SOVEREIGNTY AS RESPONSIBILITY IN LEGAL THEORY: R2P AND THE RESPONSIBILITY OF THE INTERNATIONAL COMMUNITY

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Abstract: This article examines the concept of sovereignty as responsibility from a legal-theoretical perspective. It reconstructs that concept within the doctrine of the Responsibility to Protect (R2P) through three elements: the responsibility of state agencies to exercise legal power in accordance with international law; the responsibility of the international community to constrain state power when states fail to do so; and the international legal norms requiring protection against atrocity crimes. The article makes two claims. First, these three elements rest on uneven legal-theoretical foundations. The first was substantially developed in twentieth-century legal theory, especially in the works of Hans Kelsen, Alf Ross, and, in a complementary respect, Hersch Lauterpacht. The third, concerning the obligation to protect populations from atrocity crimes, had important antecedents and was further clarified in legal-theoretical accounts of human rights, especially in the works of John Rawls, Joseph Raz, and Ronald Dworkin. By contrast, the second element – the responsibility of the international community – was elaborated in moral philosophy during the emergence of R2P but remained undertheorized in legal theory. Second, the article argues that legal theory can provide a basis for reconstructing this second element and offers guidelines for its further development.

Keywords: sovereignty as responsibility; Responsibility to Protect; legal theory; international law; human rights; atrocity crimes

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1. INTRODUCTION

In 2000, Kofi Atta Annan posed a question that has since become central to debates on international order: *"If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?"*[1] The Responsibility to Protect (R2P), formulated by the International

[1] ANNAN, K. A. *We the Peoples: The Role of the United Nations in the 21st Century*. UN Doc. A/54/2000, para. 217.

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Commission on Intervention and State Sovereignty in 2001,[2] endorsed in the 2005 World Summit Outcome,[3] and further elaborated in the United Nations Secretary-General's 2009 three-pillar framework,[4] constitutes one response to that question. At the center of R2P lies the proposition that sovereignty is not merely a title to authority, but also a responsibility to protect populations from atrocity crimes, that is, genocide, war crimes, crimes against humanity, and ethnic cleansing.

This article examines that proposition from the standpoint of legal theory. It reformulates Annan's question as follows: must the international community constrain the exercise of public power by state agencies when those agencies control individuals in violation of international law and thereby subject them to gross and systematic domination incompatible with human dignity?

In this view, the concept of sovereignty as responsibility, as expressed in the foundational R2P documents, can be divided into three elements. The first is the responsibility of state agencies to exercise power over individuals in accordance with international law. The second is the responsibility of the international community to limit the freedom of action of state agencies when they fail to do so. The third is the body of international legal principles and rules requiring state agencies to protect individuals under their control from atrocity crimes. These elements perform distinct functions. The first concerns the responsibility of the state through its agencies and corresponds to sovereignty as responsibility in the narrow sense. The second concerns the responsibility of the international community. The third concerns the normative content of the state's obligation to protect. Taken together, they constitute sovereignty as responsibility in the broader sense.

The term state agencies is used deliberately. The state does not act as an abstract entity. It governs through agencies that exercise legislative, executive, and judicial power over individuals and populations. In that sense, when international law binds states, it ultimately binds individuals acting in their capacity as state agents or organs,[5] while the state, as a legal person, bears collective responsibility for compliance or non-compliance with international obligations.[6] A legal-theoretical account of sovereignty must therefore attend not only to the state as a legal person, but also to the agencies through which state authority is concretely exercised.

When this article speaks of the international community, it refers primarily to what Hans Kelsen understands as the community of states constituted under genuine general international law, that is, a community of states in which states themselves act, in part, as organs of international law within a decentralized international legal order.[7] The term also refers to the community of states under the law of the UN Charter, insofar as that

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2 International Commission on Intervention and State Sovereignty (ICISS). *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*. Ottawa: International Development Research Centre, 2001.

3 UN General Assembly. *World Summit Outcome Document*. UN Doc. A/RES/60/1, paras. 138–139.

4 UN Secretary-General. *Implementing the Responsibility to Protect*. UN Doc. A/63/677, paras. 11–12.

5 KELSEN, H. *General Theory of Law and State*. Cambridge, MA: Harvard University Press, 1949, p. 348.

6 Ibid., pp. 350–351.

7 KELSEN, H. *Principles of International Law*. New York: Rinehart, 1952, pp. 401–403.

law is regarded as having replaced genuine general international law or as being in the process of doing so.[8] In this second sense, the reference is not limited to the written rules of Charter law, but also includes their background, as well as written principles interpreted in light of the purposes of a potentially new legal order and, where necessary, in light of those aspects of genuine general international law that remain legally relevant. Taken together, these two senses imply that the responsibility of the international community encompasses both the responsibility of state agencies in their capacity as agencies of international law and that of UN agencies performing their functions in light of UN Charter law understood in this broader sense.

The first claim of this article is that these three elements do not rest on equally developed theoretical foundations. The first element had already been substantially elaborated in twentieth-century legal theory before the emergence of R2P. The third element likewise had important antecedents in human rights legal theory and was further clarified by legal theorists around the time R2P emerged. By contrast, the second element entered R2P discourse without comparable legal-theoretical reconstruction. Although moral philosophy has increasingly explored the idea that the international community may bear responsibilities in the face of mass atrocity, a specifically legal-theoretical account remains undeveloped. The second claim is that the responsibility of the international community can be reconstructed within legal theory.

The argument of this article is therefore twofold. First, it identifies the legal-theoretical foundations of the first and third elements, showing that they either predate R2P or developed alongside it. Second, it suggests how the second element can be developed from a legal-theoretical perspective by building on insights developed for the other two.

Section 2 revisits the legal-theoretical foundations of the first element through a condensed and revised version of an established five-postulate account. Section 3 turns to the third element and examines legal theories of human rights that illuminate the normative content of the state's responsibility to protect. Section 4 then shows that moral philosophy had already begun to explore the proposition that the international community may bear moral responsibility in response to mass atrocity. Section 5 sketches the main legal-theoretical directions in which such responsibility might be reconstructed.

2. THE LEGAL-THEORETICAL FOUNDATIONS OF THE FIRST ELEMENT: SOVEREIGNTY AS RESPONSIBILITY IN THE NARROW SENSE

The responsibility of state agencies to exercise authority in accordance with international law rests on a conception of sovereignty that predates the Responsibility to Protect. Long before R2P was formulated in institutional discourse, legal theory had already developed key elements of what may be reconstructed as sovereignty as responsibility. That structure can be traced primarily through the works of Hans Kelsen and Alf Ross and, in an important complementary respect, Hersch Lauterpacht.

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[8] Ibid., pp. 57–58.

Kelsen's most comprehensive elaborations of international law are found in *General Theory of Law and State* (1945) and the second edition of *Pure Theory of Law* (1960), although important elements of his position also appear in *The Problem of Sovereignty and the Theory of International Law* (1920), *Introduction to the Problems of Legal Theory* (1934), *Law and Peace in International Relations* (1942), *Peace Through Law* (1944), *Principles of International Law* (1952), and *Collective Security under International Law* (1957). Ross's central account is set out in *A Textbook of International Law* (1947), supplemented by important observations in *Constitution of the United Nations* (1950) and *On Law and Justice* (1953). Lauterpacht, especially in *The Function of Law in the International Community* (1933), adds important insights into the nature, function, and adjudicability of international law.

A version of the reconstruction of these theorists' insights has previously been articulated in legal-theoretical scholarship[9] through three theories of sovereignty and five postulates of sovereignty as responsibility. The present article develops that reconstruction further in a more concise and revised form, introducing certain structural modifications, additional observations, and a stronger focus on the contribution of each author. The analysis is organized around three ideal types of sovereignty and three corresponding claims concerning the legal character of international law, the position of the state and state agencies within the international legal order, and the legally conditioned character of sovereign discretion.

2.1 THREE IDEAL-TYPES OF SOVEREIGNTY FROM THE ASPECT OF INTERNATIONAL LAW

Ross's analysis provides an important basis for distinguishing three ideal--types of sovereignty from the perspective of international law. Although he does not formulate them as a fixed typology, his account makes it possible to reconstruct three positions: theories of absolute sovereignty, theories of limited state obligation, and theories of sovereignty as responsibility. The third matters most here because it captures a conception of sovereignty that legal theory had already begun to articulate before the later emergence of R2P.

Theories of absolute sovereignty hold that a sovereign state cannot be legally bound because sovereignty, by definition, excludes subordination to law.[10] In this view, the sovereign exists primarily to secure the vital interests of its political community, and international legal obligation therefore appears incompatible with sovereignty itself.[11] Such theories ultimately undermine the very idea of international law as a genuinely binding legal order.

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[9] KREŠIĆ, M. – ŽUNAC, J. Reflections on the Responsibility to Protect (R2P) Through the Prism of Theoretical and Legal Concepts of Sovereignty, Intervention and Discretion. *Zagreb Faculty of Law Review*. 2025, Vol. 14, No. 1, pp. 77–101, pp. 80–85.

[10] ROSS, A. *A Textbook of International Law: General Part*. New Jersey: The Lawbook Exchange, 2006, pp. 39, 45; GUASTINI, R. *La sintassi del diritto* [The Syntax of Law]. Torino: Giappichelli, 2014, p. 355.

[11] ROSS, *A Textbook of International Law*, p. 39.

A second group consists of theories of limited state obligation. These approaches accept that states may be bound by international law, but only within supposedly natural limits, most notably through explicit consent[12] and/or outside reserved domestic matters.[13] They are less radical than theories of absolute sovereignty, but remain conceptually restrictive, since they make the binding force and scope of international law dependent on prior limits external to international law itself. As Ross's analysis suggests, such approaches cannot adequately account for the historical development of international law as an expanding normative order.[14]

Important critical observations made by Kelsen and Lauterpacht may also be read against these two positions. Kelsen argues that reducing international law to a part of national law may support imperial ideologies in which the interests of states alone are treated as decisive.[15] Lauterpacht similarly criticizes theories that reduce international law to a mere system of coordination between states, as well as theories that treat certain international disputes as inherently non-justiciable. In his view, such approaches reduce international law either to a negation of law itself or to a deficient and weakened version of law.[16]

Against these positions, a third ideal-type may be reconstructed: sovereignty as responsibility. Elements of this conception may be found in the theories of international law developed by Ross, Kelsen, and Lauterpacht. Under this view of sovereignty as the third ideal-type, the state is a legal subject that bears collective responsibility for the acts of its state agencies and whose obligations are not limited in advance by conceptions of the non-legal character of international norms, the impossibility of international norms governing matters within the domain of domestic jurisdiction, or the necessity of consent for the creation of international norms. This ideal-type may be reconstructed through five main postulates.[17]

2.2 INTERNATIONAL LAW AS A SOURCE OF BINDING OBLIGATIONS

The first two postulates may be reconstructed from the insights developed by Kelsen, Ross, and Lauterpacht into the legal character of international law. They stand against both absolutist and restrictive conceptions of sovereignty. The first postulate is that international law is a system of norms capable of generating legal obligations.[18] The second is that the content of those obligations is determined by international law itself.[19] Taken together, these two postulates imply that international law must be

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12 Ibid., pp. 20, 40, 41.

13 Ibid., p. 46.

14 Ibid.

15 KELSEN, H. *Pure Theory of Law*. New Jersey: The Lawbook Exchange, 2005, p. 343.

16 LAUTERPACHT, H. *The Function of Law in the International Community*. New Jersey: The Lawbook Exchange, 2000, pp. 407–423, 430–438.

17 KREŠIĆ – ŽUNAC, *c. d.*, pp. 81–82.

18 KELSEN, *General Theory of Law and State*, p. 66; KELSEN, *Pure Theory of Law*, p. 320; ROSS, *A Textbook of International Law*, p. 17; LAUTERPACHT, *c. d.*, p. 422.

19 KELSEN, *Pure Theory of Law*, p. 338; ROSS, *A Textbook of International Law*, pp. 37, 46, 181, 192.

treated as law in its own right. If international law generates legal obligations, then it cannot be reduced to morality, diplomacy, or mere political convenience. And if the content of those obligations is determined by international law itself, then that content cannot be reduced either to the moment of state consent or to permanently reserved domestic matters.

Kelsen and Ross approach this conclusion differently, but in complementary ways. Ross emphasizes the legal consciousness of the subjects of international law, that is, their acceptance that international law binds them.[20] Kelsen, by contrast, argues that international law possesses legal character because it includes sanctions applicable in cases of unlawful conduct.[21] Their arguments differ at the level of explanation, but both support the proposition that international law constitutes a genuinely normative legal order.

Ross and Kelsen also provide an important insight into the variable scope of international law. Matters once treated as falling exclusively within domestic jurisdiction may gradually become internationally regulated, whether through treaty, custom, or institutional development.[22] Lauterpacht likewise argues that the unwillingness of states to submit certain areas of inter-state relations to international adjudication does not arise from the nature of law itself, but from their reluctance to surrender absolute control over the regulation of those matters.[23] Kelsen similarly denies that there is any natural distinction between domestic and international spheres for adjudication.[24] These insights support the conclusion that states are subject to a plurality of obligations derived from multiple sources of international law, obligations which do not always depend on state consent and which may extend across evolving regulatory domains.

The first two postulates already point toward a conception of sovereignty as responsibility. International law binds legal subjects on the basis of its own rules governing the creation and content of international legal norms.

2.3 STATES AS BEARERS OF INTERNATIONAL OBLIGATIONS AND RESPONSIBLE LEGAL SUBJECTS

The next two postulates may likewise be reconstructed from the insights of Kelsen and Ross into the legal position of the state within the international order. The third postulate is that only sovereign states can bear international obligations in the

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[20] ROSS, *A Textbook of International Law*, p. 54; ROSS, A. *On Law and Justice*. New Jersey: The Lawbook Exchange, 2004, pp. 60–62.

[21] KELSEN, H. *Collective Security Under International Law*. Washington: United States Government Printing Office, 1957, p. 6; KELSEN, *Pure Theory of Law*, p. 321.

[22] ROSS, *A Textbook of International Law*, pp. 22, 46; ROSS, A. *Constitution of the United Nations: Analysis of Structure and Function*. New Jersey: The Lawbook Exchange, 2008, pp. 120–121; KELSEN, *General Theory of Law and State*, pp. 350, 365.

[23] LAUTERPACHT, *c. d.*, p. 174.

[24] KELSEN, H. *Peace Through Law*. New Jersey: The Lawbook Exchange, 2008, p. 23.

full legal sense.[25] The fourth is that the state bears collective responsibility for breaches committed by its agencies.[26]

Kelsen's and Ross's analyses show that the sovereign state occupies a central position as the legal subject through which international law operates upon individuals. On their view, international law genuinely binds individuals only indirectly, through state legal orders.[27] For that reason, sovereign states must be capable both of bearing international obligations and of giving domestic effect to them.[28]

At the same time, Kelsen and Ross offer important insights into the possibility that states may authorize centralized international institutions to generate legal effects either *vis-à-vis* states or directly *vis-à-vis* individuals. Such developments do not abolish the mediating role of sovereignty. Rather, they reveal different theoretical understandings of how competences may be transferred or delegated within an international legal order.[29] Lauterpacht likewise emphasizes that theories advocating inherent limits to international adjudication are unscientific, useless, and obstructive of the development of international law.[30]

The fourth postulate follows from this account of the state as the central bearer of international legal obligation. If the state is the relevant legal subject, then responsibility for breaches of international law is attributed primarily to the state as a whole rather than merely to the individual officeholders whose conduct gave rise to the breach. In this respect, the state appears as a unitary bearer of responsibility, even though the relevant conduct is carried out through distinct agencies, that is, through individuals holding public office. Kelsen and Ross help explain the state's collective international responsibility for the acts of its agencies by analogy to the manner in which national law attributes responsibility to corporations as legal persons.[31]

This point is important for the present argument. It shows that sovereignty cannot be understood apart from responsibility for the exercise of public power. Although state conduct is always carried out through particular agencies and officeholders, international responsibility is borne by the state as a collective legal person. Sovereignty, in that sense, is inseparable from responsibility for how public authority is exercised.

2.4 SOVEREIGN DISCRETION WITHIN INTERNATIONAL LAW

The fifth postulate may be reconstructed from the insights of Kelsen and Ross into the freedom of action of states within the international legal order. It is that

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[25] KELSEN, *General Theory of Law and State*, p. 348; KELSEN, *Pure Theory of Law*, pp. 290, 324; ROSS, *A Textbook of International Law*, pp. 35, 37; GUASTINI, *c. d.*, pp. 358–359.

[26] KELSEN, *General Theory of Law and State*, p. 355; KELSEN, *Pure Theory of Law*, pp. 325–326; ROSS, *A Textbook of International Law*, p. 33.

[27] KELSEN, *General Theory of Law and State*, p. 348; KELSEN, *Pure Theory of Law*, p. 327; ROSS, *A Textbook of International Law*, p. 17.

[28] ROSS, *A Textbook of International Law*, pp. 17, 23, 33; KELSEN, *Pure Theory of Law*, pp. 326–327.

[29] KELSEN, *Peace Through Law*, p. 100; ROSS, *A Textbook of International Law*, p. 30.

[30] LAUTERPACHT, *c. d.*, p. 435.

[31] ROSS, *A Textbook of International Law*, p. 30; KELSEN, *General Theory of Law and State*, p. 349.

sovereign states retain discretion in regulating the freedom of action of their populations and in conducting relations with other states only within the normative limits of international law.[32]

Kelsen's and Ross's analyses show that this postulate concerns discretion rather than unrestricted freedom. Sovereign states retain freedom of action in regulating the conduct of their populations and in conducting relations with other states, but that freedom is neither unlimited nor self-justifying.[33] Discretion is therefore best understood not as freedom from law, but as a legally structured choice between alternative courses of action.

It follows that, where international obligations exist, state agencies may govern only within the limits and directions established by international law.[34] Sovereignty, in this view, is not lawless power, but legally conditioned authority. The fifth postulate thus completes the structure of sovereignty as responsibility: the state is sovereign not because it stands outside the law, but because it exercises legally structured authority within an international legal order.

2.5 SOVEREIGNTY AS RESPONSIBILITY AND INTERVENTION

The fourth and fifth postulates also make it possible to reconstruct the concept of intervention. In this view, intervention is not conceptually opposed to sovereignty but may appear as one of the legal consequences of sovereignty understood as responsibility. For present purposes, intervention may be understood as action – coercive or non-coercive – by which an external authority constrains a state's exercise of authority over its population.[35]

Conceived in this way, intervention is linked above all to the fourth postulate concerning the collective responsibility of the state for internationally wrongful conduct. Kelsen's account of international law as a coercive legal order provides one important insight into the legal consequences of such conduct. On a coercive reading, those consequences may take the form of sanctions, including physical force or non-forcible measures functionally analogous to it.[36] Ross, by contrast, offers the basis for a non-coercive reading, under which such consequences may instead be understood as legally permitted forms of interference that do not amount to sanctions in the strict sense.[37] In any case, a state's acts contrary to international law may give rise to intervention as a legal consequence of those acts.

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[32] KELSEN, H. *Das Problem der Souveränität und die Theorie des Völkerrechts: Beitrag zu einer reinen Rechtslehre*. Tübingen: Mohr Siebeck Verlag, 1928, p. 148; KELSEN, *General Theory of Law and State*, pp. 350–351; KELSEN, H. *Introduction to the Problems of Legal Theory: A Translation of the First Edition of the Reine Rechtslehre or Pure Theory of Law*. New York: Oxford University Press, 1992, pp. 117, 119; KELSEN, *Pure Theory of Law*, pp. 343, 345; ROSS, *A Textbook of International Law*, p. 40.

[33] ROSS, *A Textbook of International Law*, pp. 40, 44, 181–191; KELSEN, *Pure Theory of Law*, pp. 338–339.

[34] ROSS, *A Textbook of International Law*, pp. 44, 183; KELSEN, *General Theory of Law and State*, p. 350; KELSEN, *Pure Theory of Law*, pp. 339, 341.

[35] KREŠIĆ – ŽUNAC, *c. d.*, p. 83.

[36] KELSEN, *Principles of International Law*, p. 58.

[37] ROSS, *A Textbook of International Law*, p. 54.

Ross's and Kelsen's analyses of discretion likewise help explain why intervention may also be derived from the fifth postulate concerning the law-bound character of sovereign discretion. Since state authority is never legally unlimited, but always constrained by international law,[38] international law may "intervene" by prohibiting certain forms of conduct, imposing positive obligations, and attaching consequences to violations. In that way, it constrains how state agencies govern individuals and populations.

This section has sought to show that the essential structure of sovereignty as responsibility in the narrow sense, understood as the first element of sovereignty as responsibility in the broader sense, had already been developed in legal theory before the emergence of R2P. The next section turns to the third element: the theoretical foundation of the normative content of R2P.

3. THE LEGAL-THEORETICAL FOUNDATIONS OF THE THIRD ELEMENT: THE OBLIGATION OF STATES TO PROTECT THEIR POPULATIONS FROM ATROCITY CRIMES

While the first element of sovereignty as responsibility concerns the legal status of the state as the bearer of international obligations, the third concerns the content of those obligations. More specifically, it concerns the claim that international law requires state authorities to exercise power so as to protect persons under their control from atrocity crimes.

This third element attracted considerable attention in post-Cold War debates on humanitarian intervention. For Michael Walzer, humanitarian intervention is military action on behalf of oppressed people, justified only as a response, with reasonable expectations of success, to acts that *"shock the moral conscience of mankind"*.[39] The issue must be situated within the tension between *jus contra bellum* and *jus ad bellum*. The former expresses the prohibition of war or forcible intervention, reflected in Article 2(4) of the UN Charter. The latter concerns the exceptional legal grounds on which force may nevertheless be permitted, especially self-defense and collective action authorized by the Security Council. R2P inherits this tension: it does not remove the prohibition of unilateral forcible intervention, but asks whether mass atrocity situations may trigger legally regulated forms of collective international action.

This section examines theories of human rights concerned with protection against atrocity crimes, focusing on accounts that connect individual protection with limits on state sovereignty in a way consistent with a legal understanding of human rights. Whereas doctrinal scholarship asks which human rights norms exist within a legal system, legal theory asks about the nature, structure, and scope of human rights. The analysis proceeds on that second level and focuses on three especially instructive authors: John Rawls, Joseph Raz, and Ronald Dworkin.

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[38] Ibid., p. 44.

[39] WALZER, M. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. New York: Basic Books, 1977, pp. 104, 107.

Rawls, in The Law of Peoples – first presented in article form in 1993 and later published as a monograph in 1999 – offered an important pre-R2P account of human rights as a special class of rights whose violation affects a political society's standing in international order. Raz, in work first presented in 2007 and later published as *Human Rights Without Foundations* (2010), adopted and refined Rawls's insight to clarify the nature and function of human rights. Dworkin further enriched this discourse. By 2010, the core of his position was already visible in two symposia devoted to his work, and it was later elaborated in *Justice for Hedgehogs* (2011) and *A New Philosophy for International Law* (2013).

Taken together, these three authors illuminate the legal-theoretical basis of the third element. This section argues that R2P's third element rests on a body of legal-theoretical work that partly predates, and partly emerged alongside, the doctrine itself. Within the Rawls–Raz–Dworkin framework, human rights perform three related functions within international society.[40] First, they limit the lawful exercise of state authority. Second, their violation may justify international response. Third, they limit legitimate pluralism by identifying a minimum threshold below which the treatment of human beings cannot fall.

3.1 HUMAN RIGHTS AS LIMITS ON STATE AUTHORITY

The first function of human rights is to limit the lawful exercise of state authority. Rawls treats human rights as a distinct category of rights that limits a state's internal autonomy. As he writes, human rights *"are part of a reasonable law of peoples and specify limits on the domestic institutions required of all peoples by that law"*.[41] In this sense, they *"specify the outer boundary of admissible domestic law of societies in good standing in a just society of peoples"*.[42]

Raz's account of human rights as limits on state power can be derived from reflections more directly connected to their second function. He treats human rights as constraints on sovereignty whose actual or anticipated violation may, as discussed below, provide a defeasible reason for international action against a state. Such action is otherwise excluded by the principle of sovereignty, understood as a general prohibition on external interference in a state's internal affairs, even when that state is *"in the wrong"*.[43] Dworkin likewise treats human rights as limits on internal state autonomy. He describes this as the *"trumps-over-sovereignty"* idea: the protection of human rights may override claims of sovereign discretion.[44]

Taken together, these positions support the conclusion that human rights function as normative limits on state authority. This matters because state agencies exercise

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40 RAWLS, J. The Law of Peoples. *Critical Inquiry*. 1993, Vol. 20, No. 1, pp. 36–68, p. 59.

41 Ibid.

42 Ibid. See: RAWLS, J. *The Law of Peoples*. Cambridge, MA: Harvard University Press, 1999, p. 79.

43 RAZ, J. Human Rights Without Foundations. In: BESSON, S. – TASIOULAS, J. (eds.). *The Philosophy of International Law*. Oxford: Oxford University Press, 2010, pp. 321–337, p. 328.

44 DWORKIN, R. *Justice for Hedgehogs*. Cambridge, MA: Harvard University Press, 2011, p. 333. See also: DWORKIN, R. Response. *Boston University Law Review*. 2010, Vol. 90, pp. 1059–1087, p. 1084.

legally constituted power over populations. If that power is limited by human rights, its exercise is not left entirely to domestic discretion. International human rights norms instead structure how state authorities must govern. They impose obligations on state authorities and create grounds on which compliance may be demanded. They do not necessarily create directly enforceable international rights for individuals in every legal order; that depends on incorporation and direct applicability within national law. Even so, they constrain the legal space within which state agencies may act. In that sense, the first function of human rights already supports the third element of sovereignty as responsibility. Meaningful human rights protection requires, at a minimum, protection against atrocity crimes.

3.2 HUMAN RIGHTS AS A GROUND OF INTERNATIONAL INTERVENTION

The second function of human rights is to justify international intervention in response to certain forms of state conduct. Rawls argues that human rights play a special role within a reasonable "law of peoples" because they limit the permissible justifications for war and regulate its conduct.[45] He further maintains that fulfilment of human rights is sufficient to exclude justified coercive intervention by other peoples, whether through sanctions or, in extreme cases, military action.[46] The implication is clear: where human rights are not protected, the barrier against international intervention may weaken.

Raz makes this connection even more explicit when he writes that *"the notion of sovereignty is the counterpart of that of rightful international intervention"*.[47] Because the principle of non-intervention occupies a central place within international law, departures from it require especially strong justification. It is not enough that a state acts wrongfully in a general sense. The wrong must be serious enough, within the normative framework of the international community, to justify action that would otherwise be impermissible.[48] Human rights, in this view, identify a class of wrongs capable of grounding such a response.

Dworkin likewise treats human rights as capable of justifying intervention. He frames them in tension with the principle of non-intervention, that is, the idea that *"one nation or group of nations must not interfere in the internal affairs of another nation"*.[49] In his account, human rights *"trump"* sovereignty in the sense that a state cannot invoke sovereign autonomy as a shield where it subjects persons under its authority to conduct fundamentally inconsistent with their dignity. In a later work, Dworkin argues that sovereignty does not protect a state against legitimate intervention in cases of atrocity

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45 RAWLS, *The Law of Peoples*, 1999, p. 79.
46 Ibid., p. 80.
47 RAZ, *c. d.*, p. 330.
48 Ibid.
49 DWORKIN, *Justice for Hedgehogs*, p. 333.

crimes and, under certain conditions, even where the Security Council has failed to authorize such action.[50]

For present purposes, the significance of these positions lies not in resolving whether intervention is lawful in every such case, but in clarifying the theoretical structure of the underlying international obligation to respect human rights. If some human rights violations may justify international intervention, then minimum standards of human rights protection define the minimum conditions for the autonomous exercise of state authority. Protection against atrocity crimes is therefore not merely a moral aspiration. It belongs to the category of obligations whose breach affects the international standing of the state and may trigger intervention from outside it.

The argument of Rawls, Raz, and Dworkin therefore reinforces the conclusion reached in the previous subsection. Human rights do not merely impose inward-facing duties of good governance. They also structure the relation between states and the international community by identifying violations grave enough to become matters of international concern and intervention. That is why the obligation of states to protect their populations from atrocity crimes may be reconstructed as part of the normative content of human rights legal theory.

3.3 HUMAN RIGHTS AND THE LIMITS OF LEGITIMATE PLURALISM

The third function of human rights is to limit pluralism. Human rights do not eliminate political, legal, and cultural diversity. They do, however, identify a minimum threshold below which variation can no longer be justified as pluralism. In that sense, they help define the substantive content of the obligations that states owe to persons under their authority.

Rawls explicitly connects human rights with the limits of pluralism among peoples. He accepts that historical, political, and cultural diversity produces different forms of social and political organization.[51] At the same time, he insists that human rights mark minimum standards around which no variation is permissible. They therefore function as constraints on pluralism among societies.[52] The pursuit of appropriate conditions for cooperation – both within and between states – underpins Rawls's articulation of a determinate set of human rights.[53]

Raz does not accept Rawls's method of deriving human rights from a prior principle of cooperation, but he likewise rejects the idea that human rights are reducible either to radical relativism or to a single uniform moral code. For Raz, human rights are rights held by individuals under conditions in which governments have duties to protect the interests those rights safeguard.[54] His approach is less universalist in formulation than

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[50] DWORKIN, R. A New Philosophy for International Law. *Philosophy & Public Affairs*. 2013, Vol. 41, No. 1, pp. 2–30, p. 25.

[51] RAWLS, *The Law of Peoples*, 1999, pp. 11, 55, 127.

[52] RAWLS, *The Law of Peoples*, 1993, p. 59.

[53] RAWLS, *The Law of Peoples*, 1999, pp. 14, 18, 33.

[54] RAZ, *c. d.*, pp. 329, 335.

Rawls's, but it still presupposes standards whose violation cannot be insulated by appeals to sovereignty or cultural difference.

Dworkin, in turn, places particular emphasis on dignity. He does not offer a fixed and exhaustive list of international human rights but argues that at least one basic human right is universal: the right *"to be treated with the attitude* […] *as a human being whose dignity fundamentally matters"*.[55] This may be understood as a right requiring state authorities to create and apply law with an attitude of equal concern and respect for all persons subject to their power. It also provides a standard for assessing public authority itself: whether the government protects persons as bearers of dignity, or transforms its power into domination, persecution, or organized violence. In this respect, Dworkin's account is close to the normative core of R2P, which also treats public authority as responsibility for the protection of persons under state power. This dignity-based approach offers a more abstract foundation for the conclusion, reached in different ways by Rawls and Raz, that the international order contains a minimum normative standard that no state may disregard in the treatment of those under its power.

Despite their differences, all three authors converge on a minimum normative standard that is decisive for the present argument. The previous subsections showed, first, that human rights limit the discretion of state agencies and, second, that sufficiently grave violations may justify international intervention. The present subsection adds that there must also be a minimum standard of protection common to all states despite their pluralistic institutional arrangements. That minimum was already implicit in the previous discussion; here it appears as a minimum in the strict sense, because it marks the point beyond which pluralism in political and legal arrangements can no longer be justified. In the aftermath of the Second World War, the clearest expression of that minimum was the prohibition of the gravest forms of violence against human beings, namely the core wrongs later identified in R2P discourse as atrocity crimes.

Before concluding this section, the insights of these three authors make it possible to reconstruct the state's obligation to protect its population as a minimum standard of human rights protection operating on two levels.[56] First, the obligation presupposes a foundational orientation: state authority must be exercised in a manner that reflects a commitment to treating all persons subject to it with equal dignity. That orientation may also be expressed as a requirement of cooperative relations, both between state agencies and the population under their authority and among peoples within the international community. In that sense, dignity and cooperation identify the fundamental value structure that human rights norms seek to protect.

Second, this foundational orientation takes more concrete legal form through specific principles and rules recognized in international law. These define rights, impose obligations on state authorities, and secure protection before national and, where applicable, international institutions. Their violation may, in some circumstances, justify

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[55] DWORKIN, *Justice for Hedgehogs*, pp. 334–335.

[56] On the more detailed content of R2P norms, see KREŠIĆ, M. Is the R2P Norm a Legal Norm? In: AMATUCCI, C. (ed.). *New Legal Reality: Challenges and Perspectives: II Collection of Research Papers in Conjunction with the 8th International Scientific Conference of the Faculty of Law of the University of Latvia*. Riga: The University of Latvia Press, 2022, pp. 356–368, pp. 361–364.

international intervention and indicate that state authority is being exercised in a manner fundamentally incompatible with the purposes of legal order. The prohibitions of genocide, crimes against humanity, war crimes, and ethnic cleansing give especially clear expression to this structure.

In conclusion, the reconstruction offered in this section shows that the third element of sovereignty as responsibility was neither created *ex nihilo* by R2P nor unsupported by legal-theoretical analysis. Rawls provided an important pre-R2P antecedent, while Raz and Dworkin helped to clarify the structure and implications of the state's obligation. Their theories of human rights help explain why the international legal order may be understood as imposing on states a duty to govern in a manner that protects populations from atrocity crimes. In that sense, the normative core later expressed through R2P was partly anticipated before the doctrine emerged and partly clarified during its emergence.

4. MORAL CONSIDERATIONS ON THE RESPONSIBILITY OF THE INTERNATIONAL COMMUNITY

If the first and third elements of sovereignty as responsibility can be traced to earlier developments in legal theory concerning international law and human rights, the second presents a different problem. R2P gave institutional prominence to the idea that the international community bears responsibility in the face of mass atrocity, but prior legal theory had not fully elaborated that idea. Earlier debates on humanitarian intervention focused mainly on the legal permissibility of intervention rather than on the existence of a legal duty to intervene. Similarly, moral reflection before R2P was concerned chiefly with permissibility and with imperfect duties of beneficence. This changed markedly during, and immediately before and after, the period in which R2P was developed (2000–2010).[57]

One line of moral argument holds that, once humanitarian intervention is morally permissible, it may in some circumstances become morally obligatory. Michael Walzer initially treated humanitarian intervention primarily in terms of permissibility, but in later work moved closer to the view that those able to help in cases of atrocity ought to do so.[58] Other authors make this move more explicitly. John W. Lango argues that, once intervention to stop mass atrocities has been shown to be morally permissible, there is a *prima facie* presumption that it is also morally obligatory unless that presumption is overridden.[59] Kok-Chor Tan similarly argues that the stringent conditions for permissible humanitarian intervention may also render it obligatory, while also addressing the problem of the appropriate agent and the duty of others to cooperate in determining

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[57] See NARDIN, T. The Moral Basis of Humanitarian Intervention. *Ethics & International Affairs*. 2002, Vol. 16, No. 1, pp. 57–70.

[58] WALZER, *Just and Unjust* Wars, pp. xv–xvi, 101–102; WALZER, M. The Argument About Humanitarian Intervention. In: MEGGLE, G. (ed.). *Ethics of Humanitarian Interventions*. Heusenstamm: Ontos Verlag, 2004, pp. 21–35, pp. 26–27.

[59] LANGO, J. W. Is Armed Humanitarian Intervention to Stop Mass Killing Morally Obligatory? *Public Affairs Quarterly*. 2001, Vol. 15, No. 3, pp. 173–191, pp. 181–182.

whether intervention is required.[60] Jovana Davidović, working within just war theory, likewise argues that once humanitarian military intervention is morally permissible, it is also morally obligatory, since minimally decent action is morally required.[61]

A second line of argument grounds intervention in duties to rescue victims, restrain wrongdoers, and rectify injustice. Carla Bagnoli, working within a Kantian framework, maintains that serious violations of fundamental human rights engage a duty of respect for humanity rather than merely a charitable duty of beneficence. Humanitarian intervention is therefore, in her view, not merely permissible but morally required as a strict duty complementary to the duty to protect victims and coerce wrongdoers.[62] Terry Nardin similarly argues that the prevention of mass atrocities follows from duties to save victims from violence and to oppose wrongful conduct by preventing wrongdoing, bringing perpetrators to justice, and correcting injustice.[63]

A third line of argument grounds intervention in more general duties to protect basic rights through just institutions. Allen Buchanan argues that an obligation of humanitarian intervention may arise from a natural duty of justice requiring persons, and therefore politically organized communities, to help ensure that all persons have access to institutions capable of protecting their basic moral rights.[64] David Lefkowitz similarly argues that such a duty follows from the correlative duty of moral agents to do their fair share to ensure that all persons securely enjoy their basic moral rights.[65]

Taken together, these three lines of argument show that the second element later expressed in R2P was anticipated in pre-R2P moral reflection (e.g., Buchanan 1999) and developed more fully during its emergence. Moral philosophy thus moved beyond the question whether intervention may be justified toward the stronger claim that, in at least some circumstances, it may be morally required.

5. LEGAL-THEORETICAL CONSIDERATIONS ON THE RESPONSIBILITY OF THE INTERNATIONAL COMMUNITY

Moral responsibility does not automatically amount to legal responsibility. The institutional practice of R2P both supports and limits the claim that the moral

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[60] TAN, K.-C. The Duty to Protect. *Ethics & International Affairs*. 2006, Vol. 16, No. 1, pp. 84–116, pp. 88–89, 94–97, 105–106.

[61] DAVIDOVIĆ, J. Are Humanitarian Military Interventions Obligatory? *Journal of Applied Philosophy*. 2008, Vol. 25, No. 2, pp. 134–144, pp. 134, 137–142.

[62] BAGNOLI, C. Humanitarian Intervention as a Perfect Duty: A Kantian Argument. *Nomos*. 2004, Vol. 47, pp. 117–143, pp. 119, 122–123.

[63] NARDIN, T. From Right to Intervene to Duty to Protect: Michael Walzer on Humanitarian Intervention. *The European Journal of International Law*. 2013, Vol. 24, No. 1, pp. 67–82, pp. 74–75, 80.

[64] BUCHANAN, A. The Internal Legitimacy of Humanitarian Intervention. *The Journal of Political Philosophy*. 1999, Vol. 7, No. 1, pp. 71–87, pp. 83–85.

[65] LEFKOWITZ, D. On a Duty of Humanitarian Intervention. In: TRIPODI, P. – WOLFENDALE, J. (eds.). *New Wars and New Soldiers: Military Ethics in the Contemporary World*. Burlington: Ashgate Publishing, 2011, pp. 87–101, pp. 88, 96–97.

responsibility of the international community has acquired legal significance. According to the Global Centre for the Responsibility to Protect, R2P had been referenced or relied upon in 99 UN Security Council resolutions and presidential statements by December 2025, 45 UN General Assembly resolutions by December 2025, and 93 UN Human Rights Council resolutions by March 2026.[66] This confirms that R2P has become part of the institutional vocabulary of the UN system. It has also served as a basis for coercive collective action, most clearly in Libya and Côte d'Ivoire.[67] Yet this practice also shows that the legal responsibility of the international community remains exceptional and mediated primarily through Security Council authorization. Institutional practice, however, is not the only basis for claiming the existence of legal obligations. Several non-positivist approaches may also support such a claim.[68] The purpose of this article is not to prove conclusively that R2P, in its broader sense, including its second element, already exists as a legal norm, although it may be argued that it can be understood as an emerging norm.[69] Its more limited aim is to identify the legal-theoretical foundations that may justify such a claim, including the claim that the international community has a duty to protect the population from atrocity crimes.

The preceding sections sought to show that sovereignty had already been reconstructed in legal theory as responsibility, that the obligation of states to protect populations from atrocity crimes had important antecedents in human rights legal theory and was further clarified in later works, and that moral philosophy had already explored the idea that the international community may, in at least some circumstances, bear a duty to intervene. In particular, moral philosophy has grounded such an argument in duties implicit in permission, victims' rescue, wrongdoers' restraint, and the need for just institutions capable of protecting basic rights.

However, the second element of the responsibility to protect remains undeveloped in legal theory. There is no general theory in international legal thought according to which the international community, as such, is under a duty to perform the basic legal functions of creating, applying, or enforcing international law. Those functions are usually structured not by duty-imposing norms but by competence-conferring norms, which identify who may perform them and under what conditions. Under this view,

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66 Global Centre for the Responsibility to Protect. UN General Assembly Resolutions Referencing R2P. In: *Global Centre for the Responsibility to Protect* [online]. 5. 9. 2025 [cit. 2026-06-09]. Available at: https://www.globalr2p.org/resources/un-general-assembly-resolutions-referencing-r2p-2/; Global Centre for the Responsibility to Protect. UN Security Council Resolutions and Presidential Statements Referencing R2P. In: *Global Centre for the Responsibility to Protect* [online]. 19. 12. 2025 [cit. 2026-06-09]. Available at: https://www.globalr2p.org/resources/un-security-council-resolutions-and-presidential-statements-referencing-r2p/; Global Centre for the Responsibility to Protect. UN Human Rights Council Resolutions Referencing R2P. In: *Global Centre for the Responsibility to Protect* [online]. 31. 3. 2026 [cit. 2026-06-09]. Available at: https://www.globalr2p.org/resources/un-human-rights-council-resolutions-referencing-r2p/.

67 Global Centre for the Responsibility to Protect. R2P After Libya and Côte d'Ivoire. In: *Global Centre for the Responsibility to Protect* [online]. 14. 10. 2011 [cit. 2026-06-09]. Available at: https://www.globalr2p.org/publications/r2p-after-libya-and-cote-divoire/.

68 KREŠIĆ, M. About Non-Positivist Perspective on Legal Values in International Law. *Bratislava Law Review*. 2020, Vol. 4, No. 2, pp. 119–130.

69 KREŠIĆ, *Is the R2P Norm a Legal Norm?*, pp. 356–368.

international organizations and states acting in the interest of the international community occupy, as a rule, a legal position of competence rather than duty: they are vested with powers whose exercise is, in principle, discretionary rather than obligatory. A duty arises only where general international law or a particular institutional regime converts that competence into an obligation to act or to abstain.[70]

The purpose of this section is limited. It does not attempt to provide a complete legal theory of such an obligation. Rather, it identifies several legal-theoretical lines of argument that may help explain why the second element of R2P should not be treated as a merely political addendum, but as a problem internal to legal theory itself. If, as Section 2 argued, the sovereign state is a law-bound authority within an international legal order, and if, as Section 3 argued, the normative content of that authority includes the protection of populations from atrocity crimes, then the possibility of a corresponding responsibility of the international community can no longer be treated as conceptually external to the legal structure of sovereignty itself. The claim that the international community may bear a legal obligation to act in response to mass atrocities can be sketched in at least three ways.

5.1 THE FORMAL CHARACTER OF LEGAL POWER: SUBORDINATE AND SUPERIOR AUTHORITIES

The first line of argument concerns the relationship between state and international legal authority and builds on the insights developed in Section 2. State agencies directly govern populations, including through coercion. International agencies, including states when exercising international legal powers, operate more indirectly: they create norms binding states and may intervene when state authorities fail to exercise their powers in accordance with international law. The relationship between the international community and states may therefore be compared, cautiously, to that between superior and subordinate authorities in domestic law. If a subordinate authority fails to fulfil its obligations, the superior authority is normally expected to respond. By analogy, the international community may be understood as having a responsibility to act when a state fails in its duty of protection.

The analogy is, however, imperfect. In domestic law, superior authorities are usually under a duty to intervene. In international law, intervention is more often treated as an authorization. This difference is central to the problem and may be addressed in two ways. First, a purely discretionary understanding of international legal power undermines the very idea of legal authority from a formal point of view. The exercise of legal authority is never arbitrary. If a higher authority is under no obligation to intervene, the decision whether to intervene risks becoming arbitrary, and this weakens the authority's

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[70] Such a view of legal functions as being structured exclusively by competence-conferring norms, with obligations arising only insofar as they accord with the custom constituted by the actual behavior of states, could also be derived from a reading of KELSEN's account of the basic norms of international law. See KELSEN, *Pure Theory of Law*, p. 216.

legal character. Second, it may be argued that the rule of law requires law to be enforced once the conditions specified for enforcement have been met. If the rule of law is an inherent value of the international order, agencies entrusted with legal authority must not disregard that principle.

5.2 THE SUBSTANTIVE CHARACTER OF LEGAL POWER: THE PURPOSE OF LEGAL POWERS

The second line of argument concerns the substantive character of the legal power that states and international authorities claim to possess and, more specifically, the duty to intervene in cases of mass atrocities. This argument relies on the considerations set out in Sections 2 and 3. From Section 2 it follows that the powers of legal authorities cannot be understood as mere freedom of action, but rather as the exercise of discretionary power guided and limited by legal norms. Section 3, in turn, bears on the question whether there exist substantive norms governing the exercise of legal power that are implicit in the very existence of a legal order.

From the insights developed in Section 3 it follows that legal authorities cannot act as agencies of a criminal organization. Once a state systematically turns its institutions against the population in ways characteristic of mass atrocities, the question arises whether it continues to exercise legal authority in a legally intelligible sense. At that point, governance begins to resemble domination or organized criminal violence. This is the minimal normative threshold identified by human rights theory. If the international legal order is unable to respond to such a threshold, its own claim to legality is weakened.

It is, of course, conceivable that such an international community, and such states, might still claim to be "legal orders". But those who maintain that a legal order ceases to be a legal order once its fundamental purposes have been betrayed may also maintain that such arrangements can no longer plausibly be regarded as legal orders.

5.3 PROSECUTION OF INDIVIDUAL CRIMINALS

The third line of argument concerns the obligation to punish perpetrators of criminal offences. As noted in Section 2, an international norm does not automatically give rise to directly enforceable rights for individuals within a domestic legal order if that order neither incorporates the international norm nor permits its direct application. A further possibility is that an individual may possess directly enforceable rights under an international norm even where such rights are not recognized within the national legal order, provided that institutions external to that legal order allow the individual to appear as a party to proceedings on the basis of the international norm. By the same token, a duty on the part of the international community exists where such a possibility for an individual to initiate legal proceedings is available. But if such a right does not exist because of an institutional deficit, is there nevertheless another basis for maintaining that the duty of the international community to prosecute perpetrators of mass atrocities continues to exist?

One possible answer is that international law contains norms empowering any state, as well as centralized international institutions, whether on the basis of consent or, according to some views, irrespective of the consent of particular states to the jurisdiction of such institutions, to punish individuals who have violated prohibitions against certain crimes. Norms recognizing universal jurisdiction over acts such as piracy and war crimes are commonly understood to form part of customary international law. By analogy, it may be argued that there exists an international norm authorizing any state or international institution to punish perpetrators of atrocity crimes.

It may therefore be argued that the international community is authorized, in certain circumstances, to transfer the competence to prosecute perpetrators from unwilling or unable states to other states or international institutions. The remaining question is whether such authorization also entails an obligation. Here again, the formal and substantive arguments concerning legal authority, together with the rule of law, support the view that discretion cannot be treated as unlimited where mass atrocities are concerned.

6. CONCLUSION

This article has argued that sovereignty as responsibility, as expressed in the foundational R2P documents, consists of three elements with distinct legal-theoretical backgrounds.

First, the responsibility of state agencies to exercise authority in accordance with international law was substantially developed in twentieth-century legal theory. In the writings of Kelsen and Ross, and in an important complementary respect in Lauterpacht, sovereignty appears not as freedom from law but as a legally conditioned authority exercised by states as responsible legal subjects within an international legal order. The first element of sovereignty as responsibility was therefore already theoretically articulated before its later appearance in R2P discourse.

Second, the obligation of states to protect their populations from atrocity crimes has important antecedents in human rights legal theory and was further elaborated during the emergence of R2P. In particular, Rawls, Raz, and Dworkin developed the view that state authority is limited by fundamental human rights, that certain violations may justify international intervention, and that pluralism cannot justify the gravest forms of violence against human beings. These theories help explain why states may be understood as bearing an international obligation to protect their populations from atrocity crimes.

Third, the article showed, more tentatively, that moral philosophy moved beyond the question whether humanitarian intervention may be permissible and advanced the stronger claim that, in some circumstances, the international community may bear a duty to respond to mass atrocities. This part of the argument was meant to show that the second element later expressed in R2P was not conceptually unprepared in moral reflection.

Finally, the article suggested that the second element of sovereignty as responsibility – the responsibility of the international community – remains undeveloped in

legal theory. The final section therefore did not attempt to provide a complete legal theory of that obligation. Instead, it identified three lines of argument along which such a theory might be developed: the formal character of legal power; the substantive character of legal power; and the obligation to prosecute individual perpetrators of atrocity crimes.

The article has also emphasized the usefulness of the *jus contra bellum – jus ad bellum* framework and institutional practice within the UN system for understanding the possible legal responsibilities of the international community. Its aim, however, remains legal-theoretical: to show that legal theory can provide foundations for arguing why such a responsibility may exist, or why it ought to be further developed within international law.

The overall conclusion is that the three elements of R2P rest on uneven legal-theoretical foundations. The first had already been substantially articulated in earlier legal theory. The third had significant antecedents in human rights legal theory and was further clarified during the emergence of R2P. The second, although introduced into international discourse by R2P and elaborated in moral philosophy, remains insufficiently developed in legal theory. In that respect, R2P is best understood, from the standpoint of legal theory, as an unfinished legal doctrine.

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