation, and becoming is as much a political journey as a moral one. As such, Buchanan establishes the standards according to which he wishes his work to be judged. This thesis will attempt to ascertain how successfully he fulfils his own criteria.

V. Communitarian Constructivism

Perhaps surprisingly, the cosmopolitan constructivist understanding of becoming shares much with that of communitarian constructivists, in that theorists on both sides of the debate accept that values gain resonance through dissemination and crystallisation. However, the key difference between cosmopolitan and communitarian constructivists is that for the former the moral equality of persons dictates the legitimacy of normative development, even absent consensus among global political actors; whereas

for the latter it is the very processes of socialisation which bestow legitimacy upon normative developments. Hence, the suggestion is that the only norms which could or should impact upon international politics are those which are agreed upon by the majority of global political actors. This is not simply a retreat into the realist suggestion that powerful states dictate the will of the international community. Rather it is a self-consciously moral claim that our identities and interests are, and ought to be, shaped and defined by our membership of a specific political community. Consequently, “[h]owever imperfectly, the nation-state is the primary locus of political legitimacy and the pursuit of justice”.⁹⁷ In other words, far from being a barrier to justice, individual political communities are integral to justice claims.

Every state has the boundaries and population it has for all sorts of accidental and historical reasons; but given that it exercises sovereign power over its citizens and in their name, those citizens have a duty of justice toward one another through the legal, social, and economic institutions that sovereign power makes possible. This duty is *sui generis*, and is not owed to everyone in the world, nor is it an indirect consequence of any other duty that may be owed to everyone in the world, such as a duty of humanity. Justice is something we owe through our shared institutions only to those with whom we stand in a strong political relation. It is, in the standard terminology, an *associative* obligation.⁹⁸

Thus, for communitarian constructivists there is something inherently morally significant about the emergence and maintenance of national boundaries. Whilst they may have come into being for arbitrary and often forgotten or contested reasons, their continued existence is vital to the practical and moral

⁹⁷ Thomas Nagel, ‘The Problem of Global Justice’, *Philosophy and Public Affairs*, 33(2), 2005, pp.113-147, pp.113

⁹⁸ *Ibid*, pp.121

infrastructure of international society. In some respects, then, communitarianism offers the most straightforward synthesis with constructivism since proponents of both theories agree that values originate within the boundaries of a given political community, which itself is constitutive of the identities and interests of its members, and that it is negotiation between these competing values which results in what might be thought of as the terms of international justice. Moreover, even if an international duty of justice can be said to exist, it is substantially less demanding than the obligations owed between fellow citizens of a political community and can only be generated by the most egregious violations of those minimal values which are subscribed to by the majority of international society. In other words, becoming is a slow and incremental process built on cross-cultural consensus and maintained by a commitment to non-intervention in all but the most extreme of cases.

i. Robert Jackson

In fact, there are those who are inclined to argue that international society represents such a loose affiliation of identities and interests that becoming and the international duty of justice which might result from it are somewhat fanciful notions. For instance, Robert Jackson has framed his defence of non-intervention in explicitly pluralist terms. Jackson defines the distinction between communitarian and cosmopolitan theorising in this context as analogous to the difference between a “*societas* of sovereign states” and “a global *universitas*”⁹⁹ of individuals. The former is a system of independent,

⁹⁹ Robert H. Jackson, *The Global Covenant: Human Conduct in a World of States*, (Oxford, Oxford University Press, 2000), p.251

self-interested, political communities which are capable of forging superficial alliances and agreements in certain key areas but which are, and ought to be, if cultural imperialism is to be guarded against and international order secured, essentially atomistic in their social relations. The latter system is characterised by some as the inevitable consequence of the increased interdependence generated by globalisation. It dictates that

it is no longer morally tenable... to concentrate only on the interests of those within states and ignore our obligations to the whole of humanity. Individuals rather than states have to be the starting point in the search for global justice.¹⁰⁰

Jackson emphasises that, in his view, the *societas* approach is entirely more persuasive than the cosmopolitan suggestion that NS is imperilled by the development of HR norms. He states that there is very little evidence to suggest that a transition from the former to the latter has taken place, or is likely to do so in the foreseeable future and he contends that the very nature of globalisation itself, though subject to hyperbole and misunderstanding, relies for, its existence and development, on the mechanisms of the state system¹⁰¹. Equally, Jackson rejects the dichotomy which necessarily pits states' rights and HR against one another, embracing instead the suggestion that NS is sometimes the best defence against predation. After all,

one of the reasons why poor, weak, countries are so keen to hang on to state sovereignty and the norm of non-intervention is a quite justifiable fear that

¹⁰⁰ Hurrell *Order and Justice* p.13

¹⁰¹ See Robert H. Jackson, 'Sovereignty and its Presuppositions: Before 9/11 and After', *Political Studies*, 55(2), 2006, pp.297-317

without these defences they would be even more at the mercy of the rich and powerful than they are now.¹⁰²

Furthermore, his work on HI is illustrative of the tendency among cosmopolitan theorists, constructivist or otherwise, to manipulate world events in order to fit them into an existing normative outlook, rather than to objectively appraise them in the correct historical and political context. Considering the cases of: the Kurdish safe havens of the first Gulf War (1991); the deployment of US and UN troops to Somalia (1993); inaction in the face of the Rwandan genocide (1994); the humanitarian crisis in Bosnia (1995); and the NATO-led incursion into Kosovo (1999), Jackson rejects the suggestion that these events are indicative of an increased activism, based on a developing cosmopolitan sentiment, which prioritises individuals over states. Instead he points to: inconsistency; poor choice of military means; lingering issues of national self-interest; and an on-going tendency for leaders to concern themselves predominately with the welfare of their own military, over that of non-combatants, to counter the suggestion that a linear pattern of interventionism is emerging. Moreover, he argues that even if such a tendency were gaining ground within international society, it ought, on both moral and prudential grounds, to be treated with extreme caution, since the norm of non-intervention offers more effective protection for individuals and states than would a general license to intervene. For Jackson, the lesson of HI in the 1990s is not that the infringement of NS on humanitarian grounds has become the prevailing norm, nor that it should be rejected out of hand. Instead he suggests that

¹⁰² Chris Brown, 'Review Article: Theories of International Justice', *British Journal of Political Science*, 27(2), April 1997, pp.273-291, pp.294

humanitarianism can be pursued within the pluralist framework of international society at least up to a point. The ethics of human rights have to be fitted into the pluralist framework of international society and cannot sidestep that framework. That is the only operational context within which human beings can be defended in contemporary world politics.¹⁰³

Conversely, acts of HI cannot be governed by inflexible rules and unshakeable moral precepts of the sort that cosmopolitans tend to attempt to apply to issues of HR. Jackson argues that, in cases of HI, “What the most responsible choice would be in any particular case is not something that can be determined in principle or in advance”¹⁰⁴ but rather on a case-by-case basis which takes into consideration a range of factors and contingencies. In fact, in his view, this speaks to the wider issue of how international politics must be conducted. For Jackson, IR can only be understood in terms of a “situational ethics”¹⁰⁵ which is responsive to the realities of inter-state interaction, as well as the “intractability of *all* political situations, and the moral quandary in which *all* statecraft operates”.¹⁰⁶ Against this backdrop, responsible criticism of international society must be contextualised by an acceptance of political realities. This is because

[o]ne cannot divorce standards from circumstances and judge international action according to the one or the other without relapsing into the lofty idealist outlook or the narrow realist outlook.¹⁰⁷

¹⁰³ Jackson, *Global*, p.289

¹⁰⁴ *Ibid*, p.250

¹⁰⁵ *Ibid*, p.136

¹⁰⁶ *Ibid*

¹⁰⁷ *Ibid*

In this context, an acceptance of cultural and political pluralism, though imperfect, is not only the most effective way in which to maintain order but it also demonstrates that the pursuit of universal values, for their own sake, is almost entirely devoid of merit.

Significantly, however, Jackson's is a relatively extreme solution to the issue of international justice, precisely because it is framed in terms of a comprehensive defence of the value of pluralism. Although, in his view, an international duty of justice is tantamount to a duty of non-interference and the processes of becoming are unlikely to alter this relationship, an engagement with competing theorists demonstrates that communitarian constructivism need not necessarily prove to be so constrained. In essence, communitarianism demands a respect for NS, whilst constructivism encourages theorists and practitioners to view NS as a malleable social construct. Although communitarian constructivists are unlikely to countenance the over-turning of NS in the name of HR, they are prepared to concede that the values generated within a political community could ultimately come to impact upon the ways in which the members of that society view the NS of their own state and that of others. In other words, the ideas underpinning 'sovereignty as responsibility' or the notion that NS might be limited, or even set aside, in extreme cases is not at odds with the communitarian constructivist conviction that it is a core value of international society. Instead, communitarian constructivists can acknowledge that the normative developments which give meaning to becoming at the international level can,

in the correct circumstances, alter the terms of even the most established elements of PIL.

Intriguingly, even Jackson himself has conceded that the nature of NS is far from static. In his work on decolonisation he points to the emergence of what he terms “juridical statehood”¹⁰⁸ to explain how territories which failed to fulfil the criteria of effective government (outlined as a core element of statehood in the Montevideo Convention on the Rights and Duties of States), were nonetheless welcomed into international society under the auspices of a form of associative statehood¹⁰⁹. This was because the widespread acceptance of the principle of self-determination, and the practical issue of the financial burdens associated with colonisation, increased pressure on states still in possession of colonies to grant independence to these territories by any means necessary. This is indicative of the ways in which the rules which govern membership of the society of states are potentially responsive to normative and political developments. Just as decolonisation could be said to have refined the terms of NS, an increased emphasis on HR standards may, over time, result in a comparable linguistic and normative shift. This would not be the direct consequence of an overt commitment to the *a priori* moral equality of persons but rather would result from incremental changes in the

¹⁰⁸ Robert H. Jackson, ‘Quasi-States, Dual Regimes and Neoclassical Theory: International Jurisprudence and the Third World’, *International Organisation*, 41(4), Autumn 1987, pp.519-549, pp.529

¹⁰⁹ The example pointed to by Jackson is the Congo. He cites James Crawford in claiming that “Anything less like effective government it would be hard to imagine. Yet despite this there can be little doubt that the Congo was in 1960 a State in the full sense of the term. It was widely recognised. Its application for United Nations membership was approved without dissent” (‘The Criteria for Statehood’, *British Yearbook of International Law 1976-1977*, (Oxford, University Press, 1978) p.95)

perception and expectations of global political actors, in line with a constructivist ontology of becoming.

ii. Emanuel Adler

So it is that combining communitarianism with constructivism generates a wealth of new possibilities for expanding our understanding of international justice, by balancing the constraints of the state system with an appreciation of conceivable modifications to it. As Adler argues in his book *Communitarian International Relations: The Epistemic Foundations of International Relations*

communitarian IR, spurred by constructivism, [is] enlivening and driving the quest for a synthesis of traditional and communitarian approaches... Such a synthesis could... be instrumental in grounding constructivism in political philosophy and in conferring on constructivism what it currently lacks most: a theory of politics. It also could provide normative IR theory with the ontological and epistemological tools for bridging the gap between the present reality and the desired human condition¹¹⁰.

In other words, properly framed, what Adler refers to as “constructivist-led communitarianism”¹¹¹ can serve to identify and develop the overlap between legal, political, and moral conceptions of norm formation and may provide the tools both for effective analysis of the status quo and for the much needed adaptation thereof; or, for both being and becoming. This is because a refined version of Adler’s argument that constructivism occupies a theoretical ‘middle ground’ demonstrates that it is the most effective means by which to interpret and judge the behaviour of global political actors and assess and respond to change at the international level. Offering a rebuttal to cosmopolitan

¹¹⁰ p.4-5

¹¹¹ *Ibid*, p.7

assumptions concerning the nature of rights and belief systems and the institutions which enforce them, Adler summarises his communitarian constructivist conviction that normative standards develop and are consolidated through processes of human interaction.

Constructivism shows that even our most enduring institutions are based on collective understandings; that they are reified structures that were once upon a time conceived *ex nihilo* by human consciousness; and that these understandings were subsequently diffused and consolidated until they were taken for granted¹¹².

For Adler, this process of norm formation and crystallisation is neither amoral nor descriptive. Instead, it offers the most effective means to expand the moral community and infuse it with minimal standards of justice. Engaging with those political communities beyond the liberal West and acknowledging the historically and culturally contingent nature of some of the values which we hold dear allows for dialogue both between states and their competing conceptions of morality. Rather than merely seeking to export liberal notions of justice to unwilling and even hostile states, communitarian constructivism calls for even-handed and culturally sensitive debate. Adler suggests that this process might serve to identify consensus where it does exist and sow the seeds for future negotiation where such agreement proves illusive.

A generalised practice of communication and conversation may make it possible to expand the community to the universal level, with no need to diminish or eliminate 'the other' in the process. While communication may not be able to achieve the universal community, to which liberals aspire, it may

¹¹² Ibid, p.322

still create a community thick enough to solve the problems of justice in world politics.¹¹³

This commitment to toleration (somewhat reminiscent of Rawls), the emphasis on the role of language and negotiation in becoming (typical of constructivist theorising) and the distinction between minimal and maximal morality, provide the terms for a communitarian constructivist definition of an international duty of justice. However, as instructive as Adler's work is in delineating the nature and extent of justice-based obligations between political communities, it is to Michael Walzer's contribution to the debate that this thesis now turns.

iii. Michael Walzer

Although Adler identifies the potential for the synthesis of communitarianism and constructivism, he fails explicitly to acknowledge that this hybridised conception has already been employed by one his predecessors. It is for this reason that Michael Walzer, rather than Adler himself, is the chosen representative of communitarian constructivism in this overview of the ontology of becoming and any resultant international duty of justice. The decision to incorporate the work of Walzer into an analysis of HI is relatively uncontroversial. Over thirty years after its initial publication, his seminal *Just and Unjust Wars* remains one of the most influential and compelling appraisals of the dilemmas governing the use of force in international society, and his subsequent works, including the recent *Arguing About War*, have consolidated his reputation as a leading figure in IR theory. In fact, an

¹¹³ Ibid, p.9

examination of HI would be incomplete without at least a cursory engagement with Walzer's viewpoint. Throughout his career, Walzer has grown increasingly preoccupied with the inability of the international community to respond effectively to humanitarian crises and, in so doing he has produced some of the most astute observations of his long career. His pioneering views on 'emergency ethics' and non-combatant immunity, and his assertion that a form of "thin universalism" or "moral minimalism"¹¹⁴ could serve to bridge the cultural gaps between states, whilst demonstrating the necessary respect for the unique ability of a political community to inform the identities of its constituent members, render Walzer's contribution to any understanding of justice almost uniquely valuable.

Ostensibly, however, it is somewhat more contentious to argue that Walzer's views represent a form of constructivist theorising. In fact, he has frequently, and often derisively, been labelled as a communitarian, whose commitment to the concepts of self-determination and non-intervention, except under the most extreme of circumstances, represents the work of "a statist with a sovereignty fixation"¹¹⁵. This caricatured version of his approach takes little or no account of his understanding of the basis of morality and its relationship to international politics. In framing his principle of 'reiterative universalism', Walzer demonstrates the constructivist epistemology which underpins his work as he argues that changing norms allow for morality to be constructed

¹¹⁴ Nicholas J. Wheeler, 'Agency, Humanitarianism and Intervention', *International Political Science Review*, 'The Dilemmas of Humanitarian Intervention', 18(1), January 1997, pp.9-25, pp.10

¹¹⁵ Peter Sutch, 'Reiterating Rights: International Society in Transition', Bruce Haddock and Peter Sutch (eds), *Multiculturalism, Identity and Rights*, (London and New York, Routledge, 2003), p.215

and reconstructed through extensive international deliberations. In stark contrast to the cosmopolitan approach which seeks to argue that certain moral principles are timeless and universal, reiterative universalism as against covering-law universalism and as an element of norm dynamics more generally, provides an alternative conception of becoming and the development of morality, in which a thin conception of the 'good life' emerges through negotiation and legitimation. Walzer's theory can be defined as a means by which

[w]e abstract from the particular to the universal through repeated experience of shared political problems...[to]...develop a reiteratively universal standpoint to judge them from.¹¹⁶

That is to say that, in line with constructivist theorising, Walzer believes that as claims are raised and legitimated within international society, a minimal code of conduct begins slowly to emerge and behaviours which fall outside these confines become increasingly sub-optimal for global political actors. It is by dint of this process that the once indomitable norms of national sovereignty and territorial integrity have gradually come to be mitigated by HR-based imperatives. In this respect, Walzer is able to counter accusations that constructivism merely represents a simple sociological description of the manner in which international society functions. His work is rooted in the assertion that:

understanding how things are put together and how they occur is not mere description. Understanding the constitution of things is essential in explaining how they behave and what causes political outcomes... an understanding of

¹¹⁶ Ibid, pp.214-215

how sovereignty, human rights, laws of war, or bureaucracies are constituted socially allows us to hypothesise about their effects in world politics.¹¹⁷

This ensures that Walzer's communitarian constructivism is sufficiently nuanced to take account of a theoretical space as broad as the debate surrounding the limits of an international duty of justice. The complicated nature of this debate finds expression in the interdependent and mutually constituted nature of the normative developments governing HI. Whilst embodying the norm of human protection, which itself owes much to the discourse of HR, it also represents a direct challenge to the norm or series of norms which speak to the sacrosanct nature of territorial integrity. It is intrinsically connected with the doctrine of JW, in which Walzer is a leading commentator, and can reasonably form part of an analysis of a range of other issues implicit in the human security discourse.

Communitarian constructivism is not simply premised on the oversimplified notion that, through processes of socialisation, one set of norms comes ultimately to displace another. Proponents of this viewpoint contend that competing norms exist, co-exist, challenge, legitimate, and delegitimize one another and only very few secure the extensive consensus necessary for them to become, what might be thought of as, settled or embedded norms, of the sort identified by cosmopolitans. Thus, the suggestion made by some cosmopolitans that the right to democratic governance, for example, is so firmly established in normative terms, that it is now a 'basic human right' which should be intrinsic to all political communities, would be rejected by

¹¹⁷ Finnemore and Sikkink, 'Norm Dynamics', pp.894

communitarian constructivists, and by Walzer in particular, as unsustainable and ethnocentric. In contrast, the rights of life and liberty, defined in narrow, specific and often negative terms, could be said to have successfully transcended state boundaries.

Walzer's emphasis on the cultural diversity at work in international society provides an explanation for the multitude of reasons that norm formation is fraught with such uncertainty, and the fact that his most famous contribution to the literature boasts the subtitle *A Moral Argument with Historical Illustrations* is indicative of the fact that his analysis of IR is explicitly normative. In engaging with the foundations of morality, Walzer is able to differentiate between those norms which have proven to be universalisable and those which *ought* to be universalised and, despite accusations levelled at his work by his most vocal detractors, these categories are not necessarily identical. As the forthcoming chapter on Walzer will demonstrate, the value of his contribution to this debate lies in his willingness to claim that whilst certain values are sufficiently accessible to a broad range of political communities to encourage and facilitate the modification, or circumvention, of ineffective institutions of governance, their origins lie in human design, rather than metaphysical or deontological reasoning. Alternatively phrased, for Walzer, becoming is driven by negotiation and legitimation among global political actors.

VI. Solidarist Constructivism

Once again the overlap between this position and an alternative hybridised account of constructivism is striking. Solidarism, a theoretical subcategory of the English School, is premised on an understanding of international society as both constitutive of, and constituted by, its diverse membership; a theoretical framework which resonates with both conventional and communitarian constructivism. However, it is also associated with the claim that individuals as well as states are valid subjects of international justice claims and, in this respect it is potentially compatible with elements of the cosmopolitan constructivist project. In order fully to appreciate the potential contribution of the English School, and in particular its solidarist elements, to debates surrounding HI and becoming in international society, and to critique the compatibility of solidarist and constructivist epistemology, it is first imperative to gain an understanding of the theoretical and historical context upon which this approach is based. Engaging primarily with the development and functions of international society, as well as the normative standards which underpin it, like constructivists, English School theorists have sought to combine elements of philosophy, political science, and law in a framework of IR which rejects both realism and liberalism. Proponents of this viewpoint

maintain that the international political system is more civil and orderly than realists and neo-realists suggest. However, the fact that violence is ineradicable in their view puts them at odds with utopians who believe in the possibility of perpetual peace.¹¹⁸

¹¹⁸ Andrew Linklater, 'The English School', Scott Burchill Andrew Linklater Richard Devetak Jack Donnelly Matthew Paterson Christian Reus-Smit and Jacqui True, *Theories of International Relations: Third Edition*, (Basingstoke, Palgrave Macmillan, 2005), p.85

As such, the theoretical middle ground assigned by Adler to constructivism can equally be said to be occupied by English School theorists, the so-called “Janus-faced [thinkers] capable of looking in two different directions at the same time”.¹¹⁹

Most notable among the work of the English School is an extensive literature, most readily associated with Hedley Bull and Martin Wight, concerning the development and activities of international society. Wight, in particular, famously conceived of the three traditions of international theory: international systems, international societies, and world societies¹²⁰ and the appeal of such a distinction in the context of an attempt to synthesise elements of the English School with constructivism is the potential for methodological pluralism (or hybridisation) implied by this triptych. As Richard Little has suggested, international systems are “associated with recurrent patterns of behaviour that can be identified most effectively using positivist tools of analysis”¹²¹ and, as such, this component of the English School is most obviously compatible with the realist approach to IR. By way of contrast, international society calls upon a methodology already familiar to advocates of constructivism, specifically, through a “focus on the language that lies behind the rules, institutions, interests and values that constitute any society”.¹²² Given that this is the case, the proposition that constructivism and solidarism are fundamentally compatible seems increasingly credible. Finally, world society, according to

¹¹⁹ Richard Little, ‘The English School’s Contribution to the Study of International Relations’, *European Journal of International Relations*, 6(3), 2000, pp.395-422, pp.396

¹²⁰ John Williams, ‘Pluralism, Solidarism and the Emergence of World Society in English School Theory’, *International Relations*, 19(19), 2005, pp.19-38, pp.20

¹²¹ Little, ‘English School’, pp.395

¹²² *Ibid*

Little “can only meaningfully be discussed by drawing on critical theory that identifies the direction that the society needs to take in order for human values to be realised”.¹²³ This somewhat more constitutive approach is commensurable with cosmopolitan constructivism, in particular, since it implies that the processes of norm formation may be manipulated or re-evaluated with a given moral goal in mind. In this case, such an objective could be defined in terms of the demands of international justice.

In fact, the epistemological and ontological similarities between constructivism and the English School are numerous, particularly when the latter is subdivided into its two principal theoretical factions: pluralism and solidarism. In essence, the pluralist position is very similar to that advocated by Jackson, specifically that whilst the state system is enormously flawed, it is the most effective means by which to secure international stability; stability which, itself, is key to the achievement, dissemination, and maintenance of justice. In the context of HI, pluralists are staunch defenders of territorial integrity, since they believe that states are the only subjects of PIL, that “the rules of the society of states... uphold plural conceptions of the ‘good’”¹²⁴ and that to establish a right of unilateral HI in a multicultural international society is: theoretically and practically flawed; potentially dictatorial in its tendency to champion ‘western’ values to the detriment of others; and an undeniable threat to order. The rallying cry of pluralism is continuing concern regarding the emergence of a new precedent, which would be subject to abuse by powerful states and impossible to constrain. In a more general sense, pluralists view the

¹²³ Ibid

¹²⁴ Wheeler, *Saving*, p.27

processes of becoming at the international level as contingent upon and subject to the will of states. Whilst they acknowledge that this perspective is intrinsically conservative they are also inclined to argue, as Jackson does, that sustainable change is only achievable within the current confines of the international system.

By way of contrast, advocates of solidarism argue vociferously for a reconceptualisation of the long-standing privileging of order over justice which leads their pluralist counterparts to claim that a right of HI would breed instability. Whilst a simple inversion of this principle is neither feasible nor desirable, an acknowledgement of the symbiosis which connects these two concepts and the manner in which changing social mores impact upon their relative importance represents a key element of the solidarist approach. In terms of becoming, solidarists contend that significant reform to international society has already taken place, insofar as the legitimacy of states is increasingly connected not simply to their efficacy but also to their ability to uphold HR standards. This developing solidarist sentiment, which is consolidating the view that humanity can transcend borders, forms the cornerstone of the solidarist understanding of becoming which itself is epistemologically comparable to the cosmopolitan agenda. In essence, pluralists are predominately concerned with the relationship between being and order, whereas solidarists tend to be more inclined to investigate the relationship between becoming and justice.

As a consequence, there exists a tension between pluralists and those who occupy the more radical territory of solidarism. The distinction was first arrived at by Bull, who foreshadowed a number of recent claims concerning the potential of the international community to work together in the application of a basic level of law enforcement. Bull identified the conflicting positions of the solidarist or “Grotian” movement, as against “pluralist’ conceptions of international society”¹²⁵ which are largely based on the writings of Vattel. Bull maintained that the “central Grotian assumption is that of the solidarity, or potential solidarity, of the states comprising international society, with respect to the enforcement of the law.”¹²⁶ This viewpoint has been particularly influential in the arena of HR where the notion that “individual human beings are subjects of international law and members of international society in their own right”¹²⁷ is gaining increasing credence. As a consequence, solidarists are disturbed by the “glaring contradiction between the moral justification of pluralist rules and the actual human rights of their citizens”.¹²⁸ Hence,

[d]iscussions about whether states should intervene to prevent human rights violations have brought the ‘solidarist’ concern with individual rights into conflict with the ‘pluralist’ stress on the dangers involved in breaching national sovereignty¹²⁹.

i. RJ Vincent

The relatively radical theoretical agenda of solidarism has ensured that many thinkers have struggled to sustain their commitment to its terms and have,

¹²⁵ Burchill et al, *Theories*, p.93

¹²⁶ *Ibid*

¹²⁷ *Ibid*

¹²⁸ Wheeler, *Saving*, p.27

¹²⁹ Burchill et al, *Theories*, p.109

ultimately, either embraced the full implications of a cosmopolitan conception of the moral equality of persons, or reverted to a pluralist understanding of the atomistic nature of individual political communities. The latter is arguably true of Bull who concluded that, given the lack of consensus over the content of norms of justice, the solidarist framework for IR remained “premature”.¹³⁰ However, RJ Vincent, a one-time student of Bull, proved to be more steadfast in his approach to solidarism. Vincent believed that international society could successfully take aim at more than the preservation of order. The uniqueness of his contribution, and its value in the context of attempts to analyse the role of becoming in the construction of an international duty of justice, lies in his approach to the pluralist/solidarist framework and his exploration of “the possibilities for the practical realisation of a human rights agenda in the society of states”.¹³¹ In a conscious attempt to escape the pluralist parameters which had limited the scope of the work of his predecessor, Vincent grounded his theory in a ‘basic rights initiative’ which represented “a common floor under the societies of the world’ by creating a ‘global cosmopolitan culture’ that would offer consensus on essential values”.¹³² Under the auspices of a comparable agenda to Walzer’s pursuit of ‘thin universalism’, Vincent accepted that there existed cultures in which the comprehensive set of HR championed by cosmopolitans, could not be fully embraced but he also suggested that respect for this cultural pluralism could accommodate a focus on two different dimensions of right: “the right to security (meaning freedom

¹³⁰ Nicholas Wheeler and Timothy Dunne, ‘Hedley Bull’s Pluralism of the Intellect and Solidarism of the Will’, *International Affairs*, 72(1), January 1996, pp. 91-107, pp.98

¹³¹ Ana Gonzalez-Palez and Barry Buzan, ‘A Viable Project of Solidarism? The Neglected Contribution of John Vincent’s Basic Rights Initiative’, *International Relations*, 17(3), 2003, pp.321-339, pp.321

¹³² *Ibid*, pp.322

from oppression) and the right to subsistence (meaning freedom from starvation)".¹³³ The latter demonstrates a commitment to the holistic appreciation of IR at the heart of the modern discourse of human security, by explicitly acknowledging the inter-related nature of physical and economic security. The former infused "his attempt to bridge the pluralist demands of international society (sovereignty and non-intervention) with the humankind that joins individuals across frontiers".¹³⁴

For Vincent, the "assertion of 'basic rights' is joined by the observation that this idea is increasingly shared among individuals in an emergent world society"¹³⁵ and the fact that states often fail to respect these rights, even in the face of mounting humanitarian legislation, was seen by Vincent, "not as a cause for despair, but as a clarion call to action".¹³⁶ Neither did he accept that the challenge of defending HR need necessarily entail the destruction of the current state system, or that of the UN framework. Instead, he asserted that far from undermining global security, an increased emphasis on HR and justice might conceivably serve to strengthen the legitimacy, and therefore the efficacy, of the existing system. Like communitarians, Vincent remained wedded to the idea that individual states provide and promote collective identity but he also argued for "the need to bring morality into the schemes of international society".¹³⁷ In so doing, he believed, the similarities between states would gradually increase and the possibility of consensus over key HR issues would result from this convergence. Like constructivist moral

¹³³ Ibid, pp.321

¹³⁴ Ibid, pp.322

¹³⁵ Wheeler, 'Pluralist or Solidarist', pp.478

¹³⁶ Ibid

¹³⁷ Gonzalez-Paleaz and Buzan, 'A Viable Project', pp.323

theorising, this process of becoming would be necessarily incremental but over time, Vincent affirmed, international society could begin to conceive of values “inside sovereignty”.¹³⁸ He provides us with a notion of

human rights consolidating the state rather than transcending it... [arguing that] we might extend a cautious welcome to both the penetration of the state and to its strengthening itself in response.¹³⁹

Perhaps it was the potential for these ideas to reconcile cosmopolitan and communitarian theoretical approaches, or the appeal of processes of change and development which can be constrained by, yet significantly improve upon, the current status quo, which inspired attempts to combine solidarist reasoning with constructivism.

ii. Nicholas Wheeler

Arguably the most successful attempt to do this finds expression in the work of Nicholas Wheeler. Of course, Wheeler is by no means the only scholar to have identified the potential for the two approaches to be hybridised and his assertion that “the English School and constructivism occupy the same terrain”¹⁴⁰ is supported by Timothy Dunne, with whom he has collaborated on a number of articles. Similarly, “John Ruggie begins his... survey of... [constructivism]... by acknowledging the influence of the English School”¹⁴¹ and Stephen Krasner, best known for his enormously influential volume

¹³⁸ Ibid

¹³⁹ RJ Vincent, *Human Rights and International Relations*, (Cambridge, Cambridge University Press, 1990), p.151

¹⁴⁰ Wheeler, *Saving*, p.4

¹⁴¹ Rengger, *International Relations, Political Theory*, p.83

Sovereignty: Organized Hypocrisy has also identified the inherent similarities between the two positions:

The English School and some other constructivist analyses understand institutions as generating agents that reinforce or enact, as a result of normative socialisation into a common civilisation, a particular set of principles, norms, and rules¹⁴².

Reus-Smit calls upon Wheeler's attempt to amalgamate the two theories as part of his own demonstration of the ways in which a more productive relationship might be forged between the competing approaches, if advocates of each took a more nuanced and sophisticated account of the common ground which they share. In simple terms, he concludes that constructivism may have the ability to systematise the findings of the English School, which in turn is well-placed to flesh out the normative presumptions so often unacknowledged in constructivist theorising.¹⁴³ Nevertheless, it is Wheeler whose appreciation of the inter-relationship between the two positions is of the greatest value to this thesis, not least because he has combined his theoretical endeavour with an extremely compelling analysis of HI.

The hybridised theoretical approach which allows Wheeler to make his moral claims is informed by a range of different influences. His views on non-combatant immunity and his incorporation of JW principles to provide the criteria for acts of HI draw heavily upon the influence of Walzer, demonstrating the validity of Brown's claim that "[t]he similarity of" Walzer's "position to that of the English School... makes it surprising that neither they

¹⁴² (Princeton NJ, Princeton University Press, 1999) p.71

¹⁴³ See Reus-Smit, 'Imagining Society'

nor [he] seem to recognise each other as kindred spirits".¹⁴⁴ However, Wheeler's approach to international justice also owes much to that of Vincent. In essence, Wheeler's 'solidarist constructivism' proceeds from the assumption that "an unjust world is a disorderly one"¹⁴⁵ and, as such, characterises NS as a duty rather than a right. The obligation which is brought to bear on sovereign authority is "to protect 'the values of individual life and communal liberty' within their borders".¹⁴⁶ It follows then that, in line with the emerging discourse of the R2P, respect for NS should be contingent upon the willingness and ability of a state to guarantee such values. In short, Wheeler is inclined to question "what moral value attaches to the rules of sovereignty and non-intervention, if they provide a license for governments to violate global humanitarian standards".¹⁴⁷ It is on this basis that he calls for a re-evaluation of the traditional role of state borders in international society. The current hegemonic discourse of the statist paradigm is based on an unflinching commitment to the notion that "the state is only responsible for its own citizens and... its obligations and duties are limited to them".¹⁴⁸ Such assertions are anathema to the solidarist movement, the terms of which are predicated on a rejection of the assumption that "the sovereign boundaries humans have constructed are morally decisive".¹⁴⁹ This claim itself owes much to the constructivist position that:

¹⁴⁴ 'Theories of International Relations', pp.286

¹⁴⁵ Wheeler, *Saving*, p.301

¹⁴⁶ *Ibid*, p.27

¹⁴⁷ *Ibid*

¹⁴⁸ Bikhu Parekh, 'Beyond Humanitarian Intervention', Holly Cullen, Dino Krisiotis and Nicholas J. Wheeler (eds), *Politics and Law of Former Yugoslavia*, University of Hull European Union Research Unit, 1993, pp.15

¹⁴⁹ Wheeler *Agency* pp.10

There is nothing natural or inevitable about the statist conception of moral boundaries. The moral frontier – whom ‘we’ choose to include or exclude – is an historical and social construction.¹⁵⁰

Thus, a process of moral learning, whereby concepts such as HR are embedded in new social norms, may allow for these boundaries, and the legal standards which have been implemented to protect them, to be redrawn or to become permeable, if breaching them can be said to advance humanitarian concerns.

Although there are clear parallels between solidarist and cosmopolitan constructivism, advocates of the former tend to have a much more restrictive sense of which among those HR commonly thought of as ‘basic’ have attained consensus extensive enough to represent a challenge to the state system. Especially in Wheeler’s case, the determination to balance a commitment to humanitarianism with a fidelity to PIL, two values which are never more squarely at odds as in discussions regarding HI, ensures that he does not advocate institutional reform as radical as that recommended by cosmopolitan constructivists like Buchanan. The attempt to create and sustain a framework of HR which is compatible with the legal and political restrictions governing inter-state relations is a challenge which has confounded most of the IR theorists who have accepted it but, even if, as a more thorough engagement with his best known work will demonstrate, Wheeler’s approach to the issue is occasionally inconsistent, its dual focus on legality and morality is certainly of great value in any appraisal of becoming in international society.

¹⁵⁰ Ibid

VII. Feminist Constructivism

So far the conceptual differences which separate each hybridised version of the constructivist project from the last are significant but not necessarily insurmountable. The key points of departure among cosmopolitan, communitarian, and solidarist constructivists concern the origins of morality, and the role and nature of boundaries. In essence, all three branches of the theory are united in their conviction that normative constraints develop and gain increased purchase as the consequence of negotiation among global political actors. However, communitarians contend that these processes of becoming are the source of both the efficacy *and the legitimacy* of normative standards whereas both cosmopolitans and solidarists argue that certain core HR are owed to all individuals by virtue of their humanity and it is only the institutionalisation of these rights which relies upon patterns of socialisation. These differing perceptions impact upon the respective understanding of national borders which, for communitarians boast the morally valuable ability to insulate political communities against cultural imperialism and for cosmopolitans and solidarists cease to be morally defensible when a state lacks 'political legitimacy'. Despite this apparent divergence, all three subcategories of constructivism are capable of licensing some form of intervention as a response to egregious violations of HR, since even communitarian constructivists are inclined to acknowledge that enormously abusive or irresponsible regimes fail to abide by those moral standards rendered universal through reiteration and, therefore, may be subject to the terms of conditional sovereignty. The specific threshold for HI, as well as the nature and duration of an act of military incursion, or the agent deemed to

possess the 'proper authority' to spearhead it are matters for debate. However, even the more conservative subsets of constructivism could provide the basis for HI in extreme cases, if sufficient consensus in favour of it can be identified across international society. This demonstrates that whilst their perceptions of the source of international justice may vary, in some cases, commentators from each branch of constructivist theorising are capable of arriving at comparable solutions to the quandaries which the debate implies.

However, feminist constructivism illuminates certain flaws which impact upon all other hybridised forms of constructivist theorising. In assessing not simply the forms of negotiation which govern norm dissemination, but also the power relations that determine which members of society are liable to participate in such interactions (generally, white middle class males), feminist constructivists are strongly positioned to problematise many inequalities which are currently taken for granted in the international system. For instance, feminism (in both its general and its constructivist incarnations) often rejects the communitarian conception of the state as a means for individuals to achieve self-realisation. Instead, feminists contend that the institutionalised patterns of discrimination within individual political communities result in subordination and subjugation for women and feminised groups. Feminist constructivists, persuaded by the assertion that 'national ideas' can become 'international standards' through processes of political interaction, argue that these unequal power relations begin in the home, are expanded to the level of the state and ultimately translated to the international plain. Thus, the suggestion, common to most theorists of HI, that it is only in cases of tyranny

or anarchy that the apparatus of the state poses a tangible threat to the welfare of its citizens, is erroneous. The state is in fact a constant source of repression for those who are robbed of political agency by its gendered hierarchies. Similarly, for feminists, the notion of the state as the *protector* of citizens is, in fact, a macrocosm of the patriarchal perception of man as the *protector* of woman and both viewpoints are gendered and morally suspect. Consequently, the shift from a 'right to intervene' to a 'responsibility to protect' has met with some suspicion from a number of feminist perspectives, including feminist constructivism.

Equally, the critical lens of feminism takes aim at the cosmopolitan (constructivist) belief in supposedly 'universal' HR as the basis for international justice. This is because many of the HR conventions which liberals identify as evidence of progress within the state system remain at best inconsistent and, at worst, blind to the lived experiences of women. The "competing rights"¹⁵¹ which these documents generate often "operate to the detriment of women".¹⁵² For example, "[t]here is a serious conflict between freedom of religion and the equality of women"¹⁵³ since "many accepted religious practices entail reduced social positions and status for women".¹⁵⁴ On this basis, it might be argued that 'human rights' and 'women's human rights' are not one and the same and that the latter is almost always deferential to the former. As such, just as cosmopolitan philosophers have

¹⁵¹ Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law', *The American Journal of International Law*, 85, 1991, pp.613-628, pp.635

¹⁵² *Ibid*

¹⁵³ Susan Moller Okin, 'Political Liberalism, Justice and Gender', *Ethics* [online], 105(1), October 1994, pp.23-43, pp.31

¹⁵⁴ Charlesworth et al, 'Feminist Approaches' pp.635-636

sought to demonstrate that IR is characterised by “the contradiction between its constitutive catalogue of ‘basic rights of man’ and their actual restriction to a certain class of men”,¹⁵⁵ feminist scholars draw attention to the fact that a liberal critique of inequality rarely takes into consideration the disjuncture between the rights of ‘man’ and the rights of *all* human beings. This is because the cosmopolitan and solidarist traditions are born out of a particular patriarchal account of *autonomy* and *rationality* as the basis for *individual human rights* which, as the forthcoming chapter on feminist constructivism will demonstrate, provide the foundations for a peculiarly male (and Western) conception of both the content of HR and the appropriate response to their infringement.

Feminism, therefore, contests the perceptions of becoming at the heart of cosmopolitan, communitarian, and solidarist constructivism by encouraging theorists and practitioners of IR to reconsider their definition of the category of ‘human’ and the ways in which this may impact upon their understanding of international society.

i. ‘Mainstreaming’ Feminism

Given that, among its many contributions to IR discourse, feminism offers the means to critique more established theories, it is perhaps surprising that its insights are not more frequently combined with those competing theoretical frameworks. The reasons for this reluctance are manifold and are partly attributable to the dismissive attitude of mainstream scholars, many of whom

¹⁵⁵ Thomas McCarthy, ‘Kantian Constructivism and Reconstructivism: Rawls and Habermas in Dialogue’, *Ethics*, 105, October 1994, pp.44-63, pp.48

view the expansive nature of feminist theorising as a weakness rather than a strength. The assumption is that feminists are engaged in an insufficiently 'scientific' form of research which is too ethereal or multi-disciplinary to generate practical solutions to the most pressing issues in international politics and that 'critique for critique's sake' is of no value. Such is the source of J. Ann Tickner's observation that most feminist scholars have found themselves "homeless as far as the canons of IR knowledge are concerned"¹⁵⁶. However, the hybridisation of feminism is also frequently resisted by feminist commentators themselves, many of whom are disturbed by the possibilities of cooption or misunderstanding which such a synthesis may generate. For example, liberal institutionalist Robert Keohane's attempt to explore the "contributions of a feminist standpoint",¹⁵⁷ although almost certainly ill-conceived, was perhaps not deserving of the scathing criticism of Cynthia Weber who accused it of "fetishising"¹⁵⁸ and "mutilating"¹⁵⁹ the feminist body by taking an unnecessarily narrow view of its diverse features. Those attempting to infuse their own understanding of international politics with a feminist perspective should, of course, be mindful of Weber's suggestion that theoretical 'cherry picking' may only allow us to "look at feminist lens"¹⁶⁰ rather than through them. However, the assumption which underpins this thesis is that embracing certain elements of a theoretical tradition whilst rejecting others is a reasonable tool in achieving

¹⁵⁶ J. Ann Tickner, "You Just Don't Understand' Troubled Engagements between Feminists and IR Theorists', *International Studies Quarterly*, 41, 1997, pp.611-632, pp.612

¹⁵⁷ See Robert Keohane, 'International Relations Theory: Contributions of a Feminist Standpoint', *Millennium: Journal of International Studies*, 18(2), 1989, pp.254-245

¹⁵⁸ Cynthia Weber, 'Good Girls, Little Girls, and Bad Girls: Male Paranoia in Robert Keohane's Critique of Feminist International Relations', *Millennium: Journal of International Studies*, 23(2), 1994, pp.337-349, pp.341

¹⁵⁹ Ibid

¹⁶⁰ Ibid

methodological pluralism. Equally, the fact that some elements of the feminist project might be used to furnish other theories with a greater understanding of the role of gender relations has the potential to positively impact upon IR, without forcing feminism to apologise for its more radical components. Nevertheless, the hostile reaction which has tended to greet the few thinkers who have attempted to explore elements of feminist theorising goes some way to explaining the continued marginalisation of feminist voices and indicates that locating the middle ground between feminist and constructivist IR is one of the most challenging dimensions of this thesis.

ii. J. Ann Tickner

The assertion that feminism and constructivism might prove to be complimentary theories is not exclusive to this project. In highlighting and exploring the feminist understanding of gender, for example, Tickner has demonstrated a substantial overlap between notions of social construction and the consolidation of inequalities. She suggests that the miscommunications between feminism and the mainstream often result from the belief among conventional IR scholars that their research is in some sense gender neutral, or that gender itself need play no specific role in an analysis of international politics. From the feminist perspective “gender differences permeate all facets of public and private life, a socially constructed divide which they take to be problematic in itself”.¹⁶¹ The emphasis on the *social construction* of gender as a category lends itself to comparison, and arguably amalgamation, with the linguistic and norm-based turns in

¹⁶¹ Ibid, pp.614

constructivism since, as Tickner argues, “almost all feminists who write about international relations use gender in a social constructivist sense”.¹⁶²

Tickner echoes the viewpoint of Sandra Harding in asserting that the manipulation of language to create dichotomies which privilege masculinity at the expense of femininity, serves to ascribe value to that which is perceived as male and banishes to the apolitical that which is dismissed as female.¹⁶³ Hence, Harding’s claim that gender consists of three dimensions: gender symbolism, gender structure, and individual gender¹⁶⁴ and that these are representative of three distinct processes: “assigning dualistic gender metaphors to various perceived dichotomies, appealing to these gender dualisms to organise social activity, and dividing necessary social activities between different groups of humans”.¹⁶⁵

Although language is a vital element of the process of denying women political agency, IR feminists argue that gender is more than a linguistic constraint. The perceived differences between men and women have gradually been *naturalised* to the extent that gender is now most accurately described as a socially constructed system, which gives meaning and context to IR in both its political and economic incarnations and has “rarely been subjected to the tests of justice”.¹⁶⁶ Gender inequality is an integral element of the hegemonic economic paradigm of neo-liberalism and is ingrained in the

¹⁶² *Ibid*

¹⁶³ *Ibid*

¹⁶⁴ See Sandra Harding, *The Science Question in Feminism*, (Ithaca, Cornell University Press, 1986)

¹⁶⁵ Tickner, ‘You Just Don’t Understand’, pp.614

¹⁶⁶ Susan Moller Okin, ‘Justice and Gender’, *Philosophy and Public Affairs*, 16(1), Winter 1987, pp.42-72, pp.43

dominant theoretical frameworks of the Enlightenment; not least the cosmopolitan tradition which, whilst claiming to aspire to universalism, functions as both the cause and the consequence of gender inequality by reaffirming masculine conceptions of autonomy and individualism.

Rejecting the criticism that feminists lack the tools to tackle the most compelling debates in IR, Tickner argues that IR feminists are more inclined to gather data from those who are directly affected by a particular policy, rather than relying on the testimony of those elites who helped to create the policy in the first instance. As she argues with reference to warfare:

Whereas IR theorists focus on the causes and termination of wars, feminists are as concerned with what happens during wars as well as with their causes and endings. Rather than seeing military capability as an assurance against outside threats to the state, militaries are seen as frequently antithetical to individual security, particularly to the security of women and other vulnerable groups.¹⁶⁷

This, in itself, helps to delineate an area of research suited to feminist constructivism; an analysis not simply of how norms come to exist but also of how they impact upon the lives of ordinary people, particularly those who are disenfranchised or discriminated against.

So it is that the suggestions that: “agency and structure are co-constituted”;¹⁶⁸ that language is key to the understanding and development of justice-claims;

¹⁶⁷ Tickner, ‘You Just Don’t Understand’, pp.4

¹⁶⁸ Locher and Prügl, ‘Feminism and Constructivism’, pp.114

and that “gendered patterns of social relations”¹⁶⁹ are themselves constructed, unite advocates of feminism and constructivism, at least to a sufficient degree to enable meaningful dialogue and to create a perspective, according to which, an international duty of justice may take aim at identifying not only the presence of discrimination, but also its systemic causes.

iii. Birgit Locher and Elisabeth Prügl

Tickner’s attempts to identify the commonalities shared by feminists and constructivists has been developed by Birgit Locher and Elisabeth Prügl, who have investigated the suggestion that the two theories could be thought of as “sharing the middle ground”¹⁷⁰ of IR theory. Emphasising their determination not to: “risk papering over considerable diversity among feminists and constructivists”,¹⁷¹ their intention to avoid “making light of profound differences between the two”;¹⁷² and their unwillingness to “risk styling feminism as supplementary to constructivism”,¹⁷³ they, nevertheless, identify a number of key areas in which a constructivist response to a feminist critique might provide the foundations for a theory which combines the strengths of both approaches. Locher and Prügl are concerned that despite the very real possibility that constructivism could offer an alternative to mainstream IR, the tendency among those who frame their work in terms of this theory, is to accept, with little critical engagement or enquiry, the positivist account of

¹⁶⁹ Robert O. Keohane ‘Beyond Dichotomy: Conversations Between International Relations and Feminist Theories’, *International Studies Quarterly*, 42, 1998, pp.193-198, pp.193

¹⁷⁰ See Locher and Prügl, ‘Feminism and Constructivism’

¹⁷¹ *Ibid*, pp.112

¹⁷² *Ibid*

¹⁷³ *Ibid*

power and the way in which it is formed and perpetuated in international politics.

Because they leave the social construction of power under-theorised, constructivists lack the tools to explain how gender and power reproduce, how and why certain constructs emerge as more influential than others. They miss an important part of the empirical reality of international politics.¹⁷⁴

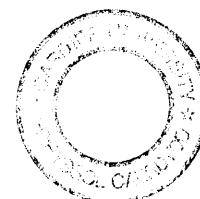
Locher and Prügl argue that the ontology of becoming (a term which they themselves have coined) unites feminism and constructivism and should take aim at transforming gender relations by seeking to expose the inside/outside or public/private dichotomy which gives meaning to the very normative structure of IR. After all, the marginalisation of women is not a coincidental or incidental by-product of IR but, rather, is integral to the fabric of the state system and PIL:

Since the primary subjects of international law are states, it is sometimes assumed that the impact of international law falls on the state and not directly on individuals. In fact, the application of international law does affect individuals, which has been recognised by the International Court in several cases. International jurisprudence assumes that international law norms directed at individuals within states are universally applicable and neutral. It is not recognised, however, that such principles may impinge differently on men and women; consequently, women's experiences of the operation of these laws tend to be silenced or discounted.¹⁷⁵

The emphasis on the impact of PIL on vulnerable individuals fuels the feminist drive to reform the international system and it is the belief of Locher and Prügl that the ontology of becoming might be the most effective tool for executing

¹⁷⁴ Ibid, pp.113

¹⁷⁵ Charlesworth et al, 'Feminist Approaches' pp.625



such change; a suggestion which is a vital component of this thesis. However, the constraints of this project ensure that the expansive category of becoming must be restricted by some degree of political feasibility. Ostensibly, this may appear counter-intuitive, especially to those who might perceive it as one of many familiar attempts to 'tame' feminist theorising. It is not the contention of this project that theory is only as valuable as the practical prescriptions to which it might give rise. However, the limited scope of this endeavour is to assess the value of HI in light of a constructed duty of justice which might be applicable to the current international system, rather than to conceive of alternatives to that model. In other words, the project seeks to improve upon the status quo rather than to dispense with it entirely and this ensures that the framework for becoming is one which must be responsive to the demands of institutional feasibility. Accepting that the privileged position of states and the consensual nature of international politics are key characteristics of IR is justifiable from a feminist constructivist perspective. Whilst there are certainly many feminist commentators who would reiterate the assertion that because the intrinsic inequality of the state system aggravates the plight of women and of the world's poorest people, who, due to that very system, tend to be women, states themselves should no longer act as the main focal point of international politics. For those who reject this viewpoint, however, it is just as credible to suggest that, as imperfect as they are, states are the most effective and efficient means by which to administrate, institutionalise and enforce HR standards and, as such, they remain the best vehicle for responding to the needs of women and feminised groups. This is far from an endorsement of the moral primacy of states and is always accompanied by an

insistence that comprehensive reform to the system both nationally and internationally is imperative if the discourse of HR, the practices of IR and the norms which govern PIL are to obtain any degree of universality, or even meaning, for those disenfranchised by patriarchy. Nonetheless, this project is premised on the suggestion that for such reform to prove durable and effective it cannot be so radical as to preclude the possibility of some form of institutionalisation.

v. Feminist Constructivism and Humanitarian Intervention

It has been established that a commitment to becoming unites the feminist and constructivist projects; that feminism can imbue constructivism with a more sophisticated understanding of the origins and perpetuation of unequal power relations; and that constructivism can consciously narrow the scope of feminist theorising so as produce a hybridised account of justice which is applicable to the current international system. All that remains is to consider the implications of this hybridised theory for the discourse of HI. One of the most engaging attempts to do this is that of Anne Orford in her volume *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*. As an Australian, feminist, Professor in International Law, Orford found herself fascinated by the overwhelming support, among her fellow nationals, for an Australian-led intervention into East Timor in 1999 and, in unpacking some of the language and behaviours which informed this support, she has begun fundamentally to question the foundations upon which the discourse of HI is based. In précised terms, which will be expanded upon in the forthcoming chapter on feminist constructivism, Orford argues that, in

this case and others like it, HI calls upon a series of 'heroic narratives',¹⁷⁶ fundamentally "premised on the notion of the international community facing new dangers, acting to save the oppressed and to protect values such as democracy and human rights".¹⁷⁷ These narratives, which encourage the reader to "identify with the active hero",¹⁷⁸ rather than to develop a more nuanced understanding of the plight of the 'victim' have: oversimplified an inherently complex issue; re-entrenched colonial assumptions concerning the superiority of Western, masculine, values; encouraged the use of force in place of a more holistic appreciation of the causes and consequences of humanitarian disaster; and allowed powerful states and international organisations to fail to acknowledge their own role in the creation and perpetuation of human suffering across the globe.

This is not to suggest that Orford's position is entirely restrictionist. In fact, she refuses to state that there are no circumstances under which HI might be the appropriate response to egregious and systematic HR abuses. However, she does argue that the value and function of feminism in this context, is to rebuke ill-conceived narratives and expose the hypocrisy and inconsistency at work in traditional readings of the subject. In line with Vincent's focus on the inter-related nature of violence and poverty, for example, Orford argues that a feminist "reading of humanitarian intervention that seeks to avoid enabling exploitation must pay careful attention to the context of increasing economic

¹⁷⁶ Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*, (Cambridge, Cambridge University Press, 2003), p.166

¹⁷⁷ *Ibid*, p.67

¹⁷⁸ *Ibid*

integration in which such intervention takes place”.¹⁷⁹ Similarly, if international lawyers are to identify and unlock the potential “for remaking the law in the image of justice”,¹⁸⁰ they must embrace the inter-disciplinary nature of such an endeavour and attempt to circumnavigate some of the barriers erected by the belief that IR and PIL have little to learn from one another, or from the ‘non-scientific’ academic community.

VIII. Conclusion

Although the literature which surrounds IR theory is vast, and responses to the issue of HI are as varied as they are numerous, a number of key themes forge links across the cosmopolitan, communitarian, solidarist and feminist branches of constructivism. All are committed to some conception of HR, albeit to varying degrees and for different reasons; all concede that individuals, as well as states, number among the subjects of PIL, even if the question of the balance between these competing interests remains contentious; all are capable of arguing in favour of a reconceptualised version of NS, in which the right to non-intervention is conditional to some extent upon respect for individual rights; and despite enormous diversity among and between each tradition, elements of each project can reasonably be associated with the doctrine of human security, which has sought to expand the definition of threat beyond militarism to incorporate ‘threats without enemies’, including economic and environmental issues. All forms of constructivism focus on the ways in which language restricts and enables the establishment of normative standards and, conversely, on the manner in

¹⁷⁹ Ibid, p.70

¹⁸⁰ Ibid

which these developing norms can become constitutive of the identities and interests of global political actors. Unlike realists, most constructivists are as concerned with the potential for change in the international system, as with the establishment of patterns and repetition. Equally, unlike some cosmopolitan liberals, constructivists tend to argue that the attempt to institutionalise change must be regulated by certain political constraints and must encompass a realistic response to the processes which govern norm formation. Whilst there is considerable divergence over the specific interpretation of justice claims and the matter of how, and even why, they might be pursued, it seems credible to suggest that the analytical and normative scope of constructivism in its many forms provides a unique perspective from which to consider the changing relationship between international order and international justice. Or that, in simple terms, all forms of constructivism, irrespective of how they may differ in their specific epistemologies or methodologies are united by their commitment to the ontology of becoming and it is this convergence which provides the tools for a fruitful analysis of developing discourses and practices across international society.

Accordingly, the remainder of this project will endeavour to establish, through a detailed examination of the work of Birgit Locher, Elisabeth Prügl and Anne Orford (among other feminist commentators), Allen Buchanan, Nicholas Wheeler and Michael Walzer, which of the forms of constructivist theorising, or combination thereof, most effectively addresses the challenges posed by the doctrine of HI and, by extension, which is best equipped to provide the

foundations for assessing the existence, and limits, of an international duty of justice.

Chapter Two: Feminist Constructivism, Gender Constructivism and Humanitarian Intervention

I. Introduction

This chapter investigates the insights into becoming and international justice provided by the hybridisation of feminism and constructivism. In so doing, it attempts to appraise the implications for constructivism of taking seriously the interrelationship between gender inequality and an increasingly nuanced appreciation of humanitarian suffering. Since the fusion of feminism and constructivism is arguably the most contentious synthesis with which this project engages, analysis must begin with an overview of several branches of feminist theorising and their relationship to both gender and social constructivism. This is a reflection of Marysia Zalewski's assertion that "feminism is really feminisms",¹⁸¹ and the related suggestion that "a diversity of voices is not only valuable, but essential, and that the search for, or belief in, one view is unlikely to capture the reality of women's experience, or gender inequality".¹⁸² Accordingly, the chapter will draw on a range of competing viewpoints, designed to illustrate the varied and sometimes contradictory views espoused by feminist commentators, seeking to reconcile violence with humanitarianism. As well as deconstructing the traditional dichotomy between states' rights and HR and calling into question the 'heroic' assumptions which often infuse and inform HI, this chapter will also assess the degree to which an analysis of feminist IR might serve to illuminate a reconceptualised path for social constructivist research. The suggestion is that the insistence that

¹⁸¹ 'Women's Troubles Again in IR', Terrell Carver (ed), *The Forum: Gender and International Relations*, *International Studies Review*, 5, 2003, pp287–302, pp29

¹⁸² Charlesworth et al, 'Feminist Approaches', pp.613

gender is itself a social construction, one which underpins a host of other preconceived notions and inadequacies at the heart of IR, draws together various forms of constructivist theorising under the banner of the 'ontology of becoming'; which encourages a focus both on critiquing the status quo and rebuilding it in pursuit of international justice.

Finally, the limitations of a feminist constructivist approach to HI, and the wider justice claims with which it is associated, will demonstrate that the issue of gender has purchase beyond feminist IR and that, in fact, the tendency to conflate the consideration of women's experiences with an analysis of gender is flawed and tends to inform an unnecessarily narrow conception of becoming. This leads to the assertion that if it is to respond effectively to complex and contentious issues such as HI, the category of conventional constructivism must develop to incorporate a conception of 'gender constructivism', which may be separate from feminism in its best known form. It is the contention of this thesis that the systemic causes, scale, and true nature of humanitarian suffering can only be understood and, by extension, meaningfully addressed, once this gender-sensitive ontology of becoming is embraced.

II. Hybridising Feminism

The first task of this chapter is to address the controversy which is liable to be engendered by attempting to combine feminist and constructivist insights into a hybridised conception of becoming. Situating feminist analysis into the wider field of IR theory is likely to meet with some resistance, either from feminists

themselves or from those who argue that a feminist perspective lacks the conceptual tools to advance an understanding of policy choice, legal principle, or state practice. Identifying the basis in feminist theorising for a given policy or legal doctrine is an inherently challenging process since feminists are often more concerned with unpacking received discourses than with engaging in what might be thought of as a justification for the status quo. In fact, this is the source of much misunderstanding between feminist commentators and what is sometimes referred to as the 'malestream' of IR theory. Feminist analysis is often met with apathy or hostility from the more established branches of the discipline, advocates of which tend to conceive of IR in unnecessarily restrictive terms; an attitude typified by statements such as "there are few activities more pointless than criticism which does not have a constructive or explanatory effect".¹⁸³

Equally, however, attempts by non-feminists to engage with the feminist discourse (and, in particular, with the concept of gender) have been known to provoke a scathing reaction from those who fear the cooption of the hard-fought theoretical territory which feminism has carved out for itself. This break-down in communication is exacerbated by that fact that "[A]ll too often, claims of gender neutrality...hide gender differences and gender inequalities",¹⁸⁴ leading mainstream theorists to believe that they may successfully address an issue in international politics without taking seriously the impact of gender.

¹⁸³ Harris, 'Order and Justice', pp.730

¹⁸⁴ Tickner, 'You Just Don't Understand', pp.614

Tensions between traditional and feminist IR derive from the perception that the latter is too broad or atheoretical to provide meaningful prescriptions for change in international society; a suggestion which is at odds with the contention of this thesis that an understanding of gender is key to an appreciation of becoming in international society. Nevertheless, it is reasonable to suggest that feminists conceive of the basis for becoming in a different way to many other commentators. In contrast to the institutional focus which unites many constructivist commentators and the more general assertion that “criticism on its own is... unproductive, if it is not accompanied by alternatives or proposals for change”,¹⁸⁵ feminists tend to reject the “siren call of liberal legality”¹⁸⁶ which “requires that lawyers must claim the capacity to solve all problems through public, institutional means”.¹⁸⁷ Instead, drawing on a range of methodologies and epistemologies from fields as diverse as literary studies, film studies, political theory, and social criticism, many feminists employ discourse analysis as a means to problematise the assumptions which permeate the practice and theory of IR.

Among these preconceptions is an increasing faith, common to most constructivists, in the liberating potential of institutions of global governance. Andrew Hurrell has claimed that a focus on the establishment and development of institutions is common to all forms of constructivism:

¹⁸⁵ Anne Orford, ‘Muscular Humanitarianism: Reading the Narratives of the New Interventionism’, *European Journal of International Law*, 10(4), 1999, pp679-711, pp704

¹⁸⁶ Ibid

¹⁸⁷ Ibid

For constructivists, institutions matter because they do more than just reflect power (as neo-realists argue) or solve collective action problems (as institutionalists suggest). They also matter because they help to explain how new norms emerge and are diffused across the international system and how state interests change and evolve. Institutions play an important role in the diffusion of norms and in the patterns of socialisation and internalisation by which weaker actors come to absorb those norms. Institutions may be the forum where state officials are exposed to new norms: they may act as channels or conduits through which norms are transmitted (as with neo-liberal economic ideas); or they may reinforce domestic changes that have already begun to take place (via state strategies of external 'lock-in', or via pressures exerted through transnational civic society).¹⁸⁸

However, many feminists harbour deeply sceptical views with regard to the proliferation of institutions. After all,

[t]he structures of governance that have developed within international society both reflect and reinforce the broader patterns of inequality that mark the global system. Institutions are not, as liberal theory often suggests, neutral arenas for the solution of common problems but rather sites of power and dominance.¹⁸⁹

Having exposed the constructed nature of so many of these 'naturalised' hierarchies, it is far from surprising that most feminists are not inclined to advocate the creation of institutions which are likely to reproduce them. However, this is often perceived as indicative of the impractical and unrealistic nature of a feminist approach to PIL and international politics, rather than a liberating and insightful appreciation of the gendered patterns which govern these disciplines.

¹⁸⁸ Hurrell, 'Global Order', pp.70-71

¹⁸⁹ *Ibid*, p.11

In fact, it is common for feminists to perceive as strength the very characteristics which their detractors dismiss as weakness; not least the seemingly boundless scope of feminist analysis. The suggestion implicit in this thesis, that feminism and constructivism might be hybridised in order best to explore and exploit the analytical potential of both theories, is one which would be rebuffed by many as an attempt to place limits on feminist theorising. After all, combining feminist insights with those based in an alternative theoretical perspective requires that certain elements of what is frequently, though non-specifically, described as the 'feminist agenda' must be redrawn or even set aside in order more effectively to establish a clear research framework. As the forthcoming detailed exposition of 'gender constructivism' will demonstrate, for many, proponents of such hybridisation are little more than apologists for the malestream, capable of only the most superficial engagement with gender and determined to rob feminism of the very characteristic which makes it so unique; its multidisciplinary focus. Hence, Zalewski, in criticising attempts to narrow the investigative scope of feminism, cites Nietzsche's claim that "[T]he worst readers are those who behave like plundering troops: they take away a few things they can use, dirty and confound the remainder, and revile the whole".¹⁹⁰ In fact, she appears mystified by the fact that "[h]owever meticulously feminism's ambiguity is articulated, the silent vociferousness of the impulse to contain, constrain, and cauterize invites the 'eternal return' of critiques of feminism in IR".¹⁹¹ Thus, Zalewski warns against the attempt to 'discipline' feminism.

¹⁹⁰ (Cited) Zalewski, *Women's Troubles*, pp.293

¹⁹¹ *Ibid*

Although this perspective is fairly widespread among feminist commentators, it seems unnecessarily dismissive and territorial. Critique and discourse analysis provide a unique means to demonstrate that much of what is taken for granted within the paradigms of, for example, 'protection' or 'humanitarianism' is far from immutable. Similarly, challenging researchers and practitioners to acknowledge the ways in which their own context situates their response to debates is certainly invaluable. Nevertheless, engaging with the mainstream *has* produced change, however incremental, and is indicative of what can be achieved when those who take seriously the nature and impact of gender infuse a meaningful exchange surrounding the limitations of international politics with their own insights. The trade-off for securing a more sophisticated and humane account of justice may be that these individuals are forced to assimilate, at least slightly, into the current language of the debate even as they battle to develop it. In R. Charli Carpenter's terms:

If the goal is to add gender to their frame of reference and demonstrate why... [mainstream theorists]... cannot do without it, we need to speak within that frame in order to be heard.¹⁹²

In the past, the reluctance to do this has resulted in the continued marginalisation of feminist analysis and the ongoing neglect of gender among mainstream thinkers. Both conditions ultimately serve to limit our understanding of the most pressing issues in world politics, not least HI and international justice.

¹⁹² 'Stirring Gender into the Mainstream', pp.297, Terrell Carver (ed), *The Forum*

In simple terms, the cause of both feminists and mainstream theorists can be advanced through dialogue between one another, and the debate surrounding HI is best understood using the terms and conceptions which arise from such an exchange. If social constructivism teaches us how the norms surrounding HI have developed, a gender-based turn in constructivism may help us to appreciate the ways in which certain institutional inequalities have limited that development and the associated pursuit of a constructed duty of justice. Employing gender as an analytical tool, as well as a social construct, serves to cast the practice and discourse of HI in a new and intriguing light, one which is most successfully investigated once the multifaceted nature of feminism is understood.

III. The Theoretical Basis for Intervention

i. Feminism(s) and Humanitarian Intervention

The second task of this chapter is to draw out the link between feminism, in its various incarnations, and the practice and discourse of HI. As Zalewski's characterisation indicates, the range of theories and approaches incorporated into feminist theorising is vast. However, for the purposes of effective exposition, it is reasonable to contend that three main sub-categories of feminism have impacted upon the study of IR: feminist empiricism, feminist standpoint and post-modern feminism. Each varies in its conception of the use of force for humanitarian, or any other, purposes and each boasts the means to critique both mainstream IR and alternative feminist theories.

ii. Humanitarian Intervention and Feminist Empiricism

Feminist empiricism, often associated with liberal feminism, effectively contends that the implementation of 'equality of opportunity' is both necessary for, and sufficient to, the task of redressing female subordination. The argument is that if women are given the opportunity to compete on an even playing field, through more egalitarian mechanisms for recruitment and more equitably balanced institutions, the gender gap can be reduced. In other words, gender equality can be gained by "winning equal access to the educational and political rights enjoyed by men within the existing system".¹⁹³ Although the prevalence of gender bias is undeniable, the assumption is that "once these biases are eliminated... a value-neutral epistemology will ensue"¹⁹⁴ which will "liberate knowledge".¹⁹⁵ The clear implication here is that international society can be improved upon from within and that, at the systemic level, the problems which limit its efficacy are soluble, if the proportion of women working within its confines increases.

Kimberly Hutchings associates this sub-category of feminist analysis with what she terms "enlightenment" or "cosmopolitan" feminism,¹⁹⁶ which she argues is "conceptually linked to the tradition of just war theory, in particular in its latest manifestation as humanitarian intervention".¹⁹⁷ As its name suggests, cosmopolitan feminism shares and modifies many of the core epistemological assumptions of cosmopolitan political theory and, as such, focuses on the

¹⁹³ Naomi Malone, *From Just War To Just Peace: Re-Visioning Just War Theory From A Feminist Perspective*, 2004, <http://etd.fcla.edu/SF/SFE0000339/Thesis-new.pdf>, pp.26,

¹⁹⁴ Ibid

¹⁹⁵ Ibid

¹⁹⁶ Kimberly Hutchings, 'Feminist Ethics and Political Violence', *International Politics*, 44, 2007, pp.90-106, pp.94

¹⁹⁷ Ibid

inclusion of all forms of humanity in a framework of HR. Its emancipatory agenda aims to extend these freedoms to all human beings, creating a conception of becoming which is neutral in terms of sex, race, age, or geographical location. In this respect, cosmopolitan feminism:

[a]uthorises the transformation of the world in accordance with its ideals. For enlightenment feminism, ethics acts as a corrective to both 'world' and 'politics'. Feminist enlightenment ethics is cosmopolitan in so far as it challenges the restriction of ethical standards to particular contexts across space and time, expanding the boundaries of ethical significance to encompass all humanity. Feminist enlightenment ethics is ethical in so far as it purports to derive from first principles rather than from the realm of contingency characteristic of world and politics.¹⁹⁸

This last statement is perhaps the most compelling in that it signifies an overlap between cosmopolitan constructivism, solidarist constructivism, and cosmopolitan feminism; namely the willingness to derive moral convictions from first principles concerning the moral equality of persons, something which would be rejected both by communitarian constructivists and by other branches of feminist theorising. The further significance of this observation is that it demonstrates that cosmopolitan feminists are able to abide HI, provided that it is the only effective way to fulfil moral goals of emancipation. Intriguingly, liberal feminists, more broadly, might be prepared to countenance HI, provided that women played a proportionate role in operations, both organisationally and militarily. The fact that HI draws on a range of discourses and practices rooted in inequality and gendered and racialised patterns of discrimination, not least JW theory which is itself "written exclusively by or for

¹⁹⁸ Ibid, pp.95

men”,¹⁹⁹ does not indicate that the practice itself will always remain without merit. It may simply be the case that HI, like so many other elements of international politics, is currently hampered by imbalances and imperfections, which concerted efforts to reduce gender bias might yet resolve. With this in mind, Hutchings sketches a cosmopolitan feminist outline of the conditions under which HI might be defined and employed, in such a way as to avoid the pitfalls associated with gender bias.

Archetypically, this will be in situations of gross threats to human rights, including the rights of women, where no alternative means to address the threat are available. In terms of the means of violence employed, as with just war thinking, enlightenment feminism will seek to limit it through rules of engagement that make strict distinctions between legitimate and illegitimate targets and ensure the proportionality of the violence employed. At the same time, enlightenment feminism must also be committed to contesting male monopolies over collective violence and supporting the right of women to participate in fighting just wars.²⁰⁰

In other words, the feminist empiricist defence of HI takes much the same form as the accounts provided by the more mainstream thinkers with whom this project will engage. The obvious distinction concerns the involvement and consideration of women as active participants in both the appraisal of ‘just cause’ and the deployment of military forces.

Although feminist empiricism and liberal feminism have been key to women’s progress within institutions at both the national and international level and have served to problematise the subordinate position of women in most societies, the majority of feminist commentators writing on HI have moved

¹⁹⁹ Malone, ‘Just Peace’, pp.2

²⁰⁰ Hutchings, ‘Feminist Ethics’, pp.95

beyond the suggestion that an increased number of women amounts to better representation or greater equality. Furthermore, it has increasingly been acknowledged that “approximations to political and legal justice in various domains of life evidently cannot close the radical gap between men’s and women’s paths and prospects”.²⁰¹ Detractors also argue that in embracing cosmopolitan first principles concerning ‘rationality’, ‘individuality’, and ‘autonomy’, liberal feminism “assumes away relations of dependence and interdependence” which are “central to most lives actually lived by women”.²⁰² In so doing, it: conflates male values with human values; does little, if anything, to break down the gendered dichotomies which favour ‘male’ over ‘female’ characteristics; and fails to call into question the emphasis on individual rights as superior and prior to those of groups. In short, “[d]espite its aspirations, gender bias is integral to liberal justice”²⁰³ and, therefore, cannot be resolved through liberal feminism. This strikes a blow to cosmopolitan constructivism in particular since advocates of this position base their arguments on the assumption that the moral equality of persons is a realistic aspiration of liberal theory.

Furthermore, critics of feminist empiricism suggest that the often under-theorised and clichéd suggestion that increasing the number of women in positions of authority is likely to increase the chances of peace, or create conditions for fairness, has been undermined by recent events in international politics. Hence, Barbara Ehrenreich’s polemic statement that “[w]hat we have learned from Abu Ghraib, once and for all, is that a uterus is not a substitute

²⁰¹ O’Neill, ‘Gender and International Relations’, pp.442

²⁰² *Ibid*, pp 440

²⁰³ *Ibid*, pp.443

for a conscience”²⁰⁴. Furthermore, even if it were possible to make the case that women are in some sense ‘naturally’ more peaceful or less barbaric than men, an assertion which many feminists would reject in itself, the incorporation of women into an international system which is characterised by violence and competition is more likely to corrupt those individuals than it is to improve the system. As such, a HI regime fashioned, for example, along the lines of the existing UN system but with an increased number of female participants would likely prove to be as flawed as the current framework.

The association of feminist empiricism, in this context, with the development of JW theory is also considered by some commentators as an inherent limitation because of the gender bias built into its development. However, there are those who claim that “it is possible to *construct* a feminist vision of just war and peace by examining the variety of feminist based approaches to ethics that have developed in response to the underrating of women’s moral experience”.²⁰⁵

iii. Humanitarian Intervention and Feminist Standpoint

Among those who argue against the supposedly universalist ethic of feminist empiricism are advocates of feminist standpoint. This branch of feminism can be most readily associated with constructivism, in its many forms, because of the shared belief that knowledge is socially constructed through language and expectation. For standpoint feminists, not only is the mere incorporation of

²⁰⁴ Barbara Ehrenreich ‘Prison Abuse; Feminism’s Assumptions Upended; A Uterus is not a Substitute for a Conscience. Giving Women Positions of Power Won’t Change Society by Itself’, *LA Times*, May 16th 2004

²⁰⁵ Malone ‘Just Peace’ pp.25 (emphasis added)

women into an existing system inadequate, it also overlooks the extent to which the marginalisation of women may be perceived as advantageous in terms of their ability to critique IR. As Jacqui True has argued:

knowledge which emerges from women's experiences 'on the margins' of world politics is actually more neutral and critical because it is not complicit with, or blinded by, existing institutions and power relations.²⁰⁶

The category of feminist standpoint can, in fact, be subdivided further into, "care feminism"²⁰⁷ and "postcolonial feminism".²⁰⁸

a. Care Feminism

Advocates of care feminism assert that rather than seeking to promote essentially masculine conceptions of moral agency, as if they are in some sense universal, we must instead argue for an entirely separate form of ethics; one which is:

self-consciously based on the recognition of human inter-dependence and the generalisation of the values inherent in women's caring work... and the concomitant revaluation of ethical values around caring virtues... Care ethics is still inherently cosmopolitan. However, instead of humanity as the reference point, care ethics assumes that the values and principles that can be abstracted from the practice of care are relevant across boundaries of culture and power and should be applied universally.²⁰⁹

The suggestion that the differences between men and women should be embraced by feminist theorists and activists, rather than subsumed in the

²⁰⁶ Scott Burchill et al (ed), p.215

²⁰⁷ Hutchings, 'Feminist Ethics', pp.95

²⁰⁸ Ibid

²⁰⁹ Ibid, pp.96

discourse of equality, is also an element of care feminism and is at the heart of Jean Tronto and Carol Gilligan's views on the 'ethic of care'. The assertion is that men and women 'moralise' differently, with women's marginalised status developing either as the cause or the symptom of their relegation to the private sphere. Whilst men are driven by the 'ethic of justice', wherein the values of individual autonomy are paramount, women are motivated by the relationships to which they belong and the responsibilities which are their consequence.²¹⁰ This gives rise to an alternative conception of becoming and international justice. As a general rule, "care feminism is conceptually connected to the ideals of pacifism"²¹¹ and, as such, the majority of care feminists do not feel able to sanction the use of force, even in cases of humanitarian disaster, since the recourse to violence is so squarely at odds with the values and practices of care. In essence,

[t]he idea of a feminist legitimization of political violence reflects the masculine distortion of enlightenment feminism's model of the human. Whereas, in building on the feminised ideal of the moral subject, care feminism locates non-violence as a core moral value.²¹²

However, certain influential thinkers have made attempts to modify the use of force in the hope of incorporating an increased focus on the demands and virtues of an ethic of care. This is particularly noteworthy within the context of HI since it accords different priorities to different elements of an act of intervention. Often the assumption is that the most significant dimension of HI

²¹⁰ For a detailed account of the data on which these findings were based see Carol Gilligan *In a Different Voice* (Cambridge Massachusetts, Harvard University Press, 1982). For an engaging account of the development of the concept of the 'Ethic of Care' see Naomi Malone 'From Just War To Just Peace'

²¹¹ 'Feminist Ethics', pp.94

²¹² Ibid

is the (short-term) cessation of violence, by any means necessary. Less consideration is given to the aftermath of an intervention and the gendered patterns of settlement. Since the ends of 'justice' are supposedly served through military engagement, the consequences in terms of 'care' are underestimated.

[t]he traditional security concerns of violent conflict and its after-effects have enormous, usually untold implications for relationships of care and for the nature and amount of necessary carework; deaths of family members; internal displacement and refugee situations; personal injury, illness or disability as a direct result of conflict; unemployment or extremely low incomes; inadequate medical care and nutrition; mental and emotional trauma resulting in increased substance abuse, domestic violence, and family conflict – all of these circumstances increase the burden on women's carework. Rarely is explicit consideration given to how the hundreds of thousands of injured, disabled, abandoned, emotionally traumatised, and acutely or chronically ill will be cared for, and by whom.²¹³

However, the ethic of care is not simply a useful device for reminding advocates of HI of the costs of their actions in human terms. Tronto also argues that it can be used to critique the very concept of R2P. Questioning the belief that R2P represents a development of the HI discourse, one which focuses on the needs of the oppressed rather than the imperialistic ambitions of the powerful, she claims that "the only way to make certain that R2P really is a different paradigm is if it goes further in the direction of a feminist practice

²¹³ Fiona Robinson, 'Feminist Ethics and Global Security Governance', Paper prepared for panel on 'The Ethics of Global Governance', International Studies Association, Chicago, 2007
<http://www.allacademic.com/meta/pmlaaparesearchcitation/1/8/0/4/2/p180423index.html>, [02/07/08]

of peacekeeping”.²¹⁴ For Tronto the ethic of care is the most effective means by which to expose poorly executed and strategically motivated interventions. In effect, since an ethic of care prioritises the needs of those in receipt of care, rather than those dispensing it, its terms can be used to assess the success of a given intervention.

In the end... the criterion by which we determine whether or not an intervention was successful is whether the abuses have ended, According to this criterion, there have been remarkably few successful humanitarian interventions, in part because questions about responsibility and competence have not been able to overcome the interests of states in conducting humanitarian interventions in a self-serving manner. Care is about meeting the needs of those in need; in this respect, most of what has been called humanitarian intervention is not humanitarian.²¹⁵

Tronto’s position is not entirely restrictionist but neither does she feel able to endorse R2P in its current form. Identifying the obvious yet significant fact that HI will almost always take place in the context of “unequal power relations”,²¹⁶ she places the onus on intervening states not to act “paternalistically or even against the interests of those in need”.²¹⁷ In so doing, she argues, along with many of her contemporaries that if a more holistic approach were adopted to social and economic inequalities and the dichotomous power relations with which they are intrinsically connected, fewer instances of HI need be occasioned. Nevertheless, Tronto concludes her findings on a tentatively optimistic note. She claims that:

²¹⁴ Jean Tronto, ‘Is Peacekeeping Care Work? A Feminist Reflection on ‘The Responsibility to Protect’, *Global Feminist Ethics: Feminist Ethics and Social Theory*, Peggy DesAustels and Rebecca Whisnant (eds), (Rowman and Littlefield, 2007), p.181

²¹⁵ *Ibid*, p.194

²¹⁶ *Ibid*

²¹⁷ *Ibid*

[T]he responsibility to protect makes clear what an ideal that feminists could endorse might look like, especially if we push the position's internal logic in a more feminist and care-based direction.²¹⁸

Although care feminism provides an engaging perspective from which to critique the use of political violence and to explore the seemingly contradictory relationship between the use of force and the defence of HR, it is not without its critics. Perhaps most significantly, it is accused of essentialising both men and women by categorising the former as the perpetrators of violence and the latter as society's 'natural' carers. This tendency to characterise women as the perennial 'victims' of violence, especially during times of warfare is not only historically inaccurate (as accounts of women's participation in the Yugoslavian Civil War and the Rwandan genocide attest) it is also counterproductive in that it threatens to rob women of their political agency.

Perpetuating images of women as powerless victims of war might unwittingly function to strip women of many types of power, including the power to resolve or prevent conflict. Despite historical examples to the contrary, women who participate in war continue to be viewed as aberrational.²¹⁹

This narrow conception of women and political violence limits the scope of a discourse of becoming, or an aspiration toward non-violence, by unnecessarily assigning reductivist gender dualisms to inherently complex debates.

²¹⁸ *Ibid*, p.196

²¹⁹ Karen Engle, 'Feminism and its Discontents: Criminalising Wartime Rape in Bosnia and Herzegovina', *The American Journal of International Law*, 99(4), October 2005, pp778-816

b. Post-Colonial Feminism

The attribution of specific roles and behaviours to oppressed groups, regardless of historical or biological fact, is vehemently criticised by advocates of another form of feminist standpoint; post-colonial feminism. In some sense, this subcategory of analysis can be read as an endorsement of political violence, in that it is “conceptually linked to the possibility of legitimating revolutionary violence or wars of liberation against colonial regimes”²²⁰. However, in certain other respects, its rejection of liberalism’s pretensions to universalism provides the basis for a cynical appraisal of the liberal conception of becoming and international justice. This is because

[w]hat is posited as inclusive in enlightenment feminism is in practice exclusive, privileging a particular set of Western cultural values and historical developments above others and ignoring the ethical significance of context...For postcolonial feminism, the ethical significance of context is twofold: firstly, because it affects the meaning of a particular right, value, or principle; secondly, because it affects the way in which the effects of measures promoting particular values and principles are experienced... even where contexts are equivalent, from a point of view that gives priority to self-determination, a value or principle that is imposed by an external body has a different ethical significance from one that is voluntarily adopted.²²¹

As the forthcoming chapter on communitarian constructivism will demonstrate, this is analogous to John Stuart Mill’s views on self-determination, in the sense that it concurs with the suggestion that the conditions for democracy or stability are artificial and unlikely to prove durable unless they have been

²²⁰ Hutchings, ‘Feminist Ethics’, pp.94

²²¹ *Ibid*, pp.96

generated from within a particular political community. Attempts to impose such values are inherently problematic and generally born out of an inaccurate or caricatured perception of 'backward' or 'helpless' foreigners incapable of affecting change themselves. Any framework of becoming based on such an analysis is likely to take the form of the developed West ushering 'less sophisticated' political communities toward increased 'civilisation'. Concerns over this ethical perspective account for the fact that post-colonial feminists often criticise liberal feminists for adopting a stance toward women in the developing world which mirrors the relationship between men and women in the West. They also emphasise that just as it is factually inaccurate and morally irresponsible to conflate *male* values with *human* values, it is a grotesque oversimplification to assume that 'femininity' or 'women's experiences' are likely to take only one form.

iv. Humanitarian Intervention and Post-modern Feminism

Furthermore, post-colonial feminists have done much to illuminate the role of narrative in the use of force. This has served to bridge the gap between their position and that of post-modern feminists, "who view reality as structured by discourse representing relations of power and domination".²²² Post-modern feminists treat with suspicion any attempt to label or categorise particular groups and "criticise the structure of this society and the dominant patriarchal order within which women and other marginalised people are perceived as the Other",²²³ something which is commonplace in the literature surrounding the use of force. Jean Bethke Elshtain, in particular, argues that the dualistic roles

²²² Malone, 'Just Peace', pp.30

²²³ *Ibid*, pp.31-32

assigned to the actors in war stories provide the moral justification for the loss of human life. For Elshtain, the “gendered distinction”²²⁴ at work in such scenarios is between the “just warrior”²²⁵ and the “beautiful soul”.²²⁶

The former is an ethical subject willing to fight for an appropriate just cause in protection of the vulnerable or of specific values. The latter is an ethical subject who is protected by the just warrior, but herself eschews violence and embodies values of care and peace. It can be argued that enlightenment feminism models the ethical subject on the just warrior, whereas care feminism models its ethical subject on the beautiful soul. In both cases these archetypes sustain an ethics of violence that is untenable from the point of view of the promotion of values of pluralism and self-determination.²²⁷

Anne Orford has also argued that the practice of HI is sustained through the creation and perpetuation of “heroic narratives”,²²⁸ which have their roots in the “encounters between Europe, later the ‘West’ or the ‘international community’, and those colonised or enslaved by Europeans”.²²⁹ Although the name of the failed state, the number of civilian casualties, the particular intervening agent, or the duration of the campaign may vary, Orford argues that the ‘plot’ of intervention stories has become entrenched in the machinations of international politics. In almost all cases, it runs as follows:

These narratives present rogue states, ruthless dictators and ethnic tensions as threats to the established liberal international order. The argument made by those in favour of humanitarian intervention is that the use of force is necessary to address the problems of racist and ruthless dictators... ethnic

²²⁴ Hutchings, ‘Feminist Ethics’, pp.97

²²⁵ *Ibid*

²²⁶ *Ibid*

²²⁷ *Ibid*

²²⁸ ‘Muscular Humanitarianism’, pp.687

²²⁹ *Ibid*

tension, civil war and religious fundamentalism thrown up in the post-Cold War era. The need to halt the horrors of genocide or ethnic cleansing, or address the effects of internal armed conflict on civilians, is sufficient justification for military intervention. A commitment to humanitarian ideals demands military action from the international community, increasingly in the form of aerial bombardment. The failure to take such action amounts to 'abstention from the foreign policy debate' and any challenge to interventionism 'rewards tyrants' and 'betrays the very purpose of the international order'.²³⁰

As these narratives are constructed and reproduced by global political actors and the Western media, we are called upon to identify with the hero of the story, the white male, capable of *civilising* the black man and *defending* the white women. In this respect, HI, for Orford, must be approached cautiously as the latest incarnation of an old, familiar story based on falsifiable assumptions and gendered and racialised power relations.

The hero's journey is about the civilisation, progress, or development of that colonised subject. Intervention by white men is justified in order first to civilise the natives of subject colonies, and later, in the era of decolonisation to assist the development of those former colonies.²³¹

The danger is, then, that in this era of 'humanitarianism', HI is now framed as an attempt to 'rescue' this same subject from the conditions of tyranny and anarchy and install regimes which allow the hero to recreate the world in his own image. In other words, the account of becoming which HI informs is not the product of an innocuous attempt to universalise basic HR but rather to homogenise (and thereby exercise control over) rival political communities.

²³⁰ *Ibid.*, pp.691

²³¹ *Ibid.*, pp.688

Such is the conceptual and practical link between HI and democratisation since “[t]he nature of international intervention rules out the possibility” of a ‘rescued’ peoples “choosing political, social or economic arrangements that differ from those in place in intervening states. The people living in states subjected to HI are only free to choose to be (almost) the same as those ‘saving’ them”.²³² This process denies the political agency of those in target states, fundamentally calling into question the extent to which they are capable of self-rule and self-determination and extending the hegemonic influence of Western states, both in political and economic terms.

Moreover, HI narratives, so framed, provide the ultimate justification for selectivity since the West need only intervene in those cases wherein a sufficient degree of ‘civilisation’ exists to provide reasonable prospects of success. If the situation is deemed to be intractable, the word ‘genocide’ is often avoided in place of ‘tribal violence’, as if to signify that this is a problem so deeply woven into the ‘irrational squabbles of a backward peoples’ that it can only be resolved internally. Even the most cursory overview of HI in recent years, highlights the striking coincidence that areas lacking in natural resources often collapse into the kind of disorder that the West feels powerless to address. In other words, the self-determination of a struggling peoples is only of any value in heroic narratives when a lack of strategic motivation necessitates a rationalisation for non-intervention. In short, current HI narratives serve either to legitimate inaction, or to perpetuate assumptions concerning the supremacy of the West. As Iris Young puts it:

²³² Ibid, pp.698

[T]o the extent that we identify with a rhetoric of war for the sake of saving the victims of tyranny, we put ourselves in a position superior to those we construct as in need of our aid.²³³

IV. The Components of Humanitarian Intervention

i. Feminism and the Transition to R2P

Much of the remainder of this thesis will be structured to reflect a JW mode of analysis which subdivides HI into certain core conceptual categories (including 'just cause' and 'proper authority'). However, HI tends to be investigated by feminists in terms of the discourse on which it is based, rather than in terms of specific military conventions or international organisations. With this in mind, the insights provided by IR feminism into HI are most effectively appraised in light of the transition from HI to the R2P, rather than in accordance with a traditional JW framework. Intriguingly, the limitations associated with HI, from the perspective of IR feminists, are not ameliorated by the linguistic shift to the R2P. In fact, many of the inadequacies of the intervention discourse are exacerbated by this recent development. Again, emphasising the way in which language constructs and enables certain behaviours, both post-colonial and post-modern feminists, have expressed dissatisfaction with the use of the word 'protection' in this context. The element of HI narratives which emphasises the duty of the developed West to offer 'protection' to the citizens of struggling or failing states is part of a wider "logic of masculinist protection"²³⁴ which infantilises and condescends to these

²³³ 'The Logic of Masculinist Protection: Reflections on the Current Security State, *Signs: Journal of Women in Culture and Society*, 29(1), 2003, pp.679-711, pp.700

²³⁴ *Ibid*

very individuals. Echoing the constructivist focus on the creation and manipulation of meaning, Young encourages IR practitioners to analyse, in greater depth, the role of gender and language in the recourse to violence. “Viewing issues of war and security through a gender lens”²³⁵, she argues “means seeing how a certain logic of gendered meanings and images helps organise the way people interpret events and circumstances, along with the positions and possibilities for action within them, and sometimes provides some rationale for action.”²³⁶ For example, using the language of protection, the US government was able partly to justify its 2001 invasion of Afghanistan, a failed state with a history of HR abuses, particularly against women. However, what was not adequately addressed were the reasons that the Taliban, with whom the US had once closely collaborated, had been able to perpetuate such abuses unchecked for so many years before September 11th 2001. Similarly, the burgeoning discourse of R2P was rocked when, once the implausibility of the pre-emptive self-defence justification for the 2003 invasion of Iraq was exposed, the responsibility of international society to the victims of Saddam Hussein took centre stage as a rationale for warfare. In both cases, the humanitarian motives cited by interveners were less than persuasive. As such, not only has the shift to R2P failed to guard against the tendency for national self-interest to govern HI but it has also failed to dismantle the gendered hierarchies of ‘victim’ and ‘rescuer’ which hampered the discourse of HI.

²³⁵ Ibid, pp.681

²³⁶ Ibid

The abiding significance of the linguistic shift from a 'right to intervene' to a 'responsibility to protect', at least in view of the concern with becoming which motivates this project, is the fact that it was designed to reflect a concern for the individuals who suffer egregious HR abuses, rather than the global political actors who choose to respond to them. However, there is still great contention as to whether intervening troops are, generally, greeted as liberators, or feared as invaders. Moreover, feminists often call into question whether the 'victims' of atrocities will benefit from the 'protection' of those whose own self-serving economic policies and neo-imperialistic agendas have contributed to the backdrop in which conflict is taking place. This is indicative of the wider limitations of the heroic narratives which have surrounded HI and the R2P, since the normative developments of the 1990s brought the discourse to increasing prominence.

The new enthusiasm for military intervention as a weapon of human rights enforcement... had systemic effects. The resort to *ad hoc* interventionist responses to human rights crises by major powers allowed them to avoid funding, supporting, and strengthening existing multilateral mechanisms for promoting and protecting human rights. The use of force as a response to security and humanitarian crises continued to mean that insufficient attention was paid to the extent to which the policies of international institutions themselves contribute to creating the conditions that lead to such crises.²³⁷

This is a recurring theme among feminist commentators who emphasise the holistic nature of international injustice, the multifaceted character of humanitarian suffering, as well as the need to acknowledge that the values and ambitions of the West are not necessarily neatly interchangeable with those of other global regions.

²³⁷ Orford, *Reading Humanitarian Intervention*, p.13

[m]any people living in Asian, African, and Latin American societies believe that not only U.S. military hegemony but also international trade and financial institutions, as well as many Western-based nongovernmental development agencies, position them in this way as feminised or infantilised women and children under the protection and guidance of the wise and active father.²³⁸

The cumulative effect of these reiterated narratives, which position the heroic figure of the US, the UNSC, or a given regional organisation as the saviour of a panicked, repressed, victimised peoples, acts to distance observers from the *real life* consequences of military intervention. Since the interveners are acting in defence of humanity and global HR standards, they gain a certain license over the rules of war and non-combatant immunity. Aerial bombardment, which is known to be a highly ineffective tool in this context, and one which costs many civilian lives, nevertheless becomes the established standard for a military incursion on humanitarian grounds. This is largely due to the fact that:

[t]here is no space within the dominant narrative of post-Cold War internationalism to consider the effects of the hero's actions on the human targets of intervention, or to treat the targets of intervention (whether states or peoples) as having legitimate agency.²³⁹

The failure to acknowledge the agency of the targets of intervention speaks, from the perspective of many IR feminists, to the heart of the failure of the practice of HI. Equally, the reproduction of the flawed 'knowledge' which informs heroic narratives renders any change to the practice highly unlikely. It is for this reason that Orford goes on to claim that critics of the current

²³⁸ Young, 'Masculinist Protection', pp.19

²³⁹ Orford, 'Muscular', pp.702

intervention regime must identify the “construction of truth”²⁴⁰ in these stories as serving a very particular purpose; the continued hegemony of Western masculinity. Equally, those dissatisfied with the current constraints of the HI discourse should seek ways of “producing knowledge more ethically”.²⁴¹ In this respect, she allies herself to techniques which are familiar to advocates of post-modernism in the wider sense; specifically arguing for discourse analysis as a means by which to render the familiar, unfamiliar, and to reject narratives and assumptions associated with liberalism. She also suggests that “[R]emembering the constructed nature of these stories is perhaps the most useful way to counter the speed and power with which such stories are disseminated”²⁴² and, therefore, arrest the processes which might otherwise allow them to become part of the vernacular of international politics. This, she acknowledges, will also involve divesting oneself of the sense of belonging and identification which participation in such HI narratives provides. Only in so doing might we rid HI of some of its paternalistic and neo-colonial overtones. However, so entrenched have HI stories become that even this process may not successfully overturn their dominance. This is due to

the speed with which such stories can be constructed and conveyed, the capacity of the media to lavish attention upon a particular state, the amount of information that is hidden in public debates about the desirability of intervention, the great leaps of logic that occur between one story and the next, and the ability of intervention stories to dismiss violence and suffering as somehow necessary.²⁴³

²⁴⁰ *Ibid*, pp.682

²⁴¹ *Ibid*, pp.703

²⁴² *Ibid*, pp.708

²⁴³ *Ibid*, pp.708-709

Nevertheless, the suggestion is that in subverting HI narratives, we will be better placed to resist manipulation and less inclined to abdicate responsibility for decisions which are made on our behalf. Analysing the NATO-led intervention in Kosovo, Orford highlights the corrupt processes of becoming which ensure that knowledge is concealed, and self-reflection discouraged, by an unthinking acceptance of a given narrative:

... belief in the story that the conflict in Kosovo was about ethnic or religious tension involves repressing questions such as: What kind of political and historical processes have given rise to this conflict? How am I a beneficiary of the knowledge that is being produced about the lives of these people? What identity am I being invited to construct for myself and my community while these people are portrayed to me as fanatics, religious bigots, pre-modern or racists? What role has my government played, either acting on its own or through international institutions, in contributing to the causes of the conflict? Do I have any power to influence... those who supposedly represent me in Kosovo? How does the rise of populist racist parties throughout the industrialised world relate to what is happening in Kosovo? Why do commentators on Kosovo believe that these people are a 'problem' that 'we' can solve? What political and personal stake do I have in this narrative? Each of these questions, and many more, must be avoided in order to create faith in a narrative that tells us that intervention is necessary.²⁴⁴

Intriguingly, despite concerns over the relationship between becoming and heroic narrative, neither Orford nor Young are prepared entirely to dismiss the role of HI in international society, since neither wishes to under-estimate the devastating impact of humanitarian disaster on the citizens of failing states and their surrounding territories. In fact, perhaps surprisingly, Young characterises HI in much the same way as mainstream theorists:

²⁴⁴ *Ibid*, pp.709

I would not argue that humanitarian reasons can never justify going to war against a state. I think, however, that such protectionist grounds for military intervention must be limited to situations of genocide or impending genocide and where the war actually makes rescue possible.²⁴⁵

However, feminist IR stresses the need to make good on the letter of the R2P by embracing the demands of prevention, which were said to distance it from the language of 'the right to intervene'. This focus on preventative measures must, they argue, take aim at problematising the hegemonic influence of the liberal economic paradigm which maintains vast disparities between rich and poor, as well as unsustainable dichotomies between the public and private spheres which themselves perpetuate gendered hierarchies in social relations. It is these inequalities which so often create the conditions for conflict and the associated calls for acts of HI.

ii. Feminist Constructivism and Humanitarian Intervention

Having established that a broad interpretation of feminist ethics is well positioned to illuminate debate surrounding HI and that such insights resonate with more general international justice claims, what remains at issue is the suggestion that a specifically 'feminist constructivism' can enrich our understanding of becoming in international society. There are several inter-related ways in which feminist IR and conventional constructivism could be said to dovetail, particularly in an analysis of HI. A focus on the development and institutionalisation of norms has the potential to compliment the emancipatory agenda which underpins feminist theorising, and an understanding of gender as a social construction may serve to advance

²⁴⁵ 'Masculinist Protection' pp.20

constructivist understandings of international politics. After all, in critiquing gender, many feminists embrace very similar analytic terms to those adopted by their constructivist contemporaries.

A social constructivist view of gender... locates “genderedness” in the distributions of ideas regarding men and women—the cultural attributes associated with masculinity and femininity—that prop up the world system. Understanding how it operates - by channelling men and women disproportionately into different institutions, by devaluing attributes and behaviours associated with the feminine, and by underwriting discourses of international affairs - is a key component of understanding world politics *per se*.²⁴⁶

This framework is supported by, among others, Birgit Locher and Elisabeth Prügl who identify ontological, and to some extent epistemological, commonalities between the two theories; not least a shared focus on the ways in which the ideational and the material are united in a symbiotic relationship, and the manner in which norms can enable and constrain the behaviours of global political actors. Furthermore, the conviction that feminism and constructivism share certain complementary assumptions is reflected in the criteria which Tickner claims that a theory must fulfil if it is to incorporate gender in a successful fashion.

Paraphrasing Sandra Whitworth, Tickner claims theories that incorporate gender must satisfy three criteria: ‘1) they must allow for the possibility of talking about the social construction of meaning; 2) they must discuss historical variability; and 3) they must permit theorising about power in ways that uncover hidden power relations’.²⁴⁷

²⁴⁶ R. Charli Carpenter, ‘Gender Theory in World Politics: Contributions of a Non-feminist Standpoint?’, *International Studies Review*, 4(3), (2002), pp.153-165, pp.155

²⁴⁷ Carpenter, *Gender Theory*, pp.162

There can be little doubt that constructivism conforms to the first two requirements but Locher and Prügl claim that, absent a response to the feminist critique, it lacks the analytical tools to engage with the third criteria because it operates within the confines of existing power relations, without questioning their origins or perpetuation. The suggestion is that constructivists must take more sophisticated account of the ways in which these power relations are replicated through the creation and maintenance of binary oppositions which denigrate the female relative to the male. This does not simply manifest itself in the subordination of women but in the dismissal or marginalisation of values which are taken to be 'female' and the championing of behaviours which are deemed to be 'male'. Indeed, entire political communities are 'feminised' in this way because the assumption in favour of male superiority is replicated in the belief that western political frameworks are more civilised and advanced than alternative regimes and the associated assumption that the West is well placed to offer guidance and 'protection' to those in other parts of the world.

As such, if feminist constructivism is to make a significant contribution to the debate surrounding HI (and related questions as to relationship between becoming and the limits of an international duty of justice) and if its transformative ontology is to provide the tools for reform, it must assimilate insights drawn from each dimension of the broader feminist tradition. Some of the most compelling of these perspectives can be delineated as follows: feminist empiricism calls for the involvement of an increased number of

female actors in international politics. Whilst unto itself this is insufficient to ensure progress, it remains a key component of feminist IR; the current absence of which is demonstrated by the fact that only one of the twelve commissioners involved in the drafting of the ICISS was female. Feminist standpoint, in the guise of care feminism, encourages an engagement with a different form of ethical debate; one which focuses not simply on the rights of the individuals and the theoretical justifications for acts of violence but rather on gendered roles within the political community. For example, its advocates draw attention to the real life consequences of consolidating women's 'double-burden', of both productive and reproductive tasks, by increasing the level of care work required within a particular group. Post-colonial feminism guards against the tendency to deny the political agency of an infantilised 'other' by rejecting the notion that, in a macrocosm of the male/female relationship, protection is something which the West is uniquely placed to offer the developing world.²⁴⁸ This form of feminist IR encourages dialogue between different political communities and attempts to foster notions of becoming which move beyond assumptions in favour of Western superiority. This is linked with the post-modernist focus on unpacking the received narratives of liberalism, in which binary oppositions are constructed with a view to justifying and naturalising chauvinistic or neo-imperialist behaviours among global political actors. Post-modern feminism has the potential to infuse alternative theoretical approaches with a level of self-reflection, ensuring that commentators in the field do not grow complacent concerning the origins of

²⁴⁸ Many feminists point to the fact that in extreme Islamist cultures, the Western framework of human rights, which extends certain freedoms to women in terms of clothing and freedom of movement, is accused of failing to 'protect' women from involvement in pornography and prostitution. This is indicative of how open to interpretation the value of 'protection' can be and of the range of behaviours which it can be used to legitimate.

their own knowledge-claims. Furthermore, although as the transition from HI to the R2P demonstrates, a mere change in language is not a guarantee of lasting progress, close-reading and narrative deconstruction do allow for such shifts, however incremental, to be seized upon, increasing the possibility that global political actors may be bound by their public commitments. Feminist constructivism can embrace a range of these elements of feminist IR more generally and through a focus on the constitutive role of language and the changing parameters which govern international politics, can both trace the development, and critically assess the impact, of gendered power relations on the processes of becoming in IR.

However, the hybridisation of feminism and constructivism does place certain constraints on the feminist theoretical framework. The, arguably, unique value of constructivism rests in its ability to provide the linchpin between more traditional readings of IR and the 'ontology of becoming' which unites a number of critical approaches to the discipline. Although many feminists would argue that maintaining credibility in the eyes of the 'scientific' academic community of IR is not a pressing concern, or that attempts to institutionalise progress in PIL are inherently fruitless, it is the lack of communication between feminist and traditional IR which has served to maintain the marginalised nature of feminist commentary. It is for this reason that even the most committed of IR feminist scholars accept that appropriating the language of the mainstream in order to improve it from within need not amount to an irrevocable abandonment of core principles. In the context of HI, even Orford concedes that "[t]here are times when it is useful to accept the imagined world

of intervention stories in order to achieve a change that is possible within its logic".²⁴⁹ Equally, those who are not persuaded by the emancipatory agenda of feminist commentary may, nevertheless, incorporate an understanding of gender into their own research. It is this suggestion which has given rise to what Carpenter refers to as "gender constructivism".²⁵⁰

V. Gender Constructivism

The final task of this chapter is to explore the suggestion that, irrespective of whether a theorist of international politics chooses to commit themselves to the full implications of what is often clumsily referred to as the 'feminist agenda', the conception of becoming which they espouse will benefit from taking seriously the impact of gender. It is reasonable to suggest, as Tronto does, "that when people begin to talk about gender, they often begin to talk really about women"²⁵¹ and it is for this reason, among others, that gender is often considered the exclusive preserve of feminist commentators. However, Carpenter argues that the imperative of incorporating gender as an analytical category should not, and need not, be contingent upon the decision to "self-identify"²⁵² as a feminist. In fact, she is particularly persuaded by the fundamental compatibility of social constructivism and gender analysis.

Although incorporating gender (and sex) would enrich all strands of IR theory, the absence of gender analyses within the emerging literature on norms and identities is particularly conspicuous. If reality is socially constructed and material outcomes depend largely on shared beliefs, the ubiquity and salience

²⁴⁹ 'Muscular', pp.703

²⁵⁰ Carpenter, 'Gender Theory', pp.164

²⁵¹ *Global Feminist Ethics*, p.87

²⁵² Carpenter, 'Gender Theory', pp.156

of beliefs about sexual difference in areas relevant to IR are worthy of study.²⁵³

In the context of her own research, Carpenter focuses on the impact of gender on issues surrounding non-combatant immunity; over-turning the assumption that the category of 'civilian' implies, principally, women and children.²⁵⁴ Crucially, however, she does so in 'descriptive' rather than 'prescriptive' terms, acknowledging and analysing the role of gender without necessarily exploring the ways in which its associated misconceptions or built-in hierarchies might be remedied as part of a wider emancipatory project. She also encourages commentators from all theoretical persuasions to take account of gender, (even if they believe their field of interest or expertise to relate to a 'non-feminist' area of research) and to do so in a fashion which is truly inclusive.

While ostensibly about *gender*, the contributions [of feminists] actually focus on *women* and their struggles: there is little effort to broaden the scope of gender in such a way as to draw in diverse perspectives... The question for "mainstreaming" gender in IR is how to put the analytical category of gender to work on topics that are not specifically feminist, without undermining the IR feminist agenda.²⁵⁵

Carpenter anticipates the hostile reaction which such a suggestion may provoke from feminists, both within IR and beyond its complex and permeable disciplinary boundaries and, in response, she points out that the

²⁵³ *Ibid*, pp.153

²⁵⁴ A typical example of Carpenter 'using gender' but rejecting feminism can be found in 'Gender Theory in World Politics'. It runs as follows: "The trope "civilians now account for about 90 percent of war casualties, the majority of whom are women and children" is a gendered construction of the "civilian" that flies in the face of, among other things, refugee statistics and the widespread targeting of civilian men and boys for massacre in armed conflicts around the world" (pp.157)

²⁵⁵ *Ibid*, pp.154

marginalisation of feminist commentary is a two-way process. It can be attributed both to the puzzling fact that “so few theorists interested in understanding the world are willing to accord to gender the causal and constitutive role it plays”,²⁵⁶ as well as to the tendency of feminists to resist “the co-option of gender as an explanatory framework separate from feminist normative commitments”.²⁵⁷ This latter factor has even led to the suggestion that, in some cases, feminists self-consciously cling to their ‘ghettoised’ status, as an element of their own identity. This resistance, coupled with the implications of framing “gender analysis as feminism”,²⁵⁸ guarantees continued miscommunication.

[T]he mainstream IR scholar, even if s/he finds arguments about gender compelling, faces an apparent choice between adopting feminist theory to study gender (migrating from establishment to fringe) or joining in the collective marginalisation of gender as an explanatory variable and feminism as a normative perspective.²⁵⁹

In fact, Carpenter seems to argue that an analytical focus on gender, (freed from the specific agenda of improving the lives of women) avoids some of the pitfalls associated with feminist theorising. In particular, she claims that the normative commitments of some feminists lead to an eschewed or inaccurate characterisation of international politics, in which decisive factors are overlooked or under-estimated.

²⁵⁶ Ibid

²⁵⁷ Ibid, pp.155

²⁵⁸ Ibid, pp.156

²⁵⁹ Ibid

Writing with a declared agenda for promoting the interests of all women, feminists run up against empirical and theoretical difficulties when the results of gender in operation conflict with their normative agenda.²⁶⁰

In the context of the debate surrounding the use of force, this may account, in part, for the problematic assumption at work in some feminist commentary that women are rarely active participants in warfare; something which has been all but disproved by empirical analysis. It also provides an indication as to why so few feminist theorists have engaged with the issue of “gendercide”.²⁶¹

Incorporating an appreciation of gender into an analysis of genocide and ethnic cleansing has the potential to save many lives by providing something akin to an ‘early warning system’.

[t]he genocidal or proto-genocidal targeting of males, especially ‘battle-age’ men, is one of the most reliable indicators of the onset, or impending onset, of full-scale genocide.²⁶²

Monitoring such patterns of violence is, therefore, one means by which to fulfil the prevention requirements written into the R2P and may help to bridge the gap between taking preventative measures, on the one hand, and respecting the requirement of ‘last resort’ on the other. It may be that once large-scale killing of battle-age men is observed, the diplomatic measures normally put in place, before HI, could be circumvented to guard against full-scale genocide.

²⁶⁰ Ibid, pp. 158

²⁶¹ Adam Jones, ‘Genocide and Humanitarian Intervention: Incorporating the Gender Variable’, Presented as a paper to the Fourth International Bi-Annual Conference of the Association of Genocide Scholars, Minneapolis, 10th-12th June 2001, pp.1, <http://www.jha.ac/articles/a080.htm>, [27/05/08]

²⁶² Ibid

Genocidal violence often begins with the targeting of the male members of a given political community and spreads to incorporate the murders of women and children.

There are two key areas in which gender seems to play a significant role in precludes to genocidal killing: mass detentions, torture, and selective killing of 'battle-age' males, and the demonization of both males and females, but especially males, as part of the campaign of stigmatisation, marginalisation, and concentration that standardly precedes the onset of larger-scale or full-blown genocide. Those seeking to isolate 'warning signs' of genocidal outbreaks should therefore attend closely to these gendered patterns of anathematisation and persecution – along with other important (and standardly gendered) indicators, such as the development of paramilitary forces, primordial appeals to racial and ethnic identity, the cultivation of the 'politics of verbal assault and physical violence' and the deepening of inter-generational cleavages".²⁶³

Although there can be no doubt that other gendered patterns of violence both precipitate and follow genocide (not least the escalation of carework described by Tronto and Heidi Hudson) it is rare for the gendered effects of genocide on men to be articulated as a cause for concern by feminist, or any other, commentators since "[t]he challenge of expanding the framework of 'gender' beyond women has... barely begun to be met, and urgently requires scholarly and institutional consideration".²⁶⁴

The phenomenon of gendercide and the tendency of feminists to downplay its significance also typifies the reluctance among feminist commentators to acknowledge that the patriarchal structures and constraints to which women

²⁶³ Ibid, pp.2

²⁶⁴ Ibid

are subject have two contradictory effects; one is to perpetuate oppression but the other, perversely, is, at least on occasion, to shield women from certain forms of violence. Using among other examples, the slaughter of Bosnian civilians in the UN-safe zone of Srebrenica in 1995, Karen Engle points out that whilst it is impossible to over-estimate the trauma associated with the mass-rapes which characterised the Yugoslavian civil war, even amidst such campaigns of terror, the lives of women were often spared.

During the massacre at Srebrenica, Serbian forces separated out and took into custody boys and men from the ages of twelve, through seventy-seven, while buses transported approximately twenty-three thousand women and children to safety.²⁶⁵

According to Carpenter's line of argument, a 'gender constructivist' perspective can take account of such disparities with an objectivity which a feminist analysis might lack. A common feminist response to this issue, for example, is to claim that due to the social stigmas inherent in certain societies, to be labelled as a "raped women"²⁶⁶ in this social context is to suffer "a fate worse than death".²⁶⁷ Equally, feminist commentators might be inclined to argue that the use of mass-rape as a tool of war is further evidence of the ways in which women are objectified, defiled, and used as a means to the end of ethnic cleansing through forced impregnation. However, Engle's persuasive account of the process by which mass-rape was ultimately declared a 'crime against humanity', illustrates that many of these assumptions, at least in the case of the Former Yugoslavia, were based on

²⁶⁵ 'Feminism and its Discontents', pp.814

²⁶⁶ *Ibid.*, pp.75

²⁶⁷ *Ibid.*, pp.813

exaggerated perceptions of: the level of religious fervour among ordinary Bosnian Muslims; the associated contention that women from Muslim societies who had been the victims of rape would find it impossible to rebuild their lives within the fabric of such societies; a distorted belief concerning the degree to which the intent behind so-called 'rape camps' was to forcibly impregnate women "with a different ethnic gene"²⁶⁸ and thereby to 'breed out' particular political communities; and a failure to appreciate that for many women the horrors of rape were consolidated by the deaths of loved ones, including young children, which for many would have represented a loss even greater than that which had been inflicted upon them by their attackers.

Certainly the purpose of Engle's work is not to make light of the horrific abuses suffered by women in this, or any other, military campaign or indeed to set aside the everyday experiences of violence which many women endure, even in the apparent sanctity of their own homes. Rather, her perspective brings balance to an emotive discussion by demonstrating the ways in which gendered patterns of violence can make 'victims' of both men and women. The significance of her findings in terms of this project lies in the suggestion that in order for any conception of becoming or prescription for progress in international society to take aim at injustice, it must first engage in a realistic appraisal of the ways in which gendered power relations impact upon all human beings.

²⁶⁸ Ibid, pp.789

So it is that Engle's insights bear out Carpenter's argument that one need not self-consciously embrace all the parameters of feminism in order to appreciate the role of gender in IR. Furthermore, in highlighting the issue of mass rape as a crime against humanity, Engle also indicates how forcing the issue of gender into the mainstream can affect positive change. When the statute establishing the International Criminal Tribunal for the Former Yugoslavia defined the crime of mass rape and the rules according to which it might be tried, the hope was that any notion that such incidents might be considered as "a natural occurrence in war"²⁶⁹ would be confined to history. Whilst she is not entirely satisfied with the specific institutional mechanisms around which the process revolved, she acknowledges that many of the feminists campaigners who fought tirelessly for this change in the law consider it to be a major victory, and one which might ultimately "encourage individual nations to treat sexual violence more seriously".²⁷⁰ Although this task is far from complete, even in its infancy, it is indicative of how a gender lens can broaden and deepen traditional understandings of IR. Perhaps, when allied with a constructivist focus on the creation, dissemination, and institutionalisation of new norms, positive developments such as these can be built into the foundation of PIL and IR, and the gap created by the failure to acknowledge gender as a social construction may be bridged, at least slightly.

Gender constructivism is not a popular concept among feminists, with critics arguing, variously, that it is: a tautology (since gender *is* a construction); an

²⁶⁹ 'A Landmark Ruling on Rape' *The New York Times* [online] 24/02/01 <http://www.criminology.fsu.edu/transcrime/articles/A%20Landmark%20Ruling%20on%20Rape.htm>

²⁷⁰ *Ibid*

attempt by the mainstream to borrow from feminism only that which it can embrace without substantial self-reflection, or to “add gender and stir”;²⁷¹ and an unnecessary abandonment of the rich cannon of feminist political theory, which has helped to define the categories of sex and gender. Alternatively, certain commentators subscribe to the viewpoint that “[f]uelling the idea of eliminating feminism from gender seems to be the gratuitous desire to confine feminist scholarly work within specific contours”,²⁷² something which is strongly resisted by feminist theorists. Notwithstanding these core differences between gender and feminist constructivism, however, there is a clear consensus surrounding the notion that no account of international justice is complete without an engagement with the construction of gender and its impact on the options available to global political actors. In short, the parameters of becoming and a constructed duty of justice will be contingent, at least in part, on the power relations which, due to gender difference, real or perceived, permeate international politics.

VI. Conclusion

The contribution of feminist constructivism to the debate surrounding HI, and the demands of international politics more generally, rests in its ability to draw together competing strands of constructivism under the banner of ‘ontology of becoming’; a concept drawn from feminist theory and one which is integral to the tone and scope of this project. Although feminist constructivism boasts the most self-consciously transformative agenda of any of the theoretical subsets

²⁷¹ Helen Kinsella ‘For a Careful Reading: The Conservatism of Gender Constructivism’, pp295, Terrell Carver (ed), *The Forum: Gender and International Relations*, *International Studies Review*, 5, 2003, pp.287–302,

²⁷² *Ibid*, pp.292

outlined in this project, even those elements of constructivism which are not wedded to a particular emancipatory goal do tend to focus both on an appraisal of the current constraints of international society and the potential for change within or beyond it.

Feminist campaigners are often the most vocal detractors of the current HI regime and their 'bottom-up' approach to IR ensures that they concern themselves not merely with the justifications for HI but with their consequences for ordinary people, particularly women. In other words, compared with mainstream IR, feminist commentary encourages the establishment of a more nuanced and far-reaching conception of the nature of humanitarian suffering and the potential (preferably non-violent) responses to it. On this basis, it is perhaps surprising that more feminist scholars are not squarely opposed to HI, in any circumstances. In fact, a recurring viewpoint, and one which appears to be common to the majority of constructivists writing on this issue, is that the use of political violence, if it is to be deemed legitimate, must be preserved for the most extreme cases of genocidal violence. This is not to say that, from a feminist perspective, less systematic forms of violence should be accepted as specific to the cultural and historical heritage of a given political community but rather it is simply to suggest that even the most radical of feminist theorists would not argue that issues such as pervasive domestic violence or economic inequalities can be resolved by means of military intervention. Ultimately, IR feminists generally assert that systemic inequalities are the root cause of political violence, both in the form of HI and in the form of the extreme disorder which begets it. As such, a

feminist international duty of justice is one in which inequitable socio-economic conditions are linked to the international organisations and western hegemonic masculinity which perpetuate such inequalities. It is by dint of this process that the underlying causes and consequences of injustice are addressed through widespread and sustained change.

In many respects, this is difficult to operationalise using a constructivist methodology. This is due to the fact that constructivism tends to assess and affect change by increments and within the boundaries of an existing system. In this context, moral claims are legitimated *ad populum* and articulated in a language which already embodies shared meanings and understandings among powerful actors. This process is not always inherently conservative or reactionary since on occasion a subtle change in this language, or the way in which it is employed, can shift the terms of a debate, forcing the hand of even the most influential states or organisations. For example, despite a degree of scepticism among feminist and other commentators, there is almost certainly substantial merit in the linguistic transition from HI to the R2P, even if only in its under-emphasised focus on prevention.

Nevertheless, many feminists would argue that the language of international politics and PIL is so tainted by gender bias that little can be achieved by assimilating it. However, it is the contention of this thesis that feminist constructivists can ill afford to adopt such an inflexible position. It is certainly the case that constructivism can benefit from a more nuanced appreciation of gendered power relations. However, it is also reasonable to suggest that

feminism will be better equipped to share its invaluable insights if its advocates are prepared to do so in a fashion which is more comprehensible to the mainstream and more amenable to the possibility of slow, and even inconsistent, progress. In other words, whilst feminism provides constructivism with a framework for understanding becoming (what might be), constructivism can anchor feminism into an appreciation of being (what is) and a balance between these two positions can produce a powerful theoretical synthesis which boasts a broad appeal. This need not necessarily entail embracing gender as a category which is entirely separate from its feminist roots but it will almost certainly involve encouraging those from beyond the feminist theoretical contingent to appraise the impact of gender on their own knowledge claims and wider considerations of international justice. It will also depend upon the willingness and ability of feminists to take seriously the possibility of improving the system from within, as opposed to abandoning it in entirety. The fact that mass-rape is now formally considered to be a crime against humanity and one which, according to the terms of the R2P, may well be sufficient to occasion HI, is due in no small part to a campaign which was spearheaded by those who acknowledged that gender, far from being an incidental component of inter-state relations, was key to the establishment and maintenance of HR standards and international politics. Equally, there is much to learn from the assertion that for as long as the discourse of HI remains impervious to gender analysis, accepting as givens the assumptions implicit within its terms, the practice of HI will continue to rely upon, and as such to perpetuate, the belief that women and 'feminised' men

lack the political agency to govern their own lives, without the heavy-handed assistance of the West.

One of the principal imperatives for the remainder of this thesis will be to take aim at reading the implications of a gender-sensitive ontology of becoming into more traditional conceptions of HI. The hope is that this gender-lens will illuminate the potential for a broader and more sophisticated account of becoming and humanitarian suffering to emerge in mainstream IR theory and, thereby, to increase the scope and influence of a constructed duty of justice.

Chapter Four: Allen Buchanan, Cosmopolitan Constructivism and Humanitarian Intervention

I. Introduction

This chapter will appraise the contribution of Allen Buchanan to the HI debate. It will analyse the claim that his principle of institutional moral reasoning represents a constructivist engagement with becoming and consider the extent to which it bears critical scrutiny from both a pluralist and a gender-based perspective. Central to this endeavour is an assessment of whether, as Buchanan claims, his theory is predominately concerned with the institutionalisation and systematisation of those justice claims which *already operate* at the heart of international society. Furthermore, the chapter attempts to unpack the associated contention that the moral claims which derive from his theory stand apart from the liberal cosmopolitan tradition and are, as such, accessible to advocates of any viable ethical perspective. In order to explore both these assertions, analysis will begin with an exposition of the traditional liberal defence of HI. This will be followed by an examination of the ways in which Buchanan's theory purports to differ from it, and, in so doing, will provide a comprehensive account of this alternative argument, including the case for a 'League of Democracies', designed to enact interventionary policies.

Taken together, these processes will reveal that, at times, Buchanan conflates cosmopolitanism and constructivism by over-estimating the 'settled' nature of certain norms. He asserts that, even in the absence of first principles, any

attempt effectively to institutionalise the HR which form the foundation of the UN system must necessarily lead to an endorsement of cosmopolitan reasoning. However, upon detailed evaluation it becomes apparent that this assumption is based on a flawed understanding of the relationship between multilateralism and HR. Furthermore, the notion that HR as they exist in the UN Charter and subsequent Conventions are interchangeable with their manifestation in cosmopolitan theorising understates the degree of controversy which continues to rage over some rights which cosmopolitans take to be basic (and by extension, over the issue of whether the failure to respect such rights can reasonably elicit HI). In this respect, there is very little substantive difference between Buchanan's defence of HI and a more traditional liberal reading of the practice. These similarities arise as a consequence of the fact that Buchanan's account of becoming and the international duty of justice is ultimately inseparable from his liberal cosmopolitan convictions and, therefore, incommensurable with the demands of the ontology of becoming.

II. The Theoretical Basis for Intervention

i. The Traditional Liberal Defence of Humanitarian Intervention

In order to situate Buchanan's views on HI and international justice into the wider debate of becoming in international society, it is first necessary to assess his claim that a liberal reading of HI can be defended without recourse to traditional cosmopolitan assumptions and is, as such, not subject to the critiques levelled at this position. Therefore, the first task of this chapter is to

establish the principal tenets of the liberal position. One of the most recent, and most comprehensive, explorations of the liberal defence of HI is that proposed by Fernando Tesòn in both his 1997 book *Humanitarian Intervention: An Inquiry into Law and Morality*²⁷³ and his subsequent article 'The Liberal Case for Humanitarian Intervention'.²⁷⁴ In both these texts, Tesòn contends that the liberal cosmopolitan argument in favour of acts of HI is framed in terms of a very specific conception of the role and nature of the state. According to Tesòn:

[A] standard assumption of liberal political philosophy... [is that]... a major purpose of states and governments is to protect and secure human rights, that is, rights that all persons have by virtue of personhood alone. Governments and others in power who seriously violate those rights undermine the one reason that justifies their political power, and thus should not be protected.²⁷⁵

This is already familiar in the guise of conditional sovereignty, enshrined in the R2P and is essentially based on the notion that NS, far from being a public good unto itself, is of instrumental moral value in that (in its ideal form) it facilitates the protection of HR. On those occasions wherein states' rights are exercised irresponsibly to the extent that they conflict with HR this intrinsic value has become corrupt and self-destructive and a moral right to overturn it is generated. According to Tesòn, this "moral collapse of sovereignty"²⁷⁶ is most likely to occur under one of two conditions, "tyranny and anarchy"²⁷⁷. The first describes circumstances under which the apparatus of the state is

²⁷³ Second Edition, (Transnational Publishers, 1997)

²⁷⁴ *Public Law and Legal Theory*, Working Paper, 39, (2001)

²⁷⁵ Tesòn, 'Liberal Case', pp.1

²⁷⁶ *Ibid*, pp.2

²⁷⁷ *Ibid*

directed against its own people, and the second speaks to those occasions when the infrastructure of the state is so profoundly compromised that no sovereign authority exists which might be capable of defending HR standards. Under either of these conditions, the 'right to intervene' is seconded by "the obligation to *rescue* victims of tyranny or anarchy, if we can do so at a reasonable cost".²⁷⁸ As an engagement with a feminist critique has already sought to demonstrate, this analysis is premised upon a very specific, and arguably overly narrow, conception of human suffering but one which is nonetheless common to many theorists of HI.

In essence, Tesón and like-minded liberal cosmopolitans argue (in terms almost indistinguishable from both communitarian and solidarist constructivists) that the collapse of a political community threatens its members with annihilation and destroys the conditions under which self-determination would generally derive its meaning. In this context, the rights of life and liberty are imperilled to such an extent that only intervention by a foreign military force can restore order and bring the chaos to an end. Therefore, those in a position to intervene without undue costs to themselves are obligated, or at the very least entitled, to do so. However, the fundamental difference between the communitarian constructivist position and the viewpoints which inform the cosmopolitan tradition concerns the *origins* of the rights which intervening forces are deployed to defend. Communitarians have tended to claim that HR "do not follow from our common humanity; they follow from shared conceptions of social goods; they are local and particular in

²⁷⁸ Ibid

character"²⁷⁹ and, as such, are most effectively protected within the specific boundaries of a state. This is at odds with the cosmopolitan claim that, since "[h]uman rights are rights held by individuals by virtue of their personhood", they are therefore "independent of history, culture, or national borders".²⁸⁰ As such, the legitimacy of these rights is a reflection of the inherent dignity and autonomy of human beings rather than any sense of consensus among global political actors. Consequently, the 'shared moral assessment' which forms the basis of HR claims in the constructivist conception is of little or no consequence and the pursuit of tolerance or 'overlapping consensus', in the Rawlsian sense, must give way to bold statements concerning the universality of these rights claims. In simple terms, "Liberal analysis must assume that liberal assumptions (such as the importance of individual autonomy) are the better ones, universally"²⁸¹ and this will entail a rejection of the pluralist belief that, in order to avoid ethnocentrism, liberals must be respectful of alternative cultures or forms of governance. For example, liberals often assert that the charge of ethnocentrism is frequently employed as a political tool to discredit genuinely humanitarian efforts.

...[I]t is just as possible... that the accusation of 'neo-colonialism' is employed ideologically, in order to conceal governments' attempts to defend their own political power. Demands that particular values and traditions be observed and corresponding demands that cultural and political autonomy be respected may be pretexts for unimpededly dominating and oppressing segments of one's own populace or neighbouring states.²⁸²

²⁷⁹ Michael Walzer, *Spheres of Justice*, (New York, Basic Books, 1983), p.312

²⁸⁰ Tesón, 'Liberal Case', pp.3

²⁸¹ *Ibid*, pp.13

²⁸² Rainer Forst, (Translated from the German by Jonathan M. Caver), 'The Basic Right to Justification: Toward a Constructivist Conception of Human Rights', *Constellations*, 6(1), 1999, pp.35-60, Blackwell Publishing, pp.35

Thus, for cosmopolitan theorists such as Tesòn, liberal democracy is the system of governance which offers the most effective protection of HR standards. Accordingly, in an ideal teleological conception of becoming, all political communities should be encouraged to pursue a democratic political framework until the values which inform it are promoted globally.

Embracing the superiority of liberal morality allows liberal philosophers to argue that, “the objective of a theory of ethics, and of justice in particular, is to discover what is right, not simply to discern upon what people or institutions concur”.²⁸³ This complicates the matter of hybridising cosmopolitanism and constructivism since in a conventional constructivist conception what is ‘right’ and what is ‘agreed upon’ are almost always one in the same. Cosmopolitans acknowledge that extensive agreement exists between various political communities as to the impermissibility and moral abhorrence of egregious crimes against humanity. However, they also suggest that even if this were not the case, liberals would retain the moral authority to take military action in the face of such flagrant HR abuses. This rejection of arguments *ad populum* in favour of a straightforward Kantian commitment to individual HR separates the cosmopolitan from the constructivist tradition and seemingly renders them irreconcilable with one another.

So it is that the principal moral claims which inform the traditional liberal approach to HR run as follows: all human beings have rights by dint of their humanity; the only moral justification for sovereign authority is its ability to defend and disseminate those rights; consequently, borders boast no moral

²⁸³ Harris, ‘Order and Justice’, pp.733

value if they insulate HR abusing states from punishment. A related argument is that prohibitions against HI, as they appear in PIL, are exaggerated by restrictionist theorists, who take no account of the elements of legal doctrine which proscribe genocide and torture. Similarly, Tesòn claims that even if the opposition to HI is writ large in both customary and conventional PIL, this simply indicates that the terms of PIL itself must be adapted to facilitate *legitimate* HI. In other words, that the liberal defence of HI can be read as a “*de lege ferenda* proposal”,²⁸⁴ providing the framework for developments in PIL, designed to bring it into line with the moral standards which ought to govern international society. The category of *de lege ferenda* refers to notions of what the content of law *ought* to be. It is often contrasted with *de lege lata* (the law as it currently exists). Although the distinction between these categories and the scope for normative development which it implies is certainly pertinent to an account of becoming, it is the contention of this thesis that for the ontology of becoming to function most effectively the gulf between what is and what should be, especially in PIL, must be tempered by a realistic appreciation of what could be. On this basis, blueprints for the direction in which PIL might progress are generally expected to bear some relation to its current confines, proposing developments which are significant but feasible in the context of a consensual system; something which Tesòn’s position can reasonably be accused of failing to do.

Nevertheless, he maintains not only that the liberal defence of HI might be read in this way but also that the pluralist contention that it is an

²⁸⁴ Tesòn, ‘Liberal Case’, pp.122

unconscionable threat to international order, and the relatively peaceful conditions which it serves to secure is erroneous. In essence, liberal cosmopolitans argue, in a fashion which many feminist commentators would arguably support, that this definition of order and peace is flawed since the pluralist focus on peace between states allows and perpetuates extreme disorder, violence, and HR abuses within the confines of state borders (and indeed, from a feminist perspective, within the home). Given that cosmopolitans refute any claims regarding the morally decisive nature of boundaries this inconsistency is considered both nonsensical and morally reprehensible.

Finally, the apparent contradiction of cosmopolitan liberals arguing in favour of military incursions which will inevitably cost the lives of innocent people is seemingly problematic. Whilst a wealth of responses to this issue characterise the liberal tradition most converge on one simple principle, that inaction, in cases of genocide, ethnic cleansing, or mass-deportation, will cost many more lives than a targeted military response. Although the deontological assumption that all individuals have a right to life does not allow for a simple consequentialist calculation, viewing the right to life in positive, rather than negative terms, suggests that, in such cases, the failure to *rescue* victims of atrocities represents a graver assault on HR standards than risking minimal civilian casualties, with a view to restoring just and peaceful conditions.

In sum, the liberal analysis of HI speaks to the notion of becoming more generally. According to this framework, an extensive set of normative

principles and associated HR standards are morally prior to political society. Those institutions which fail to implement or support such standards must either adapt or be set aside in the pursuit of international justice. Cultural particularism cannot shield HR abuses and liberal democracy represents the best hope for the containment of these violations. In essence, if international politics is to become more just, a recognition of the inherent superiority of liberal principles must be at the core of the agenda for reform. Given the extremely bold nature of all of these statements, the challenge which Buchanan establishes for himself (specifically to defend this position without relying upon cosmopolitan first principles) appears exacting. Accordingly, this chapter will consider how plausible it is to suggest, as he does, that most if not all of the arguments underpinning the liberal approach to HI and international justice can be defended simply through a focus on the principle of institutional moral reasoning; a principle which can almost certainly be interpreted as constructivist in nature.

ii. The Foundations of Institutional Moral Reasoning

The foundational premise at work in Buchanan's institutional moral reasoning is that in order for international politics to function in accordance with standards of justice and morality, both practitioners and theorists of IR must acknowledge the "necessity of taking institutions seriously".²⁸⁵ This is because, in Buchanan's view, any attempt at sustainable reform (or, in the terms of this thesis, any conception of becoming) depends for its success upon the processes of institutionalisation. This leads to the two-pronged

²⁸⁵ Buchanan, *Justice*, p.22

assertion that (a) the institutions which govern interaction between global political actors must embody consistent moral standards, rather than relying on *post hoc* rationalisations, or acting as a conduit for the interests of powerful states, and (b) those who accept the task of 'moralising' in IR must do so within the constraints of practicality, ensuring that their prescriptions for international society are responsive to the demands of institutionalisation.

[T]he moral philosophy of international law must include institutional moral reasoning; some of its most important principles must be formulated and justified in light of the assumption that they will be embodied in institutions.²⁸⁶

As an analysis of feminist constructivism has already indicated, this focus on institutionalisation must be subject to further investigation. After all, if the establishment of new institutions or the modification of existing mechanisms is to advance the cause of justice, it must take account of the unequal power relations which currently characterise global governance and seek to avoid replicating them. This leads to a consideration of the ways in which institutions ought to be designed and regulated. For Buchanan, one dimension of this process involves ensuring that complex moral issues, including HI, are neither appraised nor implemented on a case-by-case basis. As such, he rejects Jackson's contention in *The Global Covenant* that "[t]he ethics of intervention— like that of statecraft generally —is subject to the norms of the international society in existence at the time and the circumstances of the case in question".²⁸⁷ In contrast, he maintains that it is both plausible and morally desirable to establish general moral precepts and principles,

²⁸⁶ Ibid, p.18

²⁸⁷ p.250

applicable to a range of scenarios and governed by just institutions. The resulting framework could guard against the worst excesses of indifference and self-interest, even among powerful states, and allow the infrastructure of international society to more accurately reflect the values which he believes already underpin it. It is the contention of this thesis that the systematic view of HR to which this claim appeals is at odds with the norm-based focus of constructivism. In simple terms, constructivists argue that moral standards emerge through negotiation and legitimation and, as such, it is consensus over the content of human rights which imparts to them their moral authority. This pattern of norm emergence and crystallisation necessitates and relies upon casuistical analysis which can assess and aggregate normative developments and extrapolate universalisable moral principles from this process. An underlying assumption built into the constructivist ontology of becoming is that it is the cross-cultural appeal of these principles which renders their institutionalisation feasible.

This focus on the institutionalisation of moral principles appears to separate Buchanan from a number of other cosmopolitan theorists in two significant and distinct ways. The first relates to the concept of ideal theory as a means to assess justice and becoming. Although Buchanan is not opposed to ideal theory, as a matter of principle, he is scornful of those commentators who employ it as a device without relating, in some important respects, their subsequent findings to the realities of international politics. Or, in his terms, without addressing whether the moral principles which are advanced have a *realistic possibility of being incorporated into the international legal system.*

Buchanan also affirms that it is irresponsible to suggest that a course of action which can be defended either in terms of ideal theory, or in response to one specific set of circumstances, is necessarily suited to institutionalisation. After all,

[p]rinciples that may be plausible for an isolated case often prove inadequate or even counter-productive if institutionalised to govern a practice that covers many cases.²⁸⁸

Similarly, those seeking to imbue their conception of progress in PIL or international politics with a durable and persuasive moral foundation cannot “proceed as if the justification of moral principles for institutions is wholly independent of the question of what the consequences of institutionalising these principles would be”.²⁸⁹ Three vital elements of Buchanan’s institutional moral reasoning (and, as such, his understanding of becoming) are, therefore: “feasibility”,²⁹⁰ “accessibility”²⁹¹ and “moral accessibility”²⁹²; a framework of analysis which this thesis takes to be extremely persuasive. In the first instance, the moral principles which are articulated must be responsive to, and representative of, the realities of international politics. However unto itself this is not sufficient, since

[a] theory is accessible if it is not only feasible, but if in addition there is a practicable route from where we are now to at least a reasonable approximation of the state of affairs that satisfies its principles. In other words,

²⁸⁸ Buchanan, *Justice*, p.18

²⁸⁹ *Ibid*

²⁹⁰ *Ibid*, p.61

²⁹¹ *Ibid*

²⁹² *Ibid*

if an ideal theory is to be useful to us, the ideal it specifies must be accessible to us – those to whom the theory is directed.²⁹³

Furthermore, the theory must boast ‘moral accessibility’ in the sense, that it must not represent a moral retrograde step, compared with the status quo; or as Buchanan phrases it, the implementation of the theory cannot entail “unacceptable moral costs”²⁹⁴. In fact, according to Buchanan’s ‘progressive conservatism’ those seeking to frame a moral theory of PIL must ensure that “[t]he principles it proposes ought, if implemented... [to] achieve an *improvement* of the existing system (at least some of the more serious defects in the current system’s conceptual and normative resources...)”.²⁹⁵

The ability of a proposal for reform to meet these criteria will depend upon “the institutions that currently exist, on the proposed institutionalisation of the principle in question and on the moral ‘risks’ entailed by the transition”²⁹⁶. As Peter Sutch claims: “This is what Buchanan means when he insists that moral theory needs a greater empirical element”²⁹⁷ and it is these restrictions on ideal theory which have the potential to afford greater credibility to Buchanan’s approach to reconciling morality and PIL, as well as to add weight to the suggestion that he ought to be categorised, not as a Kantian philosopher, but as a cosmopolitan constructivist. After all, a cursory engagement with his arguments would suggest that he, like conventional constructivists, believes that “moral principles of international law are

²⁹³ Ibid

²⁹⁴ Ibid

²⁹⁵ Ibid, p.348 (emphasis added)

²⁹⁶ ‘Governing the Use of Force: The United Nations or a League of Democracies, (forthcoming)

²⁹⁷ Ibid

institutional principles that need to be developed *in situ*, as it were, with a proper respect for the existing world order”.²⁹⁸

It is for this reason that institutional moral reasoning, focusing as it does on the need to take account of the development of norms in international society and to avoid establishing standards which are more utopian than aspirational, can be said to conform to the broad definition of constructivism. Buchanan appears to argue that our transition from being to becoming must begin with a realistic appraisal of the constraints imposed by the international society framework and thereby provide the means to assess the likely success of alternative approaches to divisive and complex issues, such as HI. It is only within these normative and institutional boundaries that real and lasting change may be implemented. In fact, he claims that his prescriptions for becoming in international society represent nothing more than the systematic application of existing HR to the international legal order; an endeavour which is seemingly consistent with the wider constructivist project. However, many of Buchanan’s assumptions as to the content of HR and the priority of the moral equality of persons are based on a reading of international politics and PIL which relies upon more than the institutional and political consensus underpinning constructivist analysis.

iii. Institutional Moral Reasoning and the Natural Duty of Justice

One of the functions of institutional moral reasoning is to give meaning to what Buchanan refers to as:

²⁹⁸ Ibid

[The] Natural Duty of Justice... according to which each one of us – independently of which institutions we find ourselves in or the special commitments we have undertaken – has a limited moral obligation to help ensure that all persons have access to institutions that protect their basic human rights.²⁹⁹

This is undoubtedly an example of Kantian cosmopolitanism which goes beyond the Rawlsian assertion that we should defend just institutions where they have already been founded, arguing instead that “[i]deal justice... comes into non-ideal politics by way of the natural duty to secure just institutions where none presently exist”.³⁰⁰ Although Buchanan has much to say as to the applicability and appeal of such a principle, he also claims that his theory is persuasive even to those who reject any notion of such a natural obligation. He argues that although institutional moral reasoning is the appropriate mechanism for developing a moral theory of PIL which would allow for the successful implementation of the natural duty of justice, significantly, it is also defensible on its own merits. This is the basis for Buchanan’s argument that his theoretical approach is accessible even to those who reject a cosmopolitan framework. In his own words:

I wish to emphasise that much of what I say in the remainder of this volume does *not* depend upon the argument that there is a Natural Duty of Justice. My main concern is to develop a moral theory of international law that takes justice – understood as a respect for basic human rights – seriously. All that is required is the assumption that there are basic human rights.³⁰¹

²⁹⁹ Buchanan, *Justice*, p.27

³⁰⁰ Charles R. Beitz, ‘Justice in International Relations’, *Philosophy and Public Affairs*, 4(4), Summer 1975, pp.360-389, pp.384

³⁰¹ Buchanan, *Justice*, p.97

In severing the link between institutional moral reasoning and the natural duty of justice, Buchanan is claiming that the former could be acknowledged as a functional principle even by those who reject the latter. As such, he is effectively arguing that his moral theory of PIL takes aim at the cosmopolitan constructivist task of institutionalising principles which are already widely accepted across international society; specifically, those implied by the acceptance of the existence of 'basic' HR. In Buchanan's view, he is constructing a conception of becoming which appears relatively 'uncontroversial' and universalisable. In making this claim, however, he subjects his arguments to a very particular kind of scrutiny. This is because in order for his account of morality in PIL to be persuasive to those outside the liberal tradition, Buchanan must either successfully demonstrate that it relies on more than traditional cosmopolitan arguments concerning the rationality, autonomy, and dignity of all human beings (in effect, arguments which inform a commitment to the natural duty of justice), or that these ideals are embraced with such a degree of universality across international society that no global political actors of note could reasonably reject them. He endorses the second position and, in fact, refuses to be drawn on a justification or defence of the liberal cosmopolitan interpretation of the moral equality of persons. Instead he claims that:

[B]ecause I have no intention of systematically engaging those who are sceptical about morality altogether or about the fundamental moral equality of persons in this work, I will make no effort to argue for the Moral Equality Principle.³⁰²

³⁰² Ibid, p.88

This represents a weakness in his argument since it is not only those who are devoid of moral impulse who call into question the ‘universalist’ ethic of cosmopolitan reasoning. As an overview of feminist commentary on this issue has demonstrated, values and principles such as ‘autonomy’ and ‘rationality’ are heavily gendered constructs which any investigation into moral theorising would benefit from unpacking and problematising. Nevertheless, Buchanan treats the cosmopolitan reading of the moral equality principle as if it is already an embedded norm of international politics and PIL. Not only does this place him at odds with feminist theorists but it also reinforces his decision to distance himself from cosmopolitan constructivist Rawls, who is prepared to acknowledge that a particular regime or political community can be illiberal, inegalitarian, and yet reasonable.

For Buchanan, “any conception of morality worth seriously thinking about”³⁰³ is premised on the moral equality of persons, and this foundation creates an extensive set of obligations. Accordingly, he argues that we are compelled both to avoid infringing HR, and to respond to their infringement at the hands of others. He asserts that:

[o]nly a laughably anaemic conception of what it is to recognise the moral importance of persons – an absurdly attenuated view about what it is to respect persons and to be concerned about their well-being – would count my merely refraining from violating other persons’ rights as sufficient.³⁰⁴

Or, as he phrases it in his article *Political Legitimacy and Democracy*,

³⁰³ Ibid

³⁰⁴ Ibid, p.89

Consider the implausibility of acknowledging that persons are entitled to equal regard while at the same time denying that one has any obligation to do anything that will ensure that their rights are protected.³⁰⁵

This viewpoint not only forms part of his defence of HI but is also a vital element of his understanding of how international institutions ought to function. In view of his contentious belief that the moral equality of persons is a universally recognised principle (or that those who do not recognise it should rightly be excluded from debate) and the associated claim that this principle gives rise to the natural duty of justice (the terms of which are reflected in the dynamics of institutional moral reasoning), Buchanan argues that institutions, like the individuals who constitute them, ought to be committed to the defence of HR. Thus, what is engaging in his chain of reasoning is the simplicity and the intuitive appeal of his suggestion that institutions which fail to protect the HR already built into the fabric of PIL and international society, ought to be reformed or replaced. Hence, Buchanan presents institutional moral reasoning as a logical way in which to provide existing principles with the requisite 'teeth' to promote and disseminate HR. In other words, his conception of becoming is one in which our institutions must evolve to reflect our existing ethical principles. In this respect, Buchanan's prescriptions for reform in international society are presented simply as the natural consequence of taking seriously our commitment to HR.

[I]n developing a moral theory of international law Buchanan links his grasp of public international law with the critical power of political theory. His claim is that such a moral theory would not be particularly grandiose but would set

³⁰⁵ *Ethics*, July 2002, pp.689-719, pp.704

about systematically examining the principles at work in the international legal order.³⁰⁶

This examination reveals, in Buchanan's conception, a notable and morally unjustifiable gap between these principles and their implementation and institutionalisation in international society. Conventional constructivists assert that these apparent inconsistencies are merely indicative of the fact that many of the HR norms which cosmopolitans take to be basic are not embedded in international society. By way of contrast, Buchanan identifies addressing this disjuncture as the purpose and guiding principle of his moral theory of PIL. He contends that the protection of HR was intended to be integral to the UN system and that institutional failings currently preclude this possibility. Buchanan insists that his findings are simply the consequence of following the legal commitment to HR to its logical conclusion and it is this assertion which ultimately informs his understanding of progress in international society. In simple terms, he states that if the limitations of the UN prevent it from making good on its principal goal, then its claim to exclusive legitimacy is undermined and radical reform is legitimated. Furthermore, he repeatedly states that any account of morality which takes HR seriously is bound to lead to such a conclusion. It is on this controversial basis that Buchanan outlines the institutional reform necessitated by the challenge of HI and, in the process, invites extensive critique of his position.

³⁰⁶ Sutch, 'Governing'

III. The Components of Humanitarian Intervention

i. 'Institutionalising' Intervention

The forthcoming chapters on Nicholas Wheeler and Michael Walzer will be structured to reflect the conception of the JW mode of analysis adopted by both thinkers and intrinsically linked with the discourse of HI. However, an appraisal of Buchanan's theory lends itself to a slightly different approach. This is because Buchanan is less methodical in his account of HI than either of his contemporaries. Specifically, he chooses to focus predominately on the relationship between institutional moral reasoning and HI, rather than assessing in turn each element of the JW tradition. As such, the remainder of this chapter will trace his attempts to weave together the two concepts. This is not to suggest that Buchanan does not address the same fundamental components of HI as other theorists who have investigated the subject but rather it is to acknowledge that, for the most part, he is concerned with the institutional ramifications of any potential 'right to intervene'.

As to the question of 'just cause', Buchanan's views are comparable to those of Tesòn as he considers that the 'moral collapse of sovereignty' is likely to create conditions which warrant intervention in extreme circumstances. However, for Buchanan it is not adequate simply to apply the logic that, in the event of a just cause for intervention, we will 'know it when we see it'. Rather he argues that the potential for abuse and inconsistency which characterises such case-by-case assessment can and must be avoided. A framework for HI, if it is to be implemented successfully, must be subject to the terms of

institutional moral reasoning; that is to say that it must be a rule-governed practice, consistently enabled and constrained by appropriate institutional mechanisms. In simple terms, and in contrast to the tone of this thesis, Buchanan advocates systematic over casuistical analysis.

[w]hen what is sought is a morally defensible practice for a diverse community of states, some of which are much stronger than the others, substantive rules can reduce the risks of fallibility, bias, strategic behaviour, and self-serving selectivity.³⁰⁷

In this respect, Buchanan appears to suggest that much of the controversy surrounding HI (controversy which communitarian commentators tend to think of as being intractable) could be overcome through the establishment of an effective institutional solution. This entails a reworking of the traditional problematic of intervention:

[t]he proper choice is not between adhering to the JWN [just war norm] and abandoning it in favour of a more permissive norm, but rather between adhering to the JWN and adopting a more permissive norm embedded in an institutional framework that ameliorates the risks of a more permissive norm.³⁰⁸

If the balance between the constraints of the JW tradition and the promise of a more permissive norm can be sustained, Buchanan argues, it may provide the means to resolve a number of pressing debates surrounding HI. Again, for Buchanan, the key to progress or becoming lies in devising a rule-governed institutional solution. For example, the matter of agency would be addressed if a permanent body (free from the procedural limitations of the UNSC) were

³⁰⁷ Buchanan, *Justice*, p.287

³⁰⁸ Buchanan, 'Just War', pp.3

created. Equally, the accountability mechanisms put in place to regulate the interventions which the organisation spearheaded would be sufficient to assuage concerns over predation, selectivity, and the mixed motivation which so often leads to an inappropriate choice of military means. These mechanisms could also establish a framework, albeit a necessarily flexible one, for defining the nature and scale of the HR abuses which might be seen as justification for HI. Buchanan emphasises that the consensus on which the organisation would draw in codifying and implementing these standards is already in place within the dialogue of international society. After all, a limited version of the concept of R2P has been endorsed, to some degree, by a substantial proportion of the states which make up the UN.

ii. Rejecting State Majoritarianism

Even if this were not the case, however, Buchanan is inclined to argue that the application of universally recognised normative principles is entirely more morally persuasive than the requirement of state majoritarianism and the defence of NS with which it is associated. He argues that an institution which would regulate and monitor acts of HI need not rely for its legitimacy or its effectiveness on an exhaustive consensus among states. Instead, the *quality* of a given administration, and the state for which it is responsible, would impact directly on its entitlement to enter and affect political negotiation. For Buchanan, the ability to act as a member 'in good standing' of international society is a privilege which ought to be contingent upon good governance; a standard which many UN member states do not currently reflect.

This mistrust of the state consent model in PIL is key to an appreciation of Buchanan's views on international justice and would appear to be at odds with the suggestion that his theory is constructivist in nature. Although conventional constructivists are concerned with the tacit and implicit consensus generated among a broad range of global political actors, the role of the state remains one of the most vital elements of norm formation and crystallisation. Consequently, unless a norm of justice has secured some degree of support across an array of political communities it is difficult to claim, using only constructivist tools of analysis, that its terms have become settled or embedded. At present, the dynamics of the UN system and of PIL are largely based upon the pursuit of this consensus. Furthermore, the drafting of resolutions, signing of treaties, and establishment of conventions still number among the most effective means by which to demonstrate the existence, and guarantee the preservation, of such fragile normative convergence. As such, the assertion that the imperative to abandon state consent can be extrapolated from a logical reading of the current status of HR in international society is a radical one. If Buchanan wishes to make the case that these claims are consistent with the constructivist confines of institutional moral reasoning, he must demonstrate that his rejection of state majoritarianism can be defended without recourse to cosmopolitan first principles.

In attempting to do this, Buchanan provides several justifications for a conception of becoming which is not reliant on consensus among states. The

first has its roots in the globalisation thesis and the notion that states themselves are no longer the sole decision-makers in IR. The claim is that:

Once we acknowledge that international law now encompasses subjects and actors other than states, and that this change represents progress, it is no longer clear that equality of states itself... is an overriding desideratum.³⁰⁹

In other words, it is fitting in this changing international environment that the influence of states should be counteracted by consideration for individuals and groups, both above and below the national level. Buchanan argues that there has been a notable decline in the significance of state actors and that, if this decline persists, which he believes that it will, the focus on equality among states will become increasingly incidental to the realities of international politics. In fact, he goes so far as to claim that even if states are the cornerstone of IR, a hierarchy ought still to exist, which is capable of separating those who take seriously the responsibilities associated with NS, from those who routinely abuse the power with which it is connected.³¹⁰ For Buchanan, the failure to draw such a distinction is the most fundamental flaw of the state consent model of PIL. He claims that

³⁰⁹ Buchanan, *Justice*, p.317

³¹⁰ Elsewhere, Buchanan goes further, even arguing that the recognition of statehood itself should depend upon standards of legitimacy. In essence, the central tenet of 'recognitional legitimacy' is the assertion that territories which lack internal and external legitimacy have no claim to the advantages associated with statehood (including participation in international organisations), even if they fulfil the terms of the 1933 Montevideo Convention on the Rights and Duties of States. This 'constitutive' conception of recognition, as a practice which imparts power and authority to its recipients, leads Buchanan to suggest that in recognising errant states and governments, international society risks behaving as an 'accomplice to injustice'. A preferable mechanism for incentivising moral behaviour and institutionalising the protection of human rights is to deny recognition to emerging entities which do not fulfil the criteria of 'minimal justice' and to place consistently abusive and irresponsible territories on a kind of diplomatic 'probation' until such time as they notably improve their human rights records. This is a further indication of Buchanan's belief that illiberal regimes should not be treated as the legal and moral equals of functioning democracies and should be restricted in their ability to impact upon policy or international institutions.

[I]n a system in which many states systematically violate individuals' human rights, state majoritarianism in fact may be the single greatest impediment both to the effective institutional expression of equal consideration of persons and to the protection of human rights.³¹¹

Therefore, only those states boasting forms of governance which reflect the normative standards at the heart of international society should be equipped with the power to influence the manner in which that society evolves.

To recapitulate, Buchanan presents a series of bold claims all of which are, at least partly, designed to provide a defence for the circumvention of the UNSC. In the first instance he argues that any reasonable conception of morality is one which embraces the fundamental moral equality of persons. It is his claim that the vast majority of international society already acknowledges this assumption as the foundation of PIL and the guiding principle of the UN system. As such, the failure of that system consistently to preserve and protect the moral equality of persons undermines its legitimacy and gives rise to arguments for extensive institutional reform. Significantly, these calls for reform need not necessarily be endorsed by the broadest possible range of global political actors. For Buchanan, the most effective way to give institutional expression to HR may sometimes be to compromise states' rights. This notion, fundamentally opposed to the communitarian insistence that it is membership of a political community which gives meaning to rights claims, provides the basis for Buchanan's approach to agency.

³¹¹ Ibid, p.318

iii. Agency

(a) Beyond the UNSC

In Buchanan's view, nowhere is the tension between states' rights and HR more pronounced than in the institutional failings of the UNSC, which is inequalitarian in its distribution of the "morally arbitrary"³¹² veto and yet, emphasises that among the P5 all state actors must be afforded equal treatment. This contradiction affords enormous influence to two states whose governments are profoundly unrepresentative and which, due in no small part to their poor record on HR and the treatment of minorities, are in breach of Buchanan's criteria for 'internal legitimacy'. Since, he argues that the internal illegitimacy of Russia and China bears a direct relationship to a lack of 'external legitimacy' Buchanan is prepared to assert that such influence must be curbed. This cannot be achieved through reform of the UNSC since, "[c]learly... no amendment to the Charter has a chance of being adopted if any of the permanent members is firmly opposed to it, as seems to be the case at this time".³¹³ The resultant suggestion that the most effective way to avoid deadlock and restrict the power of Russia and China (especially with regard to matters pertaining to the regulation of the use of force) is to vest more power in the democratic regimes which constitute the remainder of the P5, is one which Buchanan explicitly endorses. Once again, his viewpoint is a radical one which suggests that consensus over the *values* which give meaning to HR is sufficiently widespread and deep-rooted to provide

³¹² *Ibid*, p.164

³¹³ Yehuda. Z. Blum, 'Proposals for Security Council Reform', *The American Journal of International Law*, 99(3), July 2005, pp.632-649, pp.648

justification for the political and diplomatic exclusion of two of the great powers.

Nevertheless, Buchanan's understanding of becoming depends upon a reading of legitimacy which he believes is strong and normatively demanding enough to provide the basis for such claims. His conception of legitimacy leads him to argue the UNSC is unworthy of the deference demonstrated to it in PIL. In the context of HI, this is particularly noteworthy given that, at present, for HI to abide by the terms of PIL, and indeed of the R2P, it must secure the authorisation of this body. Therefore, if Buchanan can successfully make the case that Annan's claim that the UN possesses a "unique legitimacy"³¹⁴ is not persuasive, he may be able to construct an argument for the circumvention of the UNSC in response to humanitarian disaster. In attempting to do so, he contends that legitimacy is a two-pronged notion, which can be either sociological or normative. In the sociological sense, legitimacy refers to the acceptance that a given institution is fit to fulfil its mandate, and, in the normative sense, legitimacy is evidenced by the degree to which an institution is representative of the shared moral principles underpinning international politics. Or, as Buchanan himself phrases it:

To say that an institution is legitimate in the normative sense is to assert that it has *the right to rule*—where ruling includes promulgating rules and attempting to secure compliance with them by attaching costs to noncompliance and/or benefits to compliance. An institution is legitimate in the sociological sense when it is widely *believed* to have the right to rule.³¹⁵

³¹⁴ Keohane, 'Contingent Legitimacy', pp.3

³¹⁵ Allen Buchanan and Robert O. Keohane, 'The Legitimacy of Global Governance Institutions', *Ethics & International Affairs*, 20(4), December 2006, pp.405–437, pp.405

³¹⁵ Sutch 'Governing'

Buchanan's analysis of the UNSC leads to the conclusion that "its structural failures... have cost it normative legitimacy; and... everybody knows it thus robbing it of its sociological legitimacy".³¹⁶ If this is indeed the case, it calls into question whether adherence to Charter provisions which prevent unilateral HI can be considered morally edifying. Or, in other words, absent the requisite normative legitimacy to paper over the cracks generated by inefficacy, it is unclear why the UNSC ought to maintain its rarefied status. As Hurrell considers,

Why should we set store by international institutions such as the United Nations when those institutions are clearly incapable of acting decisively and forcefully against challenges both to the security of individual states and to the broader security interests of international society as a whole?³¹⁷

Instead, Buchanan argues, that theorists and practitioners of IR should embrace the potential for becoming represented by a system which extends the power and influence of liberal democracies. After all,

If there is a minority of states that are both more zealous in protecting human rights and also so powerful that they can exert a disproportionate influence in the world, then increasing the scope of state majoritarianism may actually be a setback for human rights.³¹⁸

At this juncture, the limitations which Buchanan places on his own theorising bear repeating. It is his claim that all aspects of his theory, including the circumvention of the UNSC, are defensible simply by means of the principle of institutional moral reasoning. That is to say, that his prescriptions for reform

³¹⁶ Ibid

³¹⁷ Andrew Hurrell, 'Legitimacy and the Use of Force: Can the Circle be Squared?', *Review of International Studies*, 31, 2005, pp.15-32, pp.17

³¹⁸ Buchanan, *Justice*, p.318-319

are simply a means to institutionalise the values which are already broadly agreed upon across international society. In this respect, he argues that the normative consensus over the content of HR is sufficient to justify modifications to both PIL and the state system which it seeks to regulate. Buchanan frames this argument in terms of his conception of “illegal legal reform”.³¹⁹

(b) Illegal Legal Reform

Buchanan does not deny that abandoning the requirement of state consent is at odds with the current constraints of PIL. However, neither does he consider the credibility of his viewpoint to be contingent upon its legality. Again, his argument is beguilingly simple: HI is morally justified in extreme cases and this consideration trumps any concerns over its legal status. If PIL does not permit HI, then it is the law which must be altered not the commitment to defending HR. However, such modifications must be approached and implemented in a very specific manner. This is because Buchanan asserts that any challenge to PIL must be mounted in a self-consciously precedential and morally consistent fashion. The law should not be broken on an *ad hoc* basis, since this invites abuse and self-interested manipulation. Instead those wishing to reform international society so that it might more effectively represent the moral values which should be at its core must engage in a campaign of ‘illegal, legal reform’, whereby acts of HI which are forbidden by current legal standards, (or crucially, the institutions which might bring these acts to fruition), are justified as an attempt to challenge and improve upon the

³¹⁹ Allen Buchanan, ‘Reforming the International Law of Intervention’, J.L.Holzgrefe and Robert O. Keohane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, (Cambridge: Cambridge University Press, 2007), p.132

legal status quo. This process is not confined to breaking the terms of an existing rule but also to doing so in such a way as to increase the likelihood that an alternative, more morally defensible, standard will emerge in its place. At its heart this could be perceived as a cosmopolitan constructivist principle, premised on an acknowledgement of the ability of emerging political norms to displace or challenge outmoded legal norms and, in Buchanan's view, when combined with the strengths of institutional moral reasoning, it is the key to becoming in international society. Equally, however, if implemented irresponsibly, illegal acts have the potential to undercut moral progress in the society of states³²⁰ and it is in on this basis that Buchanan brings to bear restrictions on the 'illegal' institutional developments which he deems so integral to "the development of a new morally progressive rule of international law according to which humanitarian intervention without Security Council authorisation is sometimes permissible".³²¹

³²⁰ Significantly, in evaluating NATO's intervention into Kosovo, Buchanan is critical of the failure of the organisation to signpost more clearly: its intentions, the nature of its mandate, and its belief that its actions were legitimated by the democratic credentials of its constituent members. In his opinion, the failure to do so ensured that the action could boast no valuable precedent-setting potential, since the acceptance that humanitarian intervention spearheaded by a regional defence organisation, which had not based its actions on its democratic accountability, could have engineered a situation in which the new norm provided justification for the following scenario: "[s]uppose that China and Pakistan formed a regional security alliance and then appealed to the new norm of customary law whose creation NATO's intervention was supposed to initiate to justify intervening in Kashmir to stop Hindus from violating Muslim rights in the part of the region controlled by India"³²⁰ (Holzgrefe and Keohane, 2007, p.166).

As such, the Kosovo intervention has been treated, almost universally, both by the participants in it and the detractors of it, as anomalous, with only very limited relevance to future acts of, or approaches to, humanitarian intervention. Of course, Buchanan overlooks the fact that this may well have been a deliberate device on the part of the intervening forces, who, themselves, may not wish to be committed to act in all instances which may prove reminiscent of the Kosovo intervention. Precedent-setting which results in the institutionalisation of a new norm may compel those who establish the new rule to abide by it, even when their national interest dictates otherwise. The members of NATO would not have been blind to this possibility.

³²¹ Buchanan, *Justice*, p.318-319

(c) Arguing for a 'League of Democracies'

Buchanan's institutional solution to the quandaries which surround both agency in HI and international justice more generally is the establishment of a League of Democracies. In framing a defence for such an organisation he rejects two key pluralist premises. The first is the notion that insufficient consensus surrounding the content of HR ensures that the pursuit of order, rather than the dissemination of justice, must be the principal function of international society. In asserting that, "[t]he expanding global culture of human rights, which is imperfectly institutionalised in international law, gives reason to hope that a shared core conception of justice may emerge, if it does not already exist",³²² Buchanan suggests that pluralists underestimate the extent to which a relatively broad range of HR standards have been embraced across the majority of political communities. Equally, in arguing against the principle of state majoritarianism, Buchanan is effectively claiming that those states which continue to oppose, or defy, these 'embedded' humanitarian norms, should not be in a position to unduly influence the international political process. In the context of HI, these dual assertions lead Buchanan to argue for the establishment of a rule-governed coalition of democratic states which could regulate the use of force in international society. He envisages that this League of Democracies might represent an institutional compliment to the UN; conceiving of it as an organisation which could take action in cases of UNSC deadlock. In other words, the League of Democracies would be designed not to "supplant"³²³ but to "supplement"³²⁴ the UNSC. Neither would

³²² Ibid, p.309

³²³ John McCain, 'An Enduring Peace built on Freedom: Securing America's Future', *Foreign Affairs*, (November/December 2007),

the organisation be subject to the procedural and practical shortcomings which have hampered its institutional predecessor. Unlike the UNSC, the League of Democracies would not reflect the balance of power as it existed in 1945; neither would it extend to any of its members the right of veto, a restriction which would help to avoid the paralysis for which the UN system is so notorious.

Perhaps surprisingly, Buchanan's argument is not as radical as it may first appear, at least in the sense that suggestions of this nature have secured a large degree of cross-party support in the US. During the 2008 Presidential election campaign both Barack Obama and John McCain indicated that they would take under advisement any foreign policy framework with a League of Democracies at its crux. In fact, as journalist Jonathan Rauch commented "Rarely...have liberal idealism and neoconservative realism converged so completely".³²⁵ This reflects the belief that thorough-going reform to the UNSC is as necessary as it is unlikely and that, consequently, continuing to defer to it, especially in the face of humanitarian disaster, is no longer defensible. In fact, the influence of Buchanan's theorising became apparent when the Princeton Project issued the report *Forging a World of Liberty Under Law*, in which his proposal was reiterated:

While pushing for reform of the United Nations and other major global institutions, the United States should work with its friends and allies to develop a global 'Concert of Democracies'. The Concert would institutionalise

<http://www.foreignaffairs.org/20071101faessay86602/john-mccain/an-enduring-peace-built-on-freedom.html>, [21/07/08], pp.4

³²⁴ Keohane, 'Contingent Legitimacy', pp.20

³²⁵ (Cited) Charles A. Kupchan, 'Minor League, Major Problems', *Foreign Affairs* [online], (November-December 2008), <http://www.foreignaffairs.org/20081001faessay87607-p40/charles-a-kupchan/minor-league-major-problems.html>

and ratify the 'democratic peace'. If the United Nations cannot be reformed, the Concert would provide an alternative forum for liberal democracies to authorise collective action, including the use of force, by a supermajority vote. Its membership would be selective, but self-selected. Members would have to pledge not to use or plan to use force against one another; commit to holding multiparty, free-and-fair elections at regular intervals; guarantee civil and political rights for their citizens enforceable by an independent judiciary; and accept the responsibility to protect.³²⁶

(d) Membership of the League of Democracies

Advocates of the League of Democracies, including Buchanan himself, are quick to point out that the criteria for membership would not be limited to a western conception of democratic values. Instead,

t]he chief criterion for admission to the intervention regime would be having a decent record on human rights and having a government that meets the rather minimal criteria for democracy.³²⁷

Elsewhere, Buchanan defines these criteria as those present in states "with constitutional, representative governments, competition for elected positions through reasonably fair elections, and entrenched basic civil and political rights".³²⁸ This is a conscious attempt to ensure an eclectic membership, sufficiently broad in scope to counter charges of ethnocentrism. In effect, the concern that the League of Democracies would prove to be insufficiently inclusive, is countered by the assertion that its establishment should not "[b]e understood as necessarily amounting to a proposal for the globalisation of

³²⁶ G. John Ikenberry and Anne-Marie Slaughter, 'Final Report of the Princeton Project on National Security', 12th September 2006, pp.1-91, *The Princeton Papers*, pp.7

³²⁷ Buchanan, *Justice*, p.452

³²⁸ Allen Buchanan and Robert O' Keohane, 'The Preventive Use of Force: A Cosmopolitan Institutional Proposal', [Reprinted from] *Ethics & International Affairs*, 18(1), 2004, pp1-22, pp.18

Western-style *liberal* democracy, but rather representative democracy able to provide for a diversity of global cultures".³²⁹

For those detractors who might remain concerned that this looser definition of democracy will not be enough to ensure that the coalition does not represent a retrograde step in terms of inclusion (for example, those post-colonial commentators concerned over the insidious reintroduction of the standard of "a certain degree of civilisation"³³⁰ which for so long defined the Western approach to PIL) Buchanan argues that "the most valuable sort of inclusiveness"³³¹ has been achieved not through the state majoritarianism which characterises the UN but through non-state actors such as non-governmental organisations, many of which operate, principally, with the support and protection of rights-respecting states. This is linked to his suggestion that for as long as so many states fail to represent the interests of their citizens, state majoritarianism boasts no moral value in and of itself. Therefore, whilst the proposed League of Democracies would certainly exclude "non-democratic states... it does not follow that it would be a threat to the sort of inclusiveness that is to be valued".³³² As Justin Morris affirms, the exclusion of non-democratic states is simply a reflection of the fact that:

[t]he principles and objectives now enshrined within the United Nations cannot be sacrificed on the altar of formal representation by states which themselves fail to live up to them. Representation must be a substantive, democratic reality, not merely a sovereign formality and, *in extremis*, this may

³²⁹ Justin Morris, 'UN Security Council Reform: A Counsel for the 21st Century', *Security Dialogue*, 31(3), pp.265-277, pp.268

³³⁰ James Crawford, *The Creation of States in International Law*, (Oxford, Clarendon Press, 1979), p.72

³³¹ Buchanan, *Justice*, p.454

³³² *Ibid*

require the marginalisation of certain states and a recognition of the need to sacrifice interstate consensus in favour of higher political goals.³³³

Thus, it may be incorrect to assume that the formation of a League of Democracies “would mark a return to a pernicious exclusivity in international law”.³³⁴

(e) Governing the League of Democracies: *ex ante* and *ex post* Accountability Mechanisms

If Buchanan’s defence of the membership criteria for any proposed League of Democracies is designed to assuage concerns over unjustifiable exclusivity, the accountability mechanisms which he builds into the framework of the coalition take aim at a number of other concerns surrounding the discourse of HI, absent UNSC authorisation. In a recent article, he outlines both *ex ante* and *ex post* strategies for constraining the actions of the League of Democracies. In his conception, the *ex ante* accountability requirement would demand that all reasonable measures short of force be considered before HI could be authorised. Moreover, those arguing in favour of HI would also be expected to acknowledge that their actions would have “precedential value for future decisions”,³³⁵ an indication of Buchanan’s constructivist insistence on the need for a rule-governed framework to implement his systematic conception of HR. According to Buchanan the impact of this consideration on the decision-making processes of potential interveners ought to be far-reaching, since even the most powerful states would be reluctant to risk the emergence of norms or the institutionalisation of practices which might be

³³³ Morris, *UNSC Reform*, pp.275

³³⁴ Buchanan, *Justice*, p.454

³³⁵ *Ibid*

used against them in the future, or may at some point compel them to act in defiance of their national interest.³³⁶

Ex post accountability would complement these requirements by demanding that, after the conclusion of hostilities, the intervening agent would have to submit a detailed report to an impartial commission appointed by the League of Democracies, or even by the UNSC. The purpose of this exercise would be to evaluate the intervention in terms of two questions:

- Was the information gained *ex post* about the risk-imposing actions of the target consistent with the statements made by the states proposing action *ex ante*?
- Were the military actions of the attacking states consistent with their assurances *ex ante* that their actions would be proportional to the objectives being attained?³³⁷

Taken together, this requires the interveners to demonstrate that their actions fulfilled the JW criteria of necessity and proportionality and that HI was conducted in line with the principle of non-combatant immunity. Furthermore, intervening forces would have to prove that their overwhelming motivation to breach the territorial integrity of a target state was one of humanitarian concern, as against an attempt to secure economic or strategic advantage, or to undermine the authority of one of more rivals in the target region. Thus, it is hoped that the effective institutionalisation of JW principles, allied to the implementation of cosmopolitan accountability mechanisms, would ensure

³³⁶ Ibid

³³⁷ Buchanan and Keohane, 'Preventive', pp.13

that HI would be subject to an exacting standard of legitimacy, which would include a certain degree of purity of motivation.

Assessing the extent to which the stated intentions of intervention can be reconciled with events on the ground would necessitate comprehensive provision for “*the sharing of information*”³³⁸ to properly incentivise intervening states not to abuse their position. Equally, those states engaged in unnecessary or self-serving acts of HI would have to see their actions roundly punished. Buchanan contends that:

[w]ithout sanctions, rules for the regulation of the... use of force would almost certainly be ineffective. Unless there are sanctions for violations of the requirement to share information, some states will misrepresent the facts, exaggerating the probability of the harm that they propose to prevent. Unless there are sanctions against those who use excessive force, states are likely to discount the harm their forceful actions will inflict on others. Without sanctions, the institution will be ineffective.³³⁹

The sanctions themselves would be defined and issued by the impartial commission assigned with judging the validity of the intervention. If this body were to find in favour of the intervening states, they would be deemed to have “performed a public service for the world”³⁴⁰ by responding promptly and responsibly to a grave threat to humanity. As such, the financial and logistical burden of rebuilding the target state would fall to those who had acted as “free-riders”³⁴¹ by refusing to participate in a morally justified act of military incursion. However, in the event that HI was deemed to have been without

³³⁸ Buchanan and Keohane, ‘Preventive’, pp.12 (emphasis in original)

³³⁹ Ibid

³⁴⁰ Ibid

³⁴¹ Ibid, pp.14

merit, those who had championed it would be held to account. Specifically, “[t]hey would be required... to provide full financial support for operations that restore the country’s infrastructure and enable it to govern itself effectively”.³⁴²

The fact that the sanctions regime would apply to states which attempt to block an intervention, which is subsequently vindicated, acts as a disincentive for political practices which are equivalent to the capricious use of the veto within the current framework of the UNSC. Equally, the insistence that erroneous HI result in punishment for the attacking forces guards against the indiscriminate targeting of non-combatants and ensures that, in the case of unjustified HI “the intervening parties would not be allowed to control the political situation in the conquered country, or to determine the allocation of aid or the awarding of contracts to firms offering services for the reconstruction effort”.³⁴³

On the face of it, then, Buchanan’s framework for the League of Democracies appears to provide a solution to the broad and diverse range of problems associated with HI. Not only does it offer a means by which to undermine the ability of tyrannical or unrepresentative states to overturn the will of the rest of international society but it is also responsive to concerns over: predation; abuse; the disproportionate use of force; exploitation or neglect in terms of reconstruction; and inaction among states which do not believe HI, however morally compelling, to be in their national interest. Equally, the *ex ante* and *ex post* accountability mechanisms which would govern the proposed League of

³⁴² Ibid

³⁴³ Ibid

Democracies reflect Buchanan's understanding of the manner in which norms become embedded in international society, inasmuch as they emphasise the potentially precedential nature of decision-making in international politics. Although, in the first instance, some degree of coercion and management would be necessary to ensure that the rule-governed framework were respected, eventually the normative standards which give meaning to the rules may themselves be embraced by global political actors. In other words, Buchanan's argument for a League of Democracies is based on his wider conception of becoming in international society. Finally, his defence for the League of Democracies apparently achieves all of this through adherence to one simple constructivist principle; institutional moral reasoning. For Buchanan, the establishment of the League of Democracies is entirely consistent with the values which underpin PIL and the normative purposes of international society, and he maintains that sufficiently extensive consensus exists in support of these principles to justify breaching PIL in the name of their implementation.

III. The Limitations of Buchanan's Position

i. The Practical Limitations of a 'League of Democracies': Charles A. Kupchan's Critique

In reality, the League of Democracies is far from the panacea which it may initially appear to represent. First among a range of limitations impacting upon the proposal is its inherently divisive nature, which, according to Charles A.

Kupchan, institutionalises cooperation where it already exists and precludes it where it is most needed. In his own words

Such a club is not needed to secure cooperation among liberal democracies - they are already regular partners - and it would draw new lines between democracies and non-democracies.³⁴⁴

Kupchan contends that not only would this likely result in the “re-emergence of great power antagonism”³⁴⁵ as states such as China and Russia react angrily to their diplomatic and political exclusion, but the creation of an exclusively democratic organisation would also draw attention to the inefficacy of these supposedly legitimate and representative regimes and highlight their own tendencies toward indecision and disagreement. In fact, in the absence of the convenient scapegoat of “Chinese or Russian intransigence”³⁴⁶, to act as a veil for western inaction the “league would expose the limits of the West’s power and appeal, revealing the constraints on solidarity among democracies, eroding the legitimacy of the West, and arresting the global spread of democracy”.³⁴⁷

This issue might prove particularly problematic if, as he suggested in his initial proposal for a League of Democracies, Buchanan intends to exclude the US from the organisation.

³⁴⁴ Charles A. Kupchan, ‘Minor League, Major Problems: The Case Against a League of Democracies’, *Foreign Affairs*, November/December 2008, <http://www.foreignaffairs.org/20081001faessay87607-p40/charles-a-kupchan/minor-league-major-problems.html>

³⁴⁵ Robert Kagan, *The Return of History and the End of Dreams*, (London, Atlantic Books, 2008), p.97

³⁴⁶ Kupchan, ‘Minor League’

³⁴⁷ Ibid

There is much to be said for minimising the US role or even excluding it from participating, both from the standpoint of constraining the world's one superpower and in terms of the perceived legitimacy of the coalition. Given that the United States is widely regarded – and not without reason – as an international scoff-law, the issue of perceived legitimacy ought to be taken seriously.³⁴⁸

From a practical perspective, this is undoubtedly a limitation of Buchanan's proposal since it seems highly unlikely that the US would countenance the establishment of a global institution in which it would play no part and equally implausible that, without the financial contribution of three of the P5, a fledging organisation of this nature would be able to commit to interventionary projects of the sort he envisages.

Perhaps this accounts for the fact that, having originally suggested that “[t]hose who wish to produce a more just international legal order must be willing to do so not only without the support of the United States, but also in the face of its active opposition”,³⁴⁹ Buchanan has subsequently reconsidered his views on US participation in a League of Democracies and in his recent articles has accepted the inevitability of some degree of US involvement. Given the extent of residual anti-American sentiment which persists following, among other things, the 2003 invasion of Iraq, this acquiescence has hardly strengthened his position. In fact, relaxing his initial restriction ushers in further complications since the US, like so many other powerful democracies, is embroiled in a number of complex and co-dependent relationships with a broad range of political communities. For example,

³⁴⁸ Buchanan, *Justice*, p.452

³⁴⁹ *Ibid*

[a]s long as the United States has troops in Iraq and an economy dependent on oil from the Persian Gulf, it will maintain strong ties with Bahrain, Qatar, and the United Arab Emirates - some of the most illiberal countries on the planet.³⁵⁰

Considerations such as these call into question the effectiveness of a League of Democracies. However, Kupchan's critique goes further, contradicting Buchanan's belief that a League of Democracies would boast more legitimacy than a majoritarian alternative. Re-establishing the relationship between multilateralism and representation, he poses the question:

If democracies are legitimate because they represent the will of their citizens, could a global body that spoke for less than half the world's population and represented less than one-third of the world's nations ever be considered legitimate? Should China's 1.3 billion citizens be doubly disenfranchised - no voice abroad as well as no democracy at home?³⁵¹

This also relates to the communitarian assertion, echoed through certain elements of the feminist critique, that it is misguided to believe that a liberal conception of politics and morality is sufficiently universal to represent the interests of those in non-democratic societies, any more effectively than their own local, illiberal regime. Although there may be some circumstances in which a government is so profoundly abusive or negligent that its failures bear out this assumption, this blind faith in liberalism requires further investigation.

The final of Kupchan's reservations is both a practical and a theoretical issue. Noting, and roundly criticising, the tone of disproportionate liberal enthusiasm at the heart of the campaign for a league which might bring about increased activism and a renewed determination to disseminate democratic values,

³⁵⁰ Kupchan, 'Minor League'

³⁵¹ Ibid

Kupchan warns against perceiving international politics as a realm in which certain of these values have already secured widespread acceptance.

Such optimism is predicated on the belief that the world is now at a way station on the road to democracy; that the West provides the sole viable model of development for nations around the world; that China, Russia, and their kindred spirits are the last holdouts but are soon to join the march of history; and that the league is meant to help them complete their transition. But the world is far from arriving at such a historical endpoint; it is heading toward continued diversity, not greater homogeneity.³⁵²

Declarations concerning the inevitable triumph of liberal ideals and the end of history,³⁵³ assumptions already belied in the period following the end of the Cold War, are not necessarily anymore persuasive at this juncture than they proved to be in the early 1990s and if, as Kupchan argues, they can be discredited, so can the basis for a League of Democracies as the arbiter and manager of the use of force among and between states.

ii. The Theoretical Limitations of the League of Democracies: Institutional Moral Reasoning and Liberal Cosmopolitanism

It is this latter criticism which is the most damning to Buchanan's case not only for the League of Democracies but also for the principle of institutional moral reasoning. For Buchanan, the normative legitimacy of the League of Democracies derives from the fact that it represents a commitment to HR; the same commitment which informs the "moral foundation"³⁵⁴ of the UN framework. The sociological legitimacy of the coalition is the consequence of

³⁵² Kupchan, 'Minor League'

³⁵³ See Francis Fukuyama, *The End of History and the Last Man*, (New York, The Free Press, 1992)

³⁵⁴ Sutch 'Governing'

its ability to fulfil the associated HR-based mandate in a more effective manner than the UN. If the agenda of a League of Democracies would indeed tally with the stated purposes of the UN then its establishment would be in keeping with the principle of institutional moral reasoning; the deliberate and precedential establishment of institutions, aptly reflecting the values which give meaning to international society. In this conception, becoming would simply be a matter of increasing the 'fit' between values and institutions.

However, Buchanan's argument is irrevocably undermined if, as his critics claim, he has fundamentally misunderstood the relationship between HR and states' rights. After all,

[o]ne of the principal reasons that reforms aimed at institutionalising the international protection of human rights have been so limited is because many states are reluctant to acknowledge that human rights norms should be considered grounds for over-riding those norms already embedded in public international law that protect sovereign self-determination through the principle of non-intervention.³⁵⁵

This is indicative of the fact that the moral primacy of *individual* HR is not as firmly established or as universally accepted as Buchanan wishes to suggest. In fact, there are many cultures, not all of which are irredeemably totalitarian or abusive, wherein states' rights are considered to be of instrumental importance in the protection of HR. Furthermore, as Jackson contends and as many theorists within the English School have ultimately come to accept, the transition from '*societas*' to '*universitas*' is one which has taken place, predominately, in the minds of scholars and despite the influence of globalisation, the state remains (both in practical and moral terms) the

³⁵⁵ Ibid

organisational and procedural hub of IR;³⁵⁶ not to mention the most effective mechanism for the implementation of HR standards. As Friedrich Kratochwil argues:

[T]he role of the state as guarantor of rights is more important than ever before. It is not the state *per se* that has lost its rationale, rather its *functions* have been dramatically changed by the developments that we lump together under the heading of globalisation... [Furthermore]... the norm of self-determination has served as a powerful tool for groups which seek to assert their independence in order to preserve their identity. To that extent we had better remember that the state as a political community is also a *membership organisation* and the issue of belonging addresses more than some irrational needs.³⁵⁷

As of yet, there is little or no indication that the relationship between NS and humanitarianism, or the associated debate between interventionists and non-interventionists, has been resolved in favour of a liberal conception of HR. Hence, Hedley Bull's conclusion that any suggestion that international society is progressing toward a world society, in which individuals take precedence over states is, at best, "premature".³⁵⁸ As such, the 'moral foundation' of the UN is premised as much on a commitment to NS and territorial integrity, as it is to HR.

So it is that in rejecting any sense in which the political independence of individual state entities boasts its own moral value, Buchanan undermines his own claim that institutional moral reasoning seeks only to systematise the existing moral principles which give meaning to the UN framework. Absent

³⁵⁶ See Jackson, *Global Covenant*

³⁵⁷ 'Politics, Norms and Peaceful Change' *Review of International Studies*, 24(5) 1998, pp.195-216, pp.214-215

³⁵⁸ Sutch 'Governing'

such an argument, his theory collapses into a familiar form of cosmopolitanism; an advocacy project which calls for a deliberate, coordinated, expansion of the normative agenda designed to increase both the scope and depth of a liberal conception of HR in international society. Far from seeking more effectively to institutionalise existing consensus this amounts to an increased and increasing commitment to a broad range of HR and an assumption of the inherent superiority of liberal theory and practice. In essence, once the incoherence of institutional moral reasoning is exposed, Buchanan is forced to reassess his original claims. He must then

make the separate argument that all basic accounts of human rights are as robust or demanding as his Kantian cosmopolitan which is a) demonstrably false and b) brings the natural duty of justice argument in to a central position in his thesis – which is what he wants to avoid.³⁵⁹

In failing to make his case without relying on cosmopolitan first principles, Buchanan also fails to honour the terms of his own demands for feasibility and accessibility, and ultimately undermines the claim that his theory is palatable to advocates of any viable ethical perspective. This failure represents a significant blow to Buchanan's theory and limits the role which it might usefully play in the establishment of universalisable standards of international justice. After all,

[i]t is not enough simply to lay out a view or a vision of where we think the world ought to be heading, however sophisticated and well-argued it may be and however attractive it is to us and those like us. Rather, the task is to think very hard about the conditions under which moral principles and moral ideas

³⁵⁹ Ibid

can be meaningfully and persuasively defended, justified, and criticised within global society as a whole.³⁶⁰

It is possible that a comprehensive engagement with the foundations of ethics in which Buchanan submits his advocacy of the moral equality of persons to comprehensive critique (including a form of gender-analysis which submits supposedly 'universal' liberal standards to critical scrutiny) might allow him to bridge some of the gaps in his theorising. However, in the absence of this theoretical foundation, it would appear that his radical agenda for reform is likely either to be rejected outright by powerful state actors, or to be implemented in opposition to these actors; thereby creating conflictual conditions which may prove more damaging than the status quo.

V. Conclusion

Buchanan's understanding of becoming and international justice depends for its success on the ability of the HR discourse to displace the defence of NS, self-determination, and non-intervention on which the UN is based. However, even a superficial engagement with the legal and political status of HR demonstrates that they are yet to do so. For example the evolution of the R2P, characterised by many liberals as proof of the emergence of the conditional sovereignty norm, appears considerably weaker and less normatively demanding in its institutionalised form than many cosmopolitans are inclined to suggest. This project asserts that the R2P is the element of international legal doctrine which is most explicitly concerned with the relationship between HR and states' rights. The current incarnation of this doctrine is ultimately based on the omission of some of the most radical

³⁶⁰ Hurrell, *Global Order*, p.12

elements of the ICISS and the distillation of its findings into an agreement which continues to defend NS and state majoritarianism in almost all cases, and to reject unilateral alternatives to UNSC authorisation. With this in mind, it becomes increasingly difficult to defend Buchanan's position that the morally prior status of HR is already enshrined in PIL. Rather, this assertion begins to take on the hallmarks of familiar universalist claims concerning the moral superiority of liberalism. Such a viewpoint is likely to elicit suspicion and derision from a number of political communities beyond the West and a range of IR theorists beyond the liberal tradition.

To argue, as Buchanan attempts to, that the natural duty of justice is reflected in the moral foundation of the UN is analogous to the suggestion that when the framers of the US constitution established the legal principles which would govern an independent America they intended for the expression "all men are created equal" to apply as much to black men and to women as to the white male elite to which they belonged. This is historically untenable and easily falsifiable and, as such, to base any appeal to equality on this suggestion is far from persuasive. What is more compelling is the assertion that a right, once conceived in narrow terms, has slowly, imperfectly, and inconsistently come to incorporate a much broader raft of individuals than its authors may have imagined. This is due to the passage of time, the sacrifices of individuals, the tireless campaigns of activists and interest groups, and the gradual settling of the norms associated with gender and racial equality. Precisely because these developments have taken place at a systemic level and have faced barriers built into a system designed to further the interests of white males, those championing the rights of women and minorities would

argue that their task is far from complete but they have, nevertheless, served to transform the system from within.

Equally, it is simply inaccurate to argue that the framers of the UN Charter always intended for the interests of individuals to take priority over those of states. If anything they “assumed that there was no necessary conflict between principles of sovereignty and non-intervention and respect for universal human rights”.³⁶¹ They were concerned, principally, with securing order and peace between states and avoiding the outbreak of any further conflict in Europe or beyond. Of course they took account of HR and committed themselves to the ‘never-again’ pledge to respond to genocidal violence but they seemed to believe that avoiding war by respecting NS was the most effective way in which to afford these protections. To affirm that this account of HR bears anything more than a passing resemblance to the full blown Kantian cosmopolitan framework of individual rights is inconceivable. Just as interpretations of the US Constitution have consciously widened its scope, so various readings of the UN Charter and the development of HR norms have placed increased emphasis on the rights of those within state boundaries, and those failed by the apparatus of their own state. Perhaps, eventually, these incremental normative developments will create sustainable conditions for change. In fact, the belief in this possibility is the cornerstone of the constructivist conception of becoming. In the meantime, the normative balance at work in international society is precarious and any attempt artificially to weight it in favour of individual rights or the moral superiority of

³⁶¹ Nicholas J. Wheeler and Timothy Dunne, *Human Rights in Global Politics*, (Cambridge, Cambridge University Press, 1999), p.1

liberal democracy, carries with it significant risks both to international order and to the discourse of HR as it is currently framed. It is for this reason that Buchanan's rejection of casuistical analysis, in favour of a determination to enshrine inflexible moral principles in a rule-governed institutional structure, is not sustainable. Normative shifts occur by increments and on a case-by-case basis and attempts to manipulate this process are likely to prove both dangerous and ineffective.

Despite Buchanan's inherent mistrust of state majoritarianism, the fact remains that "[w]ithout the support from states as a whole, an 'emerging norm' can hardly 'emerge' and credibly be binding upon them".³⁶² As such, any legal or moral development which threatens the predominance of the state consent model of PIL is rejected by huge swathes of international society. Moreover, accusations of ethnocentrism continue to plague those who argue that anything more comprehensive than the rights of life and liberty, narrowly determined, might be considered to garner consensus across political communities. In many cases, references to HR standards which appear in legal documents do so only as non-binding opinions from liberally-minded judges and the stateless remain virtually unrepresented in PIL. None of this suggests either that the UN was conceived as a system which would promote HR over states' rights, or that it is rapidly developing into one.

In sum, as inadequate as the compromise and power politics of the UN may be, this institution is still generally 'perceived' as more legitimate than a League of Democracies which excludes more states than it embraces.

³⁶² Carlo Focarelli, 'The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine', *Journal of Conflict and Security Law*, 13(2), 2008, pp.191-123, pp.193

Despite the sophistication of some of his arguments and the inherent value of his attempts to synthesise legal, ethical, and political considerations, Buchanan's proposal ultimately collapses into a cosmopolitan claim concerning the moral superiority of liberalism. By extension, his attempt to hybridise constructivism and cosmopolitanism is ultimately an unsuccessful one.

To those who do not subscribe to liberal cosmopolitan principles Buchanan's theory may appear to be little more than a rationalisation for extending the influence of powerful democracies. Associating HI with such a proposal is, therefore, potentially damaging to its credibility and provides further evidence for its critics of the neo-imperialist overtones of institutionalising the R2P. Although no one can deny that the last sixty years have witnessed far-reaching change to the international system or that "[t]here is a progressivist story to be told about the evolution of international law",³⁶³ the particular manner in which Buchanan retells this story fails to take sufficient account of the continued and morally defensible influence of state consent in any account of becoming. Attempts to overturn this influence in the name of fragile and contested HR norms are likely to "do more harm than good and thus threaten those traits of a still imperfect system that it seems valid to maintain in the ultimate interest of the individual".³⁶⁴

However, the contribution of Buchanan to this thesis ought not to be underestimated. After all, the standards of institutional and political feasibility which

³⁶³ David Armstrong, 'Law Justice and the Idea of a World Society', *International Affairs*, 75(3), July 1999, pp.547-561, pp.548

³⁶⁴ Peter Hilpold, 'Humanitarian Intervention: Is there a Need for a Legal Reappraisal?', *European Journal of International Law*, 12(3), 2001, pp.437-467, pp.467

he establishes may well have proved illusive in his own arguments but they nonetheless serve as an invaluable addition to the analytical framework of this project by demonstrating the kinds of considerations which may need to limit the expansive category of becoming, if it is to function as a conceptual tool in an assessment of the current state system. This suggestion provides the basis for an investigation into Nicholas Wheeler's solidarist constructivist appreciation of becoming and international justice and its moral and procedural implications.

Chapter Four: Nicholas Wheeler, Solidarist Constructivism and Humanitarian Intervention

I. Introduction

This chapter will appraise the developing theoretical lens adopted by Nicholas Wheeler. It seeks to situate his changing views on HI in the context of his broader understanding of international justice and to demonstrate the ways in which he interprets the ontology of becoming, in light of his solidarist constructivist approach to IR. In contrast to Michael Walzer whose approach to HI (as the forthcoming chapter will reveal) has grown more ambitious in recent years, Wheeler's position is arguably more restrictive than a cursory engagement with his early work might suggest. This is because he embraces a procedural account of the limitations of international justice which attempts to balance a conviction that moral obligations cannot be contained by geographical boundaries, with an appreciation of the restrictions put in place by PIL.

Wheeler's analysis of HI has proven to be extremely influential with his *Saving Strangers* providing a moral, political, and historical overview of the progression of this complex discourse and a detailed account of the development of the norms surrounding it. In this volume, Wheeler attempts to arrive at a means by which to assess whether a proposed act of HI is justifiable. In so doing, he stipulates four criteria, all of which have their basis in the JW tradition, and all of which must be met in order for military incursion to be endowed with the status of humanitarian. His claim runs as follows:

First, there must be a just cause, secondly, the use of force must be a last resort; thirdly, it must meet the requirement of proportionality; and finally, there must be a high probability that the use of force will achieve a positive humanitarian outcome.³⁶⁵

Although factors such as: purity of motives; a justification for intervention framed in humanitarian terms; and UNSC authorisation, are considered to afford increased moral weight to any military operation, they do not constitute what Wheeler refers to as “threshold requirements”³⁶⁶ and are therefore not considered to be non-negotiable imperatives. The assertion is that on those occasions which satisfy all four of the core criteria, HI is not only justified as a response to systematic violations of HR but is also necessitated from the perspective of the enlightened self-interest of states. In Wheeler’s own words

[P]utting out the inferno of genocide is in both the national and the global interest because failure to do so risks creating a contagion that will undermine the value of civilised society.³⁶⁷

This indicates that the issue of HI resonates across all debates surrounding the nature and extent of an international duty of justice. It also reflects Wheeler’s view that the failure to enforce a minimal raft of basic, yet universal, HR is immoral and destabilising since it represents an unwillingness to defend humanity and preserve the standards within which all ‘civilised’ societies can reasonably be expected to operate. It is possible to contend that these standards are themselves enshrined in: the Universal Declaration on Human Rights (1948), which “established a standard of civilised conduct which

³⁶⁵ Wheeler, *Saving*, p.13

³⁶⁶ *Ibid*, p.52

³⁶⁷ *Ibid*, p.303

applies to all governments in the treatment of their citizens”,³⁶⁸ as well as the Genocide Convention (1950); the Covenant on Civil and Political Rights (1966); and the Covenant on Social, Economic and Cultural Rights (1966). However, Wheeler’s understanding of international morality goes beyond these legalistic commitments and is in fact intrinsically connected to his views on what constitutes humanity. It is the (sometimes uneasy) relationship between his conception of the person and his deference to PIL which renders Wheeler’s approach to international justice so engaging, and gives rise to his unique perception of becoming in IR. This chapter contends that Wheeler’s analysis has the potential to systematise some of the more ambitious prescriptions for reform in international society. However, it also explores the suggestion that the task of balancing solidarism and constructivism is conceptually illusive. The extensive commonalities between the two approaches provide a compelling theoretical basis for attempting to amalgamate them. After all, Andrew Hurrell’s characterisation of the core elements of the solidarist project is virtually interchangeable with the principal tenets of a constructivist approach to international society. According to this overview

four dimensions are especially important: the move to institutions and expansion of global rule-making; changes in the making, development, and justification of international law; the increasing emphasis placed on the enforcement of international norms and rules; and a changed understanding of the state and of state sovereignty.³⁶⁹

³⁶⁸ Wheeler and Dunne, *Human Rights*, p.1

³⁶⁹ Hurrell, *Global Order*, p.58

However, despite the substantial overlap between this framework and the constructivist agenda, attempts formally to hybridise the two positions continue to prove challenging. These difficulties result from the fact that when subjected to detailed analysis, the solidarist perspective often collapses either into a more pluralist outlook, or into a straightforward advocacy project of the type favoured by cosmopolitans. This thesis asserts that a consistent application of the constraints of feasibility dictated by the ontology of becoming might more effectively equip solidarist constructivism with the means to manage this quandary.

II. The Theoretical Basis for Humanitarian Intervention

i. The Developing Norm of Humanitarian Intervention

In defining: the occasions which might justify HI; the form which such actions ought to take; and the appropriate agent or agents, Wheeler attempts to produce a hybridised theoretical methodology. This represents an attempt to *combine* a constructivist epistemology, which rejects the presupposition that territorial integrity is sacrosanct and national boundaries natural and immutable, with a solidarist conviction that the obligation incumbent upon state leaders to act in defence of their own citizens ought to incorporate intervention on behalf of “suffering humanity”³⁷⁰ at large. Wheeler’s account of the development of the norm of HI demonstrates the manner in which it has risen to increasing prominence over the course of the last twenty years. Throughout *Saving Strangers*, he argues that, since the 1990s, international

³⁷⁰ Wheeler, *Agency*, p.10

society has been profoundly affected by an emerging norm of humanitarianism which is beginning to compel the UN and its constituent member states to prioritise HR and states' rights equally. The institutionalisation of this norm is evidenced by the increasing acceptance of the concept of conditional sovereignty, and the drafting of the ICISS report, both of which indicate that the notion of individuals as subjects as well as objects of PIL is key to prescriptions for progress in international politics.

For constructivists, in general, the humanitarian obligations which derive from the suggestion that HR pose a challenge to the dominance of NS are the consequence of negotiation and socialisation. They need not necessarily reflect an *a priori* commitment to the moral equality of persons which, by definition, predates the international community's reconceptualisation of NS. Instead, it is possible to argue that, before this ideational shift began to impact upon the ways in which states perceived their own national interest and the behaviour of their contemporaries, the 'right to intervene' had little or no normative purchase. Behaviours which appeared indicative of such a right, (including: the Indian invasion of Pakistan, in defence of the East Bengali population; the Vietnamese action in Cambodia, which brought an end to Pol Pot's reign of terror and led to the shutting down of the Killing Fields; and the overthrow of Idi Amin in Uganda, as a consequence of a Tanzanian military campaign) were implausibly characterised as actions of self-defence, if for no other reason than the fact that during the 1970s the discourse of HI simply did not exist; or at least had not been embraced within international society. The expansion of the remit of the UNSC following the end of the Cold War and the

reassessment of threat-perception which accompanied it, began slowly to introduce (or to reintroduce depending upon whether one accepts that HI had previously been advocated by Natural Law theorists such as Hugo Grotius) the concept that NS ought not to represent a “license to kill”.³⁷¹ In the years since the first Gulf War, when enforcement actions under Chapter VII of the Charter were first cited as a justification for the invasion of sovereign territory, the concept of HI (at least in its multilateral form) has developed slowly and imperfectly and has been incorporated into the shared understandings which govern international politics.

Wheeler counters claims that the emergence of this discourse must inevitably usher in concerns over predation and abuse by asserting that the very normative framework which provides its force can be used to regulate its application. Language, in particular, is key to restraining unjustifiable intervention, hence Wheeler’s endorsement of Quentin Skinner’s contention that “the range of legitimating reasons that any actor can invoke is limited”³⁷² since the agent “cannot hope to stretch the application of the existing principles indefinitely”.³⁷³ That is to say, that “any course of action is inhibited from occurring if it cannot be legitimated”³⁷⁴ and state leaders risk “being exposed as hypocrites” if their actions are not “plausibly compatible with the... values” they profess.³⁷⁵ This constructivist appreciation of the ways in which the language of justification can ultimately develop a ‘life of its own’,

³⁷¹ Baylis and Smith (eds), *Globalisation of World Politics*, p.471

³⁷² *Ibid*, p.471

³⁷³ Quentin Skinner, ‘Analysis of Political Thought and Action’, James Tully (ed), *Meaning and Context: Quentin Skinner and his Critics*, (Cambridge, Polity Press, 1988), p.117

³⁷⁴ *Ibid*

³⁷⁵ Welsh (ed), *From Right to Responsibility*, p.32

demonstrates that the relationship between language and normative development is integral to the processes of becoming in IR. In the arena of HI, this effectively ensures that the language employed by intervening agents is vital since, if a state claims that its actions are based on humanitarian imperatives and yet its subsequent behaviour belies this assertion, such a state will be subject to public opprobrium and social disapproval, which will compromise its standing within international society. As Skinner himself asserted, once any political actor embraces the linguistic constraints of a humanitarian endeavour the range of options available to them is narrowed.

Even if the agent is not in fact motivated by any of the principles he professes, he will nevertheless be obliged to behave in such a way that his actions remain compatible with the claim that these principles genuinely motivated him.³⁷⁶

II. The Components of Humanitarian Intervention

i. Just Cause

These constraints are consolidated by the criteria outlining Wheeler's "solidarist framework of humanitarian intervention",³⁷⁷ first among which is the matter of just cause, defined by Wheeler in terms of "supreme humanitarian emergency",³⁷⁸ a mantle which he is reluctant to assign the to anything but the most extreme of HR abuses, or the total collapse of state authority. Genocide, ethnic cleansing, massacre, enslavement, and mass-deportation are the actions which can precipitate the destruction of whole political communities

³⁷⁶ Tully (ed), *Meaning and Context*, p.116

³⁷⁷ Wheeler, *Saving*, p.52

³⁷⁸ *Ibid*, p.13

and which therefore, according to Wheeler's conception of an international duty of justice, generate a moral obligation which compels international society to respond in an attempt to halt or avert humanitarian crisis. In Wheeler's view this obligation finds expression in international legal doctrine and in the conviction that certain crimes represent an affront to the international moral conscience. The solidarist belief, incorporated into constructivist theorising as the norms of humanitarianism have begun to take hold across international society (or in the terms of this project as standards of international justice have been constructed through processes of becoming) asserts that whilst territorial integrity is a vital principle of IR, it is morally bereft to treat borders as impermeable entities, when doing so is likely to cost hundreds or thousands of human lives. In line with the findings of the R2P, and in terms already familiar from the conditional sovereignty discourse, Wheeler argues that respect for NS depends upon the willingness and ability of a state to guarantee the HR of its citizens, and that the failure to safeguard such fundamental entitlements empowers (and in certain circumstances should arguably force) international society to intervene.

This position is criticised by Nico Krisch on the basis that the definition provided by Wheeler for those crimes which justify HI is too inexact to underpin moral standards which can be consistently applied. The suggestion is that "Wheeler can give no objective definition, but says that some claims will be more persuasive than others".³⁷⁹ As a consequence, the simple insistence that HI cannot take place in the absence of supreme humanitarian

³⁷⁹ Nico Krisch, 'Legality, Morality and the Dilemma of Humanitarian Intervention after Kosovo', *European Journal of International Law*, 13(1), 2002, pp.331

emergency “relegates the problem of definition to the consideration of each case”.³⁸⁰ This appraisal of Wheeler’s position overlooks the fact that he is deliberately seeking to establish standards which are sufficiently flexible to allow for case-by-case assessment; a framework which naturally lends itself to constructivist theorising. After all, if as constructivists would argue, legal, political, and ethical norms become embedded through convergent and consistent practice, casuistical analysis is a much more appropriate and effective tool for investigating this process than the systematic view of human rights presented by Buchanan. Although Wheeler’s criteria are designed as a means to improve the efficacy of HI and reduce the risks of abuse, they are not intended to provide the basis of a specific ‘rule-governed’ institution, and draw their strength from the fact that they can be interpreted with some degree of flexibility.

This scope for interpretation is of particular value in a consideration of the relationship between the requirements of just cause and ‘last resort’, since it allows Wheeler to argue that imminent humanitarian emergency provides sufficient grounds for HI, even before any potential crisis has developed to the fullest extent. Although, in some respects, this caveat appears counter-intuitive when combined with the expectation that force may only be approved after all other diplomatic and non-violent attempts at resolution have been exhausted, Wheeler asserts that once large-scale loss of life appears inevitable, the continued pursuit of non-interventionary policies is rendered inappropriate. Accordingly, he claims that

³⁸⁰ Ibid

[i]t is too demanding to require politicians to exhaust all peaceful remedies; rather what is required is that they are confident that they have explored all avenues that are likely to prove successful in stopping the violence.³⁸¹

If this requirement is fulfilled, protracted negotiations and a stubborn adherence to non-violence cannot be allowed to provide a backdrop to crimes against humanity. This demonstrates the way in which JW principles may have to be perceived differently in response to changing international threats; a suggestion which finds favour in the work of Buchanan in particular.³⁸²

Despite the apparent manoeuvrability of his criteria, Wheeler asserts that the value of the category of supreme humanitarian emergency lies within its very specificity. The threshold for HI which he establishes is extremely exacting because it reflects a conscious attempt to identify a category of crime which is so severe as to justify the loss of life in which HI will inevitably result. For Wheeler, the most important consideration which must deter HI in anything but the most extreme of cases is “the premise that force is always going to lead to people being harmed”. Therefore,

[y]ou have to be able to justify the harm that’s going to be imposed by your actions against the harm that you’re going to be preventing... that means the bar has to be very high before you go to war.³⁸³

In essence, Wheeler is committed to the notion of non-combatant immunity and, as such, he is disinclined to license any act of intervention which, in a

³⁸¹ Wheeler, *Saving*, p.35

³⁸² See Allen Buchanan, ‘Institutionalising the Just War’, *Philosophy and Public Affairs*, 34(1), 2006, pp.2-38

³⁸³ Interview with Nicholas Wheeler, conducted at the University of Wales, Aberystwyth: 19/07/06

cost-benefit analysis, is liable to adversely affect as many people as it rescues. The exacting specifications of supreme humanitarian emergency must therefore, he suggests, be reserved for instances “where a very significant number of people are either dead, or at risk of death, and where force is seen to have the possibility of providing... a positive humanitarian outcome”.³⁸⁴

Wheeler believes that, in cases such as this, egregious and sustained violations of the rights of life and liberty provide grounds for HI. However, he also explores the suggestion that the category of just cause may serve not only as a means to assess the validity of an act of intervention which has already taken place, or which is imminent, but might also be employed to critique *inaction* in the face of humanitarian disaster. This is enormously significant since, for Wheeler, the failure to respond to the systematic abuse of HR represents as much of a threat to international justice, as does the licensing of inappropriate or irresponsible HI.

There can be little doubt that, in the absence of sufficient political will, even the most unambiguous examples of massacre and ethnic cleansing have been known to elicit inaction and apathy from international society. One compelling and ongoing example is the failure of the international community to respond more comprehensively to the crisis in Darfur.³⁸⁵ Having issued a

³⁸⁴ Ibid

³⁸⁵ The International Criminal Court issued a warrant for the arrest of Sudanese President Omar Hassan al-Bashir on 5th March 2009. However, at the time of writing, the humanitarian crisis in Darfur is ongoing, the warrant seems unlikely to be actioned in the near future, humanitarian intervention has yet to take place. Aid agencies estimate that, to date, up to 300

solemn promise of 'never-again', following the slaughter of up to 800 000 civilians during the Rwandan genocide, it seems intuitively clear to many commentators that a coalition of Western and African States, or the UN, ought to have come rapidly to the assistance of the people of Darfur. One of the reasons for inaction, in Wheeler's view, relates closely to the aftermath of the Rwandan crisis. Throughout the course of the massacre, representatives of international society and, in particular, the US Government, pointedly refused to describe the mass-killings as a genocide. Instead, the administration maintained, in a manner consistent with the post-colonial feminist critique of selectivity, that violence was the consequence of clan warfare and deeply rooted social tensions which the West was powerless to address. In refraining from the use of the very specific term 'genocide', the US hoped to evade the obligation to intervene which they feared would impact upon them, as signatories to the Genocide Convention. In contrast, in discussions regarding the crisis in Darfur, Colin Powell, in his capacity as Secretary of State, explicitly acknowledged that the violence had escalated to the status of genocide and yet the society of states, once again, failed to intervene.³⁸⁶ This reluctance, and manifest lack of political will, represents an unwillingness on the part of international society to honour the terms of the R2P; in which the parties pledged to come to the aid of those whose own governments had failed in their duty of guardianship and, either through their own actions or their inability to control the behaviour of other agents, exposed their citizens to the ravages of ethnic cleansing, massacre, mass-deportation, or other crimes against humanity. Furthermore, according to constructivist understandings of

000 people have been killed in the conflict and 2.7 million have been displaced, (<http://news.bbc.co.uk/1/hi/world/africa/3496731.stm>, [27/08/09])

³⁸⁶ Ibid

the constitutive relevance of language and its impact on state practice and legitimacy, to employ the use of this term and yet refuse to take the necessary action to curtail such atrocities, “fundamentally devalued and undermined the currency of the naming power of calling something a genocide”.³⁸⁷

Wheeler’s concern that the normative and linguistic force of certain categories of crime be maintained and his awareness that, in terms of becoming, inaction can have the same precedent-setting potential as intervention, account in part for the narrow terms in which he defines supreme humanitarian emergency. The term is designed: to provide the tools to assess whether or not a given act of HI is in keeping with the wider demands of international justice; to subject those who would intervene in the absence of a just cause to public scrutiny and social disapproval; and to bring pressure to bear when international society refuses to take action when doing so could save the lives of thousands of innocent civilians. In Wheeler’s terms, defining the category of just cause as the existence of supreme humanitarian emergency allows us to argue that the 2003 invasion of Iraq by the US-led ‘coalition of the willing’ did not meet the threshold for such action, whereas, for example, the Vietnamese invasion of Cambodia in 1977, and the consequent shutting down of the killing fields, was justifiable in humanitarian terms.

The criteria which Wheeler uses to establish this distinction are fundamental to his wider approach to international justice. He appears to maintain that if becoming is (as constructivists would be inclined to suggest) largely

³⁸⁷ Ibid

contingent upon consensus-building, we may have to frame our conception of the international duty of justice in negative terms. “We can’t necessarily agree on what the ‘good life’ looks like” but by retaining the linguistic force of supreme humanitarian emergency “we might be able to agree on some notion of what the ‘bad life’ looks like”³⁸⁸ and, thereby, maintain a consensus over the kinds of HR infringements which are subject to an international duty of justice and, therefore, necessitate HI. Whilst elements of this argument are very persuasive, viewing Wheeler’s analytical framework from the perspective of a gender-sensitive ontology of becoming brings to light certain inadequacies. Feminist constructivists might be inclined to argue that, having established that the use of force is an inappropriate response to anything but the most grievous of HR abuses, Wheeler ought to strengthen his argument by considering the value of measures short of force designed to address the inequalities and injustice which so often underpin the outbreak of political violence. Once again a more nuanced understanding of human suffering than that typical of mainstream theories reveals the interrelated nature of social and economic deprivation and physical insecurity.

(a) Morality, Legitimacy, and Becoming

Wheeler’s determination to maintain the ‘naming power’ of supreme humanitarian emergency effectively ensures a very narrow definition of just cause. What remains at issue is the manner in which he defends his claim that certain rights have become so intrinsic to standards of international justice that their infringement may justify HI. Perhaps surprisingly the terms in

³⁸⁸ Ibid

which he does so draw out many similarities between his solidarist constructivism and a more cosmopolitan approach to international justice. Initially, Wheeler asserted that the criteria which he advocated could be employed to assess the *legitimacy* of HI. However, he has subsequently suggested that the clarity of his early work was compromised through the conflation of legitimacy and morality. In reality, the legitimacy of HI, at least according to constructivist understandings, effectively refers to the extent to which it reflects the emerging and settled norms of international society, or secures the endorsement of a variety of global political actors. This is because

legitimacy is something which is always social: you try to raise claims and you try to legitimate those claims to different constituencies, and if you succeed then that is legitimacy.³⁸⁹

In contrast, Wheeler now contends that his stipulated criteria are an attempt to establish “a normative standard for judging intervention, which may or may not be agreed by others” but which he considers to be “*morally right* whether or not it is validated”³⁹⁰ by other agents. This represents a significant departure from the constructivist assertion that morality arises as a consequence of the consensus generated through interaction, negotiation, and the development of shared meanings and understandings. Wheeler is instead claiming, in noticeably cosmopolitan terms, that certain moral standards do possess an intrinsic value based on “our essential humanity,

³⁸⁹ Ibid

³⁹⁰ Ibid

which resonates to the presence of the same thing in other human beings".³⁹¹ As such, all individuals, regardless of the cultures from which they herald, or the states in which they are citizens, are the bearers of certain rights, which must be respected and enforced by the apparatus of the state. In this respect, Wheeler's epistemology embraces some aspects of morality as universal and morally prior to agreement among global political actors.

This position threatens his work with a measure of incoherence or, at the very least, calls into question the extent to which it can be characterised as constructivist in nature. After all for constructivists, legitimacy and morality are, effectively, one and the same. It is the very fact that certain normative standards achieve tacit or explicit recognition and acceptance across a broad range of political communities which infuses them with their moral status. It would appear that Wheeler wishes to argue that certain minimal humanitarian values are morally persuasive with or without the stamp of 'social legitimacy'. This has implications for his wider theory since if one can make the case that certain rights exist *a priori* and that international society is compelled to defend them, the processes of social interaction and construction become little more than a footnote to a form of covering-law universalism, which prioritises certain entitlements, whether or not they are informed by meaningful cross-cultural consensus. The challenge for Wheeler then is to demonstrate how his constructivist conception of norm formation and becoming can be reconciled with his solidarist refusal to view HR as socially or historically contingent. It is the contention of this chapter that, despite the

³⁹¹ Richard Rorty, *Contingency, Irony, and Solidarity*, (Cambridge, Cambridge University Press, 1989) p.189

enormously instructive nature of elements of his theorising, he is not always able to achieve this.

One might expect Wheeler's willingness to adopt a moral position, which has the potential to conflict with a constructivist account of becoming, to lend itself to a relatively radical approach to the issues of HI and international justice. If his views are not constrained by the requirement of achieving and demonstrating consensus and he believes that, at times, the moral urgency of certain rights trumps their social legitimacy, his prescriptions for change in international politics ought, logically, to be less constrained than, for example, communitarian constructivist theorising. However, in a fashion which may appear contradictory, Wheeler's justice claims are in fact confined by his fidelity to PIL. In terms already familiar from an analysis of Buchanan, he attempts to impose a standard of feasibility on his work, such that the reforms he recommends might be applicable to the *current* realities of inter-state relations. As such, Wheeler seeks to outline those incremental, yet significant, changes which could be absorbed into international society *as it presently functions*. In this respect, although Wheeler's moral theorising has grown less ambitious over time his appreciation of the legal mechanisms which govern change at the international level might serve to connect the constructivist agenda for becoming, with the practicalities of international legal doctrine. Nowhere are the grounds for this potential synthesis clearer than in an analysis of the issue of agency.

ii. Agency

Wheeler's account of agency is complex and somewhat inconsistent. In fact, his theorising in this area has passed through three distinct phases: a defence of unilateralism; a retreat from this position in light of the impact of the Bush doctrine of pre-emptive self defence and the framing of the ICISS; and finally a tentative acceptance that, in view of the limitations of the R2P, a blind rejection of unilateral alternatives may not be sustainable. The evolution of Wheeler's perspective represents a response to the changing imperatives of international politics and demonstrates that the processes of becoming impact as much on theorists of international society as on that society itself.

Intriguingly, were an analysis of Wheeler's contribution to the debate to be limited to his early work, it would be possible to argue that his views on agency represent an endorsement of unilateralism; a suggestion evidenced by the claim in his 2002 volume that "while we should always try and obtain Security Council authorisation this legal requirement can be overridden in cases of supreme humanitarian emergency".³⁹² Familiar criticisms of: the oligarchic structure of the UNSC; its "morally arbitrary"³⁹³ distribution of veto powers and their frequent abuse; as well as a cognisance of the generally inefficient and time-consuming nature of multilateral decision-making, were all taken into account by Wheeler who, initially allowed for the requirement of UNSC authorisation to be omitted from his list of threshold criteria for HI; featuring instead as a means by which to increase, rather than determine, the validity of any such action.

³⁹² Wheeler, *Saving*, p.41

³⁹³ Buchanan, *Justice*, p.164

Subsequent to the publication of *Saving Strangers*, however, Wheeler re-evaluated his contention that HI could be championed at the expense of PIL and embraced instead a notably more conservative commitment to the preservation of UNSC authority. At this stage, it was his hope that an incremental campaign of procedural reform might increase the efficiency and efficacy of the UN. In other words, proper authority might be seated with this flawed institution, even as the organisation continued to develop. Among his justifications for this shift in emphasis, was his belief that the UNSC had evolved into a much more capable institution than it was during the Cold War. As such, increased activism within the organisation had shifted the parameters of the HI debate. After all,

[t]here are no cases in the 1990s where the Council has blocked action, when there's been an overwhelming case for something to happen.³⁹⁴

Through the theoretical conduit of the ontology of becoming, he argued that the increased promise of the UNSC was due in large part to the emergence of the concept of “good international citizenship”,³⁹⁵ as an anchor to an ethical foreign policy and a reflection of a reconceptualised understanding of international justice. First coined by Gareth Evans, the Australian Foreign Minister from 1988 to 1996, and the co-chair of the ICISS, this expression denotes a departure from the “traditional realist approach to foreign policy because it rejects the assumption that the national interest always pulls in the

³⁹⁴ Wheeler Interview

³⁹⁵ Nicholas J. Wheeler and Timothy Dunne, ‘Good International Citizenship: A Third Way for British Foreign Policy’, *International Affairs*, 74(4), October 1998, pp.847-870, pp.848

opposite direction to the promotion of human rights³⁹⁶ and establishes a causal link between “domestic state repression” and “a negative impact on wider regional security”.³⁹⁷ This ensures that “it is not acceptable to define such situations as being covered by Article 2(7)”³⁹⁸ and therefore, as being beyond the auspices of HI. This notion has gained increasing credence within international society and has been reflected in the decision of the UNSC to license HI under Chapter VII, on the basis, at least in part³⁹⁹, that the widespread violation of HR in a given region threatens the stability and security of surrounding territories.

In some cases, the refugee crises and spread of disease which can result from supreme humanitarian emergency appear to vindicate this assumption; in others, this logic has been employed to mobilise HI, without the implementation of unwanted reform within the UN. As such, Wheeler argued that the block on HI no longer predominately originated from the unwillingness of the UNSC to provide authorisation in specific cases. Rather, the politics of rescue continued to be hampered by a pervasive lack of political will among the protagonists. According to this argument, it is the absence of “a solidarist commitment that could lead government and citizens to view global firefighting in the same way as citizens view the provision of a fire service in domestic

³⁹⁶ *Ibid*

³⁹⁷ *Ibid*

³⁹⁸ *Ibid*

³⁹⁹ The inflection ‘in part’ is significant because as Karel Wellens asserts: “no situations have arisen where such violations of human rights provided the exclusive underpinning of a pronouncement or determination of a threat [to the peace]” (‘The UN Security Council and New Threats to the Peace: Back to the Future’, *Journal of Conflict and Security Law*, 8(1), 2003, pp.15-70, pp.44)

society”,⁴⁰⁰ rather than deadlock within the UN, which is most likely to arrest HI even before it begins.

At this stage, Wheeler’s faith in the need to maintain the credibility and exclusive jurisdiction of the UNSC owed much to the tone of Bush’s foreign policy, which rendered Skinner’s emphasis on the relationship between language and state practice increasingly difficult to defend. Instead it was tempting to claim, as realists have always been inclined to, that the ability and willingness of states to ensure that their behaviour remains consistent with international norms is a luxury and is therefore de-prioritised when adhering to it appears likely to compromise national security. Hence, the 2001 attacks on the World Trade Centre; the subsequent unilateralism demonstrated by the US; and the failure of international society to force the Bush Administration “to apply human rights norms to its own actions in the ‘war on terror’”⁴⁰¹ seemingly confirmed the prophetic fears of many commentators that ‘homeland security’ and international justice are incommensurable agendas.⁴⁰²

The inability of international society to restrain the conduct of the US, a state which, under Bush, appeared at times to be impervious to moral censure, seemed to belie Wheeler’s original assertion that “[o]nce established, norms will serve to constrain even the most powerful states in the international

⁴⁰⁰ Wheeler, *Saving*, p.304

⁴⁰¹ Julie Mertus, ‘Review of *Saving Strangers: Intervention in International Society*, *American Journal of International Law*, 97(1), pp.224-227, 2003, pp.226

⁴⁰² Wheeler was by no means the only commentator concerned with this conflict. Writing in 2003, Julie Mertus expressed her concerns that “in the wake of those developments, human rights and humanitarian intervention will be jettisoned in favour of US national security” (Ibid)

system".⁴⁰³ As such, in 2006, he openly admitted that the invasions of Afghanistan and Iraq, both of which were ultimately framed, at least in part, as exercises in humanitarianism, threatened to lead to his abandonment of the unilateralist cause. Initially, he had harboured the optimistic expectation that since "[h]umanitarian emergencies were occurring in failed states" and "those failed states were breeding grounds for terrorism",⁴⁰⁴ the September 11th attacks "would create a convergence of security interests and humanitarian impulses".⁴⁰⁵ However, he rapidly became aware that the 'war on terror' had not provided the missing "security motivation"⁴⁰⁶ to place HI at the top of the political agenda. For the Wheeler of 2006, the Bush doctrine served to undermine, at least to some extent, the credibility which he might once have extended to the US as a potential 'rescuer'; a change of heart which impacted upon his approach to unilateralism, and his understanding of the demands of international justice, more generally. He identified what he termed the administration's "antipathy... to international institutions";⁴⁰⁷ its by-passing of the UNSC in the build-up to the Iraq war; as well as a framework of IR rooted in a "very hard-edged Wilsonianism"⁴⁰⁸ predicated on the universal and universalisable nature of American values, as inherently damaging to the reputation of the world's only superpower. Conversely, he argued, that a lack of commitment and coherence among the European powers in matters of collective security ensured that the EU was not well positioned to offer an alternative to US dominance, and since only a small number of states beyond

⁴⁰³ Wheeler, *Saving*, p.7

⁴⁰⁴ Wheeler Interview

⁴⁰⁵ *Ibid*

⁴⁰⁶ *Ibid*

⁴⁰⁷ *Ibid*

⁴⁰⁸ *Ibid*

the affluent West were materially able to intervene effectively, Wheeler conceded that unilateralism appeared less credible as a response to supreme humanitarian emergency than he had been inclined to suggest only four years earlier.

Deeply concerned by the potentially destabilising impact of powerful and self-interested states spearheading interventionary campaigns, irrespective of the constraints imposed by PIL and international society, Wheeler came to consider that the incorporation of UNSC authorisation into his erstwhile criteria for HI might infuse the process with increased moral efficacy and guard against the dangers of unilateralism. Whilst he did not deny that UNSC “inaction in cases where atrocities shock the conscience of humankind... undermines the authority of the UN”,⁴⁰⁹ his proposed solution to this was not to allow for the institution to be routinely by-passed. Instead, he called for concerted efforts to reinvigorate, and, if necessary, reinvent the UN to ready it for such tasks. For Wheeler, the inclusion in the ICISS of discussions regarding the proper recourse in instances of UNSC deadlock precipitated an engagement with tenable alternatives to unilateralism. Accordingly, he proposed a series of mechanisms designed to streamline decision-making within the UN, thereby increasing the likelihood that UNSC authorisation might either be obtained or, if necessary, *legitimately* by-passed. More generally, he appeared to argue that becoming could be engendered and sustained within the current UN framework.

⁴⁰⁹ Nicholas J. Wheeler, ‘Humanitarian Intervention after Kosovo: Emergent Norm, Moral Duty, or the coming of Anarchy’, *International Affairs*, 77(1), 2001, pp.113-128, pp.119

(a) Constructive Abstention

The first of Wheeler's proposals for reform was based on his conviction that the use of the P5 veto, should be contingent upon a certain level of fairness and moral responsibility; the notion of "constructive abstention"⁴¹⁰. Wheeler maintained that

it is not acceptable for permanent members to exercise the veto in situations where states request Council authorisation and where there is significant international support for intervention to prevent or stop gross violations of human rights.⁴¹¹

However, the fact remains that the P5 are extremely unlikely to approve any measure which would limit their own influence and even Wheeler acknowledges that "the problem arises... that often people will genuinely believe that they're not being capricious".⁴¹² It is possible to argue, for example, that the Russian willingness to veto NATO's actions in Kosovo, a threat which resulted in the failure to table a resolution and a subsequent unilateral bombing campaign, represented "a genuine difference over how government members exercise their responsibilities in international society";⁴¹³ a contentious debate over the proper interpretation of Article 2(4); and conflicting interpretations of the demands of international justice, rather than a blindly capricious act. A fundamental disagreement of this nature cannot simply be resolved by means of institutional reform.

⁴¹⁰ ICISS, 6.21

⁴¹¹ Wheeler, *Saving*, p.297

⁴¹² Wheeler Interview

⁴¹³ Ibid

(b) “Uniting For Peace”

Furthermore, the only circumstances under which the veto cannot currently be exercised is in the context of the “Uniting for Peace” protocol established in 1950 as a means by which the General Assembly (GA) could take action in the event that political stalemate were to prevent agreement within the UNSC. Envisaged as a means to increase co-operation during the Cold War, this procedure, which has remained inactive since its inception, would begin with the drafting of a Procedural Resolution within the UNSC in support of the use of force. If nine votes could be secured, the matter would then pass to the GA. Although, the role of the GA would only ever be recommendatory, and therefore military action would not be guaranteed by the passing of any such resolution, Wheeler argues that “requiring a two-thirds majority in the GA in cases where the UNSC has found a threat to ‘international peace and security’ but is unable to act due to the use of the veto, “constitutes a high standard of legitimacy, and would minimise the risk that states would abuse a right of humanitarian intervention”.⁴¹⁴ However, the ethical quandaries which result from the interconnected nature of moral and legal considerations may prove intractable if this process results in a failure to secure a 2/3 majority within the GA. In effect, such a scenario recreates the deadlock of the UNSC and reintroduces the question of whether unilateral HI ought to take place in the face of a refusal by the UN to provide its authorisation.

⁴¹⁴ Wheeler, *Saving*, p.297

(c) United Nations Armed Force

The recurring problem of political deadlock also has the potential to undermine Wheeler's third proposed alternative to unilateralism; the suggestion that a UN Armed Force (UNAF) would be better positioned to respond to widespread violations of HR than would the armies of individual states, regional organisations, or coalitions. At its inception, the UN was envisaged as an organisation which ought, unlike its unsuccessful predecessor, the League of Nations, to be endowed with a military wing which could be mobilised in those instances wherein global peace and security came under threat. However, the cooling of relations between East and West led to the onset of the Cold War which derailed any such notion and, although, the Military Staff Committee which was convened to "advise and assist the UNSC in the 'employment and command of forces placed at its disposal'... has met every two weeks since February 1946",⁴¹⁵ by 1948 it had already declared that it would be incapable of fulfilling its mandate and the aforementioned meetings are now said to last no more than a few minutes.⁴¹⁶ In this respect, the bipolarity which hijacked the UN has left a legacy which, to this day, renders the organisation dependent on the military capabilities and contributions of its constituent members.

Wheeler has suggested that in the arena of HI the establishment of a UNAF provides a potential solution to some of the issues precluding consensus over the use of force. In the first instance, a "UN army with its own officers, capable

⁴¹⁵ Simon Chesterman, 'Legality vs. Legitimacy: Humanitarian Intervention, The Security Council and the Rule of Law', *Security Dialogue*, 33(3), 2002, pp.293-307, pp.298

⁴¹⁶ *Ibid*

of acting independently in the right fields”⁴¹⁷ gives fresh impetus to the notion that successful HI can be conducted multilaterally. Secondly, the remit of the UNAF and, specifically, the kinds of crises with which it would be equipped to contend, could be established in advance (albeit with a necessary degree of flexibility and scope for case-by-case analysis) and this could serve to guarantee a rapid response and increase the likelihood of securing a positive humanitarian outcome. Thirdly, a UNAF, assigned specific responsibility for matters of HI, could receive specialised training, tailored to the demands of both warfare and peacekeeping and framed in terms which would breed the requisite cultural sensitivity and political awareness to facilitate a just and lasting settlement, once hostilities cease. Not only would this be likely to reduce the possibility of a premature withdrawal of troops but it would also ensure that an emancipatory mandate was meaningfully executed; with the local population, ultimately, liberated from oppression, rather than further violated by ‘invaders’ with little or no sense of the cultural specificity of the region.⁴¹⁸ Equally, since HI would not necessitate the deployment of national armies, the tendency of voting publics to dictate the scale and duration of military incursion would be counteracted, since governments and civilian populations alike would no longer perceive that dispatching service personnel amounted to the decision to risk the lives of their own nationals in the name of humanitarian causes.

⁴¹⁷ Walzer, *Arguing*, p.80

⁴¹⁸ A famous example of the comprehensive failure to win the trust of a local population is cited by Wheeler in *Saving Strangers* and relates to the disastrous Somali intervention. He states that “one of the worst insults in Somali society is to show your shoe to someone, and it did not foster good relations when Somalis could see the boots of US soldiers facing down on them as US helicopters flew their low-level search and destroy missions over Mogadishu” (p.206). It is possible to argue that a UNAF, properly prepared for humanitarian missions, would be less likely to fall victim to such costly errors.

However, there exist a number of obstacles to the establishment of this proposed UNAF. The first is the simple fact that, at this time, there appears to be little indication that powerful players within the UN would license the creation of such an army. This is indicative of Wheeler's concern that insufficient commitment to human solidarity renders agreement over 'global' crises entirely more difficult to secure than responses to 'local' challenges. Secondly, even if this problem could be overridden, the deployment of the UNAF "would depend on decisions of a Security Council likely to be as divided and uncertain as it is today, still subject to a great-power veto and severe budgetary constraints";⁴¹⁹ or, in Wheeler's terms, restricted in its efficiency and its moral authority by its inability to react consistently; what he labels the "vexed question of selectivity".⁴²⁰ Finally, supreme humanitarian emergency may be an exacting category but its outbreak is not as rare as its severity might imply. In fact, even the resources of a UNAF are likely to be exhausted when instability and violence take hold in more than one region, concurrently. As Wheeler points out, had the UN fire brigade existed in the mid-1990s, it "could not have been sent to save Rwandans, because it would already have been committed to fire-fighting in Somalia or Bosnia".⁴²¹ Thus, strategic and economic considerations would govern the deployment of a UNAF in much the same way as they dictate the actions of national armies. Finally, from the perspective of gender analysis, the constitution of any proposed UNAF would have to be conceived in terms which did not simply replicate the institutional failings and embedded gendered hierarchies so typical of military organisation. At the very least, both its membership and its

⁴¹⁹ Walzer, *Arguing*, p.79

⁴²⁰ Wheeler, *Saving*, p.304

⁴²¹ Ibid

remit would have to take into account the issues surrounding gender inequality and seek to balance such an appreciation with the requirement of cultural sensitivity; a difficult if not impossible task.

Ultimately, the establishment of a UNAF is subject to the same constraints and limitations as any other proposal for UN reform. There is significant agreement among both theorists and practitioners of IR that the structure and nature of the organisation is in need of revision. In fact, it was Annan who, whilst serving as Secretary General, claimed that in order for the UN to retain its credibility it must “undergo the most sweeping overhaul in its 60 year history”;⁴²² a statement which led to the establishment of the ‘High Level Panel on Threats, Challenges, and Changes’ which published its findings in 2005. However, the consensus generated by the panel was limited and addressed itself almost exclusively to the expansion of the membership of the UNSC, rather than the abolition of the veto, or any other fundamental changes to the operational procedures governing the use of force.⁴²³ The enormous difficulties associated with securing agreement over reform of the UN speak to the limitations of Wheeler’s procedural approach to HI and international justice since, in part, his theory relies upon the ability of the UN to demonstrate that it is a capable institution, adaptable, and responsive to the demands of humanitarianism. However, as an engagement with both feminist and cosmopolitan constructivists has indicated, it could be argued that the reform of the organisation, which was, after all, “created by the Great Powers for the

⁴²² (Cited) Thomas G. Weiss, ‘An Unchanged Security Council: The Sky Ain’t Falling’, *Security Dialogue*, 36(3), 2005, pp.367-369, pp.367

⁴²³ For full details on the findings of the HLP see Thomas G. Weiss and Karen E. Young, ‘Compromise and Credibility: Security Council Reform?’, *Security Dialogue*, 2005, 36(2), pp.131-155

Great Powers”⁴²⁴(and has therefore served to perpetuate unequal power relations) is precluded by the legitimacy and democratic deficits which result from its oligarchic structure. If this is the case, Wheeler’s faith in multilateralism is necessarily undermined.

(d) Agency and the R2P

To some extent, facing this quandary brings Wheeler’s argument full-circle, since his faith in the ability of the UN to adapt to new threats and pressures appears to have been misplaced. Much of his determination to investigate and promote institutional mechanisms which might alleviate the problems of UNSC stalemate was based on his belief that the drafting of the ICISS represented a highly significant step toward international consensus over HI. Both the acceptance of criteria to govern HI and the cautious indication that deadlock in the UNSC could legitimate alternative UN-based initiatives, seemed to confirm his belief that a respect for multilateralism need not necessarily equate to an endorsement of inaction. However, both of these key elements of the ICISS were “lost in the transition from ‘document to doctrine’”,⁴²⁵ with neither set of recommendations ultimately incorporated into the World Summit Outcome Document. As Wheeler puts it

Paragraph 139 of the Outcome Document requires that any collective action in support of R2P must be ‘in accordance with the Charter, including Chapter VII’. This has led some commentators to argue that the 2005 Outcome

⁴²⁴ Morris, ‘UN Security Council Reform’, pp.268

⁴²⁵ McClean, ‘The Responsibility to Protect’, pp.131

Document closes the door on unilateral and regional action without prior Security Council authorisation.⁴²⁶

For those who contend “that the language in the Outcome Document cannot be the last word on military intervention to end genocide and mass killing”,⁴²⁷ this blanket ban on unilateralism strips the R2P of its ability to constrain state-sponsored HR abuses. Whilst HI without authorisation may be institutionally flawed, non-intervention in the face of UNSC deadlock appears to Wheeler to be morally indefensible. It is on this basis that he is once again prepared to concede that a focus on multilateralism may be negotiable.

(e) The Quandary of Solidarism

It is easy to sympathise with Wheeler’s changing views on agency. If anything, they demonstrate his appreciation of precisely how complex and elusive agreement on this issue is. However, at present it is reasonable to suggest that his position is somewhat incoherent. The concerns over unilateralism which he articulated in the wake of the Afghanistan and Iraq invasions remain pertinent but his faith in the R2P appears to have been undermined by the failure of international society to institutionalise some of its more radical components. The significance of all this in terms of Wheeler’s conception of becoming and the international duty of justice is the fact that it serves to highlight a tension in his work between his belief that justice demands the defence of HR and his profound concerns over the circumvention, in the name of these very rights, of the UNSC. For the most

⁴²⁶ Nicholas J. Wheeler, ‘Operationalising the Responsibility to Protect: The Continuing Debate over where Authority should be Located for the Use of Force’, *NUPI Report 3*, 2008, pp.5-27, pp.9-10

⁴²⁷ *Ibid*

part, Wheeler maintains that justice is most effectively served through the preservation of the exclusive right of the UNSC to sanction the use of force. This is because the disorder which is likely to result from the by-passing of the UN is too high a price to pay for the mobilisation of HI. However, he also wishes to maintain that the reality that thousands of lives may be lost as HR are sacrificed at the altar of the national interest is at odds with the demands of justice as he understands them.

Wheeler's oscillating convictions speak to a broader issue concerning the relationship between solidarism, becoming, and the limits of international justice. As Hurrell has argued, it is when they begin to explore "the space beyond existing legal consensus",⁴²⁸ that those who are committed to the scope of "normative expansion"⁴²⁹ implied by the solidarist project are frequently confronted by the limitations of its appeal and applicability among global political actors. Even in accepting the existence of an international society and, in the case of some solidarists, aspiring toward a global society commentators are forced to accept how far removed their conception can sometimes be from the current realities of international politics.

[t]he aspirations of this normatively ambitious international society remain deeply contaminated by the preferences and interests of powerful states... where solidarist cooperation is weak or breaks down, the older imperatives of pluralist international society continue to flourish... even when genuinely consensual, the promotion of solidarist values both depends on, and reinforces, the power and privileges of the dominant state or group of states. We are therefore not dealing with a vanished or vanishing Westphalian world, as much transformationist writing suggests, but rather with a world in which

⁴²⁸ Ibid, p. 155

⁴²⁹ Hurrell, *Global Order*, p.144

solidarist and cosmopolitan conceptions of governance coexist, often rather unhappily, with many aspects of the old pluralist order.⁴³⁰

When faced with this quandary, solidarists tend to shift their focus in one of two directions; either toward increased radicalism or increased conservatism. In the case of Hurrell (and similarly in the work of Richard Falk)⁴³¹ the tone of analysis takes on the hallmarks of an advocacy project, moving rapidly and somewhat unsteadily from an appraisal of 'what is' to a set of radical prescriptions for 'what should be', which arguably takes insufficient account of what 'conceivably could be'. For example, the suggestion that "[A]lthough central to a liberal solidarist vision of international society, the expansion and consolidation of human rights press hard against the statist limits of that conception"⁴³² indicates a desire to push the boundaries of a solidarist normative agenda into a cosmopolitan conception of world society. Given the controversy which continues to rage over even the most limited interpretations of certain rights claims and the tangible legal restrictions which still impact upon humanitarianism, the proper debate is not whether we have moved, or are moving, from a solidarist framework for international politics into a cosmopolitan one. In fact there remains substantial doubt as to whether the solidarist agenda has served, or may ever serve, to displace the pluralist conception. Even those who are inclined toward solidarist argumentation must still address the possibility that in "seeking to achieve more, solidarists set themselves an impossible task and risk undermining the limited degree of

⁴³⁰ Ibid, p.9

⁴³¹ See Richard A. Falk, *Achieving Human Rights*, (New York, Routledge, 2009)

⁴³² Hurrell, *Global Order*, p.148

consensus and order that has been achieved within the society of states”.⁴³³

This critique is equally applicable to the emancipatory framework of feminist analysis and seems to support Carpenter’s assertion that the most effective means by which to ‘mainstream’ notions of gender bias is to separate them from the feminist focus on improving the lives of women.

Unlike some of his contemporaries, especially those from within the broad category of feminist analysis, Wheeler accepts certain limitations on the scope of his theorising. It is for this reason that his work might be said to conform more effectively to the understanding of the constructivist ontology of becoming which informs this thesis. Despite his conviction concerning the moral priority of certain rights claims, Wheeler’s commitment to constructivism nevertheless underpins his belief that a lack of consensus among global political actors has very real implications for the institutionalisation of HR and HI. In the aftermath of the R2P, and by way of a response to this apparent contradiction, Wheeler appeared to retreat from solidarism into a more conservative outlook, more in-keeping with his views on the moral and practical values of norm dynamics. Nevertheless, he also expressed renewed hope that the mechanisms of the UN might yet implement the incremental “internationalisation of the human conscience”⁴³⁴ necessary for a more overtly solidarist approach to international society to be rendered tenable. He argued that the tangible acceptance of the findings of the ICISS would take some time to resonate throughout international society; a process which he believed may prove to be analogous with the development of the concept of “common

⁴³³ Ibid, p.78

⁴³⁴ ICISS, VII

security".⁴³⁵ He hoped that, the consequent, albeit gradual, 'de-legitimation' of the veto (which would discourage its capricious use), and the development of a prompt and more morally responsive approach to humanitarian disaster, might prove to be sufficient to the task of shoring up the practice of multilateralism.

(f) The Role of 'Mitigation'

However, in his most recent contributions to the debate, Wheeler has been unable to disguise his disappointment that many of the most innovative instruments established through the ICISS were not more effectively institutionalised. It is perhaps for this reason, that, as yet, he does not appear to be prepared entirely to abandon the notion that alternatives exist to explicit UNSC endorsement. It would appear that Wheeler remains committed to the moral conviction that "there *ought* to be a possibility for willing states to help those oppressed by their governments even if the UN fails to take action".⁴³⁶ Accordingly, in his 2008 article on the subject of agency, Wheeler attempts to produce a comprehensive survey of all the means by which HI might be authorised. This allows him to revisit and reorder his changing approach to the matter of proper authority and leads to the establishment of what may be his most persuasive argument to date. He begins with largely uncontroversial cases in which HI is welcomed by a government or serving head of state; before addressing the range of measures, increasingly coercive in nature,

⁴³⁵ This was based on the recognition, encapsulated in the 1982 Palmé Commission Report, that the superpowers could only guarantee their own security, and that of the states which surrounded them, through co-existence. As Wheeler states "In the beginning, those ideas were very much marginalised... but by the end of the decade both superpowers were talking, and to some extent, acting, the language of common security" (Wheeler Interview).

⁴³⁶ Stefan Kircher, 'The Human Rights Dimensions of International Peace and Security and Humanitarian Intervention after 9/11', *Social Science Research Network*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=445124, [13/05/09], pp.30

which might secure such an invitation in instances where it is not immediately forthcoming. In cases wherein HR abuses have become intolerable and a serving government is complicit in the massacres (or, having collapsed, is in no position to issue an invitation to interveners) diplomatic and economic sanctions or incentives are liable to prove fruitless. It is in such circumstances that UNSC endorsement is most needed and, often, impossible to secure. Once again, Wheeler considers the virtues of “Uniting for Peace” but admits that the concept is neither a popular nor an efficient one and ultimately, he introduces a suggestion which, in view of his recent opposition to unilateralism, is more than a little surprising. Reviewing the international response to NATO’s intervention into Kosovo, he argues that

[t]he Security Council’s handling of the Kosovo case might... offer the best precedent for how the international community should cope with future cases of this kind. The lesson of Kosovo, and especially the abject defeat of the Russian draft resolution condemning the bombing, is that Council members are not ready to legally sanction armed intervention for humanitarian purposes that lacks express Council authorisation. But neither will they always condemn it. A majority of Council members were persuaded that NATO’s breach of the strict procedural rules of the UN Charter should be excused and in this sense it operated an international equivalent to mitigation in domestic law.⁴³⁷

This statement is enormously engaging from the perspective of the relationship between becoming and the constructed duty of justice. In the first instance, Wheeler asks us to reflect on the outcome of one of the best known cases of unauthorised HI, reminding us that far from eliciting widespread opposition, the NATO bombing of Kosovo was characterised by many global

⁴³⁷ *Ibid*, pp.7

political actors, albeit tentatively, as justifiable in moral and pragmatic terms. Even Annan ultimately labelled the campaign “illegal but legitimate”.⁴³⁸ Secondly, although there may be many reasons to claim, as Noam Chomsky does, that this is at best a “dubious policy”⁴³⁹ it does point to the disjuncture between those legal standards to which states are publically committed and the flexibility with which they might interpret these restrictions in the correct circumstances. For Wheeler, these institutional and legal ‘grey areas’ offer the most fruitful route to progress. This is because there is scope for them to be seized upon and developed without demanding an abandonment of the current legal framework. Almost by definition, however, this process must be casuistical rather than systematic since it must be concerned with developing the application of legal standards rather than with creating entirely new justice-based mechanisms or institutions.

This leads to the third of his observations; the intriguing implications of mitigation in PIL. In essence, mitigation might provide a means by which to ‘bend’ a particular rule of PIL without breaking it. Acknowledging that the NATO intervention may, on this specific occasion, have been necessitated by the institutional flaws of the UNSC does not erode the belief that multilateral HI is the prevailing legal and moral norm. This tallies with Michael Walzer’s argument (explored in more detail in the forthcoming chapter) that violating a rule does not mean that it ceases to exist. Rather, the very fact that we feel compelled to suspend it acts as proof of its existence. Mitigation is

⁴³⁸ See The Report of the ‘Independent International Committee on Kosovo’, (<http://www.reliefweb.int/library/documents/thekosovoreport.htm>), [12/03/08]

⁴³⁹ See Transcript of ‘Illegal but Legitimate: A Dubious Policy’, Lecture by Noam Chomsky, Auditorium Henry Ford Building, Free University of Berlin, March 23, 2005, <http://www.americanvoicesabroad.net/30Mar05-Chomsky-Lecture-FU-Berlin.htm> [15/05/09]

consciously designed not to claim precedential value. In fact, this is the source of some criticism for those who argue that 'rule governed' policy must shape consistent responses to humanitarian disaster. For Buchanan, one of the most significant flaws of the Kosovo campaign is the fact that it was not orchestrated in a fashion which might have provided the basis for a new precedent. However, Wheeler's argument suggests that it is the self-consciously exceptional nature of mitigation which renders the notion palatable to international society. The interpretation of the ontology of becoming at the heart of this thesis offers a balance between these two positions. Wheeler is correct to suggest that the argument against precedent serves to secure support for mitigation. However, because the development of normative standards is both a legal and a moral process, it seems likely that repeated flouting of the same principle might eventually provide the basis for the crystallisation of this so-called 'exception'. Becoming is not a linear or predictable process but, at the very least, Wheeler's argument for mitigation might serve to systematise the defence of unilateralism; ensuring that it is only applied in the rarest of cases and that it falls within a broad interpretation of current legal doctrine. The challenge for Wheeler, and indeed for any other theorists seeking to balance their agenda for becoming with the restrictions of a consensual international politics, is how to implement effective change without undermining the conditions for global stability. Although imperfect, Wheeler's understanding of mitigation may yet offer the means to reconcile these conflicting agendas and, crucially for this project, may do so in a fashion which can be absorbed into a constructivist conception of norm formation.

iii. Motivation

Wheeler's developing views on agency form the basis of an appreciation of the relationship between moral development and legal parameters, which is of enormous value to the debates surrounding international justice. Equally, his changing approach to the issue of motivation demonstrates the ways in which the processes of becoming in IR have forced him to adapt his theory to take account of evolving political imperatives. In his early work, Wheeler states repeatedly that mixed motives are an inevitable by-product of power politics and that they need not compromise the value of HI, provided that they do not "fundamentally undermine a humanitarian outcome or lead to a selection of means"⁴⁴⁰ that results in such a contradiction. In essence, Wheeler contends that if there is an agent willing to act in the face of humanitarian crisis then almost any motivation which is incidental to the alleviation of human suffering is permissible. In defence of this position, he cites the Vietnamese action in Cambodia, which was conducted with little or no regard for humanitarian impulse but, nonetheless, resulted in the undeniably positive humanitarian outcome of the shutting down of the killing fields. Similarly, motivation is of fundamental importance from the perspective of wider justice claims. The dissemination of liberal democratic values for instance, boasts the undeniable advantage, from the perspective of the West, of facilitating the establishment of patterns of trade and diplomacy with formally undemocratic territories. However, if the by-products of this process, for the citizens of the target state, include: improved representation, political participation, and an increased commitment to the preservation of HR, it might be possible to argue that this

⁴⁴⁰ Wheeler Interview

coincidence of motives is tolerable and, in fact, the only realistic way in which those currently denied democratic freedoms are likely to gain access to just institutions. So it is that, although Wheeler does not suggest that HI carried out in the absence of genuine humanitarian motives ought to elicit praise from international society, he does argue that “because they save lives, such interventions should be legitimated and not condemned or sanctioned”.⁴⁴¹

More recently, he has begun to re-evaluate this conviction. Wheeler concedes that it is certainly possible to identify acts of HI which were conducted with no regard for humanitarianism but which resulted in a positive humanitarian outcome. For instance, the cessation of the slaughter in Cambodia was the direct consequence of a perceived security interest. After all,

Vietnam was prepared to risk its soldiers' lives and expend scarce resources only because it perceived a fundamental threat to its security from China in the North and DK in the South.⁴⁴²

However, for every instance in which a coincidence of security and humanitarian motives led to the alleviation of human suffering, there are a great many more cases wherein an ill-advised choice of military means formed the basis of an intervention which further compromised the security and well-being of those whose plight warranted rescue. Wheeler is particularly critical of ‘Operation Turquoise’, which saw French troops enter Rwanda in what was widely perceived as a self-interested attempt to constrain the influence of Anglophones in what the French considered to be “their part of

⁴⁴¹ Wheeler, *Saving*, p.39

⁴⁴² *Ibid*, p.106

Africa".⁴⁴³ In response to the failure of French troops to demonstrate the requisite impartiality and commitment to just settlement, Wheeler argues that:

[G]overnments that lay claim to the humanitarian mantle have a responsibility to live up to these claims... the accusation is that the non-humanitarian motives behind the French intervention led to means being employed that conflicted with its humanitarian purposes.⁴⁴⁴

The issue of motivation is intrinsically connected with notions of non-combatant immunity and the reluctance of Western democracies to incur the political costs of risking the lives of soldiers. It is often the latter of these two conflicting imperatives which trumps the former and this has frequently led to a selection of military means which are incompatible with lasting peace. Among Western states the desire to engage only in "no-risk interventions"⁴⁴⁵ has led to an increased reliance on airpower as a response to supreme humanitarian emergency. Often, as a consequence, an unnecessarily large number of civilians are killed as aerial bombardment is expanded to incorporate the shelling of bridges or factories and, in line with feminist concerns regarding the denial of the political agency of civilians in target states, the principle of non-combatant immunity is gradually undermined and replaced by the ominous phrase 'collateral damage'. As a defender of non-combatant immunity, Wheeler is troubled by this tendency, which has come to consolidate his belief that in the absence of humanitarian motives, HI is unlikely to be successful. Put simply, those Western leaders responsible for interventions which have relied on inappropriate means have cost many lives

⁴⁴³ Wheeler, *Saving*, p.232

⁴⁴⁴ Ibid

⁴⁴⁵ Mills and Brunner (eds), *New Killing Fields*, p.29

by refusing to “learn the lesson that you cannot stop paramilitary murder and ethnic cleansing from the air”.⁴⁴⁶ For Wheeler, forcing states to make their case for HI in humanitarian terms, and then, if necessary, exposing them to the consequences of reneging upon such a claim, ought to render it more difficult for self-interest to govern the selection of military means. If HI is justified as a defence of the rights of life and liberty, it is a contravention of the norms which support it to consciously increase the risks of civilian casualties.

iv. Just Settlement

Wheeler also argues that motivation directly impacts upon the possibility of achieving a just settlement in the aftermath of hostilities. He suggests that the mismatch between rhetoric, motives, and means accounts, in large part, for the failure to arrive at a sustainable settlement which guarantees an increased security and quality of life for the local population. This is profoundly significant because, it is possible to argue that in terms of becoming, establishing a durable and equitable post-conflict resolution may be the most important element of HI. After all, the dissemination and protection of standards of international justice may be furthered by the building of just institutions in areas formerly ravaged by civil and political unrest and the establishment of the means to assist those responsible for the vastly increased amount of carework in which military incursion inevitably results.

The suggestion that a half-hearted attempt at settlement nullifies the defence of HI is evidenced, Wheeler claims, by two recent examples. The first is the premature withdrawal from Somalia prompted by the death of eighteen US

⁴⁴⁶ Wheeler, *Saving*, p.282

marines. The reaction of the US public ensured that the same ‘CNN effect’ which had inclined the Clinton administration toward HI, brought an almost immediate end to the campaign, long before civic order had been restored. As a consequence of this failure to pursue a lasting settlement, within months of the conflict “the UN’s first experiment in rebuilding failed states lay in ruins”.⁴⁴⁷ This points to the limits of ‘solidarist sentiment’ as a basis for becoming by illustrating that, in general, the publics of intervening states still value the lives of their citizens more highly than those of strangers. As such, despite radical cosmopolitan claims to the contrary, borders do maintain a moral and political significance which impacts upon the options available to intervening governments, particularly democracies.

This lack of public and political commitment to long-term settlement is also evident in the second of Wheeler’s examples. He asserts that the efficacy and moral credibility of the US-led incursion into Afghanistan have been undermined by a lack of humanitarian impulse. Not only did the fact that the motivation for invasion was primarily strategic result in a choice of military means which was inappropriate to the task of securing so-called “Enduring Freedom” but this mismatch also ensured that almost as soon as the conflict began, the focus shifted toward the search for an exit strategy. “What was missing from the Afghan operation, completely” Wheeler claims “was any real recognition of the importance of... the settlement”.⁴⁴⁸ He contends that as supporters of the R2P, the US and its allies ought to have taken more seriously the section of the ICISS which focuses on the ‘responsibility to

⁴⁴⁷ Ibid

⁴⁴⁸ Wheeler Interview

rebuild'. Having failed to discharge this duty, those responsible for the invasion are now paying the price economically, militarily, and, to a certain extent, diplomatically. As such, he bemoans the lack of commitment from the Bush government:

[t]he Americans were just not prepared to put a big footprint on the ground in terms of troops, they weren't prepared to support the ISAF (International Security Assistance Force), they weren't prepared to expand, they weren't happy to take a leadership role.⁴⁴⁹

The Obama Administration has vowed that Afghanistan will be treated as a higher political and strategic priority and, so far, this does appear to be the case. However, the pursuit of settlement in one war-torn region has necessitated a reduced commitment to resolution in another, with the US presence in Iraq substantially reduced. This is both a practical and a political balancing act which is dictated as much by a scarcity of resources as by the limits of the US public's tolerance for military casualties. As such, a degree of reticence remains in place and it has yet to be established whether, under new leadership, the US will "demonstrate sufficient moral commitment to protecting Afghan strangers"⁴⁵⁰ and whether they will embrace an understanding that "protecting Afghan strangers [is] the best way to prevent Afghanistan becoming a failed state again".⁴⁵¹

Even if this proves to be the case, the nature of the Afghan operation to date (and the abject failure of the intervention in Somalia) form the basis of a

⁴⁴⁹ Ibid

⁴⁵⁰ Ibid

⁴⁵¹ Ibid

retraction, by Wheeler, of his earlier acceptance of mixed motives; his claim now being that the coincidence of motives and outcomes represented by the Vietnamese example is, effectively, an exception to the rule. In posing the question, “if the motivation is not primarily humanitarian, are you going to get the commitment to rebuilding, and are you going to get people tailoring their military means to humanitarian ends in an appropriate way?”,⁴⁵² Wheeler concludes that, the new complexion of IR in a post-September 11th world demonstrates that the argument that mixed motives can result in positive humanitarian outcomes “isn’t going to work in practice... that if non-humanitarian motives are the driver”⁴⁵³ the commitment to just settlement will not hold, particularly in the face of the loss of service personnel. Once again, a measure of incoherence threatens to overshadow Wheeler’s arguments since, whilst, it is difficult to envisage how the military means chosen by intervening forces can be restrained in the absence of humanitarian motives, or the commitment to just settlement guaranteed, it is equally pertinent to suggest, as he does, that, “without mixed motives, it’s hard to see where governments”⁴⁵⁴ are likely to engage in HI at all.

This is a further example of the manner in which the demands of international justice often appear to conflict with one another and, as such, it reflects the need to consider both from a pragmatic and a moral perspective the limits which must be placed on an international duty of justice and reaffirms the necessity of casuistical analysis capable of assessing the specific imperatives governing the recourse to force. In this context, international justice demands

⁴⁵² Ibid

⁴⁵³ Ibid

⁴⁵⁴ Ibid

a response to egregious violations of HR, but the realities of international politics ensure that some flexibility in the interpretation of motivation is vital if such a response is ever likely to be elicited.

It would appear that, for Wheeler, an international duty of justice takes more than one form. Political actors construct expectations through the language they employ to define their intentions and the hope is that this discourse will, to some extent, frame and restrict the options available to them. Hence his initial conviction that when mixed motives do precipitate HI, the need to behave only in a manner which can be publicly legitimated, and which tallies with stated justifications, may tame the worst excesses of self-interest on the part of the intervening state. Such is the nature of Wheeler's constructivism. However, he also appears to argue that this process is contingent to some extent upon a preponderance of solidarist sentiment within international society and a form of enforcement which can be levied against any state engaged in brutal HR violations, or morally unjustifiable and irresponsible HI. In his view we must ensure that

governments that violate human rights *always* pay a heavy price in diplomatic, political, and economic terms.⁴⁵⁵

In essence, the process of public legitimation described by Wheeler relies upon a shared acceptance that the suffering of strangers is tantamount to the suffering of citizens and should generate the same, or at the very least, a similar response. This embodies Wheeler's commitment to solidarism but also indicates the manner in which, in over-estimating the extent to which

⁴⁵⁵ Ibid

international society has the interests of human solidarity at its heart, he has been forced to rescind some of the bold statements, at work in his early theorising (concerning the extent to which social interaction can constrain even the most powerful states) and to search for practical, as well as moral, solutions to the many issues informing HI and international justice.

IV. Conclusion

According to Wheeler's criteria for HI as they were originally framed, in the event of supreme humanitarian emergency, when a successful campaign is a realistic expectation, sovereign borders can be breached, if necessary unilaterally, even if the primary motivation for such action is not humanitarian. More recently, however, in conceding that a vindication of unilateralism is at odds with the views expressed by international society, Wheeler has demonstrated a willingness to modify this position in an attempt to arrive at a defence of HI which is more likely to be endorsed by the international community. The result is: an expectation that the success of an intervention depends on the purity of the motives which precipitated it; an increased level of concern over unilateral campaigns; and a reconceptualised theory which is noticeably more conservative than his original position. This reframing of his viewpoint is due to the fact that Wheeler has begun to apply the ontology of becoming in a manner which is more restrictive than his early interpretation.

All four branches of constructivism analysed over the course of this thesis are committed to the notion that substantial change to the mechanisms of international politics is both necessary and achievable. However, the extent of

that reform and the timeframe for its implementation are conceived differently across the tradition. Wheeler's initial insights were closely linked to the liberal universalist argument that the task of international politics is to erode national boundaries and allow for the development of solidarist sentiment to form the basis of an increasingly integrated international society. Recently, his perspective has grown somewhat more circumspect and is instead focused on the suggestion that existing international legal and political institutions must evolve to more accurately reflect the limited range of normative standards which can be said to be universal. The incremental nature of this development is dictated by the need to respect the broad themes of PIL even as the minutia are challenged and re-envisaged. As the forthcoming chapter will demonstrate, communitarian constructivist Walzer argues that the reiterated realities of international politics provide us with the means to ground IR theory in the pursuit of reform; up to and including fundamental changes to the state and UN systems. Feminist constructivism encourages a sceptical appraisal of existing institutional mechanisms as little more than a means to legitimate and embed inequality and prevent substantive self-reflection on the part of the powerful West. Finally, cosmopolitan constructivists advance the claim (ostensibly comparable with Walzer's position) that if the current structure of international society cannot embody the ambitious set of HR norms which they claim are integral to international morality, then those institutions can be replaced on the basis that they lack political legitimacy. Wheeler's solidarist constructivism appears to concur with the cosmopolitan position that certain basic HR are morally prior to political society, whilst also maintaining that in order for the reforms necessary to provide these rights with

the requisite 'teeth' to be effective, they must be deferential to the constraints of PIL. At times, this is a difficult position to sustain, especially when the practical realities of an issue such as unilateralism or mixed motives in HI, appear to force a choice between morality and legality. However, in defence of Wheeler's position, it is important to reiterate that his theory represents a series of prescriptions for international society as it is currently constituted. The challenge of drafting a framework for becoming which is applicable to the current state system renders the balance which Wheeler seeks to strike even more illusive. Yet, on those occasions when he does so successfully, he offers an insight into the relationship between becoming and the constructed duty of justice which is almost uniquely valuable. Although Wheeler's theory is certainly more conservative than some of the alternative prescriptions for the reform of international society which this thesis seeks to explore, he may well be correct in his claim that it is "more in tune with the realities and the possibilities of where this debate might go".⁴⁵⁶ In other words, as the least expansive conception of becoming with which this thesis engages, Wheeler's approach to international justice is perhaps the most consistent with the standard of institutional feasibility which might be said to underpin the commitment to the ontology of becoming. This is because in insisting that reform must be achievable within the confines of the existing international legal order, Wheeler focuses on the construction of a consensus which might provide the foundation for future normative development.

⁴⁵⁶ Wheeler Interview

This is not to suggest that his approach to HI is without limitations. Perhaps the most significant being that much of his theory requires a high degree of confidence in the ability of developing norms to enable changes in the conduct of global political actors. However, since, as he often states, whilst shifting normative standards enable changes in state practice, they do not necessarily determine them,⁴⁵⁷ Wheeler's arguments appear incomplete, on those occasions when his relative fidelity to PIL conflicts with his conviction that human beings in peril ought to be rescued. Several factors might account for the consequent 'gaps' which tend to appear in his theorising. It may be that his conception of HI (and of international justice) is in somewhat of a transition between the solidarist project which formed the basis of *Saving Strangers* and the more restrictionist or pluralist position which he appears to have begun to incline toward since the formulation of the R2P encouraged him to align his views with those of wider international society. Accordingly, much like Hedley Bull before him, Wheeler may have arrived at the viewpoint that the full implications of solidarism are unlikely to find acceptance within the practices of the society of states, and as such, even as the norms surrounding humanitarianism arguably evolve, those implications remain premature.

Alternatively, it is possible that Wheeler believes that a solidarist account of becoming and the international duty of justice depends upon an international society framework, based on the primacy of the UN, and that it is this framework which limits the extent to which he is able to look beyond the factors currently constraining HI. In this respect, far from abandoning his original principles, Wheeler may be attempting to defend the role of an

⁴⁵⁷ Wheeler, *Saving*, p.299

institution which is integral to his approach to international society and IR. Thus, he appears to believe that there is a great intrinsic value in arriving at a level of consensus concerning HI, even if doing so entails compromising some of the more radical elements of his original theory.

Wheeler believes that the R2P might yet prove to be “the most significant development in the story”⁴⁵⁸ and is encouraged by the large number of states which have, at least in principle, embraced its terms; expectations which he hopes will slowly begin to be incorporated both into state practice and customary PIL. Such a development, he maintains, would simply not have been conceivable if UNSC authorisation and purity of motives had not remained in place as part of the criteria for a morally justifiable intervention. The matter for debate remains, however, how Wheeler’s theory is likely to respond in the event that the terms of the R2P do not, in fact, crystallise sufficiently to determine the approach which international society takes to HI. This is particularly pertinent in view of the fact that the “extreme and multifaceted ambiguity...”⁴⁵⁹ of the R2P and the ambivalence of much of the international community toward its most innovative elements ensure that the prospect of it emerging as a functioning norm of international society is far from assured.⁴⁶⁰

This speaks to a broader concern surrounding Wheeler’s contribution to the discourse of international justice. Whilst some of the practical solutions which he advances to contend with the complexities of HI are enormously engaging,

⁴⁵⁸ Wheeler Interview

⁴⁵⁹ Focarelli, ‘Too Many Ambiguities’, pp.191

⁴⁶⁰ Ibid

the theoretical premises on which they are based appear somewhat inconsistent. Central to his conception of an international duty of justice is his attempt to provide an appraisal of those values which may realistically be considered as universalisable, principally the rights of life and liberty. However, he does not always appear capable of engaging in this process within a consistent theoretical framework. The chief limitation in his approach is his tendency to oscillate between constructivism and solidarism, rather than to create a coherent hybrid of the two positions. In some instances, he argues that international society has *constructed* an obligation to defend certain minimal entitlements and that it is this process of social construction which has infused these rights claims with their validity. However, on those occasions wherein the structure of international society and the inevitable mismatch between normative expectation on the one hand, and state practice, on the other, act as a barrier to the actions which Wheeler considers to be morally necessitated, he reverts to the argument that certain basic rights are owed to all by dint of their humanity. This need not represent an insurmountable challenge to his theory, were he prepared to argue, (as Buchanan attempts to), that the UN system is simply failing to embody the values and customs which are shared across international society. On this basis, when supreme humanitarian emergency occurs – an affront to universal humanitarian standards – and the UN fails to mount an effective response to its outbreak, the organisation is failing to execute its responsibilities to humanity and thereby forfeits its legitimacy and its exclusive jurisdiction. However, Wheeler's reticence, and, in some cases, unwillingness to countenance the circumvention of the organisation, or, in simple terms, his

belief that justice demands the preservation of multilateralism, brings to bear restrictions on the acts of HI which he feels able to endorse.

In essence, Wheeler, adopts a constructivist lens to account for the dissemination of certain normative expectations but combines this with an almost cosmopolitan appreciation of the manner in which these rights came to exist in the first instance. This argument is flawed since Wheeler cannot argue, as constructivists do, that where agreement concerning the existence of a right does not exist, neither does the obligation to defend it, whilst simultaneously contending, as solidarists are inclined to, that a minimal raft of HR must be considered timeless and universal. Embracing the implications of a constructivist approach to IR may sometimes include an acceptance of the need to limit our conception of an international duty of justice and the possibilities of becoming, to those areas where international agreement can truly be said to exist. This tends to result in a marked level of conservatism, which, as an analysis of feminist IR has elucidated, can be a source of frustration to both theorists and practitioners of the discipline. As such, it is easy to sympathise with Wheeler's attempt to infuse constructivism with a form of moral foundationalism. However, it would appear that in attempting to bridge the gap between constructivism and solidarism, as a means to address issues of international justice, Wheeler has honoured the terms of neither theoretical endeavour.

Chapter Five: Michael Walzer, Communitarian Constructivism and Humanitarian Intervention

I. Introduction

This chapter represents an engagement with the unique contribution of Michael Walzer to the debate surrounding HI and the relationship between the ontology of becoming and the constructed duty of justice. Of the four constructivist approaches to international justice with which this project has contended, one might expect Walzer's to be the most conservative, since he is best known for his defence of the right of territorial integrity. However, a thorough engagement with Walzer's body of work reveals a consistent and intensifying commitment to the proposition that international society must develop to respond more effectively to the limitations of the state system. Whilst this assertion is not limited to HI, with Walzer's project also embracing broad issues of redistributive justice and global governance, it is his changing perception of the use of force, for humanitarian purposes, which throws into sharp relief precisely how much his approach to international justice has evolved over the past thirty years.

In building his defence of HI Walzer has demonstrated that a universalist ethic and a communitarian commitment to the moral worth of the political community are not, as many liberal theorists argue, irreconcilable. Similarly, he has provided the means to claim, without recourse to first principles, that certain HR standards are sufficiently established across international society

to provide grounds for the modification of our current understanding of NS and of its breaching for humanitarian ends.

This chapter asserts that the tendency of Walzer's critics to focus exclusively on his initial definition of self-determination, to the detriment of his more progressive prescriptions for the development of international society, has tended to overshadow his contribution to the international justice debate. In fact, his willingness to license HI as a response to the systematic and widespread breaching of certain normative standards indicates that Walzer's views on the relationship between states' rights and HR are sufficiently radical to support the claim that he adopts a transformative ontology consistent with a communitarian constructivist framework. His principle of reiterative universalism is the cornerstone of his understanding of the possibility of change in international politics. It allows him to balance his belief that "all in all, we cannot be happy with the current state of the world"⁴⁶¹ with an appreciation of the constraints imposed by the consensual nature of the state system. Perhaps more intriguingly it also informs his suggestion that it is these very constraints which the terms of reiterative universalism may ultimately come to challenge and unpack.

In order to trace the processes of becoming which have altered the tone of Walzer's conception of international justice and which, he hopes, may yet come to reshape international society itself, this chapter will begin by outlining the most familiar elements of the Walzerian approach to HI. This will entail an

⁴⁶¹ Michael Walzer, *Arguing about War*, (New Haven, Yale University Press, 2004), p.179

overview of his definition of self-determination, his appraisal of the Legalist Paradigm, and his identification of possible exceptions to it. It is at this juncture that most analyses of Walzer's theory begin and end, generally with the dismissive suggestion that he lacks the conceptual tools to frame consistent moral claims and that as such his argument is little more than a form of "deeply conservative normative communitarianism".⁴⁶² However, this over-worn characterisation does not withstand critical scrutiny, especially in light of his more recent arguments in favour of what he terms the "third degree of global pluralism",⁴⁶³ a concept which seeks to disperse political power among states, non-governmental organisations, intergovernmental, and regional centres. It is in this ambitious context that Walzer's understanding of becoming reaches its logical conclusion and ultimately offers us "a real alternative to the dominant neo-Kantian cosmopolitan tradition and a workable ethical framework for thinking about the challenges of contemporary international politics and international law".⁴⁶⁴ As this chapter will attempt to establish, Walzer uses this framework to demonstrate how an international duty of justice can be grounded in, and constructed by, principles rendered universal through reiteration. However, this chapter will also engage with the suggestion that even as Walzer's prescriptions for change have grown more ambitious, his tendency to neglect the impact of gender on the construction of power relations has left certain elements of his theorising somewhat under-developed.

⁴⁶² Peter Sutch, 'International Justice and the Reform of Global Governance: A Reconsideration of Michael Walzer's International Political Theory', *Review of International Studies*, 35, 2009, pp.513-530, pp.516

⁴⁶³ Walzer, *Arguing*, p.188

⁴⁶⁴ Sutch, *International Justice*, pp.513

II. The Theoretical Basis for Humanitarian Intervention

i. Self-Determination

The evolution of Walzer's approach to international justice cannot be fully comprehended without a detailed analysis of his early work; in particular his conception of the nature and origins of justice. For the Walzer of *Just and Unjust Wars* (a volume which was first published in 1977) justice derives from the particular political community to which one belongs. The ideal for international politics would be for relatively atomistic, individual states to practice self-determination and for the territorial integrity of these units to be respected. In other words, in an ideal model of international politics the limits of any duty of justice map neatly onto the geographical boundaries which define and contain our political community. The state into which we are born, or in which we make our home, informs our understanding of morality, which is liable to differ enormously from that of other individuals who have been similarly influenced by their own political culture. Therefore, the danger of covering-law universalism (the suggestion that a wide range of *a priori* moral principles can secure agreement across numerous and disparate cultures) is that it is likely to result either in the homogenisation of cultures along ethnocentric lines, or, more probably, in conflict between states. Non-intervention is the logical corollary of NS, which Walzer considers to be the most fundamental operational principle of international society. After all, as the ICISS asserts:

sovereignty is for many states their best – and sometimes seemingly only – line of defence... sovereignty is more than just a functional principle of

international relations... it is also a recognition of their equal worth and dignity, a protection of their unique identities, and their national freedom, and an affirmation of their right to shape and determine their own destiny.⁴⁶⁵

It is important to note that Walzer's defence of NS has tended to be caricatured by his critics as intrinsically and irredeemably conservative. However, even at this early stage of his career it was not his intention to suggest that moral progress within international society was inconceivable. Rather he has always argued that the processes of becoming, whilst vital to interaction within and between states, have their roots at the level of individual political communities. HR abuses or drastic inequalities can be, in Buchanan's terms, "subject to assessment from the standpoint of justice"⁴⁶⁶ but, for Walzer, "the fight against those inequalities" must "begin within existing political communities" and then "aim at the progressive expansion... of existing solidarities".⁴⁶⁷ This conviction is both communitarian (in its acknowledgement of the moral primacy of the political community) and constructivist (in its belief that the moral standards of individual states can impact upon the identities and interests which constitute wider international society). However it does rely, to some extent, on the assertion that the political community or state is the most appropriate avenue for self-realisation; a suggestion which many feminist commentators would claim takes inadequate account of the gendered hierarchies which preclude the full scale self-realisation of women in the vast majority of political communities.

⁴⁶⁵ ICISS, 1.32

⁴⁶⁶ Buchanan, *Justice*, p.83

⁴⁶⁷ Michael Walzer, 'Response to Veit Bader', *Political Theory*, 23(2), 1995, pp.249

Nevertheless, Walzer's communitarian conviction that the seeds for reform are sown at the national level relates closely to his initial characterisation of the relationship between self-determination and non-intervention. In the first editions of *Just and Unjust Wars*, the concept of intervening in defence of a civilian population is barely addressed and, in subsequent editions, it is established as an exception to the JW prohibition on the use of force; recourse to which ought only to be permitted under the most extreme of circumstances. In further defence of this position, Walzer elucidates at some length (in an article written in response to critics of his best known book) the reasons that foreign intervention into the domestic affairs of a political community is almost always ill-advised; arguing that the practice tends toward the disruption of international order and demonstrates insufficient deference to the relationship between citizen and state.

The state is constituted by the union of people and government, and it is the state that claims against all other states the twin rights of territorial integrity and political sovereignty. Foreigners are in no position to deny the reality of that union, or, rather, they are in no position to attempt anything more than speculative denials. They don't know enough about its history, and they have no direct experience, and can form no concrete judgements, of the conflicts and harmonies, and historical choices and cultural affinities, the loyalties and resentments, that underlie it. Hence their conduct, in the first instance at least, cannot be determined by either knowledge or judgement. It is, or it ought to be, determined instead by a morally necessary presumption: that there exists a certain 'fit' between the community and its government and that the state is 'legitimate'. It is not a gang of rulers acting in its own interests, but a people governed in accordance with its own traditions. This presumption is simply the respect that foreigners owe to an historic community and to its internal life. Like other presumptions in morality and law, it can be rebutted and disregarded, and what I have called 'the rules of disregard' are as important

as the presumption itself. So long as it stands, however, the boundaries of international society stand with it.⁴⁶⁸

In short, the rule of non-intervention is neither fixed nor absolute but the circumstances under which it may be overturned must be inordinately narrow and specific. In defining the exceptional circumstances which might permit intervention, Walzer draws heavily upon John Stuart Mill's defence of the right to self-determination, thereby establishing one of the principle forces behind his own communitarian reputation. Once again, the right of any political community to maintain its territorial integrity and manage its own internal affairs is defended by Walzer in the vast majority of instances. He reiterates Mill's assertion that:

[w]e are to treat states as self-determining communities... whether or not their internal political arrangements are free, whether or not the citizens choose their government and openly debate the policies carried out in their name. For self-determination and political freedom are not equivalent terms.⁴⁶⁹

Accordingly, intervention cannot necessarily be employed with a view to assisting those who find themselves bereft of, for example, democratic freedoms, since it is not desirable for liberation to be imparted by an external force. In Walzer's own words

[a] state is self-determining if its citizens struggle and fail to establish free institutions, but it has been deprived of self-determination if such institutions are established by an intrusive neighbour. The members of a political community must seek their own freedom.⁴⁷⁰

⁴⁶⁸ Michael Walzer, 'The Moral Standing of States: A Response to Four Critics', *Philosophy and Public Affairs*, 9(3), Spring 1980, pp.209-229, pp.212

⁴⁶⁹ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, (New York, Basics Books, 2000), p.87

⁴⁷⁰ *Ibid*

Appropriating Mill's notion of "arduous struggle"⁴⁷¹ Walzer argues that those seeking to establish popular institutions within their own state must demonstrate that they "are willing to brave labour and danger for their own liberation".⁴⁷² Summarising Mill's argument, Walzer contends that, in almost all cases, its tenets prevent "any substitution of foreign intervention for internal struggle".⁴⁷³

Self-determination, then, is the right of a people 'to become free by their own efforts' if they can, and non-intervention is the principle guaranteeing that their success will not be impeded or their failure prevented by the intrusions of an alien power.⁴⁷⁴

Again, the suggestion is that becoming begins at the national level. In constructivist terms, it may be the case that developing international norms will inspire resistance or even revolution among a local population. Equally, tyrannical or dictatorial leaders may modify their behaviours as a response to diplomatic or political pressures, or in an attempt to improve their own standing within international society. However, such developments cannot be enforced by 'outsiders'. Irrespective of the pride which we may take in our own political community the demands of justice as Walzer presents them in his early work, ensure that we have no right to attempt to recreate others in its image.

In conjunction with this Millian viewpoint, Walzer goes on to outline the terms of the Legalist Paradigm; a further defence of NS and non-intervention. As

⁴⁷¹ *Ibid*

⁴⁷² *Ibid*

⁴⁷³ *Ibid*, p.88

⁴⁷⁴ *Ibid*

regards HI, the three most pertinent terms of the paradigm run as follows: Firstly, “there exists an international society of states” and whilst these states, as the subjects of PIL, “are founded for the sake of life and liberty, they cannot be challenged in the name of life and liberty by any other states. Hence the principle of non-intervention”; Secondly, “this international society has a law that establishes the rights of its members – above all, the rights of territorial integrity and political sovereignty”, both of which have traditionally been jealously guarded and defended in international society; and thirdly, “any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act”.⁴⁷⁵

However, having established the terms of the paradigm, Walzer proceeds to part company with Mill and his faith in the need for arduous struggle as the only means of securing self-determination, by defining three exceptions to it. He states that “the ban on boundary crossing is not absolute”⁴⁷⁶ and can be overturned in the following circumstances: “When a particular set of boundaries clearly contains two or more political communities, one of which is already engaged in a large-scale military struggle for independence”, that is to say in instances of secession or national liberation; “When the boundaries have already been crossed by the armies of a foreign power”, and, consequently, what is at stake is in fact an act of counter-intervention; and finally, with specific reference to HI, Walzer creates a third exception which governs cases where “the violation of human rights within a set of boundaries is so terrible that it makes talk of community or self-determination... seem

⁴⁷⁵ *Ibid*, p.61

⁴⁷⁶ *Ibid*, p.89

cynical and irrelevant, that is, in cases of enslavement or massacre".⁴⁷⁷ The final exception demonstrates the limits of self-determination since "when a people are being massacred, we don't require that they pass the test of self-help before coming to their aid. It is their very incapacity that brings us in".⁴⁷⁸

ii. Reiterative Universalism

Walzer's willingness to impose limitations on territorial integrity is indicative of his belief in the concept of "thin universalism".⁴⁷⁹ Even in the context of the cultural diversity which he celebrates, Walzer creates a theoretical space for an international duty of justice and acknowledges that a certain category of 'crime against humanity' is sufficiently egregious as to nullify the bond between citizen and state, and provide justification for some degree of foreign intervention. This is due to the fact that there exists an area of consensus which can transcend cultural specificity, and the values which constitute it are universalisable. This notion finds expression in 1994's *Thick and Thin: Moral Argument at Home and Abroad*, which is an attempt by Walzer to reconcile his communitarian commitment to the inherent value of self-determination, with his desire to establish a form of "moral minimalism",⁴⁸⁰ accessible and comprehensible to all human beings, regardless of social and historical conditioning, and to arrive at a balance between "transnational super-values and discrete cultural values".⁴⁸¹ As Wheeler puts it,

⁴⁷⁷ Ibid

⁴⁷⁸ Ibid, p. 106

⁴⁷⁹ See Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad*, (Notre Dame, University of Notre Dame Press, 2002)

⁴⁸⁰ Wheeler, *Agency*, pp.11

⁴⁸¹ William Thornton, 'Internationalism after the Cold War', *International Journal of Politics, Culture and Society*, 14(2), 2000, pp.325

Walzer seeks to embed his understanding of common humanity with an appreciation of the contingency of human subjectivity.⁴⁸²

The contention is that certain minimal values are expressed and understood across a range of cultures and political communities, by means of reiteration. As the mobility of modern societies increases, we find ourselves subject to an ever expanding number of human encounters. With each of these experiences comes the opportunity both to convey information regarding our own social practices and to garner insights into those of others. Walzer envisages a scenario in which “we must explain and defend ourselves, ground our complaints, justify our claims, situate ourselves within the moral world”.⁴⁸³ In so doing, we will likely discover a range of ways in which our society can be differentiated from any other. However, more significantly, we will also note that certain of our values will resonate across almost all our human encounters. The terms in which these values are expressed are likely to be inconsistent such that the concept of respect, for example “is itself differentiated and its names are multiplied: honour, dignity, worth, standing, recognition, esteem, and so on”⁴⁸⁴ will appear as euphemisms for it. These “family resemblances”,⁴⁸⁵ manifest themselves when the value at stake is ‘thin’ enough to generate consensus and, in this respect, the relationship between reiterative universalism and the assertion that meaning derives from social construction and interaction is significant. After all,

⁴⁸² Wheeler, *Agency*, pp.11

⁴⁸³ Walzer, *Nation*, pp.532

⁴⁸⁴ *Ibid*, pp.530

⁴⁸⁵ *Ibid*, pp.534

[t]he rights of life and liberty are... based on a commonly held perception (or family of perceptions) of what it means to be a human being.⁴⁸⁶

Standing in opposition to cosmopolitanism, defined as “the standard philosophical effort to bring all human activities, all social arrangements, all political practices, under... a single conception of the right or the good”,⁴⁸⁷ reiterative universalism thus provides an explanation for the manner in which morality is formed and re-formed by experience. It also encourages cultural pluralism by affirming that “subject to minimal universal constraints there are many different and valuable ways of life that have equal rights to flourish in their respective locations, and deserve equal respect to our own”.⁴⁸⁸

These minimal constraints arise through negotiation between political communities. The negotiations themselves are conducted by the leaders and diplomatic representatives of individual states. In essence, the consensus generated in these interactions defines the content of ‘international morality’ and, as such, the scope of any international duty of justice. The terms in which Walzer frames this argument reaffirm the decision to categorise him as a constructivist.

The idea of reiteration... reflects an understanding that morality is made again and again; hence there cannot be a single stable covering law. Moral creativity is plural in its incidence and differentiated in its outcomes – and yet, it is not wholly differentiated, as if the agents and subjects of all moralities had no common kinship. In fact, they can recognise themselves and one another as moral makers, and from this recognition there follows the minimalist universalism of reiteration.⁴⁸⁹

⁴⁸⁶ *Ibid*, pp.530

⁴⁸⁷ *Ibid*, pp.533

⁴⁸⁸ David Boucher, ‘The Law of Nations and the Doctrine of Terra Nullius’, (forthcoming)

⁴⁸⁹ Walzer, ‘Nation’, pp.533

Accordingly, Walzer contends that it is relatively easy to achieve consensus over that which is universally comprehensible, irrespective of particularist influences, since 'thin' values "evoke and provoke intense reaction"⁴⁹⁰; whereas, with thicker moral understandings come "qualification, compromise, complexity, and disagreement".⁴⁹¹ On this basis, a hierarchy of sorts emerges in the discourse of HR. The rights, values, and expectations which are universal in nature can generally be classified as rights of life and liberty which, when compromised through humanitarian crises, generate scope for a military response. Therefore, Walzer maintains that in instances where these core rights are imperilled ("in those extraordinary cases where governments are committing acts of mass-murder")⁴⁹² the state authority ought to be denied the protection afforded by NS, since its representatives are "guilty of crimes against humanity".⁴⁹³

In sum, whilst the presumption must always operate in favour of non-intervention, the moral framework generated by reiterative universalism would appear to dictate that when the actions of a state, to use an archaic phrase much beloved of Walzer, 'shock the conscience of mankind' some form of moral obligation to protect beleaguered civilian populations results. The nature and extent of this obligation is key to the wider issue of the limitations of an international duty of justice.

⁴⁹⁰ Walzer, *Thick and Thin*, p.6

⁴⁹¹ Ibid

⁴⁹² Walzer, 'Nation', pp.106

⁴⁹³ Ibid

iii. The Evolution of Reiterative Universalism

Reiterative universalism, then, provides an explanation for the mechanisms which govern change in international society and allows us to contend that a limited international duty of justice might result from extreme violations of the core rights of life and liberty. It provides us with a communitarian constructivist framework for identifying those “negative injunctions”⁴⁹⁴ by which all societies can reasonably be expected to abide. In extreme cases, the infringement of these standards might even provide grounds for third party intervention. However, as Sutch has suggested, the perception of becoming which this early reading of reiterative universalism informs is necessarily restrictive and arguably temporary.⁴⁹⁵ This is because it is Walzer’s contention, at least in his initial exploration of the concept, that the international HR standards achievable through, and implied by, ‘thin universalism’, and the “moral maximalisms”⁴⁹⁶ shared by members of a specific political community remain separate entities.

We do make... globalist assumptions but only in the context of international political crises and we do not go on to incorporate these assumptions into the moral hierarchy of our everyday lives.⁴⁹⁷

This certainly appears to be a reasonable interpretation of Walzer’s position during the early part of his career. It also accounts in part for the inconsistent and unsatisfactory way in which he has tended to distinguish between those rights which might be considered universal and those which are culturally and

⁴⁹⁴ Walzer, *Thick and Thin*, p.10

⁴⁹⁵ Sutch, ‘International Justice’, pp.520

⁴⁹⁶ *Ibid*, pp.527

⁴⁹⁷ *Ibid*, pp.520

historically contingent to such a degree that they cannot be expected to transcend borders. As Sutch affirms, Walzer's tentative initial suggestion that the definition of universal rights is "somehow entailed by our sense of what it means to be a human being"⁴⁹⁸ is both weak and incompatible with an otherwise largely communitarian approach to international society.⁴⁹⁹

Intriguingly, however, Walzer's understanding of reiterative universalism is as vulnerable to the processes of becoming as any other concept or practice within IR, and the changing political backdrop against which he has developed his ideas has served to reconceptualise the nature and limits of this communitarian constructivist principle. In simple terms, the dynamics of globalisation have begun to ensure that our 'human encounters' are no longer infrequent or elite driven. From a feminist constructivist perspective, this is all-important since female political actors would so rarely have been in a position to influence and appraise justice claims in Walzer's original framework of reiterative universalism. However, his reworked (though still gendered) version of the principle is slightly more inclusive. In the context of HI, for example: the enormous influence and access of the global media; the proliferation of non-governmental organisations concerned with the protection of HR; and the increased mobility of ordinary individuals, have all served to bring the reality of systematic abuse and neglect to the forefront of our moral and political considerations. This, in turn, has increased the diplomatic pressure on governments to conform to a more demanding conception of HR than the principle of non-intervention could ever have imposed. We no longer

⁴⁹⁸ Walzer, *Just and Unjust*, p.54

⁴⁹⁹ Sutch, 'International Justice', pp.516

restrict our 'urgent moral judgements' to 'times of crisis'. Instead, the diplomatic dialogue of international society is constantly contending with the language of HR and the matter of how to respond to their infringement.

The sorts of crises that we find intolerable and impelled to act upon are becoming (or have become) a fixture in our political lives and the political constitution of international society has adapted to the point where the basic assumptions of sovereignty, non-intervention, self-determination, and of the anarchical society do not make sense of our moral and political commitments. In short, we have reiterated and shared reasons for needing to change the shape of world politics... [t]he temporary casuistical and reiterative process of norm construction has itself developed as the constitutive context of world politics has changed... [Consequently], these thin moral universals have become, or are becoming, freestanding – a part of our 'common human reason' providing autonomous moral reasons that transcend their origins.⁵⁰⁰

In other words, "[O]nce established in the moral consciousness of international society",⁵⁰¹ moral principles rendered universal through reiteration begin to permeate the understanding of morality which we carry with us in our daily lives.

[T]hese principles become more than the recognition of some 'partial commonality in a totally separate 'other'; they become a critical tool. The consequence of this is that we come to recognise that our thin, but intensely important, moral minimum no longer finds adequate expression in membership of a sovereign nation-state in a loose international society.⁵⁰²

This is distinct from a liberal universalist reading of HR and the state system, which is based on the assumption that such rights exist independently of

⁵⁰⁰ *Ibid*

⁵⁰¹ *Ibid*, pp.527

⁵⁰² *Ibid*

consensus and institutionalisation. Nevertheless, it can support comparable moral claims as to the need to reform those elements of international society which are palpably failing to enforce the evolving moral minimum identified by Walzer. So it is that Walzer, so often dismissed as irretrievably conservative in his approach to the state system, employs the ontology of becoming to argue that this very system may have outlived its usefulness. This is not to suggest that he advocates the dismantling of the current framework of international politics. Rather, he has modified his theory to take account of the fact that the “solid lines on the old cultural map are turned into dotted lines”⁵⁰³ and this has laid the foundations for a set of obligations and an international duty of justice which is far more expansive than his early work might have suggested. Key to Walzer’s argument is the assertion that this duty has been *constructed* through the human encounters at the heart of his principle of reiterative universalism. It is this process which has infused it with its moral authority and its international legitimacy and which also ensures that it remains restricted to those values which are genuinely palatable to a diverse range of political communities. An obvious gender-based critique of this position persists, inasmuch as consensus surrounding the injustice of gender inequality remains illusive. Nevertheless, Walzer’s evolving conception of reiterative universalism and becoming serves to indicate the existence of norm-based mechanisms for change which, whilst not conceived in these terms by Walzer, may ultimately lay the foundations for unpacking and problematising gender-based inequalities.

⁵⁰³ Michael Walzer, ‘The Politics of Difference: Statehood and Toleration in a Multicultural World’, *Ratio Juris*, 10(2), 1997, pp.168

iv. Reiterative Universalism and Becoming

It has so far been established that Walzer's principle of reiterative universalism, as originally defined, is sufficient to the task of justifying HI in the most extreme of cases. This is because it demonstrates that a broad international consensus exists in defence of the 'negative injunctions' against the most severe of HR infringements. Failure to adhere to these minimal standards overrides the dictates of self-determination and allows for HI.

However, Walzer's position is rendered increasingly radical in light of the recent modifications which he has made to his original theory. According to his arguments in favour of the 'third degree of global pluralism', the normative consensus in favour of HI, or at least in favour of the concept of conditional sovereignty of which it is a component, has the potential to become one of the reiterated and shared values at the heart of international society. If this is indeed the case, then the privileged status of the peremptory norms of NS and non-intervention may not be assured. As our 'thin' and international moral prescriptions are gradually absorbed into our thick and culturally specific 'moral maximalisms', a process made possible by the changing dynamics of international politics, the limits of our toleration for HR abuses are incrementally tightened. Our interpretations of moral principles remain culturally differentiated but the set of values over which consensus can be said to exist continues to expand. In constructivist terms, the 'realities' of international politics are, themselves, formed and reformed such that the reiterated 'social facts' of IR begin to change. It is on this basis that Walzer is able to suggest that "the constitutive norms of international society that once

prioritised strict adherence to the principle of self-determination... now criticise such prioritisation".⁵⁰⁴ This evolving perception of NS is not so widely embraced as to displace a more traditional reading of the concept. In fact, it is the erroneous assumption that 'sovereignty as responsibility' already represents a settled norm of international society which often undermines the value of cosmopolitan theorising. Nevertheless, there is scope for it to weave its way into the fabric of international society and, even if fails to do so, its current moral status is enough to invigorate debates over the most appropriate response to HR abuses. The implications of this argument for the development of international justice find expression in an analysis of HI.

II. The Components of Humanitarian Intervention

i. Just Cause

The appraisal of the relationship between reiterative universalism, becoming, and HI must entail an overview of the circumstances which might justify or permit the breaching of territorial integrity. The conceptual category of 'just cause' has its basis in the JW tradition, which was itself an attempt to regulate the recourse to armed conflict and to erode the understanding that the declaration of war ought to be considered as a sovereign right. Although, in terms of modern PIL, the only legal exceptions to the prohibition on the use of force are self-defence and UNSC authorisation, the debate surrounding HI has led to the suggestion that this legalistic interpretation is overly narrow and allows for the routine violation of HR to go unpunished. The value of Walzer's

⁵⁰⁴ Sutch, 'International Justice', pp.523

reiterative universalism in advancing such discussions lies in the assertion that minimal universal standards of human conduct, and expectation, can be identified and defended; and that all human societies must necessarily reflect a combination of particularist and universalist dimensions; “universal because it is human, particular because it is a society”.⁵⁰⁵ Therefore, the suggestion that certain experiences are so universally familiar that “pretty much anyone looking on will see something here that they recognise”⁵⁰⁶ can be reconceptualised to incorporate cases of HR abuses. The result is that all observers are able to recognise egregious violations of HR and “[t]he sum of these recognitions is what is meant by minimal morality”,⁵⁰⁷ or in this case, just cause.

In the past, this has represented the full extent of Walzer’s argument and his defence of intervention, of any kind, has been restricted to the most extreme cases of tyranny or anarchy. In his early work he employs the thin universalism framework to distinguish responses to the regrettable, yet, as he sees it, insoluble routine violations of HR, which characterise much of world politics, from the acts which can truly be said to shock humankind; specifically, massacre and genocide. This willingness to demarcate certain crimes and label them as acts of ‘radical oppression’, in contrast to that which might be considered as ‘ordinary oppression’ is arguably one of the most controversial elements of Walzer’s early defence of non-intervention and certainly the aspect of his theory which is most vehemently criticised by feminists. On his original view, the distinction between thick and thin values

⁵⁰⁵ Walzer, *Thick and Thin*, p.10

⁵⁰⁶ *Ibid*, p.6

⁵⁰⁷ *Ibid*, p.6

provides an explanation for the fact that some traditions which the West might consider to be aberrations (such as female genital mutilation) are embedded in the cultures wherein they are practiced and cannot therefore be considered to shock the conscience of the totality of humankind, in the same way as widespread slaughter and enslavement. As such, they do not conform to the criteria which provide grounds for forcible or military intervention. This suggestion has met with hostility from liberal political philosophers. For instance, Gerald Doppelt argues that “a state may be extremely tyrannical and unfree”,⁵⁰⁸ yet fail to meet the threshold for intervention as defined by Walzer. Doppelt is disturbed that

[O]n Walzer’s legalist paradigm, such a state, regardless of *how* tyrannical and unfree it may be, possesses the indefeasible rights of political sovereignty; and in such cases foreign military intervention... is always morally wrong.⁵⁰⁹

This is due to the fact that Walzer’s early commitment to self-determination dictates that, in his view, it is neither practical nor moral, to license HI in anything other than the most extreme cases. In short, he does not seek to

[d]escribe a continuum that begins with common nastiness and ends with genocide, but rather a radical break, a chasm, with nastiness on one side and genocide on the other. We should not allow ourselves to approach genocide by degrees.⁵¹⁰

⁵⁰⁸ ‘Walzer’s Theory of Morality in International Relations’, *Philosophy and Public Affairs*, 8(1), Autumn 1978, pp.3-26, pp.8

⁵⁰⁹ *Ibid*, pp.8-9

⁵¹⁰ Michael Walzer, *Arguing for Humanitarian Intervention*, Nicolaus Mills and Kira Brunner (eds), *The New Killing Fields: Massacre and the Politics of Intervention*, (New York, Basic Books, 2003), p.20

Therefore, as he states in *The Politics of Rescue*:

Humanitarian interventions are not justified for the sake of democracy, or free enterprise, or economic justice, or voluntary association, or any other of the social practices and arrangements that we might hope for or even call for in other people's countries.⁵¹¹

He claims that instead

[we] are best served... by a stark and minimalist version of human rights... it is life and liberty that are at stake... Still, we could as easily say that what is being enforced, and what should be enforced, is simple decency.⁵¹²

According to this minimalist understanding of international morality, only the systematic and genocidal violation of HR can produce a level of injustice which allows for the breaching of sovereign borders to take place, in accordance with the doctrine of "supreme emergency".⁵¹³ This element of 'emergency ethics' is a communitarian argument based on the claim that political communities, have the right to protect themselves from annihilation, sometimes even at the expense of certain elements of PIL. In order for emergency ethics to be applicable, the danger must be extreme, such that "our community is threatened... in what we might think of as its ongoingness".⁵¹⁴ Only in this context when

[w]e face a loss that is greater than any we can imagine... We face moral as well as physical extinction, the end of a way of life as well as of a set of particular lives, the disappearance of people like us, [might we] be driven to break through the moral limits that people like us normally attend to and respect.⁵¹⁵

⁵¹¹ Walzer, *Arguing*, p.68

⁵¹² *Ibid*, p.76

⁵¹³ *Ibid*, p.33

⁵¹⁴ *Ibid*, p.43

⁵¹⁵ *Ibid*

Accordingly, as an engagement with Wheeler's account of just cause has demonstrated, the doctrine of supreme emergency is intrinsically connected to the 'rules of disregard' which allow us to move beyond the assumption of 'fit' between citizen and state, when appeals to self-determination are nullified by HR abuses.

There are moments when the rules can be and perhaps have to be overridden. They have to be overridden precisely because they have not been suspended. And overriding the rules leaves guilt behind, as a recognition of the enormity of what we have done and a commitment not to make our actions into an easy precedent for the future.⁵¹⁶

In other words, emergency ethics allow us to honour in the breach the rules of non-intervention but only as a response to the most 'conscience shocking' of crimes.

(a) The Limitations of Non-Intervention

An obvious two-pronged critique of this position relates, firstly, to the open-ended terms in which Walzer defines crimes against humanity and, secondly to his attempt to separate his conception of physical security from other equally pressing considerations. For instance, many people might be inclined to argue that mass-starvation or institutionalised discrimination are themselves 'indecent' and, certainly, a vast evidential basis suggests that marked disparities in wealth and opportunity are as costly in terms of human lives as the sporadic outbreak of genocidal violence. In defence of this apparent shortcoming, it is noteworthy that Walzer is explicit in his willingness

⁵¹⁶ Ibid, p.34

to ascertain the existence of just cause on a “case-by-case” basis. Therefore, the use of broad categories is arguably a deliberate mechanism to guarantee flexibility and increase the possibility that HI may find favour within international society. After all, states, and the international organisations to which they belong, are unlikely to subscribe to standards which are overly exacting, and institutionalising weak or heavily caveated commitments is not necessarily valuable unto itself. As to the matter of broadening the definition of crimes against humanity beyond the ‘loud emergencies’ of ethnic cleansing, mass-deportation, and enslavement to take account of, for example, what Henry Shue referred to as the ‘silent genocide’ of starvation, or what gender analysis reveals as the entrenched and unequal power relations which perpetuate discrimination and persecution, Walzer is addressing himself specifically to *the use of force*, which, in his view, is an inappropriate response to anything but widespread physical violence and one which itself inevitably results in loss of life. As such, the litmus test for those actions which may justify forcible intervention must be enormously demanding. Perhaps surprisingly, many feminist commentators characterise the resort to force in comparable terms.

Nevertheless, even Walzer has now conceded that the demarcation between ordinary and radical oppression is inadequate, since the former is so often a precursor to the latter. With this in mind, he has now moved beyond the concepts of *Jus in Bello* and *Jus ad Bellum* to outline the circumstances which might give rise to *Jus ad vim*; the just use of “force short of war”.⁵¹⁷ Of course

⁵¹⁷ Michael Walzer, ‘Regime Change and Just War’, *Dissent* [online], Summer 2006, <http://www.dissentmagazine.org/article/?article=663>, [06/08/09]

this overturns the presumption that the use of force can only ever be justified as a last resort:

[F]orce-short-of-war obviously comes before war itself. The argument about *jus ad bellum* needs to be extended, therefore, to *jus ad vim*. We urgently need a theory of just and unjust uses of force. This shouldn't be an overly tolerant or permissive theory, but it will certainly be more permissive than the theory of just and unjust war.⁵¹⁸

For Walzer, then, *jus ad vim* connects to what the ICISS refers to as the 'duty to prevent' and necessitates a reconsideration of the category of just cause. The threshold for force short of war is necessarily more permissive than the actions which justify full blown war but still largely restricted to a regime which has "acted aggressively or murderously in the past" and given "reason to think that it might do so again".⁵¹⁹ In such cases, external forces can support and even anticipate local demands for increased freedoms but they cannot consciously initiate regime change.

[t]his isn't an unjust anticipation, since the states organising the containment don't themselves overthrow the old regime, and they don't establish the new one, if there is a new one. They are operating at the edge of the non-intervention principle, but not in violation of it.⁵²⁰

This looser interpretation of non-intervention would seem to suggest that Walzer allows for the processes of becoming to be expedited when the will for reform is seemingly present among a local population. This may also be

⁵¹⁸ *Ibid*

⁵¹⁹ *Ibid*

⁵²⁰ *Ibid*

achieved through the use of “politics-short-of-force”;⁵²¹ in essence offering support to those elements of civil society which aim at creating conditions for change. Once again, it seems clear that Walzer’s erstwhile communitarian commitment to the sanctity of national borders has been eroded by the development of an increasingly morally and politically integrated international community. He is now prepared to contend that becoming, defined in this case as the possible transition to democratic governance, can be partially implemented through measures such as carefully targeted economic sanctions, or explicit support of civil society movements. The focus on ‘politics short of force’ highlights the potential for Walzer’s approach to international justice to embrace a broader conception of becoming which is more amenable to those concerned with ‘routine’ or ‘ordinary’ oppression and inequality. In simple terms, the ‘just cause’ for intervention which stops short of war is considerably less demanding than the traditional definition of *jus ad bellum*. Nonetheless, Walzer remains committed to his belief that the use of force itself must be reserved for the most specific and severe of HR violations. Only this narrow category of crime falls within the remit of ‘emergency ethics’.

ii. Agency

Another key element of Walzer’s approach to HI which is inconsistent with his reputation as a conservative communitarian concerns the matter of agency. Again the findings of PIL make the case very clearly; only the UNSC and those empowered by it can claim the requisite legal authority to engage in acts of HI. The limitations of this assumption are manifold but perhaps the

⁵²¹ Ibid

most striking counter-argument relates to the rarity with which sufficient consensus can be achieved within the organisation to produce a prompt response to humanitarian emergency. The threat or use of the veto by the P5 and the pursuit of national interest over a commitment to 'common humanity' plague an institution, which is already compromised by a lack of resources and a dearth of political will. It is these deficiencies which, at times of great humanitarian crisis, have so frequently made "complicit bystanders"⁵²² of the constituent members of the UNSC.

Walzer's willingness to countenance alternatives to UN authorised HI is, therefore, born out of several considerations. Among the most common defences of multilateralism is the suggestion that an organisation which takes account of the views of a number of states is, by definition, more legitimate than the unilateral decisions of one state. As a detailed exposition of the work of Buchanan has sought to explore, this understanding of legitimacy is arguably erroneous; with liberals suggesting that the legitimacy of an international organisation is directly dependent on that of the individual states which constitute it. Even in the absence of this insight, Walzer questions the assumption that multilateral decision-making is in some sense inherently preferable by claiming that "morality, at least, is not a bar to unilateral action".⁵²³ Although, Walzer is keenly aware, that in the current international climate, legality does represent just such a bar, he bases his viewpoint on the contention that, in instances of large-scale humanitarian emergency, when mass-killing is either taking place, or is imminent; the simple reiteration of

⁵²² ICISS, 1.22

⁵²³ Walzer, *Arguing*, p.43

high-minded principles and an unflinching commitment to the doctrine of non-intervention are rendered indefensible.

Walzer's initial views on agency are also a direct reflection of the manner in which he has tended to categorise HI. Characterising such acts as neither right nor obligation, he suggests that the issue of intervention is most accurately described as an "imperfect duty";⁵²⁴ which effectively refers to a set of circumstances in which it is clear that a response is necessitated but it is difficult to ascertain who ought to assume responsibility for it. In other words, the challenge is to establish "proper authority".⁵²⁵ In the case of HI, Walzer makes reference to situations in which "[s]omeone should stop the awfulness, but it isn't possible to give that someone a proper name, to point the finger, say at a particular country".⁵²⁶ Under such circumstances, the logic of the assumption that it is preferable for intervention to be spearheaded multilaterally comes under strain. In Walzer's view, if the inefficiency and political paralysis of such an organisation prevent it from taking action, the burden falls to whichever state, or group of states, is empowered to do so; hence his simple maxim "who can... should".⁵²⁷

The notion of imperfect duty is instructive as part of a more general appreciation of the nature and limits of an international duty of justice, since it illustrates the manner in which an element of international injustice so rarely corresponds with a designated agent, either inclined toward, or capable of,

⁵²⁴ Mills and Brunner (eds), *New Killing Fields*, p.25

⁵²⁵ ICISS, 47

⁵²⁶ Mills and Brunner (eds), *New Killing Fields*, p.25

⁵²⁷ Walzer, 'Nation', pp.107

mounting an effective response. In short, it is considerably easier to identify injustice than it is to identify those who ought to rectify it. In the early Walzerian framework, HI is more than a voluntary act of charity but less than a full-blown moral obligation and, in some respects, this is true of international justice more broadly. The cosmopolitan conviction that meaningful international justice depends on the willingness of state leaders to prioritise the interests of those beyond their borders as vociferously as those of their citizens⁵²⁸ (an argument which corresponds to justice as duty) is rejected by Walzer but so is the suggestion that all moral obligation is contained within geographical borders. It is reasonable to suggest that the developments within international society which have led Walzer to expand his conception of reiterative universalism may also have encouraged him to review his initial characterisation of intervention as less than obligatory; such that he has acknowledged an increasing number of what might be thought of as 'international obligations'. As further enquiry will reveal, perfecting an 'imperfect duty' may even entail substantial reform of the state and UN systems. This is because the need to embrace unilateralism is, for Walzer, the direct consequence of "the reiterated recognition that the nation state system simply cannot deal appropriately with the [humanitarian] crises it faces".⁵²⁹

This recognition has been engendered, at least in part, by the consistent failure of the UN to respond effectively to the outbreak of genocide or ethnic cleansing, particularly when it has occurred beyond continental Europe. Not

⁵²⁸ Not all cosmopolitans are committed to this principle. Buchanan and Keohane, for example, acknowledge the value of "Moderate Cosmopolitanism' which allows one to give a limited priority to the interests of one's own nation and does not require strict impartiality"(See 'The Preventive Use of Force', pp.4)

⁵²⁹ Sutch, 'International Justice', pp.523

only has the UNSC failed to license HI on its own terms but, in the past, it has failed to offer its support to those 'politically legitimate' interventions which have occurred without its authorisation. As Walzer has consistently maintained, many of the best known examples of HI, which have met with tacit, or explicit, approval from a range of commentators, such as the Vietnamese invasion of Cambodia, or the Indian incursion into Pakistan, would almost certainly have failed to secure a UN mandate. In fact, on each occasion, the perpetrators of that which Walzer characterises as a rescue were chastised, and often subjected to moral censure and political sanctions. For a time it may have appeared that the end of the Cold War and the expansion of the definition of Chapter VII enforcement powers might serve to address these shortcomings. For many commentators this was a time at which,

[t]he system centred on the Security Council was transformed from one designed to help resolve certain conflicts between states, when interests sufficiently overlapped, to a system also intended to prevent extensive abuses of state power - at least where states abusing power were weak - over their own population.⁵³⁰

However, despite such (largely short-lived) optimism, it is clear that the "propensity for paralysis"⁵³¹ and indecision still holds the organisation to ransom and in the face of humanitarian disaster it remains reactive at best, inactive at worst. Hence Walzer's assertion that

[t]he politics of the UN is no more edifying than the politics of many of its members, and, the decision to intervene, whether local or global, whether it is

⁵³⁰ Mills and Brunner (eds), *New Killing Fields*, p.25

⁵³¹ Lee Feinstein and Anne-Marie Slaughter, 'A Duty to Prevent', *Foreign Affairs* [online], (January-February 2004), pp.1-6, <http://www.foreignaffairs.org/20040101faessay83113-p0/lee-feinstein-anne-marie-slaughter/a-duty-to-prevent.html>, [07/06/08], pp.5

made individually or collectively is always a political decision... the collective will to act is sure to be as impure as the individual will to act (and is likely to be much slower).⁵³²

With this in mind, the root causes of Walzer's disillusionment toward the UN are easily identifiable, as is the basis of his readiness to dispense with the protocols and elements of PIL which limit the opportunities for HI to take place, even under the direst of circumstances. Thus, he maintains that, in the absence of effective multilateral enforcement action "we will have to look for and live with unilateral interventions".⁵³³ Accordingly, Walzer makes no apologies for a reliance on unilateralism to further the cause of HI, questioning instead the very logic of collective responsibility which originates, to some extent, with Jean-Jacques Rousseau's notion of the 'General Will'. This principle dictates, in simple terms, that the aggregation of opinion will likely produce a compromise which will prevent the vested interests of any one force from predominating. Walzer would argue, and to a certain extent experience would bear him out, that such protracted negotiations are far more likely to produce a 'lowest common denominator' mentality, which would ensure that human lives are sacrificed in an ill-fated attempt to achieve consensus. Moreover, the politics of the Cold War and the ability and inclination of the P5 to exercise the veto with impunity have historically undermined this pursuit of compromise. As Walzer himself states "stalemate and inaction... cannot always be the general will of international society".⁵³⁴

Thus, he concludes:

⁵³² Robert O. Keohane, 'The Contingent Legitimacy of Multilateralism', GARNET Working Paper, No: 09/06, September 2006, http://wi-garnet.uni-muenster.de/fileadmin/documents/working_papers/0906.pdf, [21/07/08], pp.8

⁵³³ Feinstein and Slaughter, 'Duty to Prevent', pp.5

⁵³⁴ Walzer, *Just and Unjust*, xiii-xiv

[i]t is a good idea to strengthen the UN and to take whatever steps are possible to establish a global rule of law. It is a very bad idea to pretend that a strong UN and a global rule of law already exist.⁵³⁵

Walzer seems to suggest that an acceptance of unilateralism may provide a 'stop-gap' for responding to injustice, until such time as the UN system can be overhauled and rendered fit for purpose. The justification for this claim is, once again, embedded in the terms of reiterative universalism. If, as Walzer has sought to establish, this principle has provided us with the moral means to define the values of life and liberty as rights which ought to be defended by force, it is possible to argue that if the UN fails to engage in such campaigns, this duty, imperfect or otherwise, passes to whichever agent is best equipped to embrace it. Put simply, the processes of becoming which give meaning to the constructed duty of justice compel us to by-pass the UN on those occasions when it fails to operate in accordance with an international moral minimum.

i. US Hegemony

Of course, Walzer's endorsement of unilateralism in the field of HI is subject to the practical consideration of which states, or groups of states, might be willing and able to take up the mantle of HI in the event of UNSC stalemate. The principal consideration in any such analysis is a pragmatic one. In practical terms, only the affluent, Western states are in possession of the resources to intervene with any regularity, or for any notable length of time. These states are themselves often subject to the constraints produced by their political systems, since, the demands of democracy render the

⁵³⁵ Walzer, *Arguing*, p.80

deployment of troops for anything but the most extreme, or self-interested, purposes difficult to justify to a voting public. The presumption in favour of developed states must also take into consideration the perception of US hegemony among the potential targets or supporters of HI. For most observers, the consolidation of US power is not necessarily compatible with the pursuit of international justice since, as Walzer claims, “[n]o one really wants the United States to become the world’s policeman, even of-last-resort... Morally and politically, a division of labour is better”.⁵³⁶ This preference is due both to the self-interested behaviours of the US itself and to what Walzer considers to be a lamentable “knee-jerk Anti-Americanism on the European left”,⁵³⁷ which he fears threatens to confuse and undermine the issue of HI. As he asserted, in a lecture delivered shortly after NATO’s intervention in the Balkans “one thing we learn from Kosovo is that any American intervention makes all the world suspicious”.⁵³⁸ Walzer believes that if the doctrine of HI is to be successful, this tendency must be addressed. Although, he states that in light of the conduct of the Bush administration in particular, “It is easy to criticise American unilateralism”,⁵³⁹ he also claims that it is myopic to do so without seeking to provide an alternative to it. In essence, whilst the US ought, occasionally, to intervene “very often it is better done by someone else”.⁵⁴⁰ Implicitly this statement appears to contradict his earlier maxim in acknowledging that, whilst in terms of resources, the US almost

⁵³⁶ Ibid

⁵³⁷ Ibid

⁵³⁸ Ibid, p.79

⁵³⁹ Michael Walzer, ‘The Ethics of Humanitarian Intervention’, *Ethics Across the Curriculum Workshop* [online], (University of San Diego, 2000),

http://ethics.acusd.edu/video/Walzer/Workshop/Humanitarian_Intervention_Lecture.html,

28/04/06

⁵⁴⁰ Ibid

always can, from the point of view of justice and political expediency, there may be instances in which it ought not to.

In fact, this is representative of the challenge facing all those who seek to establish and enforce standards of international justice more generally. From the perspective of Walzer's communitarian constructivism, if these expectations are to be embraced they must represent more than a conduit for US interests, which might serve to 'separate the West from the rest'; they must, he argues, be accessible to as broad a range of cultures as possible, a balance which is inordinately difficult to strike without minimising or diluting justice claims to the point where they serve no real practical or moral purpose; an accusation frequently levelled at Walzer by his cosmopolitan critics.

(b) The Limitations of Unilateralism

The intuitive appeal of Walzer's justice-based claims is undeniable. The fact that his pragmatic endorsement of unilateralism appears to provide the means to sideline prolonged legal debate and paralysis renders the moral argument which he advances very attractive to those seeking to promote the circumvention of the UNSC; those for whom "the current organisation of international society causes more problems than it resolves".⁵⁴¹ From this perspective, the legitimacy of multilateralism is contingent, to some extent, upon its efficacy. As such, whilst

[C]ollective decisions to act may well exclude unilateral actions... collective decisions not to act don't have the same effect. In this sense, unilateralism is

⁵⁴¹ Haddock and Sutch, *Multiculturalism*, p.220

the dominant response when the common conscience is shocked. If there is no collective response, anyone can respond. If no one is acting, act.⁵⁴²

However, unilateralism is a temporary and unpredictable solution to humanitarian and political crises. What is required, in the long term, is much more thorough-going reform of the international system. In Walzer's terms:

[t]he third degree of pluralism requires a United Nations with a military force of its own capable of humanitarian interventions and a strong version of peacekeeping – but still a force that can only be used with the approval of the Security Council or a very large majority of the General Assembly.⁵⁴³

For many commentators, this remains a distant prospect fraught with and frustrated by the continued predominance of self interest among global political actors. In fact, as in feminist, cosmopolitan, and solidarist analysis, there exists an apparent disjuncture between some of Walzer's moral prescriptions and the legal and political constraints currently restricting the processes of becoming in IR. The very stalemate at which Walzer's theory takes aim has the potential to stifle some of his most innovative ideas. After all, international politics remains a consensual system and one in which NS and non-intervention are jealously guarded. There can be little doubt that Walzer is correct to suggest that the credibility of the UN currently hangs in the balance and that there are pragmatic and instrumental reasons for it to respond more convincingly to humanitarian crises. After all, a successful HI, conducted in the absence of UN authorisation, has the potential to undermine the UN by drawing attention to its failure to act more decisively; an eventuality

⁵⁴² Walzer Interview, 2003, 'The United States in the World – Just Wars and Just Societies: An Interview with Michael Walzer', *Imprints: A Journal of Analytical Socialism* [online], 7, (2003), <http://eis.bris.ac.uk/~plcdib/imprints/michaelwalzerinterview.html>, [28/02/06]

⁵⁴³ Walzer, *The Politics of Difference*, pp.175

which “may have enduringly serious consequences for the stature and credibility of the UN itself”.⁵⁴⁴ However, as persuasive as Walzer’s views on unilateralism are, it is possible to assert that they do not demonstrate a realistic appreciation of the fact that HI, in the absence of UN authorisation, simply does not find favour within international society, hence the unequivocal finding of ICISS that

[i]f international consensus is ever to be reached about when, where, how, and by whom military intervention should happen, it is very clear that the central role of the Security Council will have to be at the heart of that consensus.⁵⁴⁵

This impasse reflects the fact that bridging the gap between the desired conditions for international politics and the current realities of the international system is key to defining, applying, and extending the international duty of justice. For Walzer “finding political expression for a sustained moral minimum”,⁵⁴⁶ or in the parlance of this project, constructing the duty of justice necessitates the application of the ‘rules of disregard’. The same rules which allow us to assume that most political communities are legitimate but take action against those which are indisputably not, can allow us to assume that multilateralism is the ideal for intervention but license unilateralism where this proves to be the only option. The justification for impinging upon the principle of non-intervention is that, in extreme cases of HR abuses, it no longer tallies with the reiterated realities of international politics. Therefore, far from failing the test of feasibility which is so central to communitarian constructivism, Walzer demonstrates that reiterative universalism and the processes of

⁵⁴⁴ ICISS, 6.40

⁵⁴⁵ Haddock and Sutch, *Multiculturalism*, p.220

⁵⁴⁶ Sutch, ‘International Justice’, pp.523

becoming are beginning to force a reconsideration of those actions which are conceivable and sustainable in the context of IR.

Walzer is aware that the reforms which he demands can only be implemented by increments but this represents one of the strengths of his argument. The gradual 'rolling out' of a new framework of international politics ensures that no one conception of justice can dominate any other and that changes to the state and UN systems meet with the approval of a broad range of political communities, something which could not be achieved through the application of the systematic conception of HR which informs cosmopolitanism. In constructivist terms, the norms which justify and necessitate reform have emerged but it has taken many years for them to begin to crystallise through reiterative universalism. Until and unless they do unilateralism, like HI itself, remains a controversial but necessary exception to an increasingly outdated rule.

iii. Motivation

Walzer's acceptance of the need to embrace, at least for the time being, the moral and political necessity of unilateralism invites consideration of another component of the debate. This is because there exists a presumption, based on the predominance of the national interest, that unilateral interventions are likely to be governed by motives which are, at best, mixed, and at worst, entirely devoid of humanitarian impulse. As such, the matter for debate then becomes whether an intervention, conducted in the absence of genuine humanitarian motivations, is likely to result in a military operation conducted in

accordance with the demands of justice and for the benefit of the local population; and equally pertinently, whether this, in turn, is likely to produce a settlement which prioritises the security of civilians.

Walzer has consistently argued that it is not only acceptable for mixed motives to precipitate HI but that it is also inevitable that the decision to intervene will depend upon them. In his view

the victims of massacre or ethnic cleansing are very lucky if neighbouring states, or a coalition of states, has more than one reason to rescue them. It would be foolish to declare the multiplicity morally disabling. If the intervention is expanded beyond its necessary bounds because of some ulterior motive then it should be criticised: within those bounds, mixed motives are a practical advantage.⁵⁴⁷

This appraisal is characteristically pragmatic. However, as an analysis of Wheeler's contribution to the debate has already indicated, it is not necessarily plausible to separate considerations of motivation from the character of an intervention. After all, the driving force behind HI is likely to condition the military means chosen to enact it and the conduct of the intervening forces both during hostilities and following their cessation. This is particularly germane to the issue of just settlement since, as Wheeler has argued, self-interested interveners, positioned for economic or strategic gain, are unlikely to commit sufficient resources to the rebuilding of damaged infrastructure, or the needs of a destabilised civilian population. For cosmopolitan critics, in particular, it is the willingness to assess intervention, and justice claims more generally, on a case-by-case basis, rather than

⁵⁴⁷ Ibid, p.216

attempt to build a consistent rule-governed practice, which allows for illegitimate motives to govern military incursion and strategy. However, in Walzer's view if states are denied the requisite flexibility to pursue their own interests (as well as those of humanity more generally), interventions will simply cease to take place. This is indicative of a wider contention that an international duty of justice, constructed from a combination of moral prescriptions which have secured cross-cultural consensus, must also be responsive to the institutional limitations of the current state system. It is only by acknowledging these restrictions that we may eventually come to erode them. In short, inflexible rules do little to advance the cause of becoming in international society and a casuistical framework is the logical corollary of a norm-based approach to international justice. Nevertheless, even in the context of this case-by-case assessment, Walzer's failure to apply a gender-lens to his analysis undermines the value of some of his insights. In fact, from the perspective of gender analysis Walzer's argument would benefit from an acknowledgment of the fact that HI must represent more than the masculinist posturing of powerful Western states. In order for the doctrine of HI to be perceived as legitimate by a range of global political actors, it must escape its association with neo-imperialism. An explicit acceptance of mixed motives as a necessary component of HI appears to be at odds with this agenda.

(a) Selectivity

The debate surrounding mixed motives is intrinsically connected with the issue of consistency in the practice of HI and the discourse of international justice more generally. It is undeniable that due to the preponderance of national interest as a motivation for intervention, the politics of rescue is

riddled with selectivity. Access to oil or other natural resources; the opportunity to increase one's advantage relative to a rival; or the promise of the lucrative reconstruction contracts which might follow in the wake of an act of intervention, are all considerations which often conflict with the demands of justice and lead to HI being licensed in certain regions, whilst comparable crises in less strategically significant territories elicit apathy and inaction. Regime change, in particular, highlights this contradiction, with the 2003 invasion of Iraq conceived, among other things, as a means to secure the overthrow of Saddam Hussein while the despotic rule of Robert Mugabe in Zimbabwe has persisted with only the most limited of meaningful opposition from the international community. Similarly, in the arena of HI, the question of 'If Kosovo, why not Rwanda?' continues to cast a long shadow across the legitimacy and credibility of the UN; as does the fact that despite near universal condemnation of Russia's shelling of civilians in Chechnya, there is simply no practical scope for an intervention which has the potential to result in nuclear war between the major powers. Walzer's response to this issue is to accept that different circumstances necessitate different responses, military and non-military, and that for reasons of pragmatism, "one ought not to provoke fights that one is bound to lose, especially not if one is fighting for justice"⁵⁴⁸. With this in mind, Walzer once again argues in favour of casuistical judgement and maintains that

[c]onsistency isn't an issue here. We can't meet all occasions; we rightly calculate the risks in each one. We need to ask what the costs of intervention

⁵⁴⁸ Henry Shue, *The Burdens of Justice*, *The Journal of Philosophy* 80(10), October 1983, pp.600-608, [06/09/08], pp.607

will be for the people being rescued, for the rescuers, and for everyone else.
And then we can only do what we can do.⁵⁴⁹

For Walzer, the impact of prudential concerns is inevitable and cannot lead us to conclude that “having failed to rescue the people of East Timor or the people of Tibet, we should have failed to rescue the people of Kosovo out of moral consistency”.⁵⁵⁰ This viewpoint is compatible with a constructivist approach to justice which encourages practitioners of IR to consider how conceivable a given course of action is, as well as how morally desirable it may be. Within this framework, change is implemented incrementally and once the economic and strategic advantages afforded a state through, for example, demonstrating increased respect for HR are established the hope is that this norm will begin to crystallise as an ever expanding number of state actors begin to abide by its terms. Whilst these state authorities may initially embrace the terms of the norm for exclusively instrumental or self-serving reasons, its principles may eventually become sufficiently embedded in the political culture so as to socialise leaders and citizens alike into the development of new expectations and behaviours. Although the impetus for change may originate externally, the particular manner in which these reforms are institutionalised will depend on local cultural and political proclivities. Therefore if an international duty of justice can successfully strike this balance, it might allow for the gradual universalisation of certain standards, without the associated accusations of ethnocentrism and neo-imperialism.

⁵⁴⁹ Walzer, ‘Ethics of Humanitarian Intervention’

⁵⁵⁰ *Ibid*

As appealing as the logic of this argument is, it fails to unpack or even to problematise the reasons that international society (and in particular Western powers) tends to prioritise the suffering of certain groups differently to the pain and indignity of others. Since feminist constructivist analysis takes aim at this issue and the consequent perpetuation of unequal and gendered power relations, Walzer's conception of the relationship between suffering and selectivity would be more nuanced if he were to take account of this theoretical perspective. Whilst he may be correct in his assertion that inconsistency is inevitable and not, in and of itself, a strong enough argument to preclude HI in all cases, his tendency to acquiesce to the existence of selectivity, without questioning its fundamental causes represents an under-developed dimension of his argument.

iv. Just Settlement

In contrast to this example of 'under theorising' an element of the intervention debate, Walzer has written extensively on a issue which is, all too often, sidelined in a consideration of the use of force for humanitarian purposes. The matter of how and when an act of intervention ought to be brought to a close is of vital significance since the failure to secure a just settlement following a military campaign can result in levels of insurgency and unrest which can condemn a civilian population to a fate as uncertain as the humanitarian disaster which prompted intervention. Hence, Walzer's belief that

you can fight a just war, and fight it justly, and still make a moral mess of the aftermath... by failing....to help the people you have rescued to rebuild their lives.⁵⁵¹

This represents a further substantial modification of his original theory, which was formerly premised on the applicability of the “in and out test”.⁵⁵² This refers to the expectation that ‘just settlement’ is achieved when “the intervening force goes in, stops the massacres or the ethnic cleansing, helps set up some sort of regime... and then gets out... they go in, they affect the rescue that they said was their goal, and then they leave the rescued people to govern themselves”.⁵⁵³ According to this principle, right intention would virtually preclude the possibility of a long-term commitment to settlement. Interveners who choose to remain in place once violence has ceased are likely harbouring a strategic or economic agenda and should be encouraged to withdraw immediately. Recently, however, Walzer appears to have lost faith in this proposition.

I’m a little less sure of that test these days because it often seems that the success of the intervention is dependent on the will to stay for a while at least, to make sure that the situation you have just rescued the people from doesn’t recur.⁵⁵⁴

In effect, the application of the ‘in and out’ principle is dependent upon a stark and simplistic interpretation of intra-state conflict, which characterises one ethnic minority or social group as victimiser, and another as victim. However, like all other elements of IR theory and practice, intra-state conflict has

⁵⁵¹ Michael Walzer, ‘Just and Unjust Occupations’, *Dissent* [online], (Winter 2004), www.dissentmagazine.org/article/?article=400, 22/07/06

⁵⁵² Walzer ‘Ethics of Humanitarian Intervention’

⁵⁵³ Ibid

⁵⁵⁴ Ibid

evolved considerably. Even if this simplistic understanding of violence and civil breakdown was once of value, it is now clear that adherence to such a notion provides no appropriate framework for responding to a form of humanitarian crisis which is much more common, and considerably more ambiguous, than this idealised perception. In Walzer's words

What if the trouble is internal, the inhumanity locally and widely rooted, a matter of political culture, social structures, historical memories, ethnic fear, resentment, and hatred?⁵⁵⁵

As was aptly demonstrated by the botched intervention in Somalia, an inability to comprehend the complexities of local or regional culture and conflict dooms any proposed intervention, and in particular, any attempt at reconstruction, to dismal, and perilous, failure. It is for this reason that "it sometimes turns out that occupying is harder than fighting".⁵⁵⁶

As such, the scope of Walzer's interventionary project has grown more ambitious not only in terms of the crimes which might warrant HI, and the appropriate agents to carry out the campaign, but also with regard to the level of commitment necessitated by the pursuit of just settlement. In recent years, he has come to believe that a 'rescue' has not been properly executed until the conditions which might result in a reoccurrence of humanitarian crisis have been comprehensively contended with. As such, he rejects the suggestion that "there must be an exit strategy before there can be an intervention".⁵⁵⁷ Believing that this misplaced focus is tantamount to an argument against intervention, Walzer asserts that public declarations to draw

⁵⁵⁵ Mills and Brunner (eds), *New Killing Fields*, p.30

⁵⁵⁶ Walzer, *Just and Unjust Occupations*, pp.4

⁵⁵⁷ Mills and Brunner (eds), *New Killing Fields*, p.30

a campaign to a close within a stipulated timeframe serve only to “give the hostile forces a strong incentive to lie low and wait. Better to stay home” he claims “than to intervene in a way which is sure to fail”.⁵⁵⁸

The conviction that intervention is necessarily a lengthy process allows for the possibility of regime change and of the establishment of interim or provisional governmental authorities, perhaps administered from beyond the target state or with the support of intervening forces. To demonstrate the legitimacy of these policies, Walzer calls upon the example of the humanitarian crisis in Rwanda:

Imagine that there had been, as there surely should have been, an African or a European or a United Nations intervention in Rwanda in 1994. The initial purpose of the military action would have been to stop the massacre of Tutsi men and women (and their Hutu sympathisers), but in order to do that and to protect the survivors, it would have been necessary to overthrow the Hutu Power regime. And whoever was responsible for that overthrow would also have taken on some degree of responsibility for the creation of an alternative government. It would have been wise to share that responsibility with local political forces and also with international agencies, but there would have been no just way of shedding it entirely.⁵⁵⁹

The significance of this is twofold. In the first instance, it points to the fact that the post-conflict settlement in Rwanda, though noticeably more successful than the international response to the genocide itself, remained limited. The hundreds of thousands of lives which have been lost since unrest spilled over into the Democratic Republic of Congo is testament to this. Secondly, it indicates Walzer’s changing views on the resolution of an act of HI. In fact, he

⁵⁵⁸ Ibid

⁵⁵⁹ Walzer, ‘Regime Change’

now identifies three specific sorts of intervention which are likely to necessitate an extended period of occupation:

The first is perhaps best exemplified by the Cambodian killing fields, which were so extensive as to leave, at the end, no institutional base, and perhaps no human base, for reconstruction.⁵⁶⁰

A rapid withdrawal in these circumstances leaves behind a shell of a country, ravaged by humanitarian disaster and facing an indeterminate future. The second example pertains to the humanitarian crises in Uganda, Rwanda, and Kosovo. In these cases “the extent and depth of the ethnic divisions make it likely that the killings will resume as soon as the intervening forces withdraw”.⁵⁶¹ This may be the consequence of a resumption of atrocities by the “original killers”⁵⁶² or, by a commencement of ‘reverse ethnic cleansing’, which might see the victims of an attempted genocide orchestrating a campaign of reprisals. In such instances, Walzer argues,

‘in and quickly out’ is a kind of bad faith, a choice of legal virtue at the expense of political and moral effectiveness. If one accepts the risks of intervention in countries like these, one had better accept also the risks of occupation.⁵⁶³

The final set of circumstances which demand large-scale reconstruction exist in failed states, such as Somalia, where, at the time of intervention, no government infrastructure can be said to exist, and where it is this very lack of civic authority which has ultimately led to the widespread violence that provided the impetus for HI, in the first instance. When a country has fallen

⁵⁶⁰ Ibid

⁵⁶¹ Ibid

⁵⁶² Ibid

⁵⁶³ Ibid

into the hands of “paramilitary forces and warlords... what is necessary... is to create a state, and the creation will have to be virtually *ex nihilo*”. Reconstruction on such a scale is, as Walzer puts it, “not work for the short term”.⁵⁶⁴

Walzer contends that once an intervention has begun, those who initiated it are obligated to pursue a lasting peace for the citizens of the target state. He defines two means by which this might be achieved, both of which are “standing interventions”,⁵⁶⁵ distinguishable from one another through the following definitions:

The first is a kind of trusteeship, where the intervening power actually rules the country it has ‘rescued’, acting in trust for the inhabitants, seeking to establish a more or less consensual politics.⁵⁶⁶

This would arguably be the correct course of action for the reconstruction of a failed state such as Somalia.

The second is a kind of protectorate, where the intervention brings some local group or coalition of groups to power and is then sustained only defensively to ensure that there is no return of the defeated regime or the old lawlessness and that minority rights are respected.⁵⁶⁷

In essence, then, HI is justified by processes of becoming but it also necessitates them. If an agent makes the decision to intervene in response to HR abuses, they accept the responsibility of constructing or defending alternative political and legal institutions which might serve to prevent

⁵⁶⁴ Ibid

⁵⁶⁵ Walzer, ‘Ethics of Humanitarian Intervention’

⁵⁶⁶ Walzer, *Arguing*, p.76

⁵⁶⁷ Ibid

renewed outbreaks of violence. However, this position is not without its limitations. Post-colonial and feminist commentators in particular are concerned that protectorates and trusteeships are little more than neo-imperialist wolves in politically palatable sheep's clothing. For these thinkers, enforced regime change denies both the cultural specificity and the political agency of the citizens of a target state and is an extension of "the imperial arrogance lurking behind the whole idea of nation building".⁵⁶⁸ Walzer's communitarian roots ensure that he shares this concern and is anxious to limit the authority of intervening foreigners, in as far as possible.

Even when a humanitarian crisis has rightly triggered intervention, we can still hope to minimise the coercive imposition of foreign ideas and ideologies. The intervening forces have a mandate for political, but not for cultural, transformation.⁵⁶⁹

The obvious overlap between political and cultural considerations has the potential to render this argument somewhat unsatisfactory, particularly in light of the practical problems associated with reconstruction projects on the scale which Walzer appears to advocate. Perhaps the most pressing issues relate to the lack of political will among both states and their citizenry. Just settlement often necessitates, or amounts to, long-term military engagement and is therefore subject to the same constraints which often render such extended campaigns so unpopular. The fear is that civilian populations will not abide the loss of members of their own armed forces; a proposition which was seemingly confirmed when, following the death of eighteen infantrymen in a firefight in Mogadishu, the US famously chose to recall the troops it had

⁵⁶⁸ Wheeler, *Saving*, p.207

⁵⁶⁹ Walzer, 'Regime Change'

dispatched to Somalia, leaving the infrastructure of the failed state in tatters.

In response to this issue, Walzer argues that:

From the standpoint of justice, you cannot invade a foreign country, with all the consequences that has for other people, while insisting that your own soldiers can never be put at risk.⁵⁷⁰

He suggests that those who serve in the military have committed themselves to defending civilians, even to the detriment of their own lives, and are fully cognisant of this risk at the time that they enlist. Therefore, it is legitimate that their lives be sacrificed in military campaigns designed to rescue non-combatants. Of course, this does not take account of the ways in which the waters of consent are muddied in this context. It is often the poor and disenfranchised who join the army as the only means to continue their education, or for want of any other financial opportunities. Such individuals are often courted by their national governments and given only a very limited understanding of precisely what their military career is likely to entail. Hence, the suggestion that they have willingly entered into life-threatening situations is somewhat of an over-simplification. This is indicative of the need to adopt a holistic approach to justice and becoming which acknowledges the interrelated nature of physical and economic security and embraces Vincent's suggestion that an understanding of one necessitates an engagement with the other.

Despite the shortcomings and practical limitations of extended occupations Walzer nevertheless maintains that they are a moral corollary of HI. In his

⁵⁷⁰ *Ibid*, p.29

view, the advantages of such a proposal outweigh the negative connotations since schemes of this nature offer a means “to open a span of time and to authorise a kind of political work between the ‘in’ and the ‘out’ of humanitarian intervention”.⁵⁷¹ He explicitly addresses the limits of an international duty of justice in this context by claiming that the new regime need not be “democratic, or liberal, or pluralist, or even capitalist. It doesn’t have to be anything except non-murderous”⁵⁷². In insisting upon this degree of minimalism, Walzer believes that it is possible to ensure that the scope of occupation remains limited and that “once the massacres and ethnic cleansing are really over and the people in command are committed to avoiding their return, the intervention is finished”.⁵⁷³ Equally, the refusal to impose conceptions of liberal democracy on the target state helps to engender the process of self-determination, which he considers to be of such moral worth.

IV. Conclusion

Walzer’s understanding of becoming in international politics is key to the tone and scope of this project. For the most part, justice, for Walzer, is embedded in the opportunity of individual political communities to establish and implement their own cultural and political practices. However, the suggestion that reiterated and shared moral principles are evolving to such an extent that they can begin to impact upon the realities of inter-state relations serves both to explain those reforms which have already taken place and to justify calls for

⁵⁷¹ Mills and Brunner (eds), *New Killing Fields*, p.31

⁵⁷² *Ibid*, p.32 (However, he would be inclined to argue that if governmental infrastructure is to be built *ex nihilo*, there are many compelling reasons to attempt to create a democratic framework which can then be fashioned and interpreted according to local traditions)

⁵⁷³ *Ibid*, p.30

further modifications to the state system. For Walzer, the resultant international duty of justice is, in effect, a series of constructed agreements and obligations which have generated sufficient consensus to permeate both the 'thin' moral arena of international politics and, to a lesser but vital extent, the thicker moral understandings of our daily lives. As such, when the restrictions imposed by the current international system conflict with the few, inordinately valuable, moral prescriptions to which much of international society is committed, the system itself becomes vulnerable to demands for reform. In the context of HI, this ensures that in cases where the apparatus of the state has grown so repressive or civic authority has disintegrated so comprehensively, as to render nonsensical any suggestion of a self-determining people, the protection afforded by NS ought to be rescinded, allowing for HI. As such, whilst territorial integrity remains the abiding norm "[h]umanitarian intervention is justified when it is a response (with reasonable expectations of success) to acts that 'shock the conscience of mankind'".⁵⁷⁴

In such instances, the issue of agency is succinctly addressed through the assertion that when the UNSC fails to act promptly, any state, or group of states, equipped to take up its mantle is permitted to do so, irrespective of whether the principal motivation for intervention is humanitarian. The suggestion is that, under these highly specific circumstances, multilateralism may be considered to be at odds with the promotion and safeguarding of HR standards and that, this contradiction provides ample justification for the circumvention of the UN framework. In fact, in some of his most recent works,

⁵⁷⁴ Walzer, *Just and Unjust*, p.107

and in tones far more radical than his early interpretations of the imperfect duty of HI, Walzer has even begun to claim that the by-passing of the UNSC should represent one element of a process designed to create “a strong international system, organised and designed to defeat aggression, to stop massacres and ethnic cleansing, to control weapons of mass-destruction, and to guarantee the physical security of all the world’s people”.⁵⁷⁵ This ‘third degree of global pluralism’ would see political power diffused and balanced across many competing forms of governance, including organisations both above and below the level of the state. Walzer’s willingness to countenance institutional reform on this scale results not from the cosmopolitan conviction that political institutions must reflect *a priori* moral rights and duties but from the communitarian constructivist belief that the international political infrastructure has failed to keep pace with developing normative standards. In other words

[t]he reiterated facts of international politics are that the globalist institutions of international society are too weak and that retreat into the nation state is not the solution.⁵⁷⁶

However, as an analysis of Wheeler’s procedural approach has demonstrated, moral prescriptions still depend for their dissemination on politico-legal structures and these frameworks remain restrictive. It is certainly possible to make the case, for example, that long-standing occupations are a morally imperative component of successful HI; it is quite a separate prospect to suggest that intervening states might be forced to take seriously this obligation. Similarly, no matter how compelling the argument for the

⁵⁷⁵ Walzer, *Arguing*, p.155

⁵⁷⁶ Sutch, ‘International Justice’, p.523

circumvention of the UNSC in cases of political deadlock may be, it is still subject to the sustained opposition to unilateralism which unites some of the most powerful global political actors. Walzer's approach to these quandaries is a largely successful one precisely because it remains firmly anchored in his particularist account of morality and the right of individual political communities to determine their own domestic arrangements in the vast majority of instances. Although his views are undoubtedly progressive, Walzer's understanding of the complex and incremental nature of the development and crystallisation of political and legal norms ensures that his moral theory can be said to conform to the standard of feasibility which this thesis interprets as an integral component of the ontology of becoming. Whilst Walzer passionately believes that a substantial overhaul of international society is both necessitated and justified by the principle of reiterative universalism, he also concedes that becoming is a gradual process. As such "we need to let it happen in its own time. Forcing the issue corrupts the reiterative process".⁵⁷⁷ This is a frustrating and in some respects unsatisfactory position, especially in light of the lack of consensus over the injustices associated with gender inequality. However, Walzer's theory is self-consciously dynamic and is constructed with a view to facilitating and supporting normative developments including, potentially, shifts toward more equitable gender relations. In fact, the dynamic nature of reiterative universalism accounts for the development of Walzer's theory over the past thirty years. The conservative implications of the early editions of *Just and Unjust Wars* were responsive to the political realities of the Cold War and the,

⁵⁷⁷ Ibid, pp.525

then, relatively marginal status of HR norms. His more recent interpretations of the possibilities of implementing reforms to the international system reflect the degree to which the norms surrounding international justice have begun to take root in the diplomatic dialogue of the society of states. Therefore, normative developments in international society have impacted both on that society itself and on Walzer's approach to it. It is for this reason that "Walzer's pronouncements have grown more ambitious over the years",⁵⁷⁸ whilst still retaining a commitment to feasibility.

Perhaps the greatest strength of his hybridised version of constructivism is its ability to "speak of human rights and global justice to actors who still cherish sovereignty but are tentatively engaging in the discourses of humanitarianism and justice".⁵⁷⁹ The lesson of Walzer's communitarian constructivism in an analysis of an international duty of justice is, therefore, double-edged. He provides the means to argue that a constructed duty of justice has arisen as a consequence of changing expectations within international society, and the developing conviction that the pursuit of justice is a legitimate element of the maintenance of international order. However, he also places restrictions of the kinds of activities permitted under the auspices of this international duty of justice, arguing that in many cases it is most effectively honoured by demonstrating due respect and deference to the cultural diversity at work in international politics.

⁵⁷⁸ *Ibid*, p.214

⁵⁷⁹ *Ibid*, pp.530

Conclusion

Drawing together the competing imperatives identified by constructivists in their appraisal of becoming in international society is a complex but instructive exercise. No one set of prescriptions for the manner in which PIL and international politics could and should evolve emerges from this process, since there are aspects of each branch of the constructivist project which often challenge or contradict one another. It is not within the scope of this project definitively to identify those normative standards which constitute an exhaustive conception of international justice. Nevertheless, in hybridising constructivist theorising with a range of other approaches to IR concerned with the expansion of the normative agenda of international society, this thesis has sought to expose to critical scrutiny some of the embedded assumptions regarding the relationship between international order and international justice and the suggestion that the appeal to justice is the exclusive preserve of the liberal universalist. In so doing, it has examined the issue of HI and posited the notion that more general themes and precepts concerning becoming might be extrapolated from such an overview. This concluding chapter will seek to recapitulate the varying defences and critiques of HI with which the project has engaged, before assessing the wider implications for the pursuit of international justice of a theoretical framework which combines casuistical analysis with a gender-sensitive, constructivist, ontology of becoming.

I. The Theoretical Basis for Humanitarian Intervention

Although each of the forms of constructivism with which this thesis has engaged adopts a different approach to the role of morality in IR, they are, at the very least, united in their belief that this role exists. Although this may appear to be somewhat of an oversimplification it is, in fact, imperative not to under-estimate this commonality, since it places constructivism at odds with the hegemonic realist paradigm, which denies that the behaviour of global political actors is responsive to moral principles. All constructivists emphasise that “it is not an unchanging fact that the international realm is a self-help system. Rather, the international environment is created and recreated in processes of interaction”,⁵⁸⁰ which impact upon both the behaviour of states and the institutionalisation of moral standards.

However, key differences exist between the perception of morality among various constructivist advocates, with communitarian constructivism basing its moral claims exclusively on incremental normative developments and consensus across international society. According to this argument, multilateral HI is a defensible practice, albeit only under the most extreme of circumstances. This is because the norms which surround it have been accepted by a number of influential global political actors. The legitimacy of HI depends upon this cross-cultural agreement and so must the extent to which it is allowed to take place. All the sub-categories of the debate are defined and resolved according to moral principles which have taken root through negotiation and the development of shared meanings; comprehensible to a

⁵⁸⁰ Maja Zehfuss, ‘Constructivism and Identity: A Dangerous Liason’, *European Journal of International Relations*, 7(3), 2001, pp315-348, pp.317

range of political communities. HI is justified according to a set of HR standards which have found favour in a post-Holocaust international society, and this emerging HR culture is beginning to shift the focus from 'sovereignty as power' to 'sovereignty as responsibility'. The key term here, however, is 'beginning' and communitarian constructivists are conservative in their estimates of whether or not HR could ever usurp states' rights. In fact, according to communitarian principles, such an eventuality would not necessarily represent a positive development for international society, since membership of a specific political community provides a sense of belonging and a cultural and moral framework for the individuals who constitute it. Impinging upon the relationship between the individual and the political community to which they belong is an imposition which is only justified when the affiliation between the two has collapsed or been rendered meaningless. As such, an international duty of justice, for communitarian constructivists, is restricted by the duty to respect territorial boundaries, wherever possible, and to maintain order through adherence to the legal framework on which international society is based. This almost certainly results in even the most liberal of states becoming complicit in appalling HR abuses and also leads to the conclusion, disturbing for some, that the moral progress which has been secured in international politics is precarious and contingent upon the continued support of some of the most *morally dubious* of global political actors. Nonetheless, this conception of both politics and morality as an imperfect compromise between international order and international justice is perceived by communitarian constructivists as the most effective means by which to preserve our fragile HR culture. After all, according to this perception,

at least to some extent, “[t]he formal authority of the international system is what gives human rights their normative value”.⁵⁸¹

In contrast, for solidarist and cosmopolitan constructivists, the origin of our obligation to ‘suffering humanity’ is an *a priori* commitment to the moral equality of persons. Although more likely to concede the instrumental moral value of statism than their cosmopolitan contemporaries, solidarists are nonetheless equally prepared to seek recourse in first principles when the occasion serves. These theorists are unified in their assertion that the role of a state is to protect its citizens and that once its behaviours demonstrate its unwillingness or inability to do so it forfeits its right to territorial integrity. Although, both cosmopolitan and solidarist constructivists argue that this principle is enshrined in elements of international legal doctrine which prioritise HR, they would also be inclined to suggest that even if it were not, the obligation to defend those who are persecuted by their own state authority would be generated by the abuse of our fellow human beings. As a result, according to cosmopolitan (and some solidarist) constructivists, breaching PIL in the name of this cause is justified and a necessary element of the moral development of these legal principles. An international duty of justice in this context may involve overturning the very restrictions identified by communitarian constructivists and establishing a competing framework in which HR provide the foundation for an alternative approach to PIL.

⁵⁸¹ Jim Whitman, ‘Global Governance as the Friendly Face of Unaccountable Power’, *Security Dialogue*, 35, pp.45-57, pp.48, (emphasis added)

Whether this takes the form of Buchanan's League of Democracies, or necessitates the abolition of the veto within the UNSC, our duty to respond to HR violations wherever they may occur appears to engender an extremely broad commitment to HI. It also relies upon the assumption that liberal moral principles are universally applicable, something which communitarian constructivists and most feminist commentators reject. It is for this reason that the cosmopolitan/solidarist constructivist approach to the matter of HI might be deemed somewhat utopian. Whilst the communitarian constructivist position almost certainly allows for a range of abuses to continue unchecked, a more cosmopolitan outlook threatens to result in disorder, as those states which have tentatively committed themselves to HR standards retreat into an overtly pluralist stance and an uncooperative attitude to international institutions, and the HR standards and conventions which have been established since the middle of the 20th Century are left hanging in the balance. It is on this basis that communitarian constructivists defend casuistical over systematic analysis; arguing that a case-by-case assessment is not only more responsive to an understanding of norm dynamics but also maintains the degree of flexibility necessary to achieve and maintain the compromise and consent which are still so vital in the context of international society and PIL.

The dimensions of feminist IR which provide the basis for feminist constructivism have much to contribute to the complex debate surrounding becoming and the international duty of justice. In the first instance, feminist constructivism encourages global political actors to frame their conception of

international justice in light of its relationship to the value of care. In terms of HI, this entails moving beyond the theoretical justification of the use of force and engaging with the impact of political violence on the lives of the individuals within, and beyond, a target state. In other words, feminists encourage theorists and practitioners of HI to conceive of humanitarian suffering in broader terms than a focus on militarism has tended to allow.

The critical capacity of feminist constructivism also seeks to unpack the deeply ingrained assumptions at the heart of cosmopolitan constructivism, which have tended to conflate HR with the rights of men. Accordingly, feminist constructivists acknowledge that the dominant narratives of 'morality' are, in many respects, an extension of particular masculinist hegemonic discourses and ought not to be accepted as, in any way, natural or immutable. Feminist constructivism also offers the means to critique communitarian constructivism, by problematising the belief that the state is necessarily the most appropriate 'protector' or disseminator of HR standards and drawing attention to the unequal 'inside/outside' power relations which maintain the privileged position of states among other global political actors. Similarly, it calls into question whether a focus on elite-level consensus, typical of certain elements of communitarian constructivist theorising, truly provides an adequate means to assess and categorise justice claims given how unequal the distribution of such political roles is in both the national and international spheres.

Although critical of the state-centric overtones of the communitarian constructivist project, feminist constructivism also calls into question the

liberal belief that HR ought to displace states' rights, arguing that a gender-blind account of HR is as damaging to women and feminised groups as are the more statist elements of IR theory. However, despite its vocal criticism of the liberal project, feminist IR in its broad incarnation remains subject to many of the same limitations as cosmopolitan constructivism; namely the matter of how the existing state consent model might be modified to take account of the challenges presented by progressivist analysis. For many feminist commentators, the notion that it might be possible to affect meaningful change to the current state system is implausible and leads to a focus on criticism, as against prescriptions. As this thesis has sought to demonstrate, however, feminist constructivism offers the potential for critique to be framed in a language which might be accessible to the mainstream and for change to be executed in an incremental and realistic fashion.

Alternatively, as R. Charli Carpenter has proposed, the merits of the analytical category of gender can be appropriated into 'gender constructivism', in terms which are distinct from the feminist commitment to the emancipation of women. In this context, a gender-lens can be used simply to broaden our understanding of becoming. A gender-sensitive ontology of becoming, even absent feminist assumptions, is one which allows not only for a more nuanced appreciation of humanitarian suffering but also for a clearer conception of the socially constructed nature of international politics than supposedly 'gender-neutral' analysis has been able to secure.

Although substantial disagreement persists among constructivists, as to the basis of morality, all of the theoretical subsets of constructivism place an emphasis on HR. The views of many of these theorists can be placed on a continuum, with cosmopolitan constructivists most vociferously committed to a set of HR standards which can transcend borders; solidarist constructivists prepared to argue that the value of pluralism is constrained by the need to honour the rights of life and liberty; and communitarian constructivists asserting that whilst, in the majority of cases, political issues ought be resolved within political communities, in instances where this proves impossible, intervention by the wider international community should be permitted. Feminist constructivism cannot be categorised quite so simply but a number of commentators working in this field would concede, albeit with extensive caveats relating to non-combatant immunity and preventative measures, that some conception of HR (one which attempts to guarantee a focus on gender equality) might, in extreme cases, serve as a justification for the recourse to force. So it is that a range of constructivist theorising might be said to converge on the conviction that HI is a necessary element of a wider international duty of justice.

II. The Components of Humanitarian Intervention

i. Just Cause

Having established that, at least in principle, all four branches of constructivism can be used to defend HI, *in the most extreme of circumstances*, it now seems fitting to address precisely what form those circumstances might take. Again, a review of the viewpoints espoused by

each group reveals extensive agreement. Feminist, cosmopolitan, solidarist and communitarian constructivists all identify the threshold for *military action* as being extremely demanding, with nothing short of actual or impending genocide, or other equally alarming crimes against humanity, considered as adequate justification for the use of force. This is due to the fact that military incursion, even when conducted in a fashion which accords the highest priority to non-combatant immunity will inevitably cost human lives. In fact, at least from the perspective of communitarian, solidarist and some feminist constructivists, the risks attached to military incursion are so high that they can only be approved on a case-by-case basis.

Most branches of constructivism are capable of acknowledging the inter-related nature of structural inequalities, extreme poverty, and political violence. This suggests that not only might HI be most successfully appraised in light of issues of redistributive justice but also that measures short of military incursion (well-managed economic sanctions, political and diplomatic pressures, and systemic reform designed to address ingrained hierarchies and inequalities) might be justified by a more expansive reading of the principle of conditional sovereignty. The commitment to international justice implied by this appraisal is much further reaching than anything advocated by most communitarian constructivists, but is also considerably less amenable to the current restrictions of a consensual international society. Nevertheless, most constructivists contend that “[i]t is important to remember that the ‘responsibility to protect’ does not begin when armed conflict begins; rather,

avoiding the outbreak of violence is another form of peace-making or keeping".⁵⁸²

The contribution of feminist constructivists to the matter of just cause goes further, however, with the role of narrative and discourse analysis subverting some of the assumptions woven into JW theory. Commentators like Anne Orford and Iris Young have successfully demonstrated that the category of just cause can be used to manipulate public sentiment, encouraging HI where it is not justified and avoiding it where it is necessary but not strategically viable. The transition from 'the right to intervene' to the 'responsibility to protect' has, arguably, consolidated this process, with the powerful rhetorical impact of notions of 'protection' threatening to reawaken imperialist ambitions and language. Therefore, the position of feminist constructivists is dichotomous. On the one hand, advocates of this position would like to witness more active (non-violent) intervention into the processes which lead to outbreaks of political violence but on the other, they would argue that the narratives used to justify intervention are often divisive and counter-productive.

ii. Agency

Constructivists from the cosmopolitan, solidarist and communitarian traditions have all turned their attention to the issue of agency and all have explored the possibility of overturning the exclusive jurisdiction of the UNSC. One proposition which emerges from this analysis is that if the UNSC fails to

⁵⁸² DesAustels and Whisnant (ed), *Global Feminist Ethics*, p.196

discharge its duties, it forfeits its claim to legitimacy and can be circumvented. This position is surprisingly broad in its appeal and finds favour across the theoretical spectrum. In advocating the circumvention of the UNSC Buchanan, Walzer (and to a lesser extent) Wheeler are suggesting that adherence to normative principles can even provide a basis for breaching the terms of PIL. This would appear to suggest that the 'middle ground' of constructivism has served partially to reconcile competing cosmopolitan, solidarist and communitarian perspectives. Although their conceptions of the origins of individual rights claims may differ, all three commentators appear to defend the position that the appeal to HR can (albeit to varying extents) transcend a legalistic commitment to the restrictions of the UN system. Once again, however, the distinction between casuistical and systematic analysis is pertinent in that Walzer and Wheeler allow for the ad hoc compromising of certain legal standards, either through 'emergency ethics' or mitigation, whereas Buchanan insists on the deliberate precedential reconceptualisation of those legal restrictions which are at odds with his foundational normative commitments.

This leads to a further critique of Buchanan's position, namely the suggestion that insufficient consensus over the superiority of *liberal* principles exists to support the notion of *liberal democracies* assuming a leading role in the regulation of the use of force. Whilst calls for the establishment of an alternative institution are popular among liberals, in truth "there is very little sign of their reflecting any political or legal consensus within international

society as a whole”.⁵⁸³ This provides a further indication of the fact that the most effective prescriptions for becoming may entail case-by-case analysis and the ‘bending’ or reinterpreting of certain legal principles, rather than the flagrant and deliberately precedential infringement of PIL.

From the perspective of feminist constructivism, the crucial and divisive nature of the agency issue has been exaggerated. In fact, the suggestion is that in HI narratives, the UNSC, regional organisations, and individual states such as the US are presented as “largely interchangeable... heroic agents of progress, democratic values, peace and security, who shape target states through their interventions”.⁵⁸⁴ The most pressing consideration for feminist constructivists is that HI should not depend for its legitimacy on the exclusive matter of which agent spearheads it but, rather, on how and why it is conducted and whether it is based on more than the gendered and racialised dichotomies which so often underpin international politics.

iii. Motivation, Means, and Settlement

The issue of motivation represents a quandary in that whilst, in principle, many commentators argue that the strategic or neo-imperialist ambitions of the powerful must be restrained, forcing states to act on purely humanitarian impulse virtually precludes the possibility of HI. However, despite noteworthy differences of opinion concerning the acceptance, or otherwise, of mixed motivation and its likely impact upon the success of HI, extensive agreement exists as to the related matter of military means; specifically, that HI ought not

⁵⁸³ Hurrell, *Global Order*, p.156

⁵⁸⁴ Orford, ‘Muscular’, pp.692

to take the form of aerial bombardment. In the simplest of terms, if the conditions on the ground justify HI (either from the perspective of covering-law or reiterative universalism) then they also provide justification for risking the lives of military personnel. Whilst, of course, the safety of soldiers is an enormously important consideration “a fixed policy that *their* lives are expendable while *ours* are not can’t...be justified”.⁵⁸⁵ Hence, the suggestion, framed in somewhat litotic terms by ND White that “Bombing in the name of humanity may be a cause for concern for the international community”.⁵⁸⁶ For advocates of a constructivist approach to HI, the *jus in bello* standards dictated by JW theory represent a firmly established international norm which has at its core the “absolute principle that civilians are not legitimate targets of war. This norm is enshrined in all the instruments of international humanitarian law, notably the Geneva Conventions (including the two additional Protocols signed in 1977), and it is a moral standard against which states feel it necessary to justify their actions”.⁵⁸⁷

A certain degree of purity of motivation and a responsible choice of military means are also likely to facilitate the establishment of a just settlement. Nevertheless, there can be no ‘quick-fix’ in post-conflict resolution. As Thomas Weiss has claimed, in colloquial but persuasive terms:

[T]hose civilians and soldiers who are looking for clear mandates and unambiguous exit strategies are demonstrating that they cannot stand the

⁵⁸⁵ Walzer, *Just and Unjust*, xiv

⁵⁸⁶ ‘The Legality of Bombing in the Name of Humanity’, *Journal of Conflict and Security Law*, 5(1), 2000, pp.27-43, pp.43

⁵⁸⁷ Nicholas Wheeler, ‘Protecting Afghan Civilians from the Hell of War’, Social Science Research Council, [online], <http://essays.ssrc.org/sept11/essays/wheeler.htm>, [02/02/09]

heat generated by situational ethics. They should stay out of post-Cold War humanitarian and peace operations' kitchens.⁵⁸⁸

All of the constructivists who have turned their attention to the issue of HI appear to concur with this perspective, including Walzer who now believes that the 'in and out' test has been discredited by real world events. However, the challenge of offering support to a target state once widespread violence has ceased should not serve to mask campaigns of enforced democratisation, or open the door to neo-colonialism. As this thesis has demonstrated, support for the R2P among developing states is currently tentative at best and any indication that HI carries with it an undertone of occupation will see even this limited endorsement withdrawn. The key appears to lie in conducting campaigns with the requisite cultural sensitivity and appreciation of events on the ground so that the complexities of warfare can be understood. The notion that HI is conducted to rescue 'good guys' from 'bad guys' and that once military engagement draws to a close these 'good guys' can be relied upon to restore good governance is a grotesque and dangerous over-simplification which can raise the political capital of fringe, dissident, groups and even encourage the escalation of genocidal violence both before and after intervention.⁵⁸⁹ An ontology of becoming which takes account of the patriarchal implications of an ill-conceived approach to post-conflict resolution demonstrates that, if HI is to resolve disorder, rather than engender it, intervening states must do more than pay lip service to the tripartite structure

⁵⁸⁸ 'Researching Humanitarian Intervention', pp.425

⁵⁸⁹ See Jide Nzelibe, 'Courting Genocide: The Unintended Effects of Humanitarian Intervention', *Public Law and Legal Theory Series*: Northwestern University School of Law, Social Science Research Network, <http://ssrn.com/abstract=1290654>

of the R2P and ensure that the duty to rebuild is taken as seriously as the duty to react.

III. The Ontology of Becoming and the Constructed Duty of Justice

Having recapitulated the responses to the various subcategories of debate which inform discussions of HI, it now seems pertinent to attempt to extrapolate from these findings, some coherent constructivist principles of justice. This process brings to light the analytical virtues of two key concepts which have formed the basis of this thesis: the ontology of becoming and the constructed duty of justice. In simple terms, the relationship between international justice and the feminist constructivist conception of the ontology of becoming represents the cornerstone of this project. The single most significant contribution of feminist constructivism to this debate, and wider discussions of international justice, is the ontological shift from being to becoming. 'Mainstreaming' this notion encourages constructivists to combine a descriptive account of the realities of international politics with a prescriptive, yet realistic, appraisal of the direction in which international society could and should develop. It affords feminist critique the respect that it deserves in that it consciously moves beyond the tendency to 'add gender and stir' but, equally, it forces those who are resistant to a mainstream engagement with gender to justify what are often knee-jerk accusations of cooption. The ontology of becoming identifies moral progress where it has taken place, without overstating such developments, and because it is openly normative, it allows its advocates to argue for a hierarchy of norms which privileges basic HR standards. Thus,

[c]onstruivists might seek to identify the design features that facilitate the type of interstate interaction most likely to positively transform identities and interests around a preferred international norm.⁵⁹⁰

This effectively indicates that there is no implicit contradiction in accepting that a diversity of viewpoints constitute international society and yet simultaneously attempting to generate legitimacy for a particular perspective, by publicly raising certain moral claims and attempting to secure agreement over their content. In line with communitarian constructivist assumptions, this process is likely to prove most successful if the moral claim tallies with principles which are already common to a multitude of political communities, or, in other words, is based on appeals to the most basic of HR. Hence, notions of 'sovereignty as responsibility', which are designed to limit genocidal violence, are generally more palatable to the member states of the UN than would be the establishment of a League of Democracies, which might have at the heart of its agenda "the aim of moving all other societies toward liberalism".⁵⁹¹ Although, this is an uncomfortable proposition for those who contend that "[j]ustice requires efforts to project democratic commitments beyond national borders",⁵⁹² this is largely because these cosmopolitan constructivist philosophers often overestimate the degree to which democratic governance has emerged as an international norm, which favours HR over all other considerations.

⁵⁹⁰ Anne-Marie Slaughter, Andrew S. Tulumello and Stepan Wood, 'International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship', *The American Journal of International Law*, 92(3), July 1998, pp.367-397, pp.386

⁵⁹¹ Nagel, 'Global Justice', pp.134

⁵⁹² Andrew Linklater, 'The Evolving Spheres of International Justice', *International Affairs*, 75(3), July 1999, pp473-482, pp.477

The ontology of becoming forces us to accept that international justice is constituted by “both the rights of states and the rights of individuals”⁵⁹³ and that, as such we are faced “somewhat inevitably” with “the philosophically untidy and politically elastic notion that the scope of our obligations to individuals in other societies varies in time and space”⁵⁹⁴. This is not to suggest that “the duties of justice are” exclusively or even “essentially duties to our fellow citizens”⁵⁹⁵ but it is to make clear that any obligations which amount to “justify beyond borders”⁵⁹⁶ are necessarily limited. The guideline, drawn from Buchanan, that the prescriptions for international justice are conceivable if and only if they can withstand the demands of institutionalisation certainly provides one among many instructive yardsticks for ensuring the feasibility of proposals for becoming. However, feminist critics espouse the suggestion that institutions of global governance ought not to be perceived as a panacea. Instead, new or modified institutional mechanisms ought to do more than replicate the failings of their predecessors.

Even within an institutional framework, one of the principal challenges for justice theorists is balancing the competing rights claims of states and individuals and of citizens and ‘strangers’, it appears that the ‘middle ground’ between feminism and constructivism effectively provides the ‘middle ground’ between international order and international justice, between

⁵⁹³ Stanley Hoffman, *Duties Beyond Borders: On the Limits and Possibilities of Ethical International Politics*, (Syracuse, NY, Syracuse University Press, 1981), p.156-157

⁵⁹⁴ Ibid

⁵⁹⁵ Nagel, ‘Global Justice’, pp.135

⁵⁹⁶ Geoffrey Best, ‘Justice, International Relations and Human Rights’, *International Affairs*, 71(4), October 1995, pp.775-799, pp.780

cosmopolitanism and communitarianism, and between interventionists and non-interventionists. This is because its advocates can successfully sketch the relationship between power and legitimacy and the incremental development of international norms. In so doing, they can concede that:

[T]he maintenance of legitimacy requires that states conform with the international community's conception of justice. This conception changes from era to era, and thus there can be no single standard from which to judge what is just.⁵⁹⁷

However, they can also maintain that:

[t]here is a tendency for a single concept of legitimacy to become generally dominant in a particular era. Statist principles, reflecting a legitimization that is founded on bases ranging from the balance of power to dynastic conservatism, have dominated at times. However, 'the modern era has also seen the establishment of national self-determination as the basis of legitimate statehood, and the global extension of the reach of this legitimising principle has been one of the most significant developments of recent decades.'⁵⁹⁸

Similarly, it is possible to contend that the focus on self-determination as the dominant 'concept of legitimacy' could, in time, be re-envisaged by the development of the discourse of HR. This process is not, as cosmopolitans would claim, already embedded across international society, neither is it, as realists or some pluralists would argue, a fanciful notion which has absolutely no purchase beyond the West. It is, instead, an aspirational and incremental set of standards which is becoming increasingly commonplace in the

⁵⁹⁷ Wellens, *United Nations Security Council*, pp.44

⁵⁹⁸ *Ibid*

language of inter-state relations and which can be accessed, analysed, and arguably consolidated through the ontology of becoming.

In fact, language itself is a core element of the ontology of becoming. This is due both to the fact that the influence of feminist IR encourages the unpacking of loaded or bias discourse and to the potential for moral progress implicit in the language of diplomacy. After all,

[t]he argument that language constitutes reality is invariably used to show how a certain terminology sustains oppressive and unjust structures. But it has never been entirely clear why language need necessarily function in such a negative fashion; as good governance terminology permeates the international discourse, and becomes institutionalised in legal documents, is it not possible that it might help to constitute a more just reality?⁵⁹⁹

IV. Concluding Remarks

Each of the preceding chapters has been structured with a view to reassessing and augmenting the debate surrounding international justice and HI by investigating the nature and scope of the constructivist ontology of becoming. The contribution of the gender-sensitive perspective of feminist constructivism is to encourage a broader and more sophisticated understanding of humanitarian suffering; one which takes a fuller account of the economic disparities and gendered and racialised inequalities which permeate international society. It also emphasises the importance of deconstructing the 'heroic narratives' which often inform the rationale for HI and breaking away from assumptions concerning the universality of western

⁵⁹⁹ Armstrong, 'Law, Justice', pp.561

masculinist conceptions of HR and liberal preconceptions of the neutrality of institutions of global governance. Allen Buchanan, though not always sufficiently constrained by the standards which he establishes to govern ideal theory, nonetheless brings to bear a compelling appraisal of the nature of institutional and political feasibility which can be incorporated into the ontology of becoming. Nicholas Wheeler mounts a persuasive defence of the value of criteria-based casuistical analysis and investigates the possibility that PIL might be modified to take account of humanitarian imperatives, without precipitating the degree of international disorder feared by pluralists. Finally, Michael Walzer posits the notion that traditional JW accounts of HI might be adapted to incorporate the requirement of *Jus ad vim*, whilst also contending that developments in the extent and depth of normative consensus have the potential to lay the foundations for a 'third degree of global pluralism' in which the apparent dichotomy between states' rights and human rights may prove increasingly reconcilable.

So it is that in matters of international justice, the ontology of becoming, shared by a range of constructivist commentators, emphasises the potential for durable reform in international society but anchors this commitment in a realistic appraisal of the limitations of the current state system. In so doing, it builds upon Hedley Bull's suggestion that "it is better to recognise that we are in darkness than to pretend that we can see the light"⁶⁰⁰ by arguing that that instead of 'pretending', we can make use of that little knowledge which we do share to 'imagine' what this light might look like and in which direction it is

⁶⁰⁰ *The Anarchical Society: A Study in World Politics*, (London, Macmillan, 1977), p.320

liable to lead us. There should be no automatic assumption that the teleological progress of international society will lead inexorably to a world of democratic states but neither should we embrace the defeatist and reductivist assumption that progress within the system is impossible. Instead we should accept that “while a world society is clearly not taking shape on the back of developments of the kind described by... progressivists, neither is the society of states unchanged from its nineteenth century form”.⁶⁰¹ In short, inter-state relations have begun to evolve as “justice considerations have moved to the centre of the discipline”⁶⁰² and there is every reason to believe that this evolution, no matter how inconsistent and frustratingly incremental, can and will persist in the future.

Given the vast array of theoretical and practical challenges which inform HI, it is little wonder that no one theoretical account has proved able to encapsulate or resolve this impenetrable issue. HI and international justice more generally, pit the central foundational assumptions of international society against one another and beg a series of seemingly unanswerable questions as to how a system of state consent can take seriously the demands of individual rights. Whilst it is beyond the scope of this thesis to provide comprehensive responses to these mystifying enquiries, it is the combination of the ontology of becoming and the constructed duty of justice which, at the very least, establishes a framework for future research and critical engagement with competing approaches to international justice.

⁶⁰¹ Ibid, pp.558

⁶⁰² Linklater, 'Evolving Spheres', pp.747

Bibliography

'A Landmark Ruling on Rape', *The New York Times* [online], 24/02/01, <http://www.criminology.fsu.edu/transcrime/articles/A%20Landmark%20Ruling%20on%20Rape.htm>

Emanuel Adler, 'Seizing the Middle Ground: Constructivism in World Politics', *European Journal of International Relations*, 3(3), 1997 pp.319-363

Emanuel Adler, *Communitarian International Relations: The Epistemic Foundations of International Relations*, (London, Routledge, 2005)

David Armstrong, 'Law Justice and the Idea of a World Society', *International Affairs*, 75(3), July 1999, pp.547-561

J. Samuel Barkin and Bruce Cronin, 'The State and the Nation: Changing Norms and the Rules of Sovereignty in International Relations', *International Organisation*, 48(1), Winter 1994, pp.107-130

<http://news.bbc.co.uk/1/hi/world/africa/3496731.stm> [27/08/09]

Charles R. Beitz, 'Justice in International Relations', *Philosophy and Public Affairs*, 4(4), Summer 1975, pp.360-389

Alex J. Bellamy, 'Ethics and Intervention: The 'Humanitarian Exception' and the Problem of Abuse in the Case of Iraq', *Journal of Peace Research*, 41(2), March 2004, pp.131-147

Geoffrey Best, 'International Relations and Human Rights', *International Affairs*, 71(4), October 1995, pp.775-799

Hedley Bull, *The Anarchical Society: A Study in World Politics*, (London, Macmillan, 1977)

Yehuda. Z. Blum, 'Proposals for Security Council Reform', *The American Journal of International Law*, 99(3), July 2005, pp.632-649

David Boucher, *Political Theories of International Relations*, (Oxford, Oxford University Press, 1998)

David Boucher, 'The Law of Nations and the Doctrine of Terra Nullius', (forthcoming)

Chris Brown, 'Review Article: Theories of International Justice', *British Journal of Political Science* [online], 27(2), April 1997, pp.273-291

Chris Brown, 'Borders and Identity in International Political Theory', Mathias Albert, David Jacobsen and Yosef Lapid (eds), *Identity, Borders, Orders: Rethinking International Relations Theory*, (USA, Minnesota University Press, 2001)

Chris Brown, 'Towards a neo-Aristotelian Resolution of the Cosmopolitan-Communitarian Debate', Chris Brown, *Practical Judgements in International Political Theory: Selected Essays* (Oxford, Routledge, 2010) p.40-52

Allen Buchanan, 'Political Legitimacy and Democracy', *Ethics*, July 2002, pp.689-719

Allen Buchanan, *Justice, Legitimacy and Self-Determination: Moral Foundations for International Law*, (Oxford, Oxford University Press, 2004)

Allen Buchanan and Robert O' Keohane, 'The Preventive Use of Force: A Cosmopolitan Institutional Proposal', [Reprinted from] *Ethics & International Affairs*, 18(1), 2004, pp.1-22

Allen Buchanan, 'Institutionalising the Just War', *Philosophy and Public Affairs*, 34(1), 2006, pp.2-38

Allen Buchanan and Robert O. Keohane, 'The Legitimacy of Global Governance Institutions', *Ethics & International Affairs*, 20(4), December 2006, pp.405–437

Allen Buchanan, 'Reforming the International Law of Intervention', J.L.Holzgrefe and Robert O. Keohane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, (Cambridge, Cambridge University Press, 2007)

Scott Burchill, Andrew Linklater, Richard Devetak, Jack Donnelly, Matthew Paterson, Christian Reus-Smit and Jacqui True, *Theories of International Relations: Third Edition*, (Basingstoke, Palgrave Macmillan, 2005)

Michael J. Butler, 'US Military Intervention in Crisis, 1945-1994: An Empirical Study of Just War Theory', *Journal of Conflict Resolution*, 47(2), April 2003, pp.226-248

R. Charli Carpenter, 'Gender Theory in World Politics: Contributions of a Nonfeminist Standpoint?', *International Studies Review*, 4(3), Autumn 2002, pp.153-165

Terrell Carver (ed), 'The Forum: Gender and International Relations', *International Studies Review*, 5(2), 2003, pp.287-302

Hilary Charlesworth, Christine Chinkin and Shelly Wright, 'Feminist Approaches to International Law', *The American Journal of International Law*, 85, 1991, pp.613-628

Charter of the United Nations, [<http://www.un.org/aboutun/charter>]

Simon Chesterman, 'Legality vs. Legitimacy: Humanitarian Intervention, the Security Council and the Rule of Law', *Security Dialogue*, 33(3), 2002 pp.293-307

Noam Chomsky, 'Illegal but Legitimate: A Dubious Policy', (Lecture), Auditorium Henry Ford Building, Free University of Berlin, March 23rd 2005,
<http://www.americanvoicesabroad.net/30Mar05-Chomsky-Lecture-FU-Berlin.htm>,
[15/05/09]

Raymond Cohen, 'Rules of the Game in International Politics', *International Studies Quarterly*, 24(1), March 1980, pp.129-150

James Crawford, *The Creation of States in International Law*, (Oxford, Clarendon Press, 1979)

J. Samuel Barkin and Bruce Cronin, 'The State and the Nation: Changing Norms and the Rules of Sovereignty in International Relations', *International Organisation*, 48(1), Winter 1994, pp.107-130

Alex de Waal and Rakiya Omaar, 'Can Military Intervention be 'Humanitarian'?', *Middle East Report*, 187/188, , March-June, 1994, pp.2-8

Gerald Doppelt, 'Walzer's Theory of Morality in International Relations', *Philosophy and Public Affairs*, 8(1), Autumn 1978, pp.3-26

Barbara Ehrenreich, 'Prison Abuse; Feminism's Assumptions Upended; A Uterus is not a Substitute for a Conscience. Giving Women Positions of Power Won't Change Society by Itself', *LA Times*, May 16th 2004

Karen Engle, 'Feminism and its Discontents: Criminalising Wartime Rape in Bosnia and Herzegovina', *The American Journal of International Law*, 99(4), October 2005, pp778-816

Gareth Evans, 'Responsibility to Protect: An Idea Whose Time Has Come... and Gone', *International Relations*, 22(3), 2008, pp.283-298

Tony Evans and Peter Wilson, 'Regime Theory and the English School of International Relations: A Comparison', *Millennium: Journal of International Studies*, 21(3), 1992, pp.329-351

Richard A. Falk, *Achieving Human Rights*, (New York, Routledge, 2009)

Lee Feinstein and Ann-Marie Slaughter, 'A Duty to Prevent', *Foreign Affairs* [online], January-February 2004, pp.1-6,

<http://www.foreignaffairs.org/20040101faessay83113-p0/lee-feinstein-anne-marie-slaughter/a-duty-to-prevent.html>

Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change', *International Organisation*, 52(4), 1998, pp.887-917

Mona Fixdal and Dan Smith, 'Humanitarian Intervention and Just War', *Mershon International Studies Review*, 42(2), November 1998, pp.283-312

Rosemary Foot, John Lewis and Andrew Hurrell (eds), *Order and Justice in International Relations*, (Oxford, Oxford University Press, 2003)

Carlo Focarelli, 'The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine', *Journal of Conflict and Security Law*, 13(2), 2008, pp.191-123

Rainer Forst, (Translated from the German by Jonathan M. Caver) 'The Basic Right to Justification: Toward a Constructivist Conception of Human Rights', *Constellations*, 6(1), 1999, pp.35-60

Mervyn Frost, *Ethics in International Relations: A Constitutive Theory*, (Cambridge, Cambridge University Press, 1996)

Francis Fukuyama, *The End of History and the Last Man*, (New York, The Free Press, 1992)

Carol Gilligan, *In a Different Voice*, (Cambridge Massachusetts, Harvard University Press, 1982)

Ana Gonzalez-Paleaz and Barry Buzan, 'A Viable Project of Solidarism? The Neglected Contribution of John Vincent's Basic Rights Initiative', *International Relations*, 17(3), 2003, pp.321-339

Ryan Goodman, 'Humanitarian Intervention and Pretexts for War', *The American Journal of International Law*, 100(1), January 2006, pp.107-141

Sandra Harding, *The Science Question in Feminism*, (Ithaca, Cornell University Press, 1986)

Ian Harris, 'Order and Justice in 'The Anarchical Society'', *International Affairs*, 69(4), October 1993, pp.725-741

Stanley Hoffman, *Duties Beyond Borders: On the Limits and Possibilities of Ethical International Politics*, (Syracuse, NY Syracuse University Press, 1981)

Peter Hilpold, 'Humanitarian Intervention: Is there a Need for a Legal Reappraisal?', *European Journal of International Law*, 12(3), 2001, pp.437-467

Heidi Hudson, 'Doing Security as if Humans Matter: A Feminist Perspective on Gender and Human Security', *Security Dialogue*, 36(2), 2005, pp.155-171

Andrew Hurrell, 'Legitimacy and the Use of Force: Can the Circle be Squared?', *Review of International Studies*, 31, 2005, pp.15-32

Andrew Hurrell, *On Global Order*, (Oxford, Oxford University Press, 2007)

Kimberly Hutchings, 'Feminist Ethics and Political Violence', *International Politics*, 44, 2007, pp.90-106

ICISS Report, Synopsis, *Basic Principles*, (1B), <http://www.iciss.ca/pdf/Commission-Report.pdf>

(Report of the) 'Independent International Committee on Kosovo', (<http://www.reliefweb.int/library/documents/thekosovoreport.htm>), [12/03/08]

G. John Ikenberry and Anne-Marie Slaughter, 'Final Report of the Princeton Project on National Security', *The Princeton Papers*, 12th September 2006, pp.1-91,

Robert H. Jackson, *The Global Covenant: Human Conduct in a World of States*, (Oxford, Oxford University Press, 2000)

Robert H. Jackson, 'Sovereignty and its Presuppositions: Before 9/11 and After', *Political Studies*, 55(2), 2006, pp.297-317

Robert H. Jackson, 'Quasi-States, Dual Regimes and Neoclassical Theory: International Jurisprudence and the Third World', *International Organisation*, 41(4), Autumn 1987, pp.519-549

Adam Jones, 'Genocide and Humanitarian Intervention: Incorporating the Gender Variable', Presented as a paper to the Fourth International Bi-Annual Conference of the Association of Genocide Scholars, Minneapolis, 10th-12th June 2001, pp.1, <http://www.jha.ac/articles/a080.htm>, [27/05/08]

Robert Kagan, *The Return of History and the End of Dreams*, (London: Atlantic Books, 2008)

Robert O. Keohane, 'International Relations Theory: Contributions of a Feminist Standpoint', *Millennium: Journal of International Studies*, 18(2), 1989, pp.254-245

Robert O. Keohane, 'Beyond Dichotomy: Conversations Between International Relations and Feminist Theories', *International Studies Quarterly*, 42, 1998, pp.193-198, Blackwell Publishers

Robert O. Keohane, 'The Contingent Legitimacy of Multilateralism', GARNET Working Paper: No: 09/06, September 2006,
http://wi-garnet.uni-muenster.de/fileadmin/documents/working_papers/0906.pdf

Stefan Kircher, 'The Human Rights Dimensions of International Peace and Security and Humanitarian Intervention after 9/11', *Social Science Research Network*,
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=445124, [13/05/09]

Ted Kopf, 'The Promise of Constructivism in International Relations Theory', *International Security*, 23(1), Summer 1998, pp.171-200

Stephen Krasner, *Sovereignty: Organized Hypocrisy*, (Princeton NJ, Princeton University Press, 1999)

Friedrich Kratochwil, 'Politics, Norms and Peaceful Change' 24(5), *Review of International Studies*, 1998, pp.193-218

Nico Krisch, 'Legality, Morality and the Dilemma of Humanitarian Intervention after Kosovo', *European Journal of International Law*, 13(1), 2002, pp.323-335

Charles A. Kupchan, 'Minor League, Major Problems', *Foreign Affairs* [online], November-December 2008, <http://www.foreignaffairs.org/20081001faessay87607-p40/charles-a-kupchan/minor-league-major-problems.html>

Michael Levine-Clark, Review Article: 'We, the Peoples' The Role of the United Nations in 21st Century', *Journal of Government Information*, 28(5), September-October 2001, pp.571-574

Andrew Linklater, 'The Evolving Spheres of International Justice', *International Affairs* [online], 75(3), July 1999, pp.473-482

Richard Little, 'The English School's Contribution to the Study of International Relations', *European Journal of International Relations*, 6(3), 2000, pp.395-422

Birgit Locher and Elisabeth Prügl, 'Feminism and Constructivism: Worlds Apart or Sharing the Middle Ground?', *International Studies Quarterly*, 45(1), 2001, pp. 111-129

Naomi Malone, 'From Just War To Just Peace: Re-Visioning Just War Theory From A Feminist Perspective', 2004, <http://etd.fcla.edu/SF/SFE0000339/Thesis-new.pdf>

Thomas McCarthy, 'Kantian Constructivism and Reconstructivism: Rawls and Habermas in Dialogue,' *Ethics*, 105, October 1994, pp.44-63

Julie Mertus, 'Review of Saving Strangers: Intervention in International Society', *American Journal of International Law* [online], 97(1), pp.224-227

John McCain, "An Enduring Peace built on Freedom: Securing America's Future", *Foreign Affairs*, November/December 2007, The Council on Foreign Relations, <http://www.foreignaffairs.org/20071101faessay86602/john-mccain/an-enduring-peace-built-on-freedom.html>, [21/07/08]

Emma McClean, 'The Responsibility to Protect: The Role of International Human Rights Law', *Journal of Conflict & Security Law*, 13(1), 2008, pp.123-152

Justin Morris, 'UN Security Council Reform: A Counsel for the 21st Century', *Security Dialogue* [online], 31(3), 2000, pp.265-277

Thomas Nagel, 'The Problem of Global Justice', *Philosophy and Public Affairs*, 33(2), 2005, pp.113-147

Jide Nzelibe, 'Courting Genocide: The Unintended Effects of Humanitarian Intervention', *Public Law and Legal Theory Series*, Northwestern University School of Law, pp.8-36, Social Science Research Electronic Paper Collection, <http://ssrn.com/abstract=1290654>

Gerd Oberleitner, 'Human Security: A Challenge to International Law?', *Global Governance*, 11, 2005, pp.185-203,

Susan Moller Okin, 'Justice and Gender', *Philosophy and Public Affairs*, 16(1), Winter 1987, pp.42-72

Susan Moller Okin, 'Political Liberalism, Justice and Gender', *Ethics*, 105(1), October 1994, pp.23-43

Onora O'Neill, 'Gender and International Relations', *British Journal of Political Science*, 20(4), October 1990, pp.439-459

Anne Orford, 'Muscular Humanitarianism: Reading the Narratives of the New Interventionism', *European Journal of International Law*, 10(4), 1999, pp.679-711

Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*, (Cambridge, Cambridge University Press, 2003)

Bikhu Parekh, 'Beyond Humanitarian Intervention', Holly Cullen, Dino Krisiotis and Nicholas J. Wheeler (eds), *Politics and Law of Former Yugoslavia*, University of Hull, European Union Research Unit, 1993

Thomas Pogge, *Realizing Rawls*, (Ithaca and London, Cornell University Press, 1989)

John Rawls, *A Theory of Justice: Revised Edition* 4, (Cambridge Massachusetts, Harvard University Press, 1999)

John Rawls, *The Law of Peoples*, (Cambridge, Massachusetts Harvard University Press, 1999)

Christian Reus-Smit, 'Imagining Society: Constructivism and the English School', *British Journal of Politics and International Relations*, 4(3), October 2002, pp.487-509

Adam Roberts, 'Humanitarian War: Military Intervention and Human Rights', *International Affairs*, 69(3), July 1993, pp.429-449

Fiona Robinson, 'Feminist Ethics and Global Security Governance',
Paper prepared for panel on 'The Ethics of Global Governance', International Studies
Association, Chicago, 2007

<http://www.allacademic.com/meta/pmlaaparesearchcitation/1/8/0/4/2/p180423index.html>, [02/07/08]

Richard Rorty, *Contingency, Irony, and Solidarity*, (Cambridge, Cambridge University Press, 1989)

Lieutenant General John M. Sanderson (Ret'd), 'The Need for Military Intervention in Humanitarian Emergencies', *International Migration Review*, 35(1), Spring 2001, pp.117-123,

Henry Shue, 'The Burdens of Justice', *Journal of Moral Philosophy*, 80(10), October 1983, pp.600-608,

Beth A. Simmons, 'Capacity, Commitment and Compliance: International Institutions and Territorial Disputes', *Journal of Conflict Resolution*, 46(6), December 2002, pp.829-856

Anne-Marie Slaughter, Andrew S. Tulumello and Stepan Wood, 'International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship', *The American Journal of International Law*, 92(3), July 1998, pp.367-397

Carsten Stahn, 'Responsibility to Protect: Political Rhetoric of Emerging Legal Norm?', *The American Journal of International Law*, 101(1), January 2007, pp.99-120

Henry Steiner, Philip Alston and Ryan Goodman, *International Human Rights in Context: Law, Politics, and Morals*, 3rd Edition, (Oxford, Oxford University Press, 2008)

Peter Sutch, 'Reiterating Rights', Bruce Haddock and Peter Sutch (eds), *Multiculturalism, Identity and Rights*, (London, Routledge, 2003)

Peter Sutch, 'International Justice and the Reform of Global Governance: A Reconsideration of Michael Walzer's International Political Theory', *Review of International Studies*, 35, 2009, pp.513-530

Peter Sutch, *Governing the Use of Force: The United Nations or a League of Democracies*, (Forthcoming)

Fernando R. Tesòn, *Humanitarian Intervention: An Inquiry into Law and Morality*, Second Edition, (USA, Transnational Publishers, 1997)

Fernando R. Tesòn, 'The Liberal Case for Humanitarian Intervention' *Public Law and Legal Theory*, Working Paper, 39, (2001), Social Science Research Network Electronic Paper Collection, <http://papers.ssrn.com/abstract=291661>

William Thornton, 'Internationalism after the Cold War', *International Journal of Politics, Culture and Society* [online], 14(2), Human Sciences Press Inc, 2000, <http://www.springerlink.com/content/n5v86p520537u5511>

J. Ann Tickner, "'You Just Don't Understand' Troubled Engagements between Feminists and IR Theorists', *International Studies Quarterly*, 41, 1997, pp.611-632

J. Ann Tickner, 'Gendering a Discipline: Some Feminist Methodological Contributions to International Relations', *Signs: Journal of Women in Culture and Society*, 30(4), June 2005, pp.2173-2188

Stephen J. Toope, 'Emerging Patterns of Governance and International Politics', Michael Byers (ed), *The Role of Law in International Politics*, (Oxford, Oxford University Press, 2001)

Jean Tronto, 'Is Peacekeeping Care Work? A Feminist Reflection on 'The Responsibility to Protect'', *Global Feminist Ethics: Feminist Ethics and Social Theory*, Peggy DesAustels and Rebecca Whisnant (eds), (Rowman and Littlefield, 2007)

James Tully (ed), *Meaning and Context: Quentin Skinner and his Critics*, (Cambridge, Polity Press, 1988)

RJ Vincent, *Human Rights and International Relations*, (Cambridge, Cambridge University Press, 1990)

Michael Walzer, 'The Moral Standing of States: A Response to Four Critics', *Philosophy and Public Affairs*, 9(3), Spring 1980, pp.209-229

Michael Walzer, *Spheres of Justice*, (New York, Basic Books, 1983)

Michael Walzer, 'Nation and Universe', *The Tanner Lectures on Human Values* [online], (1989), <http://www.tannerlectures.utah.edu/lectures/walzer90pdf> 03/08/06

Michael Walzer, 'Response to Veit Bader', *Political Theory*, 23(2), 1995

Michael Walzer, 'The Politics of Difference: Statehood and Toleration in a Multicultural World', *Ratio Juris*, 10(2), 1997

Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, (New York, Basics Books, 2000)

Michael Walzer, The Ethics of Humanitarian Intervention in Ethics across the Curriculum Workshop [online], (University of San Diego, 2000) http://ethics.acusd.edu/video/Walzer/Workshop/Humanitarian_Intervention_Lecture.html

Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame, University of Notre Dame Press, 2002)

Walzer Interview, 2003 'The United States in the World – Just Wars and Just Societies: An Interview with Michael Walzer', *Imprints: A Journal of Analytical Socialism* [online], 7, (2003), <http://eis.bris.ac.uk/~plcdib/imprints/michaelwalzerinterview.html>, [28/02/06]

Michael Walzer, 'Arguing for Humanitarian Intervention', Nicolaus Mills and Kira Brunner (eds), *The New Killing Fields: Massacre and the Politics of Intervention*, (New York, Basic Books, 2003)

Michael Walzer, *Arguing about War*, (New Haven, Yale University Press, 2004)

Michael Walzer, 'Just and Unjust Occupations', *Dissent* [online], (Winter 2004), 1
www.dissentmagazine.org/article/?article=400

Michael Walzer, 'Regime Change and Just War', *Dissent* [online], Summer 2006,
<http://www.dissentmagazine.org/article/?article=663>, [06/08/09]

Cynthia Weber, 'Good Girls, Little Girls, and Bad Girls: Male Paranoia in Robert Keohane's Critique of Feminist International Relations', *Millennium: Journal of International Studies*, 23(2), 1994, pp.337-349

Thomas G. Weiss, 'Researching Humanitarian Intervention: Some Lessons', *Journal of Peace Research*, 38(4), July 2001, pp.419-428

Thomas G. Weiss, 'An Unchanged Security Council: The Sky Ain't Falling', *Security Dialogue*, 36(3), 2005, pp.367-369,

Thomas G. Weiss and Karen E. Young, 'Compromise and Credibility: Security Council Reform?', *Security Dialogue*, 2005, 36(2), pp.131-155, Sage Publications

Karel Wellens, 'The UN Security Council and New Threats to the Peace: Back to the Future', *Journal of Conflict and Security Law*, 8(1), 2003, pp.15-70

Alexander Wendt, 'Anarchy is What States Make of It: The Social Construction of Power Politics', *International Organization*, 46(2), Spring 1992, pp.391-425

Nicholas J. Wheeler, 'Pluralist or Solidarist Conceptions of International Society', *Millennium: Journal of International Studies*, 21(3), 1992, pp.463-487

Nicholas Wheeler and Timothy Dunne, 'Hedley Bull's Pluralism of the Intellect and Solidarism of the Will', *International Affairs*, 72(1), January 1996, pp. 91-107

Nicholas J. Wheeler, 'Agency, Humanitarianism and Intervention', *International Political Science Review: The Dilemmas of Humanitarian Intervention*, 18(1), January 1997

Nicholas J. Wheeler and Timothy Dunne, 'Good International Citizenship: A Third Way for British Foreign Policy', *International Affairs*, 74(4), October 1998, pp.847-870

Nicholas J. Wheeler and Timothy Dunne, *Human Rights in Global Politics*, (Cambridge, Cambridge University Press, 1999)

Nicholas J. Wheeler, 'Humanitarian Intervention and World Politics', John Baylis and Steve Smith (eds), *The Globalisation of World Politics* (Oxford, Oxford University Press, 2001)

Nicholas J. Wheeler, 'Humanitarian Intervention after Kosovo: Emergent Norm, Moral Duty, or the coming of Anarchy', *International Affairs*, 77(1), January, 2001, pp.113-128

Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, (Oxford, Oxford University Press, 2002)

Nicholas J. Wheeler, 'The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society', Jennifer M. Welsh (ed), *From Right to Responsibility: Humanitarian Intervention and International Society*, (Oxford, Oxford University Press, 2002)

(Interview with) Nicholas Wheeler, conducted at the University of Wales, Aberystwyth: 19/07/06

Nicholas Wheeler, 'Protecting Afghan Civilians from the Hell of War', Social Science Research Council [online], <http://essays.ssrc.org/sept11/essays/wheeler.htm>, [02/02/09]

Nicholas J. Wheeler, 'Operationalising the Responsibility to Protect: The Continuing Debate over where Authority should be Located for the Use of Force', *NUPI Report*, 3, 2008, pp.5-27,

ND White, 'The Legality of Bombing in the Name of Humanity', *Journal of Conflict and Security Law*, 5(1), 2000, pp.27-43

Jim Whitman, 'Global Governance as the Friendly Face of Unaccountable Power', *Security Dialogue*, 35, pp.45-57

John Williams, 'Pluralism, Solidarism and the Emergence of World Society in English School Theory', *International Relations*, 19(19), 2005, pp.19-38,

Iris Young, 'The Logic of Masculinist Protection: Reflections on the Current Security State', *Signs: Journal of Women in Culture and Society*, 29(1), 2003, pp.679-711

Maja Zehfuss, 'Constructivism and Identity: A Dangerous Liason', *European Journal of International Relations*, 7(3), 2001, pp.315-348

Appendix

E-mail, addressed to Professor Nicholas Wheeler, Aberystwyth University, dated 12/05/06:

Dear Professor Wheeler,

My name is Claire Malcolm and I am a Postgraduate Student at Cardiff University's School of European Studies. At present, I am engaged in preparation for my master's thesis, based on a critical engagement with the issue of humanitarian intervention. The project takes aim at a comparison between Michael Walzer's contribution to the debate and the central tenets of your own publication, *Saving Strangers*. With this in mind, I would greatly appreciate the opportunity to meet with you in person to discuss some of the issues surrounding the development of humanitarian intervention and the Responsibility to Protect. I anticipate that the interview I should like to conduct will take no more than an hour and, of course, I would be more than happy to provide you with a list of questions in advance. In the event that you may be able to make yourself available in the coming months, please could you contact me on this e-mail address to advise me as to which date(s) might be convenient for you.

Thank you in advance for your assistance in this matter.

