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Book Review Essay

R2P and Empire: On Dan Kovalik's *No More War: How the West Violates International Law by Using 'Humanitarian' Intervention to Advance Economic and Strategic Interests*, and How Principled Realism Will Reduce Domination Around the World

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In his impassioned No More War: How the West Violates International Law by Using 'Humanitarian' Intervention to Advance Economic and Strategic Interests*, human rights lawyer Dan Kovalik makes the case that the recently considered responsibility to protect (R2P) doctrine, which allows for humanitarian intervention in narrowly defined circumstances, is legally and morally untenable. Humanitarian interventions of this kind, Kovalik argues, mask the true imperial interests of those who intervene and perpetuate a colonial legacy of northern domination of the global south.* No More War *bridges academic and popular discourse, making it an informative read for those involved in the theoretical and legal study of international relations and for policymakers in the field. Nevertheless, Kovalik's book would benefit from a sharper distinction between international norms and laws. Although the impact of the R2P documents on international law is debatable, there is little controversy that the norm surrounding humanitarian intervention has changed. Moreover, as we show, there are reasons to believe that the law has changed as well. Kovalik's book would also have benefited from omitting a number of polemical points, which may alienate readers who might otherwise agree with his core theses.*

Keywords: responsibility to protect, humanitarian intervention, just war, norms, laws

1. Introduction

In his impassioned *No More War: How the West Violates International Law by Using 'Humanitarian' Intervention to Advance Economic and Strategic Interests*,[1] human rights lawyer Dan Kovalik makes the case that the recently considered responsibility to protect (R2P) doctrine, which allows for humanitarian intervention in narrowly defined circumstances, is legally and morally untenable. Humanitarian interventions of this kind, Kovalik argues, mask the true imperial interests of those who intervene and perpetuate a colonial legacy of northern domination of the global south. *No More War* bridges academic and popular discourse, making it an informative read for those involved in the theoretical and legal study of international relations and for

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[1] Dan Kovalik, *No More War: How the West Violates International Law by Using 'Humanitarian' Intervention to Advance Economic and Strategic Interests* (Skyhorse Publishing 2020).

policymakers in the field. Nevertheless, Kovalik's book would benefit from a sharper distinction between international norms and laws. Although the impact of the R2P statement, the 2005 World Outcome Summit Document, on international law is debatable, there is little controversy that the norm surrounding humanitarian intervention has changed. Moreover, as we show, there are reasons to believe that the law has changed as well. Kovalik's book would also have benefited from omitting a number of polemical points.

First, we provide a chapter by chapter overview of *No More War*, focusing especially on Kovalik's portrayal of the international system of law originating in the immediate aftermath of the Second World War. For Kovalik, this system is motivated to such an extent by the imperative of peace that national sovereignty is morally and legally sacrosanct, and humanitarian intervention of any kind is impossible to justify morally or legally. Next, we show that norms have undoubtedly shifted in the direction of R2P since the 2001 work of the International Commission on Intervention and State Sovereignty,[2] a subject that Kovalik could have addressed at greater length. In keeping with the original R2P documents from 2001 and 2005, not only does this norm shift lend further support to international community intervention with Security Council authorisation when an individual state is manifestly failing to protect its populations, but it may also leave a legal space in which individual nations can intervene *outside the Security Council framework*. We then show, in the fourth section, that further support for the possibility of an actual legal change in support of favouring R2P comes from the importance of *practice* in determining what the law is. Judicial practice already involves authoritative citation by International Court of Justice (ICJ) judges of older thinkers who supported a variety of humanitarian interventions.

Indeed, in the fifth part, we show how expanded research interest into these thinkers was tied to the articulation of R2P standards in 2001 and 2005, and how it has been affirmed by contemporary moral philosophers today. The sixth section analyses why Kovalik's account of self-defence in international law is so narrow and restrictive. In the seventh part, we demonstrate that bringing Augustine into the conversation as a critic of imperialism – who nevertheless does not succumb to the polemical quality that at times seems characteristic of Kovalik's work – helps our case. We suggest, in the eighth part, an Augustinian version of realism, the very paradigm Kovalik condemns as responsible for international power disparities. It was precisely as a realist that Augustine critiqued imperialism, emphasising the importance of justice and even maintaining an openness to just wars pursued for the sake of peace, but at the same time rejecting utopianism in all its forms. We show how, paradoxically, Augustine's principled realism can serve as the vehicle through which, over time, the kind of international order for which Kovalik longs is realised. The ninth part, the conclusion, ends with concrete thoughts about how Kovalik could better build consensus.

[2] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (2001), which contributed to the 2005 World Summit (see Alex J Bellamy, 'Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit' (2006) 20 *Ethics & International Affairs* 143).

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2. OVERVIEW

In the first chapter ('"Humanitarian" Intervention from King Leopold to Samantha Power') Kovalik catalogues interventions that relied on the pretext of humanitarian aims to further what he argues are imperial goals, from King Leopold's abuses in the Congo to more recent western interventions during the Clinton administration. He does so to show the reader the barbarities to which 'humanitarian' interventions have led in the past, paving the way for his argument that no moral or legal support for R2P exists today. Kovalik emphasises the striking fact that the men who ran those operations justified their interventions not with reference to domination but to the benevolent improvement of the peoples involved – the infamous 'White Man's Burden'.[3]

In the second chapter ('Nuremberg and the Rise of International Law') Kovalik assesses the origins and aims of twentieth century international law, continuing to build towards his central claim that no moral or legal support for R2P exists. Kovalik makes the case that international law remains connected with the Nuremberg Charter's condemnation of wars of aggression as 'crimes against peace'.[4] This body of international law is now explicitly codified in the United Nations (UN) Charter,[5] the Preamble to which affirms the tragic nature of war, and in subsequent treaties. Kovalik focuses especially on Article 2(7) of the UN Charter, as it mandates strong respect for national sovereignty, declaring interference in the domestic affairs of any country – even by the United Nations itself – to be illegal. The UN Security Council, according to the Charter, does retain the authority ultimately to approve an intervention, but only as a last resort: Article 33(1) cautions that peaceful avenues must first be exhausted. Even if the Security Council determines that intervention is warranted, Article 24(2) makes clear that its means, methods and goals are limited to the transparent interests of affected nations.[6] Kovalik links this strong Westphalian[7] emphasis of the UN Charter back to that document's overriding motive to preserve conditions in which war is absent, which itself is related to Article 6 of the Nuremberg Charter in condemning crimes against peace.

In Chapter 3 ('Peace is a Paramount Human Right') Kovalik takes up the question of how the imperative of peace growing out of the twentieth century experience of war, protected by strict non-intervention, is further reflected in the UN Universal Declaration of Human Rights (UDHR).[8] National sovereignty as a matter of importance for this goal is reflected in the Preamble to the UDHR and Article 2. This, in turn, led to the Vienna Declaration, which

[3] Unlike our elites, whom Kovalik characterises as pursuing empire while relying on a rhetoric of human rights and equality, the Victorians openly made claims of superiority over indigenous peoples; see Rudyard Kipling, 'White Man's Burden', *The Times of London*, 4 February 1899.
[4] Kovalik (n 1) 37.
[5] Charter of the United Nations (entered into force 24 October 1945) 1 UNTS XVI.
[6] Kovalik (n 1) 49.
[7] We refer to an international system predicated on the sovereignty of individual states, which has been traced back to the mid-seventeenth century Peace of Westphalia; see Henry Kissinger, *Diplomacy* (Simon & Schuster 1994) 21–27, 65–68, 76, 139, 290 and 806.
[8] Universal Declaration of Human Rights, UNGA Res 217A (III) (10 December 1948).

condemns war as does Nuremberg on the same grounds. Kovalik veers off in this chapter into an irrelevant discussion of homelessness in Los Angeles, but he has made the connection between the UDHR and Nuremberg, still indicating his central claim that no moral or legal support for R2P exists.

In Chapter 4 ('The ICC, the Crime of Aggression, and Western Humanitarians'), Kovalik continues, the only real reason the US opposed joining the International Criminal Court (ICC) is long-standing imperial resistance to these Westphalian principles of the Charter. He augments his criticism of US interventions with an extended discussion of both US involvement in the Cuban revolution and the humanitarian dimension of the 2003 Iraq intervention, using these examples to imply that US resistance to joining the ICC was motivated by an aversion to potential lawsuits. Kovalik also points to prominent human rights organisations and their leadership, essentially defending the US unwillingness to join the organisation. In doing so, he does not seem to accept the possibility that any legitimate considerations could have dissuaded US membership: not the possibility of prosecutions driven by politics, the question of checks on the ICC, or the question of the relationship of the UN Security Council with this body.

The fifth chapter ('The Anticolonial Nature of International Law') provides historical corroboration for Kovalik's anti-intervention arguments, such as members of the South who signed the UN Charter in San Francisco after the Second World War. To Kovalik, their motivation for signing the UN Charter was deeply anti-colonial. Presenting colonialism as the major event of the twentieth century, Kovalik expands on these anti-colonial underpinnings of international law in describing additional resolutions that reinforce them, from the UN General Assembly Resolution 1514 (XV)[9] to the International Convention on the Elimination of All Forms of Racial Discrimination,[10] and others. Kovalik's review does a good job in exposing the anti-imperial and anti-interventionist underpinning of these UN initiatives. Intriguingly, in this chapter Kovalik loosely compares those who would downplay or ignore interventions like that carried out by the US in Guatemala on behalf of United Fruit as equivalent to the 'banality of evil' that Hannah Arendt used to describe Eichmann and the nameless Nazi bureaucrats who sent hundreds of thousands of individuals to their deaths in obeisance to impersonal bureaucratic diktats. He also identifies an 'Ivy League' mentality[11] as a common theme that characterised interventionists 100 years ago as well as today, from Henry Cabot Lodge to Samantha Power and Barack Obama – no longer an assertion of cultural or racial superiority, but a toxic form of supremacy nevertheless.

In Chapter 6 ('*Nicaragua v. US*, and Lessons about Nonintervention') Kovalik continues to make the case for a lack of legal grounding for R2P, this time with reference to the ICJ ruling against the US in a 1986 decision, *Nicaragua v United States*.[12] This decision held explicitly

[9] UNGA Res 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples (14 December 1960).
[10] International Convention on the Elimination of All Forms of Racial Discrimination (entered into force 4 January 1969) 660 UNTS 195.
[11] Kovalik (n 1) 101–02.
[12] *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* Merits, Judgment [1986] ICJ Rep 14.

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that humanitarian intervention is illegal. The US, having assisted with installing Somoza's regime in 1936, undermined the successor Sandinista government surreptitiously and without Congressional approval, delivering arms to the opposition Contras in a way that raised the prospect of a Reagan impeachment. The Court argued that in this case there was no true appeal for outside assistance, but that intervention is illegal even if non-state parties request external help. In terms of twentieth century international law, there is no doubt that this decision went beyond previous pronouncements in explicitly declaring that a plea for help is not legally germane to overriding sovereignty.

Next, in Chapter 7 ('The Right of Self-Defense') Kovalik shows how the understanding of self-defence in international law only further reinforces a lack of both moral and legal justification for R2P. This chapter confirms that a national right of self-defence is outlined and upheld in the UN Charter (Article 51) and other resolutions discussed, but claims that legitimate self-defence includes the limitation of circumstances where an attack is in progress. Kovalik's interpretation is not, prima facie, tendentious: the language of Article 51 states explicitly that an attack needs to be under way.

The above seven chapters, laying out the legal and moral case for a strong Westphalian order, set the stage for the crux of Kovalik's argument in Chapter 8 ('The UN and the Responsibility to Protect') in which he assesses specific documents related to contested notions of the meaning of R2P. R2P was developed in 2001, but the main meeting Kovalik considers is the World Summit in 2005 at which participants affirmed what are known as the 'three pillars' of the paradigm: (i) the primary responsibility of individual states, (ii) the secondary obligation of the international community to assist individual sovereign units in protecting vulnerable populations, and (iii) the ultimate responsibility of the international community to step in when this has not taken place. With regard to the morality and legality of humanitarian intervention, Kovalik argues that the World Summit documents add nothing new; nor does a document with an introduction by Kofi Annan titled 'A More Secure World: Our Shared Responsibility'.[13] Kovalik draws on paragraph 78, which is fairly clear about the importance of 'strictly abiding by the Charter and the principles of international law'; and on paragraph 79, which holds that the existing parts of the Charter 'are sufficient to address the full range of threats to international peace and security'.[14] Kovalik also points to qualifying language[15] that makes it harder for the Security Council to back a humanitarian intervention: there still has to be 'seriousness of threat', 'proper purpose', the view that it is exercised as a 'last resort', relying on 'proportional means' and with a 'balance of consequences'.[16]

In Chapter 9 ('The US Military Is Not a Feminist Organization'), as Kovalik considers the terrible abuses that women experience during war, the connection of the chapter with his argument is not clear. Presumably, the special horror of armed conflict when it comes to rape is an

[13] UN General Assembly, A More Secure World: Our Shared Responsibility: Report of the High-level Panel on Threats, Challenges, and Change (2 December 2004), UN Doc A/59/565; Kovalik (n 1) 143.
[14] Kovalik (n 1) 139.
[15] ibid 147–48.
[16] ibid 148.

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additional reason to stick to a strict framework of national sovereignty that minimises wars; but Kovalik uses violations of women's rights, including the prevalence of rape during wartime, as an ideological cudgel against US soldiers specifically. Rape in armed conflict is a war crime irrespective of whether the US, or any other nation, did or did not sign the UN Convention on the Elimination of All forms of Discrimination Against Women.[17]

Finally, in Chapter 10 ('The Genocide Convention and Selective Justice') Kovalik considers whether genocide could provide the (sole) exception to the hard UN principle of non-intervention in Article 2(7). Kovalik sticks to his rhetorical guns: genocide does not justify humanitarian intervention on moral or legal grounds, either. For Kovalik, even from a moral perspective it is more important that national sovereignty be vigorously protected with some genocide occurring than to permit humanitarian intervention to stop the genocide. This is because allowing any interference in an aggressor nation's internal affairs, no matter how justified, will always be abused by strong nations for their own imperial ends.

Kovalik, at this point, broaches the issue of the Rwandan tragedy of 1994. He blames the genocide of 800,000 by machete in Rwanda on two causes: the 1972 slaughter of 200,000 Hutus in Burundi by Tutsis in control of government, and a 1989 withdrawal by the West from a stabilising International Coffee Agreement. To make matters worse, Kovalik argues, Clinton supported the removal of UN peacekeepers from Rwanda in 1994.

However, Kovalik arguably makes his own argument harder to sustain. On the one hand, in order to guard against potential abuses of humanitarian intervention for the sake of imperial ends, he wants to prohibit all interventions by a great power for any reason, even a transparently good one. On the other hand, he criticises the removal of UN peacekeepers and, by implication, the US for deciding not to support a continuing minimal intervention, a choice that Kovalik considers a real contributing factor to the massacre. This begs the question: if humanitarian intervention is legally and morally unacceptable in principle, why is it problematic in this particular case to leave and to allow the Rwandans to address their own challenges?

3. NORMS AND THE LAW

In considering R2P, two distinct but related conceptual issues need to be taken into account, and unfortunately Kovalik does not address either. They are (i) whether there has been movement in the international community in the direction of accepting R2P as a *norm*; and (ii) whether there has been any shift in the UN *legal* regime away from strict non-intervention, which would allow for implementation of a R2P intervention (either through or outside the UN Security Council). To be clear, a 'yes' on (i) – movement in the direction of accepting R2P as a *norm* – would itself be significant, even in the absence of any shift on (ii). Before a legal framework is changed, often it is norms that must evolve first, subsequently allowing for formalisation and codification of that evolution. Here, however, there has been significant movement on (i) and (ii) (both the legal and

[17] Convention on the Elimination of All Forms of Discrimination Against Women (entered into force 3 September 1981) UN Doc A/RES/34/180.

moral dimensions). The literature does support the notion that R2P is almost universally accepted as a norm and, although the case for a changed legal reality is harder to make, it is not impossible and, in fact, is also reflected in the literature.

On the first issue of norms: Peter Hilpold – in his excellent chapter on 'R2P and Humanitarian Intervention in a Historical Perspective' in his equally excellent edited volume[18] – argues that unanimous acceptance of R2P by the UN General Assembly at the World Summit was highly significant from a norm perspective. Alex Bellamy further found it 'remarkable that a consensus was produced at the 2005 World Summit',[19] and the importance of the change in norms stands out especially in the light of the opposition to R2P subsequent to this global endorsement. As Hilpold explains, after 2005 'an array of states, which were either strongly attached to a traditional concept of sovereignty or had a bad human rights record (or both), opposed R2P notwithstanding the fact that it had been unanimously approved by the State Community in 2005'.[20] However, R2P survived and effectively justified a major international action: 'In the end … the forces operating in favour of R2P were stronger, and in 2011 the Security Council, a body which had initially taken a rather prudent stance towards R2P, referred to it in order to authorize the use of force against Libya'.[21] The significance of the 2011 moment cannot be overestimated; Andrew Garwood-Gowers also writes in support of the reality of the shift in moral understanding in that year, specifically with reference to Chinese authorisation of the Libya intervention, a step Beijing took even as it continued to recognise the potential strategic abuse by sovereign nations of the third pillar of R2P.[22] In ten years R2P had gone from a mere proposal to a major and actionable international norm.

Indeed, the number of scholars who have substantiated movement in the direction of R2P in a variety of contexts is significant. Jason Ralph and James Souter have investigated the question directly and found that R2P as a normative aspiration is now 'almost universally accepted'.[23] Arguing that both the ICC and R2P reflect liberal cosmopolitanism, Mark Kersten has further acknowledged the shift;[24] so has Dele Jemirade, even as he admits that the norm has not been translated into legal principle.[25] In writing about how the ICC supports all three pillars of R2P, even if not necessarily in a straightforward manner in so far as a state that has initially

[18] Peter Hilpold, 'R2P and Humanitarian Intervention in a Historical Perspective' in Peter Hilpold (ed), *Responsibility to Protect (R2P): A New Paradigm of International Law?* (Brill 2014) 1.
[19] Bellamy (n 2) 153.
[20] Hilpold (n 18) 60.
[21] ibid. Hilpold cites UNSC Res 1973 of 17 March 2011 as well as UNSC/10200.
[22] Andrew Garwood-Gowers, 'China's "Responsible Protection" Concept: Reinterpreting the Responsibility to Protect (R2P) and Military Intervention for Humanitarian Purposes' (2016) 6 *Asian Journal of International Law* 89, 98.
[23] Jason Ralph and James Souter, 'Is R2P a Fully-Fledged International Norm?' (2015) 3(4) *Politics and Governance* 68, 68.
[24] Mark Kersten, 'A Fatal Attraction? The UN Security Council and the Relationship between R2P and the International Criminal Court' in Jeff Handmaker and Karin Arts (eds), *Mobilising International Law for 'Global Justice'* (Cambridge University Press 2018) 142.
[25] Dele Jemirade, 'Humanitarian Intervention (HI) and the Responsibility to Protect (R2P): The United Nations and International Security' (2021) 30 *African Security Review* 48, 49–52.

welcomed ICC involvement (pillar II) may subsequently turn against it, Maartje Weerdesteijn and Barbora Holá nevertheless find themselves in the same camp.[26]

Reflecting this change specifically with regard to how the public feels, Graham Davies and Robert Johns conclude that '[t]here does not appear to be a major constituency of opinion that simply rejects such [R2P-supporting] action as unjust'.[27] Todd Lindberg, in a similar vein, refers to R2P as a 'revolution in consciousness in international affairs'.[28] Hilpold, apart from public opinion or consciousness on the international stage, sees evidence of the norm shift in academia: the explosion of historical interest in humanitarian intervention also reflects the reality of this new moral standard, and is directly related to the 'genuinely felt desire to unearth the enormous potential lying in R2P'.[29] Further thinkers who agree that R2P is now a norm include Foluke Ipinyomi,[30] Ramesh Thakur,[31] as well as Neil MacFarlane, Carolin Thielking and Thomas Weiss.[32] Although this is not the unanimous view, it is close.[33]

What about actual legal changes in the UN non-intervention regime? Here the work of Bellamy is especially useful. Strikingly, given the consensus view that R2P has not changed international legal obligations, his reading of the World Summit outcome document is as follows:[34]

> On closer inspection, paragraphs 77–80 of the outcome document leave open the possibility of unauthorized intervention. The paragraphs reiterate the obligation of states to refrain from the threat or use of force in *any manner inconsistent* with the UN Charter, insist that states 'strictly abide' by the Charter, reaffirm the Security Council's authority to mandate coercive action, and assert its 'primary responsibility' for international peace and security. By forbidding the use of force in a manner inconsistent with the Charter, the paragraphs leave open the possibility of unauthorized intervention aimed at either upholding the UN's humanitarian principles outlined in Article I of the Charter or acting on the 'implied authorization' of past Security Council resolutions, as NATO suggested it was doing in intervening in Kosovo.

[26] Maartje Weerdesteijn and Barbora Holá, '"Tool in the R2P Toolbox"? Analysing the Role of the International Criminal Court in the Three Pillars of the Responsibility to Protect' (2020) 31 *Criminal Law Forum* 377, 403–07.
[27] Graeme AM Davies and Robert Johns, 'R2P from Below: Does the British Public View Humanitarian Interventions as Ethical and Effective?' (2016) 53 *International Politics* 118, 134.
[28] Todd Lindberg, 'Protect the People', *Washington Times*, 27 September 2005 (in Bellamy (n 2) fn 144).
[29] Hilpold (n 18) 60.
[30] Foluke Ipinyomi, 'Is Côte d'Ivoire a Test Case for R2P? Democratization as Fulfillment of the International Community's Responsibility to Prevent' (2012) 56(2) *Journal of African Law* 151, 166–69.
[31] Ramesh Thakur, 'The Development and Evolution of R2P as International Policy' (2015) 6(3) *Global Policy* 190.
[32] S Neil MacFarlane, Carolin J Thielking and Thomas G Weiss, 'The Responsibility to Protect: Is Anyone Interested in Humanitarian Intervention?' (2004) 25(5) *Third World Quarterly* 977, 989. They reference as highly relevant Lee Feinstein and Anne-Marie Slaughter, 'A Duty to Prevent' (2004) 83(1) *Foreign Affairs* 136; and Allen Buchanan and Robert O Keohane, 'The Preventive Use of Force: A Cosmopolitan Institutional Proposal' (2004) 18(1) *Ethics & International Affairs* 1.
[33] For dissenting voices see Noele Crossley, 'Is R2P Still Controversial? Continuity and Change in the Debate on "Humanitarian Intervention"' (2018) 31(5) *Cambridge Review of International Affairs* 415; and Ralph and Souter (n 23) 68 (but Ralph and Souter admit that R2P as 'a normative aspiration' is 'almost universally accepted': ibid 68).
[34] Bellamy (n 2) 166–67 (emphasis in original).

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Based on the outcome document, Bellamy believes that a change in the legal landscape following R2P has occurred.

The point is not that this is a dispositive legal argument. Rather, it is a legal *opening* for a power acting outside the formal authorisation structure of the UN Security Council to attempt an intervention. Especially in the context of the near consensus that a shift in *norms* has occurred, this legal opening takes on added significance.[35]

4. THE LAW AND PRACTICE

That a legal, and not just norm-related, possibility to pursue R2P exists is further reinforced by the fact that the law cannot be conceived entirely apart from practice. This has been recognised in the literature and is supported by events discussed below.[36] A pure interpretation of what the law is or is not is, quite simply, a hermeneutic impossibility. The ways in which the law is understood by actors and referred to in rulings by judges must be taken into account.

Consider that in the twentieth century since the adoption of the UDHR,[37] non-western powers have successfully carried out humanitarian interventions and did not consider these to be violations of UDHR-related strictures. Thus, at the end of his fifth chapter on 'The Anticolonial Nature of International Law', Kovalik points to two highly significant non-western interventions that did avert humanitarian catastrophe. The cases involve the intervention by India in East Pakistan in 1971 to stop a horrific genocide, which led to the creation of an independent Bangladesh, and action on the part of Tanzania in 1979, curtailing the reign of Idi Amin in 1979. Nevertheless, Kovalik quotes Peter Baehr to the effect that the claims were not justified, by the states that disregarded legal sovereignty, in moral or human rights terms.[38] Is that actually the case?

When it comes to India, it simply is not; not only has the Indian government called attention to the humanitarian reasoning that was involved, but the case is referred to in the literature by Sonia Cordera as an archetypal case of justified humanitarian intervention.[39] This is not to deny, as she points out, that there were not *also* considerations of interest and more self-regarding reasons why India acted as it did, but it does not negate altruistic or other-regarding factors. (Kovalik can object to even the best examples of justified humanitarian intervention by state actors because, not appreciating the extent of human fallibility, he may not see clearly that his own standards of altruistic purity are impossible to achieve).

[35] At least two scholars have also argued that although R2P did not create new legal requirements, it has had an impact on the interpretation of obligations in current international law; see Jennifer M Welsh and Maria Banda, 'International Law and the Responsibility to Protect: Clarifying or Expanding States' Responsibilities?' (2010) 2(3) *Global Responsibility to Protect* 213.

[36] Jack Goldsmith, 'Is the U.N. Charter Law?' *LawFare Blog*, 16 April 2018, https://www.lawfareblog.com/un-charter-law.

[37] Universal Declaration of Human Rights (n 8).

[38] Kovalik (n 1) 112.

[39] Sonia Cordera, 'India's Response to the 1971 East Pakistan Crisis: Hidden and Open Reasons for Intervention' (2015) 17(1) *Journal of Genocide Research* 45.

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With regard to Tanzania deposing the murderous Idi Amin, at least one important article (which also includes a survey of different natural law philosophies) concludes that the motivating justification *was* of a humanitarian nature, and not self-defence, as noted by UD Umozurike and UO Umozurike.[40] To dismiss the possibility that these cases of successful non-western intervention can be presented as humanitarian interventions, when there is no disagreement in the literature with regard to the interruption of ongoing human rights catastrophes that followed, seems to indicate an ideological and anti-western animus.

Judicial practice, and specifically with references by ICJ judges in their rulings to theorists of international relations and defenders of humanitarian intervention like Grotius, lends further support for the view that there is not just a norm shift in the direction of R2P, but a legal opening as well. As Sondre Torp Helmersen points out in calling attention to these references to older theorists of the international order,[41] scattered references to Grotius and others may not by themselves be significant in the current UN legal regime. However, the principle matters: judges reference sources with the intent to increase perception of their holdings as authoritative. Even if the question is one of partial authority (a scattered reference that increases the weight of an ICJ ruling on the margin), the fact that an ICJ judge would do this at all reinforces that these old thinkers, in an international legal setting, continue to possess authority.

Kovalik has recognised and relied on the authority of these ICJ judges in other contexts. So, why not acknowledge the possibility that the older thinkers, when quoted by ICJ judges, are to some extent authoritative?

As a possibility, this is borne out yet further by research that emphasises the importance of *practice* in legal settings.[42] The current interpretation of a law involves not just principles that can be gleaned from armchair investigation of subsections, but from the way it is actually, in practice, debated in courtrooms and implemented. If practice is constitutive of legal meaning in this way, even scattered examples of judges incorporating Grotian principles in decisions mean that those ideas are already playing some part of the current international legal order, and could increase in influence depending on whether judges refer to them more, or less.

The Trump administration's 'Report on the Commission of Unalienable Rights', although not mentioning Grotius, does refer to 'natural law' and proposes reading the UDHR in the light of the American tradition of inalienable rights, which it recognises as having been shaped by both Athens and Jerusalem.[43] Agree or disagree either with ICJ judges referencing Grotius or with Mike Pompeo placing current international law and human rights discourse in dialogue with older notions, what these facts show is that the older notions of both law and morality are not hermetically sealed off – even as far as practice is concerned – from the legal realities of the

[40] UD Umozurike and UO Umozurike, 'Tanzania's Intervention in Uganda' (1982) 20 *Archiv des Völkerrechts* 301, 312.
[41] Sondre Torp Helmersen, 'Finding "the Most Highly Qualified Publicists": Lessons from the International Court of Justice' (2019) 30 *European Journal of International Law* 509, see 515 and 534 for references to Grotius.
[42] Goldsmith (n 36).
[43] Commission on Unalienable Rights, 'Report of the Commission on Unalienable Rights', 6 August 2020, 11, https://www.state.gov/wp-content/uploads/2020/07/Draft-Report-of-the-Commission-on-Unalienable-Rights.pdf.

present. This raises the question: in the light of the fact that judicial decisions can and do – as demonstrated – incorporate moral ideas from past centuries, why should authoritative legal principles be drawn exclusively from the twentieth century paradigm of international law? In *No More War*, Kovalik could do more to provide an answer. Moreover, if there is no good reason for this limitation, why would theorists and even jurists not go back even further in time to classic theorists of just war, who also theorised circumstances under which one power could come to the aid of another in distress or experiencing domination?

5. THE MORALITY AND LEGALITY OF HUMANITARIAN INTERVENTION: DRAWING ON AN OLDER BODY OF NORMS IN THE CONTEXT OF CONTEMPORARY INTERNATIONAL LAW

From the perspective of an older morality that can still (as just shown) affect contemporary international legal reality, Grotius in conjunction with Francisco de Vitoria and Samuel von Pufendorf are especially relevant. In what way? They are all natural law thinkers and, based on their understanding of natural law, they support humanitarian intervention at various levels. To be clear, the point is not to draw on these older thinkers based on agreement with their ontology or other categories. Just as Plato can profitably be read by those interested in a fuller account of democracy without accepting the truth of his account of the Forms, or Augustine can be appreciated for his insights about radical democracy without a commitment to metaphysical categories in *The City of God*,[44] so too can these thinkers provide resources to support R2P interventions. As Hilpold points out,[45] the recent explosion of historical interest in humanitarian intervention follows on the unexpected and recent emergence of R2P as a norm – it is responding directly to it, for the sake of finding conceptual resources in history to further support the emergence and consolidation of a new norm.

Given the pre-eminence of moral considerations in questions of possible intervention since the end of the Cold War, it is interesting that Vitoria, too, and a body of Spanish natural law thinkers known as the School of Salamanca, drew on natural law considerations specifically for the sake of better understanding the ethics of Spanish conquest of the New World. Associated questions arose related to the right treatment of aboriginal peoples. Vitoria, known as the 'father of international law', recognised indigenous Americans as human beings with rights at a time when leading intellectual lights in Europe did not:[46]

> The upshot of all the preceding is this, then, that the aborigines undoubtedly had true dominion in both public and private matters, just like Christians, and that neither their princes nor private persons could be despoiled of their property on the ground of their not being true owners.

[44] Augustine, *The City of God* (Henry Bettenson trans, Penguin Books 2003); Catherine Pickstock, 'Ascending Numbers: Augustine's *De Musica* and the Western Tradition' in Lewis Ayres and Gareth Jones (eds), *Christian Origins: Theology, Rhetoric, and Community* (Routledge 1998) 185.
[45] Hilpold (n 18) 60–61.
[46] Francisco de Vitoria, 'First Section' in 'The Rights of the Indians' from *De Indiis et de Iure Belli Relectiones* (JP Bate trans) in JB Scott (ed), *Classics of International Law* (1944) (as reproduced in Arthur F Holmes (ed), *War and Christian Ethics* (Baker Academic 1975) 119, 125).

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In order to arrive at his position and extend protection to indigenous Americans, while also affirming the legitimacy of Spanish presence in the Americas, Vitoria expanded the Thomistic concept of customary (not positive) law, the *jus gentium* from Roman times. The key insight here is that *jus gentium* is a foundation of a natural law of nations, permitting peaceful travellers to come and go.

Of course, as James Muldoon has emphasised,[47] this is still problematic from our perspective: what if indigenous Americans did not wish autonomously to accept 'peaceful travellers' or treat them with humanity and respect? Yet the reasons that *cannot* be used to justify Spanish intervention, according to Vitoria, are equally significant. The Spanish are not allowed to conquer the New World in order to convert its inhabitants to Christianity. The Pope does not have dominion over non-Christian subjects. Where the Spanish, or any other nation, do have a right to intervene without the permission of the Pope is when 'nefarious customs' are involved, such as human sacrifice of the innocent or slaughter of criminals for purposes of cannibalism. This still leaves the question of who is to define 'nefarious', but as grounds of humanitarian intervention it is closer to our moral intuitions.

Grotius, sometimes viewed as expanding on Vitoria's ideas even as the greater degree of modernity in his work is acknowledged,[48] is even more readily associated with just war. To Grotius, war is simply the next natural next step if diplomacy fails; and justified war in *De Jure Belli Ac Pacis*[49] does not even require the commission of a wrong: anticipated wrongdoing can suffice. For Grotius, war is an appropriate response not only in matters of self-defence[50] but also in inflicting punishments,[51] defending chastity,[52] and importantly, vindicating innocent rights.[53] Without an overarching civil authority, everyone in a state of nature can, in principle, initiate a war to come to the assistance of those abused by the stronger or launch a humanitarian intervention on their behalf – provided, of course that it is just.[54]

That Grotius, despite his greater sympathy relative to Vitoria with a system of nation-states not ruled by a universal monarch or the Pope, supports just war and humanitarian intervention

[47] James Muldoon, 'Francisco De Vitoria and Humanitarian Intervention' (2006) 5 *Journal of Military Ethics* 128, 135–36.

[48] Anthony Coates, 'Humanitarian Intervention: A Conflict of Traditions' in T Nardin and MS Williams (eds), *Humanitarian Intervention* (New York University Press 2006) 58, 65.

[49] Hugo Grotius, *The Rights of War and Peace* (AC Campbell trans, M Walter Dunne 1901), https://oll.libertyfund.org/title/grotius-the-rights-of-war-and-peace-1901-ed#lf0138_label_022; Jonathan Scott, 'The Law of War: Grotius, Sidney, Locke, and the Political Theory of Rebellion' (1992) 13 *History of Political Thought* 565.

[50] Grotius, ibid II.1.3.

[51] ibid II.1.2.

[52] Ibid II.1.7.

[53] ibid II.25.6–8.

[54] ibid; consider II.25.8: 'Though it is a rule established by the laws of nature and of social order, and a rule confirmed by all the records of history, that every sovereign is supreme judge in his own kingdom and over his own subjects, in whose disputes no foreign power can justly interfere. Yet where a Busiris, a Phalaris or a Thracian Diomede provoke their people to despair and resistance by unheard of cruelties, having themselves abandoned all the laws of nature, they lose the rights of independent sovereigns, and can no longer claim the privilege of the law of nations. Thus Constantine took up arms against Maxentius and Licinius, and other Roman emperors either took, or threatened to take them against the Persians, if they did not desist from persecuting the Christians'.

is especially evident in a recent article by Evan Criddle.[55] The author advocates a new interpretation of humanitarian intervention grounded in Grotius that he thinks modern scholars sceptical of a boilerplate natural law justification for humanitarian intervention might consider. Criddle analogises Grotius' view of responsibility involved in a medical power of attorney or a trustee relationship. In summarising this argument, he writes:[56]

> According to this fiduciary theory, when states intervene to protect human rights abroad they exercise an oppressed people's right of self-defense on their behalf and may use force solely for the people's benefit. As fiduciaries, intervening states bear obligations to consult with and honor the preferences of the people they seek to protect, and they must respect international human rights governing the use of force within the affected state. By clarifying the respective responsibilities of the Security Council and individual states for humanitarian intervention, the fiduciary theory also lends greater coherency to the international community's 'responsibility to protect' human rights.

This is a fascinating argument in the context of this review, as Criddle considers R2P to be justifiable by both a centuries-old international law tradition grounded in Grotius and positive international law expressed in R2P, a creative synthesis grounded in fiduciary responsibility. However, where Criddle seeks historical fusion and adaptation with past seminal insights consistent with many international law jurists, Kovalik sees anachronism and a need for rigid application of the Charter without deference to nuance or context.

It was left to Pufendorf, a later seventeenth century German natural law theorist, to point out that the universal right to intervene as theorised by Grotius would lead to excess. Pufendorf is remembered for works that include *Elementorum Iurisprudentiae Universalis* (1660),[57] and *De Jure Naturae et Gentium* (1672).[58] Yet, despite critiquing the chaos to which a universal Grotian right to intervene leads, Pufendorf allowed that instances where intervention is justified exist – his is not a wholesale ban of interventions per se. These cases involve moral issues, and go far beyond self-defence.[59]

Contemporary political thinkers, including Terry Nardin, have already drawn on the resources made available by these and other older political philosophers to ground the morality of humanitarian interventions in cases where a question of self-defence is not involved. In his famous and widely cited article, Nardin makes the case that, far from being the exception, the legitimacy of involvement to stop or prevent injury was the rule among early modern theorists of international relations. What changed, starting in the nineteenth century? Nardin argues that it was the advent

[55] Evan J Criddle, 'Three Grotian Theories of Humanitarian Intervention' (2015) 16 *Theoretical Inquiries in Law* 473.
[56] ibid 473.
[57] Samuel Pufendorf, *Two Books of the Elements of Universal Jurisprudence*, https://oll.libertyfund.org/title/behme-two-books-of-the-elements-of-universal-jurisprudence.
[58] Samuel Pufendorf, *The Whole Duty of Man According to the Law of Nature*, https://oll.libertyfund.org/title/tooke-the-whole-duty-of-man-according-to-the-law-of-nature-1673-2003#lf0217_label_779.
[59] ibid II.16.11: 'A war may be made by a person, not only for himself, but for another … And where there is no other reason, the common Relation alone of Men to Men, may be sufficient, when the Party imploring our aid is unjustly oppressed, to engage our Endeavours, as far as with Convenience we are able, to promote his Defence'.

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of legal positivism that took away the possibility of a natural standard in holding that the only valid (authoritative) laws derive from governmental enactment.[60]

To be clear, this does not speak to the legality of R2P, especially of a nation going outside Security Council authorisation to perform a humanitarian intervention; but it does situate us in a history of norms, allowing us to see the degree to which humanitarian interventions have been accepted throughout history. Especially set against the backdrop of the recent evolution of the norm towards almost universal acceptance of R2P, the consideration of historical examples can further add momentum to that norm shift. Also, as discussed, once a critical mass has been reached, a shifting norm can increase the chances that an actual legal change takes place.

Indeed, the moral case for intervention since the Cold War has been uppermost on theorists' minds. Intrastate conflicts have now replaced interstate conflicts as the dominant form of armed hostility on all continents, and most of the casualties in these intrastate conflicts have been civilians. Actual wars need not be involved: why may a sovereign state not act against, for example, violent and evil international drug cartels in order to dismantle networks that cause so much suffering of innocent civilians? As contemporary thinkers drawn in this direction recognise, the burden of proof for overriding state sovereignty is strong, but needs to be made, and it is being made.

Michael Walzer, for example, has weighed in on the limits of sovereignty, underscoring the need for balance – that is, guarding sovereignty against unhealthy erosion while at the same time articulating plausible scenarios in which overriding a state's political independence and territorial integrity is in order. Walzer proposed three cases where a state's right to be left alone may be overridden: (i) secession (subject to certain conditions); (ii) civil wars in which balance is restored when another nation intervenes on the other side; and (iii) gross violations of human rights that insult morality and render sovereignty arguments cynical and irrelevant. Walzer considers military necessity and proportionality to be important, but not the only considerations in limiting the scope and evils of war. Outside theology, rights are needed, among other things to provide the best secular protection for non-combatant immunity. Thus, 'humanitarian intervention is justified when it is a response (with reasonable expectations of success) to acts "that shock the moral conscience of mankind"'.[61] In this way Walzer augments utilitarian considerations with a robust consideration of human rights.

In recent years Brian Orend has also argued more generally that sovereignty rights should be strongly respected, but not in an unlimited way. He sees sovereignty as both a privilege and a right. In other words, as long as said states are 'minimally just', a crucial but vague and difficult concept, sovereignty ought not be violated.[62] In rights respecting communities that are minimally just societies, individuals, families and other groups retain a large measure of sovereignty over their property, their lives and their plans for life. The weightiest obligations to neighbours are of a negative nature, that is, not to cause them unjustified harm. We presume that our neighbours

[60] Terry Nardin, 'The Moral Basis of Humanitarian Intervention' (2002) 16(2) *Ethics & International Affairs* 57, 63, 64.
[61] Michael Walzer, *Just and Unjust Wars* (Basic Books 1977) 91, 107.
[62] Brian Orend, *The Morality of War* (Broadview Press 2006) 35, 35–37.

are minimally just and that we should respect their autonomy until evidence to the contrary is exposed. However, given knowledge of significant injustice, a neighbour must decide whether and how to intervene. Orend's insight captures the intuitive plausibility of our earlier domestic analogy. It makes for the general view that sovereignty should be respected until certain knowledge of palpable evil justifies intervention.

6. KOVALIK'S DEFINITION OF SELF-DEFENCE IS TOO RESTRICTIVE

Just as Kovalik interprets too narrowly the possible emergence of a new norm like R2P, which we have shown has gained universal acceptance among scholars studying the related set of issues; and just as he interprets too narrowly contemporary R2P possibilities, so too does he interpret too narrowly the circumstances in which state actors can take anticipatory action to defend themselves. Although these pieces are not all conceptually related in a direct way, the fact that Kovalik interprets too narrowly emerges as a consistent theme. Pointing this out may make additional sense of the fact that Kovalik interprets norms, the law and practice too narrowly when it comes to R2P.

What form does a broader right of self-defence supported by natural law take? A plausible argument refers back to what is known as the Caroline incident. During the 1830s and 1840s, disputes over America's northern border led to the use of an American ship, the *Niagara*, to aid insurrectionists in Canada seeking to undermine that country's duly constituted civil authority. In response, Canadian militia members crossed the border into the United States where the *Niagara* was in the process of resupply, set it on fire and launched it down the Niagara Falls, killing two crew members. The resulting tension almost led to military conflict between the US and Canada. The ensuing series of letters, between US Secretary of State Daniel Webster and British envoy to the United States Lord Ashburton, articulated a standard of legitimate self-defence that is still in use today.[63] The incident produced reasonable criteria, which continue to be relevant for the attention of international jurists.

That standard permits pre-emptive self-defence if a threat is imminent; and if the threat is imminent, the pre-emptive response must be proportional to it. The Caroline test is useful in the context of Kovalik's restrictive prescriptions for the use of force in that it goes well beyond them. The US response during the Cuban missile crisis is a good example, when the proximity to US territory, the imminence of the danger and the type of weapons deployed in Cuba exposed the catastrophic consequences of believing, as Kovalik apparently does, that justified self-defence required waiting to be fired upon with ICBMs. It was also impracticable to defer to the Security Council, as the Soviets would certainly have stalled or vetoed any belated resolutions. One of the many other historical examples justified by the Caroline test is the Six Day War in 1967. Israel, surrounded by large populous countries actively mobilising, and with the stated

[63] Correspondence between Mr Webster and Lord Ashburton, https://avalon.law.yale.edu/19th_century/br-1842d.asp.

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goal of annihilation, seized the tactical advantage by pre-emptively attacking. In this lopsided affair, waiting to be attacked would have constituted an existential threat.

To be clear, the Caroline test justifies seizing the initiative in attacking pre-emptively in cases of imminent attack where delay threatens a strategic and tactical catastrophe. In discussing the US invasion of Iraq, Kovalik is right to doubt the weak rhetorical arguments supporting the invasion as justified on grounds of preventative self-defence, but he fails to distinguish between pre-emptive and preventative self-defence. Pre-emptive self-defence is a stricter standard which satisfies the Caroline test criteria, a measurable threat with consequences at hand. Preventative self-defence is generally grounded in fears not immediately quantifiable, and is not consistent with the Caroline criteria. However, here is the key point: while pre-emptive self-defence does have stricter criteria for violent responses, even pre-emptive self-defence does not meet the strict standard in Article 51 of the UN Charter. Yet the Caroline test was reaffirmed at Nuremberg, to which Kovalik refers positively.[64] Again, Kovalik's not allowing that international law allows for a broader interpretation of self-defence helps us to make sense of why, on R2P, he also takes an overly narrow interpretation of relevant norms and practice.

7. ANTI-IMPERIALISM – AUGUSTINE

Credit where credit is due: to the extent that Kovalik chronicles the tragic destruction of life for which imperialism bears responsibility, and that he is able to show how the impulse to dominate others has plausibly appropriated the language of humanitarianism, his book unsettles. Can it be that the reader is complicit, even today, in projects of subjugation, the packaging of which has changed but the essence remains the same? Imperialism has historically been defended openly on both the 'left' and the 'right' (witness its championing by Disraeli[65] and, even if to a lesser extent, by Gladstone[66] as well as by John Stuart Mill[67] in the England of the 1800s). No one would do so today, and in the last few years, after several decades in which projection of power beyond borders was supported in the United States to a greater extent on the right, conservative populists have repudiated neo-conservatives and issued a critique of American interventionism around the world. Yet even as this has occurred, admittedly in part in response to the presidency of Donald Trump, liberals seem to have rediscovered the virtue of empire, sounding notes of caution about withdrawing from Afghanistan or not supporting militarily the opposition in Syria. To show how the imperial tendency may lurk, disquietingly, where we least expect it is an accomplishment of Kovalik's book.

A broader critique of imperialism at the heart of the western canon, which captures some part of what *No More War* is attempting to convey, can be found in the works of the North African

[64] Kovalik (n 1) 37.
[65] Freda Harcourt, 'Disraeli's Imperialism, 1866–1868: A Question of Timing' (1980) 23 *The Historical Journal* 87.
[66] Robert T Harrison, *Gladstone's Imperialism in Egypt: Techniques of Domination* (Greenwood Press 1995).
[67] Mark Tunick, 'Tolerant Imperialism: John Stuart Mill's Defense of British Rule in India' (2006) 68 *The Review of Politics* 586.

Augustine, who unmasked the lofty sounding rhetoric and justification of the Roman empire, and in whose work there has recently been renewed interest. When the Romans spoke of justice (as some speak of humanitarianism today), Augustine explains in *City of God* that what they did was further entrench the domination for which their rule was known. This was true also of the Greek, Assyrian and other empires, whose history Augustine chronicles in Books XV to XVIII of *City of God* after outlining the fundamental and famous contrast between the earthly and heavenly cities at the end of Book XIV. All of these empires, as Augustine explains in a critique of human failing that goes significantly beyond Aristotle's, are ineluctably drawn into a catalytic interplay of oppression precisely because they belong to the earthly city. Augustine contrasts the end of all political organisation (domination) in this city with that of the heavenly city that journeys in its midst seeking only to glorify God.

This is why Augustine has already, to positive effect, been characterised as a critic of Roman colonialist discourse.[68] Calvin Troup has called attention to the famous passage in Book IV in *City of God* in which Augustine tells the story of Alexander the Great and a pirate, who tells the Emperor that there is no difference between them other than the size and scope of their undertakings;[69] Troup also highlights the less frequently read passage in Chapter 6 of Book IV, in which the Syrian King Ninus, whose kingdom has stood for 1,200 years, is also none too subtly labelled a thief.[70] This is also why Augustine, despite affirming historic Christian notions of truth and objectivity, has been portrayed in the literature as an opponent both of moral relativism and of moral imperialism, a combination made possible by his profound appreciation of the value of humility.[71]

Charles Mathewes, as an Augustinian, has called on those tempted to the idolatry of American power and empire (as well as their demonisation) today to pursue greater humility.[72] On this account, the productive response to the evils of imperialism is neither to indulge it nor to succumb to the bitterness of thinking that one's country is uniquely awful. Rather, it is to concede that human beings pursuing ends of interest and glory may well use the language of humanitarianism, among other rhetorical devices, to justify domination – Augustine himself would have been saddened, though not surprised. It is then through faith to open ourselves to an honest confrontation with history, continuing to inhabit hope and calling our fellow citizens to account in love.

8. AUGUSTINIAN PRINCIPLED REALISM AND HUMANITARIAN INTERVENTION IN A JUST WAR

Augustine, actually, brings this review back to a key moment in the book where, ironically, Kovalik expresses a negative view of the very foreign policy school of thought positioned to

[68] Calvin L Troup, 'Augustine the African: Critic of Roman Colonialist Discourse' (1995) 25 *Rhetoric Society Quarterly* 91, 101.
[69] ibid 102.
[70] ibid.
[71] Gerald Schlabach, 'Augustine's Hermeneutic of Humility: An Alternative to Moral Imperialism and Moral Relativism' (1994) 22 *The Journal of Religious Ethics* 299, 302.
[72] Charles T Mathewes, 'An Augustinian Look at Empire' (2006) 63 *Theology Today* 292, 300.

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contribute to his goals. The reason is that even as he exposed the vicious depredations of imperialism, Augustine would not necessarily have opposed a great power intervening on a case-by-case basis ultimately to prevent or punish evil. To see why, we need to consider at greater length the principles that inform Augustine's critique of imperialism. These principles amount to a distinctive realism, which in narrowly circumscribed circumstances necessitates just wars on behalf of the oppressed.

No More War mischaracterises realism in a key passage. This occurs in Kovalik's second chapter, where he writes '[a]nd the US has remained true to this realist, self-interested, and non-altruistic foreign policy to this day'.[73] In the preceding paragraph, the context is an international distribution of resources in which the US enjoys a disproportionate share. Kovalik also refers in that preceding paragraph to George Kennan, considered an architect of a hard-nosed and realist foreign policy towards the Soviets in the twentieth century.

This foreign policy paradigm reference, where it occurs in Kovalik's account, is accurate in part. Realism does recognise inequalities of power, and it seeks to avoid a misguided idealism of utopian solutions, especially those imposed where there is no underlying and local basis of support. The problem in tying realism exclusively to short-term interest and a complete lack of altruism is that it misleads the reader into thinking that a record of falsely justified humanitarian interventions is exclusively the fault of foreign policy realists.

Kovalik, however, creates a somewhat straw man because in the twentieth century realism was advanced not just by Kennan but by the likes of more nuanced thinkers such as Hans Morgenthau[74] and Reinhold Niebuhr.[75] Especially in the case of Niebuhr – arguably the pre-eminent foreign policy realist of the twentieth century who fully accepted the need for hard-nosed engagement with the Soviets – realism can also be rooted in a specific anthropology of imperfection that manifests itself especially in the behaviour of groups and collectives.[76] This is hardly the reverence for power voiced by Callicles in the *Gorgias*,[77] Thrasymachus in the *Republic*[78] or Thucydides in his Melian dialogue,[79] or the Machiavellianism of satisfying and stupefying power-maximising strokes two millennia later. The historical record and human experience confirm the reality of systemic human flaws and imperfections. Thus, the reason not to attempt a humanitarian intervention to build democracy halfway around the world is not insufficient power but the many unexpected consequences that flow from fallen human nature. Niebuhr did affirm the continuing importance of nations – global order depended on their trust and collaboration – but he also supported the United Nations and upheld universal

[73] Kovalik (n 1) 41.
[74] Hans J Morgenthau, *The Struggle for Power and Peace: Politics among Nations* (Alfred Knopf Inc 1978).
[75] Reinhold Niebuhr, *Moral Man and Immoral Society: A Study in Ethics and Politics* (Westminster/John Knox Press 2013).
[76] ibid especially 257–78.
[77] Plato, *Gorgias* (Donald J Zeyl trans, Hackett 1987) 55, 483a–484c.
[78] Plato, *Republic* (Allan Bloom trans, Basic Books 2016) 13–29, 336b–350d.
[79] Thucydides, *History of the Peloponnesian War*, Book V Ch 17, https://www.gutenberg.org/files/7142/7142-h/7142-h.htm#link2HCH0017.

human rights.[80] Kovalik's flaw, then, is not adequately accounting for the nuanced differences between versions of realism.

Indeed, with these considerations in mind, Kovalik does not seem open to the possibility that a fine-grained and positive version of realism is consistent with, and indeed can support, the very anti-imperial patterns of international relations that he favours. This is despite the fact that all the interventions he critiques as illegitimate – think Kosovo, Iraq in 2003, Libya and Syria – were opposed by realists and supported by idealists, Wilsonians and empire builders of various kinds. Realists, as it turns out, are Kovalik's allies on both the left and the right – even if he gives no indication throughout the book that he does not acknowledge the dynamic.

An important influence on Niebuhr was Augustine.[81] Recent work by Matthew Hallgarth speaks to the fifth century political theologian's keen but non-idolatrous appreciation of the dynamics of power, in a variety of contexts where case-by-case considerations of the permissible extent of coercion are required.[82] The earthly pursuit of utopia is foolish, and force is sometimes necessary in a world populated by flawed people. Given that a republic is united by common objects of love, and human beings remain embodied creatures affected by shared memories and histories of place, there also remains a place for patriotism and tempered recognition of the importance of one's national community.[83]

Significantly, Augustine's principled realism is especially evident in his just war theory. Immediately noticeable about Augustine's account of armed conflict is that it is not to be fought for gain or glory. War is justified only in dire situations as a last resort, when peace and the existence of the commonwealth itself are threatened. Thus, in *City of God* Augustine ties legitimate physical strife to peace and its restoration.[84] As further illustrated in *On the Free Choice of the Will*, this includes pre-emptive self-defence,[85] and it is systematised in *Contra Faustum*, where Augustine offers three conditions that must obtain in a just war scenario: (i) due authorisation;

[80] Warren L Holleman, 'Reinhold Niebuhr on the United Nations and Human Rights' (1987) 70 *Soundings: An Interdisciplinary Journal* 329.

[81] Niebuhr argues that arrogance, selfishness and hypocrisy are systemic hallmarks of relationships between nation-states and classes. Limiting nation-states, by empowering groups of nation-states working through the administrative architecture of the UN based on professed fealty to international jurisprudence, does not necessarily lead to better human rights outcomes: Niebuhr (n 75) especially 257–78. See also Gregory J Moore, *Niebuhrian International Relations: The Ethics of Foreign Policymaking* (Oxford University Press 2020) 72, 105, 109–11.

[82] Matthew Hallgarth, 'Augustine's Principled Realism' in Boleslaw Z Kabala, Ashleen Menchaca-Bagnulo and Nathan Pinkoski (eds), *Augustine in a Time of Crisis: Politics and Religion Contested* (Palgrave Macmillan 2021) 323.

[83] Augustine (n 44) Book XIX Ch 26 890. On Augustine as a Roman patriot see John J Burke, 'Historical Attitude of the Church Towards Nationalism' (1928) 14 *The Catholic Historical Review* 69, 71. The recent surge of interest in a republican Augustine also suggests interpretive proximity to patriotism; see Paul J Cornish, 'Augustine's Contribution to the Republican Tradition' (2010) 9 *European Journal of Political Theory* 133, 145; Michael Lamb, 'Augustine and Republican Liberty: Contextualizing Coercion' (2017) 48 *Augustinian Studies* 119, 140–59 (particularly related to Augustine's support of the publicity of reason-giving as part of a shared political project).

[84] Augustine (n 44) Book XV Ch 4; see also Book XIX Ch 12.

[85] Augustine, *On the Free Choice of the Will* (Cambridge University Press 2010) Book I Chs 5, 9–11.

(ii) execution with the right intention; and (iii) necessity related to 'the peace and safety of the community'.[86]

The necessity to use force, based on Augustine's principled realism, can apply also in situations where self-defence is not the only consideration. How does this follow? Augustine himself holds that a punitive action can qualify as a just war,[87] and this punitive action is consistent with defending a weaker party from oppression. Certain injustices, from flagrant violations of rights to the extreme case of genocide, can plausibly be argued to demand a response if innocent third parties ill-equipped to defend themselves are to know security in the future. If a response does not materialise, the security of all suffers. From an Augustinian perspective, this is all the more true given that an important justification for civil authority is human wickedness itself. Punitive action *is* the humanitarian intervention.

Interestingly, Doug Kries has also written about Augustine's 'flexibility' in applying moral precepts, precisely in *Contra Faustum.* Flexibility, or the unwillingness to have options constrained by a rigid interpretation of moral statutes, is more readily associated with a Machiavellian version of realism. In an Augustinian context, one can see how it could open the door to prudence in how to understand Augustine's criteria of just war. It could impact, on a case-by-case basis, considerations of when to intervene.[88]

The question for Kovalik, then, is why not principled realism? In exceptional circumstances where there is no other option, why not a humanitarian intervention carried out by a single nation? Especially given that R2P already allows the Security Council to support this kind of involvement; and especially given, as we have shown, that even action by individual states outside the Security Council framework may be moral and legal.

Indeed, if non-western nations like Tanzania and India can, on occasion, carry out a needed humanitarian intervention without upsetting the overall framework of national sovereignty, then why, on restrained and principled realist grounds, is Kovalik not open to the possibility that in Germany in the 1930s, or in Rwanda, a responsible western nation ought to have done the same? Circling back to the *Nicaragua* case in Chapter 6 compounds the problem for Kovalik. Presumably, even if the Ugandans, in a demonstration of popular sovereignty, had asked Tanzania to help them shake off Amin's yoke, Kovalik would object to intervention based on the desire to avoid the potential abuses of these missions at all costs.

Principled realism would apply especially when collective action by the Security Council is, for any of a number of reasons, unattainable. This view can help us to make sense of why, despite the enormity of a humanitarian situation, Security Council members may balk at the kind of swift action needed to avert disaster. Do the members of the Security Council not have interests? In

[86] Augustine, *Contra Faustum*, Chs 74, 75 and 78, https://www.newadvent.org/fathers/140622.htm; see also Nico Vorster, 'Just War and Virtue: Revisiting Augustine and Thomas Aquinas' (2015) 34(1) *South African Journal of Philosophy* 55, 59.

[87] Augustine (n 85) Book XIX.7 and 13; John Langan, 'The Elements of St. Augustine's Just War Theory' (1984) 12(1) *The Journal of Religious Ethics* 19, 24–27.

[88] Douglas Kries, 'Augustine and the Flexibility of True Justice' in Kabala, Menchaca-Bagnulo and Pinkoski (n 82) 343–58.

line with a realistic assessment of human nature, if they act on those interests instead of moving to avert a crisis, does it not make sense to rectify the human rights abuse outside formal UN structures as opposed to indulging in the idolatry of national sovereignty? Principled realism would provide a safety valve, allowing conscientious states to act when the Security Council demurs, or one of its members objects.

9. CONCLUSION: OVERLAPPING CONSENSUS AND STRATEGIES OF HOPE

Dan Kovalik's contributions in *No More War* undoubtedly deepen the discussion around humanitarian intervention and a just international order. The book is a passionate cry for equity among nations, and it calls attention to numerous documents and resolutions that are too often swept under the rug in both academic and popular discourse. Setting out to challenge and unsettle the reader, Kovalik succeeds.

Yet Kovalik does not take into account relevant changes in norms during the last 40 years. He could have mentioned the current judicial practice of citing older thinkers, who did support humanitarian intervention. Kovalik also does not consider the possible legal impact of R2P. This norm may already have created a space for countries to act without explicit Security Council approval.

No More War, therefore, also represents a missed opportunity. It appears at a highly unsettled time when questions of the sustainability of the neo-liberal paradigm abound. As the ground shifts in unexpected ways and old political coalitions prove brittle, new ones unexpectedly take shape. The growing agreement, on the left and the right, that unrestricted international capital flows have undermined the dignity of workers, corroded civic institutions and weakened the family is a case in point. Kovalik himself is sensitive to these shifting dynamics, having appeared on both the *Ingraham Angle* on Fox News and written for *The Huffington Post.*

Especially in the light of his awareness of coalitional possibilities, Kovalik's needless alienating of people who might be natural allies is disappointing, and unnecessary. Kovalik should pursue, instead, the possibility of overlapping consensus, as he has already started to do. Whether America is singularly responsible for the problem of 'humanitarian intervention' used as a cover for imperialism or whether the problem predates America, the fact is that 'humanitarian intervention' as practised today in so many cases has been destabilising. Figuring out a way, institutionally and conceptually, to restrain the practice, without letting go of the exceptional circumstances in which it is genuinely needed, would seem a priority.

The pursuit of overlapping consensus is a time-honoured tradition, stretching from Augustine in the fifth century to John Rawls in the twentieth. Although it does not permit us to see eye to eye on everything, it does make possible agreement on important and divisive subjects. The dynamic Kovalik has identified is important. A common hope is that a stable of ground of shared values is articulated soon, and Kovalik provides important conceptual pieces in the ongoing discussion and debate on the way to making it a reality.