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978-1-107-04202-5 - Just and Unjust Military Intervention: European Thinkers
from Vitoria to Mill

Edited by Stefano Recchia and Jennifer M. Welsh

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Introduction: the enduring relevance of classical thinkers

Stefano Recchia and Jennifer M. Welsh

Recent years have witnessed a notable resurgence of interest in the politics and ethics of military intervention among scholars, policymakers, and the informed public. While during the Cold War, the superpowers engaged in covert and sometimes overt intervention within their respective spheres of influence, since the early 1990s, intervention has become a more prominent feature of the international landscape. The perception of intervention in some corners of international society appears to have shifted from an act that was primarily viewed negatively – as “dictatorial interference,” in the words of international legal scholar Lassa Oppenheim¹ – to a good deed, motivated by the desire to spread universal principles or to “right” a wrong committed within the boundaries of a particular state. As a consequence, for present-day supporters of the practice intervention is no longer an act that a target society “suffers,”² but rather something that it benefits from.³

Military intervention has increasingly been justified by reference to humanitarian purposes, reflecting a growth in both the potency of international human rights norms and the willingness of the United Nations Security Council to consider humanitarian crises as threats to international peace and security. As Martha Finnemore notes, while states often consciously avoided humanitarian justifications for intervention during the Cold War – even when they plausibly could have offered them (as, for example, in the cases of India’s 1971 intervention in East Pakistan or Vietnam’s 1979 intervention in Cambodia) – “humanitarian

¹ L. Oppenheim, *International Law: A Treatise* (London: Longmans, 1920), vol. I, p. 221.

² R. J. Vincent, *Nonintervention and International Order* (Princeton University Press, 1974), p. 3.

³ See e.g. N. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford University Press, 2000); T. Weiss, *Humanitarian Intervention*, 2nd edn (Cambridge: Polity, 2013); and the essays in J. L. Holzgrefe and R. O. Keohane (eds.), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge University Press, 2003); J. Welsh (ed.), *Humanitarian Intervention and International Relations* (Oxford University Press, 2004); and T. Nardin and M. Williams (eds.), *Humanitarian Intervention* (New York: NYU Press, 2005).

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claims now frequently trump sovereignty claims,” provided that interventions can be authorized and carried out multilaterally.⁴ At the same time, powerful states have occasionally relied on a more contested rationale for intervention – the toppling of ostensibly hostile authoritarian regimes to instill or restore a democratic government. In those latter cases, where formal multilateral backing has been difficult to secure, interveners have sometimes been prepared to “go it alone,” even in the years following the Cold War, thus challenging established international norms.⁵

Regardless of its ultimate purpose, military intervention always carries with it the potential for further death and destruction. It also stands in an uneasy relationship with fundamental principles of international society, notably self-determination, noninterference, and political independence. Military intervention (like the use of force more generally) is thus always morally problematic – or *evil* to some degree – although sometimes it might be the lesser of two evils, when compared with the costs of unhindered genocide and other mass atrocities, or the prospect of irreparable damage to one’s own vital national interests. As a result, today’s interventions have resulted in lively debate over a number of ethical questions.

The first set of questions – which has traditionally fallen under the rubric of *ius ad bellum* – relates to the circumstances under and purposes for which military intervention can be justified. Apart from the right of individual and collective self-defense in response to an armed attack, as enshrined in Article 51 of the UN Charter, *when (if ever) is it permissible to intervene militarily in a foreign country?* Does the existence of an undemocratic and oppressive regime alone generate a prima facie right of intervention on human protection grounds, as some cosmopolitan philosophers argue?⁶ Or must there instead be evidence of ongoing genocidal violence, war crimes, or crimes against humanity – that is, of gross human rights violations that “shock the moral conscience of mankind,” as Michael Walzer famously

⁴ M. Finnemore, *The Purpose of Intervention: changing beliefs about the use of force* (Ithaca, NY: Cornell University Press, 2003), p. 79.

⁵ See e.g. K. Von Hippel, *Democracy By Force* (Cambridge University Press, 2000); E. Luck, “The United States, International Organizations, and the Quest for Legitimacy,” in S. Patrick and S. Forman (eds.), *Multilateralism and U.S. Foreign Policy* (Boulder, CO: Lynne Rienner, 2002); and A. Thompson, “Why Did Bush Bypass the UN in 2003?” *White House Studies* 11, no. 3 (2011), 1–20.

⁶ See e.g. B. Barry, “International Society from a Cosmopolitan Perspective,” in D. Mapel and T. Nardin (eds.), *International Society: Diverse Ethical Perspectives* (Princeton University Press, 1998); F. Tesón, “The Liberal Case for Humanitarian Intervention,” in Holzgrefe and Keohane (eds.), *Humanitarian Intervention*; and A. I. Applbaum, “Forcing a People to Be Free,” *Philosophy & Public Affairs* 35, no. 4 (2007), 359–400.

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put it?⁷ Between the two poles of “merely” undemocratic governance, on the one hand, and ongoing genocide, on the other, there is arguably a large gray zone. For instance, do outsiders have a right to *preventive* humanitarian intervention during the early stages of a popular uprising, with the goal of averting mass atrocities that are only anticipated – as in the case of Libya in 2011?⁸ The legitimacy of preventive military intervention more generally, of course, remains heavily contested – even when contemplated for more traditional purposes of self-defense.⁹

The second set of questions relates to means, rather than ends – matters which have traditionally fallen under the rubric of *jus in bello*. If a case can be made that armed intervention is justified in principle, *what kind of military action and what level of force are acceptable?* Can human rights legitimately be protected by relying exclusively on high-altitude air strikes (as NATO did in the cases of Kosovo and Libya) – or does just intervention instead require the deployment of ground troops in combat, at greater risk to the intervener, in order to minimize civilian casualties among the local population? In spite of their increased precision, air strikes still often result in high “collateral damage,” especially when used in forested or urban areas. More generally, what level of collateral damage – understood as the accidental destruction of civilian lives and property – is acceptable to achieve one’s objectives?

Finally, a third set of questions concerns the source of normative judgment, or the question of *right authority*. Who should pass judgment on the legitimacy of intervention – the UN Security Council and regional multilateral bodies; the targeted population itself; or the leaders and citizens of powerful states that actually have the capabilities to intervene?¹⁰ Even if one agrees that multilateral approval is normatively desirable and should always be sought as a matter of principle, to minimize the risk of

⁷ M. Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), p. 107.

⁸ According to Walzer, such cases do not meet the threshold for humanitarian intervention. See M. Walzer, “The Case Against Our Attack on Libya,” *The New Republic*, March 20, 2011. For the opposite argument, see A. Bellamy, “Libya and the Responsibility to Protect,” *Ethics and International Affairs* 25, no. 3 (2011), 263–9; and more cautiously, R. Pape, “When Duty Calls: A Pragmatic Standard of Humanitarian Intervention,” *International Security* 37, no. 1 (2012), esp. 61–9.

⁹ For insightful analyses that reach differing conclusions, see M. Doyle, *Striking First: Pre-emption and Prevention in International Conflict* (Princeton University Press, 2008), and R. Betts, “Striking First: A History of Thankfully Lost Opportunities,” *Ethics & International Affairs* 17, no. 1 (2003), 17–24.

¹⁰ See J. Welsh, “Authorizing humanitarian intervention,” in R. Price and M. Zacher (eds.), *The United Nations and Global Security* (London: Palgrave, 2004); M. Doyle, “The Ethics of Multilateral Intervention,” *Theoria* 53, no. 109 (2006), 28–48; and J. Pattison, *Humanitarian Intervention and The Responsibility to Protect: Who Should Intervene?* (Oxford University Press, 2010).

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self-serving interventions by powerful states, what about those cases where it is either unavailable or might simply be too costly to achieve? Concluding that in such instances unilateralism should be generally admissible risks doing away with precious checks and balances, precisely at the moment when military intervention is likely to be most internationally controversial. At the same time, making formal multilateral approval a necessary requirement for intervention might undermine the credibility of coercive threats where such approval is unavailable, thus reducing outsiders' ability to effectively deal with hostile opponents and to address large-scale human rights violations short of actually using force.

Our answers to the aforementioned questions reflect to a significant degree the particular features of our current age. For example, instantaneous access to information from around the world has heightened our awareness of human suffering and domestic political crises abroad, and the proliferation of human rights organizations and other non-governmental advocacy groups has intensified the pressure brought to bear on states to "do something" in the face of large-scale atrocities. More traditional international actors – the world's most powerful states, together with institutions such as the United Nations and NATO – have also crucially shaped debates about the legitimate goals and means of intervention. Finally, public discourse about the merits of armed intervention at any given time is inevitably influenced by contingent political views and commitments, technological possibilities (which have greatly expanded in recent decades), and the existence of relevant precedents that function as focal points in the debate. In short, judgments about the "rightness" or "wrongness" of intervention are heavily influenced by our contemporary material and ideational context.

The classics in context

The above-noted influence of context would suggest that there is little to be gained from considering the writings of the classical European thinkers featured in this book, who operated within a different material and ideational environment. Trying to mobilize classical thinkers from the era of the principalities of Christendom, to find solutions to the challenges facing today's interveners, involves the risk of "presentism."¹¹ As Stanley Hoffmann points out, "all ethical judgments in politics, but particularly in [international relations] are historical judgments. They are, as the jargon would put it these days, contextual or situational;

¹¹ See B. Jahn, "Classical theory and international relations in context," in Jahn (ed.), *Classical Theory in International Relations* (Cambridge University Press, 2006), p. 3.

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they are not separable from the concrete circumstances.”¹² We therefore need to take seriously the “contextualist” challenge, articulated most fully by Quentin Skinner, about the need to move beyond the surface meaning of words and concepts to understand the specific, subjective *intentions* behind them. Those intentions, he asserts, can only be uncovered through a detailed examination of the political, social, intellectual, and linguistic universe within which a particular thinker participated.¹³ According to Skinner, textual approaches to the study of a thinker too often engage in the “mythology of parochialism” by finding something apparently familiar in what remains an alien argument. Simply because a similar concept appears does not mean it conveys the same idea or is used with the same intention. As he writes: “There is no determinate idea to which various writers contributed, but only a variety of statements made with the same or approximately equivalent words by a variety of different agents with a variety of intentions.”¹⁴

Skinner’s injunction reminds us that the works we consider here are social acts, rather than abstract statements. As a result, our treatment endeavors to provide the context for each thinker’s perspective on intervention, so as to illuminate whether he is accepting, rejecting, or revising the prevailing ideas and conventions of his time. Moreover, we acknowledge that terminology is historically contingent. Indeed, the very term “intervention,” as we use it here, is a relatively recent one, and was not used by most of the authors discussed in this book.¹⁵ As shown by David Trim in Chapter 1, while the word has existed in both English and French from at least the sixteenth century, it only came to refer to coercive interference in the affairs of another state involving the use of force in the middle of the nineteenth century – when Giuseppe Mazzini and John Stuart Mill (the last thinkers we address) penned their works on intervention.

Nevertheless, while aiming to provide historical context, we concede that we stop short of providing the kind of contextual picture to which Skinner aspires. But we also question whether his method can in fact deliver on its promise, given the inescapable obstacles to being an

¹² S. Hoffmann, *Duties Beyond Borders: On the Limits and Possibilities of Ethical International Politics* (Syracuse, NY: Syracuse University Press, 1981), p. 27.

¹³ Q. Skinner, “Meaning and Understanding in the History of Ideas” in J. Tully (ed.), *Meaning and Context: Quentin Skinner and his Critics* (Cambridge University Press, 1988), pp. 29–67.

¹⁴ *Ibid.*, p. 56.

¹⁵ We define military intervention as the cross-border deployment of armed force, aimed at changing the domestic politics of a foreign country, without the explicit consent of local authorities. For a similar definition, see Vincent, *Nonintervention*, p. 8.

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uninvolved observer or chronicler of ideas. We can only ever approximate a re-enactment of each author's intentions in writing a specific tract, and there will always be a certain "fusion of horizons" between a classical thinker and a contemporary interpreter.¹⁶ More fundamentally, we contest Skinner's view that we should not necessarily look to classic texts for inspiration, given the contrast between their milieu and our own, but rather should "learn to do our thinking for ourselves."¹⁷ The authors analyzed here, we contend, are not solely epiphenomena of the issues and tensions in their own societies, but offer insights and modes of argumentation that can assist contemporary scholars. And we have chosen them, rather than some of their lesser-known contemporaries, because of the quality and impact of their work. As Friedrich Meinecke wrote, the "ideas which guide historical life, do certainly not indeed spring solely from the intellectual workshop of the great thinkers ... But it is in this workshop that they condensed and solidified; it is there, in many cases, that they first assume the form which will have an effect on the progress of events and the actions of men."¹⁸

Despite the contextualist challenge, then, there are at least three reasons to think that a close reading of classic texts can enhance our understanding of intervention, in terms of both its origins and its controversial status in international society. First, as Trim shows, even if etymologically the term "intervention" is relatively new, the practice of what came to be called intervention – particularly humanitarian intervention – has a much longer history. From the sixteenth century onward, princes and states have sent their troops to fight in foreign lands against the will of local rulers, and in many instances the justification for doing so has been the appalling acts of those local rulers. Evidence of this longstanding practice reinforces the revisionist interpretation of the Peace of Westphalia (advanced by scholars such as Krasner, Osiander, and Teschke), according to which absolute state sovereignty and the attendant rule of nonintervention were not magically enshrined in 1648.¹⁹ Not only did the Westphalian treaties provide guarantees of freedom of conscience for some religious minorities, which effectively *mandated* intervention if

¹⁶ See e.g. the critique of Skinner by J. Femia, "An Historicist Critique of 'Revisionist' Methods for Studying the History of Ideas," in Tully (ed.), *Meaning and Context*, pp. 156–75.

¹⁷ Skinner, "Meaning and Understanding," p. 66.

¹⁸ F. Meinecke, *Machiavellism: The Doctrine of Raison d'Etat and its Place in Modern History*, transl. D. Scott (New Haven, CT: Yale University Press, 1957), p. 21.

¹⁹ S. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton University Press, 1999); A. Osiander, "Sovereignty, International Relations, and the Westphalian Myth," *International Organization* 55, no. 2 (2001), 251–87; and B. Teschke, *The Myth of 1648* (London: Verso, 2003).

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that freedom was breached, but through the seventeenth and eighteenth centuries (the period when several of the authors discussed in this volume wrote), Europe's princes regularly considered the behavior of fellow sovereigns as having breached common standards of acceptability, triggering limited interventions aimed at stopping oppression and massacre. For instance, Cromwell's show of force in 1655 on behalf of the Vaudois of Savoy, while partly motivated by religious affinity to fellow Protestants, was primarily driven by outrage over their inhumane treatment by a tyrannical local ruler.

Second, the particular European thinkers showcased here all played an important part in constituting the kind of international society we have today – one that is now based on a universal ideal of sovereign equality, but which evolved from a European “core” and still has embedded within it notions of hierarchy and exclusion. As subsequent chapters illustrate, colonialism and imperialism were often bound up with attempts by the classical European thinkers to establish a basis for intervention, or to contest its legitimacy.

Authors from other cultural traditions have undoubtedly produced valuable and original contributions on the ethics of war and intervention.²⁰ However, for better or worse, classical European thought on these matters has had a unique impact on our contemporary conceptual categories and normative standards – and consequently it has fundamentally shaped the parameters of legitimate intervention, including intervention by non-Western states. As Brendan Simms and David Trim note in their comprehensive history of humanitarian intervention, recent “interventions by Asian and African states . . . [have] to a great extent reflected the experience of the Western world and the ‘Law of Nations,’ which began to emerge in early modern Europe, drawing partly on concepts in late medieval European philosophy and theology.”²¹

This gives rise to a final reason for consulting the works of the classical European thinkers: they themselves represent “interventions” into a

²⁰ See e.g. S. Hashmi, “Islamic Ethics in International Society,” in Mapel and Nardin (eds.), *International Society*; K. Roy, “Just and Unjust War in Hindu Philosophy,” *Journal of Military Ethics* 6, no. 3 (2007), 232–45; and the chapters on Buddhist, Hindu, Chinese, and Islamic just war traditions in P. Robinson (ed.), *Just War in Comparative Perspective* (Aldershot: Ashgate, 2003).

²¹ D. J. B. Trim and B. Simms, “Towards a History of Humanitarian Intervention,” in B. Simms and D. J. B. Trim (eds.), *Humanitarian Intervention: A History* (Cambridge University Press, 2011), pp. 18–19. On how classical European thought has shaped the norms and rules of modern international society, see also J. Donnelly, “Human Rights: A New Standard of Civilization?” *International Affairs* 74, no. 1 (1998), 1–23; and E. Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge University Press, 2002).

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debate about the strength and meaning of core norms and ideas, such as sovereignty, humanity, and self-determination. So, for example, William Bain shows in Chapter 3 that Vitoria's argument about human beings created equal "in the image of God," from which he derived a natural right to self-rule, or *dominion*, for political communities everywhere, gave him the normative leverage to challenge Spanish colonial interference in the religious practices of American Indians. Similarly, as Jennifer Pitts demonstrates in Chapter 6, Vattel's conception of sovereign equality and independence led with to embrace a strong rule of non-interference and condemn military intervention on religious or civilizational grounds – of the kind sanctioned by the Westphalian treaties and regularly practiced by the European empires of his time in their empires overseas. Of course, the nature of the political contestation over the meaning of these norms is different from the one we are engaged in today, and therefore we should endeavor to understand what Antje Wiener calls their "meaning-in-use."²² Nevertheless, participants in current debates over the legitimacy of military intervention, whichever side they endorse, can benefit from consulting the arguments of the classical European philosophers and jurists. While the contextualists would deny the very existence of any enduring issues or questions in international politics, we contend that the debate over intervention, both then and now, pivots around two central issues: first, what is a legitimate basis for intervention? Second, what is the likely impact of intervention and what are the associated risks? Both questions appear in the writings analyzed here, although each thinker addressed them differently and to a greater or lesser extent.

The first issue, regarding the basis or rationale for intervention, arises out of the strength of the injunction to allow the affairs of princes and states to remain largely their own "business." For much of the modern era, three factors supported this tendency towards nonintervention. First, particularly in the early modern period, princes had a conception of sovereignty as affording a right of property, or *dominium*, over their respective territories and populations; and that, combined with the belief that rulers were divinely ordained, partially explains why they engaged in forcible interference in each other's affairs only in extreme circumstances, and then only for limited periods of time.²³ The objective – as

²² A. Wiener, *The Invisible Constitution of Politics: Contested Norms and International Encounters* (Cambridge University Press, 2008).

²³ F. Kratochwil, "Sovereignty as *Dominium*: Is there a Right of Humanitarian Intervention?" in G. M. Lyons and M. Mastanduno (eds.), *Beyond Westphalia: State Sovereignty and International Intervention* (Baltimore, MD: Johns Hopkins University Press, 1995). See also D. Trim, ch. 1 in this volume.

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shown by Elizabeth's intervention in the Netherlands in the late sixteenth century, or Cromwell's coercive diplomacy in the seventeenth century – was not to change the political “regime,” but simply to enforce conformity with common standards, and then withdraw. Second, the Just War framework that Vitoria developed further from Augustine and Aquinas, and which Grotius then sought to revive and legalize, took as its starting point the belief that killing is evil, and that therefore the employment of force through war can only be justified as a punitive measure in response to a specific, unjust act. Thus, in contrast with more contemporary conceptions of Just War, such as Walzer's, which revolve around the idea of individual and collective self-defense, the earlier conception pivots around the idea that wars are an exceptional instrument of retribution: their goal is to uphold justice by punishing either the external aggressor, or the tyrannical ruler who is killing his subjects.²⁴ Third, as we move into the nineteenth century, we encounter the perspective of thinkers such as Mazzini and Mill, who argue that armed interference to promote representative democracy abroad is both illegitimate (since it violates the principle of self-determination) and futile (since democracy established with the help of foreign armies can neither be genuine nor lasting). “Nonintervention,” which by then had become a recognizable term, is viewed as a principle that facilitates the development of authentic and truly self-determining political communities.

It was against this backdrop, where political autonomy and nonintervention were accepted and advised as general rules of international society, that certain classical thinkers developed their counterarguments *in favor* of intervention. The bases for intervention which they advanced varied a great deal: they ranged from humanitarian rationales, which included the imperative to rescue fellow human beings abroad from egregious harm, such as cannibalism and human sacrifice (Vitoria); the punishment of vicious oppression by a tyrannical ruler (Grotius); or stopping large-scale massacres of religious or ethnic minorities (Mazzini) – to the need to “preventively” oppose and neutralize looming dangers – whether stemming from pirates hiding in foreign lands (Suarez); states threatening to disrupt the traditional

²⁴ N. Rengger, “On the Just War Tradition in the Twenty-first Century,” *International Affairs* 78, no. 2 (2002), 353–63; J. T. Johnston, “The Idea of Defense in Historical and Contemporary Thinking About Just War,” *Journal of Religious Ethics* 36, no. 4 (2008), 543–56. More recent ethical treatments of war, such as those of D. Rodin and J. McMahan, are attempting to revive the earlier conception of just war as “punishment.” See J. McMahan, *Killing in War* (Oxford University Press, 2009); and D. Rodin, *War and Self-Defense* (Oxford University Press, 2002).

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balance of power (Vattel); or revolutionary governments that more fundamentally challenge the European political order (Burke). Each of these rationales, though a product of a particular context, can usefully be probed by contemporary scholars concerned with the legitimate basis for intervention.

In terms of the likely impact of military intervention and associated risks, the views of most of the thinkers studied here travel in a cautious and sometimes skeptical direction. Whether we consider Vitoria's concerns about safeguarding the vitality of indigenous customs and practices; Hobbes's warnings about the risk that intervention might erode a ruler's scarce resources; Vattel's worry about the weakening of his ideal of sovereign equality; or Kant's discussion of the dangers of power and interest corrupting moral purpose – the classical thinkers are often scathing in their condemnation of military intervention, and especially of long-term occupation of fellow European states. Of course, this theme of caution is much less prominent in the classical thinkers' discussion of empire and colonial rule, where the desire to bring "civilized governance" to "barbarous" (non-European) peoples is frequently viewed as justifying a much longer-term and more intrusive presence. But even here, some thinkers – particularly Burke, Hume and Smith – worry about the deleterious effects of the exercise of arbitrary rule in the colonies on the health of the "mother country."

Therefore, as we seek to demonstrate, the classical European philosophers and jurists covered in this book – from central figures of international thought such as Grotius, Vattel, and Kant, to authors not especially known today for their arguments about international politics, such as Locke and Mazzini – all provided a perspective on the two aforementioned issues, although their material and ideational context means that their precise ethical concerns and judgments cannot be directly applied to the present. In some cases, we may find strong elements of continuity between the subjects of analysis, even if the precise terminology is different and the solutions offered are not always relevant or possible in the contemporary context. In others, we find strong elements of discontinuity between contemporary and early modern analyses – and then we come away from our reading of the classic texts with a keen sense of historical contingency, the possibilities for historical change, and the need to understand the particular underpinnings of contemporary values and norms. Either way, we hope that contemporary readers will find the discussions in this book to be both thought provoking and illuminating.