

HUMANITARIAN INTERVENTION AND THE DISTRIBUTION OF SOVEREIGNTY IN INTERNATIONAL LAW

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ABSTRACT

Legal debates about humanitarian intervention – military intervention by one or more states to curb gross human rights violations occurring in another state – tend to assume that its legitimacy is irrelevant to its legality. Debates among philosophers and political theorists often assume the inverse, that the legality of humanitarian intervention is irrelevant to its legitimacy. This paper defends an alternative account, one that sees the legality and legitimacy of humanitarian intervention as intertwined and ultimately tied to the justice of the distribution of sovereign power that lies at the heart of the international legal order. Drawing on a long standing debate among domestic legal theorists about the rule of law, it first identifies formal constraints on the UN Security Council's discretion to authorize the use of force to end human rights violations. Developing a distributive conception of humanitarian intervention, it then identifies substantive considerations that shed further light on the legality of intervention. It suggests that a failure by the UN Security Council to authorize humanitarian intervention, in some circumstances, may constitute an international illegality, and that, in such circumstances, intervention might not only be legitimate but assume a measure of international legality.