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# Dangerous duties: power, paternalism and the ‘responsibility to protect’

PHILIP CUNLIFFE

**Abstract.** This article provides a critique of Louise Arbour’s article ‘The responsibility to protect as a duty of care in international law and practice’. Proceeding through criticisms of Arbour’s specific propositions, the thesis is advanced that the perverse effect of the ‘duty of care’ is to undermine political accountability and by extension, political responsibility. It is argued that this is an imperfect duty that no specific agent is obliged to fulfil. This poses insuperable problems of agency that are exposed in Arbour’s efforts to actualise the doctrine. As there is no mechanism for enacting the ‘duty of care’, I argue that it will be powerful states that will determine the conditions under which the ‘responsibility to protect’ is discharged. This means that the ‘duty’ will remain tied to the prerogatives of states. In order to resolve this problem of agency, it will be shown how Arbour is forced to replace the idea of law with the principle of ‘might makes right’. The ‘duty of care’ is also shown to have regressive effects on the domestic sphere: the demand that states be made accountable to the international community ends up making states responsible for their people rather than to their people.

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## Introduction

In recent years the idea of the ‘responsibility to protect’ has won widespread backing around the globe. The doctrine articulates a link between the management of violence by the international community and a vision of the fundamental elements of legitimate domestic rule. In her article ‘The responsibility to protect as a duty of care in international law and practice’ Louise Arbour argues that the ‘vitality’ of the doctrine ‘flows from its inherent soundness and justice’.<sup>1</sup> I will argue here that the doctrine is neither sound nor just and that its vitality, such as it is, stems not from its capacity to protect the wretched of the earth but from the opportunity it offers states to extend the writ of their power both over their own peoples and over other (weaker) states. Arbour’s article is a useful entry point into the debate. The rigour of Arbour’s attempt to translate the ‘responsibility to protect’ into a legally actionable ‘duty of care’ allows us to pursue the problems with the doctrine to their logical conclusion. Criticisms of specific points in Arbour’s argument establish a foundation for a more general critical discussion of the doctrine.

<sup>1</sup> Louise Arbour, ‘The responsibility to protect as a duty of care in international law and practice’, *Review of International Studies*, 34 (2008), p. 448.

In its most basic form, the doctrine holds that if a state is unable or unwilling to discharge its obligation to protect individuals against gross human rights violations then the 'onus of [such] protection falls by default upon the broader international community, which is then called upon to step in and help, or [...] even coerce States to put in place the requisite web of protection'.<sup>2</sup> According to Arbour, the appeal of the doctrine lies in its promise to privilege the suffering of ordinary people above the interests and scheming of states. The doctrine will strengthen the regime of international legal protection that is supposed to shield imperilled humanity against 'state-sponsored slaughter'.<sup>3</sup> I will argue that the 'responsibility to protect' threatens to repress popular sovereignty and in so doing, makes the exercise of power less rather than more responsible.

In her article Arbour identifies two types of opposition to the doctrine. The first is those who claim we are 'powerless' to halt 'gross violations of human rights' in far-off conflicts.<sup>4</sup> The second is those whom Arbour calls the 'custodians of the orthodoxy of non-interference', who worry that the 'responsibility to protect' will foster a 'moral imperialism' granting powerful states a license to interfere in the affairs of weaker states.<sup>5</sup> Although Arbour's dismissal of both these positions is unconvincing,<sup>6</sup> my argument here takes a different tack. I argue that the 'responsibility to protect' strengthens state power at the expense of popular power *within* states and that 'moral imperialism' between states is a corollary of this effect. Extending Arbour's 'web of protection' across the planet with no single identifiable authority responsible for keeping that web intact means that the 'duty of care' can only be 'imperfect'. 'Imperfect' because, in the words of Michael Walzer, it is 'a duty that doesn't belong to any particular agent'.<sup>7</sup> With only nebulous global principles at stake, inevitably it is power that will determine the conditions under

<sup>2</sup> Arbour, 'The responsibility to protect', p. 448.

<sup>3</sup> *Ibid.*, p. 445.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*, p. 448.

<sup>6</sup> Arbour criticises the claim that we are powerless in humanitarian crises by arguing that 'the global web of our interdependence' makes any such claims redundant. The result is a fortuitous symmetry between the needs of security and the demands of morality: 'indifference or inaction in the knowledge of violence, deprivation and abuse allow exclusion and resentment to fester [...] conditions that will ultimately affect everybody's rights, security and welfare' – Arbour, 'The responsibility to protect', p. 445. Here unspecified mechanisms of global integration function as a *deus ex machina* that obviates the need for argument. This allows Arbour to sidestep concrete analysis of actual conflicts. Yet the number of conflicts that have *not* seen intervention clearly demonstrates that intervention is not an automatic by-product of globalisation – a range of additional factors come into play before intervention actually occurs. In the second instance, Arbour contests the so-called 'orthodoxy of non-interference' by arguing later in her article that the 'responsibility to protect' is already embedded in the provisions of existing international law (Arbour, *ibid.*, pp. 447–8). But this can only leave the reader wondering what precisely is 'orthodox' about the claims made by the 'custodians of non-interference'. Arbour's suggestion that the 'responsibility to protect' is part of the natural growth and progress of existing international law puts her in the position of claiming the mantle of legal orthodoxy.

<sup>7</sup> Michael Walzer, *Just and Unjust Wars: A moral argument with historical illustrations* (New York: Basic Books, 2000), p. xiii. Walzer is discussing humanitarian intervention rather than the 'responsibility to protect'. Kok-chor Tan considers the same problem in relation to the 'responsibility to protect' doctrine outlined in the 2001 report *The Responsibility to Protect*. Tan questions whether humanitarian intervention meets the strict definition of 'imperfect duty' as understood by Kantian scholars. Cf. Kok-chor Tan, 'The Duty to Protect', in Terry Nardin and Melissa S. Williams (eds), *Humanitarian Intervention* (New York and London: New York University Press, 2006), pp. 95–96. He nonetheless accepts the designation, and for the sake of consistency I will follow him in doing so.

which a duty is discharged. Insofar as this differs from humanitarian intervention, it will be for the worse. Invoking the ‘responsibility to protect’ will allow interloping states to claim a higher authority than the merely selfish claim to a ‘right of intervention’.

In other words, the problem is not confined to international relations. The attempt to embed a ‘duty of care’ into the definition of legitimate statehood warps the principle of representative government. However noble the intent, if shielding individuals from the most degraded forms of barbarism is to become a fundament of legitimate statehood, this will have dangerous repercussions for the structure of political relations between peoples and their states. If states are seen less as emanating from their people’s will but rather as one apparatus among others for the enforcement of disembodied global duties, this will dilute the relationship of representation between a people and state. If the sovereign people are no longer the sole legitimate arbiter of their state’s behaviour, this can only mean that the state is *less* responsible to its people. Upholding a duty of care under the threat of external sanction pushes representative government into the realm of paternalism, wherein states have responsibilities *for* their people rather than *to* their people. In other words, the doctrine *fails on its own terms*. Whatever the alleged ‘orthodoxy of non-interference’ may be, it can be shown that the responsibility to protect renders the exercise of power less accountable, and unaccountable power is ultimately irresponsible power. Instead of disciplining states in favour of powerless victims, I will show how the doctrine will allow states to evade political responsibility.

## Outline

The argument proceeds as follows. I begin by analysing Arbour’s account of how the ‘responsibility to protect’ transforms a state’s prerogative to intervene in other states into a duty to defend imperilled humanity. According to Arbour, making the defence of imperilled humanity an obligation transforms it from a selfish act by a single state into an altruistic function in line with the collective standards and interests of the international community. However, as this duty can only be an imperfect one, we shall see that there is an insurmountable problem of agency at the core of the doctrine.<sup>8</sup> I will argue that the enforcement of the ‘responsibility to protect’ can only be discretionary – and hence there is no means of preventing the selective and self-serving enforcement of the duty. Arbour struggles with the implications of this problem, striking out in a number of directions in her search to find a means by which she can ensure that the duty be realised.

I trace and criticise Arbour’s various manoeuvres through international law and order, showing how the argument inexorably leads her to argue for expanding the remit of powerful states and her resignation to the principle of paternalism. I take issue with Arbour’s suggestion that the ‘responsibility to protect’ should exact

<sup>8</sup> Note that this point is not restricted to questions of military or coercive intervention: the basic issue is the same across the spectrum of possibilities that Arbour outlines as falling under the responsibility to protect, ranging from help, through compellence to coercion. Arbour, ‘The responsibility to protect’, p. 448.

heavier duties from powerful states, as this proposition segues into the idea that might makes right – precisely the condition which law is supposed to curtail. Building on the issue of agency, I go on to say that this problem extends to the post-conflict engagement envisioned under the ‘responsibility to protect’, where the diffusion of duties leads to the dilution of concrete responsibilities in transitional administration. In the last third of the article, I put forward the case that a consistent reading of the doctrine of popular sovereignty, and its corollary of non-intervention, remains the best way to discipline states and ensure that they uphold their responsibilities.

### **From right to responsibility?**

For Arbour, what lifts the ‘responsibility to protect’ over and above humanitarian intervention that preceded it is the embrace of ‘the victims’ point of view and interests’.<sup>9</sup> In doing this the doctrine ditches the ‘questionable State-centred motivations’ associated with the arguments regarding the so-called ‘right’ of intervention.<sup>10</sup> In place of a flexible ‘right of intervention’ that states can exercise as and when they please, the ‘responsibility to protect’ erects a global and ‘permanent duty to protect individuals against abusive behaviour’.<sup>11</sup> Arbour’s reasoning seems to be that if the decision to intervene is always left to the discretion of states, we can expect them to act against human rights abuses only when it suits them. As a result, we have no means of extricating the moral good of humanitarian intervention from the ‘questionable motivations’ that underpin state action.<sup>12</sup> If states are *obliged* to act however, whatever their underlying motivations may be will become less important.<sup>13</sup> This is one of the strong points of the doctrine. On the one hand, the prerogatives of interloping states are limited by the adoption of a more rigid policy that prevents them acting as and when they please. On the other, the potential ‘recipients of international attention and action’ are left none the worse (that is, always subject to potential predation by more powerful states).<sup>14</sup> What is more, as would-be interveners are now bearers of a duty, they can be held to account for their failure to act.<sup>15</sup>

There are two things immediately worth noting about Arbour’s presentation of the doctrine. First, there is a sleight-of-hand in her treatment of humanitarian intervention. Arbour concedes that humanitarian intervention is problematic, but she locates the problem not where one might expect (that humanitarian intervention violates state sovereignty), but rather in the fact that the intervener’s claim has to be framed in the selfish terms of a right belonging to that state. Casting the problem of humanitarian intervention in this way frees Arbour from having to account for the link between sovereignty and non-intervention. In other words, she

<sup>9</sup> Ibid.

<sup>10</sup> Ibid. Arbour also welcomes the way in which the ‘responsibility to protect’ systematises ‘post-conflict engagement’ by the international community – an issue we shall return to below.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid., p. 447.

<sup>13</sup> ‘No longer holders of a discretionary right to intervene, all States are now burdened with the responsibility to take action under the doctrine of the ‘responsibility to protect.’ Ibid., p. 449.

<sup>14</sup> Ibid., p. 449.

<sup>15</sup> Ibid., p. 450. As we see below, Arbour’s faith in these mechanisms is misplaced.

has already tacitly privileged intervention. Second, this facilitates her presentation of the ‘responsibility to protect’ as embodying normative progress. If the problem with humanitarian intervention is its egotistical character, then a more communal version of the same practice will be sufficient to rectify the problem. This would indeed appear to be progress if we had correctly identified the problem with humanitarian intervention.

Arbour muddies the waters further in her one-sided account<sup>16</sup> of prior debates on intervention. The discussion is confused by the fact Arbour conflates intervention in general with the specific invocation of a ‘right of humanitarian intervention’. Arbour claims that ‘intervention is the prerogative of the intervener and has always been exercised as such, thereby creating a hierarchy among those who received protection and those whom the potential interveners could afford to ignore’.<sup>17</sup> Formulating the problem in such general terms means that Arbour is never forced to confront non-intervention as the corollary of sovereignty. But intervention has been proscribed between fully-fledged sovereign states since at least the mid-eighteenth century, as seen in ‘the doctrine of the equal rights of states to sovereignty, and of their duty of non-intervention’ propounded by Christian Wolff and Emmerich de Vattel.<sup>18</sup>

Humanitarian intervention, on the other hand, is more specific than a general right to intervention: the claim made by its advocates is that there exists a ‘right’ to intervene in other states in conditions of extreme human suffering and duress. Although proscribed by the very idea of sovereignty, intervention has remained the prerogative of states insofar as the rights of states cannot be ‘*actualised* [...] in a universal will with constitutional powers above [states], but [only] in their own particular wills’, as G. W. F. Hegel put it.<sup>19</sup> What Hegel means is that in the anarchic conditions of the international realm, the clash of rights between states is also always a collision of political wills: the two are inextricably intertwined. As we shall see, the ‘responsibility to protect’ mystifies the inner link between the exercise of a state’s right and a state’s will.

By presenting the doctrine as an onerous imposition on would-be interveners Arbour glosses the fact that the status of the potential ‘recipient’ of international ‘assistance’ is ratcheted down a notch. For if the responsibility to protect could potentially force would-be interveners to account for their non-action in a particular context, it most certainly forces the state being intervened in to defend

<sup>16</sup> One-sided insofar as Arbour claims that ‘neither the advocates nor the detractors of humanitarian intervention gained a definitive upper hand’ in the debate (*ibid.*, p. 447). If there is any truth to this claim, it is less to do with the fact that the legal arguments were equally robust on both sides as much as the fact that the doctrine of humanitarian intervention won the support of a minority of rich and powerful Western nations. To hold that a right of intervention has become an accepted part of international law is to discard a key principle of customary law: that it must be accepted evenly by a majority of its subjects, as pointed out by Jennifer Welsh: ‘non-Western legal opinion opposes this interpretation of the customary law on intervention, since it seems to suggest that certain types of practice count more than others – that is, the actions of Western states versus the stated opposition from those such as China, Russia, and India.’ Jennifer Welsh, ‘Taking Consequences Seriously; Objections to Humanitarian Intervention’, in Jennifer Welsh (ed.), *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004), p. 55.

<sup>17</sup> Arbour, ‘The responsibility to protect’, p. 447.

<sup>18</sup> Hedley Bull, ‘Introduction’, in Hedley Bull (ed.), *Intervention in World Politics* (Oxford: Clarendon Press, 1986), p. 4.

<sup>19</sup> Georg Wilhelm Friedrich Hegel, *Elements of the Philosophy of Right*, ed. Allen W. Wood (Cambridge: Cambridge University Press, 2000), p. 368. Emphasis in original.

why it is entitled to be free from external interference.<sup>20</sup> The doctrine of humanitarian intervention at least recognises intervention as vice by paying homage to the virtue of non-intervention: the so-called ‘right’ to breach the sovereignty of another state is an exception that requires heavy justification.<sup>21</sup> By annulling the presumption of non-interference the doctrine of the responsibility to protect goes further. Taking away the right to non-intervention is like the erosion of civil liberties in domestic politics or revoking the presumption of innocence in criminal law.<sup>22</sup> To be sure, in the international realm eroding the presumption of non-intervention shifts the burden of justification on to a state rather than an individual. Nonetheless, it is no less invidious a principle.

For once states must justify their political authority to external powers, this means they are no longer solely legitimate by virtue of the people that they represent. A people’s right to political representation is effectively made conditional on international license.<sup>23</sup> In the words of Amitai Etzioni, rendering sovereignty conditional in this manner blasts open ‘a gaping hole’ in the ‘foundation of democratic theory’: ‘Sovereignty as responsibility [...] creates a democratic deficit that cannot be ignored’.<sup>24</sup> Second, this duty does not eliminate the problem of state prerogative (recall that Arbour singled this out as undermining the credible use of humanitarian force). Arbour’s claim that the ‘responsibility to protect’ is a ‘concurrent’ burden that falls evenly on all states does not withstand scrutiny.<sup>25</sup> For a duty to be ‘effectively claimable’ there must be a specific agent to whom we can turn in circumstances where we wish the duty to be upheld.<sup>26</sup> This is what Kok-chor Tan calls the ‘agency condition’: a duty can only be actualised through a particular agent.<sup>27</sup> Of all the varied iterations of the ‘responsibility to protect’, not a single formulation of the doctrine to date is able succinctly to express and logically demonstrate that there is a single, identifiable agent *formally obligated* to act or intervene in a particular situation. There is no ‘automaticity’ in the doctrine – no governmental machinery or legislation that spontaneously comes into effect once the ‘duty’ is breached by a state.<sup>28</sup>

### Imperfect duties and the problem of agency

Arbour is at least tacitly aware of this ‘agency condition’, as is shown by her speculation about ‘States’ lack of resistance regarding the responsibility to protect’.

<sup>20</sup> The argument here builds on that originally developed by David Chandler in ‘*The Responsibility to Protect? Imposing the “Liberal Peace”*’, *International Peacekeeping*, 11:1 (2004), pp. 59–81.

<sup>21</sup> For an example of this type of argument, cf. Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001) pp. 228–99.

<sup>22</sup> For a treatment of the dangers of this move in the domestic sphere, cf. Andrew Ashworth, ‘Four Threats to the Presumption of Innocence’, *International Journal of Evidence and Proof*, 10 (2006), p. 241.

<sup>23</sup> Peter Gowan, ‘The New Liberal Cosmopolitanism’, in Daniele Archibugi (ed.), *Debating Cosmopolitanism* (London and New York: Verso, 2003), p. 52.

<sup>24</sup> Amitai Etzioni, ‘Sovereignty as Responsibility’, *Orbis* (Winter 2006), p. 72.

<sup>25</sup> Arbour, ‘The responsibility to protect’, p. 454. Not least because, as we shall see, Arbour contradicts this claim later when she suggests that the doctrine exacts greater duties from powerful states.

<sup>26</sup> Tan, ‘The Duty to Protect’, p. 86.

<sup>27</sup> *Ibid.*, p. 96.

<sup>28</sup> This problem is linked to the impossibility of articulating in advance the criteria to judge when the ‘responsibility to protect’ has been breached. See Alex J. Bellamy, ‘The Responsibility to Protect and the problem of military intervention’, *International Affairs*, 84:4 (2008), p. 148.



She muses whether the rapid uptake of the doctrine may be because states perceive it to be a ‘merely moral or political’ obligation; that is, the consequences resulting from ‘a failure to discharge’ the duty only being ‘of limited’ if not ‘altogether negligible’ concern to ‘the [...] duty bearers’ in question.<sup>29</sup> Arbour tries to get around this problem of agency in several ways. But, as we shall see, the contortions to which she submits her argument in order to render an imperfect duty obligatory show that her original instinct was the right one: the responsibility to protect can only be an imperfect duty offering plenty of advantages to states and exacting ‘altogether negligible’ political costs.

First, in keeping with other formulations of the doctrine, Arbour claims that this ‘permanent duty’ should be seen ‘as a function of sovereignty’: the first agent to whom we turn to claim the duty is the incumbent state ruling over the population and territory in question.<sup>30</sup> But this duty is not an absolute but a relative one, because the doctrine clearly holds that states bear responsibilities for ‘human protection’<sup>31</sup> that diffuse and overlap across the planet’s whole population. This is the only way to ensure that there exists the possibility of turning to other agents to uphold the ‘responsibility to protect’ should an incumbent state fail to do so. But, because it is everyone’s duty it is also no one’s duty.<sup>32</sup> Making the duty an imperfect one is, perversely, the only way of saving the duty from evaporating completely in the decentralised political system that is the international realm.

This has several further consequences. First, *pace* Arbour’s earlier claims, in an international order where there is a widely accepted but nebulous responsibility to protect, we are still firmly in the realm of state prerogative. The ‘permanent’ but imperfect ‘responsibility to protect’ will only be actualised if states choose to do so. As Michael Walzer put it, ‘There is no avoiding state action and therefore no avoiding state politics.’<sup>33</sup> What this means is that for all the talk of ‘responsibility’ the doctrine does not limit state prerogatives. Quite the opposite: the doctrine gives states enhanced flexibility and opportunity to interfere in other states’ affairs. Indeed, insofar as the doctrine openly countenances coercion, it can be seen as a *de facto* extension of the right to wage war.

While the responsibility to protect does differ from discretionary intervention, it is not in the way that Arbour would have us believe. By tapping into an international consensus over the ‘responsibility to protect’, states can act on their own prerogative while claiming a legitimacy that goes beyond their rights as sovereign states. Specifically: invoking the ‘responsibility to protect’ allows states to claim they are acting on behalf of humanity itself. Humanitarian intervention has been attacked for its Manichean potential to normalise aggression and exacerbate conflict through the criminalisation of all political

<sup>29</sup> Arbour, ‘The responsibility to protect’, p. 450.

<sup>30</sup> *Ibid.*, p. 448.

<sup>31</sup> This peculiarly cold and sterile phrase comes from the ICISS report. ICISS, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Center, 2001), p. viii.

<sup>32</sup> In Kok-chor Tan’s words, ‘if the duty to protect is to be a perfect duty, there must be the additional condition that an agent capable of performing the duty be identified and assigned the responsibility to act’ – Tan, ‘The Duty to Protect’, p. 86.

<sup>33</sup> Walzer, *Just and Unjust Wars*, p. xiv.



opposition.<sup>34</sup> Yet the ‘responsibility to protect’ goes further still. Even if justified in the most grandiloquent terms,<sup>35</sup> a ‘right of humanitarian intervention’ is still linked to the state(s) making the claim, with all the political costs and deterrents that come with claiming such a ‘right’ (such as arousing suspicion of self-serving motives). As the ‘responsibility to protect’ is elevated from a right that can be claimed by states to a disembodied duty that states can enforce at their own discretion, it offers all the potential for abuse as does a cosmopolitan ‘right of intervention’, but with fewer political costs.<sup>36</sup>

In terms of the potential beneficiaries of intervention, the fact that the ‘responsibility to protect’ is an imperfect duty means that it offers no guarantees to the wretched of the earth – the oppressed that the doctrine claims to defend against predatory or indifferent states. For in the end, all the doctrine can really offer is the vague assurance that remote foreign powers may involve themselves in a conflict if it happens to be convenient for them to do so. Worse, by virtue of being enshrined as a permanent duty the ‘responsibility to protect’ could cruelly raise expectations of outside support that have little hope of ever being fulfilled. Indeed, the danger also exists that the less specific the assurance of internationalised ‘human protection’, the greater the possibility that it may also prolong existing conflicts by encouraging belligerents to continue fighting in order to secure international intervention in their favour.<sup>37</sup> The doctrine may even encourage opportunistic secession and insurgency, generating the very conflicts that it purports to suppress.<sup>38</sup>

Arbour’s second move to actualise the imperfect duty is to argue that the failure to discharge the duty has ‘legal implications and consequences’, which may even constitute ‘a separate actionable harm’.<sup>39</sup> In other words, the imperfect duty can be actualised because states can be held to account through legal mechanisms if they fail to act to halt abusive behaviour. Arbour argues that ‘the heart of the responsibility to protect doctrine’ rests on an extant and undisputed obligation of international law – the prevention and punishment of genocide as codified in the Genocide Convention’.<sup>40</sup>

This is peculiar on the face of it, because if the doctrine adds no substantial value to the provisions of existing international law, why bother spending so much

<sup>34</sup> Cf. Mitchell Dean, ‘Military Intervention as “Police” Action?’, in Markus D. Dubber and Mariana Valverde (eds), *The New Police Science: The Police Power in Domestic and International Governance* (Stanford: Stanford University Press, 2006), pp. 196–200 and *passim*.

<sup>35</sup> Former British Prime Minister Tony Blair, for example, famously described the 1999 war over Kosovo as ‘a battle between good and evil; between civilisation and barbarity; between democracy and dictatorship’. Blair, cited in Philip Hammond, ‘The rise of the laptop bombardier’, *Spiked Online* (24 March 2009).

<sup>36</sup> The idea that the ‘responsibility to protect’ imposes costs in terms of duties of post-conflict engagement and reconstruction is dealt with below.

<sup>37</sup> A danger that is even acknowledged in the ICISS report, though not by Arbour (cf. fn. 40 below). For the reality of this effect see Alan Kuperman ‘Strategic Victimhood in Sudan’, *The New York Times* (31 May 2006).

<sup>38</sup> This danger is recognised by the ICISS report (ICISS, *Responsibility to Protect*, p. 25).

<sup>39</sup> Arbour, ‘The responsibility to protect’, p. 450.

<sup>40</sup> *Ibid.* Arbour weakens her claim by expanding it to include the statutes of the international criminal tribunals for the former Yugoslavia and Rwanda – institutions notorious for their disastrous legal credentials and breach of ‘every norm of impartiality’. Alberto Toscano, ‘Sovereign Impunity’, *New Left Review*, 50 (March–April 2008), p. 132. See more generally John Laughland, *Travesty: The Trial of Slobodan Milošević and the Corruption of International Justice* (London: Pluto Press, 2006). Unfortunately the problems with international criminal law are beyond the scope of this article.

time defending mere rhetoric? On the preventive side, Arbour turns to the findings of the International Court of Justice (ICJ) in the case of *Bosnia-Herzegovina vs. Serbia*. Arbour cites the Court's findings that Serbia failed in its legal obligation to prevent genocide given the manifold links it had with the 1992–1995 war in neighbouring Bosnia.<sup>41</sup> The various parameters used by the Court to assess the scope of Serbia's obligations range from geographic proximity to the strength of political links between the perpetrators of the crimes in Bosnia and the Serbian state. Arbour uses this judgement as the basis from which to extrapolate to the preventive duties of 'neighbouring and regional states' and those states who have 'pre-eminence, global reach and capabilities'.<sup>42</sup> Let us examine these two claims in turn.

In the first case, we have good grounds to query Arbour's conclusions about the responsibilities of neighbouring states. Even if we accept the Court's findings against Serbia, this could be turned against Arbour's conclusions. As is well known, the various relations on which the Court based its judgement relate to wars that arose from the disintegration of the Federal Socialist Republic of Yugoslavia in 1991. Indeed, the conflict itself was about the rights of secession of the various nations of Yugoslavia. Countries that previously formed a single larger country immediately prior to a conflict will obviously have far more links than countries that have no such history. For this reason, the highly exceptional circumstances surrounding the links between the ex-republics of former Yugoslavia seems a dubious basis on which to extrapolate to the appropriate behaviour and mutual relations of all neighbouring states throughout the world. Here again, Arbour is giving states greater leeway to involve themselves in their neighbours' affairs. Granting regional states the 'responsibility' not only to prevent genocide using 'all such tools as are at a State's disposal' but even to 'deter' potential perpetrators of such crimes (that is, to pre-empt genocide)<sup>43</sup> gives remarkable scope to regional states to intervene in their neighbours' affairs.<sup>44</sup>

This is quite apart from the larger questions of how international law or the findings of the ICJ can be upheld against powerful states, particularly given, as we shall see, the leeway that Arbour seems happy to grant to powerful states. Indeed, citing a ruling by which one of Europe's weakest, poorest and most isolated states was prosecuted by an international court is not a particularly convincing model to underpin a new era of equitable global law enforcement. In any case, Arbour clearly realises that calling for good neighbourly relations and drubbing small states into submission with international law is insufficient to make the 'responsibility to protect' genuinely actionable. This is apparent in the fact that Arbour is keen to prevent geographic distance being used as an excuse by remote countries to exonerate themselves from having to take action. Hence she broadens the links that could count as 'actionable' far beyond mere geographic proximity to

<sup>41</sup> We have no *prima facie* reason to join Arbour in accepting the Court's ruling as just, but the justice or otherwise of the Court's ruling is not directly relevant to the argument that I want to pursue here.

<sup>42</sup> Arbour, 'The responsibility to protect', p. 453.

<sup>43</sup> As David Chandler observes of such arguments in a different context: 'Armed with the ability to "to identify the early stages of genocide" [...] to judge "murderers before they kill", it would seem highly likely that the demand for military-led [...] interventions will rely more on prejudice than objective "justice".' David Chandler, *From Kosovo to Kabul and Beyond: Human Rights and International Intervention* (London and Ann Arbor: Pluto Press, 2006), p. 189.

<sup>44</sup> Arbour, 'The responsibility to protect', p. 453.

encompass ‘relevant links of all kinds: historic, political, economic’.<sup>45</sup> Perhaps it is hoped that the more responsibility is shared around, the greater the likelihood that someone will take action. But the very need to promiscuously share the duty as much as possible speaks to the intractable character of the agency problem in the first place.

Sure enough, Arbour is forced to fall back on power to ensure that the responsibility to protect can be realised. Hence she makes ‘pre-eminence’ and ‘global reach and capabilities’ the basis for apportioning greater responsibilities in upholding the global duty. Indeed, Arbour is happy to go beyond even the vast powers invested in the permanent five members of the UN Security Council. She suggests that:

being better positioned to avert and respond to atrocities may have as much to do with the capacity to project power and mobilise resources beyond national and regional borders as with physical proximity. In this respect [...] powerful States may be reasonably expected to play a leading role in bolstering appropriate measures of prevention, dissuasion and remedy across a geographic spectrum commensurate with their weight, reach and advanced capabilities.<sup>46</sup>

By this stage in her argument, Arbour’s claim amounts to little more than the principle that undermines all law and justice – that ‘might makes right’. She has granted powerful states the *de facto* right to police weaker states, up to and including the use of force. Here we have again returned to the discretionary ‘rights’ of states to interfere in other states’ affairs – the very condition that the ‘responsibility to protect’ was supposed to move us beyond.

Despite Arbour clothing her argument in the language of ‘duties’ and ‘burdens’ the way in which she expressly singles out powerful states for a special role shows that this doctrine does not curb powerful states but actually augments their power. It can be said in Arbour’s defence that she is at least consistent in following the logic of the ‘responsibility to protect’ to its conclusion. Relaxing the normative presumption against intervention always privileges powerful states, because it is precisely these states that are capable of projecting power across borders. The result is that the international hierarchy of power will subvert the already fragile and decaying edifice of formal international equality.<sup>47</sup>

As Arbour seems unconcerned about elevating powerful states over the rest, it is worth reminding ourselves of why formal standards of international equality are valuable. Once we use different (that is, unequal) standards to judge different groups of states and to accord greater rights to groups of powerful states, we adopt a self-referential account of political order. Without an antecedent conception of formal (legal) equality, inequality becomes its own explanation. The more that the structure of formal norms reflect real inequalities of wealth and power, the more entrenched these real inequalities become. The end-result is described by Benedict Kingsbury: ‘The outcome seems likely to be the maintenance of a classificatory system which is itself both an explanation and a justification for those at the

<sup>45</sup> Ibid., p. 454.

<sup>46</sup> Ibid., p. 455.

<sup>47</sup> On the erosion of international equality in recent years throughout international law, cf. Benedict Kingsbury, ‘Sovereignty and Inequality’, in Andrew Hurrell and Ngaire Woods (eds), *Inequality, Globalisation and World Politics* (Oxford: Oxford University Press, 1999).

margins remaining there for generations.<sup>48</sup> The distinctive features of the ‘inferior’, failing category of states is used to explain their very inferiority. Arbour’s struggle with the implications of the ‘agency condition’ leads her from a half-heated invocation of international law to an embrace of power and the principle of ‘might makes right’.

Arbour’s blithe attitude towards international equality is complemented by an equally derisory treatment of what she calls ‘the element of information’. After briefly genuflecting to the ‘notion of presumption of innocence’, Arbour pours scorn on the idea that information regarding atrocities may be uneven, suspect or contradictory.<sup>49</sup> She points out that ‘perpetrators’ will manipulate and poke holes in the information concerning atrocities in order to stave off an international response. She claims that the demand for ‘unassailable evidence’ is ‘altogether preposterous in an age of high-speed communications and sophisticated fact-finding technologies’.<sup>50</sup> Given the record of media compromise witnessed in recent conflicts Arbour’s faith in the existence of ‘high-speed communications’ seems naïve, to put it mildly. British journalist Maggie O’Kane famously describes how the media were manipulated by the British and American armed forces in the 1991 Gulf War: ‘This is a tale of how to tell lies and win wars, and how we, the media, were harnessed like 2,000 beach donkeys and led through the sand to see what the British and US military wanted us to see in this nice clean war.’<sup>51</sup>

In any case, as is hopefully clear by now, the real problems with the ‘responsibility to protect’ do not lie with the issue of information or the lack thereof, or in the fact that information technology can be manipulated. The real problem is that the doctrine itself is regressive. The problem of agency does not just vitiate the ‘responsibility to react’, but also ‘the commitment to rebuild’.<sup>52</sup> Much like the putative focus on victims is said to elevate the ‘responsibility to protect’ above humanitarian intervention, so too the emphasis on ‘post-conflict engagement’ – or the ‘responsibility to rebuild’ in the language of the ICISS report – is equally flagged up as a crucial new advance inaugurated by the doctrine. According to Arbour, the latter forms ‘an integral part of protection rather than an afterthought’. In this way, the new norm is believed to bar ‘both quick fixes and even quicker exit strategies’.<sup>53</sup>

But once the restraints imposed on interventionism are relaxed by emplacing the ‘responsibility to protect’ as a global and permanent duty, so it makes sense to diffuse the mechanisms for post-conflict governance. If intervention can be pursued for the collective purposes of the international community, it is only logical that no single state should bear the burden of transitional administration. As difficult as it is to specify an agent obliged to uphold the responsibility to protect, so it is just as difficult to identify a single agent responsible for overseeing post-conflict

<sup>48</sup> Kingsbury, ‘Sovereignty and Inequality’, p. 91.

<sup>49</sup> Arbour, ‘The responsibility to protect’, p. 455.

<sup>50</sup> *Ibid.* Whether this means that we have *more* unassailable evidence due to global telecommunications, or that we should relax our demand for firm evidence due to an overwhelming proliferation (of potentially contradictory) reports, is unclear.

<sup>51</sup> Maggie O’Kane, ‘How to tell lies and win wars’, *The Guardian* (16 December 1995). Cf. more generally on the issue of the media in humanitarian intervention, Philip Hammond (ed.), *Degraded Capability: The Media and the Kosovo Crisis*, (London: Pluto Press, 2000).

<sup>52</sup> Arbour, ‘The responsibility to protect’, p. 448.

<sup>53</sup> *Ibid.*

populations and territories. Instead in the ‘new humanitarian empire’<sup>54</sup> there is ‘no territorial center of power [...] fixed boundaries or barriers [...] The distinct national colours of the imperialist map of the world have merged and blended in the imperial global rainbow.’<sup>55</sup> In practice this means that direct political responsibility for transitional territories can be avoided. Roland Paris raises concerns about the ‘networked’ character of political authority in today’s transitional administrations and peacebuilding operations. According to him, by virtue of being ‘decentralized and lacking a single corporate identity’ –

international governance structures lack clear lines of accountability, meaning that even if we [...] disapproved of the actions of the network of international agencies engaged in peacebuilding, there is no single mechanism through which we could demand a change of peacebuilding policy. Nor is there a single actor whom we could collectively hold responsible for the outcome of a particular operation.<sup>56</sup>

### Sovereignty and responsible government

Having prised open the ‘problem of agency’ at the core of the doctrine, it is now incumbent on me to take my critique further by following the problem back to its source.<sup>57</sup> This problem of agency that vitiates the whole structure of the responsibility to protect can be traced back to its founding assumption – its erosion of the authority of the sovereign state. In Arbour’s words, ‘sovereignty is not absolute in an interdependent world’.<sup>58</sup>

The problem here is the misconception engendered by the term ‘absolute sovereignty’ – a rhetorical construct that blurs the issues more than it clarifies them. The ICISS report sagely observed that talk of humanitarian intervention tends to ‘prejudge the issue in question’ by assuming that the intervention in question must be humanitarian and any opposition inhumane by default.<sup>59</sup> The

<sup>54</sup> Michael Ignatieff, *Empire Lite: Nation-Building in Bosnia, Kosovo and Afghanistan* (London; Vintage, 2003), p. 17.

<sup>55</sup> Michael Hardt and Antonio Negri, *Empire* (Cambridge, MA and London: Harvard University Press, 2000), pp. xii–xiii. Hardt and Negri’s description is evocative even if their explanatory power is limited. Cf. Scott McLemee, ‘Empire Burlesque’, *Book Forum* (Dec/Jan 2009).

<sup>56</sup> Roland Paris, ‘Broadening the Study of Peace Operations’, *International Studies Review*, 2:3 (2000), p. 43.

<sup>57</sup> One frequently mooted solution to the ‘agency condition’ is a standing cosmopolitan or humanitarian defence force independent of state interests. While such proposals are beyond the scope of the article, one observation can be made, apart from questions of their improbability. It is far from clear that proposals for standing cosmopolitan forces of whatever variety would go much further in resolving the ‘agency condition’. On the contrary, such a force could exacerbate the agency problem, as is suggested by John T. O’Neill and Nicholas Rees:

A [standing] force of this kind would very likely be regarded as a mercenary body willing to, and capable of, performing any kind of military task. Since no [...] state would bear direct political responsibility for it, everyone would opt out of obligations and frivolously call for its deployment in any small conflict around the world. Far from the answer to global concerns, a UN Foreign Legion would be another excuse for [...] states to do nothing. (*UN Peacekeeping in the Post-Cold War Era*, (London: Routledge, 2005), p. 205).

Although O’Neill and Rees are surveying proposals for a standing UN peacekeeping force, the issue would be the same for a standing humanitarian defence force (in any case, there are now significant humanitarian expectations placed upon UN peacekeepers – cf. Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Cambridge: Polity, 2009), pp. 159–60).

<sup>58</sup> Arbour, ‘The responsibility to protect’, p. 448.

<sup>59</sup> ICISS, *Responsibility to Protect*, p. 9.

same could be said of ‘absolute sovereignty’:<sup>60</sup> it prejudices the issue in question by suggesting that the absolute monopoly of power is at once untenable in an era of globalisation and morally dubious as a quasi-totalitarian concentration of power. But the idea of ‘absoluteness’, as far as it is related to sovereignty, is nothing to do with totalitarianism. This is emphasised by Martin Loughlin:

The absolutist aspect of sovereignty lies in danger of being misunderstood; it can properly be understood only from the perspective of law. Since sovereign authority is expressed through those established institutional forms which enable the general will to be articulated, that general will, although absolute, has nothing in common with the exercise of an arbitrary power. *Sovereign will is the antithesis of subjective [individual] will.*<sup>61</sup>

The ‘absoluteness’ of sovereign power is ‘absolute’ insofar as it is related to the binding force of law, which emerges from the relationship between the institutional framework of the state and the people of the state, the latter being the ‘constituent power’ that generates the ‘constituted power’ of the state.<sup>62</sup> Sovereignty is not about the *form* of government (democracy, dictatorship, monarchy) nor about the institutions which exercise power (bureaucracy, parliament) but about ‘the relationship of political power to other forms of authority’.<sup>63</sup> The fact that sovereign power is supreme, with no higher constituted power above it, asserts the pre-eminence of public authority, and with it the autonomy of the political sphere.<sup>64</sup> The ‘absoluteness’ or ‘impunity’ of sovereignty is often tendentiously described as if it existed merely to allow states to perpetrate genocide against their people.<sup>65</sup> But if to be sovereign is to act as one pleases, then sovereignty enshrines the freedom of the people that the state represents, to structure their collective affairs as they see fit.

Sovereignty preserves the freedom of a people to be self-determining, not the impunity of the state apparatus. To erode or call into question ‘absolute sovereignty’ is to erode or call into question the idea of representative government and the self-determination of nations. As sovereignty inheres in the relationship between people and state, once it is properly understood then the idea of sovereignty already answers the question of who should alleviate human suffering or stamp out gross abuses of human rights: it is the people themselves who must impose their will on the state. If the ‘absoluteness’ of sovereignty alienates a potentially awesome power of oppression to the state, the dialectic of sovereignty contains within itself the potential to check and overthrow tyranny. It is a concept that relates people to state and subdues the latter to the former. ‘People power’ is a meaningless slogan in the absence of sovereignty. Without effort it is possible to

<sup>60</sup> Another variant on this theme is ‘traditional’ or ‘Westphalian’ sovereignty. Though the epithets may vary, they function in essentially the same way.

<sup>61</sup> Martin Loughlin, ‘Ten Tenets of Sovereignty’, in Neil Hart (ed.), *Sovereignty in Transition* (Oxford: Hart Publishing, 2003), p. 73. Emphasis added.

<sup>62</sup> On the relational character of political power, Loughlin notes ‘The relational aspect of the political conception of sovereignty is mainly concerned with elaborating the ways in which constitutional arrangements serve state-building purposes. This feature of political sovereignty is the product of the peculiarly communal character of political power, which requires that individuals act in concert.’ *Ibid.*, p. 71.

<sup>63</sup> James Sheehan, ‘Presidential Address: The Problem of Sovereignty in European History’, *The American Historical Review*, 111:1 (2006), p. 1. Cf. also Loughlin, ‘Ten Tenets of Sovereignty’, p. 56.

<sup>64</sup> On the autonomy of the political, see Loughlin, ‘Ten Tenets of Sovereignty’, p. 56.

<sup>65</sup> Louis Henkin, for example, criticises this caricatured portrayal of sovereignty: ‘Kosovo and the Law of “Humanitarian Intervention”’, *American Journal of International Law*, 93:4 (1999), pp. 824–48.



bring to mind historical examples of when people have risen up against even the most fearsome and unjust of tyrannies. Indeed, the Franco-American revolutions of the eighteenth century that advanced universal human rights as a political force were precisely examples of such struggles for popular self-determination.

The real issue then is not whether states are responsible to their citizens – this is after all given in the very idea of modern political representation. What becomes clear is that under the banal talk of ‘state responsibilities’ the responsibility to protect doctrine is calling into question people’s capacity for and rights of self-determination. Small wonder that ‘victims’ occupy such an important place in the doctrine. As we saw previously, the emphasis on the victims of international politics is celebrated as the strong point of the doctrine.<sup>66</sup> No more of the unseemly squabbling and shenanigans of states, the doctrine’s supporters say, and instead let us focus on the practical problem of alleviating human suffering. But we have no reason to accept the ‘ideology of victimization’ at face value.<sup>67</sup> Quite the opposite: we would be naïve not to be at least initially sceptical when we hear the powerful, the great and the good declaiming for the rights of the powerless.

Indeed, it is revealing that the intended beneficiaries and constituents of the doctrine have to be assumed to be politically passive. Victims by their very nature are weak and pliable, offering exceptional political advantage to those who would seek to represent them. After all, the weak and powerless have difficulty holding their putative benefactors to account. To paraphrase Marx, what is appealing about victims as a political constituency is that ‘They cannot represent themselves, they must be represented. Their representative must at the same time appear as their master, as an authority over them, [...] that protects them [...] and sends them rain and sunshine from above.’<sup>68</sup> What is true in general is even truer of the international sphere, where there exists no machinery of cross-border government that would enable the victims of a particular conflict to hold the government of another intervening country to account in any meaningful way. Indeed, in certain cases international interveners have not only assumed the political passivity of their intended beneficiaries, they have actively imposed it. NATO’s support for the human rights of Kosovars during the war of 1999 came at the expense of the self-determination for which the Kosovo Liberation Army was fighting (Kosovo was administered as a UN-NATO protectorate from 1999 to 2008, and remains a ward of the international community to this day).<sup>69</sup> It would seem that the victims of conflict are good enough to be flattered by august international conventions and UN resolutions, but not it seems, good enough to be granted self-government.

While Arbour openly recognises that the doctrine gives powerful states greater leeway to coerce smaller powers, what she does not recognise is that it also gives states greater freedom from accountability to their own peoples. This returns to the ‘gaping hole’ that the doctrine tears open in the structure of democratic politics. For once the principle is established that states must uphold a certain standard to

<sup>66</sup> Arbour, ‘The responsibility to protect’, p. 448.

<sup>67</sup> The phrase is taken from Slavoj Žižek, ‘NATO: the Left Hand of God?’, *Nettime* (29 June 1999).

<sup>68</sup> Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte* (London: Lawrence and Wishart, 1934), p. 109. Marx is here relating the form of Louis Napoleon’s mid-nineteenth century dictatorship to the socio-political fragmentation and weakness of the French peasantry that supported him.

<sup>69</sup> Even today, nominally independent Kosovo is an international protectorate. Cf. Philip Cunliffe, ‘Kosovo: the obedient child of Europe’, *Spiked Online* (18 February 2008).



which they may be held to account by outside institutions and other states, this cannot but have the effect of making the people less central to a state's political choices. Perversely, being forced to take greater account of the international community does not strengthen a state's commitment to its own people so much as granting states the opportunity to distance themselves from their people's demands and interests, by citing the pressures and responsibilities owed to the international community. In short, the doctrine of the responsibility to protect establishes the insidious principle that states hold responsibilities *for* their people more than *to* their peoples. For a doctrine that invites us to be suspicious of state power, it is peculiar on the face of it that it offers such clear opportunities for states to entrench their powers at the expense of popular accountability. But this is the logic of a doctrine that expands responsibilities without accountability: paternalism.

Lest it be thought that these concerns only apply to those states 'which may assume that they could be targets of intervention', Arbour's internationalised duty of care also has consequences for domestic politics in those 'countries that would most likely be the potential interveners'.<sup>70</sup> The 'responsibility to protect' not only lowers the justification necessary for any state to mount an intervention in the international realm, but also in the domestic sphere. Embedding the possibility of intervention as a duty of generalised 'human protection' provides governments with a ready means of quashing domestic opposition to foreign crusades – doubtless a prospect that would appeal to the likes of former British Prime Minister Tony Blair, who infamously insisted that the invasion of Iraq was the 'right thing to do' regardless of the expressed will of his people.<sup>71</sup> The more that states bear diffuse and abstract duties to all people, the more they are able to evade responsibility to a concrete people.

### Sovereignty and intervention reconsidered

Where does all this leave the issue of offering people an additional bulwark of (international) protection from 'state-sponsored slaughter'? What of circumstances when self-help is not possible, where there is no popular domestic movement or organised political opposition of sufficient strength to overthrow an oppressive regime or halt systematic atrocities? Is it possible to take cross-border action to halt 'gross violations of human rights' without compromising the imperative of popular sovereignty and self-determination? What is certain is that it is always possible to concoct hypothetical scenarios in the abstract, in which the case for intervention is unarguable. Concrete crises are always more complex and contradictory than those dreamt up in 'what if?' scenarios.<sup>72</sup> Nonetheless, as Martin

<sup>70</sup> Arbour, 'The responsibility to protect', p. 450.

<sup>71</sup> Philip Webster, 'Tony Blair: "I wanted war – it was the right thing to do"', *The Times* (17 November 2007).

<sup>72</sup> Indeed, the formation of institutions and policy around the precautionary principles of preparing for extreme scenarios is a problem in itself – the problem of political exceptionalism that vitiates the whole debate around intervention and the responsibility to protect. It is incumbent on us to think through not only how we should respond to exceptional scenarios, but also in the words of Jef Huysmans, reflect on how 'claims of exceptionality' function politically. How do such claims

Wight justly observed, ‘adherents of every political belief will regard intervention as justified under certain circumstances’.<sup>73</sup> Equally it would be dishonest and remiss not to acknowledge that even those interventions which we may believe to have been justified under the circumstances are still deeply problematic.<sup>74</sup> There is no avoiding issues of ‘the utmost moral complexity’ in intervention<sup>75</sup> – something which is obliterated in the Manichean vision promulgated by humanitarianism, which sees only oppressors and victims, good and evil.<sup>76</sup>

What should be apparent by now is that it is not possible innocuously to insert this internationalised ‘duty of care’ without distorting the normative edifice of the international order and warping the structure of representative government. It is not possible to loosen the normative restraints on intervention – whether conceived of as the use of military force or ‘milder’ forms of coercion – without impinging on self-determination and boosting paternalistic forms of political authority. Intervention should always be proscribed and sovereignty upheld. If these are the keystones of international order, then even specific instances of intervention or violations of sovereignty will leave intact the normative value and content of self-determination as a principle. Recognising that intervention will take place and may even be necessary in some circumstances is crucially different from making the case that intervention should be encouraged or facilitated.<sup>77</sup>

It is possible, without being inconsistent, to uphold non-intervention as a precondition of sovereignty while also admitting that particular interventions may be necessary. At the very least, this would have the benefit of honesty: acknowledging that intervention involves the violation of sovereignty would not require tortuous and unconvincing arguments about ‘responsibilities’. It would impose political penalties, preventing states from grandiloquently claiming that they were acting on behalf of humanity itself. The principle of self-determination would remain as one from which criticism could be mounted and interveners held to account.<sup>78</sup> It would also by default clarify the responsibilities incumbent on interveners in any post-conflict period, preventing the flight from political responsibility witnessed in the networked authorities of today’s transitional administrations.

This begs the question of course, of whether we live in ‘special times’ – in a period where human suffering is so dramatic, grave and shocking that we must discard principled attachments to norms of self-determination, international

‘structure [the] stakes and positions in international struggles for legitimacy and authority?’ – Jef Huysmans, ‘International Politics of Insecurity: Normativity, Inwardness and the Exception’, *Security Dialogue*, 37:1, (2006), p. 12. Alas, for reasons of space, this is a problem that I tackle elsewhere: Philip Cunliffe, ‘The Responsibility to Protect as a Practice of Political Exceptionalism’. Paper presented to LSE Forum in Legal and Political Theory (17 March 2010).

<sup>73</sup> Martin Wight, *Power Politics* (Harmondsworth: Penguin, 1979), p. 191.

<sup>74</sup> For example, see Joshua Kurlantzick’s account of the vagaries of the international criminal tribunals in contemporary Cambodia, and of the legacy of political authoritarianism inherited from the Vietnamese occupation of that country. Joshua Kurlantzick, ‘In Pol Pot Time’, *London Review of Books* (6 August 2009).

<sup>75</sup> Wight, *Power Politics*, p. 191.

<sup>76</sup> For a critique of this reflexive depiction of a conflict in Manichean terms, cf. Mahmood Mamdani, ‘The Politics of Naming: Genocide, Civil War, Insurgency’, *London Review of Books* (8 March 2007).

<sup>77</sup> The way in which one proposition segues into the other is usually through claims for political exceptionalism. Cf. fn. 66 above.

<sup>78</sup> This is the argument advocated by Simon Chesterman. Cf. f n. 21 above.

equality and anti-imperialism and simply accept the routine violation of sovereignty.<sup>79</sup> This belief, in many variants, is the corollary assumption that shadows all discussion of humanitarian intervention and the responsibility to protect. As David Chandler observes, 'Most human rights books start with stories of genocide, mass rape, ethnic cleansing, and torture, to emphasise the urgency of their cause.'<sup>80</sup> Arbour herself begins her article by citing 'a proliferation of devastating internal wars' that unfolded across the 1990s.<sup>81</sup> Are these justifiable depictions of today's international order? The claims of the 'neo-barbarism' school – the idea that conflicts in the developing world today are disproportionately violent and brutal – have now been subjected to extensive and penetrating criticisms, so there is no need to recapitulate such criticisms here.<sup>82</sup> In any case, there is always the point that the focus of humanitarian concern is notoriously partial: some cases of human rights violations receive international attention while others do not.

The point is not to draw attention to the hypocrisy that may underlie any particular humanitarian claim. Rather the inconsistency should alert us to the fact that there is something else that intercedes between identifying a focus for humanitarian compassion and maintaining the international duty of care which Arbour enjoins us to do. As Slavoj Žižek observes,

The death of a West Bank Palestinian child, not to mention an Israeli or an American, is mediatically worth thousands of times more than the death of a nameless Congolese. Do we need further proof that the humanitarian sense of urgency is mediated, indeed overdetermined, by clear political considerations?<sup>83</sup>

Despite the hysteria surrounding the threats posed by failed states and 'new wars', as the 2005 *Human Security Report* has shown, levels of global violence have been declining from the early 1990s, including both inter – and intra-state conflict.<sup>84</sup> All of this suggests that the rise of the 'responsibility to protect' cannot be straightforwardly justified or mechanically attributed to a rise in the levels of conflict, violence or human suffering, as this rise has simply not happened. As Jon Holbrook noted long before the *Human Security Report* was published, 'The point is not that there are no humanitarian crises: there are. But [...] the existence of human suffering cannot explain the phenomenon of humanitarian intervention.'<sup>85</sup> Nor is the argument about globalisation or interdependence any more straightforward: 'Pressures on Western governments to respond to humanitarian crises existed before the 1991 relief operation in northern Iraq. What needs to be explained is why Western governments did not, until 1991, translate these pressures into coercive action'.<sup>86</sup>

<sup>79</sup> The question of *whether* or not we accept a particular claim made for political exceptionalism is not necessarily the same as providing an account of *why* claims are systematically advanced in the form of political exceptionalism. The latter is beyond the scope of this article. Cf. fn. 66 above.

<sup>80</sup> Chandler, *Kosovo to Kabul*, p. 232.

<sup>81</sup> Arbour, 'The responsibility to protect', p. 446.

<sup>82</sup> See Chapter 5 in Mark Duffield, *Global Governance and the New Wars: The Merging of Development and Security* (London and New York: Zed Books, 2001).

<sup>83</sup> Slavoj Žižek, *Violence: Six Sideways Reflections* (London: Profile Books, 2008), p. 3.

<sup>84</sup> *Human Security Report*. Available: {<http://www.humansecurityreport.info>} accessed 9 August 2009.

<sup>85</sup> Jon Holbrook, 'Humanitarian Intervention and the Recasting of International Law', in David Chandler (ed.), *Rethinking Human Rights: Critical Approaches to International Politics* (Basingstoke: Palgrave Macmillan, 2002), p. 139.

<sup>86</sup> *Ibid.*

The argument that we have increasing recourse to intervention as a result of enhanced levels of international violence does not hold up. If anything, recent international history is remarkable for its relative calm and stability more than anything else.<sup>87</sup> This gives us no reason of historic exceptionality to jettison sovereignty and self-determination. Instead these facts should prompt us to reconsider the context for the rise of humanitarian intervention and the ‘responsibility to protect’. If we cannot attribute these norms to greater levels of international violence, then we must root it in the changing political order – Western victory in the Cold War, economic globalisation and the subsequent struggles between the developing and developed worlds.<sup>88</sup> Locating this as the context for the responsibility to protect sheds a very different light on how we understand and approach the doctrine.

### Conclusion

Arbour celebrates the responsibility to protect as a means of bolstering the international legal defences available to the wretched of the earth. She presents the doctrine as offering important normative advances on the problems posed by humanitarian intervention. But Arbour misdiagnoses the problems of humanitarian intervention, and in so doing, simply reproduces the real problems of interventionism in her defence of the responsibility to protect. The problem remains that of the violation of state sovereignty involved in intervention, and the concomitant violation of self-determination. The responsibility to protect remains as discretionary a prerogative as humanitarian intervention. At the most, the doctrine can only offer vague assurances to the victims of world politics, who in any case are assumed to be politically passive and apathetic, prostrate before the mercy of both their oppressors and their benefactors.

Where the responsibility to protect does differ from humanitarian intervention, it is for the worse. The responsibility to protect does not merely enconce coercion in relations *between* states; it also has the potential to distort the structure of representative government *within* states. It further erodes the presumption of non-intervention in the internal affairs of states, thereby calling into question the very foundation of representative government, by making such government conditional on international license. At the international level, the promotion of the responsibility to protect yields all the advantages of intervention to the powerful states that are likely to wield it, with fewer political costs. Invoking a ‘permanent’ duty allows states to claim a higher legitimacy than their own political will in pursuit of their aims. As the doctrine enhances power with no countervailing check, we can only reach the conclusion that the doctrine will have the effect of making the exercise of power less responsible. The doctrine fosters the paternalism of strong states over weak states and of states over their peoples. Perversely, instead of disciplining states in favour of the wretched of the earth, states are given further justification to slip out of the grasp of popular accountability.

<sup>87</sup> For example, cf. Raimo Väyrynen, *The Waning of Major War: Theories and Debates* (Oxford, New York: Routledge, 2006).

<sup>88</sup> See the ‘Foreword’ in the ICISS’ *Responsibility to Protect*.