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Introduction

A multi-state coalition of NATO and Arab forces started a military intervention in Libya to implement the United Nation Security Council's resolution 1973. At the moment of writing it seems the civil war in Libya is at its end. At the 21st of October 2011 Colonel Muammar Khadafi was captured short after his last stronghold of resistance Sirte fell to the rebels. Not much later Khadafi was shot dead.

Although they were with few left, resistance of Khadafi loyalists to the western supported rebels was fierce. NATO-bombardments were necessary to weaken Khadafi forces and give rebel forces a decisive advantage over their opponents. Now the Khadafi regime is completely overthrown, Libya could seriously start focusing on rebuilding its country and reconciling quarrelling groups among its population. This post-war phase would be a very interesting topic for a thesis.

However, this thesis will concern itself with the pre-war period. More specifically, it will focus on the developments that led to the UN Security Council (UNSC) resolution 1973 which allowed an international NATO-coordinated military intervention which primary aim was to save the revolting Libyan civilians from an assumed certain death by the hands of Khadafi's Libyan army.

During the events that led to the intervention in Libya one could hear a lot of (political) rhetoric in the media and in the political arena about moral obligations to protect people from certain death, defending universal human rights and/ or not allowing a dictator on the southern borders of Europe slaughtering its population under a latent, only watchful international eye. The West had to put its money where its mouth was regarding universal human rights and prevent Khadafi from his announced murderous plans. Additionally, in the background, the ghost of numerous other conflicts like Rwanda and the Balkan wars was probably still haunting a lot of the political minds as well. In Rwanda a genocide in which several hundred thousand

people were massacred could occur while the international community was aware of the atrocities that went on. One can still hear echoing Tony Blair's speech in 1999 in Chicago. In this speech he argues in favour of 'just wars', thereby justifying NATO's intervention in the Balkan, Kosovo: "This is a just war, based not on any territorial ambitions but on values."¹ One could wonder whether such ethical based rhetoric and is seriously included in political decision-making. Consider the UN and NATO for example: when it comes to military interventions it seems both institutions follow a rather incoherent policy. After a problematic intervention in the Belgian Congo in the 1960's, the UN proved a rather non-interventionist institution in the 70's and 80's. In the 90' however the UNSC approved of intervention in Rwanda and, eventually, also in former Yugoslavia (Bosnia, Kosovo). In the latter case NATO initially intervened unilaterally without consent of the UN Security Council.² In addition, Alexander Mosely and Richard Norman explain in *Human Rights and Military Intervention* that in the case of Rwanda more than only moral values were at stake. In fact, national economical and political interests of different countries played a huge role in the reluctance of Western powers to intervene in Rwanda.

Whether (moral) commitment to universal human rights had any significance in the debate about a possible western led military intervention in Libya or that other less explicitly (and mostly less popular) expressed economical and/or political interests played a more significant role, will probably always remain somewhat of a mystery. In addition, this is not what my academic field of expertise, (applied) ethics, is concerned with.

So if it is so hard to determine whether ethical considerations are taken seriously or whether they have any impact at all on political decision-making, then why do we ascribe so much value to the moral justifiability of any political decisions concerning war? Why do politicians need to account morally for their decisions related to warfare? For example, one could reasonably argue that the invasion in Iraq had a lot of positive consequences for the West and, more specifically, the USA. By overthrowing Saddam Hussein's regime, the world got arguably rid of a hostile regime and a leader who was a tyrant to its population. Additionally, the West secured

¹ <http://keepTonyBlairForPM.wordpress.com/blair-speech-transcripts-from-1997-2007/#chicago>

² Alexander Moseley, Richard Norman: *Human Rights and Military Intervention*, 2-6.

an important source of oil. Nevertheless, the West, in particular the USA, still bears the negative (political) consequences in the international sphere of their efforts in the Middle East. For the invasion of Iraq appeared to be undertaken for the (morally) wrong reasons and the (morally) wrong intentions.

How come we as a people assign so much value to the moral component of political decision-making? I would like to give a comprehensive answer to this question. Deliberation about how to act or to judge certain human action always tends to include moral components we relate to the specific situation in which is acted or which is to be judged. Hence, a notion of what we consider to be morally right or wrong is essential to human behaviour. Morality (Ethics) is essential to Humanity. We cannot switch this essential, natural part of our being off. So judging upon a situation or deliberation about action without including any moral considerations would be inhumane. There are numerous discussions about in what our morality consists or whether the value we assign to it is reasonable. The fact that philosophical debate about morality (ethics) already continues for thousands of years and the fact our society, related (political) institutions and legal system are grounded in ethical convictions about humanity *in this case* only underlines the assumption that morality forms an essential part of our thinking and action. Support for the above statement can be found in the works of ancient Greek philosophers like Aristotle and Plato; in the works of (late) Middle Age and Enlightenment thinkers like Aquinas, Hobbes, Locke, Kant and more contemporary thinkers like Habermas, Rawls, and Nozick. Some of these philosophers I will turn to in this thesis (Chapter 1 and Chapter 4).

When I return to the matter of justified intervention, the former paragraph would clarify why some forms of war are *always* considered to be wrong, why military inaction in certain cases is condemned, why in other situations war is (morally) *justified* and why, most importantly, we find this moral judgment so important in our overall judgment concerning political decision-making regarding war.

I think the foregoing plausibly accounts for why a thesis concerned with the ethical aspect of the humanitarian intervention in Libya is useful and important: ethics matters. This thesis focuses on the ethics involved in war. I recall that the military intervention in Libya was justified based on violations of human rights. What is of

particular interest to this thesis then, is whether ethical arguments related or referring to universal human rights can plausibly build a case morally justifying the intervention in Libya. Hence, the main question this thesis will try to answer is:

Was the humanitarian intervention with military means in Libya morally justified?

To answer this question this thesis will turn to Just War theory. Aware of the fact that Just War theory is not the only (ethical) philosophy concerned with the morality of war; Just War theory will be first put in perspective in regard of those other theories. Then, secondly, using the account of the renowned Just War thinker Michael Walzer, the theoretical content of Just War theory and how it justifies and condemns war in different situations will be set out. Thirdly, (Walzer's) Just War theory will be critically analyzed using a thoroughly construed argument of Richard Norman focussing on the most important, essential feature of Just War theory. Fourthly, the specific type of warfare with which this thesis is ultimately concerned, humanitarian intervention, will be regarded: what does it entail and how does it relate to (Walzer's) Just War theory? Finally, findings of this research will be applied to the case of the intervention in Libya.

Besides the argument we assign value to moral justifiability of human action, why is this thesis related to the intervention in Libya of importance? There are three reasons. First and foremost, although the war in Libya seems to have come to an end (and with that western military efforts in the Maghreb), this does not mean that the question of the moral justifiability of the intervention has been answered or wiped away from the surface of debate. Whether it was 'right' to intervene in Libya, or any other (future) country in a similar situation for that matter; think of Syria, is still a controversial issue. That the UNSC on a political level agreed to an intervention perhaps says something about the ethical aspects involved, but certainly not everything. So from an academic point of view it is interesting to examine when we speak of a Just War (just intervention) in respect of the Libya-case. Secondly, the thesis' findings might be useful in political debate involving any future casus of the same sort as Libya. While writing this introduction of this thesis the dire situation in Syria would be the best example of such a 'Libyan-like' case. This thesis could provide moral arguments in favour of or against military intervention in Syria.

Thirdly, and this is a personal note, this thesis combines two fields of major interest of mine: international politics and ethics (philosophy). Moreover, I think that theoretical research referring to and applied to a practical case adds to the significance of being an academic student. In addition, it answers partially the call of the idealist within me. As probably more students of my age I would like to use my (academic) skills and change the world for the better; also if it matters only a little. I hope this thesis can add to that ideal by offering a solid ethical reflection on the justifiability of the intervention in Libya.

Before I start my argument I would like to state firmly that when I speak of humanitarian intervention, or refer to authors using the term, I am talking of a military intervention based (justified) on humanitarian grounds. In other words, humanitarian intervention in this thesis is tantamount to war.

1. Just War theory in Perspective

Before examining Just War theory closely in relation to the intervention in Libya, it is useful to put the idea of just war in a broader context. One could ask whether something like a 'just war' exists: is war not always morally wrong? In contrast, others might question whether war is part of the moral domain at all. In other words, is it conceptually possible to ethically condemn or justify war? From a Just War theoretical perspective the answers to these questions are positive. But Just War theory is not the only theory regarding issues of war. There are other theories arguing differently. This chapter will put Just War theory in perspective of two other branches of theories concerning the morality of warfare. Firstly, the differences in presuppositions will be explained. Secondly, it will be shown why Just War theory is more useful to examine the morality of warfare compared to the other two options. Thirdly, this chapter will give a short historical reflection on how Just War theory developed through the years. Fourthly, and finally, it will become clear how the remaining part of the thesis will approach the thesis' main question: was the intervention in Libya morally justified?

1.1 Pacifism – Realism – Just War theory

The theoretical foundation for the morality of warfare is built on Just War theory. Just War theory holds that war can sometimes be morally justified. However, if war is justified the means or methods used to fight a war are still limited by moral considerations.³ Next to Just War theory there are two competing groups of views. Both are fundamentally different in their presupposition on the morality of warfare: Pacifism and Realism.

Pacifism holds that war is never justified. The philosophical origins of this doctrine are ascribed to the works of Desiderius Erasmus of Rotterdam (1466 – 1536). However, it is not entirely sure Erasmus was opposed to all war. In his *The Complaint of Peace* Erasmus argued that Christians never ought to make war upon each other.

³ David Kinsella and Craig Carr, eds., *The Morality of War* (London: Lynne Rienner Publishers, 2007) 55.

Christians should follow the teachings of Christ and even embrace infidels as their brothers. Still, in *Instructions to a Christian Prince* Erasmus allowed few occasions in which war against infidels was justified. Erasmus based his condemnation of warfare on that Christians never had a justifiable reason to kill each other. After all, Christ's teachings tell us that killing our fellow human beings is wrong.⁴ For Erasmus this settles the discussion: Christ's command against killing is absolute since he talks with the authority of God whose word is law to the whole of mankind. Erasmus' deontological argument is an example of how pacifists argue against any form of warfare. Warfare involves killing and this is a terrible moral wrong. This argument seems plain and simple, but it faces a few problems. Should a Pacifist, or a good Christian in this matter, stand idly by while someone kills others even if the pacifist could prevent these deaths by intervening? It seems Erasmus deontological claim regarding killing allows great moral wrong to happen even though it is preventable. Do Christians not also have an affirmative responsibility to help safeguard life when unjust aggressors threaten it? Just War theory, as will be explained, generally allows defending the rights of innocents whose lives are threatened, even if this involves killing.⁵

Pacifists could try to deflect some of these criticisms by adopting a theory of qualified Pacifism. From the deontological perspective war is wrong because it involves killing. Pacifists may however qualify their argument by stating that killing is only *prima facie* wrong, but not in an absolute way. Self-defence, necessity and protection of innocents resulting in killing, or violence of any other kind, could be justified. However, this brings Pacifists onto a slippery slope. The only way they can save their condemnation of warfare based on the 'prima facie argument' is by claiming that war never involves the mentioned legitimate exceptions in regard of killing. This does not seem very likely. Since killing is justifiable in certain personal situations, it would also seem that killing is morally allowed in the case of collective self-defence. If Pacifists concede this however, they engage in the field of Just War theory.⁶ Secondly, Pacifists might use consequentialist arguments in support of their absolute rejection of war. In this case Pacifists in fact argue that through war people are always

4 Kinsella and Carr, *Morality*, 33-34.

5 Kinsella and Carr, *Morality*, 34-35.

6 Kinsella and Carr, *Morality*, 35.

worse off than without.⁷ The latter argument can easily be countered. Firstly, one can never know in advance how a war would develop. Secondly, there are enough examples in history in which arguably a population was worse off because of non-intervention: Rwanda being one of those examples. Concluding, Pacifism seems a troubled doctrine to sustain. No one would contest the Pacifist's claim that war is abhorrent. However, it seems that violence is sometimes necessary to prevent other morally abhorrent aspects of humankind's inhumanity that rival or may even surpass warfare.

Another perspective to approach the morality of warfare is Realism. It refers to a tradition of thought in the area of international relations theory and is in essence a rather practical theory compared to Pacifism and Just War theory. Realism's theoretical groundwork can often be found in a Hobbesian theory and/ or cultural relativism.⁸ Hans Morgenthau is considered as a key figure in the development of Realism as a theoretical perspective. Realism holds that the states of the world exist in an anarchical and rather hostile environment. It is in a state's best interest to develop and expand its power as best it can in order to prosper and survive in such an environment.⁹ Power in this case could be defined in many ways: as pure military power and/ or as economical power for instance. Realism at first sight seems to offer arguments for ignoring a morality of warfare altogether. After all, if war is to the benefit of the state, meaning war improves the power of the state, war is allowed. Why adhere to moral rules, when a state is better off ignoring those rules? However, one could also argue that abiding to laws and to a morality of warfare in general, states may appear trustworthy both as allies and as economical partners. From this a state could prosper as well. In addition, since war is often costly, it is in most cases to the benefit of a state not to engage in war. Hence, Realists are not necessarily advocates of war. Favouring objective scientific research, Realists are first and foremost interested in how a state functions. From this they derive normative claims about how a state should act on the international stage. The pursuit of interests and the clear articulation of interests that matter are identified as the basic common denominator against which states can measure and anticipate the behaviour of other

7 Kinsella and Carr, *Morality*, 35-36.

8 Nigel Dower, "Violent Humanitarianism - an Oxymoron?," in *The Morality of War*, ed. David Kinsella and Craig Carr (London: Lynne Rienner Publishers, 2007), 78.

9 Kinsella and Carr, *Morality*, 13.

states.¹⁰ This is the logic states should adopt when deliberating foreign policy and/or action. This means that Realists do not necessarily support or reject Just War theory (or Pacifism). In their eyes states do not necessarily have to adhere to a morality of war, unless this is to the overall benefit of the state. However, the development of international law on warfare is based for a great part on conceptions of morality of war. The reason states adhere to these laws, and thus the underlying morality of war, is because most of them think it is in their best interests to abide these laws.¹¹ Realism arguably tends to assign not enough value to the morality of warfare when it comes to international relations of states.

Some think that Just War theory occupies the middle ground between the extremes of Realism (moral concerns are irrelevant) and Pacifism (war is never justified). This seems a misconception for it is hard to reasonably recognize something as a middle ground between Realism and Pacifism. As explained in the above, Realism makes more use of prudential instead of moral considerations when evaluating the legitimacy of war. Moreover, the fact that Realism bases legitimacy of warfare on prudential arguments does not necessarily involve that Realism is more inclined to condone or support warfare than Just War theory.¹² Since Realism elaborates on justified warfare from a different disposition than Just War theory and Pacifism, one could claim that Realism is incommensurable with both other competing views.

Pacifism and Just War theory seem to share moral ground. Indeed, there are some who try to argue that both views can be reconciled. James Sterba in *Reconciling Pacifists and Just War Theorists* Sterba distinguishes three types of Pacifism: 'Nonviolent Pacifism', 'Nonlethal Pacifism' and 'Anti-War Pacifism'.¹³ Nonviolent Pacifism is defined as: "Any use of violence against other human beings is morally prohibited."¹⁴ Jan Narveson rejects this form of Pacifism since it seems incoherent: Nonviolent Pacifism recognizes a right to life, but at the same time rules out to defend that right.¹⁵ Sterba agrees with Narveson's argument and in response to this criticism

10 Kinsella and Carr, *Morality*, 15.

11 Kinsella and Carr, *Morality*, 15-16.

12 Kinsella and Carr, *Morality*, 55.

13 James Sterba, "Reconciling Pacifists and Just War Theorists," *Social Theory and Practice* 18, No. 1 (1992): 21-38.

14 Sterba, *Reconciling Pacifists*, 25.

15 Jan Narveson, "Pacifism: A Philosophical Analysis," *Ethics* 75, no. 2 (1965): 259-271.

proposes Nonlethal Pacifism: “Any lethal use of force against other human beings is morally prohibited.” However, imagine someone tries to kill you, are you not allowed killing him in defence? What if killing your opponent would be the only way to save your life? Those that argue that killing is still wrong, even in the case of defending your own (right to) life, would have to admit that killing your attacker would at least be the lesser of two (moral) evils, when the alternative would have been that your attacker would have killed you instead. For in the latter case it could be reasonably argued that the attacker already gave up his right to life by disrespecting that right through attempting to kill you.¹⁶ Recognizing this difficulty within Nonlethal Pacifism, Sterba turns to Anti-war Pacifism: “Any participation in the massive use of lethal force in warfare is morally prohibited.”¹⁷ Anti-war Pacifism responds to the foregoing criticisms in the sense that it neither prohibits all violence nor rejects all uses of lethal force. Sterba argues in favour of this view on Pacifism stating it is undeniable that wars have brought enormous amounts of death among innocent civilians and that the amount of civilian casualties increased in the past decades of war. Therefore, it would be more (and more) difficult to justify participation in such wars. Moreover, Sterba argues that alternative strategies concerning non-belligerent conflict are rarely explored and extensively developed before a nation decides to go to war.¹⁸ It appears that Sterba thinks that Just War theory generally dismisses the horrors of war too easily and allows too much space for nations to justify a war. I will return to Sterba's latter claim later on (Chapter 3). What I would like to point out here is that Sterba factually seems to be arguing for a form of Just War theory. For Just War theory, as I will show, is generally very reluctant offering just causes for war and demands strict limits on the means used in war.¹⁹ Summarizing, in his effort for reconciliation of Just War theory and Pacifism, Sterba abandons Pacifism. For Pacifism holds that war is never justified, while Just War theory argues there are situations in which war is justified. I would like to argue that Sterba's definition of Anti-war Pacifism presupposes one is already engaged in war and thereby implicitly admits that warfare can be justified. The means used in warfare however would seldom be justified. If my interpretation of Sterba's argument is incorrect, imagine he would argue that Anti-war Pacifism does not allow justified war for instance, then one

16 Sterba, *Reconciling Pacifists*, 22-23.

17 Sterba, *Reconciling Pacifists*, 23-24.

18 Sterba, *Reconciling Pacifists*, 24.

19 Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 2004), 3-361.

could wonder why we need a concept like Anti-war Pacifism in the first place. Concluding, Just War theory and Pacifism differ too much to speak of a 'shared moral ground'.

Why place Just War theory in perspective of Realism and Pacifism? Because it shows that both Pacifism and Realism do not meet the practical requirements we, as people, seem to demand from a theory concerning just warfare. Pacifism is criticized that it never allows any military action, not even in self-defence, because this would most likely result in killing of human life. Realism in principle does not include any morality in deliberation about war; it is a purely rational orientated theory, unless it is to the benefit of the state. Therefore, Realism does not address the moral aspects of warfare, which we, as people, do distinguish and on which many base their arguments against or in favour of warfare. Michael Walzer, in *Just and Unjust Wars*, gives a good historical example of how warfare cannot be viewed separately from morality.²⁰ According to Walzer one does not escape morality when talking of war. He refers to the Ancient Athenians conquering their rebelling allies of Mytelene. After the revolt was suppressed, a decree in Athenian Assembly was agreed. This decree ordered to destroy Mytelene and all its inhabitants. The following day however, many Athenians felt repentance over their decision. Why would the civilians and the city itself have to be punished? Why not only punish the authors of the rebellion? Eventually the Assembly decided it was to the benefit of the Athenian Empire to cancel the slaughter and destruction of Mytelene and its population. The appeal to interests triumphs, so this would seem an argument in favour of Realism. However, the occasion for the appeal was the repentance of the citizens of the Assembly. Moral anxiety, not political realism, led the Athenians to worry the effectiveness of their decree.²¹ It proves that even thousands of years ago people seem to assign a lot of value to morality in deliberation about war. Realism seems not to grasp this fact. Walzer's historical example also forms a good argument against historical and cultural relativism. Historical and cultural relativists argue that morality seems culturally and/ or historically depended. So why would we assign value to moral considerations? Why refer to Just War theory if the moral presumptions it includes are nothing more than cultural preferences or simply mirroring a historical timeframe? If historical and/or

²⁰ Walzer, *Wars*, 7-13.

²¹ Walzer, *Wars*, 7-13.

cultural relativism would be true, then how would we explain that the majority of people can still recognize and understand the ancient moral dilemmas of the Athenians in the case of Mytelene's rebellion? Even though certain moral values might slightly change over time, in its basis morality seems to be comprehensible for every human being in every period of time.²² A lot more is to be said about this matter, but this thesis does not aim to discuss this issue thoroughly. However, shortly including relativist criticism on ethical theories in general, only grounds firmer the ethical foundation on which this thesis is built; Just War theory.

Finally, one could argue that Realism is not necessarily a flawed account on justified warfare. Not many (except Pacifists) would argue that practical considerations are not of importance when considering war. Instead, Realism does seem an incomplete account of the morality of warfare. *In that sense*, Just War theory does occupy the middle ground between Pacifism and Realism. Just War theory, as we will see, both answers the moral restrictions and includes practical considerations concerning warfare. So one could argue that Just War theory offers the best chance to come to a complete and realistic account on morality of warfare. This should settle any debate about whether this thesis could have been viewed from another perspective than Just War theory. In the next section the emergence of Just War theory through history and its influence on the morality of warfare will shortly be discussed.

1.2 The Emergence of Morality of Warfare

Warfare is one of the most paradoxical of all human activities. No other human activity equals war when it comes to cruelty, brutality, and destruction of life and property. Yet ironically, warfare elicits also good human characteristics: courage, noble action and other forms of honourable behaviour. This paradoxical view of warfare has not always existed and does not even exist all over the contemporary world. In the ancient world for instance, war was hardly objectionable from a moral point of view. Legitimacy of warfare was linked to the necessity for the survival of the community. War was a way of acquiring goods that the community needed to live and prosper. In this sense, warfare becomes heroic and noble. Likely, war was also regarded as a natural aspect of life. After all, it is naturally to fight for your survival.

²² Walzer, *Wars*, 13-21.

Warfare in the ancient world was commonplace and conquest was primarily aimed to expand wealth and increase security of the environment of the community.²³

The ancient view on warfare changed because of the collapse of the Roman Empire and the subsequent wake of Christendom. Territories and regions, which regained autonomy after the collapse of Roman rule, were left rather self-sufficient. So there was no need to expand in favour of the community. Christians introduced a different valuation of human life that made killing in war suspect. The emergence of Christendom, and its becoming of the dominant religious belief in the Western world, is arguably the most important influence on what came to be known as the morality of warfare.²⁴ Although killing at the face of it was now morally wrong and no longer considered a natural feature of mankind, it still seemed unavoidable at times. For instance, does morality require potential victims of deadly force to abandon any effort to defend themselves? This view has never gained much support.

Generally, the first important steps in the development of a morality of warfare based on what later came to be known as Just War theory are ascribed to St. Augustine.²⁵ A next step was taken by St. Thomas of Aquinas (1225 – 1274) in the 13th century. Thomas supported and further articulated Augustine's view on the morality of warfare. In line with Augustine, Thomas claims that a justified war is based on three conditions. Firstly, the authority of the Prince by whose command war is to be waged. Secondly, a just cause is required. Thirdly, those who wage war should have a righteous intent. The theological and classical background in Aquinas' thinking exposes itself in his view on mankind and its relation to nature. According to Aquinas (and derived from Aristotle), in nature all imperfect things exist for the sake of perfect. From this would follow that man killing living things as animals and/or plants for his own sake is justified. For in the natural order of things only God stands above men. Following from this, Aquinas believed that every part of the whole is in the same directed as the imperfect to the perfect: every part naturally exists for the sake of the whole. For instance, imagine if the health of a body requires removal of a certain part of the body because this specific part is diseased or corrupted. It would seem

23 Kinsella and Carr, *Morality*, 1-2.

24 Kinsella and Carr, *Morality*, 2.

25 Augustine, "The City of God," in *The Morality of War*, ed. David Kinsella and Craig Carr (London: Lynne Rienner Publishers, 2007), 59-66.

praiseworthy to cut this party away. Aquinas extended his vision of the natural order the human community. In short, if a man would be dangerous for the community as a whole, then it would be justified and even praiseworthy to kill this man (or woman).²⁶ If the cause and intention of war were just, then all means to accomplish the goals of a just war were permitted. Aquinas' writings were of much influence. They were for instance essential for the adopted just war doctrine of the Roman Catholic Church.²⁷ One of the leading Catholic theologians in the 16th century who further developed Just War theory was Francisco de Vitoria (1485 – 1546). He explicitly focussed on just cause and rightful intentions regarding warfare. He applied his reasoning in cases of both defensive and offensive wars: states were justified not only in defending themselves, but also in avenging previous injustice and protecting themselves from tyrants who might threaten them in the future. Vitoria pressed his Just War theory further than his predecessors. He insisted however that not every cause offered enough legitimacy to justify a war. Avenging previous harm and punish wrongdoers was enough cause, but many others offenses were not. Vitoria also pushed his argument beyond just cause of war (*jus ad bellum*) into just means (*jus in bello*). Although he follows Aquinas that a Prince is permitted to do everything to secure a positive outcome of war, he also claimed that it was impermissible to kill innocent civilians.²⁸ Vitoria's emphasis on that the evil of war should never outweigh the good gained from it, would become the basis of what is now known as the principle of proportionality in international law.²⁹

A more comprehensive development on the morality of warfare however, had to wait until the 17th and 18th century. During that period philosophers started working within the natural law tradition systematically exploring Just War theory. Two events in this era underlined the development of just war thinking. First of all, with the emergence of the nation states after the Peace of Westphalen in 1648, the moral right of individuals to defend themselves was logically extended to communities and states. States were now morally permitted to kill in self-defence.³⁰ This international status

26 Thomas Aquinas, "War and Killing", in *The Morality of War*, ed. David Kinsella and Craig Carr (London: Lynne Rienner Publishers, 2007), 66-69.

27 Kinsella and Carr, *Morality*, 3.

28 Francisco de Vitoria, "On the Law of War," in *The Morality of War*, ed. David Kinsella and Craig Carr (London: Lynne Rienner Publishers, 2007), 70-79.

29 Kinsella and Carr, *Morality*, 56.

30 Kinsella and Carr, *Morality*, 2-3.

quo was infused with philosophical inquiry into moral matters, which was separated from theological dogmas to which philosophy was bound until that time. Most philosopher retained from a theological basis now argued that all persons were governed by a set of natural laws. Through reasoning one could understand these laws and discern which actions were (morally) right or just and which were not. From the view that natural law defined the proper moral relations of persons it was but a small step to the concurrent view that it also defined proper moral action of states.³¹ Hugo Grotius's and Samuel Pufendorf's writings were of major importance in that time. Hugo Grotius (1583 – 1645) can be considered as one of the founders of modern natural law theory. He was a political thinker whose importance stretches far beyond the context of Just War theory. Grotius interpreted natural law in such a way that individual rights were placed central in political thinking. Grotius' can be understood through his efforts to develop the way rights are influenced (transformed) by means of individual expressions of consent and the legal mechanism of the (natural social) contract. Peace was the natural condition for mankind and that was what human beings should strive for. Disputes over rights were the chief cause of war. States were permitted to defend their rights by means of war, but also to actively wage war in order to avenge states that have violated their rights.³²

Philosophical efforts to develop a morality of war in the form of a just war doctrine turned out to be of considerable political value. In the 17th and 18th century the general conviction in Europe was that natural law controlled the proper relations of human beings. States turned to philosophical inquiry into morality of warfare to find a justifying ground for their actions on the international stage.³³ The emergence through time of a morality of warfare makes the fact of war an even more paradoxical feature of the international environment. For there was, and still is, no consensus on the nature of legitimacy, or exact meaning of many, if not most, of the rules shaping the morality of warfare. Instead, ethical reasons are discussed about when and why states are justified in going to war. Subsequently, the question arises how wars ought to be fought in accordance with the right of (national) self-defence? Efforts of theologians, philosophers, statesmen and lawyers to answer these questions produced a variety of

31 Kinsella and Carr, *Morality*, 4.

32 Kinsella and Carr, *Morality*, 57.

33 Kinsella and Carr, *Morality*, 4.

rules and principles. The collection of these rules and principles form the morality of warfare. As argued in the above, Just War theory seems to offer the best chance to come to a complete account on the morality of warfare. The fact that Just War theory can rely on a long tradition of philosophers, theologians and statesmen concerning themselves with the morality of warfare only supports this claim.

1.3 *Jus ad Bellum & Jus in Bello*

As mentioned above, *Jus ad Bellum* and *Jus in Bello* were first distinguished by Vitoria. This section will shortly shed a little more light on the two terms. Again, *Jus ad Bellum* concerns 'just cause' to go to war. In other words, what makes it right to go to war? *Jus in Bello* concerns 'just means' in war. Put into question form: what is right to do in war? The content of both notions is provided by Just War theory. Moreover, the content of *Jus ad Bellum* and *Jus in Bello*, on which there is a lot of (philosophical) debate, is often guiding for international law on which legitimacy of waging war and acts during war is depended in contemporary secular times.³⁴ This thesis is mainly concerned with a just cause for war (*Jus ad Bellum*) since this would lead to an answer on the question whether the Western initiative to intervene in Libya was justified. According to Walzer, *Jus ad Bellum* requires us to make judgments about aggression and self-defence. *Jus in Bello* about the observance or violation of the customary and positive rules of engagement. Both sorts of judgment are independent. This dualism is at the heart of all that is most problematic in the moral reality of war.³⁵

Jus ad bellum is often interpreted as to contain the following conditions for just war³⁶:

1. The war must be fought for a *just cause*.
2. The decision to go to war should be made with the *right intention*.
3. A *legitimate authority* should make the decision to go to war.
4. A *formal declaration of war* must be made.
5. When deciding to go to war there must be *reasonable hope of success*.
6. Only as a *last resort* a decision to go to war should be made.
7. The decision should meet the requirement of *proportionality*.

34 Richard Norman, *Ethics, Killing & War* (Cambridge: University Press Cambridge, 1995), 118-120.

35 Walzer, *Wars*, 21.

36 Norman, *Ethics*, 118.

I would like to suggest that this interpretation of *Jus ad Bellum* can be regarded as *Jus ad Bellum* 'in the broad sense'. One notices that this broad interpretation of the *Jus ad Bellum* includes a lot of formal and procedural applications of the underlying philosophical content of Just War theory. Many of these applications are (indirectly) concerned with other fields of expertise like law and politics. There are two important reasons why this thesis does not reflect on *Jus ad Bellum* in the broad sense. First of all, arguably the first requirement, the one specifically concerning 'just cause', is from a philosophical perspective often considered the most important.³⁷ The first requirement entails what the philosophy of Just War theory is essentially preoccupied with: an ethical account on the (moral) justifiability of war. The other requirements are often derived, built on and/ or are practical applications or considerations of the philosophical arguments grounding the first requirement; just cause. So a sound argument underlying the first requirement of *Jus ad Bellum* in the broad sense construes the ethical backbone of any of the other conditions. Second of all, partially following from the former point, since this thesis is preoccupied with the ethical justifiability of the intervention in Libya, it only seems logical to investigate that which *ethically* grounds any possible conditions justifying war; i.e. intervention. Hence, any procedural, legal, political or formal conditions that are 'merely' an (partial) expression of ethical principle(s) grounding the morality of war are of less interest to this thesis.

When taking in regard Walzer's *Just and Unjust Wars* one would notice that Walzer mainly focuses on the first requirement and to a lesser extent the second requirement.³⁸ As a contrast to *Jus ad Bellum* in the broad sense, I would like to suggest that Walzer's account of *Jus ad Bellum*, its content and scope, could be regarded as *Jus ad Bellum* in the narrow, ethical strict, sense. I would like to stress that for the remaining part of this thesis the justifiability of the intervention in Libya is mainly investigated by focusing on the requirement of 'just cause' since this is at the heart of *Jus ad Bellum*.

37 Norman, *Ethics*, 119.

38 Walzer, *Wars*, 3-122.

The next chapter will elucidate on Michael Walzer's *restatement of Just War theory* in which the theoretical groundwork of contemporary Just War theory, and thus *Jus ad Bellum*, is explained. Walzer's account of Just War theory will be leading in finding an answer to the thesis' main question: was the humanitarian intervention with military means in Libya morally justified?

2. The Restatement of Just War Theory

This chapter will focus on Michael Walzer's *Just and Unjust Wars*. Michael Walzer was probably the most influential Western thinker on Just War theory in the post-war era of the 20th century. In *Just and Unjust Wars*, Walzer restates Just War theory. His theory has become leading in Just War debate and guiding for international policy and law concerning warfare. In this chapter Walzer's theory and underlying arguments will be explained.³⁹

2.1 Walzer's Restatement of Just War Theory

Walzer explains the crime of war arguing from his 'Theory of Aggression'. Why is it wrong to start a war? Because in war people get killed in large numbers. War is hell. Walzer argues that war is hell whenever men are forced to fight and whenever the limit of consent is breached. With the limit of consent Walzer is referring to any occasions in which men freely choose to engage in an armed struggle. Jousting tournaments between aristocratic young men in medieval times, and mercenaries volunteering to fight for the Italian cities during the Renaissance would be examples of this. The limit of consent is already breached whenever a state makes it a legal obligation and a patriotic duty for citizens to fight for its nation. In either case men go to war under constraint or as a matter of conscience. With the emergence of nation states men became political instruments obeying orders from higher political levels in the light of a so-called common cause. Walzer calls this inescapable duty to fight for one's country the 'Tyranny of War'. A statesman declaring war then, is acting tyrannously. For civilians eventually have no other choice but to go to war independent of whether it is initiated by their side or forced upon them. Citizens decide either out of loyalty, patriotism and/ or to protect their family they have to obey the orders of their leaders. The ultimate form of the Tyranny of War is the situation in which war is forced upon those, who have to resist aggression. To resist successfully against aggression one might have to break with every human moral

39. Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 2004), 3-361.

restraint, perhaps even exceeding the brutality of the aggressor⁴⁰. However, this does not leave people blameless however for their acts during war:

“Just as we can charge a tyrant with particular crimes over and above the crime of ruling without consent, so we can recognize and condemn particular criminal acts within the hell of war.”⁴¹

So initiating aggression and its consequences is what makes war wrong. Walzer refers to aggression being the crime of war. People are being forced to risk their lives for the sake of rights they enjoy during peace. This implies there are rights worth dying for. To which rights does Walzer refer? Rights worth dying for are ‘territorial integrity’ and ‘political sovereignty’. These rights belong to states, but are derived ultimately from the rights of individuals, and from them they take their force. Territorial integrity and political sovereignty would respectively refer to the individual rights to ‘life’ and ‘liberty’. How these individual rights are grounded Walzer does not explain explicitly. The individual rights to liberty and life would reflect a sense of what it means to us being human.⁴²

This seems a very limited explanation of why the rights to life and liberty are worth dying for and Walzer is often criticized for his vagueness in this matter. Walzer's vagueness is rather surprising since these individual rights, and the moral values they represent, are ultimately grounding his Just War theory. After all, when the presumptions of his theory could be criticised in fact all the conclusions and consequences derived from these presumptions are subject of criticism as well. For the sake of this chapter however, that only wants to describe Walzer's restatement of Just War theory, the philosophical background of these individual rights will be examined in the next chapter.

2.2 From Individual to Collective Rights

Then, how would these individual rights relate to collective rights of the community (state)? Walzer explains this process of collectivisation through a sort of social

40 Walzer, *Wars*, 22-32.

41 Walzer, *Wars*, 33.

42 Walzer, *Wars*, 54.

contract theory. He admits that some of the force of individual rights is lost during the process. The process of collectivisation would be a moral process, which justifies some claims to sovereignty and territory and invalidates others. For Walzer 'contract' is a metaphor for a process of mutuality and association between the community, which is formed by shared experiences and cooperative activity, and state governments. The latter claims to protect the community from external disruption of its (peaceful) activities. The legitimacy of any particular state depends on the reality of the common life it protects and the extent to which the community thinks the sacrifices of individual rights required for that protection are worthwhile. So defence of the state does not have any moral justification in case the state does not protect any common life within its borders. Most states, however, do defend their citizens and their way of life. This explains why we assume defensive wars to be justified: states defend their rights on political sovereignty and territorial integrity, which are the collective form of the rights on life and liberty of every individual within the community. Hence, a state's right to territorial integrity and sovereignty can be defended in the same way as individual life.⁴³ Since states' rights are comparable to those of men, one could imagine states can form a society among themselves, just like men can. Support for this claim can be found in John Rawls' *Law of the Peoples* and in writings of Grotius.⁴⁴ This comparison, between international and civil order, is crucial to the theory of aggression. Every international reference to armed robbery and aggression, personal liberty and political independence depend on what is called the 'domestic analogy'. Lawyers make this analogy explicit in international law. If the world of states can be viewed as a political society then it can be judged upon through notions such as crime and punishment, self-defence and law enforcement (etc.).⁴⁵

2.3 Legal Paradigm

From the domestic analogy, two presumptions follow. The first is already pointed out. This is the presumption that favours military resistance once aggression has begun: a state defends its fundamental rights and those of its citizens. Since all resistance is in fact also law enforcement, a state is not only allowed to repel the attack, but also to punish it. From this follows the second presumption: when war erupts, there must

43 Walzer, *Wars*, 54-55.

44 Hugo Grotius, "The Rights of War and Peace," in *The Morality of War*, ed. David Kinsella and Craig Carr (London: Lynne Rienner Publishers, 2007), 80-87.

45 Walzer, *Wars*, 58.

always be a state against which the law can and should be enforced. The theory of aggression then, first takes shape through the domestic analogy. Walzer refers to this primary form of the theory of aggression as the *legal paradigm*. This paradigm does not necessarily reflect the arguments of lawyers; both legal and moral debates are initiated from this framework since it is the fundamental structure for the moral comprehension of war.⁴⁶ Walzer will also argue that the paradigm does not suffice to account for all our moral judgments regarding war. These exceptions will be attended to later in this chapter. First, I will explain what propositions the theory of aggression consists of:

The theory of aggression is summed up in six propositions:

- I. There exists an international society of independent states.
- II. This international society has a law that establishes the rights of its members; above all the rights of territorial integrity and political sovereignty.
- III. Any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act.
- IV. Aggression justifies two kinds of violent response: a war of self-defence by the victim and a war of law enforcement by the victim and any other member of international society.
- V. Nothing but aggression can justify war.
- VI. Once the aggressor state has been militarily repulsed, it can also be punished.⁴⁷

Summarizing, the defence of rights is the only justified reason for fighting. Although the domestic analogy is a critical intellectual tool to explain the international legal paradigm it does not offer us the complete picture of the morality of war. For states are not equal to individuals in all aspects (as Walzer admitted before). Walzer factually seems to argue that as an account of our moral judgments, the domestic analogy and the legalist paradigm possesses great explanatory power. Walzer indicates however that the account needs revision if it wants to successfully address our moral conventions regarding war. Since our moral judgments are tremendously

46 Walzer, *Wars*, 58-61.

47 Walzer, *Wars*, 58-63.

complex and subtle, Walzer tries to restrict himself to four points of revision. These revisions should incorporate certain of our general moral convictions concerning justice, which the legal paradigm as described in the foregoing does not reflect.⁴⁸

2.3.1 Revision 1: Anticipations/ Pre-emptive Strikes

The right to defend oneself against an imminent, but not actual attack is recognized in both domestic and international law. However, in most legal accounts it is severely restricted.⁴⁹ When is preventive war justified? Just like human actions, this seems to depend for a great part on the context. Walzer argues that the line between legitimate and illegitimate first strikes should not be drawn at the point of an *imminent attack*, but at the point of *sufficient threat*. This covers three things: firstly, a manifest intent to inflict harm. Secondly, a degree of active preparation that makes that intent a positive danger, and, thirdly, a general situation in which waiting, or doing anything else than fighting, greatly enlarges the risk. Taking into account these conditions, Israel's pre-emptive strikes against Egypt during the Six Day War are, according to him, an example of justified preventive war. On May the 22nd of 1967 Egypt blockaded the Straits of Tiran to the Israeli's. Israel already announced in advance that it would consider the closing of Straits of Tiran, recognized as an international waterway, as an act of war. In addition, it could be added that by shutting down the Straits of Tiran Egypt was not only threatening Israel's economy but also its food supply. The latter would directly threaten the Israeli people. From that perspective Egypt's blockade of the Straits of Tiran was a 'practical act of threatening'. Hence, since Israel was purposely put in danger and, according to many foreign observers, factually was in danger, Israel's strike could be justified.⁵⁰

Although arguably plausible, alteration of the legal paradigm would be necessary to include this notion of justified aggression. For it means that aggression can be made out not only in absence of a military attack or invasion, but also in (probable) absence of any immediate intention to launch such an attack or invasion. The general formula would have to be altered as followed: states may use military force in the face of threats of war, whenever the failure to do so would seriously risk territorial integrity

48 Walzer, *Wars*, 67-73.

49 Walzer, *Wars*, 74-75.

50 Walzer, *Wars*, 80-84.

or political independence. Since this thesis is in its core not concerned with the justifiability of preventive war, I leave the matter here. Nevertheless, since all of Walzer suggested revisions were, and still are, controversial I thought it necessary to shortly address Walzer's first revision also. Additionally, in order to properly comprehend the reach of Walzer's Just War theory an (short) explanation of the possible justifiability of preventive war could not be absent.

2.3.2 Revisions 2,3 and 4:

The legalist paradigm prohibits intervention in the domestic affairs of a foreign state. However, the conceptions underlying the paradigm do so less readily and more ambiguously; they even make it plausible.⁵¹ Walzer claims there are exceptions to the rule prohibiting any intervention in a foreign country. However, a heavy burden of proof should be laid upon the political leader deciding that it is necessary to military intervene. Since a military intervention will probably not only bring ravages and coercions in its wake, but also because it is thought that citizens of a sovereign state have the right to suffer only at one another's hands.⁵²

Walzer starts his argument referring to the *right of self-determination* of citizens within any political community as argued by John Stuart Mill.⁵³ Mill also makes use of an 'individual-community analogy': one should treat states as self-determining communities, whether or not their internal political arrangements are free, whether or not the citizens choose their government and openly debate politics carried out in their name. For a community of people to be self-determinant it is imperative for them to have their own state. In other words, the right of collective self-determination is tantamount to the right to independent statehood. Mill argues that political freedom and self-determination are not equivalent terms. The latter is a more inclusive idea. It describes not only a particular institutional arrangement, but also the process by which a community arrives (or does not arrive) at that arrangement. A state is self-determining if it struggles for political freedom, but it loses its self-determination when a foreign power intervenes in its struggle. Members of a political community must seek their own freedom, just as the individual must cultivate his own virtue.

51 Walzer, *Wars*, 86.

52 Walzer, *Wars*, 86.

53 John S. Mill, "A Few Words on Non-Intervention," in *Dissertations and Discussions*, (Honolulu: University Press of the Pacific, 2002), 238-263.

Self-determination is the right of a people “to become free by their own efforts”.⁵⁴ Walzer adheres to this statement. It initially supports the legalist paradigm, which strictly favours non-intervention: foreign intrusion in a country where people fight for (political) freedom will only pollute their struggle. “The internal freedom of a political community can be won only by the members of that community.”⁵⁵ Mill’s account arguing from self-determination seems to favour a sort of cold Darwinian struggle of survival of the fittest among members of a community within given national borders.

However, the reason why Walzer argues that the right on political sovereignty of a political community and its borders is not absolute, is in part because boundaries are arbitrary and in part because of the ambiguous relation the political community might have with its government. Jamie Munn rightly points out that despite Mill’s very general account on self-determination, it is not always clear when a community is in fact self-determining, when it qualifies, so to speak, for non-intervention.⁵⁶ Referring to the domestic analogy: in individual cases similar problems could arise, but probably less severe and always being coped with by domestic law. International law does not provide authoritative verdicts. So the ban on boundary crossings is subject to unilateral suspension, particularly in relation to three sorts of cases where it does not serve the purposes for which boundaries were established.⁵⁷

Secession (or national liberation), counter-intervention and human rights violations, and their underlying arguments, constitute the second, third and fourth revision of the legal paradigm. All are concerned with just causes to justifiably intervene and are thereby an exception to the rule of non-intervention of the legal paradigm. Walzer summarizes:

54 Mill, *Words*, 240-258.

55 Walzer, *Wars*, 89.

56 Jamie Munn, "Intervention and Collective Justice in the Post-Westphalian System," in *Human Rights and Military Intervention*, ed. Alexander Moseley and Richard Norman (Burlington: Ashgate Publishing Company, 2002), 190-195.

57 Walzer, *Wars*, 89-90.

*“States can be invaded and wars justly begun to assist secessionist movements (once they have demonstrated their representative character), to balance prior interventions of other powers, and to rescue people threatened with massacre.”*⁵⁸

Not surprisingly, this thesis will concern itself mainly with the 4th revision (the third case), an argument in favour of humanitarian intervention. After all, the intervention in Libya was pronounced a humanitarian intervention aiming to end (prevent) a massacre. The second and third revision, which have respectively to do with secession movements and counter-intervention, and how they are argued for, are therefore further ignored in this thesis.

2.4 The 4th revision: Humanitarian Intervention

“A legitimate government is one that can fight its own internal wars.”⁵⁹ However, if the dominant forces within a particular state turn on their own population and engage in massive violations of human rights, an appeal to Millian self-determination in the sense of self-help is not very attractive, nor does it seem appropriate. After all, the Millian appeal concerns the political community as a whole. When is at stake the bare survival or the minimal liberty of its members it has no force. There may be no help against the massacre or enslavement of political opponents, religious sects, and national minorities unless help comes from outside. Moreover, if a government turns brutally on its own people, one must question the very existence of a political community to which the idea of self-determination would apply. Basically, Walzer seems to argue that a government forfeits its right on political sovereignty and territorial integrity, when it turns on the very foundation on which these rights are based: individual rights and communal consent on sacrificing some of these fundamental rights in favour of protection of these rights.⁶⁰ Arguing that the right of self-determination is not an absolute right, Walzer argues against Mill’s absolute case for non-intervention. There are many examples of cases in which Walzer’s argument would apply: Nazi-Germany’s *Endlösung* in 1942-1945, Cambodia’s Killing Fields in 1975, the genocide in Rwanda in 1994, and Pakistan’s atrocities in Bangladesh in

58 Walzer, *Wars*, 108.

59 Walzer, *Wars*, 101.

60 Walzer, *Wars*, 101.

1971. On the other hand, examples of humanitarian interventions, or interventions which are called like that, seem very rare. In the last two decades however we have three good examples: the intervention in the Serbian-, Croatian-, Kosovar conflict, the Gulf War in which the U.S. came to the aid of Kuwait, and the recent intervention in Libya. However, these examples occurred a long time after Walzer wrote his *Just and Unjust Wars*. Because we are analyzing his argument in favour of humanitarian intervention, we will stick with his examples: Bangladesh in 1971 and Cuba in 1898.

Walzer could in his time only find examples in which humanitarian arguments were included in decision making about intervention. Not did he find one example of interventions purely or mainly concerned with humanitarian interests. So Walzer finds himself focussing on cases in which mixed motives, like political and/or economical and moral (humanitarian) interests, play a role. Walzer does not necessarily want to argue against humanitarian intervention. He simply wants to illustrate by his examples there is reason to be very sceptical about 'humanitarian motives' of intervening countries. Especially in a liberal democracy with governments having mixed motives that reflect society's pluralism, it is hard to determine whether the government's intention was mainly concerned with saving the population from a massacre by its own government.⁶¹

According to Walzer, judgment regarding humanitarian intervention does not hang on this. Nor does it hang on the question of benevolent outcomes. The U.S. intervention in Cuba in 1898 is a good example of this. The U.S. government argued it had to intervene in Cuba because of the Spanish colonizer's policy forcing Cubans living in the countryside to move to specific compounds. This policy was called 'reconcentraci3n'. Many Cubans died during the long marches to the compounds where they were 'reconcentrated'. In addition, the circumstances in the compounds were far from healthy. As a consequence even more died. The Spanish followed this policy because many of the insurgents fighting against the Spanish colonizers came from the countryside. By moving the Cubans from the countryside to compounds they hoped to cripple the insurgent movement significantly. It turned out the intervening Americans were more interested in their sugar investments and other economical

61 Walzer, *Wars*, 104.

interests than in the suffering population of Cuba. American troops defeated the Spanish army rather quickly, but after that occupied Cuba for more than three years, only to grant Cuba a very limited form of independence through the 'Plat Amendment' when they left.⁶² It proves a justified humanitarian intervention does not depend on the outcome of an intervention. The Cubans suffering from the 'reconcentracion' could also been helped when the Americans joined the Spaniards in defeating the Cuban insurgents. For the Spanish policy was war policy and, therefore, would have ended if the war between the insurgents and the Spanish troops ended.⁶³ What Walzer indicates is that a purely consequentialist theory does not suffice to properly analyze the moral rights and wrongs of war. I will get back to that in Chapter 3 and 4.

According to Walzer, the Indian intervention in Bangladesh in 1971 was a much better example of a humanitarian intervention. India intervened in Bangladesh, because Pakistani forces invaded the region and were slaughtering and raping all Bangladeshi who were openly expressing their preference for independence from Pakistan. The Indian government also had motives other than the safety of the Bengali people (up till this day the relation between Pakistan and India is troubled). However, Indian mixed motives converged to a single course of action, which took into account Bengali interests, and was therefore accepted by the Bengali's. In addition, after defeating the Pakistani army the Indian army immediately left Bengali territory, not imposing any political constraint on the emergent state of Bangladesh.⁶⁴

According to Walzer the Indian intervention was justified based on the massacre of the Bengali people by the Pakistan Army. One is not required in these cases to see whether the oppressed will pass a self-test, in which they would prove representing the majority of the community in their struggle, before coming to their aid.⁶⁵ The purpose of the Indian Army was to win the war; to drive out the Pakistani's from Bangladesh. This purpose is different than in a situation of counter-intervention (balancing struggling powers) or assistance of secession (assisting a freedom movement), in which a foreign country should not, according Walzer, win the war for

62 Walzer, *Wars*, 103-104.

63 Walzer, *Wars*, 102-104.

64 Walzer, *Wars*, 105-106.

65 Walzer, *Wars*, 96-106.

members of the community, which borders it crossed.⁶⁶ The reason behind the different purpose of humanitarian intervention in regard of other ‘sorts’ of justified intervention is moral: “People who initiate massacres lose their right to participate in the normal (even in the normally violent) processes of self-determination. Their military defeat is necessary.”⁶⁷

Summarizing, Walzer justifies humanitarian intervention under the following conditions:

*“Humanitarian intervention is justified when it is a response (with reasonable expectations of success) to acts that shock the moral conscience of mankind.”*⁶⁸

This phrase does not refer to the moral conscious of politicians governing a state, but to the moral convictions of ordinary men and women in every day society. Still this is a rather vague description. When do we speak of acts that shock the moral conscience of mankind for instance? However, the advantage of this definition of justified humanitarian intervention is that it can be applied in every period of time. Since it does not specifically describes ‘acts that shock the moral conscience of mankind’, it can be used as a universal principle regarding justified humanitarian intervention. Although Walzer argued that in its core morality is always more or less the same (see the beginning of this chapter), it does alter somewhat over time. By giving any content ‘acts that shock the moral conscience of mankind’ Walzer would risk that his principle could be outdated in a couple of decades. Walzer claims his principle under which humanitarian intervention is justified is a persuasive argument against any possible moral reason to passively wait for the UN to intervene.⁶⁹

For an intervention to be considered 'humanitarian' Walzer distinguishes three requirements. The first requirement has to do with the goal of a humanitarian intervention. A humanitarian intervention should have the main purpose to rescue people from (almost) certain slaughter and/ or enslavement. In addition, being the second requirement, the humanitarian intervention should have consent of the people

66 Walzer, *Wars*, 90-100.

67 Walzer, *Wars*, 106.

68 Walzer, *Wars*, 107.

69 John Westlake, *International Law: Peace* (Boston: Adamant Media Corporation, 2000), 319-320.

who they aim to rescue. Whenever an intervening state claims any political prerogatives for itself, one can reasonably suspect that political power was its purpose from the start, according to Walzer.⁷⁰ So a justified humanitarian intervention partially depends on the intention of an intervention (although it does not hang on it). Finally, the third requirement, after an intervention appeared to be successful, which means the population was saved from its own government, foreign forces should leave immediately. The intervening force should not impose any political constraints or conditions on the country (and its people) it invaded.

So Walzer's general argument for justified intervention comes down to the fact that in case a community's government does not represent the members of that community anymore for whatever reasons, it forfeits its rights on political sovereignty and territorial integrity by not respecting the rights of its citizens from which a government's right ultimately derive. Or in Walzer's own words:

*"In each of these cases (of justified intervention) we permit or, after the fact, we praise or do not condemn violations of the formal rules of sovereignty, because they uphold the values of individual life and communal liberty of which sovereignty itself is merely an expression."*⁷¹

Walzer's work is still seen as the groundwork of contemporary just war theory by many philosophers, politicians and other thinkers concerning themselves with the morality of warfare. This is exemplified in the many (renowned) academic experts who refer to, reflect on, or argue from (or against) Walzer's restatement of Just War theory.⁷² So the common moral values Walzer refers to in regard of war apparently still touch upon that which makes war ethically and essentially controversial for us almost 40 years later. In addition, the ongoing attention for Walzer's *Just and Unjust Wars* seems to indicate that the claims he makes regarding the morality of warfare still relate to the general convictions of people regarding the morality of war. Both remarks underline, in this case, the importance of Walzer's work and the strength of

70 Walzer, *Wars*, 105.

71 Walzer, *Wars*, 108.

72 David Luban, Richard Norman, Jeff McMahan, James Pattison (and many others) are among those who often include Walzer's arguments of *Just and Unjust Wars* in their writings. This of course does not mean they always agree with Walzer's claims and conclusions.

the arguments included. Finally, for those who argue Walzer's work does not suffice anymore to address the modern reality of warfare, one could ask whether the world changed as much to classify Walzer's restatement of Just War theory outdated. Still, the importance of Walzer's account on Just War over the past decades does not mean it is free of criticism. The next chapter will treat some fundamental criticism Just War theory, and Walzer's account in particular, is subject of.

3. Criticism on Just War Theory: Norman's Argument

Chapter 1 & 2 show us that a theory concerning morality of warfare is often based on and/ or related to the morality of the individual. Most contemporary philosophers and thinkers of the past argue that since individuals are allowed to kill in self-defence, a state is also morally justified waging war in self-defence. In Chapter 2 it was shown that these presumptions are reflected in the contemporary international legal paradigm. Yet, this presumption raises some questions that will be addressed in this Chapter. First of all, the example of killing in self-defence, and derived notion of morality of warfare, contains a presupposition regarding killing. Namely, that killing is *prima facie* wrong and therefore morally prohibited. We cannot ignore the question: why is killing wrong?⁷³ Especially not in a thesis that concerns the philosophical basis for Just War. Second of all, even if the morality of individual killing can be accounted for, how does it follow that states should in principle conform to this rule as well? In other words, how do we get from morality concerning the *individual* to a morality for *states* in regard of warfare? An individual and a state seem two completely different things. The third and final aspect in this chapter is how contemporary Just War theory, as presented by Walzer, relate to the two foregoing questions? If one wants to obtain a comprehensive understanding of Just War theory, one needs to investigate the underlying philosophical presuppositions.

To answer these (philosophical) questions this chapter will, firstly, focus on Richard Norman's *Ethics, Killing & War*.⁷⁴ Norman gives his philosophical view on the generally accepted morality of killing. Next, Norman's account on the morality of warfare, derived from his philosophy explaining the immorality of killing, will be analyzed. Another reason for referring to Norman's account on the morality of war is that it also provides criticism on Walzer's account on Just War theory. If this thesis

⁷³ Richard Norman, Michael Walzer, Kinsella would probably agree with this statement since their considerations concerning Just War theory also start from this point.

⁷⁴ Richard Norman, *Ethics, Killing & War* (Cambridge: Cambridge University Press, 1995).

wants to legitimize using Walzer's restatement on Just War theory as the theoretical, ethical starting point from which the intervention in Libya should be analyzed, then it should address, and counter, any (philosophical) criticism to which it is subject. So, secondly, this chapter will regard Norman's philosophical account on Just War theory in relation to Walzer's restatement of Just War theory.

3.1 Norman on the Moral Wrongness of Killing

Richard Norman is a renowned philosopher and criticizes (contemporary) Just War theory. Before going into any of Norman's arguments, it is important to stress that Norman, like Walzer, starts his argument accepting that the legal paradigm and its underlying presuppositions reflect secular contemporary thinking about Just War theory.⁷⁵ He uses, again like Walzer, the legal paradigm as a starting-point to reflect on his own arguments regarding the morality of war. However, where Walzer rather easily accepts certain fundamental presumptions of the legal paradigm/ contemporary Just War theory, Norman steps out of this framework and uses a more abstract, 'meta-approach'. In other words, Norman seems more concerned with the fundamental philosophical pillars of the morality of war.

Norman defines war as: "the deliberate killing or maiming of human beings in vast numbers." This brings us to probably the most fundamental assumption within deliberation about the morality of warfare: killing a human being is morally wrong.⁷⁶ Norman asks himself: why is killing wrong?⁷⁷ This might not seem a relevant question. It appears to be such a basic and fundamental moral rule in contemporary morality that it stands beyond any doubt. In philosophy however, if one cannot account for the plausibility of a moral principle, it means it could possibly be rejected. Hence, since the presupposed moral wrongness of killing is essential to Just War theory, this (philosophical) thesis cannot lack an account explaining this moral rule. Moreover, if not addressed appropriately, the Pacifist argument that killing is always wrong and therefore war is always wrong, could undermine the theoretical foundation of this thesis and any claims and/or arguments based on it. For it is exactly this Pacifist argument to which Norman factually refers when he starts his argumentation

⁷⁵ Norman, *Ethics*, 117-120.

⁷⁶ Norman, *Ethics*, 38.

⁷⁷ Norman, *Ethics*, 36-39.

about the morality of warfare. How come, in the case of war, we seem to neglect the moral principle condemning killing, or at least assign less value to it, in comparison to debates about abortion and euthanasia?⁷⁸

Reflecting on our general moral rule that killing is wrong, Norman claims that war must be an anomaly. Killing one person is considered to be an immoral action. Nevertheless, if someone kills 100 enemies during war he will probably be named hero of the nation. In *Ethics, Killing & War* Norman analyses this anomaly starting from the point why we consider killing to be (*prima facie*) morally wrong.⁷⁹ The reason for Norman to start with, what from now on will be labelled, ‘individual morality’ is that according to him “deliberate killing of vast numbers of human beings” is central to war. As a result killing is morally central in discussion about war.⁸⁰ What Norman deems essential to our moral condemnation of killing is that we claim that everyone has a ‘Right to Life’. This supposed to be a universal moral right, not dependent on laws or rules of particular social institutions. However, no right is self-evident and every (universal) right needs to be grounded in fundamental moral considerations. In other words, to justifiably refer to a (universal) Right to Life to account for the moral wrongness of killing, a right to life must be explainable on basis of a more fundamental ethical idea. This idea would have to explain the sanctity or the moral uniqueness that we assign to the lives of human beings. Norman argues that the supposed universal moral Right to Life is grounded in the philosophical idea of Respect for Life.⁸¹

3.1.1 Respect for Life – Right to Life

By introducing different (aspects of) philosophical theories it becomes clear that no matter how we view upon killing, philosophical theories seem to agree that killing generally is morally wrong. He refers to Utilitarianism and Kantianism as examples. However, Norman also discusses problematic situations in which, when applying these theories consequently, killing according Kantianism and/ or Utilitarianism would be justified but in practice would still be judged wrong by moral conventions.⁸²

78 Norman, *Ethics*, 38-39.

79 Norman, *Ethics*, 1-10.

80 Norman, *Ethics*, 37-38.

81 Norman, *Ethics*, 38-62.

82 Norman, *Ethics*, 44-54.

Imagine a young student with a whole future ahead of him who is in need for money to continue his study and a dying old man with money, but with a short life expectancy. The student kills the old man for the money. When applying Utilitarianism to this case, which Norman defines as ‘the promotion of happiness and/or prevention of suffering’, the student would be justified in killing the old man.⁸³ After all, the happiness the student will gain by obtaining the old man’s money; he could continue studying and thereby broaden his options in the future, is much greater than the (short) suffering of the old man with no future left. Still, conventional norms would judge the act of killing in this case morally wrong. This seems to disqualify Utilitarianism as a plausible explanation of the moral wrongness of killing. To solve the ‘utilitarian anomaly’, Norman investigates the notion of ‘Respect for Autonomy’ derived from a Kantian notion of a ‘person’; someone with a certain required level of rationality and self-consciousness, and Singer’s notion of autonomy: “the capacity to choose, to make and act on one’s own decision”.⁸⁴ However, this would leave the killing of babies/ foetuses morally unproblematic since it is hard to assign any of the ‘Kantian capacities’ to them. Again, this is contrary to public moral convictions. Norman indicates that the problem of the idea of Respect for Autonomy resides in the narrow definition of ‘person’ to which the concept of autonomy is connected. To overcome this problem, Norman commits to his own idea of ‘Respect for Life’ to account for the unique moral value we assign to human life, and the moral wrongness of deliberately ending it.⁸⁵

The idea of Respect for Life recognizes that everyone has his or her own life to lead, irrespective of someone's rational capacities and/ or self-consciousness, which others may not destroy. This recognition can be formulated as that everyone has a *Right to Life*. So respect for life means respect for people's right to live their own lives.⁸⁶ This is what Norman means with ‘living one’s own life’:

“ ‘Living one’s own life’ means shaping one’s life through one’s activities, from birth, over time, accumulating experiences and learning from them, making decisions for

83 Norman, *Ethics*, 45.

84 Norman, *Ethics*, 50.

85 Norman, *Ethics*, 51-54.

86 Norman, *Ethics*, 52-54.

oneself in the light of these experiences and of one's sense of one's past, and making an intelligible pattern out of them."⁸⁷

Norman admits that the content of Respect for Life is similar to that of Respect for Autonomy but with the exception that Respect for Life is able to explain some marginal cases, which Respect for Autonomy cannot explain. For instance, Respect for Life is able to explain why the killing of babies is morally wrong. In other words, Respect for Life would best answer our moral conventions and our primitive responses to killing. Moreover, it seems to successfully explain why we tend to consider killing as wrong in itself; meaning that this moral rule is not derivable from other moral considerations. If this alone would not be enough reason to assign a lot of weight to this moral rule, Norman suggests that the unique and strong emotion that is elicited in people's experiences of loss of life, should be sufficient to do so anyways. Although building a case for Respect for Life, Norman is not blind for the theories mentioned in the above. He admits that Utilitarianism could in many cases coincide with Respect for Life. Also Norman wants to stress that from Respect for Life, and the enormous amount of value this principle assigns to human life, not automatically follows that killing is always wrong. In the case of war for instance, Utilitarian arguments, which weigh harm and benefit, might override the principle of Respect for Life.⁸⁸ Imagine a scenario in which one militant is threatening to slaughter a whole village. In line with our moral conventions one would be probably morally allowed to kill the militant in order to save the people of the village. So killing is not always wrong and the Respect for Life principle does not hold for the militant.

At this moment, it would seem Norman is factually building the individual case on which the principles of Just War theory are founded. However, although the presupposition that killing of a human being is immoral seems theoretically widely accepted, philosophical theories do not seem to agree to what extent killing is morally wrong. As mentioned in the above, Norman admits that there are situations in which the principle of Respect for Life can be overridden. However, Norman only leaves, in contrast to Utilitarianism for instance, very few exceptions justifying taking someone

⁸⁷ Norman, *Ethics*, 60.

⁸⁸ Norman, *Ethics*, 69-72.

else's life. As it will turn out, this conviction will ground his criticism on Just War theory.

As explained, this thesis is mainly concerned with *Jus ad Bellum* (just cause): what makes it right to go to war. A just cause legitimizes a war. The content of 'just cause' is often debated. 'Just cause' is a vague concept. In contemporary secular times Just War thinking focuses on one specific justification for war:

*"The wrong which war should attempt to right is the crime of aggression, and the only justification for going to war is therefore as a defence against aggression."*⁸⁹

As already became clear in chapter 2, this formulation is also the version of Just War theory encapsulated in modern international law, argued for by Walzer (theory of aggression) and regularly referred to by politicians.⁹⁰ Inherently, this formulation of Just War theory compares war to the imposition of legal punishment. The core idea however, on which will be focussed now, is that war can be justified in self-defence of the state. After all, this point is firmly established in Just War theory for many centuries already and, therefore, seems beyond point of debate.⁹¹ If this principle falls, Just War theory and every principle derived from it prescribing the morality of war would collapse.

3.1.2 The Relation Between the Legitimacy of Self-, and State Defence

As said before, Norman argues that legitimacy to go to war is often linked to legitimacy of (individual) killing since killing is central to war.⁹² This is in line with Kinsella (Chapter 1). He claims that morality of the individual was extended to states after 1648, the Peace of Westphalen. In short, the appeal to self-defence of states (governments) to justify war is thought to derive its legitimacy from the comparison with individual self-defence. Individuals are allowed to kill in self-defence, in comparison states are allowed to go to war (to kill) in self-defence. The underlying assumption here is, arguing from Norman's point of view, that a Right to Life grants a right of self-defence, which allows to kill (if necessary). However, what happens to

89 Norman, *Ethics*, 119-120.

90 Walzer, *Wars*, 51.

91 Norman, *Ethics*, 120.

92 Norman, *Ethics*, 120.

the Right of Life of the aggressor trying to kill someone in this situation? It appears that by attempting to kill someone, thus violating someone else's Right to Life, the aggressor *forfeits* his Right to Life. According to Norman, this assumption is central in Just War thinking in support of 'just war'. Although Norman admits that the right to kill in self-defence is not limited to the defence of one's life, it does certainly not extend much beyond that situation and factually never extends to the concept of 'state'. It extends only to cases in which what is defended is of equal importance as one's own life. Situations of rape would be an example of this. Even then, 'necessity', 'responsibility' and 'forced choice' should be the central factors for the killing; not punishment for instance. 'Necessity' would refer to having no other option saving one's life by killing your aggressor. 'Forced choice' and 'responsibility' adhere to the fact that the aggressor is responsible for forcing upon the victim the situation in which he is responsible for a kill aimed to defend his life. In this kind of situation one is justified to kill his aggressor. Note however, that by introducing 'necessity' as a condition for justified killing, the one who defends his life does not have a clean sheet to kill his aggressor. If it turns out the defender who defends his life killed the aggressor while he was already disabled, the defender is still responsible for unnecessarily killing the aggressor. In other situations, imagine a third party has to intervene to prevent someone from killing another person, it is hard to come to a conclusive, solid argument, which would morally allow the third party to kill the aggressor. Therefore Norman limits himself to a very narrow justification for killing, which has direct implications for his view on the morality of warfare.⁹³

Norman argues it is *impossible* to apply the moral permissibility of killing in self-defence to an abstract concept like 'the state' (political community). Any analogy accounting for the similarity between individual and state's morality would fail.⁹⁴ As a consequence, a foreign army crossing another state's borders and/ or ruining cultural heritage would not suffice to override the strong (individual) moral imperative against killing. After all, the lives of the people living in the invaded community are not threatened. Any psychological or sentimental ties one might experience in regard of what is destroyed (violated) would be solemnly based on false ideas of loyalty or identity in regard of the political community. This means that killing, a war of self-

93 Norman, *Ethics*, 121-132.

94 In the next section I will turn to Norman's argument accounting for this claim.

defence in which one kills other individuals, is only strictly allowed when one's life is directly at stake. One could only imagine such a case in a war of *ethnic cleansing*.⁹⁵ Does this limited justification for killing in self-defence truly delivers a solid account on the morality of war?

3.2 Analyzing Norman's Critique on (Walzer's) Just War Theory

Norman's theory on the morality of war argues from the individual moral principle which allows killing only in certain cases of self-defence. According to Norman, conditions for a just war as provided by Just War theory are false since they stem forth of a wrongly construed argument suggesting a relation between individual moral convictions and state rights. In this section, I will show why Norman's approach to the morality of warfare is incorrect. In addition, I will offer a suggestion on how state rights are ultimately grounded in individual morality. My suggestion would also account for the moral significance of state rights and how the latter would permit killing/ war in case of violation.

3.2.1 Norman's Approach

Norman's account on the morality of warfare seems to imply that one cannot *directly* apply a moral account on the wrongness of killing from an individual perspective onto the (collective) morality of warfare, which concerns states (political communities). I think this is true, but only to a certain extent. For I will suggest through Gerald J. Postema's *Collective Evils, Harms and the Law* that Norman's approach is too rigid.⁹⁶ I argue in this section that the morality of war entails more fundamental moral values than only Norman's Respect to Life. As a result, Norman's analysis does not entirely grasp what the morality of warfare is essentially about.

According to Gerald Postema, Norman would probably fall under those people ignoring to include in their ideas certain values not necessarily directly aimed at the private concerns of the individual. Collective values (- goods, interests) as these values are called, are defined in contrast with private values. Private values can be distinguished in personal and impersonal values. Both categories of private values are states of affairs an individual can value for his or her own part only. One cherishes

95 Norman, *Ethics*, 121 - 140.

96 Gerald J. Postema, "Collective Harms, Evils and the Law," *Ethics* 97, no. 2 (1987): 414-440.

private values regardless of whether someone else does (or does not).⁹⁷ Collective (or public) values are neither personal nor impersonal. These are ultimately values of individual persons, but they are not private in the sense as just explained: one does not adopt collective values for one's part only, but rather only insofar as one regards oneself as a member of a community.⁹⁸ So the manner in which an individual values a state of affairs is what primarily distinguishes collective values from an individual's private values. States of affairs are collectively valued if one values them as a member of a certain community, or insofar as one regards them from the perspective of a member of that specific community. Collective values are also different from private values in the sense of to what objects they refer. For that which is valued essentially refers to the community or is a common way of regarding each other in the community.⁹⁹ To summarize, where private values, thus including both personal and impersonal values, are linked to notions of 'good life' and 'good simpliciter'; collective values express a conception of the 'common good' (covering both moral and material well-being), or the 'good society'.¹⁰⁰ Although collective values often might have a public character, from this does not automatically follow that collective goods are tantamount to public goods (public services or public institutions for instance). Public goods could amongst other things be considered as something that we collectively value as collective goods. However, collective goods entail more.¹⁰¹ How exactly these collective goods are defined I will not discuss here for the sake of argument. The main point is that, although ultimately based on individual judgment, collective values (goods/ interests) are valued from a different perspective and aimed at other objects than private values.

Taking into consideration Postema's account on private and collective values and relating it to Norman's individual based ethical criticism towards Just War theory, one could ask: is Norman criticizing the morality of warfare from the right perspective? I think not. Norman assumes that since killing is essential *in the practice* of war, war mainly concerns individual killing. However, I would like to indicate that when we talk of war we do not only speak of (lethal) aggression towards individual lives. The

97 Postema, *Harms*, 418-420.

98 Postema, *Harms*, 420.

99 Postema, *Harms*, 420-421.

100 Postema, *Harms*, 421.

101 Postema, *Harms*, 421-430.

aggression of war does not necessarily *primarily* focus on individual members of a community. As Norman indicated, the only exception to this would be a war of ethnic cleansing. In this case one is allowed to kill the aggressors since the latter's main purpose is to take individual lives (of a specific ethnic group). However, generally aggression of war first and foremost harms or threatens to harm values collectively shared by individual members of a community and any institutions or agencies representing these collective values (goods/ interests). For instance, an invading force could violate territorial borders from which a political community and its members partially derive their identity. An invading force could bomb cultural heritage, which symbolizes a community's identity through history. An invading force could forbid any religious practices in the specific community. Possibly, an invading force could kill members of the invaded community in its aggression against the community's collective goods. My point is that the object of the morality of war is not merely the individual, or more specifically; the moral permissibility of *individual killing*. The morality of warfare is concerned with aggression aimed at the community and its collective values. Therefore, I argue that the question of just war and the agents it concerns; political communities/ nation states, is primarily concerned with aggression, and protection from that aggression, against collective values and collective goods (as in public goods representing collective values). Or, as Walzer articulates it:

*"When states are attacked, it is their members who are challenged, not only in their lives, but also in the sum of things they value most, including the political association they have made."*¹⁰²

Summarizing, the presumption that war is only concerned with individual killing; thus, only with disrespect for the moral value of 'Respect for Life', seems wrong. This statement supports Norman's claim insofar that individual morality cannot be *directly* applied to the morality of states. However, arguing that war is a concept that concerns the whole political community and its related collective values, implies there is a (indirect) relation between individual morality and the morality of warfare that concerns states. For amongst collective values reflected by a state, it could be plausibly argued, is Respect to Life. So any (Just War) theory accepting a relation

102 Walzer, *Wars*, 53.

between individual morality and state morality, still answers to what we consider the great moral wrongness of war: killing human life. In accordance with Walzer, my suggestions seems to imply that an analogy between the individual morality within a political (domestic) society and the morality within a society of states exists: in both societies ultimately the same moral values are at stake since states would ultimately reflect (fundamental) moral values that are collectively shared by individual members of its community. Thus, individual morality *can* be applied to the society of states when accepting that states (*indirectly*) reflect (and protect) what its citizens collectively value. Such a connection would confirm Walzer's domestic analogy: that state rights are based on individual rights within a political community.

3.2.2 The Foundation of Just War Theory Criticized

Even if there is a relation between individual-, and state morality; individual -, and state rights; how does this relation account for the moral permissibility of killing in defence of state rights? Walzer relies on the 'domestic analogy' to explain how defence of the state legitimizes killing the same way as defending one's own life.¹⁰³ Walzer's domestic analogy is at the heart of his Just War theory. So the plausibility of Walzer's domestic analogy is vital for the plausibility of his Just War theory concerning the morality of war. Can Walzer's domestic analogy account for the justifiability of killing in defence of the state (rights)?

Norman argues that Walzer's analogy in the strict sense does not seem to offer us that justification¹⁰⁴ Norman argues that if Walzer's analogy between individual rights and communal rights is followed consistently this will not lead anywhere. It would mean that just as the defence of the individual's right to life and liberty would justify overriding the attacker's right to life and liberty, so also the defence of the community's rights to territorial integrity and political sovereignty would justify overriding the aggressor community's rights to territorial integrity and political sovereignty.¹⁰⁵ Next, Norman views on Walzer's analogy from another perspective. Norman states that Walzer might try to argue that the communal rights to territorial integrity and political sovereignty are in itself worth killing for. In others words, life

103 Walzer, *Wars*, 54-58.

104 Norman, *Ethics*, 133-134.

105 Norman, *Ethics*, 133-134.

in a political community is of comparable value as a human life. Following this parallel, killing in defence of the political community would be justified when the threat is of a same magnitude that would allow individuals to kill. Norman argues however that this kind of comparison between a political community and an individual does not hold. An individual life is unique. When an individual's life is threatened and he would not defend himself, a life will be ended. In addition, there are numerous examples to think of in which a political community is invaded, but it does not necessarily mean the end of the community. A community could partially go underground or continue its specific way of living in exile.¹⁰⁶ It could be concluded that Norman factually argues that since the conquest of a community is not identical with ending someone's life, the political community is in itself *not* worth killing for.

On Norman's first point of criticism I have two comments. First of all, Norman assumes that someone can lose his Right to Life, when someone's disrespects the ethical idea grounding this right; Respect for Life. This is a highly controversial assumption in contemporary philosophical debate.¹⁰⁷ For it does not automatically follow from the Right to Life, or the Respect to Life for that matter, that if one does not respect such a right in regard of someone else, that right does no longer apply to oneself. Since treating this matter would require an extensive inquiry and is not essentially important to the subject of this thesis, I will limit my criticism regarding this matter by stating that Norman's forfeiture of rights is based on a doubtful assumption concerning the forfeiture of that which determines the moral value of human life: Respect to Life. So whether this is a strong principle to hold onto in case of the moral permissibility of killing is doubtful. Second of all, I will attempt to show that even when a principle like forfeiture of rights is accepted, the domestic analogy could ultimately justify killing of aggressors violating these state rights. If the forfeiture of someone's Right to Life implies that this person can be justifiably killed, then forfeiture of state rights to political sovereignty and territorial integrity can do so as well. The Right to Life to which Norman refers, is ultimately based on the ethical idea of Respect to Life. This is what makes trying to kill someone morally wrong and

106 Norman, *Ethics*, 136-138.

107 Amongst many others, Michael Ignatieff discusses this topic in *Human Rights as Politics and Idolatry*.

why one would forfeit his own Right to Life when he attempts to kill someone. If this explanation is valid for the Right to Life, it is, as I will argue, also for state rights.

My argument relies on an implementation of Postema's account on private and collective values and inclusion of a 'Kantian-like' theory on the moral value of human life into Walzer's social contract theory. Moreover, I think Postema's account could fill the theoretical vacuum of Walzer's restatement of Just War theory in regard of the meagre attention Walzer gives to Social Contract theory. According to Walzer, a 'moral process of collectivisation' would ground his domestic analogy; the relation between individual and state rights in the society of states, and ultimately his Just War theory.¹⁰⁸ I will try to account for this process of collectivisation through an example of how the relation between private and collective values according to Postema might work.

It is perfectly sensible that someone values his life regardless of whether someone else does. Then, this value is a private value. This private value in its 'collective form' could be articulated as: since my life as a human being is valuable, every human being's life is (just as) valuable. This is a collective value in the sense as Postema explained: it is neither personal nor impersonal but adopted from the perspective of regarding oneself as a member of the community. In addition, the collective value in this case relates to another object than the private value: respectively, each individual within the community and the individual as a private person.¹⁰⁹ Possibly, the collective value of human life could even be further extended to all human beings in this world: the 'global community'. I will address this latter extension of values further in section 3.4 and chapter 4.

To stick with the argument at hand: I would like to argue that the process of private and collective valuation of human life ethically grounds related individual rights adopted in state policies and/ or national laws. The collective valuation of human life could for example lead up to an individual (fundamental) right to life, either defined as by Walzer or by Norman. My suggestion is perfectly compatible with Walzer's social contract theory explaining the rights of individuals within the state:

108 Walzer, *Wars*, 85-90.

109 Postema, *Harms*, 420.

"Individual rights (to life and liberty) underlie the most important judgments that we make about war. How these rights are themselves founded I cannot try to explain here. It is enough to say that that they are somehow entailed by our sense of what it means to be a human being. If they are not natural, then we have invented them, but natural or invented, they are a palpable feature of our moral world. States' rights are simply their collective form."¹¹⁰

This 'sense of what it means to be a human being' could, ironically, be given philosophical content by adhering to a Kantian theory like Norman's Respect for Life. Probably, Norman would agree with Walzer's legal articulation of his Respect to Life since it factually entails the Right to Life as explained by Norman.

How does all of this lead up to an argument based on Norman's forfeiture of rights, which morally permits killing in case of aggression towards the state? The argument goes as follows: if state rights ultimately reflect individual collective values (goods), including Respect for Life, through laws and policies, and assuming the legitimacy of the state depends on the consent and protection of the common life within its political community, then, if we follow Norman's forfeiture of rights-principle, by attacking a state a foreign faction factually forfeits its Right to Life (or, in this case existence). The attacking state forfeits its right to life as a political body since it does not reflect the collective values of its own community (assuming this community values human life in more or less the same way as the people of the defending political community do). As a result, the state as a representative body for the political community loses its legitimacy. Moreover, by attacking a peaceful political community, the attacking faction (state/ nation) also factually forfeits the Right to Life of its citizens since the political community and its rights are ultimately related to what each of its members value from the perspective of being a member of that state (community). My point is that the attack of the state results in the forfeiture of rights (to life) of its citizens since the existence of the state and related rights rely on the consent of those citizens. Hence, the citizens of the state are (indirectly) responsible for their authorities to attack another nation, thereby forfeiting their rights to life. As a result, killing in

110 Walzer, *Wars*, 54.

defence of state rights is morally permissible; also when arguing from Norman's point of view.

3.2.3 A More Decisive Argument

Although to me the latter argument countering Norman 'forfeiture of rights'-criticism seems theoretically plausible, it also seems a little farfetched. Would one be really prepared to kill, or to die, for something abstract as state rights? In order for an argument like the above based on the essential relation between individual moral conviction and state rights in the international sphere, it should account for the insinuation coming forth from it: that the defence of collective values *morally* permits war, thus killing. According to Norman, one cannot plausibly build such an argument since the analogy between state and individual rights would fail to account for this.¹¹¹ In what follows I will argue how such an argument can plausibly be construed.

I think one can come up with another plausible argument, besides the theoretical argument presented in the above, which accounts for the moral permissibility of killing in defence of aggression towards collective goods as (partially) presented by the political community. Besides his argument on how individual views on morality or, more specifically, the 'common good' are reflected in collective values/ goods, Postema argues that we find these collective values of significance because they determine the identity of our community.¹¹² Walzer could probably agree with such a claim since he also indicates that the attack of states involves aggression not only on the members of the state, but also what they mutually value and share.¹¹³ This implies that there is a possible strong connection between an individual's identity and the community. Norman believes that, first of all such a relation does not exist, and, second of all, that it cannot account for the moral permissibility of killing in case of war.¹¹⁴ In *Reflection on Identity and Belonging* Theo van Willigenburg investigates this connection by looking into whether nationality, or any other concept referring to communal identity, can be an important part of our individual identity.¹¹⁵ Van

111 Norman, *Ethics*, 133-140.

112 Postema, *Harms*, 418-419.

113 Walzer, *Wars*, 53-54.

114 Norman, *Ethics*, 136-139.

115 Theo van Willigenburg, "Reflection on Identity and Belonging," in *Nation, State and the Coexistence of Different Communities*, ed. Theo van Willigenburg, Robert Heegen and Wibren van der Burg (Kampen: Kok Pharos Publishing, 1995), 207-218.

Willigenburg finds support for the claim that the core dispositions, which construe the configuration of features that constitute one's identity, are neither fully depended on subjective appropriation, neither on social determination.¹¹⁶ The social environment, whether this is to be interpreted as family, friends or (religious, cultural, political) community, seems to play a dominant role on the formation of one's identity. Relating these findings to nationality, Van Willigenburg concludes that the importance of national belonging for someone's identity depends partially on to what extent the community values nationality as an important identifying characteristic in comparison to other personal-related and social traits.¹¹⁷ How does this help my argument favouring the moral permissibility of killing in defence of state rights?

Van Willigenburg ultimately focuses his argument on the question whether nationality is of influence to someone's identity. However, his general point, on which I like to focus, is that communal, social factors are of dominant influence on someone's personal development. In other words, someone's identity could be strongly related to the identity of the community to which he or she belongs. Postema's account on the relation between identity and collective values underwrites this claim. Postema argues that we collectively value what we, amongst other things, want to pass on to future generations. Assuming a state (partially) reflects our collective values through policies, laws and/ or institutions it would factually reflect the collective identity of the members of the state. Hence, we identify ourselves with the state because the state reflects and includes what we collectively value. When taking into account both Van Willigenburg's and Postema's accounts it can be concluded that the identity of state and citizens, the identity of the community and its members, mutually interact. Van Willigenburg indicates however that to what extent someone chooses to adopt certain communal traits in his personality, is also partially depended on the individual's character.

Why do I mention this latter point? Simply to nuance the point I am going to make now: I would like to argue that the Right to Life, as articulated by Norman, includes more than simply a right of staying physically alive. Physical existence is only part of what makes us a human being. That what makes us amongst other things unique as an

116 Van Willigenburg, *Nation*, 210.

117 Van Willigenburg, *Nation*, 210-218.

individual is our personal identity. Since Norman's idea of Respect for Life essentially includes this broad notion of 'life' covering both the mental and physical capabilities of human beings, I suspect he could agree with my claim that identity also falls within the concept of Respect for Life.¹¹⁸ Thus, since identity is (partially) related to the political community, and therefore Respect for Life is (amongst other things) related to the existence of the political community, aggression towards the state can be interpreted by individuals as a violation of their fundamental right to 'living one's own life' (Right to Life; see page 32). In other words, aggression towards the state could justify war (killing), because it is tantamount to threatening our identity, an essential part of what we value most: human life.

What if someone does not directly identify himself on a national level with the political community he lives in? This person might still do so indirectly. Imagine the possibility that the political community (state) under attack is tolerant in regard of someone's highly valued religious community.¹¹⁹ Then this person could still interpret aggression towards the state as an indirect attack on his religious community to which he relates very strongly. Even if it would be accepted that aggression from a foreign state only partially affects us, because our attachment to the political community only accounts partially for our identity, I could still argue it would be morally permissible to kill by reflecting on the physical aspect of human life entailed by Respect for Life.

For instance, what if someone is determined to chop of your arm? It would probably not kill you since it only affects a part of your body. Should you allow it to happen? Or are you permitted to defend yourself in a way, which might ultimately even kill your aggressor? As Norman, and (Walzer's) Just War theory for that matter as well, rightly pointed out, there is always an issue of proportionality involved in the way you should respond to aggression. I do not deny this. I would like to suggest however that when an essential physical and/ or mental part of your body is threatened, your (right

118 Norman, *Ethics*, 50-60.

119 To be clear: the state is a form of a political community. However, the concept of 'political community' can for instance also refer to a political movement within a state. Thus, a political community (political movement) in a political community (the state) is possible. Just as a religious community, Muslims for instance, can exist within a political community (state). I trust the context of my writings clarifies to which conception I refer. Needless to say, an individual can identify himself either to both conceptions, or to only one of them.

to) life is threatened to such an extent you would be morally allowed to kill your aggressor. This should at least shift the burden of proof back to Norman if he would reject my suggestions.

Summarizing, my 'identity argument' contradicts Norman's claim there is no connection between an individual's identity and the state. In addition, this section showed that this connection could plausibly account for the moral justifiability of killing in case of aggression towards the state. When that is attacked which (partially) constitutes identity, the state in this case, citizens of the state are factually attacked in an essential part of their human being. Also, since killing is justified in defence of citizen's identity (arguing from Norman's idea of Respect for Life), and since state rights internationally factually protect that which reflect and construes a part their identity, defence of state rights is tantamount to defence of one's life thereby justifying war. The plausibility of the identity argument gains strength when considering that a connection between the citizen and state through identity could also account for the emotional attachment of citizens to the state: we not only theoretically, but also personally *feel* harmed by aggression towards our country. This could explain the willingness of people to defend their country with their lives. Thus, not only the moral justifiability is explained through the identity argument, but also the willingness of people to kill/ die for their country.

3.3 Summary

By now all the main questions put forward in the beginning of this chapter are answered. First of all, why is killing wrong? Norman's account on the moral wrongness of killing based on Respect for Life seems plausible and theoretically well argued for. Killing is *prima facie* wrong since it disrespects what we value the most: human life.

Then, second of all, how do we get from morality concerning the individual to a morality for states in regard of warfare? In contrast to Norman, I argued that Walzer's social contract theory and domestic analogy offer a plausible theoretical tool for explanation. For one can come up with a plausible connection between individual rights and state's rights arguing that both classes of rights are ultimately grounded in individual morality. State rights are ultimately depended on individual morality when

arguing that states reflect/ protect (through rights, laws, policies and/ or institutions) what we collectively value as individual members of a political community. State rights in the international sphere would be a reflection of these collective values since they protect the state itself in the society of states. We could collectively value the state for being the protection/ reflection of 'the sum of things we value most'. Since Walzer's domestic analogy holds, the legal paradigm as the primary form of the theory of aggression explaining the morality of war is accounted for. Since the legal paradigm is the fundamental structure for the moral comprehension ultimately derived from individual morality (arguing from Postema's account on collective values), we can conclude that the morality of warfare for states is ultimately grounded in individual morality. Thus, any attempts to reflect on the morality of warfare as articulated by the legal paradigm from the perspective of individual morality are plausible.

Next, Norman criticized the domestic analogy: as part of the explanation for the relation between individual and state morality, the domestic analogy would not be able to account for the moral justifiability of killing which constitutes the moral wrongness of war. I rejected Norman's criticism. Based on arguments from Van Willigenburg and Postema, I argued that aggression towards the state could account for the moral justifiability of killing (war). The moral and emotional relation between state and citizens can be explained through the mutual interaction between citizens' collective values and citizens' collective identity. Since an individual's identity is an essential part of human life, arguing from Norman's Respect for Life, aggression towards the state can be explained as harm towards citizens' lives. Hence, killing (war) in defence of aggression towards state rights, which protect an essential part of our human being, would be morally permissible.

Since I included Walzer's restatement of Just War theory in the latter section, the third question was also answered. Walzer's restatement of Just War theory seems able to both include our (*prima facie*) moral condemnation of killing, to explain the relation between individual morality (rights) and state morality (rights), and the moral permissibility of killing when defending the state. Although Walzer does not give a very thorough explanation about how the connection between morality, mainly focussed and argued for from an individual perspective, and state rights comes into

existence, this shortcoming can be compensated by using arguments from Postema and Van Willigenburg mentioned in the above. Walzer's Just War theory from which follow his conditions for justified war, appear to be theoretically solid.

Since Walzer's Just War theory seems solid and is able to withstand heavy criticism on its theoretical foundation, I will use Walzer's theory and forthcoming conditions for justified war as guideline for the remaining part of this thesis. A war is justified when there is just cause prescribes Walzer. This thesis is concerned with the question whether the humanitarian intervention in Libya was justified. Following Walzer then, the intervention in Libya was justified if there was just cause to intervene, or to use his words:

*"Humanitarian intervention is justified when it is a response (with reasonable expectations of success) to acts that shock the moral conscience of mankind."*¹²⁰

3.4 State Rights vs. Universal Human Rights

Is a humanitarian basis sufficient cause to go justifiably to war (to initiate an intervention)? Arguing from the above this question can be further specified to: does a humanitarian occasion justify violating state rights? Walzer refers to the intervention of India in East- Pakistan in 1971 as an example of justified intervention. In this case gross violations of human rights was the act that shocked the moral conscience of the world to such an extent it justified intervention; i.e. the violation of state rights.¹²¹ At first sight then, it seems we can determine a clear principle: humanitarian intervention with military means is justified when it reacts to massive human rights violations in a state. Unfortunately, a fundamental ethical conflict lies underneath.

Both state rights and Universal Human Rights ultimately rely on the same philosophical foundation: a Kantian idea accounting for the unique moral value of human life. In other words, both state rights and Universal Human Rights protect what we value most: human life. Universal Human Rights can be considered as the further extension (reflection) of the collective value of Respect to Life to which I already shortly referred in 3.2.2. After all, if we can extend our moral values in

120 Walzer, *Wars*, 107.

121 Walzer, *Wars*, 105-106.

respect of human life from the individual to the political community (the state), why could we not extend (some of) these values to the global community? Also the identity argument could be applied here: if the global community (through the UN for example) represents some of our collective values, then we can identify with the global community just as we can identify ourselves with the political community. Hence, defence of human rights could justify intervention (war; killing) in the same manner as explained in the above. Since the identity-argument is mostly depended on the collective value argument of Postema (factually it explains why killing in defence of some collective values is morally permissible), I choose to focus on what gave the identity-argument its moral force: Respect for Life. Also, a critical analysis of the philosophical content (Respect for Life) of both conflicting rights would be of most interest to the ethical debate concerning the moral justifiability of humanitarian interventions in cases like Libya. As I stressed in the introduction, the ethical debate is with what this thesis is ultimately concerned. Thus, if both rights are grounded in the same philosophical theory, how then to decide which right trumps the other? The next chapter will focus on this question.

4. On Humanitarian Intervention

Humanitarianism in its general form is an ethic of benevolence and sympathy extended universally and impartially to all men.¹²² This should sufficiently ground the assumed relation between Universal Human Rights and humanitarian intervention. Also, I argue this assumed relation falls within Walzer's definition of humanitarian intervention (Chapter 2, 24-25). As we have seen, a humanitarian intervention factually represents a case in which the principle of state integrity conflicts with the requirements of universal morality. In chapter 3 I indicated that the defence of the former, state rights, and the defence of the latter, Universal Human Rights, in fact reside in the same idea of Respect for Life. I argued that if we want to determine whether Universal Human Rights trumps state rights, in other words, whether violations of Universal Human Rights morally justify a humanitarian intervention, we have to determine which class of rights better reflects the ultimate moral value within contemporary morality: human life. I also showed this factually depends on the question whether the philosophy that grounds Respect for Life, derived from a Kantian idea of Respect for Humanity, extends to all people on this planet. Hence, we have to investigate the philosophy to which Respect for Life refers: Kant's Respect for Humanity.

4.1 Kant's Respect for Humanity

If Universal Human Rights apply to all human beings, it should represent something essentially ethically valuable inherent to all human beings. As we can make out from the above this something in modern times seems to be accounted for through Kant's Respect for Humanity. However, is the assumed relation between Kantian philosophy and Universal Human Rights plausible? This section will also give more insight and a short account on what grounds Universal Human Rights and how it accounts for the moral basis delivering just cause to go to war. Are violations of Universal Human Rights truly 'acts that shock the moral conscience of mankind'?

122 Michael N. Barnett, *Empire of Humanity: A History of Humanitarianism* (New York: Cornell University Press, 2011), 2-10.

In *Humanitarian Intervention as a Perfect Duty* Carla Bagnoli argues they are. She argues that a humanitarian intervention is a *moral obligation* by appealing to a Kantian conception of respect for humanity. Thereby she indicates that violation of human rights not merely offer just cause to militarily intervene, but even burdens us with a perfect obligation to use force if necessary.¹²³ However, this claim is not the reason I refer to Carla Bagnoli. Rather her Kantian argument that assigns trumping moral value to Universal Human Rights in regard of territorial integrity of states is of this section's interest. For if one refers to Universal Human Rights, one often refers to the content of the Declaration on Universal Human Rights of the UN as stated by the convention of Geneva in 1949. This declaration amongst other things tells us that the defence of Universal Human Rights, and the moral value we should assign to it, is based on a notion of human dignity. What the content of this 'notion of human dignity' is, the declaration does not tell us.¹²⁴ Hence, what is needed is a philosophical solid account on what human dignity entails and how it accounts for the moral value assigned to Universal Human Rights. I think Bagnoli's articulation of Kant's Respect for Humanity, which accounts for the value we should assign to human dignity (moral value of human life), is representative of how many would argue for a Kantian defence of the moral value of Universal Human Rights. Bagnoli argues that Human Rights are an expression of our humanity.¹²⁵ What is humanity, then? Humanity is what characterizes us as persons, which is the use of reason. Since the use of reason, the capacity to determine value and to set ends of our own, also determines what we consider valuable in the world, we as persons are the source of value. Because persons are factually the origin of value (morality) then, Kant assigns a special locus to us. This peculiar kind of value we embody is called 'human dignity'.¹²⁶

Originating value is a law-like activity. It requires us to set ends conceived by maxims that can be willed as universal law. It also demands from us to be capable of self-legislation and of prescribing obligations to ourselves. According to Kant the activity of self-legislation is tantamount to the autonomous exercise of rationality. Hence, humanity is tantamount to exercise of rationality and it is the feature that makes

123 Carla Bagnoli, "Humanitarian Intervention as a Perfect Duty: A Kantian Argument," accessed March 6, 2012, 1-3, <https://pantherfile.uwm.edu/cbagnoli/www/hi.pdf>.

124 United Nations, "The Universal Declaration of Human Rights," accessed April 4, 2012. <http://www.un.org/en/documents/udhr/>.

125 Bagnoli, *Duty*, 3.

126 Bagnoli, *Duty*, 3-4.

persons inviolable. We cannot view persons as undistinguished units of value insofar persons embody this peculiar kind of value called human dignity. After all, the peculiar value human dignity is related to the capacity to exercise rationality possessed by all human beings. Therefore, all human beings should be treated as autonomous sources of value. Our recognition of somebody being a person makes a claim on us: it demands that we respect such a person as an autonomous source of value.¹²⁷ According to Nardin, this respect to other persons does not only entail that one should not interfere with one another's freedom, but also that one should help another person to achieve his or her ends.¹²⁸ Whether this is a perfect or imperfect obligation is widely debated as also shown in the foregoing. Bagnoli's account should point out the importance of a Kantian conception of humanity in arguments concerning the justifiability of humanitarian intervention.

Bagnoli, and with her many others - like Walzer (chapter 2) - argues that armed intervention is humanitarian when it is undertaken for the sake of protecting the dignity of persons; the value of their humanity. Human Rights are therefore necessary; as an expression and the ability to exercise our humanity. They express what is essential to being a person for all human beings in the world. So whenever we appeal to the idea of human dignity, we make a moral case for intervention, that is, one that applies universally and, according to Bagnoli, unconditionally.¹²⁹ Criticism against any arguments explaining the moral basis of Universal Human Rights on a Kantian notion of human dignity focuses on what would practically qualify as human dignity. What is exactly harmed if human dignity is not respected? Or in other words, in what does human dignity reside in human beings? If human dignity is depended on the capacity to reason, do brain dead human beings do not have any dignity left? Is killing them not morally objectionable? Can human dignity be lost? As we saw, Norman also focused on these questions. As I indicated his 'solution', Respect for Life, seems to partially solve two of the three questions. However, can human dignity be lost? According to Norman it can.¹³⁰ However, it is unclear what basis of this claim is. This kind of criticism factually nibbles on the plausibility and the (trumping)

127 Bagnoli, *Duty*, 4-5.

128 Terry Nardin, "The Moral Basis of Humanitarian Intervention," accessed March 5, 2012, 13-14, http://www.cgpac.uci.edu/files/cgpacs/docs/2010/working_papers/terry_nardin_humanitarian_intervention.pdf.

129 Bagnoli, *Duty*, 3-5.

130 Norman, *Ethics*, 121-128.

strength of the human rights argument in favour of humanitarian intervention. I will not go into detail about this matter here. So much has been said and written in regard of human dignity that it provides sufficient material to produce a thesis solely concerned with this subject. The main point made in this section is, although not free from criticism, human dignity can plausibly account for Universal Human Rights applicable to all human beings on this planet.

Are violations of human rights 'acts that shock the moral conscience of mankind'? I would like to argue that they are since Universal Human Rights can be plausibly argued for by a Kantian philosophy concerning the idea of human dignity, which accounts both for the universality and the unique moral value we assign to human life. However, in order for violations of Universal Human Rights to be considered as just cause to go to war, I argued that human rights should also ethically trump state rights.

The question that remains open is: do Universal Human Rights trump state rights? Yes, they do. Arguing from the scope of Universal Human Rights, they trump state rights in that the former, more than the latter, better reflects our ultimate moral value and underlying Kantian theory. Respect for Life (grounded in Kantian theory), because of its philosophical content should be extended to all people, not merely those in a political community. In 3.4 I already gave an account of how one could argue in favour of such an extension and how from this a theoretical conflict between Universal Human Rights and state rights follows. By explaining the Kantian theory underlying Universal Human Rights in this Chapter, I think I proved the global extension of Respect for Life to be plausible and reasonable. Therefore, Universal Human Rights and its defence are of higher moral significance than state rights. Thereby, it can be concluded that violations of human rights provide *jus ad bellum* for war. Hence, humanitarian intervention to stop gross violations of Universal Human Rights is justified.

Finally, I would like to stress one final point. My claim regarding the justifiability of humanitarian intervention does not necessarily imply that those defending their country from military intervention do not have any justification to do so on. They too can be morally justified in defending their country with military means arguing from the perspective that the defence of state rights ultimately also relate to Respect for

Life (as explained in chapters 2 & 3). Only acceptance of a disputable principle like Norman's forfeiture of rights could reject such an assertion: by violating human rights, the violators have forfeited their state rights by disrespecting what grounds these rights: Respect for Life. Therefore, they have forfeited their right to life. Hence, I think both the defence of state rights and of Universal Human Rights can be morally justified even if they conflict in the same cause of events. Before I come to conclusions regarding the main question of this thesis, I first would like to further strengthen the ethical case for humanitarian intervention in defence of Universal Human Rights. For humanitarian intervention is not only criticized for its violation of state sovereignty.

4.2 Criticism from Other Perspectives

Aside from causing ethical conflict within Just War theory, humanitarian intervention is also ethically criticized from other perspectives. What value should we assign to a Just War theory-account justifying humanitarian intervention if humanitarian intervention could be rejected by ethical arguments from other perspectives? I will address some of these arguments in this section. It should prevent that this thesis will be criticized for approaching the ethical case of humanitarian intervention too narrowly.

4.2.1 Dower's Analysis

In *Violent Humanitarianism - An Oxymoron?* Nigel Dower reflects on the justifiability of humanitarian intervention arguing from Cosmopolitanism.¹³¹ Cosmopolitanism entails a universal, 'nation state transcending' morality: all people belong to a moral global community with norms, values and mutual responsibilities.¹³² Arguing from his cosmopolitan defence of humanitarian intervention, Dower indicates that an account on the justifiability of humanitarian intervention based on a Kantian conception of human rights is confronted with three critical points of debate.¹³³

131 Dower, *Humanitarianism*, 93-95.

132 Dower, *Humanitarianism*, 83.

133 Dower, *Humanitarianism*, 83-91.

Firstly, use of Kantian theory to ground universal human rights on which justification of humanitarian intervention (mostly) relies, also implies a deontological conceived duty regarding the requirement to take (military) action in case of 'humanitarian need'. However, such an argument cannot be plausibly delivered. That means a duty in regard of human rights can only be plausibly conceived as a moral second-order duty; a 'duty-all-things-considered'. This would raise the two other points of criticism regarding humanitarian intervention. Secondly, a failure to sufficiently take into accounts the wider ramifications of the military action taken. Dower argues that the impact on a whole region as a result of an intervention is often not considered. The inflicted harm by intervention is exceeding the harm caused by restraining from intervention. Therefore, intervention would be morally wrong. Thirdly, a failure to recognize that if we think that we ought to do 'all that we can to alleviate suffering', there are generally more effective things that can be done with the resources we are willing to use. By this is meant that the costs of a military intervention could often better be spent on programmes focussing on other 'humanitarian suffering' like fighting global poverty and starvation.¹³⁴ Notice the Kantian character of the first argument, and the consequentialist character of the last two arguments. This indicates that Dower grounds his Cosmopolitanism, accounting for the justifiability of humanitarian intervention, is a mixture of Kantian and Consequentialist theory. Dower calls this combination of theories 'Human Rights theory'.¹³⁵ How problematic are Dower's indicated arguments for the justification of humanitarian intervention?

4.2.2 The Kantian Issue (1st Argument)

Just as Dower's Cosmopolitanism, Just War theory as interpreted in this thesis also relies on a Kantian conception of universal human rights to morally justify humanitarian intervention in regard of state rights. Therefore, criticism from a Kantian perspective, from which ultimately follow the two other arguments against the moral justifiability of humanitarian intervention, also applies to the argument justifying humanitarian intervention within the framework of Just War theory. Hence, I will first analyze this Kantian critical argument.

¹³⁴ Dower, *Humanitarianism*, 86-92.

¹³⁵ Dower, *Humanitarianism*, 83-86.

I think that the Kantian argument, implying that commitment to a moral duty either conceived as a strict principle or as a second-order principle, to intervene in case of human rights violations would raise problems for the moral justifiability humanitarian intervention, is wrong. Firstly, Dower articulates a strict duty via the following deontological principle: 'whenever A can intervene to stop B from violating rights of C, then A ought to do so'. This deontological claim in the strict sense raises problems. Consider A has a human right to x, which is not realized because of various factors like poverty, the wrongdoing of others or famine; would we think we have a strict moral duty to come to A's aid even if we did not cause the factors that keep A away from its human right to x? Probably not, but if we would accept a moral duty in the strict sense in regard of human rights as presented via a deontological principle, we would have no choice. So acceptance of a principle to intervene in the Kantian strict sense seems unrealistic.¹³⁶ Secondly, I doubt whether Dower's presupposition that the Kantian features within a theory justifying humanitarian intervention demand a deontological principle. For instance, Terry Nardin in *The Moral Basis of Humanitarian Intervention* relies on 'common morality', which embodies both Kantian and Natural Law theory aspects, to justify humanitarian intervention in the light of human rights violations. According to Nardin, from committing to a Kantian conception of respect for humanity does not follow a perfect duty (rather imperfect) and, thus, not a strict obligation to intervene when human rights violations occur. It would morally *permit* military intervention in certain occasions, but we are not required to do more than we can reasonably afford.¹³⁷ My point here is that Dower's presumption, that any theory relying on Kantian theory would inherently entail a deontological principle, is arguable. Hence, it remains a question whether a strict duty to humanitarily intervene in certain situations exists.

Still, this does not mean that Dower's assumption is not supported. Contrary to Nardin, Carla Bagnoli in *Humanitarian Intervention as a Perfect Duty* argues from Kantian theory that humanitarian intervention in case of human rights violations is not just morally *permissible* but is even morally obligatory.¹³⁸ Defending Universal Rights is a deontological principle and a strict *perfect (moral) duty*, which bestows on

136 Dower, *Humanitarianism*, 86 - 89.

137 Nardin, *Moral Basis*, 1-15.

138 Bagnoli, *Duty*, 1-3.

us all. She rejects any defence of merely the moral permissibility of a humanitarian intervention since this implies that states have the right to stay neutral in the face of human rights violations. This would imply that inaction in these cases would not be morally objectionable, which it is according to Bagnoli.¹³⁹

The debate about whether the duty to intervene in case of human rights violations has a 'perfect' or 'imperfect' character comes down to the question: to whom falls the (im)perfect obligation of responding to situations of human rights violations? Mark Evans in *Selectivity, Imperfect Obligations and the Character of Humanitarian Morality* noticed this problem as well. Evans argues that from an account justifying humanitarian intervention based on Kantian theory, follows the responsibility to preserve and protect Universal Human Rights. However, this responsibility (duty) is an 'imperfect obligation' that falls upon the global community. The notion of an imperfect obligation should be understood as followed: obligations need institutionalization, just as much as rights do, in order to be operationalized. If this institutionalization is lacking or is incomplete, the specific responsibilities for discharging obligations cannot be definitely allocated. Moral imperfect obligations leave us an excuse in some cases not to act in accordance with what morality would prescribe, because we do not have the capacities to do so, or we do not see the most efficient way to act upon our duty. We cannot say however that there are no obligations in such instances. Failures to confront violations of humanitarian morality are matters of collective responsibility insofar as the community of human beings has failed to develop the means to convert imperfect obligations into perfect obligations. In the case of a cosmopolitan theory justifying humanitarian intervention on basis of a Kantian notion of human rights that is the responsibility which all human beings collectively share.¹⁴⁰ Whether one can speak of perfect institutionalization of Kantian human rights, hence a conversion of imperfect to perfect obligations involved, I leave to others to discuss.

139 Bagnoli, *Duty*, 3-12.

140 Mark Evans, "Selectivity, Imperfect Obligations and the Character of Humanitarian Morality," in *Human Rights and Military Intervention*, ed. Alexander Moseley and Richard Norman (Burlington: Ashgate Publishing Company, 2002), 136-147.

4.2.3 The Consequentialist Issue Part 1 (2nd Argument)

Regarding the issues involved with a deontological principle, could we plausibly commit to a moral second-order commitment as Dower and Nardin suggest? As a second-order moral commitment our moral duty in regard of human rights would be transformed in a 'duty-all-things-considered'.¹⁴¹ Here we experience a shift from the Kantian to the 'Consequentialist character of arguments criticising the moral justifiability of humanitarian intervention. For 'all-things-considered' implies, amongst other things, that a possible humanitarian intervention could only be justified if the 'good' aimed for, securing Universal Human Rights for a population, would exceed the harm caused by the military action taken to achieve that 'good'. Dower argues that in most situations in which governments agreed to humanitarily intervene this was not the case.¹⁴²

Dower's latter point gains strength when considering Paul Robinson's article *Humanitarian Intervention and the Logic of War*.¹⁴³ Robinson claims that even when we accept that there are certain moral values transcending nation's rights to sovereignty, humanitarian intervention is still a practical and, therefore, moral impossibility. Humanitarian intervention involves the use of force, and is therefore similar to other forms of war. Robinson also indicates that it is too often presumed that results of war are measurable, likely to be favourable, and that the means of war can be kept within certain limits. Like Walzer, Robinson turns to Clausewitz' Logic of War to support his argument. The Logic of War predicts that wars, once started, will always escalate: wars always tend to last longer, involve more violence and are harder to end than initially anticipated. Humanitarian intervention is especially vulnerable to this process since humanitarian aims are likely to be supplanted by military objectives and the natural desire of war: victory. In other words, the tension between a moral war with just cause and the necessity involved to win such a war makes a humanitarian intervention (war) a practical impossibility. Interventions are only humanitarian until they start. After initiation of an intervention the Logic of War takes over. Therefore,

141 Dower, *Humanitarianism*, 86-89.

142 Dower, *Humanitarianism*, 90-91.

143 Paul Robinson, "Humanitarian Intervention and the Logic of War," in *Human Rights and Military Intervention*, ed. Alexander Moseley and Richard Norman (Burlington: Ashgate Publishing Company, 2002), 95-110.

we should reject any assertion that legitimizes any form of war.¹⁴⁴ Robinson's argument is factually thus: the unpredictability of the harmful consequences of war makes it *prima facie* morally wrong to initiate any form of war, including humanitarian intervention.

However, Dower's consequentialist line of argument, which finds support in Robinson's *Logic of War*, can also be used in favour of humanitarian intervention. Stephen Clarke in *Genocide, Consistency and War* rightly counters criticism on the NATO-intervention in Kosovo in 1999 using the same type of argument.¹⁴⁵ NATO wanted to stop Serbians killing, murdering and raping thousands of Kosovars claiming independence from Serbia. NATO's intervention was criticized that it might have brought more destruction and harm in its wake than peace. However, what would have happened if the Serbs were not stopped? Besides the fact that the Serbian genocide could have raged on, the consequences for other European countries could have been disastrous. There are many countries like Serbia that have a rich variety of ethnic and/ or religious groups. Like Serbia there are many regions where tensions among these groups still exist. If NATO would have accepted the genocide of the Serbs in Kosovo without intervening, it could be reasonably argued that in countries like Romania, Hungary, Greece, Slovakia and Bulgaria nationalistic, ethnical sentiments would have increased up to a critical boiling point.¹⁴⁶ In case atrocities would have spread to other countries neighbouring Serbia, NATO would have probably been blamed for not intervening in Serbia. The Rwandan genocide in 1994 is an example of the negative consequences of not intervening in cases of massive human rights violations. An estimated 800.000 people were killed while the world sat idly by, respecting the right to sovereignty and non-intervention of Rwanda as dictated by international law.¹⁴⁷ Would intervention not have been the *moral* right thing to do in Rwanda? An actual example of possible positive consequences of a humanitarian intervention was the situation in Syria a few months ago. People suggested that Assad's government in Syria, which is struggling to maintain power, was hesitant to deploy heavier firepower against its civilians, because this might have

144 Robinson, *Logic*, 95-110.

145 Stephen R.L. Clarke, "Genocide, Consistency and War," in *Human Rights and Military Intervention*, ed. Alexander Moseley and Richard Norman (Burlington: Ashgate Publishing Company, 2002), 113-131.

146 Clarke, *Genocide*, 113-117.

147 Clarke, *Genocide*, 114-116.

opened the door for an international humanitarian intervention as in Libya.¹⁴⁸ Now Assad seems certain that his allies, China and Russia, will block any UNSC-resolution with similar content to that of Libya, he unleashes his full military power on the Syrian population. So aside from the fact that the interventions in Kosovo and Libya directly might have saved numerous people from death, also the long-term consequences of such interventions could limit the amount of people getting killed in other countries.

Summarizing, the argument against the moral duty as a moral second-order principle to save people in case of human rights violation, is not necessarily wrong. However, it does not suffice to reject an argument in favour of the justifiability of humanitarian intervention related to universal human rights. Whether a consequentialist, second-order principle argument is in favour or against humanitarian intervention is totally depended on the situation. I would like to stress that no one can ever exactly predict the future: a huge problem for consequentialist arguments is that one never is able to obtain all information necessary to perfectly assess a situation. Only in that case could a perfect (moral) judgment about how to act when 'all-things-considered' be possible. Thereby I indirectly also nuance Robinson's Logic of War-argument. We cannot really predict the process of war, but similarly we cannot really predict the development of tensions among ethnic and/ or religious populations in a country either and what effect (not) intervening would have had. What other atrocities might have occurred or what difference it would have made if NATO did not intervene in Kosovo or in Libya is beyond our knowledge. We were able to analyze however, that we arguably should have intervened in Rwanda after the genocide took place. Hence, the second argument against the justifiability of humanitarian intervention is not very solid either. In addition, it also shows us that a theory arguing in favour or against humanitarian intervention (or war in general) purely based solemnly on consequentialist arguments does not suffice.¹⁴⁹

148 Remco Andersen, "Interne druk op regime Syrië: nog harder optreden," *Volkskrant*, January 1, 2012, <http://www.volkskrant.nl/vk/nl/2844/Archief/archief/article/detail/3145716/2012/01/31/Interne-druk-op-regime-Syrie-nog-harder-optreden.dhtml>.

149 This is what Norman concluded as well.

4.2.4 The Consequentialist Issue Part 2 (3rd Argument)

Dower's third critical argument in regard of humanitarian intervention seems essentially related to the issue of 'selectivity'. Why did the West intervene in Libya and Kosovo, but not in Rwanda? The argument is used against possible justification of humanitarian intervention. In its traditional form it goes as follows: a humanitarian intervention as in Libya is morally problematic because the West has failed to act consistently in response to similar circumstances in other countries before. The lack of consistency in military responses to similar humanitarian crises shows the inconsistent moral standards of the West and the dominance of self-interest in its decisions about where to intervene.¹⁵⁰ I will show through a number of (counter-) arguments that the traditional selectivity-objection towards humanitarian intervention does not hold. Most importantly, the objection misses the target: it shows us that the West's failure to act consistently in response to similar cases like Libya (or Kosovo) is morally problematic, but not that in the specific case of Libya the intervention was morally wrong.¹⁵¹ In addition, the (moral) issue of mixed motives involved in humanitarian intervention does not necessarily need to be morally problematic. As mentioned in Chapter 2, Walzer argues that it is unrealistic to expect that any political decisions, so also those including intervention (war), are solemnly driven by a single motive or interest. It is inherent to liberal, democratic societies and related forms of government that political decisions are always based on a mixture of arguments related to different motives and mixtures ultimately representing the balance of power and dominating ideas within a country.¹⁵² To be clear, Walzer also indicates that motives are of importance for the justifiability of any type of war. The foregoing only shows how hard it is to exactly tell on what grounds a country initiated an intervention (war) and, as a result, why basing any (moral) judgment concerning a country's action on analyses of these motives is very difficult. Probably, this is the reason why Walzer put so much emphasis on including the wishes and interests of the population whose country would be invaded in justification for humanitarian intervention.¹⁵³ Still, this does not offer any solid guarantee either that the intervening country favours purely or mainly the (humanitarian) interests of the intervened

150 James Pattison, "The Ethics of Humanitarian Intervention," *Ethics & International Affairs* 25, no. 3 (2011): 276.

151 Pattison, *Intervention*, 276.

152 Walzer, *Wars*, 104.

153 Walzer, *Wars*, 105-106.

population. It does limit the possibilities to abuse the 'humanitarian card' politically. In any case, the traditional selectivity-objection in regard of humanitarian intervention does not seem solid.

James Pattison in *The Ethics of Humanitarian Intervention* indicates that the selectivity-objection in another form provides a plausible moral argument against humanitarian intervention.¹⁵⁴ Dower articulates his third factor of conjunction in the same way. Pattison articulates the objection as followed: not the West's supposed double standards are morally problematic; rather its decision to intervene in Libya instead of responding to situations where possibly more lives could have been saved. Again this argument is grounded in a utilitarian (consequentialist) theory: when there is a forced choice between saving two (or more) groups of people, numbers matter, and one should save the greatest number. Aside from the question whether this does not obligate the West to military intervene in every justifiable case whenever it has the means to do so, for this would surely save the greatest amount of people; one can reasonably ask whether the financial means involved in the military intervention in Libya should not have been spent on other dire humanitarian situations in the world.¹⁵⁵ Still, if a consequentialist argument like this would solemnly determine the justifiability of humanitarian intervention (aid), it would still not mean that the intervention in Libya by the West was morally unjustified. After all, as Pattison indicates, saving at least a small(er) number of people is always better than saving none. It is rather the West's failure to *also* provide assistance in other cases that is morally problematic.¹⁵⁶ Notice, on the one hand, how the latter nuance of Pattison could perfectly relate to the Kantian component underlying Dower's Cosmopolitan theory: every human should be treated as an end in itself, never as a means. In other words, the individual lives of those in the bigger group are of no more value than of those in smaller group simply because the bigger group represents more individuals. On the other hand, the fact that Dower's second and third point of conjunction are mainly based on consequentialist thinking, shows his commitment to consequentialism in his Cosmopolitan theory.

154 Pattison, *Intervention*, 271-277.

155 Pattison, *Intervention*, 276-277.

156 Pattison, *Intervention*, 276-277.

A final general argument against the selectivity-objection is that inconsistency is inherent to human moral behaviour. In other words, selectivity is morally acceptable since it is part of morality. Mark Evans argues that it is extremely difficult to imagine any moral system functioning without a granted significant role for selectivity. For example, a moral agent (individual) might not have sufficient knowledge about a certain action. As a consequence he might choose to act less morally or immorally than he would have done when having full knowledge of the situation. So by choosing for a certain type of action some moral demands (could) go unaddressed. Instead of an anti-selective moral extremism, it is preferable and more realistic to support a theory of 'moral moderation'. In such a theory personal non-moral projects allowably limit morality's demands upon agents. Then, it seems, the general opportunity for selectivity obviously increases significantly. Furthermore, the unavoidability of selectivity should not be seen as an unfortunate limitation. It is widely and commonly accepted in the Western world that a moral agent is in some fundamental sense free and autonomous based on a variety of philosophical ideas (Hobbes, Locke, Kant). This is an Enlightenment view we adopted and adhere to until this day. It is the idea that if one should behave according to some rigorous predetermined organization of life; it seems to reduce the agent to a means, a tool for moral ends. In that case, the West's most fundamental moral value, respect for life (as an end in itself), is abandoned. So selectivity in the moral domain follows from the assumption that a human being is naturally free (to choose) how to act. However, acceptance of selectivity in the moral domain should not be interpreted as an argument which *redeems* any immoral behaviour. A theory of moral moderation merely takes into account the practical, non-moral context in which a moral theory is applied to judge upon someone's action. The inclusion of reality in moral judgment does factually not directly trivialize any possible (deontological) weight of a moral rule as indicated in a certain moral theory. Hence, I would like to argue that a theory of moral moderation, the acceptance of selectivity in the moral domain, demands that one is *prima facie* obligated to follow moral rules. Or, put differently, one's moral duty is a duty-all-things-considered. Whether a Kantian defence of humanitarian intervention entails such a second-moral order duty, I already discussed in the above.

Condemning selectivity is thus condemning the ethical convictions grounding our contemporary moral framework. This confirms again that selectivity in moral

decision-making, depended on external and internal impulses, is in itself not a clear-cut argument against humanitarian intervention.¹⁵⁷ However, if non-moral projects cut us in some sense free from our moral duties, then, when applying individual morality on states, nations or international organisations could simply turn to realistic (non-moral) arguments to abandon any moral duties they might have in the international sphere. As Evans indicated, we have a collective obligation to prevent this.

4.3 Summary

It seems the three critiques can be objected, or at least be questioned in return. The main point of this section is that criticism outside the framework of Just War theory cannot build a plausible case against the moral justifiability of humanitarian intervention based on a Kantian conception of universal human rights. Neither arguments within the framework or aimed at the theoretical foundation of Just War theory, nor 'external arguments' seem successful in plausibly criticizing the moral justifiability of humanitarian intervention as argued for by this thesis through a conception of Just War theory. I would like to conclude that the moral justifiability of humanitarian intervention based on a Kantian conception of universal human rights as argued for by Just War theory cannot be rejected immediately and has, therefore, at least some plausibility.

4.4 Walzer's View on Libya

Michael Walzer's theoretical framework of Just War theory was used in this thesis as basis. In anticipation of the conclusion of this thesis, it would therefore be interesting to analyze Walzer's view on the humanitarian intervention in Libya. How does this thesis' elaboration of Walzer's Just War theory in regard of the humanitarian intervention in Libya relate to Walzer's own view? Michael Walzer seems to argue that the intervention in Libya was not justified.

In *The Case Against Our Attack on Libya* Walzer argues that the Libyan intervention is wrong.¹⁵⁸ According to Walzer, firstly, the purpose of the intervention would have been unclear. Secondly, the intervention would not have had significant (sufficient)

157 Evans, *Selectivity*, 136-140.

158 Michael Walzer, "The Case Against Our Attack on Libya," *The New Republic*, March 20, 2011, <http://www.tnr.com/print/article/world/85509/the-case-against-our-attack-libya>.

Arab support. Thirdly, opposition in the UN Security Council would not have stopped with Russia and China; many other countries abstained from voting and the African Union refused to send a representative to the meeting in Paris organised by President Sarkozy to consolidate support for military action.

I doubt whether this claim of Walzer is in accordance with his Just War theory. I turn to James Pattison's *The Ethics of Humanitarian Intervention in Libya* for support.¹⁵⁹ Pattison also noticed the apparent contradiction between Walzer's arguments in *Just and Unjust Wars* and his recently published article in *The New Republic*.¹⁶⁰ According to Pattison, this would only exemplify that Walzer's account of just cause seems unconvincing. Firstly, Walzer would arbitrarily set the bar for intervention extremely high, and, secondly; it would be unclear what precisely constitutes 'acts that shock the moral conscience of mankind'. I do not agree with Pattison on this point. First of all, I think that Walzer's 'India - Pakistan, 1971- example' is a good indicator of what 'acts that shock the moral conscience of mankind' practically entail, and how humanitarian intervention should be defined. Second of all, this thesis suggested a plausible specification of to what 'acts that shock the moral conscience of mankind' could relate: violations of Universal Human Rights. This would also, thirdly, reject the criticism related to the supposed arbitrariness of Walzer's 'extremely high set bar' for justified humanitarian intervention. It seems to me that Pattison's criticism on Walzer's Just War theory is in fact 'question-begging': since Pattison thinks he cannot turn to Walzer's *Unjust and Just Wars* for an argument justifying the intervention in Libya, he rejects Walzer's theory and turns to another source, the International Commission on Intervention and State Sovereignty, which does offer him a framework to ground his argument.¹⁶¹

I confronted Walzer with the apparent contradiction in his view on just war, and Terry Nardin's defence of his article in *The New Republic*.¹⁶² Walzer agrees with Nardin's defence of his article that argues from Walzer's Just War theory. At the time of writing, Walzer's main reason for arguing against an intervention in Libya was that it

159 Pattison, *Intervention*, 271-277.

160 Pattison, *Intervention*, 271-272.

161 Pattison, *Intervention*, 272.

162 e-mail correspondence with Walzer on 26-03-2012 & 4-4-2012.

would not be genuinely humanitarian.¹⁶³ Only a cruel repression after Khadafi's victory over the Libyan rebels could have justified a humanitarian intervention in Libya. Also, Walzer believed that Khadafi would not turn to such acts after securing victory. For none of Khadafi's troops committed massacres in cities it captured during its eastward drive along the Libyan coast.¹⁶⁴ Hence, Mill's argument on self-determination of a population; people's right to shape their own society and/ or political system, as entailed by Walzer's Just War theory, clearly argues against any form of intervention.¹⁶⁵ Walzer also mentioned that in his article he did not take into account the current problems the Western weapon supply to the Libyan rebels currently causes. By failing to secure the Libyan weapon arsenal, these weapons now turn up in surrounding countries like Mali, Niger, Egypt, and Gaza.¹⁶⁶

My own view in respect of Walzer's reaction is as followed:

Firstly, it occurs to me that Walzer claims there was factually no indication of cruel repression of the population by Khadafi forces. One can deliberate about when one can speak of 'cruel repression', but I would like to argue that purposely shooting on civilized areas, thereby killing (ultimately) thousands of civilians, is a deed of cruel repression. Secondly, related to the treatise on consequentialist arguments in section 4.2.3, arguments based on the negative consequences of weapon distribution to the Libyan people can easily be countered by a similar consequentialist argument. What would have happened if the Libyan people were not given the means to defend themselves? Since I already discussed this matter above, I will leave it here. Thirdly, although this thesis relies on Walzer's Just War theory and the morality of war it dictates, it now seems there is a discrepancy between my and Walzer's conception of Just War theory. Does Mill's component in Walzer's Just War theory conflict with my specification of Walzer's theory through (Kantian) Respect for Life?

The discrepancy seems to follow from my specification on Walzer's *Jus ad Bellum* for humanitarian intervention and Postema's account on collective values used to account for Walzer's domestic analogy. Central to both is the Kantian argument, articulated as

163 Terry Nardin, "From Right to Intervene to Duty to Protect: Michael Walzer on Humanitarian Intervention," accessed April 3, 2012, 11-13, <http://www.nyutikvah.org/events/docs/papers/Nardin%20From%20RI%20to%20DP%20doc.pdf>.

164 Email correspondence with Walzer, April 4, 2012.

165 Nardin, *Right to Intervene*, 12.

166 Email correspondence with Walzer, April 4, 2012.

Respect for Life, accounting for the unique moral value of human life. Where I try to account for the existence (social contract theory) and moral value of state rights through their relation to human life, Walzer accounts for their value through Mill's argument on self-determination.¹⁶⁷ The reason I did not address this issue earlier is because I believe both accounts always coincide. Mill's argument on self-determination can even be plausibly supported by Respect for Life as defined by Norman: a right to self-determination can be considered similar to the right of 'living one's own life'. However, as my argument in this thesis showed, this Right to Life applies to all people on this world. Universal Human Rights recognize this, and since they reflect the ultimate moral value (human life), they can, according to me, be plausibly related to Walzer's 'acts that shock the moral conscience of mankind' when violated. Also taken into account that Universal Human Rights better reflect our ultimate moral value than state rights, I concluded that violation of human rights give just cause; i.e. justify humanitarian intervention. Thus, my ethical account initially meant to support and specify Walzer's conception of Just War theory, seems ultimately to result in different conclusions when applied to practical cases. However, I will argue this is not necessarily the case.

I would like to suggest that Walzer might have judged differently on the intervention in Libya reflecting on current facts. Walzer wrote his article on the 20th of March 2011: one day after the intervention was initiated. Walzer indicates at that time he did not believe there would be a massacre in Libya if Khadafi forces would successfully repress the revolt. However, following the acts of Khadafi troops after the 20th of March, amongst other things the shelling of Benghazi and Misrata and related civilians casualties, Walzer might argue now there was a case of 'acts that shock the moral conscience of mankind'. My suggestion seems plausible when considering his view on the current situation in Syria.¹⁶⁸ In *Syria* Walzer articulates requirements for a possible military intervention to stop the atrocities in Syria, and what we should have learned from the Libyan intervention. Since in terms of atrocities (violations of human rights, civilian casualties, etc.) Libya and Syria indeed seem similar cases, and

¹⁶⁷ I like to stress again, I had to come up with my own suggestion for various presumptions in Walzer's theory: Walzer does not thoroughly account for some presumptions or suffices with meagre explanation. As shown in Chapter 3 most fundamental criticism was aimed at these theoretical unclaritys in Walzer's theory.

¹⁶⁸ Michael Walzer, "Syria," *Dissent Magazine*, 9 March, 2012, <http://www.dissentmagazine.org/atw.php?id=706>.

since Walzer at this stage in the Syrian conflict opts for the requirements of a military intervention, I think he would, ultimately, agree with the conclusion of this thesis to which I will turn shortly. If my suggestion would be correct, this would also ground my claim that my specification of Walzer's theory through Respect for Life is compatible with other components of Walzer's theory like Mill's Right to Self-Determination.

Still, would any difference between Walzer's view and mine undermine the plausibility of this thesis? I do not think so. Firstly, because I already stressed in Chapter 1 that Walzer's conception of Just War theory would be *guiding* for this thesis. Hence, my conclusion does not have to necessarily coincide with Walzer's as long as my conception of Walzer's theory does not conflict with its theoretical presumptions. Secondly, even if Walzer would hold on to his opinion in *The New Republic*, our difference of opinion seems mostly a matter of interpretation of the Libyan case. *At the time of writing* Walzer does not speak of cruel repression by Khadafi forces. Based on reports of the United Nations Human Rights Council estimating 15.000 people got killed, I do.¹⁶⁹ This is an essential difference of interpretation, because from this follows Walzer's opinion that Khadafi forces did not commit 'acts that shock the moral conscience of mankind'. Hence, there was no just cause for humanitarian intervention. In contrast, I argue Khadafi forces did commit actions justifying humanitarian intervention. However, I rely on facts determined in a later stage and/or after the war.

What is the definite conclusion of this thesis? Was the humanitarian intervention in Libya justified?

169 Human Rights Council. "Full Report of the International Commission of Inquiry to Investigate All Alleged Violations of International Human Rights Law in the Libyan Arab Jamahiriya," accessed April 6, 2012. www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A_HRC_19_68_en.doc.

Conclusion

Was the humanitarian intervention in Libya justified? *Yes*, it was.

I come to this conclusion as followed:

Firstly, I indicated why I chose, instead of Pacifism and Realism, Just War theory to reflect on the morality of war. More specifically, I articulated reasons for using Michael Walzer's conception of Just War theory, and related *Jus ad Bellum* 'in the strict sense'. Secondly, I set out Walzer's Just War theory: what grounds it, what presumptions it entails, and what requirements it spells out for just war. Regarding humanitarian intervention, response to 'acts that shock the moral conscience of mankind' would provide just cause for war. Thirdly, to account for the plausibility of Walzer's Just War theory I reflected on its theoretical groundwork and presumptions. It seemed that Walzer's theory could entail Norman's idea of Respect for Life that accounts for the unique value we assign to human life and, thereby, the moral wrongness of killing. Criticism focussing on Walzer's domestic analogy was countered. Relying on Postema's idea of collective values, the domestic analogy can plausibly account for the relation between individual and state rights (individual and state morality). When taking into account Van Willigenburg's account on the relation between individual and state on basis of identity, Walzer's domestic analogy also seems able to account for the moral justifiability of killing (war) in state (rights) defence. Fourthly, I showed Universal Human Rights can plausibly be interpreted as 'acts that shock the moral conscience of mankind'. I also indicated that the moral value Universal Human Rights and state rights factually depend on the same philosophical foundation: a Kantian idea accounting for the unique moral value of human life. This is the essence of the ethical conflict between the two set of rights. Since Universal Human Rights better reflect the Kantian value of human life than state rights, the former trumps over the latter. Therefore, violations of UNHR would justify a humanitarian intervention.

Since it was reported that in Libya gross violations of human rights were committed, there was just cause for a humanitarian intervention. In addition, the humanitarian intervention in Libya, as it turned out, had a reasonable chance of success. Finally, the

intervention in Libya also met Walzer's three requirements to be rightly called 'humanitarian'. Firstly, the main purpose of the intervention was to rescue people from certain slaughter. Secondly, the intervention had consent of the people who were to be rescued. Thirdly, foreign forces left Libya after the military intervention was accomplished, and officially did not impose any strict political constraints or conditions on the country or its people. So based on all findings in the above, I think I can plausibly conclude: the humanitarian intervention in Libya was justified.

Are there no weaknesses in the arguments leading up to this conclusion?

Quite possibly there are. After all, this thesis analyses the morality of war in general, not only one specific aspect of it. As a consequence, it is vulnerable to criticism over the whole theoretical spectrum it covers. For instance, one could criticize my (plausibly argued for) Kantian(-like) account grounding Universal Human Rights. In such a case one could argue that, since my account for Universal Human Rights could be criticized, the assigned moral value to human rights derived from that account is also under critique. This could ultimately affect the plausibility of my argument regarding the justifiability of the humanitarian intervention in Libya. Instead, I could have focussed only on the particular aspect of the morality of war with which this thesis is ultimately concerned: humanitarian intervention. As I hopefully made clear though, considering the coherency, the solidity, and impact of this thesis, I deemed it necessary to extensively address the historical background and theoretical groundwork of the underlying (Just War) theory justifying or condemning humanitarian intervention. By countering fundamental criticism on Just War theory and humanitarian intervention in particular, and taking into account Professor Walzer's personal response on apparent controversy within his views, I would like to think this thesis is an interesting contribution to the (academic) debate about the moral justifiability of the intervention in Libya.

The (academic) contribution of this thesis consists of 4 points:

Firstly, this thesis presents an extensive and (therefore) well-grounded argument claiming the humanitarian intervention in Libya was morally justified. Such a clear and controversial statement calls for critical reactions. So hopefully this thesis results in a new impulse in the *academic* debate about the humanitarian intervention in Libya. Secondly, this thesis specifies and adds theoretical content to Walzer's Just

War theory in response to criticism. Thirdly, by specifying Walzer's general conditions for justified humanitarian intervention, this thesis could serve not only as a theory, but also as a practical model to analyse the moral justifiability of humanitarian interventions of the past and/or in the future. On the one hand, specifying 'acts that shock the moral conscience of the world' through Universal Human Rights gives direction to Walzer's general requirement for justified humanitarian intervention. On the other hand, this specification does not limit Walzer's theoretical framework insofar it would exclude other situations of humanitarian intervention from ethical analysis since Universal Human Rights cover all people all over the world. In other words, this thesis' conception of justified humanitarian intervention (Just War theory) seems applicable to all cases of (possible) humanitarian intervention with military means. Of course, any ethical conclusions regarding the moral justifiability of a humanitarian intervention should always be considered in a wider (political, economical) context. This thesis has often stressed this nuance. Fourthly and finally, this thesis might bring the ethical aspect of the Libyan intervention under everyone's attention (again). It should not be forgotten that from an ethical perspective this intervention was a clear example of a morally justified humanitarian intervention. Even if it turns out Libya will be a failed state with possible negative consequences for the region, and/ or Western and Arab Leaders had other hidden motives for the intervention, I hope future inquiries on the Libyan intervention also take into account that the NATO-Arab League coalition stood up for rights reflecting our highest moral value of which we believe it to be 'universal'. For not assigning any importance to this ethical aspect of the intervention, is factually a statement that morality does no longer matter in our (political) judgments on right or wrong action (decisions). This is not only a wrong assumption. Moreover, as articulated in the introduction, it would factually indicate a denial of what makes us essentially human.

Epilogue

Current developments in Syria seem to desperately call for similar action as in Libya. At the moment of writing, the Libyan and Syrian case seem almost related like 'Yin and Yang': they are part of the same discourse, signifying both contrary and complementary values within that discourse, thereby embodying a comprehensive account on the essential issues involved in considerations about humanitarian intervention. For in regard of committed atrocities against their populations Libya and Syria are similar cases. Hence, deliberation about the moral justifiability of an intervention in Syria would seem to result in a 'Libyan conclusion'. Yet, compared to Libya, the international community responds completely differently to the human rights violations under the regime of Syrian President Assad. Not for long, will the enduring indecisiveness and incompetence of the international community to come to meaningful action in Syria result in an (painful) example of the consequences of non-intervention. One could reasonably ask however: could such an example be avoided taking into account the political reality politicians have to deal with? Libya and Syria: Yin and Yang.

"Diplomacy is not like chess.

It is more like jazz - a constant improvisation on a theme."

† Richard Holbrooke

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