**The Responsibility to Protect: the problem of justice and security in International Society**

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**Declaration**

I declare that this thesis is my own work and it has not, in whole or in part, previously been presented by me to this or any other university for the conferment of any degree.

Parts of this thesis (some of Chapters 6 and 7) were presented as work in progress at the following conferences:

* *ILA British Branch Conference*, University of Nottingham, April 2012
* *Responsibility to Protect in Theory and Practice*, University of Ljubljana, April 2013
* *Beyond Responsibility to Protect: Towards Responsible Use of International Law?* University of Hull July 2013

The same parts of the thesis then formed the basis of the following two publications:

* A Bohm, ‘Responding to Crises: the Problematic Relationship between Security and Justice in *The Responsibility to Protect*’ (2013) 4 Global Policy 247–257
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**Abstract**

This thesis addresses the ‘Responsibility to Protect’ (RtP), a concept developed to protect vulnerable individuals from atrocities. The RtP’s core idea is the primary responsibility of the state for the security of its population, and the secondary responsibility of the international community in this regard. It was hailed as a revolutionary step, demonstrating the society of states’ increasing cosmopolitan concern with providing justice and security for distant strangers.

The thesis undertakes a critical analysis of the RtP as the latest tool of the society of states for managing injustice and insecurity. The primary question it seeks to answer is whether the RtP represents such a cosmopolitan commitment of international society and whether it can achieve its goals. In order to answer this question, it analyses the RtP’s construction of the nature of order and justice and the relationship between the two concepts.

One of the contributions of the thesis is to demonstrate that, because of its liberal solidarist (importantly, not cosmopolitan) underpinnings, the RtP takes too narrow a view of justice and security. The RtP’s focus on a government’s abuse of its citizens’ civil and political rights neglects the importance of socioeconomic injustices and the potential responsibility of the international community for these injustices. It is an inconsistent moral position to claim to care about individuals but only seek to do justice for them in one limited way. More importantly, outbreaks of civil and political violence are related to underlying structural conditions of socioeconomic injustice, for which the international community is at least partly responsible.

Those claiming a cosmopolitan concern for distant strangers should therefore refocus their efforts on global poverty instead of military responses to crises. The RtP should focus more on long term structural conflict prevention and less on military reaction to crises.

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**Chapter 1**

**Introduction**

This thesis is about the ‘Responsibility to Protect’, a concept developed during the 2000s in an attempt to deal more effectively with mass atrocities occurring within the borders of a sovereign state. The 1990s witnessed horrific violence against vulnerable individuals, such as in Rwanda and Srebrenica, during which time ‘millions of people [were…] killed, maimed, raped, displaced, and otherwise victimized, while the international community – including the United States, the United Nations, and the European Union – [did…] too little, too late’.[[1]](#footnote-1) Against a backdrop of growing concern with the dignity of the individual, human rights protection and human security, academics, policymakers and civil society responded to these events by calling for action. In Kofi Annan’s 1999 annual report to the opening meeting of the United Nations General Assembly, the (then) Secretary General addressed the issue of human security and intervention. He referred to a ‘developing norm’ of intervention for human protection purposes, in the following terms:

This developing international norm in favour of intervention to protect civilians from wholesale slaughter will no doubt continue to pose profound challenges to the international community.

Any such evolution in our understanding of State sovereignty and individual sovereignty will, in some quarters, be met with distrust, scepticism, even hostility. But it is an evolution that we should welcome.

Why? Because, despite its limitations and imperfections, it is testimony to a humanity that cares more, not less, for the suffering in its midst, and a humanity that will do more, and not less, to end it.

It is a hopeful sign at the end of the twentieth century.[[2]](#footnote-2)

The Responsibility to Protect (RtP) concept was articulated in the publication of a report by the International Commission on Intervention and State Sovereignty (ICISS)[[3]](#footnote-3) which was convened by the Canadian Government. According to co-Chairs of the Commission Mohammed Sahnoun and Gareth Evans, the commissioning of the report, the consultation on which it was based and its publication signalled a new determination of the international community not to stand by in the face of mass slaughter of civilians.[[4]](#footnote-4) The RtP’s core idea is the primary responsibility of the state for the security of its own population, and the secondary responsibility of the international community in this regard should a state not fulfil its primary responsibility.

The RtP has been praised as being a ‘crucial concept’,[[5]](#footnote-5) ‘the most dramatic normative development of our time’[[6]](#footnote-6) and ‘a major development in international relations’,[[7]](#footnote-7) with the activities of the international community in Kenya in 2008 and Libya in 2011 declared a success for the RtP.[[8]](#footnote-8) Despite this positive reception, several key areas of the doctrine remain contested. These include the justification for limiting the doctrine to genocide, war crimes, crimes against humanity and ‘ethnic cleansing’, the degree to which the doctrine is significantly different from its predecessor idea of ‘humanitarian intervention’, the legal status of the RtP and the extent of the international community’s secondary responsibility for the security of a vulnerable population. It is in relation to these uncertainties that this thesis develops its critical engagement with the RtP.

# 1 Aims of the Thesis

This thesis provides a critical analysis of the RtP as the latest tool of the society of states for managing injustice and insecurity across the globe. It considers the contested areas mentioned above in the light of the assumption underlying Kofi Annan’s view that there is a ‘humanity that cares more, not less, for the suffering in its midst, and a humanity that will do more, and not less, to end it’.[[9]](#footnote-9) This description of humanity and the commitment to end suffering evokes cosmopolitan sentiments within the society of states, inviting the taking of an interest in distant strangers beyond state borders.[[10]](#footnote-10) The primary question the thesis seeks to answer is whether the RtP really represents such a cosmopolitan move by states.

The RtP must be understood in the context of the developments which preceded it, including the UN reforms and renewed peace and security practice in the 1990s directed towards individual protection, set against the perceived failures of the UN in peace and security. These in turn are best understood in the context of a wider set of claims about the changing substance, structure and scope of international law which intensified with the end of the Cold War and the claimed triumph of liberalism over communism.[[11]](#footnote-11) These changes are viewed as the result of increasing solidarity, or value consensus, over the importance of the individual in the post-Cold War era. The RtP is a recent, and particularly important, development in this line of alleged developments, capturing as it does the urgency of the problem, the unique horror of mass atrocity crimes and the understanding that in our globalised, interconnected world an injustice in one part of the globe is felt the world over. But the picture painted by proponents fails to draw attention to significant problems with the concept.

Some under-explored problems include the limitation of the doctrine to four acts of mass atrocity crimes,[[12]](#footnote-12) the RtP’s unclear legal status,[[13]](#footnote-13) the relationship between the RtP and humanitarian intervention,[[14]](#footnote-14) the extent of the international community’s obligations[[15]](#footnote-15) and the operation of the doctrine in practice (as mentioned above).[[16]](#footnote-16) Some critical work on the RtP has already been undertaken. For example, it has been suggested that the RtP ignores the concerns of non-Western states and is an attempt to mask the West’s neo-colonial policies;[[17]](#footnote-17) that the RtP ignores the victims it aims to protect;[[18]](#footnote-18) and that the RtP replaces self-determination of peoples with the exercise of executive authority by the UN,[[19]](#footnote-19) making the government accountable to an international community rather than its own citizens.[[20]](#footnote-20) Even some supporters of the RtP concede that when action has been taken in response to atrocities, such as NATO’s bombing of Serbia in response to the treatment of Kosovars, it proved highly controversial.[[21]](#footnote-21) The RtP promises hope to vulnerable people at risk from mass atrocity crimes. But how can this concern for distant strangers be squared with the ‘holocaust of neglect’ of strangers dying from starvation and malnutrition?[[22]](#footnote-22) Whilst notable critical attacks have been made on the RtP, none have undertaken an analysis of the logic and consistency of the arguments made (both within the RtP and by its supporters) about how to achieve their cosmopolitan aim of security and justice. Accordingly, this thesis develops exactly such a critique, demonstrating how the RtP fails to evidence a move of the society of states towards a cosmopolitan community of humankind.

# 2 Scope of the Thesis and Contribution to Knowledge

The primary focus of this thesis is on understanding the role of the RtP as an institution of the society of states in managing injustice and insecurity across the globe. It seeks to answer several important questions about the RtP, with the aim of resolving some of the problems identified above (such as the concept of atrocities, the RtP’s legal status and relationship to humanitarian intervention, the extent of the international community’s responsibility and the ‘success’ of the doctrine in practice). First, and most importantly: the relationship between security and justice – how is this portrayed in the RtP documents and how is it understood by supporters? Is this perception consistent with the doctrine’s claimed cosmopolitan and liberal foundations? Can the RtP succeed in its stated aims of protecting vulnerable individuals? How does the RtP relate to existing trends in international law in the direction of increasing levels of coercion and increasing individualistic focus?

In undertaking a critical analysis of the RtP, the thesis takes a different approach to the critiques of the RtP outlined above, such as those based on neocolonialism. It demonstrates that, because of its liberal (and, importantly, not cosmopolitan) underpinnings, the RtP takes too narrow a view of how to judge the way in which particular states treat their citizens, compared to its view of how the international community treats these same people. It argues that states which support the RtP – and wish to intervene for human protection purposes in states which are unable or unwilling to protect their populations – are also potentially responsible for significant global structural injustices that frequently lead to outbreaks of violence. This means that the commitment to justice in the RtP is incomplete from a moral perspective in its disregard for a wide range of suffering in humanity’s midst, and from an operational perspective is unlikely to succeed in providing security. The thesis argues that the RtP’s stated aims therefore cannot be fulfilled without a stronger cosmopolitan commitment to global distributive justice.

The RtP is important not just because of the claims that it represents a new global value consensus on saving vulnerable individuals from the most serious, conscience-shocking injustices and threats to their security, but also because it is representative of a turn in post-Cold War international law scholarship to claims of progress on the acceptance and enforcement of fundamental human rights and democracy – the triumph of liberalism. In critiquing the RtP, therefore, the thesis also challenges the notion that there is such a global value consensus as is claimed – and argues that if there is, in fact, such a consensus, then this is not necessarily to be welcomed as a positive development. To suggest that everything can be demarcated simply into Cold War and post-Cold War time periods is an oversimplification,[[23]](#footnote-23) but the thesis views the set of claims under analysis as having gained momentum and significance from the 1990s onwards. Furthermore, when assessing the legal status of the RtP, the thesis does not focus so much on the question of what the legal status is, but looks at how the arguments about its legal status are used to try to tie together contradictory aspects of the RtP debate – such as arguing that the RtP received wide agreement and is therefore uncontroversial, but also arguing that some parts of the RtP – the very parts that received consensus – are unacceptably conservative and need to be moved forward.

# 3 Methodology: the English School of International Relations and the Responsibility to Protect

To answer these questions, the thesis situates the RtP within the theoretical framework of the ‘English School’ of International Relations theory. Early English School work considered the nature of international theory and posited the existence of a society of states which had come to mitigate the effects of international anarchy (the lack of an overall sovereign to regulate states’ behaviour). According to these theorists, international law played a key role in this society. International legal scholars were not much known for their interdisciplinary work at this time (with some exceptions, such as the Policy Science School[[24]](#footnote-24)) and did not make use of the English School’s approach – partly, perhaps, because the School was not really a coherent ‘theory’ of international relations nor a consistent group of scholars until later. In the 1980s and 1990s, the early post-Cold War period, the English School underwent something of a revival as many of the questions it sought to answer on human rights and state sovereignty came to be viewed as having increasing importance. International lawyers became increasingly interested in interdisciplinary work at this time, though largely focused on realism and liberalism.[[25]](#footnote-25) This thesis argues that the English School deserves more attention by international lawyers because of its comprehensive understanding of the relationship between values, law and power in international affairs. More specifically, though, there are four particular reasons why this thesis uses an ‘English School’ approach as an analytical tool to explore and respond to the shortcomings of the RtP.

First, the key idea of the English School is that we live in an international society – a society of *states* (however important non-state entities are becoming). The international relations theories of realism and liberalism can shed some light on aspects of the RtP and its implementation, but ‘[t]he dominant approaches to the study of normative change ill equip us to understand the level of contestation about the current status of the R2P’.[[26]](#footnote-26) It is with the English School’s *via media* approach between realism and liberalism that important aspects of the RtP can be best understood. English School work does not dismiss the existence of a community of liberal states within the wider global society of states.[[27]](#footnote-27) It is interested in the RtP within the society of states as a whole. The thesis’ critique of many of the assumptions underlying the liberalism inherent in the RtP (and modern international law) uses some insights provided by realism, but does not subscribe to realism’s pessimism and championing of national interest. The English School’s appreciation of the existence of two types of society with different values and rules (in terms of the normative goals of order or justice representing the substantive content of the values and in terms of the consensual or coercive nature of the spread of these values), helps to explore the flaws of the RtP and the dangers of the persistence of these flaws in legal scholarship.

Second, and relatedly, the English School’s grounding in international legal theory enables English School debates about values in international society to be more easily linked to debates about the structures of international law. Arguments about the RtP map on to arguments about the changing nature and structure of international law, and perceived failings in peace and security within international law were part of the context leading up to the promulgation of the RtP concept. The RtP is often presented as a successful stage in the ‘humanisation’ of international law, which has been moving slowly towards a more hierarchical structure aimed at protecting the individual and which now permits coercive force in response to gross violations of certain civil and political rights norms. If international law is now moving away from a concern with order between states and towards a concern with justice for individuals within them, then a framework which enables international law to be taken seriously, and to be considered alongside arguments about values, order and justice in the society of states, is the framework which this thesis requires in order to make sense of the RtP.

Third, many RtP scholars choose to use the English School as an analytical framework within which to engage with the RtP. This thesis relies upon the key English School concepts of pluralism and solidarism as two different understandings of the level of agreement on matters of justice for individuals in the society of states. Pluralism represents a thin consensus only on the maintenance of order between states with different ideas of what constitutes a just domestic society. Solidarism represents a higher degree of consensus – or solidarity – on the importance of justice for individuals in domestic society, and the use of force as international law enforcement against states that do not adhere to these norms of justice. The English School largely views the RtP as a move towards cosmopolitan international community[[28]](#footnote-28) or at least a solidarist international society based on the liberal values of democracy, human rights and the rule of law. The English School is therefore most useful in examining these claims. For example Adrian Gallagher brings the RtP into his English School analysis of genocide, suggesting that the RtP ‘embodies solidarist ethic’.[[29]](#footnote-29) Tom Keating argues that the English School in general views human security and the RtP as evidence of solidarism.[[30]](#footnote-30) Even though the differences between the RtP and humanitarian intervention are not settled, a significant amount of work on humanitarian intervention has been undertaken within the English School since the 1990s. This English School work overlaps with the RtP in its analysis of how situations of insecurity and injustice arise and what we can and should do about them – what is (and should be) the relationship between order and justice. To neglect the English School would be to neglect an important point of view for the understanding of the RtP.

Even when scholars do not identify their work explicitly with the English School, they frequently use the terminology and concepts of the School when discussing the RtP. For example, Nicholas Tsagourias refers to solidarism and values of the society of states centring on the RtP;[[31]](#footnote-31) Birthe Møller refers to the RtP goal of ‘justice and peace in Libya’,[[32]](#footnote-32) mapping directly onto English School debates about the nature of (and relationship between) order and justice in the society of states; and Ramesh Thakur (a prominent RtP scholar who was on the ICISS board) argues that order and justice ‘are logical and empirical correlates’.[[33]](#footnote-33) Of course, plenty of international lawyers have written on the RtP without (explicit) recourse to International Relations theory in general or the English School in particular. This thesis could have undertaken its critique of the RtP based on critical theory – such as Third World approaches to international law, or ‘TWAIL’ scholarship, alone.[[34]](#footnote-34) Certainly this author is sympathetic to TWAIL arguments and the potential for neo-colonialism in international peace and security law, but it is submitted that situating the thesis’ particular form of critique within the English School offers a richer analysis of the doctrine, and its construction of the order-justice relationship, than might otherwise be possible – whilst still mapping the RtP onto more general trends in international law since the end of the Cold War. To dismiss all claims to common humanity as mere lip service and declare, as Pierre Jean Proudhon does, that ‘whoever says humanity wants to cheat’[[35]](#footnote-35) is not the best way to engage readers who really believe in the concept and relevance of humanity to the RtP, and who are not merely paying lip service. This thesis aims to engage supporters of the doctrine in a constructive dialogue about the premises upon which they support the RtP, rather than simply to accuse them of imperial beliefs – which they may genuinely not hold, even if the doctrine can easily be viewed as imperialist. A debate based on the internal logic of the RtP can engage RtP supporters on their own terms and show why the RtP fails on those terms. To do this, the English School provides a useful background on order and justice in international society in which to situate this method of critique.[[36]](#footnote-36)

Finally, the RtP contains both empirical observations about how the world is, and has come to be, and normative assertions about how the world should be. These are combined to create a compelling case in favour of the doctrine. Work in the English School is sensitive to both empirical and normative arguments, particularly in relation to the level of solidarity (or consensus) on the values shared between members of the global society of states. Again, the early work of Hedley Bull on pluralism and solidarism tended to be more empirical in nature, with later post-Cold War work taking on an explicitly normative agenda. In analysing the RtP it is useful to unpick the conflation of empirical and normative assertions as this then enables the thesis to question the empirical evidence on which the normative claims of the RtP are based. The English School is not the only way to do this; but this aspect is a focus of much English School work that tries to understand the actual level of consensus around certain values. For this thesis, it is important to explore the question why there might not be a consensus around the seemingly obviously ‘good’ values of democracy, human rights and the rule of law – rather than subscribe to liberal scholar Fernando Teson’s view that one is either part of the consensus in favour of humanitarian intervention or one is in favour of mass slaughter.[[37]](#footnote-37) This suggests that to understand the arguments made about whether the RtP represents solidarity (consensus) among states on how to respond to crises, we need to better understand what solidarism is from a theoretical viewpoint, including its strengths and weaknesses, in order to apply this understanding to the RtP itself. To understand the RtP’s position within the relationship between security/order and justice and how to achieve these, it helps to engage with English School theoretical work on what these concepts mean, particularly in relation to human rights abuses. English School work on the difference between an international society and an international community, particularly in terms of underlying values, helps look behind claims of a unified international community (willing to undertake the significant secondary responsibility involved in the RtP).[[38]](#footnote-38)

Putting these methodological aspects of the English School together, the thesis critiques the construction of the relationship between order and justice both generally in International Relations and international legal theory and more specifically within the RtP. It argues that solidarism is, since the end of the Cold War, liberal in nature.[[39]](#footnote-39) This liberal solidarist construction succumbs to several serious flaws which (a) are inconsistent with claims of the doctrine’s more cosmopolitan concerns for vulnerable individuals across the globe; and (b) mean that the doctrine cannot achieve its stated aims of prevention of atrocities. Despite attempts by ICISS and Secretary General Ban Ki-moon to move beyond the humanitarian intervention debate, these flaws mean that the RtP ends up merely repeating the humanitarian intervention idea, focusing on military action rather than on long term conflict prevention.

# 4 Thesis overview

Chapter 2 provides a detailed background to the development of the RtP concept, by exploring international law and human protection in the post-Cold War era. The Chapter traces developments claimed to be taking place in substantive international law that paint a picture of increasing concern with the individual and human rights together with a changing structure of the law towards a more hierarchical, constitutional system enshrining liberal or cosmopolitan values. These claims are then examined in relation to the United Nations’ approach to international peace and security law and the idea of a right to ‘humanitarian intervention’ as an exception to the UN Charter’s prohibition on the use of force. Although contextual, this Chapter is crucial to the thesis’ critique of the RtP because the RtP’s development cannot be understood in isolation from claims about the changing nature of threats to individuals’ security and justice, and the changing nature of general international law and UN practice in relation to the individual. The Chapter concludes with an exploration of the idea of law’s ‘fitness for purpose’ and how this relates to instrumentalism in international legal theory, highlighting some potential problems with this feature of post-Cold War international law (of which the RtP is one specific example).

Chapter 3 introduces the concept of the RtP. The Chapter describes in detail the key provisions of the RtP enunciated in the original ICISS report as well as the terms upon which the concept was endorsed by the UN General Assembly in its 2005 World Summit, before moving on to consider more recent developments such as the Secretary General’s report on implementing the doctrine. This level of detail is necessary to highlight some of the subtle differences between the earlier report and later commentary. It also enables Chapter 7 to critique these same provisions without repeating unduly these basic details, so as to explain why they are based on a liberal solidarist view of the relationship between security and justice and why this is problematic. Chapter 3 also considers in general terms how the RtP is viewed in the existing literature, by international lawyers, international relations scholars, NGOs and policymakers. It outlines some problems with the RtP and explains further the unique focus of the thesis in relation to contemporary literature. Part of this unique focus is through a critical analysis of the liberal solidarism on which the RtP rests – specifically liberal solidarism’s view of the relationship between order (security) and justice. This requires a clearer understanding of these concepts.

Accordingly, the English School of International Relations is investigated fully in Chapter 4, examining the importance it places on the interlocking narratives of realism, rationalism and utopianism as well as the key concepts of pluralism/order and solidarism/justice. This Chapter maps these English School debates onto the contours of the RtP debate, thus explaining why in particular the English School is such a useful way to understand RtP and its discontents. The focus of this Chapter is on pluralism and solidarism because these fundamental concepts of English School theory are a particularly useful way to understand the problematic assumptions within the RtP. Their opposing understandings of the level of value-consensus on the use of law enforcement (force) to protect the individual provide a useful way of analysing the problems with the RtP. The claim of this Chapter is not that the theoretical frameworks of realism, liberalism or cosmopolitanism are unsuitable – certainly they have made, and continue to make, valuable contributions to the study of international relations. Rather, the claim is that the issues that this thesis wishes to draw out are best seen through an English School lens.

Chapter 5 explores the English School concept of solidarism in more detail in order to build up to a detailed exploration and critique of the RtP. The Chapter makes the argument that solidarism in post-Cold War English School work is specifically *liberal* solidarism. In making the claim that solidarism is liberal, the Chapter undertakes an exposition of liberal theory. This is done both through John Rawls’ theory of justice, to demonstrate liberalism’s view of justice within domestic society, and through liberal peace theory and its stress on the relationship of domestic justice to international order. Although the English School traditionally associates solidarism with cosmopolitanism, the Chapter shows that this liberal solidarism differs from cosmopolitanism in important ways. Finally, the Chapter shows that liberal solidarism endorses a coercive approach to values, in contrast with early English School solidarist work on the level of solidarity – consensus – on values. This Chapter is important in setting up the background to the exploration of the problems of the RtP as a coercive liberal solidarist doctrine. Whilst the difference between liberalism and cosmopolitanism within English School solidarism may appear to be an inconsequential claim of interest only to political or international relations theorists, Chapters 6 and 7 show that liberal solidarism is beset by internal contradictions which make it an inappropriate normative theory on which to base global security doctrines such as the RtP.

Chapter 6 provides a critique of liberalism (and therefore solidarism) as described and associated with the English School in the previous Chapter. The Chapter first explores tensions within the concepts of liberalism and democracy and therefore the problems with viewing liberal democracy as a natural teleological development in international society on which to base assumptions about how to achieve justice for individuals. The state-focus of liberal and solidarist theories of justice is criticised, contrasting this with more egalitarian and more cosmopolitan conceptions of justice. This shows that liberal solidarism in the post-Cold War era is elitist, privileging the narrow understanding of justice as liberal democracy and economic liberalism. The thesis contrasts this with a more positive role of the state in providing for citizens’ welfare, thus showing that liberal solidarism is not cosmopolitan, because it fails to consider the role of a state towards non-citizens in achieving justice, unduly prioritising the citizens’ relationship with their own state over a broader conception of justice for vulnerable individuals. The Chapter turns finally to the relationship between justice and order, critiquing liberal peace theory and the international behaviour of liberal states. As suggested in the previous paragraph, the fact that solidarism is liberal rather than cosmopolitan has significant practical consequences for the RtP, which are explored further in Chapter 7.

Chapter 7 engages in a detailed critique of the RtP, arguing that Chapter 6’s criticism of liberal solidarism applies to the RtP. The RtP elevates mass atrocity crimes over other forms of suffering as the primary form of injustice and insecurity, prioritising the civil and political domain of rights over socioeconomic issues of justice. This results in blame for atrocities attaching to the ‘local’ level – the particular state – as the cause of problems and in contrast the ‘international’ level becomes that of saviour and rescuer. In order to make this argument, Chapter 7 sets out a more egalitarian and cosmopolitan approach to the duties incumbent upon states towards non-citizens in order to demonstrate the RtP’s impoverished understanding of justice and security for individuals across the globe. In doing this, the Chapter shows that the RtP is inconsistent with its cosmopolitan claims and cannot succeed in its aim of saving individuals from mass atrocities – therefore it fails ‘on its own terms’.

Chapter 8 concludes and offers some thoughts on what, if anything, ‘can be done’ in relation to mass atrocities if the RtP is not the answer. What should international (peace and security) law look like if not the coercive version propounded by liberal and solidarist scholars in the post-Cold War era? An implication of this thesis’ critique of liberal solidarism is that English School pluralism may be a worthy alternative to solidarism as the foundation of the society of states, for moral rather than pragmatic reasons, which support cosmopolitan aims of human emancipation. The Chapter suggests that pluralism is committed to toleration, diversity and self-determination. In a pluralist society of states, traditional international law (described in Chapter 2 as under attack and criticism from many post-Cold War international lawyers) can represent these values, providing predictability and stability between different states and enabling areas of genuine value consensus to be reached, rather than attempting to justify coercion. As such, a pluralist international society is not antithetical to cosmopolitanism, but can provide a neutral, stable base in which cosmopolitan claims about justice for individuals can be put forward.

Mass atrocity crimes are abhorrent, and the problem of what to do about them is compelling. This makes the RtP an important topic of research. Despite the persistence of those who suggest that the RtP is a crucial victory in the fight against atrocities, the concerns outlined in this Introduction are important and it is troubling that they remain unanswered. It is troubling from a moral perspective if in fact, despite any claimed consensus, the RtP represents coercion over a limited set of liberal values rather than a genuine cosmopolitan consensus on how to protect human rights and human security. It is troubling from an operational perspective if RtP interventions are unlikely to be successful in halting atrocities and rebuilding an atrocity-free society. Given that military interventions cause instability, disorder and loss of life,[[40]](#footnote-40) it is crucial to know whether the RtP can actually do what proponents claim and move towards a more just society of states.

**Chapter 2**

**Building up to the Responsibility to Protect: the developing importance of the individual after the Cold War**

# Introduction

This Chapter describes a series of claims common in the post-Cold War era about the changing status of the individual in the society of states, in particular in relation to international law, UN peace and security practice, and the idea of the use of military force for humanitarian purposes. The RtP is the latest, and a very significant, example of the society of states instituting individual protection mechanisms, and it is important to understand the RtP in the context of the changing content and structure of international law and the idea that military force can be used for enforcement of international legal rules. It is this author’s belief that the scholarly views of international law described in this Chapter tend to be overstated as regards the degree of change taking place in international law and the level of consensus behind the claimed changes. The issue of consensus is explored further in Chapter 4 on the English School of International Relations theory because the issue of consent vs coercion is important for this thesis’ critique of the RtP. Nevertheless, what is important for this Chapter (and this thesis) is the fact that these claims are made, and by a significant number of scholars. The extent of the claims is also significant, involving not just the substantive content of international law but a deeper change in ‘the basic structures and processes of the international system’,[[41]](#footnote-41) with an increasing role played by the UN in crisis situations and a perceived need to change the ‘normative underpinnings’ of the UN towards democracy.[[42]](#footnote-42) The trends identified in this Chapter did not start at the end of the Cold War,[[43]](#footnote-43) but this work both intensified and found empirical support with the end of the Cold War and Francis Fukuyama’s picture of the ‘end of history’ that accompanied the ‘triumph of liberalism’ over communism at this time. These liberal underpinnings will be explored in Chapters 5 and 6; for now the intention is to describe a set of common post-Cold War ideas (whether from self-identifying liberal scholars or not) about the importance of the individual and how to enshrine this importance in law.[[44]](#footnote-44)

The Chapter is structured as follows. Section 1 describes the claims about the changing status of the individual in, and changing structure of, international law involving its coming to have a specific purpose – that of individual protection, compared to older, ‘traditional’ law between states that was not concerned with the individual. Section 2 extends this discussion to the UN’s peace and security practice in the post-Cold War era, particularly the area of military intervention through the Security Council. This section also suggests that there is some evidential support for the idea that international society and international law is becoming more individualist. Section 3 moves this discussion on to the specific topic of ‘humanitarian intervention’ when there is no Security Council authority – the right asserted by states to use military force in response to a ‘supreme humanitarian emergency’[[45]](#footnote-45) to protect individuals. This section outlines some of the problems with the concept of humanitarian intervention that led to the RtP being developed – this context is crucial for understanding why the RtP came to be introduced and why it was largely welcomed upon its promulgation. Concluding thoughts are then offered, explaining how this Chapter fits within the broader thesis. This section links the debates over international law to the RtP and the English School of International Relations theory, explaining that the English School’s concepts of pluralism and solidarism, and the School’s interest in consensus vs coercion, enable this thesis’ critical examination of the RtP to take place.

# 1 The Changing Nature of International Law

This section examines claims about the development of international law in the post-Cold War era towards enshrining the normative status of the individual. It uses examples from international human rights law and international criminal law to demonstrate substantive changes in the law and describes the position taken on these changes by a number of scholars exemplifying the trends described. The section also considers assertions of the changing structure of international law. Again, this is not a novel development confined to the post-Cold War period[[46]](#footnote-46) but there is a rapid expansion in the literature at this point with new journals being started, and the claims do involve a turning point at the end of the Cold War with a qualitative and quantitative change in international law at this time.

## 1.1 From States to Individuals: human rights and responsibilities

Literature on post-Cold War international law displays a recurring narrative of its increasing focus on the individual together with the decline of national sovereignty,[[47]](#footnote-47) because individuals ‘have distinct and independent international rights, responsibilities, and abilities to bring claims’.[[48]](#footnote-48) This is associated with a cosmopolitan refusal to define human wellbeing by location or to allow these locations to unduly affect how law controls the individuals who happen to reside there.[[49]](#footnote-49) These changes are not claimed to be wholly the product of the end of the Cold War, because international law is viewed as always having encompassed a variety of non-state actors including individuals, but the important status of the individual is increasingly recognised at this time.[[50]](#footnote-50) The increasing number of human rights instruments can be said to reflect this increasing importance of the individual and increasing willingness of states to cede their absolute sovereignty and agree that how they treat their citizens is a matter of cosmopolitan international concern.[[51]](#footnote-51) Increasing numbers of individuals also believe themselves to have rights and wish to enforce them.[[52]](#footnote-52) The UN Office of the High Commissioner for Human Rights notes that all states have ratified one of the core human rights treaties and 80% of states have ratified four or more of the core treaties, signifying an increasing relevance of human rights in international law today.[[53]](#footnote-53) Again, not all of these treaties are post-Cold War instruments – the Universal Declaration of Human Rights (UDHR) was signed in 1948, the two international covenants were opened for signature in 1966 and the Convention on the Elimination of all forms of Discrimination Against Women was promulgated in 1979. But the growth in ratifications has been significant in the post-Cold War period and several human rights treaties have only come into being at this time. The growth of human rights treaties is treated as part of a purposive development by arguments that the UDHR shows that human rights and self-determination were already firmly entrenched in international society in 1948;[[54]](#footnote-54) for others the UDHR is described as the start of a long journey towards universal human rights protection.[[55]](#footnote-55) This progress culminates at the end of the Cold War, when human rights,

perverted and distorted for decades by the realities of Cold War relations, were finally able to flourish free from cynical misappropriation following the collapse of the USSR and its client Communist regimes in 1989; the international rule of law was at last to become reality and liberal democracy was enthusiastically proposed as the end to which all means should be directed.[[56]](#footnote-56)

The claims above have been articulated more specifically in relation to democracy and the rule of law, concepts which enshrine the importance of the individual through their protection from arbitrary rule – a major foundation of liberal philosophy. The idea of democracy and liberalism is revisited in Chapters 5 and 6 which first set out and then critique the concepts as they are understood in liberal solidarist scholarship. Here, the intention is to show that part of the literature supporting the rising importance of the individual pertains to the protection of their civil and political rights from governmental abuse.[[57]](#footnote-57) For example, Fernando Teson views democracy as the most fundamental human right, because it is required for every other human right to take effect.[[58]](#footnote-58) Thomas Franck posited the existence of an ‘emerging right to democratic governance’[[59]](#footnote-59) and encouraged leaders at the UN to make democracy the global normative standard, continuing the transformations which had been under way for the past five years.[[60]](#footnote-60) Steven Wheatley suggests that democratic states should be the ones to evaluate international law (through deliberative democratic processes), thereby making it more democratic.[[61]](#footnote-61) This democratic trend is addressed further in Chapter 5 as a feature of the liberal solidarist approach to justice; for now the point is that this trend is viewed as part of the increasing importance of the individual in the international legal system.

In addition to treaty law, customary international law has been a topic of interest to those seeking to expand the reach of international law into the state and its relationship with its citizens. Claims have been made that human rights law is drawn from *jus cogens* norms, customary international law and general principles of international law[[62]](#footnote-62) and even that the role of states’ *opinio juris* is an inappropriate source of customary human rights law in a globally interconnected world where non-state actors are just as significant as states – because individuals are important, their beliefs in their human rights should be the foundation of customary norms of international human rights law.[[63]](#footnote-63)

The idea of individual human *rights* is accompanied by the issue of individual *responsibility* for international crimes, which further demonstrates the central role of the individual in international law[[64]](#footnote-64) and which is ‘vital in the struggle to uphold the rule of law’ in the face of the continuing obstacle of state sovereignty.[[65]](#footnote-65) The principle of individual criminal responsibility was set out at the Nuremberg and Tokyo trials[[66]](#footnote-66) and was followed by a slow development for much of the period of the Cold War. Developments in international criminal law accelerated during the 1990s, with the international criminal tribunals set up by the Security Council such as those for the former Yugoslavia and for Rwanda, culminating in the formation of a permanent court, the International Criminal Court (ICC).[[67]](#footnote-67) Being treaty-based rather than set up by the Security Council, the ICC has ‘enjoyed broad and enthusiastic support from governments and NGOs alike’ – a notable development from the Cold War period when such a court was derided as utopian.[[68]](#footnote-68) During this time, individual international criminal responsibility became more precisely formulated and consolidated both in treaty and customary law, with lawyers playing a crucial role in these developments.[[69]](#footnote-69) The development of international criminal law is presented as part of a ‘post Lotus narrative’ of the decreasing importance of state sovereignty and the rise of global constitutionalism, another key post-Cold War narrative (dealt with below).[[70]](#footnote-70)

The points made in this section suggest that the individual is coming to occupy a central place in an international legal system traditionally concerned with relations only between states. First, states have been willing to make more treaty law enshrining the importance of the individual (both their rights and their responsibilities). Second, in addition to treaty law, scholars (and judges) have been finding customary international human rights laws which bind states without their express consent. Third, scholars have argued that in fact international law was never only about states – individuals have always been at the heart of international law and this is now coming to be recognised. Fourth, scholars have turned their attention to the relationship between human rights generally and the specific combination of rights that make up the concept of democracy and the right of individuals to choose who governs them – the ultimate expression of human freedom and autonomy, backed up by the ‘rule of law’. Finally, this individual autonomy finds expression in the concept of individual responsibility as well as rights. The picture presented here is largely of the law changing to focus on the individual – but to the extent that the law has not changed, it has been criticised for not keeping pace with changing normative understandings outside the law. The changing content of international law is presented as linked to its changing structure, in such a way that that the principles of individual human rights and responsibility are at the centre of the international legal system, acting as a constitutional principle which fundamentally changes how other parts of international law can be interpreted. It is to this idea that the Chapter now turns.

## 1.2 Constitutionalisation and International Law

The previous section suggested that international law was increasingly focused on the individual and human rights and responsibility. This is accompanied by claims that a structural process of constitutionalisation is taking place in international law (rather than just an increase in the number of legal instruments) for example through a blurring of the domestic and international legal realms, the rise of soft law and the decline of state sovereignty.[[71]](#footnote-71) With the birth of a new academic journal – Global Constitutionalism[[72]](#footnote-72) – the constitutionalist approach can be said to be increasingly popular in international law as a way of analysing the law’s changing structure and content in the globalised post-Cold War world.

Constitutionalism ties together the individualism identified above with the lofty goals of peace, security and justice achieved by a community of states through changing the structure of international law to help instantiate the ‘normative element of common values [in addition] to the more factual notion of an interconnected international society composed of states and other international actors’.[[73]](#footnote-73) In the English School the idea of international law reflecting post-Cold War common values is described as solidarist, and others also use this word in relation to constitutionalism – for example, Stephen Gill describes economic institutions such as the International Monetary Fund (IMF) or World Bank as constitutionalising parts of the international system based on solidarist values.[[74]](#footnote-74) For Douglas Johnston and Ronald Macdonald, solidarity as a substantive constitutional principle is increasingly supportive of individual rights, informing international human rights law, international humanitarian law, disaster and refugee law and development law (even if the application of these principles is sometimes imperfect).[[75]](#footnote-75) Whether described in terms of common values, solidarity among states or the more common phrase now of ‘international community’, these terms all suggest a ‘worldwide village of human commonality’[[76]](#footnote-76) and the closeness of common objectives of the members.

This constitutionalist framework of international law is tied to the individualistic nature of the new international law and the reduction in the ‘positivist stranglehold’ on legal and political thought after World War II, with the UDHR signalling ‘a return to a more normatively focused jurisprudence.[[77]](#footnote-77) Global administrative law can also be seen as a move away from the traditional sources of international law – or the need for traditional international law at all in some areas of global governance, because globalised interdependence requires transgovernmental regulation, which is different from ‘inter-national’ regulation.[[78]](#footnote-78) Similarly, Anne Peters describes constitutionalism as being based on the view that ‘natural persons are the ultimate unit of legal concern’.[[79]](#footnote-79) She also gives this modern turn a sense of history, suggesting that individuals as international legal persons were part of natural law up to the 18th Century, but now have rights and responsibilities[[80]](#footnote-80) – signifying a deeper, more significant status in international law. In what Jurgen Habermas describes as a Kantian project, the constitutionalisation process taking place features the individual as the unit of primary legal and moral concern.[[81]](#footnote-81) Because individuals are at the heart of the constitutionalisation process, constitutionalism has to enshrine democracy as the standard of judgement of those participating in the international legal community[[82]](#footnote-82) – confirming W Michael Reisman’s argument that ‘the international human rights program is more than a piecemeal addition to the traditional corpus of international law’.[[83]](#footnote-83)

In addition to the normative status of the individual and an increased sense of community among states is the idea that globalisation has rendered constitutionalisation necessary, rather than merely morally superior. As with individual rights and duties, this solidarist constitutionalist process did not start at the end of the Cold War (for example, John Vincent and Dan Keohane refer to the anti-apartheid movement during the Cold War as an early example of growing solidarity between states[[84]](#footnote-84)) but the idea has certainly gained ground since the 1990s with the notion of globalisation. This process (of increasing speed and frequency of human interaction[[85]](#footnote-85)) has brought to the fore the idea that a cosmopolitan community has become both more necessary and more likely. Because globalisation has made the world ‘shrink’ and become more interdependent, this cosmopolitan international community ‘faces an expanding need to develop universal norms to address global concerns’.[[86]](#footnote-86) Habermas suggests that the process of constitutionalisation can establish a more robust global order, required to deal with global problems.[[87]](#footnote-87) This gives international law a purpose beyond mere stability – constitutionalisation is associated with peace, legitimacy, rule of law, human rights respect, transparency and accountability, helping to secure human welfare through international law.[[88]](#footnote-88) Christian Tomuschat describes international law’s constitutional function as being:

to safeguard international peace, security and justice in relations between states, and human rights as well as the rule of law domestically inside states for the benefit of human beings, who, in substance, are the ultimate addressees of international law.[[89]](#footnote-89)

Although ‘constitutionalism’ is a contested concept,[[90]](#footnote-90) the description of the constitutional process offered by the many scholars described in this section brings together the normative aspects of individualism (described in the previous sections) and the idea that a new kind of international law and legal system is needed to solve today’s global problems. As suggested at the start of this section, constitutionalism can thus be said to tie together the ideas of individualism, peace, security, justice and a community of states committed to these values solving global problems through changes to international law’s structure and implementation.

What might this ‘new kind of international law and legal system’ look like? How would it be different from traditional international law’s horizontal relationship between sovereign equals? When Wolfgang Freidmann identified the change from coexistence to cooperation in the 1960s he suggested it would lead to a more hierarchical international legal system[[91]](#footnote-91) and Andreas Paulus and Joseph Weiler suggest that this has now taken place, with *jus cogens* norms and obligations *erga omnes* at the top of a hierarchy of international legal rules, having greater force than other rules.[[92]](#footnote-92) This is a significant change from the days when state consent prevented the development of universal norms – now, full autonomy of a state to ‘refuse’ international law is viewed as not only undesirable but also unlikely. This can be seen in *jus cogens* norms and customary international law made through consensus in multilateral fora, with General Assembly resolutions providing evidence of *opinio juris*.[[93]](#footnote-93) The constitutionalisation process contributes to international law’s increasing depth, as law is made without express state consent, through international organisations (and monitored by non-governmental organisations) both of which increased in number significantly in the 1990s.[[94]](#footnote-94) In addition to individual enforcement of international law in international fora and the expansion of the international human rights regime,[[95]](#footnote-95) the European Convention on Human Rights (ECHR), the International Criminal Court (ICC) and the World Trade Organisation (WTO) have been described as constitutional systems: for example because their dispute resolution mechanisms mean that their law is no longer only about consent but is a more complex, enmeshed web of obligations.[[96]](#footnote-96) This was described in relation to customary international law earlier in this section – this is one part of the process of constitutionalisation, which can also be seen in ideas such as ‘soft law’.[[97]](#footnote-97)

The rise in number and complexity of international organisations is another feature of the global constitutionalism literature. For example, Anne Marie Burley has argued that, in addition to transgovernmental networks changing the structure of global (rather than purely inter-national) law, states which put the individual at their heart will work through international organisations to resolve differences and promote their interests.[[98]](#footnote-98) With the international regimes above (such as the WTO or ICC) labelled as constitutionalist, it is not surprising that scholars have analysed the UN in this framework. The UN Charter has been labelled as a constitution of the global society of states,[[99]](#footnote-99) at ‘the centre of an international “constitutional order” of which the international legal system is a part’.[[100]](#footnote-100) Bardo Fassbender argues that the ‘constitutional predisposition’ of the UN Charter has been strengthened from an international organisation’s constitution to a constitution of the international community, ‘determining guiding principles according to which political unity shall be constituted and governmental tasks performed’.[[101]](#footnote-101) Reasoning by analogy to the domestic constitutional situation in the USA, where a constitution is a ‘superior, paramount law, unchangeable by ordinary means’,[[102]](#footnote-102) Fassbender notes that the UN Charter makes and applies law and has a means of adjudicating claims,[[103]](#footnote-103) amendment provisions and – importantly – a normative hierarchy within Article 103 which decrees provisions incompatible with the UN Charter to be inferior to the rules of the Charter.[[104]](#footnote-104) Together with the idea of *jus cogens* norms (including a prohibition on slavery and genocide) the idea of the constitutional superiority of the UN over other legal systems suggests that the UN system can be put to work to achieve the purposes of the society of states through constitutionalism – those of peace, security and justice.

The RtP is also very much a part of these constitutionalist ideas, viewed by Wellens as the ‘penultimate stage of the irreversible humanisation of international law’ and the first major articulation of the constitutional principle of solidarity on a global level.[[105]](#footnote-105) Not only is there near universal agreement on the RtP,[[106]](#footnote-106) the argument goes, but it represents a hierarchical movement in the international legal system whereby states which are unwilling or unable to protect their populations cede their sovereignty to an international community which is willing to protect the vulnerable population in question. The idea of the RtP as constitutionalist could not have come about without the increasing willingness of the Security Council to become involved in international peace and security matters since the end of the Cold War. Of course, this constitutionalist description of the international legal order has been challenged, not least by commentators on the *Kadi* case.[[107]](#footnote-107) Nevertheless, post-Cold War UN practice does reveal a new and increasingly active approach by the UN to international peace and security.

# 2 UN Peace and Security Practice

The Security Council does seem to have undergone something of a revitalisation in the period just before the end of the Cold War and in its immediate aftermath.[[108]](#footnote-108) An example of this increased activity is shown simply in the number of resolutions passed by the Council. In the 45 years since the founding of the UN, the Security Council passed 185 resolutions; in the 3 year period starting just before the end of the Cold War, 685 resolutions were passed.[[109]](#footnote-109) The content of the newly active Security Council’s practice included increasingly invoking Chapter VII threats to international peace and security in new circumstances, changing its view of what is of sovereign states’ internal concern (under Article 2(7) of the UN Charter) and what is a legitimate matter for international intervention, increasing the scope of collective security (under Chapter VII).[[110]](#footnote-110) The Security Council came to find that a number of issues traditionally perceived to be within a sovereign state’s domestic jurisdiction, and therefore outside the ‘reach’ of the UN, were in fact threats to the peace under Article 39 of the UN Charter, enabling the Council to take the measures available to it under Chapter VII.[[111]](#footnote-111) These new circumstances include responding to an anti-democratic coup (Haiti), humanitarian catastrophes (Somalia), terrorism, internal conflicts (El Salvador, the former Yugoslavia, Sierra Leone, Mozambique, Rwanda) and oversight of territories (East Timor, Cambodia, Kosovo),[[112]](#footnote-112) demonstrating an increasing interest in the individual and threats to their security.

In response to some of these crises, the measures taken by the Security Council expanded in addition to the Council asserting a competence to intervene in a wider range of situations. Its expanded activities included setting up war crimes tribunals and authorising peacekeeping forces.[[113]](#footnote-113) Many of these peacekeeping teams had a different approach from Cold War peacekeeping’s focus on host state consent, neutrality and non-use of force. Modern peacekeeping operations frequently have Chapter VII ‘enforcement’ mandates to use force to protect civilians and prevent ‘spoilers’, with the consent of the parties often somewhat tenuous. In addition to this increasing ‘depth’ of operations is their increasing breadth, with ‘multdimensional’ operations encompassing electoral monitoring, human rights training, judicial and police training, reintegrating former combatants into society and training locals on rule of law issues.[[114]](#footnote-114) This aims to entrench individual protection into the society’s constitution, through human rights, democracy and fair judicial process. Encompassing many individual-centric ideas, the rule of law has been described as coming to be regarded as ‘a panacea in post-conflict societies’,[[115]](#footnote-115) with interventions such as peacekeeping operations advancing the rule of law.[[116]](#footnote-116) The change in post-Cold War peacekeeping is significant in favouring the individual, when compared to Cold War peacekeeping’s standard inter-state interposition.[[117]](#footnote-117) It is also significant in its assumption that military force can sometimes be put to use successfully to achieve these aims of individual protection and freedom. The change in peacekeeping operations is one of the factors used by those who argue that the idea of humanitarian intervention is becoming more legitimate in the society of states (on which see section 3 below).

This practice signalled a renewed commitment by Security Council members, especially the permanent five members (the P5), to work together – and a higher level of consensus (or solidarity) that the issues outlined above did or might constitute threats to international peace. The UN could therefore be said to be acting in a constitutionalist manner, reflecting the individual’s normative status as described in section 1. Of course internal conflicts, especially where atrocities are taking place, could be said to threaten regional security – for example the increased refugee flows from Rwanda to neighbouring states during 1993 and 1994. But could the Security Council’s willingness to act in these internal conflicts signal a more significant underlying value shift?

It is common in the literature to find descriptions of UN policy shifts through the reports of the UN and other organisations in the early-mid 1990s.[[118]](#footnote-118) These reports were issued around the time of renewed Security Council activity and demonstrated the hope that the UN could once again work towards the Charter objectives of ‘international peace and security, of security, justice and human rights’.[[119]](#footnote-119) The (then) Secretary General Boutros Boutros Ghali’s ‘An Agenda For Peace’ envisaged an increased commitment to peace ‘enforcement’, peacebuilding and democracy.[[120]](#footnote-120) Barnett finds ‘An Agenda for Peace’ to be explicit in viewing regional insecurity as a consequence of domestic insecurity.[[121]](#footnote-121) This report proposes liberal global governance structures which change state behaviour in order to protect the individual to enable them to improve the ‘moral character and material welfare of humankind’.[[122]](#footnote-122) The report ‘Our Global Neighbourhood’ also suggests the need for governance to be individual-focused, reflecting the global community’s values of rule of law, democracy and markets.[[123]](#footnote-123) The trio of security, justice and human rights in ‘An Agenda for Peace’ views the concept of security as important at the individual, as well as the state, level.[[124]](#footnote-124) Kofi Annan echoed this, commenting that ‘a new understanding of the concept of security is evolving. Once synonymous with the defence of territory from external attack, the requirements of security today have come to embrace the protection of communities and individuals from internal violence’.[[125]](#footnote-125) Chapters 5 and 6 explore further this idea of liberal governance, the rule of law, democracy and markets and the association of these with justice and security for individuals (with Chapter 6 offering a critique of this liberalism) – for now, this section is seeking to show that the UN is arguably reflecting the increasing status of the individual in international law.

Tying these UN developments back to the constitutionalism debates and the individual-focus of post-Cold War international law, Nicholas Tsagourias has argued that the UN (particularly the Security Council) is the centre of collective security based on cosmopolitan principles, albeit adapted to a world of sovereign states. In line with Karel Wellens’ view of the RtP as part of the humanisation of international law, here the RtP is viewed as the culmination of this cosmopolitanising trend of the UN acting in collective security matters.[[126]](#footnote-126) Russell Buchan ties these developments in what the UN has been able to achieve in collective security to the collective will of an ‘international community’ of liberal states within the wider society of all states, which are able to exert their influence in, for example, increasing the breadth and depth of peacekeeping operations.[[127]](#footnote-127) Again, Chapters 5 and 6 examine this concept of liberalism (and the collective will of liberal states) in greater, and more critical, detail. This section has sought to show that the debates in constitutionalism, human rights and UN practice are linked by common threads of individual freedom and human rights which are now endorsed by a growing consensus among states (or at least a community of states within the wider international society) and which can be imposed upon those states which refuse to endorse these trends. The use of force to protect individual freedom and human rights is at the centre of debates on ‘humanitarian intervention’, particularly the idea that states act unilaterally to protect individuals when the Security council fails to act sufficiently quickly or robustly in its new individual-centred role in international peace and security. It is to this that the Chapter now turns.

# 3 Humanitarian Intervention: the development of individual protection

The previous sections described a common view of the increasing tendency of international law to favour individual rights protection; this section develops this description specifically into the area of humanitarian intervention. It first outlines briefly the idea of ‘just war’ theory because, whilst the idea of using force to achieve ‘just’ ends is not confined to the post-Cold War period, the humanitarian intervention debate is frequently couched in ‘just war’ terms, more so in the post-Cold War period than before.[[128]](#footnote-128) Just war theory requires a just cause, right intention, right authority, last resort, proportionality and reasonable prospects of success in order for a military intervention to be viewed as just. The concept of a ‘just cause’ did not traditionally include ‘humanitarian’ reasons[[129]](#footnote-129) – this has been a more recent development, concomitant with the trends claimed for international law that were identified above,[[130]](#footnote-130) viewing war as law enforcement of international human rights norms.

Admitting that the term ‘humanitarian intervention’ might seem to some ‘an obscene oxymoron’,[[131]](#footnote-131) Jeff Holzgrefe and Robert Keohane use the following definition:

The threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.[[132]](#footnote-132)

The idea of using force ‘across state borders’ in response to grave human rights violations demonstrates this tension between individual and state sovereignty.[[133]](#footnote-133) Literature in both the disciplines of international law and international relations addresses aspects such as whether war can ever be ‘humanitarian’,[[134]](#footnote-134) whether particular examples of military interventions with a humanitarian element to them should in fact be regarded as humanitarian intervention[[135]](#footnote-135) and whether humanitarian intervention is or should be a legal concept and a further exception to the UN Charter’s prohibition on the use of force contained within Article 2(4).[[136]](#footnote-136) Here, following on from the previous section (which suggested growing consensus on the importance of the individual), and in order to provide a contextual introduction to the RtP, the discussion will focus on one particular aspect of the humanitarian intervention literature. This is the search for empirical evidence demonstrating an increasing solidarity between states on the legitimacy of the practice of humanitarian intervention as a practice in international society for enforcing international human rights norms against abusive governments. This develops the description above of increasing solidarity on the importance of the individual and the need to constitutionalise and instrumentalise international law towards achieving justice for individuals, showing that the developing consensus on the individual extends to ‘humanitarian’ military intervention to protect individuals most at risk. It also demonstrates where this developing consensus resulted in a ‘deadlock’, which leads to Chapter 3’s discussion of the promulgation of the RtP concept. This provides context to the birth of the RtP and also enables the thesis to demonstrate (in Chapter 7) that many of the problems with the RtP are no different to the problems with humanitarian intervention, suggesting that the RtP has not moved the debate ‘forward’ as much as it is claimed to have done.

## 3.1 Humanitarian Intervention: a legitimate practice?

The view that there is evidence of increasing consensus on humanitarian intervention, as a natural adjunct to the increasing importance of the individual in international law, has gained ground in both scholarly thought and foreign policy.[[137]](#footnote-137) One of the most detailed arguments is put forward by prominent English School theorist Nicholas Wheeler, who assessed whether international society has displayed greater solidarity in relation to humanitarian intervention since the end of the Cold War. His Cold War intervention case studies, which could have been viewed as humanitarian by their outcomes, are those of Pakistan in India, Vietnam in Cambodia and Tanzania in Uganda. He concludes that there was no solidarity among states as to the legitimacy of any humanitarian credentials these interventions might have had.[[138]](#footnote-138) Post-Cold War, however, he argues that the situation became more complex, turning on Article 2(7) of the UN Charter and the role of the Security Council in intervening in the internal matters of member states. If an internal situation of human rights abuses was judged by the Security Council to be a threat to international peace and security, then intervention to halt this abuse was more likely to be seen as legitimate by international society.[[139]](#footnote-139)

Wheeler’s post-Cold War analysis starts with the establishment of ‘no fly zones’ by a Western coalition, following the designation by the Security Council in Resolution 688 (15 April 1991) of the trans-boundary consequences of Iraq’s repression of the Kurds as a threat to international peace and security.[[140]](#footnote-140) He considers that the humanitarian claims put forward by Western states were new, and that the first resolution by the Security Council to consider an internal matter to be a threat to international peace and security was a significant change in the post-Cold War environment.[[141]](#footnote-141) He notes, however, that this resolution received relatively limited support by the Security Council. When the collapse of the government in Somalia in 1992 led to widespread famine, however, all 15 Security Council members were in favour of the US (and UN) intervention to provide humanitarian relief – this was the first time that the Security Council used its Chapter VII authorisation powers, in the absence of the host state’s consent, for humanitarian reasons.[[142]](#footnote-142) France’s Operation Turquoise in Rwanda after the genocide in 1994 received limited support, reflecting fears about the humanitarian credentials of France’s intervention in Francophone Africa, tempered by the knowledge of the severity of harm caused by failing to undertake action in relation to the Rwandan genocide.[[143]](#footnote-143) The final case study is that of NATO’s intervention in Kosovo, undertaken without Security Council authorisation. Wheeler points to the significance of the vote against Russia’s condemnatory resolution put to the Security Council concerning NATO’s action, ‘because, for the first time since the founding of the Charter, seven members either legitimated, excused or acquiesced in the use of force justified on humanitarian grounds.’[[144]](#footnote-144) Whilst Wheeler does not go as far as some legal scholars in asserting an emerging or established *legal* norm,[[145]](#footnote-145) he does find increasing *legitimacy* with regard to humanitarian intervention in international society, at least where the Security Council has found a threat to international peace and security.

This description of the increasing legitimacy of the idea of humanitarian intervention, together with the claims in section 1 of this Chapter on international law, support the notion that the ‘international community’ is becoming more open to acting to protect the individual and their civil and political rights, using military intervention as international law enforcement. As Jon Western and Joshua Goldstein describe it, ‘the shifting global landscape created new problems that cried out for action’ but along with this, ‘military force that had long been held in check by superpower rivalry could now be unleashed to protect poor countries from aggression [and] repression’.[[146]](#footnote-146) Chapter 5 will link this narrative to a specific liberal solidarist conception of progress towards achieving security and justice for individuals across the globe (allowing Chapters 6 and 7 to critique this conception). For now, the aim has been merely to convey a sense of the popular narrative about international law and human protection in the society of states from the 1990s onwards, and to show (in section 4) that where international law does not reflect this popular narrative, it is heavily criticised.

The discussion on humanitarian intervention was of course not limited to scholarly debate. It is worth recalling the quotation from Kofi Annan used in the Introduction to this thesis (Chapter 1):

The developing international norm in favour of intervention to protect civilians from wholesale slaughter’ is an ‘evolution we should welcome ... Because, despite its limitations and imperfections, it is a testimony to a humanity that cares more, not less, for the suffering in its midst, and a humanity that will do more, and not less, to end it.[[147]](#footnote-147)

## 3.2 Humanitarian Intervention: International Law Reform?

This ‘developing norm’ of humanitarian intervention (and, in parallel, other alleged developing norms such as Franck’s emerging right to democratic governance) does not, of course, find overt expression in the UN Charter. As such, a deadlock between human rights and non-intervention characterised the humanitarian intervention debate for some time – with arguments in favour of a legal right of humanitarian intervention based on the ‘trumping’ of non-intervention by human rights; and arguments against based on the protection offered by non-intervention rule against pursuit of national interest.[[148]](#footnote-148) As Louis Henkin described it in relation to Kosovo, international law prohibits humanitarian intervention not because people do not care about human rights but because they are worried about abuse of a right of humanitarian intervention.[[149]](#footnote-149) However, the more popular view can be shown again by reference to Kofi Anna, who described the tension between states’ and individuals’ rights in his claim that:

States are now widely understood to be instruments at the service of their peoples, and not vice versa ... When we read the Charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them.[[150]](#footnote-150)

It is in this light that the use or threat of the veto in the Security Council has been heavily criticised. For example, Allen Buchanan and Robert Keohane suggest that a coalition of liberal states could decide on the legitimacy of an intervention if the Security Council was paralysed by a veto or by majority voting against intervention. As they argue, the ‘use and anticipated use of the veto can block preventive actions that we have morally compelling reasons to undertake’.[[151]](#footnote-151) They suggest that instead (or additionally) a group of liberal democracies (defined so as to exclude human rights-violating states) could take a role additional to the Security Council, because they are more reliable than non-democracies in upholding cosmopolitan standards. This suggestion has not been adopted but it highlights the attempt to find creative solutions in the face of the traditional statist law which does not permit humanitarian intervention. It also demonstrates the perception of one of the major problems with the idea of humanitarian intervention (that of authority for action), which the RtP attempted to solve. The issue of military intervention being a ‘last resort’ under just war criteria, and what efforts should be made before military intervention, has also proved problematic in the humanitarian intervention debate. The urgency of the need to respond to atrocities immediately is set against the need to look for peaceful solutions to conflicts.[[152]](#footnote-152) Chapter 3 will consider these points further (with Chapter 7 returning to these points in its argument that the RtP has failed to resolve key problems evident in the concept of humanitarian intervention).

Despite the lack of formal law permitting states the right of humanitarian intervention, international impetus had been building to ‘do something’ in response to gross violations of civil and political, rights rather than ‘stand by’ and allow people to be slaughtered as was said to have happened in Rwanda and Srebrenica during the 1990s.[[153]](#footnote-153) It was in an attempt to break this deadlock and find a way of overcoming the inadequate crisis responses of the 1990s that the RtP was born.[[154]](#footnote-154) Before turning to the RtP (in Chapter 3), this Chapter’s final section ties together the claims about international law’s individualism, UN practice and the idea of humanitarian intervention. It addresses common criticisms of the traditional, statist international law which is insufficiently ‘up to date’ with the new moral consensus on the individual and which therefore does not permit humanitarian intervention.

# 4 International Law in a Changing World: making law fit for purpose

The previous sections set out the claims common within academic literature about post-Cold War international law and the UN, hinting at a number of the problems with these claims. Some scholars evidently wish for international law to go further in the direction of cosmopolitan individualist constitutionalism; others challenge the idea that international law has undergone (or should undergo) such significant changes. This section draws out these two sets of opposing ideas, providing a backdrop against which to situate the thesis’ exposition and critique of the RtP. It first considers the idea that despite some positive changes, international law is still not ‘fit for purpose’ in the post-Cold War era and is unable to deal adequately with the threats faced today. The section then moves on to consider criticisms offered of this view by those who suggest that the constitutionalisation and individualisation of international law does not represent progress towards peace, security and justice. Whilst these comments foreshadow the critique of the RtP undertaken by the thesis (in Chapter 7), at this point they are directed at the international legal system at a general level.

## 4.1 International Law as a Tool for Achieving Justice: Fitness For Purpose

If globalisation and the normative status of the individual in the society of states require universal norms and if traditional international law generally does not permit their development,[[155]](#footnote-155) this implies that international law is not fit for purpose. For example, Antonio Cassese argues that statist law is ‘strikingly unsatisfactory’ today in a world consisting of many complex non-state actors (including both individuals and transnational corporations).[[156]](#footnote-156) Fernando Teson argues that ‘new times call for a fresh conceptual and ethical language’[[157]](#footnote-157) because the old state-based conception of international law is not an accurate depiction of international society in the post-Cold War era. WM Reisman sums up the tension between the traditional understanding of international legal concepts and how they should now be interpreted in the light of these post-Cold War developments:

Although the venerable term ‘sovereignty’ continues to be used in international legal practice, its referent in modern international law is quite different. International law still protects sovereignty, but not surprisingly it is the people’s sovereignty rather than the sovereign’s sovereignty. Under the old concept, even scrutiny of international human rights without the permission of the sovereign could arguably constitute a violation of sovereignty by its ‘invasion’ of the sovereign’s *domaine reservi*. The United Nations Charter replicates the ‘domestic jurisdiction-international concern’ dichotomy, but no serious scholar still supports the contention that internal human rights are ‘essentially within the domestic jurisdiction of any state’ and hence insulated from international law.[[158]](#footnote-158)

Whilst some of the descriptions above suggest that fundamental changes in international law have replaced outdated statist law embodied in the Lotus case’s traditional view of state sovereignty,[[159]](#footnote-159) Cassese suggests that these new Kantian trends of universal cosmopolitanism[[160]](#footnote-160) have not yet replaced the old state-based system, but merely overlay it, with the result that state sovereignty and non-intervention (key principles of the old state-based system of law) are now at loggerheads with the Kantian law of human rights.[[161]](#footnote-161) Anthony D’Amato criticises scholars who maintain the importance of the UN Charter’s non-intervention principles as ‘so conditioned by a statist conception of international law that they seem unable to see through the abstraction that we call the “state” to the reality of human beings struggling to achieve basic freedoms’.[[162]](#footnote-162) He further criticises traditional statist international law for its formalistic, ‘Oppenheimian’ notions, describing such work as a ‘crabbed 19th-Century interpretation of international law’.[[163]](#footnote-163) As Richard Falk puts it, ‘international law is not able to keep up with the rapidly changing practical and normative requirements of a viable and equitable world order’.[[164]](#footnote-164) Turning specifically to international peace and security law, the suggestion that international law has not kept up with changing practical requirements is most evident. For Gillian Triggs, although international law has responded dynamically to changing security threats, it is still not fit for purpose: securing international peace, security and justice.[[165]](#footnote-165) For D’Amato, ‘the real world is changing faster than the paradigm of scholars’.[[166]](#footnote-166) As such, he commends the value-based approach of scholars such as W Michael Reisman and Myres McDougal (whose work originated in the 1960s as a way to make international law relevant to policymakers, out of the fear that states did not feel themselves to be even slightly constrained by international law), for providing an idea of international law for humans rather than states, moving international law forward to keep up with the demands of the real world.[[167]](#footnote-167)

For Falk, this static, ‘old’ international law does not represent justice because so many of the legal rules themselves no longer represent the reasons for having those rules in the first place. Rather than arguing that the law should be updated (or is being updated) to reflect how to achieve justice in current circumstances, Falk suggests that states should not be concerned with conforming with existing law when doing so seems inconsistent with perceived urgencies and common interests and values.[[168]](#footnote-168) Michael Glennon made this point specifically in relation to Kosovo, when he argued that because of international law’s prohibition on the use of force, ‘justice and the UN Charter collided’.[[169]](#footnote-169) In UN terms, Falk argues, existing international law ‘guidelines’ have not taken account of the fact that whilst the Security Council is the only legal way of authorising ‘effective action’, any one of the P5 can block this action even when it is ‘strongly supported by the great majority of the governments of member countries, [and] by the overwhelming sentiments of world public opinion’.[[170]](#footnote-170) This strong support, Falk suggests, should matter more than (outdated) technical legal issues of authority for military action. Thus the UN reforms of the 1990s have not gone far enough.

This idea of law having a purpose (for Falk, this purpose is achieving justice; section 2 described others who view the UN’s purpose as achieving peace, security and justice) is based on the reasons behind a law – the values that came to be represented in the piece of law – as being more important than the form of the law (particularly when the values are represented by world public opinion).[[171]](#footnote-171) If law has a particular value, or a particular end, behind it, then this end should be prioritised over the particular legal rule itself.[[172]](#footnote-172) This is hinted at by the constitutionalist literature which links solidarity and community values to the importance of the individual at the centre of the global constitution.[[173]](#footnote-173) These values are said to be shaping law – and thus are more important than what the current state of international law actually is. The idea that international law has a (value-based) function, and that law should be instrumental in achieving these values, has been argued by international lawyers resisting the rise of realism in International Relations theory, which denies law’s relevance entirely. International law can be seen to be relevant if it can be used as a tool to achieve the purpose of human dignity in the post-Cold War era.[[174]](#footnote-174) International lawyers should therefore stop perpetuating sterile debates on the precise content of legal rules, and view law as a process by which to achieve the aims of peace, security and justice.[[175]](#footnote-175)

Specifically in relation to the RtP and ICC, Frederick Megret argues that these institutions of international society are essentially an attempt to make the Security Council favour the goal of justice over its previous goal of inter-state order.[[176]](#footnote-176) From the picture painted of post-Cold War international law so far in this Chapter, it seems that international law has started to respond to a changing normative consensus on the importance of the individual, and changing global circumstances that bring different threats to the fore (frequently threats to individual security or justice). But scholars still argue that international law is slow to change and keep up with this moral consensus on how to respond to these new threats (particularly those which threaten the individual). They argue that we should either ignore international law if we think it does not represent morality, or work towards making the law more instrumental in achieving values – more fit for purpose. This is particularly true in the area of security, where the status of the individual is said to have changed significantly, with the notion of individual security becoming important. Although this picture of international law (and its representation of the values and consensus of the underlying society of states) has a significant following, there are scholars who dispute the factual claims that these changes are taking place (or their speed or comprehensiveness). There are also those who argue that, even if these changes are taking place, they are not to be welcomed because serious problems persist with the idea of international law as a purposive, hierarchical, coercive system which imposes a certain set of values onto states (and individuals) who are not part of the ‘overwhelming consensus’ on these values. The next section outlines these problems, foreshadowing the thesis’ critique of liberal solidarism and the RtP (in Chapters 6 and 7).

## 4.2 The Problem of Purpose

As section 2 sought to show, the changing role of the Security Council has seen it become viewed as a tool for ‘doing’ justice within states, rather than (or in order to) keep order between them. Whilst this is welcomed by those scholars described above, the desire to achieve the aim of justice by moving beyond ‘statist’ illegitimate international law is not without problems – international law structured in a traditional manner between states with formal and slow rules for legal change is not necessarily an illegitimate way of organising the society of states.[[177]](#footnote-177) There is also the risk that, even if the ends (of justice and peace) sought by this new international law and new Security Council activism are uncontested and appropriate, the means employed may not actually achieve those ends. Specifically, Simon Chesterman has pointed out that the means of humanitarian intervention – bombs, in the case of NATO’s intervention in relation to Kosovo in 1999 – are wholly incompatible with the ends sought by the idea.[[178]](#footnote-178) Jean Cohen makes a related point more generally in arguing that international law should retain the rule of state sovereignty and equality to avoid the risk that the principle of sovereignty might not be ceding to a vision of global cosmopolitan justice but to a new form of empire.[[179]](#footnote-179) If the changes described in this Chapter are overstated by the scholars who make the claims, and if the level of consensus behind the claimed changes is also less than that claimed, this merits further investigation of whether the society of states is indeed moving towards global cosmopolitan justice.

The problems highlighted by Chesterman and Cohen with international law (and, as the thesis demonstrates, the problems with the liberal solidarist view of the relationship between justice and order) is considered further in Chapter 6, which critiques liberalism and solidarism – this section has set the scene of these debates within international law by suggesting potential problems with the ‘benevolent intentions’ behind the transformation of international law’s content and structure, and the willingness of the UN to match these changes. The description of international law as becoming more individualist and more constitutionalist is represented by the concept of solidarism in the English School – solidarity (or consensus) among states about rules of cooperation and the importance of the individual. In contrast, English School pluralism views international law as an area of overlapping consensus, able to maintain order between states with different ideas of domestic justice.[[180]](#footnote-180) As Bill Bowring puts it,

although law is necessarily the result and reflection of politics, law nevertheless retains a specificity and resistance to short-term change that enables it to constrain sudden changes in relative power, and sudden changes in policy motivated by consequentially shifting perceptions of opportunity and self-interest.[[181]](#footnote-181)

This is especially important if international law reflects not just power but also struggle and resistance. This point is returned to in the Conclusion to the thesis, which suggests that, because liberal solidarism and the RtP are insufficiently cosmopolitan, the view of international law described here deserves more attention in relation to attempts by the society of states to express cosmopolitan sentiments.

# Conclusion

This Chapter has described a set of claims about how international law is changing (and needs to change further) in line with the new post-Cold War value consensus concerning the individual and the particular threats the world now experiences. The changes involve not just the substantive content of international law but also its structure and enforcement. These changes have become apparent in UN (and other international organisation) practice as well as international legal theory, for example with increased Security Council activism from the 1990s onwards. This has led to claims that the idea of a right of ‘humanitarian intervention’ is becoming increasingly legitimate in international society – if not strictly lawful. These claims about the changing nature of international law form the foundation of the development of the RtP concept, in particular the perceived gap between traditional international law and the need to move beyond this to solve important global problems – key amongst which are those injustices such as mass atrocity crimes which threaten the security of the individual. In demonstrating the problems with how the RtP constructs the global problem of mass atrocity crimes and the possible responses to the problem, the thesis also shows up some of the problems with the claims shown in this Chapter about international law’s content and structure. In other words, by highlighting the deficiencies of the RtP the thesis also shows the deficiencies of contemporary readings of international law (whether they be overtly constitutionalist, liberal or just claim a movement towards international law’s primacy of the individual).

Whilst many scholars making the claims outlined above do not link them to particular philosophical or political theories (or they describe the trends as cosmopolitan or liberal without enquiring deeply into these concepts) it is a key claim of this thesis that it is a particular kind of liberalism which underlies the concepts of security (order) and justice in the RtP (and international peace and security law, and international law, more generally). Furthermore, English School solidarists make similar claims about the RtP (because, as Chapter 5 argues, solidarism in post-Cold War international society is liberal).[[182]](#footnote-182) In order to make the argument that the trends identified here in international law (and the RtP) are liberal solidarist in nature, and that liberal solidarism is a problematic basis on which to address issues of global justice and security, the thesis now moves on to the RtP (Chapter 3), before exploring the English School and the concepts of pluralism and solidarism in more detail (Chapter 4) in order to link the RtP more solidly to the debates in this Chapter. Chapter 5 then makes the argument that English School solidarism is liberal in nature (and not cosmopolitan), with Chapter 6 then critiquing liberalism and therefore solidarism, before the thesis moves on to apply this critique to the RtP (Chapter 7).

**Chapter 3**

**The Responsibility to Protect**

# Introduction

The previous Chapter described a trend in international legal thought since the end of the Cold War that views the global society of states as coming to form a consensus around the importance of the individual, with the international legal system protecting this importance both in substance and in structure. An important part of this trend is the concept of ‘humanitarian intervention’, although the debates over its legality and legitimacy were ultimately caught in a deadlock between state sovereignty and human rights. Building on this discussion, this Chapter introduces the concept of the Responsibility to Protect (RtP). The Chapter explores the RtP’s development and reception by the ‘international community’ of states, civil society, academics and policymakers. It seeks to demonstrate the positive reception that the concept has received, as well as growing (if not entirely smooth) references to the RtP in UN practice. This largely confirms the concept’s place in an increasingly constitutional, hierarchical international law which reflects the increasing commitment of the society of states to achieving justice for individuals. The detail in this Chapter supports the thesis’ later critique of the RtP (Chapter 7) which analyses this detail to demonstrate the logical flaws in the RtP’s text (and in arguments made by its supporters). To provide context and a theoretical basis for the RtP critique, Chapter 6 critiques the view of international law presented in Chapter 2, to show that the problems with the RtP are representative of problems with the post-Cold War’s increasingly individualist and coercive international law.

The Chapter starts by providing a detailed description of the first iteration of the RtP in the 2001 report by the International Commission on Intervention and State Sovereignty (ICISS) and the reception of this by the international community at the UN General Assembly World Summit in 2005 (in section 1). Section 2 considers the more recent developments of Secretary General Ban Ki-moon’s 2009 report on implementing the doctrine and Brazil’s idea of a ‘responsibility while protecting’. Section 3 builds a picture of how the RtP has been received and used in the international community by examining references to the RtP by the Security Council, Human Rights Council and by NGOs[[183]](#footnote-183) and scholars who immediately began considering the application of the RtP to specific outbreaks of violence. Section 4 describes some unresolved issues and potential problems with the RtP, highlighting key debates over the topic – these also demonstrate the largely positive reception of the doctrine despite the problems identified in this section. This is done to flag up what the thesis will address in its critique – why these unresolved issues exist and what they mean for the future of the RtP. These issues include the relative importance and priority of prevention and reaction to mass atrocity crises; the scope of prevention responsibilities; and the place of the Security Council in the international community’s reaction to crises. The main argument of the thesis is that the RtP – in particular the way many supporters have interpreted the RtP – neglects long term structural conflict prevention measures and thus ends up reacting to symptoms of injustice and insecurity rather than addressing the causes. This means it can never satisfactorily achieve its cosmopolitan aims, and risks being a mere restatement of the idea of humanitarian intervention (which the previous Chapter showed to be problematic chiefly through its narrow focus on military intervention).

# 1 The Responsibility to Protect: ‘responsible sovereignty’

The phrase ‘sovereignty as responsibility’ was first used by Francis Deng, then Secretary General’s Special Representative for Internally Displaced Persons. In a book on conflict management in Africa, Deng and others suggested this reconceptualisation of state sovereignty as a reaction to the changing place of the state and the erosion of the Westphalian model of the state in the globalised, post-Cold War, world.[[184]](#footnote-184) The book suggested that human dignity should be the ultimate goal to which everyone – and every state – aspires, regardless of particular cultural perspectives.[[185]](#footnote-185) With figures (when the book was written in the 1990s) of 20 million refugees and 30 million internally displaced persons, the authors argued that it was ever-more urgent to find solutions to the human tragedy of conflicts in Africa involving state collapse and internal conflicts – and that a renewed understanding of sovereignty was the way forward.[[186]](#footnote-186)

The concept of sovereignty as responsibility began to move more firmly into the domain of international peace and security law as a response to the stagnation in the debate on the topic of humanitarian intervention and its perceived deadlock between state sovereignty/non-intervention and human rights. In his Millennium Report to the General Assembly in 2000, Kofi Annan again challenged the human rights/state sovereignty deadlock by asking:

If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we react to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?[[187]](#footnote-187)

This call to a common humanity was followed up by the Canadian government, which commissioned a substantial consultation on the issue, to be followed by the production of a report.

## 1.1 The International Commission on Intervention and State Sovereignty (2001)

In 2001, having met with a wide range of actors including NGOs, governments and civil society groups, the ICISS produced a detailed report. The ‘Responsibility to Protect’ report attempted to resolve this human rights/state sovereignty deadlock by reconceptualising sovereignty as suggested by Deng and others. It also claimed to do so by shifting the debate away from the point of intervention and those claiming a right to intervene, and towards the question of what duties are owed to individuals, both by their state and by the wider society of states, or ‘international community’, as it has come to be known.[[188]](#footnote-188) The report covered the changing international environment of security threats; changes in the terms of the humanitarian intervention debate and the meaning of sovereignty; the three ‘pillars’ of responsibility (prevention, reaction and rebuilding); authority for intervention and with operational military issues. Finally, the report ended with thoughts for the ‘way forward’, from the analysis therein to action in the future.[[189]](#footnote-189)

*The Context of the Report*

The changing international environment depicted by the report includes new actors (in particular the increased number of states since decolonisation and various non-state actors), together with new security issues such as the increase in intra-state conflicts, frequently associated with weak states and frequently involving high civilian casualties, with resource wars and modern technology complicating the picture.[[190]](#footnote-190) The ICISS warns that these conflicts are not ‘a set of discrete and unrelated crises occurring in unimportant regions’ but are part of a process of state fragmentation not helped by transfers of money and arms from the West which can fuel terrorism, refugee flows, transnational crime and the spread of infectious diseases.[[191]](#footnote-191) In other words, the problems of distant strangers are also our problems. The report notes that ‘millions of human beings remain at the mercy of civil wars, insurgencies, state repression and state collapse’.[[192]](#footnote-192) At the same time, international law has increasingly become concerned with protecting the individual, evidenced by increasing numbers of human rights treaties since the end of World War II.[[193]](#footnote-193) These include the Universal Declaration of Human Rights,[[194]](#footnote-194) the four Geneva Conventions,[[195]](#footnote-195) the Convention on the Prevention and Punishment of the Crime of Genocide,[[196]](#footnote-196) the two 1966 human rights covenants,[[197]](#footnote-197) CEDAW[[198]](#footnote-198) and the Rome Statute for the International Criminal Court (ICC).[[199]](#footnote-199) This progress in multilateral human rights instruments is viewed by the report as part of a process of realising the ideal of justice without borders, in both the substance of human rights obligations and the process of international criminal tribunals.[[200]](#footnote-200)

Against this background, the report argues that a principle is emerging of intervention for human protection purposes – including military intervention in extreme cases of major harm to civilians.[[201]](#footnote-201) This is justified because the ‘conditions under which sovereignty is exercised’ are very different from 1945,[[202]](#footnote-202) and a defence of state sovereignty ‘does not include any claim of the unlimited power of a state to do what it wants to its own people’.[[203]](#footnote-203) ICISS reported that in its consultations it found less tension between the ideas of state sovereignty and intervention than the Commission’s chairs had expected, with a broad acceptance of the idea of state sovereignty entailing responsibility towards citizens.[[204]](#footnote-204) In the light of this, the Commission recommended changing the terms of the debate from a ‘right to intervene’ to a ‘responsibility to protect’, focusing on the victims rather than the interveners and encompassing a broader responsibility than just that of military intervention.[[205]](#footnote-205) The core principle of the report is that:

If a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unable or unwilling to halt or avert it, the principle of non-intervention yields to the international responsibility to protect’.[[206]](#footnote-206)

Thus each individual state has the primary responsibility to protect its population. Only if it fails should the international community step in to provide protection to vulnerable individuals. As Bellamy says, the ‘concept of the R2P rests on the idea that sovereignty and human rights are two sides of the same coin, and not opposing principles locked in interminable struggle’.[[207]](#footnote-207)

*The Definition of Serious Harm*

The acts that the ICISS report addresses are genocide, war crimes, crimes against humanity and ethnic cleansing. Gareth Evans, one of the ICISS co-chairs, explains that the different mass atrocities in the report are not mutually exclusive, and that, for example, genocide has a precise definition as opposed to the broader notion of ethnic cleansing.[[208]](#footnote-208) What they all have in common, the ICISS notes, is that they are acts which ‘shock the conscience of mankind’.[[209]](#footnote-209) Evans argues that it is not necessary to distinguish between the categories: if something is an ‘atrocity crime’ the RtP should be invoked, regardless of the precise definition of the acts in question.[[210]](#footnote-210) Similarly, David Scheffer suggests that an ‘atrocity crime’ must be of a certain severity before it passes the RtP threshold and justifies military intervention in response – eg by being large scale, widespread and systematic.[[211]](#footnote-211) Sections 3 and 4 of this Chapter return to the ‘scope’ of the RtP when assessing the international response to particular crisis situations and what the international community has viewed as coming within the RtP remit. This is important for this thesis because much of its critique of the RtP centres on its view of mass atrocities as acts which are somehow unique and separate from global injustice more generally.

Having established what it is that populations need protecting from, the report looks in detail at how protection from these evils might be carried out, with the concept of a responsibility to protect involving three different pillars, or aspects – those of prevention, reaction and rebuilding.

*Prevention*

The RtP involves a responsibility to prevent and a commitment to ‘exhaust prevention options before rushing to embrace intervention’,[[212]](#footnote-212) with global governance institutions exhorted to move from a culture of reaction to one of prevention.[[213]](#footnote-213) Fitting with the general theme of the RtP, conflict prevention is primarily the responsibility of the state in which the conflict may develop, through a ‘firm national commitment to ensuring fair treatment and fair opportunity for all citizens’.[[214]](#footnote-214) The international community should support local prevention efforts with early warning tools to identify potential conflicts, a ‘toolbox’ of preventive measures and a willingness to apply the measures.[[215]](#footnote-215) The role of NGOs in early warning is encouraged.[[216]](#footnote-216) Prevention is divided into immediate and root cause prevention. Root cause prevention should focus on poverty reduction, to address ‘deep rooted structural problems’[[217]](#footnote-217) and development assistance targeted towards conflict prevention through political representation which promotes human rights – especially minority rights – through representative governmental arrangements.[[218]](#footnote-218) Root cause prevention should include political, economic, legal and military measures such as democratic capacity building; overseas development assistance to address inequalities of opportunity; rule of law promotion and security sector reform.[[219]](#footnote-219) The ICISS warns that ignoring underlying factors ‘amounts to addressing symptoms rather than causes’.[[220]](#footnote-220) More direct, short-term prevention also includes these four strategies of political pressure, economic sanctions, legal tools and military action.

Because of the shorter time period involved in ‘direct’ conflict prevention, the particular preventive tools under these headings/in these categories will be different – ICISS refers to ‘straightforward assistance, positive inducements or, in more difficult cases, the negative form of threatened punishments’.[[221]](#footnote-221) Political actions include the involvement of the UN Secretary General and fact-finding missions;[[222]](#footnote-222) economic strategies include promises of extra funding or threats of sanctions or withdrawal of funding by the International Monetary Fund (IMF) and World Bank.[[223]](#footnote-223) Legal measures include mediation, arbitration and the international criminal justice system.[[224]](#footnote-224) In this regard, a key legal tool in prevention is the International Criminal Court, which the ICISS welcomes as a preventative tool that avoids the accusation of victor’s justice levelled at some criminal tribunals.[[225]](#footnote-225) The RtP is related to international criminal justice in a significant way, as the acts the RtP seeks to regulate are crimes or elements of crimes.[[226]](#footnote-226) Criminal prosecution as a preventive, reactive and rebuilding strategy is part of the RtP, with the RtP and ICC part of parallel transitions from sovereign impunity to human rights protection.[[227]](#footnote-227) Military prevention, such as UN preventive deployment peacekeeping forces, is also envisaged by the RtP.[[228]](#footnote-228) This belief in prevention is one of the reasons proponents view the RtP as different from its predecessor of humanitarian intervention, although the similarities between the concepts become evident in the responsibility to react.

*Reaction*

The responsibility to protect ‘implies above all else a responsibility to react to situations of compelling need for human protection’.[[229]](#footnote-229) Coercive reaction can, again, involve political, economic, legal and military activity in the form of sanctions aimed at persuading a regime to halt a developing crisis. Suggested sanctions include political action such as restrictions on diplomatic representation, travel bans for individuals and their families or suspension of membership of international/regional bodies;[[230]](#footnote-230) economic action such as asset-freezing or aviation bans;[[231]](#footnote-231) or military reaction including arms embargoes.[[232]](#footnote-232) Military intervention is reserved for extreme cases only[[233]](#footnote-233) and the rest of this part of the ICISS report is devoted to considering what makes a case such an example – what is an extreme case suitable for intervention? The report starts by endorsing the principle of non-intervention, or non-interference, noting that it protects peoples, societies or cultures as well as protecting states and governments – ICISS therefore notes that not all conflicts require intervention, which can be a destabilising threat to international peace and security. [[234]](#footnote-234) With this caveat, the report goes on to endorse (or report on the endorsement by those with whom ICISS consulted) ‘limited exceptions to the non-intervention rule for certain kinds of emergencies’.[[235]](#footnote-235) ICISS derives its criteria for formulating these exceptions from ‘just war theory’ criteria for judging the justness of a war (though it does not refer explicitly to just war theory, instead referring to the common ground between many different lists of criteria for acceptable interventions). The criteria are right authority, just cause, right intention, last resort, proportional means and reasonable prospects.[[236]](#footnote-236)

ICISS considers a just cause for the extraordinary measure of military intervention to be ‘serious and irreparable harm occurring to human beings, or immediately likely to occur’.[[237]](#footnote-237) This serious and irreparable harm is divided by ICISS into two categories:

Large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or

Large scale ‘ethnic cleansing,’ actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.[[238]](#footnote-238)

The report elaborates upon this, suggesting that the categories would include acts within the Genocide Convention framework, other large scale loss of life (actual or threatened), ethnic cleansing (including acts of terror aimed at ethnic cleansing), war crimes and crimes against humanity, state collapse resulting in famine or internal conflict and also significant environmental disasters where the relevant authority cannot or does not come to the aid of its population.[[239]](#footnote-239) Aware that suggesting an exception to the rule of non-intervention and non-use of force is controversial, justification/reassurance put forward by ICISS is that the range of acts reaching the just cause threshold is limited – reducing the risk of abuse of the RtP concept. As such, ICISS excludes human rights violations falling short of mass atrocity crimes, including systematic racial discrimination or military anti-democratic coups.[[240]](#footnote-240) It also considers the question of gathering evidence to demonstrate that the requirement of just cause has been reached, suggesting reports prepared by UN organs and agencies as part of their normal work, together with fact-finding missions.[[241]](#footnote-241)

In relation to the intention of interveners, ICISS notes that intention must be to ‘halt or avert human suffering’ rather than to alter territorial borders, advance any group’s claim to self-determination or undertake regime change – though this may be an unavoidable consequence of the protection of civilians.[[242]](#footnote-242) Right intention is more likely to be satisfied if an intervention is multilateral, has support from the vulnerable population itself or regional states or bodies.[[243]](#footnote-243) ICISS suggests that national interest is likely to figure as at least part of states’ motivations to spend money, and possibly lives, but suggests that this is acceptable if operating alongside genuine altruistic motives – concerns such as refugee flows or transnational terrorism or drug crimes are legitimate concerns of states.[[244]](#footnote-244) Last resort again highlights the importance of prevention, with all diplomatic and non-military efforts being made for the prevention or resolution of the crisis before military intervention is considered. ICISS admits that it is difficult to tell when all options have been tried – as it says, ‘this does not necessarily mean that every such option must literally have been tried and failed: often there will simply not be the time for that process to work itself out’.[[245]](#footnote-245) Interventions must be carried out using proportional means – a cardinal rule of the law of armed conflict. As ICISS puts it, ‘the scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the humanitarian objective in question’.[[246]](#footnote-246) A military intervention should only be undertaken if it is reasonably likely to halt or avert the mass atrocities to which it is attempting to respond. This means that ‘military intervention is not justified if actual protection cannot be achieved, or if the consequence of embarking upon the intervention are likely to be worse than if there is no action at all’.[[247]](#footnote-247)

*Rebuilding*

If a military intervention is undertaken, the interveners have a responsibility to rebuild a ‘durable peace’, promoting order and safety together with good governance and sustainable development;[[248]](#footnote-248) contributing to future conflict prevention. ICISS criticises previous attempts to rebuild (a growing field of *jus post bellum*, or justice after war) for being under-resourced and short-term, leaving a state with the same underlying problems that resulted in the initial intervention being required.[[249]](#footnote-249) Rebuilding should encourage development and economic recovery, respect for human rights, political inclusiveness, national unity and repatriation of refugees.[[250]](#footnote-250) Providing security for all, disarmament and reintegration are important, so that demobilised soldiers do not turn to armed crime.[[251]](#footnote-251) Rebuilding armed forces is also a problem after recent armed conflict, where former combatants have to act as a police force as well as a military one.[[252]](#footnote-252) Transitional justice is also important, and particularly difficult where a state has a corrupt or non-functioning judicial system.[[253]](#footnote-253) NGOs are praised for their ‘justice packages’ which include a model penal code and provide a useful way to ensure a consistent and fair delivery of justice in a time when there may be no functioning legal system.[[254]](#footnote-254) The ICC is also praised for its rebuilding role, for example making the return of refugees easier through the prosecution of war criminals.[[255]](#footnote-255) Finally, ICISS recommends the encouragement of economic growth through the recreation of markets.[[256]](#footnote-256) ICISS also considers UN territorial administration as providing guidelines for how intervening authorities might behave[[257]](#footnote-257) and notes the balance between staying in the country (ensuring sustainable reconstruction, ameliorating root causes of conflicts, restoring good governance and accustoming the population to democratic processes) versus the negative aspects of dependency and challenges to sovereignty.[[258]](#footnote-258)

*Intervention: Authority and Operational Issues*

The role of the Security Council is paramount as the body with legitimate authority to respond to crises – the ICISS report notes that the consensus on the RtP was premised upon a central role for the Security Council.[[259]](#footnote-259) This report suggests that we should not look for alternatives but should instead seek to make the Security Council work better. One problem with the way the Security Council functions is noted by ICISS to be the veto – ‘it is unconscionable that one veto can override the rest of humanity on matters of grave human concern’.[[260]](#footnote-260) In this regard, the ICISS supports the suggestion made by a representative of one of the Security Council’s permanent five members (P5) – that the P5 refrain from vetoing a resolution on humanitarian issues that would otherwise pass with a majority vote.[[261]](#footnote-261) As ICISS says, ‘It is especially important that every effort be made to encourage the Security Council to exercise – and not abdicate – its responsibility to protect’.[[262]](#footnote-262) When the Security Council fails to act, both the General Assembly (under the Uniting for Peace resolution) and regional organisations are an option for subsidiary action.[[263]](#footnote-263) The ICISS points to possible serious consequences for the UN if the Security Council were to stand by in the face of slaughter and a coalition or single state chose to act to avert the crisis, in a way that was then judged to meet all the ICISS intervention criteria.[[264]](#footnote-264) This is reminiscent of (but does not go as far as) Allen Buchanan and Robert Keohane’s suggestion, noted in the previous Chapter, that a coalition of liberal states could decide on the legitimacy of an intervention if the Security Council was paralysed by a veto or by majority voting against intervention. In their view, Security Council inaction is set against ‘morally compelling’ action to rescue victims.[[265]](#footnote-265) Issues of operation and authority are particularly important parts of this thesis’ critique of the RtP (considered further in Chapter 7) and are returned to in section 4 of this Chapter as some of the more contested parts of the RtP.

On an operational level, the RtP distinguishes itself from ‘traditional’ war-fighting and traditional peacekeeping, noting that this produces different operational challenges. In particular, the focus is on ‘quick success’ whilst ‘inflicting as little damage as possible so as to enhance recovery prospects in the post-conflict phase’.[[266]](#footnote-266) This is contrasted with war-fighting, where destruction of the opponents’ military and industrial capacity may be part of the aim. At the other end of the scale, RtP military interventions are to be distinguished from peacekeeping’s emphasis on consent and neutrality in undertaking ceasefire monitoring and verification, because an RtP operation may have to ‘engage in more robust action’ than traditional peacekeeping.[[267]](#footnote-267) The ICISS envisages two types of preventative deployment under the RtP. The first is a consensual positioning of troops in a hotspot to bring the situation under scrutiny (such as the UN ‘preventive deployment’ force UNPREDEP in 1992);[[268]](#footnote-268) the second is a build-up of troops but not on the relevant territory. This display of force and willingness might be able to monitor the situation from where it is stationed, or add pressure to diplomatic initiatives.[[269]](#footnote-269) These tools are generally envisaged as useful preventively, but may be required to become employed in an actual military intervention.[[270]](#footnote-270) If so, ICISS cautions on the need for careful planning and resourcing of the operation, which may again overlap with peacekeeping operations by becoming ‘peace enforcement’. The report recommends the effective building of a coalition, with the need to harmonise the objective of the intervention between different coalition members.[[271]](#footnote-271) It also stresses the importance of a good command structure and good civil-military relations.[[272]](#footnote-272) Other operational issues include the need to focus on human protection rather than the avoidance of risk to the interveners, together with the importance of good media relations.[[273]](#footnote-273) Operationally-speaking, the report identifies specific tasks in the aftermath of military intervention, including the transfer of authority back to local control, peacebuilding strategies to help this, such as minority protection, security sector reform, civilian police training, disarmament and reintegration of forces and the pursuit of war criminals.[[274]](#footnote-274)

In considering the ‘way forward’ after publication of the report, ICISS addressed process, priorities and delivery. The report noted the importance of process in reinforcing the international community’s collective responsibility, so that the RtP does not legitimise unilateral, unsupported, military action and did not focus the international community’s priorities on military intervention in reaction to a crisis, highlighting the importance of prevention and rebuilding as important priorities. None of this could be done without the political will to act.[[275]](#footnote-275) ICISS suggested that it would be necessary to appeal to the international community on moral and financial grounds to mobilise political will, providing arguments about the urgency of action and also the financial costs of inaction. The report ended with recommendations to the General Assembly and Secretary-General:

8.28 The Commission recommends to the General Assembly:

That the General Assembly adopt a draft declaratory resolution embodying the basic principles of the responsibility to protect, and containing four basic elements:

* an affirmation of the idea of sovereignty as responsibility;
* an assertion of the threefold responsibility of the international community of states – to prevent, to react and to rebuild – when faced with human protection claims in states that are either unable or unwilling to discharge their responsibility to protect;
* a definition of the threshold (large scale loss of life or ethnic cleansing, actual or apprehended) which human protection claims must meet if they are to justify military intervention; and
* an articulation of the precautionary principles (right intention, last resort, proportional means and reasonable prospects) that must be observed when military force is used for human protection purposes.

8.29 The Commission recommends to the Security Council:

1. That the members of the Security Council should consider and seek to reach agreement on a set of guidelines, embracing the “Principles for Military Intervention” summarized in the Synopsis, to govern their responses to claims for military intervention for human protection purposes.
2. That the Permanent Five members of the Security Council should consider and seek to reach agreement not to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support.

8.30 The Commission recommends to the Secretary-General:

That the Secretary-General give consideration, and consult as appropriate with the President of the Security Council and the President of the General Assembly, as to how the substance and action recommendations of this report can best be advanced in those two bodies, and by his own further action.

The ICISS report did not receive an immediate response from the international community, possibly owing to its publication in the aftermath of the events of 11 September 2001.[[276]](#footnote-276) In 2004 the UN High Level Panel referred to sovereignty as entailing protection of a state’s population[[277]](#footnote-277) and to a growing consensus on the international community’s responsibility to step in when a state fails, ‘endorsing’ the norm of a collective responsibility[[278]](#footnote-278) to be managed by the Security Council as the centrepiece of the global collective security system.[[279]](#footnote-279) Four years after the ICISS report and a year after the High Level Panel’s endorsement, the Secretary General produced his report ‘In Larger Freedom’ in the run-up to the World Summit. This report stressed the relationship between development, security and human rights and focused on promotion of democracy and the rule of law internationally as part of the concept of sovereignty as responsibility.[[280]](#footnote-280) Following this report, the idea of a responsibility to protect was debated by the General Assembly as part of the World Summit.

## 1.2 The United Nations General Assembly World Summit (2005)

In two paragraphs of its ‘Outcome Document’, the General Assembly endorsed the key principle of the RtP in its 2005 World Summit, as follows:

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out. [[281]](#footnote-281)

Although the RtP has been hailed as a revolutionary norm,[[282]](#footnote-282) the Outcome Document is a somewhat cautious approach to the detailed content of the full ICISS report. For example ICISS’ reference to the option of General Assembly-mandated action[[283]](#footnote-283) has not been addressed, with the General Assembly committing to the principles of international law, including peaceful means to help protect populations, undertaking collective action only through the Security Council under Chapter VII of the Charter. No reference was made to ICISS’ (very limited) comments on the need for root cause prevention. The General Assembly also did not respond to that part of the ICISS report which noted the suggestion made by ‘a senior representative of one of the Permanent Five countries’ that the Security Council’s P5 might refrain from using their veto power.[[284]](#footnote-284) The definition of serious harm gained an additional qualification of the state manifestly failing its protective responsibility in relation to mass atrocity crimes. This caution suggests that overall the General Assembly may be committed to a more traditional view of international law (and the role of international organisations such as the UN in international peace and security) than ICISS and its supporters might have hoped. Nevertheless it seems that the idea of both states and the international community having a responsibility towards individuals at risk from mass atrocities has been accepted by the General Assembly, which instructed Secretary General Ban Ki-moon to continue to report on the matter.

# 2 The Development of the Responsibility to Protect

There have been several RtP-related developments since the World Summit, from the appointment of a Secretary General’s Special Adviser, Ed Luck,[[285]](#footnote-285) to the production of reports by the Secretary General and the consideration of the doctrine by states, NGOs and the UN subsidiary organs of the Security Council and the Human Rights Council. This section focuses on the most detailed of the Secretary General Reports in order to show how implementation of the report has been envisaged since the General Assembly’s adoption of the key principle of the Responsibility to Protect. This starts to demonstrate some of the tensions within the RtP concept, as the Secretary General’s report differs from the original ICISS idea of the RtP. Section 3 then considers the reaction of the wider international community, including the Security Council, General Assembly (beyond the World Summit), Human Rights Council and some academic commentary, demonstrating further some key disagreements about the content, scope and meaning of the RtP. This all buttresses this thesis’ claim that whilst the RtP has received a positive welcome in the international community, this welcome ignores significant uncertainties over (or tensions within) the concept – which, this thesis argues, means that the RtP will ultimately fail to achieve its aims.

## 2.1 Implementing the Responsibility to Protect (2009)

One of the results of the General Assembly’s request that the Secretary General continue to consider the RtP was the report ‘Implementing the Responsibility to Protect’, produced in 2009.[[286]](#footnote-286) The report suggests a three-pillar strategy for implementing the responsibility to protect (different from the pillars in the 2001 report of prevention, reaction and rebuilding) – these are the state’s responsibility to protect (pillar 1); the international community’s responsibility to assist (pillar 2); and the need for a timely and decisive response to a crisis (pillar 3).[[287]](#footnote-287) The report suggests that through these pillars the RtP can strengthen sovereignty through international assistance, rather than weaken it through intervention.[[288]](#footnote-288) Prevention, through pillars 1 and 2, is viewed by the report to be critical[[289]](#footnote-289) – together with an ‘early and flexible response’ when necessary. Coercive action is mentioned only briefly when Ki-moon encourages the P5 not to use their veto in RtP situations.[[290]](#footnote-290) Referring to pillar 1, the state’s primary responsibility to protect its population, Ki-moon notes the importance of the management or encouragement of diversity and equal enjoyment of rights – ‘responsible sovereignty is based on the politics of inclusion not exclusion’.[[291]](#footnote-291) This commitment to inclusion should be backed up by signing up to any relevant international commitments such as human rights law, humanitarian law, refugee law and the ICC Statute and by enacting national legislation to back up these international obligations with the domestic rule of law.[[292]](#footnote-292) Part of the state’s primary responsibility to protect its population should include seeking help from the international community to craft legislation and train key actors in society.[[293]](#footnote-293)

Under pillar 2, the international community can assist in protecting vulnerable individuals – through encouraging states to meet their responsibilities, helping them to exercise this responsibility, helping them build capacity and assisting states ‘under stress’.[[294]](#footnote-294) Ki-moon focuses particularly on capacity-building, tying in with the prevention pillar of the ICISS report. Prevention includes taking notice of warning signs,[[295]](#footnote-295) reminding states of their obligations[[296]](#footnote-296) and international assistance directed towards good governance training and legislation-drafting.[[297]](#footnote-297) Encouraging, helping and building the capacity of states can all be carried out by the UN, Bretton Woods institutions or regional organisations with experience in attempting to build political and cultural ties and diffuse tensions.[[298]](#footnote-298) Encouragement can include diplomacy, training efforts, dialogue and education on human rights standards,[[299]](#footnote-299) together with reminding states of the costs of mass atrocities over seeking peaceful resolution to internal problems – ‘lost foreign investment, capital flights, reductions in aid and tourism, … Development efforts can be set back for decades’.[[300]](#footnote-300) Capacity-building is viewed as key, with a relatively lower cost than post-conflict peacebuilding[[301]](#footnote-301) and the need for significant civilian skill – itself often difficult to find, so that the possibility of a standby civilian rapid response team was considered by the Secretary General.[[302]](#footnote-302) Ki-moon endorses ICISS’ idea of the potential for deployment of consensual preventive peacekeeping forces,[[303]](#footnote-303) as well as security sector reform and rule of law reform being important targets of assistance and capacity-building from the international community.[[304]](#footnote-304) Like the ICISS report, this report mentions development, noting that:

Chronic underdevelopment does not, in and of itself, cause strains among different ethnic, religious or cultural communities. But it can exacerbate the competition for scarce resources and severely limit the capacity of the State, civil society, and regional and subregional organizations to resolve domestic tensions peacefully and fully.

Ki-moon suggests that increased overseas development assistance would see a decrease in mass atrocity crimes if the assistance is targeted towards equality, social justice and meaningful political participation. He notes that it is possible that overseas development assistance could be directed in a way that exacerbates tensions, so that aid programmes must be cautious with further research needed to understand how this can be done better.[[305]](#footnote-305) The report suggests that important factors include conflict-sensitive development analysis, indigenous mediation and local dispute resolution procedures together with consensus and dialogue – all of which should be able to be replicated by future generations.[[306]](#footnote-306)

Pillar 3 reflects the opening statement in paragraph 139 of the World Summit Outcome Document, that the international community has the responsibility to use peaceful means, or a wider range of collective action measures if peaceful means fail.[[307]](#footnote-307) In doing so, Ki-moon’s report seems to be at odds with the 2001 ICISS report’s understanding of sequencing which, as section 1 showed, uses ‘just war’ criteria to guide the decision on when military intervention might be appropriate.[[308]](#footnote-308) Whilst Ki-moon does say that the use of force should be a last resort,[[309]](#footnote-309) he also argues that there is no need for a chronological sequencing of the different possible RtP responses and that the UN should not prize procedure over results – ‘there is no need for a rigidly sequenced strategy or for tightly defined “triggers” for action’.[[310]](#footnote-310) Pillar 3 endorses the ICISS’ suggestion that a variety of peaceful measures, including dialogue and peaceful persuasion, are important.[[311]](#footnote-311) These can be undertaken by the Secretary General, intergovernmental and other bodies, such as by investigating alleged violations.[[312]](#footnote-312) Referral to the ICC (or its threat) is also seen as important in the face of unfolding violence.[[313]](#footnote-313) Ki-moon suggests that diplomatic sanctions are an important response to problems, together with reducing the sale of arms.[[314]](#footnote-314) Ki-moon’s report notes the responsibility of the UN as well as various regional bodies and civil society in encouraging a timely and decisive response by the international community. He refers to both the General Assembly and the Security Council in this regard, suggesting that the Security Council P5 should consider agreeing not to use their veto power to halt action.[[315]](#footnote-315) Finally, the report also made recommendations to the General Assembly:

The General Assembly should, in my view, look forward to ways in which the United Nations can best help to ensure the fulfilment of the commitments made. In addition to affirming that decision, the Assembly may wish to:

1. Welcome or take note of the present report;
2. Define its “continuing consideration” role as mandated in paragraph 139 of the 2005 World Summit Outcome;
3. Address ways to define and develop the partnerships between States and the international community, under pillar two, “International assistance and capacity-building”, of the strategy outlined in the present report;
4. Consider whether and, if so, how to conduct a periodic review of what Member States have done to implement the responsibility to protect;
5. Determine how best to exercise its oversight of the Secretariat’s efforts to implement the responsibility to protect.

General Assembly resolution 308[[316]](#footnote-316) was passed by consensus and took note of the report and agreed to continue consideration of the implementation report. Since then, the Secretary General has produced three further reports, on early warning and assessment;[[317]](#footnote-317) regional and subregional arrangements;[[318]](#footnote-318) and a timely and decisive response.[[319]](#footnote-319) The report on early warning suggested that the Special Adviser on the Prevention of Genocide had a useful early warning role, collecting the necessary information (especially from within the UN system).[[320]](#footnote-320) This report also noted the importance of information management and analysis; suggesting that gaps in this field had been identified after Srebrenica and were now being addressed – including through multiple sources outside, as well as within, the UN.[[321]](#footnote-321) The report on regional and subregional arrangements noted the importance of the local context of the universal principle of the RtP.[[322]](#footnote-322) Regional organisations were neighbours of the state in question, closer to the events ‘on the ground’ and thus likely to provide useful information and useful mechanisms in prevention and response, such as regional human rights courts.[[323]](#footnote-323) The report on the need for a timely and decisive response noted in particular that it was difficult to separate the elements of prevention and response in many situations relevant to the RtP, arguing that it was not necessary to know under which pillar an activity was being taken, because pillars were not sequential.[[324]](#footnote-324) For example, preventive diplomacy was usually a *response* to a specific set of circumstances, even though a *preventive* activity;[[325]](#footnote-325) while peacekeeping was generally a pillar 2 activity (assistance of the international community) but also encompassed a pillar 3 response.[[326]](#footnote-326)

At times the Secretary General’s reports appear more expansive than the 2001 ICISS report on the use of force (for example compared to ICISS’ condition of military intervention being a last resort); at other times their focus is less on military intervention. The 2009 report also stresses that the RtP concept does not alter international law on the use of force.[[327]](#footnote-327) These differences – and the extent to which they indicate that the content of the RtP is not entirely clear or settled – will be revisited in Chapter 7, which undertakes a critique of the RtP’s provisions. In particular, it will argue that the RtP’s uncertainty surrounding prevention and its tendency to conflate prevention and response risks obscuring the need for long term, structural commitments to conflict prevention by the international community by suggesting that mass atrocities can be halted by activities such as early warning or human rights training. Of course this is a simplistic presentation of the reports discussed above, but it is offered here to suggest the case that Chapter 7 will make in more detail. This is the case that, despite trying to move on from the humanitarian intervention debate by including prevention and rebuilding commitments, too often the main issue under discussion in relation to the RtP is that of military intervention, sidelining the importance of long term conflict prevention through redressing structural injustice (for example through global distributive justice initiatives).

## 2.2 Responsibility While Protecting

Clearly the Secretary General’s 2009 report was largely supportive of the original RtP concept, since it was designed to implement the responsibility. Not all activity within the UN framework has been wholly supportive, however. In September 2011 Brazil introduced the idea of a ‘responsibility while protecting’ (RwP) to the General Assembly in the general debate, possibly as a result of some of the controversial aspects of the RtP’s application in Libya (discussed in section 3.1 below).[[328]](#footnote-328) This proposal stressed the importance of prevention and of seeking peaceful solutions to conflicts because of the ‘high human and material costs of military intervention, even when warranted on the grounds of justice’.[[329]](#footnote-329) It also stressed the need for accountability by those carrying out their responsibility by using force – for example by monitoring the implementation of Security Council resolutions under the RtP banner. This focus on conflict prevention rather than response, and on peaceful dispute settlement, are reminiscent of the arguments of those scholars described in Chapter 2 as resisting the turn to a more coercive, instrumental international law which achieves the ends of justice for individuals. Seeking to move the RtP away from the more controversial points of military intervention and acting without Security Council authority, Brazil’s idea is very much at odds with the otherwise-increasing trend towards hierarchy and coercion in international law as a means to achieving the protection of individuals. The idea of a need for increased accountability of those using coercive force also suggests an awareness of the potential for the concept to be abused and used as an excuse for militarist, interventionist policies of some states – the same critique of the RtP outlined in the Introduction (Chapter 1) by David Chandler and Noam Chomsky.

Brazil’s promulgation of the ‘Responsibility while Protecting’ met with a lukewarm reception among states in their RtP discussions at the UN. This has been explained by Jennifer Welsh as being because of the increased commitments which would be required by the international community were it to endorse the proposal wholeheartedly.[[330]](#footnote-330) The RwP idea and its reception again suggest some potential problems with the RtP mentioned in the previous section, in terms of clarity of the concept and exactly what each part of the ICISS report (and the Secretary General’s report) entails in terms of the international community’s commitments. This is explored further below (section 3), when particular crisis situations have met with different uses and understandings of the RtP by the international community. These differences are linked in this thesis to some of the remaining unresolved issues within the RtP (section 5), to which the thesis returns later in its critique of the doctrine (Chapter 7). For example, RtP supporters deride the focus on prevention as making the RtP unable to do what it really needs to do – provide a swift response to horrendous mass atrocities. But if better, long term, prevention reduces the occurrence of atrocities and therefore the need for any response, and if the response does a lot of damage to those it is trying to save, it is questionable whether response should in fact be prioritised over prevention.

# 3 The RtP in the International Community

Since the promulgation of the RtP concept by ICISS in 2001, the RtP has been discussed and debated in academic circles (on both theoretical and practical levels) as well as when particular crises have prompted responses in RtP terms by UN bodies, NGOs and policymakers. An academic journal was started in 2009 – the *Global Responsibility to Protect* – in which academics explored many details of the RtP, discussing the positive role the RtP could play in different regions, the role of civil society and specific aspects of the RtP such as prevention or implementation.[[331]](#footnote-331) At the same time as the discussion of the meaning of the concept was taking place, various parts of the international community made ‘practical’ reference to the RtP in their reactions to various crisis situations. This section demonstrates some conceptual uncertainties and differences of opinion over parts of the RtP and, despite these uncertainties, a general trend towards acceptance and endorsement of the RtP by these parts of the international community, as well as references made to the RtP in the Security Council and Human Rights Council.[[332]](#footnote-332) This leads on to the Chapter’s final section, which highlights some of the problems, or unresolved issues, revealed by the responses to the doctrine in the international community – both in general and in response to particular crises which have developed. Some of these examples of crises, and the problems with the RtP, will be revisited in Chapter 7, which provides a critique of the RtP. The way the RtP is represented by its proponents (and examples they use from particular crises to support their arguments) will be addressed in this critique, which shows that the RtP focuses on the symptoms rather than the causes of injustice and insecurity, and will therefore not succeed in addressing these problems. Here, though, the intention is to demonstrate how the RtP is viewed by parts of the international community and then for the final section to suggest some potential problems with the concept.

## 3.1 Particular Crisis Situations and the RtP

*Kenya*

When violence broke out in Kenya after the December 2007 elections, diplomatic efforts and dialogue with the parties were undertaken immediately by a variety of people, such as Archbishop Desmond Tutu and several former presidents of African States – including mediation between the parties, calls to remain calm and restrained and abide by international human rights obligations. Bernard Kouchner (then French Foreign Minister) appealed to the UN to respond to the situation in RtP terms[[333]](#footnote-333) and Kofi Annan brokered a peace agreement in February 2008. A Commission of Inquiry was called to investigate the crisis; this Commission gave the names of six key protagonists of the violence to the ICC in October 2008 (after two failed Governmental efforts to establish a tribunal); the ICC Prosecutor initiated an investigation and issued a summons for these six, who were charged with crimes against humanity. Commentators praised the international community’s response to the Kenyan situation as straight out of the RtP toolkit,[[334]](#footnote-334) as an example of the RtP in action,[[335]](#footnote-335) as a ‘classic R2P situation’[[336]](#footnote-336) and ‘a successful example of R2P at work’.[[337]](#footnote-337) More specifically, Adrian Gallagher argues that Kenya shows that the RtP is about more than just military intervention, suggesting that it has successfully moved the international community’s crisis-response on from viewing humanitarian intervention as the only option.[[338]](#footnote-338) More critical voices, such as Noam Chomsky, suggested that the responses of diplomacy, mediation and criminal proceedings already existed before the RtP, and would have been undertaken whether or not the RtP doctrine existed.[[339]](#footnote-339) Furthermore, the specific violence between the two electoral parties may have ended but this has not ended the country’s ethnic and political tensions,[[340]](#footnote-340) suggesting that crisis resolution may not be as easy as it appears from this situation.

*Myanmar*

When Cyclone Nargis hit Myanmar in 2008, the Myanmar authorities refused to allow international aid agencies access to provide humanitarian aid. Bernard Kouchner again invoked the RtP in a direct appeal to the Security Council to force Myanmar to accept aid.[[341]](#footnote-341) NGOs such as Christian Solidarity Worldwide and the Federation Internationale des Droits de l’Homme referred to the situation in RtP terms.[[342]](#footnote-342) These suggestions were not endorsed by many, however, with arguments for the ‘doctrinal purity’ of the RtP concept prevailing. For example, diverse respondents such as China, Ed Luck and the International Coalition for the Responsibility to Protect (ICRtoP) argued against expanding the concept of the RtP from the four core mass atrocities (genocide, war crimes, crimes against humanity and ethnic cleansing) to include natural disasters, because this expansion might ‘water down’ the concept.[[343]](#footnote-343) In defending the RtP against claims that it expands the ability of powerful states to use force, supporters of the doctrine rely on the very narrow range of circumstances to which the RtP applies.[[344]](#footnote-344) On the other hand, Roberta Cohen is critical of the rush to exclude Myanmar from the RtP’s remit, suggesting that it might have been a valid RtP situation (if the denial of aid amounted to a crime against humanity). She argues that the Myanmar situation demonstrates the need for more effective criteria for deciding when the Security Council should act, covering situations such as this.[[345]](#footnote-345) Overall, though, the international response to Myanmar suggests a willingness to keep the RtP as a narrow response to the four terms listed in the ICISS report – grave abuse by a state of its own citizens.

*Libya*

In Libya, when then-leader Colonel Gadhafi suppressed protests in February 2011 with increasing violence accompanied by threats to ‘cleanse’ the population, civil society (such as major NGOs like ICRtoP, the Global Centre for the Responsibility to Protect (GCR2P), and Civicus) reacted quickly by invoking the Libyan Government’s responsibility to protect its population. Newspaper op-eds also called for action, including in the Financial Times and New York Times. [[346]](#footnote-346) The Human Rights Committee (HRC) ‘strongly call[ed] upon the Libyan Government to meet its responsibility to protect its population’[[347]](#footnote-347) and the Security Council also referred to the Libyan authorities’ responsibility to protect, imposing a travel ban and asset freezes as well as referring the matter to the ICC (which opened an investigation and issued three arrest warrants).[[348]](#footnote-348) The League of Arab States suggested that a no-fly-zone should be imposed, and the Security Council authorised this in Resolution 1973 and also authorised members:

to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory.[[349]](#footnote-349)

States began to recognise the opposition forces – the National Transitional Council (NTC) – as the legitimate government[[350]](#footnote-350) with the African Union recognising the NTC in September 2011. The authorised no-fly-zone action morphed into ‘regime change’ and the ousting of the Gadhafi government by the NTC (with his death on 20 October 2011 and the end of the conflict on 26 October). Pursuant to Resolution 1973 this regime change was supported by a 15-member coalition providing the NTC with weapons as well as air support through the no-fly-zone. Resolution 2016 recognised the end of the conflict and the positive developments in Libya following Gadhafi’s death, terminating the authorisation for NATO’s campaign and underscoring the new Libyan authorities’ continued responsibility to protect.[[351]](#footnote-351)

Simon Adams (Director of major RtP NGO the GCR2P) applauds the RtP for preventing a massacre in Benghazi; others also hail Libya as a success for the RtP.[[352]](#footnote-352) Alex Bellamy suggests that Resolution 1973 signals a continuing trend for the Security Council to authorise the use of all necessary measures (ie force) following RtP references in Kenya, Guinea, the Cote d’Ivoire and the Eastern Democratic Republic of the Congo – he suggests that these show a move in the international community from wondering *if* we should act to wondering *how* we should act.[[353]](#footnote-353) Similarly, the ICRtoP (a major NGO) describes Libya as being about not whether but how to protect civilians.[[354]](#footnote-354) Thomas Weiss suggests that the RtP’s emphasis on prevention (from the Secretary General’s 2009 report) had been counterproductive by stalling a much-needed focus on reaction to mass atrocities by force; he argues that Libya remedied this and showed that the RtP could work as intended.[[355]](#footnote-355) However, the troubling circumstances of Gadhafi’s death, together with allegations of other war crimes by the NTC (and breaches of IHL by NATO by association),[[356]](#footnote-356) led to criticism of the Libyan action.[[357]](#footnote-357) The ICRtoP suggested that Libya highlighted the need to distinguish between the (unimpeachable) ideals of the RtP and the (unfortunate) way they happened to play out in practice on this occasion.[[358]](#footnote-358) Thus the invocation of the RtP in relation to Libya demonstrates some potential problems with the doctrine in practice, even if it also demonstrates an increased willingness to put the concept into practice.

*Syria*

When problems arose in Syria in mid-March 2011, the overall international response was more muted. The EU and League of Arab States imposed sanctions, embargoes and asset freezes on all sides to the conflict in May 2011, lifting the embargo on the opposition shortly thereafter. The Secretary General’s Special Advisor on the Prevention of Genocide reminded both the Syrian Government and the international community of its responsibility to protect the Syrian population and suggested that the Security Council refer the matter to the ICC (which it has not yet done).[[359]](#footnote-359) Russia and China vetoed several resolutions in the Security Council referring to Syria’s responsibility to protect its population and the US and UK unsuccessfully attempted to garner domestic support for military action against Syria in the absence of Security Council authority.[[360]](#footnote-360) The only Security Council resolution on the matter has been in relation to the chemical weapons possessed by Syrian authorities.[[361]](#footnote-361) The Human Rights Council has been more active than the Security Council in relation to Syria, holding four special sessions and despatching various fact-finding missions and commissions of inquiry to Syria. In its 16th, 18th and 19th Special Sessions and 22nd Ordinary Session the HRC urged the Syrian Government to protect its population and found crimes against humanity and war crimes to have been committed by both government and opposition forces.[[362]](#footnote-362) The General Assembly has produced various resolutions taking note of the HRC’s work on Syria, deploring the failure of the Government of the Syrian Arab Republic to protect its population[[363]](#footnote-363) and calling ‘upon the Government of the Syrian Arab Republic to immediately put an end to all human rights violations and attacks against civilians, protect its population’.[[364]](#footnote-364) Civil society, in its various forms has also referred to Syria in RtP terms, holding the RtP up as a standard by which to judge the international community – and deploring its failure. A typical newspaper reaction is the comment that ‘here we are, once again, with the Security Council standing virtually idle while mass atrocities are being committed, the very situation the responsibility-to-protect concept was designed to avoid’.[[365]](#footnote-365) Towards the end of 2012, the League of Arab States, EU, US and UK recognised the opposition coalition as the legitimate government, although it is a fractured group of rebels, some of whom have been linked to Al Qaeda.[[366]](#footnote-366)

The use of the veto in the Security Council in relation to Syria has been referred to as illegitimate and an abuse of the UN Charter principle of good faith, halting much-needed action.[[367]](#footnote-367) This criticism is in line with the view of international law (presented in Chapter 2) which enshrines the importance of the individual (and endorses the RtP as an effective means of law enforcement) criticising any obstacle to action in response to mass atrocities. These criticisms are made of the veto despite the fact that ICISS, the World Summit and the Secretary General all endorse the role of the Security Council in authorising military action. The ICRtoP deplores the fact that the problems encountered in Libya led to lack of action over Syria, suggesting that it was not the fault of the RtP itself that there was such controversy over Libya, but rather the fault of problems with implementation or lack of clarity regarding mission scope. Others point out that ‘mission creep’ from civilian protection to regime change is a valid concern because mission creep may be an abuse of the doctrine by powerful states.[[368]](#footnote-368) As the conflict in Syria is continuing, it is difficult to provide a definitive assessment of what Syria means for the RtP at this stage.

These four situations demonstrate the breadth of occasions in which the RtP has been invoked, whether by the UN or civil society, and whether in relation to military or other action. These situations also begin to demonstrate the complexities of the RtP ‘in practice’, with disagreements over whether diplomatic activity in response to a crisis is really RtP action (Kenya), the scope of the RtP concept (Myanmar) or operational problems of action and inaction (Libya and Syria). The section now turns to the Human Rights Council and Security Council more generally, as well as some academic commentary, to offer a brief outline of other circumstances in which the RtP has been mentioned. This is done to demonstrate that despite some of the difficulties outlined in section 4.1, the concept has still, in general, seen increasing use and increasing welcome.

## 3.2 More General Views of the RtP

After the 2005 UN World Summit, the Security Council issued a 2006 resolution on protecting civilians, in which it ‘[r]eaffirm[ed] the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity’.[[369]](#footnote-369) In the same year the Security Council issued a resolution on the Democratic Republic of the Congo and Burundi, stating that ‘the governments in the region have a primary responsibility to protect their populations’[[370]](#footnote-370) and the Human Rights Council noted that ‘the Government has the primary responsibility to make every effort to strengthen the protection of the civilian population’.[[371]](#footnote-371) Both the Security Council and Human Rights Council considered the Cote d’Ivoire in 2011, after the violence following the 2010 elections and both referred to the legitimate government’s primary responsibility to make efforts to protect civilians.[[372]](#footnote-372) After the independence of South Sudan, the Security Council set up a peacekeeping operation charged with ‘[a]dvising and assisting the Government of the Republic of South Sudan, including military and police at national and local levels as appropriate, in fulfilling its responsibility to protect civilians’.[[373]](#footnote-373) In relation to violence in the Yemen, in 2011 the Security Council recalled ‘the Yemeni Government’s primary responsibility to protect its population’.[[374]](#footnote-374) In 2011, the Security Council President also made several statements referring to the RtP. In relation to international peace and security, the President commented that the Security Council ‘reaffirms the responsibility of each individual State to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity’.[[375]](#footnote-375) In 2012, the Security Council President stated three times that the Council ‘underlines the primary responsibility of States in the Lords Resistance Army-affected region to protect civilians’.[[376]](#footnote-376) On Mali, Security Council Resolution 2100 ‘[r]eiterates that the transitional authorities have the primary responsibility to protect civilians in Mali’ [[377]](#footnote-377) and Resolution 2085 asked states to ‘support the Malian authorities in their primary responsibility to protect the population’.[[378]](#footnote-378) On peace and security in Africa the Security Council President’s 2013 statement stressed the importance of the primary responsibility of states to protect their population. This statement also noted the importance of the international community’s secondary responsibility.[[379]](#footnote-379) RtP language was used again in a Presidential Statement on civilian protection, which referred to the paragraphs 138 and 139 from the World Summit Outcome Document, and again RtP language was used in a presidential statement on protecting children in armed conflict.[[380]](#footnote-380) This demonstrates that, despite controversy in some cases, there has been a general tendency for the Security Council and Human Rights council to make increasing reference to the RtP.

The above reveals two main issues of interest. First, the controversy surrounding the use of the doctrine in relation to specific crisis situations, the diverse interpretations of the idea of states having a responsibility to protect and the different views about what the most important part of the doctrine is, when it should be invoked (or not) and what problems can arise with its application in practice. Second, despite these controversies and problems, UN bodies have continued to refer to the RtP, with the Security Council envisaging a relationship between the RtP and the international criminal justice system. This increasing use is matched by an overall sense of ‘approval’ given to the doctrine in academic literature and among policymakers and civil society. Intervention for human protection purposes has been described as enabling ‘those who might die in fear to live in hope instead’[[381]](#footnote-381) and ‘in one revolutionary step, the UN membership has tempered the long-held view that national sovereignty is inviolate when a population is abused’.[[382]](#footnote-382) Even the problems in Libya have not dampened the enthusiasm of RtP supporters. Rebecca Hamilton has argued that the developments outlined in this section show that there is ‘in principle’ support for the RtP from states, civil society and the UN and that the debate should now move on to the remaining issues rather than continuing to wonder whether the RtP is a good idea.[[383]](#footnote-383) Jack Straw has suggested that the RtP could have prevented the massacres in Rwanda and Srebrenica;[[384]](#footnote-384) Simon Adams argues that ‘we have won the battle of ideas’;[[385]](#footnote-385) and Thomas Weiss comments that the RtP debates now are about *how* to act not *whether* to act – as he puts it, ‘the main challenge facing the responsibility to protect is how to act not how to build a normative consensus’.[[386]](#footnote-386) Similarly, James Pattison suggests that the key question now is who should intervene, rather than whether anyone should do so; Christina Badescu echoes this by arguing that scholars should discuss how to act when the Security Council refuses to do so.[[387]](#footnote-387) This lends support to the idea that there is an overwhelming consensus on the RtP, but the doctrine is not without its critics.

The Introduction (Chapter 1) outlined briefly some of the criticisms levelled at the RtP, including the damage it may do to self-determination by a people of their own domestic arrangements, the potential for misuse of the doctrine, and the possible loss of life and destabilising effects of military intervention.[[388]](#footnote-388) Despite these criticisms, supporters have continued to maintain the importance, relevance and significance of the RtP. Substantive responses by proponents to criticisms have been limited – Alex Bellamy argues that the criticisms rest on a misunderstanding of the doctrine[[389]](#footnote-389) and Weiss dismisses the imperialist critique as disingenuous.[[390]](#footnote-390) This thesis is sympathetic to many of the critiques undertaken by the authors mentioned above and in the Introduction (Chapter 1); but offers a different analysis. As suggested in Chapter 1 and alluded to earlier in this Chapter (section 2.2), this thesis disagrees with those RtP supporters who suggest that the battle of ideas has been won. It critiques the RtP’s construction of injustice and insecurity, arguing that this construction means the RtP cannot be truly cosmopolitan and cannot be successful in bringing justice and security to vulnerable individuals in the way many proponents believe it can and will. In order for this critique to take place, the Chapter now turns to some unresolved issues in the doctrine, drawing on some of the points noted in this section – such as the different views of the scope of the concept evinced by different parties, whether the RtP provides any new tools for conflict resolution and the need for post-conflict rebuilding.

# 4 The RtP: unresolved issues

Thus far, this Chapter has set out in detail the provisions of the RtP and considered its development since 2001, particularly in relation to implementation. It has also outlined the growing use of the RtP concept by UN bodies, NGOs and academics during this time. In doing so, it has suggested some potential inconsistencies in, and differences of opinion over, the doctrine – but for the main part the intention has been to describe the provisions of the RtP and how these have been construed and used in international peace and security situations. The Chapter now turns to these inconsistencies and differences of opinion, setting out three main particular unresolved issues. This is done for two reasons. First, to show in more detail the large measure of support received by the RtP in academia and the continuity with the claimed (coercive individualist) trends in international law (identified in Chapter 2).[[391]](#footnote-391) Second, to suggest some of the problems with the RtP – whether acknowledged in the literature or simply revealed by the differences of opinion over parts of the RtP, its aims and priorities. The work in this section is then linked to the ‘English School’ concepts of order and justice as values of international society (Chapter 4), so that these concepts can be explored and critiqued (Chapters 5 and 6). This then forms the basis of Chapter 7’s critique of the RtP, where it will be argued that without a stronger commitment to rectifying structural conditions of injustice and insecurity, the RtP will only ever act as a ‘plaster’ for symptoms without addressing the causes of atrocities.

## 4.1 Conceptual Clarity, Novelty and Legality

Is the RtP ‘new’ in legal, moral or diplomatic terms? Its legal status is ‘hard to state with any exactitude’.[[392]](#footnote-392) The RtP has been referred to in a variety of terms – as a new norm, an idea, a concept.[[393]](#footnote-393) But whilst its supporters may refer to it as a ‘dramatic normative development’,[[394]](#footnote-394) they (and the ICISS report) also seek to situate it within a context which suggests that it is perhaps not so dramatic, as it builds on existing legal and diplomatic tools for dealing with threats to international peace and security. This employs the same descriptive technique, and evolutionary view of history, as used by those describing international law’s progress in protecting human rights (Chapter 2 section 1.1). Although arguments have been made that the RtP could be a new legal norm,[[395]](#footnote-395) by and large it is agreed that the RtP does not (yet) represent a crystallised rule of customary international law.[[396]](#footnote-396) However, supporters note that the RtP norm is built on existing legal foundations including the Genocide Convention and other international human rights instruments[[397]](#footnote-397) – suggesting that whilst it may not be a coherent norm itself, it is fully grounded in legal duties. But if it is not ‘new’, does the RtP actually bring anything extra to existing conflict prevention or reaction measures? The international responses to the crises referred to above could all have been carried out whether or not the RtP existed. The ICISS report was careful to assuage concerns of imperialism by limiting the RtP to the most shocking acts[[398]](#footnote-398) about which the international community is already acknowledged to have legal or moral responsibilities, rather than expanding the doctrine to include natural disasters, sex trafficking or the crime of aggression – and this limitation has been criticised strongly,[[399]](#footnote-399) as has the idea that the four mass atrocities in question can be considered a coherent category of acts with similar causes, requiring similar strategies.[[400]](#footnote-400) To the extent that it is nothing new, the utility of the RtP is cast into doubt – other than acting as a ‘rallying cry’ when a crisis develops. But ICISS also touched upon some more controversial ideas which would be new if they were to be adopted by the international community – for example, suggesting ways around Security Council inaction. It is these controversial ideas, where ‘there is still significant contestation over its meaning, scope and applicability’,[[401]](#footnote-401) that have become the focus of much academic discussion, and these will be considered in depth in Chapter 7’s critique. ICISS, and RtP supporters, make some claims about the RtP’s novelty, in particular in relation to the extent to which the doctrine moves the humanitarian intervention debate forward and away from the deadlock between state sovereignty, non-intervention and human rights. Part of the way the RtP does this is by being much wider than the narrow question of military intervention in reaction to a crisis. But at the same time, these wider aspects of the RtP are often unclear and have been criticised for taking attention away from the important issue – of military reaction.[[402]](#footnote-402) This is considered below.

## 4.2 The Extent of Responsibilities or Duties under the RtP

What preventative steps can or must be taken by the international community and how do these relate to the responsibility to react? Gallagher notes that, in spite of the universal stress on the importance of prevention over reaction, prevention is unclear in the RtP[[403]](#footnote-403) – for example Ki-moon’s report stressed the international community’s role in assisting states to meet their primary responsibility to protect. But how far do these duties of assistance extend? ICISS mentions early warning and identification of triggers of conflicts; Ki-moon suggests economic development is important in conflict prevention. The debates about chronological sequencing of the various prevention and reaction measures available to the international community suggest uncertainty in the RtP itself over exactly what should be done to prevent atrocities, and how far non-military responses should be taken before military intervention is contemplated. Gareth Evans is critical of even the limited focus on long term prevention of mass atrocities, arguing that it draws attention away from the RtP’s ability to act as a ‘rallying cry’ for action in response to crises.[[404]](#footnote-404) This makes it difficult to know exactly what the international community is ‘signing up’ for with regard to assistance and prevention. Alex Bellamy comments that it is hard to find prevention measures aimed directly at mass atrocities and the potentially wide duty of prevention may decrease states’ commitment to the RtP – which he suggests would be a step backwards in the progress achieved of consensus over halting atrocities.[[405]](#footnote-405) The importance of prevention is also at odds with the need for losses to be large scale before a reaction is mandated – Jeremy Levitt suggests that it makes no sense to wait until atrocities become large scale, if action could be mounted earlier.[[406]](#footnote-406) Ki-moon’s implementation report does little to clarify these matters, suggesting that there is no chronological list of responses, and that prevention and reaction measures can be the same measure – this is a vague answer to the question of precisely who can do what, and when, in relation to mass atrocities.[[407]](#footnote-407) The issue of the international community’s responsibility to prevent is at the heart of this thesis. In undertaking its critique of the RtP, the thesis argues that without a genuine and thorough commitment to conflict prevention, the RtP cannot amount to much more than the previous idea of humanitarian intervention, and cannot really succeed in its aims of ridding the world of mass atrocities. Furthermore, this commitment to prevention must be long term and address the international community’s own role in structural causes of violence (such as poverty and inequality), otherwise the international community will only ever react to symptoms of injustice rather than the causes – and this cannot halt mass atrocities.

## 4.3 Authority and the Security Council

What is the role of the Security Council in the responsibility to protect? If the Security Council does not authorise a military intervention when some states (or sectors of civil society) have called for military action, is the Security Council necessarily ‘paralysed’? ICISS explored other options for the just war criterion of legitimate authority in the face of Security Council ‘inaction’, including regional organisations and the General Assembly, but these were not welcomed at the UN’s World Summit. They were, however, welcomed in academic circles ‘as the only alternative to inaction and its devastating human as well as moral consequences’.[[408]](#footnote-408) The assessment of this issue in academic circles tends to criticise ICISS for failing to overcome the need for Security Council authority (although ICISS was reporting on the consensus it found in its consultations). Thomas Weiss and Anne Peters argue that ‘the real problem is not that the UN would intervene too often, but that the Security Council has abstained from authorising military activities’ when the RtP threshold has in fact been reached.[[409]](#footnote-409) Nicholas Tsagourias argues that the Security Council veto is illegitimate,[[410]](#footnote-410) Gallagher refers to the ‘moral deficiencies of the present legal system’,[[411]](#footnote-411) and Levitt describes the ICISS report as stale because it does not get past the quagmire of an ineffective Security Council.[[412]](#footnote-412) Ramesh Thakur suggests that the UN will be damaged if the Security Council does not act and states nevertheless form a coalition and their military action is perceived as legitimate.[[413]](#footnote-413) It seems that supporters of the RtP seek to reassure sceptics by grounding the RtP in existing international law and crisis response mechanisms, but then seek to push the international community further than the global consensus achieved during consultations.

To some extent the issues identified above relate to implementation – Gallagher criticises the ICISS report for lacking an implementation strategy[[414]](#footnote-414) and Ki-moon’s implementation report has been criticised for failing to move implementation forward because of its focus on prevention at the expense of reaction.[[415]](#footnote-415) But the issues identified above all suggest something more significantly problematic with the RtP. The difficulty of answering these questions and of even coming up with an implementation strategy suggests just how complex and potentially contradictory this RtP ‘norm’ is – it may have shifted the terms of the debate, but it has not solved key problems such as authority.[[416]](#footnote-416) Similar questions of authority, and of the prior relationship of the ‘rescuers’ with the victims, have plagued the humanitarian intervention debate and suggest problems with the RtP on a deeper level than mere implementation.[[417]](#footnote-417) This section has suggested that the RtP is perhaps not such a coherent concept as is widely assumed. Chapter 7 returns to these issues in critiquing the RtP, focusing on the logical inconsistency of the claims it makes about how primarily states (and secondarily the international community) can achieve security and justice for individuals. For example, if the international community contributes to prior structural conditions of instability and injustice in states which then manifestly fail to protect their populations, it is unlikely that this international community can subsequently successfully implement short term prevention strategies, or react to crises, in a way which successfully halts atrocities.

# Conclusion

This Chapter has examined the concept of the Responsibility to Protect, starting with the ICISS report commissioned by the Canadian Government in 2001 to overcome the problems that had beset the debate on humanitarian intervention. The UN General Assembly’s discussion of the RtP at the World Summit in 2005 was then considered, followed by an exploration of how the doctrine was received by the international community. This included the Secretary General’s reports to the General Assembly on various aspects of the RtP, General Assembly debates and references to the concept by the Security Council and Human Rights Council. The Chapter suggested that the RtP has been viewed positively, despite occasional critical voices, and is an important part of the increasing individualism and constitutionalisation of international law, which seeks to achieve justice for individuals. This Chapter has sought to show that the RtP is largely welcomed in the international community – even some of the criticisms levelled at the doctrine still assume that it is ‘a good thing’ and just needs to be improved.[[418]](#footnote-418) Finally, the Chapter addressed some of the problems and inconsistencies in the RtP, in particular the lack of clarity over the relationship of the RtP with its predecessor concept of humanitarian intervention; the degree to which the RtP is a revolutionary new norm or a restatement of existing legal obligations; the lack of clarity over the scope of prevention duties and the scope of the international community’s duties of assistance and capacity building; and the importance of the Security Council in authorising military action. This thesis challenges the strong voices claiming that the RtP is a widely accepted, coherent norm which must now be implemented more effectively. It argues that, despite the conviction of those who claim that the battle of ideas is won, we should in fact still be asking the basic questions of whether the RtP is a good idea; of whether we should intervene; of whether, between supporting military intervention and supporting mass slaughter, there is a better choice.

Having made the point that fundamental problems exist within the RtP that have not been addressed sufficiently or satisfactorily in the literature so far, the Chapter outlined the thesis’ particular approach to critiquing the RtP, based on the doctrine’s construction of the relationship between security and justice. In doing so, it suggested that the RtP doctrine, and those in favour of it, subscribe to a very particular construction of the relationship between (in)justice and (in)security for vulnerable individuals, and the role of the state and the international community in creating and responding to the situations which the RtP was designed to address. In order to make this critique fully, the thesis now moves on to situate Chapters 2 and 3 in the theoretical framework of the English School of International Relations, and its concepts of pluralism, solidarism, order and justice (Chapter 4). Chapter 5 then examines solidarism further, focusing on the order-justice relationship and the state-citizen relationship in achieving justice, before later Chapters move on to the critique.

**Chapter 4**

**The English School of International Relations**

# Introduction

So far the thesis has made the claim that international relations and international law literature is increasingly inclined to perceive a value-consensus among states and other actors over the ultimate importance of the individual in international society and international law. This – and the associated ‘triumph of liberalism’ at the end of the Cold War – is viewed as having been accompanied by a change in the nature of international law towards a more hierarchical structure with constitutional features further committing the society of states to protecting the individual. These changes are, in particular, said to be happening within the UN’s peace and security practice, which is now directed towards implementing this protection of the individual using force if necessary. Where international law fails to protect the individual adequately, it is criticised for clashing with justice and the new moral consensus of achieving security for individuals across the globe. Against this background the Responsibility to Protect (RtP) was born, designed to supercede the stale debate between the claimed new moral (and to some extent legal) consensus on human rights and the old, statist focus of the law on state sovereignty and non-intervention (which had typified the concept of ‘humanitarian intervention’). The previous Chapter described the RtP’s birth and development, suggesting that although there has been criticism of the RtP (by both supporters of the general principle and detractors), there is significantly more literature and commentary praising the RtP than burying it. The RtP is therefore viewed as a significant part of the development towards justice and security for individuals.

This Chapter situates the development of the RtP, and the parallel claims about international law’s purported move from being state-centred to becoming more individual-centred, within the English School of International Relations. As explained in the Introduction (Chapter 1), the thesis is situated within the English School because its foundational assumption – that we live in a society of *states* – provides the most accurate picture of world politics in which to situate an exploration of the RtP. Further, the English School views international law as an important part of how the society of states functions (for example, Hermann Mosler argued that international law is coterminous with international society – both represent a community of persons wishing to live together[[419]](#footnote-419)), which means that the English School can provide a link between debates about the RtP and parallel debates about international law. It is the English School’s questioning of the relationship between inter-state order and domestic justice for individuals (particularly in the context of the work on humanitarian intervention undertaken by members of the School in the 1990s) which makes it such a suitable platform for the thesis’ investigation of the RtP. This thesis argues that the RtP privileges a particular conception of justice (which is insufficiently egalitarian or cosmopolitan), and its relationship to security, which focuses on the duties of a state towards its people at the expense of a fuller understanding of the duties of the international community towards those same people. This means that the RtP will inevitably only address the symptoms of injustice rather than the causes, and therefore cannot achieve its aim of providing security to vulnerable individuals. In order to make this argument, this Chapter takes a step back from the detail of the RtP introduced in the last Chapter and addresses some tensions within English School theory in order to show the importance of these internal debates for the thesis’ critique of the RtP.

This Chapter proceeds as follows. Section 1 explains the overall methodological approach of the English School. Section 2 sets out the ‘three traditions’ of theorising, to demonstrate how each tradition helps draw out important aspects of contemporary intervention debates. Section 3 then focuses in more detail on the ‘international society tradition and the pluralist and solidarist visions of the shared values of this society (said to be influenced by realism and cosmopolitanism respectively). It also explores critiques of pluralism which present solidarism as a more progressive, individualistic normative theory and which overlap with the criticisms of traditional statist international law set out in Chapter 2, demonstrating the relevance of the English School to this thesis. Section 3 also explains the importance of pluralism and solidarism to the analysis of the RtP undertaken by this thesis. Concluding thoughts are then offered, on the strengths of English School theory for assessing arguments about the changing values of international society and how these arguments relate to doctrines and practices of intervention such as the RtP. The next Chapter examines solidarism in more detail, investigating the theories of cosmopolitanism and liberalism in order to show that solidarism is liberal rather than cosmopolitan, setting up the thesis’ critique of liberalism (and therefore solidarism) and the RtP for being insufficiently egalitarian and cosmopolitan and therefore for being unable to succeed in its aims.

# English School Methodology: a ‘Classical Approach’ to Scholarship

This section outlines some of the English School’s early work to demonstrate the methodology employed by members of the English School in their attempts to grapple with complex questions of world politics. First, it should be noted that at the time of their work (the 1960s) there was no such thing as the English ‘School’ – there was a ‘British Committee’ founded as an equivalent of a similar committee in the US, formed to consider questions of world politics. The term ‘English School’ was not coined until the 1980s, ironically by a scholar criticising the ‘school’ and calling for its closure.[[420]](#footnote-420) This resulted in a renewed interest in the individual scholars now associated with the school and the questions they studied.[[421]](#footnote-421) Early English School work tends to be descriptive rather than analytically normative, seeking to account for the way world politics works and avoiding succumbing to a narrow outlook that could only explain a limited part of the subject. For example, Hedley Bull’s ‘International Theory: the case for a classical approach’[[422]](#footnote-422) responded to the scientific trend in the study of international relations in the US by recommending a traditional, theoretical, approach. Bull defended the ‘classical’ study of international relations against the demands of US behaviourist scholars who, in Bull’s words, ‘aspire to a theory of international relations whose propositions are based either upon logical or mathematical proof, or upon strict, empirical processes of verification’.[[423]](#footnote-423) Bull recommended instead an:

approach to theorizing that derives from philosophy, history, and law, and that is characterized above all by explicit reliance upon the exercise of judgment and by the assumptions that if we confine ourselves to strict standards of verification and proof there is very little of significance that can be said about international relations, that general propositions about this subject must therefore derive from a scientifically imperfect process of perception or intuition, and that these general propositions cannot be accorded anything more than the tentative and inconclusive status appropriate to their doubtful origin.[[424]](#footnote-424)

This tentative or inconclusive status is not to be taken as something which diminishes the importance of the study of international relations and the conclusions to which ‘classical’ scholars come. Rather, it is to be seen as a more methodologically honest approach, acknowledging the limits of what scholars can hope to achieve. Again in Bull’s words:

...by confining themselves to what can be logically or mathematically proved or verified according to strict procedures, the practitioners of the scientific approach are denying themselves the only instruments that are at present available for coming to grips with the substance of the subject. In abstaining from what Morton Kaplan calls ‘intuitive guesses’ ... they are committing themselves to a course of intellectual Puritanism that keeps them (or would keep them if they really adhered to it) ... remote from the substance of international politics.[[425]](#footnote-425)

Bull goes on to point out that the judgment and intuition of individual researchers is central to classical scholarship, which addresses moral questions to which there is no objective answer – and even when the subject of scholarship does involve framing and testing hypotheses, such empirical matters are still so strongly dependent on our own observational judgment that such work cannot properly be described as ‘scientific’.[[426]](#footnote-426) This can be demonstrated particularly well by some of the questions that Bull and other British Committee members sought to address – is there such a thing as a society of states; does a society (if it exists) rest on a common culture or merely functional convenience; what is the place of war in international society; who are the ultimate members of international society?[[427]](#footnote-427)

This is not an argument of importance only to those debating the usefulness of behaviourism in the 1950s-60s. More recently (in 2000), Robert Jackson has defended this sort of scholarship as being a ‘craft discipline’.[[428]](#footnote-428) He points out that conducting research that undertakes historical analysis, legal-institutional scholarship and political philosophy enables the researcher to draw upon the insights and reflections of several generations of scholarship; and does not have to involve creating hypotheses about political life[[429]](#footnote-429) – a craft discipline ‘is not and could never be a strictly scientific or narrowly technical subject’.[[430]](#footnote-430) This point is important for this thesis because it examines arguments about the RtP, order and justice from a perspective encompassing political theory and legal scholarship, analysing the RtP and international peace and security law in a multidisciplinary and methodologically pluralist framework. It undertakes a wider analysis of the RtP than just of the documents which go together to form the doctrine – the thesis situates the RtP in the context of arguments about security and international law in the post-Cold War era. One of the chief methods of this work is an analysis of the logic of arguments made in favour of the RtP. This analysis, or a priori reasoning, cannot be understood or carried out by testable hypotheses involving quantitative or qualitative data – or, if it can, it would lose much of its subtle analytical power, and its ability to draw out continuities in international legal debates with a previous generation of scholarship, and with other disciplines and approaches.[[431]](#footnote-431)

Having defended the overall English School methodology, the Chapter now turns to the ‘three traditions’ which characterise the English School approach to world politics and it does so for three reasons. First, in order to suggest that the English School can offer a more sophisticated approach to world politics than either of the main international relations theories of realism and liberalism,[[432]](#footnote-432) because of its appreciation of the complexity of world politics and the multiple influences and explanations possible for any particular event. Second, in order to make the case that the ‘international society’ tradition is a more accurate description of our world than either of the ‘realist’ or ‘revolutionist’ ideas of international system or world society. Finally, it does so in order to provide context for Section 3, which explores the concepts of a pluralist and a solidarist society of states. Pluralism and solidarism are believed[[433]](#footnote-433) to be influenced by realism and revolutionism respectively, so a discussion of the concepts of pluralism and solidarism must be grounded in a discussion of realism and revolutionism. The introduction to pluralism and solidarism in this Chapter in turns sets up the discussion in the rest of the thesis which critiques the solidarist understanding of security and justice underlying the RtP. Having critiqued solidarism and the RtP, the thesis suggests that a pluralist society of states (and international legal system) does not have to be the conservative, realist-influenced society that traditional English School and international legal theorists have supposed it to be.

# The Three Traditions

The English School’s attempt to explain the complexity of international affairs through historical, philosophical, sociological and legal scholarship is nowhere more apparent than in Martin Wight’s exposition of the ‘three traditions’ of international theory. Wight identified three broad categories of thought present in the literature theorising about international affairs and he associated these traditions with Machiavelli (realism), Grotius (rationalism)[[434]](#footnote-434) and Kant (revolutionism).[[435]](#footnote-435) Andrew Linklater has associated these three traditions with the methodological approaches of positivism (realism), interpretivism (rationalism) and critical theory (revolutionism) respectively,[[436]](#footnote-436) leading Richard Little to argue that the School is methodologically pluralist. This gives English School theory a broad scope for explanation of international affairs[[437]](#footnote-437) – tying into Bull’s argument that not everything in world politics can be reducible to a series of testable hypotheses. Importantly, Wight assumed that all three elements of realism, rationalism and revolutionism existed together, not as competing perspectives on international affairs with each theory claiming better powers of analysis and explanation than the other, but as constantly interweaved together – he likened the traditions to river currents rather than railroad tracks.[[438]](#footnote-438) Overcoming the ‘binary opposition’[[439]](#footnote-439) of realism and liberalism, the three strands present in English School theory have been explained as forming a trialectical relationship with each other,[[440]](#footnote-440) allowing the English School ‘to act as an interlocutor between opposing positions that otherwise lack the ability to communicate effectively with each other’.[[441]](#footnote-441) After exploring each of the three traditions and their view of interests, values and war in more detail, this section explains why the English School offers a useful theoretical framework (particularly compared to the dominant international relations theories of realism and liberalism) for understanding important questions about intervention and the RtP.

## 2.1 Realism

Realist thought[[442]](#footnote-442) shares the belief that (naturally self-interested) human nature, together with the anarchic structure of world politics in the absence of a world government, mean that self-interest and material power dictate state behaviour.[[443]](#footnote-443) Early, classical, realism, viewed human nature and structural causes of state behaviour as equally important[[444]](#footnote-444) – the ‘blood and iron and immorality men’[[445]](#footnote-445) would naturally pursue self-interested goals and for state leaders these would be to maximise the state’s material power and pursue state interests, trying to gain power relative to other states. Structural realism – developed during the Cold War chiefly by Kenneth Waltz[[446]](#footnote-446) – argued that even without selfish human nature, the anarchical structure of the international realm (ie the absence of a world government) meant that states inevitably strove to protect their interests in order to survive and this ensured that states competed to maximise their interests, with the only difference between states being their material capabilities.[[447]](#footnote-447) The combination of human nature and international anarchy described above meant that warfare was inevitable as states sought to pursue their national interest (which would naturally conflict with other states’ interests).[[448]](#footnote-448) Realism is associated with an ‘international system’ of states which interact in a limited manner, behaving ‘as parts of a whole’ even if this behaviour tends towards conflict.[[449]](#footnote-449)

The interaction between states is largely unconstrained by rules (and largely *unconstrainable*) international law and international organisations are not capable of influencing state behaviour or preventing powerful actors from pursuing their interests,[[450]](#footnote-450) especially in relation to the problems of distant strangers which the RtP aims to address. Laura Neack’s work provides an example of this (in relation to peacekeeping rather than the RtP).[[451]](#footnote-451) She examines factors affecting states’ contributions to peacekeeping operations up to 1990 together with perceptions of the success or failure of missions, suggesting that the findings support a realist account of peacekeeping. Instead of contributing to peacekeeping operations out of a concern to protect the international peace and underlying value consensus, middle powers in particular contribute to operations as a way to preserve their international status, whilst failing to contribute to international peace by reducing arms sales, for example.[[452]](#footnote-452) Catherine Gegout has argued that realism best explains the West’s policies in the Democratic Republic of the Congo, creating and defending zones of influence in the Cold War, followed by neglect in the 1990s.[[453]](#footnote-453) This certainly accords with the realist idea that states will not risk soldiers’ lives unless it is in the national interest to do so.[[454]](#footnote-454)

Richard Little relates the realist tradition to a positivist methodology which examines international society from the outside and analyses recurrent patterns in history, embodied by Wight’s assertion that ‘international politics is the realm of recurrence and repetition’ within international society. No doubt because of this, realism is sceptical about the degree of progressive change that can happen and has happened in world politics,[[455]](#footnote-455) and this certainly makes it a useful tool with which to look at the pattern of national interest lying behind purported moral reasons for interventions. Realism can be used as a critical tool to point out the hypocrisy of statements about human rights given powerful states’ disregard of morality when it suits them.[[456]](#footnote-456) This view also explains why states intervene on some occasions and not on others. For example in relation to Rwanda, the US did not ‘have a dog in this fight’,[[457]](#footnote-457) whereas the US (and allies)’ interests in fighting Iraq in both 1990 and 2003 can be related to the need to secure oil supplies.[[458]](#footnote-458)

Realism cannot be said to provide a complete account of international affairs, however. It has been criticised for failing to account for the effect of domestic changes (such as the internal breakdown of the Soviet Union) on the international system (in this example, the end of the Cold War). Because of his view of the stability of structural constraints on state behaviour, prominent neo-realist Kenneth Waltz predicted that the bipolarity which characterised the Cold War would continue almost indefinitely.[[459]](#footnote-459) Constructivist accounts of international relations also reveal some flaws in the realist assumption that a state’s interests are material, ie external to the state, and fixed. Constructivism suggests that a state’s interest are socially constructed and can – and do – change, a common example being the transition of Sweden from being a nuclear to a non-nuclear state.[[460]](#footnote-460) Research also suggests alternative interpretations of state interventions and non-interventions in peacekeeping operations, such as the ‘CNN effect’, whereby media presentation of a crisis causes people to petition their government to do something.[[461]](#footnote-461)

## 2.2 Revolutionism

The revolutionist strand of thought stresses the moral unity of a society which transcends state units to form a cosmopolitan community (or ‘world society’ as often used in English School theory) of humankind.[[462]](#footnote-462) Wight acknowledged that revolutionism was not as much of a coherent stream of thought as realism was, but was rather a series of ‘waves’ – several different unconnected expressions of the political philosophy of universality,[[463]](#footnote-463) which Bull described as the ‘subversion, liberation and missionary men’.[[464]](#footnote-464) Revolutionism could, for example, be seen in the coincidental uniformity of states represented by Kant’s idea of states merging towards republican constitutions; imperial doctrines of domestic conversion or the dissolution of the society of states in favour of a community of humankind.[[465]](#footnote-465) In more recent English School work revolutionism is associated with a Kantian cosmopolitan community of humankind[[466]](#footnote-466) in which individuals are the relevant unit of moral concern, all individuals are equal and this concern for individual equality is applicable globally.[[467]](#footnote-467) Bull referred at different times to a community of mankind or a ‘world society’ of individuals[[468]](#footnote-468) and associated this with cosmopolitan or liberal universality, focusing on individuals and other non-state actors. Whatever term is used, this idea of a universal community is described as ‘something that reaches well beyond the state towards more cosmopolitan influences of how humankind is, or should be, organised’.[[469]](#footnote-469)

As might be suggested by the primacy of individuals, there is a limited concept of ‘national interest’ in revolutionist thought, because individuals are so much more important than nations or states – ‘it is impossible to protect and enhance human freedom and well-being exclusively through the traditional paradigm of national security’.[[470]](#footnote-470) The equality of individuals everywhere trumps considerations of national interest, meaning we should care about strangers (almost) as much as we care about fellow nationals.[[471]](#footnote-471) Instead of national interest, the relevant question is what is in the interest of ‘the universal society of mankind’.[[472]](#footnote-472) Security has come to be viewed as existing at the individual level as well as between states and it is on this idea of ‘human security’ that the RtP rests.[[473]](#footnote-473) This thesis is not an investigation into the concept of human security in particular, preferring to address the RtP specifically rather than any individual concept underlying the doctrine – the point to be made here is simply the application of traditionally statist concepts to the domain of the individual. Cosmopolitans generally view traditional international law as overly statist, working within the states system rather than seeking to achieve cosmopolitan values beyond states[[474]](#footnote-474) – though, as Chapter 2 suggested, international human rights treaties or the Universal Declaration of Human Rights have been described as prime examples of cosmopolitan international law.[[475]](#footnote-475) Similarly, the International Criminal Court (ICC) has been described as cosmopolitan, as it puts obligations directly onto the individual rather than going through the state.[[476]](#footnote-476) In addition, Chapter 2 drew attention to scholars who view the constitutionalisation of international law as enshrining cosmopolitan principles.

Whereas realism views international law as incapable of constraining states from using force to achieve their national interest, Wight argued that cosmopolitanism viewed war in two different ways – either as prohibited by pacifism (because war fails to meet the standards cosmopolitanism sets for the justification of violence[[477]](#footnote-477)) or as a revolutionary tool to end all war.[[478]](#footnote-478) Methodologically, Richard Little associates the revolutionist tradition with critical theory’s aim of achieving the emancipation of individuals belonging to a world society from repression within the society of states.[[479]](#footnote-479) The question of whether war can be a tool of emancipation is an important one in cosmopolitan circles and relates directly to humanitarian intervention and RtP debates on the use of force to uphold vulnerable individuals’ human rights against oppressive states. Some recent work has undertaken a spirited defence of ‘cosmopolitan war’ against cosmopolitan pacifism,[[480]](#footnote-480) arguing that ‘we sometimes have the right to resort to war, precisely when our or other people’s fundamental rights are violated’.[[481]](#footnote-481) Fernando Teson argues that a Kantian interpretation of international law supports the use of force to enforce international human rights protection[[482]](#footnote-482) and Robert Fine views humanitarian intervention as consistent with cosmopolitanism, provided strict just war criteria are met.[[483]](#footnote-483) The RtP and its proponents evoke a cosmopolitan universal concern for humanity in their support of the doctrine, based on ‘a humanity that cares more, not less, for the suffering in its midst’, enforcing international human rights norms against abusive governments.[[484]](#footnote-484) Investigating this claim is a central concern of this thesis, and this cosmopolitan concern is investigated in subsequent Chapters (with Chapter 5 investigating differences between liberalism and cosmopolitanism, Chapter 6 providing a critique of liberal solidarism and Chapter 7 applying this critique to the RtP). Here, the intention has been to describe cosmopolitanism and its approach to war in brief as part of how the English School sees its own three traditions, building an understanding of what the English School has to offer as a framework within which to study the RtP.[[485]](#footnote-485) Ultimately, the thesis concludes that English School solidarism is insufficiently cosmopolitan and is thus an inadequate position from which to assess the RtP.

As just noted, claims that the use of force can be cosmopolitan are controversial, given how far we seem to be from most scholars’ visions of a cosmopolitan community in how we live now. Indeed, Bull did not believe that the world had achieved a community of humankind and suggested that any nascent influence of a ‘world society’ was to be found *within* the society of states rather than acting to overthrow it.[[486]](#footnote-486) This idea forms the basis of the solidarist view of the values of the society of states (to be discussed in section 3 below). Acknowledging that such a world society was not yet a reality, Bull described the revolutionist position as the idea that ‘the ultimate reality was the community of mankind, which existed potentially, even if it did not exist actually, and was destined to sweep the system of states into limbo’.[[487]](#footnote-487)

## 2.3 Rationalism

The rationalist strand of theorising is a ‘via media’[[488]](#footnote-488) lying between the two strands of realism and revolutionism, being described by Wight as a ‘broad middle road of European thinking’.[[489]](#footnote-489) In between the conflictual international system of realism and the revolutionist world society of individuals, rationalism is associated with a society of states having moved beyond mere interaction (in an international system) to cooperation and an ordered coexistence, but which has not moved beyond the units of states to a world society of individuals. Bull defined an international society as coming into existence ‘when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions’[[490]](#footnote-490) and it is these common interests and common values which go to the heart of arguments about the RtP as representative of a new post-Cold War consensus on the protection of vulnerable individuals (explored further in sections 2.4 and 3 below). Rationalism views reason as the source of human knowledge and the rationalist tradition is associated with an interpretive methodology which is interested in the ‘language’ of international society, investigating its rules and procedures and the discourse by which states make their views and interests known.[[491]](#footnote-491) For example, by use of reasoning, persuasion and diplomacy, national interests could be found to be part of a community of interest – it is therefore possible to pursue the national interest without *necessarily* disrupting other states’ national interests.[[492]](#footnote-492) More specifically, and of particular relevance to this thesis, is the conception of security – security can be viewed as a ‘public’ good for all states, rather than as part of competing national security interests between individual states.[[493]](#footnote-493)

Rationalists are described as ‘the law and order and keep your word men’[[494]](#footnote-494) and see international law as a key institution of international society, representing the rules it has agreed to keep order in conditions of international anarchy. As noted in the introduction to this Chapter, the idea of international law has been posited as being the very same thing as an international society – it is not possible to have a society of coexistence between states without rules governing inter-state relations. Andrew Linklater and Hidemi Suganami trace the development of the international society tradition from the classical international law writers such as Grotius, Pufendorf, Wolff and Vattel, with such work endorsed by legal positivists such as Jellinek and Kelsen in their view that international law, though decentralised, was still law – the parallel being that international society, though without a higher authority, was still a society.[[495]](#footnote-495) Peter Wilson describes the importance of international law as a defining feature of English School work, because, as just noted, a set of rules is of paramount importance in enabling international society to function effectively. Though without a central authority to make and apply the rules, international society has nonetheless developed ways for making, changing and adjudicating the rules between states.[[496]](#footnote-496) The content of these rules, and the degree to which they are changing, is the subject of debate within the English School and international legal scholarship, as Chapter 2 suggested. The importance of international law in international society means that the English School is able to bridge debates in international relations and international legal theory, particularly in relation to intervention and the RtP. As explained in Chapter 2, international law can be viewed as a formal set of rules designed to ‘facilitate regular, continuous, and generally orderly international relationships’[[497]](#footnote-497) or a more purposive, malleable set of processes with the aim of achieving the value of justice, or human dignity. Mirroring these two different views of international law, section 3 in this Chapter describes two accounts of the society of states – pluralism and solidarism – each with its own view of the key values of, and the role of law within, the society. These differences are important for this thesis because the overall argument is that the RtP represents the latter, instrumental, view of international law concomitant with a solidarist society of states committed to enforcing justice for individuals across borders in states where gross human rights abuses occur.[[498]](#footnote-498) Section 2.4 links the RtP debates to those in international law.

In response to the realist scepticism about state obedience to international law when not in the national interest, Bull argued that what was particularly surprising about international relations was the fact that states so frequently viewed obedience to international law to be in their interests – perhaps not so surprising in a society built on the expectation of reciprocity.[[499]](#footnote-499) This idea of state interests as being influenced by shared understandings, for example on the need for collective security, demonstrates a significant element of constructivism in Bull’s work. As mentioned in section 2.1 on realism, constructivism posits the constitutive effect of social interaction on a state’s identity and interests. International rules and institutions, in other words, both regulate state behaviour and help to constitute states’ identities and interest; at the same time state behaviour has an impact on these rules and institutions.[[500]](#footnote-500) Tim Dunne describes this importance, of and obedience to, international law in rationalism as simply that international society ‘looks different’ to the ‘static hierarchical system’ sketched by neo-realists of structural constraints forcing states into competition and war.[[501]](#footnote-501)

In general, the idea of a ‘society’ of states is antithetical to war – the point of states forming a society, rather than merely a static, hierarchical system, is to regulate interstate relations without recourse to armed force. Just as the notion of ‘security’ can be a common good rather than a self-interested competitive pursuit – a public interest rather than a national interest – so too can war be an institution of the society of states used as a means of enforcing the common values on which the precarious society rests.[[502]](#footnote-502) In other words, international society can accept the use of force, not as an attempt at power and interest maximisation but as a legitimate way to maintain the stability of the society by enforcing its agreed rules. The development of just war theory is associated with Grotius, and therefore the rationalist international society tradition, because it imposes limitations on both the purpose and conduct of warfare in interstate relations,[[503]](#footnote-503) seeking to regulate the occasions when military intervention is permissible to enforce the rules of international society against a rogue member. The limited exceptions to the use of force in the UN Charter allow for self-defence from an armed attack and collective action through the Security Council in response to a threat to or breach of international peace;[[504]](#footnote-504) this represents international society’s agreement on when a breach of the rules can legitimately result in the use of force (and how it can be authorised). This agreement of the society of states to limit recourse to armed force is of great importance to this thesis, because the RtP (or the part of it which endorses military response to atrocities) represents part of a continuing attempt to change the UN’s collective security system to promote human rights – possibly by diminishing the Security Council’s paramount role in authorising force. Section 2.4 examines this further, showing that the English School is at the centre of contemporary intervention debates.

## 2.4 The Three Traditions and Contemporary Intervention Debates

As has already been stated, this thesis maintains that it is the rationalist tradition’s idea of a society of states which best describes the current structure of global politics.[[505]](#footnote-505) In particular, whilst the international relations theories of realism and liberalism are frequently invoked to explain certain aspects of the RtP, especially as regards liberalism and the legal trends identified in Chapter 2, it is the via media of the international society tradition which is best placed to examine the nature of the claimed value consensus around the RtP and its understanding of the relationship between security and justice – because the ‘dominant approaches to the study of normative change ill-equip us to understand this level of contestation about the current status of R2P’.[[506]](#footnote-506) Importantly, though, it is the different accounts of international society (supposedly influenced by the realist international system and the revolutionist world society) which provide such a useful analytical framework within which to examine the RtP, and its relationship to claimed international legal developments (described in Chapter 2), than either of realism or liberalism.

It might be argued that there is no ‘English School’, if the two competing conceptions of international society are so different. But other theories (such as liberalism, as Chapter 5 shows) have different and varied strands within them whilst retaining a common core which enables them to be identified as ‘a theory’ – and such it is with the English School. Whichever conception of the society of states is used, the English School’s particular focus is on how institutions, law and power relate to the values of the society of states. This enables the English School to be more open to change than realism is, but to apply a necessary scepticism to claims about change (particularly the idea of inexorable progress which marks out liberalism). So, for example, the English School might view power as ‘backing up’ a particular value, putting power in the service of values against a minority of rogue states which do not subscribe to international society’s overwhelming consensus on a particular value. Or the English School might view power as ‘causing’ rather than ‘following’ the value – so power is used to attempt to spread a particular value, coercively. This is considered further in Chapters 5 and 6, on liberal solidarism’s (and post-Cold War international law’s) coercive nature.

This section has explained the differences between the three traditions of thought identified by the English School, and their different perspectives on power, law, values and war. The idea of ‘traditions’ are contestable and may suggest greater continuity between different thinkers than actually existed[[507]](#footnote-507) but, as argued above, Wight used these traditions as paradigms ‘to which no actual thinker did more than approximate’.[[508]](#footnote-508) Seeing the three traditions as interwoven, each with an ability to explain certain aspects of the RtP (how it came to be perceived as needed, the content of the doctrine and its reception in international society), makes intuitive sense compared to the idea that one theory of international relations can account for the nuances within the doctrine and in its reception and use by states, non-governmental organisations (NGOs), diplomats and other policymakers. At the risk of persisting in the oversimplification of which Wight was accused, the idea of the ‘international community’ having a responsibility to individuals across the globe, regardless of national identity, clearly expresses cosmopolitan sentiments of a community whose primary moral referent is the individual rather than the state. The fact that this community or society has produced a doctrine recommending the use of force to protect individuals evokes the rationalist view of war as enforcement of international society’s norms (power in the service of values) – those norms including order between states and justice for individuals within them. The extent to which international society’s rules governing order and justice (and their relative importance) are changing, and the position of the RtP as part of attempted changes, is of key importance to this thesis. Some of the problems with the doctrine identified in Chapter 3, such as the ‘patchy’ application of the doctrine[[509]](#footnote-509) and the lack of interest in long term prevention assistance compared to military intervention, suggest that considerations of national interest still play their part. Realism’s scepticism about claims of progress towards a world society concerned with justice for individuals enables the English School to question the belief in progress displayed by revolutionist thought and therefore question any claims that the RtP represents a move from the society of states towards a cosmopolitan world society (and thus whether power might produce rather than follow the value change underlying the RtP). This is important because RtP proponents rely on an ‘overwhelming consensus’[[510]](#footnote-510) of support for its key principles – and this thesis critiques the assumptions underlying these key principles.

This section has explained the relevance to the RtP of the English School’s appreciation of the interaction between realist, revolutionist and rationalist thought.[[511]](#footnote-511) It is to the influence of realism and revolutionism on the values of the society of states that the Chapter now turns its attention. The different accounts of international society have within them different accounts of the relationship between law, power and values in inter-state relations, and assessing the RtP from these viewpoints enables the thesis to explore the RtP’s relationship with values and power. More specifically, in order for the thesis to undertake a critique of the RtP, the concept of solidarism – at the heart of claims made about international law in Chapter 2 and the RtP in Chapter 3 – is explored. This Chapter undertakes an initial exploration of solidarism in comparison to its counterpart, pluralism, with Chapter 5 exploring solidarism in more detail, making the argument that solidarism is (at least since the end of the Cold War) essentially the same as liberalism. Chapters 6 and 7 provide a critique of liberal solidarism and the RtP, arguing that the RtP, in neglecting how we treat these strangers long before a conflict breaks out, does not ‘live up’ to what is required by a cosmopolitan commitment to justice for distant strangers. It argues that instead the RtP is based on liberal, solidarist, ideas about justice which prioritise how a government treats its own people over how the international community treats them.

# 3 The Common Values of International Society: Pluralism and Solidarism

As mentioned in the previous section, the rationalist international society tradition has been associated with the writings of classical international lawyers such as Grotius.[[512]](#footnote-512) Given that Bull appreciated international law’s fundamental role in managing states’ coexistence, it is perhaps not surprising that he turned to international legal theory to consider the different possibilities of the ‘nature’ of this international society. He undertook a comparison of pluralism based on legal positivism (Lassa Oppenheim) and solidarism based on natural law (Hersch Lauterpacht’s work on Grotius),[[513]](#footnote-513) noting three key differences between these two conceptions of international law and international society: the status of individuals within international society; the sources of international law binding on members of international society and the place of war in international society. This thesis’ critique of the RtP is based on a critique of solidarism; and this section therefore sets out the traditional view (within the English School and more widely) of pluralism and solidarism, which presents solidarism as a more radical, justice-centred theory of international society compared to pluralism’s statist lack of concern with the individual. This enables later Chapters to critique this view of solidarism, showing it to be very selective in its understanding of justice in world politics, and then apply this same critique to the RtP.

## 3.1 Pluralism: pragmatism and difference

Pluralists view states as the only beneficiaries of international law and the only members of international society,[[514]](#footnote-514) thus endorsing legal positivism – law-making by state consent.[[515]](#footnote-515) On war, the early pluralist tradition reflected Oppenheim’s position – that international law regulated the conduct of warfare (*jus in bello*) but not the decision to wage war, because to regulate the *jus ad bellum* would require a shared understanding of what constitutes a just cause, and when Oppenheim was writing (in 1905-1906) this appeared doubtful. States have since consented to a significant restriction of the *jus ad bellum*, in the UN Charter’s prohibition of the use of force promoting order between states.[[516]](#footnote-516) This principle enables different states to live together in an anarchical society.

Pluralism is generally associated in the English School with a pessimistic, pragmatic acceptance of the limits of progressive ethics in a society of states ‘rooted in the survival instincts and self-interests of states’.[[517]](#footnote-517) Robert Jackson, writing in the post-Cold War era, makes similar arguments in favour of pluralism when he cautions against judging the actions of statespeople by the standards of moral philosophers.[[518]](#footnote-518) He argues that, given the difficult choices faced by statespeople, and given that the primary role of the state is to represent its own people by pursuing the national interest, statespeople should not be expected to comply with standards imposed by abstract moral philosophy. Moral philosophical arguments about justice for individuals across the globe are simply not relevant for the ‘ethics of statecraft’. In other words, the normative aspirations of the pluralist society of states is rightly limited to the coexistence of a plurality of types of state, each with its own conception of the ‘good life’, and we should not expect or try to achieve more – even if this means accepting a high degree of injustice for some individuals.[[519]](#footnote-519)

Some scholars do not distinguish between realism and pluralism in their discussions on English School morality – for example, Filippo Buranelli has commented that ‘morality is not part of the realist/pluralist vocabulary’ without distinguishing between the two,[[520]](#footnote-520) and in relation to enforcement of human rights abroad Nicholas Wheeler (a prominent post-Cold War solidarist) comments that ‘progress is blocked by a realist and pluralist mindset’,[[521]](#footnote-521) suggesting that pluralism and realism share a disinterest in achieving justice for individuals in international society. Barry Buzan also describes pluralism and realism as ‘a good fit’.[[522]](#footnote-522) Whilst realists such as Hans Morgenthau dismissed the idea of international law altogether, pluralists accept that international law is an institution of international society and argue that the limited, consensual and state-based nature of international law reflects the limited shared values and norms of an international society committed to maintaining an orderly coexistence despite their differences.[[523]](#footnote-523) As Bull and Adam Watson saw it, the international society which emerged in Europe in the late 17th Century attempted to deal with competing and irreconcilable versions of religion, which were seen as the cause of previous prolonged, bloody conflicts.[[524]](#footnote-524) To constrain conflict, therefore, these different religious views were compartmentalised into different states, each with their own version of moral truth, different from the Holy Roman Empire’s universal reach. The Peace of Westphalia was hard-fought-for and a significant change in how individuals chose to be governed, compared to the previous religious feudalism.[[525]](#footnote-525) The degree of universalism left between these new states was largely procedural,[[526]](#footnote-526) but is nonetheless different from a realist international system and suggests good reasons (at least in 1648) for constructing and maintaining a system where people could separate themselves from each other according to their differences.

Since 1648, Jackson argues, despite significant changes in the way people live, the importance of sovereign states has been reaffirmed repeatedly – for example in the 1945 UN Charter, where he points to the key rules of equal sovereignty, territorial integrity and non-intervention.[[527]](#footnote-527) The importance of states and state sovereignty was again affirmed in the process of decolonisation and the norm of self-determination of peoples – Jackson suggests that people’s continued choice of living in a system of states has strong normative force and thus this system should have priority over attempts to change it. Decolonisation led to the European society of states becoming a global society, with a significant increase in the number of different versions of the ‘good life’ (or different ‘moral truth’ claims), each version being particular to its own state. Jackson argues that this globalisation of the society of states did not result in any change in the way that inter-state relations are managed – the rules of state sovereignty and non-intervention persist as the means of management of difference.[[528]](#footnote-528) However, this form of society led to the traditional, statist, view of international law which, as Chapter 2 explained, has been heavily criticised by those who view international law as coming to represent the importance of the individual united despite their differences through universal human rights norms.

When examining the society of states that he saw around him, Bull considered that states clearly valued order between themselves, as they had set up an international legal framework restricting war and promoting order.[[529]](#footnote-529) On the other hand, he found little or no consensus between states on matters of justice for individuals, and described the regime maintaining order between states as inhospitable to demands for cosmopolitan or human justice.[[530]](#footnote-530) It has been argued that Bull (and other early English School writers) was working at the height of the Cold War when ideological reconciliation between the superpowers seemed unlikely – and against this backdrop of superpower opposition, pluralism ‘stresses the instrumental side of international society as a functional counterweight to the threat of excessive disorder’.[[531]](#footnote-531) This attribution of pluralism’s features to the influence of the Cold War suggests that pluralism is a theory very much of its time, unsuited to explaining the events of post-Cold War times. Indeed, Bull’s account of pluralism sought ‘not to burden international law with a weight it cannot carry’[[532]](#footnote-532) – he viewed the pluralist focus on order as being the best that could be hoped for when members of international society had very different views of matters of justice, such as human rights or economic issues such as uneven wealth distribution.[[533]](#footnote-533) Both Bull and Jackson feared that attempts to promote solidarity on values beyond order and stability would risk undermining the fragile ordered coexistence that had formed since the end of World War II.[[534]](#footnote-534)

Bull’s early work also expressed a normative preference for order over justice, because justice is only realisable in the context of order.[[535]](#footnote-535) Jackson also makes a normative case for pluralism, viewing inter-state order as a form of justice – a form that the society of states has chosen to prioritise over justice for individuals within states.[[536]](#footnote-536)  The relationship between order and justice is important for this thesis – specifically, whether order between states is necessary for justice within them, or whether order between states can only be achieved through justice within them. The former view is associated with pluralism, and is revisited in the thesis’ Conclusion, which explores the potential contribution of pluralism to achieving cosmopolitan justice for individuals. The latter view is that of the solidarists and is dealt with in the next section. Despite some of Bull’s normative arguments in favour of pluralism, much of his writing is more pragmatic. It is this pessimism and pragmatism which was challenged with the end of the Cold War – and the apparent ideological triumph of Western liberal capitalism over Soviet communism, which gave renewed momentum to those seeking a more extensive set of shared values than mere coexistence between states: the solidarists.

## 3.2 Solidarism: towards global justice?

Compared to pluralism’s legal positivism, the solidarists took a natural law approach to the sources of international law, which held that there were certain universal moral laws which applied to all without the need for explicit consent. This natural law thinking also influenced the solidarists’ view of the members of international society – natural law bound (and gave rights to) every individual by virtue of their humanity, and as such the ultimate members of international society were individuals. Grotius’ development of the ‘just war’ doctrine of just cause suggests that a solidarist society of states can have a common understanding of when it might be just to use force, despite a general commitment to order.[[537]](#footnote-537) Solidarists perceive war as unacceptable unless used by international society as a means of law enforcement over a law-breaking state – international law therefore *could* (though it didn’t in Grotius’ day) limit the right to war. [[538]](#footnote-538)

The cosmopolitan ambitions of solidarism are clear from the importance it places upon the individual. Barry Buzan places solidarist international society next to Kantian ‘world society’ (explained in section 2.2 above to be a society or community of individuals) in his diagram of the English School modes of theorising, and associates solidarism with the influence of world society.[[539]](#footnote-539) Chris Brown describes pluralism as ‘second best’ because it simply describes the world as it is, rather than recognising the place for moral debate and thus the (potential) ethical superiority of the cosmopolitan moral position on global ethics.[[540]](#footnote-540) John Williams finds it

notable that Bull sees in Grotius an approach that can be read as a precursor to the kind of human rights-based cosmopolitanism that is characteristic of a considerable amount of English School work in recent years that has advocated the development of an ethically cosmopolitan approach to the idea of world society.[[541]](#footnote-541)

It has been argued that Bull and other Cold War English School theorists displayed more solidarism than they are often given credit for. For example, Bull’s Hagey Lectures on justice acknowledged that international society’s constitutional arrangements ought to be judged by the effect on individuals who were the ultimate members of international society[[542]](#footnote-542) and he described international society’s lack of interest in justice for individuals as a ‘conspiracy of silence entered into by governments about the rights and duties of their respective citizens’.[[543]](#footnote-543) Wheeler and Dunne argue that this is a solidarist position which acknowledges that individuals are members of international society in their own right.[[544]](#footnote-544) Similarly, John Vincent initially shared this pessimism on the degree to which states could form a solidarist international society and thus shared the approval of a pluralist international society in his work on non-intervention in 1974.[[545]](#footnote-545) In 1986 Vincent produced a key piece of work demonstrating the possibility for the current global society of states to display some solidarity on the rights of individuals, arguing that there was widespread agreement on individuals’ ‘basic rights’ to be safe from violence and starvation.[[546]](#footnote-546) These changes of view of major English School pluralists have been described as coming to see order as valuable only to the extent that it could secure individual justice, rather than as having value in its own right.[[547]](#footnote-547)

 Though Bull remained sceptical of the extent to which the global society of states as a whole could ever achieve any significant level of agreement and cooperation on the need for the just treatment of individuals,[[548]](#footnote-548) the change in Bull and Vincent’s work in the 1980s, together with the increase in international society’s willingness to make and enforce individual-focused international law,[[549]](#footnote-549) suggests that, superficially at least, international society after the Cold War is becoming more solidarist. Chapter 2 described the similar trend in international legal thought which criticised pluralism’s static, conservative and unrealistic view of law as a body of rules, instead viewing law as a dynamic process in which policy considerations are important – the post-Cold War policy being to achieve justice for individuals.[[550]](#footnote-550) As Chapter 2 suggested, the society of states has come to view humanitarian intervention as increasingly legitimate on some occasions (though these are always surrounded by controversy).[[551]](#footnote-551) Much of the work on this subject took place at the end of the Cold War, and it is to this post-Cold War period that this section now turns.

## 3.3 Pluralism, solidarism, human rights and intervention in post-Cold War International Society

So far, this section has suggested that the English School views pluralism as conservative, pragmatic and morally limited compared to solidarism’s radical commitment to ‘strengthen the legitimacy of international society by deepening its commitment to justice’.[[552]](#footnote-552) It has also suggested that the idea of solidarism received renewed support at the end of the Cold War, which encouraged a renewed enthusiasm for building consensus on the common value of justice for individuals. Bull’s attempt not to burden international law with a weight it could not carry might have produced an accurate description of the Cold War world, but solidarists argue that international law in the post-Cold War world can and is bearing the new weight of human rights norms and their collective enforcement. Previous Chapters suggested that the RtP is the latest, and one of the most significant, steps in this direction, representing a solidarist international society’s commitment to act in response to abuse, injustice and insecurity of individuals across the globe. This section explores pluralism’s and solidarism’s approach to post-Cold War questions of intervention for human rights protection, linking the rest of section 3’s more general exposition of pluralism and solidarism to Chapter 2’s work on international law and Chapter 3’s work on the RtP.

Whereas Bull believed that justice was only possible in conditions of order, solidarists suggested that order between states depends on justice within them – therefore, solidarism means that states can no longer presume their right to non-intervention but must meet basic criteria of decency to have the protection of sovereignty.[[553]](#footnote-553) As Louis Henkin puts it, the target state’s sovereignty should not be a higher value in international society than the human rights of victims.[[554]](#footnote-554) This relates to section 2.3’s explanation of the place of war in international society – if war can be used as an enforcement tool for international law (rather than war always being pursuit of national interest by states), then humanitarian intervention can be a ‘police action’ – law enforcement of cosmopolitan human rights norms. This demonstrates both the presumed cosmopolitan influence on a solidarist society of states and the solidarist alignment of the use of force with justice for individuals.[[555]](#footnote-555) In particular, solidarists accept a ‘supreme humanitarian emergency’ exception to the rules on non-intervention and non-use of force, legitimising humanitarian intervention on occasion; pluralists argue against such an exception because it would undermine international order.[[556]](#footnote-556) At the heart of this thesis is an assessment of claims that the RtP demonstrates the success of solidarism in promoting cosmopolitan human rights within the society of states. This makes the pluralist-solidarist debate, and any tensions or contradictions within these concepts, of particular importance to this thesis.

As suggested in the preceding part of this section, Bull viewed solidarism as both impractical and overly simplistic in its view of the ‘moral dilemmas of international politics’.[[557]](#footnote-557) The solidarist acceptance of just causes for war[[558]](#footnote-558) meant that promoting justice could undermine order – which in itself would be ultimately to the detriment of individuals.[[559]](#footnote-559)  Similarly, Jackson believes that we should respect peoples’ choice to live in separate states and build and enjoy their own version of the ‘good life’. Rather than being responsible for the conditions in which others live, Jackson believes that

[w]hether the citizens of particular states actually manage to build and enjoy their own ‘good life’, or not, is up to themselves; it is not the responsibility of international society.[[560]](#footnote-560)

In Jackson’s view, respecting a people’s independence means not having a duty to help them financially, militarily, or in any other way – the responsibility for citizens’ human rights therefore lies solely with their own government, rather than with other states or the wider ‘international community’.

Jackson’s view is in direct contrast to solidarist concerns for the human rights of people in other states, but pluralists can still be in favour of human rights and good governance, viewing democracy as a superior, enlightened form of self-government. Thus he does judge people if they fail to build and enjoy their good life, commenting that poverty is no excuse for barbarity – even the poorest countries should be capable of enlightened self-government.[[561]](#footnote-561) If they are not capable of enlightened self-government, ‘having a good cause, in this case the cause of democracy and human rights ... is not a justification for trespassing on state sovereignty’.[[562]](#footnote-562) He clearly does not agree with the idea that justice for individual produces order between states, viewing the choice as simply one between order or justice, and he favours order – as he puts it, ‘the stability of international society, especially the unity of the great powers, is more important, indeed far more important than minority rights and humanitarian protections ... if we have to choose between those two sets of values’.[[563]](#footnote-563)

Pluralism’s lack of moral progressiveness has been explained as being due to its empirical focus, which bases its normative theory of what states should do in their relations with one another on the evidence of what states appear to be willing to do in practice.[[564]](#footnote-564) Pluralism has therefore been criticised for merely reporting state practice (either as representative of international law or of the structure of international society), which means that pluralism is nothing more than ‘apologia for the deeds (and misdeeds) of politicians’.[[565]](#footnote-565) For solidarists, the idea of a practical association between states which are free to pursue their own ends is not acceptable if those ends are not based on the will of the people, revealing ‘the limitations, the cruelties, and the failures of a pluralist anarchical society.’[[566]](#footnote-566) In contrast, Andrew Hurrell argues, solidarism does not accept the moral equality of non-liberal democratic states and as such is better placed to theorise about morality in post-Cold War international society.[[567]](#footnote-567) Ian Harris agrees that the failures of pluralism come from Bull’s descriptive, rather than explanatory, theory – he argues that Bull’s work lacks explicit normative grounding, leading Bull to accept pluralism simply because that is what he sees states as having agreed to.[[568]](#footnote-568) Bull treated order as both a value of international society and as a fact, already largely achieved in international society.[[569]](#footnote-569) He did not consider order in relation to justice because he merely sought to describe how states had achieved order and concluded that they therefore must value it. In agreement with Jackson, Harris goes on to point out that order is a form of justice, so Bull’s juxtaposition of order and justice is in fact potentially a juxtaposition of different forms of justice.[[570]](#footnote-570) Solidarism suggests that the post-Cold War evidence demonstrates that international society’s choice of the primary value of order (a form of inter-state justice) might now be ceding to the choice of the primary value of justice for individuals within states. This is evidenced by the increasing tendency of international law to focus on individuals and for international society to use force to protect them (as shown in Chapters 2 and 3).

This section has described pluralism and solidarism, and explained how they are traditionally viewed as being the result of the influences of realism and revolutionism on the society of states respectively. It has differentiated the two doctrines’ approaches to human rights and intervention after the Cold War, contrasting pluralism’s commitment to formal international law upholding non-intervention and state sovereignty with solidarism’s view that international law is a means to an end – the end being ‘justice’. As Chapters 2 and 3 suggested, the RtP is part of the move towards international society’s solidarist approach to human rights and intervention. However, this thesis does not view solidarism, and the RtP, in this positive light. It suggests that the RtP’s solidarist ‘international community’, which wishes to rescue vulnerable individuals, is actually responsible for much of the injustice and insecurity in the states which the RtP then holds to be manifestly failing their primary responsibility. If the blame for these crises lies in part with the international community as much as with the locals, the international community’s desire to rescue may be neither so welcome nor so effective. In order to make this critique, further theoretical work is necessary because in addition to its critique of the RtP, this thesis challenges the idea that solidarism is a morally superior way of theorising about the role of the individual, and how to best protect their rights, in the society of states. In order to make this challenge and critique of the RtP and liberal solidarism, the next Chapter explores the liberal solidarist view of justice and order, then critiques this view.

# Conclusion

This Chapter has set out some of the key features of the English School, including its methodological approach to studying world politics and its unique understanding of the complexity of the subject, best understood through an interaction between the different political philosophies of realism, rationalism and revolutionism. The origins and development of English School theory stem from a desire to understand world politics in the historical, legal and philosophical context – deriving a ‘grand theory’ rather than individual testable hypotheses. The Chapter argued that this makes the English School a more useful theory in which to situate RtP research than the dominant international relations approaches of realism and liberalism (or constructivism). Bull’s distinction between a pluralist and a solidarist international society is a cornerstone of international society theory today, drawing two different pictures of the values shared by international society and demonstrating the ever-present tension between the realist and cosmopolitan elements within international society. In setting out the tenets of pluralism and solidarism, the Chapter suggested that pluralism is viewed as portraying a realist-influenced international society where states are subject only to a minimum of international laws to which they have agreed, and solidarism reflects the revolutionist part of English school theorising, which subjects states to greater regulation based on them having a higher level of shared norms – in particular on the importance of the individual and the willingness of international society to enforce these norms.[[571]](#footnote-571) Chapter 2 suggested that the end of the Cold War was hailed as ‘the end of history’:[[572]](#footnote-572) with the endorsement of the spread of liberal norms such as human rights, democracy and the rule of law,[[573]](#footnote-573) international society is viewed as evolving from a pluralist to a solidarist form. Thus traditional English School pluralism has been presented as an inadequate empirical and normative theory for the post-Cold War world’s new moral consensus on the importance of the individual and their human rights protection. In contrast, solidarism is viewed as offering the best description of the new level of consensus among states, and the better basis from which to construct a theory of intervention for human protection purposes, such as the RtP.[[574]](#footnote-574)

The RtP is viewed as a solidarist, constitutionalist doctrine about how to achieve individual protection in international law. Because supporters of the RtP (and those making the claims outlined in Chapter 2 about changing international law reflecting changing shared values) tend not to distinguish between liberalism and cosmopolitanism, some important aspects of their arguments are left unexplored. Of particular relevance to this thesis is the idea that, despite the claimed move of post-Cold War international society and international law towards solidarism, there still exists significant inequality and injustice between and within states. Claims of the growing normative consensus may hide inequalities in wealth and power rather than being representative of a genuine move towards cosmopolitan justice in the society of states.[[575]](#footnote-575) In order to explore these points further, the next Chapter examines the differences between the theories of solidarism, liberalism and cosmopolitanism and the moral duties they mandate. The thesis then moves on to critique the liberal (and therefore solidarist) understanding of the relationship between order and justice, demonstrating that this understanding can in fact lead to significant injustice from a cosmopolitan perspective, as liberal (and solidarist) justice focuses too much on the relationship of citizens with their own government and not enough on the prior relationship of these same individuals with other states (or the ‘international community’). This then sets up Chapter 7’s critique of the RtP on the same grounds, arguing that the RtP contains this same misplaced understanding of order and justice, with the consequence that the international community will continue to react belatedly to crises without ever being able to prevent them by changing the structural conditions of justice in international society. The Conclusion brings this critique back to the English School and international law scholarship by suggesting that the English School concept of pluralism (and the more formal readings of international law that resist an ends-over-means approach to achieving ‘justice’) might be a viable – and cosmopolitan – alternative for international society in the post-Cold War era

**Chapter 5**

**Liberal Solidarism**

# Introduction

Building on the work of the previous Chapter on pluralism and solidarism, this Chapter will demonstrate that the English School has traditionally viewed solidarism as a radical approach to the moral possibilities of international society, influenced by what solidarists see as cosmopolitan ‘world-society’ theory and its human-centred values. In counterpoint to this traditional view, the Chapter makes the case that post-Cold War solidarism is liberal rather than cosmopolitan in nature – perhaps unsurprisingly, because solidarism is concerned with states, albeit with the extent to which states are concerned with individuals.[[576]](#footnote-576) This is an important distinction to make when assessing the claim that solidarist values represent progress towards justice for individuals across the globe, in particular in relation to the structure of international peace and security law. The thesis will argue that, because solidarism is largely a liberal rather than a cosmopolitan theory, it cannot achieve the emancipation of humankind associated with cosmopolitanism – liberalism and cosmopolitanism differ in significant ways of particular importance to the RtP and to claims of its ability to halt mass atrocity crimes.[[577]](#footnote-577)  The Chapter will explore the foundations of liberalism and cosmopolitanism in order to make this claim, focusing in particular on the approach of these theories to the issues of justice and order. The thesis does not make a normative argument in favour of cosmopolitanism; it seeks only to demonstrate that solidarism is a liberal rather than a cosmopolitan theory, and that there are significant problems with viewing this liberal solidarism as progress by the society of states towards a human-centred value consensus.

English School work, while acknowledging the potential importance of the individual, focuses more on the whole of the society of states rather than on groups of liberal states.[[578]](#footnote-578)  It is the level of consensus agreed within the society of states as a whole, rather than just the liberal ‘norm entrepreneurs’ which have been called the ‘international community’,[[579]](#footnote-579) which is important for this thesis. The idea of consensus is important for two reasons: first to investigate the reasons why there might not be such a consensus on the RtP; and second to demonstrate the way in which the actual level of consensus achieved on the RtP is then manipulated by its supporters in order to push the RtP ‘forward’ in its implementation. Thus, while this Chapter claims that post-Cold War solidarism is liberal in its normative outlook, it also suggests that the idea behind solidarism of solidarity (consensus) can enable us to ask what the degree of consensus is on any norm and ask why this might be. The issue of consensus is an important part of English School theory and has received less attention in recent years, and Chapters 6 and 7 of the thesis return to the issues of consensus and coercion in critiquing the coercive turn in post-Cold War international law compared to its ability to represent consensus between states. This Chapter first focuses on the normative side of solidarism to demonstrate that solidarism is liberal.

In order to make this argument, section 1 makes the claim that the English school views solidarism as resulting from the influence of a cosmopolitan world society on the global society of states, building on Chapter 4’s outline of the revolutionist (cosmopolitan) tradition of thought. This section also points to the work of some English School theorists who note that solidarism is or could be specifically *liberal* solidarism. Section 2 discusses the key tenets of liberalism, to demonstrate that solidarism in the English School (at least since the end of the Cold War) is liberal in nature. This section focuses on the work of John Rawls on justice, demonstrating liberalism’s ‘decoupling’ of civil and political rights from socioeconomic rights, as well as liberalism’s focus on the state (or government) rather than individuals in its approach to international justice. This section also investigates liberal peace theory, demonstrating liberalism’s association of order with this statist, civil-political view of justice. Section 3 moves on to examine arguments in favour of ‘humanitarian intervention’, demonstrating that the liberal assumptions about order and justice extend to arguments in favour of military intervention for human rights protection. This is important because Chapter 7’s critique of the RtP seeks to show that the RtP is based on the same liberal assumptions about order and justice. The Chapter then offers concluding thoughts, tying the work in this Chapter back to Chapter 2 on international law and leading on to Chapter 6’s critique of the liberalism (and therefore solidarism) described here.

# 1 Solidarism and Cosmopolitanism in the English School

As Chapter 4 sought to show in its description of the ‘three traditions’, cosmopolitanism (derived from the Greek *kosmopolitês*, meaning ‘citizen of the world’) views all human beings as having equal moral worth, universally, wherever they are born and whatever local political community they inhabit. From this view of humanity stems every human being’s cosmopolitan moral duty to treat all other humans equally, regardless of their place of birth or local political allegiances.[[580]](#footnote-580) The previous Chapter suggested (in section 3) that pluralism is generally viewed as reflecting a realist-influenced view of international society where states are subject only to a minimum of international laws to which they have agreed; and solidarism is generally viewed as reflecting a cosmopolitan commitment to justice and security for individuals across the globe.[[581]](#footnote-581) This section now explores cosmopolitanism in more detail, in order to differentiate it from liberalism and show that solidarism is liberal rather than cosmopolitan.

## 1.1 Cosmopolitan Justice

The extent of peoples’ (and states’) duties towards non-citizens is at the core of modern cosmopolitan scholarship, which is often set against communitarian theories about the importance of a person’s local culture to their identity, and thus the importance of national (and other cultural) boundaries.[[582]](#footnote-582) Recent cosmopolitan work, such as that of Thomas Pogge, Simon Caney and Charles Beitz, has focused on individuals’ duties of global distributive justice towards other individuals and has attempted to refute theories of justice based on political community that give credence to the moral importance of membership of a particular community.[[583]](#footnote-583) Pogge in particular describes what is meant by the term global justice – that people are ‘against oppression, hunger, and grinding poverty, and in favour of development and human rights’.[[584]](#footnote-584) These scholars view the current levels of global wealth inequality (and the institutions and practices which support such inequality) as morally unacceptable. The cosmopolitan moral view of the equal worth of all humans is thus translated into considering what our duties are towards other people across the globe, regardless of national boundaries.

In addition to cosmopolitan work on global distributive justice, other cosmopolitans – such as Robert Fine, Cecile Fabre and Mary Kaldor – focus on war and intervention. These scholars make cosmopolitan arguments for why states might sometimes have the right, or duty, to undertake military intervention across another state’s borders in order to rescue vulnerable individuals whose human rights are being violated (these were touched upon briefly in Chapter 4’s section 2.2). Section 2.4 seeks to demonstrate that these arguments in support of humanitarian intervention are actually liberal arguments rather than cosmopolitan. In other words, although these scholars purport to be cosmopolitan in nature, they are inconsistent cosmopolitans because of their lack of commitment to robust principles of global justice. It is this criticism of liberal solidarism, and the RtP, which is at the heart of the thesis. For now, having associated cosmopolitanism with a duty of global justice that involves economic redistribution to the world’s poorest individuals, the Chapter moves on to examine English School solidarism and its association with both cosmopolitanism and liberalism, ultimately arguing that solidarism is a liberal, rather than a cosmopolitan, theory.

## 1.2 Solidarism as a Cosmopolitan Theory?

In addition to linking solidarism with natural law theory, Hedley Bull linked the idea of individual rights existing within the global society of states to the influence of the cosmopolitan sphere of theorising (though at that stage as an ideal rather than a reality).[[585]](#footnote-585) Following Bull, as the previous Chapter suggested, English School theorists have tended to associate solidarism with the influence of cosmopolitanism on the society of states. Barry Buzan places solidarist international society next to Kantian cosmopolitanism (which, as the previous Chapter explained, is sometimes called ‘world society’) in his diagram of the English School modes of theorising,[[586]](#footnote-586) and associates solidarism with the influence of cosmopolitanism on international society by describing the concept of world society as ‘something that reaches well beyond the state towards more cosmopolitan influences of how humankind is, or should be, organised’.[[587]](#footnote-587) Terry Nardin equates solidarism with ideas about global justice, a term frequently used to describe cosmopolitan approaches to justice, when he refers to ‘the theorists of global justice, the solidarists’.[[588]](#footnote-588) Similarly, Paul Williams describes solidarism as revolutionist;[[589]](#footnote-589) and Andrew Hurrell contrasts the pluralist focus on inter-state order and lack of interest in justice[[590]](#footnote-590) with ‘solidarist and cosmopolitan conceptions of governance’[[591]](#footnote-591) without distinguishing between the two. Buzan describes RJ Vincent, Hedley Bull, James Mayall and Robert Jackson as all viewing cosmopolitanism as the key component of solidarism.[[592]](#footnote-592) This suggests that, in line with the view of solidarism presented in Chapter 4, it is common to understand solidarism as related to cosmopolitanism on a normative level.

This view of solidarism as a normative theory is in counterpoint to Bull’s initial exposition of the concept, which included the empirical aspect of states showing solidarity, or consensus, over values and Buzan’s view that solidarism could involve *any* shared values (shared through calculation, consent and coercion) rather than necessarily involving universal human rights.[[593]](#footnote-593) Despite the initial importance of solidarity as part of solidarism, most post-Cold War solidarist work, especially that on humanitarian intervention, takes an explicitly normative approach to the issue.[[594]](#footnote-594) The focus on the normative aspect of solidarism over the empirical is one reason solidarism is now barely distinguishable from liberalism, because it rarely considers the reasons why consensus on liberal values might be lacking in the society of states.

When considering the features of solidarism in more detail beyond the simple association of solidarism with cosmopolitanism, Andrew Hurrell states explicitly that the solidarism displayed by international society since the end of the Cold War is *liberal* solidarism.[[595]](#footnote-595) Buzan concurs, describing the most popular understanding of world society to be ‘about forms of universalist cosmopolitanism ... these days it is usually taken to mean liberalism’.[[596]](#footnote-596) As Chapter 2 mentioned in relation to the changes which many scholars claim to be taking place in the international legal system, Hurrell’s description of liberal solidarism relates to the increasing role of non-state actors (both private market actors, non-governmental organisations and other civil society groups) in contributing to international legal developments (in particular in relation to the state’s relationship to its citizens); the increase in intergovernmental networks and transnational business and the decreasing role of the state in economic governance.[[597]](#footnote-597) In addition to the association of solidarism with the decreasing role of the state compared to the individual, solidarism has been described as making a liberal link between state sovereignty and the requirement of protecting individual rights.[[598]](#footnote-598) In addition to the scholars who describe solidarism as liberal, Chapter 2 showed that those making claims about international law’s increasing individualism make the same link between order and justice, and how to achieve this, as self-identifying liberal scholars (as this Chapter will demonstrate).

Chapter 2 also showed that those making claims about post-Cold War changes in international law have referred to these changes as liberal, cosmopolitan, solidarist, Kantian or based on common values such as humanity – but without necessarily giving any detailed reasons for associating these changes with the particular theory or scholar. This, and the association made by people such as Hurrell between liberalism and cosmopolitanism in relation to solidarism, suggests that many scholars do not find it necessary to distinguish between these theories, all of which are associated with justice for individuals in some way. However, it is a key claim of this thesis that post-Cold War solidarism is liberal and that liberalism differs from cosmopolitanism in ways which are important for the RtP because of their different conceptions of duties of justice towards individuals in other states. The conflation of liberalism and cosmopolitanism by many scholars working on issues of intervention is inappropriate. As the thesis will argue, cosmopolitanism demands a much deeper commitment to global justice with a distributive component – something which liberals are unwilling to accept.

The rest of this Chapter therefore explores liberalism in detail, aiming to show its particular understanding of the concept of justice and the relationship of this concept of justice with international order or security, in order to distinguish liberalism (and solidarism) from cosmopolitanism. This enables the next Chapter to offer a critique of liberalism (and solidarism) for its narrow understanding of justice which neglects egalitarian concern for the poorest most vulnerable individuals and which neglects a cosmopolitan concern for the vulnerable across the globe in other states. The difference between *liberalism* and *cosmopolitanism* in relation to justice (and the argument that solidarism is liberal, and fails cosmopolitan standards of global justice) is important for this thesis as it forms the basis of the critique of the RtP. The key difference between *liberalism* and *solidarism* is the latter’s focus on empirical evidence of solidarity between states on these particular values of individual human rights, and this empirical aspect of solidarism has been overlooked in post-Cold War work on humanitarian intervention and the RtP. Yet it is important for this thesis because states may have good reasons for not going along with the ‘overwhelming consensus’[[599]](#footnote-599) in favour of the RtP and should not necessarily be dismissed as outlaws, subject to international coercion, for their hesitation to endorse the doctrine.

# 2 Liberalism: justice and security in a post-Cold War world

Having explained briefly cosmopolitanism’s focus on global justice across borders, this section now introduces liberalism and John Rawls’ liberal approach to justice in order to demonstrate that liberal solidarism is significantly different from cosmopolitanism. Like all traditions of thought, liberalism is a broad and varied theory but also has a core set of beliefs drawing together different strands and distinguishing liberalism from alternative traditions.[[600]](#footnote-600) In the late 17th Century, John Locke considered the values underlying liberalism to be life, liberty and property;[[601]](#footnote-601) John Stuart Mill, following Locke in part, emphasised the centrality of self-development through individual liberty and the exercise of one’s own free will.[[602]](#footnote-602) More recently, John Gray has asserted that the core of liberalism consists of the four principles of universalism, individualism, egalitarianism and progress.[[603]](#footnote-603) Raymond Geuss finds the key principles to be freedom, individualism and autonomy, toleration, and a suspicion of excessive governmental power.[[604]](#footnote-604) There is thus clear agreement on the basic ideas of the equal right of all individuals to autonomy and freedom and a concomitant suspicion of any exercise of power which might inhibit this freedom. These basic liberal values form the foundation of liberalism’s approach to both domestic and international politics, in particular questions of how to form a society which upholds these principles.

## 2.1 Liberal Domestic Justice

Applied to domestic society, these core liberal beliefs translate into the importance of the separation of governmental powers, the rule of law, democracy and associated civil and political rights (such as freedom of expression and association and the right to privacy, life and liberty) in allowing individuals to pursue their free choices as autonomous agents, because these principles limit a state’s power to control individuals in the exercise of their freedom.[[605]](#footnote-605) Liberalism holds that this individual freedom should only be circumscribed to the extent necessary for others to enjoy a similar level of freedom – John Rawls describes this as ‘each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system for all’.[[606]](#footnote-606) This comprises the first of Rawls’ two principles of justice (largely equated to fairness) designed to govern ‘the basic structure of society’[[607]](#footnote-607) in order to achieve a just social arrangement where individuals are able to live together with the minimum infringement on each other's freedom.[[608]](#footnote-608) First, and most importantly, Rawls’ basic liberties relate to civil and political rights – Rawls held that there should be *equality* in the assignment of basic liberties, including voting and the chance to stand for public office; freedom of speech, assembly, conscience and thought; freedom of person and property; and freedom from arbitrary arrest.[[609]](#footnote-609) Rawls’ second principle deals with resource distribution and allows social or economic *inequalities* if they result in benefits for everyone, particularly the poorest members of society.[[610]](#footnote-610) Rawls thought that the second principle should be subordinate to the first, so that denial of civil and political rights could never be justified by greater socioeconomic equality.[[611]](#footnote-611) The issue of socioeconomic justice is important for this thesis and is dealt with in Chapter 6, which critiques liberalism (and therefore solidarism) for its inadequate understanding of the importance of socioeconomic issues in building a theory of justice (because socioeconomic justice is important in its own right and because socioeconomic rights support – and help prevent abuses of – civil and political rights).

As Rawls notes, his theory of justice is designed to address the structure of a society that enables individuals to live together with the minimum infringement of each other’s freedom. Thus a theory of social *justice* requires a theory of the aims and purpose of *society*; and Rawls’ definition of justice is clearly related to a liberal theory of the aims of society that allows individuals maximum freedom to pursue their own goals autonomously.[[612]](#footnote-612) The state is important in Rawls’ liberalism because it is the entity through which individuals can best achieve pursuit of their autonomous goals, owing to its ability to constrain individuals to the extent necessary so as not to impinge upon each other’s freedom, and the state can itself be constrained from undue interference in individuals’ lives by the separation of powers and the rule of law. Liberalism thus distinguishes the domestic realm from the international because of the importance of the state as the provider of the goods which enable individual autonomy. This has the result that a domestic society is perceived as different to an international society of states in how individuals should aim to live together justly.[[613]](#footnote-613)

## 2.2 Liberal International Justice

Rawls’ *Theory of Justice* aims to achieve social justice in domestic society – within a state – rather than in international society. In his *Law of Peoples* he considered the application of his ideas on justice to a ‘law of peoples’ – roughly equating to the laws of international society.[[614]](#footnote-614) His approach to international justice is not to expand the size of the ‘society’ to which principles of justice apply to a global society of individuals, instead remaining focused on the just internal arrangements of a state and the effects of this internationally. He tied the ‘great evils of human history’ – genocide, religious persecution and starvation – to domestic political injustices, and argued that elimination of these evils required elimination of internal political injustices through a liberal domestic political arrangement.[[615]](#footnote-615) Once states had a just (liberal) domestic political arrangement, their foreign policy would develop justly and thus a just law of peoples would develop.[[616]](#footnote-616) It was thus not necessary to elaborate upon arrangements necessary to achieve international justice, as international justice would develop from domestic justice. Liberal international justice is therefore not so much international as still domestic.

Consistently with this focus on the domestic rather than the international realm as the site of justice, much of the book elaborates upon when non-liberal peoples should be tolerated and when intervention in their societies (whether by diplomatic pressure, military or other means) might be just, in order to bring about a just internal social arrangement for them (and thus, ultimately, international peace).[[617]](#footnote-617) Rawls recognises that political liberalism requires toleration of different ways of ordering society and holds that ‘provided a non-liberal society’s basic institutions meet certain specified conditions of political right and justice ... a liberal people is to tolerate and accept that society’.[[618]](#footnote-618) Nonetheless, he also holds that liberal citizens of a state would agree that non-liberal societies in some way fail to treat their citizens as truly free and equal and therefore non-liberal societies will always deserve some form of sanction.[[619]](#footnote-619) In this regard, Rawls distinguishes between decent non-liberal peoples and outlaws.[[620]](#footnote-620) Decent peoples recognise some principles of justice without being fully liberal societies, and Rawls recommends that liberal societies tolerate decent people in order to foster mutual respect and strengthen the society of peoples, which itself will foster liberal reforms towards domestic justice in decent peoples.[[621]](#footnote-621) He defines what makes a non-liberal peoples ‘decent’ by reference to the desire of such peoples to participate in a society of peoples and a law of peoples and also by virtue of them having some kind of ordered society which may not be liberal but which contains some elements of democracy and associated civil and political rights, such as the right to life and the abolition of slavery.[[622]](#footnote-622) By contrast, an outlaw state is one which violates these human rights and ‘in grave cases may be subjected to forceful sanctions and even to intervention, because outlaw states are aggressive towards their own citizens and towards the society of peoples.[[623]](#footnote-623)

Duties of justice from individuals in State A towards individuals in State B, therefore, revolve around the question of how State B should be constituted and thus behave towards its own citizens, rather than what state A owes state B’s individuals regardless of what sort of constitution State B has. This distinguishes liberal justice from cosmopolitan justice, which focuses on duties of distributive justice aimed at individuals regardless of their government’s constitution. This cosmopolitan work is considered further in the next Chapter as a standard against which to criticise liberalism for failing to offer an adequate conception of justice. Liberals tend to argue that it is not possible (administratively) or wise (morally) to expand Rawls’ principles of distributive justice beyond state borders[[624]](#footnote-624) (though, as this thesis shows, many liberals accept the need to do justice beyond borders when justice is military intervention rather than wealth redistribution). Clearly, then, the state is very important in liberal theory, as the delineation of the society to which Rawls’ principles of justice apply. It is the government of a state that must not unduly interfere with its individuals’ liberty; and it is the government of the state that individuals may choose not to re-elect to govern them. Only through the development of domestic justice, and thus a just foreign policy between states, can international peace (order) develop. This is not to say that cosmopolitanism is necessarily anti-state, but it is to say that liberalism prioritises the state and its relationship with its own citizens over the relationship of states with non-citizens.

Solidarism largely shares these features of liberalism’s approach to justice within and beyond borders. Most post-Cold War solidarist work focuses on intervention for human protection purposes, whether humanitarian intervention (such as Wheeler) or the RtP (such as Bellamy), together with the solidarists’ claims about international law protecting individual human rights (in Chapter 2). Little solidarist work considers distributive justice, and English School work on the global economic system tends to view this system as evidence of solidarism because so many states have signed up to liberal governance rules. A more critical approach might question whether states really have a choice about participating in global economic institutions and therefore whether they necessarily endorse the values which these organisations represent.[[625]](#footnote-625) This is one of the key problems with solidarism and is addressed further in the next Chapter, which critiques liberalism and solidarism on these points (suggesting that a truly cosmopolitan theory of justice would view these liberal global governance structures as inadequate in terms of global distributive justice).

## 2.3 Liberal International Order

Liberalism's approach to justice for non-citizens, inside another state, has been developed beyond Rawls’ ideas of the degree of toleration or intervention required by liberal states of non-liberal states. In line with Rawls’ idea that a state with a just domestic society would develop a just foreign policy, liberal international relations theory posits that a state’s international behaviour is governed by its individuals’ preferences, expressed through the democratic process.[[626]](#footnote-626) As Chapter 2 suggested, the individual is important as a determinant of state behaviour (in democracies) and also as an actor outside the bounds of the state, such as in transnational civil society – individuals influence a state’s behaviour more than, for example, the state’s material power.[[627]](#footnote-627) This (and the limits on governmental power in liberal states) leads to two major focuses of liberal international relations theory: first, the spread of economic liberalism with the globalisation of trade; and, second, the spread of political liberalism and democracy and an associated liberal zone of peace as liberal democracies resolve their disputes peacefully without resorting to force.[[628]](#footnote-628) This idea of peaceful relations between liberal states has a history older than Rawls, with the intellectual forefather of the liberal peace thesis acknowledged to be Immanuel Kant, who wrote *Perpetual Peace* in 1795 – an aspirational rather than descriptive work.[[629]](#footnote-629)

The ‘liberal peace’ thesis has received increasing attention since the end of the Cold War, with some scholars alleging there to be empirical evidence – rather than just normative aspiration – relating to the spread of peace, democracy and liberal market economic principles that Francis Fukuyama heralded as the inevitable ‘triumph of liberalism’ at the end of the Cold War.[[630]](#footnote-630) In what Burchill describes as a neo-Kantian position,[[631]](#footnote-631) liberal international relations theory highlights the spread of democracy and its association with a zone of peace as liberal democracies do not use force in their relations with each other.[[632]](#footnote-632) The liberal perspective employs a broader interpretation of self-interest than realism does, viewing security as a public good rather than selfish national interest.[[633]](#footnote-633) Thus liberal states do not need to compete for their own security, as security is a common good for all. This liberal peace phenomenon has been described as ‘the closest thing we have to an empirical law in the study of international relations’.[[634]](#footnote-634) Beyond academia, US Presidents including Ronald Reagan, Bill Clinton and George W Bush have made this link between democracy and peace, with democracies praised for treating their own individuals better and being better international citizens.[[635]](#footnote-635) Liberal peace theory looks for both evidence of the absence of war between liberal states and possible explanations for this, whether because citizens do not want to fight and are able to express this preference; because of increasing economic interdependence increasing the costs of war; or because of democratic institutional constraints.[[636]](#footnote-636)

International lawyers have also identified this same link between democracy and peace, with Anne-Marie Slaughter arguing that in general liberal states behave more cooperatively towards each other than non-liberal states do, complying with treaties, submitting to judicial dispute resolution and national enforcement of their international obligations, and building cooperative transnational networks.[[637]](#footnote-637) Mutual assurances regarding judicial rather than military responses to disagreements, domestic democratic institutions, and market economic and social transnational relations all help to foster trust and increase the liberal peace.[[638]](#footnote-638) She too associates this mode of thinking – ‘liberal internationalism’ – with Kant, not trying to find differences between liberalism and cosmopolitanism.[[639]](#footnote-639) Fernando Teson argues that ‘international law and domestic justice are fundamentally connected’ because new threats to international order come from unjust domestic arrangements.[[640]](#footnote-640) Liberal international law therefore ‘mandates a distinction among different types of states based on their domestic political structure and ideology’.[[641]](#footnote-641) Several other legal scholars describe (and endorse) this distinction between states which respect the liberal values of democracy, human rights and the rule of law[[642]](#footnote-642) – based on a Rawlsian distinction between liberal states (which together form ‘morally justified international law’) and outlaws – tyrannical governments which are bound only by ‘elementary principles’ of international law.[[643]](#footnote-643) Without necessarily being explicitly English School-based, these arguments are solidarist in their nature – they involve ideas about a society of states as a whole and the relationship of a segment of this society with the rest, based on different shared values.

This work of international lawyers contributing to liberal peace theory can be seen to be part of the ‘instrumentalist’ turn in international law identified in Chapter 2, with lawyers seeking to use law to achieve particular ends, such as justice and peace.[[644]](#footnote-644) Some, such as Anne-Marie Slaughter, tie their work explicitly to liberal International Relations theory; others such as Teson or D’Amato simply take the same liberal premises for granted in their arguments based on the relationship between international pace and individual human dignity – and the liberal domestic conditions in which this flourishes. This Chapter argues that English School solidarism is, essentially, liberalism. This enables the critique of liberalism in the next Chapter (Chapter 6) to be applied to solidarism, in order for Chapter 7 to demonstrate that the RtP is a liberal solidarist doctrine (and to critique it on this basis).

The liberal view described in the preceding sections, that a certain ‘just’ domestic (liberal) constitution leads to peaceful international behaviour, and that non-liberal states are in a condition of aggression with their own people, forms the basis of liberal arguments in favour of humanitarian intervention. It is to this which the Chapter now turns, outlining the moral arguments in favour of humanitarian intervention made by liberal and solidarist (and occasionally cosmopolitan) scholars.

## 2.4 The Ethics of Humanitarian Intervention

This thesis has demonstrated that international law and international society scholars view military enforcement of international human rights law as increasingly acceptable in the post-Cold War era (in Chapters 2, 3 and 4). This section focuses on humanitarian intervention, and shows that arguments in favour of humanitarian intervention share the same underlying liberal moral basis as the kinds of claims made in Chapter 2 about international law. The moral arguments are accompanied by the sense that, with the end of the Cold War, the idea of humanitarian intervention was becoming increasingly legitimate (as Chapter 3 suggested) and ‘military force that had long been held in check by superpower rivalry could now be unleashed to protect poor countries from aggression [and] repression’.[[645]](#footnote-645)

Fernando Teson’s case for allowing states a right of humanitarian intervention under international law is based on ‘a standard assumption of liberal political philosophy’ – that ‘a major purpose of states and governments is to protect and secure human rights’.[[646]](#footnote-646) Those in power who violate these rights, the argument goes, undermine their right to exercise power and so should not be allowed to do so. Teson argues that we all have the obligation to respect (and promote respect for) human rights and, in exercise of this obligation, we can be obliged to rescue victims of tyranny or anarchy whose human rights are being violated, using force if necessary.[[647]](#footnote-647) Similarly, Robert Fine argues that

if the idea of “universal responsibility” is to mean anything, it is the responsibility of those who have the power to intervene not to stand idly by when crimes against humanity are being committed and when it is within their capabilities to stop them.[[648]](#footnote-648)

In not intervening, ‘we deny, not only the centrality of justice in political affairs but also the common humanity that binds us all’.[[649]](#footnote-649) This has been described (as Chapter 3 explained) as the target state’s sovereignty not being a ‘higher’ value of international society than the human rights of the victims, or sovereignty not being a shield for abusers.[[650]](#footnote-650) It is tyranny and anarchy (both opposites of democracy) that are argued to be the worst forms of injustice to individuals because it is in these situations that the worst human rights abuses occur – including crimes against humanity, mass murder, genocide and widespread torture.[[651]](#footnote-651) Democracy, or at least free and fair elections, therefore appears to be the most fundamental of rights, acting as the basis for the enjoyment of all other human rights or ‘basic freedoms’.[[652]](#footnote-652) This demonstrates a similar view of justice as Rawls’ liberalism, focusing on the civil and political realm of human rights supported by democracy. It also echoes the criticisms of statist international law from Chapter 2. Fernando Teson provides one of the most detailed general arguments in favour of humanitarian intervention. Teson explains his argument thus:

I believe that all reasonable religious and ethical theories converge in the judgment that those situations (mass murder, widespread torture, crimes against humanity, serious war crimes) are morally abhorrent. We are not dealing here with differences in conceptions of the good, or with various ways to realize human and collective excellence, or with the place of religion, civic deliberation, or free markets, in political life. We are confronting governments that perpetuate atrocities against people, and situations of anarchy and breakdown of social order of such magnitude that no reasonable ethical or political theory could reasonably condone. And, of course, if there are political theories that condone those situations, too bad for them: they cease to be reasonable or plausible.[[653]](#footnote-653)

Liberal arguments such as this also form the basis of solidarist arguments in favour of humanitarian intervention. Wheeler presents his ‘supreme humanitarian emergency’ just cause for the use of force as responding to crimes against humanity including genocide and state breakdown – failures of the national government to uphold citizens’ civil and political rights. Similarly, in juxtaposing justice (humanitarian intervention) with order (the UN Charter’s non-use of force), both Glennon and David Luban draw upon English School solidarist fundamental assumptions. Luban, writing on just war theory, claims that the UN Charter fails to recognise the ‘moral reality’ of just causes for war including basic human rights violations such as murder, torture and starvation.[[654]](#footnote-654) Glennon blames an outdated international legal system for not allowing humanitarian intervention in cases such as Haiti, Somalia and Rwanda when, he claims, ‘the international community stepped in to halt the slaughter of civilians’.[[655]](#footnote-655) He makes an explicit reference to justice in relation to Kosovo, saying ‘justice (as it is now understood) and the UN Charter seemed to collide’[[656]](#footnote-656) when NATO members feared that Russia would block Security Council authorisation of the use of force against Slobodan Milosevic – justice was thus served by NATO’s intervention without Security Council authorisation.

This humanitarian intervention debate was shown in Chapter 2 to have gained ground in international society but not to have changed the law. And, as Chapters 2 and 3 showed, the RtP sought to ‘move things on’ – for example, Richard Cooper, of the R2P Coalition (a US NGO), claims that with the development of the RtP,

the obsolete principles underlying the Westphalian ordering of world affairs have been dramatically rewritten. We can no longer hide behind State sovereignty, a 400-years old shield, to excuse the shameful reflex and ongoing practice of remaining passive in the face of the most outrageous behaviors.[[657]](#footnote-657)

But if the same liberal (solidarist) arguments underlie the RtP as underlie the humanitarian intervention debate, the RtP will fail just as surely as the humanitarian intervention concept failed. This is what this thesis will demonstrate.

# Conclusion

This Chapter has set out the liberal (and therefore solidarist) understanding of domestic justice, in terms of Rawls’ theory of justice and also in arguments in favour of humanitarian intervention which focus on civil and political rights protection, with little attention paid to socioeconomic rights. This lack of attention is an important flaw in liberal theories of justice, as Chapter 6 will go on to show. The Chapter also considered liberal (and therefore solidarist) understandings of international justice (doing justice for others) and its relationship to international order. Liberalism and solidarism view injustice in other states (the major denial of civil and political rights) as unacceptable in its own right but also as causing disorder or insecurity internationally. The Chapter argued that liberalism and solidarism share this normative commitment to the individual, and view justice for individuals as best achieved through a liberal domestic constitution of a state as the ideal way to protect individuals’ civil and political rights. This means that the domestic constitution of a state is no longer the concern only of the people of that state – it is a matter of international concern. Thus the liberal arguments in favour of humanitarian intervention (section 2.4 of this Chapter) map directly onto the solidarist consideration of the increasing legitimacy of humanitarian intervention in the society of states (Chapter 2 section 3) and the increasing frequency with which the Security Council has viewed internal human rights issues as a matter of international peace and security enabling action under Chapter VII of the Charter (Chapter 2 section 2) and in international law generally (Chapter 2).

Solidarism has been viewed as resulting from the universalist cosmopolitan influence on the society of states (as well as an empirical suggestion about the actual level of consensus over values in international society). Normatively, whilst solidarism could be about solidarity over *any* values (eg a particular religion), in the post-Cold War society of states and in post-Cold War English School work, solidarism now means a particular liberal set of values which seek to elevate the status of the individual through democracy, human rights and the rule of law. This thesis argues that the current post-Cold War understanding of a solidarist society of states is that it (or at least a large number of its members) enshrines liberal values – the individualist values are applied at the state level rather than a cosmopolitan level. So (liberal) solidarists are concerned with the relationship of a particular state with its own citizens more than the relationship of a particular state to the citizens of another state.

The next Chapter (Chapter 6) moves on to explore problems with liberalism (and therefore solidarism) and its conception of justice as well as its understanding of the relationship between justice and order. The critique of liberalism (and therefore solidarism) in Chapter 6 focuses on two aspects: first, its tendency to separate the civil-political and socioeconomic realms of justice (downplaying the importance of socioeconomic justice); and, second, its internal state-citizen relationship focus. The Chapter also draws attention to the problematic tendency of liberalism to accept violence in the name of its particular view of justice. These critiques of liberalism (and therefore solidarism) are important because Chapter 7’s critique of the RtP is based on these same points – Chapter 7 argues that the RtP blames a government for abusing its citizens and views the fault as located within this relationship, suggesting that the international community can put right this problem. But because the RtP’s liberal-solidarist construction of injustice (and its relationship to insecurity) is insufficiently cosmopolitan, it does not consider (adequately) the international community’s relationship with these vulnerable individuals earlier than at the point of rescue.

**Chapter 6**

**Liberal Solidarism: a critique**

# Introduction

So far this thesis has introduced the Responsibility to Protect (RtP) as emblematic of the post-Cold War influence of solidarism on international society and international law. It has described a common set of claims that international law and the UN now focus on the individual through a commitment to democracy, human rights and the rule of law, with the RtP viewed as the latest and most successful example of this change, moving forward from the stagnant ‘humanitarian intervention’ debate (see Chapters 2 and 3). Chapter 4 set the RtP (and international law more generally) within the English School framework of analysis in order to link together claims about changing values, the nature of international law and the interaction between a cosmopolitan community of humankind and the society of states. The previous chapter (Chapter 5) examined English School solidarism in depth, arguing that it is a liberal concept rather than a cosmopolitan one. Having laid the foundations, the thesis moves on to its key claims, undertaking a critique of liberalism (and therefore solidarism) in international society and international law in order then to demonstrate (in Chapter 7) that the same critique applies to the RtP. This Chapter revisits and re-engages with the liberal solidarist view of justice and order set out in the last Chapter. It critiques the concepts of ‘liberalism’, ‘democracy’ and the idea of ‘liberal democracy’, together with liberalism’s (and therefore solidarism’s) association of domestic justice with peaceful inter-state relations. It is not argued that a cosmopolitan approach would *necessarily* overcome all the problems identified with liberal theory; nor is it argued that liberalism itself *necessarily* produces these problems – but that the current strand of liberalism (and therefore solidarism) relied upon by international lawyers, international relations theorists and policymakers alike in relation to international peace and security law (and the RtP) is especially problematic.

In order to make its case, the Chapter first addresses liberalism’s teleological approach to progress through history, pointing out some of the issues hidden by such an interpretation (section 1). Section 2 points out some of the tensions within the individual concepts of liberalism and democracy and argues that they are incoherent ideas, meaning that the concept of ‘liberal democracy’ is similarly inconsistent and full of tensions. Section 3 then maps these problematic concepts onto the liberal view of justice, arguing that post-Cold War liberal justice is conceived narrowly, in relation to civil and political rights only, neglecting egalitarian concern with domestic society’s poorest members and neglecting cosmopolitan concern with the world’s poorest individuals. Section 4 moves on to critique liberalism’s association of (this troublingly narrow conception of) justice with order between states, addressing liberal peace theory’s problematic assumptions about ‘liberal democracies’ being good international citizens. Finally, the Chapter turns back to solidarism (in section 5) to demonstrate that these same problems apply to solidarist work, particularly on the topic of intervention. This sets up Chapter 7’s critique of the RtP.

# 1 Progress, Teleology and Coherence

The belief that international law and international society are progressively encompassing liberal human-centred values is enabled by a certain reading of history that presents liberalism as a coherent, progressive doctrine. John Tosh and Sean Lang describe a common way of seeing history as encompassing a teleological view of historical events ‘in terms of the inexorable march across time of great forces, human or divine, which explain both how we got to where we are and where we might be heading’.[[658]](#footnote-658) They note that the Enlightenment belief in moral progress represented this progressive view of history.[[659]](#footnote-659) Mirroring this description of the Enlightenment era, and as Chapter 5 showed, liberalism is a theory which ‘champions scientific rationality, freedom and the inevitability of human progress’.[[660]](#footnote-660) Such a view of the inevitable historical progress of humankind is very much in evidence in Francis Fukuyama’s *The End of History[[661]](#footnote-661)* and is perhaps best seen within liberal peace theory – the idea that as humankind evolves towards liberal democratic domestic society, peace will inevitably spread across the globe.[[662]](#footnote-662) As Chapter 2 described, this progressive view of history is seen in many international legal scholars’ belief in an emerging norm of democratic governance from the Universal Declaration of Human Rights into more grounded and determinate legal rules in international treaties, as well as other developments such as the RtP and the International Criminal Court (ICC). Liberalism’s teleological reading of history has been questioned by scholars who doubt that it has had the progressive, evolutionary purpose of the ‘universalisation of Western liberal democracy as the final form of human government’.[[663]](#footnote-663) Raymond Geuss has made a similar observation, describing liberalism as attempting to marshal support for itself by presenting its past so as to emphasise its continuities with attractive features and to downplay those features which would reflect badly upon it.[[664]](#footnote-664) Thus modern liberalism takes a teleological, purposive, reading of history to bolster its claim to be the inevitable result of human evolution and to justify acts done in support of the promotion of this superior way of being. Christopher Hobson relates this teleological view of history to another attribute of liberalism – the desire to universalise the concept of democracy by removing it from its historical context, obscuring its ‘long and rather negative past’.[[665]](#footnote-665) In constructing the narrative of inevitable historical progress of the world towards liberal democracy, the ‘highly contingent and fortunate nature of liberal democracy’s “triumph” was quickly forgotten’[[666]](#footnote-666) as democracy became embedded in the liberal story of progress.

Supporting the idea that the obfuscation of liberalism’s past enables modern liberalism to be seen as a natural and inevitable development, Susan Marks argues that Francis Fukuyama (and those liberal scholars who follow his ‘millenarianist’ tendencies, such as Thomas Franck, Fernando Teson, Anne-Marie Slaughter and others referred to in Chapters 2 and 5) assumes that there is one coherent concept under the name of liberalism, one coherent idea of democracy and one liberal democracy. This view denies the

diversity of values and beliefs that contributes to producing divergent understandings of the meaning of liberalism and democracy and of their interrelationship. *Liberal democracy cannot spell the end of the ideological struggle because it is itself the subject of ideological contestation.*[[667]](#footnote-667)

Part of the reason for the ideological contestation within liberal democracy may be that, historically, liberalism and democracy were considered to be entirely separate concepts, with liberalism equated with liberty and democracy with equality.[[668]](#footnote-668) Early liberal thinkers, such as John Locke and John Stuart Mill, did not include a substantive definition of equality within their view of important liberal principles, focusing only on the ‘procedural’ need for equality in the substantive right to liberty.[[669]](#footnote-669) Democracy was feared by the liberal elites as ‘mob rule’.[[670]](#footnote-670) Like Marks, Hobson concludes from this history that since liberalism and democracy are historically separate, there *can be no* liberal democratic telos to history.[[671]](#footnote-671) Thus the current idea of liberal democracy has not evolved naturally and inevitably from 17th Century theories of politics and society, but arose from a particular set of circumstances.

This view of liberal democracy as more of a ‘chance’ development in society rather than the result of inevitable progress paints a different picture of the importance, coherence and value of liberal democracy as part of the progress of humankind. This is problematic when scholars and policymakers alike describe doctrines (or potential emerging legal norms) in terms of being part of the inevitable progress that the world has made towards justice, democracy or freedom, without questioning the nature of these terms. Chapter 2 suggested that there is a significant body of international law scholarship which succumbs to this tendency; Chapter 3 introduced the RtP as being viewed in similar, progressive, solidarist terms. In order for this thesis to undertake its critique of the RtP, further theoretical criticism of solidarism is necessary, moving beyond the argument that liberal democracy is an incoherent and inconsistent idea. The next section therefore considers the concepts of democracy and liberalism in more detail.

# 2 Tensions within and between Liberalism and Democracy

In addition to the contested notion of liberal democracy, the individual concepts of liberalism and democracy themselves contain tensions and contradictory interpretations, particularly in the difference between their application to the domestic and international realms. This section investigates these tensions, because the thesis seeks to show that liberalism (and solidarism) rely on particular conceptions of liberalism and democracy as underlying empirical assumptions about justice in the world. The thesis then seeks to show that these assumptions are flawed and that therefore liberalism (and solidarism) cannot provide an adequate theory for making moral arguments about justice, either domestically and internationally. Specifically, doctrines such as the RtP, which rely on liberal solidarist understandings of justice (as liberal democracy) and order will share the same flaws and will be unlikely to succeed.

## 2.1 Democracy

The work of international relations and international legal scholars on democracy rarely attempts to define the term, which frequently becomes reduced to free and fair elections and associated civil and political rights, without explanation. Brad Roth accuses these scholars of either ignoring historical controversies over democracy’s content, or claiming that recent events have resolved any controversies in favour of the current form of liberal democracy.[[672]](#footnote-672) This limited conception of democracy produces a focus on ‘negative’ individual and economic freedom rather than a more ‘positive’ conception of the role of the state towards its citizens and the role of citizens in their own self-determination.[[673]](#footnote-673) One good example of this is W Michael Resiman, who featured in Chapter 2 as prominent among those arguing that international law is coming to focus on protecting the individual and that therefore matters of domestic justice are of international concern. Reisman argues that:

in circumstances in which free elections are internationally supervised and the results are internationally endorsed as free and fair and the people's choice is clear, the world community does not need to speculate on what constitutes popular sovereignty in that country.[[674]](#footnote-674)

Speculating on just this question, and echoing Roth above, Marks argues that periodic elections do not necessarily guarantee genuine political choice and a real free market of ideas.[[675]](#footnote-675) Democracy can mean simply a periodic choice between political elites, none of whom represent voters’ wishes, rather than meaningful political participation by individuals in decisions that affect their lives.[[676]](#footnote-676) Anne Orford ascribes this uncertainty over the concept of ‘democracy’ to the fact that

[l]iberalism treats the role of democracy not as enabling ‘collective participation in the decisions affecting the life of the governed’ but as ensuring ‘individual freedom to pursue one's own agenda without undue interference’.[[677]](#footnote-677)

Orford also notes that modern liberal conceptions of procedural democracy exclude, largely without question, large groups in societies divided by race, class, or gender and thus cannot be considered to represent equal self-rule.[[678]](#footnote-678) A consequence of the impoverished view of democracy is the tendency to promote one model of democracy in vastly different contexts, with Christopher Hobson noting that the current democratisations taking place in Africa and the Middle East are occurring in very different circumstances to the start of the ‘third wave’ of democratisation with Portugal in 1975.[[679]](#footnote-679) The third wave should thus not be viewed as a simple blueprint when undertaking post-conflict reconstruction of societies, or when promoting democracy abroad generally. A practical example of alternative ideas of the substance of democratic participation is the very different models of US and Scandinavian democracy – these demonstrate the potential for more than one understanding, and more than one institutional realisation, of the democratic ideal.[[680]](#footnote-680)

## 2.2 Liberalism

Viewing democracy in a minimalist way accords with the modern liberal tendency to focus on ‘negative’ (civil and political) rights, which can be seen in Rawls’ first principle of liberal justice – the importance of equal political rights and participation enables individuals to maximise their freedom and autonomy. The socioeconomic principle is subordinate, which can have the effect of downplaying the idea of governments’ ‘positive’ duties to ensure minimum standards of health, education and wealth to help their own (and, potentially, other states’) citizens pursue autonomously their freely-chosen life goals. In line with those who argue that liberalism has no coherent past, James Richardson asserts that ‘the rigorous prioritizing of freedom in contemporary libertarian doctrine is atypical of liberal thought in general’.[[681]](#footnote-681) Richardson argues that liberalism has historically always contained significantly different interpretations of itself, such as between Whigs and radicals, privileged property owners and egalitarians, international business/finance and radical social movements. He draws upon a distinction between elitist and radical liberalism, seeing modern liberalism as having embraced the elitist side. Elitist liberalism ‘endorses the prevailing patterns of political and economic organization, including the massive privileges which they confer on the advantaged’ and limits individuals’ participation in political debate.[[682]](#footnote-682) This can be seen in Locke and Mill’s notion of equality, described in the previous section as pertaining to equal liberty rather than substantive equality. In comparison, Richardson argues that a radical strand exists in liberal theory, which ‘finds these patterns and privileges unacceptable and contrary to its understanding of liberal values’[[683]](#footnote-683) which are ‘participation, citizenship, equality and the rights of those affected by decisions to have a voice in making them’.[[684]](#footnote-684) Radical liberalism challenges elitist liberalism’s injustices, in particular the ‘high human costs’ of development, levels of deprivation and poverty, lack of wealth redistribution and denial of even limited socioeconomic rights.[[685]](#footnote-685) This liberalism also has ancient roots, linked to Hegel and Spinoza advancing a ‘positive’ idea of the role of the state in contributing to individuals’ freedom to make good lives for themselves.[[686]](#footnote-686)

Richardson’s definition of radical liberalism is similar to the alternative conceptions of democracy offered by Marks and Anne Orford. This suggests that an egalitarian liberalism is not necessarily at odds with an inclusive, substantive definition of democracy. This in turn suggests that it is not necessarily liberalism *per se* that is flawed, but the particular, elitist version which has taken hold in modern policymaking and has influenced international legal scholarship in the post-Cold War period. The previous Chapter argued that most English School work (especially post-Cold War work on intervention for human protection purposes) views solidarism as liberal solidarism; this suggests that solidarism shares the problems identified in this section. Given that both liberalism and democracy can have such different meanings, and given that it is the narrow understanding of the concepts which pervades the arguments made about international law (identified in Chapter 2), about the RtP and humanitarian intervention (identified in Chapters 3 and 5) and about the relationship between justice and order (identified in Chapter 5), the relationship between these concepts merits further investigation. The section now suggests that in modern elitist liberalism, there is limited room for substantive democratic participation, and therefore liberalism’s approach to the question of justice within domestic society is problematic.

## 2.3 Tensions Between Liberalism and Democracy

Section 1 suggested that the concept of ‘liberal democracy’ was not a coherent idea with a significant evolutionary pedigree. It is perhaps unsurprising that, in addition to different historical understandings of the terms ‘liberalism’ and ‘democracy’, there are tensions between the two concepts. Richardson traces this back to the 18th Century and beyond, with tensions between those thinkers championing property rights (elitist liberalism) and those in favour of universal rights and truly universal suffrage (radical liberalism).[[687]](#footnote-687) Referring to more contemporary times, and despite Fukuyama’s claim that ‘liberalism remains the only coherent political aspiration’,[[688]](#footnote-688) both Marks and Orford point out that liberalism can actually *decrease* democratic participation. Economic liberalisation and increasing market freedom take decisions away from those most affected by them.[[689]](#footnote-689)

A similar point has been made about the relationship between the rule of law and democracy – that in some cases elevating something to ‘rule of law’ status takes decision-making power out of the population’s reach over important, life-affecting decisions. So requiring courts to uphold a decision made by the Executive (such as in relation to privatisation of industries, or the invasion of another country) removes an issue from the ambit of popular political participation.[[690]](#footnote-690) In relation to the Third World, for example, Mahmood Monshipouri views the demands of economic liberalisation as potentially in conflict with human rights such as democracy, and recommends that states should ‘afford economic liberalization a higher priority than democratization’. Liberalism thus ‘wins’ over democracy in this situation.[[691]](#footnote-691) As pointed out above, the concept of democracy can encompass the ‘mob rule’ so feared by the 17th Century elites, for example when the ‘tyranny of the majority’ wishes to suppress the individual freedoms of minorities; or when an elected leader reduces the population’s civil and political rights by executive action in the name of an emergency (such as the ‘war on terror’ proclaimed by George W Bush).[[692]](#footnote-692)

It is difficult to see how such potentially conflicting concepts can represent the inevitable progress of international society (and international law) towards human-centred values. Within this contested concept of ‘liberal democracy’ then, how can one theory of justice – and international peace and security – make sense? The next section returns to liberalism’s (and therefore solidarism’s) approach to the concept of justice, described in the previous Chapter and now subject to critique, in order to argue that the particular, inegalitarian, elitist understanding of liberalism and democracy shown here can be seen in modern liberal solidarist approaches to domestic and international justice. Because the RtP is based on such a modern, liberal solidarist, approach to justice, it will not succeed in its aim of achieving justice for all because it is beset by the problems of inconsistency and incoherence demonstrated here in relation to the concepts of liberalism, democracy and liberal views of justice and order.

# 3 Liberal Domestic and International Justice

There are clear parallels between liberalism’s focus on individual freedom and self-realisation and Rawls’ theory of justice, which prioritises civil and political freedoms over socioeconomic issues to a certain extent (as Chapter 5 showed). The purpose of this section is to draw out problems with Rawls’ theory of justice – chiefly its assumption that the boundaries of our duties of justice are the boundaries of our state. The section considers the consequences of this assumption, in terms of the numbers of individuals suffering from deep poverty and inequality across the globe.

## 3.1 Problems in Theory: the possibility of global injustice

Charles Beitz has applied Rawls’ liberal theory of justice to the globe rather than just within a state, arguing that Rawls’ key assumption that ‘nation-states are self-sufficient’ was flawed as was his assumption that individuals only owe duties of distributive justice within their state, towards their fellow citizens.[[693]](#footnote-693) Beitz argued that the global society of states is just as interdependent and cooperative as Rawls’ contractarian picture of domestic society, as non-self-sufficient states participate in the global economy through transnational trade and investment (largely on terms dictated by the richer countries), and thus principles of distributive justice should apply between states as well as within them.[[694]](#footnote-694) This cosmopolitan approach has met with criticism from liberals such as David Miller, and from Rawls himself, who hold that the state is important both as an expression of individual identity and as the most practical institution of realisation of justice, reinforcing the importance of the state and its internal constitution in liberal theory.[[695]](#footnote-695) Simon Caney has however criticised the statist approach to distributive justice within rather than between states, on the basis that such an approach assumes without justification the significance of state boundaries, in particular their relationship to ‘basic institutions’ of social and political cooperation.[[696]](#footnote-696) Caney outlines various criticisms of statist approaches to distributive justice, including moral arbitrariness, incompleteness and theoretical inadequacy.[[697]](#footnote-697) Statist theories of justice are morally arbitrary because they allow place of birth (and, potentially, class or ethnic group) to have significant normative consequences for an individual’s prospects in life.[[698]](#footnote-698) These theories take states as a ‘given’ rather than as contingent ‘accidents’ of history, and thus fail to provide a moral defence of the state as the scope of principles of justice, instead simply assuming that the state’s boundaries delimit the boundaries of political and social cooperation.[[699]](#footnote-699) Statism also fails to provide any answer to indisputably global problems with benefits and burdens, such as climate change.[[700]](#footnote-700)

Caney contrasts this statist view with a cosmopolitan position which places all persons within the scope of distributive justice by virtue of their humanity, or at least by virtue of their participation in global economic interaction (or any social interaction which produces benefits and burdens), to which principles of justice apply.[[701]](#footnote-701) The position on global justice which Brian Barry describes as ‘egalitarian cosmopolitanism’, on the other hand, allows the state to be viewed as an important political institution (whether by virtue of citizens’ pride in their country’s political system, foreign policy or other attributes) but does not allow this to take on such a degree of moral relevance that it permits billions of people to live ‘in conditions of degrading poverty’.[[702]](#footnote-702)

This description of a cosmopolitan approach to justice can be used as a standard against which to judge liberal solidarist approaches which claim to be cosmopolitan. Cosmopolitan global justice posits that either by virtue of our humanity or by virtue of our participation in transnational economic interaction with individuals across the globe, we each have responsibility towards others, regardless of national boundaries.[[703]](#footnote-703) This views the responsibility for individuals’ welfare as falling not just on their own government but on all governments. On the other hand, liberal justice tends to view the state as the boundary for obligations of justice, and the national government as the entity responsible for the just treatment of its people. It should be noted, furthermore, that Rawls is considered to be an ‘egalitarian liberal’ compared to libertarians such as Friedrich Hayek and Robert Nozick.[[704]](#footnote-704)

## 3.2 Problems in Practice: the reality of global injustice

Moving from theory to practice, in order to assess the current state of affairs against the standards of global distributive justice, the evidence shows that global inequality is worsening. For example, Brian Barry notes that the richest countries have increased their overall wealth at the expense of many poor countries, which actually make net transfers to rich countries.[[705]](#footnote-705) Thomas Pogge notes that in the post-Cold War period, developed states reduced their foreign aid as a percentage of GNP by 27%[[706]](#footnote-706) in the same period global economic growth was accompanied by increasing inequality, with a 25% increase in the number of people living below US$1/day.[[707]](#footnote-707) Pogge cites these statistics as supporting the belief that, as the overall wealth of the global North has increased so significantly since the end of the Cold War, we are now in a position where we could quite easily put an end to global starvation, malnutrition and disease – high income countries’ combined GNP in 1998 was US$22,599 billion, compared to the US$6 billion/year overseas development aid which would be required to eliminate starvation in 19 years.[[708]](#footnote-708) Hilary Charlesworth notes that at this time, 34 million people worldwide were suffering from AIDS and HIV, 1.2 billion people were suffering from malnourishment, and double this number – 2.4 billion people – lacked basic sanitation.[[709]](#footnote-709) Pogge also quotes the statistics that 6 million people die each year of HIV and malaria in developing countries, but of the $170 billion annual drugs spend, only 10% is dedicated to these diseases, even though they affect 90% of the world’s population. At a World Food Summit it was ‘recognised that mass starvation is the consequence of a refusal by most states in the developed world to open their agricultural systems to free trade rules’.[[710]](#footnote-710) This refusal to accept redistributive duties towards non-citizens may stem from a denial that rich countries have anything to do with the condition of the poor in other parts of the world. Despite the ability to make a significant contribution towards ending global starvation, the US views the human right to adequate food[[711]](#footnote-711) as a goal rather than a true ‘human right’[[712]](#footnote-712) when it is willing to promote the human rights of democratic elections across the globe (and spend significant sums doing so). Even if it is nobody’s ‘fault’, a cosmopolitan concern with global justice would still require economic redistribution. But this chapter suggests that to a certain extent it *is* ‘somebody’s’ fault – the global economic structure which prioritises the needs of rich countries and enables them to deny market access to poorer countries, the inability of poor states to afford expensive WTO dispute settlement procedures, weighted voting in the IMF and World Bank and the advantages offered by colonialism to the development of the West, or global North, are a few examples. The next Chapter links these structures to outbreaks of violence and insecurity, in response to which the ‘international community’ first developed the idea of humanitarian intervention and then the RtP, which – because of these structural problems – can only ever act as a bandage on symptoms rather than a cure.

## 3.3 The Consequences of Global Injustice

This Chapter has argued that liberalism (and therefore solidarism) prioritises ‘negative’ civil and political rights (such as free and fair elections) over socioeconomic rights in its view of justice, and prioritises the state-citizen relationship (domestic justice) over international duties of socioeconomic justice of states towards non-citizens. It has also demonstrated the significant global socioeconomic inequalities in socioeconomic rights, in particular in relation to wealth and health. But this separation between civil-political and socioeconomic realms is not necessarily natural or logical, being a feature of elitist, inegalitarianism (but not of radical liberalism). Pogge points out that socioeconomic rights actually support and enable meaningful use of civil and political rights.[[713]](#footnote-713) Kofi Annan makes a similar point in relation to the ‘positive’ liberal view of freedom when he argues that someone with AIDS who cannot read or write and lives on the brink of starvation cannot truly be free.[[714]](#footnote-714) Elections may be of little interest to someone who cannot read the ballot papers, or who is suffering from an acute terminal illness. People struggling through the ‘grinding misery’ of poverty and malnutrition are unlikely to be able to resist oppressive governments and call for meaningful democratic reform.

Within the English School, RJ Vincent made an egalitarian, cosmopolitan, case for the idea of ‘basic rights’, which he suggested should include a right to subsistence in addition to the standard civil and political rights. In relation to the idea that the scope of justice is limited by political community, his view was that ‘in regard to the failure to provide subsistence rights, it is not this or that government whose legitimacy is in question, but the whole international system in which we are all implicated’.[[715]](#footnote-715) This is a rare example of solidarism as truly cosmopolitan-influenced, but his idea was not met with a significant response within the English School, with solidarists choosing to focus on a state’s denial of civil and political rights in relation to humanitarian intervention rather than on the structural global denial of socioeconomic rights. Andrew Hurrell also notes the criticisms levelled at post-Cold War solidarism, pointing to an increasing ‘deformity’ in world politics – of opportunities, of outcomes, and of security – he points out that globalisation and the end of the Cold War have seen increased global inequality and violence in addition to claims of an increased value-consensus among states on human rights.[[716]](#footnote-716)

The points raised above are the crux of this thesis. Because liberalism views justice as largely limited to civil and political issues within a state’s borders, it views the inequalities outlined above as outside the responsibility of any state other than the one in which the problems occur. Chapter 4 suggested that this view is shared by solidarism and traditional pluralism within the English School – for example, pluralist Robert Jackson suggests that it is the citizens’ own fault if they cannot build a ‘decent’ society, however poor they are.[[717]](#footnote-717) The Chapter now turns its attention to the liberal (and therefore solidarist) view of the relationship between this limited conception of justice and international order. It seeks to show that in addition to a problematic understanding of justice (which fails to address socioeconomic injustice and the grinding misery, or ‘structural violence’, of poverty), liberalism also makes flawed connections between justice and order. This means that its solutions to disorder and insecurity, such as the RtP, are unlikely to succeed.

# 4 Liberalism, Justice and International Order

In addition to the question of whether this liberal view of justice is a coherent one, the international behaviour of liberal states – in particular the relationship between liberal domestic justice and international order (and international law) – has been called into question.

## 4.1 Liberal Intolerance

Section 2 of this Chapter showed that the core of liberal philosophy, centring on individualism, freedom and progress is revealed on closer inspection to be no simple set of coherent values.[[718]](#footnote-718) For example, concomitant with individualism[[719]](#footnote-719) are the values of toleration and non-coercion – if each individual is free to choose their way of life then their different choices must be tolerated. Yet today’s liberal democracies tend to display only limited tolerance towards anti-democratic or anti-liberal parties at the domestic level.[[720]](#footnote-720) The same point has been made in relation to the international realm, where liberal democracies display limited tolerance of states they consider not to conform to their own norms, which this Chapter showed earlier to be a narrow, and not necessarily coherent, set of norms. For example, Jose Alvarez describes today’s liberal democracies as ‘intolerant of those states and peoples not regarded as “democratic”, narrow-minded in its conception of the “ideal society” and ill-disposed to the notion of real progressive reform within institutions or regimes of universal membership’.[[721]](#footnote-721) Gerry Simpson makes much the same point in relation to international law in his contrast of ‘Charter liberalism’ and ‘liberal anti-pluralism’, which, at the international level, map on to James Richardson’s concepts of radical and elitist liberalism at the domestic level.[[722]](#footnote-722) Charter liberalism is equated with ‘classical liberalism’ and toleration, diversity and sovereign equality between states regardless of their domestic political constitution; liberal anti-pluralism is ‘endowed with a sort of moralistic fervour … and, at times, an intolerance of the illiberal’, therefore being ‘illiberal in its effects’.[[723]](#footnote-723)

The liberal anti-pluralism described above places emphasis on the rights of individuals rather than states, mapping on to the descriptions of international law in Chapter 2. But, as section 3.2 in this chapter sought to show, this focus on the individual is not actually cosmopolitan, no matter that Teson and others describe it as neo-Kantian. In response to Anne-Marie Slaughter’s suggestion that liberal ‘transnationalism’ (cooperative networks between legislatures, executives and judiciaries across borders) is replacing international organisations as the site of legitimate governance of global problems, critics point out that this is actually undemocratic or anti-democratic, taking power away from international organisations and giving it to even less accountable bureaucratic institutions (such as the Basel Committee on finance). Mirroring section 2’s suggestion that modern liberals may be undemocratic, this replacement of governments with bureaucrats marginalises governments as representatives of the people.[[724]](#footnote-724)

This section has painted a different picture of the behaviour of the ‘good international citizens’[[725]](#footnote-725) of international society – liberal states – from their own more flattering self-portraits. The next section extends this criticism of liberal states’ behaviour to liberal peace theory, showing that the link between domestic liberal justice and international peace is not a robust theory on which to build doctrines such as the RtP.

## 4.2 Liberal Peace Theory

This overly narrow, intolerant, anti-pluralism is branded as ‘liberal peace theory’ in the areas of the use of force, and has been subjected to particularly rigorous critique. Evidence in support of liberal peace theory’s claims has been challenged by those who question the definition of a ‘conflict’ (usually taken as more than 1,000 battle deaths) and those who question the definition of ‘liberal’ or ‘democratic’ states.[[726]](#footnote-726) On the definition of conflict, Tarak Barkawi and Mark Laffey criticise the inclusion of the Falklands war in liberal peace theory’s examples (as an example of a war between a liberal democracy and a non-liberal state) when fewer than 1,000 battle deaths occurred; whereas democracy-on-democracy violence is ignored – David Spiro lists examples of violence between democratic entities, such as Peru and Ecuador, Israel’s invasion of Lebanon in 1981 and the 1812 war between the UK and US.[[727]](#footnote-727) This means that the samples are skewed in favour of finding a ‘liberal peace’. Johann Galtung argues that after World War II the states most frequently at war have been the USA, UK, France and Israel – all democracies. Even if much of the violence is directed towards non-liberal states (thereby not disproving the liberal peace thesis specifically), for Galtung this does not matter as much as the fact of these democracies’ violent behaviour, particularly given the alternative of peaceful negotiation opportunities (such as in the run-up to the first Gulf War).[[728]](#footnote-728) He also describes Western Europe, North America, Australia and New Zealand as conducting the international violence of slavery and colonialism for centuries, even after significant domestic ‘democratic milestones’.[[729]](#footnote-729)

Barkawi and Laffey criticise the liberal peace literature for excluding cases of democratic violence when the violence took place through non ‘traditional’ international warfare – such as the overthrow by the US of the democratically elected governments of Allende in Chile, Arbenz in Guatemala and Ortega in Nicaragua – these took place through the US giving support (such as training and financing) to national ‘contra’ groups which then ousted the elected government. It should be noted that the ICJ held that the US’ contra support was an unlawful use of force (and a violation of Nicaragua’s sovereignty) in the *Nicaragua* case,[[730]](#footnote-730) so it is difficult to see why this example is not included in liberal peace theorists’ calculations. This categorisation of conflict enables supporters of liberal peace theory to exclude such unhelpful examples from their definitions of their independent (liberalism/democracy) and dependent (conflict) variables.[[731]](#footnote-731)

In response to scholars such as John Owen, who explicitly treat liberalism as an independent variable in their empirical work, Harold Koh criticises the ‘essentialism’ of the categorisation of states as liberal or non-liberal.[[732]](#footnote-732) Similarly, Barkawi and Laffey criticise the assumption that liberalism or democracy and war can be considered as independent and dependent variables respectively, given that for much of the last century both of these concepts evolved together during the process of decolonisation – the current definitions of liberalism or democracy and war are thus inseparable from each other, since so many processes of democratisation involved conflict.[[733]](#footnote-733) As suggested in section 2, on the definitions of liberalism or democracy, Marks questions whether democratic elections with dwindling voter participation can still be considered as representative of their people (particularly in democracies which exclude large parts of their population based on gender or other factors); she also doubts whether states such as Britain and France can rightly be considered as ‘liberal’ during their time as colonial empires. [[734]](#footnote-734) Barkawi and Laffey make a similar point, commenting that few of today’s democracies would have met liberal peace theorists’ criteria (universal adult suffrage) before the 20th Century, even though instances of the non-use of force have been counted as relevant during the time before democracy came to be understood in this way.[[735]](#footnote-735) Roth also notes that liberal peace theorists’ definitions of democracy tend to ignore the Central American elections of the 1980s, Yeltsin’s 1993 unconstitutional dismissal of parliament, or Aristide’s anti-democratic behaviour before the coup which deposed him.[[736]](#footnote-736) In other words, in order to find a correlation between liberal democracy and peace, the definitions of liberalism, democracy and war must all be manipulated.

In addition to the factual and definitional concerns about the empirical rigour of the liberal peace thesis, some troubling consequences can be identified – whether or not the thesis is ‘true’. With the link between democracy and peace ‘established as a fact’,[[737]](#footnote-737) the answer to increasing international peace and order seems obvious – to export liberal democracy to non-liberal states. Scholars who accept the liberal peace thesis vary in the level of support they give to different levels of democracy promotion, but all see the solution to world conflict to rest in liberal democratic institutions which provide for free and fair elections with associated civil and political rights. Teson and Reisman judge unilateral armed intervention to depose a non-democratic government to be acceptable; [[738]](#footnote-738) and from an international legal perspective, D’Amato has argued that this is lawful and that there is no norm of non-intervention in international law. [[739]](#footnote-739) It is in this regard that the liberal construction of the relationship between justice and order becomes most problematic. Owen, for example, notes and accepts without difficulty that a short-term, ‘unintended consequence’ of liberal peace theory’s status as a ‘rule’ of international relations means more rather than less war, as the UN and coalitions of democratic states increasingly see interventions to promote liberal democracy (or, more accurately, ‘electoral competition and a narrow range of civil and political rights’[[740]](#footnote-740)) as a legitimate solution to the peace and justice problems affecting international society.[[741]](#footnote-741) This certainly seems to be a feature of post-Cold War international society – Chapter 5 showed that the liberal peace theory has influenced US foreign policy, with several Presidents asserting that democracies make better international citizens,[[742]](#footnote-742) and Christopher Hobson points to a ‘more expansive and assertive liberal-democracy promotion agenda, which has been institutionalised and embedded in the foreign policies of the US and EU, as well as many other states and international organisations’.[[743]](#footnote-743) Even those scholars who do not endorse military interventions to promote elections and civil and political rights, preferring economic or political solutions, are still content to judge states by liberal standards.[[744]](#footnote-744)

Jose Alvarez criticises liberal peace theorists’ tendencies to make the link between justice and order without appreciating its nuances and contestations, noting that this theory, ‘is used as a strut upon which to build the liberal democratic order’.[[745]](#footnote-745) Alvarez is particularly critical when the reification of democracy by these scholars leads them to view liberal states as more dependable and trustworthy in relation to their international legal commitments (as one explanation of their peaceful nature). For example, he notes that the US, a paradigmatic liberal-democratic state, permits only limited enforcement of international human rights treaties in its domestic courts[[746]](#footnote-746) and frequently delays or fails to ratify international legal instruments such as the Landmines Convention or the Rome Statute of the International Criminal Court (when plenty of non-liberal states did ratify the Convention[[747]](#footnote-747)) – questionable behaviour for a ‘good international citizen’. In agreement with Alvarez’ assertion that liberal peace theory is used to justify building a new liberal democratic order by existing liberal democracies, Hobson ties together this ‘negative’ procedural conception of liberal democracy to the ease of exporting democracy by installing institutions (such as in Afghanistan or Iraq) without considering more expansive ideas of democracy.[[748]](#footnote-748) Liberal scholars such as Teson, Resismann and D’Amato agree that the promotion of order through justice is relatively unproblematic. In contrast, this section has sought to show that the mixture of ideals and interests in liberal democracy promotion is, in fact, highly problematic – particularly given the historical contingency of the ideal of liberal democracy that is associated with international peace.[[749]](#footnote-749)

This section has shown that liberal assumptions about the relationship between justice and order contain some serious flaws, which call into question the suitability and superiority of liberalism as a theoretical basis for producing either domestic justice or international order. This can be contrasted with a cosmopolitan approach to justice for distant strangers, which highlights further some of the problems with modern elitist liberalism.

## 4.3 Cosmopolitanism, Justice and Order

Rawls’ idea that free citizens will insist on a just foreign policy does not seem to be backed up by the evidence – which suggests either that they are not so interested in a just foreign policy or perhaps are not truly free – in which case exporting the global North’s model of democracy does not seem guaranteed to export justice. Echoing the cosmopolitan assertions of Pogge and others that rich countries are in fact responsible for much of the injustice suffered by vulnerable individuals in poorer countries, Martti Koskenniemi asserts that this is true of order as well as justice, drawing attention to the ‘intuitively plausible argument to the effect that the West has been able to promote peaceful growth...only at the expense of the underdeveloped South/East. War has not been absent but has been externalised.’[[750]](#footnote-750) In other words, as well as being responsible for injustice and inequality in poor countries, rich countries are also responsible for disorder and violence outside their democratic ‘zone of peace’. The externalisation of war to the rest of the globe, and its underdevelopment, is not some sort of coincidence, irrelevant to the issue under consideration (the separate peace between liberal democracies), but is part and parcel of how the North has managed to experience such high levels of peaceful development. As this section has suggested, the more important issue may be that the major liberal democratic states of the world today have been, and are, ‘slaving, colonialist and highly belligerent’,[[751]](#footnote-751) whether or not they behave differently to states with similar internal constitutions. Even if liberal peace theory is partly correct, this gives us no reason to deify today’s Western liberal democracies and permit their desire to see regime change and democratisation across the world.

The work referred to in the previous paragraph suggests an alternative construction of the relationship between the concepts of order and justice in addition to the previous section’s alternative understanding of the concept of justice. For example, contrary to Michael Glennon’s claim, that with regard to Kosovo, order (non-use of force in the UN Charter) and justice (humanitarian intervention) were opposed,[[752]](#footnote-752) Ann Orford points out that ‘order’ is not actually opposed to ‘justice’, it is opposed to war.[[753]](#footnote-753) Chapter 4 showed that because Hedley Bull viewed order as both a fact and a value, he set up a false opposition between the two – in fact, as Ian Harris, Robert Jackson and Koskenniemi have all argued, order is a kind of justice. Thus the choice made in how the UN manages international peace and security, with the ban on use of force and responsibility of the Security Council to maintain order through its primary responsibility *is a choice about justice*. This represents the value consensus in 1945 on how the world should be managed and is representative of Simpson’s ‘Charter liberalism’ and toleration of diversity.[[754]](#footnote-754) The assumptions of the scholars discussed in Chapters 2 and 5, suggesting that international law is (and should be) instrumental in achieving a liberal vision of justice for individuals (and therefore also international peace), are arguing for a new understanding of justice which praises liberal democratic states and outlaws non-liberal states (and traditional international law) for their failure to respect the individual. However, this Chapter has sought to show that these scholars put forward a narrow, selective, view of justice which enables the perpetuation of systemic injustice and structural violence for millions of vulnerable individuals, who are unable to exercise meaningfully their socioeconomic or their civil and political rights.

Some of the problems with liberal peace theory that this section has identified can be explained by a selective understanding of Kant’s conditions for perpetual peace, despite the fact that some of the scholars who make the claims described in Chapter 2 about international law or in Chapter 5 about liberal justice and order associate their work with Kant. While Kant did foresee peace between republics as they engaged in trade with each other and thus war between them became too costly, significantly Kant’s articles for perpetual peace contain requirements for peace beyond that of a republican constitution[[755]](#footnote-755) – he also held that standing armies should be abolished;[[756]](#footnote-756) that no state should by force interfere with the constitution or government of another state;[[757]](#footnote-757) and that world citizenship should be understood as universal hospitality, whereby non-citizens should not be treated with hostility or injustice.[[758]](#footnote-758) Kant’s requirements demonstrate a more cosmopolitan conception of our responsibilities to other individuals across the globe than liberalism’s limited interpretation of liberal peace theory, which focuses on liberal democracy at the expense of other important aspects of how we treat individuals in other states. Kant’s requirements for treating non-citizens justly are important for this thesis, because the RtP is viewed as a model for achieving justice for non-citizens in their own states, but this thesis argues that the RtP fundamentally misunderstands how to ‘do’ justice for individuals in other states, making all the mistakes that this chapter has demonstrated are an inherent part of modern, elitist, anti-pluralist liberalism.

Before moving on to the RtP, the final section returns to solidarism within the English School, relating the critique of liberalism set out in this Chapter to solidarism, and arguing that because post-Cold War solidarism is normatively liberal, it succumbs to the same problems. The section also returns to the idea that a useful part of solidarism, now largely ignored, is the importance of consensus or coercion – this is important for the thesis’ critique of the RtP because, as Chapter 7 will demonstrate, the RtP does not appreciate the importance of the level of consensus on its provisions.

# 5 Solidarism in the English School: a liberal theory

Thus far, this Chapter has focused its critique on liberalism in particular, as most critical scholarly literature is directed towards liberalism specifically and has tended not to consider English School solidarism. But since the previous chapter argued that solidarism is now actually a form of *liberal* solidarism, the critique of liberalism in this chapter is also to be applied to solidarism. Chapters 2 and 5 sought to show that liberal and solidarist scholars make the same claims about international law (and more particularly about humanitarian intervention and the RtP), whether they ascribe their work to a particular theory or not.[[759]](#footnote-759) Both liberal and solidarist work is based on assumptions that State A owes its citizens civil and political rights protection (and that international law is coming to recognise this) but that State B’s duties of justice towards the citizens of State A only come into being when justice becomes related to order – ie at the point when State B wishes to intervene to protect State A’s citizens and make State A more liberal and more democratic.

Little solidarist work considers socioeconomic issues and, when it does, it suggests that this provides further evidence that the society of states is becoming more solidarist, as so many states have agreed to the rules of global economic governance. This can be seen in the work of Barry Buzan on international political economy and in the work described in Chapter 2 which views the WTO (and other international law) as having a constitutionalist structure.[[760]](#footnote-760) But Buzan is, as he admits, not interested in the question of how solidarist values are spread – he accepts that this will be through a mixture of consensus, calculation and coercion and he is not concerned with understanding the relevant proportions of these methods. This may be because he is interested in solidarism as a normative position more than an empirical assessment of the level of solidarity – consensus – surrounding the liberal, individualistic values. Whilst liberal international relations theory focuses on liberal states and is rather limited in its analysis of liberal interactions with non-liberal states,[[761]](#footnote-761) the English School asks questions about international society as a whole. This provides a means of enquiry about how these liberal ideals (explored in Chapter 2 in relation to international law and in Chapter 5 in relation to the concepts of order and justice liberalism and democracy) are received within the society of states as a whole.

If solidarism can retain its empirical side rather than becoming purely normative and purely liberal, it can be used to look beyond the natural liberal answer to the question of the level of consensus on liberal values – that if a non-liberal state does not accept liberal values, it is because that state is illegitimate and does not represent its people. Used in this way, solidarism can seek to discover why states may not accept the consensus around liberal values. Andrew Hurrell’s distinction between ‘consensual’ and ‘coercive’ solidarism[[762]](#footnote-762) is important here – one represents a genuine consensus (or solidarity) between states on principles of justice, however limited that agreement might be (such as the broad coalition of support for the expulsion of Iraq from Kuwait in 1991[[763]](#footnote-763)). The other represents the enforcement of a set of norms on a population which has had little say in the content or suitability of such norms (such as the US and allies’ promotion of ‘democratic’ institutions in Iraq after their 2003 invasion[[764]](#footnote-764)).

Solidarism, as Bull saw it, permitted the use of force as enforcement over widely shared values, rather than aggressive promotion of a very particular set of ideas not necessarily shared by those upon whom the ideas were being forced. For example, a state may support non-intervention and non-use of force not because it wishes to commit mass atrocities against its citizens but because it wishes to be protected from international interference in its economy, health, education and other welfare policies. In the light of the problems identified with liberalism in this Chapter (in particular its elitist, inegalitarian and uncosmopolitan approach to justice and its dubious association of this domestic ‘justice’ to international order), Tom Keating has argued persuasively that the pressures for solidarism emanate from dominant powers, rather than demonstrating full solidarity.[[765]](#footnote-765) Certainly the liberal construction of order and justice presented here bolster the status of many states in the West (or global North), in particular the US (as well as, for example, the UK and France).

Although Buzan does seem to subscribe to the view of solidarism as normative (and liberal), he is aware that it does not necessarily have to be so – he has also suggested that solidarism does not necessarily have to focus on human rights and can in fact refer to any normative convergence.[[766]](#footnote-766) However, Chapter 5 showed that in the post-Cold War era, solidarism has become a particular normative liberal solidarism – and, in line with liberal anti-pluralism, solidarism has become increasingly coercive. The thesis now turns to the RtP as a specific example of this coercion.

# Conclusion

This Chapter has argued that liberalism’s teleological view of history and progress hides important inconsistencies within liberalism, especially the idea of liberal democracy and its relationship to justice and order. It explored tensions within the concepts of liberalism and democracy themselves, and the relationship between the concepts, arguing that they are contested and incoherent and thus cannot form a coherent basis from which to strive for the achievement of justice and order. For example, global economic liberalism and transnational corporate activities may be incompatible with meaningful democratic participation by people over decisions that affect their lives.

Based on this problematic construction of liberalism and democracy, the Chapter argued that post-Cold War liberalism suffers from two particular flaws in its view of justice and order relevant to this thesis. First, domestically, this liberalism is elitist and inegalitarian, being insufficiently concerned with the life outcomes of the poorest members of society and viewing equality only in procedural terms in relation to the equal right to the civil and political rights of being left alone to pursue their own life goals – this privileges those who have sufficient funds to pursue any life goals at the expense of those lacking the means to make meaningful life choices. In this liberalism, democracy is a narrow conception of ‘free and fair’ elections rather than substantive, meaningful control over the decisions that affect peoples’ lives. Second, internationally, this liberalism is overly statist and insufficiently cosmopolitan, viewing distributive justice as a domestic rather than an international (or global) issue. This enables modern liberal democratic states to permit or perpetuate conditions of significant global injustice such as starvation, global health problems and other large scale deaths. This has been described as a ‘deformity’ between rich and poor, and between whose security is to be protected and who sets the rules of international society, and is a feature of post-Cold War work on international society and international law – and, as Chapter 7 will show, of the RtP.

The Chapter then critiqued liberalism’s view of the relationship between justice and order, in particular in relation to the liberal peace thesis and the idea of liberal democracies as good international citizens – suggesting that liberalism’s prescriptions for international order are based on a selective reading of Kantian cosmopolitan principles. Having enabled liberal democratic states to perpetuate systemic, structural injustice and violence across the globe, liberal peace theory then permits these states to address the issue of justice with a ‘moral fervour’ when justice is defined as the major denial of civil and political rights in another state, criticising these states for their failure to treat their own citizens justly.

Finally, the Chapter tied the problems it identified with liberalism to solidarism. As Gerry Simpson describes in relation to liberalism, solidarism could mean ‘many things but is too often taken to mean only one’.[[767]](#footnote-767) This part of the Chapter explained that although solidarism could potentially refer to the actual level of consensus on any values at all (and could be used as a platform from which to enquire why some values might not be shared), post-Cold War solidarism is a normative rather than empirical theory and is based on elitist, anti-pluralist liberalism. Chapter 7 builds upon this general critique, applying it to the RtP and demonstrating how the same conception of order (security), justice and their relationship informs the RtP – the Chapter asserts that the doctrine can never succeed in its stated humanitarian, cosmopolitan aspirations because of these flaws.

**Chapter 7**

**The Responsibility to Protect: the failure**

**of liberal solidarism in practice**

# Introduction

This thesis has suggested that the RtP is largely viewed as a welcome development (Chapter 3), with ‘overwhelming consensus, at least on the basic principles’.[[768]](#footnote-768) It was also suggested that there were some problems with the RtP (such as the concept of atrocities, the RtP’s uncertain legal status and relationship to humanitarian intervention, the extent of the international community’s responsibility and the ‘success’ of the doctrine in practice), and this Chapter returns to these problems in its critique of the doctrine. The critique of the RtP in this Chapter is based upon the theoretical work in the previous Chapter (Chapter 6), which critiqued the liberal solidarist view of the concept of justice and its relationship to order as insufficiently cosmopolitan or egalitarian. This Chapter sets out the key argument of the thesis. This argument is that the RtP is the prime example of post-Cold War liberal solidarism in practice, and succumbs to the same problems which Chapter 6 showed were evident in liberal solidarist theory. Because the RtP is based on a particular strand of liberal solidarism and its interpretation of domestic justice and international order, the RtP is not cosmopolitan and cannot achieve the cosmopolitan aspirations towards which it claims to strive.

The Chapter first makes the case that the RtP is emblematic of post-Cold War liberal solidarism. To do this, section 1 recalls the material in Chapter 3 which set out the RtP provisions in detail, and explains why these provisions are liberal in nature, both in their national, civil-political focus and their liberal solidarist view of the inevitable progress of humankind towards justice for individuals across the globe. The Chapter then challenges the veracity, coherence and consistency of these liberal solidarist assumptions within the RtP. Section 2 shows that the liberal solidarist view of progress which underlies RtP work hides many of the problematic aspects of the RtP. It makes the claim that the RtP privileges some forms of suffering and injustice over others in order to present the government of the problem state as at fault and in order to present the international community as capable of solving these global problems and rescuing vulnerable individuals. Section 3 shows that the RtP’s presentation of blame and rescue leads to a focus on military interventions in response to crises of civil and political rights and dismisses the importance of prior conditions of socioeconomic justice in achieving justice for individuals, because the RtP does not appreciate the importance of structural distributive justice in conflict prevention. This has the effect of presenting the ‘international community’ as striving to achieve justice for individuals across the globe rather than as being implicated in creating and perpetuating existing global conditions of poverty and inequality (whether they are related to particular crises of civil and political rights abuses or not). Given the potential for socioeconomic inequality to be related to disorder, this impoverished conception of justice has consequences for order as well as for justice itself. It means that the RtP in practice ends up being largely the same as the earlier concept of humanitarian intervention. Section 4 returns to the idea of the RtP as a legal norm, and shows that the arguments surrounding the RtP’s legal status reflect liberal solidarism’s coercive tendency – supporters tend to ignore the level of consensus achieved between states on what the RtP means and push forward on issues such as military intervention without Security Council authority. This again makes the RtP not easily distinguishable in practice from humanitarian intervention, and risks increasing disorder and injustice across the globe.

# 1 Liberalism and The Concept of (in)justice and (in)security in the Responsibility to Protect

Quite clearly, the RtP is designed to address situations in which civilians suffer grave harm at the hands (or through the neglect) of their government, which has failed in its primary responsibility towards its population. The 2001 ICISS report refers to this failure as the state having the primary responsibility and being unable or unwilling to fulfil it;[[769]](#footnote-769) the 2005 Outcome Document refers to the state’s ‘manifest failure’ to protect its population.[[770]](#footnote-770) ICISS notes that millions are at risk of atrocities and the RtP is designed to deliver ‘practical protection for ordinary people, at risk of their lives, because their states are unwilling or unable to protect them’.[[771]](#footnote-771) This role of the state towards its own citizens is reflected in pillar 1 of Ban Ki-moon’s 2009 report, which notes that ‘it is the enduring responsibility of the State to protect its populations ... from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement’.[[772]](#footnote-772) The RtP is thus designed to be a narrow doctrine, addressing only these mass atrocity crimes and the government’s role in carrying them out or failing to prevent them.[[773]](#footnote-773) The doctrine is also designed to be ‘deep’, because although the focus of the RtP claims to be on prevention, flexible responses to crises also involve a ‘wide array of protection and prevention instruments’ from Chapters VI, VII and VIII of the Charter.[[774]](#footnote-774)

The RtP’s definition of insecurity relates specifically to a certain category of injustices – threats from (or failures of) the citizens’ own government in relation to the civil and political rights of the state’s own citizens (limited to the mass atrocity crimes of genocide, war crimes, crimes against humanity and ethnic cleansing). Again, clearly, the very existence of the RtP doctrine assumes that something *can be done* about mass atrocity crimes specifically, with the RtP specifying that it is Chapter VI, VII and VIII measures that are appropriate. This section re-engages with the material from Chapter 3 on the RtP in order to demonstrate that the RtP’s definition of insecurity – the very problems it was designed to address – reflect a liberal solidarist understanding of security (order) and justice, focused on civil and political rights.

## 1.1 The cause of threats to individual security

Perhaps unsurprisingly for a report that deals with grave civil and political rights abuses, the 2001 ICISS report relates the primary causes of conflicts or state collapse to failures in domestic governance – in particular commenting that a ‘firm national commitment to ensuring fair treatment and fair opportunities for all citizens provides a solid basis for conflict prevention’,[[775]](#footnote-775) relating to Rawls’ liberal theory of justice which requires equality in the distribution of civil and political rights. The 2009 report comments that populations will be at risk if ‘national political leadership is weak, divided or uncertain about how to proceed’ (for example against rebels).[[776]](#footnote-776) It also deplores the lack of education and training on human rights in states at risk from RtP crimes.[[777]](#footnote-777) Mass atrocity crimes are therefore taken to be caused by the government responsible for the civil and political rights of its citizens,[[778]](#footnote-778) whether by neglect and lack of education or by more malevolent forces. Regarding mass atrocities as the fault of the citizens’ own government, the RtP then turns to the role of the international community in response to national governance failures.

## 1.2 The international community’s role in enabling security

*Prevention and Assistance*

The international community’s secondary responsibility to protect populations at risk from mass atrocity crimes involves helping states prevent crimes on their territory by identifying triggers of conflict[[779]](#footnote-779) – an important change from the humanitarian intervention debate, to which RtP proponents turn in order to reassure others that the doctrine is not about increasing recourse to military intervention. The RtP’s view of the role of the international community in this regard is as a neutral helper, and the help expected of the international community is based on liberal solidarism – for example, the international community should support local human rights and good governance initiatives[[780]](#footnote-780) in order to strengthen national governance. The international community’s assistance to states should be through diplomatic encouragement, human rights training and other governance capacity building assistance,[[781]](#footnote-781) by UN Special Advisors and the Bretton Woods institutions[[782]](#footnote-782) or through rule of law and other human rights issues being addressed in existing aid programmes.[[783]](#footnote-783) Mirroring the RtP’s view of the causes of insecurity as local governance failures, these provisions similarly focus on the importance of a national commitment to civil and political rights and training local actors in liberal governance.[[784]](#footnote-784)

*Reaction and Response*

If the international community’s preventive efforts fail and a crisis develops, the international community must then exercise its responsibility to react. This responsibility can be fulfilled using economic, political and legal, as well as military, means,[[785]](#footnote-785) although ICISS acknowledges that sanctions can be a blunt instrument and it may be necessary to consider military reaction. [[786]](#footnote-786) ICISS devotes significant space to considering and endorsing ‘just war’ criteria to assess the legitimacy of a military response.[[787]](#footnote-787) Ki-moon’s report refers to the broad range of tools available under the Security Council’s Chapter VI, VII and VIII powers, as well as the role of the General Assembly,[[788]](#footnote-788) diplomatic sanctions and arms control.[[789]](#footnote-789) Ki-moon notes, however, that given the widely different circumstances in which mass atrocity crimes occur, ‘there is no room for a rigidly sequenced strategy or for tightly defined “triggers” for action’.[[790]](#footnote-790) Whilst not particularly reflecting fundamental liberal tenets of domestic justice in this part of the RtP, the post-Cold War liberal solidarist increased readiness to use force can be seen in this part of the doctrine – which is the crux of the RtP and the liberal solidarist claims about the changing nature of post-Cold War international law.

*Rebuilding*

ICISS stresses that the international community has a responsibility to rebuild a society after military intervention. Rebuilding should focus on order, safety, good governance and sustainable development, with responsibility for these tasks transferred progressively to local ownership.[[791]](#footnote-791) The report notes that the international community cannot leave states with the same underlying problems that caused the conflict in the first place and thus highlights the importance of development and economic recovery, human rights and political inclusiveness.[[792]](#footnote-792) The RtP does not give a detailed blueprint on how to achieve good governance, political inclusiveness, sustainable development and economic recovery, but it criticises previous examples of military interventions which did not give sufficient thought, planning and funds to rebuilding. Outside the ICISS report, Jon Western and Joshua Goldstein are an example of scholars who are explicit that rebuilding must produce a liberal democratic regime – they note that this cannot be done ‘overnight’ and suggest that occupation or other international territorial presence may be necessary, stressing that this must rely on local customs and policies.[[793]](#footnote-793) They point to the success of the international community’s rebuilding in the Balkans, and in East Timor, where Australia’s INTERFET intervention successfully produced an independent state.[[794]](#footnote-794)

This section has shown that the RtP’s assumptions about threats to security focus on the state-citizen relationship and the national government’s duty not to abuse its citizens’ civil and political rights. The very existence of a doctrine dealing with grave civil and political rights abuses (some of Rawls’ ‘great evils of human history’) is based on a liberal solidarist view of the purpose of the state being to secure citizens’ civil and political rights so that these individuals can pursue their autonomous life goals, protected from governmental abuses of power.[[795]](#footnote-795) In addition to the commitment to a (narrow) form of liberalism expected of states towards their own citizens, the RtP envisages a cosmopolitan role for the international community whose human rights obligations to individuals everywhere can require them to rescue individuals from gross human rights abuses.[[796]](#footnote-796) The use of international criminal justice systems were shown in Chapter 3 to be an important part of the international community’s responsibility to protect and this section moves on to show that liberal principles underwrite the RtP’s view of international criminal justice.

*International Criminal Justice within the RtP*

The international criminal justice system is an important part of rebuilding (and, indeed prevention) in the RtP – for example, Ramesh Thakur and Thomas Weiss view ‘protection of civilians and prosecution of perpetrators [as] two sides of the same coin’.[[797]](#footnote-797) Scholars, policymakers and NGOs refer to the RtP and the ICC in the same breath in response to some developing crises, as Chapter 3 showed in relation to Kenya, Libya and Syria.[[798]](#footnote-798) It is thus worth considering the specific role of international criminal justice as part of how the international community can deal with mass atrocities. Frederic Megret’s description of the similarities between the RtP and the ICC demonstrates some particular liberal solidarist features in his description (again showing the tendency of these institutions to be linked to cosmopolitanism):

Both the ICC and R2P as projects share classic features of idealism: a willingness to put word above fact; a strong principled and deontological push; an insistence over the desirable rather than the merely achievable. They are culminations of a tradition of vibrant international norm entrepreneurship, which they contribute to update in an age of globalization and cosmopolitan human rights.[[799]](#footnote-799)

The international criminal justice system promulgated by the international community views peace through justice is better, and more stable, than peace instead of justice – the idea being that punishment of perpetrators allows a state to clear its guilt and rejoin peaceful international society.[[800]](#footnote-800) The existence of the ICC and other tribunals contribute to peace by removing violent actors from their positions of influence and from being able to carry out any atrocities themselves – for example, Western and Goldstein argue that ‘[e]very suspected war criminal, once indicted, quickly lost political influence in post-war Bosnia’.[[801]](#footnote-801)

The points raised above suggest that the international community can help prevent atrocities, or at least rebuild a just domestic society after conflict, through its role in punishing those responsible for crimes. And, as Chapter 2 showed, the RtP and ICC are viewed as part of the liberal solidarist progressive view of post-Cold War developments enshrining the importance of the individual.[[802]](#footnote-802) This section now investigates some of this progressive language more closely (recalling Chapters 2 and 3). It suggests that this language, and the presentation of the argument that the RtP is progressive, hides the more troubling aspects of the doctrine. Section 2 goes on to reveal these troubling aspects.

## 1.3 Progress

So far this section’s exposition of the liberal solidarist values underlying the RtP has concentrated mainly on the provisions of the ICISS and Implementation Reports rather than looking at scholarly work. This sub-section will now recall some of the scholarly work from Chapter 3 (section 4.2) in support of the RtP, in order to draw attention to its liberal solidarist notion of progress of the international community’s common values (building on the sense of progress described in Chapter 2 in relation to international law and the UN). This is done so that section 2 can deconstruct these progressive arguments and suggest some of the problems which they hide.

The sense of overwhelming support for the RtP (described in Chapter 3) is accompanied by commentary that makes it difficult to disagree with the RtP’s supporters – for example, Ramesh Thakur argues that ‘[i]ntervention for human protection purposes occurs so that those condemned to die in fear may live in hope instead’.[[803]](#footnote-803) This language is filled with the idea of the progress and development of the community of humankind in caring for each other as human beings, wherever they happen to live in the world.[[804]](#footnote-804) Echoing the scholars whom Chapter 2 identified as viewing the RtP as the culmination of the solidarist, constitutionalist move in international law, ICISS itself views the RtP as the natural next step from the growing number of human rights treaties.[[805]](#footnote-805) A similar progressive view is taken of the role of international criminal justice in managing conflicts, as part of an increasingly individual-focused, hierarchical and coercive international law (as Chapter 2 demonstrated).[[806]](#footnote-806) The international criminal justice system can thus be seen to be viewed as part of the same liberal solidarist progressive view of the RtP as a major stride towards justice and security for all. Supporters assert vigorously that the battle of ideas has been won[[807]](#footnote-807) and it is now time to move on to important questions (such as who should intervene[[808]](#footnote-808)) rather than dealing with disingenuous naysayers.[[809]](#footnote-809)

Evans describes this progress in more detail, providing an explicitly liberal solidarist narrative: from the indifference and violence of the pre-modern age through the ‘institutionalised indifference’ of the Westphalian state model and the cynicism of the Cold War, finally giving way after the conscience-shocking inactions resulting from adherence to the non-intervention norm in the 1990s, to a growing acceptance of a new understanding of the state as guardian of its citizens civil and political rights.[[810]](#footnote-810) Linking this idea of justice (as civil and political rights) to international security (order), Ramesh Thakur and Thomas Weiss (RtP panellists and staunch advocates of the concept) describe progress in the society of states as:

Over time, the chief threats to international security have come from violent eruptions of crises within states, including civil wars, while the goals of promoting human rights and democratic governance, protecting civilian victims of human atrocities and punishing governmental perpetrators of mass crimes have become more important.[[811]](#footnote-811)

This description of the (co)evolution of security threats and ideas about justice supports the idea of the RtP being an important development in post-Cold War liberal solidarist (and increasingly hierarchical and coercive) international law (outlined in Chapter 2).

Even those who criticise the RtP do not necessarily take issue with its fundamental tenets. For example, a common criticism is the issue of potential Security Council inaction – an operational criticism.[[812]](#footnote-812) This has previously been stated (in Chapter 6) – violence outside the liberal zone of peace tends to be regarded as having nothing to do with the global North’s development. But in fact the global North would not have enjoyed such high levels of wealth and development had it not been belligerent and colonialist. The global North should therefore not now claim that its prosperity is entirely due to the internal constitutions of its states. On a similar level, Wheeler criticises Jack Straw’s belief in the potential for the RtP to have prevented the tragedies of Rwanda or Srebrenica, for his failure to understand that it was a lack of political will, rather the lack of an ICISS Report, that was the problem in these cases.[[813]](#footnote-813) However, in making this criticism, Wheeler does not take issue with the fundamental assumptions of the RtP – of the notion of justice as ‘doing something’ in response to crises caused by democratic faults at the local governmental level.[[814]](#footnote-814) Whilst Kofi Annan acknowledges some ‘limitations or imperfections’ in the current interpretation of humanitarian intervention and the RtP,[[815]](#footnote-815) and Wheeler acknowledges that there is less solidarity in relation to the ‘holocaust of neglect’ that characterises other areas of world (economic) policy,[[816]](#footnote-816) both nonetheless see progress as taking place in international society’s focus on achieving justice for individuals. The limitations and imperfections of the RtP are seen as unfortunate, and somehow coincidental, but not as a significant impediment in the seemingly inevitable movement towards justice in international society by ‘a humanity that cares more, not less, for the suffering in its midst, and a humanity that will do more, and not less, to end it’.[[817]](#footnote-817) This thesis contends that the limitations and imperfections identified by liberal and solidarist scholars *are* in fact a significant impediment to the progress made towards justice for individuals within international society. This is because these limitations and imperfections are an integral part of the liberal solidarist approach to justice, which are insufficiently egalitarian and cosmopolitan and are therefore unlikely to achieve either justice or security for vulnerable individuals.

 The next section brings together the previous Chapter’s critique of liberal solidarism with this section’s demonstration that the RtP is a liberal solidarist doctrine. Section 2 of this Chapter now presents the key argument of the thesis in its critique of the RtP. It argues that because the RtP contains an impoverished, ‘uncosmopolitan’ conception of the role of the international community in the security of individuals in other states, it cannot address insecurity and violence successfully.

# 2 Security and Responsibility: an alternative conception

Here, the problems with the RtP’s construction of the nature of injustice and its relationship to security are demonstrated by suggesting an alternative understanding of these threats, in order to show that the RtP is flawed as a concept and cannot succeed in its aims. This section critiques the very need for a doctrine focused on mass atrocity crimes, because (as Chapter 3 pointed out) such a doctrine inevitably assumes that something can be ‘done’ about mass atrocities as a unique, coherent set of problems afflicting individuals and the society of states. The doctrine also assumes that the ‘international community’ is well-placed to rescue people or attempt to prevent the commission of crimes, rather than having been part of creating systemic conditions of injustice and contributing to the insecurity of vulnerable individuals. The alternative conception of justice and security offered below links socioeconomic development to security more explicitly than the RtP does, arguing that without addressing this issue more adequately (and the different picture this provides of the international community’s concern with vulnerable individuals), the RtP – and the international community – will only ever respond to the symptoms, and not the causes, of insecurity.

## 2.1 The Importance of Mass Atrocity Crimes

While horrific, it is not self-evident that mass atrocity crimes are the primary insecurity faced by vulnerable populations today. Creating a doctrine to enable urgent response to these particular crimes elevates the importance of certain types of death over other types without justification, and risks *adding* to the injustices suffered by the most vulnerable people by drawing attention away from equally important – and related – injustices. Some of the statistics used in Chapter 6 (to show the level of global injustice permitted by post-Cold War liberal solidarism) highlight this point. There are 18 million poverty-related deaths annually, with 2,000 million people lacking access to basic drugs, 2,500 million lacking access to basic sanitation, 1,020 million chronically undernourished and 34 million people suffering from HIV and AIDS.[[818]](#footnote-818) This contrasts with the 1998 statistics of 588,000 deaths from war and 736,000 from social violence[[819]](#footnote-819) and of course the famous death toll numbers of 800,000 in Rwanda and suggestions of 100,000 in Syria.[[820]](#footnote-820) Alex Bellamy describes this issue as ‘structural violence’ and suggests that it is this issue, rather than organised military violence, which is the main contemporary problem facing humanity.[[821]](#footnote-821) In this regard, he contrasts ‘death by politics’ (state sponsored killing) with ‘death by economics’ (such as starvation), noting that the latter is somehow seen as outside the interest or responsibility of international law and the ‘international community.[[822]](#footnote-822)

The perception of mass atrocity crimes as the most urgent security issue reflects a tendency of international lawyers to focus on crises, rather than systemic chronic issues, and thus not consider the relationship between the two – as Hilary Charlesworth notes, ‘using crises as our focus means that what we generally take for “fundamental” questions and enquiries are very restricted’.[[823]](#footnote-823) Sundya Pahuja describes this phenomenon as ‘the power of a question to define an outcome’[[824]](#footnote-824) – if mass atrocity crimes are posed as the most urgent security threat to individuals, naturally the development and implementation of a doctrine to deal with mass atrocities seems a wise outcome. But is this the right question (or the only question) to ask? The RtP is a product of this crisis-focus, both in its very existence and in its narrow lack of interest in really investigating and addressing the wider structural injustices of the global system and their relationship to acts of violence. Reminiscent of the humanitarian intervention debate, the fundamental question or enquiry becomes ‘should we do something or should we do nothing?’ [[825]](#footnote-825) The mounting pressure ‘to “do something”, or to appear to be doing something’ in response to a crisis, has also been described in relation to the International Criminal Tribunals for the former Yugoslavia and for Rwanda.[[826]](#footnote-826) Phrased in terms of Michael Glennon’s and Fernando Teson’s strident liberal argument in favour of humanitarian intervention (set out in Chapter 5), are we in favour of stopping mass atrocities, using military means if necessary, or are we one of ‘the defiant, the indolent, the miscreant’ who subscribe to an unreasonable theory of ethics which permits wholesale slaughter?[[827]](#footnote-827)

A focus on the more chronic problems outlined above would suggest that *if* we have a responsibility towards individuals in other states (as Teson and others suggest), *then* it should include not just responding to crises in which mass atrocity crimes may occur, but responding to the significant numbers suffering from these chronic problems. The RtP does not explain why the ‘millions’ suffering from state repression and collapse are in need of a doctrine to help them, compared to the greater number of people dying from poverty-related causes. Although it might be argued that two separate doctrines, relating to civil/political and socioeconomic rights, are possible (and not an either-or option), this does not reflect the limited concern and funds that the international community appears prepared to give to the problems of strangers.[[828]](#footnote-828) The level of generality of the Millennium Development Goals[[829]](#footnote-829) and the gulf between their aspirations and the actual achievements by the international community shows the limited concern about global poverty and inequality.[[830]](#footnote-830) Given that states do not have unlimited funds, it is plausible that a doctrine addressing mass atrocities would compete for attention and funding with other foreign policy doctrines. The existence of a doctrine addressing mass atrocities also suggests that they are a set of unique acts, coherent in themselves and unrelated to other global problems. Mass atrocities are presented as not just something which need a doctrine of their own but which can have, logically, consistently and usefully, a doctrine of their own. This does not enable a comprehensive understanding of the situations in which mass violence occurs and has been criticised both by those who would see a widening of the doctrine[[831]](#footnote-831) and those who simply question the ease of categorising the four RtP crimes together – for example, Adrian Gallager points out that these different crimes may have very different causes (contrasting Somalia with Rwanda, for example) and should not be conflated and addressed in a one-size-fits-all manner.[[832]](#footnote-832) On the other hand, David Scheffer comments that it is more difficult to justify ‘RtP action’ for acts such as torture, sexual violence, enslavement or the system of apartheid,[[833]](#footnote-833) but he makes no effort to provide evidence for his assertion. Similarly, he justifies the inclusion of ‘ethnic cleansing’ as an RtP category even though it is not actually an atrocity crime in the ICC statute, merely because it is a ‘powerful term’.[[834]](#footnote-834) It seems, therefore, that he feels that the special status of mass atrocities goes without saying and that, for example, ‘apartheid’ or ‘torture’ are insufficiently powerful terms to warrant a doctrine for how to respond to them. Yet, as Bellamy has pointed out, there is no specific prevention for mass atrocities – this suggests that perhaps they are not such a unique and coherent category after all.

Proponents such as Adama Dieng (the Secretary General’s Special Representative for the Prevention of Genocide) argue that the RtP is only supposed to be a narrow doctrine[[835]](#footnote-835) limited to ‘extreme, conscience-shocking cases’[[836]](#footnote-836) and not, for example, natural disasters such as Cyclone Nargis.[[837]](#footnote-837) This may calm the fears of those who see the RtP as expanding the number of situations when it is acceptable to use military force, but in more general terms it does not explain why the deaths of 18 million human beings from poverty is not as conscience-shocking. As stated above, whilst efforts addressing underdevelopment and efforts addressing mass atrocity crimes are not necessarily mutually exclusive, there is a real risk that the focus on mass atrocity crimes will draw attention, effort and – crucially – funds away from causes such as global health and poverty and towards the defence industry and military intervention.

Even if mass atrocity crimes *are* the major problem of our time, somehow more conscience-shocking than the 18 million poverty-related deaths every year, the RtP still neglects the relationship between atrocities and more chronic problems, prioritising certain civil and political rights over other human rights. Scholars frequently refer to ‘fundamental’ human rights,[[838]](#footnote-838) without explaining whether all human rights are fundamental (as the term ‘human’ would imply) or whether some rights are more fundamental than others – though Jeff Holzgrefe and Robert Keohane’s reference to the word ‘fundamental’ rights in their definition of humanitarian intervention suggests that only those civil and political rights triggering an intervention are the fundamental ones.[[839]](#footnote-839) This issue warrants further discussion, and the next section considers the liberal solidarist prioritisation of civil and political rights over socioeconomic rights, arguing that this contributes to the view (which is ultimately incorrect) that mass atrocities are not related to socioeconomic issues.

## 2.2 Injustice and civil and political rights in the RtP

The primary importance of certain civil and political rights stems from the ‘triumph of liberalism’[[840]](#footnote-840) at the end of the Cold War and the declining influence of socialism and socioeconomic rights. As Chapters 2 and 5 showed, at this time liberal international lawyers and others began to champion democracy and civil and political rights as the key to realising the important normative status of the individual,[[841]](#footnote-841) because it is in non-democratic conditions that the worst evils – genocide, crimes against humanity, serious war crimes (which are themselves serious breaches of IHL) and mass murder – are perpetrated.[[842]](#footnote-842) This view is backed up by more theoretical work on justice, such as that of John Rawls, whose theory of justice focuses more on the civil and political arena than socioeconomic issues – equality of civil and political opportunities can never be compromised, and increased socioeconomic equality is not a justification for civil and political inequalities.[[843]](#footnote-843) As Chapter 6 argued, this ‘negative’ liberal focus on protecting individuals’ autonomy from state interference does not consider more positive duties that individuals may require in order to exercise their autonomy in a meaningful way.[[844]](#footnote-844)

In a similar vein, as section 1 suggested, the RtP relates insecurity strictly to the government’s failure to protect its people’s civil and political rights.[[845]](#footnote-845) It constructs the biggest threat to individual justice and security as mass abuses of civil and political rights and constructs the blame for abuse to lie with the government when those rights are violated on a grand scale. Although the RtP tried to ‘move on’ from the humanitarian intervention debate, the doctrine shares the previous debate’s view of the main problems faced by vulnerable populations – civil wars, repression and state collapse and a failure of *national* commitments to fair treatment.[[846]](#footnote-846) These points reiterate section 1’s claim that the RtP is liberal, and thus suffers from the same problems as liberal solidarism does in its lack of concern for the socioeconomic problems of individuals (particularly those in other states). Although one paragraph of the 2001 report by ICISS does refer to the role of Cold War debts and the trade policies of richer countries in preventing poorer states from addressing some of the root causes of conflicts, such as poverty,[[847]](#footnote-847) it then ties these causes back to the civil and political rights arena of *national* democratic participation and *national* responsibility, suggesting that national poverty and inequality is to be solved by national good governance.[[848]](#footnote-848) Very little of the 2001 report considers the potential ‘direct’ responsibility of the international community for socioeconomic underdevelopment in poorer countries (rather than viewing national political constitution as responsible for national socioeconomic development).[[849]](#footnote-849) The 2009 report is slightly more promising in this regard, referring to aid and development as part of conflict prevention in stronger terms than ICISS does. Unfortunately this report still largely sees the relationship between development and conflict the other way round, noting (no doubt correctly) that mass atrocity crimes halt development through, for example, tourism and capital investment.[[850]](#footnote-850)

There is therefore a significant disparity between civil and political rights and socioeconomic rights in the RtP. This disparity is worrying in itself, given the number of people suffering from poverty and the RtP’s claimed cosmopolitan concern for ‘a humanity that cares more, not less, for the suffering in its midst, and a humanity that will do more, and not less, to end it’.[[851]](#footnote-851) Of course the RtP’s concern with mass atrocities means a concern with (a limited range of) civil and political rights, as section 2.1 suggested – but is a doctrine addressing mass atrocity crimes actually so important compared to channelling efforts and funds into dealing with global poverty and health inequalities? Again, as section 2.1 suggested, the RtP tends to assume this rather than present a convincing argument that this is the case.

Even for those who believe that civil and political rights are particularly important and that mass atrocities require urgent action compared to global poverty and inequality, the RtP’s civil-political vs socioeconomic disparity is still problematic. Chapter 6 made the argument that socioeconomic rights support civil and political rights[[852]](#footnote-852) – in English School and liberal peace theory terms, if justice is necessary for order, this concept of justice must be more expansive than a narrow liberal solidarist focus on some civil and political rights which permit significant ‘deformity’ between rich and poor.[[853]](#footnote-853) It is worth recalling here two specific examples given in Chapter 6. Kofi Annan highlights the general importance of socioeconomic development when commenting that ‘a young man with AIDS who cannot read or write and lives on the brink of starvation is not truly free.’[[854]](#footnote-854) Thomas Pogge points to the inability of severely poor citizens to participate meaningfully in politics in order to combat corrupt and anti-democratic governments[[855]](#footnote-855)

The structural violence of socioeconomic injustice can also be seen to be a major cause of outbreaks of violence which are an abuse of civil and political rights (such as mass atrocities). For example, James Fearon and David Laitin found that poverty was a key factor contributing to civil war; and Susumi Suzuki and Volker Krause found that economic development reduced the risk of civil war.[[856]](#footnote-856) In addition James Richardson suggests that ‘[a]rbitrary acts of violence against the underprivileged, or acts of omission such as the dispossession without restitution of those who inadvertently stand in the way of “development”’ are just as important as the negative rights which are the focus of RtP.[[857]](#footnote-857) These socioeconomic issues contribute to ‘structural’ violence which, as suggested in section 2.1, is just as important as instances and acts of physical violence (if not more so).[[858]](#footnote-858) In RtP terms, a national commitment to good governance and political participation and representative governance is of limited value if, for example, an individual cannot read the ballot papers or is dying of starvation and is therefore unlikely to have a meaningful investment in their future. This means that the RtP’s commitment to protecting vulnerable individuals from abuses is somewhat empty without a prior commitment to the socioeconomic rights which strengthen the ability of citizens to support and derive benefit from democracy and good governance measures – the high-level human rights training in prevention is of little use if individuals cannot exercise these rights ‘on the ground’. Although ICISS and Ki-moon recognised to a limited extent that socioeconomic development supports the exercise of civil and political rights, the RtP still contains a narrow focus on the acts themselves – mass atrocities – at key points in the reports, particularly on what is required for conflict prevention by the international community.

The problems highlighted above with the RtP’s failure to appreciate the importance of socioeconomic development can be seen in particular in relation to prevention and rebuilding. In terms of prevention (as Chapter 3 and this Chapter’s section 2.1 noted), Alex Bellamy comments that it is hard to find prevention aimed directly at mass atrocity crimes – and he suggests that open-ended preventative commitments expected of the international community could decrease overall state commitment to the RtP.[[859]](#footnote-859) If, as the previous paragraphs argued, development contributes to security through reducing repression and conflicts, then in fact an earlier commitment to justice by the international community would involve a non-military response to the non-military threat of underdevelopment long before these problems translated into acts of violence.[[860]](#footnote-860) In order to be meaningful, therefore, the international community’s responsibility to prevent (and to assist problem states) should include a genuine commitment to development and poverty alleviation.

In terms of rebuilding, the RtP gives more attention to the importance of development at this stage, but at the rebuilding stage this is ‘shutting the stable door after the horse has bolted’. Furthermore, the relationship between ICISS’ requirement of local ownership of rebuilding and commentators’ focus on the need for liberal democratic institutions and economic liberalisation simply reveals the same fundamental problems in the RtP as was demonstrated in Chapter 6 in relation to liberal democracy – local ownership may not be compatible with the requirement of World Bank and IMF funding programs.[[861]](#footnote-861) An example of these problems can be seen in East Timor – Anne Orford describes the awards of most reconstruction contracts to Australian corporations rather than locals, and the World Bank’s encouragement of the foreign-owned hotel and tourism industry which served only World Bank and UN staff, paying very low wages to the locals working there and charging high costs to those staying. East Timor found itself obliged to honour long-term contracts which it did not negotiate and which are not favourable to the development of local basic services.[[862]](#footnote-862) Although this took place before the existence of the RtP, the doctrine has done nothing to suggest how these problems in rebuilding can be avoided.

The idea of the international community’s duty to assist states in preventing abuse (and the idea that this is about restructuring the relationship of the problem government with its people through civil and political good governance, rather than socioeconomic rights and development) suggests that the international community’s relationship with these problem states is currently neutral, being neither a help nor a hindrance – the problem is perceived to be in the relationship between citizens and government. Again reflecting Pahuja’s concept of the power of a question to define an outcome, if the blame for these crises lies with the local government then it is natural to view the appropriate response to a national failure at the level to be international rescue.[[863]](#footnote-863) In relation to international rescue, Chapter 5 set out Teson’s liberal argument that our human rights obligations can require us to rescue others, but this section has argued that *if* RtP proponents claim a cosmopolitan concern for vulnerable individuals across the globe, *then* they should be committed to reducing global socioeconomic inequality as much as, and before, being committed to using military force (with all the civilian casualties this entails) to rescue individuals once a conflict has started. In the language of Teson’s argument, he does not explain why our human rights duties to others require us to rescue them once civil and political rights abuses have been committed but not to respect their socioeconomic rights (and therefore civil and political rights) before conflict breaks out, in our relationship with them in times of peace. This challenge to Teson questions whether the international community’s relationship with victims really is neutral. The role of the international community is neglected by some scholars even when they recognise the importance of socioeconomic deprivation as serious injustice – for example, Michael Doyle considers the possibility of the state starving its own citizens or failing to feed them.[[864]](#footnote-864) The UN’s Committee on Cultural, Economic and Social Rights suggests that all states must respect the economic, social and cultural rights of individuals in other countries – this appears to go unnoticed by the RtP’s proponents.[[865]](#footnote-865)

The relationship between vulnerable individuals’ socioeconomic rights and the extent of the international community’s human rights duties merits further consideration. The Chapter therefore now moves on to this point, linking the socioeconomic issues highlighted in this section to the role of the international community in crises, challenging its role as neutral rescuer and arguing that the international community plays a major role in contributing to underdevelopment, violence and insecurity across the globe.

## 2.3 The role of the international community in insecurity – to the rescue?

In response to Bellamy’s description (in section 2.1) of an international community that shows more concern for death by politics than by economics, this section demonstrates that the international community contributes significantly to ‘death by economics’. This lack of concern with the death by economics of millions of vulnerable individuals calls into question the cosmopolitan concern for strangers claimed by RtP proponents: a concern with a limited number of acts of death by politics has not been justified adequately and is not a consistent cosmopolitan position on global justice without a prior commitment to economic justice. Chapter 6 explored this point further in its critique of liberal solidarism’s focus on the domestic, civil-political, realm at the expense of the international and socioeconomic realm of justice, and therefore its limited understanding of the relationship of domestic justice with international order. Taking this critique further, this section links the lack of socioeconomic concern of the international community directly to this same community’s role in acts of violence because, as the previous section showed, this underlying socioeconomic insecurity is related to more obvious acts of violence.

The idea that rich states contribute to the underdevelopment of poor states is not new. Whilst it is beyond the scope of this Chapter to engage fully with development literature, it has been argued plausibly that rich country development policies are not helping the global poor, with loan conditions that increase inequality and decrease education, welfare and employment – for example, during the 1990s, developed countries reduced their development assistance by 27%.[[866]](#footnote-866) Some of this was explored in Chapter 6’s section 4.2 – to reiterate here, it is worth recalling briefly Thomas Pogge’s description of the asymmetrical global trading regime which allows rich countries to favour their companies through tariffs, quotas and subsidies at an estimated cost to poor countries of $700 billion; and poor countries struggle to obtain affordable generic drugs and crop seeds as a result of the market access conditions imposed upon them by rich countries.[[867]](#footnote-867) In relation to the UK, former International Development Secretary Clare Short suggested that the British public overall resented the £7.8 billion given to the Department for International Development in 2013, but felt no such resentment at £46.4 billion spent on defence.[[868]](#footnote-868) Socioeconomic underdevelopment has been shown in section 2.2 to be correlated to violence and conflict. The international community’s contribution to socioeconomic injustice means that it is in part responsible for the very violence from which the RtP and the international community wishes to rescue people.

Two examples demonstrate these points well. In the Balkan crisis, the cause of the crisis was said to be historical local ethnic tensions and, set against the local cause of threats, the question for international actors was naturally whether to rescue or not.[[869]](#footnote-869) In contrast to this view of the causes is the contribution made by the economic liberalisation project of the World Bank and International Monetary Fund to the increasing instability in the former Yugoslavia and its eventual violent breakup. Both Ann Orford and Susan Woodward note that before the two international financial institutions’ (IFI) interventions into the country, the different Yugoslavian provinces had been able to coexist peacefully with a degree of autonomy from the central government, without perceiving a need for full separation. The IFIs required the central government to enact constitutional changes which increased centralised control at the expense of autonomous regions, as well as decreasing education opportunities and reducing constitutional protections for workers.[[870]](#footnote-870) This led to a decrease in income per capita, increased unemployment and attendant social unrest, together with a perception within the various regions that independence would be necessary to be able to reverse the damaging social changes introduced by the central government and the IFIs.[[871]](#footnote-871) Pre-existing nationalist sentiments had previously been managed through regional autonomy, but were fuelled by the increasing sense of insecurity, instability and social exclusion resulting from the constitutional reforms and increased centralisation decreed by the IFIs. This is a very different, and more complex, picture than that of purely local factions fighting for local historical reasons, with the only question for the international community being whether or not it should intervene to protect individuals at risk from local violence.

The problematic role of the international community in intra-state violence can also be demonstrated in Rwanda, where Belgium’s colonial policy of elevating Tutsis to senior economic positions at the expense of the Hutu population is said to have led to many of the ethnic tensions that led to the genocide in 1994.[[872]](#footnote-872) Rwanda’s exposure to the international market in coffee and the economic problems caused by the collapse in coffee prices is also said to have contributed significantly to the tensions, through rapid increases in poverty and resulting social unrest.[[873]](#footnote-873) Far from helping prevent instability and violence, international aid agencies and development programs are also alleged to have contributed to the ‘structural violence’ of poverty, inequality and humiliation of the local population, which was largely excluded from meaningful participation in decisions – and jobs – in the development process.[[874]](#footnote-874) Mahmood Mamdani goes even further than suggesting that colonialism contributed to ethnic tension, arguing that in Rwanda and Darfur colonialism actually *created* racial differences which would not otherwise have existed in these countries.[[875]](#footnote-875) Whether Mamdani is correct or not, it is difficult to deny the link between these non-military interventions (whether overtly colonial or through the practices of IFIs) which leave countries impoverished and the acts of violence which spring from such impoverishment. This link does not mean that those carrying out acts of violence should not bear any responsibility for their actions; but if the RtP really aims to prevent violence, or react usefully to it, then it cannot ignore the broader context in which violence occurs and the wider range of actors responsible for violence. The idea that the international community can help achieve peace through international criminal justice has been cast into doubt, with a counterargument that international criminal prosecutions do not affect the course of war by decreasing aggression – it has been suggested that, on the contrary, international criminal proceedings may prolong war and delay peaceful resolution through alternative justice mechanisms.[[876]](#footnote-876)

Focusing on the need for acts of ‘intervention’ ensures that military interventions are perceived as discrete acts rather than a different part of the spectrum of the international community’s historical, ongoing, long term involvements in ‘problem’ states.[[877]](#footnote-877) Section 1.2 showed that the RtP views the international community’s preventative role as helping identify local triggers of conflict; using diplomatic, economic and other means (including military intervention) directed to preventing conflicts arising.[[878]](#footnote-878) RtP supporter RW Murray suggests that prevention is an important part of the RtP, particularly so because it is cheap.[[879]](#footnote-879) This may be true of intelligence gathering compared to the costs of war, but a wholesale readjustment of our economic relationship with poorer parts of the world may not be cheap enough for people to be willing to support (as suggested by Clare Short’s speech referred to above). This demonstrates that the RtP’s and supporters’ view of prevention in a limited way does not acknowledge the importance of socioeconomic structural justice. Philip Alston concurs, arguing that the focus on *ad hoc* interventions in response to civil and political crises allows the interveners to avoid supporting existing multilateral human rights promotion and protection regimes.[[880]](#footnote-880) In parallel with Charlesworth’s reflections on crises, Antonio Franceschet asserts that the discourse of gross human rights violations has, ‘perhaps conveniently, eclipsed global dialogue, action and responsiveness on the other central problems of global justice, namely, increased poverty and inequality’ – and as such the ICC ‘may also reflect a profound moral and political *detachment* on the part of many of its state signatories’.[[881]](#footnote-881)

This section has suggested that the international community can be a significant contributor to violence taking place in the countries that the RtP deems incapable of protecting their citizens. This calls into question the RtP’s genuine commitment to root cause prevention, suggesting that the policies of countries in the international community contribute to injustice and insecurity in unstable parts of the world, and the RtP merely addresses the symptoms of this activity rather than addressing the deeper structural injustices. Because liberal solidarist duties of justice are generally perceived to end at state borders – these duties are only owed to citizens within the state – many of the systemic problems of global injustice (for example access to drugs and food) are not viewed as problems with which the international community need concern itself. Justice – and order – across the globe is seen to come from justice domestically – liberal democratic regimes treating other liberal democratic regimes peacefully. Rather than consider truly cosmopolitan approaches to global justice in how ‘we’ treat ‘them’, this liberalism generously offers to rescue people from certain kinds of injustice. Teson’s liberal ethical theory, which he argues no reasonable person would refuse,[[882]](#footnote-882) can be seen to permit death by economics but forbid death by politics. This calls into question the genuineness, or at least the consistency, of claimed cosmopolitanism when used by liberal solidarists to underwrite their readings of the RtP. If there is a humanity that cares more for the suffering in its midst, why does this humanity not address systemic injustices in addition to – or prior to – the acts of violence which frequently result? As suggested by the references to Alston and Bellamy above, one of the results of focusing on symptoms over causes is the perceived importance of military intervention in response to these symptoms. This point is addressed in section 3 of this Chapter. Before turning to the issue of military intervention, this section makes one more point, on the effect of the RtP’s construction of the roles of the national government and international community in crises – which is a decrease in autonomy and self-determination of the victims themselves – which goes against foundational liberal principles supposedly endorsed by the international community and RtP.

## 2.4 Liberal autonomy and self-determination of whom? Victims vs interveners

In line with the post-Cold War view (shown in Chapter 2) of the RtP as part of an increasingly solidarist, hierarchical international law focused on individuals, the RtP is praised for focusing on individuals as both victims and perpetrators.[[883]](#footnote-883) The previous sections have drawn attention to some problems with how the international criminal justice system deals with individuals as perpetrators; this section focuses on individuals as victims. Mahmoud Mamdani argues that the RtP is actually a ‘right to punish … without being held accountable’ because the international community becomes the judge of when to intervene in a state (rather than this judgment being made by the victims themselves) and there is no body competent to judge the international community’s actions afterwards.[[884]](#footnote-884) Mamdani’s argument suggests that, far from bolstering individual autonomy, the RtP may in fact take power and freedom away from vulnerable individuals who are denied any agency and are turned into passive objects rather than active agents.[[885]](#footnote-885) Support for the RtP has frequently been described in terms of how the would-be rescuers – the RtP supporters – feel, more than how the victims perceive their own circumstances. For example, Richard Cooper (head of NGO the R2P Coalition) describes his personal response to atrocities in these terms:

Yet, nestled in the comfort of a prosperous country where people lived in peace, I remained a bystander as sheer barbarity wrecked various corners of our world: Cambodia, the former Yugoslavia or Rwanda. When told or reminded of these atrocities, my senses were revolted, my soul was in turmoil, my heart bled, and with all my might – or so I thought – I condemned humanity for being so full of evil’. [[886]](#footnote-886)

Naturally, the response to feeling like this is to ‘do something’ about these crises, to overcome one’s feeling of powerlessness. [[887]](#footnote-887) Payam Akhavan associates the international community’s enthusiasm for criminal prosecutions with the desire to feel, and to be seen, as caring liberal people –he describes how ‘the suffering of others was often a platform for self-serving demonstrations of liberal virtue’.[[888]](#footnote-888) Calling for punishment of perpetrators allows us to feel good about ourselves without enquiring too deeply into the complexities at issue in these situations. Yet is what we want to ‘do’ necessarily the right thing to do? Weiss’ demonstration of support for RtP – because in consultations nobody asked for less intervention, they often wanted more[[889]](#footnote-889) – does not respond adequately to the question of what intervention, when and how, would best help individuals in need, not just from repression by their own government but by the international community which claims to be willing to rescue them.

Similarly, Philip Cunliffe argues that the RtP actually undermines political accountability and responsibility, and ‘strengthens state power at the expense of popular power within states’.[[890]](#footnote-890) The RtP means that ‘states have responsibility *for* their people rather than *to* their people’ – the RtP replaces citizens as the arbiter of legitimate behaviour of their government with the international community as arbiter. In this regard, Frederic Megret comments that the reformist agendas of both the RtP and ICC in fact back up the existing sites of power within the international system – those states which have the capacity to mount interventions into weaker states. The international community’s authority to intervene (whatever means are used) represents power, and this power may be used in ways with which the victims do not agree[[891]](#footnote-891) – confidence that this authority to intervene will be used well ‘should not be a matter of course’.[[892]](#footnote-892) Whilst UN executive authority may appear better than that of a single intervening state, Anne Orford argues that because liberalism has been embedded within the UN from Dag Hammarskjöld’s era as Secretary General, it is not necessarily any better in terms of how it undertakes territorial governance.[[893]](#footnote-893)

The lack of local ownership in rebuilding in practice has already been demonstrated in section 2.2. The question posed here is what if the locals – the victims – want a different form of government than the international community deems suitable for enshrining the national commitment to fair opportunities required of the RtP? Rebuilding – or even earlier actions – risk ‘confiscating grass roots initiatives and abusively speaking in the name of others’.[[894]](#footnote-894) This section has suggested that the RtP may have a perverse effect of decreasing individual autonomy and self-determination, despite being based on liberal solidarist values which prize just these qualities. Anne Orford argues that, in the face of descriptions of powerless victims, responses such as Cooper’s are natural – but unfortunately lead to a feeling on the part of the would-be rescuers that instead of feeling powerless themselves they could do something in response to these crises.[[895]](#footnote-895) Previous sections have begun to make a link between certain of the RtP’s provisions (or the way they are used in practice and by supporters) and the prioritisation of military responses over long term conflict prevention, despite a claimed commitment to prevention. The Chapter now turns to this issue, addressing the degree to which the RtP really has moved the debate on from humanitarian intervention’s focus on the use of military force in response to crises.

# 3 The RtP: a return to ‘humanitarian intervention’?

Much of the discussion on the status of the RtP involves considering the extent to which it is different from its ‘older sibling’ of humanitarian intervention.[[896]](#footnote-896) Supporters of the RtP tend to argue that the doctrine is significantly different from humanitarian intervention, partly because of its focus on prevention and rebuilding as well as a range of responses other than just military intervention. For instance, Gareth Evans argues that critics of the RtP ‘labour under the misapprehension’ that the RtP is just a new name for humanitarian intervention.[[897]](#footnote-897) In contrast to this separation of humanitarian intervention and the RtP, others link the two concepts more explicitly. Thomas Weiss describes the ICISS report as attempting ‘to alter the existing normative consensus about humanitarian intervention’,[[898]](#footnote-898) whilst James Pattison argues that humanitarian intervention is one part of the RtP.[[899]](#footnote-899) Evans also criticises the RtP’s focus on long term prevention for taking away its power to act as a rallying cry for action in response to atrocities – suggesting that for Evans the most important part of the RtP is reaction (and military reaction as part of this). Weiss concurs that the discourse on prevention could get in the way of moving towards the key to RtP – which is rapid military reaction to a crisis.[[900]](#footnote-900)

Despite the RtP’s claimed focus on prevention and protection for victims rather than the ‘rights’ of interveners, and wider approach than purely military intervention,[[901]](#footnote-901) the ICISS report devotes 13 pages to military issues – far more than on root cause prevention or responses other than military action, such as diplomacy and sanctions. Ironically, as section 1.1 showed, ICISS suggests that military action might be appropriate because sanctions can be a blunt instrument.[[902]](#footnote-902) The 2009 report takes the question of military intervention further (though less of the report is focused on the topic), stressing that chronological sequencing of responses is not necessary in response to a crisis, so that military intervention does not have to be a last resort. The perceived urgency of military responses to crises is demonstrated by Weiss’ argument that it is ‘better that the serially abusive regimes live with this fear of international intervention than that their people fear being visited by death squads’.[[903]](#footnote-903) In this example, the ‘serially abuse regimes’ are given the clinical, clean option of ‘international intervention’ in response but the fate of their people is described in much more personal, less clinical language – that of death squads. But in fact military operations to rescue vulnerable individuals can cause huge damage – and was one of the reasons behind the controversy over NATO’s air campaign in relation to Kosovo.[[904]](#footnote-904) Brazil’s idea of a ‘responsibility while protecting’ pointed out the ‘high human and material costs’ of military intervention, ‘even when warranted on the grounds of justice’.[[905]](#footnote-905) This point has been acknowledged in relation to the humanitarian intervention debate as well, with the argument made that discussions never question the methods used.[[906]](#footnote-906)

The RtP’s focus on military action risks neglecting a true commitment to prevention (particularly the long term socioeconomic issues outlined above). Many RtP supporters have been shown to be dismissive of prevention; others view this aspect as only short term intelligence-gathering. [[907]](#footnote-907) If it is agreed that military intervention does not have to be a last resort in particular ‘worst case’ scenarios, it becomes all too easy to view each crisis as one of the worst case scenarios requiring immediate military action.[[908]](#footnote-908) This can be seen in Nicholas Wheeler’s argument that humanitarian intervention should be undertaken ‘when the only hope of saving lives depends on outsiders coming to the rescue’[[909]](#footnote-909) – as if there were an objective way of determining that there is an ‘only hope’ and that these outsiders would not just present the situation, as in Kosovo, as an ‘only hope’. The idea that one needs to decide what to do in these difficult worst case situations presumes that we are already willing, able, committed and *actually doing* everything else in the non-worst case scenarios, with the only remaining problem being the very few worst cases. This has been shown in the previous sections to be an incorrect assumption.

In trying to ensure that much of the RtP debates centre on military intervention, and resolving the ‘problem’ of Security Council ‘paralysis’, proponents dismiss fears that the RtP is humanitarian intervention in sheep’s clothing by arguing that ‘the real problem is not that the UN would intervene too often, but that the Security Council has abstained from authorising military activities’ when the RtP threshold has in fact been reached’.[[910]](#footnote-910) The General Assembly’s World Summit Outcome Document focuses on existing international law (including the need for Security Council authority); this consensus is then dismissed as a major problem preventing the RtP’s implementation. At the same time as arguing that the RtP fetters rather than enables would-be interveners, Louise Arbour suggests that the RtP produces a duty of care at the international level, such that if the international community fails to discharge its secondary responsibility then relevant states could be complicit in the mass atrocity crimes which they have a duty to prevent.[[911]](#footnote-911) Similarly, Anne Peters foresees a situation where preventing military intervention through the use of the veto could make the relevant Security Council member complicit. These arguments contribute to refocusing the RtP debate specifically on to military intervention, and present the case for military intervention in ever more urgent terms. They also lead to the assumption that any Security Council veto must be illegitimate because it prevents a perceived-necessary military response. This assumption can be seen in the views of Nicholas Tsagourias, Csaba Toro and Christian Henderson, who seek alternative ways of authorising action when the Security Council is paralysed, criticising Security Council ‘inaction and its devastating human as well as moral consequences’.[[912]](#footnote-912) This fails to consider that perhaps a veto might suggest that it is the proposed military response which is in fact illegitimate. For example, the Russian and Chinese vetoes of action in response to the Syrian crisis might not necessarily be illegitimate simply because they have the effect of preventing military action. Given the controversy surrounding the Libyan intervention and subsequent regime change, as well as the war crimes committed by the National Transitional Council, a resulting reluctance to authorise further military interventions is unsurprising.[[913]](#footnote-913)

The NATO action in Libya was described as a success partly because of the absence of controversial territorial occupation.[[914]](#footnote-914) But only the party with effective control of a territory can provide protection for the people of that territory.[[915]](#footnote-915) This demonstrates a problem at the heart of how the RtP is used, because protection without occupation is not really protection. Thus in the Libya case the international community’s responsibility to protect the Libyan population was carried out without any ground troops, chiefly through logistical support to the rebels in their ‘regime change’ efforts. The presentation of the crisis as based on rapidly mounting atrocity threats ‘out of the blue’ increased the pressure for intervention, but did not consider of how the atrocities arose (other than Gadhafi’s presumed personal evil) and did not consider how to best protect the people on the ground.[[916]](#footnote-916) In situations such as this, the Security Council’s widening powers give more power to those ‘who control the levers of force’ rather than demonstrating a clear commitment to help the millions of people living at risk of state collapse, repression and civil wars.[[917]](#footnote-917) The presentation of Libya as a ‘success’ for the RtP ignores disputes over the *jus ad bellum* motivations of the interveners as well as *jus in bello* problems with the way the action was undertaken and the lack of attention to *post bellum* rebuilding a stable society.[[918]](#footnote-918)

This repeated return to the issue of military action at the expense of serious long term prevention efforts suggests that the RtP and humanitarian intervention are not such ‘very different concepts’ after all.[[919]](#footnote-919) In fact Thomas Weiss comments that ‘the acknowledgment [of the RtP] by the 2005 World Summit ... has reinforced the legitimacy of humanitarian intervention as a policy option’;[[920]](#footnote-920) and even ICISS itself says that its report is about humanitarian intervention, asserting that it was convened to break new ground on *reacting* to conscience-shocking situations because ‘over the last decade, we have witnessed not too much but rather too little armed force to protect human lives’.[[921]](#footnote-921) To criticise the constant focus on military intervention is not to say that use of force can *never* be an acceptable policy option – the point being made here is that the absence of a genuine commitment to doing everything that can be done before contemplating military intervention will mean that any use of force is unlikely to be perceived as legitimate. Doing ‘everything’ possible before military intervention should not be taken to be ‘early warning’ of mass atrocities followed by diplomacy and sanctions in response to a crisis, but should include a serious long-term commitment to poverty and inequality reduction as part of the international community’s responsibility towards vulnerable individuals.

We should therefore be cautious in endorsing the international community’s subsequent desire to ‘do something’ in response to outbreaks of violence. The question is not one of ‘do something or do nothing’[[922]](#footnote-922) (as previous sections have shown in relation to the RtP), because the international community is already ‘doing something’ in contributing to instability and violence through its prior relationship with the vulnerable across the globe. To really be different from humanitarian intervention, the international community’s implementation of the RtP requires serious commitments to decrease structural violence, through systemic reform – including global distributive justice. This critique of the RtP is important in its own right, but also impacts upon the wider debates about the changing nature of international law in the post-Cold War era. The discussions over the legal status of the RtP demonstrate the coercive and instrumental side to post-Cold War liberal solidarism and the fight over the era’s value ‘consensus’. The next section discusses these debates, suggesting how these arguments relate to the instrumental side of post-Cold War liberal solidarist international law.

# 4 **The RtP and International Law: the problem with an ‘evolving norm’**

## 4.1 The RtP’s legal status

The relationship of the RtP doctrine to international law is far from settled, with a variety of descriptions attaching to the documents which go to make up the RtP – a ‘concept’; an ‘idea’; a ‘political push’; ‘political commitment’ or an ‘evolving norm’.[[923]](#footnote-923) As Chapter 3 suggested (in section 4), proponents argue that the RtP is already part of international law, bringing together different strands of extant law such as human rights conventions with UN reports, giving the RtP ‘deep roots’[[924]](#footnote-924) and a ‘long evolutionary pedigree’.[[925]](#footnote-925) If it is true that the RtP is only an amalgamation of existing international law then of course there is nothing *new* in the RtP; it has not changed international peace and security law on the use of force. Thakur and Weiss concede that the dramatic normative development of the RtP has not actually created a new norm, rather ICISS ‘registered and dramatized a norm shift already underway and found language to make it more palatable to naysayers’.[[926]](#footnote-926) Basing an argument that the RtP is a coherent unified legal norm on a ‘hodgepodge’ of different ideas and documents such as UN reports is controversial, given the formal sources of international law.[[927]](#footnote-927) Similarly, any argument that the RtP represents customary international law (through the development of soft law and General Assembly consensus resolutions as evidence of *opinio juris*) must take account of the fact that the General Assembly’s World Summit endorsement of the RtP was very limited and only to the extent that the idea was in line with existing international law.[[928]](#footnote-928) If there is no ‘intersubjective consensus about what the responsibility to protect actually means’,[[929]](#footnote-929) then the RtP cannot be a new legal norm.[[930]](#footnote-930) Yet others more optimistically suggest that the RtP might be becoming *de lege ferenda*, if not *lex lata*.[[931]](#footnote-931) This scholarship demonstrates a tension between hailing the RtP as revolutionary and new, and grounding it in uncontroversial accepted practices and values. The point is important for this thesis because it demonstrates the way in which a value consensus is sought and obtained, and then immediately the more coercive side of liberal solidarism becomes apparent in attempts to move beyond the consensus. This was also demonstrated in relation to the role of the Security Council and military intervention – a global consensus was obtained at the World Summit based on the central role of the Security Council; yet upon having obtained this consensus supporters immediately moved to push the RtP beyond what was agreed, by arguing that successful implementation of the doctrine depended on moving beyond the initial agreement.

The legal status of the RtP is not merely an ‘academic’ question of interest only to scholars of international law – it has significant consequences. This is perhaps best seen in Anne Peters’ argument, which ties together questions of law and of military intervention – she suggests that ‘once R2P is accepted as a fully-fledged legal principle, the Security Council and its members will be under a legal obligation to authorize or to take sufficiently robust action in R2P situations’.[[932]](#footnote-932) She admits that this stage has not been reached yet, suggesting instead a duty to give reasons for any veto, arguing that reports found the UN to be ‘responsible’ for the massacres in Rwanda and Srebrenica and that this responsibility may soon be a legal one.[[933]](#footnote-933) As such, the exercise of the veto must be shown to be legitimate. This of course merely restates earlier arguments about the veto in legal terms, without settling the question of what reasons might be acceptable for casting a veto. Forcing the Security Council to take ‘robust action’ ignores the often devastating consequences of military action, as Brazil’s concept of Responsibility while Protecting suggested.[[934]](#footnote-934)

Peters’ analysis is reminiscent of the style of argument demonstrated by the international legal scholars in Chapter 2, and the likes of Weiss, Evans and Scheffer in this Chapter and Teson, D’Amato and others in Chapter 5. This style paints a progressive view of developments, and dismisses ‘naysayers’ as ‘the indolent, the miscreant’ in favour of an unreasonable theory of ethics which permits wholesale slaughter.[[935]](#footnote-935) Thus any attempt to question the good intentions of the RtP and its advocates (or question the practical outcome of their good intentions) is silenced by accusations of disingenuous ‘naysaying’ or, worse, complicity in atrocities.[[936]](#footnote-936) Peters focuses on the outcome of a highly hypothetical scenario, painting this outcome as morally desirable and diminishing the significance of the fact that her scenario is unlikely. In a similar vein, Thomas Weiss dismisses criticism of the RtP without ever engaging seriously with the points raised by critics – he merely claims, dismissively, that the ‘anguished hue and cry about RtoP being a ruse for Western imperialism is disingenuous’[[937]](#footnote-937) but does not explain why this is so. This only lends credence to the fears of those who suggest that the RtP might be an imperialist doctrine, with Western states ignoring the concerns of non-Western states and attempting to impose their values on the rest of the world.[[938]](#footnote-938)

The push for implementation of the RtP, now that the ‘battle for ideas’ is apparently won,[[939]](#footnote-939) will be problematic if these key areas are not resolved. What exactly is to be implemented? The 2001 report’s just war criteria requiring military intervention to be a last resort or Ki-moon’s suggestion that there is no need for a chronologically sequenced response? Nina Zupan laments that ‘the contestability of the [RtP] can indeed slow down and reduce the efficacy of its implementation’.[[940]](#footnote-940) But the contested nature of key parts of the RtP suggests that these parts are simply not ready to be implemented. If an idea has only achieved consensus on a limited number of points, then implementation should not push beyond this consensus – particularly not if relying on the level of consensus to support the RtP’s legitimacy. As section 3 suggested, military intervention without Security Council authorisation does not form part of the consensus on the RtP. Yet the 2009 report, and much debate on the topic, seems to presume that implementation of the RtP requires a way to deal with the (presumed) illegitimate veto – any veto preventing military action must necessarily be illegitimate *because* it is preventing military action.

## 4.2 Is International Law Fit for Purpose?

Despite its ‘contestability’, the idea that the RtP doctrine is a necessary and welcome development permeates international legal discourse and relates to the idea, described in Chapter 2, that extant international (peace and security) law is not ‘fit for purpose’ in its ability to meet the security threats of the post-Cold War era. It is worth recalling here an example of the arguments covered in Chapter 2. Gillian Triggs demonstrates this fitness for purpose narrative particularly well, in her argument that generally ‘international law is responding dynamically to the contemporary concern for the humanitarian needs of the individual’[[941]](#footnote-941) but is still not able to respond adequately – is still not fit for purpose – because it does not allow military intervention without Security Council authorisation.[[942]](#footnote-942) This demonstrates the combination of liberal teleological progress with the suggestion that just one final push in this inevitable direction is what is needed. The idea that international law is not fit for purpose can be seen not just in relation to intervention for ‘human protection’ purposes, but in other areas of law including ‘cyber war’ and terrorism, where a threat is identified as too novel and unusual to be dealt with by the existing international legal framework, requiring new, or reinterpreted, law to deal with the problem.[[943]](#footnote-943) In counterpoint to calls to move international law ‘forward’ to enable a military response in RtP situations, others note that the rules prohibiting use of force exist for good reason, and the migration of human rights issues away from multilateral resolution and into the area of peace and security – use of force – is problematic. The risk of increasing the range of permissible uses of force is an overall *increase* in violence and instability.[[944]](#footnote-944) Military intervention, for any reason (however ‘just’), still threatens the security of many and could be counterproductive.[[945]](#footnote-945) ‘Fitness for purpose’ therefore seems to be synonymous with the expectation that international law should permit military intervention in more situations than it currently does. As noted, this risks increasing the overall level of violence and instability in the world – the means of humanitarian intervention (use of military force) are incompatible with ends sought by it.[[946]](#footnote-946) Sections 3 and 4 have shown that the RtP simply repeats the problems of the idea of humanitarian intervention, even as it ‘seeks to transcend them’ – a flaw in the RtP’s design, rather than, as proponents claim, merely being an issue of implementation.[[947]](#footnote-947)

In addressing the legal status of the RtP, this section has shown the problematic construction of the arguments in favour of the RtP’s status as law, or simply its grounding in existing legal rules, when combined with the persistent efforts to move beyond existing international law at every opportunity, whether in scholarly debate or the ‘mission creep’ of Libya when NATO’s civilian protection turned into regime change. Arguments about international law and the RtP have been shown to be related to the issue of military intervention and the extent to which the RtP (at least in how its supporters argue about it and push for its implementation) is any different from humanitarian intervention in practice. This both stems from and reinforces the idea that mass atrocities in unable or unwilling states are local problems with local causes, and that the international community can undertake discreet acts of intervention in response, solving the problem. This in turn reflects liberal solidarist scholarship overall and liberal solidarist international law in the post-Cold War period.

# Conclusion

This Chapter has critiqued the RtP’s view of the key threats to individuals and their security in the post-Cold War era, stemming from the liberal solidarist construction of the order-justice relationship. The problems identified were the prioritising of mass atrocity crimes over other suffering and death; the neglect of the relationship between socioeconomic rights and civil and political rights (and their abuse during conflicts); the assumption that the international community is well-placed to undertake a secondary responsibility to protect by assisting with conflict prevention or rescue; and the assumption that a new doctrine is required because existing international law is not capable of responding adequately to the question of intervention without Security Council authorisation. These problems were demonstrated by highlighting an alternative understanding of the source and type of threats to the security of vulnerable individuals. Here the Chapter explored the role of the international community in contributing to the insecurity of individuals across the globe, both through chronic socioeconomic underdevelopment in general and more specific examples of international community policies which exacerbate or cause more directly the very crises to which the RtP aims to respond. This critique challenges the RtP’s liberal solidarist construction of justice and security, which blames the domestic level – the national government – for abusing the civil and political rights of its citizens, and which does not consider the international community’s role in contributing to both injustice and insecurity through its prior relationship with the victims in the state in question.

The Chapter then suggested that the way the RtP views crises (and the role of the national government and international ‘community’ of states in these crises) leads to an assumption that the rules on the use of force need to be revisited, so that military intervention can be undertaken not simply as a last resort, and without Security Council authorisation. This means that in fact the RtP is not actually so different from the concept of ‘humanitarian intervention’, because the heated debates over implementing the RtP ignore the differences between the two concepts and focus only on the perceived need for military intervention in response to a crisis, without Security Council authorisation if this is lacking. The Chapter then examined the RtP’s relationship to the international legal regime governing peace and security and related this to more general debates about the extent to which international law is ‘fit for purpose’ in addressing contemporary problems. This Chapter has suggested that asking if international law is fit for purpose when it does not permit military intervention to provide security is asking the wrong question. International law does not necessarily fall short just because it does not mirror the ideas of RtP advocates about when military intervention should occur and how it should be authorised.

This Chapter’s overall argument was that the RtP addresses some of the symptoms of global insecurity rather than the fundamental causes – and enables the international community to continue to contribute to the causes of conflicts whilst simultaneously claiming to want to ‘do something’ about the atrocities which result. Those who wish to do good in responding to situations of insecurity, and who believe that the international community has a cosmopolitan responsibility towards vulnerable individuals across the globe, should therefore refocus their efforts on chronic conditions of poverty and inequality, both because these are important in their own right and because these efforts are likely to help prevent the sorts of crises which RtP was designed to address. This is particularly important because one of the options of the responsibility to react to mass atrocities is military intervention – the use of force. If we wish to subvert the non-use of force rule for the sake of ‘humanity’, we must be sure that this is consistent with our approach to humanity in other areas of international affairs, in particular notions of global justice and economic redistribution. It is an inconsistent moral position to claim to care about vulnerable individuals but only seek to do justice for them in one limited way. But, and importantly for the RtP, a genuine commitment to reduce global poverty and inequality is likely to reduce violent conflicts. If these prior commitments of justice are not undertaken, the ‘fortuitous symmetry between the needs of security and the demands of morality’[[948]](#footnote-948) will quite reasonably be viewed with suspicion by those being ‘bombed in the name of humanity’.[[949]](#footnote-949) Given the claims underlying the RtP of a concern for humanity, it is worth recalling the quote from the thesis’ Introduction (Chapter 1) – that ‘whoever says humanity wants to cheat’.[[950]](#footnote-950)

**Chapter 8**

**Conclusion**

It was argued at the beginning of this thesis that the Responsibility to Protect (RtP) has been met with a largely positive reception among states and civil society, which have welcomed the doctrine as a sign of international society’s cosmopolitan concern for justice and security for distant strangers.

This thesis has critically analysed the RtP as an institution of the society of states for managing injustice and insecurity across the globe. More specifically, it aimed to answer the question of whether the RtP does in fact represent a cosmopolitan commitment by the society of states and whether it can achieve its cosmopolitan goals. In order to answer these questions, the thesis set the RtP in the context of post-Cold War international law, perceived to be showing increasing willingness to use force to protect individuals’ rights (Chapter 2). In this light, it was shown that the RtP was welcomed as a move forward from the humanitarian intervention debate’s antithesis between state sovereignty and human rights, and the doctrine has seen increasing reference by states and UN bodies (Chapter 3). The thesis sought to analyse the RtP’s construction of the nature of justice and security in international society and the relationship between the two concepts. It therefore situated its analysis within the English School of International Relations, using the English School concepts of pluralism and solidarism to demonstrate two different pictures of the values of international society (Chapter 4). Through an analysis of the liberal approach to justice and order (Chapter 5), the thesis showed that English School solidarism is a liberal, rather than a cosmopolitan, doctrine. It then undertook a critique of the liberal solidarist view of justice and security, in particular set against cosmopolitan approaches to justice because the RtP is associated with cosmopolitanism (Chapter 6).

The thesis ultimately concluded that claims of international society’s cosmopolitan aspirations (and claims that the RtP reflects such aspirations) are overstated (Chapter 7). The post-Cold War solidarist society of states is based on a narrow set of liberal principles which are neither egalitarian nor cosmopolitan. The implementation of these narrow liberal principles through the RtP risks increasing, or at least not helping, the suffering of the most vulnerable individuals in our world. This Chapter concludes the thesis by discussing the thesis’ key conclusions, deriving from its critical analysis of liberal solidarism and the RtP, and considering one of the main implications of the research.

# 1 Key Conclusions

First, the thesis showed that liberal solidarism is an elitist liberal doctrine which focuses on ‘negative’ civil and political rights at the expense of positive duties of the state in relation to citizens’ socioeconomic rights. This has the effect of privileging societal elites at the expense of the poorest, most vulnerable, members of society. It also showed liberal solidarism to be insufficiently cosmopolitan, because it views duties of justice as ending at state borders, so that the state owes duties of justice to its citizens but not to non-citizens. This further disadvantages the world’s poorest citizens. On the relationship of justice to international order, liberal solidarism judges states to be legitimate targets for interventions when they fail to uphold the (narrow, elitist) standards of justice in their domestic societies, because liberal solidarism views liberal democracies as better (and more peaceful) international citizens than non-liberal states. Increased disorder, or conflict, can therefore take place as liberal democracies seek to export their mode of governance across the globe, believing it to bring peace and justice.

Chapter 7 then applied this critique to the RtP. It showed that the RtP prioritises civil and political rights over socioeconomic rights in its very definition of what it is designed to address – mass atrocity crimes. This is compounded by the RtP’s location of the blame for crises in which atrocities occur – it is the national government which is responsible for upholding its citizens’ civil and political rights and it is the national government which must therefore have failed in this responsibility if it commits (or allowed) gross abuses of these rights. The downplaying of the importance of socioeconomic rights means that the RtP ignores the role of the international community in contributing to the ‘structural violence’ of global injustice and insecurity. Here the Chapter demonstrated that the international community contributes to global socioeconomic injustice through, for example, trade and development policies which leave 18 million people dying of starvation, or without access to basic medicines or safe water. It also showed some instances when IMF and other institutions’ policies could be seen to have a more direct role in increasing violence and conflict within a domestic society. Having made the link between the structural violence of socioeconomic injustice and outbreaks of violence which abuse civil and political rights, the Chapter suggested that because the international community is responsible for some of the major socioeconomic injustice in the world it is therefore also responsible to a certain extent for the crises in which civil and political rights are abused and to which this same community wishes to respond through the RtP.

Furthermore, because of the presentation of crises in ever more urgent, dramatic, terms, military intervention becomes viewed as the only reasonable option in response to a crisis, even though the RtP is said to have moved on from humanitarian intervention’s narrow focus on the question of military intervention. Finally, the Chapter demonstrated that the arguments over the RtP’s legal status emphasise the importance of military intervention and downplay the need for the international community to commit to long term prevention through structural justice and economic redistribution.

The RtP’s impoverished understanding of the relationship between justice and security is insufficiently cosmopolitan or egalitarian. This is inconsistent with its claimed cosmopolitanism. It also means that the RtP cannot save the vulnerable individuals it aims to help, because it will not be able to prevent (or even react usefully to) crises in which mass atrocities occur – the international community will simply address the symptoms of conflicts whilst contributing to and perpetuating the causes. Given the failures of liberal solidarism in theory and the RtP in practice, this Chapter moves on to discuss one important implication of this – the question of whether English School pluralism offers a viable alternative, as a normatively justifiable position on the values of the society of states rather than merely a pragmatic acceptance of the limits of agreement between states on matters of justice.

# 2 The Normative Potential of Pluralism

In agreement with John Williams’ view that the ‘pluralist-solidarist debate has been cast so as to hand the progressive cause to solidarism’,[[951]](#footnote-951) this section suggests that the concept of pluralism is not antithetical to cosmopolitanism’s aim of the emancipation of humankind. The Conclusion does not seek to prove that pluralism is necessarily the ‘correct’ way to think about security and justice in the post-Cold War era; it seeks to show that the idea of pluralism as cosmopolitan is worthy of further investigation.

In contrast to traditional English School pluralism’s toleration of the ‘other’ (which Chapter 4 showed to be based on a combination of a fear of disorder and a lack of duties of justice towards others), pluralism could in fact have a more genuine ethical commitment to tolerating strangers – as a positive rather than a prudential virtue. As John Williams says,

[t]olerating what we morally condemn is right because such things are part of a properly political, worldly, process, engaging people and creating opportunities for discourse to develop. This is what toleration should be about, rather than forbearing things made presently unalterable by circumstances or prudential considerations.[[952]](#footnote-952)

This idea of toleration is built on the work of Hannah Arendt. The key point about Arendt’s conception of toleration is that diversity is essential to human existence, because what we have most in common is that we are all unique.[[953]](#footnote-953) Rather than the solidarist idea of ‘humanity as one’,[[954]](#footnote-954) Arendt views humanity itself as diverse. This makes diversity central to the *human* condition, rather than being limited to the sovereign-state level.[[955]](#footnote-955) Human diversity pre-existed the state, and parcelling people into states, whether more or less artificial in their borders, does not make a domestic society a homogenous one – diversity is as significant within communities as between them.[[956]](#footnote-956) In addition to criticising traditional pluralism’s fixation on state borders as the borders of duties of justice, this view of diversity provides a criticism of liberal solidarism’s assumption that liberal solidarist states are such significant, stable and predictable entities (as Chapter 6 also suggested).[[957]](#footnote-957)

A pluralism that respects the diversity of humanity regardless of the contingent nature of territorial borders can view borders as non-territorial – as any sort of exclusion, including the exclusion of groups which exist across territorial spaces (such as women, refugees or religions).[[958]](#footnote-958) This interest in those excluded by traditional discourse or traditional understandings and assumptions is, as Chapter 1 suggested,[[959]](#footnote-959) an important part of critical theories – and, as Chapter 4 showed, the English School associates critical theory’s interest in the emancipation of humankind with cosmopolitanism.[[960]](#footnote-960) Further, as Chapter 5 showed, cosmopolitanism is associated with a world society or community of humankind and is often associated with anti-state ideas (or the liberation of humankind from a repressive system of states) because it also alerts us to the contingent, morally insignificant, status of territorial borders.[[961]](#footnote-961) But does this mean that a pluralist society of states is antithetical to cosmopolitanism? If states act as a useful means of institutionalising the way that humans can all live together on the same planet, and if these states take seriously their cosmopolitan duties of justice to individuals in other states, then this system is not uncosmopolitan.[[962]](#footnote-962) Territorial borders are thus useful to the extent that they enable the world to function and enable people to be represented in political communities, and should be respected as one way of allowing individual diversity to flourish. They are not morally relevant in themselves, however, and an international society committed to tolerating diversity both within and across state boundaries would resolve some of the problems associated with the coercive nature of liberal solidarism, which only tolerates its own narrow understanding of how to live (described in Chapters 6 and 7).[[963]](#footnote-963) This also avoids the problem of Jackson’s pluralism which, in respecting peoples’ choice to live in separate states, disavows any duties of justice towards other people (and suggesting that it is their own fault if they are suffering).

The idea of cosmopolitan respect for diversity is not as novel or controversial as it may first appear, despite the frequent association of cosmopolitanism with universality (sometimes of the ‘crusading’ variety[[964]](#footnote-964)). Andrew Linklater describes as cosmopolitan his argument that international society should aim for more universality and equality (there being no moral significance to differences of race, gender or class) *and* more respect for difference.[[965]](#footnote-965) This description is similar to John Williams’ argument for a pluralist world society which welcomes, rather than tries to coerce, difference – the point being that the differences between people are not a moral basis for permitting significant inequalities to exist.[[966]](#footnote-966) This form of pluralism is not against the idea that we have moral cosmopolitan duties of justice towards those in other states – because the state is not a morally relevant unit delineating people. Those who claim to truly care about justice for individuals (particularly those who therefore endorse the moral superiority of solidarism) therefore need to take pluralism seriously. In its respect for difference and diversity, pluralism is not anti-universal. The universals necessary for people to live together in a society of states are minimal but robust procedural rules to enable the egalitarian respect for individuals’ diversity that pluralism requires. International society can thus provide a stable system in which cosmopolitan world society sentiments can then be expressed and discussed.[[967]](#footnote-967) This may be only a thin cosmopolitanism, seeking the minimum universals that support an international and world society of difference and diversity, but it is still a universal, and is thus open to the fundamental tenet of cosmopolitanism – universality.

# 3 International Law in a Pluralist Society of States

International society has many divergent purposes, and these require fundamental rules in a strong framework to enable ‘adversaries’ to coexist peacefully – for example the concept and rules of diplomacy, restraint, toleration and mutual accommodation.[[968]](#footnote-968) The role of international law in a pluralist international society is of ‘overlapping consensus among societies that otherwise radically differ on fundamental matters (including, but not limited to, choices among “democratic” priorities)’.[[969]](#footnote-969) This gives that international law a stabilising function, ‘to guarantee a modicum of predictability in an otherwise unpredictable world’.[[970]](#footnote-970) Given the contingent and contested nature of ‘liberal democracy’ as the best way to organise domestic society and achieve justice for individuals (demonstrated in Chapter 6), which Martti Koskenniemi accurately criticises as particularism in the guise of universalism,[[971]](#footnote-971) an international society committed to toleration rather than coercion is best supported by an international law which represents the areas of overlapping consensus of its members, for the purpose of peaceful coexistence.[[972]](#footnote-972) Again, although this may seem to replicate Jackson’s argument (set out in Chapter 4) that we should support the rule of non-intervention over the opposing idea of human rights, a normatively pluralist international law does not necessarily oppose these two concepts – as Roth says, the combination of human rights *and* non-intervention ‘remains valid and viable today’.[[973]](#footnote-973)

Seen in the light of pluralism’s commitment to toleration as a positive virtue, compared to liberal solidarism’s intolerance and coercion, the UN Security Council’s post-Cold War activism seems more troubling. Martti Koskenniemi examines the UN structure and finds that because the Security Council was designed to keep order, the tools at its disposal are those for achieving order – guns (military intervention or other invasive interference). Conversely, the General Assembly was designed to promote justice, through discussion of different states’ views on what this might mean ‘in a world where values differ’.[[974]](#footnote-974) And, as Koskenniemi says, ‘justice – unlike order – cannot be created out of the barrel of a gun’.[[975]](#footnote-975) He therefore suggests that the Security Council continues to strive towards achieving order (for which its current composition and processes were designed) and that the General Assembly should deal with the ‘acceptability of that order’ – the justness of that order (for which its current composition and processes were designed).[[976]](#footnote-976)

This is not to say that toleration of states allows injustice within a state’s borders to go unnoticed – injustice can form the basis of dialogue, rather than war, whether between states or between groups across borders. These injustices could be about the relationship between citizens with their government or about the relationship between these same people and the ‘international community’. Instead of making international law more ‘universal’ (using the liberal particularist view of universality demonstrated in Chapter 5) and claiming to be cosmopolitan, international law can provide some stability between states in which the concept of justice, and justice claims, can be put forward: Kant’s idea of ‘cosmopolitan law’ was of a level separate from inter-state law, in which individuals have rights as citizens of the earth rather than particular states.[[977]](#footnote-977) There is no reason to suppose that this cosmopolitan law would be about rescuing individuals from gross civil and political rights abuses through humanitarian intervention and the RtP– it could equally be about issues of global justice and equality in relation to wealth, resources and basic services.

Again, this is not to say that military intervention for human protection purposes could never occur in a pluralist international society which respects diversity. But it is submitted that institutional blueprints for humanitarian intervention are inappropriate because each situation of repression is different, be it in the form of mass atrocity crimes or otherwise. This does not mean that military force should never be employed in response to atrocities. But, to the extent that there can ever be a ‘blueprint’ for such diverse and unique sets of circumstances in which outbreaks of violence occur, this blueprint would look very different from that described in the RtP. Responses to repression (which might then have the aim of restoring dialogue and access to political space, rather than instituting a particular set of post-conflict good governance measures) must be different each time.[[978]](#footnote-978) This is particularly true given the serious human and material costs of military intervention[[979]](#footnote-979) and given the potentially complex relationship of the ‘rescuers’ with the victims. And of course, as argued in this thesis, a society of states truly committed to the cosmopolitan emancipation of humankind should take seriously issues of global injustice before rushing to bomb ‘in the name of humanity’.[[980]](#footnote-980)

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4. G Evans and M Sahnoun, ‘The Responsibility to Protect’ (November-December 2002) 81 Foreign Affairs 99. [↑](#footnote-ref-4)
5. N Wheeler and F Egerton, ‘The Responsibility to Protect: “Precious Commitment” or a Promise Unfulfilled?’ (2009) 1 Global Responsibility to Protect 114. [↑](#footnote-ref-5)
6. R Thakur and T Weiss, ‘R2P: From Idea to Norm – and Action?’ (2009) 1 Global Responsibility to Protect 22. [↑](#footnote-ref-6)
7. R Caplan, ‘Seeing the Responsibility to Protect in Perspective’ (2011) 10 Ethnopolitics 129. [↑](#footnote-ref-7)
8. Thakur and Weiss, ‘R2P’ (n 6). [↑](#footnote-ref-8)
9. K Annan, ‘Two Concepts of Sovereignty’ (n 2). [↑](#footnote-ref-9)
10. For example Karina Sangha argues that the cosmopolitan thought of Kant, Mill and Locke (understood as the universal equality of individuals) provides the foundation for the central ideas within the RtP. Mark Kersten argues that the RtP represents ‘liberal cosmopolitan convictions’ that mass atrocity crimes are the concern of all individuals and Daniele Archibugi argues that the cosmopolitan moral sentiments underlying the concept of humanitarian intervention need cosmopolitan institutions, praising the ICISS report for recognising this. See K Sangha, ‘The Responsibility to Protect: A Cosmopolitan Argument for the Duty of Humanitarian Intervention’ (Winter 2012) Expressions 2, 7-8; M Kersten, ‘Whose R2P Is It? The R2P Post-Syria’ Justice in Conflict Blog 3 September 2013 at <http://justiceinconflict.org/2013/09/03/whose-r2p-is-it-the-responsibility-to-protect-post-syria/> (accessed 19 November 2013); D Archibugi, ‘Cosmopolitan Guidelines for Humanitarian Intervention’ (2004) 29 Alternatives: Global, Local, Political 2. [↑](#footnote-ref-10)
11. F Fukuyama, *The End of History and the Last Man* (Penguin 1992). [↑](#footnote-ref-11)
12. A Gallagher, *Genocide and its Threat to Contemporary International Order* (Palgrave 2012) 7. [↑](#footnote-ref-12)
13. See eg P Hilpold, ‘Intervening in the Name of Humanity: R2P and the Power of Ideas’ (2012) 17 J Conflict Security L 49. [↑](#footnote-ref-13)
14. G Evans, *The Responsibility to Protect: Ending Mass Atrocities* (Brookings 2008) 56-60. [↑](#footnote-ref-14)
15. See eg G Evans, ‘The Responsibility to Protect in International Affairs: where to go from here?’ Keynote Speech, Australian Catholic University, Melbourne 27 November 2009. [↑](#footnote-ref-15)
16. See eg S Adams, ‘Libya and the Responsibility to Protect’ Global R2P Occasional Paper Series No 3, at http://www.globalr2p.org/publications/213 (accessed 3 January 2013). [↑](#footnote-ref-16)
17. Noam Chomsky has linked the RtP’s virtuous concern with victims to similar arguments made in favour of colonialism – see N Chomsky, ‘The skeleton in the closet: the responsibility to protect in history’ in P Cunliffe (ed), *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice* (Routledge 2011) 11; David Chandler has similarly attacked the RtP for ignoring the concerns of non-Western states about intervention by the powerful West in weaker states – see D Chandler, ‘Understanding the Gap between the Promise and the Reality of “The Responsibility to Protect”’ in P Cunliffe (ed), *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice* (Routledge 2011) 19. [↑](#footnote-ref-17)
18. F Megret, ‘Beyond the ‘Salvation’ Paradigm: Responsibility To Protect (Others) vs the Power of Protecting Oneself’ (2009) 40 Security Dialogue 575; P Cunliffe, ‘Dangerous duties: power, paternalism and the “responsibility to protect”’ (2010) 36 Rev Intl Studies 79. [↑](#footnote-ref-18)
19. A Orford, *International Authority and the Responsibility to Protect* (CUP 2012) 41. [↑](#footnote-ref-19)
20. Cunliffe (n 18). [↑](#footnote-ref-20)
21. See, eg L Henkin, ‘Kosovo and the Law of “Humanitarian Intervention”’ (1999) 93 AJIL 824; E Heinze, ‘Humanitarian Intervention, the Responsibility to Protect, and Confused Legitimacy’ (2011) 11 Human Rights & Human Welfare 17. Two particular aspects of this operation are most relevant. First, the terms imposed on Serbia and NATO’s refusal to negotiate before the bombing – it has been suggested that these failed to consider a more conciliatory approach that could have significantly reduced the overall violence. Second, the manner in which NATO undertook the campaign, focusing on high altitude bombing over the use of ground troops, led to international humanitarian law concerns of indiscrimination and worsening conditions ‘on the ground’. Despite these concerns, the intervention is described as being ‘legitimate’ and a success in saving victims. See International Independent Inquiry on Kosovo, ‘The Kosovo Report: Conflict, International Response, Lessons Learned’ (OUP 2002) 4; J Solana, ‘NATO's Success in Kosovo’ (November-December 1999) 78 Foreign Affairs 114; R Falk, ‘Kosovo, world order, and the future of international law (1999) 93 AJIL 841; IH Daalder and ME O'Hanlon, ‘Unlearning the Lessons of Kosovo’ (September-October 1999) 116 Foreign Policy 128. [↑](#footnote-ref-21)
22. See N Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (OUP 2000); RJ Vincent, *Human Rights* *and International Relations* (CUP 1986); H Shue, *Basic Righst: Subsistence, Affluence, and US Foreign Policy* (Princeton UP 1980). [↑](#footnote-ref-22)
23. I de la Rasilla del Moral, ‘The Boy Who Cried Wolf! The Dimensions of Emergence of the Right to Democratic Governance and the Fundamentals of International Law: An Introductory Overview’ International Law: Do We Need It? Biennial Conference of The European Society Of International Law, Paris, May 2006. [↑](#footnote-ref-23)
24. See, eg, M McDougal, ‘The Law School of the Future: From Legal Realism to Policy Science in the World Community’ (1947) Faculty Scholarship Series Paper 2484; M McDougal, and H Lasswell, ‘Jurisprudence in Policy-Oriented Perspective’ (1967) Faculty Scholarship Series Paper 2582; M McDougal, L Chen and H Laswell, *Human Rights and World Public Order: The Basic Policies of an International Law of Human Dignity* (Foundation Press 1980); WM Reisman, S Wiessner and A Willard, ‘The New Haven School: A Brief Introduction’ (2007) Faculty Scholarship Series Paper 959. [↑](#footnote-ref-24)
25. See, eg, AM Slaughter, ‘International Law in a World of Liberal States’ (1995) 6 EJIL 503; F Teson, ‘The Kantian Theory of International Law’ (1992) 53 Columbia L Rev 53; cf J d’Aspremont, ‘1989-2010: the Rise and Fall of Democratic Governance in International Law’ in J Crawford (ed), *Select Proceedings of the European Society of International Law* (Hart 2011); S Marks, *The Riddle of All Constitutions* (OUP 2000) 34, 43; J Alvarez, ‘Do Liberal States Behave Better? A Critique of Slaughter's Liberal Theory’ (2001) 12 EJIL 239; S Scott, ‘International Law as Ideology: Theorizing the Relationship between International Law and International Politics’ (1994) 5 EJIL 313; D Armstrong, ‎T Farrell and ‎H Lambert, *International Law and International Relations* (CUP 2012). [↑](#footnote-ref-25)
26. J Welsh, ‘A normative case for pluralism: reassessing Vincent's views on humanitarian intervention’ (2011) 87 Intl Affairs 1200; J Welsh, ‘Implementing the Responsibility to Protect: Where Expectations Meet Reality’ (2010) 4 Ethics & Intl Affairs 415. [↑](#footnote-ref-26)
27. On this idea, see, eg, R Buchan, ‘A clash of normativities: international society and international community’ (2008) 10 Intl Community L Rev 3. [↑](#footnote-ref-27)
28. On the term ‘international community’ see B Buzan and A Gonzales-Pelaez, ‘International Community After Iraq’ (2005) 81 Intl Affairs 31; Buchan (n 27). In this thesis, the wording ‘international community’ is used where the RtP and RtP discussions use it. This author views the RtP literature as using the term ‘international community’ without a precise meaning (cf Buzan and Buchan, who mean something specific by the term) – in RtP literature, the term seems to be no different from the term international society (though possibly used with the intention of invoking a close feeling of community. [↑](#footnote-ref-28)
29. Gallagher (n 12) 129. [↑](#footnote-ref-29)
30. T Keating, ‘Pluralism and International Society’ in RW Murray (ed), *System, Society and the World:* *Exploring the English School of IR* (e-International Relations 2013) 58, citing Wheeler (n 22); A Bellamy and M McDonald, ‘Security International Society: towards an English School Discourse of Security’ (2004) 39 Australian J Political Science 307. [↑](#footnote-ref-30)
31. N Tsagourias, ‘Whither the Veto? Responsibility to Protect and the Veto’ in V Sancin and M Kovič Dine (eds), *Responsibility to Protect in Theory and Practice* (GV Zalozba 2013) 173. The claims made are all in terms of the move towards a growing consensus on values and cooperation rather than merely coexistence – these map on to the English School idea of solidarism, regardless of the actual terms used. [↑](#footnote-ref-31)
32. B Møller, ‘R2P and the Vetoes in the Security Council (SC): Syria versus Libya’ in V Sancin and M Kovič Dine (eds), *Responsibility to Protect in Theory and Practice* (GV Zalozba 2013) 177. [↑](#footnote-ref-32)
33. R Thakur, *The Responsibility to Protect: Norms, Laws and the Use of Force in International Politics* (Routledge 2011) 190. [↑](#footnote-ref-33)
34. See, eg, BS Chimni, ‘Third world approaches to international law: a manifesto’ (2006) 8 Intl Community L Rev 3; BS Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (Sage 1991). [↑](#footnote-ref-34)
35. See M Koskenniemi, ‘The Police in the Temple – Order, Justice and the UN: A Dialectical View’ (1995) 6 EJIL 325. [↑](#footnote-ref-35)
36. An assessment of the internal logic of the RtP reflects a critical method, which is ‘not a matter of saying that things are not right as they are. It is a matter of pointing out on what kinds of assumptions, what kinds of familiar, unchallenged, unconsidered modes of thought the practices that we accept rest’ – see M Foucault, *Politics Philosophy and Culture* (L Kritzman, ed; A Sheridan, tr) (Routledge 1988) 154. This thesis explores the assumptions underlying the RtP and by situating the critique of the RtP within the English School, it can subject the English School concept of solidarism to the same critique. [↑](#footnote-ref-36)
37. F Teson, ‘The Liberal Case for Humanitarian Intervention’ Florida State University College of Law Public Law Research Paper No 39 at14 (largely reproduced in JL Holzgrefe and R Keohane (eds), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (CUP 2003) 93). [↑](#footnote-ref-37)
38. See, eg, G Raymond, ‘Responsibility: Letter to the Editors’ (2007) 29 Harvard Intl J 5 – he suggests that the concept of a society rather than a community paints a more accurate picture of the world (suggesting a looser association of states) and therefore is better able to explore the RtP. [↑](#footnote-ref-38)
39. In addition to endorsing liberal values in particular (rather than representing consensus over any set of substantive values), solidarism has become more normative than empirical, advancing a normative (liberal) agenda rather than using solidarism’s traditional focus on the actual level of consensus of any values. [↑](#footnote-ref-39)
40. Civilian deaths are permissible under *jus in bello* rules as legitimate casualties. [↑](#footnote-ref-40)
41. T Franck, ‘United Nations Based Prospects for a New Global Order’ (1989-1990) 22 NYU J Intl L and Politics 601. [↑](#footnote-ref-41)
42. Franck (n 1) 615. [↑](#footnote-ref-42)
43. Notably during the 1960s the Policy Science School called for international law to be centred on human dignity, and Rosalyn Higgins made similar suggestions. See ch 1 n 24 and the references therein, eg M McDougal and H Lasswell, ‘Jurisprudence in Policy-Oriented Perspective’ (1967) Faculty Scholarship Series Paper 2582; R Higgins, The Development of International Law through the Political Organs of the United Nations (OUP 1963). On the tendency to oversimplify claims about the uniqueness of the post-Cold War era see I de la Rasilla del Moral, ‘The Boy Who Cried Wolf! The Dimensions of Emergence of the Right to Democratic Governance and the Fundamentals of International Law: An Introductory Overview’ International Law: Do We Need It? Biennial Conference of The European Society Of International Law Paris, May 2006. [↑](#footnote-ref-43)
44. Some of the claims about international law after the Cold War are explicitly liberal, some use the term cosmopolitanism, or solidarity, or refer to ‘community’ values; but their set of claims about what international law is or should become are broadly similar. The difference between these terms, and their underlying theoretical premises, will be considered in ch 5, which argues that the difference between cosmopolitan and liberalism/solidarism is of critical importance in the RtP and is one of the reasons it cannot succeed in its aims. For this Chapter, though, the aim is to set out, rather than critique, the claims made about international law’s content and structure in the post-Cold War era. [↑](#footnote-ref-44)
45. N Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (OUP 2002). [↑](#footnote-ref-45)
46. W Freidmann, *The Changing Structure of International Law* (Columbia UP 1964). Even during the Cold War, with the significant divide between capitalist and communist states, Wolfgang Freidmann identified three ‘levels’ of international law – classical Westphalian coexistence, universal cooperation through the UN and regional cooperation through organisations such as the OAS and NATO. [↑](#footnote-ref-46)
47. Freidmann (n 6) 36, 63; see also W Freidmann, ‘The Uses of “General Principles” in the Development of International Law’ (1963) 57 AJIL 279. English School theorists make similar claims about the rise in international law and international organisations – this is dealt with in ch 4. See also R McCorquodale, ‘An Inclusive International Legal System’ (2004) 17 Leiden J Intl L 480. McCorquodale cites Lassa Oppenheim as representative of the old statist model of international law, from his writings in 1905 – see L Oppenheim, *International Law Vol I* (1905) 134. [↑](#footnote-ref-47)
48. McCorquodale, ‘An Inclusive System’ (n 7) 477. [↑](#footnote-ref-48)
49. See, eg, McCorquodale, ‘An Inclusive System’ (n 7) 484. [↑](#footnote-ref-49)
50. R McCorquodale ‘The individual and the international legal system’ in M Evans (ed), *International Law* (OUP 2010) 284. He traces the place of the individual back to 1532 and Francisco de Vitoria’s view that individuals’ had the right to protection under international law, and points out that the state has always been an artificial abstraction because it is individuals who act on behalf of the state and a state cannot be recognised as such under international law without a population – of individuals. See also McCorquodale, ‘An Inclusive System’ (n 7) 482-483. [↑](#footnote-ref-50)
51. See, eg, T Pogge, ‘Cosmopolitanism and Sovereignty’ (1992) 103 Ethics at eg 56. Teson notes that whilst democracy and human rights are paradigmatic domestic liberal matters, as they regulate the relationship between government and subjects, democracy and human rights issues are not within the exclusive jurisdiction of states because of their international impact. See F Teson, ‘Collective Humanitarian Intervention’ (1995-1996) 17 Michigan J Intl L 330. This is dealt with in more detail in ch 5 of the thesis. [↑](#footnote-ref-51)
52. T Buergenthal, ‘International Human Rights Law and Institutions: Accomplishments and Prospects’ (1988) 63 Washington L Rev 1. [↑](#footnote-ref-52)
53. See ‘What Are Human Rights?’ at <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx> (accessed 11 January 2014). The core human rights treaties are considered to be the International Covenant on Civil and Political Rights (ICCPR) (opened for signature 19 December 1966, entered into force 23 March 1976) 999 UNTS 171, the International Covenant on Economic, Social and Cultural Rights (opened for signature 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, the Convention on the Elimination of All Forms of Discrimination Against Women (opened for signature 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, the Convention Against Torture (opened for signature 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, the Convention on the Rights of the Child (opened for signature 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (opened for signature 10 December 1990, entered into force 1 July 2003) 2220 UNTS 3, the International Convention for the Protection of All Persons from Enforced Disappearance (opened for signature 6 February 2007, entered into force 23 December 2010) 2715 UNTS and the Convention on the Rights of Persons with Disabilities (opened for signature 30 March 2007, entered into force 3 May 2008) 999 UNTS 3. [↑](#footnote-ref-53)
54. WM Reisman, ‘Sovereignty and Human Rights in Contemporary International Law’ (1990) 84 AJIL 868. [↑](#footnote-ref-54)
55. See, eg, D Weissbrodt and C de la Vega, *International Human Rights Law: an introduction* (U Penn Press 2007); M Baderin and M Ssenyonjo, *International Human Rights Law* *6 Decades after The UDHR and Beyond* (Ashgate 2010); J Rehman, *International Human Rights Law* (Pearson 2010); S Joseph and S Kryakakis, ‘The United Nations and human rights’ in S Joseph and A McBeth (eds), *Research Handbook on* *International Human Rights Law* (Edward Elgar 2010) 1. [↑](#footnote-ref-55)
56. E MacDonald and P Alston, ‘Sovereignty, Human Rights, Security: Armed Intervention and the Foundational Problems of International Law’ in E MacDonald and P Alston (eds), *Human Rights, Intervention and the Use of Force* (OUP 2008) 1. [↑](#footnote-ref-56)
57. Though the Universal Declaration does not mention a specific right to democracy as such, it does provide the right to free and fair elections – certainly the scholars described here regard democracy as related to the increasing importance of the individual. The rule of law implies that everyone (including government officials) is accountable under the law, and requires limits on governmental powers, a lack of corruption (so that public office is only for public gain) and an orderly and secure society which protects individuals’ fundamental rights from abuses of power. Clearly this goes hand in hand with democracy and human rights. Traced back to Aristotle, and enshrined in the UN Charter’s Preamble and the UDHR, the rule of law is described as in opposition to the ‘rule of men’ – the power and arbitrary rule of an autocratic leader. UN Rule of Law, ‘What is the rule of law?’ webpage introduction (undated) at <http://www.unrol.org/article.aspx?article_id=3> (accessed 3 February 2014). The rule of law can be said to uphold democracy and other human rights and is a feature of post-Cold War scholarship. This will be revisited briefly in s 2 as a feature of UN practice – here it is simply tied to human rights and democracy as part of the substantive changes in international law towards the individual. [↑](#footnote-ref-57)
58. Teson, ‘Collective’ (n 11) 332. [↑](#footnote-ref-58)
59. See T Franck, ‘The Emerging Right to Democratic Governance’ (1992) 86 AJIL 46. See also GH Fox and BR Roth, ‘Introduction’ in GH Fox and BR Roth (eds), *Democratic Governance and International Law* (CUP 2000) 11. See also Art 21, ‘Universal Declaration of Human Rights’ UNGA Res 217 A (III) (10 December 1948); Art 25 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; Art 3 Convention for the Protection of Human Rights and Fundamental Freedoms (entered into force 3 September 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 respectively) 213 UNTS 222. [↑](#footnote-ref-59)
60. Franck (n 1) 621. [↑](#footnote-ref-60)
61. S Wheatley, *The Democratic Legitimacy of International Law* (Hart 2010). [↑](#footnote-ref-61)
62. B Simma and P Alston, ‘Sources of Human Rights Law: Custom, Jus Cogens, and General Principles’ (1988-1989) 12 Australian Ybk Intl L 82. [↑](#footnote-ref-62)
63. C Ochoa, ‘Towards a Cosmopolitan Vision of International Law: Identifying and Defining Customary International Law Post Sosa v Alvarez-Machain’ (2006) 74 U Cincinnati L Rev 117. [↑](#footnote-ref-63)
64. McCorquodale, ‘An Inclusive System’ (n 7) 291. [↑](#footnote-ref-64)
65. A Cassese, ‘On the Current Trend towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law’ (1998) EJIL 2. [↑](#footnote-ref-65)
66. Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis and Charter of the International Military Tribunal (London 8 August 1945); International Military Tribunal for the Far East (29 April 1946). [↑](#footnote-ref-66)
67. S Ratner and J Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (OUP 2001) 9; T McCormack, ‘60 Years From Nuremberg: What Progress for International Criminal Justice?’ Annual Accounting for Justice Lecture, Melbourne Law School (17 May 2005); R Jackson, ‘The Influence Of The Nuremberg Trial On International Criminal Law’ Record of Speech at Robert Jackson Foundation <http://www.roberthjackson.org/the-man/speeches-articles/speeches/speeches-related-to-robert-h-jackson/the-influence-of-the-nuremberg-trial-on-international-criminal-law/> (accessed 9 January 2014). [↑](#footnote-ref-67)
68. A Franceschet, ‘Global(izing) Justice? The International Criminal Court’ in J Harrington, M Milde and R Vernon (eds), *Bringing Power to Justice? The Prospects of the International Criminal Court* (McGill-Queen’s University Press 2006) 244; D Scheffer, ‘Staying the Course with the International Criminal Court’ (2001-2002) 35 Cornell Intl LJ 50; B Broomhall, *International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law* (OUP 2004); W Schabas, *An Introduction to the International Criminal Court* (CUP 2001). [↑](#footnote-ref-68)
69. L Arbour, ‘Progess and Challenges in International Criminal Justice’ (1997) 21 Fordham Intl LJ 531; J Charney, ‘Universal International Law’ (1993) 87AJIL 529; J Charney, ‘Progress in International Criminal Law?’ (1999) 93 AJIL 452; E Greppi, The Evolution of Individual Criminal Responsibility Under International Law’ (1999) 835 Intl Rev Red Cross; McCormack (n 27); E van Sliedregt, *Individual Criminal Responsibility in International Law* (OUP 2012); S Murphy, ‘Progress and Jurisprudence of the International Criminal Tribunal for the Former Yugoslavia’ (1999) 93 AJIL 95. [↑](#footnote-ref-69)
70. Eg M Ajevski, ‘International Criminal Law and Constitutionalisation’ (2013) 1 Erasmus L Rev 51, 56; T Giegerich, ‘The Is and the Ought of International Constitutionalism: How Far Have We Come on Habermas’s Road to a "Well-Considered Constitutionalization of International Law"?’ (2009) 10 German Law Journal 31; Franck (n 1). [↑](#footnote-ref-70)
71. N Krisch and B Kingsbury, ‘Introduction: Global Governance and Global Administrative Law in the International Legal Order’ (2006) 17 EJIL 1; A Stone Sweet, ‘Constitutionalism, Legal Pluralism, and International Regimes’ (2009) 16 Indiana J Global Legal Studies 621. [↑](#footnote-ref-71)
72. See <http://journals.cambridge.org/action/displayJournal?jid=GCN> (accessed 10 January 2014). The International Community Law Review is a similar new journal – see http://booksandjournals.brillonline.com/content/journals/18719732 (accessed 2 March 2014). [↑](#footnote-ref-72)
73. A Paulus, ‘International Law and International Community’ in D Armstrong (ed), *Routledge Handbook of International Law* (Routledge 2009) 44. [↑](#footnote-ref-73)
74. S Gill, ‘Constitutionalizing Inequality & the Clash of Globalizations’ (2002) 4 Intl Studies Rev 47. See also T Keating, ‘Pluralism in International Society’ in RW Murray (ed), *System, Society, World – the English School* (e-International Relations 2013) 58. See also B Buzan, ‘Political Economy and Globalisation’ in A Bellamy (ed), *International Society and Its Critics* (OUP 2004) 119; A Hurrell, *On Global Order: Power, Values, and the Constitution of International Society* (OUP 2008) 58. [↑](#footnote-ref-74)
75. K Wellens, ‘Solidarism as a Constitutional Principle’ in R Macdonald and D Johnston (eds), *Towards World Constitutionalism* (Brill 2005) 755; K Wellens, ‘Revisiting Solidarity as a (Re-) Emerging Constitutional Principle: Some Further Reflections’ in R Wolfrum and C Kojiman (eds), *Solidarity: A Structural Principle of International Law* (Springer 2010) 4. [↑](#footnote-ref-75)
76. A Paulus, ‘The influence of the United States on the concept of the “International Community”’ in M Byers and G Nolte (eds), *United States Hegemony and the Foundations of International Law* (CUP 2003) 58. [↑](#footnote-ref-76)
77. M Kumm ‘The Legitimacy of International Law: A Constitutionalist Framework of Analysis’ (2004) 15 EJIL 910. [↑](#footnote-ref-77)
78. B Kingsbury, N Krish & RB Stewart, ‘The Emergence of Global Administrative Law’ (2005) 68 Law and Contemporary Problems 16. See also AM Slaughter, ‘The Real New World Order’ (1997) 76 Foreign Affairs 183. [↑](#footnote-ref-78)
79. A Peters, ‘Membership in the Global Constitutional Community’ in J Klabbers, A Peters and G Ulfstein, *The Constitutionalization of International Law* (OUP 2009) 155. [↑](#footnote-ref-79)
80. Such as in Art 6 of the UDHR and Art 16(2) ICCPR. [↑](#footnote-ref-80)
81. J Habermas, *Divided West* (Polity 2006). [↑](#footnote-ref-81)
82. Paulus (n 36). [↑](#footnote-ref-82)
83. Reisman (n 14) 872. [↑](#footnote-ref-83)
84. D Keohane, ‘South Africa’ in RJ Vincent (ed), *Foreign Policy and Human Rights: issues and responses* (CUP 1986) 47; RJ Vincent, *Human Rights and International Relations* (CUP 1986) 100. [↑](#footnote-ref-84)
85. B Çali, ‘On Legal Cosmopolitanism: Divergences in Political Theory and International Law’ (2006) 19 Leiden J Intl L 1149. [↑](#footnote-ref-85)
86. J Charney, ‘Universal International Law’ (n 29) 529. See also GW Brown, ‘The Constitutionalisation of What?’ (2012) 1 Global Constitutionalism 201. [↑](#footnote-ref-86)
87. Habermas (n 41). See also Kumm (n 37); Brown (n 46) 208. This is evident in the ‘global administrative law’ literature as well – see Kingsbury, Krisch and Stewart (n 38) 15. [↑](#footnote-ref-87)
88. R Macdonald, ‘The International Community as a Legal Community’ in R Macdonald and D Johnston (eds), *Towards World Constitutionalism* (n 35); Peters (n 39) 104. See also M Saul ‘Towards World Constitutionalism, Issues in the Legal Ordering of the World Community, Towards an International Legal Community? The Sovereignty of States and the Sovereignty of International Law’ (2007) 18 EJIL 214. [↑](#footnote-ref-88)
89. C Tomuschat, ‘International Law: Ensuring the Survival of Mankind on the Eve of a New Century,

General Course on Public International Law’ (1999) 281 Recueil des Cours 10, 23, 25. [↑](#footnote-ref-89)
90. See, eg, JL Cohen, ‘Whose Sovereignty? Empire Versus International Law’ (2004) 18 Ethics & Intl Affairs 1-24; C Schwöbel, *Global Constitutionalism in International Legal Perspective* (Nijhoff 2011). [↑](#footnote-ref-90)
91. Freidmann (n 6). [↑](#footnote-ref-91)
92. See A Paulus and J Weiler, ‘The Structure of Change in International Law or Is There a Hierarchy of Norms in International Law?’ (1997) 8 EJIL 545; A Cassese, *International Law* (OUP 2005) 10-12. [↑](#footnote-ref-92)
93. Charney (n 29) 531, 546; Kumm (n 37). [↑](#footnote-ref-93)
94. Andrew Hurrell charts the following changes – in 1909 there were 37 inter-governmental organisations and 176 international non-governmental organisations; by the late 1990s these numbers had risen to 260 and 5,500. In the period1648-1814 there were 3,000 treaties concluded; the much shorter period of 1980-1999 saw 25,000. Furthermore, these are not merely changes in the number of laws or organisations – the complexity, density and impact of treaties such as NAFTA and the EU treaties is unparalleled. See Hurrell, *On Global Order* (n 34) 58, 60; J Alvarez, ‘Do Liberal States Behave Better? A Critique of Slaughter's Liberal Theory’ (2001) 12 EJIL 183. [↑](#footnote-ref-94)
95. Paulus (n 33) 160, 167; Kumm (n 37). [↑](#footnote-ref-95)
96. See, eg Çali (n 45) 1150; Stone Sweet (n 31). [↑](#footnote-ref-96)
97. AT Guzman and TL Meyer, ‘International Soft Law’ (2010) 2 Journal of Legal Analysis 171; KW Abbott and D Snidal, ‘Hard and Soft Law in International Governance’ (2000) 54 Intl Organization 421; J Ellis, ‘Shades of Grey: Soft Law and the Validity of Public International Law’ (2012) 25 Leiden J Intl L 397. [↑](#footnote-ref-97)
98. AM Burley, ‘Toward an Age of Liberal Nations’ (1992) 33 Harvard J Intl L 393. [↑](#footnote-ref-98)
99. See eg B Fassbender, ‘Rediscovering a Forgotten Constitution’ in J Dunhoff and J Trachtman (eds), *Ruling the World* (CUP 2009) 136; M Doyle, ‘UN Charter Constitutionalism’ in J Dunhoff and J Trachtman (eds), *Ruling the World* (CUP 2009) 132. [↑](#footnote-ref-99)
100. McCorquodale, ‘An Inclusive system’ (n 7) 478. [↑](#footnote-ref-100)
101. B Fassbender, ‘The UN Charter as a Constitution of the International Community’ (1998) 36 Columbia J Trans L 533. [↑](#footnote-ref-101)
102. Fassbender, ‘The UN Charter as a Constitution’ (n 61) 536. See Marbury v Madison 5 US 137 (1803). [↑](#footnote-ref-102)
103. Fassbender, ‘The UN Charter as a Constitution’ (n 61) 574. [↑](#footnote-ref-103)
104. Fassbender, ‘The UN Charter as a Constitution’ (n 61) 577. [↑](#footnote-ref-104)
105. Wellens, ‘Revisiting Solidarity’ (n 35) 12. [↑](#footnote-ref-105)
106. Eg UN World Summit Outcome Document (24 October 2005) UN Doc A/RES/60/1. [↑](#footnote-ref-106)
107. These critical commentators suggest that the disagreements between the Court of First Instance and the European Court of Justice reveal a more complex picture of the relationship between UN and EU legal orders (and jurisdiction of European courts to judge the lawfulness of UN Security Council resolutions) than a simple hierarchy asserted by scholars based on Article 103 of the UN Charter. See, eg, A Posch, ‘The Kadi Case: Rethinking The Relationship Between EU Law and International Law?’ (2009) 15 Columbia J Eur LF 1; RA Wessel, ‘The Kadi Case: Towards a More Substantive Hierarchy in International Law?’ (2008) 5 Intl Organizations L Rev 323; J Klabbers, ‘Kadi Justice at the Security Council?’ (2007) 3 Intl Organizations L Rev 1; P Cardwell, D French and ND White, ‘Kadi: the Interplay between EU and International Law’ (2009) 58 ICLQ 229. [↑](#footnote-ref-107)
108. B Fassbender, ‘Uncertain Steps into a Post-Cold War World: The Role and Functioning of the UN Security Council After a Decade of Measures Against Iraq’ (2002) 13 EJIL 273. Some peacekeeping operations in the late 1980s were undertaken with the aim of preparing countries for democratic transitions, for example UNGOMAP, UNIIMOG, UNAVEM I, UNTAG and ONUCA. [↑](#footnote-ref-108)
109. D Malone (ed), *The UN Security Council: From the Cold War to the 21st Century* (Lynne Rienner 2004) 6. [↑](#footnote-ref-109)
110. M Doyle and N Sambanis, ‘International Peacebuilding: A Theoretical and Quantitative Analysis’ (2000) 94 American Political Science Rev 779-801 1; Wheeler (n 5). [↑](#footnote-ref-110)
111. T Sato, ‘The Legitimacy of Security Council Activities under Chapter VII of the UN Charter since the End of the Cold War’ in JM Coicaud and V Heiskanen (eds), *The Legitimacy of International Organizations* (UN UP 2001) 309. [↑](#footnote-ref-111)
112. See, eg Malone (n 69) 8-9; C Navarri, ‘Liberalism, Democracy and International Law - An English School Approach’ in R Friedman, K Oskanian and R Pacheco Pardo (eds), *After Liberalism: The Future of Liberalism in International Relations* (Palgrave 2013) 44; UN DPKO, ‘Peacekeeping’ at <http://www.un.org/en/peacekeeping/operations/surge.shtml> (accessed 12 January 2014). [↑](#footnote-ref-112)
113. Generally peacekeeping was a function of the General Assembly in the Cold War, though there were some Security Council mandated operations. [↑](#footnote-ref-113)
114. See, eg, R Higgins, ‘Peace and Security Achievements and Failures’ (1995) 6 EJIL 445; M Goulding, ‘The Evolution of United Nations Peacekeeping’ (1993) 69 Intl Affairs 451; A Bellamy and P White, *Understanding Peacekeeping* (Polity 2010); J Sloan, *The Militarisation of Peacekeeping in the Twenty-First Century* (Hart 2013); C Nyamu-Musembi, ‘Ruling out Gender Equality? The Post-Cold War Rule of Law Agenda in Sub-Saharan Africa’ (2006) 27 Third World Quarterly 1193; T Carothers, 'Rule of law revival' (March-April 1998) 77 Foreign Affairs 95. [↑](#footnote-ref-114)
115. B Rajagopal, ‘Invoking the Rule of Law in Post-conflict Rebuilding: A Critical Examination’ (2008) 49 William and Mary L Rev 1347. [↑](#footnote-ref-115)
116. MH Adler, ‘International Law’s Contribution to Security in the Post-Cold War Era: From Functional to Political and Beyond’ (1995) 19 Fordham Intl LJ 1955. [↑](#footnote-ref-116)
117. See, eg, R Buchan, *International Law and the Construction of the Liberal Peace* (Hart 2013) 137-146. [↑](#footnote-ref-117)
118. M Barnett, ‘Bringing in the New World Order: Liberalism, Legitimacy, and the United Nations’ (1997) 4 World Politics 529, 551. [↑](#footnote-ref-118)
119. B Boutros-Ghali, ‘An Agenda For Peace’ (17 June 1992) UN Doc A/47/277 S/24111. See also G Evans, *Cooperating for Peace: The Global Agenda for the 1990s and Beyond* (Allen and Unwin 1993), which makes the same claims as the Agenda for Peace report. [↑](#footnote-ref-119)
120. Boutros-Ghali (n 79) [44]; [56]; [81]-[82]. [↑](#footnote-ref-120)
121. Barnett (n 78) 530. [↑](#footnote-ref-121)
122. Barnett (n 78) 529; 533. [↑](#footnote-ref-122)
123. Commission on Global Governance, *Our Global Neighbourhood* (OUP 1995); *The Report of the Independent Working Group on the Future of the United Nations* (Yale UP 1995) 66; Barnett (n 78) 532, 537, 538. [↑](#footnote-ref-123)
124. R Paris, ‘Human Security: Paradigm Shift or Hot Air’ (2001) 26 Intl Security 87. In 1994 the UN Development Programme defined human security as including economic security, food security, health security, environmental security, personal security, community security and political security – see UNDP, *Human Development Report 1994* (OUP 1994) 22. [↑](#footnote-ref-124)
125. K Annan, ‘We The Peoples: The Role of the United Nations in the 21st Century’ Millennium Report of the Secretary-General (6- 8 September 2000) 43. He later referred to the concept of human security as hand-in-hand with the rule of law, in his 2005 report ‘In Larger Freedom’. Reports such as In Larger Freedom and the High Level Panel refer to the rule of law as an aim of UN activity in the post-Cold War world – see K Annan, ‘In Larger Freedom: Development, Security and Human Rights for All’ Report of the Secretary General (21 March 2005) UN Doc A/59/05 35 [133]; Rajgopal (n 75); Nyamu-Musembi (n 74). Whilst these concepts are contested, as section 1 suggested both human security and the rule of law point to international society becoming more concerned with the individual. [↑](#footnote-ref-125)
126. N Tsagourias, ‘Collective Security’ in R Pierik and W Werner (eds), *Cosmopolitanism: Perspectives from political theory and international law* (CUP 2010) 140. [↑](#footnote-ref-126)
127. R Buchan, ‘A Clash of Normativities: International Society and International Community’ (2008) 10 Intl Community L Rev 3. [↑](#footnote-ref-127)
128. The idea of a ‘just’ war was considered as early as 45BC by Cicero, who endorsed many of the categories present in modern just war theory including just cause, last resort, right intention, proportionality and discrimination. Cicero’s idea was later taken up in Christian writing, including by Augustine in 400AD (who argued that violence might be necessary but should be used sparingly by those with authority and with good intention) and by Thomas Aquinas in the mid-13th Century (making similar arguments). Hugo Grotius is generally viewed as the developer of a secular just war theory in the late 16th Century and the criteria used today are similar to those he developed (though with different ideas as to what constitutes a just cause, for example). In addition to his work on just war theory, Grotius is viewed as the founder of modern public international law and as representative of the English School concept of ‘international society’ in general and solidarism in particular. This is mentioned here only to suggest the deep conceptual linkages between the English School, international law and work on war and enforcement. On the history of ‘just war’ theory generally, and these points, see JM Mattox, *St Augustine and the Theory of Just War* (Continuum 2006) 2; S Chesterman, *Just War or Just Peace?* *Humanitarian Intervention and International Law* (OUP 2003) 11; M Evans, ‘Introduction: Moral Theory and the Idea of a Just War’ in M Evans (ed), *Just War Theory: a reappraisal* (Edinburgh UP 2005) 2-4; A Bellamy, *Just Wars: from Cicero to Iraq* (Polity 2006) 8-9. [↑](#footnote-ref-128)
129. On historical views of just causes, see, eg, M Fixdal and D Smith, ‘Humanitarian Intervention and Just War Theory’ (1998) 42 Mershon Intl Studies Rev 283; R Tuck, *The Rights of War and Peace: Political Thought and International Order from Grotius to Kant* (OUP 1999); T Nardin, ‘The Moral Basis of Humanitarian Intervention’ (2002) 16 Ethics & Intl Affairs 57. [↑](#footnote-ref-129)
130. See, eg, J Davenport, ‘Just War Theory, Humanitarian Intervention, and the Need for a Democratic Federation’ (2011) 39 Journal of Religious Ethics 513-515; Evans 1(n 93) 2. The RtP also uses just war criteria to provide guidance on military intervention, in the ICISS report. [↑](#footnote-ref-130)
131. R Keohane, ‘Introduction’ in JL Holzgrefe and R Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (CUP 2003) 1. [↑](#footnote-ref-131)
132. J Holzgrefe, ‘The humanitarian intervention debate’ in Holzgrefe and Keohane (n 91) 15. [↑](#footnote-ref-132)
133. Again, the state vs individual concept is a key feature of English School work, suggesting the importance of this theory of International Relations to this field of study. [↑](#footnote-ref-133)
134. See, eg, K Booth (ed), *The Kosovo Tragedy: the Human Rights dimension* (Frank Cass 2001) Part 5; I Atak, ‘Ethical Objections to Humanitarian Intervention’ (2002) 33 Security Dialogue 279. [↑](#footnote-ref-134)
135. See, eg, A Bellamy, ‘Ethics and Intervention: The “Humanitarian Exception” and the Problem of Abuse in the Case of Iraq’ (2004) 41 Journal of Peace Research 131; Booth (n 94). [↑](#footnote-ref-135)
136. See, eg, M Glennon, ‘The New Interventionism: The Search for a Just International Law’ (1999) 78 Foreign Affairs 2; Chesterman (n 88); A Buchanan, ‘Reforming the International Law of Humanitarian Intervention’ in Holzgrefe and Keohane (n 91); C Chinkin, ‘The legality of NATO's action in the former republic of Yugoslavia (FRY) under international law’ (2000) 49 ICLQ 910; B Simma, ‘NATO, the UN and the use of force: legal aspects’ (1999) 10 EJIL 1. [↑](#footnote-ref-136)
137. See, eg, P Malanczuk, *Humanitarian Intervention and the Legitimacy of the Use of Force* (Het Spinhuis 1993); S Chesterman, ‘Legality Versus Legitimacy: Humanitarian Intervention, the Security Council, and the Rule of Law’ (2002) 33 Security Dialogue 293; M Kahler, ‘Legitimacy, Humanitarian Intervention, and International Institutions’ (2011) 10 Politics, Philosophy & Economics 20. [↑](#footnote-ref-137)
138. Wheeler, *Saving Strangers* (n 5) 130. [↑](#footnote-ref-138)
139. Wheeler, *Saving Strangers* (n 5) 139. See also a similar description of the evolution in Security Council practice in J Welsh, ‘A normative case for pluralism: reassessing Vincent’s views on humanitarian intervention’ (2011) 87 Intl Affairs 1197. [↑](#footnote-ref-139)
140. Wheeler, *Saving Strangers* (n 5) 145-146; 169. See also Welsh (n 99) 1197. [↑](#footnote-ref-140)
141. Wheeler, *Saving Strangers* (n 5) 139-171. [↑](#footnote-ref-141)
142. See also Malanczuk (n 97) 30. [↑](#footnote-ref-142)
143. Wheeler, *Saving Strangers* (n 5) 230. [↑](#footnote-ref-143)
144. Wheeler, *Saving Strangers* (n 5) 281. [↑](#footnote-ref-144)
145. See, eg, A D’Amato, ‘The Invasion of Panama Was A Lawful Response to Tyranny’ (1990) 84 AJIL 520 in relation to Panama; at 523 in relation to Grenada. See also A D’Amato, ‘There is No Norm of Intervention or Non-intervention in International Law’ (2001) 7 Intl Legal Theory 33. [↑](#footnote-ref-145)
146. J Western and J Goldstein, ‘Humanitarian Intervention Comes of Age: Lessons From Somalia to Libya’ (November-December 2011) 90 Foreign Affairs 49. [↑](#footnote-ref-146)
147. K Annan, ‘Two Concepts of Sovereignty’ Address to the 54th Session of the UNGA (Press Release 20 September 1999) UN Doc SG/SM/7136; A Arend and C Joyner, ‘Anticipatory Humanitarian Intervention: An Emerging Legal Norm’ (1999-2000) 10 USAF Academic J Legal Studies 42; R Caplan, ‘Humanitarian Intervention: Which Way Forward?’ in A Lang (ed), *Just Intervention* (Georgetown UP 2003) 142; T Crawford and A Kuperman, *Gambling on Humanitarian Intervention: Moral Hazard, Rebellion and Civil War* (Routledge 2006) x, 10, 14. [↑](#footnote-ref-147)
148. Although (then) Prime Minister Tony Blair in fact listed national interest as one of his conditions in favour of a military intervention by Britain on humanitarian grounds, in opposition to most of the ‘just war’ based criteria offered for assessing the humanitarian credentials of particular interventions, which require a ‘right intention’ to do justice – see, eg, Fixdal and Smith (n 94) 42; Chesterman (n 93) 9. On the incompatibility of human rights and non-intervention, see J Welsh, C Thiekling and SN Macfarlane, ‘The Responsibility to Protect: Assessing the Report of the International Commission on Intervention and State Sovereignty’ (2001-2002) 57 Intl Journal 489; B Brown, ‘Humanitarian Intervention at a Crossroads’ (2000) 41 William and Mary L Rev 1697. [↑](#footnote-ref-148)
149. L Henkin, ‘Kosovo and the Law of “Humanitarian Intervention”’ (1999) 93 AJIL 825. [↑](#footnote-ref-149)
150. Annan (n 107). [↑](#footnote-ref-150)
151. A Buchanan and R Keohane, ‘The preventive use of force: a cosmopolitan institutionalist perspective’ (2004) 18 Ethics & Intl Affairs 2. [↑](#footnote-ref-151)
152. J Childress, ‘Just War Criteria’ in R Miller (ed), *War in the Twentieth Century* (John Know Press 1992) 358; R Miller, *Interpretations of Conflict, Ethics, Pacifism, and the Just War Tradition*
(University of Chicago Press 1991) 14. [↑](#footnote-ref-152)
153. G Evans, *The Responsibility to Protect: Ending Mass Atrocities* (Brookings 2008) 2. [↑](#footnote-ref-153)
154. See, eg, S Mohamed, ‘Taking Stock of the Responsibility to Protect’ (2012) 48 Stanford J Intl L 323. [↑](#footnote-ref-154)
155. Charney (n 29) 531. [↑](#footnote-ref-155)
156. Cassese (n 52) 5. [↑](#footnote-ref-156)
157. F Teson, ‘The Kantian Theory of International Law’ (1992) 92 Columbia L Rev 54. [↑](#footnote-ref-157)
158. Reisman (n 14) 869. [↑](#footnote-ref-158)
159. *SS Lotus* (France v Turkey) [1927] PCIJ (ser A) No 10. [↑](#footnote-ref-159)
160. Cassese (n 52) 23. [↑](#footnote-ref-160)
161. Cassese (n 52) 59. See also JHH Weiler, ‘The Geology of International Law – Governance, Democracy and Legitimacy’ (2004) 64 Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht560. [↑](#footnote-ref-161)
162. D’Amato (n 110) 516. [↑](#footnote-ref-162)
163. D’Amato (n 110) 516, 518. [↑](#footnote-ref-163)
164. R Falk, ‘Introduction: Legality and Legitimacy – necessities and problematics of exceptionalism’ in R Falk, M Jurgensmeyer and V Popovski, *Legitimacy and Legality in Global Affairs* (OUP 2012) 6. [↑](#footnote-ref-164)
165. G Triggs, ‘Public International Law: is it fit for purpose?’ (2007) 7 Legal Information Management 114, 119. She suggests in particular the need for humanitarian intervention without Security Council authorisation – an argument which will be considered further in Chapters 5 and 6. [↑](#footnote-ref-165)
166. A D’Amato, ‘The Invasion of Panama Was A Lawful Response to Tyranny’ (1990) 84 AJIL 524. [↑](#footnote-ref-166)
167. Panel Discussion (led by A D’Amato), ‘New Customary Law: Taking Human Rights Seriously?’ (1993) 87 ASIL Proc 230. [↑](#footnote-ref-167)
168. Falk (n 124) 3. [↑](#footnote-ref-168)
169. M Glennon, ‘The New Interventionism: The Search for a Just International Law’ (1999) 78 Foreign Affairs 2. [↑](#footnote-ref-169)
170. Falk (n 124) 4. [↑](#footnote-ref-170)
171. M Koskenniemi, ‘What is International Law For?’ in M Evans (ed), *International Law* (OUP 2010) 81. [↑](#footnote-ref-171)
172. Koskenniemi, ‘What is International Law For?’ (n 136). [↑](#footnote-ref-172)
173. D Kritisotis, ‘International Law in the international community’ (2002) 13 EJIL 962. [↑](#footnote-ref-173)
174. On the concept of human dignity, see P Capps, Human Dignity and the Foundations of International Law (Hart 2009). [↑](#footnote-ref-174)
175. McDougal and Lasswell (n 3); O Hathaway, ‘The Continuing Influence of the New Haven School’ (2007) Yale Faculty Scholarship Series Paper 834; A-M Slaughter, ‘International Law in a World of Liberal States’ (1995) 6 EJIL 504; A-M Slaughter-Burley, ‘International Law and International Relations Theory: A Dual Agenda’ (1993) 87 AJIL 205; J Dunhoff and M Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations. The State of the Art* (CUP 2013) 7. See also T Nardin, *Law, Morality and the Relations of States* (Princeton UP 1983) 199. [↑](#footnote-ref-175)
176. F Megret, ‘The ICC, R2P, and the International Community’s Evolving Interventionist Toolkit’ (2010) 21 Finnish Ybk Intl L 27. He notes that this could end up giving the power where it is not intended – to those who want to stigmatise certain actors, for example through states’ self-referrals to the ICC in order to decrease the power of certain non-state actors. [↑](#footnote-ref-176)
177. See M Koskenniemi, ‘What is International Law For?’ (n 131) 89; M Koskenniemi, ‘”The Lady Doth Protest Too Much” Kosovo, and the Turn to Ethics in International Law’ (2002) 65 Modern Law Review 159. [↑](#footnote-ref-177)
178. S Chesterman, ‘”Leading from Behind”: The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention After Libya’ (2011) 25 Ethics & Intl Affairs 279. [↑](#footnote-ref-178)
179. Cohen (n 50). [↑](#footnote-ref-179)
180. Nardin (n 135) 12. [↑](#footnote-ref-180)
181. B Bowring, *The Degradation of the International Legal Order* (Routledge 2008) 41. [↑](#footnote-ref-181)
182. A key part of solidarism within the English School is its very foundation in the degree of *solidarity* – consensus – on these claimed values and changes. This allows us to ask whether there is genuine consensus over certain values, or whether they are being pushed for by the more powerful states and challenged (or accepted reluctantly in the face of pressure) by weaker states. Tom Keating notes that ‘solidarist’ values tend to be pushed on states by the most powerful – see T Keating, ‘Pluralism in International Society’ in RW Murray (ed), *System, Society, World – the English School* (e-International Relations 2013) 58. [↑](#footnote-ref-182)
183. See, eg, the websites of two major RtP NGOs: <http://www.responsibilitytoprotect.org/> and <http://www.globalr2p.org/>. [↑](#footnote-ref-183)
184. F Deng and others, *Sovereignty as Responsibility: conflict management in Africa* (Brookings 1996) xiii, 2, 5. [↑](#footnote-ref-184)
185. Deng (n 2) 19. [↑](#footnote-ref-185)
186. Deng (n 2) xi. [↑](#footnote-ref-186)
187. K Annan, Millenium Development Report to the 55th Session of the UNGA (5 September 2000) UN Fact Sheet DP1/2083/Rev.1. [↑](#footnote-ref-187)
188. On the concept of an international community, see, eg, R Buchan, ‘A Clash of Normativities: international society and international community’ (2008) 10 Intl Community L Rev 3 – Buchan argues that this denotes an exclusively liberal group of states within wider international society. See also B Buzan and A Gonzales-Pelaez, ‘International Community After Iraq’ (2005) 81 Intl Affairs 31 In this thesis, the term is used in the way anyone claiming to speak on its behalf uses the term, and particularly how commentators on the RtP use the term. [↑](#footnote-ref-188)
189. The International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (International Development Research Centre 2001) 69. [↑](#footnote-ref-189)
190. See ICISS (n 7) 4 [1.19]. [↑](#footnote-ref-190)
191. ICISS (n 7) 5 [1.20]. [↑](#footnote-ref-191)
192. ICISS (n 7) 11 [2.1]. [↑](#footnote-ref-192)
193. ICISS (n 7) 6 [1.25]; 14. [↑](#footnote-ref-193)
194. Universal Declaration of Human Rights GA res 217A (III) (1948) UN Doc A/810 at 71. [↑](#footnote-ref-194)
195. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (opened for signature 12 August 1949, entered into force 21 October 1950) 75 UNTS 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (opened for signature 12 August 1949, entered into force 21 October 1950) 75 UNTS 85; Geneva Convention relative to the Treatment of Prisoners of War entered into force (opened for signature 12 August 1949, 21 October 1950) 75 UNTS 135; Geneva Convention relative to the Protection of Civilian Persons in Time of War (opened for signature 12 August 1949, entered into force 21 October 1950) 75 UNTS 287. [↑](#footnote-ref-195)
196. Convention on the Prevention and Punishment of the Crime of Genocide (opened for signature 11 December 1948, entered into force 12 Jan 1951) 78 UNTS 277. [↑](#footnote-ref-196)
197. International Covenant on Civil and Political Rights (opened for signature 19 December 1966, entered into force 23 March 1976) 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights (opened for signature 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 [↑](#footnote-ref-197)
198. Convention on the Elimination of All Forms of Discrimination against Women (opened for signature 18 December 1979, entered into force 3 September 1981). [↑](#footnote-ref-198)
199. Rome Statute of the International Criminal Court (opened for signature 17 July 1998, entered into force 1 July 2000) 2187 UNTS 90. [↑](#footnote-ref-199)
200. ICISS (n 7) 14 [2.19], 16 [2.26], 50 [6.17]. [↑](#footnote-ref-200)
201. ICISS (n 7) 16 [2.25]. [↑](#footnote-ref-201)
202. ICISS (n 7) 7 [1.33]. [↑](#footnote-ref-202)
203. ICISS (n 7) 8 [1.35]. [↑](#footnote-ref-203)
204. ICISS (n 7) 69 [8.2]. [↑](#footnote-ref-204)
205. ICISS (n 7) 17 [2.29]; G Evans, ‘Responsibility to Protect: an idea whose time has come...and gone?’ (2008) 22 Intl Relations 283. [↑](#footnote-ref-205)
206. ICISS (n 7) xi. [↑](#footnote-ref-206)
207. A Bellamy, *The* *Responsibility to Protect* (Polity 2009) 33. [↑](#footnote-ref-207)
208. G Evans, *The Responsibility to Protect: Ending Mass Atrocities* (Brookings 2008) 12. [↑](#footnote-ref-208)
209. ICISS (n 7) 31 [4.13]. [↑](#footnote-ref-209)
210. Evans, *The Responsibility to Protect* (n 26) 13. [↑](#footnote-ref-210)
211. D Scheffer, ‘Atrocity Crimes Framing the RtP’ in R Cooper and J Kohler, *Responsibility to Protect: Global Moral Compact* (Palgrave 2005) 77, 82-83. [↑](#footnote-ref-211)
212. ICISS (n 7) 19 [3.1]. [↑](#footnote-ref-212)
213. ICISS (n 7) 27 [3.42]. [↑](#footnote-ref-213)
214. ICISS (n 7) 19 [3.2]. [↑](#footnote-ref-214)
215. ICISS (n 7) 20 [3.9]. [↑](#footnote-ref-215)
216. ICISS (n 7) 21 [3.13]. [↑](#footnote-ref-216)
217. ICISS (n 7) 19 [3.5]. [↑](#footnote-ref-217)
218. ICISS (n 7) 22 [3.19]. [↑](#footnote-ref-218)
219. ICISS (n 7) 23. [↑](#footnote-ref-219)
220. ICISS (n 7) 23 [3.19]. [↑](#footnote-ref-220)
221. ICISS (n 7) 23 [3.5]. [↑](#footnote-ref-221)
222. ICISS (n 7) 24 [3.26]. [↑](#footnote-ref-222)
223. ICISS (n 7) 24 [3.27]. [↑](#footnote-ref-223)
224. ICISS (n 7) 24 [3.29]. [↑](#footnote-ref-224)
225. ICISS (n 7) 24 [3.30]. [↑](#footnote-ref-225)
226. See, eg, B Møller, ‘R2P and the Vetoes in the Security Council (SC): Syria versus Libya’ in V Sancin and M Kovič Dine (eds), *Responsibility to Protect in Theory and Practice* (GV Zalozba 2013) 177. [↑](#footnote-ref-226)
227. ICISS (n 7) 8 [1.38]; 14 [2.8]. [↑](#footnote-ref-227)
228. ICISS (n 7) 25 [3.23]. [↑](#footnote-ref-228)
229. ICISS (n 7) 29 [4.1]. [↑](#footnote-ref-229)
230. ICISS (n 7) 30 [4.9]. [↑](#footnote-ref-230)
231. ICISS (n 7) 30 [4.8]. [↑](#footnote-ref-231)
232. ICISS (n 7) 30 [4.7]. [↑](#footnote-ref-232)
233. ICISS (n 7) 31 [4.10]. [↑](#footnote-ref-233)
234. ICISS (n 7) 31 [4.11]-[4.12]. [↑](#footnote-ref-234)
235. ICISS (n 7) 31 [4.13]. [↑](#footnote-ref-235)
236. ICISS (n 7) 32 [4.16]. [↑](#footnote-ref-236)
237. ICISS (n 7) 32 [4.18]. [↑](#footnote-ref-237)
238. ICISS (n 7) 32 [4.19]. [↑](#footnote-ref-238)
239. ICISS (n 7) 33 [4.20]. [↑](#footnote-ref-239)
240. ICISS (n 7) 34 [4.24]-[4.27]. [↑](#footnote-ref-240)
241. ICISS (n 7) 35 [4.20]-[4.31]. [↑](#footnote-ref-241)
242. ICISS (n 7) 35 [4.33]. [↑](#footnote-ref-242)
243. ICISS (n 7) 36 [4.34]. [↑](#footnote-ref-243)
244. ICISS (n 7) 36 [4.36]. [↑](#footnote-ref-244)
245. ICISS (n 7) 36 [4.37]. [↑](#footnote-ref-245)
246. ICISS (n 7) 37 [4.39]. [↑](#footnote-ref-246)
247. ICISS (n 7) 37 [4.41]. [↑](#footnote-ref-247)
248. ICISS (n 7) 39 [5.1]. [↑](#footnote-ref-248)
249. ICISS (n 7) 39 [5.2]. [↑](#footnote-ref-249)
250. ICISS (n 7) 40 [5.6]. [↑](#footnote-ref-250)
251. ICISS (n 7) 41 [5.9]. [↑](#footnote-ref-251)
252. ICISS (n 7) 41 [5.10]-[5.11]. [↑](#footnote-ref-252)
253. ICISS (n 7) 41 [5.13]. [↑](#footnote-ref-253)
254. ICISS (n 7) 42 [5.14]. [↑](#footnote-ref-254)
255. ICISS (n 7) 42 [5.17]. [↑](#footnote-ref-255)
256. ICISS (n 7) 42 [5.19]. [↑](#footnote-ref-256)
257. ICISS (n 7) 43 [5.22]-[5.24]. [↑](#footnote-ref-257)
258. ICISS (n 7) 44 [5.26]-[5.29]. [↑](#footnote-ref-258)
259. ICISS (n 7) 49 [6.14]. [↑](#footnote-ref-259)
260. ICISS (n 7) 51 [6.20]. [↑](#footnote-ref-260)
261. ICSS (n 7) 51 [6.21]. [↑](#footnote-ref-261)
262. ICISS (n 7) 52 [6.24]. [↑](#footnote-ref-262)
263. ICISS (n 7) 48 [6.7]; 53-54 [6.28]-[6.35]. [↑](#footnote-ref-263)
264. ICISS (n 7) 55 [6.40]. [↑](#footnote-ref-264)
265. A Buchanan and R Keohane, ‘The preventive use of force: a cosmopolitan institutionalist perspective’ (2004) 18 Ethics & Intl Affairs 2. [↑](#footnote-ref-265)
266. ICISS (n 7) 57 [7.1]. [↑](#footnote-ref-266)
267. ICISS (n 7) 57 [7.2]. [↑](#footnote-ref-267)
268. ICISS (n 7) 57 [7.4]. [↑](#footnote-ref-268)
269. ICISS (n 7) 58 [7.6]. [↑](#footnote-ref-269)
270. ICISS (n 7) 58 [7.4]. [↑](#footnote-ref-270)
271. ICISS (n 7) 58-59. [↑](#footnote-ref-271)
272. ICISS (n 7) 61. [↑](#footnote-ref-272)
273. ICISS (n 7) 63. [↑](#footnote-ref-273)
274. ICISS (n 7) 58 [7.8]; 64-65. [↑](#footnote-ref-274)
275. ICISS (n 7) 70 [8.6]-[8.7]. [↑](#footnote-ref-275)
276. Evans, *The Responsibility to Protect* (n 26) 5. [↑](#footnote-ref-276)
277. Report of the High-level Panel on Threats, Challenges and Change, *A more secure world: Our shared responsibility* (United Nations 2004) 11, 17 [29]. [↑](#footnote-ref-277)
278. High Level Panel Report (n 95) 56, 65-66 [201-203]. [↑](#footnote-ref-278)
279. High Level Panel Report (n 95) 57. [↑](#footnote-ref-279)
280. K Annan, ‘In Larger Freedom: Towards Development, Security and Human Rights for All’ (Report of the Secretary General 21 March 2005) UN Doc A/59/2005 at 5, 28. [↑](#footnote-ref-280)
281. UN World Summit Outcome Document (24 October 2005) UN Doc A/RES/60/1. [↑](#footnote-ref-281)
282. See, eg, R Cooper and J Kohler, *Responsibility to Protect: Global Moral Compact* (Palgrave 2005); N Wheeler, ‘A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit' (2005) 2 J Intl L Intl R 97. [↑](#footnote-ref-282)
283. ICISS (n 7) 48 [6.7]; 53 [6.29-6.30]. [↑](#footnote-ref-283)
284. ICISS (n 7) 51 [6.21]. [↑](#footnote-ref-284)
285. Mr Luck’s appointment has been described as taking place despite back-peddling and controversy at the General Assembly. See, eg, A Bellamy, *Global Politics and the Responsibility to Protect: from words to deeds* (Routledge 2011) 23; <http://www.un.org/apps/news/story.asp?NewsID=25010> (accessed 10 September 2013). [↑](#footnote-ref-285)
286. B Ki-moon, ‘Implementing the responsibility to protect: Report of the Secretary General’ UNGA 63rd session (12 January 2009) UN Doc A/63/677. [↑](#footnote-ref-286)
287. Ki-moon (n 104) 2. Pillar 2 has also been understood more in terms of rebuilding – see A Nollkaemper and J Hoffmann, ‘Introduction’ in A Nollkaemper and J Hoffmann (eds), *Responsibility to Protect: From Principle to Practice* (Pallas 2012) 15. [↑](#footnote-ref-287)
288. Ki-moon (n 104) 7 [10a]. [↑](#footnote-ref-288)
289. Ki-moon (n 104) 9 [11b]. [↑](#footnote-ref-289)
290. Ki-moon (n 104) 27 [61]. [↑](#footnote-ref-290)
291. Ki-moon (n 104) 10 [14]. [↑](#footnote-ref-291)
292. Ki-moon (n 104) 11 [17]. [↑](#footnote-ref-292)
293. Ki-moon (n 104) 13-14 [22-25]. [↑](#footnote-ref-293)
294. Ki-moon (n 104) 15 [28]. [↑](#footnote-ref-294)
295. Ki-moon (n 104) 6 [6]. [↑](#footnote-ref-295)
296. Ki-moon (n 104) 16 [32]. [↑](#footnote-ref-296)
297. Ki-moon (n 104) 15 [30]. [↑](#footnote-ref-297)
298. Ki-moon (n 104) 17 [38]. [↑](#footnote-ref-298)
299. Ki-moon (n 104) 15-16 [30; 33]. [↑](#footnote-ref-299)
300. Ki-moon (n 104) 16 [32]. [↑](#footnote-ref-300)
301. Ki-moon (n 104) 17 [38]. [↑](#footnote-ref-301)
302. Ki-moon (n 104) 18 [39]. [↑](#footnote-ref-302)
303. Ki-moon (n 104) 18 [40-42]. [↑](#footnote-ref-303)
304. Ki-moon (n 104) 21 [46-47]. [↑](#footnote-ref-304)
305. Ki-moon (n 104) 19-20 [48]. [↑](#footnote-ref-305)
306. Ki-moon (n 104) 20-21 [45]. [↑](#footnote-ref-306)
307. Ki-moon (n 104) 22 [49]. [↑](#footnote-ref-307)
308. ICISS (n 7) 32 [4.16]; 36 [4.37], [4.38]. [↑](#footnote-ref-308)
309. Ki-moon (n 104) 18 [40]. [↑](#footnote-ref-309)
310. ICISS (n 7) 22; Ki-moon (n 104) 9 [12], 22 [50]. The ICISS does recognise the difficulty of the ‘last resort’ concept, but nevertheless emphasises the need for caution before military intervention. [↑](#footnote-ref-310)
311. Ki-moon (n 104) 23 [51]. [↑](#footnote-ref-311)
312. Ki-moon (n 104) 23 [51-52]. [↑](#footnote-ref-312)
313. Ki-moon (n 104) 23 [54]. [↑](#footnote-ref-313)
314. Ki-moon (n 104) 25 [57-58]. [↑](#footnote-ref-314)
315. Ki-moon (n 104) 27 [61]. [↑](#footnote-ref-315)
316. UN GA Res 63/308 (14 September 2009). [↑](#footnote-ref-316)
317. B Ki-moon, ‘Early warning, assessment and the responsibility to protect’ (14 July 2010) UN Doc A/64/864. [↑](#footnote-ref-317)
318. B Ki-moon, ‘Regional and Subregional arrangements’ (27 June 2011) UN Doc A/65/877-S/2011/393. [↑](#footnote-ref-318)
319. B Ki-moon, ‘Responsibility to protect: timely and decisive response’ (25 July 2012) UN Doc A/66/874-S/2012/578. [↑](#footnote-ref-319)
320. Ki-Moon, ‘Early Warning’ (n 135) 2 [6]. [↑](#footnote-ref-320)
321. Ki-Moon, ‘Early Warning’ (n 135) 3 [7-8]; 5 [12]. [↑](#footnote-ref-321)
322. Ki-moon, ‘Regional and Subregional arrangements’ (n 136) 3 [8]. [↑](#footnote-ref-322)
323. Ki-moon, ‘Regional and Subregional arrangements’ (n 136) 3 [6], 6 [20]. [↑](#footnote-ref-323)
324. Ki-moon, ‘Timely Response’ (n 137) 4 [12], [13]. [↑](#footnote-ref-324)
325. Ki-moon, ‘Timely Response’ (n 137) 4 [11] [↑](#footnote-ref-325)
326. Ki-moon, ‘Timely Response’ (n 137) 5 [16]. [↑](#footnote-ref-326)
327. Ki-moon (n 104) 5 [3]. [↑](#footnote-ref-327)
328. See, eg, X Avezov, ‘Responsibility While Protecting: are we asking the wrong questions?’ SIPRI Blog (January 2013) <http://www.sipri.org/media/newsletter/essay/Avezov_Jan13> (accessed 27 November 2013). [↑](#footnote-ref-328)
329. Letter dated 9 November 2011 from the Permanent Representative of Brazil at the Security Council and General Assembly Debate, UN docs A/66/551; S/2011/701. [↑](#footnote-ref-329)
330. J Welsh and others, ‘Brazil’s “Responsibility While Protecting” Proposal: A Canadian Perspective’ ICRtoP commentary (12 July 2013) at <http://responsibilitytoprotect.org/index.php/crises/178-other-rtop-concerns/4915-jennifer-welsh-patrick-quinton-brown-and-victor-macdiarmid-ccr2p-brazils-responsibility-while-protecting-proposal-a-canadian-perspective> (accessed 27 November 2013). [↑](#footnote-ref-330)
331. K Virk, ‘India and the Responsibility to Protect: A Tale of Ambiguity’ (2013) 5 Global Responsibility to Protect 56; P Williams, ‘The “Responsibility to Protect”, Norm Localisation, and African International Society’ (2009) 1 Global Responsibility to Protect 392; S Atuobi and K Aning, ‘Responsibility to Protect in Africa: An analysis of the African Union's Peace and Security architecture’ (2009) 1 Global Responsibility to Protect 90; J Sarkin, ‘The Responsibility to Protect and Humanitarian Intervention in Africa’ (2009) 1 Global Responsibility to Protect 371; S Teitt, ‘Assessing Polemics, Principles and Practices: China and the Responsibility to Protect’ (2009) 1 Global Responsibility to Protect 208; N Morada, ‘The ASEAN Charter and the Promotion of R2P in Southeast Asia: Challenges and Constraints’ (2009) 1 Global Responsibility to Protect 185; K Haugevik, ‘Regionalising the Responsibility to Protect: Possibilities, Capabilities and Actualities’ (2009) 1 Global Responsibility to Protect 346; B Harff, ‘How to Use Risk Assessment and Early Warning in the Prevention and De-Escalation of Genocide and other Mass Atrocities’ (2009) 1 Global Responsibility to Protect 506; J Harrington, ‘R2P and Natural Disasters’ in WA Knight and F Egerton (eds), *The Routledge Handbook of the Responsibility to Protect* (Routledge 2012) 141. [↑](#footnote-ref-331)
332. See, eg, R Cohen, ‘The Responsibility to Protect: Human Rights and Humanitarian Dimensions’ Harvard Human Rights Journal Annual Symposium (20 February 2009); S Adams, ‘Responsibility to Protect’ speech to opening plenary session of the Responsibility to Protect in Theory and in Practice Conference (11-12 April 2013) Ljubljana. [↑](#footnote-ref-332)
333. See, eg, B Kouchner, Statement at <http://www.diplomatie.gouv.fr/en/country-files_156/kenya_209/situation-in-kenya-2008_6019/situation-in-kenya-statement-by-bernard-kouchner-january-31-2008_10767.html> (accessed 1 February 2014). [↑](#footnote-ref-333)
334. D Steinberg, ‘Responsibility to Protect: Coming of Age?’ (2009) 1 Global Responsibility to Protect 434. The concept of a tool kit is shared by others who see the RtP as part of a conflict management toolkit – see eg J Western and J Goldstein, ‘Humanitarian Intervention Comes of Age: Lessons From Somalia to Libya’ (November-December 2011) 90 Foreign Affairs 49. [↑](#footnote-ref-334)
335. E Luck, ‘The Responsibility to Protect: The First Decade’ (2011) 3 Global Responsibility to Protect 387. [↑](#footnote-ref-335)
336. G Evans, ‘R2P is breaking a new ground in the development of global governance’ Yale Global Online (15 April 2011) at <http://yaleglobal.yale.edu/content/gareth-evans-responsibility-protect-transcript> (accessed 12 February 2014). [↑](#footnote-ref-336)
337. See R Cohen, ‘How Kofi Annan Rescued Kenya’ The New York Review of Books (14 August 2008). [↑](#footnote-ref-337)
338. A Gallagher, *Genocide and its Threat to Contemporary International Order* (Palgrave 2012) 132. [↑](#footnote-ref-338)
339. N Chomsky, ‘The skeleton in the closet: the responsibility to protect in history’ in P Cunliffe (ed), *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice* (Routledge 2011) 11. [↑](#footnote-ref-339)
340. Niemelä also comments that the country is still very unequal with 1.3m Kenyans suffering from starvation, almost half the country living below the poverty line and ministers earning a monthly wage 22 times as big as the average yearly wage of most people. See P Niemelä, *The Politics of Responsibility to Protect: Problems and Prospects* (The Erik Castrén Institute of International Law and Human Rights 2008) 116. [↑](#footnote-ref-340)
341. See eg T Reinold, ‘The responsibility to protect – much ado about nothing?’ (2010) 36 Rev Intl Studies 55-78; S Mydans ‘Myanmar Faces Pressure to Allow Major Aid Effort’ New York Times (8 May 2008) at http://www.nytimes.com/2008/05/08/world/asia/08myanmar.html?\_r=1& (accessed 1 January 2014); ICRtoP, ‘The Crisis in Burma’ at <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-burma> (accessed 30 November 2013). [↑](#footnote-ref-341)
342. See ICRtoP (n 159). [↑](#footnote-ref-342)
343. Reinold (n 159); ICRtoP (n 159); A Dieng, the Responsibility to Protect’ remarks at the opening plenary of The Responsibility to Protect in Theory and in Practice, University of Ljubljana 11-12 April 2013. [↑](#footnote-ref-343)
344. See, eg, Evans, *The Responsibility to Protect* (n 26) 59-60. [↑](#footnote-ref-344)
345. [R Cohen](http://booksandjournals.brillonline.com/search?value1=&option1=all&value2=Roberta+Cohen&option2=author), ‘[The Burma Cyclone and the Responsibility to Protect](http://booksandjournals.brillonline.com/content/journals/10.1163/187598409x424324)’ (2009) 1 [Global Responsibility to Protect](http://booksandjournals.brillonline.com/content/journals/1875984x) 255. [↑](#footnote-ref-345)
346. For a list, see ICRtoP, ‘The Crisis in Libya’ at <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-libya> (accessed 30 November 2013). [↑](#footnote-ref-346)
347. HRC Res A/HRC/S-15/1 (25 February 2011) [2]. [↑](#footnote-ref-347)
348. UN SC Res 1970 (26 February 2011). [↑](#footnote-ref-348)
349. UN SC Res 1973 (17 March 2011). [↑](#footnote-ref-349)
350. On the question of whether the law of state recognition can apply to merely changes of government, see eg J Crawford, *The Creation of States in International Law* (OUP 2007). [↑](#footnote-ref-350)
351. UN SC Res 2016 (27 October 2011). Resolution 2040 reiterated this – the Security Council adjusted the mandate of the UN support mission and ‘…underscores the Libyan authorities’ primary responsibility for the protection of Libya’s population’ – see SC Res 2040 (12 March 2012). [↑](#footnote-ref-351)
352. S Adams, ‘Libya and the Responsibility to Protect’ Global R2P Occasional Paper Series No 3, at http://www.globalr2p.org/publications/213 (accessed 3 January 2013); Møller (n 44) 191 – ‘Libya is a clear-cut example of a just war R2P case fulfilling the criteria for justum bellum’; L Axworthy and A Rock, ‘A Victory for the Responsibility to Protect’ The Ottawa Citizen (25 October 2011) at http://www2.canada.com/ottawacitizen/news/archives/story.html?id=14039d0f-c6a9-4c61-8afe-6f33c099e1b8&p=2 (accessed 20 February 2014). [↑](#footnote-ref-352)
353. A Bellamy, ‘Libya and the Responsibility to Protect: The Exception and the Norm’ (2011) 25 Ethics & Intl Affairs 263. [↑](#footnote-ref-353)
354. ICRtoP (n 164). [↑](#footnote-ref-354)
355. T Weiss, ‘RtoP Alive and Well after Libya’ (2011) 25 Ethics & Intl Affairs 287. [↑](#footnote-ref-355)
356. O Corten and and V Koutroulis, ‘The Illegality of Military Support to Rebels in the Libyan War: Aspects of jus contra bellum and jus in bello’ (2013) 18 J Conflict Security L 95. See also D McElroy, ‘Libya: Nato to be investigated by ICC for war crimes’ *The Telegraph* (2 November 2011) at http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8866007/Libya-Nato-to-be-investigated-by-ICC-for-war-crimes.html (accessed 1 February 2014). [↑](#footnote-ref-356)
357. See, eg, R Falk, ‘Libya After Gaddafi: A Dangerous Precedent?’ *Al Jazeera* (22 October 2011) R Falk, ‘Libya After Gaddafi: A Dangerous Precedent?’ Al Jazeera (22 October 2011) at http://www.aljazeera.com/indepth/opinion/2011/10/20111022132758300219.html (accessed 20 February 2014); D Rieff, ‘R2P, RIP’ *New York Times* (7 November 2011) at http://www.nytimes.com/2011/11/08/opinion/r2p-rip.html?pagewanted=all&\_r=0 (accessed 13 February 2014); R Dalton, ‘Libya, and the Limits of Liberal Intervention’ *The Independent* (23 October 2011) at http://www.independent.co.uk/voices/commentators/richard-dalton-libya-and-the-limitsof-liberal-intervention-2374649.html (accessed 20 February 2014). [↑](#footnote-ref-357)
358. ICRtoP (n 164). [↑](#footnote-ref-358)
359. Statement of the Special Advisers of the Secretary-General on the Prevention of Genocide and on the Responsibility to Protect on the situation in Syria (14 June 2012). [↑](#footnote-ref-359)
360. UN Doc S/2011/612 (4 October 2011); UN Doc S/2012/77 (4 February 2012); UN Doc S/2012/2043 (19 July 2012); ‘Syria resolution vetoed by Russia and China at United Nations’ *The Guardian* (4 February 2012) at <http://www.guardian.co.uk/world/2012/feb/04/assad-obama-resign-un-resolution> (accessed 20 February 2014). [↑](#footnote-ref-360)
361. UN SC Res 2118 (27 September 2013). [↑](#footnote-ref-361)
362. UN GA Res 66/176 (16 February 2012); Res A/HRC/RES/S-16/1 (29 April 2011) [1]; A/HRC/S-18/2 [3]; A/HRC/S-19/2 [5]; Commission of Inquiry Report on Syria (5 February 2013) 24 [171]; A/HRC/22/l.31/rev.1 [12]; ‘Syria crisis: Cameron loses Commons vote on Syria action’ *BBC* (30 August 2013) www.bbc.co.uk/news/uk-politics-23892783; M Bowman, ‘US Congress Action on Syria on Hold for Now’ *Voice of America* (10 September 2013) at [www.voanews.com/content/us...to-military-action...syria/1746915.html](http://www.voanews.com/content/us...to-military-action...syria/1746915.html). [↑](#footnote-ref-362)
363. UN GA Res 66/176 (16 February 2012). [↑](#footnote-ref-363)
364. UN GA Res 66/253 (3 August 2012) [3]. [↑](#footnote-ref-364)
365. P Bolopion, ‘After Libya, the Question: To Protect or Depose?’ *Los Angeles Times* (25 August 2011) <http://articles.latimes.com/2011/aug/25/opinion/la-oe-bolopion-libya-responsibility-t20110825>; see also ‘BRICS: Take Concrete Steps to Help Syria’s People’ Human Rights Watch (26 March 2013) at <http://www.hrw.org/news/2013/03/26/brics-take-concrete-steps-help-syria-s-people>; ‘Snapshot of Syria – UN must take urgent action to ensure justice for victims of gross abuses’ Amnesty International (14 March 2013) at <http://www.amnesty.org/en/news/snapshot-syria-un-must-take-urgent-action-ensure-justice-victims-gross-abuses-2013-03-14>; T Rabbani, ‘Enablers of the Syrian Conflict - How Targeting Third Parties Can Slow the Atrocities in Syria’ Human Rights First (Stop the Atrocity Supply Chain Project, March 2013); ‘Statement on the Second Anniversary of the Start of the Syrian Conflict’ Global Centre for the Responsibility to Protect (15 March 2013) at <http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/4699-global-centre-for-the-responsibility-to-protect-statement-on-the-second-anniversary-of-the-start-of-the-syrian-conflict>; M Spindelegger, K Erjavec, E Gilmore and V Søvndal, ‘Time to Refer Syria Crisis to the ICC’ *CNN* (10 January 2013) accessed through <http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/4586-cnn-time-to-refer-syria-to-the-icc>; D Christiansen, ‘Syria: How R2P Might Still Work’ *America Magazine* (2 August 2012) at <http://americamagazine.org/node/128623>; B Ramberg, ‘Five ways to advance a Responsibility to Protect agenda in Syria’ *The Daily Star* (19 March 2012) <http://www.dailystar.com.lb/Opinion/Commentary/2012/Mar-19/167143-five-ways-to-advance-a-responsibility-to-protect-agenda-in-syria.ashx#axzz1pZMKCYKL> (all accessed 13 January 2014). [↑](#footnote-ref-365)
366. See, eg, A Lantier, 'US-Backed Syrian Opposition Forces Reject Political Leaders, Align with Al Qaeda' Global Research (26 September 2013) at http://www.globalresearch.ca/us-backed-syrian-opposition-forces-reject-political-leaders-align-with-al-qaeda/5351612 (accessed 2 March 2014);

J Dougherty, 'Obama recognizes Syrian opposition coalition' CNN (12 December 2012) at http://edition.cnn.com/2012/12/11/world/us-syria-opposition/ (accessed 2 March 2014);

I Ros-Lehtinen, ‘The Administration's Formal Recognition of the Syrian Opposition Raises More Questions than Answers, Ros-Lehtinen Says, Notes Recent Designation of Syrian Rebel Group for Connection to al-Qaeda’ House Foreign Affairs Committee (12 December 2012) at http://archives.republicans.foreignaffairs.house.gov/news/story/?2645 (accessed 2 March 2014). [↑](#footnote-ref-366)
367. See, eg, N Tsagourias, ‘Whither the Veto: Responsibility to Protect and the Veto’ in V Sancin and M Kovič Dine (eds), *Responsibility to Protect in Theory and Practice* (GV Zalozba 2013) 159, 169. See also A Peters, ‘Humanity as the A and O of Sovereignty’ (2009) 20 EJIL 537-540. [↑](#footnote-ref-367)
368. See, eg, T Barkawi, ‘Intervention Without Responsibility’ *Al Jazeera* (23 November 2011) at <http://www.aljazeera.com/indepth/opinion/2011/11/20111121161326433590.html> (accessed 10 January 2014). [↑](#footnote-ref-368)
369. SC Res 1653 (27 January 2006). It issued a similar resolution in 2009 – SC Res 1894 (11 November 2009). [↑](#footnote-ref-369)
370. SC Res 1674 (28 April 2006). [↑](#footnote-ref-370)
371. A/HRC/S-8/1 (1 December 2008) [6]. [↑](#footnote-ref-371)
372. A/HRC/S-14/1 (4 January 2011) [8]; SC Res 1975 (30 March 2011). [↑](#footnote-ref-372)
373. SC Res 1996 (8 July 2011). [↑](#footnote-ref-373)
374. SC Res 2014 (21 October 2011). [↑](#footnote-ref-374)
375. S/PRST/2011/18 (22 September 2011). [↑](#footnote-ref-375)
376. S/PRST/2011/21 (14 November 2011); S/PRST/2012/18 (29 June 2012); S/PRST/2012/28 (19 December 2012). [↑](#footnote-ref-376)
377. SC Res 2100 (25 April 2013). [↑](#footnote-ref-377)
378. SC Res 2085 (19 December 2012). [↑](#footnote-ref-378)
379. S/PRST/2013/4 (15 April 2013). [↑](#footnote-ref-379)
380. S/PRST/2013/2 (12 February 2013); S/PRST/2013/8 (17 June 2013). [↑](#footnote-ref-380)
381. R Thakur, *The Responsibility to Protect: Norms, Laws and the Use of Force in International Politics* (Routledge 2011). [↑](#footnote-ref-381)
382. B Crossette, ‘Post-Summit Reaction: The Good News’ (2005) 29 *Minerva* 39-40. [↑](#footnote-ref-382)
383. R Hamilton, ‘The Responsibility to Protect, from Document to Doctrine - But what of Implementation?’ (2006) 19 Harvard Human Rights Journal 296. [↑](#footnote-ref-383)
384. Cited by N Wheeler, ‘A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit' (2005) 2 J Intl L Intl R 95. [↑](#footnote-ref-384)
385. So claims Simon Adams (the Executive Director of the Global Centre for the Responsibility to Protect, a major RtP NGO) – see S Adams, ‘Responsibility to Protect’ speech to opening plenary session of the Responsibility to Protect in Theory and in Practice Conference (11-12 April 2013) Ljubljana. [↑](#footnote-ref-385)
386. T Weiss, *Humanitarian Intervention* (Polity 2007) 255-265; A Bellamy, *Responsibility to Protect: the global effort to end mass atrocities* (Polity 2009) 3. This is reminiscent of Fernando Teson’s assertion that nobody who supports non-intervention in the face of atrocity crimes - and that if they do, they subscribe to an unreasonable theory of ethics which permits mass slaughter. [↑](#footnote-ref-386)
387. J Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (OUP 2010); C Badescu, *Humanitarian Intervention and the Responsibility to Protect: Security and human rights* (Routledge 2010). [↑](#footnote-ref-387)
388. R Jackson, ‘War Perils in the Responsibility to Protect’(2010) 2 Global Responsibility to Protect 315; N Chomsky, ‘The skeleton in the closet: the responsibility to protect in history’ in P Cunliffe (ed), *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice* (Routledge 2011) 15. [↑](#footnote-ref-388)
389. See eg A Bellamy, ‘The Responsibility to Protect – Five Years On’ (2010) 24 Ethics & Intl Affairs 144. [↑](#footnote-ref-389)
390. T Weiss, ‘In Libya, Political Will Catches Up With New R2P Norm’ World Political Review (28 June 2011) at http://www.worldpoliticsreview.com/articles/9309/in-libya-political-will-catches-up-with-new-r2p-norm (accessed 1 January 2014). [↑](#footnote-ref-390)
391. For example, the RtP is said to represent the constitutionalisation of international law in accordance with the evolving values of the society of states committed to developing protection mechanisms to deal with threats to individual security. N Tsagourias, ‘Whither the Veto’ (n 183) 165. [↑](#footnote-ref-391)
392. Niemelä (n 158) i. [↑](#footnote-ref-392)
393. M Notaras and V Popovski, ‘The Responsibility to Protect’ United Nations University (5 April 2011); A Bellamy, ‘The Responsibility to Protect – Five Years On’ (2010) 24 Ethics & Intl Affairs 143. [↑](#footnote-ref-393)
394. R Thakur and T Weiss, ‘R2P: From Idea to Norm – and Action?’ (2009) 1 Global Responsibility to Protect 22; A Orford, *International Authority and the Responsibility to Protect* (CUP 2012). [↑](#footnote-ref-394)
395. See, eg, A Peters, ‘The Responsibility to Protect and the Permanent Five: The Obligation to Give Reasons for a Veto’ in Nollkaemper and Hoffmann (n 108) 199; L Arbour, ‘The responsibility to protect as a duty of care in international law and practice’ (2008) 34 Rev Intl Studies 445. [↑](#footnote-ref-395)
396. See, eg, C Stahn, ‘Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?’ (2007) 101 AJIL 99; T Reinold, ‘The responsibility to protect – much ado about nothing?’ (2010) 36 Rev Intl Studies 55; P Cunliffe, ‘Dangerous duties: power, paternalism and the “responsibility to protect”’ (2010) 36 Rev Intl Studies 79; C Focarelli, ‘The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine’ (2008) 13 J Conflict Security L 191; P Hilpold, ‘Intervening in the Name of Humanity: R2P and the Power of Ideas’ (2012) 17 J Conflict Security L 49; E Heinz, ‘Humanitarian Intervention, the Responsibility to Protect, and Confused Legitimacy’ (2011) 11 Human Rights & Human Welfare 17. [↑](#footnote-ref-396)
397. Convention on the Prevention and Punishment of the Crime of Genocide (opened for signature 11 December 1948, entered into force 12 January 1951) 78 UNTS 277; ICISS (n 7) 6 [1.25]; 14; N Schriver, ‘the Responsibility to Protect’ remarks at the opening plenary of The Responsibility to Protect in Theory and in Practice, University of Ljubljana 11-12 April 2013. [↑](#footnote-ref-397)
398. Gareth Evans is one scholar who refers to acts which ‘shock the conscience of humanity’ – see Evans, *The Responsibility to Protect* (n 26) 48. [↑](#footnote-ref-398)
399. Kouchner (nn 151, 159); V Todeschini, ‘The Place of Aggression in the Responsibility to Protect Doctrine’ Beyond Responsibility to Protect: Towards Responsible Use of International Law? Conference, Hull University 4-5 July 2013; M Ikeora, ‘The Responsibility to Protect Victims of Human Trafficking’ Beyond Responsibility to Protect: Towards Responsible Use of International Law? Conference, Hull University 4-5 July 2013; E Lawson, ‘Should there be a Global Harmonization of Laws Relating to Child Sexual Exploitation to Include Sentencing Policy and the Treatment and Rehabilitation of Children During and Following Trial?’ Beyond Responsibility to Protect: Towards Responsible Use of International Law? Conference, Hull University 4-5 July 2013. [↑](#footnote-ref-399)
400. Gallagher (n 156) 7. [↑](#footnote-ref-400)
401. J Welsh, ‘A normative case for pluralism: reassessing Vincent’s views on humanitarian intervention’ (2011) 87 Intl Affairs 1200. [↑](#footnote-ref-401)
402. G Evans, ‘The Responsibility to Protect in International Affairs: where to go from here?’ Keynote Speech, Australian Catholic University, Melbourne 27 November 2009. [↑](#footnote-ref-402)
403. Gallagher (n 156) 130. [↑](#footnote-ref-403)
404. Evans, Keynote Speech (n 220). [↑](#footnote-ref-404)
405. Bellamy, *The Responsibility to Protect* (n 25) 99-100; T Weiss, ‘RtoP Alive and Well after Libya’ (2011) 25 Ethics & Intl Affairs 287-292. Libyan events seem to have reassured Bellamy, who argues that Libya demonstrated the international community’s continued support of the RtP despite the setbacks to effective implementation introduced by Ban Ki-moon in his 2009 report. As s 4.1 suggested, viewing Libya as a success is not entirely convincing. For example, the RtP includes a commitment to rebuild war torn societies after any military intervention, but (possibly because of the controversial occupation of Iraq which began in 2003) when invoking the RtP in relation to Libya, Security Council Resolution 1973 (17 March 2011) expressly excluded ‘a foreign occupation force of any form on any part of Libyan territory,’ meaning a limited on-the-ground involvement of the international community in post-conflict peacebuilding. These uncertainties and differences of opinion suggest that there is much work which needs to be done to address these issues, beyond the praise and welcome so far received by the doctrine. [↑](#footnote-ref-405)
406. J Levitt, ‘The Responsibility to Protect: A Beaver Without A Dam?’ (2003) 25 Michigan J Intl L 166. [↑](#footnote-ref-406)
407. This point is also made by Stephanie Carvin, who notes the unanswered questions of who can intervene, under what mandate, for how long and where? S Carvin, ‘A Responsibility to Reality: A Reply to Louise Arbour’ (2010) 36 Rev Intl Studies 53. [↑](#footnote-ref-407)
408. C Toro, ‘R2P without UN Security Council Mandate – Subsidiary Action as the Possible Way Out of Institutional Deadlock?’ in V Sancin and M Kovič Dine (eds), *Responsibility to Protect in Theory and Practice* (GV Zalozba 2013) 239; C Henderson, ‘R2P without UN Security Council Mandate - Subsidiary Action as the Possible Way out of Institutional Deadlock?’ in V Sancin and M Kovič Dine (eds), *Responsibility to Protect in Theory and Practice* (GV Zalozba 2013) 221, 230. [↑](#footnote-ref-408)
409. A Peters, ‘The Security Council's Responsibility to Protect’ (2011) 8 Intl Organisations L Rev 3; T Weiss, ‘The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era’ (2004) 35 Security Dialogue 135. [↑](#footnote-ref-409)
410. Tsagorias (n 184). [↑](#footnote-ref-410)
411. Gallagher (n 156) 133. [↑](#footnote-ref-411)
412. Levitt (n 224) 158; 176. [↑](#footnote-ref-412)
413. Thakur, *The Responsibility to Protect* (n 199) 262, 344. [↑](#footnote-ref-413)
414. Gallagher (n 156) 130. [↑](#footnote-ref-414)
415. [↑](#footnote-ref-415)
416. See, eg, Evans (n 220). Some, eg Graham Day and Christopher Freeman, have come up with an operational plan for the RtP as part of global peace operations – see G Day and C Freeman, ‘Operationalizing the Responsibility to Protect—the Policekeeping Approach’ (2005) 11 Global Governance 141. [↑](#footnote-ref-416)
417. [↑](#footnote-ref-417)
418. See P Cunliffe, ‘Introduction’ in P Cunliffe (ed), *Critical perspectives on the responsibility to correct: interrogating theory and practice* (Routledge 2011) 1. [↑](#footnote-ref-418)
419. H Mosler, *The Intenrational Society as a Legal Community* (Sijthoff and Noordhoff 1980) xv. The idea of strong conceptual links between the research agendas of international law and international relations – in particular international society – is not limited to Mosler. Anne-Marie Slaughter suggests that international law and international politics ‘cohabit the same conceptual space’ and Jeffrey Dunhoff and Mark Pollack refer to the disciplines of international law and international relations as having common interests, or overlapping research interests and scholarly agendas. See AM Slaughter, ‘International Law in a World of Liberal States’ (1995) 6 EJIL 503-538; J Dunhoff and M Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations. The State of the Art* (CUP 2013) 1. [↑](#footnote-ref-419)
420. R Jones, ‘The English School of International Relations: a case for closure’ (1981) 7 Rev Intl Studies 1. [↑](#footnote-ref-420)
421. T Dunne, *Inventing International Society: a history of the English School* (Palgrave 1998). [↑](#footnote-ref-421)
422. H Bull, ‘International Theory: the case for a classical approach’ (1966) 18 World Politics 361. [↑](#footnote-ref-422)
423. Bull, ‘International Theory’ (n 4) 362. [↑](#footnote-ref-423)
424. Bull, ‘International Theory’ (n 4) 361. Robert Jackson endorses this approach, noting that such research attempts to interpret human activity at the international level, which is not conducive to being modelled or explained by a scientific hypothesis – see R Jackson, *The Global Covenant: Human Conduct in a World of States* (OUP 2000) 57. [↑](#footnote-ref-424)
425. Bull, ‘International Theory’ (n 4) 366. [↑](#footnote-ref-425)
426. Bull, ‘International Theory’ (n 4) 367. [↑](#footnote-ref-426)
427. Bull, ‘International Theory’ (n 4) 367. [↑](#footnote-ref-427)
428. Jackson, *Global Covenant* (n 6) 56; R Jackson, ‘International Relations as a Craft Discipline’ in C Navari (ed), *Theorising International Society: English School Methods* (Palgrave 2009) 21. [↑](#footnote-ref-428)
429. Jackson, *Global Covenant* (n 6) 56. See also B Buzan, ‘From International System to International Society: Structural Realism and Regime Theory Meet the English School’ (1993) 43 Intl Organization 327 – Buzan argues that the study of ‘international society’ involves a broader context (systemically and historically) than neorealism or neoliberalism, and is capable of connecting these theories ‘to the underlying political-legal framework of the modern international system’ (at 328). [↑](#footnote-ref-429)
430. Jackson, ‘Craft Discipline’ (n 10) 204. Terry Nardin describes this sort of work as ‘philosophical, in the sense of an examination of the assumptions underlying particular ways of speaking and thinking’ – see T Nardin, *Law, Morality and the Relations of States* (Princeton UP 1983) x-xi. [↑](#footnote-ref-430)
431. This thesis draws upon work from the disciplines of critical and liberal international law, English School solidarist and pluralist and critical international relations approaches such as the ‘Welsh School’ of critical security studies – see, eg, C Peoples and N Vaughan-Williams, *Critical security studies: an introduction* (Routledge 2010). [↑](#footnote-ref-431)
432. Certainly these are the main theories referred to by international lawyers, with constructivism also coming to have an increasing part in this interdisciplinary scholarship. See, eg, D Armstrong, ‎T Farrell and ‎H Lambert, *International Law and International Relations* (CUP 2012); A-M Slaughter-Burley, ‘International Law and International Relations Theory: A Dual Agenda’ (1993) 87 AJIL 205. [↑](#footnote-ref-432)
433. This thesis contends that the modern, coercive solidarism cannot really be said to be cosmopolitan – this is explored in chs 5, 6 and 7. In counterpoint to this, the Conclusion to this thesis suggests that in fact pluralism can be interpreted in a way that is not antithetical to cosmopolitanism’s aims of the emancipation of humankind. However, a significant and persuasive amount of scholarship takes the view set out in this Chapter. [↑](#footnote-ref-433)
434. Though not the rationalism that developed in the 1990s through the work of Robert Keohane on institutions – see R Keohane, ‘International Institutions: two approaches’ (1988) 32 Intl Studies Quarterly 379. [↑](#footnote-ref-434)
435. For this description of Wight’s traditions, see H Bull, ‘Martin Wight and the Theory of International Relations – 2nd Martin Wight Memorial Lecture’ (1976) 2 Brit J Intl Studies 106. See also M Wight, ‘Why is there no international theory?’ in H Butterfield and M Wight (eds) *Diplomatic Investigations* (George Allen and Unwin 1966) 17; G Wight and B Porter (eds), M Wight, *International Theory: the three traditions* (Holmes & Meier 1992). [↑](#footnote-ref-435)
436. R Little, ‘The English School’s Contribution to the Study of International Relations’ (2000) 6 Eur J Intl R 402 citing A Linklater, *Critical theory and world politics: citizenship, sovereignty and humanity* (Routledge 1990) ch 1. This also helps the English School have a broad range of explanatory capabilities; making it capable of the ‘eclectic theorising’ called for in order to understand complex political and social processes involved in international law and international relations – see P Katzenstein and N Okawara, ‘Japan, Asian-Pacific Security and the Case for Analytical Eclecticism’ (2001) 26 Intl Security 167. [↑](#footnote-ref-436)
437. Little (n 18) 414. See also B Buzan, *From International to World Society* (CUP 2004) 13. [↑](#footnote-ref-437)
438. M Wight, ‘An Anatomy of International Thought’ (1987) 13 Rev Intl Studies 227, 260; B Buzan, ‘The English School: an underexploited resource in international relations’ (2001) 27 Rev Intl Studies 476. [↑](#footnote-ref-438)
439. See also Buzan, ‘The English School’ (n 20) 476, where he argues that the English school can ‘transcend the binary opposition’ of realism and liberalism. [↑](#footnote-ref-439)
440. Little (n 18) 402 citing A Linklater, *Critical theory and world politics: citizenship, sovereignty and humanity* (Routledge 1990) ch 1. [↑](#footnote-ref-440)
441. Little (n 18) 396. See also Jackson, ‘Craft Discipline’ (n 10). [↑](#footnote-ref-441)
442. Though some see realism as a philosophical tradition rather than a theory of international relations, it is generally agreed that there are common assumptions among realist thinkers – see J Donnelly, *Realism and International Relations* (CUP 2000) 6 citing R Gilpin, ‘The Richness of the Realist Tradition’ in R Keohane, *Neorealism and its Critics* (Columbia UP 1986) 304. [↑](#footnote-ref-442)
443. Donnelly, *Realism* (n 24) 9. [↑](#footnote-ref-443)
444. J Donnelly, ‘Realism’ in S Burchill et al (eds), *Theories of International Relations* (Palgrave 2009) 33. [↑](#footnote-ref-444)
445. Bull, ‘Martin Wight’ (n 17) 104. [↑](#footnote-ref-445)
446. K Waltz, *Theory of International Politics* (McGraw Hill 1979). [↑](#footnote-ref-446)
447. Donnelly, ‘Realism’ (n 26) 36. [↑](#footnote-ref-447)
448. Wight, *Three Traditions* (n 17) 15, 208, 220. [↑](#footnote-ref-448)
449. H Bull, *The Anarchical Society* (Columbia UP 2002) 10, 14. [↑](#footnote-ref-449)
450. S Scott, ‘Is there room for international law in *realpolitik*?’ (2004) 30 Rev Intl Studies 71. [↑](#footnote-ref-450)
451. L Neack, ‘UN Peace-Keeping: In the Interest of Community or Self?’ (1995) 32 J Peace Research 181. [↑](#footnote-ref-451)
452. Neack (n 33) 185; 188. [↑](#footnote-ref-452)
453. C Gegout, ‘The West, Realism and Intervention in the Democratic Republic of Congo (1996–2006)’ (2009) 16 Intl Peacekeeping 231. [↑](#footnote-ref-453)
454. J Mearsheimer, *The Tragedy of Great Power Politics* (Norton 2001) 47. [↑](#footnote-ref-454)
455. Little (n 18) 404, citing Wight (n 2) 26 (though it should be noted that Epp argued that this phrase is misused by readers of Wight who wish to place him within the realist tradition – R Epp, ‘The English School on the Frontiers of International Society: A Hermeneutic Recollection’ (1998) 24 Rev Intl Studies47); A Linklater and H Suganami, *The English School of International Relations: A Contemporary Reassessment* (CUP 2006) 117. [↑](#footnote-ref-455)
456. Early realist writers such as EH Carr made these points in 1939 after the failure of ‘Wilsonian idealism’ embodied in the League of Nations, which could not prevent the outbreak of World War II. Hans Morgenthau, writing in the late 1940s and early 1950s, went further than Carr, disavowing the relevance of international law entirely and founding a new discipline of international relations, based on the actual relations between states rather than any ‘laws’ they may have made between them. [↑](#footnote-ref-456)
457. A Gallagher, *Genocide and its Threat to Contemporary International Order* (Palgrave 2012) 7. [↑](#footnote-ref-457)
458. See, eg, P Aarts, ‘Democracy, Oil and the Gulf War’ (1992) 13 [Third World Quarterly](http://www.jstor.org/action/showPublication?journalCode=thirworlquar) 525; RJ Lieber, ‘Oil and Power after the Gulf War’ (1992) 17 Intl Security 155-176; TL Friedman, ‘A War for Oil?’ *New York Times* (5 January 2003); G Greenwald, ‘David Frum, the Iraq war and oil’ *The Guardian* (18 March 2013) <http://www.theguardian.com/commentisfree/2013/mar/18/david-frum-iraq-war-oil> (accessed 1 January 2014). This goes not just to issues of the use of force but to all foreign policy, eg toleration of regimes such as Saudi Arabia or Armenia even though they do not comply with international human rights standards. Richard Falk also points out this inconsistency of approach in relation to Kosovo Albanians vs Turkish Kurds. See eg N Ghazaryan, ‘Promotion of democracy by the EU to its Eastern neighbourhood: Rhetoric and reality’ paper presented at a Workshop on Ethics, Moral Responsibility and Politics of Democracy Promotion: Political Choices for International Actors, University of Sheffield 22 January 2010; R Falk, ‘Introduction: Legality and Legitimacy – necessities and problematics of exceptionalism’ in R Falk, M Jurgensmeyer and V Popovski, *Legitimacy and Legality in Global Affairs* (OUP 2012) 13-14. [↑](#footnote-ref-458)
459. K Waltz, ‘The Stability of a Bipolar World’ (1964) 93 Daedalus 881. See also R Little, ‘Neorealism and the English School: a Methodological, Ontological and Theoretical Reassessment’ (1995) 1 Euro J Intl R 9. [↑](#footnote-ref-459)
460. A Arend, ‘Do legal Rules Matter?’ (1998) 38 Virginia J Intl L 140. [↑](#footnote-ref-460)
461. See, eg, M Gilligan and J Stedman, ‘Where Do the Peacekeepers Go?’ (2003) 5 Intl Studies Rev 37; P Jakobsen, ‘National Interest, Humanitarianism or CNN: what triggers UN Peace Enforcement after the Cold War?’ (1996) 33 J Peace Research 205. [↑](#footnote-ref-461)
462. Wight, *Three Traditions* (n 17) 8. [↑](#footnote-ref-462)
463. Wight, *Three Traditions* (n 17) 9. [↑](#footnote-ref-463)
464. Bull, ‘Martin Wight’ (n 17) 104. [↑](#footnote-ref-464)
465. Wight, *Three Traditions* (n 17) 45. [↑](#footnote-ref-465)
466. A Linklater, *The Transformation of Political Community* (Polity 1998). [↑](#footnote-ref-466)
467. See, eg, P Hayden, *Cosmopolitan Global Politics* (Ashgate 2005) 1. [↑](#footnote-ref-467)
468. Bull, *The Anarchical Society* (n 31) 22, 26; H Bull, *Justice in International Relations: The Hagey Lectures* (University of Waterloo Press 1984) 13. [↑](#footnote-ref-468)
469. Buzan (n 11) 1, 10, 84. [↑](#footnote-ref-469)
470. Hayden (n 48) 67. [↑](#footnote-ref-470)
471. See, eg, M Drumbl, *Atrocity, Punishment, and International Law* (CUP 2007) 185. [↑](#footnote-ref-471)
472. Bull, *The Anarchical Society* (n 31) 84. [↑](#footnote-ref-472)
473. See, eg, R Paris, ‘Human Security: Paradigm Shift or Hot Air?’ 87-102; P Upadhyaya, ‘Human Security, Humanitarian Intervention and Third World Concerns’ (2004) 33 Denver J Intl L and Politics 77 (defining human security as ‘security from fear, conflict, poverty, deprivation and hunger). Pekka Niemelä attributes the RtP’s wider temporal focus, including prevention and rebuilding, to the influence of the human security concept – see P Niemelä, *The Politics of Responsibility to Protect: Problems and Prospects* (Erik Carstén Institute 2008). [↑](#footnote-ref-473)
474. See, eg, C Ochoa, ‘Towards a Cosmopolitan Vision of International Law: Identifying and Defining Customary International Law Post Sosa v Alvarez-Machain’ (2006) 74 U Cincinnati L Rev 105; D Zolo, ‘A Cosmopolitan Philosophy of International Law? A Realist Approach’ (1999) 12 Ratio Juris 429; J Morss, ‘Good global governance: custom, the cosmopolitan and international law’ (2007) 3 Intl J Law in Context 59. [↑](#footnote-ref-474)
475. United Nations Declaration of Human Rights 1948, UNGA Res 217A (III) UN Doc A/810 at 71. See, eg, K Appiah, *Cosmopolitanism* (WW Norton 2010) 1; Ch 2 s1.1 and fns therein. [↑](#footnote-ref-475)
476. See, eg, J Ralph, ‘Between Cosmopolitan and American Democracy: Understanding US Opposition to the International Criminal Court’ (2003) 17 Intl Relations 195; D Archibugi, *The Global Commonwealth of Citizens: Toward Cosmopolitan Democracy* (OUP 2008); U Beck, ‘The cosmopolitan perspective: sociology of the second age of modernity’ (2000) 51 Brit J Sociology 84; Drumbl (n 53) 186. Although the state is still important in international criminal justice, and is the first ‘port of call’ for prosecutions of international crimes. Ochoa (n 56) 105, 117-118. See also Ch 2 s 1.1. [↑](#footnote-ref-476)
477. See, eg, S Reader, ‘Cosmopolitan Pacifism’ (2007) 3 J Global Ethics 87. [↑](#footnote-ref-477)
478. Wight, *Three Traditions* (n 17) 285. [↑](#footnote-ref-478)
479. Little (n 18) 412. [↑](#footnote-ref-479)
480. C Fabre, *Cosmopolitan War* (OUP 2012) 4. [↑](#footnote-ref-480)
481. Fabre (n 62) 5. See also H Arkes, *First Things: An Inquiry into the First Principles of Morals and Justice* (Princeton UP 1986) chs 11-13; D Luban, ‘Just War and Human Rights’ in C Beitz (ed), *International Ethics* (Princeton UP 1985) 195. [↑](#footnote-ref-481)
482. F Tesón, ‘The Kantian Theory of International Law’ (1992) 92 Columbia L Rev 53. [↑](#footnote-ref-482)
483. R Fine, ‘Cosmopolitanism and Violence’ (2006) 57 Brit J Sociology 61. [↑](#footnote-ref-483)
484. K Annan, Report to the General Assembly (20 September 1999) UN Doc Press Release SG/SM/7136; Hayden (n 48) 68; on cosmopolitan peace and security more generally see T Woodhouse and O Ramsbotham, ‘Cosmopolitan peacekeeping and the globalization of security’ (2005) 12 Intl Peacekeeping 139-156; J Lebovic, ‘Uniting for Peace? Democracies and United Nations Peace Operations after the Cold War’ (2004) 48 J Conflict Resolution 910 – this suggests that democracy levels predict contributions to UN peacekeeping operations, in turn suggesting that security is a public good to which liberal democracy contributes. [↑](#footnote-ref-484)
485. The thesis suggests that the English School is a more useful theory of international relations than others because the three traditions allow a unique descriptive accuracy. When the thesis moves into its investigation and critique of solidarism and the RtP, the key English School concept of solidarism comes ‘under fire’ for being insufficiently cosmopolitan despite its claimed association with this theory. As stated, this description and critique takes place in Chapters 5 and 6. [↑](#footnote-ref-485)
486. Bull, *The Anarchical Society* (n 31) 81-82. [↑](#footnote-ref-486)
487. Bull, *The Anarchical Society* (n 31) xii. [↑](#footnote-ref-487)
488. B Buzan, ‘The English School: an underdeveloped resource in international relations’ (2001); RW Murray, ‘Introduction’ in RW Murray (ed), *System, Society and the World:* *Exploring the English School of IR* (e-International Relations 2013) 10; A Linklater, ‘The English School’ in S Burchill and others (eds), *Theories of International Relations* (Palgrave 2009) 85; C Navari, ‘Liberalism, Democracy and International Law - An English School Approach’ in R Friedman, K Oskanian and R Pacheco Pardo (eds), *After Liberalism: The Future of Liberalism in International Relations* (Palgrave 2013) 33. Though Richard Little disagrees with the ‘via media’ view, arguing that this privileges international society as the focus of the English School when in fact its unique contribution is its methodological pluralism and focus on all three aspects of international theory. [↑](#footnote-ref-488)
489. Wight, *Three Traditions* (n 17) 14. [↑](#footnote-ref-489)
490. Bull, *The Anarchical Society* (n 31) 13. [↑](#footnote-ref-490)
491. Little (n 18) 408. Examples of this work include Ian Clark’s work on legitimacy and whether rightful membership and rightful conduct have changed in international society – I Clark, *Legitimacy in International Society* (OUP 2005); and Wheeler’s work on humanitarian intervention and the justifications used by states for interventions with a humanitarian element – N Wheeler, *Saving Strangers: humanitarian intervention in international society* (OUP 2000). [↑](#footnote-ref-491)
492. Wight, *Three Traditions* (n 17) 114, 120. [↑](#footnote-ref-492)
493. D Bobrow and M Boyer, ‘Maintaining system stability: Contributions to peacekeeping operations’ (1997) 41 Journal of Conflict Resolution 723. The relationship of domestic justice and international security can also therefore be seen to be a public good – this is examined in depth in chs 5 and 6, which explore and critique liberalism’s and solidarism’s view of the relationship between domestic justice and international security. [↑](#footnote-ref-493)
494. Bull, ‘Martin Wight’ (n 17) 104. [↑](#footnote-ref-494)
495. Linklater and Suganami (n 36) 35. [↑](#footnote-ref-495)
496. P Wilson, ‘The English School's approach to international law’ in C Navari (ed), *Theorising International Society: English School Methods* (Palgrave 2009) 167, 168. [↑](#footnote-ref-496)
497. Wilson (n 78) 168. [↑](#footnote-ref-497)
498. The thesis then critiques the idea that the RtP can ‘enforce justice’, arguing that its view of the relationship between injustice and insecurity, and the relative roles of the ‘manifestly failing’ state and the rescuing international community, means it can never achieve the emancipation of individuals. [↑](#footnote-ref-498)
499. Bull, *The Anarchical Society* (n 31) 134, 140. Bull considered the key common rules of the global society of states to be a restriction on war, the principle of *pacta sunt servanda* and territorial sovereignty – see 66-67. [↑](#footnote-ref-499)
500. See M Griffiths, S Roach and M Solomon, *Fifty Key Thinkers in International Relations* (Routledge 2009) 123; see also C Reus Smit, ‘Constructivism’ in S Burchill et al (eds), *Theories of International Relations* (Palgrave 2009) 212. [↑](#footnote-ref-500)
501. T Dunne, ‘New thinking on international society’ (2001) 3 Brit J Politics & Intl Relations 242. [↑](#footnote-ref-501)
502. Wight, *Three Traditions* (n 17) 206-207; Bull, *The Anarchical Society* (n 31) 181. [↑](#footnote-ref-502)
503. Wight, *Three Traditions* (n 17) 217. [↑](#footnote-ref-503)
504. Arts 51 and Ch VII, UN Charter. [↑](#footnote-ref-504)
505. The concept of a realist international system suggests more open conflict and less cooperation and dialogue than can be said to be taking place; and whilst there is a significant body of work arguing that a world society or international community of humankind is becoming ever more present, clearly it has not yet transcended the society of sates – rights claims made by individuals or transnational corporations (or responsibilities) still occur through state mechanisms of, for example, setting up courts and providing legal systems. The focus of this thesis is therefore on the international society tradition. [↑](#footnote-ref-505)
506. J Welsh, ‘Implementing the Responsibility to Protect: Where Expectations Meet Reality’ (2010) 4 Ethics & Intl Affairs 1201. [↑](#footnote-ref-506)
507. Wight, *Three Traditions* (n 17) 14; E Keene, *International Political Thought: An Historical Introduction* (Polity 2005) 3, 7. [↑](#footnote-ref-507)
508. Bull, ‘Martin Wight’ (n 17) 106. See also C Navari, ‘Review: International Theory – The Three Traditions’ (1992) 68 Intl Affairs 321 – this makes sense if the traditions are approximations of beliefs in human nature and inter-state relations gathered from grouping together certain thinkers and differentiating them from others. [↑](#footnote-ref-508)
509. Eg the different response of the international community to allegations of genocide or ethnic cleansing in Libya compared to in Sudan/Darfur. [↑](#footnote-ref-509)
510. G Evans, ‘The End of the Argument: How we won the debate over stopping genocide’ (November 2011) Foreign Policy 1. [↑](#footnote-ref-510)
511. The thesis does employ realist and cosmopolitan arguments on occasion. For example, to suggest when references to humanity may be mere ‘lip service’ and employing cosmopolitan arguments about duties of justice at other times to suggest that solidarism – and the RtP – has an impoverished understanding of how to achieve justice. [↑](#footnote-ref-511)
512. See s 3.2 above; Linklater and Suganami (n 36). [↑](#footnote-ref-512)
513. H Bull, ‘The Grotian Conception of International Society’ in H Butterfield and M Wight (eds) *Diplomatic Investigations* (George Allen and Unwin 1966) 52. This idea of ‘the Grotian’ was different to Martin Wight’s association of Grotius with rationalism and international society in general (whether pluralist or solidarist), here representing the idea that an analogy to domestic society could be a useful way to theorise about international affairs. [↑](#footnote-ref-513)
514. Bull, ‘The Grotian Conception’ (n 95) 52; 68. [↑](#footnote-ref-514)
515. Bull, ‘The Grotian Conception’ (n 95) 66. [↑](#footnote-ref-515)
516. Art 2(4), United Nations Charter. This was reaffirmed by the General Assembly in its ‘Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations’ which declared that these principles were the key to friendly relations between states. See Preamble GA Res 2625 (XXV) 24 October 1970. This is echoed by John Rawls’ consideration of the need for toleration between liberal and ‘decent’ states – see J Rawls, *The Law of Peoples* (Harvard UP 2002) 60 (discussed in ch 5). [↑](#footnote-ref-516)
517. See eg B Buzan, ‘Political Economy and Globalisation’ in A Bellamy (ed), *International Society and Its Critics* (OUP 2004) 119; Buzan, *World Society* (n 19) 20-21, 141; H Suganami, ‘The English School and International Theory’ in A Bellamy (ed), *International Society and its* *Critics* (OUP 2004) 29; C Reus-Smit, ‘The Constructivist Challenge’ in A Bellamy (ed), *International Society and its Critics* (OUP 2004) 92; J Mayall, *Nationalism and International Society* (CUP 1990) 18; Bull, *The Anarchical Society* (n 31) ch 6. [↑](#footnote-ref-517)
518. Jackson (n 6) 21, 41. [↑](#footnote-ref-518)
519. A Bellamy, ‘Introduction: The English School’ in A Bellamy (ed), *International Society and Its Critics* (OUP 2004) 10. [↑](#footnote-ref-519)
520. F Buranelli, ‘A Critical Assessment of Pluralism and Solidarism within the English School’ KCL Research Paper at [www.kcl.academia.edu/FilippoCostaBuranelli/Papers](http://www.kcl.academia.edu/FilippoCostaBuranelli/Papers) (accessed 10 February 2014)‎. [↑](#footnote-ref-520)
521. N Wheeler, ‘Enforcing Human Rights’ in G Lyons and J Mayall (eds), *International Human Rights in the 21st Century: Protecting the Rights of Groups* (Rowman & Littlefield 2003) 192. [↑](#footnote-ref-521)
522. Buzan, *World Society* (n 19) 9, 20-21. [↑](#footnote-ref-522)
523. See, eg, H Bull, *The Anarchical Society* (n 31) ch 6. [↑](#footnote-ref-523)
524. See, eg, A Watson, *The Evolution of International Society: a comparative historical analysis* (Routledge 2009) 182. [↑](#footnote-ref-524)
525. Jackson (n 6) 156. [↑](#footnote-ref-525)
526. J Williams, ‘A new pluralism? Borders, Justice and Diversity in the English School’ BISA Annual Conference, Birmingham University, December 2003; A Orford, ‘Constituting order’ in J Crawford and M Koskenniemi, *The Cambridge Companion to International Law* (CUP 2012) 272. [↑](#footnote-ref-526)
527. Jackson (n 6) 17. [↑](#footnote-ref-527)
528. For example, the OSCE’s Helsinki Final Act 1975 again emphasised norms such as sovereign equality, non-use of force, territorial integrity and the inviolability of frontiers, and self-determination, among others. Jackson 17. [↑](#footnote-ref-528)
529. Bull, *The Anarchical Society* (n 31) 22. [↑](#footnote-ref-529)
530. Bull, *The Anarchical Society* (n 31) 83. [↑](#footnote-ref-530)
531. Buzan, *World Society* (n 19) 47. [↑](#footnote-ref-531)
532. Bull, ‘The Grotian Conception’ (n 95) 72. [↑](#footnote-ref-532)
533. Bellamy, ‘Introduction’ (n 101) 10. See also A Bellamy, ‘Humanitarian Responsibilities and Interventionist Claims in International Society’ (2003) 29 Rev Intl Studies 323-324. Jackson (n 6) 127, 156, 169, 337. [↑](#footnote-ref-533)
534. Bull *The Anarchical Society* (n 31) 93; ‘The Grotian Conception’ (n 95) 70. [↑](#footnote-ref-534)
535. Bull, ‘The Grotian Conception’ (n 95) 70; Bull, *The Anarchical Society* (n 31) 85. [↑](#footnote-ref-535)
536. Williams, ‘A new pluralism?’ (n 108). Jackson also argues that this system is the *only* way to enable different peoples to live together, other than subjugation and imperialism – see Jackson (n 6) 14, 17; A Hurrell, *On Global Order* (OUP 2008) 49. [↑](#footnote-ref-536)
537. See G Draper, ‘Grotius’ Place in the Development of Legal Ideas about War’ in H Bull, B Kingsbury and A Roberts (eds), *Hugo Grotius and International Relations* (Clarendon 1992) 194. [↑](#footnote-ref-537)
538. Bull, ‘The Grotian Conception’ (n 95) 55. In *The Anarchical Society*, Bull acknowledged a tension between the idea of war as disorder, ie a breakdown of society, and the idea that it could contribute to the overall stability of international society, if sanctioned by international society itself – see Bull, *The Anarchical Society* (n 31) 183. [↑](#footnote-ref-538)
539. Buzan, *World Society* (n 19) 9, 109. Buzan’s book explores the concept of world society in detail, finding that it has several potential meanings. Here, however, the term is used interchangeably with Bull’s idea of a community of humankind, to denote cosmopolitanism within the English School. [↑](#footnote-ref-539)
540. J Williams, ‘Territorial borders, toleration and the English School’ (2002) 28 Rev Intl Studies 742. [↑](#footnote-ref-540)
541. J Williams ‘Hedley Bull and Just War: Missed opportunities and lessons to be learned. European Journal of International Relations’ (2010) 16 Eur J Intl R 183, citing H Bull, ‘The importance of Grotius in the study of international relations’ in H Bull, B Kingsbury and A Roberts (eds), *Hugo Grotius and International Relations* (Clarendon 1990) 84; Bull, ‘International Theory’ (n 4) 112. [↑](#footnote-ref-541)
542. Bull, *The Hagey Lectures* (n 49) 13; 18; Bull, *The Anarchical Society* (n 31) 21. [↑](#footnote-ref-542)
543. Bull, *The Anarchical Society* (n 31) 80. [↑](#footnote-ref-543)
544. T Dunne and N Wheeler, ‘Hedley Bull’s Pluralism of the Intellect and Solidarism of the Will’ (1996) 72 Intl Affairs 91. [↑](#footnote-ref-544)
545. RJ Vincent, *Nonintervention and International Order* (Princeton UP 1974). [↑](#footnote-ref-545)
546. RJ Vincent, *Human rights and International Relations* (CUP 1987). As will be mentioned later in the thesis, this work makes Vincent fairly cosmopolitan in his views – certainly more so than many solidarists. [↑](#footnote-ref-546)
547. See Bull, *The Hagey Lectures* (n 49) 220; T Dunne and N Wheeler, ‘Hedley Bull’s Pluralism of the Intellect and Solidarism of the Will’ (1996) 72 Intl Affairs 97-98. [↑](#footnote-ref-547)
548. Bull, *The Anarchical Society* (n 31) 231. [↑](#footnote-ref-548)
549. Ch 2 s 1; Hurrell, *On Global Order* (n 118). [↑](#footnote-ref-549)
550. R Higgins, *Problems and Process: International Law and How We Use It* (OUP 1995) 2; A D’Amato, ‘The Invasion of Panama Was A Lawful Response to Tyranny’ (1990) 84 AJIL 516; Wilson (n 78) 175. [↑](#footnote-ref-550)
551. See Ch 2 s 3 and the references therein. [↑](#footnote-ref-551)
552. Wheeler, *Saving Strangers* (n 73) 11. [↑](#footnote-ref-552)
553. RJ Vincent and P Wilson, ‘Beyond non-intervention’ in I Forbes and M Hoffman (eds), *Political theory, international relations and the ethics of intervention* (Macmillan 1993) 125. [↑](#footnote-ref-553)
554. L Henkin, ‘Kosovo and the Law of “Humanitarian Intervention”’ (1999) 93 AJIL 824. [↑](#footnote-ref-554)
555. M Kaldor, *Global Civil Society: an answer to war* (Polity 2003) 134. Frederic Mergret also describes the RtP and also the ICC as associated with cosmopolitanism – see F Megret, ‘The ICC, R2P, and the International Community’s Evolving Interventionist Toolkit’ (2010) 21 Finnish Ybk Intl L 21. [↑](#footnote-ref-555)
556. Suganami, ‘The English School’ (n 99) 39. [↑](#footnote-ref-556)
557. British Committee discussion on Bull, ‘The Grotian Conception’ cited in N Wheeler and T Dunne, ‘Hedley Bull’s Pluralism of the Intellect and Solidarism of the Will’ (1996) 72 Intl Affairs 91. [↑](#footnote-ref-557)
558. Bull, ‘The Grotian Conception’ (n 95) 70-71. [↑](#footnote-ref-558)
559. Bull, *The Anarchical Society* (n 31) 231. Ian Harris has criticised this part of Bull’s reasoning because his conception of order necessarily contains a concept of justice – see I Harris, ‘Order and Justice in “The Anarchical Society”’ (1993) 69 Intl Affairs 725. [↑](#footnote-ref-559)
560. Jackson (n 6) 373. [↑](#footnote-ref-560)
561. Jackson (n 6) 295, 365, 396. [↑](#footnote-ref-561)
562. He views aid conditionality, and the implicit judgments made by richer countries as to the governance records of poorer countries, as acceptable because poor countries are ‘free’ to refuse aid money, and if they accept it they are accepting it ‘of their own free will’. Jackson (n 6) 312, 315, 365. [↑](#footnote-ref-562)
563. Jackson (n 6) 291. [↑](#footnote-ref-563)
564. Reus Smit (n 99) 81. [↑](#footnote-ref-564)
565. Hurrell, *On Global Order* (n 118) 50; Harris (n 141) 729. [↑](#footnote-ref-565)
566. Hurrell, *On Global Order* (n 118) 69. [↑](#footnote-ref-566)
567. Hurrell, *On Global Order* (n 118) 67. [↑](#footnote-ref-567)
568. Harris (n 141). [↑](#footnote-ref-568)
569. Harris (n 141) 728. [↑](#footnote-ref-569)
570. Harris (n 141) 728. Jackson’s pluralism accepts this and still makes an argument in favour of inter-state order, but his arguments are somewhat circular – that states are sovereign and independent because we chose for them to be, and we should not place human rights over state sovereignty because we chose not to place human rights over state sovereignty. [↑](#footnote-ref-570)
571. Early modern enlightenment figures such as Kant, Suarez and de Vitoria have been associated with both natural law and cosmopolitanism because of their shared view of the inalienable rights of individuals. See D Archibugi, ‘Immanuel Kant, Cosmopolitan Law and Peace’ (1995) 1 Eur J Intl R 429. Archibugi notes that Kant taught natural law and acknowledged the importance of some of its central propositions, including the inalienable rights of individuals (at 432). Nussbaum notes that, although Kant called Grotius, Pufendorf and Vattel ‘sorry comforters’, and his work can be distinguished from theirs in relation to the legitimacy of war, both natural law and cosmopolitanism are grounded to some extent in the writings of Cicero – see M Nussbaum, ‘Kant and Stoic Cosmopolitanism’ (1997) 5 J Political Philosophy 1. [↑](#footnote-ref-571)
572. F Fukuyama, *The End of History and The Last Man* (Penguin 1992), in particular at xi-xii where he contends that Western liberal democracy could represent the ‘final form of human government’ and ‘endpoint of mankind’s ideological evolution’. [↑](#footnote-ref-572)
573. See, for example, Article 3(5) of the Treaty on European Union; Burchill, ‘Liberalism’ (n 86) 58, 68. [↑](#footnote-ref-573)
574. Wheeler describes this as a ‘change in the generative grammar of international society from pluralism to solidarism’ – Wheeler, *Saving Strangers* (n 77). [↑](#footnote-ref-574)
575. Hurrell, *On Global Order* (n 118) 15, 57. [↑](#footnote-ref-575)
576. Both cosmopolitanism and liberalism draw on some of the same conceptual origins and the terms ‘liberal’ and ‘cosmopolitan’ have been used in conjunction with each other. See, for example, C Beitz, ‘International Liberalism and Distributive Justice: A Survey of Recent Thought’ (1999) 51 World Politics 272; I de la Rasilla del Moral, ‘All Roads Lead to Rome, or the Liberal Cosmopolitan Agenda as a Blueprint for a Neo-Conservative Legal Order’ (2007) 7 Global Jurist at <http://www.bepress.com/gj/vol7/iss2/art2>; A Buchanan and R Keohane, ‘The Preventive Use of Force: A Cosmopolitan Institutional Proposal’ (2006) 18 Ethics & Intl Affairs 1 at fn 7; M Doyle, ‘Kant, Liberal Legacies and Foreign Affairs’ (1983) 12 Philosophy and Public Affairs 205. This thesis contends, however, that liberalism and cosmopolitanism differ in key areas, particularly as regards duties of justice. [↑](#footnote-ref-576)
577. See R Little, ‘The English School's Contribution to the Study of International Relations’ (2000) 6 Eur J Intl R 411. See also S Brincat, *Towards an Emerging Cosmopolitanism: Reconstructing the Concept of Emancipation in Critical International Relations Theory* PhD Thesis (January 2011) University of Queensland; and the discussion of English school methodology in Chapter 2. cf Chris Brown, who argues that a commitment to emancipation does not necessarily entail a cosmopolitan outlook but is better understood as related to a ‘politically independent and self-governing community, a state’ – see C Brown, ‘Cosmopolitanism, Emancipation and Critical Security Studies’ 7th Pan-European International Relations Conference, Stockholm, 9-11 September 2010. [↑](#footnote-ref-577)
578. See I Clark, *Legitimacy in International Society* (OUP 2005) 33; A Watson, *The Evolution of International Society: a comparative historical analysis* (Routledge 2009) 266; P Wilson, ‘The English School's approach to international law’ in C Navari (ed), *Theorising International Society: English School Methods* (Palgrave 2009) 168. [↑](#footnote-ref-578)
579. Russell Buchan refers to a group of states within international society called an international community – he means a community of liberal states, with closer bonds based on more deeply shared values. See R Buchan, ‘A Clash of Normativities: international society and international community’ (2008) 10 Intl Community L Rev 3. The RtP and those debating it refer to an ‘international community’ without clear theoretical underpinnings – their use generally seems to be referring to the whole of international society, though of course anyone can claim to speak in the name of this ‘international community’. On norm entrepreneurs, see eg N Wheeler, ‘Reflections on the legality and legitimacy of NATO's intervention in Kosovo’ (2000) 4 Intl J Human Rights 144. [↑](#footnote-ref-579)
580. M Nussbaum, ‘Kant and Stoic Cosmopolitanism’ (1997) 5 J Political Philosophy 2; P Kleingeld and E Brown, ‘Cosmopolitanism’ Stanford Encyclopaedia of Philosophy (28 November 2006) at <http://plato.stanford.edu/entries/cosmopolitanism/> (accessed 12 February 2012); GW Brown and D Held, *The Cosmopolitanism Reader* (Polity 2010) 2. [↑](#footnote-ref-580)
581. Early modern enlightenment figures such as Kant, Suarez and de Vitoria have been associated with both natural law and cosmopolitanism because of their shared view of the inalienable rights of individuals. See D Archibugi, ‘Immanuel Kant, Cosmopolitan Law and Peace’ (1995) 1 Eur J Intl R 429. Archibugi notes that Kant taught natural law and acknowledged the importance of some of its central propositions, including the inalienable rights of individuals (at 432). Nussbaum notes that, although Kant called Grotius, Pufendorf and Vattel ‘sorry comforters’, and his work can be distinguished from theirs in relation to the legitimacy of war, both natural law and cosmopolitanism are grounded to some extent in the writings of Cicero – see Nussbaum (n 5). See also ch 2. [↑](#footnote-ref-581)
582. See, eg, D Miller, ‘In defence of nationality’ (1993) 10 Journal of Applied Philosophy 3; K-C Tan, *Justice Without Borders: cosmopolitanism, nationalism and patriotism* (CUP 2004). [↑](#footnote-ref-582)
583. See, eg, B Barry, ‘International Society from a Cosmopolitan Perspective’ in D Mapel and T Nardin (eds), *International Society: Diverse Ethical Perspectives* (Princeton UP 1998) 149-150; T Pogge, ‘An Egalitarian Law of Peoples’ (1994) 23 Philosophy and Public Affairs 195; T Pogge, ‘Introduction: Global Justice’ (2001) 32 Metaphilosophy 1. This is not the only remit of modern cosmopolitanism – for example, much has been written recently on the idea of cosmopolitan democracy and on defending cosmopolitanism from communitarian ideas about ethics – see, eg, D Archibugi and D Held, *Cosmopolitan Democracy: An Agenda for a New World Order* (Polity 1995); D Bell (ed), *Communitarianism and its Critics* (OUP 1993). [↑](#footnote-ref-583)
584. Pogge, ‘Introduction’ (n 8) 1-2. [↑](#footnote-ref-584)
585. H Bull, *Justice in International Relations: The Hagey Lectures* (University of Waterloo Press 1984) 13. Ch 4 s 2.3 explained that cosmopolitanism within the English School has been described as a community, or world society, of humankind. [↑](#footnote-ref-585)
586. B Buzan, *From International to World Society* (CUP 2004) 9, 109. As Ch 4 suggested, Buzan investigates the concept of world society in detail and provides different possible definitions of the term – here, for simplicity and in line with one of Buzan’s definitions, world society is equated with cosmopolitanism. [↑](#footnote-ref-586)
587. Buzan (n 11) 1. [↑](#footnote-ref-587)
588. T Nardin, ‘Justice and Coercion’ in A Bellamy (ed), *International Society and its Critics* (OUP 2004) 247. [↑](#footnote-ref-588)
589. P Williams, ‘Critical Security Studies’ in A Bellamy (ed), *International Society and its Critics* (OUP 2004) 137. [↑](#footnote-ref-589)
590. A Hurrell, *On Global Order: Power, Values and the Constitution of International Society* (OUP 2008) 70. [↑](#footnote-ref-590)
591. Hurrell, *On Global Order* (n 15) 9. [↑](#footnote-ref-591)
592. Buzan (n 11) 141. [↑](#footnote-ref-592)
593. Buzan (n 11) 139. [↑](#footnote-ref-593)
594. For example, even though Wheeler does address the issue of the level of consensus (or, as he puts it, the increased legitimacy) over humanitarian intervention, he also develops a normative theory of when humanitarian intervention should be permissible, and why it is good that certain interventions took place – See N Wheeler, *Saving Strangers: humanitarian intervention in international society* (OUP 2000) 285 onwards. [↑](#footnote-ref-594)
595. Hurrell, *On Global Order* (n 15) 5, 6, 58, 59. [↑](#footnote-ref-595)
596. Buzan (n 12) 7. [↑](#footnote-ref-596)
597. Hurrell, *On Global Order* (n 15) 58-62. Then-ICJ President Bedjaoui also referred to the multiplication of international organisations and the move from law on coexistence to law on cooperation in his Declaration appended to the *Legality of the Threat or Use of Nuclear Weapons* Advisory Opinion [1996] ICJ Rep 226 at 270 [12]. [↑](#footnote-ref-597)
598. A Linklater, *Critical Theory and World Politics: Citizenship, Sovereignty and Humanity* (Routledge 2007) 82; A Linklater, *The Transformation of Political Community* (Polity 1998) 174. [↑](#footnote-ref-598)
599. G Evans, ‘End of the Argument: How we won the debate over stopping genocide’ (November 2011) Foreign Policy 1 at http://www.foreignpolicy.com/articles/2011/11/28/gareth\_evans\_end\_of\_the\_argument (accessed 19 December 2013). [↑](#footnote-ref-599)
600. As discussed in relation to the description of realism in Chapter 2, liberalism is ‘hardly less a habit of mind than a body of doctrine’ – see J Richardson, ‘Contending Liberalisms: Past and Present’ (1997) 3 Eur J Intl R 17. [↑](#footnote-ref-600)
601. J Locke, *Two Treatises of Government* (1689 P Laslett ed, CUP 1988). On different interpretations of Locke (and whether he was the ‘start’ of liberal theory), see J Richardson, ‘Contending Liberalisms: Past and Present’ (1997) 3 Eur J Intl R 9. [↑](#footnote-ref-601)
602. JM Robson (ed), *Collected Works of John Stuart Mill* (University of Toronto Press 1963). [↑](#footnote-ref-602)
603. J Gray, *Liberalism* (University of Minnesota Press 1986) x; see also John Dunne’s description of liberalism’s key tenets as ‘political rationalism hostility to autocracy, cultural distaste for conservatism and for tradition in general, tolerance and ... individualism’ – J Dunne, *Western Political Theory in the Face of the Future* (CUP 1993) 33 – both cited in Richardson (n 26) 7-8. [↑](#footnote-ref-603)
604. R Geuss, *History and Illusion in Politics* (CUP 2001) 73. [↑](#footnote-ref-604)
605. See, eg, MF Plattner, ‘Liberalism and Democracy: Can’t Have One Without the Other’ (March/April 1998) ForeignAffairs 1; A-M Slaughter, ‘Government networks: the heart of the liberal democratic order’ in GH Fox and BR Roth (eds), *Democratic Governance and International Law* (CUP 2000) 199; see also J-M Coicaud and V Heiskanen (eds), *The Legitimacy of International Organizations* (UN University Press 2001) 4. For a discussion of the problematic relationship between these concepts see B Tamanaha, ‘The Dark Side of the Relationship between the Rule of Law and Liberalism’ (2008) NYU J Law and Liberty 516; Doyle (n 1) 206 on the importance of the individual; also S Burchill, ‘Liberalism’ in S Burchill et al (eds), *Theories of International Relations* (Palgrave 2009) 57. [↑](#footnote-ref-605)
606. J Rawls, *A Theory of Justice* (Harvard UP 1999) 60. Rawls’ is not the only liberal theory of justice – Robert Nozick also elaborated a substantially different theory in *Anarchy, State and Utopia* (Basic Books 1974). Rawls is considered here as the paradigmatic liberal; and because his theory is relatively egalitarian – see J Waldron, ‘Socioeconomic Rights and Theories of Justice’ NYU School of Law Public Law Research Paper (November 2010) 10. [↑](#footnote-ref-606)
607. Rawls, *Justice* (n 31) 61. [↑](#footnote-ref-607)
608. See Rawls, *Justice* (n 31) eg xi, 3, 25, 233; J Rawls, *Justice as Fairness* (Harvard UP 2001) xii. [↑](#footnote-ref-608)
609. Rawls, *Justice* (n 31) 14, 60. [↑](#footnote-ref-609)
610. Rawls, *Justice* (n 31) 14, 42-43; 61. [↑](#footnote-ref-610)
611. Rawls, *Justice* (n 31) 61. [↑](#footnote-ref-611)
612. Rawls, *Justice* (n 31) 62. [↑](#footnote-ref-612)
613. See Doyle (n 1) 206 on the importance of the individual; also Burchill, ‘Liberalism’ (n 30) 57. [↑](#footnote-ref-613)
614. Though he uses the term ‘peoples’ so that his theory is applicable to any polity rather than the current system of states – J Rawls, *The Law of Peoples* (Harvard UP 1999) 3, 23. [↑](#footnote-ref-614)
615. Rawls, *Peoples* (n 39) 7. [↑](#footnote-ref-615)
616. Rawls, *Peoples* (n 39) 9. See also Gerry Simpson’s description of liberalism’s view that ‘free citizens will insist on a just foreign policy’, which is what links domestic and international justice – G Simpson, ‘Two Liberalisms’ (2001) 12 EJIL 563. [↑](#footnote-ref-616)
617. Rawls, *Peoples* (n 39) 59-60, 89-94. [↑](#footnote-ref-617)
618. Rawls, *Peoples* (n 39) 59-60. [↑](#footnote-ref-618)
619. Rawls, *Peoples* (n 39) 60. [↑](#footnote-ref-619)
620. Eg Rawls, *Peoples* (n 39) 80. [↑](#footnote-ref-620)
621. Rawls, *Peoples* (n 39) 62. [↑](#footnote-ref-621)
622. Rawls, *Peoples* (n 39) 61, 63. [↑](#footnote-ref-622)
623. Rawls, *Peoples* (n 39) 81. A similar view is offered by Buchan in explaining why liberal states are aggressive towards non-liberal states but peaceful towards liberal states – because liberal states perceive non-liberal states to be in a state of aggression towards their own people – see R Buchan, ‘Explaining Liberal Aggression: The International Community and Threat Perception’ (2010) 12 Intl Community L Rev 413. [↑](#footnote-ref-623)
624. See, eg, D Miller, *Citizenship and National Identity* (Polity 2000) 24; D Miller, ‘National responsibility and global justice’ 2008 (11) Critical Rev Intl Social and Political Philosophy 383. [↑](#footnote-ref-624)
625. Buzan claims that the international political economy arena demonstrates far more solidarism than the topic of international peace and security, because nearly all states have signed up to, and therefore share, the norms, values and rules embodied in the WTO system together with the World Bank and IMF regulation. See B Buzan, ‘Political Economy and Globalisation’ in A Bellamy (ed), *International Society and Its Critics* (OUP 2004) 115; A Bellamy, ‘Humanitarian Responsibilities and Interventionist Claims in International Society’ (2003) 29 Rev Intl Studies 320. John Vincent’s more cosmopolitan position does consider socioeconomic rights (and this is addressed further in the next Chapter as part of the critique of liberal solidarism for failing to consider this enough). See, eg, RJ Vincent, *Human rights and International Relations* (CUP 1987). See also J Ruggie, ‘International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order’ (1982) 36 Intl Organization 379-415. [↑](#footnote-ref-625)
626. See, eg, A Moravcsik, ‘Taking Preferences Seriously: A Liberal Theory of International Politics’ (1997) 51 Intl Organisation 513-553; Burchill, ‘Liberalism’ (n 30) 59. [↑](#footnote-ref-626)
627. A-M Slaughter, ‘International Law in a World of Liberal States’ (1995) 6 EJIL 509; see also AM Slaughter, ‘The Real New World Order’ (1997) 76 Foreign Affairs 183; A Moravcsik, ‘Taking Preferences Seriously: A Liberal Theory of International Politics’ (1997) 51 Intl Organisation 513. [↑](#footnote-ref-627)
628. See, eg, M Brown, S Lynn-Jones and S Miller (eds), *Debating the Democratic Peace* (MIT Press 1996) x, who describe a separate and permanent peace between democracies; see also Slaughter, ‘International Law in a World of Liberal States’ (n 53) 504, 537; M Doyle, ‘Liberalism and World Politics’ (1986) 80 American Political Science Rev 1151; A Hurrell, ‘Power Transitions, Global Justice and the Virtues of Pluralism’ (2013) 27 Ethics & Intl Affairs 189. [↑](#footnote-ref-628)
629. Immanuel Kant, To *Perpetual Peace: a philosophical sketch* (tr T Humphrey, Hackett 2003). [↑](#footnote-ref-629)
630. F Fukuyama, ‘The End of History?’ (1989) 16 National Interest 4; see also C Hobson, ‘The Limits of Liberal-Democracy Promotion’ (2009) 34 Alternatives 383; C Brown, ‘“Really Existing Liberalism” and International Order’ (1992) 21 Millennium J Intl Studies 313. [↑](#footnote-ref-630)
631. Burchill, ‘Liberalism’ (n 30) 59. [↑](#footnote-ref-631)
632. Doyle, ‘Liberalism and World Politics’ (n 53) 1151. [↑](#footnote-ref-632)
633. B Urlacher, ‘Answering the Call: A mid-range theory of major contributions to UN peacekeeping missions’ International Studies Association Panel, February 2008 at 2. [↑](#footnote-ref-633)
634. J Levy, ‘Domestic Politics in War’ in R Rotberg and T Rabb (eds), *The Origin and Prevention of Major Wars* (CUP 1989) 88. See also Brown, Lynn-Jones and Miller (n 53) in particular the chs by Michael Doyle and Bruce Russett. [↑](#footnote-ref-634)
635. ‘Excerpts from President Clinton’s State of the Union Message’ *NY Times* (26 January 1994) A17, cited in T Barkawi and M Laffey (eds) *Democracy, Liberalism and War: Rethinking the Democratic Peace Debates* (Lynne Rienner 2001); President Reagan, ‘Peace and National Security’ Television address to the US, Washington DC (23 March 1984) cited in M Doyle, ‘Liberal Internationalism: peace, war and democracy’ at [www.nobelprize.org](http://www.nobelprize.org) (accessed 5 October 2011); White House Press Office, ‘President and Prime Minister Blair Discussed Iraq, Middle East’ Press Release (12 November 2004) at <http://georgewbush-whitehouse.archives.gov/news/releases/2004/11/20041112-5.html> (accessed 5 October 2011). See also Buchan, ‘Explaining Liberal Aggression (n 48) 419. [↑](#footnote-ref-635)
636. See, eg, B Russett, ‘Why Democratic Peace?’ in Brown, Lynn-Jones and Miller (n 53) 82; J Owen, ‘How Liberalism Produces Democratic Peace’ in Brown, Lynn-Jones and Miller (n 53) 116. [↑](#footnote-ref-636)
637. Slaughter, ‘Government Networks’ (n 30); Slaughter, ‘The Real New World Order’ (n 53). [↑](#footnote-ref-637)
638. Slaughter, ‘A World of Liberal States’ (n 53). [↑](#footnote-ref-638)
639. A-M Slaughter, ‘Toward an Age of Liberal Nations’ 33 (1992) Harvard J Intl L 394. [↑](#footnote-ref-639)
640. F Teson, ‘A Kantian Theory of International Law’ (1992) 92 Columbia L Rev 53. [↑](#footnote-ref-640)
641. Slaughter, ‘A World of Liberal States’ (n 53) 504-505. [↑](#footnote-ref-641)
642. R Buchan, ‘A Clash of Normativities’ (n 4). R Buchan, ‘International Community and the Occupation of Iraq’ (2007) 12 J Conflict Security L 41; L Diamond, J Linz and S Lipset, *Politics in Developing Countries: Contemporary Experiences With Democracy* (Lynne Reiner 1995) x. [↑](#footnote-ref-642)
643. Teson, ‘A Kantian Theory’ (n 65) 89. [↑](#footnote-ref-643)
644. Ch 2 s 4. [↑](#footnote-ref-644)
645. J Western and J Goldstein, ‘Humanitarian Intervention Comes of Age: Lessons From Somalia to Libya’ (November-December 2011) 90 Foreign Affairs 49. [↑](#footnote-ref-645)
646. F Teson, ‘The Liberal Case for Humanitarian Intervention’ (November 2001) Florida State University College of Law Public Law and Legal Theory Working Paper No 39 largely reproduced in F Teson, ‘The Liberal Case for Humanitarian Intervention’ in Holzgrefe and Keohane (n 3) 93. See also F Teson, ‘Collective Humanitarian Intervention’ (1995-1996) 17 Michigan J Intl L 342. [↑](#footnote-ref-646)
647. Teson, ‘The Liberal Case’ (n 71) 2. [↑](#footnote-ref-647)
648. R Fine, ‘Cosmopolitanism and Violence’ (2006) 57 Brit J Sociology 59. [↑](#footnote-ref-648)
649. Teson, ‘The Liberal Case’ (n 71) 54. [↑](#footnote-ref-649)
650. L Henkin, ‘Kosovo and the Law of “Humanitarian Intervention”’ (1999) 93 AJIL 824; B Brown, ‘Humanitarian Intervention at a Crossroads’ (2000) 41 William and Mary L Rev 1684. [↑](#footnote-ref-650)
651. Teson, ‘The Liberal Case’ (n 71) 8; Rawls, *Law of Peoples* (n 39). [↑](#footnote-ref-651)
652. Teson, ‘Collective Humanitarian Intervention’ (n 72) 332; A D’Amato, ‘The Invasion of Panama Was A Lawful Response to Tyranny’ (1990) 84 AJIL 520 in relation to Panama; at 523 in relation to Grenada. [↑](#footnote-ref-652)
653. F Teson, ‘The Liberal Case’ (n 72) 14. [↑](#footnote-ref-653)
654. D Luban, ‘Just War and Human Rights’ (1980) 9 Philosophy and Public Affairs 160. [↑](#footnote-ref-654)
655. M Glennon, ‘The New Interventionism: The Search for a Just International Law’ (1999) 78 Foreign Affairs 5. Glennon is presumably referring to the Security Council authorised peacekeeping (or quasi-peacekeeping) operations – UNMIH/Operation Uphold Democracy, UNOSOM/UNITAF and UNAMIR/Operation Turquoise – in response to crises in these countries. The view that these operations halted the slaughter of civilians is extremely controversial – for example, see Gareth Evans’ claim that situations ‘crying out’ for military intervention were met with indifference in the 1990s – G Evans, *The* *Responsibility to Protect* (Brookings 2008) 11. [↑](#footnote-ref-655)
656. Glennon (n 80) 1. [↑](#footnote-ref-656)
657. R Cooper, ‘The R2P Coalition: letter from the convenor’ R2P Coalition at <http://r2pcoalition.org/content/view/27/52/> (accessed 7 January 2014). [↑](#footnote-ref-657)
658. J Tosh with S Lang, *The pursuit of history: aims, methods and new directions in the study of modern history* (Longman 2006) 28. The opposing view does not see history as necessarily progressive and therefore necessarily able to offer us any lessons. [↑](#footnote-ref-658)
659. ibid 29. [↑](#footnote-ref-659)
660. S Burchill, ‘Liberalism’ in S Burchill et al (eds), *Theories of International Relations* (Palgrave 2009) 57. [↑](#footnote-ref-660)
661. F Fukuyama, *The End of History and the Last Man* (Penguin 1992). [↑](#footnote-ref-661)
662. See N Wheeler and T Dunne, ‘Hedley Bull’s Pluralism of the Intellect and Solidarism of the Will’ (1996) 72 Intl Affairs 91; A Linklater, ‘The English School’ in Burchill et al (eds), *Theories of International Relations* (Palgrave 2009); cf Burchill, ‘Liberalism’ (n 3) 57. [↑](#footnote-ref-662)
663. Fukuyama (n 4) 3; C Hobson, ‘Beyond the End of History: the Need for a Radical Historicisation of Democracy in International Relations’ (2009) Millennium J Intl Studies 633; S Marks, ‘The End of History? Reflections on Some International Legal Theses’ (1997) 8 EJIL 453. [↑](#footnote-ref-663)
664. R Geuss, *History and Illusion in Politics* (CUP 2001) 69, 71 – Geuss describes liberalism’s association with historical figures such as Locke and Spinoza, who bear little resemblance to modern liberals, in order to enable it to claim a long and distinguished past. David Kennedy makes a similar point in ‘When Renewal Repeats’ (2000) 32 NY University J Intl L 335. [↑](#footnote-ref-664)
665. Hobson, ‘Radical Historicisation’ (n 6) 633. Hobson describes this as the ‘history of forgetting’ at 623. [↑](#footnote-ref-665)
666. C Hobson, ‘The Limits of Liberal-Democracy Promotion’ (2009) 34 Alternatives 386. [↑](#footnote-ref-666)
667. Marks (n 6) 456 (emphasis added). [↑](#footnote-ref-667)
668. Hobson, ‘Radical Historicisation’ (n 6) 639. [↑](#footnote-ref-668)
669. See Geuss (n 7). [↑](#footnote-ref-669)
670. See, eg, Plato, *Republic* (380BC, tr HDP Lee, Penguin Classics 2007); see also B Tamanaha, ‘The Dark Side of the Relationship between the Rule of Law and Liberalism’ (2008) NYU Journal of Law and Liberty 518. [↑](#footnote-ref-670)
671. Hobson, ‘Radical Historicisation’ (n 6) 640. [↑](#footnote-ref-671)
672. B Roth, ‘Evaluating Democratic Progress’ in G Fox and B Roth (eds), *Democratic Governance and International Law* (CUP 2000) 495. [↑](#footnote-ref-672)
673. See, eg, Roth (n 15) 494 – he distinguishes between ‘substantive’ and ‘procedural’ democracy. [↑](#footnote-ref-673)
674. WM Reisman, ‘Sovereignty and Human Rights in Contemporary International Law’ (1990) 84 AJIL 871. [↑](#footnote-ref-674)
675. Marks (n 6) 450, 462. [↑](#footnote-ref-675)
676. Recent events in the UK’s domestic political scene suggest that this rings true, with MPs making fraudulent expenses claims or failing to take seriously the food bank crisis. See, eg, C Cooper, ‘Hungry Britain: welfare cuts leave more than 500,000 people forced to use food banks, warns Oxfam’ *The Independent* (30 May 2013) <http://www.independent.co.uk/news/uk/politics/hungry-britain-welfare-cuts-leave-more-than-500000-people-forced-to-use-food-banks-warns-oxfam-8636743.html>; T Helm, ‘Charities condemn Iain Duncan Smith for food bank snub’ *The Guardian* (21 December 2013) <http://www.theguardian.com/politics/2013/dec/21/iain-duncan-smith-food-banks-charities> (all accessed 30 December 2013). [↑](#footnote-ref-676)
677. A Orford, ‘Locating the International: Military and Monetary Interventions after the Cold War’ (1997) 38 Harvard Intl LJ 461. [↑](#footnote-ref-677)
678. Orford (n 20) 461. Marks suggests an alternative, broad definition of democracy as self-rule by citizens on an equal footing – see Marks (n 6) 450s. [↑](#footnote-ref-678)
679. Hobson, ‘Limits’ (n 9) 398. [↑](#footnote-ref-679)
680. Hobson, ‘Limits’ (n 9) 386. [↑](#footnote-ref-680)
681. J Richardson, *Contending Liberalisms in World Politics: ideology and power* (Lynne Reiner 2001) 19, citing K Minogue, *The liberal mind* (Methuen 1963) 66-67. Geuss believes that this division within liberalism arose during the 18-19th Centuries when Humboldt rejected the then-accepted idea that the state should provide for citizens' welfare, claiming that it was just a ‘nightwatchman’ with no duties beyond protecting individual self-activity – see Geuss (n 7); see also Tamanaha (n 13) 520. Barry Buzan notes this same distinction in terms of the state’s job in providing security for its people, setting Locke’s minimalist conception against a more maximal idea of the state – see B Buzan, *People, States and Fear* (Harvester 1983) 21. [↑](#footnote-ref-681)
682. J Richardson, ‘Contending Liberalisms: Past and Present’ (1997) 3 Eur J Intl R 7, 25. [↑](#footnote-ref-682)
683. Richardson, ‘Contending Liberalisms’ (n 25) 7. [↑](#footnote-ref-683)
684. Richardson, ‘Contending Liberalisms’ (n 25) 25, citing C Pateman, *Participation and Democratic Theory* (CUP 1970) 1. [↑](#footnote-ref-684)
685. Richardson, ‘Contending Liberalisms’ (n 25) 7. [↑](#footnote-ref-685)
686. Richardson, ‘Contending Liberalisms’ (n 25) 12. [↑](#footnote-ref-686)
687. Richardson, ‘Contending Liberalisms’ (n 25) 10. [↑](#footnote-ref-687)
688. Fukuyama (n 4). [↑](#footnote-ref-688)
689. Marks (n 6) 456; Orford (n 20) 465. [↑](#footnote-ref-689)
690. Tamanaha (n 13). [↑](#footnote-ref-690)
691. M Monshipouri, *Democratization, Liberalization and Human Rights in the Third World* (Lynne Rienner 1995) 3. James Richardson criticises this prioritisation of economic liberalisation over political participation by the population: see Richardson, ‘Contending Liberalisms’ (n 26) 18. This is true not just in the global South of which Monshipouri speaks, but recent UK politics suggest that this may also apply to the more developed world – an example being the outrage and powerlessness felt by many in response to banks awarding large bonuses to the very people responsible for the global financial crisis and the collapse of UK banks. See, eg, N Goodway and J Prynn, ‘Fat Cats Gettting Fatter?’ *The Independent* (29 November 2013) <http://www.independent.co.uk/news/business/news/fat-cats-getting-fatter-bankers-bonus-culture-lives-on-as-millionaires-club-tops-2700-8972757.html>; H Stewart, ‘Osborne bats for bankers' bonuses citing risk to City from EU cap’ The Guardian (25 September 2013) <http://www.theguardian.com/politics/2013/sep/25/osborne-bankers-bonuses-eu-cap>; J Treanor, ‘RBS bankers get £950m in bonuses despite £1.1bn loss’ The Guardian (24 February 2011) at <http://www.theguardian.com/business/2011/feb/24/rbs-bankers-bonuses-despite-loss>; A Bennett, ‘Economic Recovery Not Helping Working Families, Say Voters’ The Huffington Post (5 August 2013) <http://www.huffingtonpost.co.uk/2013/08/05/uk-living-standards_n_3706052.html> (all accessed 30 December 2013). [↑](#footnote-ref-691)
692. See, eg, ‘President Bush Declares War on Terror’ Speech to a Joint Session of Congress 20 September 2001. [↑](#footnote-ref-692)
693. CR Beitz, ‘Justice and International Relations’ (1975) 4 Philosophy & Public Affairs 361. [↑](#footnote-ref-693)
694. Beitz (n 36) 374. [↑](#footnote-ref-694)
695. See, eg, J Thompson, *Justice and World Order: a philosophical enquiry* (Routledge 1992) 114; T Nagel, ‘The Problem of Global Justice’ (2005) 33 Philosophy & Public Affairs 113-147; D Miller, *Citizenship and National Identity* (Polity 2000); J Rawls, *The Law of Peoples* (Harvard UP 1999) 113. [↑](#footnote-ref-695)
696. S Caney, ‘Global Distributive Justice and the State’ (2008) 56 Political Studies 487. [↑](#footnote-ref-696)
697. Caney (n 39). [↑](#footnote-ref-697)
698. Caney (n 39) 505. [↑](#footnote-ref-698)
699. Caney (n 39) 506. [↑](#footnote-ref-699)
700. Caney (n 39) 509. [↑](#footnote-ref-700)
701. Caney (n 39) 491, where he distinguishes between these two types of cosmopolitan approach to global justice. [↑](#footnote-ref-701)
702. B Barry, ‘Statism and Nationalism*:* ACosmopolitan Critique’ in I Shapiro and L Brilmayer (eds), *Global Justice* (New York UP 1999) 13. See also B Barry, ‘International Society from a Cosmopolitan Moral Perspective’ in D Mapel and T Nardin (eds), *International Society: Diverse Ethical Perspectives* (Princeton UP 1998) 145, where he says that membership of a particular society (such as a state) can have some moral significance but not any deep moral significance. cf Costas Douzinas, who claims that ‘the extreme injustice of global distribution is invisible to cosmopolitan law and is reduced to the sphere of the private’ – cosmopolitans such as Barry certainly do not see this distribution as invisible to cosmopolitan morality (though at present international law has little to say on the matter) – see C Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (Routledge 2007) 193. [↑](#footnote-ref-702)
703. As stated in the previous Chapter, cosmopolitanism does not necessarily demand the overthrow of the state system – it merely requires that states behave in a cosmopolitan responsible manner to those outside the state’s borders. [↑](#footnote-ref-703)
704. See G Simpson, ‘Two Liberalisms’ (2001) 12 EJIL 539 at fn 6. [↑](#footnote-ref-704)
705. Barry, ‘International Society’ (n 45) 105. He also points out that within poor countries the burden of IMF and World Bank repayments often falls on the poorest people, with a decrease in basic services and increasing unemployment – at 153. On the growing gap between the top 2% (who own over half of all global wealth) and the rest of the world, see also [D Chotikapanich](http://link.springer.com/search?facet-author=%22Duangkamon+Chotikapanich%22), [R Valenzuela](http://link.springer.com/search?facet-author=%22Rebecca+Valenzuela%22) and [DS Prasada Rao](http://link.springer.com/search?facet-author=%22D.+S.+Prasada+Rao%22), ‘Global and Regional Inequality in the Distribution of Income: Estimation with Limited and Incomplete Data’ in D Slotjer and B Raj (eds), [*Income Inequality, Poverty, and Economic Welfare*](http://link.springer.com/book/10.1007/978-3-642-51073-1)(Springer 1998) 65; N Birdsall, ‘Rising Inequality in the New Global Economy’ 2005 WIDER Annual Lecture (2005) 2 World Institute for Development Economics Research WIDER ANGLE 1; JB Davies, S Sandström, A Shorrocks and EN Wolff, ‘The World Distribution of Household Wealth’ UC Santa Cruz Center for Global, International and Regional Studies 2007, at <http://escholarship.org/uc/item/3jv048hx> (accessed 1 February 2014). [↑](#footnote-ref-705)
706. Pogge, ‘Priorities of Global Justice’ (2001) 32 Metaphilosophy 7. [↑](#footnote-ref-706)
707. Pogge, ‘Priorities’ (n 49) 12. [↑](#footnote-ref-707)
708. Pogge, ‘Priorities’ (n 49) 12, citing the World Bank 1999 Report 231. [↑](#footnote-ref-708)
709. H Charlesworth, ‘International Law: A Discipline of Crisis’ (2002) 65 Modern Law Rev 391. Considering solidarism’s tendency to focus on acute human rights crises, Andrew Hurrell contrasts the 588,000 deaths from war, 736,000 from social violence and 18,000,000 from starvation in 1998, questioning why there is solidarity in relation to deaths from social or military violence but not in relation to starvation. See A Hurrell, R Foot and J Gaddis *Order and Justice in International Relations* (OUP 2003) 42 citing T Pogge, ‘Priorities of Global Justice’ in TW Pogge (ed), *Global Justice* (Blackwell 2001). [↑](#footnote-ref-709)
710. R Little, ‘The English School vs American Realism: a meeting of minds or divided by a common language?’ (2003) 29 Rev Intl Studies 455. [↑](#footnote-ref-710)
711. Art 11, International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 999 UNTS 3. [↑](#footnote-ref-711)
712. Pogge, ‘Priorities’ (n 49) 11. See also P Alston and G Quinn, ‘[The Nature and Scope of States Parties' Obligations Under the International Covenant on Economic, Social and Cultural Rights](http://www.jstor.org/stable/10.2307/762295)’ (1987) 9 Human Rights Quarterly 157. [↑](#footnote-ref-712)
713. Pogge, ‘Priorities’ (n 49) 8. [↑](#footnote-ref-713)
714. K Annan, ‘In Larger Freedom: Development, Security and Human Rights for All’ Report of the Secretary General (21 March 2005) UN Doc A/59/05 35. [↑](#footnote-ref-714)
715. RJ Vincent, *Human Rights and International Relations* (CUP 1987) 3, 114, 127. Barry Buzan and Ana Gonzalez-Pelaez also note the limited attention given by the English School to the area of political economy – see B Buzan and A Gonzalez-Pelaez, ‘A Viable Project of Solidarism? The Neglected Contributions of John Vincent’s basic rights initiative’ (2003) 17 Intl Relations 321. [↑](#footnote-ref-715)
716. Hurrell, Foot and Gaddis (n 52) 41. [↑](#footnote-ref-716)
717. Ch 4 s 3.3. [↑](#footnote-ref-717)
718. See section 3 above, in particular ns 20-23. [↑](#footnote-ref-718)
719. Though it should be noted that many communitarians do not accept that there is such a thing as the ‘isolated, atomistic individual’ that liberalism assumes, as our identities are constructed by reference to our communities – see, for example, M Smith, ‘Liberalism and International Reform’ in T Nardin & D Mapel, *Traditions of International Ethics* (CUP 1993) 209. [↑](#footnote-ref-719)
720. G Fox and G Nolte, ‘Intolerant Democracies’ in G Fox and B Roth (eds), *Democratic Governance and International Law* (CUP 2000) 391. [↑](#footnote-ref-720)
721. J Alvarez, ‘Do Liberal States Behave Better? A Critique of Slaughter's Liberal Theory’ (2001) 12 EJIL 239. See also D Kennedy, ‘The Disciplines of international law and Policy’ (1999) 12 Leiden J Intl L 9; Marks (n 6); Hurrell, Foot and Gaddis (n 52) 41; J Owen, ‘Iraq and the Democratic Peace’ (November/December 2003) Foreign Affairs 1, who acknowledges that, as part of liberal peace theory, liberal democracies are intolerant of other types of state. Although it should be noted that today’s liberal democracies will tolerate strategic non-liberal allies, such as Saudi Arabia. [↑](#footnote-ref-721)
722. Simpson (n 47). This is somewhat of an oversimplification, but is meant to demonstrate that liberalism’s two different meaning permeate both the domestic and international spheres – one interpretation meaning toleration and equality despite difference; the other meaning intolerance of states which do not conform to a narrow set of domestic conditions. [↑](#footnote-ref-722)
723. Simpson (n 47) 539. [↑](#footnote-ref-723)
724. S Marks, ‘Democracy and international governance’ in JM Coicaud and V Heiskanen, *The Legitimacy of International Organizations* (UN UP 2001) 47. [↑](#footnote-ref-724)
725. See Ch 5 s 2.3. [↑](#footnote-ref-725)
726. In addition to the general critiques of the concept of ‘democracy’ and nns 15-24 in this Chapter, see, eg, C Layne, ‘Kant or Cant: The Myth of the Democratic Peace’ M Brown, S Lynn-Jones and S Miller (eds), *Debating the Democratic Peace* (MIT Press 1996) 157. [↑](#footnote-ref-726)
727. See D Spiro, ‘The Insignificance of the Liberal Peace’ in M Brown, S Lynn-Jones and S Miller (eds), *Debating the Democratic Peace* (MIT Press 1996) 212. [↑](#footnote-ref-727)
728. J Galtung, *Peace by Peaceful Means: Peace and Conflict, Development and Civilization* (Sage 1996) 50. [↑](#footnote-ref-728)
729. Galtung (n 71) 49, referring to the dates 1688, 1776 and 1789. [↑](#footnote-ref-729)
730. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14 at 145 [292]. The court also found that some acts, such as the training on psychological guerrilla warfare, were a violation of human rights – though these were not found to be attributable to the US. [↑](#footnote-ref-730)
731. T Barkawi and J Laffey, ‘The Imperial Peace’ (1999) 5 Eur J Intl R 403. [↑](#footnote-ref-731)
732. H Koh, ‘Why Do Nations Obey International Law?’ (1997) 106 Yale LJ 2601. [↑](#footnote-ref-732)
733. Barkawi and Laffey (n 74) 406; 412. See also P Bobbitt, *The Shield of Achilles: War, Peace and the Course of History* (Penguin 2003) – Bobbitt concurs with Barkawi and Laffey on the subject of the evolution of modern warfare and the modern nation state being intimately bound together and difficult to separate. [↑](#footnote-ref-733)
734. See Marks (n 6). [↑](#footnote-ref-734)
735. T Barkawi and M Laffey, *Globalization and War* (Rowman and Littlefield 2006). [↑](#footnote-ref-735)
736. Roth (n 15) 496. [↑](#footnote-ref-736)
737. See the claim at n 79 above regarding liberal peace theory’s status as fact. [↑](#footnote-ref-737)
738. See T Franck, ‘Legitimacy and the democratic entitlement’ in G Fox and B Roth (eds), *Democratic Governance and International Law* (CUP 2000) 25; WM Reisman, ‘Sovereignty and human rights in contemporary international law’ G Fox and B Roth (eds), *Democratic Governance and International Law* (CUP 2000) 256. [↑](#footnote-ref-738)
739. A D’Amato, ‘The Invasion of Panama was a Lawful Response to Tyranny’ (1990) 84 AJIL 516; A D’Amato, ‘There is No Norm of Intervention or Non-Intervention in International Law’ (2001) 7 Intl Legal Theory 33. [↑](#footnote-ref-739)
740. Orford (n 21) 460; B Roth, ‘Evaluating Democratic Progress: A Normative Theoretical Perspective’ (1995) 9 Ethics & Intl Affairs 55-77 at 55. [↑](#footnote-ref-740)
741. Owen (n 65). [↑](#footnote-ref-741)
742. ‘Excerpts from President Clinton’s State of the Union Message’ *NY Times* (26 January 1994) A17, cited in T Barkawi and M Laffey (eds) *Democracy, Liberalism and War: Rethinking the Democratic Peace Debates* (Lynne Rienner 2001); President Reagan, ‘Peace and National Security’ Television address to the US, Washington DC (23 March 1984) cited in M Doyle, ‘Liberal Internationalism: peace, war and democracy’ at [www.nobelprize.org](http://www.nobelprize.org) (accessed 5 October 2011); White House Press Office, ‘President and Prime Minister Blair Discussed Iraq, Middle East’ Press Release (12 November 2004) at <http://georgewbush-whitehouse.archives.gov/news/releases/2004/11/20041112-5.html> (accessed 5 October 2011). [↑](#footnote-ref-742)
743. Hobson, ‘Limits’ (n 9) 384. See also n 43 on the US Presidential statements linking peace and democracy; European Security Strategy (Brussels 12 December 2003); EC Guidelines on Recognition of New States in Eastern Europe and the Soviet Union (16 December 1991); US National Security Strategy 1996, ‘Engagement and Enlargement’ Preface; USS National Security Strategy 20 September 2002 Preface; US National Security Strategy May 2010 at 37; R Jackson, *The Global Covenant: Human Conduct in a World of States* (OUP 2000) 15. [↑](#footnote-ref-743)
744. A-M Slaughter, ‘International Law in a World of Liberal States’ (1995) 6 EJIL 503; A-M Slaughter, ‘The Real New World Order’ (1997) 76 Foreign Affairs 183; A-M Slaughter, ‘Government networks: the heart of the liberal democratic order’ in GH Fox and BR Roth (eds), *Democratic Governance and International Law* (CUP 2000) 199. On this she is joined by classical English School pluralist Robert Jackson, who accepts aid conditionality as a way of improving domestic good governance, but who does not endorse military intervention – Jackson (n 86). [↑](#footnote-ref-744)
745. Alvarez (n 64) 234. [↑](#footnote-ref-745)
746. Alvarez (n 64) 215. [↑](#footnote-ref-746)
747. Alvarez (n 64) 208. Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction (opened for signature 3 December 1997, entered into force 1 March 1999) 2056 UNTS 211; Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force on 1 July 2002) 2187 UNTS 90. [↑](#footnote-ref-747)
748. Hobson, ‘Limits’ (n 9) 390. [↑](#footnote-ref-748)
749. C Hobson, ‘Justifying US Democracy Promotion’ Workshop on Ethics, Moral Responsibility and Politics of Democracy Promotion: Political Choices for International Actors (22 January 2010) University of Sheffield. [↑](#footnote-ref-749)
750. M Koskenniemi, ‘Intolerant Democracies: a reaction’ (1996) 37 Harvard Intl LJ 234. See also V Mehta, *The Economics of Killing* (Pluto Press 2012). [↑](#footnote-ref-750)
751. Galtung (n 71) 4, 49. [↑](#footnote-ref-751)
752. M Glennon, ‘The New Interventionism: The Search for a Just International Law’ (1999) 78 Foreign Affairs 2. [↑](#footnote-ref-752)
753. A Orford, ‘Constituting order’ in J Crawford and M Koskenniemi, *The Cambridge Companion to International Law* (CUP 2012) 271. [↑](#footnote-ref-753)
754. This is similar to Jackson’s pluralist defence of state sovereignty and non-intervnetion, described in Chapter 4. However, chapter 4 also suggested some problems with Jackson’s ppluralism, by which this choice about justice was a pragmatic rather than a normative choice and which is associated with a very limited view of states’ duties of justice towards non-citizens. [↑](#footnote-ref-754)
755. I Kant, *To* *Perpetual Peace: a philosophical sketch* (tr T Humphrey, Hackett 2003) Definite Art 1. [↑](#footnote-ref-755)
756. Kant (n 98) Preliminary Article 3. [↑](#footnote-ref-756)
757. Kant (n 98) Preliminary Article 5. [↑](#footnote-ref-757)
758. Kant (n 98) Definite Article 3. [↑](#footnote-ref-758)
759. Ch 2; A Hurrell, *On Global Order: Power, Values, and the Constitution of International Society* (OUP 2008) 58, 60. [↑](#footnote-ref-759)
760. See B Buzan, ‘Political Economy and Globalisation’ in A Bellamy (ed), *International Society and Its Critics* (OUP 2004) 115; Ch 2 s 1.2. [↑](#footnote-ref-760)
761. See, eg, R Buchan, ‘A Clash of Normativities: International Society and International Community’ (2008) 10 International Community Law Review 3; R Buchan, ‘Explaining Liberal Aggression: The International Community and Threat Perception’ (2010) 12 Intl Community L Rev 413. [↑](#footnote-ref-761)
762. Hurrell (n 102) 63. [↑](#footnote-ref-762)
763. See SC Res 687 (3 April 1991). [↑](#footnote-ref-763)
764. See SC Res 1441 (8 November 2002); Hobson, ‘Justifying US Democracy Promotion’ (n 92). The paper quoted an Iraqi citizen saying ‘be careful how you treat the Americans, or they will punish you with democracy.’ [↑](#footnote-ref-764)
765. T Keating, ‘Pluralism and International Society’ in RW Murray (ed), *System, Society and the World:* *Exploring the English School of IR* (e-International Relations 2013) 58. [↑](#footnote-ref-765)
766. B Buzan, *From International to World Society* (CUP 2004) 48. A Bellamy, *International Society and its Critics* (OUP 2004) 9-11, 290; I Clark, *International Legitimacy and World Society* (OUP 2007). [↑](#footnote-ref-766)
767. Simpson (n 47) 537. [↑](#footnote-ref-767)
768. G Evans, ‘End of the Argument: How we won the debate over stopping genocide’ (November 2011) Foreign Policy 1 at http://www.foreignpolicy.com/articles/2011/11/28/gareth\_evans\_end\_of\_the\_argument (accessed 19 December 2013). [↑](#footnote-ref-768)
769. ICISS, *The Responsibility to Protect* (International Development Research Centre 2001) foreword viii. [↑](#footnote-ref-769)
770. UN World Summit Outcome Document (24 October 2005) UN Doc A/RES/60/1 [139]. [↑](#footnote-ref-770)
771. ICISS (n 2) 11 [2.1]. [↑](#footnote-ref-771)
772. B Ki-moon, ‘Implementing the responsibility to protect: Report of the Secretary General’ UNGA 63rd session (12 January 2009) UN Doc A/63/677 at 8 [11.a]. [↑](#footnote-ref-772)
773. Ki-moon (n 5) 8 [10.b]. [↑](#footnote-ref-773)
774. Ki-moon (n 5) 8 [10.c]; A Dieng, Secretary General’s Special Representative for Genocide, Opening Speech to Responsibility to Protect in Theory and in Practice Conference (11-12 April 2013) Ljubljana. [↑](#footnote-ref-774)
775. ICISS (n 2) 19 [3.2]. [↑](#footnote-ref-775)
776. Ki-moon (n 5) 15 [29]. [↑](#footnote-ref-776)
777. Ki-moon (n 5) 16 [33]. [↑](#footnote-ref-777)
778. Ki-moon (n 5) 12; ICISS (n 2) 11, 19. [↑](#footnote-ref-778)
779. ICISS (n 2) 19 [3.4]. [↑](#footnote-ref-779)
780. ICISS (n 2) 19 [3.3]. [↑](#footnote-ref-780)
781. Ki-moon (n 5) 15 [29-30]; 20 [44]. [↑](#footnote-ref-781)
782. Ki-moon (n 5) 15 [30]. [↑](#footnote-ref-782)
783. ICISS (n 2) 27 [3.41]; Ki-moon (n 5) 21 [47]. [↑](#footnote-ref-783)
784. Both ICISS and Ki-moon do refer to the international community’s duties in relation to socioeconomic rights and development, but in a limited way – section 2.2 returns to this and explains why the level of consideration given to socioeconomic issues is inadequate – for now the point to be taken is the liberal solidarist view of the appropriate domestic conditions for conflict prevention. [↑](#footnote-ref-784)
785. ICISS (n 2) 19. [↑](#footnote-ref-785)
786. ICISS (n 2) 29. [↑](#footnote-ref-786)
787. ICISS (n 2) 32-37 [4.18-4.43]. [↑](#footnote-ref-787)
788. Ki-moon (n 5) 8-9 [11c]; 22 [49]. [↑](#footnote-ref-788)
789. Ki-moon (n 5) 25 [57]; [58]. [↑](#footnote-ref-789)
790. Ki-moon (n 5) 22 [50]. [↑](#footnote-ref-790)
791. ICISS (n 2) 39 [5.1]. [↑](#footnote-ref-791)
792. ICISS (n 2) 40 [5.6]. [↑](#footnote-ref-792)
793. J Western and J Goldstein, ‘Humanitarian Intervention Comes of Age: Lessons From Somalia to Libya’ (November-December 2011) 90 Foreign Affairs 59. [↑](#footnote-ref-793)
794. Western and Goldstein (n 26) 53. [↑](#footnote-ref-794)
795. Ch 5 s 2.1 and the fns therein, especialy J Rawls, *A Theory of Justice* (Harvard UP 1999); F Teson, ‘The Liberal Case for Humanitarian Intervention’ in J Holzgrefe and R Keohane (eds), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (CUP 2003) 95; see also F Teson, ‘Collective Humanitarian Intervention’ (1995-1996) 17 Michigan J Intl L 323. [↑](#footnote-ref-795)
796. Ch 5 s 2.2 and the fns therein, especially J Rawls, *The Law of Peoples* (Harvard UP 2002); R Buchan, ‘Explaining Liberal Aggression: The International Community and Threat Perception’ (2010) 12 Intl Community L Rev 413-436; Ch 5 s 2.4 and the fns therein, especially A D’Amato, ‘The Invasion of Panama Was A Lawful Response to Tyranny’ (1990) 84 AJIL 516; Teson, ‘Collective’ (n 28) 342. [↑](#footnote-ref-796)
797. R Thakur and T Weiss, ‘R2P: From Idea to Norm – and Action?’ (2009) 1 Global Responsibility to Protect 42. See also G Robertson, *Crimes Against Humanity* (Ringwood 1999); J Prendergast and L Rogoff, ‘R2P, the ICC, and Stopping Atrocities in the Real World’ Enough! Project (28 February 2008) at http://www.enoughproject.org/publications/r2p-icc-and-stopping-atrocities-real-world. [↑](#footnote-ref-797)
798. Ch 3 s 4.1. [↑](#footnote-ref-798)
799. F Megret, ‘ICC, R2P, and the International Community’s Evolving Interventionist Toolkit’ (2010) 21 Finnish Ybk Intl Law 26 (he also describes the two things as part of a common strategy of the international community). The ICC Statute preamble itself suggests that the court represents moral cosmopolitanism in dealing with crimes that ‘affect the world community as a whole’ and describes the court as based on peoples united by common bond, with prosecution holding these bonds together – see Rome Statute of the International Criminal Court (opened for signature 17 July 1998, entered into force on 1 July 2002) 2187 UNTS 90. [↑](#footnote-ref-799)
800. V Popovski, ‘International Criminal Court: A Necessary Step Towards Global Justice’ (2000) 31 *Security Dialogue* 406, 408. [↑](#footnote-ref-800)
801. Western and Goldstein (n 26) 53, 55. [↑](#footnote-ref-801)
802. See Ch 2 s 1.1. [↑](#footnote-ref-802)
803. R Thakur, *The United Nations, Peace and Security* (CUP 2006) 251. Similar emotive language is used by Teson, Glennon and D’Amato, as shown in Ch 5 s 2.4 on their arguments in favour of humanitarian intervention. [↑](#footnote-ref-803)
804. Anne Orford draws attention to this language in her article, 'Muscular Humanitarianism: Reading the Narratives of the New Interventionism' (1999) 10 EJIL 679. More specifically within the English School, the liberal notion of the evolution of humankind is evident in Wheeler’s description of progress from the Cold War’s refusal to accept humanitarian intervention as a legitimate action within international society to his claim that ‘international society became more open to solidarist themes in the 1990s’ – see N Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (OUP 2000) 285. See also SN Macfarlane, CJ Thielking and T Weiss, ‘The Responsibility to Protect: is anyone interested in humanitarian intervention?’ (2004) 25 Third World Quarterly 977-992 at 977. [↑](#footnote-ref-804)
805. Ch 3 s 1.1. [↑](#footnote-ref-805)
806. Ch 2 s 1.1. [↑](#footnote-ref-806)
807. S Adams, ‘Responsibility to Protect’ speech to opening plenary session of the Responsibility to Protect in Theory and in Practice Conference (11-12 April 2013) Ljubljana. [↑](#footnote-ref-807)
808. J Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (OUP 2010). [↑](#footnote-ref-808)
809. Ch 3 s 3.2, s 4; Thakur and Weiss (n 30); T Weiss, ‘RtoP Alive and Well after Libya’ (2011) 25 Ethics & Intl Affairs 289. [↑](#footnote-ref-809)
810. G Evans, *The Responsibility to Protect: Ending Mass Atrocities* (Brookings 2008) 13. [↑](#footnote-ref-810)
811. Thakur and Weiss (n 30) 30. [↑](#footnote-ref-811)
812. See Ch 3 s 4.3 and fns therein, in particular N Tsagourias, ‘Whither the Veto: Responsibility to Protect and the Veto’ in V Sancin and M Kovič Dine (eds), *Responsibility to Protect in Theory and Practice* (GV Zalozba 2013) 157; A Gallagher, *Genocide and its Threat to Contemporary International Order* (Palgrave 2012); N Wheeler, ‘A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit' (2005) 2 J Intl L Intl R95. [↑](#footnote-ref-812)
813. Wheeler, ‘Common Humanity’ (n 45). [↑](#footnote-ref-813)
814. Wheeler, ‘Common Humanity’ (n 45); A Bellamy, *Responsibility to Protect: the global effort to end mass atrocities* (Polity 2009) 2. See also S Zifcak, ‘The Responsibility to Protect’ in in M Evans (ed), *International Law* (OUP 2010 *Responsibility to Protect*) 504. [↑](#footnote-ref-814)
815. K Annan, ‘Two Concepts of Sovereignty’ Address to the 54th Session of the UNGA (Press Release 20 September 1999) UN Doc SG/SM/7136. [↑](#footnote-ref-815)
816. Wheeler (n 45) citing H Shue, *Basic Rights: Subsistence, Affluence, and US Foreign Policy* (Princeton UP 1996). [↑](#footnote-ref-816)
817. Annan (n 48). [↑](#footnote-ref-817)
818. H Charlesworth, ‘International Law: A Discipline of Crisis’ (2002) 65 Modern Law Review 391; T Pogge, ‘Politics as Usual: What Lies Behind the Pro-poor Rhetoric?’ Yale University Lecture 2010, 12-13. [↑](#footnote-ref-818)
819. A Hurrell, R Foot and J Gaddis, *Order and Justice in International Relations* (OUP 2003) 42. See also A Bellamy, ‘Humanitarian Responsibilities and Interventionist Claims in International Society’ (2003) 29 Rev Intl Studies 329. [↑](#footnote-ref-819)
820. On Syria, see ‘Syria's Death Toll Now Exceeds 140,000: Activist Group’ Reuters (15 February 2014) at http://www.huffingtonpost.com/2014/02/15/syria-death-toll\_n\_4794010.html (accessed 20 February 2014). On Rwanda, see, eg, M Verpoorten, ‘The Death Toll of the Rwandan Genocide: A Detailed Analysis for Gikongoro Province’ (2002) Population 331. [↑](#footnote-ref-820)
821. Bellamy, ‘Humanitarian Responsibilities’ (n 52) 329. Charlesworth also refers to structural issues of global justice (at 382). [↑](#footnote-ref-821)
822. Bellamy, ‘Humanitarian Responsibilities’ (n 52) 332. [↑](#footnote-ref-822)
823. Charlesworth (n 51) 377. As Ch 2 (s 4.1) explained, this is one of the problems with international law’s instrumentalism, by making it relevant to policymakers – crises being a natural way of doing so. [↑](#footnote-ref-823)
824. S Pahuja, ‘Don't just do something, stand there! Humanitarian intervention and the drowning stranger’ (2005) 5 Human Rights & Human Welfare 51. [↑](#footnote-ref-824)
825. S Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law* (OUP 2003) 108, 220, for example quoting part of Tony Blair’s speech in advance of NATO’s bombing campaign in Kosovo. Alex Bellamy also describes the choice presented as being between standing by and intervening – see A Bellamy, ‘Humanitarian Responsibilities (n 52). See also A Orford, ‘Locating the International: Military and Monetary Interventions after the Cold War’ (1997) 38 Harvard ILJ 447 on the idea of action and inaction. [↑](#footnote-ref-825)
826. P Akhavan,’ Justice, Power, and the Realities of Interdependence: Lessons from the Milosevic and Hussein Trials’ (2005) 38 Cornell Intl LJ 973; J Rabkin, ‘Global Criminal Justice: An Idea Whose Time Has Passed’ (2005) 38 Cornell Intl LJ 763. [↑](#footnote-ref-826)
827. Teson (n 28). [↑](#footnote-ref-827)
828. Section 2.3 below offers some statistics in this regard. [↑](#footnote-ref-828)
829. See <http://www.un.org/millenniumgoals/> (accessed 1 January 2014). [↑](#footnote-ref-829)
830. Thomas Pogge criticises the MDGs themselves for their lack of specificity, arguing that the goals should be more specific rules – with specific agents responsible for delivering the goals – rather than generalised aspirations which no individual state feels responsible for failing to address. For example, they should specify how aid should be spent on basic social services. [↑](#footnote-ref-830)
831. See, eg, B Kouchner, Statement at <http://www.diplomatie.gouv.fr/en/country-files_156/kenya_209/situation-in-kenya-2008_6019/situation-in-kenya-statement-by-bernard-kouchner-january-31-2008_10767.html> (accessed 1 February 2014) and cited in ICRtoP, ‘The Crisis in Burma’ at <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-burma> (accessed 30 November 2013); V Todeschini, ‘The Place of Aggression in the Responsibility to Protect Doctrine’ Beyond Responsibility to Protect: Towards Responsible Use of International Law? Conference, Hull University 4-5 July 2013; M Ikeora, ‘The Responsibility to Protect Victims of Human Trafficking’ Beyond Responsibility to Protect: Towards Responsible Use of International Law? Conference, Hull University 4-5 July 2013; E Lawson, ‘Should there be a Global Harmonization of Laws Relating to Child Sexual Exploitation to Include Sentencing Policy and the Treatment and Rehabilitation of Children During and Following Trial?’ Beyond Responsibility to Protect: Towards Responsible Use of International Law? Conference, Hull University 4-5 July 2013. [↑](#footnote-ref-831)
832. Gallagher (n 45) 7. [↑](#footnote-ref-832)
833. Scheffer (n 29) 87. [↑](#footnote-ref-833)
834. Scheffer (n 29) 98. [↑](#footnote-ref-834)
835. Dieng (n 8). The limited focus of the RtP is a source of criticism for some who believe there is no justification for the choice of its 4 crimes, which are not necessarily [↑](#footnote-ref-835)
836. Evans, *The Responsibility to Protect* (n 43). [↑](#footnote-ref-836)
837. Evans, *The Responsibility to Protect* (43) 59-60; Ch 3 s 4.1. [↑](#footnote-ref-837)
838. See, eg, T Meron, ‘On a Hierarchy of International Human Rights’ (1986) 80 AJIL 1; WM Reisman, ‘Sovereignty and Human Rights in Contemporary International Law’ (1990) 84 AJIL 872; P Malanczuk, *Humanitarian Intervention and the Legitimacy of the Use of Force* (Het Spinhuis 1993); M Kahler, ‘Legitimacy, Humanitarian Intervention, and International Institutions’ (2011) 10 Politics, Philosophy & Economics 20-45. [↑](#footnote-ref-838)
839. R Keohane, ‘Introduction’ in JL Holzgrefe and R Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (CUP 2003) 1. [↑](#footnote-ref-839)
840. F Fukuyama, ‘The End of History’ (Summer 1989) National Interest. [↑](#footnote-ref-840)
841. T Franck, ‘The Emerging Right to Democratic Governance’ (1992) 86 AJIL 47. See also A D’Amato, ‘The Invasion of Panama was a Lawful Response to Tyranny’ (1990) 84 AJIL 516; AM Slaughter, ‘International Law in a World of Liberal States’ (1995) 6 EJIL 509. [↑](#footnote-ref-841)
842. Teson (n 28) 2; 102. [↑](#footnote-ref-842)
843. J Rawls, *A Theory of Justice* (Harvard UP 1999) 61. [↑](#footnote-ref-843)
844. A Sen, *Development as Freedom* (OUP 1999). [↑](#footnote-ref-844)
845. See s 2.2 above. [↑](#footnote-ref-845)
846. ICISS (n 2) 11 [2.1]; 19 [3.2]. [↑](#footnote-ref-846)
847. ICISS (n 2) 20 [3.4], 22 [3.22]. [↑](#footnote-ref-847)
848. ICISS (n 2) 19 [3.2]. [↑](#footnote-ref-848)
849. ICISS (n 2) 23 [3.22]; D Chandler, ‘The Responsibility to Protect: Imposing the "Liberal Peace"?’ (2004) 11 Intl Peacekeeping 59-81 at 62. [↑](#footnote-ref-849)
850. Ki-moon (n 5) 16 [32]. [↑](#footnote-ref-850)
851. Annan (n 48). [↑](#footnote-ref-851)
852. Ch 6 s 4.3 11. [↑](#footnote-ref-852)
853. Ch 6 s 4.3; Hurrell, Foot and Gaddis (n 52) 41. [↑](#footnote-ref-853)
854. K Annan, ‘In Larger Freedom: Development, Security and Human Rights for All’ Report of the Secretary General (21 March 2005) UN Doc A/59/05 35. [↑](#footnote-ref-854)
855. T Pogge, ‘Priorities of global justice’ (2001) 32 Metaphilosophy 20. [↑](#footnote-ref-855)
856. JD Fearon and DD Laitin, ‘Ethnicity, Insurgency, and Civil War’ (2003) 97 American Political Science Rev 75; S Suzuki and V Krause, ‘Trade openness, economic development and civil war onset in the post-colonial world, 1950–1992’ (2005) 5 Conflict, Security and Development 23. See more generally, V Mehta, *The Economics of Killing* (Pluto Press 2012). [↑](#footnote-ref-856)
857. J Richardson, ‘Contending Liberalisms: Past and Present’ (1997) 3 Eur J Intl R 25. [↑](#footnote-ref-857)
858. J Galtung, *Peace by Peaceful Means* (Sage 1996) 6; S Zizek, *Violence* (Profile 2009). [↑](#footnote-ref-858)
859. A Bellamy, *Responsibility to Protect: the global effort to end mass atrocities* (Polity 2009) 99-100. [↑](#footnote-ref-859)
860. P Niemelä, *The Politics of Responsibility to Protect: Problems and Prospects* (The Erik Castrén Institute of International Law and Human Rights 2008) 68. [↑](#footnote-ref-860)
861. ICISS (n 2). See Ch 6 ss 2 and 3 on problems with liberal democracy as a coherent concept. [↑](#footnote-ref-861)
862. A Orford, *Reading Humanitarian Intervention* (CUP 2003) 136. [↑](#footnote-ref-862)
863. WM Reisman, ‘Some Lessons From Iraq: International Law and Domestic Politics’ (1991) 16 Yale J Intl L 203; L Gordenker and T Weiss, ‘The Collective Security Idea and Changing World Politics’ in T Weiss (ed), *Collective Security in a Changing World* (Lynne Reiner 1993) 14; Teson, ‘Collective Humanitarian Intervention’ (n 60) 342. [↑](#footnote-ref-863)
864. M Doyle, ‘The New Interventionism’ (2001) 32 Metaphilosphy 212. [↑](#footnote-ref-864)
865. Committee on Economic, Social and Cultural Rights, General Comments No 12 [36]; No 14 [39] and No 15 [31], [33] and [34] refer to the responsibility of all states parties to respect, protect and facilitate the enjoyment of economic, social and cultural rights in other countries. [↑](#footnote-ref-865)
866. Pogge (n 88) 7, citing UNDP, Development Report (OUP 2000) 218. [↑](#footnote-ref-866)
867. Pogge (n 88) 20; T Pogge, ‘Politics as Usual: What Lies Behind the Pro-poor Rhetoric?’ Yale University Lecture 2010, 12. [↑](#footnote-ref-867)
868. C Short, Keynote Speech to the Opening of the Sheffield Institute for International Development 24 April 2013. [↑](#footnote-ref-868)
869. This was how the situation was portrayed by US Secretary of State Warren Carpenter and also Henry Kissinger – see Western and Goldstein (n 26) 50-51. See also A Orford, ‘Locating the International’ (n 58); A Orford, *Reading Humanitarian Intervention* (n 96) 18; S Woodward, *The Balkan Tragedy: chaos and dissolution after the Cold war* (Brookings 1995) 3. [↑](#footnote-ref-869)
870. Orford, ‘Locating the International’ (n 58) 453; Woodward (n 102) 82-88. See also James Richardson’s more general critique of IFI ‘shock therapy’ as a selective, context-free interpretation of East Asia’s initial development success. Richardson points out that the UNDP statistics show that states with very different internal constitutions (including different state-market relationships) have achieved good levels of development, so the model pushed by IFIs cannot be taken to be a useful blueprint in this regard. See Richardson (n 109) 20, 22. [↑](#footnote-ref-870)
871. Orford, ‘Locating the International’ (n 58) 454; Bellamy, ‘Humanitarian Responsibilities’ (n 52) 330. [↑](#footnote-ref-871)
872. B Jones, ‘Intervention without Borders: Humanitarian Intervention in Rwanda, 1990-94’ (1995) 24 Millennium J Intl Studies 225. [↑](#footnote-ref-872)
873. RH Robbins, *Global Problems and the Culture of Capitalism* (Allyn and Bacon 2002) 269; P Verwimp, ‘The political economy of coffee, dictatorship, and genocide’ (2003) 19 Eur J Political Economy 161. [↑](#footnote-ref-873)
874. P Uvin, *Aiding Violence: The Development Enterprise in Rwanda* (Kumarian Press 1998) 107, 136, 143. [↑](#footnote-ref-874)
875. M Mamdani, *When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda* (Princeton UP 2001) 13, 42, 80; M Mamdani, *Saviours and Survivors: Darfur, Politics and the War on Terror* (Verso 2009) 6, 15, 59, 271. [↑](#footnote-ref-875)
876. D Zolo, *Invoking Humanity: war, law and global order* (Continuum 2002) 124. D Robinson, ‘Serving the Interests of Justice: Amnesties, Truth Commissions and the ICC’ (2003) 14 EJIL 481; ‘International justice: A warrant for Bashir’ The Economist (5 March 2009) at <<http://www.economist.com/node/13235033>> accessed 7 September 2011. [↑](#footnote-ref-876)
877. Bellamy, ‘Humanitarian Responsibilities’ (n 52) 329. See also A de Waal, ‘Darfur and the Failure of the Responsibility to Protect’ (2007) 83 Intl Affairs 1039. [↑](#footnote-ref-877)
878. ICISS (n 2) 19 [3.3-3.4]. [↑](#footnote-ref-878)
879. RW Murray, *Routledge* *Handbook of the Responsibility to Protect* (Routledge 2013) 70. [↑](#footnote-ref-879)
880. P Alston, ‘The Security Council and human rights: lessons to be learned from the Iraq-Kuwait crisis and its aftermath’ (1991) 13 Australian YBk Intl L 107. [↑](#footnote-ref-880)
881. Franceschet (n 30) 245. [↑](#footnote-ref-881)
882. Ch 3 s 3.2. [↑](#footnote-ref-882)
883. J Welsh, ‘A normative case for pluralism: reassessing Vincent’s views on humanitarian intervention’ (2011) 87 Intl Affairs 1203. [↑](#footnote-ref-883)
884. M Mamdani, Responsibility to Protect or Right to Punish? (2010) 4 J Intervention and Statebuilding 53. [↑](#footnote-ref-884)
885. See, eg, F Megret, ‘The ICC, R2P’ (n 32) 34; F Megret, ‘Beyond the ‘Salvation’ Paradigm: Responsibility To Protect (Others) vs the Power of Protecting Oneself’ (2009) 40 Security Dialogue 580. [↑](#footnote-ref-885)
886. R Cooper, ‘Letter from the Convenor’ R2P Coalition Website, at http://r2pcoalition.org/content/view/27/52/ (accessed 1 February 2014). [↑](#footnote-ref-886)
887. Orford makes the point that our feeling the need to ‘do something’ is part of a ‘hero narrative’ and has the consequence of increased violence, as we are more often inclined to go to the rescue. [↑](#footnote-ref-887)
888. Akhavan (n 69) 975. Of course, the ‘international community’ is rarely brought before the court for its own breaches of the laws of war or the *jus ad bellum*, whether in situations such as the bombing of Dresden or the more recent invasion of Iraq in 2003. See, eg, Zolo (n 109). [↑](#footnote-ref-888)
889. T Weiss, *Humanitarian Intervention* (Polity 2007) 153. [↑](#footnote-ref-889)
890. P Cunliffe. ‘Dangerous duties: power, paternalism and the “responsibility to protect”’ (2010) 36 Rev Intl Studies 80. [↑](#footnote-ref-890)
891. Cunliffe, ‘Dangerous duties’ (n 123) 81. [↑](#footnote-ref-891)
892. P Niemelä (n 93) iii. [↑](#footnote-ref-892)
893. A Orford, ‘On International Legal Method’ (2013) 1 London Rev Intl Law 183. Furthermore, if ‘coalitions of the willing’ are the only way of carrying out an action then it will not really be a pure ‘UN’ action anyway – Korea in 1953 and the first Gulf War in 1990-1991 may have given us false hope regarding the possibility of coalitions as the way forward. [↑](#footnote-ref-893)
894. Megret, ‘The ICC, R2P’ (n 32) 22. Similarly, the ICC is viewed as merely exercising neutral ‘police functions against a few psychopaths’ rather than exerting some more fundamental ideological political pressure ‘in the midst of profoundly historical events’ – see Megret, ‘The ICC, R2P’ (n 32) 34. [↑](#footnote-ref-894)
895. Orford, *Reading Humanitarian Intervention* (n 96) 10. [↑](#footnote-ref-895)
896. A de Waal, ‘No Such Thing as Humanitarian Intervention: Why We Need to Rethink How to Realize the "Responsibility to Protect" in Wartime’ Harvard International Review (21 March 2007) 1 at http://hir.harvard.edu/no-such-thing-as-humanitarian-intervention (accessed 3 January 2013). [↑](#footnote-ref-896)
897. Evans, *The Responsibility to Protect* (n 43) 56-59. [↑](#footnote-ref-897)
898. T Weiss, ‘To intervene or not to intervene? A contemporary snap-shot’ (2002) 9 Canadian Foreign Policy 141. [↑](#footnote-ref-898)
899. J Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (OUP 2010) 250. [↑](#footnote-ref-899)
900. T Weiss, *Military-Civilian Interaction: Humanitarian Crises and the Responsibility to Protect* (Rowman and Littlefield 2005) 201. [↑](#footnote-ref-900)
901. Evans, *The Responsibility to Protect* (n 43) 285. [↑](#footnote-ref-901)
902. ICISS (n 2) 29 [4.5]. [↑](#footnote-ref-902)
903. Thakur and Weiss (n 33) 46. [↑](#footnote-ref-903)
904. E Herring, ‘From Rambouillet to the Kosovo Accords: NATO’s War Against Serbia and its Aftermath’ in K Booth (ed), *The Kosovo Tragedy: The Human Rights Dimension* (Frank Cass 2001) 225, 229. See also D Levine, ‘Some Concerns about the responsibility not to veto’ (2011) 3 Global Responsibility to Protect 323; Chesterman (n 58) 224 – particularly on the relatively limited number of refugees before the NATO campaign, rapidly rising to 800,000 within a short time after the bombing commenced. R Falk, ‘Reflections on the Kosovo War’ (Autumn 1999) 1 Global Dialogue 93; ‘The Future of Kosovo: an Indefinite NATO Presence’ (January 2000) 6 IISS Strategic Comments 1; I Brownlie and C Apperley, ‘Kosovo Crisis Inquiry: Memorandum On The International Law Aspects’ (2000) 49 ICLQ 878; I Brownlie and C Apperley, ‘Kosovo Crisis Inquiry: Memorandum On The International Law Aspects’ (2000) 49 ICLQ 910. [↑](#footnote-ref-904)
905. Letter dated 9 November 2011 from the Permanent Representative of Brazil at the Security Council and General Assembly Debate, UN docs A/66/551; S/2011/701. [↑](#footnote-ref-905)
906. A Roberts, ‘NATO’s “Humanitarian War” over Kosovo’ (1999) 41 Survival 102. [↑](#footnote-ref-906)
907. Murray (n 112) 114. [↑](#footnote-ref-907)
908. Thérèse O’Donnell and Craig Allan make a similar point in relation to Cyclone Nargis in Myanmar – the discussion of the worst case scenario (of a non-liberal regime refusing aid) tends to blot out discussion of many less extreme times when it might be perfectly reasonable for a regime to be suspicious of, and refuse, international ‘help’. See C Allan and T O’Donnell, ‘A Call to Alms?: Natural Disasters, R2P, Duties of Cooperation and Uncharted Consequences’ (2012) 17 J Conflict Security L 337. [↑](#footnote-ref-908)
909. Wheeler, Saving Strangers (n 37) 34. [↑](#footnote-ref-909)
910. A Peters, ‘The Security Council's Responsibility to Protect’ Intl Organisations L Rev 3. [↑](#footnote-ref-910)
911. L Arbour, ‘The responsibility to protect as a duty of care in international law and practice’ (2008) 34 Rev Intl Studies 450. [↑](#footnote-ref-911)
912. C Toro, ‘R2P without UN Security Council Mandate – Subsidiary Action as the Possible Way Out of Institutional Deadlock?’ in V Sancin and M Kovič Dine (eds), *Responsibility to Protect in Theory and Practice* (GV Zalozba 2013) 239. See also C Henderson, ‘R2P without UN Security Council Mandate - Subsidiary Action as the Possible Way out of Institutional Deadlock?’ in V Sancin and M Kovič Dine (eds), *Responsibility to Protect in Theory and Practice* (GV Zalozba 2013) 203; Tsagourias (n 45). [↑](#footnote-ref-912)
913. See, eg, O Corten and V Koutroulis, ‘The Illegality of Military Support to Rebels in the Libyan War: Aspects of jus contra bellum and jus in bello’ (2013) 18 J Conflict Security L 95; A Bellamy and P Williams, ‘The New Politics of Protection’ (2011) 87 Intl Affairs 846; S Zifcak, ‘The Responsibility to Protect after Libya and Syria’ (2012) 13 Melbourne J Intl L 11. [↑](#footnote-ref-913)
914. Ch 3 s 4.1; Western and Goldstein (n 26) 48-49. [↑](#footnote-ref-914)
915. *Island of Palmas (United States v The Netherlands)* 1928 2 UN Rep Intl Arbitral Awards 829. Max Huber’s 1928 US v Netherlands arbitration decision was based on effective control (occupation) of the island, ‘noting that such occupation has a corollary: the duty to protect rights of foreigners and of local inhabitants. Only someone in effective control can provide that protection’. See also Niemelä (n 93). [↑](#footnote-ref-915)
916. Megret, ‘The ICC, R2P’ (n 32) 35; Corten (n 146); S Mohamed, ‘Taking Stock of the Responsibility to Protect’ (2012) 48 Stanford J Intl L 319 at fn 8. [↑](#footnote-ref-916)
917. Megret, ‘The ICC, R2P’ (n 32) 36; ICISS (n 2) 11 [2.1]; Ch 3 s 1.1. [↑](#footnote-ref-917)
918. Mohamed (n 149) 320; [P Beaumont, ‘One year on: chaotic Libya reveals the perils of humanitarian intervention](http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/4005-peter-beaumont-the-observer-one-year-on-chaotic-libya-reveals-the-perils-of-humanitarian-intervention)’ *The Observer* (18 February 2012) at http://www.theguardian.com/commentisfree/2012/feb/19/peter-beaumont-libya-intervention-gaddafi (accessed 20 February 2014). [↑](#footnote-ref-918)
919. Evans, *The Responsibility to* Protect (n 43) 290. [↑](#footnote-ref-919)
920. Weiss, *Humanitarian Intervention* (n 122) 89. [↑](#footnote-ref-920)
921. ICISS (n 2) foreword vii; 288-289 (emphasis added). [↑](#footnote-ref-921)
922. Chesterman (n 58) 2001 108. This can also be seen in the international criminal justice system – see Akhavan (n 69). [↑](#footnote-ref-922)
923. Eg, M Notaras and V Popovski, ‘The Responsibility to Protect’ United Nations University (5 April 2011) (concept); Evans (n 12) (idea, new norm, concept); A Bellamy, ‘The Responsibility to Protect – Five Years On’ (2010) 24 Ethics & Intl Affairs 143 (political commitment); UN High Level Panel (n 6) 65-66 [201-202] (emerging norm); M Wood, ‘The Responsibility to Protect’ speech to the opening plenary of the Responsibility to Protect in Theory and in Practice Conference (11-12 April 2013) Ljubljana (political push). For a summary, see A Bellamy, *Responsibility to Protect: the global effort to end mass atrocities* (Polity 2009) introduction. [↑](#footnote-ref-923)
924. E Luck, ‘Sovereignty, Choice, and the Responsibility and the Responsibility to Protect’ (2009) 1 Global Responsibility to Protect 13; N Schriver, ‘The Responsibility to Protect’ speech to the opening plenary session of the Responsibility to Protect in Theory and in Practice Conference (11-12 April 2013) Ljubljana. [↑](#footnote-ref-924)
925. Thakur and Weiss (n 30) 26. [↑](#footnote-ref-925)
926. Thakur and Weiss (n 30). N Chomsky, ‘The skeleton in the closet: the responsibility to protect in history’ in P Cunliffe (ed), *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice* (Routledge 2011) 12-13; Chandler (n 82) 20-23; A Bellamy and R Reike, ‘The Responsibility to Protect and International Law’ (2010) 2 Global Responsibility to Protect 267. See also A Orford, International Authority and the Responsibility to Protect (CUP 2013) 2; Bellamy, *Responsibility to Protect* (n 156) 195. [↑](#footnote-ref-926)
927. Art 38 Statute of the International Court of Justice (26 June 1945) 33 UNTS 993; Niemelä (n 112); S Carvin, ‘A Responsibility to Reality: A Reply to Louise Arbour’ (2010) 36 Rev Intl Studies 48. [↑](#footnote-ref-927)
928. On humanitarian intervention, see Chesterman (n 58). On RtP see, eg, N Zupan ‘The RtoP: The Soft Law Riddle and the Role of the United Nations’ in V Sancin and M Kovič Dine (eds), *Responsibility to Protect in Theory and Practice* (GV Zalozba 2013) 541; C Stahn, ‘Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?’ (2007) 101 AJIL 99 (noting that the question of authorisation has been consistently referred back to the Security Council, demonstrating that the law on exceptions to Art 2(4) of the UN Charter remains unchanged); D Amneus, ‘Has Humanitarian Intervention Become Part of the International Law under the Responsibility to Protect Doctrine?’ in Nollkaemper and Hoffmann (n 108) 157 (arguing that there has been no change in customary international law); A Hehir, ‘The Responsibility to Protect and International Law’ in P Cunliffe (ed), *Critical perspectives on the responsibility to correct: interrogating theory and practice* (Routledge 2011) 84. [↑](#footnote-ref-928)
929. [↑](#footnote-ref-929)
930. Theresa Reinold gives the example that ‘China leads a group of countries who continue to stress that the RtP should be exercised in accordance with traditional notions of non-intervention and host state consent, which of course would render the idea of R2P entirely meaningless’.Reinold (n 196) 65. See also C Focarelli, ‘The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine’ (2008) 13 J Conflict Security L 191; P Hilpold, ‘Intervening in the Name of Humanity: R2P and the Power of Ideas’ (2012) 17 J Conflict Security L 49; E Heinz, ‘Humanitarian Intervention, the Responsibility to Protect, and Confused Legitimacy’ (2011) 11 Human Rights & Human Welfare 17. See also M Wood, ‘the Responsibility to Protect’ remarks at the opening plenary of The Responsibility to Protect in Theory and in Practice, University of Ljubljana 11-12 April 2013. [↑](#footnote-ref-930)
931. J Brunnée and S Toope, ‘Norms, Institutions and UN Reform: The Responsibility to Protect’ (2005) 2 J Intl L Intl Rel 121; E Strauss, ‘A Bird in the Hand is Worth Two in the Bush – On the Assumed Legal Nature of the Responsibility to Protect’ (2009) 1 Global Responsibility to Protect 293; E Luck, ‘Sovereignty, Choice, and the Responsibility and the Responsibility to Protect’ (2009) 1 Global Responsibility to Protect 11. [↑](#footnote-ref-931)
932. Peters (n 143) 3-4, 18-19. [↑](#footnote-ref-932)
933. A Peters, ‘The Responsibility to Protect and the Permanent Five: The Obligation to Give Reasons for a Veto’ in Nollkaemper and Hoffmann (n 108) 199. [↑](#footnote-ref-933)
934. RwP (n 138). [↑](#footnote-ref-934)
935. Teson (n 28); Glennon (n 93). [↑](#footnote-ref-935)
936. Thakur and Weiss (n 30); Megret, ‘Salvation’ (n 118) 30. [↑](#footnote-ref-936)
937. Weiss (n 42). [↑](#footnote-ref-937)
938. Chandler (n 82); JL Cohen, ‘Whose sovereignty? Empire versus international law’ (2004) 18 Ethics & Intl Affairs 1. [↑](#footnote-ref-938)
939. Adams (n 40). [↑](#footnote-ref-939)
940. Zupan (n 160) 547. [↑](#footnote-ref-940)
941. G Triggs, ‘Public International Law: is it fit for purpose?’ (2007) 7 Legal Information Management 118. [↑](#footnote-ref-941)
942. Triggs (n 174) 119. See also D Bethlehem, ‘International Law And The Use Of Force: The Law As It Is And As It Should Be’ written evidence submitted to the House of Commons Foreign Affairs Committee (Seventh Report 2004). At [2.2] – ‘there are significant shortcomings in the traditional body of legal rules relevant to the use of armed force ... Recent events ... pose a challenge to the adequacy and coherence of the law in this area’; at [6] he summarises the main question for the Committee as ‘Is international law adequate to the task required of it in contemporary international society?’. [↑](#footnote-ref-942)
943. On cyber war, see the special edition of the Journal of Conflict and Security Law, in particular M O’Connell, ‘Cyber Security without Cyber War’ (2012) 17 J Conflict Security L 187. On terrorism, see eg O Okafor, ‘Newness, Imperialism, And International Legal Reform In Our Time: A Twail Perspective’ (2005) 43 Osgoode Hall LJ 171. [↑](#footnote-ref-943)
944. M O’Connell, ‘Responsibility to Peace: A Critique of R2P’ in P Cunliffe (ed), *Responsibility to Protect: Critical Perspectives* (Routledge 2011). This echoes RJ Vincent’s earlier view that humanitarian intervention would allow significantly increased violence overall – see, eg, RJ Vincent, Human Rights and International Relations (CUP 1986). See also Speech given by President Dilma Rousseff during the general debate, 66th UN General Assembly Session (21 September 2011) <http://www.un.int/brazil/speech/11d-Pr-Dilma-Roussef-opening-of-the-66th-gerneral-assembly.html> (accessed 10 July 2013). On Kosovo see n 137; see also Chesterman (n 58) 224 – particularly on the relatively limited number of refugees before the NATO campaign, rapidly rising to 800,000 within a short time after the bombing commenced. R Falk, ‘Reflections on the Kosovo War’ (Autumn 1999) 1 Global Dialogue 93; ‘The Future of Kosovo: an Indefinite NATO Presence’ (January 2000) 6 IISS Strategic Comments 1; I Brownlie and C Apperley, ‘Kosovo Crisis Inquiry: Memorandum On The International Law Aspects’ (2000) 49 ICLQ 878; I Brownlie and C Apperley, ‘Kosovo Crisis Inquiry: Memorandum On The International Law Aspects’ (2000) 49 ICLQ 910. [↑](#footnote-ref-944)
945. Orford (n 96) 12. [↑](#footnote-ref-945)
946. Chesterman (n 58) 222. [↑](#footnote-ref-946)
947. Megret, ‘Salvation’ (n 118) 576. 578. [↑](#footnote-ref-947)
948. Cunliffe, ‘Dangerous duties’ (n 123) 80 fn 6. See also Mohamed (n 149). [↑](#footnote-ref-948)
949. ND White, ‘The Legality of Bombing in The Name of Humanity’ (2000) 5 J Conflict Security Law 27. [↑](#footnote-ref-949)
950. Cited by M Koskenniemi, ‘International Law in Europe: Between Tradition and Renewal’ (2005) 16 EJIL 113; Zupan (n 161); V Bilkova, ‘Responsibility to Protect and Humanitarian Intervention’ Responsibility to Protect in Theory and Practice, 11-12 April 2013, Ljubljana; Henderson (n 145); Toro (n 145); B Møller, ‘R2P and the Vetoes in the Security Council (SC): Syria versus Libya’ in V Sancin and M Kovič Dine (eds), *Responsibility to Protect in Theory and Practice* (GV Zalozba 2013); Tsagourias (n 45) 173. [↑](#footnote-ref-950)
951. J Williams, ‘Pluralism, Solidarism and the Emergence of world society in English School Theory’ (2005) 19 International Relations 19. [↑](#footnote-ref-951)
952. J Williams, ‘Territorial borders, toleration and the English School’ (2002) 28 Rev Intl Studies 754. Williams is criticising Locke and Mill’s (cited by Jackson at 139) version of toleration – for example, Mill values diversity because it aids progress – but this progress is viewed as naturally being towards liberal world. This is something which is likely to decrease diversity, rather than value it for its own sake (at 746). He also says ‘[d]iversity needs to be tolerated in the sense of being positively valued and engaged with as part of an open politics, rather than reluctantly forborne as a result of circumstance or necessity’ (at 738). See also M Canovan, ‘Friendship, truth and politics: Hannah Arendt and toleration’ in S Mendus (ed), *Justifying Toleration: Conceptual and Historical Perspectives* (CUP 1988) 178.This is to be contrasted with Jackson’s concept of toleration, which is based on Locke and Mill, who advocate toleration either as a practical matter because coercion is difficult (Locke), or because tolerating diversity will eventually lead to progress towards the liberal ideal, in which there is gradually less disagreement and more consensus on uncontested truths (Mill). [↑](#footnote-ref-952)
953. Williams, ‘Territorial borders’ (n 2) 748. [↑](#footnote-ref-953)
954. J Mayall, *World Politics: Progress and Its Limits* (Wiley 2000) 14. [↑](#footnote-ref-954)
955. Individuals are not, and do not need to be, in a constant search for the truth and for agreement on this, as Mill hopes – one can instead celebrate the unending discourse on difference that is fundamental to politics (rather than accepting with disappointment the difficulty of coercion, as Locke does). See M Canovan, ‘Friendship, truth and politics: Hannah Arendt and toleration’ in S Mendus (ed), *Justifying Toleration: Conceptual and Historical Perspectives* (CUP 1988) 182-184. [↑](#footnote-ref-955)
956. Williams, ‘Territorial borders (n 2) 749, 751; A Linklater, *The transformation of political community* (Polity 1998) 27. [↑](#footnote-ref-956)
957. Ch 6 s s 4.2 and the fns therein, especially J Alvarez, ‘Do Liberal States Behave Better? A Critique of Slaughter's Liberal Theory’ (2001) 12 EJIL 183. [↑](#footnote-ref-957)
958. Williams argues that human discourse should not be limited to international ethics and diplomacy in the hands of some 2,000 policy elites. Williams, ‘Territorial borders’ (n 2) 752. [↑](#footnote-ref-958)
959. Ch 1 s 4. [↑](#footnote-ref-959)
960. R Little, ‘The English School's Contribution to the Study of International Relations’ (2000) 6 Eur J Intl R 411. See also Ch 4 s 2. [↑](#footnote-ref-960)
961. B Barry, ‘International Society from a Cosmopolitan Perspective’ in D Mapel and T Nardin (eds), *International* *Society* (Princeton UP 1998); C Beitz, ‘Cosmopolitan Liberalism and the State System’ in C Brown (ed), *Political Restructuring in Europe: Ethical Perspectives* (Routledge 1994) 119; L Cabrera, *Political Theory and Global Justice: A Cosmopolitan Case for the World State* (Routledge 2004); S Caney, ‘Cosmopolitanism and the State’ (2008) 56 Political Studies 487; R Marchetti, *Global Democracy: For and Against: Ethical Theory, Institutional Design and Social Struggles* (Routledge 2008); JA Yunker, *Political Globalization: A New Vision of Federal World Government* (UP of America 2007). [↑](#footnote-ref-961)
962. C Reus-Smit, *The Moral Purpose of the State* (Princeton UP 2009) 9; T Nardin, ‘International Political Theory and the Question of Justice’ (2006) 82 Intl Affairs 450; GW Brown, ‘Bringing the State Back into Cosmopolitanism: The Idea of Responsible Cosmopolitan States’ (2011) 9 Political Studies Review 53. [↑](#footnote-ref-962)
963. This narrow coercive nature is described by Buzan as ‘crusading universalism’; B Buzan, *From International to World Society* (CUP 2004) 27. Angie, for example, criticises de Vitoria’s use of cosmopolitanism to justify the conversion and subjugation of the local South American Indian population – see, eg, A Angie, *Sovereignty and the Making of International Law* (CUP 2007). [↑](#footnote-ref-963)
964. Buzan (n 13) 27. [↑](#footnote-ref-964)
965. A Linklater, *The transformation of political community* (Polity 1998) 5. [↑](#footnote-ref-965)
966. J Williams, ‘Pluralism’ (n 1) 32. [↑](#footnote-ref-966)
967. I Clark, *International Legitimacy and World Society* (OUP 2007) 32; Buzan (n 13) 41. At a more descriptive level, Buzan recognises that although world society is often associated with cosmopolitan universalism, it can also be highly fragmented and therefore pluralist – see Buzan (n 13) 133. He goes on to note that world society is so fragmented and diverse that it is *more* likely to be pluralist than solidarist, and in fact it is *more* pluralist than an international society of states – because the number of states is far fewer than the number of individuals, states actually have greater potential to display solidarism than individuals. See Buzan(n 13) 58, 126. J Williams, ‘Pluralism’ (n 1) 31. [↑](#footnote-ref-967)
968. T Nardin, *Law, Morality and the Relations of States* (Princeton UP 983). [↑](#footnote-ref-968)
969. B Roth, ‘Responses’ (1996) 37 Harvard Intl LJ 236; See also B Roth, ’Democratic Intolerance: Observations on Fox and Nolte’ in G Fox and B Roth (eds), *Democratic Governance and International Law* (CUP 2000). [↑](#footnote-ref-969)
970. T Reinold, ‘The responsibility to protect – much ado about nothing?’ (2010) 36 Rev Intl Studies 59. [↑](#footnote-ref-970)
971. M Koskenniemi, *The Gentle Civiliser of Nations: The Rise and Fall of International Law* 1870-1960 (CUP 2001) 130. [↑](#footnote-ref-971)
972. Gerry Simpson makes much the same point in relation to international law in his description of ‘Charter liberalism’, equated with ‘classical liberalism’ and toleration, diversity and sovereign equality between states regardless of their domestic political constitution. See G Simpson, ‘Two Liberalisms’ (2001) 12 EJIL 539. [↑](#footnote-ref-972)
973. B Roth, *Governmental Illegitimacy in International Law* (OUP 2000) xi. [↑](#footnote-ref-973)
974. M Koskenniemi, ‘The Police in the Temple – Order, Justice and the UN: A Dialectical View’ (1995) 6 EJIL 338. [↑](#footnote-ref-974)
975. Koskenniemi, ‘The Police in the Temple’ (n 24) 338. [↑](#footnote-ref-975)
976. Koskenniemi, ‘The Police in the Temple’ (n 24) 339. [↑](#footnote-ref-976)
977. D Archibugi, ‘Immanuel Kant, Cosmopolitan Law and Peace’ (1995) 1 Eur J Intl R 429. [↑](#footnote-ref-977)
978. Williams, ‘Territorial borders’ (n 2) 755. [↑](#footnote-ref-978)
979. Letter dated 9 November 2011 from the Permanent Representative of Brazil at the Security Council and General Assembly Debate, UN docs A/66/551; S/2011/701; S Chesterman, ‘“Leading from Behind”: The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention After Libya’ (2011) 25 Ethics & Intl Affairs 279–285; S Chesterman, *Just War or Just Peace?* *Humanitarian Intervention and International Law* (OUP 2003). [↑](#footnote-ref-979)
980. ND White, ‘The Legality Of Bombing In The Name Of Humanity’ (2000) 5 J Conflict Security L 27. [↑](#footnote-ref-980)