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HUMANITARIAN INTERVENTION AND RELATIONAL SOVEREIGNTY

1. INTRODUCTION

Humanitarian intervention with military force has no firm theory under the international legal apparatus because sovereignty, the inviolate claim of a nation-state against all others, is a legal shield against outside intervention in a nation's internal affairs. The United Nations (UN) Charter under Article 2(4) prohibits the “threat or use of force” against another state, even when civil bloodshed is creating humanitarian disasters. The Charter allows only two exceptions to this prohibition: Article 51 in Chapter VII of the Charter allows a nation to use force in self-defense if an armed attack occurs against it or an allied country, and the United Nations Security Council (UNSC) is authorized to employ force to counter threats to breaches of international peace. Humanitarian intervention rests upon the unconvincing fiction of the danger that a civil conflict may spill over a nation's borders, at least if it is to be justified under the UN Charter.

A better account of the fate of national sovereignty in cases of international humanitarian intervention in human rights disasters derives from what I call a theory of “relational sovereignty.” This theory arises under today’s conditions of globalization and describes the role of the sovereign government as an obligation to meeting its citizens’ civil, political, social, and economic needs, according to the government’s capacity, and always working for its citizens’ good. A government fails in its governance role when its murderous, corrupt, or persistently neglectful actions lead to serious human rights harms. Under the theory of relational sovereignty, widespread and extreme harm to citizens is evidence that sovereignty is no longer an absolute shield against international intervention. Put differently, relational sovereignty puts human rights at the heart of good governance.

A widespread and extreme humanitarian crisis alters sovereignty in two ways: First, citizens rather than the government are seen as the bearers of their national sovereignty. If their government no longer represents their best interest, the nation’s sovereignty no longer coalesces in its government. Second, citizens rely on the international community to express their sovereign interest in good governance when they themselves
are unable to depose a government that harms them. In other words, their national borders have metaphorically fractured, allowing other nations in the international community to step across to their assistance. When sovereignty is seen this way – as an obligation of attentive governance, which the international community can insist upon on behalf of a nation’s citizens – it need not be breached when humanitarian intervention takes place.

This temporary dispersal of national sovereignty from a nation’s citizens to the international community is easiest to map onto humanitarian crisis of murderous civil conflict. It is more difficult to map onto humanitarian crises of malnutrition and starvation. But I argue here that humanitarian intervention may also be justifiable for massive cases of letting-die, such as starvation and disease. In other words, national sovereignty cannot shield corrupt or neglectful governments that fail to distribute essential sustenance – food, medical care, and essential services – to their citizens in exigent circumstances. International morality is invoked not only for the commissions of nation-states, but also for their omissions. My argument is that widespread death by malnutrition or disease should make a government just as culpable as death by civil violence, where the government has the capacity to prevent starvation and disease and fails to do so. When a government negligently fails to prevent a national crisis that leads to widespread death, that government’s claim to inviolate sovereignty qua other nations or the international community is invalid.

But expanding humanitarian intervention into a general license for war against repressive regimes is dangerous. The equitable principles of fairness show that humanitarian interventions should be restricted to very few situations. In what follows, I set out the problems with the legal apparatus of humanitarian interventions under Chapter VII of the UN Charter, and how this apparatus is out of step with an emerging notion of sovereignty. Using relational sovereignty as a theory for lowering the defense of sovereignty against the legitimacy of international humanitarian interventions, and using familiar principles of equity and individual rescue in tort, I set out three limiting principles for international humanitarian intervention and then briefly test these against the ongoing US invasion and occupation of Iraq.

2. THE PROBLEM WITH INTERVENTIONS UNDER CHAPTER VII OF THE UN CHARTER

The last decade of humanitarian intervention has been a patchwork of inconsistent justifications, too-often sluggish international responses, and