

Human Rights and the Sovereign State

**An Examination of the Compatibility of State
Sovereignty with the Humanitarian Necessities of a
Global World**

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A thesis submitted in partial fulfillment
of the distinction requirements
for the degree of

BACHELOR OF ARTS IN
POLITICAL SCIENCE

at

DUKE UNIVERSITY

2013

Abstract

This thesis looks at the problem of sustaining human rights in a world of sovereign states. What does it mean for the global human rights movement that the predominant form of political organization in the world is the individual sovereign state? What are the tensions between the theories of sovereignty and humanitarianism? I trace the origin of the modern notion of sovereignty in order to demonstrate the difficulties posed for the human rights movement by state sovereignty. I argue that the relationship between the two concepts is antinomic: human rights require the resources and structure of the state for their actualization, yet are simultaneously put at risk by the unchecked power of the state. Because the human rights movement relies on state stability, but the stability of the state does not rely on the provision of human rights, an imbalance of power exists. Examining notions of sovereignty that antedate our own, I conclude that the human rights movement must become an international force strong enough to counterbalance powerful individual states in order to encourage states to adhere to human rights norms. This involves greater coordination between many elements of the human rights movement, including individuals, NGOs, regional organizations, multilateral institutions, and the international justice system.

Acknowledgements

First and foremost, I would like to thank my advisor, Dr. Michael Gillespie, for the generous amount of time and energy he committed to working with me on my thesis. Professor Gillespie met with me every week, and always came to meetings with prepared notes and edits. Since sparking my interest in political theory through the Visions of Freedom Focus Program, he has been consistently supportive of my academic endeavors. Professor Gillespie – thank you for always leaving me with more questions than I began with; I have learned to think so much more deeply and thoroughly because of your teaching.

I would also like to extend my gratitude to Suzanne Pierce, who dealt with my many questions and concerns throughout this process with good humor and kindness, and to the Kenan Institute for Ethics, which helped develop my interest in statelessness, thereby pushing me to think harder about state sovereignty. A special thank you goes to my parents, Laura McBride and Bill Yaffe, for their unwavering support and constant willingness to be a sounding board for my ideas. Last but not least, I would like to thank my quick-witted brother, Noah Yaffe, whose insightful questions about a school debate topic similar to my thesis topic forced me to more clearly articulate a strong defense of my claims and ideas.

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Introduction

The sovereign state is the predominant form of political organization in the modern world. Sovereign states confer rights on individual citizens, using laws and policies to secure these rights within the territory of the state. Treaties and trade policies are made between sovereign states, and state leaders guide the decisions made through the United Nations. According to Stephen D. Krasner, the former Director of Policy Planning at the United States Department of State, “Sovereign states are the building blocks, the basic actors, for the modern state system.”¹ The political structure of the world both within states and between them has been shaped by state sovereignty.

Yet state sovereignty is not the only formative element of political modernity. From moral notions of a supranational political organization first laid out by Immanuel Kant to the goals of the 19th Century Concert of Europe, the idea of the League of Nations, and the mandate of the United Nations, a significant alternative idea of political organization that focuses on transnational problems and universal moral ideals has developed alongside this state-centric notion. Whereas sovereignty theory “. . . stresses the division of the world into exclusive territorial jurisdictions . . .”,² universal theories (such as those that undergird the human rights movement) ignore territorial exclusivity

¹ Krasner, Stephen D. “Abiding Sovereignty.” *International Political Science Review/Revue Internationale de Science Politique* 22 (3, Transformation of International Relations: Between Change and Continuity. Transformations des relations internationales: entre rupture et continuité): 230 (2001). <http://www.jstor.org/stable/1601484>.

² Väyrynen, Raimo. "Sovereignty, Globalization and Transnational Social Movements." *International Relations of the Asia-Pacific* 1 (2): 227-246. (2001). doi:10.1093/irap/1.2.227.

and seek to redefine the relationship³ between the individual “one” and the collective “many.”⁴ Today, the human rights movement, increased globalization, and the development of multilateral institutions have been factors in a growing global focus on problems that transcend political borders and connect individuals worldwide. Human rights activists argue that the international community has obligations towards individuals around the world when their domestic governments cannot or will not protect them, and non-state actors such as Human Rights Watch and Amnesty International attempt to raise international awareness about global human rights violations and prod both individuals and states into action. The call for international recognition and action regarding human rights contrasts with the sovereign state’s theoretical independence from concerns other states face, an independence that vastly diminishes the preconceived need to intervene in the internal matters of those states to secure the rights of individuals. Thus, while state sovereignty continues to be a central basis from which humanity operates in the political realm, the absolute control over internal affairs that is a hallmark of sovereignty is increasingly problematic in a globalizing world.

In this thesis, I ask whether the dominant political organization of our time, the sovereign state, is compatible with the humanitarian necessities of a global world. As no work of this scope can answer this question as a whole, I examine a subset of questions about the problem of sustaining human rights in a world of sovereign states, namely: 1)

³ Gillespie argues that the “fundamental philosophical question” is “whether being itself is one or many.” The purpose of political theory is to determine “. . . how we might reconcile or explain the relationship between the one and the many that we are in this time and place.”

⁴ Gillespie, Michael Allen, "Sovereign States and Sovereign Individuals: The Question of Political Theory," In *Freedom and the Human Person*, edited by Richard L. Velkley, (Washington DC: Catholic University of America Press, 2007), 109.

What are the theoretical foundations of both state sovereignty and the modern human rights movement? 2) What are the contradictions between sovereign states and global humanitarianism (e.g. the human rights movement)? 3) Does an understanding of the development of sovereignty offer us any clues with respect to overcoming these contradictions? To address the problems for the human rights movement posed by current notions of the sovereign state, I first explore the development of modern sovereign institutions, their purposes, and their limitations, before similarly examining the development of relevant humanitarian theory. After, I consider the tensions between sovereignty and the human rights movement in regards to both capacity and moral theory. Finally, I discuss ways in which to address the complexity of the relationship.

Ultimately, I will argue that the relationship between sovereign states and universal human rights is an antinomy: Because sovereign institutions have absolute authority over internal affairs, the state is the most effective means of obtaining real protection for political and human rights. At the same time, this authority also makes the sovereign state the greatest threat to rights, both as a dangerous source of power that can trample rights, and as a barrier to external intervention when it is unwilling or unable to protect the rights of its own citizens. This dual role of the sovereign state as both the best provider of and worst violator of human rights positions the human rights movement in a role dependent on state stability, while state stability is not likewise dependent on the adherence to human rights norms. This problematic relationship is manifested in the complexities of promoting human rights and respecting self-determination, as well as by the free rider problem faced by the dispersed human rights movement. These contradictions between state sovereignty and the human rights movement demonstrate the

need for human rights to become a strong enough international force to provide a check on the power of the sovereign state. At the end, I look at ways in which to strengthen the human rights movement using elements from notions of sovereignty that antedate our own. These methods include a) increasing a sense of world citizenry through NGOs, b) strengthening existing components of human rights multilateral institutions, c) putting greater emphasis on regional bodies related to human rights, and d) strengthening the international justice system through the International Criminal Court.

Chapter One

Understanding Sovereignty: Historical and Theoretical Foundations

Given the central role of the sovereign institution in modernity, it is difficult to imagine the world structured otherwise. Yet the sovereign state was not always the dominant form of political organization. In the medieval era, the state competed for power with the Catholic Church, which had a much more public and powerful role as an authoritative institution than it does today. This chapter traces the development of sovereignty from medieval times to the present in order to discern both its necessity and its limitations in the context of global rights. It first discusses the historical transition from the system of overlapping church and state authority to independent secular authority, before analyzing the theoretical foundations of sovereignty as articulated by Hobbes, Locke, Rousseau, Montesquieu, and Tocqueville.

Historical Development

Before the development of the modern conception of state sovereignty, the power of the Church transcended the political boundaries of various republics, principalities, and empires. The Church constituted a community larger and more universal than that of any strictly political unit. It was a central element of public life with the power to connect individuals both within states and between them; it provided an international focus that offset the power of the state. Because both the Church and the state were considered legitimate authorities, neither the clergy nor the political leaders had absolute authority over any particular population. As Jean Bethke Elshtain writes, “. . . the medieval epoch displayed a bewildering variety of overlapping jurisdictions, none of which could claim de facto the kind of absolutism that sovereigns began to embrace from

the sixteenth century or so on.”¹ This overlap between temporal and spiritual powers allowed the Church to play an overarching role independent of political approval, particularly since – unlike the United Nations today – the Church did not rely on the very political institutions it sought to supersede. This independence meant that the Church had the ability to challenge the state in a way that is unparalleled by any organization today. Most significantly, the Church had the power to excommunicate rulers, which affected the citizens that continued to follow the rulers as well. It also had a parallel system of law that applied to its members, and churches were seen as refuges, similar to embassies today, that protected individuals and that could not be invaded. For instance, the power of the Church is demonstrated by the fact that the fourth-century bishop Ambrose was able to insist that the emperor Theodosius “. . . perform public penance for the sin of a massacre by the army at Thessalonica that took place on his watch” by excluding Theodosius from the Eucharist until the public penance was completed.² The Church challenged the authority of the state by holding state leaders up to moral norms; it established an environment not conducive to a ruler like a Machiavellian prince with absolute authority.

How was the Church able to maintain this overarching role, when today it is relegated to the private sphere? Part of the reason that this overlapping authority between religious and political leaders existed is because political institutions were not yet considered sovereign or absolute. Sovereignty was a religious rather than a political concept, which referred to God’s power and the relationship between God and human beings, and it did not equate to absolutism. The most popular understanding of

¹ Elshtain, Jean Bethke, *Sovereignty: God, State, and Self*, (New York: Basic Books, 2008), xv.

² *Ibid.*, 14-5

sovereignty during the first part of the Middle Ages came from Thomas Aquinas, who held that the relationship between God and humans is fundamentally rational. As Elshtain explains, “God’s sovereignty over the human intellect held that human beings could come to God and discern his existence and divinity through the light of the intellect and reason. Faith was not cast in opposition to reason, as many now have it . . .”³ To some extent, the Thomistic understanding of sovereignty restrained God’s power within the bounds of rationality, and thus even this highest authority was not considered absolute. This dynamic carried over to earthly powers: despite (often violent) conflicts between spiritual and temporal leaders, powerful Church and state authorities continued to exist simultaneously as neither was able to attain absolute control.

But the notion of the bounded God broke through the chains of reason; nominalism began to replace the Thomistic understanding of God’s power. Nominalism rejects the idea that the relationship between God and humans is rational, that having faith in a higher power can be established through reason, and instead posits that a rational understanding of God’s relationship to humans unduly limits God’s power. Whereas for a Thomist, God would not change the laws of nature or otherwise fundamentally undermine one’s previous conception of the world, the nominalist holds that God could choose to disregard these rules at any time. God is not bound by his previous acts and can completely change the way the world as we know it works; He has the power to render food unnecessary or make pollution good for the environment. It does not matter that these changes would be thoroughly irrational to any human attempting to comprehend God’s sovereign power through reason. Elshtain explains:

³ Elshtain, *Sovereignty: God, State, and Self*, 1

As we reach the later Middle Ages, theological understandings of God's fullness of reason and goodness and his relational complexity are featured less prominently; instead God, as the site of sovereign will, moves to the forefront of controversy and implication. For strong nominalists, God is not bound by anything other than his will.⁴

This focus on the absolute will of God both changed the extent to which power was deemed to be achievable and reduced the expectation that a sovereign institution would be rational. In a way, nominalism established a theological absolutism, which provided the foundations for the later adoption of absolutism in the political realm. The notion of God "... as the site of sovereign will . . . came to dominate sovereignty talk and helped to lay the basis for the juristic conception of the state when man decided that he, too, could be sovereign in this way."⁵ Whereas under the Thomistic notion of sovereignty, religious and political leaders had overlapping authority, the nominalist definition opened up the possibility that a sovereign institution could be absolute.

Thus began the gradual push towards replacing the overlapping authority of the Church and the state with absolute political sovereignty. But why did theological absolutism lead to state sovereignty at the expense of the Church's status as an effective and powerful overarching authority, rather than upholding the status of the Church at the expense of political institutions? Why did the temporal power gain firm footing while the spiritual power was increasingly on uncertain ground? While nominalism largely accounts for the focus on absolutism, it is not solely responsible for the unraveling of the system of dual sovereignty between church and state. Overly ambitious and corrupt Church officials and the subsequent religious divisions also helped to undermine the Church's status as a unifying authority. The shift from sovereignty as a religious concept

⁴ Ibid., 30

⁵ Ibid., 27

to sovereignty as a political one demonstrates two main problems posed by competing authorities and overarching organizations: 1) the potential for an overarching organization to seek too much political power rather than independent authority, and 2) the difficulty posed by internal factions for an organization such as the Church that attempts to transcend political boundaries.

First, tensions between church and state officials regarding the origin of political power and the proper role of the Church in temporal politics had long been high. Was the temporal “sword” dependent on the spiritual “sword” for authority, or did it have power independently of religious leaders’ approval? While kings typically argued that their power came directly from God, religious officials insisted that the spiritual sword controlled the temporal one, and became overly involved in politics. As popes sought to gain more and more temporal power, their credibility as a politically impartial moral authority crumbled and the Church was seen as corrupt and illegitimate. As Dante wrote in *Purgatorio*:

The laws exist, but who applies them now? No one – the shepherd who precedes his flock can chew the cud but does not have cleft hooves; and thus the people, who can see their guide snatch at that good for which they feel some greed, would feed on that and seek no further.⁶

These complaints about the Church actuated thinkers such as Luther and Calvin who attacked the established Church in unmitigated terms.

This theological critique ultimately spilled over into politics. Thomas Hobbes, for example, criticized the Church mercilessly, calling it the “Kingdom of Darkness,” and asking, “For who is there that does not see to whose benefit it conduceth to have it

⁶ Alighieri, Dante, *The Divine Comedy: Purgatorio*, Translated by Allen Mandelbaum, (New York: Bantam Classics, 1982), Canto XVI

believed that a king hath not his authority from Christ unless a bishop crown him?”⁷ The extent to which religious officials claimed power over temporal politics made the corrupt and ambitious nature of some Church officials subject to widespread public criticism.

Second, Reformation and the subsequent wars of religion destroyed the unity of the Church. In the 1500s, Martin Luther attempted to reform the Catholic Church and reduce its corruption with his 95 Theses. Rather than encourage reform of the existing institutional arrangement as originally intended, however, Luther’s ideas sparked a movement away from the Catholic Church towards Lutheranism, which formed the basis of the Protestant Reformation. Though the tensions between the newly developed Protestant sect and the institution of Catholicism led to the Peace of Augsburg in 1555, which attempted to reduce conflict by allowing for the practice of both religions, this was only temporarily successful. The damage done to the support for the “universal”⁸ organization of the Catholic Church was permanent; tensions resurfaced when John Calvin and other radical Protestant thinkers added to the criticism of the Catholic Church and conflict again broke out.

The continued tension between religious sects and the growing claims of individual states produced internecine warfare throughout much of the 16th and 17th centuries. From 1562 to 1598, the French Religious Wars were fought between the French Protestants (Huguenots) and the French Catholics. In 1618, the Thirty Years’ War was initiated by differences between Protestants and Catholics; it spread to

⁷ Hobbes, Thomas, *Leviathan: With Selected Variants from the Latin Edition of 1668*, Edited by E.M. Curley, (Indianapolis: Hackett Pub. Co, 1994), 73

⁸ The use of the term “universal” here is not meant to suggest that all peoples were Catholic but rather to convey the Church’s transcendence of political boundaries.

encompass most of Central Europe and involved nearly all of the European powers. The Church's lack of unity due to the wars of religion is significant because it demonstrates the problematic aspects of the presence of overarching "universal" organizations. While dual sovereignty between different institutions (e.g., individual states and the Church) could lead to competition and the preservation of individual freedom and moral norms, such as when the Church was able to positively influence the actions of the Kings, it could also undermine the authority of an institution if it was seen to be greedily encroaching on the other's power. Moreover, the dual sovereignty system was only effective as long as internal conflict did not cripple the overarching organization, such as the Protestant Reformation did for the Catholic Church. Further complications arose when one religious confession worked with the secular state to eliminate minority sects. During the French Religious Wars, for example, the king helped the French Catholics kill thousands of Huguenots in the St. Bartholomew's Day massacre. If competing sovereign institutions team up to destroy individuals within their jurisdictions, the system of overlapping and competing authority can suddenly become oppressive and tyrannical. The instability of the Church due to internal conflict and unfortunate political alliances demonstrates the difficulty of maintaining a system of dual sovereignty in the world.

Eventually, the wars of religion exhausted all sides and brought the warring parties to the bargaining table. At this long conference the political and religious leaders around Europe agreed to the Peace of Westphalia. The length and scope of the Thirty Years' War had led many to believe that humans need a strong, absolute authority on Earth in order to live peacefully with one another. Elshtain notes:

Given Luther's assumptions, it is more rather than less likely that force is needed to bind human beings to one another and to the law. Were we "naturally" more

good, less wicked, the hand of temporal authority could rest lighter on our heads. But we are not. So worldly authority has the power to punish and punish severely: not only power but authority. This is its legitimate task.⁹

A political institution which had absolute control over its citizens, and which was not subject to the authority of the Church, would be able to minimize the violent fighting and establish peaceful temporal power. Just as sovereignty had originally shifted from the Thomistic perspective that sees a rational basis for God's power to the nominalist notion that God's power is absolute and unlimited, sovereignty shifted once again – this time finding its foundation and legitimacy in political rather than religious institutions, and particularly in the rising European states.

Thus the Treaty of Westphalia, completed in 1648, ended the Thirty Years' War and effectively established and institutionalized the authority of the sovereign state. This is spelled out in a number of places but perhaps most explicitly in Article LXIV:

And to prevent for the future any Differences arising in the Politick State, all and every one of the Electors, Princes and States of the Roman Empire, are so establish'd and confirm'd in their antient Rights, Prerogatives, Libertys, Privileges, free exercise of Territorial Right, as well Ecclesiastick, as Politick Lordships, Regales, by virtue of this present Transaction: that they never can or ought to be molested therein by any whomsoever upon any manner of pretence.¹⁰

Essentially, sovereign states were given complete territorial jurisdiction and protection from external interference in internal affairs. As Michael Gillespie explains:

Political power, which hitherto was understood as one of a number of forces governing human beings, henceforth became (at least in principle and often in fact) absolute. The state thereby became sovereign over all internal affairs, the entire life of civil society and the family, and also came to regulate all relations with those outside the state.¹¹

⁹ Elshstain, *Sovereignty: God, State, and Self*, 83.

¹⁰ *Avalon Project, The: Documents in Law, History and Diplomacy, Yale Law School*. s.v. "Treaty of Westphalia."

¹¹ Gillespie, "Sovereign States and Sovereign Individuals," 114.

Thus the Westphalian notion of sovereignty gave the prince complete control over the internal affairs of his territory in order to reduce conflict and promote peace. Yet because this authority was awarded in an attempt to end the wars of religion and reduce the tensions caused by both religious and political divisions, this absolute control was effectively based on uniformity of religion and culture as imposed by the ruling prince, rather than on toleration and multiculturalism.

This brief account of the historical development of the modern notion of (absolute) state sovereignty demonstrates four key points. First, the medieval Church acted as a larger, more universal moral authority that transcended political boundaries. While this ultimately meant that religious and political leaders vied for power, which led to conflict, it is not clear that such overlapping sovereignty was obviously inferior to the modern notion of sovereignty, especially since it imposed limitations on all sides. The Church derived legitimacy independently of the state, and was thus in a position to criticize immoral actions of the state and to unify people without regard to political boundaries. (Later sections of this thesis will evaluate how to simulate this type of overarching authority in a way that checks but does not undermine the sovereign state.)

Second, the fact that state sovereignty emulated the nominalist notion of the absolute sovereignty of God gave the internal political authority of the state (as established by the Treaty of Westphalia) a claim to greater power that was more difficult to challenge: Westphalian sovereignty does not merely hold that other states may not intervene in domestic affairs in an attempt to reduce excessive warfare, it also rests on the assumption that a prince's authority is based on the absolute will of God. This means

that there is no clear limit to the power of the sovereign. The rise of absolutism in the 17th and 18th centuries and the subsequent appearance of totalitarian regimes in the 20th century demonstrate how far this absolutism can go. For instance, fascist leaders such as Adolf Hitler used the state to formulate a notion of the “superior race.” The fascist state was not merely a method of governance but an indication of a “spiritual attitude;” as Benito Mussolini explains, “. . . man is man only by virtue of the spiritual process to which he contributes as a member of the family, the social group, the nation . . .”¹² The power of the fascist state was all-encompassing and the individual meant nothing outside of the context of the nation.

Third, the purpose of granting princes control over internal affairs was to reduce war and the danger of violent death by minimizing conflict within states among competing religious groups. It is based on the notion of territorial exclusivity and the will of the prince rather than the self-determination of individual communities. This is significant because, though a portion of the modern population respects sovereignty on behalf of a community’s right to self-determination and as a rejection of imperialism, the rules and theories established about sovereignty are designed not to promote cultural autonomy but to impose a sovereign will. Thus, this centralization of authority in a single pair of hands often comes into direct conflict with rights of individuals and groups.

Fourth and finally, Westphalian sovereignty acknowledges each sovereign state to be distinct and separate from the other states. Thus, while the Peace of Westphalia brought a much-needed end to war and violence, it established the precedent for states to

¹² Mussolini, Benito, "Fascism," In *The Nationalism Reader*, edited by Omar Dahbour and Micheline R. Ishay, (Amherst: Humanity Books, 1995), 222-3.

look entirely inward rather than outward towards the shared world and the problems that necessitate global collective action.

Theoretical Development

In 1651, just three years after the Treaty of Westphalia, Thomas Hobbes published his *Leviathan*. Hobbes' account of human nature and his description of the necessity of sovereign authority provide the foundation for later developments in sovereignty theory. Because Hobbes was writing *Leviathan* after the end of the Thirty Years' War and at the height of the English Civil War, the brutality of civil war seemed to him the greatest danger to civil society. This led him to paint a particularly bleak portrait of human nature and life outside the sovereign state (or commonwealth as he called it). He famously considers life in the state of nature to be “. . . solitary, poor, nasty, brutish, and short,” and argues that without a “common power”, men “. . . are in that condition which is called war, and such war as is of every man against every man.”¹³ This condition of the war of all against all is the Hobbesian state of nature, which he saw recapitulated in the civil wars of his time.

The horrific conditions of Hobbes' state of nature demonstrate the importance of the state as an absolute authority that can bring an end to the war of all against all and provide lasting protection for its inhabitants. To Hobbes, everyone in the state of nature is relatively equal, because each has roughly the same ability to kill another. Even if a person does not wish to kill someone else, it is necessary to do so for survival so that he or she will not be killed. Hobbes explains:

¹³ Hobbes, *Leviathan*, 76.

Nature hath made men so equal in the faculties of body and mind as that . . . when all is reckoned together the difference between man and man is not so considerable as that one man can thereupon claim to himself any benefit to which another may not pretend as well as he. For as to the strength of body, the weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others that are in the same danger as himself.¹⁴

Because everyone is in relatively equal danger, “. . . men have no pleasure, but on the contrary a great deal of grief, in keeping company where there is no power able to overawe them all.”¹⁵ The brutal reality of the state of nature – or of the religious and political wars of the early 17th century – lends support to Hobbes’ claim that humanity needs a strong authority in order to live peacefully and be protected. As Hobbes suggests, “Where there is no common power, there is no law; where no law, no injustice.”¹⁶ This is a crucial argument as Hobbes is postulating that there is no justice outside of the sovereign institution. Essentially, “. . . before the names of just and unjust can have place, there must be some coercive power to compel men equally to the performance of their covenants . . .”¹⁷ The very notion of justice in his view is thus dependent on a structured, powerful, sovereign state.

Because Hobbes is focused so strongly on leaving the state of nature and ending civil wars, and because he has such a bleak view of human nature, he finds no political sovereign authority too powerful. The commonwealth is established by a group of men who all agree to lay down their weapons and constrict their unfettered freedom by giving authority to one man or one assembly of men, the leviathan. Hobbes explains:

¹⁴ Ibid., 74

¹⁵ Ibid., 75

¹⁶ Ibid., 78

¹⁷ Ibid., 89

This is more than consent, or concord; it is a real unity with every man, in such manner as if every man should say to every man *I authorize and give up my right of governing myself to this man, or to this assembly of men, on this condition, that thou give up thy right to him, and authorize all his actions in like manner.*¹⁸

The men are all bound together by a covenant, but the leviathan is not included in this covenant. It is given absolute authority that cannot be contested because all men agree to everything that the leviathan does when they initially accept it as authoritative; as Hobbes explains, after awarding the leviathan sovereign authority, the people. “. . . have made themselves every one the author . . .”¹⁹ Hobbes’ leviathan is sovereign over those who consent to it, holding absolute power in order to bring the state of war of all against all to an end. Thus, a key element of the Hobbesian state is its absolute control over internal affairs. Hobbes clearly establishes this aspect of internal authority, asserting that:

. . . nothing the sovereign representative can do to a subject, on what pretence whatsoever, can properly be called injustice, or injury, because every subject is author of every act the sovereign doth, so that he never wanteth right to anything (otherwise than as he himself is the subject of God, and bound thereby to observe the laws of nature).²⁰

Not only, then, does Hobbes consider justice to be a product of the state, but he also upholds that this justice only applies to the individual subjects within the commonwealth; once the individuals agree to confer power on the leviathan, there is no limit to what the sovereign can do to its subjects.

The sovereign state not only has sovereignty over internal matters, but also acts as an autonomous entity with respect to all other states. Though the development of the sovereign commonwealth ends the horror of individuals’ lives in the state of nature, a

¹⁸ Ibid., 109

¹⁹ Ibid., 109

²⁰ Ibid., 138

state of nature continues to exist between the sovereign states themselves. Hobbes explains:

For as amongst masterless men, there is perpetual war of every man against his neighbour, no inheritance to transmit to the son nor to expect from the father, no propriety of goods or lands, no security, but a full and absolute liberty in every particular man, so in states and commonwealths not dependent on one another every commonwealth (not every man) has an absolute liberty to do what it shall judge (that is to say, what that man or assembly that representeth it shall judge) most conducing to their benefit.²¹

There is thus no recognition that all states or commonwealths exist on a shared planet with shared problems. As a result, concern for individuals outside of one's sovereign state and the prevalence of transnational challenges are not themes within Hobbes' writings. Ultimately, both Hobbesian theory and the Peace of Westphalia posit sovereign institutions that have complete internal authority, and that are independent of each other externally. This is a large part of the source of the contradiction between the state and human rights in the context of globalization.

The extent of the leviathan's power – limited only by its own ability to protect the state from external force – poses extreme danger to individual liberty. Hobbes is so concerned with preventing civil war that he effectively leaves the state open to tyranny. John Locke rejects the unlimited power of a sovereign leviathan unbound by the social contract and replaces it with a government regulated by rational laws developed by the people. As Elshtain writes, "If sovereignty is located anywhere for Locke, it is with 'the people.' This sovereign authority – for he stresses authority, a notion necessarily bound, by contrast to unchained power – lies in the people."²² The state of nature according to

²¹ Ibid., 140

²² Elshtain, *Sovereignty: God, State, and Self*, 121.

Locke is much less brutal than Hobbes' war of all against all, and thus Locke dismisses Hobbes' notion of an absolute sovereign leviathan.

To Locke, the law of nature asserts that individuals have certain inalienable rights – namely, the pursuit of life, liberty, and property. This is a prodigious departure from Hobbes, who does not conceive of any sort of justice or concept of rights in the state of nature; the conceptualization of the state's function as protecting individual rights contrasts with its Hobbesian purpose as a means of eliminating internal warfare. Locke's inalienable rights are due to man within the state of nature, but he may not be able to practically obtain them; thus, the purpose of leaving the state of nature and forming a commonwealth is the protection of one's individual liberties. He explains the necessity of this transition, writing:

If man in the state of nature be so free, as has been said; if he be absolute lord of his own person and possessions, equal to the greatest and subject to nobody, why will he part with his freedom? Why will he give up this empire, and subject himself to the dominion and control of any other power? To which 'tis obvious to answer, that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain, and constantly exposed to the invasion of others.²³

People choose to leave the state of nature because the liberties they have a right to enjoy cannot be fully enjoyed without regulation through just law. Locke's state of nature is not the same as his state of war, however, and thus he does feel the urgency of Hobbes' need to relinquish liberty to a sovereign authority in order to end violence. Thus, for Locke, if the sovereign state undermines these liberties and abuses its citizens, there is no reason to sustain a state. He rejects the notion of "absolute arbitrary power,"²⁴ arguing:

²³ Locke, John, *The Second Treatise of Government and A Letter Concerning Toleration*, (Mineola: Dover Publications, Inc, 2002), 57.

²⁴ *Ibid.*, 63

For then mankind will be in a far worse condition than in the state of nature, if they shall have armed one, or a few men, with the joint power of a multitude to force them to obey at pleasure the exorbitant and unlimited decrees of their sudden thoughts, or unrestrained, and, til the moment, unknown wills, without having any measures set down which may guide and justify their actions.²⁵

It is clear that Locke does not afford the sovereign state the authority that Hobbes attributes to his leviathan. Because the function of the state according to Locke is “to preserve and enlarge freedom”²⁶ as well as men’s “enjoyment of their properties in peace and safety,”²⁷ his definition of sovereign power is much different than that of Hobbes.

First, unlike the leviathan, Locke’s state is regulated by laws. He defines political power as:

. . . a right of making laws with penalties of death, and consequently all less penalties, for the regulating and preserving of property, and of employing the force of the community in the execution of such law, and in the defence of the commonwealth from foreign injury; and all this only for the public good.²⁸

Second, the majority of the population possesses sovereign authority. The sovereign majority deviates from Hobbes’ absolute leviathan, albeit its basis is still primarily voluntarist rather than rationalist. Though the power of the sovereign can be found in the people, and though there are (presumably rational) laws that govern society, the majority population still has the absolute authority over the system of governance. Thus, the majority can choose a democracy or decide to vest power in a smaller group of men or only one man. In Chapter X of *The Second Treatise of Government* entitled “Of the Forms of a Commonwealth,” Locke explains:

²⁵ Ibid., 64

²⁶ Ibid., 25

²⁷ Ibid., 60

²⁸ Ibid., 2

The majority having . . . upon men's first uniting into society, the whole power of the community naturally in them, may employ all that power in making laws for the community from time to time . . . and then the form of the government is a perfect democracy; or else may put the power of making laws into the hands of a few select men, and their heirs of successors, and then it is an oligarchy; or else into the hands of one man, and then it is a monarchy . . .²⁹

Though such a delegation of power to a group of men or a single man may seem similar to the process of establishing a leviathan, Locke's state is theoretically still vastly different from that of Hobbes since it is governed by laws rather than the leviathan's whims. Once the majority has relinquished control to a different authority, however, it is difficult to ensure that this focus on laws will still hold. In essence, it is possible for a majority to undermine the rule of the people that gives it power in the first place. Locke does not establish enough safeguards against this possibility, though he permits revolution if the state abuses its power and abolishes individual liberty. Locke's emphasis on the majority's ability to decide everything about the character of the state is indicative of two main problems associated with majority sovereignty: the potential for a majority to undermine its own authority by giving up power, and the possibility that the majority will act tyrannically with respect to the minority.

In *The Spirit of the Laws*, Montesquieu states:

Political liberty is found only in moderate governments. But it is not always in moderate states. It is present only when power is not abused, but it has eternally been observed that any man who has power is led to abuse it . . .³⁰

Though majority sovereignty as espoused by Locke seems moderate in comparison to Hobbes' absolute sovereign state, it is possible for the people – or rather, the majority of

²⁹ Ibid., 60

³⁰ Montesquieu, Baron de, *The Spirit of the Laws*, edited by Basia C. Miller, Harold S. Stone, (Cambridge: Cambridge University Press, 1989), 155.

people – to be corrupted and abuse power. Thus, the potent criticism of Hobbes' leviathan as undermining individual liberty can be leveled against the sovereign majority as well. First, as Locke demonstrates in his assertion that the majority can choose to award power to an oligarchy or a monarchy, it is possible for a majority to relinquish its own sovereign authority. A pure democracy, for instance, could theoretically vote itself into a fascist state, particularly if the people perceived it to be necessary to protect the state against an external threat. One weakness of the sovereign majority, therefore, is its potential to undermine itself and consequentially reduce the liberties of its individual citizens.

A second, and arguably more significant, weakness of the sovereign majority is the possibility of the tyranny of the majority. James Madison articulates this concept in *Federalist Paper 10* in his discussion of the crippling effects of factions on a democracy. He writes, "When a majority is included in a faction, the form of popular government . . . enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens."³¹ Essentially, the power placed in the majority allows the majority to abuse the interests of the minority; in effect, a majority can impose its will on a minority and abuse the minority's rights. The majority can disenfranchise specific groups of citizens who may vote against the professed majority interest, and policies can be enacted which effectively discriminate against minority populations. These policies do not need to be overt; in the United States, for instance, there is a harsher penalty for using crack than cocaine, because crack is less expensive and typically associated with minority

³¹ Madison, James, "The Federalist Papers: No. 10. the Same Subject Continued: The Union as a Safeguard Against Domestic Faction and Insurrection," *The Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School.

populations. Alexis de Tocqueville recognizes this possibility for tyranny of the majority in the United States in the mid-1800s, writing:

When a man or a party suffers from an injustice in the United States, whom do you want him to address? Public opinion? that is what forms the majority; the legislative body? it represents the majority and obeys it blindly; the executive power? it is named by the majority and serves as its passive instrument; the public forces? the public forces are nothing other than the majority in arms; the jury? the jury is the majority vested with the right to pronounce decrees: in certain states, the judges themselves are elected by the majority.³²

With so much emphasis on the power of the majority, the state is left susceptible to majority tyranny in a way reminiscent of the potential tyranny of Hobbes' leviathan.

Rejecting the authority of the majority in an attempt to promote a more equal notion of sovereignty, Jean-Jacques Rousseau establishes the concept of popular sovereignty, where the sovereign power lies in the people as a collective whole. He begins his argument in contrast to Hobbes, who Rousseau argues “. . . had wrongly injected into the savage man's concern for self-preservation the need to satisfy a multitude of passions which are the product of society . . .”³³ Instead of agreeing with Hobbes' claim that natural man is one that “seeks only to attack and to fight,”³⁴ Rousseau contends that natural man is simultaneously naïve and innocent; he cannot be wicked because he has no conception of good. He does not look to fight, because he does not have jealous desires. While natural man's primary concern for self-preservation

³² Tocqueville, Alexis de, *Democracy in America*, edited by Harvey C. Mansfield, Delba Winthrop, (Chicago: The University of Chicago Press, 2000), 241.

³³ Rousseau, Jean-Jacques, *Discourse on the Origin of Inequality*, Translated by Donald A. Cress, (Indianapolis: Hackett Publishing Company, 1992), 35.

³⁴ *Ibid.*, 20

sometimes necessitates violence, his “innate repugnance to seeing his fellow men suffer”³⁵ leaves him far from seeking to attack.

Though it is not in man’s nature to attack fellow man, the introduction of the concept of property into the state of nature initiates conflict; as Rousseau writes, “It is the relationship between things and not between men that brings about war.”³⁶ In order for this transition from the state of nature to the civil state to result in “. . . a form of association which defends and protects with all common forces the person and goods of each associate, and by means of which each one, while uniting with all, nevertheless obeys only himself . . .”, Rousseau argues in favor of a social compact that “. . . produces a moral and collective body composed of as many members as there are voices in the assembly . . .” He explains that in forming this compact, “*Each of us places his persona and all his power in common under the supreme direction of the general will; and as one we receive each member as an indivisible part of the whole.*”³⁷ Thus, every person becomes an equal part of the whole; rather than assenting to a Hobbesian leviathan removed from the contract, or awarding authority to the majority population in a Lockean fashion, every person is equally powerful in the sense that all are subject to the general will of the whole.

Though Rousseau recognizes three different wills – the private individual will, the corporate will, and the general will – it is only this last will that is sovereign; thus, the

³⁵ Ibid., 36

³⁶ Rousseau, Jean-Jacques, *The Basic Political Writings*, edited by Donald A. Cress, (Indianapolis: Hackett Publishing Company, 1987), 145.

³⁷ Ibid., 148

individual self-interested will must be made subordinate to the true will of the collective whole. He writes:

. . . in order for the social compact to avoid being an empty formula, it tacitly entails the commitment – which alone can give force to the others – that whoever refuses to obey the general will will be forced to do so by the entire body. This merely means that he will be forced to be free.³⁸

Therefore, the collective can coerce an individual dissenter, because the individual is acting based on the private will rather than the general will. To Rousseau, the general will is always correct and aimed at “the public utility” regardless of whether or not an individual consciously recognizes it.³⁹ It is legitimate because its basis is equitable and “. . . because it is common to all . . .” An act of sovereignty does not consist of an individual, or a segment of society, exercising authority over the rest of society, it “. . . is not a convention between a superior and an inferior, but a convention of the body with each of its members.”⁴⁰ Thus, unlike Hobbes and Locke, Rousseau awards sovereignty to the entirety of the citizenry through popular sovereignty. Yet he does not differ completely from these earlier theorists; his notion of sovereignty adheres to the voluntarist (nominalist) tradition in the sense that the general will of the collective is still absolute. Ultimately, “. . . the social compact gives the body politic an absolute power over all its members, and it is the same power which . . . is directed by the general will and bears the name sovereignty.”⁴¹

³⁸ Ibid., 150

³⁹ Ibid., 155

⁴⁰ Ibid., 158

⁴¹ Ibid., 156

Rousseau's concept of a popularly run state where all members are part of a sovereign whole is dependent on both size and information. He concedes that "... a body which is too big for its constitution collapses and perishes, crushed by its own weight."⁴² Moreover, while the aggregate sum of the private wills of all members in society should balance out the general will if each citizen makes an independently informed decision, problems occur when citizens form associations and biases. He writes, "For the general will to be well articulated, it is ... important that there should be no partial society in the state and that each citizen make up his own mind."⁴³ Both of these conditions are difficult to achieve in reality, and thus the reliability of the popularly sovereign "general will" is called into question. Therefore, it is not clear that Rousseau abolishes the problems of the tyranny of the majority; the idea that the "general will" is always right, and that a dissenting minority is always wrong, is particularly worrisome if the accuracy of the general will can be so easily undermined.

Thus, though placing sovereign authority in the hands of the people is an important safeguard against the potential tyranny of a singular leviathan, the rule of the people (whether by majority or through full popular sovereignty) can be problematic as well. What is the purpose behind attributing sovereignty to the people, then, if the true will of the collective is likely unachievable or if it imposes its will upon a minority of sundry individuals? While an absolute sovereign leviathan cannot be held to restraints, laws and the organizational structure of the government can mitigate the tyranny of the majority, as well as the majority's potential for undermining its own sovereign authority. I refer to the body of thought regarding the limitations that should be imposed upon a

⁴² Ibid., 168

⁴³ Ibid., 156

majority in context of popular sovereignty as constitutionalism. Constitutionalism attempts to correct for the failings of popular sovereignty; it limits “pure” democracy by majority so as to ensure that the majority does not undermine itself or treat a portion of its population unfairly.

One way to check the ambition of the majority is through the separation of powers, a concept that is at the basis of the structure of the American government. As Montesquieu argues, “So that one cannot abuse power, power must check power by the arrangement of things.”⁴⁴ Montesquieu articulates the concept of the three branches of government. Because it is the majority that is deemed the most dangerous to liberty, he argues that the legislative branch must be kept in check, writing:

If the executive power does not have the right to check the enterprises of the legislative body, the latter will be despotic, for it will wipe out all the other powers, since it will be able to give itself all the power it can imagine.⁴⁵

Additionally, the American constitution demonstrates the possibility of having a Bill of Rights, which protects specific individual liberties from the whims of a democratic majority. While there are still problematic tensions between the sovereign power of the people and constitutionalism, the role of constitutionalism as a check on power of the sovereign majority is important. Indeed, it is such constitutionally moderate regimes that have led to the general view of the legitimacy of the sovereignty of the people.

Though constitutionalism helps to check the internal power of the sovereign majority, it does not always mitigate the use of sovereign power outside the state. Thus popular sovereignty in the form of a “regulated” democracy may ensure that the citizens

⁴⁴ Montesquieu, *The Spirit of the Laws*, 155.

⁴⁵ *Ibid.*, 162.

have a greater role in their system of government and reduce the chances of arbitrary rule, but it is no panacea for the problems that arise in the transnational realm. Transnational challenges and the overall interdependency of nations due to globalization require sovereign states to recognize that they exist in the same global society as other states, yet this seems to be especially difficult for democracies and other popularly run states. When the people at large possess the ultimate sovereign authority, decisions are often based primarily on the interest of the citizenry (and particularly the competing interest groups) within the state regardless of external, global problems. Though this is partially true of every state – the leviathan, for instance, is by no means held to external restraints – there is in particular a commitment problem with democratic governments. It can be difficult for democracies/republics to sustain a globally focused policy because of the internal political tensions generated by self-interest, and the differences in perceptions about the state's role in the world. For instance, throughout much of the United States' history, American foreign policy has been characterized by tensions between isolationism and interventionism.

Basic Components of the Sovereign State

From Hobbes' leviathan, to Locke's majority sovereign, to Rousseau's general will, it is clear that there are many different ways in which state sovereignty can develop. The sovereign state can be absolutist and subject to the individual whim of the sovereign ruler; it can derive its power from the people, allowing citizens to govern themselves under various institutional schemes; it may be a plutocracy or oligarchy, or even some form of totalitarianism. Though these states have vastly different methods of governance,

there are five key components of the modern sovereign state that each one shares. The recognition of these components is essential to the question of the antinomic relationship between the sovereign state and universal humanitarian goals.

The first key component of the sovereign state is territorial exclusivity. What territorial exclusivity signifies is that there is no other sovereign authority active in the territory of the state. This is a departure from the structure of the medieval era, where the Catholic Church and various political institutions had competing and overlapping authority around Europe. As indicated above, the Treaty of Westphalia accepted the notion of territorial exclusivity in order to establish peace and bring an end to the wars of religion that had been spawned by the Reformation and intensified by the desire for political aggrandizement. Territorial exclusivity generally requires a monopoly on the legitimate use of armed force in the area of the state, which is the second principle component of the sovereign state. The monopoly on the legitimate use of armed force is central to state sovereignty because it ensures that there is only one authoritative body (whether the leviathan or the majority). As Weber argues:

. . . a state is a human community that (successfully) claims *the monopoly of the legitimate use of physical force* within a given territory. . . . the right to use physical force is ascribed to other institutions or to individuals only to the extent to which the state permits it. The state is the sole source of the ‘right’ to use violence.⁴⁶

For example, the competition among various warlords in Somalia, one of the most “failed” states in the world, demonstrates that without territorial exclusivity and control over the legitimate use of force, there can be no legitimate sovereign authority.

⁴⁶ Weber, Max, "Politics as a Vocation," In *From Max Weber: Essays in Sociology*, edited by H. H. Gerth and C. Wright Milles, (New York: Oxford University Press, 1948), 78

A third chief element of the modern sovereign state is the notion of absolute authority over internal affairs, regardless of whether the state has absolute or popular sovereignty. With its origin in the Treaty of Westphalia as well as Hobbes' *Leviathan*, the idea of absolute authority over internal affairs signifies that no external power has the right to interfere in the domestic politics of a state. With this power comes the fourth aspect of modern sovereignty – the responsibility to protect citizens and territory from external enemies.

An additional key aspect of the modern sovereign state that is not outlined in the development of sovereignty above is the necessity of recognition from other states. The Treaty of Westphalia was at heart such an agreement and this notion of recognition has played a decisive role ever since. Today, sovereignty is certainly still dependent on the recognition by other existing states around the world. If the international community does not perceive a territory to be dominated and united by a single power, then it will not respect that state's right to the absolute authority over internal affairs. Sovereignty thus requires that the state have territorial exclusivity, the monopoly on the legitimate use of armed force, absolute authority over internal affairs, the ability to protect citizens and interests from external force, and recognition by other members of the international community.

Chapter Two

Understanding Universal Humanitarianism: Past and Present

Sovereignty is not the only formative element of political modernity. As political philosophers posited various derivatives of the sovereign state, the rights due to the individual and his role in the political sphere became increasingly important topics of discussion. This focus on the individual paralleled the development of a significant alternative idea of political organization that focuses on transnational problems and universal ideas and which forms the basis for the modern human rights movement. Though the human rights movement as it stands today traces its origin to the period immediately after WWII with the creation of the United Nations and the writing of the Universal Declaration of Human Rights, such universalistic humanitarian tendencies have a longer history. Centuries of philosophical thought and political treaties form the foundation for human rights as they exist today: Religious notions of charity and neighborly kindness, moral philosophy regarding natural rights, peace treaties such as those of the Congress of Vienna in 1814-5, and preliminary international organizations such as the Concert of Europe in the 19th Century and the League of Nations after WWI all antedate the human rights movement we are familiar with. In this chapter, I briefly outline Locke, Rousseau, and Kant's contributions to universalistic, rights-based thought in order to contextualize today's human rights movement, while exploring the concepts of negative and positive liberty as they relate to human rights. I then go on to describe the major institutions and ideas behind the modern human rights movement.

Theoretical Foundations of a Universal Humanitarianism

Though Hobbes posits that justice does not exist before the creation of the sovereign state, that the purpose of the state is to end internal warfare, and even that liberty is merely “. . . the absence of . . . external impediments of motion . . .,”¹ this limited notion of the function of the state and the rights of the individual was quickly expanded in much greater detail. As indicated in the previous chapter, John Locke’s notion of the law of nature recognized the inalienable rights to life, liberty, and property (which includes health and estates.) Locke not only attributes these rights to citizens within a sovereign state, but also argues that these are natural rights due to man whether or not he is part of a regime; i.e., they are pre-political rights. Thus, even in the state of nature, there are universal rights (though they may not be respected). Locke explains, “The state of nature has a law of nature to govern it, which obliges every one; and reason, which is that law, teaches all mankind who will but consult it, that, being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions.” To defend his claim, Locke draws on religious notions, arguing that all men are property of “one sovereign Master” and not of each other.²

The wording of his law of nature is indicative of the early ways in which (Western) theorists began to develop a body of thought regarding individual rights. The phrasing, “. . . no one ought to harm another” alludes to what Isaiah Berlin famously refers to as negative liberty. In “Two Concepts of Liberty,” Berlin describes liberty in the “negative sense” as an answer to the question, “What is the area within which the

¹ Hobbes, *Leviathan*, 136.

² Locke, *The Second Treatise of Government*, 3.

subject – a person or group of persons – is or should be left to do or be what he is able to do or be, without interference by other persons?”³ The idea of liberty as “. . . the degree to which no human being interferes . . .”⁴ with another corresponds to Locke’s law of nature. Unfettered freedom can be constrained in order to protect other individuals and because of values such as justice, happiness, and security. Apart from this, advocates of liberty in the negative sense, such as Locke and Tocqueville, suggest “. . . that there ought to exist a certain minimum area of personal freedom which must on no account be violated . . .;” indeed, a “. . . frontier must be drawn between the area of private life and that of public authority.”⁵ The law of nature as professed by Locke is an important foundation for the idea that humans have rights independent of the state, as it breaks away from Westphalian sovereignty theory, which posed no limits on the authority of the sovereign power.

Yet just as Locke allows the sovereign majority to give authority to whichever form of government it chooses, such as a monarchy or an oligarchy, liberty in a “negative sense” can be found under any type of government, provided that the government does not curb liberties or interfere with the inalienable rights of the citizens. As Berlin acknowledges, negative liberty is theoretically compatible with despotism; the despot “. . . may be unjust, or encourage the wildest inequalities, care little for order, or virtue, or knowledge . . .” as long as it does not interfere with the basic rights of the individual. In other words, “Freedom . . . is not, at any rate logically, connected with democracy or self-

³ Berlin, Isaiah, “Two Concepts of Liberty,” 155,
<http://www.cas.umt.edu/phil/faculty/walton/Berlin2Concepts.pdf>

⁴ Ibid., 156

⁵ Ibid., 157

government.”⁶ Thus, the right to participate in one’s government and the right to self-determination are not guaranteed through this absence of coercion.

The lack of focus on self-government or concern for the individual’s potential to participate in the political processes that affect his or her life contrasts with popular sovereignty as outlined by Rousseau. As discussed in the previous chapter, Rousseau’s desire for equality led him to establish a method of governance whereby each individual is an equal part of the collective sovereign whole. To Rousseau, the function of government is not solely to protect against coercion in the name of inalienable rights, but also to respect the autonomy of individuals and their right to a voice in the political sphere. In reference to the social compact through which Rousseau’s sovereign state is formed, he writes, “So long as the subjects are subordinated only to such convention, they obey no one but their own will alone.”⁷ For advocates of individuals’ political rights (as opposed to advocates solely of negative liberty), the benevolent despot that does not interfere with one’s property is not a sufficiently just or moral form of government. As Rousseau contends:

It will be said that the despot assures his subjects of civil tranquility. Very well. But what do they gain, if the wars his ambition drags them into, if his insatiable greed, if the oppressive demands caused by his ministers occasion more grief for his subjects than their own dissensions would have done? What do they gain, if this very tranquility is one of their miseries? A tranquil life is also had in the dungeons; is that enough to make them desirable?⁸

Rousseau’s assertion that liberty is not merely the absence of coercion but also the access to political rights evokes Berlin’s second notion of liberty in the “positive sense.”

⁶ Ibid., 160

⁷ Rousseau, *The Basic Political Writings*, 158.

⁸ Ibid., 144.

As Berlin explains, “The ‘positive’ sense of the word ‘liberty’ derives from the wish on the part of the individual to be his own master.” In this sense, liberty is “. . . not freedom from, but freedom to . . .”⁹ Such a notion of rights came to play an increasingly important role in the Enlightenment and received perhaps its foremost articulation in the thought of Immanuel Kant, who argued for the universality of rights of all rational beings. Writing a century after Locke’s articulation of natural rights, and decades after Rousseau’s conceptualization of popular sovereignty and political rights, Kant upholds the importance of both negative and positive liberties. Just as Locke describes the natural rights due to mankind, Kant recognizes the importance of individual life and liberty. One basis for his efforts to establish peace comes from war’s impact on the individual. He writes, “. . . to pay men to kill or to be killed seems to entail using them as mere machines and tools in the hand of another (the state), and this is hardly compatible with the rights of mankind in our own person.”¹⁰ Kant recognizes the inherent value of the human being apart from the state, because he asserts that states should not dehumanize citizens by risking their lives in warfare.

Furthermore, Kant helps establish a basis for the political rights of the citizen, including one’s basic freedom of speech. Unlike Hobbes, who posits that citizens give up their rights to make decisions and to dissent against the government once they elect a leviathan (granted that the leviathan successfully protects them from external forces), Kant argues that citizens must have the freedom to speak their minds as well as the ability

⁹ Ibid., 160.

¹⁰ Kant, Immanuel, “Perpetual Peace: A Philosophical Sketch,” (1795), 2, <https://www.mtholyoke.edu/acad/intrel/kant/kant1.htm>

to make institutional changes and political improvements.¹¹ In his essay, “What is Enlightenment?,” Kant writes, “. . . the public use of one’s reason must be free at all times, and this alone can bring enlightenment to mankind.” This does not mean that citizens have full freedom to do what they please, but that they must have the ability to think and reason as they see fit. For instance, Kant explains:

The citizen cannot refuse to pay the taxes imposed on him; . . . But the same person nevertheless does not act contrary to his duty as a citizen when, as a scholar, he publicly expresses his thoughts on the inappropriateness or even the injustice of these levies.¹²

Additionally, he argues, “An age cannot bind itself and ordain to put the succeeding one into such a condition that it cannot extend its (at best very occasional) knowledge, purify itself of errors, and progress in general enlightenment.”¹³ In other words, citizens cannot bind future generations to the laws of the past; individuals have the right to their use of reason and the legal avenues of change in the political realm.

To the extent that Kant seeks to protect the political liberties of individuals, he follows in the tradition of Rousseau. Yet Kant’s writings are particularly significant because he not only seeks positive liberty for the individual citizen, but he also attempts to determine how to achieve international, long-term peace. In this way, Kant helps establish a universal outlook and steers the notion of individual rights into the international sphere. Kant’s view of the state of nature does not differ drastically from that of Hobbes, and thus, like Hobbes, he believes that peace “must be established;” the desire for security must be “. . . pledged to each by his neighbor (a thing that can occur

¹¹ Kant acknowledges that limitations on the freedom of speech exist for public officials, who cannot criticize certain policies from their position but only as individuals.

¹² Kant, Immanuel, *Foundations of the Metaphysics of Morals: Second Edition*, Translated by Lewis White Beck, (Upper Saddle River: Prentice-Hall, Inc. 1997), 85.

¹³ Kant, *Foundations of the Metaphysics of Morals*, 87.

only in a civil state), . . .”¹⁴ But Kant does not follow Hobbes’ drastic path towards the unchecked power of the sovereign state. In fact, Kant asserts that every state should be republican, because the republican constitution is favorable towards “perpetual peace.” He argues that one of the best ways to ensure that a state does not renege on peace treaties is to establish a form of government in which the people must be the ones to declare war. He writes:

“ . . . if the consent of the citizens is required in order to decide that war should be declared (and in this constitution it cannot but be the case), nothing is more natural than that they would be very cautious in commencing such a poor game, decreeing for themselves all the calamities of war.”¹⁵

To establish perpetual peace, Kant recognizes both the importance of respect for the sovereign state, as well as the necessity of an international outlook and recognition that individuals as well as individual states are part of a shared global society. Thus, not only is Kant’s philosophy contrary to traditional Hobbesian sovereignty from an internal, individual perspective, but his theories also break away from the external notion of sovereignty that posits that the sovereign state is independent of other sovereign states. First, because the republican state is a key factor in the achievement of long-term peace, the second and fifth articles of his six “preliminary articles for perpetual peace among states,” support the independence of the state and establish Kant’s belief in the importance of a respect for sovereignty when it comes to international peace. Article Two is “No Independent States, Large or Small, Shall Come under the Dominion of Another State by Inheritance, Exchange, Purchase, or Donation.” Kant elaborates, “A state is not, like the ground which it occupies, a piece of property (*patrimonium*). It is a

¹⁴ Kant, “Perpetual Peace,” 4.

¹⁵ *Ibid.*, 4.

society of men whom no one else has any right to command or to dispose except the state itself.”¹⁶ Additionally, Article Five is “No State Shall by Force Interfere with the Constitution or Government of Another State,” which asserts that, unless the state has been fractured into two pieces, “. . . interference by foreign powers would infringe on the rights of an independent people struggling with its internal disease; hence it would itself be an offense and would render the autonomy of all states insecure.”¹⁷ Both of these points suggest that peace is contingent upon respecting the sovereignty of individual states. To some degree, this seems relevant to modern day anti-imperialism, and the support for the self-determination of a nation.

At the same time, Kant rejects the traditional sovereignty theory, which posits that states are in a pseudo-state of nature in relation to each other. Kant asserts, “Peoples, as states, like individuals, may be judged to injure one another merely by their coexistence in the state of nature (i.e., while independent of external laws).”¹⁸ In his critique of modern society at the time of his writing, Kant contributes to the groundwork for the later development of international organizations such as the United Nations. This is because he recognizes that there is no way of determining, and ensuring accordance with, justice in the state of nature between states. As he points out:

States do not plead their cause before a tribunal; war alone is their way of bringing suit. But by war and its favorable issue, in victory, right is not decided, and though by a treaty of peace this particular war is brought to an end, the state of war, of always finding a new pretext to hostilities, is not terminated. Nor can

¹⁶ Ibid., 1.

¹⁷ Ibid., 2-3.

¹⁸ Ibid., 5.

this be declared wrong, considering the fact that in this state each is the judge of his own case.¹⁹

In order to remedy the lack of established justice between states, Kant argues for the establishment of a league of peaceful nations that would seek to end wars all together. He takes this step beyond a peace treaty, because a treaty “. . .terminates only one war, while [a league of peace] seeks to make an end of all wars forever.”²⁰ Kant thus helps establish the precedent for civil and political rights, the notion of universal rights due to mankind such as the immorality of states using humans as “machines” during warfare, and suggests a universal body that can navigate interstate justice.

What is perhaps most significant, however, is Kant’s notion of a world citizenry, of a new level of identity beyond the personal, the community-based, and the national.

At the end of his essay on perpetual peace, Kant declares:

Since the narrower or wider community of the peoples of the earth has developed so far that a violation of rights in one place is felt throughout the world, the idea of a law of world citizenship is no high-flown or exaggerated notion. It is a supplement to the unwritten code of the civil and international law, indispensable for the maintenance of the public human rights and hence also of perpetual peace.²¹

The idea that injustices are relevant to people all over the world is a substantial departure from state-centric sovereignty theory that moves toward universal humanitarianism, and is compatible, at least in incipient form, with modern notions of what constitutes human rights.

¹⁹ Ibid., 6.

²⁰ Ibid., 6.

²¹ Ibid., 8.

The development of sovereignty theory and the focus on the function of the state in relation to the individual thus led to an increasingly vast conception of liberty and a focus on individual rights. From the negative liberties proposed by Locke necessitating a lack of interference on the part of the state, to the positive liberties established by Rousseau's focus on political rights, to a combination of the two in an effort to promote universal peace and a global citizenry, a significant body of thought antedates and forms the basis of the human rights movement as it stands today.

The Modern Human Rights Movement

How do we understand human rights today? Certainly, human rights grow out of this past tradition based both on inalienable natural rights and the importance of political freedoms, but what are human rights for us, and who/what is responsible for protecting them? According to James W. Nickel, author of *Making Sense of Human Rights*, “. . . almost all human rights are or include claim-rights, and such rights identify a party or parties (the addressees or duty bearers) who must act to make available the freedom or benefit identified by the right's scope.”²² Essentially, human rights pose obligations on others to respect and provide protection for citizens around the world. This aligns well with Kant's theory of a world citizenry, where the violation of rights in one place of the world is important to the rest of the world as well.

In addition to posing obligations on one's state government and the international community, Nickel suggests that human rights are universal, high priority norms that are not theoretically “. . . dependent for their existence on recognition or enactment by

²² Nickel, James W, *Making Sense of Human Rights*, 2nd ed. (Malden: Blackwell Publishing, 2007), 23.

particular governments.” This is in contrast to Hobbes’ notion that justice only exists with the creation of the sovereign state. (Later in this thesis, however, I will discuss how the practical protection of human rights is in many ways and perhaps even essentially tied to the sovereign state.) As Nickel explains, human rights “. . . exist as legal norms at the national and international levels, and as norms of justified or enlightened political morality.”²³

In the modern era, these rights are not merely elements of normative theory, but the foundation for a strong and widespread movement. Global organizations such as the United Nations (which includes the UN High Commissioner for Human Rights and the Human Rights Council), the World Bank, and the World Trade Organization attempt to foster international cooperation among nations regarding economics, international peace, worldwide development, and the prevention (or diminishment) of human rights violations. On a regional level, organizations such as the European Union, the Organization of American States (specifically the Inter-American Commission on Human Rights), and the African Union (which includes the African Commission on Human and Peoples’ Rights) address localized human rights violations through regional state-based cooperation. Moreover, non-state and non-regional actors such as the International Committee of the Red Cross, Doctors Without Borders, and Amnesty International ignore the borders of the states and promote global health, global awareness, and general support for human rights worldwide. These various actors, though working independently, together formulate a movement directed at the promotion and protection of human rights around the world, for every individual.

²³ Ibid., 10

The basic substance of the human rights movement is articulated in the Universal Declaration of Human Rights (UDHR), which is one of the founding documents for international law. Created in 1948 following the brutality and devastation of World War Two, the UDHR was one of the first major outcomes of the United Nations. What is remarkable about this declaration, though non-binding, is its intended application for the entire world: This suggestion stands in stark contrast to the traditional sovereignty theories upholding the independence of the sovereign state. Indeed, the Preamble to the UDHR asserts:

Now, Therefore, THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.²⁴

The UDHR, along with the two other founding documents for the modern human rights movement – the International Covenant on Civil and Political Rights and the International Covenant on Social and Cultural Rights – promote the protection of rights that fall under both of Berlin’s notions of liberty. For instance, in a Lockean fashion, Article Three of the UDHR states, “Everyone has the right to life, liberty and security of person,” and Article Five asserts that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 21, however, articulates a more positive conception of liberty, establishing that:

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people

²⁴ Ibid., 192

shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.²⁵

In fact, the UDHR takes positive liberty a step further, promoting not only political liberties, but also additional social liberties such as the right to leisure and a reasonable workweek (Article 24).

These human rights documents, coupled with international organizations (both governmental and non-governmental) and a growing global awareness of human rights concerns are improvements to the status of the individual in the world. At the same time, however, the non-binding status of most human rights documents (and the lack of legal force for even binding treaties) limits the efficacy of the movement as a whole. Why was the development of the sovereign state so firmly established, whereas the advent of universal humanitarian thought has resulted in only partially effective treaties and agreements? What makes the state more powerful as an institution than the human rights movement, including international organizations such as the United Nations that have been recognized by almost every state throughout the world?

The basic problem posed for human rights by state sovereignty is that the contradictions between sovereignty and universalist humanitarianism create a tension between the individual's identity as a human being with obligations to other human beings throughout the world and one's identity as a citizen with obligations to the other citizens within his state. The organization of humanitarian efforts is crippled by a free rider problem resulting from large group size (human rights apply to all individuals

²⁵ The United Nations. "The Universal Declaration of Human Rights." <http://www.un.org/en/documents/udhr/>

throughout the world) and a lack of specific selective incentives, whereas each state acts as an already organized organizing unit with the strong incentive to maintain its own sovereignty. It is therefore difficult for anything bigger than the state to effectively organize a successful movement, particularly if the ideas perpetuated by the movement contrast with the sovereignty of the state. Further complicating the problem is the fact that states are the most effective means of obtaining real protection for political and human rights, largely because states have the backing of the monopoly on the legitimate use of armed force within a particular territory. The state is thus positioned as the ultimate provider of both positive and negative liberties. In the following chapter, I navigate the intricacies of these contradictions in order to demonstrate how the dual role of the state as both a provider of and barrier to human rights poses problems for the human rights movement.

Chapter Three

Human Rights and the Sovereign State

Human rights theory provides a way of conceptualizing and articulating a moral universalism that transcends political borders, connecting individuals and establishing a limit on the extent to which a sovereign authority can control the lives of its citizens. As a theory, at least, it defies the constraints of a state-centric world, directly conflicting with the key components of sovereignty outlined in chapter one: Whereas the sovereign state is founded on the basis of territorial exclusivity, human rights are universal. The sovereign state is considered externally independent of other states, but human rights are claim-rights, posing an obligation on individuals around the world not just as citizens but also as human beings. Moreover, while sovereignty delegitimizes any external intervention by awarding the sovereign absolute authority over internal affairs, the obligations posed by human rights legitimize humanitarian interventions in order to end extreme violations of rights. And ultimately, when it comes to the enforcement of human rights, the state has a monopoly on the legitimate use of armed force in a given territory, whereas – despite substantiation through treaties and international organizations – the human rights movement does not have any similar power.

Despite these fundamental contradictions, state sovereignty is a crucial element in the promotion of human rights, and it plays a necessary role in establishing systemic respect for cultures. As the International Commission on Intervention and State Sovereignty (ICISS) explains, “For many states and peoples, 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.”¹

The key components of the sovereign state – particularly its absolute authority over internal affairs and its monopoly on the legitimate use of armed force – make it particularly adept at protecting the rights of individuals both from other individuals within their state as well as from foreign states and individuals. Indeed, political rights, including the individual’s ability to vote or otherwise participate in the political processes controlling his or her life, are entirely dependent on the state for their actualization. In this chapter, I discuss two forms of tension within the relationship between sovereignty and human rights – morality and capacity. First, I articulate the dual role of the sovereign state as both the best provider of and the worst violator of human rights, before analyzing how this tension relates to self-determination. I then describe the difficulties of organizing an international movement in context of the free rider problem. At the heart of both of these tensions is the problem of the relationship between the “one” and the “many;” in other words, the problem of how the individual can reconcile his or her identities as a citizen and as a human. In the end, I discuss the current solutions to these tensions, focusing on the problems faced by modern human rights institutions.

A Necessary Danger: The Dual Role of the Sovereign State

To articulate the role of the state in the provision of human rights more clearly, one need only compare rights within even a weak sovereign state to the complete lack of protection of rights found in what is commonly referred to as a “failed state.” Without sovereign authority, a state can degenerate into anarchy, setting the stage for evils such as

¹ International Commission on Intervention and State Sovereignty, “The Responsibility to Protect,” (December, 2001), 7, <http://responsibilitytoprotect.org/ICISS%20Report.pdf>

civil war, warlordism, exploitation of both rich and poor, and terrorism. “Though “. . . a sustained African Union military campaign . . .”² has helped weaken Al-Shabaab terrorist forces in recent years, Somalia remains a seminal example of the problems facing a state without de facto sovereignty. Somalia saw 14 attempts to establish a central Somali government from the time the Siyad-Barre regime was overthrown in 1991 until the establishment of the Transitional Federal Government (TFG) in Mogadishu. Though nominally in power, the TFG only had minimal de facto sovereignty, and recently ended its tenure with the establishment of The Federal Government of Somalia in August 2012. The lack of effective central authority led to the failure of public institutions, the destruction of public infrastructure, the poor provision of public services, a lack of skilled manpower, a decline in the delivery of agriculture and livestock services, and a decrease in production.³ Though the Federal Government of Somalia is on its way to becoming more powerful than the TFG, there is still no effective central sovereign authority.

Somalia has also become factionalized along clan-based lines. As a Refugee Studies Centre report states, “the state collapsed into factional violence [and] . . . key strongmen established themselves as ‘warlords,’ mobilising clanspeople to contest control of key resources . . .”⁴ Philippe Le Billon explains that warlordism essentially describes a region in which “. . . de facto sovereignty are often defined by commercial

² Masters, Jonathan, “Backgrounder: Al-Shabaab,” *Council on Foreign Relations*, <http://www.cfr.org/somalia/al-shabaab/p18650>

³ Food and Agriculture Organization of the United Nations, “Food and Agriculture Organization of the United Nations: Somalia,” *FAO Strategy and Plan of Action 2011-2015*, 48, <http://faosomalia.org/uploads/FAO%20Somalia%205-year%20strategy.pdf>

⁴ Lindley, Anna and Anita Haslie, “Unlocking Protracted Displacement: Somali Case Study 79,” (Refugee Studies Centre, University of Oxford. August, 2011), 7, http://www.rsc.ox.ac.uk/publications/working-papers-folder_contents/RSCworkingpaper79.pdf/view

interests . . .”⁵ Under warlordism, the strongest clans forcibly take valuable resource-rich land from weaker clans and indigenous people, which has caused many Somalis to lose their homes and their livelihoods, becoming either internally displaced persons or refugees.⁶

These infrastructure problems and clan-based tensions have continued over the past few decades in part because warlords and other business leaders have vested interest in the continuation of internal conflict. As Christian Webersik writes in “Mogadishu: An Economy Without a State:”

. . . in a territory with a weak state and without effective institutions, such as Somalia, there clearly exist economic incentives to maintain conflict by diminishing the prospects of peace. In weak states income inequality can lead to the privatization of violence . . .⁷

Under warlordism, many businesspeople benefit from the lawlessness of the war economy, even going so far as to sell looted property to other countries by dismantling and exporting public assets as scrap (including factories, power stations, bridges, marine vessels, telecommunication equipment, national schools, and more). Essentially, warlords controlling various areas of Somalia have disregarded territorial exclusivity and corrupted the business sector, in addition to the long-term effects of Al-Shabaab on the government’s monopoly on the legitimate use of force and its control over internal affairs.

⁵ Le Billon, Philippe, “The Political Ecology of War: Natural Resources and Armed Conflicts,” *Political Geography* 20: (2001). 575, <http://www.geog.ubc.ca/~lebillon/documents/ecowar.pdf>

⁶ World Bank, *Conflict in Somalia: Drivers and Dynamics*, January, 2005, <https://openknowledge.worldbank.org/handle/10986/8476>

⁷ Webersik, Christian, “Wars Over Resources? Evidence From Somalia,” *Environment* 50.3 (2008): 1478, www.proquest.com

It is clear that the government of Somalia's inability to protect its citizens from external and internal force leaves its citizens susceptible to abuse, corruption, and a low quality of life. Indeed, part of the reason why a vast number of Somali citizens fled to refugee camps in Kenya during the 2011 drought in the Horn of Africa is because the TFG was unable to provide for the needs of the citizens in a crisis. Refugees were left in squalid conditions in extremely overpopulated camps, with limited resources and poorly policed areas prone to gender-based violence.⁸ And even if foreign nations or non-governmental agencies had been more willing or better able to care for the displaced Somalis, these individuals would still not have had autonomy over the political processes controlling their lives, or career opportunities, or the economic ability to move somewhere else. Indeed, even today, as some people migrate back to Mogadishu, the most vulnerable face myriad hardships and abuse. As Human Rights Watch reported on March 27, 2013, "Members of state security forces and armed groups have raped beaten, and otherwise abused displaced Somalis who have arrived in Somalia's capital fleeing famine and armed conflict since 2011 . . ."⁹ These realities help demonstrate why a sovereign state is needed in order to protect its citizens from other citizens in a crisis.

The necessity of sovereignty is not only related to the state's ability to protect its citizens; it is also essential for ensuring the international community's positive treatment towards its territory. Looking back to the five basic components of the sovereign state from chapter one, an important element of sovereignty is recognition by other states.

⁸ International Rescue Committee, "Gender-Based Violence Rapid Assessment Dadaab, Kenya," *Mental Health & Psychosocial Support Network*, July 2011, <http://mhps.net/wp-content/uploads/group-documents/129/1312457004-IRCFINALGBVRapidAssessment-DadaabJuly2011.pdf>

⁹ Human Rights Watch, "Somalia: Protect Displaced People at Risk: New Government Should Tackle Past Injustice, Abuses," *Human Rights Watch*, March 27, 2013, <http://www.hrw.org/news/2013/03/26/somalia-protect-displaced-people-risk>

When the TFG was in power, though technically recognized as the official government of Somalia, the international community did not treat Somalia as truly sovereign in accordance with this component. This is because it lacked the other four central components of sovereignty. Since Somalia was unable to defend itself from foreign nations, these nations intervened whenever they wanted. For example, the recognition that Somalia could not protect its citizens and their interests made it easier for polluters to dump toxic wastes in Somalia's territorial waters.¹⁰ This violated the rights of Somalia as a "sovereign" state and endangered individuals (fishermen and others) dependent on the water for their livelihood. International respect for the sovereign independence of states is not merely a way of protecting state power but also a means of controlling the negative behavior of other states throughout the world.

As the difficulties facing Somalia demonstrate, the existence of a truly sovereign state is key to the provision of human rights. When the state fails, the protection of human rights within its territory is likely to fail as well. But the state's relationship to human rights is not simply a direct correlation between state stability and the protection of rights: The role of the state as the ultimate provider of rights also means it has the ability to deny or take away those rights arbitrarily.¹¹ Thus, rights are dependent on state stability, but the state itself is not dependent on the provision of rights. This makes the state dangerous, because a strong sovereign state intended to protect the rights of citizens can actually be the force that violates these rights. If sovereign leaders decide to abuse

¹⁰ Abdullahi, Najad, "'Toxic Waste' Behind Somali Piracy," *AlJazeera*, Oct 11, 2008, <http://www.aljazeera.com/news/africa/2008/10/2008109174223218644.html>

¹¹ I mean this in the practical, concrete sense and not from a moral perspective. This thesis takes as a basic assumption the notion that all humans have rights in a moral sense, regardless of whether or not they are externally validated or protected.

their power, the state's absolute authority over internal affairs can be extremely oppressive and ultimately tyrannical. In Syria, for example, Syrian President Bashar al-Assad sparked demonstrations around the nation following his violent crackdown against one city's protestors (who were protesting the torture of students who used graffiti to speak out against the government) in March 2011. The demonstrations spread, and eventually led to the formation of an armed opposition. The Syrian government has been sending tanks into cities and opening fire on demonstrators, and is continuing to commit mass killings and violate human rights. Human Rights Watch reports that the Syrian government has arbitrarily detained and tortured citizens, including children.¹² During the week of February 17, 2013, the government "... launched at least four ballistic missiles that struck populated areas in the city of Aleppo and a town in Aleppo governorate ...," killing "... more than 141 people, including 71 children ..."¹³ Thus while the state is in principle the main protector of the human rights of its citizens, it can be the most dangerous violator of rights as well.

Though not all states are equally likely to become oppressive, tyranny is possible under all states and it can take a variety of different forms. A national government may support a specific sect (whether religious, political, or ethnic) of the nation and engage in genocide towards the rest of the population, as occurred during the Rwandan Genocide in 1994. Or a government can murder those in the opposition, as the Assad regime is doing in Syria. Totalitarian regimes in the 20th century attempted to control all aspects of citizens' lives; if people resisted, they were killed. In Nazi Germany, for instance,

¹² Human Rights Watch, "Syria: Stop Torture of Children," *Human Rights Watch*, Feb 3, 2012, <http://www.hrw.org/news/2012/02/03/syria-stop-torture-children>

¹³ Human Rights Watch, "Syria: Unlawful Missile Attacks Kill More Than 140," *Human Rights Watch*, Feb 26, 2013, <http://www.hrw.org/news/2013/02/26/syria-unlawful-missile-attacks-kill-more-140>

citizens who were against the Nazis were in grave danger even if they were Aryan; moreover, millions of people died under Stalin's leadership in the USSR. George Orwell's *1984* is a brilliant literary portrayal of just this sort of absolutist tyranny. Additionally, democracy under the United States allowed for the enslavement of millions of African-Americans for nearly a hundred years. Even after the passage of the thirteenth amendment abolishing slavery throughout the nation, white voters were able to disenfranchise former slaves and their offspring and limit their economic opportunities through the Black Codes and subsequent Jim Crow laws. From these examples, it is clear that the potential for widespread abuse of the authority over internal affairs can be a dangerous element of the sovereign state.

In addition to having the power to violate the rights of its citizens through tyrannical abuse, the state can choose to completely deny or take away citizenship or membership in the state; the flipside of territorial exclusivity and internal authority is the ability to exclude. This is a horrible degree of power; as the UN Refugee Agency explains, "Possession of nationality is essential for full participation in society and a prerequisite for the enjoyment of the full range of human rights."¹⁴ Without citizenship, one does not have access to the protection of human rights or the power to demand change. As Hannah Arendt argues:

The calamity of the rightless is not that they are deprived of life, liberty, and the pursuit of happiness, or of equality before the law and freedom of opinion – formulas which were designed to solve problems *within* given communities – but that they no longer belong to any community whatsoever.¹⁵

¹⁴ The UN Refugee Agency, "Stateless People: Searching for Citizenship," *The UN Refugee Agency*, " <http://www.unhcr.org/pages/49c3646c155.html>

¹⁵ Arendt, Hannah, *The Origins of Totalitarianism*, (Cleveland: The World Publishing Company, 1958), 295, <http://ia600509.us.archive.org/7/items/originsoftotalit00aren/originsoftotalit00aren.pdf>

Without a community, human rights are not protected; stateless peoples are left at the mercy of non-binding international law. For instance, in Europe, the Roma lack membership in the European Union because membership is dependent on having nationality in one of its member states. Yet because states often refuse to grant them nationality, many Roma are stateless.¹⁶ The Roma not only lack a say in the political and social processes of the European Union, but they are also generally considered a domestic policy problem by member states. Indeed, the Roma have been discriminated against within Europe for a long time. Between the 14th and the 19th centuries, the Roma in Romania were slaves; during the Holocaust, the Nazis committed mass extermination of them; after the fall of communism, some states denied the Roma citizenship on an ethnic basis.¹⁷ As Jessica Parra explains, “The current unfortunate social, economic, and political circumstances of Roma in the EU are the product of centuries of discrimination.”¹⁸

Statelessness is perhaps the best exemplifier of the contradictions inherent in the sovereign’s dual role as the best rights provider and the most dangerous rights violator. No other condition so clearly depicts the simultaneous need for the protection of a state and for the protection from a state or a system of states. Individuals lack rights without a

¹⁶ Parra, Jessica, “Stateless Roma in the European Union: Reconciling the Doctrine of Sovereignty Concerning Nationality Laws with International Agreements to Reduce and Avoid Statelessness,” *Fordham International Law Journal* 34, no. 6 (2010-2011): 1667-8, http://heinonline.org/HOL/Page?handle=hein.journals/frdint34&div=55&g_sent=1&collection=journals#1682

¹⁷ *Ibid.*, 1671.

¹⁸ *Ibid.*, 1670

state, but at the same time, it is political conflict or political prejudice within or between states that most often is the cause of statelessness. The UN Refugee Agency writes:

Statelessness occurs for a variety of reasons including discrimination against minority groups in nationality legislation, failure to include all residents in the body of citizens when a state becomes independent (state succession) and conflicts of laws between states.¹⁹

Moreover, some traditionally nomadic cultures do not fit into the state-centric structure of the world and are denied the benefits of the state within whose territory they reside. As Patrick Hayden, in a description of Arendt's views on statelessness, explains:

The central paradox of the notion of inalienable human rights is that while the protection of human rights within the international system is inseparably tied to state sovereignty, states are also authorized to deprive citizens of those same rights and to exclude individuals from the condition of nationality that would enable them to have human rights. By controlling admission into or expulsion from nationality and citizenship, states thereby control each individual's prospects for the effective possession and exercise of human rights.²⁰

The condition of statelessness – lack of access to protection, marginal to no control over the political processes that impact one's life, discrimination, and “complete rightlessness”²¹ – demonstrates the role the state plays (at least in today's state-centric world) in the provision of human rights to its citizens, and the difficulty a person or a people has without the protection of a sovereign state. But the mere fact that the state can intentionally cause statelessness, coupled with the horrors committed by tyrannical regimes to their citizens, positions the state as a terrible benefactor.

¹⁹ The UN Refugee Agency, “Stateless People: Searching for Citizenship.”

²⁰ Hayden, Patrick, “From Exclusion to Containment: Arendt, Sovereign Power, and Statelessness,” *Societies Without Borders* 3 (2008): 253, www.library.duke.edu

²¹ *Ibid.*, 256

Self-Determination and the Human Rights Movement

This contradiction between the dual roles of the sovereign state as exemplified by statelessness is not only a concrete problem as it relates to the provision of resources for human rights, but it is also a moral theoretical problem concerning the tension between the promotion of universal human rights norms and self-determination. By self-determination, I refer to the rights of the state as a collective unit, including the ability of the population to govern itself and exercise control over its own affairs. The right to self-determination is different than the authority of the sovereign state to seek economic and political gain, but its actualization relies on this authority.

The importance of self-determination can be easily demonstrated by the brutality and cruelty of colonialism and imperialism. From the killing and marginalization of Native American tribes, to the random division of Africa by European powers, to puppet governments propped up by the United States, it is clear that there is a need for the moral understanding – the right – of populations to exist and to control their own lives. In a way, creating a respect for self-determinism helps protect the weak against the strong. This respect for other cultures is compatible with the human rights movement. Indeed, its importance is reiterated in its inclusion in human rights doctrine: As Article One of the International Covenant on Civil and Political Rights states, “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”²²

As Article One indicates, however, respecting self-determination means more than simply protecting the existence of various cultures – it also suggests the right for

²² United Nations General Assembly, The, “International Covenant on Civil and Political Rights,” *Office of the High Commissioner for Human Rights*, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

these cultures to govern themselves and to control their own political processes. Once again, this is not directly in conflict with the human rights movement; as previously indicated, the political rights of individuals and societies are included within the notion of human rights. The problems occur when the political processes of self-determining states lead to outcomes contrary to the doctrine of human rights in other ways. For instance, a religious society might decide to outlaw the public display of other religions' religious symbols, or deny gay rights, or refuse to grant women's suffrage. Or a state facing population concerns might force women to have abortions and conduct forced sterilizations, such as is occurring in China with the one-child policy. How can the respect for political and cultural rights be reconciled with other human rights such as the right to worship as one pleases or the ability to vote regardless of gender? When is it acceptable for the international community to take action against a specific culture, and when is it imperialism? When does humanitarian action prevent tyranny over a population or future statelessness, and when does it undermine a people's access to a state and control over its political processes?

To some degree, the tensions created by self-determination are a positive check on the human rights movement. One of the dangers of the human rights movement is the very notion of its universality: on one hand, there is a strong need for a universal conception of morality that transcends political boundaries and connects individuals around the world, that sets a standard for sovereign states and refuses to ignore the atrocities committed by tyrannical regimes or perpetuated by discriminatory policies. On the other hand, a universal theory related to morality is dangerous in that it risks turning into cultural imperialism or an effort to homogenize global society. For instance,

collectivist societies conceive of rights as they relate to a population as a whole, acknowledging the duties of the individual toward his or her community. In contrast, individualistic (often Western) societies focus on the singular person and his or her rights to pursue the life he or she wants to lead separate from communal standards. Though there are ways of reconciling these tensions – such as recognizing that the basic rights due to an individual (such as the right to life) are necessary for one’s successful participation in society – the language of the individual within human rights theory can thus be oppressive if left unchecked. This is one reason why it is important that self-determination be part of human rights doctrine. Though some may perceive this contradiction between universalism and self-determination as an inherent flaw within the human rights movement, I see it as a necessary check on the dangers of universalistic philosophies when taken to an extreme – a check that does not undermine the human rights movement but instead prevents the movement from undermining itself.

Yet it is not just a problem of the tensions inherent within a system of moral pluralism regarding the language of the human rights movement and the necessity of respecting other cultures; the contradiction between the promotion of human rights and self-determination is aggravated by the fact that self-determination implies state sovereignty. Going back to the dual role of the sovereign state as the best provider of and worst violator of human rights, self-determination further complicates the issue by making respect for the state’s policies a moral element of the equation. It is thus not only about the state choosing to be just or unjust, but it is also about the notion that even an unjust state has rights. This means that a respect for the self-determination of a population could undermine other goals of the human rights movement, as demonstrated

by the example of the religious society banning gay rights. Moreover, it could hurt the essence of the movement as universal and fundamental to rely too strongly on the procedures chosen within a state (whether democratically or otherwise) to abide by human rights standards; this is particularly true when it comes to international problems requiring global collective action, such as promoting peace, or combatting human trafficking, or aiding those made to flee their homes due to the environmental effects of global warming.

Additionally, while self-determination is propped up morally as a way of protecting the weak against the strong, it is also a question of getting the strong to help people around the world even when it defies that strong state's political desires to do so. For example, a powerful democracy might choose to drastically cut spending on foreign aid, thereby greatly reducing the amount of food going into refugee camps around the world, or it might choose not to send troops intended to help stop a genocide. The purpose of universal human rights norms is to help negate this tendency and promote global awareness of the rights of individuals worldwide. The tension within an individual in regards to his or her dual identity as a citizen and a human is augmented in light of the fact that one's political rights to determine what the resources within the government go towards might not align with what would best benefit the rights of other humans abroad.

Moreover, too great an emphasis on self-determination in contrast with the rest of the human rights movement may lead the international community to overlook the abuse of minority populations under sovereign states, an abuse that defies the cultural and political rights of the minority but which may be sanctioned by the majority within a state. This problem is made possible by the fact that sovereignty is separate from self-

determination. Though self-determination needs sovereignty, Westphalian sovereignty was created with the intention of imposing the sovereign will on a population in order to ensure peace and stop civil war, not to promote tolerance and multiculturalism. Though a monopoly on the legitimate use of armed force and territorial exclusivity are beneficial from a self-determination standpoint (in the context of imperialism, for example), these seminal aspects of sovereignty can also be wildly abused in a way that both hurts the human rights movement and limits the society's control over political processes. For example, Nazi Germany – or really any fascist state – demonstrates the absolutist nature of Westphalian sovereignty in its imposition of the sovereign will on the rest of the population. Thus, for self-determination to be actualized, minorities and individuals in general must have the rights they need to actually control their political processes.

In order to navigate the contradictions between the rights of a populace to control the political processes in its territory and the human rights abuses that may result from these processes, there is a need to establish limits to both the justifiable actions that can be taken in the name of humanitarianism and to the usage of self-determination as a justification for the continuance of suboptimal humanitarian conditions. Yet humanitarian doctrine as it exists today only outlines these limits in regards to the most extreme violations of human rights by sovereign states – namely, those instances that require humanitarian intervention. In these cases, it appears that foreign nations are able to override Westphalian sovereignty when it no longer props up the self-determination of a community and instead harms the citizens within its territory.

This is articulated within the ICISS report, “The Responsibility to Protect,” (R2P) which attempts to regulate interventions within a state in order to limit the violation of

internal sovereignty through unnecessary interventions and to promote action under extreme circumstances regardless of the economic or political draw of the state in need. The commission argues that, “. . . sovereign states have a responsibility to protect their own citizens from avoiding catastrophe . . . but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.”²³ This applies to violent oppression by governments, as it claims:

Where a population is suffering serious harm, as a result of internal war, insurgency, repression, or state failure . . . and the state in question is unwilling . . . to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.²⁴

Yet R2P is reliant on a flawed system of approval through the UNSC, and these conclusions, while a good start, do not address how to handle human rights violations of a lesser scale than genocide or state failure, such as the denial of gay rights or women’s suffrage. Thus, the tensions regarding the dual nature of the state as a provider of rights and a violator of rights, as well as the rights due to even unjust nations through self-determination, remain problematic.

Organizing for Human Rights in Context of the Sovereign State

On April 22, 2012, Chinese human rights lawyer Chen Guangcheng escaped from his home in the village of Dongshigu in Shandong Province and, though blind, traveled hundreds of miles to the U.S. Embassy in Beijing. His crime? Speaking out against forced sterilizations and abortions occurring in accordance with the Chinese one-child policy. His punishment? House arrest under the surveillance of violent guards whom

²³ International Commission on Intervention and State Sovereignty, “The Responsibility to Protect,” VIII.

²⁴ *Ibid.*, XI

Guangcheng reported frequently beat him and his wife. When he escaped, he broke his foot climbing over the wall outside his home, and fell over 200 times.²⁵ To the chagrin of the Chinese government, Guangcheng found temporary refuge in the U.S. Embassy. An article from *The Economist* published on May 2, 2012 (just a few days after Guangcheng reached the embassy), remarks that the escape “. . . will long be recounted as one of the most dramatic episodes in America’s dealings with China over human rights.”²⁶

Why was Guangcheng’s admittance to the embassy so “dramatic”? Apart from the remarkable feat he accomplished by escaping, from a humanitarian perspective this case seems relatively straightforward: Guangcheng was unfairly being detained, guards were beating him and his wife, he managed to escape, and the U.S. was in a position to provide protection. Yet from a state perspective, the situation is much more complicated. Guangcheng escaped just days before the annual U.S.-China Strategic and Economic Dialogue (SED), and the subsequent increased tensions between the two states following his escape threatened to undermine their diplomatic relations and strategic goals. Chinese diplomats feared that allowing the U.S. to protect an individual being punished by Chinese authorities would make China seem less powerful than the United States. American officials feared that China’s anger over what it deemed to be an infringement of sovereignty over its internal affairs might undermine their diplomatic goals. As *The Economist* explains, U.S. diplomats did not “. . . want a human-rights case to overshadow discussions about issues ranging from a possibly imminent nuclear test by

²⁵ J.M., “The Great Escape,” *The Economist*, May 2, 2012, <http://www.economist.com/blogs/analects/2012/05/chen-guangcheng>

²⁶ *Ibid.*

North Korea to global economic rebalancing.”²⁷ This high-stakes “drama” was not simply about a conflict between the U.S. and China; it was a conflict between political priorities of the state and humanitarian goals.

Fortunately for Chen Guangcheng, the U.S. and China worked out a deal in his favor,²⁸ in part because the United States also had a vested interest in demonstrating a commitment to human rights in such a high-profile case. But his remarkable situation is far from the norm: Guangcheng is one individual who required few resources and whose escape took place during a high-profile dialogue between high-profile states; even then, the situation just barely resolved in his favor, and it required going to extraordinary lengths and even putting family members and fellow activists at serious risk.

Not all people are as lucky as Guangcheng: favorable outcomes are often not in the cards for those affected by the hundreds of human rights crises that do not fall right on the doorstep – literally – of powerful states with a vested interest in ending the crisis. As two of the most powerful nations in the world, the United States and China have an interest in maintaining a degree of cordiality; China had a stronger incentive to concede to the wishes of Guangcheng and the United States than it would have had if Guangcheng had fled to the embassy of a much weaker and less economically relevant country. This case demonstrates how the entire outcome of human rights crises can be controlled by states. China’s interests and the United States’ interests were the driving forces behind the decision-making and the outcome; there was no third-party arbitrator or key player with humanitarian goals as its main focus. Guangcheng’s human rights were dependent

²⁷ Ibid.

²⁸ I do not say this to minimize the experience of Guangcheng, who would have preferred to study in China rather than the United States but was unable to do so due to fear for the safety of his family. Rather, I simply mean to suggest that he was given freedom and safety in a way that is not the case for many others.

on the degree to which the states in question took them seriously. Fortunately for him, China and the U.S. had enough incentive to come to an agreement; unfortunately for many others, the states in question do not have as much at stake and pursue self-interested politically or economically beneficial paths instead.

So what happens to those abusive nations with no economic incentive to maintain relationships with states that have vested interests in public humanitarianism? What is done to stop tyrannical regimes that are not powerful trading partners from committing genocide, such as Rwanda in 1994? Or what about the crises that do not get addressed because they are economically inconvenient and not made into high-stakes dramas, such as the fact that the U.S. continues to buy oil from Saudi Arabia despite its terrible policies towards women? How often do abuses occurring within supposedly developed, humanitarian states go unpunished because no nation wants to risk angering the wealthiest powers – or if it does, it simply does not have the resources?

It is clear that the political goals of sovereign states and the humanitarian goals of people do not always overlap; indeed, they often oppose each other. The fundamental problem here is that this creates a conflict within the identity of the individual between his or her role as a citizen, with legal and political obligations to a defined collective, and his or her role as a human, with ethical or moral responsibilities towards other humans around the world. In an ideal world, what would be best politically would also be best for human rights, but this is not the case in reality. Whereas sovereign states are highly concerned with maintaining their power over internal affairs within their specific territories, human rights activists attempt to achieve universal norms that apply to all peoples across all boundaries. This makes it difficult for human rights activists to

organize effective action against human rights violations for two reasons: 1) There is a free rider problem related to effective human rights advocacy, and 2) despite conflicting interests, human rights are still dependent upon states.

The problems posed for the human rights movement by state sovereignty can be described using the framework of a free rider problem. A free rider problem is associated with collective action for public goods, and essentially occurs when individuals recognize the minimal significance of their individual actions and attempt to “free ride” off of the efforts of others. For example, it would benefit all individuals living in the United States to reduce pollution, and a substantial reduction of pollution could occur if everyone consistently walked when possible or invested in green technology such as a hybrid car. Though each individual’s singular actions would do little to reduce pollution, taken as a whole, a nation of individuals could accomplish a significant feat. Yet because one’s personal efforts are so insignificant, one often assumes that others will take care of the environmental concerns and that there is really no urgent need to contribute to the process; even if one is inclined to do so and bear the cost, there is no assurance that others will do the same. In fact the very knowledge that there is no enforcement can lead to the conclusion that others are likely to cheat and that one is a fool to bear all of the costs with no shared participation. One thus chooses not to participate. This becomes problematic when too many people make this assumption, and only a few people are left abiding by the anti-pollution rules, rendering their efforts ineffective.

The free rider problem is related to three main factors as most famously articulated by Mancur Olson in *Logic of Collective Action* – individual benefits, group size, and selective incentives – which Michael Munger explains well in his short video,

“Why Is The NRA So Powerful?” Munger discusses why the sizeable portion of the population that supports gun control has difficulty achieving its goals, whereas the National Rifle Association (NRA) is quite successful. For gun control supporters, the individual benefits of putting in the time and effort it takes to effectively organize for gun control are minimal; for NRA members, individual benefits – namely keeping one’s own gun – are more substantial. Moreover, there are selective incentives saved for only those who participate in promoting the goals of the NRA; NRA meetings might include gun shows and marksmanship classes, for instance. There is no equivalent to this from the gun control advocates, as their purpose is to limit the usage of guns, not to promote them. Though Munger acknowledges that the size of the NRA does not make the group size factor as applicable in this example, he explains that, typically, small but organized groups win, because they are better at concentrating and organizing power.²⁹ Small groups are privileged in regards to collective action because they have more accountability, more peer pressure, more monitoring capacities, and generally higher individual contribution.

That human rights organizations and activists intent on promoting an international standard would have difficulty accomplishing their goals seems given: not all people are motivated to actively promote human rights (regardless of their political stance on any specific rights issue), and many people will ignore actions they could take hoping that others will take care of the advocacy for them. Examining Olson’s three factors shows

²⁹ Munger, Michael, "Why is the NRA so Powerful" [video}, January 22, 2013, <http://www.youtube.com/watch?v=Pdt6Jj64TVU>

that the human rights movement has as large a group size as possible, given that human rights apply universally throughout the world. While individual benefits apply to all (albeit not as much to those who already live in well governed states), the selective incentives involved in organizing are minimal; some may derive satisfaction from their commitment to the promotion of human rights, but for many, the time and effort required for effective advocacy is too costly to prevent free riding. Moreover, in some areas of the world, human rights advocacy is particularly dangerous, posing even greater costs for the individual activist, as the case of Chinese activist Guangcheng mentioned above indicates. Thus, like the gun control supporters in the United States, human rights supporters suffer from the free rider problem.

This free rider problem is made more problematic by the fact that states are comparatively effective organizers. Like the NRA, state interest often overpowers human rights interests; when a state opposes changes in favor of human rights or even merely fails to support an initiative, it is that much more difficult for humanitarian activists to bring about change. For example, the United States continues to buy oil from Saudi Arabia, and it supports Israel despite its treatment of Palestinian refugees and widespread global criticism of its policies. One way in which the state is a much more effective organizer than the human rights movement is in relation to group size; each sovereign state has a comparatively small group size, allowing for better coordination. This is particularly true given the sovereign's monopoly on the legitimate use of armed force. Each state also has a strong interest in the "individual benefit" of maintaining sovereign power, and citizens within a state usually have selected incentives to support the state in the form of state-based protections and provisions. Within world politics,

then, the sovereign state is a better organizer than advocates of the human rights. This is true whether the advocate is an individual activist speaking out in favor of women's rights, or an organization attempting to promote widespread awareness of a problem, or even a particularly benevolent state. In effect, each state is an already established organizing unit on behalf of sovereign power, and will usually be more effective than the dispersed human rights movement. The world is a tapestry of states, making it difficult to weave anything bigger than the state into a successful movement.

Complicating this free rider problem is the fact that states are not simply an opposing body to the human rights movement, the equivalent of the NRA to the gun control supporters. As the situations of failed states like Somalia and stateless populations like the Roma demonstrate, the state is also the most effective means of obtaining real protection for human rights. In relation to Munger's NRA example, this would be as if the gun control movement was not only less effective at organizing than the NRA, but also dependent on the NRA for the enactment of gun control laws. Rather than have a third-party such as the government making policy decisions (albeit based off of the influence of both groups), the NRA would both make the decisions and be fundamentally biased in one direction. Thus, it is not simply that state interests are competing with humanitarian interests for approval; for humanitarian goals to succeed, they must either coincide with or overcome the interests of the state, within the state itself. This dependence on the state means that the human rights crises that have the best chance of gaining the support of the international community are those crises that occur in states that are of interest to powerful nations for economic or political reasons, but whose goals do not undermine the relationships between states necessary for political goals in the

region to be achieved. For instance, the international community rallied around Libyan citizens in 2011 because democracy in the Middle East is a goal that many countries can support, and in which some powerful states (such as the United States) have particular vested interest. Likewise, France is aiding Mali to combat extremists in northern Mali, in part because Mali's humanitarian concerns line up with France's counterterrorism goals in North Africa.

In contrast, the humanitarian crises that do not seem particularly relevant to the interest of a multitude of states – or at least one powerful state – are likely to be ignored at best and perpetuated at worst. One of the greatest failings of the international community following the development of the modern human rights movement after World War II is its lack of effective action in ending the genocide in Rwanda in 1994. Rwanda is not a wealthy country, and it was not politically relevant to powerful states at the time. When political interests do not overlap with humanitarian goals, this sort of terrible inaction can occur. This is similarly true when political interests oppose humanitarian goals. During the Red Scare in the United States, the U.S. helped stage a coup against the elected Prime Minister Mossadegh in order to reinstate a U.S.-backed shah due to fears that the Soviet Union was gaining influence over Iran. This complete disregard for the political rights of the citizens to choose their own government stemmed from America's fear of what the spread of communism could mean for its power and its sovereignty. These are just a few examples of how the interests of states “make or break” humanitarian goals. The free rider problem faced by the human rights movement makes it significantly less powerful than the states that it sometimes competes with.

Are there ways in which to minimize the problems posed for the human rights movement from the free rider problem, its dependence on the state, and the potential contradictions between negative human rights and positive political human rights? Referring back to Mancur Olson's three criteria affecting collective action, it seems as though the human rights movement needs a smaller group size and/or increased selective incentives. To some degree, successful non-governmental organizations address both of these problems: organizations such as the International Red Cross, Human Rights Watch, and Amnesty International form smaller organizing units which provide incentives to their participants in the form of jobs, opportunities to travel, and membership in a highly regarded community. And while these organizations do accomplish a substantial amount of good throughout the world, they are still only a piece of the solution. Perhaps in a more standard free rider problem such as the NRA situation described by Munger, increasing selective incentives and reducing group size (while maintaining individual benefits) might be enough. But, as indicated above, everything is more complicated when it comes to organizing against the interest of the state.

First, states have the ability to exclude organizations from its borders, and even to attack members of an organization if they are going against the sovereignty of the state. Thus, for medical organizations such as the International Red Cross, it is more effective to remain politically neutral in order to gain access to the people most in need of aid. While this allows the Red Cross to aid more people than it would have otherwise, it also means that it cannot push policies or speak out against particular humanitarian crises; thus, these sorts of NGOs do not solve the free rider problem against the state, as they cannot participate in many forms of human rights advocacy in the first place.

Second, even for those organizations that do not have a commitment to neutrality, such as Human Rights Watch, the power of the state and intricacy of this particular free rider problem leave them unsatisfactory opponents to the state. NGOs are significantly less powerful than the states whose self-interests they sometimes oppose, because they do not have any sort of monopoly on the legitimate use of armed force in a particular region. Because they are not merely competing with, but dependent upon the state, the lack of force is significant. When humanitarian goals do not overlap with the goals of the state, they must be able to override the self-interest of the state, but it is nearly impossible to do so when one has so little power and the state has so much.

Current Solutions to Contradictions Between Sovereignty and Human Rights

In an attempt to combat the problems posed to human rights by the sovereign state, the international community has developed a number of mechanisms under both binding and non-binding law with the goal of regulating the provision of human rights and holding states accountable for their citizens. While many of these solutions have some degree of positive impact, overall, international human rights mechanisms are underwhelming in face of the strength of the sovereign state. In this section I discuss the major elements of international human rights regulations, analyzing which ideas are effective and which are too strongly overpowered by sovereignty and the self-interest of the state.

The central institution to the international human rights movement is the United Nations. Its goals as articulated by the Preamble to the Charter of the United Nations include promoting peace and reaffirming “. . . faith in fundamental human rights, in the

dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . .,” as well as establishing “. . . conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained . . .”³⁰ These are admirable goals, and many UN agencies do effectively combat some human rights violations; indeed, the very existence of an international organization that professes to discuss global human rights violations and the appropriate legitimate courses of action is a step towards a more powerful human rights movement. Overall, however, the impact of the United Nations is limited by its own structure.

The fundamental problem with the structure of the United Nations and other major multilateral institutions is that they do not solve for one of the most complex aspects of the tension between human rights and state sovereignty: they fail to mitigate human rights’ dependency on the sovereign state, because the basic organizational unit of the UN itself is the state. The UN is not the organizational solution to the human rights free rider problem, but rather the embodiment of the extent to which states are interested, or willing to acknowledge, humanitarian principles. Thus, the UN does not give recourse to the stateless Rohingya population discriminated against in Myanmar, or the Palestinian refugees living in camps in Jordan or Lebanon; it is up to the international community of states to determine whether or not the conditions of these peoples are important enough to discuss or act upon. This dependency on the state means that humanitarian action relies on the funds and resources of the member states, which can be susceptible to state politics rather than real consideration of the human rights at stake;

³⁰ The United Nations, “Charter of the United Nations,” <http://www.un.org/en/documents/charter/preamble.shtml>

moreover, the self-determination of cultures is only protected to the extent that they are already substantiated by a state.

The extent to which global humanitarian action is funded and propped up by the state is problematic because the state has no motivation to pour resources into actions that will not benefit it in any specific way, or that might even harm its economic interests. The international interest in a particular region of the world dictates which human rights violations are stopped, and which are left to continue unmitigated by the international community. The same problem that individual and NGO organizers face in relation to engaging state interest in different crises occurs within the United Nations as well. Moreover, states contribute funds to the UN disproportionately; thus, not only is the UN controlled by the interests of states, but it is also controlled by some more than others in a way that biases international law towards wealthier, often Western, states. Even when the UN chooses to criticize the actions of a wealthy nation such as the U.S., its dependence on states – especially wealthy states – leaves it with no real way of enforcing its rules. For example, before going to war in Iraq in 2003, the Bush Administration attempted to gain the support of the international community by asking for support from the UN. When a multitude of nations spoke out against the Iraq War, and when reports suggested that the concern about weapons of mass destruction (WMDs) was hyperbolized, the U.S. ignored the ruling of the UN and continued on its previously chosen path. Powerful nations can thus undermine the authority and purpose of the UN, because there is no real way to criticize or monitor the human rights violations that occur within the powerful nations themselves.

The magnitude of these problems is best exemplified in context of humanitarian interventions, which are justified from a humanitarian perspective in the direst cases of human rights violations. According to Allen Buchanan, humanitarian intervention is:

The threat or use of force across state borders by a state (or group of states) aimed at preventing or ending presently occurring or imminent widespread and grave violations of the fundamental human rights of individuals other than its (their) own citizens, without the permission of the state within whose territory the force is applied.³¹

To begin with, humanitarian interventions are already controversial because they directly violate the internal authority of the sovereign state, and traditional sovereignty theory asserts that states cannot intervene in the internal affairs of other states. More critically, humanitarian interventions risk harming the self-determination of a population, and thus should only be justified once the sovereign authority no longer facilitates self-determination; as indicated above, the R2P doctrine holds that these interventions are only legitimate once a government harms a large population of its citizens (or if the government is unable to prevent internal warfare, etc.).

Yet despite these restrictions, states also abuse the rules of the United Nations by using humanitarian intervention as an excuse to invade the sovereignty of another nation for its own purposes. This may lead to beneficial humanitarian consequences, or it may not. The point is that there is no way to ensure that states acting of their own accord are acting on behalf of real humanitarian concerns or self-interested policies. It is extremely difficult to disentangle the motives of states acting alone or with a few other states in reference to humanitarian interventions. And even when states have true interest in the humanitarian problems within a state, regional interest and perceived relevance to

³¹ Buchanan, Allen, Distributed Lecture Notes for "Human Rights: Theory/Practice," Duke University, Durham, NC. Fall, 2007, 1

mainstream foreign policy dictates which crises receive international attention and which do not.

Moreover, the power to regulate humanitarian interventions is held by the United Nations Security Council (UNSC), which makes the UN's decision-making process regarding humanitarian interventions particularly problematic. With just one veto by a permanent member, the UNSC can prevent UN action. This level of consensus required is exorbitant, and can lead to detrimental impacts on the world. A state interested in violating international law might feel secure in doing so because it knows it has an ally on the UNSC that has the power to veto all UN military action. Nations are particularly apt to sidestep the rules if they perceive the UNSC to be ineffective and biased. The international community is left at the whim of those on the UNSC, where the specific state-interests of one or more of the members of the UNSC often diminish the legitimacy of the decision. For instance, many criticize the UNSC veto of the idea of intervention in Syria by Russia as political rather than ethical or practical. Russia did not support the intervention because Syria has traditionally been a large buyer of Russian arms; the Russian government even stated that it would continue to sell arms to the Syrian government during this conflict, because Syria has been an important trading partner.³² Additionally, the extreme power of the UNSC undermines democratic decision-making within the UN, which might have problematic consequences in regards to its legitimacy in the eyes of the international community.

³² Isachenkov, Vladimir, "Russian Arms Trade with Syria Will Continue, State Arms Trader Says," *The Huffington Post*, Feb 13, 2013, http://www.huffingtonpost.com/2013/02/13/russian-arms-syria_n_2677279.html

One major element of the human rights movement attempting to break through the human rights movement's dependence on states is the international justice system. The Rome Statute of the International Criminal Court (ICC) went into effect ten years ago, establishing "... the first permanent international criminal court with a mandate to investigate, charge, and try people suspected of genocide, crimes against humanity, and war crimes worldwide."³³ It is essentially the first judicial body to have global jurisdiction, thus taking a drastic step away from the notion of a pseudo-state of nature between states and acknowledging the importance of human rights on a global scale. As the Preamble to the Rome Statute for the ICC states, those states which are parties to the statute are "... conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time . . ."³⁴ Though it is connected to the United Nations Security Council in regards to the UNSC's ability to request deferrals, the intention of the ICC is to be independent from individual states and prosecute those who ignore human rights (and commit related crimes) around the world.

Yet there are numerous problems even with this well-intended body, at least in the form the ICC takes today. First, the ICC gains its authority not from sovereignty or a monopoly on the legitimate use of force but from the voluntary participation of states in the Rome Statue system. This is positive in the sense that it is seen as a legitimate organization with vast global support, but it is also problematic because not all states

³³ Dicker, Richard, "ICC: The Court of Last Resort," *Human Rights Watch*, June 29, 2012, <http://www.hrw.org/news/2012/06/29/icc-court-last-resort>

³⁴ United Nations, "Rome Statute of the International Criminal Court," Codification Division, Office of Legal Affairs, July 2002, <http://untreaty.un.org/cod/icc/statute/romefra.htm>

have joined the court. As Richard Dicker, the Director of the International Justice Systems program within Human Rights Watch, explains, this means that there are “impunity gaps” in the international realm. As he writes, “Unsurprisingly, those with the most egregious records – North Korea, Sri Lanka, Zimbabwe, to name a few – have not joined.”³⁵ The court’s authority does not extend to these regions clearly in need of an international justice presence, because the nations have not agreed to the jurisdiction of the court.

These impunity gaps are particularly complicated when it comes to powerful nations on the UNSC. The U.S., Russia, and China have all failed to join the ICC, and thus have an exorbitant amount of power when it comes to controlling which cases the ICC is able to prosecute. Not only do the three powerful nations not fall under the jurisdiction of the ICC, but they also, as members of the UNSC, have the ability to defer the proceedings within a nation that has joined the court. Article 16 of the Statute states:

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.³⁶

Thus, both Israel and Syria are unlikely to have to deal with the ICC, because Russia and the United States can defer action³⁷. In reference to the ICC’s “. . . promise of a more level international playing field for justice . . .” Dicker writes, “. . . this expectation has

³⁵ Dicker, “ICC: The Court of Last Resort.”

³⁶ United Nations. "Rome Statute of the International Criminal Court."

³⁷ Dicker, “ICC: The Court of Last Resort.”

been undercut by the double standard of the world's most powerful states . . . Through their non-ratification and veto power, they have insulated themselves from the ICC.”³⁸

Not only are there impunity gaps in the international sphere, but also the UNSC's deferral power and the immunity of Russia, China, and the United States have the potential to put political pressure on the ICC. This is particularly true given that, just like with the United Nations, the ICC relies on states for financial support. What makes the ICC so extraordinary is its supposed independence from states – it is not state officials making decisions or doing the prosecuting. But the connection between the Court and the UNSC poses a problem for that independence.

The reason for the connection between the ICC and the states is in part due to the fact that the ICC does not have a monopoly on violence, or access to any armed force at all. As Dicker writes, one challenge for the court is “. . . the ICC's dependence on countries to execute its arrest warrants because it does not have a police force.” This is significant in the obstacles it creates for the arrests and detainment of suspects,³⁹ and also because it demonstrates the limited power of the ICC compared to the state, at least in its current form.

Thus, while there are myriad institutional mechanisms intended to promote human rights around the world, these institutions are currently too connected to powerful states to be a formidable force on their own. Problems regarding self-determination and the ability for the human rights movement to prevent powerful sovereign states from abusing the notion of a humanitarian intervention, as well as capacity problems related to

³⁸ Ibid.

³⁹ Ibid.

the institutions' abilities to connect people and to successfully work independent of states' concerns abound.

Chapter Four

Conclusion: Making Space for Human Rights

From the sovereign state's dual role as best provider of and worst violator of human rights, to its key part in supporting self-determination, to the problems associated with human rights institutions due to their reliance on the sovereign state, it is clear that the relationship between human rights and sovereignty is an antinomy: human rights – particularly political rights – require the resources and structure of the state for their actualization, yet are simultaneously put at risk by the unchecked power of the state. This dependence on the sovereign state is not inherently detrimental; indeed, it is a beneficial dependency to the degree that it leads to respect for self-determination and checks the potential for the universality of human rights to become morally imperialistic or homogenizing. The problem is that this dependence is not reciprocated by the sovereign state: the human rights movement relies on state stability, but the stability of the state does not rely on the provision of human rights. Thus, in order to check the terrible power of a state to tyrannize, murder, and otherwise harm citizens, human rights must become a strong enough international force that the stability of the state depends in part on its adherence with these universal rights. This requires establishing a legitimate arena within the international sphere that does not depend so heavily on the support of the state and that perpetuates human rights norms.

Given the need for a stronger presence of human rights in the international realm, how do we move forward? What do the contradictions between sovereignty and human rights explored in this thesis imply regarding the way in which we should conceptualize the human rights movement? Paradoxically, a good way forward is to start by looking back. As discussed in chapter one, before Westphalian sovereignty – indeed, before even

the wars that necessitated this absolutist form of political organization – there was a system of dual authority between the European kings and the Catholic Church. The Church was an effective check on the power of the state because it derived its authority separately from the approval of states, and because it was a strong organization with support networks that transcended the boundaries of empires. As previously discussed, the Church had its own parallel system of law, and it had the massive power of excommunication. It was not organized by the state or controlled by the state; rather, it held a position that allowed it to check the power of kings (who simultaneously checked the power of the Church). In contrast, the modern human rights institutions are overly dependent on the state, as demonstrated at the end of chapter three. Many of the problems these organizations face are due precisely to a reliance on the state for funding, power, and organizational support, because the organizations are made up of states and therefore cannot disengage their power from the state. Thus the Church's ability to check political leaders is missing from human rights institutions as they stand today.

This is not to glaze over the atrocities committed under the name of the Catholic Church as it began to simultaneously encroach on political power as well as lose support due to internal factions; I do not propose that the human rights movement become an overarching power capable of undermining self-determination or of becoming a corrupt empire, and I think that the decentralized, multifaceted nature of the movement can help protect it from these problems. What I do suggest is that the human rights movement be conceptualized in accordance with a Montesquieuan theory of checks and balances. As

Madison writes, “Ambition must be made to counteract ambition.”¹ Some way of balancing power between the state and human rights – some informal system of checks and balances – within the international arena could simulate the dual authority of the kings and the Catholic Church in the medieval ages. For this balance of power to be realized, human rights institutions and activism must be strong enough to engage in a push and pull with the state.

In order for the human rights movement to be able to counterbalance the state in a way analogous to that of the Catholic Church during the medieval era, it should be less fully dependent on states, and it should increase coordination between activists so as to reduce the dispersed quality of the movement that leaves it susceptible to the free rider problem. Though I do not profess to have a solution to global collective action problems and the mechanisms associated with international law, I think there are a number of promising avenues to explore and things we can do to develop the human rights movement as a check on the power of the states. Rather than simply attempt reform at the global level with large multilateral institutions such as the United Nations, the human rights movement is best served by increasing the power of all of its components. Namely, attention needs to be paid to all tiers of the human rights movement, including non-state actors such as NGOs and individuals, regional organizations, multilateral institutions, and the international system of justice. By both increasing the collaboration between the tiers and strengthening components of each tier, the human rights movement can gain power and support in the international arena. I thus propose four important ways in which to control the relationship between state sovereignty and human rights in

¹ Madison, James, “The Federalist Papers: No. 51. The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments,” *The Avalon Project: Documents in Law, History, and Diplomacy, Yale Law School*. <http://avalon.law.yale.edu/>

the context of modern human rights institutions: 1) Increase global awareness and understanding of world citizenry through international activism, NGOs, and other non-state actors (including existing religious institutions), 2) strengthen components of the UN most removed from the sovereign state and increase their collaboration with regional and non-state actors, 3) strengthen regional organizations in order to decrease the reality and suspicion of Western imperialism and address some of the contradictions within the human rights movement itself, and 4) support the endeavors of the International Criminal Court (ICC) so as to increase its legitimacy and reduce its dependence on powerful states for its authority. Combined, these four methods can help invigorate human rights as global norms which states must either abide by or attempt to justify departures from in the international arena.

The first tier of the human rights movement includes the individual as well as non-state actors such as NGOs or existing religious institutions. This tier is important because it is largely removed from the state and can thus help connect people across borders and promote action that transcends borders. As indicated in chapter two, Immanuel Kant believed in the importance of a world citizenry for the achievement of “perpetual peace,” referring to a “law of world citizenship,”² that could maintain respect for human rights. Though an actual law of world citizenship seems problematic in regards to self-determination and cultural preservation, as well as in its potential to undermine the sovereignty of the state to such a degree that it no longer had the power to protect human rights, increased awareness of the notion of a world citizenry from a social perspective is an important element of support for human rights around the world. Heightening the knowledge of the problems faced by others around the world, as well as

² Kant, “Perpetual Peace,” 7

the awareness that a degree of responsibility exists among individuals globally, is the first step toward chipping away at the free rider problem facing human rights activism. A stronger focus on one's role as an individual in a global community may also reduce potential tensions between political liberty and other negative conceptions of liberty because citizens might be more inclined to vote in favor of human rights goals.

It is unlikely that awareness alone will greatly affect the free rider problem, and there thus need to be institutional mechanisms for encouraging this sense of world citizenry and for creating a means of activism that is not too costly for the individual. Because the basic characteristic of world citizenry is that it is not dependent on the state, an important element to developing a social understanding of the concept is by strengthening non-state actors, while dispelling information and communicating with others. Examining the current human rights movement, well-known and accountable NGOs collectively play a role similar to the Catholic Church though on a smaller and more diffuse scale, as they exist in multiple countries yet actively criticize state violations of human rights abuses publicly and consistently. In this way, they not only expose the actions of states, but they also increase individuals' awareness of the problems going on around the world regardless of whether or not they exist in economically or politically "relevant" states. For instance, Human Rights Watch reports on human rights violations around the globe, making sure that people cannot simply ignore atrocities even if there is little international interest in the region and few connections to powerful states. Oxfam International and the International Rescue Committee send people around the world to work toward mitigating human rights crises or toward diminishing poverty.

The reach and effectiveness of these organizations is vastly increased by the Internet, which links people through social networking site and which provides easy access to information. Just as the quick circulation of Luther's 95 Theses due to the printing press helped stimulate the movement to reform the Catholic Church, the work of Human Rights Watch and other NGOs is substantially more effective because of the Internet. For instance, information exposing government sanctioned usage of conflict minerals or sweatshops to create products can be quickly circulated throughout the Internet, providing a cost-efficient means for individuals to protest against human rights abuses. By providing ready information about which stores use which products, or which politicians support which policies, non-state actors can reduce the informational asymmetry between the state leaders (with a vested interest in knowing the dynamics of policies and their financial efficiencies) and individuals (who would have to spend an exorbitant amount of their time researching the intricacies of every policy and company on their own). Indeed, the combined efforts of non-state organizations and individuals have already produced successful boycotts, such as the United Students Against Sweatshops' successful nationwide campaign against Russell Athletic (which led the company to reverse its decision to shut down a factory in Honduras),³ and – more significantly – the myriad boycotts against South Africa during apartheid.

There are, of course, problems related of the Internet in activism, and valid criticisms made against the reliance on non-state actors for a large part of the human rights movement's success. First, both methods of activism have regulation problems, and there is concern that too much of the funding for NGOs comes from Western

³ Greenhouse, Steven, "Labor Fight Ends in Win for Students," *The New York Times*, Nov 17, 2009, http://www.nytimes.com/2009/11/18/business/18labor.html?_r=0

organizations and societies, which could perpetuate cultural imperialism or paternalistic attitudes toward developing nations. While it is important to recognize and fight against these attitudes, this is not an unsolvable problem. Encouraging more existing international NGOs to expand into other regions (using local staff) could help to overcome the regional biases of international NGOs. Coordinating with other tiers of the human rights movement (such as regional organizations or individual UN agencies) could both increase regulation and encourage NGO strength in all regions around the world.

A second concern regarding the regulation of this first tier is that Internet activism can lead to the dispersion of incorrect and sometimes harmful information. The “Kony 2012” video last year provoked extensive criticism for these reasons; some critics suggest that Internet activism through social media actually increases complacency in the face of human rights violations, because by “sharing” information through Facebook or Twitter, an individual feels he or she has substantially contributed to the movement without having actually done much at all. From the perspective of these critics, social media may actually enhance the free rider problem because those people who may have advocated on behalf of the movement feel that this minimal awareness activism (or “slacktivism”) is doing enough. While these criticisms are valid, and while the Internet is notorious for misinformation, there is no other medium that even comes close to its effectiveness in connecting people around the globe. Moreover, even if 100 million people each only donate one dollar to a cause or an NGO, for instance, there is still \$100 million given. It is true that an Internet campaign on its own is unlikely to stop someone like Kony. But if the formation of a sense of global citizenship is the goal, then even the simple action of sharing information on the Internet can be helpful. Moreover, those who are truly

interested in human rights and who would otherwise not know where to begin can seek out legitimate websites in order to become more informed.

Finally, a third concern with this first tier of the movement is that NGOs lack a monopoly on the legitimate use of force. As discussed in chapter three, the ability for NGOs to reduce the free rider problem is lessened due to their weakness in relation to the strength of the global system of states. While there is no way of obtaining similar authority for the NGOs without attaching them to states, their strength can be increased if they work together and form networks of people fighting for the same causes. Moreover, combining their work with existing religious institutions around the world (without committing to one religion in particular) could help lend legitimacy reminiscent of the Catholic Church to these organizations. Ultimately, however, NGOs and individual activism must be seen in context of the entire human rights movement, playing an important role in the overall push against the strength of the sovereign state by detaching the movement from the state.

A second key component of the global respect for human rights, similar to Kant's suggestion for an international peace institution in "Perpetual Peace," is a league of states committed toward the promotion of human rights and a more equitable and just society. This league of states already exists as the United Nations; though it has problems, and though any league of states is obviously going to be dependent on state decisions and tensions created by those decisions, it is important to have a forum where these states can directly engage with one another in a peaceful setting. A unifying body such as the UN in which discussions and debates take place between member states chips away at the extreme quality of external independence between sovereign states. The UN's

foundation in state authority makes it difficult to imagine it being sufficiently effective at promoting human rights on its own, but its role in connecting states and establishing a precedent for international collaboration is essential. With that said, however, for the UN to be truly effective in this role, substantial reforms that give states a more equitable share in power and lessen existing biases toward wealthier and more powerful states are needed. While a large part of this could come from UNSC reform, it seems unlikely that powerful states will agree to this in the near future. Thus, it is also important to focus on the work that can be done by branches of the UN less entangled with state sovereignty. For instance, the UN High Commissioner of Human Rights and the UN Refugee Agency could play an increasingly important and public role in the promotion of human rights, particularly if there were increased coordination between these branches and non-state organizations.

But because reforms of a universal state-based institution are made difficult due to the powerful influence of wealthy states, a third important component of strengthening the human rights movement is increasing the number and legitimacy of regional multilateral institutions such as the African Union, the European Union,⁴ and the Organization of American States. Regional institutions are beneficial in that they can give attention to smaller crises that may not get noticed on the international scale, or even larger crises that may otherwise go intentionally ignored. Moreover, solving regional problems within that region not only requires fewer UN resources, but also decreases the specter of Western imperialism. These institutions may also enhance the process of

⁴ For those critical of the European Union given the financial crisis, my point is not to endorse or criticize the specifics of any of these institutions, but rather to point to regional solutions as a necessary component of international activism. Whether or not regional institutions bind nations economically or not is a decision to be made by the specific states within that region.

establishing a more global outlook by increasing citizens' awareness of place within a regional society as well as within a specific state. The smaller size of regional institutions may also aid NGOs in reducing the human rights movement's free rider problem.

Of course, regional institutions are not perfect, and problems occur when they are used to exclude certain communities on an even higher level than within a state. As previously discussed, the Roma in Europe face the double problem of not belonging to an individual state and also of not fitting into the European Union. Removal from both the political processes within a state and within a region aggravates the detrimental impacts of statelessness. These concerns, however, may become less critical if one considers the enhanced version of the human rights movement within the above scenarios, where legitimized NGOs, regional institutions, and the United Nations all have overlapping authority. If a regional institution continues to ignore a stateless population, NGOs can call attention to the problem and even send in aid workers, putting pressure on governments to pay attention; the United Nations or other global multilateral institutions might choose to aid the population as well. Similarly, if the United Nations is ignoring a particular region of the world, regional institutions can provide the necessary support for affected populations, or at least lobby together in a strengthened coalition at the United Nations. While this solution is imperfect, an increasingly strong human rights movement with multiple tiers will be more likely to respect and promote the rights of a stateless population than an uncoordinated, state-based system. Essentially, the tiered human rights movement, with each tier reformed and strengthened, may supplement and check state power, providing an informal globalized version of Montesquieu's original theory of balanced governance.

Additionally, a fourth component of the human rights movement with potential to play an increasingly active and legitimate role is the international justice system, particularly the International Criminal Court (ICC). While the problems with the ICC as explain in chapter three are detrimental and must be mitigated, a strengthened and legitimized ICC could help extricate the international human rights movement from its reliance on states by providing an alternative form of justice similar to the canon law system of the medieval Church. Though the court faces vast obstacles, if it continues to gain cases and handle them well, it will become increasingly legitimate in its own right.

Conceptualizing the human rights movement as consisting of tiers that must be individually strengthened and increasingly coordinated can begin to mitigate the free rider problem by enhancing the efficacy and legitimacy of smaller human rights units (in the form of NGOs and regional organizations), reducing the specter of Western imperialism, and disentangling the interests of the movement from the power of the states. Increased awareness of a social world citizenry can reduce the tensions between positive and negative liberties by making it increasingly likely that citizens will support human rights abroad; this does not mean that citizens will always be willing to vote in favor of a humanitarian intervention (nor should they) but it may mean that citizens are more likely to pay attention to their states' policies toward abusive governments. For instance, a heightened awareness of the notion of world citizenry may encourage more people in the United States to protest against buying oil from Saudi Arabia or using products with "conflict minerals." Strengthened regional institutions can help check the biases of international organizations such as the United Nations by creating powerful resources within all regions of the world, and by responding to crises with a better

knowledge of cultural constraints and considerations. Increasing these non-state and regional organizations' collaboration with UN agencies and supporting the independence of the ICC are the first steps toward a stronger human rights presence. Though it will be a gradual and imperfect process, continuing to support and actively strengthen the human rights movement is necessary in order to build the movement as a counterbalancing force to the state, that will at least partially moderate the dangers the state poses to human rights without seriously impeding the power of the state to protect human rights. There may be no ultimate solution to this problem, but we can in the foreseeable future hope that the balance of power between human rights and the sovereign state reaches something closer to equilibrium.

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