İSTANBUL BİLGİ ÜNİVERSİTESİ

SOSYAL BİLİMLER ENSTİTÜSÜ

KÜLTÜREL İNCELEMELER YÜKSEK LİSANS PROGRAMI

HUMANITARIAN INTERVENTION LITERATURE AND ITS CRITICS: THE CASE OF LIBYA INTERVENTION AND KILLING OF GADDAFI

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2014

HUMANITARIAN INTERVENTION LITERATURE AND ITS CRITICS: THE CASE OF LIBYA INTERVENTION AND KILLING OF GADDAFI

İNSANİ MÜDAHALE LİTERATÜRÜ VE ELEŞTİRİLERİ: LİBYA MÜDAHALESİ VE KADDAFİ'NİN ÖLDÜRÜLMESİ

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Tezin Onaylandığı Tarih: ....16.09.2014..

Toplam Sayfa Sayısı: .....105.....

Anahtar Kelimeler (Türkçe)

1) İnsan Hakları

2) İnsani Müdahale

3) Libya

4) Kaddafi'nin Öldürülmesi

5) Kültürel Üstünlük

Anahtar Kelimeler (İngilizce)

1) Human Rights

2) Humanitarian Intervention

3) Libya

4) Gaddafi's Killing

5) Cultural Superiority

Abstract

This study focuses on human rights and humanitarian intervention debates, and aims to analyse humanitarian intervention literature and its critics. To grasp the debates better, the Libyan intervention and Gaddafi's killing will be taken up as the case study of the thesis. The study intends to ask these questions: "What are the links between the concept of 'human rights' and 'natural rights'?", "How can the instrumentalisation of humanitarian intervention be argued against the theories of cultural superiority and post-colonialism?" and "What does Gaddafi's dead body represent in the circumstances of the Libyan intervention?". The study includes news and remarks about the Libyan intervention and Gaddafi's killing from the mainstream newspapers in comparing the theoretical discussions with practice. Moreover, the thesis' general concern is to demonstrate that as long as the concept of humanitarian intervention implies the superiority of Western oriented values and norms over the boundaries of cultural difference, it creates a zone of cultural hierarchy and superiority, and as long as the international powers identify the so-called Third World as failed, violent or outlaw, it causes the reproduction of colonial stereotypes while masking the role played by the international organisations' priorities in contributing to the humanitarian crises.

Özet

Bu çalışma insan hakları ve insani müdahale tartışmalarına odaklanarak, insan hakları literatürünü eleştirileriyle birlikte analiz etmeyi amaçlar. Tartışmaları daha iyi kavrayabilmek için, Libya müdahalesi ve Kaddafi'nin öldürülmesi tezin vaka incelemesi olarak ele alınacaktır. Tez çalışması şu soruların cevaplarını aramaya yöneliktir: "İnsan hakları ve doğal haklar kavramları arasındaki ilişkiler nelerdir?", "İnsani müdahalenin araçsallaştırılması kültürel üstünlük ve post-kolonyalizm teorileriyle beraber nasıl tartışılabilir?" ve "Kaddafi'nin ölü bedeni Libya müdahalesi şartlarında neyi temsil eder?". Bu çalışma, teorik tartışmaların pratikle mukayese edilebilmesi için, Libya müdahalesi ve Kaddafi'nin öldürülmesi ile ilgili ana-akım gazetelerden haberler ve görüşler içermektedir. Bunlara ek olarak, tezin genel kaygısı şunları gösterebilmektir: İnsani müdahale kavramı, kültürel farklılığın sınırlarının ötesinde, Batı merkezli değer ve normları kapsadığı sürece, kültürel hiyerarşi ve üstünlük alanı oluşturur; ve uluslararası güçler sözde- Üçüncü Dünya'yı başarısız, vahşi ya da suçlu ilan ettiği müddetçe, sadece sömürgeci stereotiplerin yeniden üretimi ile karşı karşıya kalmaz, aynı zamanda uluslararası kuruluşların önceliklerinin insanlık krizlerine katkılarındaki rolünü göremeyiz.

"If today there is no longer any clear figure of the sacred man, it is perhaps because we are all virtually homines sacri." (Agamben, "Homo Sacer")

I dedicate my thesis to the people who lost their lives during the Gezi Park Resistance in several regions of Turkey. A special feeling of respect is due for those people who demonstrated again the importance of the struggle for rights.

I also dedicate this thesis to the people who struggled for their rights and were opposed to injustice throughout the history of the world. I will always appreciate the way that is illuminated by these honourable people who never waver in their fight for their rights.

Acknowledgements

I would like to acknowledge and thank my thesis supervisor Asstistant Professor Mehmet Ali Tuğtan who spent countless hours in reading, encouraging and reflecting on this study. A special thanks to him for being so patient with me throughout the entire process and his invaluable contribution.

I would also like to thank Associate Professor Ferda Keskin and Doctor Bülent Somay for agreeing to serve on my committee, sharing their wisdom and making procedures easier for me.

I am deeply thankful to all professors and assistants of the Cultural Studies Master Program who were always there for me with their academic wisdom and helpfulness.

I would also like to thank all my friends and my family for their support and understanding. A special thanks to Ahmet Gire for his priceless support in every step I take and his assistance with his academic knowledge, and to Büşra Yaman for her enthusiastic support and reading the thesis throughout the entire process of this study.

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INTRODUCTION

The Libyan intervention and Gaddafi's[1] killing are two important cases within the context of human rights and humanitarian intervention debates. These two phenomena consist of political processes which are intertwined and interacting. In this study, I will examine the Libyan intervention and Gaddafi's killing in terms of the debates of human rights and humanitarian intervention.

In the first chapter of this thesis, I will argue the concept of human rights and its formation process with regard to the fact that although the concept does not have the same meaning as the concept of 'natural rights', it has lots of similarities. In this regard, the concept of human rights is in one sense the successor to natural rights which were developed in Western culture. Human rights are assumed equal, inalienable and universal. Herein, a dilemma occurs because of the contradiction between the meanings that the concept has (universal, individual, indivisible and equal), and normative values from its original culture. This is why, in the first chapter, beyond explaining the formation process of the concept, I seek to analyse these contradictions.

To grasp human rights conceptually, I will tackle a brief history of natural rights and refer to the period in which these rights arose. After this analysis, the Universal Declaration Model of human rights will be examined. The claim of universality seems problematic to the extent that the concept of human rights has strong ties to European understanding. As long as what we call human rights today refers to a certain democratic regime and civilised society, the concept of human rights becomes exclusionary for those who are not within this definition. This specific characteristic of human rights, which also causes the exclusion, contradicts with its claim of universality. On the contrary, cultural relativism leaves room for cultural differences in terms of rights. This approach is also

[1] There are many varied spellings for the name of former Libyan leader such as Qaddafi or Gadhafi. In this thesis, Gaddafi will be used and in the quotations the authors' spelling choices will be preserved.

allocated to the groups in itself as strong radical cultural relativism and weak cultural relativism. While the former accepts the culture as the principal source of the validity of a right, the latter considers the culture as the secondary source of the validity of such a right. Those approaches will be discussed in order to enlighten the contradiction of the claim of universality of the Universal Declaration Model.

After the discussion of the claim of universality, I will query the question of what causes these human rights to be identified as 'individual'. Herein, the specific ties of the concept to Western cosmology will be touched upon. The social construction of modern Western society tends to see individual actors as the ultimate units. However, when it comes to the 'other' cultures, group rights can come to prominence. As another important characteristic of human rights, namely individual rights, will be problematised in terms of the question of how those 'individual' rights can be applied to societies which do not tend to see individuals as the ultimate unites of society.

For the problem of indivisibility, I will examine the dichotomy between positive and negative, and civil and political- socioeconomic rights. Although this principle aims to establish a system which tries to make all those rights complementary, there is a logical contradiction in their implementation. To illustrate, 'periodic holidays with pay' as a right is supposedly ensured by Article 24 of the Universal Declaration. However, this article may be irrelevant to those who do not have these social conditions. In other words, by claiming Article 24, a right which is relevant only to limited social conditions is universalised.

Since states are party to internationally recognized human rights and responsible for ensuring them in terms of the obligations that the United Nations brings along with its membership, they are accepted as responsible for the prosecution of these rights. This state-centric attitude is problematic in the sense of degradating the concept of 'human' rights into the rights of citizens. This is

why the characteristic of a state's responsibility will be discussed with its ambivalence consequently.

The first chapter will end with the discussions and critiques of cultural imperialism in terms of human rights. Herein, my aim is to argue the ambivalent structure of the concept of human rights. The formation process of the notion causes the dilemma with its ties to a specific ethical-legal code and its reference to a particular kind of political system of which both have European origins. As long as those values and codes are used to imply other parts of the world, a cultural hierarchy occurs between those who are the intervener and the intervened in terms of human rights.

In the second chapter, I aim to argue the concept of humanitarian intervention and non-interventionist theories to establish a structure for the introduction to the case study. Non-interventionism will be discussed within the framework of utilitarianism and with the question of whether the intervention has moral or legal dimensions. Human rights and humanitarian intervention are concepts which go hand in hand in the discussions. This is why this unique relationship will be mentioned while the concept of humanitarian intervention is being defined.

Although states are responsible for ensuring and implementing internationally recognized human rights, the United Nations can intervene in the domestic jurisdiction of a state by invoking the articles 2(4) and 2(7) with the purpose of implementation of human rights. Thus, a contradiction occurs between these articles and the non-intervention rule of international relations which proclaims that it is not permitted to use force against any state's territorial integrity or political independence. This contradiction will be discussed under the heading of sovereignty.

Utilitarians may be assumed as defenders of non-interventionism. In this context, utilitarians basically tend to calculate the possible consequences of an action to decide whether it is favourable or unfavourable. However, it does not

mean that utilitarians always have to be non-interventionist. In fact act-utilitarians do not refuse any kind of intervention directly, it depends on the calculations used to determine general social welfare standards. For this reason, the discussion between utilitarians, who can be non-interventionist in some circumstances, and liberals, who define themselves as interventionist, will be examined.

Moral concern, which can be instrumentalised for humanitarian intervention, is an important case for discussion in terms of being disputable. Especially, the moral concern of the international community is controversial to the extent of entrusting the future of people to the morality of the international community. Considering the fact that it is almost impossible to point to universal moral arguments and apply them for each case, these moral arguments which represent a specific group's moral system will be questioned.

I will concentrate on the discussions of 'cultural superiority' and 'post-colonial effects' at the end of this chapter. The axis of the whole study rests on these two inferences. Although the discussions that will be held before the end of the second chapter are necessary and important, they are steps to reach a body of theoretical debate, which is the cultural superiority and post-colonial attitude of the humanitarian intervention.

I would argue the imperialistic gesture of humanitarian intervention along two paths: first, to the extent the concept of humanitarian intervention implies Western-oriented values and norms over the boundaries of cultural difference, it creates a zone of cultural hierarchy and superiority. Second, as long as the international community and international powers declare the so-called Third World as failed, violent and outlaw and consider this society as the victims and vulnerable, they create a heroic narrative which causes not only the deployment of colonial stereotypes but also masks the role played by the international organisational priorities in contributing towards humanitarian crises.

After structuring this theoretical background, I will concentrate on the case study of the thesis: the Libyan intervention and killing of Gaddafi in the third

chapter. The Libyan intervention will be touched upon with the theories that are argued in the first and second chapters. In this way, the theoretical discussions will be matched up with the case study. The Libyan intervention, firstly, will be tackled in the context of these discussions: the 'collectivist or individualist', the 'naturalist approach', and the 'sovereignty dilemma'. Then Gaddafi's killing will be discussed within the scope of the questions of whose life is worth to mourn and who decides what a human is. After Gaddafi was killed, the media started to expose his tormented dead body with widespread coverage. During this media presentation, Western states' authorities uttered some remarks which can be regarded as celebratory and imply the success of the humanitarian intervention. These remarks will be argued using the theories of biopolitics, unpunishability and the outrage over the death.

After the discussion of Gaddafi's death/tormented body and the remarks uttered by Western authorities, I will argue dehumanisation in order to melt these two cases (Libyan intervention and Gaddafi's killing) in the same pot. Because herein, the dehumanisation of Gaddafi (or any other ousted leader who is called 'a monster') not only legitimises his killing but also provides the necessary apparatus for intervention by claiming Libyans are in need and vulnerable in the hands of a 'dehumanised' leader.

Ultimately, the Libyan intervention and Gaddafi's killing - as the case study of this thesis - and all the theoretical discussions of the thesis will be touched upon under the heading of the state of exception. At this point, I aim to figure the necessary relationship between the ethical-legal codes that the notion of human rights carries, and the intervention in Libya and Gaddafi's killing. Those cases are not separate: on the contrary, they are eclectic. What gathers them under a single roof is the positions of those subjects against the sovereign power under the state of exception. Therefore, the approach, which leaves no room for cultural difference and insists on the universal norms while positioning with a post-colonial perspective, will be questioned.

CONCEPTUALISATION AND FORMATION PROCESS OF HUMAN RIGHTS

1.1. The Concept of Human Rights

Human rights as the main source of the Universal Declaration of Human Rights and several internationally recognized treaties have an important role in determining domestic and international policies. Actually, the concept of human rights has been located as a subject of international relations for only half a century; they were not the subject of international relations before the Second World War. However, considering its ties to the concept of natural law, one can argue they have been thought of before. The great shift after the Second World War is that states' attitude to their citizens turned into both a legitimate concern and subject to international standards. How and why did the concept become so important in international relations? To reach an answer to this question, the concept should be analysed deeply with its historical background. Therefore, this chapter seeks to analyse the concept of human rights, its peculiarities, formation process and bonds with natural rights, with a special emphasis on its ambivalent structure within the system of international relations.

Donnelly identifies human rights as the rights people have because they are human, and he believes that these rights' basic and constant features are listed as follows: human rights are equal, inalienable and universal.[2] What constant features mean in theory is that these rights provide the same opportunity for everyone to enjoy them (equality); one cannot stop being human (inalienability); and all those are effective for all humankind (universality).

[2] Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca and London: Cornell University Press, 2003), 7-10.

Rights which are defined as above have two main types being accepted in international treaties and conventions: civil-political and socio-economic rights.[3] Twiss separates these two main types into sub-groups as follows:

> Civil-political rights include two sub-types: norms regarding physical and civil security (e.g., prohibitions of torture, slavery, inhumane punishment, arbitrary arrest; guarantees of legal personhood and equality before the law) and norms regarding civil and political empowerment (e.g., freedom of thought, assembly, voluntary association; guarantees of effective political participation in one's society). Socio-economic rights also include two sub-types: norms regarding the provision of goods meeting basic personal and social needs (e.g., nutrition, shelter, health care, education) and norms regarding goods meeting basic economic needs (e.g., work and fair wages, adequate living standard, a social security net).[4]

When we speak of human rights in terms of the Universal Declaration, the main emphasis shows up as 'dignity' for all humankind.[5] In other words, instead of the ability to create dozens of sub-types and groups, the main principle is to protect human dignity and provide everyone with minimum conditions of dignified life in the Declaration.

The questions of who can enjoy the rights and who is responsible to protect them are answered in a conventional way of 'social contract' understanding: A state is required to protect the human rights of everyone within its territory and subject to its jurisdiction.[6] Rights claim includes the two sides as 'duty-bearer' and 'right-holder'. In this sense human rights should be enjoyed by all humankind (right-holder) and provided by the state (duty-bearer). This conventional understanding squeezes the human rights debates into the state level

[3] Sumner B., Twiss, "History, Human Rights, and Globalization," *Journal of Religious Ethics* Vol.32 No.1 (Spring, 2004): 40.
[4] Sumner B., Twiss, "History, Human Rights, and Globalization", 40.
[5] "Preamble," The Universal Declaration of Human Rights, accessed February 12, 2014, http://www.un.org/en/documents/udhr/.
[6] "Article 2," International Covenant on Civil and Political Rights, accessed February 12, 2014, http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.

by referring to citizenship. It also brings out the concept of 'duties'. Galtung draws attention to the concept of 'duties' of a citizen to the state: "Total rights in principle entitle the state to demand total duties in return."[7] In other words, when rights are mentioned, so too are duties.

No concept may pop up in history: it should have reasonable grounds, suitable conditions and a gradual formation process. Although the great shift after the Second World War has a significant role for modern human rights, it does not mean that humankind did not witness the premises of the concept in earlier history. For instance, the social construction of today's international relations system is based upon the 1648-Westphalia system, the 1815 Concert of Europe, the 1919 League of Nations and ultimately the 1945 United Nations. In other words, what we call a 'great shift' has also been processed step by step in history.

The concept of human rights has also evolved in time, and its development has been a matter of debate along with its specific ties to Western culture. Thus, in the following sections of the first chapter, the relation between the concept of human rights and the concept of natural rights and the doctrine of natural law will be discussed.

1.1.1. Brief History

i) Natural Rights

Critiques of the concept of human rights generally arise from its roots associated with Western culture. In this context, it would be useful to tackle the issue with the concept of 'natural rights', which is claimed as the basis of the notion. L. Holzgrefe identifies natural law as a notion which "… is the naturalist doctrine

[7] Johan Galtung, *Human Rights in Another Key* (Cambridge: Polity Press, 1994), 10.

that human beings have certain moral duties by virtue of their common humanity."[8] In other words, in the natural condition of humankind, everyone had the natural right to do anything for their preservation.

Natural law basically is a doctrine which postulates certain natural or divine laws, while positivism postulates no such non-human law, politics or morality.[9] However, early Roman law had no term for right as we understand today. *Ius* means both right and duty; in the sixth century, the Emperor Justinian introduced the notion of natural law (*ius naturae)*.[10] *Ius naturae* was basically an 'objective' system of rights that was not really separable from *lex naturalis* (natural law).[11] Pagden claims that what we term today human rights have evolved from those which Roman jurists called natural rights.[12] On the contrary, Freeman states that "there is no direct line from medieval conceptions of *ius* to early modern conception of natural rights."[13] Freeman justifies his argument by handling the approach of humanist lawyers of the Renaissance to rights, and stresses that they were concerned not with natural rights but with civil rights.[14]

The Roman lawyers proposed natural law as an ideal or standard. Thus it was not exemplified in any existing legal code; however, it was a kind of standard which remains in nature to be discovered and to be applied by humanity (men).[15]

Hugo Grotius is considered to be the person who provided the basis for a secular theory of natural rights. The main reason why Grotius is regarded as the founder of modern natural law is his secularization of the doctrine. What he has done is to maintain that the theory of natural law does not logically require belief

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[8] J. L. Holzgrefe, "The Humanitarian Intervention Debate," in *Humanitarian Intervention Ethical, Legal and Political Dilemmas*, ed. J.L. Holzgrefe and O. Keohane, (Cambridge: Cambridge University Press, 2007), 25.
[9] Henrik Syse, *Natural Law, Religion, & Rights* (South Bend, Ind., St.: Augustine Press, 2007), 2.
[10] Anthony Pagden, "Human Rights, Natural Rights and Europe's Imperial Legacy," *Political Theory,* Vol.31, No.2 (Apr. 2003), 174.
[11] Henrik Syse, *Natural Law*, *Religion, & Rights,* 5.
[12] Anthony Pagden, "Human Rights, Natural Rights and Europe's Imperial Legacy," 174.
[13] Michael Freeman, *Human Rights: An Interdisciplinary Approach* (Cambridge: Polity Press, 2005), 18.
[14] Michael Freeman, *Human Rights: An Interdisciplinary Approach,* 19-20.
[15] Margaret MacDonald, "Natural Rights," *Proceedings of the Aristotelian Society* New Series Vol.47 (1946-1947):229.

in the existence of God.[16] As Benjamin Straumann states, Groutius says that his work in natural law "… does not depend upon an interpretation of Holy Writ in which many people find many things they cannot understand."[17] For Grotius, "… men had natural rights, but these were transformed by society. He conceived of *ius* both as what is just and as the ability."[18] In Grotius' idea of the ability to preserve one's life, liberties and property, the community's help is crucial, and these rights can be enjoyed by the members of one's society as well as humankind. Herein, we encounter two main arguments: the basic form of 'universality' (that rights can be enjoyed by everyone) and the 'secular' meaning of the rights (society is able to transform the rights and they have exact duties). In a sense, his theory is a combination of ancient and modern rights because, as it will be seen below, those arguments are not totally different from those that ancient premises tendered. Straumann stresses that Grotius's theory is not totally clear of what Ancient Roman jurists enhanced considering the following grounds: first, Grotius aimed to put forward secular, neutral natural law; second, Roman law had already enhanced a doctrine of the freedom of the high seas; third, analogies between Roman imperialism and Dutch expansion made political and legal theory particularly attractive for Grotius; and last, Roman law provided a fair amount of rights for foreigners, especially merchants, for trade-driving economic activities.[19]

Thomas Hobbes did not actually reject the concept of natural law but rather transformed it. Hobbes defines the law of nature (*lex naturalis)* in *Leviathan* as follows: "[*Lex Naturalis*]... is a Precept, or generall Rule, found out by Reason, by which a man is forbidden to do, that, which is destructive of his life, or taketh away the means of preserving the same; and to omit, that, by which

[16] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 19.
[17] Benjamin Straumann, "Is Modern Liberty Ancient? Roman Remedies and Natural Rights in Hugo Grotius's Early Works on Natural Law," *Law and History Review*, Vol.27 No:1 (Spring 2009), 62.
[18] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 19.
[19] Benjamin Straumann, "Is Modern Liberty Ancient? Roman Remedies and Natural Rights in Hugo Grotius's Early Works on Natural Law," 62-63.

he thinketh it may be best preserved."[20] Freeman explains Hobbes' natural law envisagement for humankind under the natural conditions in this way:

> In the natural condition of mankind, everyone had the natural right to do anything that was conductive to their preservation [...] The natural condition of mankind was one of each against everyone else, and therefore one of great insecurity[...] All men were obliged to obey this sovereign, provided that he did not threaten preservation.[21]

In the 17th century, Hobbes caused a breakpoint in the natural law doctrine by separating human's aim from God's and nature's objective rule, and emphasized the subjective will of the human in the lack of those binding rules. This secularization effort of natural law does not mean that he rejected God's will at all. Henrik Syse indicates that Hobbes tried to avoid the obvious charges which would be raised against him by religious followers of natural law theory and interprets him as a secularized nominalist who saw the natural right of a human being prior to any teaching of religious truth.[22] Basically for Hobbes, peace and self-preservation were prior to anything in the sense of natural rights. Syse remarks how Hobbes dealt with the concepts of 'sovereign', 'human' and 'laws of nature' in his theory: "...while the subjects are bound to obey no laws but the sovereign's, [...], *the sovereign himself* is bound by the laws of nature. He is thus, restrained by nature and by nature's God."[23]

One of the most important differences that Hobbes drew attention to is the distinction of right (*jus*) and law (*lex*). He parses sharply these two notions because for him the former means liberty while the latter means restriction.[24] Thus it is possible to say that those two notions are contradistinctive to each other in Hobbesian theory.

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[20] Thomas Hobbes, *Leviathan*, Chapter XIV, ed. Richard Tuck, (New York: Cambridge University Press, 1996), 91.
[21] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 19.
[22] Henrik Syse *Natural Law, Religion, & Rights*, 157-177.
[23] Henrik Syse, *Natural Law, Religion, & Rights*, 154.
[24] Thomas Hobbes, *Leviathan*, 91.

Both Hobbes and Grotius strove to redefine natural law in terms of humankind's emergence from the state of nature to a progress in civil society. While Grotius aimed at secularization of these rights, Hobbes carried the doctrine one level up and transformed *ius naturae* to the 'subjective' natural right. Although Hobbes remarked that all people (men) were obliged to obey the sovereign, he left no room for eternal and unconditional sovereignty for rulers; on the contrary, he opened a space to humankind to use their subjective rights if threatened by a lack of preservation. In other words, what differentiates Hobbes from Grotius is that Hobbes emphasised the subject's role and will on her/his own subjective rights under the conditions of lack of preservation, rather than unconditionally obeying the sovereign.

John Locke may be the most popular name when it comes to modern and contemporary natural rights debates. Locke, who held each individual as a rational and active creature, claimed that one had a responsibility to God to pursue the law of nature.[25] In other words, reason discovers what God has decreed. He offered a list of three basic human rights such as to live, liberty and property.[26] He also offered a social contract theory with the context of natural rights:

> In 'the state of nature', in the absence of government, everyone had the right to self-defence and to enforce the laws of nature. Since everyone was judge in their own cause, they would be partial to themselves, and this would lead to conflict. Rational individuals would therefore agree to live under a government that was entrusted to enforce the law of nature and protect the natural rights of all through the rule of law, and to promote the public good.[27]

On the other hand, Locke annotated that when those governments choose tyranny, people have the right to resist them. Locke's attempt to harmonize natural rights to both classical natural law and *ius naturae* is distinguishable. His

[25] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 21-22.
[26] Jack Donnelly, *Universal Human Rights in Theory and Practice,* 31.
[27] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 21.

reference to God and His absolute power is associated with an objective approach to rights. However, he provides an extensive freedom to individuals by referring to the rational mind that ensures a choice of their own badness or goodness, which may be associated with subjective rights. In other words, he submits preservation to rights by their objectivity, and universality, and besides he emphasizes individuality and subjectivity.

Syse stresses that although Locke used the term natural rights, he never defined it as clearly as does Hobbes, and that Locke used the concept of natural law in a much more traditional way than Hobbes did.[28] Since he is rational, Locke presumed that humanity (men) was subject to the law of nature even before the establishment of civil society. Nonetheless, Hobbes asserted a theory which accepts this state of nature in another way. For Hobbes, a state of nature meant chaos and all humankind was at war with it. This is why Hobbes emphasised the right of preservation as the natural right because in a chaotic situation it might make sense sufficiently.

ii) Revolutions and the Decline of Natural Rights

Since the 18th and 19th centuries, there has been a great shift in the notion of natural rights. By the 18th century, liberals targeted the governments which were not successful in providing for the rights of people and they pushed them to reform. They even strove to displace them. In this atmosphere, "… the natural right to freedom of conscience was held to entail the principle that the state should not discriminate against anyone on the ground of religion..."[29] This was an important threshold for debates of natural and human rights because people's right-seeking became the 'citizen's struggle against states. This means that 'rights

[28] Henrik Syse, *Natural Law*, Religion, *& Rights*, 189-190.
[29] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 23.

of man' became the rights of the citizen and the notion of natural rights became a concept which lies on the level of states and social contract.

In 1789, the National Assembly proclaimed the Declaration of the Rights of Man and the Citizen in France. It was obvious that there was an emphasis on 'citizen' here as if it was something different from human (man). By 1848 this language was going to be clearer in France: the Constitution of the Second Republic spoke of 'rights and duties anterior and superior to the positive laws'[30] so the rights were neither natural nor even for humans, but for citizens.

Freeman attributes the decline of natural rights to secularization: "It [natural rights] suffered philosophically from uncertain foundations once its theological basis had faded."[31] Thus the approach which asserted that morality and politics had to be derived from nature by reason could not survive.

While natural rights were suffering, Immanuel Kant enhanced his own theory about rights. As Pagden indicates, Kant declared the 'highest purpose of nature' with his expression 'a universal cosmopolitan existence'. For Kant, all nations stand originally in a community of land. Thus natural rights extend to all human beings without considering their nationality, so they should be understood as the citizens of the world.[32] Kant also brought a new perspective against the idea which tied natural law to 'reason': As Leonard Krieger states, Kant separated the faculty of understanding from the faculty of reason. According to Kant, the laws of nature were produced by the faculty of understanding, and we had to omit the realm of the moral from the natural because the moral realm had its laws but these are categorically distinct from the law of nature.[33]

Edmund Burke, another important figure in natural rights' critics, objected to the universalism of natural rights because of its failure to take account of

[30] Anthony Pagden, "Human Rights, Natural Rights and Europe's Imperial Legacy," 190.
[31] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 27.
[32] Anthony Pagden, "Human Rights, Natural Rights and Europe's Imperial Legacy," 187-188.
[33] Leonard Krieger, "Kant and the Crisis of Natural Law," *Journal of the History of Ideas* Vol.26 No:2 (April-June 1965): 195-196.

national and cultural diversity.[34] He did not fully reject the concept of natural rights – he noticed the natural rights to life, liberty, freedom of conscience, the fruits of one's labour, property and equal justice, but he saw the concept as useless metaphysical abstraction and that was the rights of man -social rather than natural.[35]

Another important name criticising natural rights, Jeremy Bentham, was in quest of establishing the law on a rational basis. Since natural law was fictitious, it was not appropriate for his rational understanding. Freeman explains why Bentham rejected the concept of natural rights as follows: "Claims of natural rights were vague, and so they could not be objectively evaluated, and disputes over natural rights were therefore likely to be settled by violence."[36] In other words, for Bentham what were called natural rights were non-sense and they could only cause instability in a society because of their vagueness. Bentham's other objection was to the absoluteness of natural law, one's claim to rights might conflict with another's, so the theory of natural rights failed to provide a clear criterion for its limitation[37] as his implication for utility was.

Pagden alleges that Bentham's reaction was against the natural law concept of the 'Declaration of the Rights of Man and the Citizen' rather than early modern natural law traditions.[38] Actually this assertion squares with what Freeman indicates in his book about Bentham. According to Freeman, "[o]nce natural rights had been detached from the concept of divine law, Bentham argued, they were based on nothing at all."[39] It was not a coincidence that Burke's demand from his French correspondent to "take a closer look not at humans as natural agents but at 'men in the concrete' and at their share in a common human life"[40] was the time in which a secularized conception of human rights (The

[34] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 27.
[35] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 27.
[36] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 27-28.
[37] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 28.
[38] Anthony Pagden, "Human Rights, Natural Rights and Europe's Imperial Legacy," 188.
[39] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 28.
[40] Anthony Pagden, "Human Rights, Natural Rights and Europe's Imperial Legacy," 189.

Rights of Man and the Citizen) emerged. All those philosophers developed their thoughts in a period in which natural law and the doctrine of rights were cornered in the context of the traditional concept of natural law and disengagement of its divine meaning.

Kreiger purports that there are three peculiarities about the history of natural law: first, the doctrine of natural law has been a central and continuous concept in Western thought from the ancient Greeks well into the modern period (longevity); second, despite its decline at the end of the 18th century in mainstream Western thought, it has maintained its importance to inspire intellectual movements in the 19th and 20th centuries (continuity); and its final peculiarity is that the 21st century is witnessing a revival of natural rights with its discrepancy.[41]

To sum up, along with the 18th and 19th centuries, the concept of natural rights transformed to a different pattern in comparison with its ancient version both in theory and practice. This great shift was observable in European governance regimes, especially with the 'right of man'. What was termed 'natural right' turned into 'civil' and 'political' rights – especially by the French Revolution and its declaration. Both Pagden and Freeman tackle this era (from the 18th century till the Second World War) as a period which contains the decline of natural rights in the traditional sense. While Freeman believes it happened because of the rupture of natural law from its traditional divine meaning, Pagden indicates especially natural law's new concept as the 'right of man' under a specific democratic (basically European) regime. Pagden accuses utilitarianist liberal tradition which saw rights as something that could be spoken of within what had come to be called 'civilization'- was roughly a reference to the value system of Europeans.[42] Pagden explains what the duality between nature and society caused with his own words:

[41] Leonard Krieger, "Kant and the Crisis of Natural Law," 92-93.
[42] Anthony Pagden, "Human Rights, Natural Rights and Europe's Imperial Legacy," 190-191.

> The distinction between nature and society, between the rights a person might hold as an individual and those he or she might hold as member of a given community, which both the Thomists and the modern theorists of the natural law had fought to keep separate, albeit with limited degrees of success, had now collapsed altogether.[43]

Consequently in the 19th century, utilitarianism suppressed the concept of natural rights. As John Stuart Mill said, 'barbarians', who are not civilised as Europeans, did not have rights as 'nations' had: only members of nations could have rights.[44]

1.2. Universal Declaration Model

1.2.1. After 1945: A New Age

When we speak of modern human rights, it is almost impossible to grasp the notion without analysing its historical bond to Nazi Germany and the Second World War. Until 10th December 1948 - before the General Assembly of the United Nations proclaimed the Universal Declaration of Human Rights- humankind had witnessed many atrocities prior to and during the Second World War, especially against the Jews committed by Nazi Germany. Therefore, as Twiss signifies, almost all human rights, which were in the Universal Declaration of Human Rights, "...addressed and readdressed the dehumanizing techniques and conditions imposed by Nazi Germany on Jews..."[45]

Although utilitarianism suppressed the concept of natural rights in the 19th century, it could not avoid the chain of satire. Freeman explains why utilitarianism

[43] Anthony Pagden, "Human Rights, Natural Rights and Europe's Imperial Legacy," 191.
[44] Anthony Pagden, "Human Rights, Natural Rights and Europe's Imperial Legacy," 191.
[45] Sumner B., Twiss, "History, Human Rights, and Globalization," 41.

was defeated by the concept of human rights in the 20th century which points to the failure of both utilitarianism and scientific positivism to explain the evil 'nature' of Nazism: according to him, 'The language of human rights seemed much more appropriate' to explain this evil nature.[46] Thus, the main aim of the Universal Declaration was, Donnelly says, to specify minimum conditions for a dignified life – and a life worthy of a human being - like any list of human rights.[47]

After the Second World War, the United Nations Organization was established in order to maintain the new world order. When the preamble to the charter of the United Nations is viewed, the following Article attracts the attention: "[It is determined] to reaffirm fate in fundamental human rights in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small".[48] Herein, it is possible to observe that the 'new world order' also meant a precaution that might halt the atrocities against humankind. In other words, it is not a coincidence that the chief aim of the organization emphasises the need to secure human rights after all historical experiences. Note that, Article 55 lays stress on the universality: the United Nations shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."[49] Taken together, it would be concluded that the United Nations aimed to provide a dignified life for all humankind to halt the atrocities in theory, and it tried to strengthen this effort not only with the emphasis on human rights in its charter, but also by proclaiming the Universal Declaration of Human Rights.

[46] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 33.
[47] Jack Donnelly, *Universal Human Rights in Theory and Practice*, 15.
[48] "Preamble," Charter of the United Nations, accessed February 21, 2014, http://www.un.org/en/documents/charter/preamble.shtml.
[49] "Article 55," Charter of the United Nations, accessed February 21, 2014, http://www.un.org/en/documents/charter/chapter9.shtml.

i) The Universal Declaration of Human Rights

On 10th December 1948, the Universal Declaration of Human Rights was endorsed, by vote of 48-0 (with 8 abstentions), by the United Nations General Assembly.[50] Donnelly's approach to the concept of human rights in terms of the purposes of international action is mainly based on the 'Universal Declaration Model' which associates human rights roughly with what is in the Universal Declaration of Human Rights.[51] He indicates four 'merits', in his own words, to understand the Universal Declaration Model of which features have strong bonds with what we call modern human rights: first, these rights are universal; second, all the rights in the Universal Declaration are the rights of 'individuals', not corporate entities (except self-determination); third, internationally recognized human rights are a whole package, therefore one cannot choose any of them by not choosing the others within the package, they are indivisible; fourth, these rights are the rights of everyone (universality) and can be held by everyone equally. However, states have a responsibility to implement them.[52]

ii) Universality vs. Cultural Relativism

Herein, it should be questioned whether it is possible to be universal by carrying the characteristics of Western thought. The claim to universality of the Universal Declaration is maybe the most targeted characteristic which is generally criticised.

The Universal Declaration model obviously was developed against Nazi ideology, bearing traces of neo-Lockean political theory. Using the concept of human rights rather than natural right does not necessarily mean that those two

[50] Jack Donnelly, *Universal Human Rights in Theory and Practice*, 22.
[51] Jack Donnelly, *Universal Human Rights in Theory and Practice*, 22.
[52] Jack Donnelly, *Universal Human Rights in Theory and Practice*, 23.

concepts are completely different. In fact, as Freeman underlines, replacement of the concept of 'natural rights' with 'human rights' may only have helped to eliminate the controversial philosophical implications (as indicated above) of grounding rights in nature.[53] If it is examined carefully, it is clearly seen that the Universal Declaration tries to put norms to make a deal generally rather than emphasising values and beliefs by comparison with the concept of natural rights. On the other hand, it becomes more controversial because of being parallel to the Lockean tradition of Western thought, which means that it is not a total break from the Western value system and it is a concept of the Western system of liberal thought. "To establish human rights, a different kind of law is necessary; some version of *natural law*."[54]

Pagden underlines that what we call human rights have strong ties with European understanding and they refer specifically to a certain democratic regime and civilised society; therefore, he finds the concept of human rights exclusionary in terms of its approach to the 'other' by designating them 'outlaw' or 'rogue'.[55]

Chris Brown also remarks from a liberal perspective of human rights that those rights are universal, they are associated with a particular kind of society (as indicated before by 'civilised society') and liberals agree that those rights can be promoted by promoting 'this' kind of society.[56] However, Brown adds that "...the international [human rights] regime which attempts on a global scale to promote decontexualised human rights is engaging in a near-impossible task."[57] He criticises the approach which seeks the Good according to universal norms settled in 1945, and instead of doing that, he says, we can find 'different and potentially competing accounts of Good' in the present international order.[58]

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[53] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 35.
[54] Chris Brown, "Universal Human Rights: A Critique," in *Human Rights in Global Politics,* ed. Tim Dunne and Nicholas J. Wheeler (Cambrdige, Newyork: Cambridge University Press, 2000), 106.
[55] Anthony Pagden, "Human Rights, Natural Rights and Europe's Imperial Legacy," 190-192.
[56] Chris Brown, "Universal Human Rights: A Critique," 121.
[57] Chris Brown, "Universal Human Rights: A Critique," 120-121.
[58] Chris Brown, "Universal Human Rights: A Critique," 116.

In *Universal Human Rights in Theory and Practice*, Donnelly introduces two approaches to explain the struggle between universalism and cultural relativism such as 'radical universalism' and 'radical cultural relativism'. Radical cultural relativism acknowledges that culture is the main source of the validity of a moral right or rule, while radical universalism, on the contrary, holds that culture is irrelevant to the validity of moral rights and rules.[59] He also suggests the concepts of 'strong cultural relativism' and 'weak cultural relativism': the former accepts that culture is the principal source of validity of a right or rule, that but it leaves a space for a few basic rights with virtually universal application; the latter considers that culture is the secondary source of validity of a right or rule. For Donnelly the latter can be also termed 'strong universalism'.[60] Radical universalism not only contains the dangers of moral imperialism, but also assumes a constant 'human nature' to determine general and universal rules. And this is extremely problematic because human nature itself can also be relative. On the other hand, radical cultural relativism leaves no room to determine any human rights because it accepts that all moral values are determined solely by culture. For Donnelly, radical cultural relativism is a problem because in a community there are several moral variations but he does not tend to ignore culture totally: He defines himself as a 'weak cultural relativist', or 'strong universalist' in this case.[61] It is agreeable that there are some existing cross-culturally valid moral values. However, making them primary and declaring them universal - in any condition - by putting any value to the top of the list, would be cultural imperialism in the sense of hierarchy among the cultures.

Galtung another name insisting that the concept of human rights are quite Western, stresses that there are no such universal laws in the legal sense because 'law' may mean very different things to different cultures and the main problem with cultural universalism is that "...infractions of human rights are evaluated and

[59] Jack Donnelly, *Universal Human Rights in Theory and Practice*, 90.
[60] Jack Donnelly, *Universal Human Rights in Theory and Practice*, 90.
[61] Jack Donnelly, *Universal Human Rights in Theory and Practice*, 90-104.

adjudicated according to Anglo-Saxon/Nordic standards, also when these may not be the standards of the local culture." [62]

As can be seen, Universalist ideology of the concept of human rights is seen as problematic in the sense of denying local social practices and values. It also causes a hierarchal value system that specifies which culture is essential to the universal norms. Nevertheless it still seems that it is troublesome to speak of human rights without basic norms of arbitration. The Universal Declaration Model of rights has quite strong ties with its Western predecessor, namely, natural rights. Besides, its formation process is, for sure, based on the history of Western rights theories. Even though the United Nations' Declaration has been universal in principle, it was approved by the political powers in that time. Herein, it should be questioned whether the participation of the new states in the United Nations makes its goals more universal or not. Freeman points out the representation problem as follows:

> Some states that played leading roles in drafting and approving the declaration had colonial empires, and much of the world's population lived under colonial rule. Since the adaption of the declaration, UN membership has more than trebled, with new members coming overwhelmingly from Africa and Asia. This has raised the question as to the applicability of the declaration to these countries...Nevertheless the Western states, including those from Latin America, were dominant. [63]

Herein, Rawls' conception of human rights in *The Law of Peoples* may contribute to the discussion of 'universality'. Charles R. Beitz deals with Rawls' conception of human rights in *The Law of Peoples* as a practical way to approach the 'role' of human rights.[64] Because, for Beitz, "... practical views treat the question of the justification of human rights as separable from the question of nature." and what Rawls seeks in *The Law of Peoples* is quite similar to this view

[62] Johan Galtung, *Human Rights in Another Key*, 49.
[63] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 35.
[64] Charles R. Beitz, "Human Rights and The Law of Peoples" (Paper prepared for *The Ethics of Assistance: Morality and the Distant Needy,* ed. Deen Chatterjee, Cambridge University Press, 2004), 5.

by emphasising the 'common' rather than 'universal', and giving priority to the role of human rights.[65] Rawls holds that human rights are binding on all peoples and societies but he does not claim that these rights belong to human beings in virtue of their common 'humanity' nor "... they are universal in the sense of being recognized by all significant cultural moral codes."[66] Then, what does it mean to be common but not universal? Beitz explains Rawls' idea as following: "They [human rights] can be said to be common to all persons only in a special sense, internal to the Law of Peoples: they are compatible with all reasonable political doctrines, including those of both 'liberal' and 'decent' peoples."[67] In other words, Rawls stresses that there is no need for a single, commonly agreed justification of human rights; members of each type of society would presumably internalise human rights for their own reasons. Beitz identifies how Rawls classifies the rights which do not require specifically a liberal government or the Western tradition, but a 'common good idea of justice' as follows:

> Human rights "proper" include rights to life (including "the means of subsistence"), personal liberty (including liberty, though not equal liberty, of conscience), personal property and equal treatment under law. These rights are essential to any "common good idea of justice" and therefore are not "peculiarly liberal or special to the Western tradition."... His own account of the distinction relies on an idea of reasonable toleration among peoples-specifically, toleration by liberal societies of those non-liberal societies which he labels as "decent hierarchical peoples."[68]

In a sense, Rawls sees some rights as common under the 'common good idea of justice' and it is possible to implement them in a society with decent hierarchical peoples. Rawls' theory can be a good position against the perspective of radical universalism which tends to ignore cultural codes and differences.

[65] Charles R. Beitz, "Human Rights and The Law of Peoples," 7.
[66] Charles R. Beitz, "Human Rights and The Law of Peoples," 12.
[67] Charles R. Beitz, "Human Rights and The Law of Peoples," 12.
[68] Charles R. Beitz, "Human Rights and The Law of Peoples," 15-16.

iii) Individuality

Rights, as indicated before, are assumed to be the rights of individuals because it is thought that only individuals should be considered human beings. Thus, only individuals have human rights. It is intrinsic to the liberal arguments of predecessors, and human rights are not totally free from the concept of natural rights. What 'individual' means here is neither the atomistic individual nor the community. Membership of a community is essential when it comes to explain the human rights of an individual in a community as a social practice. It can be herein questioned whether it refers to the rights of individuals or a community. Donnelly stresses that it is important to take into account individuals as ones who can hold the rights as the members of a protected group but individually. To be more specific, Donnelly says "Even where group membership is essential to the definition of a human right, however, the rights are held by individual members of protected groups and not by the group as a collective entity."[69] However Article 16 of the Declaration indicates that "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."[70] This is the only reference to a collective right in the Declaration. While Freeman sees this right as an "unusual example of a collective right in the declaration."[71], Donnelly underlines that families are 'associations of rights-holding individuals' and "… [families] may not exercise their rights in ways that infringe on the human rights of their members (or on any other persons)"[72] This is why, Donnelly claims, that even in this structure, Article 16 secures the individualistic character of the Declaration by grasping the concept as 'individuals in a group'.

Galtung, who identifies human rights as norms which concern and protect human existence, explains the international human rights system with the

[69] Jack Donnelly, *Universal Human Rights in Theory and Practice*, 26.
[70] "Article 16," The Universal Declaration of Human Rights, accessed February 22, 2014, http://www.un.org/en/documents/udhr/index.shtml#a16.
[71] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 38.
[72] Jack Donnelly, *Universal Human Rights in Theory and Practice*, 26.

components such as norm-sender (the United Nations), norm-receivers (states) and norm-objects (individuals).[73] With the effect of Westernness, which includes individualism within strong competitive relationships, the Universal Declaration Model deals with rights at the level of the individual. For Galtung, since individuals are the norm-objects and correlated with the norms, human rights become individual rights too, and it causes the exclusion of the collective rights to the extent of rights' Westernness.[74] Galtung clarifies why the Western attitude places the individuals at the center of rights, rather than dealing with groups as follows:

> Western cosmology defines individual actors as the ultimate units of social construction, the social atoms or building bricks so to speak. In this perspective groups might not only constrain the free unfolding of individuals through obligations of solidarity; they are also less 'real'. Individuals are born, mature and die; but in between they are real, with inalienable rights. How can groups with no clear birth and death dates be capable of serving as norm-objects?[75]

iv) Indivisibility

Since the Universal Declaration of Human Rights was declared, a lot of internationally recognized human rights treaties have been established to fill the gaps adjunct to the Universal Declaration. The Vienna Declaration, which was declared in 1993, states that "All human rights are universal, indivisible and interdependent and interrelated."[76] (Article 5) However, there are some arguments which stress a dichotomy between socioeconomic and civil and political rights. As Donnelly points out, Cranston remarks that some socioeconomic rights are not

[73] Johan Galtung, *Human Rights in Another Key*, 2-3.
[74] Johan Galtung, *Human Rights in Another Key*, 16.
[75] Johan Galtung, *Human Rights in Another Key*, 52.
[76] "I(5)," Vienna Declaration and Programme of Action, accessed February 23, 2014, http://www.ohchr.org/en/professionalinterest/pages/vienna.aspx.

available for all human beings so there is no sense in calling them human rights. For instance, "Cranston notes that right to work, like many other economic and social rights, refers directly to a particular class of people rather than all human beings."[77]

Johan Galtung also distinguishes negative and positive rights as follows: "The negative human rights limit *l'état gendarme*, the positive human rights define *l'état providence,* the state as a provider, with the individuals having claims *on* the state, not only *against* the state as for the negative rights."[78] and he correlates those two dichotomies (positive-negative and civil and political-socioeconomic) as follows: "The civil and political rights are often seen as being more of the first kind, and the economic, social and cultural rights as more of second."[79] On the other hand, Donnelly proffers to transcend the dichotomy between socioeconomic and civil and political rights not to allow ruling elites to violate human rights by ensuring benefits of dichotomy.[80] He tackles all those rights as complementary to each other – i.e. the social and cultural right to education may ensure the civil and political rights to freedom of speech, belief - and consider them equivalently precarious – i.e. the right to work is instrumentally and intrinsically valuable like political participation.[81]

Although it seems important to blend both civil and political and socioeconomic rights, and to regard them as complementary on behalf of enjoying those rights as a whole, it does not eliminate the logical contradictions. For instance, Article 24 of the Universal Declaration states that "Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay."[82] But considering the phrase 'periodic holidays with pay', it looks like the article universalizes a right which is relevant only to limited

[77] Jack Donnelly, *Universal Human Rights in Theory and Practice*, 28.
[78] Johan Galtung, *Human Rights in Another Key,*8.
[79] Johan Galtung, *Human Rights in Another Key,*8.
[80] Jack Donnelly, *Universal Human Rights in Theory and Practice*, 33.
[81] Jack Donnelly, *Universal Human Rights in Theory and Practice*, 32.
[82] "Article 24", The Universal Declaration of Human Rights, accessed February 23, 2014, http://www.un.org/en/documents/udhr/index.shtml#a24.

social conditions.[83] Thus, if human rights are universal and relevant to all human beings, the rights should cover everyone without any exception. Hence, this situation looks like a strong paradoxical phenomenon in terms of a dichotomy of human rights being necessary or not.

v) A State's Responsibility

Since states are parties to internationally recognized human rights and responsible for ensuring human rights in terms of the obligations that the United Nations brings along with its membership, they are accepted as responsible for prosecution of the rights, as indicated before. However Article 2(7) of the Charter of the United Nations annotates that the United Nations is not authorised to intervene in the domestic jurisdiction of any state, which empathises relatively the internal independence of the states in international relations: "Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter […]"[84] The rest of the article clarifies under which conditions the United Nation has the right to intervene, but this will be argued below.

The United Nations' human rights system, which was termed basically the Universal Declaration Model in the previous parts of this thesis, may be termed a 'regime' because it consists of "[…] a set of norms and institutions that is accepted by states as binding."[85] This regime, as seen before, is foundation of the Universal Declaration. This regime holds states responsible to provide at least minimum conditions for implementation of human rights (see preamble to the charter of the United Nations) and this is based on the realist paradigm of

[83] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 40.
[84] "Article 2(7)," Charter of the United Nations, accessed February 23, 2014, http://www.un.org/en/documents/charter/chapter1.shtml.
[85] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 53.

international relations which strengthened and became widespread after the Second World War. Nevertheless, the state-centric conception of human rights pertains not only to the modern approach but also to historical understanding. Historically, liberal social contract theory, which sees that there is a contract between rulers and people to protect people's rights by a legitimate power (state), also gives the state a 'central' role. Donnelly also draws attention to the state-centric conception and highlights the similarity between old and new approaches: "[…] the contractarian notion of the state as an instrument for the protection, implementation, and effective realization of natural rights is strikingly similar to the conception of the state in international human rights instruments."[86]

Galtung also draws attention to the state-centric conceptualization between old and new forms of human rights (natural rights) with the 'transpersonal' characteristic of human rights: pointing the transcendental principle which was God in old times and is now His successors such as the king, the state, the United Nations, etc., he expresses that the state is constructed in the image of the king by receiving legitimacy both from the state community (the United Nations) and from the people, which makes the new social contract look like the old one that was conceptualized as the allegiance to the ruler (or authority) in return for protection and assistance.[87]

The state-centric attitude, firstly, may degrade the concept of human rights into the rights of citizens; secondly it carries the issue into the stage of states, which may promote the strong realist paradigm without considering other components of the international system; and finally, it mostly advocates that the states are the main protectors. However, they are not only main protectors but also the principal violators. It becomes difficult to see the states as protectors when it comes to political and civil rights. In the case of economic rights, states may act as providers of rights to property with its liberal background which has historically defended the right to property as a bourgeoisie tradition. But should

[86] Jack Donnelly, *Universal Human Rights in Theory and Practice*, 35.
[87] Johan Galtung, *Human Rights in Another Key,* 17-18.

we expect that the state plays a positive role with regards to political and civil rights? For instance, in case of discrimination or police violence against its own citizens, how often do we witness that the state acts as a positive protector that ensures human rights without being biased? It seems that states, which are the source of power itself, have no chance to be 'eternal' and unconditional protectors of human rights but inevitable violators of them.

1.3. Critiques

Up to the end of the first chapter, I have tried to demonstrate first, the formation process of the concept of human rights in association with the natural law doctrine and the concept of natural rights; second, the Universal Declaration Model and its peculiarities under the name of modern human rights; third, the critiques to the concept of human rights and the Universal Declaration Model, which are related to its claims such as being universal and individual by repudiating cultural differences and imposing Western values as universal norms.

The strategy of the Universal Declaration of Human Rights was not to find out a middle way to reach common values and beliefs. On the contrary its strategy was to reach agreements on norms which were raised from the value system of the West within its historical background. Does it mean that we should give up on the rights or ignore the violence of the rights? Surely not. But it is necessary to confront the ambivalent structure of the concept.

Cultural imperialism, as argued in the sections above, is the most important critique to the concept of international human rights in the context of universality and individualism. Donnelly argues that acting on behalf of human rights does not mean imposing one's own values on other countries and if the human rights policies are based on norms which are authoritative international

human rights norms, it does not necessarily reflect moral imperialism.[88] Firstly, he defends this idea by recalling the fact that the Universal Declaration was adapted without any single dissident vote. But it is a poor claim to say that the decisions are universal norms and facts just because they were approved by political powers *at that time.* It seems more cyclical than universal. Secondly, he remarks that we cannot simply ignore several cases such as torture, disappearances, arbitrary arrest and detention, racism and so on in the name of diversity or respect for cultural tradition.[89] This assertion is partly true but deficient. To highlight cultural differences and to refuse a repressive universality does not necessarily mean that people are on the side of the oppressors. Actually, this approach itself is problematic because it means that if one emphasises cultural difference or refuses universal truth -which means one refuses the fruits of 'enlightened' Western ideology-, then one has to be on the side of the oppressors. It seems that the author leaves no room for local or cultural norms to be able to do the 'right thing'. Thus, we confront a subject who is capable of knowing everything with 'reason', and this is almost the same figure introduced by the 17th century's concept of natural rights. Another problem which emerges from Donnelly's suggestion is that he insists on not conniving with these 'inhuman' conditions by applying the universal human rights standards; however, the authorities of this Universal Declaration Model have ignored human rights violations in several cases by pointing to those whose lives are worth living and what it really means to be human.[90] Therefore, I assert that there is an ambivalent nature in the Universal Declaration Model and its sanctions.

Another dilemma related to the concept of human rights is the ambiguity of 'human'. Freeman criticises Donnelly's definition of human rights: "Donnelly says that human rights are the rights one has simply because one is a human being. This is a very common and very unsatisfactory formulation. It is not clear

[88] Jack Donnelly, *Universal Human Rights in Theory and Practice*, 159.
[89] Jack Donnelly, *Universal Human Rights in Theory and Practice*, 159.
[90] This debate is the third chapter's discussion topic this is why it will be tackled detailed later in the thesis.

why one has *any* rights simply because one is a human being."[91] Also in the Universal Declaration it maintains its ambiguity as to why one has human rights. For instance, Article 22 begins with the expression "Everyone, as a member of society, has the right to social security"[92], so herein having rights is bound to becoming a member of society. Also Article 21, which states that "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives"[93], is selective because it does not cover the underage citizens.

It seems that it has not been grounded philosophically why one has rights, except by reason of being human. However, in my estimation, what is termed 'human' in the declaration mainly refers to the 'citizens' of a state. Because whoever has such rights also has duties as a citizen in the sense of a social contract. As long as the concept of human rights is explained in this mutual relationship (rights and duties), it is in conformity with the state-centric structure. Pagden points out that the application of human rights requires a certain democratic regime and a civilised society, and this seems quite like the 'rights of man (citizen)' in the European sense rather than a universal characteristic.[94] If the modern concept of human rights is a return to its natural law heritage, and if we speak of the citizen's rights against the state and the citizen's duties under the name of 'human rights', it is essential to clarify one point: what we call human rights (which is accepted *universal* and *equal* for everyone), loses its characteristics – mainly those two mentioned before - at the moment in which the concept is not applied within the nation-state. Giorgio Agamben, whose theories will be touched upon in the third chapter, states the same concern as follows: "In the system of the nation-state, the so-called sacred and inalienable rights of man show themselves to lack every protection and reality at the moment in which they

[91] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 60.
[92] "Article 22," The Universal Declaration of Human Rights, accessed February 25, 2014, http://www.un.org/en/documents/udhr/index.shtml#a22.
[93] "Article 21," The Universal Declaration of Human Rights, accessed February 25, 2014, http://www.un.org/en/documents/udhr/index.shtml#a21.
[94] Anthony Pagden, "Human Rights, Natural Rights and Europe's Imperial Legacy," 191-192.

can no longer rake the form of rights belonging to citizens of a state."[95] In the Universal Declaration Model which prioritizes the nation-state system as the dominant actor and charges the state with the protection of these rights, human beings do not actually have the 'human' rights because they are human. They may enjoy their human rights only if they are the members of a democratic society and/or are the citizens of a state.

Although international sanctions are one of the most popular debates in human rights, and are also the subject of this thesis, authors such as Donnelly stresses that the solution to human rights violations can be found at state, rather than international, level.[96] Those states which are assumed as the main actors of an international regime should be willing to fulfil the minimum requirements that are necessary for the protection of human rights. Thus again, we are returning to the argument which puts the states at the centre of the application of rights.

Pointing out this ambivalent structure does not mean that the concept of human rights and its claims are completely in vain. Its occurrence was really important during the period in which the Nazis made major human rights violations, and they remain important considering that we still face human rights violations. However, the dilemma about its ambivalent structure is related to the development of the concept of human rights. The formation process of the notion causes the dilemma not only with its ties to a specific ethical-legal code but also with its reference to a particular kind of political system, both of which have European origins. This is why, when the term 'human rights' is instrumentalized for humanitarian intervention, it establishes a superiority of one civilization over all others, or uniform standards for all countries according to their own priorities.

[95] Giorgio Agamben, *Homo Sacer Sovereign Power and Bare Life,* trans. Daniel Heller-Roazen (Stanford California: Stanford University Press, 1998), 126.
[96] Jack Donnelly, *Universal Human Rights in Theory and Practice*, 138.

HUMANITARIAN INTERVENTION AND NON-INTERVENTIONISM

2.1. Humanitarian Intervention

Humanitarian intervention and human rights are concepts which go hand in hand in debates about accountability and paradoxes of humanitarian intervention in international law. This is why in this chapter the concept of 'humanitarian intervention' will be analysed in terms of law and politics with its relation to the concept of human rights.

Humanitarian intervention may be defined as follows:

> […] the threat of 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 government of the state within whose territory force is applied.[97]

In addition to J. L. Holzgrefe's definition of humanitarian intervention, Fernando R. Teson defines the concept as follows:

> [humanitarian intervention is] the proportionate transboundary help, including forcible help, provided by governments to individuals in another state who are being denied basic human rights and who themselves would be rationally willing to revolt against their oppressive government.[98]

We might ask whether there is a clear-cut divide between 'humanitarian' and other kinds of intervention. Chris Brown points out the rational egoist characteristic of states in international relations - according to realist paradigm -

[97] J. L. Holzgrefe, "The Humanitarian Intervention Debate," 18.
[98] Fernando R. Teson, *Humanitarian Intervention: An Inquiry Into Law and Morality* (New York: Transnational Publishers, 1997), 5.

and he criticizes any expectation of being 'humanitarian' from those states which are motivated by egoist selectivity.[99] For the questioning of the existence of any clear-cut divide between humanitarian and other kinds of intervention, we might note that all interventions involve the exercise of power; all involve taking sides in local political conflicts and the motives for all interventions are mixed.[100]

However, if we go beyond the search for an appropriate definition for the term, it is a must to get to the root of humanitarian intervention, which is provided by international declarations and agreements. Thus, the restrictions and necessities in the Charter of United Nations should be analysed with the intention of grasping the processing of humanitarian intervention.

The paramount international convention which governs the exercise of internationally accepted armed force is the Charter of the United Nations. In the United Nations Charter, states are restricted to exercising the use of armed force by Article 2(4) which states that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."[101] Article 2(7) declares that

> Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter...[102]

According to these articles, states, armed organisations or international organisations are not allowed to intervene in the domestic affairs of states under

[99] Chris Brown, "Humanitarian Intervention and International Political Theory," in *Human Rights and Military Intervention,* ed. Alexander Moseley and Richard Norman (Aldershot, Hants; Burlington : Ashgate Pub, 2004), 154.
[100] Chris Brown, "Humanitarian Intervention and International Political Theory," 162.
[101] "Article 2(4)," Charter of the United Nations, accessed March 31, 2014, http://www.un.org/en/documents/charter/chapter1.shtml.
[102] "Article 2(7)," Charter of the United Nations, accessed March 31, 2014.

the restrictions of international law. However, humanitarian intervention debates began on how to interpret these articles legally rather than an acceptance of this clear end. Article 39 of the UN Charter states that

> The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.[103]

As seen from the article stated above, the Security Council is responsible for protecting international peace, and authorized to decide what measures shall be taken in parallel with the necessity of stabilising international peace. Herein 'intervention' eludes its prohibited meaning which is mentioned in Article 2(4) and 2(7), and it becomes an instrument to stabilise the international system. The dilemma on debates of humanitarian intervention occurs with this duality- that is, if it is *really* a duality.

Some international lawyers interpret Article 2(4) in a way which stresses that it does not forbid the threat or use of force, but rather forbids it when directed against the territorial integrity or political independence of any state.[104] According to this counter-argument, if the humanitarian intervention does not end with a territorial conquest, it is not a breach of Article 2(4). Herein it seems that international law – by way of interpretation - does not give constant and certain resolutions. "This debate, like so many in international law, turns on how to interpret the relevant international conventions."[105]

In the following sections will be discussed the legal interpretation of the usage of armed forces in the name of humanitarian intervention in terms of the

[103] "Article 39," Charter of the United Nations, accessed March 31, 2014, http://www.un.org/en/documents/charter/chapter7.shtml.
[104] J. L. Holzgrefe, "The Humanitarian Intervention Debate," 37.
[105] J. L. Holzgrefe, "The Humanitarian Intervention Debate," 38.

sovereignty principle and the theoretical dilemmas which can occur in the course of the interpretation of international law.

2.2. Non-Interventionism

Non-interventionism is an attitude which rejects international interventions in order to avoid unjust and unequal interference. Fernando R. Teson categorizes three basic reactions to humanitarian intervention: the first, 'absolute non-interventionism', claims that use of force can be only justified as a *self-defence*; the second, 'limited interventionism' is a thesis which claims that humanitarian intervention can be acceptable only if there are extreme human rights violations such as mass murder or enslavement; the third, 'broad interventionism' is a thesis which claims that humanitarian intervention is acceptable in cases of serious human rights violations even when it is not genocidal in extent.[106]

The main debate about non-interventionism is shaped by some basic arguments such as state sovereignty, calculations in terms of human happiness and legality-morality. These discussions will be addressed below.

2.2.1. Sovereignty

As claimed in the previous parts of this chapter, Article 2(4) and Article 2(7) emphasise the priority of the state sovereignty principle. The modern international relations system established after the Second World War strictly prohibits intervening in states' domestic jurisdiction. The Westphalian order identified strict

[106] Fernando R. Teson, *Humanitarian Intervention: An Inquiry Into Law and Morality,* 23-24.

rules of non-intervention and respected the rights of sovereigns,[107] and the new world order – the post-Westphalian system - basically collects the same rules to stabilise the international relations system. However, as Chris Brown points out:

> [t]he Westphalia order was actually characterized by interventions of all shapes and kinds, and 1945 was significant for two reasons not one; it certainly instituted a set of new human rights but it also, *for the first time* introduced a strict norm of non-intervention – in other words both human rights and non-intervention are substantially new ideas, and it is a mistake to regard one as representing an old older displace by the other.[108]

Thus, from the starting point to which Brown brings us, until 1945 what had shaped the international relations system was all kinds of interventions, and what has changed since 1945 is that intervention in a legal sense has been prohibited and at the same time human rights have become an important argument of international relations. Therefore the existence of the non-interventionist post-Westphalian order, which delegitimizes humanitarian intervention against state sovereignty and domestic jurisdiction, conflicts with the new set of rules which brings 'humanitarian' aims to the extent of the importance and priority of human rights in international relations. Thus, in practice these two parameters of the modern international system seem to conflict with one another.

However, when the United Nations Charter is analysed more carefully, it is possible to see that the strict rule non-intervention has some exceptions, which are legally stated in Article 2(7). Article 2(7) continues as follows: "[...] this principle shall not prejudice the application of enforcement measures under Chapter VII."[109] Chapter VII determines how the United Nations shall deal with threats to peace, breaches of the peace, and acts of aggression. That is why it flouts the rule of non-intervention by authorizing the Security Council to decide

[107] Chris Brown "Humanitarian Intervention and International Political Theory," 153.
[108] Chris Brown, "Humanitarian Intervention and International Political Theory," 153.
[109] "Article 2(7)," Charter of the United Nations, accessed April 2, 2014.

under which circumstances a state's domestic jurisdiction can be intervened in. It is obvious that Chapter VII is designed as an exceptional solution to solve the problems that emerge when the non-intervention rule and necessity to protect human rights meet. However, the non-intervention rule for protecting states' sovereignty remains ambiguous because the application of Article 2(7) might result in breaching the rule of non-intervention.

Teson, who is against non-interventionist arguments and approaches the issue from a liberal perspective, contends that sovereignty does not necessarily mean that a state is untouchable or that its authorities may act in whatever way they want. He differentiates external self-determination from internal self-determination in the case of the sovereignty principle, and remarks that "external self-determination is the right of peoples to be free from alien rule" such as colonial domination.[110] On the other hand, internal self-determination is associated with the legitimacy of the government inside, and for Teson internal self-determination, which is "the right of peoples to establish their own political, economic, and cultural institutions without interference from other states", should be our focus when it comes to the debates concerning sovereignty.[111] For Teson, accepting the humanitarian intervention principle is not denying people's right to independence, because if a government violates the human rights, then it is no longer a legitimate power, and internal self-determination requires the government to be legitimate and based on the consent of the people.[112] He states that "[t]he gross violation of human rights is not only an obvious assault on the dignity of persons, *but a betrayal of the principle of sovereignty itself*."[113] Hereby, Teson criticises the approach which prioritizes self-determination over individual human rights, and interprets the state sovereignty principle in a way that denies the

[110] Fernando R. Teson, *Humanitarian Intervention: An Inquiry Into Law and Morality,*30.
[111] Fernando R. Teson, *Humanitarian Intervention: An Inquiry Into Law and Morality,* 30-31.
[112] Fernando R. Teson, *Humanitarian Intervention: An Inquiry Into Law and Morality,* 33.
[113] Fernando R. Teson, "The Liberal Case for Humanitarian Intervention," in *Humanitarian Intervention Ethical, Legal and Political Dilemmas*, ed. J.L. Holzgrefe and O. Keohane (Cambridge: Cambridge University Press, 2007), 110.

legitimacy of the internal self-determination of a government if there are mass human rights abuses by that government.

2.2.2. Utilitarianism

Holzgrefe identifies utilitarianism as a naturalist doctrine which considers an action as 'just' only if its consequences are more favourable than unfavourable to all concerned.[114] In other words, for utilitarians the consequences of an action are more important than the action itself.

It is possible to analyse utilitarianism under two different groups: act-utilitarianism and rule-utilitarianism. Act-utilitarians claim that "[...] *each human action* is the proper object of moral evaluation."[115] Briefly, an action is just if its immediate and direct consequences are more favourable than unfavourable to all concerned. On the other hand, " 'rule-utilitarians' hold that a *specific class of actions* (rules, norms, and maxims) is the proper object of moral evaluation."[116] Namely, for rule- utilitarians an action can be just if it accords with a set of rules which are adapted to aggregate well-being. To give an example to illustrate the differences between two of the groups, if we ask whether a military action is permissible or not, the answers will be as follows: an act-utilitarian might say that military action can be permissible if it saves more lives than it loses; on the other hand, a rule-utilitarian's answer might depend on whether a military action is permitted or required by a rule which has a general adherence for the good of humankind. Therefore the main difference between these two is that while the former is involved with the consequences of the action, the latter looks for a general rule that produces the best consequences for all concerned.

[114] J. L. Holzgrefe, "The Humanitarian Intervention Debate," 20.
[115] J. L. Holzgrefe, "The Humanitarian Intervention Debate," 21.
[116] J. L. Holzgrefe, "The Humanitarian Intervention Debate," 21.

Teson, claiming that strict non-interventionism may be defended on utilitarian grounds, specifies two main characteristics to explain why the utilitarian argument is against humanitarian intervention: first, the killing of innocent people; second, the danger of abuse and partiality by those who intervene. The first argument takes into account the possibility of the extensive damage that can occur during the use of armed force by the intervention. In such a case, interventionist powers defuse not only the group which caused the human rights abuses, but also harm innocent people who had already been the target of this group's abuses. Herein, the main interest of utilitarianism is the 'innocent people' who are damaged as the 'consequence' of an act. Thus, from a utilitarian perspective, if the consequences are considered - and calculated - it is better not to intervene in such a case. The second argument postulates the empirical proposition which governments always abuse when they intervene abroad. It assumes that during and after the intervention, interventionist powers create a new balance of power in their favour, and meanwhile human rights abuses may remain in a different way which is highly relevant to an empirical approach.[117] Herein, we confront the rule-utilitarianist approach which confirms that "[i]t is better to have a rule of absolute non-intervention in order to minimize abuses."[118]

In light of this information, Teson maintains an opposite position against the arguments of the utilitarianist approach by accusing the theory of being too ready to stigmatize every intervention on behalf of human rights as abusive. For him, non-interventionists (utilitarians) seek non-humanitarian reasons behind the intervention all the time. He states that

> "It is not immoral for a government to act out of humanitarian *and* self-interested motives at the same time. The true test is whether the intervention has put an end to human rights deprivations... There is nothing wrong in a government trying at the time to rescue foreign victims of oppression and legitimately to advance the interests of its own citizens, provided that the self-

[117] Fernando R. Teson, *Humanitarian Intervention: An Inquiry Into Law and Morality,* 102-113.
[118] Fernando R. Teson, *Humanitarian Intervention: An Inquiry Into Law and Morality,* 109.

> interested action does not impair the main humanitarian objective."[119]

To support his argument, Teson indicates the situation which experienced in Nazi Germany; he states that a particular evil in institutionalized violations of human rights can be in a society and those who might monopolize the use of force in a political community must be stopped by an intervention. In such a case, the intervention can be just even if the interventionist powers infringe upon the rights of innocents. For him, such an intervention which contains the infringements of the rights of innocents will prevent more abuses than the violators can perpetrate in the absence of that intervention.[120]

While Teson's argument draws attention to the deficient parts of a non-interventionist utilitarian approach, it still remains deficit in explaining why it is necessary to prevent an imperialistic gesture of the humanitarian intervention. In this sense, Teson himself becomes an advocate of an imperialist action by defending his liberal position.

While Teson clamorously associates the utilitarianist argument with the non-interventionist approach in his book as if it is the only source of the non-interventionist argument, Nigel Dower writes that "[...] such an approach [utilitarianism] provides no principled objection to the possibility of military intervention for the sake of stopping human rights violations."[121] Actually Dower might be right if the act-utilitarian approach is considered, because act-utilitarians do not refuse any kind of intervention as a *de facto* constant and/or 'rule' under all conditions. The situation changes according to the utilitarian calculations. Also, for rule-utilitarians, it is not an unalterable fact or rule *not* to intervene. The rule might be changed to the extent that it is adapted to the general welfare of a society when utilitarian calculations are considered. Therefore, the utilitarian argument

[119] Fernando R. Teson, *Humanitarian Intervention: An Inquiry Into Law and Morality,* 113.
[120] Fernando R. Teson, *Humanitarian Intervention: An Inquiry Into Law and Morality,* 106.
[121] Nigel Dower, "Violent Humanitarianism- An Oxymoron?," in *Human Rights and Military Intervention,* 84.

can be a part of a non-interventionist approach, but it is not an argument consistent with a principle that is against intervention under all circumstances.

2.2.3. Arguments on Morality and Legality

In the course of humanitarian intervention, 'responsibility to intervene' or 'responsibility to protect' does not have a really obvious binding or explicit conditions which can be applied in all cases. For instance, in some cases like Uganda, Cambodia and Liberia[122], the international community did nothing to stop the massacre in spite of the fact that the doctrine of humanitarian intervention refers to the United Nations Charter and recognizes the principles of international law, rather than customary law[123]. When we look at the applications of interventions, we may see speeches and motives which contain moral concerns.

The struggle between law and moral concern and their interpretation may be seen in 'legal positivism'. Legal positivism "[…] as a normative doctrine, is the consensualist, collectivist view that norms are just if they are lawful; that if they are enacted according to accepted procedures."[124] Thus, for a legal positivist it is a moral obligation to obey the law. Herein the moral questioning is irrelevant to the fact that if the norm satisfies moral expectations and demands, the content of the norm is irrelevant to its binding force.[125] This is called the 'separability thesis' which postulates that binding laws have absolutely no need to reproduce or satisfy a certain demand of morality in a society.[126]

[122] Vladimir Kartashkin, "Human Rights and Humanitarian Intervention," in *Law and Force in the New International Order*, ed. Lori Fisler Damrosch and David J. Scheffer (Westview Press, 1991), 209.
[123] Vladimir Kartashkin, "Human Rights and Humanitarian Intervention," 206.
[124] J. L. Holzgrefe,"The Humanitarian Intervention Debate," 35.
[125] J. L. Holzgrefe,"The Humanitarian Intervention Debate," 35.
[126] J. L. Holzgrefe,"The Humanitarian Intervention Debate," 35.

On the other hand, naturalists reject the separability thesis because they find no sense in having a moral obligation to obey the law only if it is settled by legislative procedures.[127] The main argument of naturalists here is that it does not have to be a point to obey a law because the legislative power itself also can be problematic such as seen in Nazi Germany.

The separation of the legal from the moral was discussed in the previous chapter under the section on natural law. The duality here occurs because of the separation of those two by the reformations in the West. When the accommodation between positive and natural (or divine) law ended, sovereigns were bent on an understanding of secular law which has historically shifted to legal positivism. Thus there is no room for moral decision-making processes in the legal positivist understanding.

In this respect, international law was recognized as essentially depending on positive law legitimized by sovereign consent and power. Thomas M. Franck sees the struggle which is faced today caused by such a lack of natural law. By exiling natural law from international law, legality and morality have become problematic. For instance "Commission of Kosovo concluded that NATO's action, while not strictly legal, was legitimate."[128]

In the light of this information, can humanitarian intervention be just under a normative law, or do states have a moral duty to intervene?

As for the question of the legality of humanitarian intervention, for legal realists if the Security Council fails to end massive human rights abuses, states can do so without any authorization according to the contemporary international community's attitude - which includes moral concerns in addition to legal regulations.[129] Herein we witness the separation of legal realists and classicists, because according to the classicist view, unauthorized humanitarian intervention

[127] J. L. Holzgrefe, "The Humanitarian Intervention Debate," 36.
[128] Thomas M. Franck, "Legal Interpretation And Change," in *Humanitarian Intervention Ethical, Legal and Political Dilemmas*, 215.
[129] J. L. Holzgrefe," The Humanitarian Intervention Debate," 39.

is illegal; in other words, the illegality of unauthorized humanitarian intervention is clear in the classicist view. Nonetheless, according to a legal realist view, states may be considered unauthorized when the contemporary international community's tendency signifies the necessity for intervention. Also classicists and legal realists differ in the case of how to legitimize humanitarian intervention. While classicists accept Article 2(4) of the Charter and claim that states are banned from using force against both domestic boundaries and other states' political independence, legal realists emphasise Article 39 of the Charter and argue that the phrase 'threat to the peace' allows the Security Council to intervene to end human rights violations, because in the article it is not written that the Security Council shall determine the existence of any threat to 'international' peace; in other words, legal realists defend the stance that it does not have to be threat to 'international' peace: any threat (a state's domestic issue) can also be a reason to intervene.[130]

For the question of the morality of humanitarian intervention, Teson says that the right of 'humanitarian intervention is not the law' and 'humanitarian intervention should not be the law'. [131] He states:

> There is a necessary link between international law and moral and political philosophy. Finding a response to the question of whether it is morally right for nations to intervene on behalf of human rights requires an inquiry into the ethical foundations of the international legal system. Such inquiry, I shall assume, is directly relevant to legal discourse.[132]

For Teson, what is legally binding about humanitarian intervention is also morally binding, and that these two are inseparable. Instead of accepting a positivist (legal positivism) position, Teson defends Grotian tradition which sees

[130] J. L. Holzgrefe," The Humanitarian Intervention Debate," 40-41.
[131] Fernando R. Teson, *Humanitarian Intervention: An Inquiry into Law and Morality*, 9.
[132] Fernando R. Teson, *Humanitarian Intervention: An Inquiry Into Law and Morality,* 9.

international law as an offspring of universal morality.[133] For him, these legal texts about international law may be deficient when moral concerns emerge. In other words, it is moral to intervene.

However, to entrust the future of the people to the morality of the international community seems as problematic as the strict norm of non-intervention. To point at universal moral arguments and apply them for each case is almost impossible. This is why we face the problem of selectivity. If unauthorized interventions seek the common interest of the international community, then under different circumstances and in different times variations in moral opinion may cause a non-egalitarian treatment which is fed by the dominance of powerful states in international relations. At this point, we face the problem of naturalist doctrines which arise from our understanding of natural law.

"Naturalist theories of international justice contend that morally binding international norms are an inherent feature of the world; a feature that is discovered through reason or experience."[134] In contrast with this approach, consensualists advocate that the moral authority of any given international norm derives from the explicit or tacit consent of the agents subject to that norm.[135]

This naturalist attitude presumes that there is an approved common virtue for all humankind and standards of human rights must be applied by all 'civilized' states. On the other hand, as Hedley Bull points out, "there is no present tendency for states to claim, or for the international community to recognize, any such right."[136] In contrast to naturalists, consensualists advocate that there are infinite numbers of possible lives, shaped by an infinite number of possible cultures, religions, political systems and so on. Although legal positivism, as a consensualist theory, fails when it proposes to obey the law and ignore certain

[133] Fernando R. Teson, *Humanitarian Intervention: An Inquiry Into Law and Morality,* 9.
[134] J. L. Holzgrefe," The Humanitarian Intervention Debate," 19.
[135] J. L. Holzgrefe," The Humanitarian Intervention Debate," 19.
[136] Hedley Bull, "Conclusion," in *Intervention in World Politics* (Oxford: Clarendon Press, 1984),193.

demands of morality in a society which has inhuman legislators, it does not insist on a common virtue discovered by and applicable to all human beings.

To sum up, some lawyers, who can be called legal realists, claim that international law can be interpreted in a way in which it is possible to intervene on behalf of human rights, with the interventions unauthorized and/or authorized by the Security Council through an interpretation of Article 39. On the other hand, classicists strongly insist that unauthorized interventions are illegal by considering Article 2(4) of the Charter in terms of states' sovereignty. From the point of view of realism, which assumes a Hobbesian approach claiming it is impossible for autonomous states to exist without a 'common power', or a world government in an anarchic world in which therefore there are no moral rules applicable because such norms are unenforceable[137], naturally a nation's self-interest will be override such moral norms. This does not particularly mean that it is impossible to intervene from a realist point of view, but it is almost impossible to intervene with the priority of moral goals. The goals that a state (or group of states) might carry during the intervention are dependent upon self-interest. Nigel Dower claims that it is incoherent to explain 'humanitarian intervention' from a realist point of view because for him what humanitarian includes is moral goals in this context. That is why states intervene to remedy humanitarian atrocities, there is no humanitarian aim in these interventions at all – if the intervention is calculated from the realist point of view.[138] Dower writes: "Of course a realist may accept that a government may pursue a 'humanitarian goal' by violent intervention; but such action will be interpreted as based on calculation of advantage to the country in question."[139]

On the other hand, advocating moral goals for the practice of humanitarian intervention also involves similar problems which a realistic point of view bears. To speak of a common moral goal is almost impossible. Thus, when we speak of a moral goal for all humankind, we might fall into the error of cultural superiority because what we speak of as a general moral goal is up to the dominant cultural

[137] Nigel Dower, "Violent Humanitarianism- An Oxymoron?," 78.
[138] Nigel Dower, "Violent Humanitarianism- An Oxymoron?," 78-79.
[139] Nigel Dower, "Violent Humanitarianism- An Oxymoron?," 79.

structure in international relations. The moral engagements that liberals defend[140] also cause unjust treatments by prioritising one culturally specific value (in this context it is a humanitarian aim as a 'moral' goal) over all.

2.3. A Global Governance Regime?

So far both the debates in the first chapter (the ambiguity which is occurred by the claims - universality, individuality, state' responsibility and indivisibility – of the United Nations' Model and its Western heritage) and in the second (sovereignty, utilitarianism and morality-legality) raise the question as to whether the international human rights system is a global governance regime or not. To grasp the process deeply, it is necessary to examine how a humanitarian intervention process and the decision-making mechanism work. This is, how the unilateral and multilateral interventions are put into practice, and will be analysed in the section below.

2.3.1. United Nations' Decision-Making Mechanism

The United Nations has six principle organs – the General Assembly, the Security Council, the International Court of Justice, the Economic and Social Council, the Trusteeship Council (now defunct) and the Secretariat; of the principle organs, only the Court and the Security Council have the power to make legally binding decisions.[141] Article 24 states that

> In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary

[140] See Fernando R. Teson.
[141] Anthony Aust, *Handbook of International Law* (Cambridge, UK; New York: Cambridge University Press, 2005), 207-208.

> responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.[142]

In other words, Article 24 claims that the Security Council has primary responsibility for the maintenance of international peace and security. Article 24 should be read with the aforementioned Article 39[143]. Although the decision-making process of the Council should be legal and the resolutions are legally binding, an action which is based on Article 39 is a 'political' act[144] because during the decision-making process, member states ask one another whether an action (intervention) is necessary, and if it *is* necessary what consequences they are going to face. In this sense, if the members believe that they have to intervene, as Anthony Aust says, they do not indulge in rigorous legal analysis.[145]

The contradiction which occurs because of the inconsistency between Article 2(4) and Article 39 deals with an understanding which sees 'human rights' as an international matter. Accepting 'human rights' as an international matter provides 'legality' to any United Nations intervention because when it is an international matter rather than being an internal issue, it becomes legal to intervene in terms of Article 39. It is to be noted that intervention is not the only measure which can be taken by the United Nations. There are sanctions which require states to stop (or prevent their nationals from doing)[146], that are determined in Article 41 such as "[...] complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations".[147]

However Article 42 empowers the Security Council to authorise states to use force when it considers that the measures which shall be taken would be

[142] "Article 24," Charter of the United Nations, accessed April 14, 2014, http://www.un.org/en/documents/charter/chapter5.shtml.
[143] "Article 39," Charter of the United Nations, accessed March 31, 2014.
[144] Anthony Aust, *Handbook of International Law*, 215.
[145] Anthony Aust, *Handbook of International Law*, 215.
[146] Anthony Aust, *Handbook of International Law*, 217.
[147] "Article 41," Charter of the United Nations, accessed April 16, 2014, http://www.un.org/en/documents/charter/chapter7.shtml.

inadequate or have proven to be inadequate.[148] In other words, the Security Council does not have to put into practice the sanctions or wait for the sanctions to be effective before it authorises the use of force. Aust stresses that "Article 42 is never expressly mentioned in resolutions, and Articles 43-47, concerning the availability of forces to put at the disposal of the United Nations, have always been seen as a dead letter."[149]

After the decision-making process, it should be considered that although the Security Council may authorise the member states to use force, it is not an obligation to fulfil the task for the members.

All these processes (which include a legal text and 'political' decisions) raise the question of whether the United Nations and the matters it brings with itself cause a global governance regime in terms of human rights in the international relations or not.

James W. Nickle, argues that international human rights institutions - especially the United Nations - provide an international system for promotion and protection of human rights as part of normative globalisation. He claims that although this system constitutes a system of global governance in some areas, it cannot be termed 'total' global governance.[150] For him, to be a regime it must be a coherent system, and to be a governance regime it must govern, not merely preach.[151] He also admits that the Security Council is a global governance regime:

> [...] the Security Council is global in scope of its concerns and its role as a representative of the countries of the world. These countries agreed, under the UN Charter, to accept the decisions of the Security Council, and hence the power of the Security Council is both clearly authorized and incipiently federal. There is no doubt that the Security Council is an international governance regime.[152]

[148] "Article 42," Charter of the United Nations, accessed April 16, 2014, http://www.un.org/en/documents/charter/chapter7.shtml.
[149] Anthony Aust, *Handbook of International Law*, 225.
[150] James W. Nickel, "Is Today's International Human Rights System a Global Governance Regime?," *Journal of Ethics* Vol. 6 No. 4 (2002): 354.
[151] James W. Nickel, "Is Today's International Human Rights System a Global Governance Regime?," 355.
[152] James W. Nickel, "Is Today's International Human Rights System a Global Governance Regime?," 367.

It is obvious that the United Nations has a global power to authorise an intervention by its organs and decision-making mechanism. On the other hand, the consensus inside the Security Council has not been established all the time in history. This is why the authors are in need of separating the interventions as before pre-Cold War and post-Cold War. For instance, Wayne Sandholtz draws attention to the fact that before 1990, interventions were generally unilateral, and after that date most have been multi-lateral.[153] In other words, it should be considered that a state may initiate a humanitarian intervention as well as the possibility of a UN-initiated multilateral intervention.

2.4. Critique of Humanitarian Intervention Theory: Cultural Superiority and Post-Colonial Effects

Critics of humanitarian intervention can be tackled in two ways: first, the discourse of humanitarian intervention with its Western oriented arguments carries cultural characteristics that can cause the imposition of culturally specific values across the boundaries of cultural difference; second, the humanitarian intervention is also a discourse which can be the subject of post-colonial debate.

For the first peculiarity, almost all humanitarian interventions include the expression such as 'democratisation', 'liberation' and so on, along with the aim of halting atrocities. These kinds of purposes are problematic in the sense of being 'superior' and 'rational' in the face of another object which is assumed 'ignorant' or 'irrational'. Going back to the natural rights-human rights discussion of the previous chapter, if we consider that the formation process of the notion has reference to a particular kind of political system and specific ethical-legal code, a

[153] Wayne Sandholtz, "Humanitarian Intervention: Global Enforcement of Human Rights?," in *Globalization and Human Rights,* ed. Alison Brysk (Berkeley: University of California Press, 2002), 203.

humanitarian intervention which is fed by this kind of 'human rights' interest of utilitarianism is the 'innocent people' who are damaged as the 'consequence' between states. If the notion of human rights requires a particular kind of political system and specific ethical-legal code, a relationship of superiority is established between those who are intervened and those who intervene. Because the former does not have this particular kind of political system and specific ethical-legal code while the latter has.

As long as naturalist doctrines of humanitarian intervention, assume the existence of morally binding 'international' norms – which is quite relevant to the idea of 'universal' rights of humankind - and accept these norms as an inherent feature which can be discovered through reason by 'rational' subjects, it continues being ignored by culturally specific values which can be an important element during the intervention, and insists upon the imposition of these 'universal' norms over others. In contrast, collectivist approaches of humanitarian intervention seek to find another possibility and advocate cultural diversity to criticise one culture's domination in the humanitarian intervention debate.

For the second peculiarity, it should be examined in terms of a post-colonial structure of humanitarian intervention. Anne Orford, who discusses humanitarian intervention in terms of global imperialism, criticises the advocates - such as Teson - who claim that the best interpretation of international legal doctrine allows for the right and duty of humanitarian intervention. She states that these advocates of humanitarian intervention "[...] tend not to see any necessary relation between such intervention and imperialism, treating international law as an agent of liberation from domination by corrupt Third World elites or the violence of religious or ethnic groups."[154] Orford rejects the proclamation that a renewed international legal text embodied with the creation of the United Nations coincides with the birth of a new era of decolonisation. In contrast, she sees

[154] Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge; New York: Cambridge University Press, 2003), 40.

humanitarian intervention – as an apparatus of this new system - as intimately connected with colonialism, rather than a decisive departure from it.[155]

Orford associates humanitarian intervention discourse with post-colonialism through two characteristics: first, post-colonial theory postulates the possibility that imperialism survived in the era of decolonisation as a largely economic rather than territorial enterprise. For Orford, humanitarian intervention also includes this economic concern: "[o]ne of the overt aims of pre-conflict 'aid' programmes, and post-conflict reconstruction, has been establishment of necessary conditions to make foreign investment secure and profitable."[156] She continues to explain the situation as follows:

> [P]ostwar reconstruction guarantees that the people and territories of Asia, Africa, Latin America and Eastern Europe continue to produce the wealth of Europe and North America, while images of the suffering peoples of Third World, and of our benevolence in responding to them, are used to provide spiritual enrichment to audiences in those wealthy countries.[157]

The second characteristic of post-colonial theory which she finds relevant to humanitarian intervention is that intervention narratives reflect imperialist culture by the possibility of the cultural self-representation of the First World. What Orford means is that interveners create 'we' and 'others' to make the international community desire not to be like 'them'. These others are not 'civilized' people; they are so-called 'ignorant', 'child-like', 'disordered', 'chaotic', 'primitive', 'violent' and even termed 'monster' and/or 'outlaw'.[158]

What Orford provides here is a review of international law against the traditional understanding of it. She leaves room to realise the association between the international law approach and cultural-economic dominance of the historical

[155] Anne Orford, *Reading Humanitarian Intervention*, 46-47.
[156] Anne Orford, *Reading Humanitarian Intervention*,47.
[157] Anne Orford, *Reading Humanitarian Intervention*, 47.
[158] Anne Orford, *Reading Humanitarian Intervention*, 47-48.

narratives. Her theory is important in two ways: first, she sees 'intervention' as a part of an ongoing process in the history of colonialism. Interventionist powers also have an economic benefit for those territories in which they intervene, even if the claim is to stabilise the area rather than occupy it for land acquisition. The second important point to which she draws attention is the 'monstrosity discourse' that is generally referred to by the interventionist powers. Since this 'monstrosity' discourse is the issue of the third chapter of the thesis, it will be closely examined later. But herein, her critique of international legal doctrine is vital to the extent of its opposition to see international legal texts as self-appointed, natural and impartial. Unless the necessary connection between international legal doctrine and the phenomena behind the apparatuses of this doctrine – which are assumed imperialistic in this context - is not seen, humanitarian intervention will keep its biased characteristic and its claim to be natural and universal will be rendered meaningless.

Orford's critiques of humanitarian intervention and mainstream international law approach are vital to grasp the elements of intervention, as well as in the Libya case. Her theory will be associated with the Libya case below, in company with other arguments from critical theory. This is why; the debates which are relevant to critiques will be examined more widely in the next chapter.

To sum up, the basic components of non-interventionism – sovereignty, utilitarianism and moral-legal arguments - were discussed for the purpose of a critical introduction to interventionism in this chapter. The United Nations' decision-making process was tackled to demonstrate how the mechanism works on the interventions. While getting into the discussion of critical approaches to humanitarian intervention two steps were used: the thesis defending cultural difference and the post-colonial thesis. At the end of the theoretical arguments, the Libyan intervention, as a case study, will be discussed with the examples of theoretical dilemmas (the 'collectivist vs. individualist', the 'naturalist approach' and the 'sovereignty dilemma') which were argued before the introduction of the

case study. Therefore, the third chapter includes the debates the ambiguity of Libyan Intervention in terms of the theories that were discussed.

THE LIBYAN INTERVENTION & GADDAFI'S KILLING

3.1. Libyan Intervention

In the Libyan case, on 15th February, 2011 protests began in Benghazi against Gaddafi's regime. On 26th February, 2011 the UN Security Council declared Resolution 1970 after the beginning of civil war. The UN defined its concern through Resolution (1970) as follows:

> *Deploring* the gross and systematic violation of human rights, including the repression of peaceful demonstrators, expressing deep concern at the deaths of civilians, and rejecting unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government…[159]

The Resolution (1970) imposed an arms embargo on Libya to stop mass atrocities and a travel ban for sixteen people including Gaddafi and his family.[160] Nevertheless, civil war did not end with these restrictions and resolution, which were ignored by Gaddafi. Therefore, on 18th March, 2011 the UN Security Council discussed the issue a second time and declared Resolution 1973.

In the Libyan case, humanitarian intervention relied on Resolution 1973 which aims to take all measures necessary to protect civilians under the threat of attack in Libya.[161] A 'no-fly zone' over Libya was approved by the Security Council. NATO forces were used for this multilateral intervention. However, the

[159] "Libya Resolution," Libya Resolution, accessed April 17, 2014, http://www.un.org/News/Press/docs/2011/sc10187.doc.htm.
[160] "Libya Resolution," Libya Resolution, accessed April 17, 2014, http://www.un.org/News/Press/docs/2011/sc10187.doc.htm.
[161] "Libya Resolution," Libya Resolution, accessed April 17, 2014, http://www.un.org/News/Press/docs/2011/sc10200.doc.htm.

military intervention conducted under the leadership of France and NATO forces joined after the first attack. Obviously, France rushed in to intervene. Despite the fact that the intervention, at the beginning, was limited to air strikes which were enough to protect the opposition in Benghazi against Gaddafi's possible attacks, in a short time, turned into an offensive and comprehensive operation which aimed to topple the regime. Emboldened by NATO air support which turned the tide against Gaddafi, the opposition forces marched to Tripoli and forced Gaddafi to flee. Ultimately, he was killed by rebels on 20th October, 2011.

3.1.1. Libyan Intervention with the Debates of Theories

So far, some converse theories of human rights and humanitarian intervention have been examined. It will be examined how the necessary link between those theories and the Libyan intervention can be forged in this order: 'collectivist vs. individualist', 'naturalist approach' and 'sovereignty dilemma'.

Starting with the debate of 'collectivist or individualist', contemporary human rights norms which originated in the West are in some tension with cultural practices of the other parts of the world as mentioned in the previous chapters of the thesis. As it was argued before, individualist understanding overrides the approach of the United Nations Model of human rights. International law tends to hold the rights of human beings as each of them *per se* 'individuals'. In contrast, the advocates of 'collective' rights claim that all cultures are unique and that all these cultures have their own tendencies concerning rights. In other words, "[...] *collectivist* theories of international justice maintain that groups - typically ethnic groups, races, nations, or states - are proper objects of moral

concern."[162] Collective rights are generally propounded against an individualist understanding of human rights, especially by African and Asian states.

Herein, the main objection of individualists is that it is not possible to provide a consensus even in a specific society about what is 'just' in terms of human rights. In my estimation, the defence of individualism, -and by this way, the defence of Western oriented understanding of rights which are generally put into practice as if they are 'universal'- is problematic in this way which assumes that the best for humanity arises and comes from the Western value system. On the other hand, collective rights can fail when it comes to practice. For instance in the Libyan case, it should be considered that the intervention's legitimacy was not suspicious for all parts of the society – in other words, it was acceptable for some - and also it was hard to speak of collective rights of Libyan society in this case. It was known that Gaddafi and his tribe (al-Qaddadfa) deliberately undermined and marginalized the al-Warfalla and al-Magariha tribes.[163] Since Gaddafi and his tribe had the power and eliminated the other tribes from government, it would be difficult to provide a collective rights understanding which comprises all parts of society. In this respect, it is hard to expect that the concept of collectivist rights work for the Libyan case because it cannot comprise all people in Libya. In other words, the Libyan case is a conundrum of collectivist theory. Although we cannot see that the Libyan society has a collective attitude for the intervention in this case, it does not legitimise the repudiation of cultural diversity and mutable accuracy in different cultures by individualist theories which seek to create a constant 'best' for all human beings.

Continuing with the debate of a 'naturalist approach', such theories of international justice contend that morally binding international norms are an inherent feature of the world and that these can be discovered through reason or experience. The naturalist approach considerably affects the United States' foreign policy on interventions. In Stewart Patrick's article, he draws attention to

[162] J. L. Holzgrefe, "The Humanitarian Intervention Debate," 19.
[163] Fredric Wehrey, "Libya's Terra Incognita," *Foreign Affairs*, February 28, 2011, accessed April 22, 2014, http://www.foreignaffairs.com/articles/67551/frederic-wehrey/libyas-terra-incognita.

the 'Presidential Study Directive on Mass Atrocities (PSD-10)': "The directive defines the prevention of mass atrocities as both a core national security interest and a core moral responsibility of the United States."[164] The United States considers that any atrocity can be its own security problem and also ethical interest.[165] But how can an atrocity be in the United States' interest? What are the ethical codes which provide the intervention's basis to the United States? It is possible to see the naturalist doctrine here. According to the United States' foreign policy understanding, this interest and duty for intervention inherently belong to them. Because according to a naturalist approach, the basic principle of natural law – and also natural rights - can be discovered through reason and therefore these basic principles are achievable for anyone who is capable of rational thought. In the PSD-10 case, the United States' attitude resulted from holding the idea that reason was discovered by the United States with their capability of rational thought. But there are some states which do not have this rational thought capability. Thus the United States considers that its mission here is to bring conditions for emancipation to those which are so-called rogue states and do not have a rational thought capability to discover these natural rights-officially human rights.

Glancing at the remark of the United States' president Barack Obama concerning the Libyan intervention, he said that "[...] he would not stand by while the democratic aspirations spreading across the Middle East were 'eclipsed by the darkest form of dictatorship' at the hands of a murderous Moammar Gadhafi," and continued "And as president, I refused to wait for the images of slaughter and mass graves before taking action."[166] If the remark is analysed, first, it can be seen that a specific atrocity is linked to a specific political regime which is not

[164] Stewart Patrick, "Libya and the Future of Humanitarian Intervention," *Foreign Affairs*, August 26, 2011, accessed April 23, 2014, http://www.foreignaffairs.com/articles/68233/stewart-patrick/libya-and-the-future-of-humanitarian-intervention?page=show.
[165] White House Office of the Press Secretary, *Presidential Study Directive on Mass Atrocities,* August 4, 2011, http://www.whitehouse.gov/the-press-office/2011/08/04/presidential-study-directive-mass-atrocities.
[166] Mimi Hall, "Obama cites the 'responsibility' of U.S. in Libya Intervention," *USA Today*, March 28, 2011, accessed April 23, 2014, http://www.usatoday.com/news/washington/2011-03-29-RW1AObama29_ST_N.htm.

democratic. In other words, it confirms the hypothesis stated before, in which the language of human rights excludes other possible ways of living and/or other kinds of regimes which are not Western; second, the president considers himself an agent of emancipatory conditions elsewhere which is quite naturalist.

For the last discussion, the 'sovereignty dilemma', the 'responsibility to protect' (RtoP) is an important notion that should be considered in terms of the definition of sovereignty in the Libyan case. RtoP is defined in International Coalition for the Responsibility to Protect (ICRtoP) publications on May 2011 as follows: "[...] [RtoP] is an international human rights norm adopted at the UN World Summit in 2005 to prevent and stop genocide, war crimes, ethnic cleansing and crimes against humanity (often called collectively 'mass atrocities')."[167] It is underlined that Libya was not the first case to which RtoP was applied in this cotext. Military operations were legitimised in Libya with the following formula which states that "[...] which measures to use at what time is not precise; each case will require a tailored response."[168]. However, it is not a must to engage a military action by applying the formula to other cases. Herein the fine line between the sovereignty principle and 'humanitarian' aims become ambiguous. RtoP offers a new form of sovereignty understanding which claims that sovereignty is not a right but a responsibility, and once a state loses the capability of this responsibility necessary measures should be taken for 'humanitarian' aims by the international community.

Although it is important to break the mould of conventional state-centred sovereignty understanding, it is still biased and open-ended to decide when and which state loses control. It is also quite open to a political decision-making process which might not be equally applied to all sides of this decision, considering the international power relations. In the Libyan case, sovereignty was seen and/or interpreted as a responsibility rather than a right, and consequently the intervention in Libya was legitimised and made meaningful in terms of the

[167] "Impact of Action in Libya on the Responsibility to Protect," RtoP, accessed April 24, 2014, http://www.responsibilitytoprotect.org/RtoP%20in%20Light%20of%20Libya%20FINAL.pdf.
[168] "Impact of Action in Libya on the Responsibility to Protect," RtoP, accessed April 24, 2014.

'humanitarian' aims of the international community. Samantha Power, who was Obama's adviser and is the 28th United States Ambassador to the United Nations, as a key figure, promoted the military intervention in Libya in the United States by convincing Obama to push for a United Nation Security Council resolution to authorise a coalition military force to protect Libyan civilians.[169] Power, as one of the initiators of RtoP and Libyan intervention, purports that it is essential for the United States to respond to genocide (in any place in the world) with a sense of urgency in her book, *A Problem From Hell: America and the Age of Genocide.*[170] Power identifies herself as a humanitarian. Libya intervention was a congruent move, since she does not acknowledge sovereignty as a right but a duty, and Libya had 'failed' in its duty to provide the necessary conditions for its citizens to gain 'sovereignty'.

In my estimation, the real problem here is to determine whether the sovereignty initiative policy is applicable to all subjects under equal conditions as impartial or political selectivity plays a role for the application of this initiative. If political selectivity to the extent of power relations has priority over the 'humanitarian' aims – as it is claimed - then it arrives at the discussion above which is argued through the opinions of Anne Orford. It should be considered whether this kind of decision-making process has a post-colonial background which includes the notion of a so-called third world country being incapable of having a right to sovereignty which others have.

To sum up, one can mention the following: halting mass atrocity crimes and violations of human rights are surely vital; but to ignore cultural specificity and inherent values of a group or state is also problematic. Herein, when means and ends are considered, halting mass atrocities as an end is notably acceptable

[169] Indira A.R. Lakshmanan and Hans Nichols, "Samantha Power Brings Activist Role Inside to Help Persuade Obama on Libya," *Bloomberg,* March 25, 2011, accessed May 6, 2014, http://www.bloomberg.com/news/2011-03-25/samantha-power-brought-activist-role-inside-to-help-sway-obama-on-libya.html.
[170] Samantha Power, conclusion to *A Problem From Hell: America and the Age of Genocide* (New York: Perennial, 2003), 503-516.

but remarks which include liberalising, democratising and so on any state or group are problematic in the sense of establishing superior relation over a culture.

Crimes against humanity are an important element of not only international relations but also everyday life. This thesis has no intention of defending these kinds of crimes. On the other hand, all kinds of interventions against crimes are not necessarily 'just', even though they claim that they have 'humanitarian' bases. Besides, what humanitarian law means is also ambiguous and its roots are disputable as argued in the first and second chapters.

So far, non-interventionism, the United Nations' decision-making mechanism, interventionist theories and the details of the Libyan intervention have been discussed. In the next sections all those theories and information will be held from a sociological perspective. Especially, rather than the intervention itself, its political and sociological ends and the process of Gaddafi's killing in terms of the lives being open to death will be discussed.

3.2. Analysis of Muammar Gaddafi's Killing

Going back to 2002, after 9/11 the United States' (now former) president George W. Bush uttered a remark on terror and terrorism. Basically, he said that the threat "include[s] the terrorists themselves, who are widely dispersed, and states sympathetic to terrorism, particularly those disposed to acquire or further develop weapons of mass destruction."[171] Also he declared that it would be considered a terrorist attack on the world as a core issue of the United States' national security. According to Tom J. Farer, what has changed with the Bush doctrine is the content of the humanitarian intervention. In his article he states that "...humanitarian goals do not trigger interventions but are rather a cosmetic

[171] Tom J. Farer, "Humanitarian Intervention Before and After 9/11," in *Humanitarian Intervention Ethical*, *Legal and Political Dilemmas*, 81.

applied to counter-terrorist operations..."[172] Herein, what terror and terrorist mean is up to the declaration of a 'power' which sees itself as *primus inter pares*. This remark is important in the sense of including a subject who defines what terror and terrorist are. As long as a subject (namely, a sovereign power) defines the lines between 'us' and 'others', it has the power of unilaterally decision-making upon an action even if this action has other standards to be defined in terms of juridical order. Throughout the next section, this unilaterally decision-making mechanism will be examined in the context of dehumanisation, *othering* and exclusion from the zone of law. Afterwards, Gaddafi's killing will be associated with these theoretical debates.

3.2.1. Homo Sacer

What does Gaddafi's body represent and what is the connection between his body's presentation in the media and the meanings his body carried?

Agamben stresses that the Greeks had two terms to express life: *zoe* and *bios*. While the former expresses the simple fact of living which is shared by all living being, the latter indicates the form or way of living.[173] In his book, *Homo Sacer,* Agamben explains the difference between *zoe* and *bios* as follows: neither Plato (in *Philebus*) nor Aristotle (in *Nichomachen Ethics*) used the term *zoe* to explain 'life' in their works; they used *bios* due to a simple fact that both thinkers tackled not a simple natural life but rather a qualified life, a particular way of life, simply *bios.*[174] This way of thinking is based on the view that sees *zoe* as a matter of *oikos* (home); in other words, "... simple natural life [*zoe*] excluded from the

[172] Tom J. Farer, "Humanitarian Intervention Before and After 9/11," 84-85.
[173] Giorgio Agamben, *Homo Sacer*, 1.
[174] Giorgio Agamben, *Homo Sacer*, 1.

polis in the strict sense, and remains confined - as merely reproductive life - to the sphere of the *oikos* [...]"[175]

At this point, it can be beneficial to mention Michel Foucault's 'biopolitics' to be able to understand Agamben's idea and critique about Foucault's 'biopolitical' approach. Foucault indicates that power over life evolved in two basic forms which are not antithetical: the first is called *anatomo-politics of the human body*; the second is called *biopolitics of the population*.[176] What Foucault intends to mean by anatomo-politics of the human body which he views as the first pole is that it is centred on the body as a machine; "[...] its [body's] disciplining, the optimization of its capabilities, the extortion of its forces, the parallel increase of its usefulness and its docility, its integration into systems of efficient and economic controls [...]"[177]. All those were ensured by the procedures of power that characterized the disciplines. According to Foucault what he terms biopolitics formed later in history, and this pole focused on the species body; "[...] the body imbued with the mechanics of life and serving as the basis of the biological processes: propagation, births and mortality, the level of health, life expectancy and longevity [...]"[178] Foucault says that all those matter's supervision were effected through an entire series of interventions and regulatory controls which are called biopolitics of the population.[179] All these theoretical inferences are based on a fact that Foucault seeks to point out that in the course of the classical age, a new kind of power was characterised by all these bipolar technologies. This power is described in Foucault's book as a power whose highest function was no longer killing but rather investing life through and through.[180]

[175] Giorgio Agamben, *Homo Sacer*, 2.
[176] Michel Foucault, *The History of Sexuality An Introduction: Vol.1*, trans. Robert Hurley (New York: Pantheon Books, 1978), 139.
[177] Michel Foucault, *The History of Sexuality An Introduction: Vol.1*, 139.
[178] Michel Foucault, *The History of Sexuality An Introduction: Vol.1*, 139.
[179] Michel Foucault, *The History of Sexuality An Introduction: Vol.1*, 139.
[180] Michel Foucault, *The History of Sexuality An Introduction: Vol.1*, 139.

In this context Foucault's idea on how the sovereign power has the new form of the power of death is important. For Foucault, "[t]he old power of death that symbolized sovereign power was now carefully supplanted by the administration of bodies and the calculated management of life."[181] By this way, the era of biopower begins.

Foucault tends to associate politicisation of bare life or the entry of *zoe* into the sphere of *polis* with modernity by a formation of this new sovereign power: "For millennia, man remained what he was for Aristotle: a living animal with the additional capacity for a political existence; modern man is an animal whose politics places his existence as a living being in question".[182] In contrast to Foucault, Agamben tends to see the politicisation of bare life in a frame which sees the *zoe*/*bios* relationship as an exclusion/inclusion duality. He distinguishes himself from Foucault at this point: for Agamben, biopolitics is at least as old as the sovereign exception because "[...] *the production of a biopolitical body is the original activity of sovereign*."[183] In this context, Agamben approaches the *zoe*/*bios* duality as the inclusive exclusion (an *exceptio*) of *zoe* in the *polis*.[184] If *zoe* were an *exceptio,* the politicisation of bare life might exist before modernity. On the other hand, how should Agamben's determination on biopolitics be read, while Foucault's assignations on the modern State's behaviour, especially on subjects, in a biopolitical sense still survive? In other words, if biopolitical body were the original activity of the sovereign (and this makes biopolitics as old as the sovereign exception) what does Agamben say about the modern state's behaviour in the context of biopolitics to be able to it when compared to the archaic sovereign?

> [...] biopolitics is at least as old as the sovereign exception. Placing biological life at the center of its calculations, the modern State therefore does nothing other than bring to light the secret tie

[181] Michel Foucault, *The History of Sexuality An Introduction: Vol.1*, 139-140.
[182] Michel Foucault, *The History of Sexuality An Introduction: Vol.1*, 143.
[183] Giorgio Agamben, *Homo Sacer Sovereign*, 6.
[184] Giorgio Agamben, *Homo Sacer Sovereign*, 7.

> uniting power and bare life, thereby reaffirming the bond (derived from a tenacious correspondence between the modern and the archaic which one encounters in the most diverse spheres) between modern power and the most immemorial of the *arcana imperii*.[185]

For Agamben, the answer to the question of what characterises modern politics is not so much the inclusion of *zoe* in the *polis* – the politicisation of bare life - or being the life as a principal object of projections and calculations of state power [186]; it is rather related to the 'state of exception'. Agamben, in *State of Exception*, does not define the state of exception as a special kind of law (like the law of war); rather he tackles the concept as a suspension of the judicial order itself; in other words the state of exception defines the law's threshold or limits its concept.[187] He says "[t]he modern state of exception is [...] an attempt to include the exception itself within the juridical order by creating a zone of indistinction in which fact and law coincide."[188] In such a situation modern politics goes hand in hand with the state of exception because:

> [...] the decisive fact is that, together with the process by which the exception everywhere becomes the rule, the realm of bare life-which is originally situated at the margins of the political order-gradually begins to coincide with the political realm, and exclusion and inclusion, outside and inside, *bios* and *zoe*, right and fact, enter into a zone of irreducible indistinction. At once excluding bare life from and capturing it within the political order, the state of exception actually constituted, in its very separateness, the hidden foundation on which the entire political system rested.[189]

In the light of this information, the protagonist of Agamben's book, *homo sacer* will be touched upon. *Homo sacer* is someone whose life is open to death because of the impunity of his killing and the ban on his sacrifice; namely, it is

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[185] Giorgio Agamben, *Homo Sacer*, 6.
[186] Giorgio Agamben, *Homo* Sacer, 9.
[187] Giorgio Agamben, *State of Exception,* trans. Kevin Attel (Chicago: The University of Chicago Press, 2005), 4.
[188] Giorgio Agamben, *State of Exception*, 26.
[189] Giorgio Agamben, *Homo Sacer*, 9.

not permitted to sacrifice this man; on the other hand the one who kills him would not be condemned for homicide.[190] The term *sacer* here denotes two different meanings: the pure and the impure. The pure and the impure are accepted as if they are made from each other. The main difference between normal sacrifice and *homo sacer* lies behind the fact that normal sacrifice brings an object from the profane to the sacred or in other words, from *ius humanum* to *ius divinum*; whereas *homo sacer* does not belong to the realm of human jurisdiction without being brought into the realm of divine law. For this situation, Agamben underlines that *sacratio* takes the form of 'double exception'; a double exception because of being outside both of the *ius humanum* and *ius divinum*, both of the sphere of the profane and the sphere of the religious.[191] According to Agamben, this double exception means not only a double exclusion, but also a double capture: "[...] *homo sacer* belongs to God in the form of unsacrificeability and is included in the community in the form of being able to be killed. *Life that cannot be sacrificed and yet may be killed is sacred life.*"[192]

This ancient character, *homo sacer*, does not disappear under the circumstances of modern democracy in the book. Agamben postulates the 1679 writ of *habeas corpus* as the first recorded document in which the bare life becomes the new political subject.[193] He explains the importance of this document as follows:

> Whatever the origin of this formula, used as early as the eighteenth century to assure the physical presence of a person before a court of justice, it is significant that at its center is neither the old subject of feudal relations and liberties nor the future *citoyen*, but rather a pure and simple *corpus*.[194]

[190] Giorgio Agamben, *Homo Sacer Sovereign Power and Bare Life*, p.71.
[191] Giorgio Agamben, *Homo Sacer Sovereign Power and Bare Life*, p.82.
[192] Giorgio Agamben, *Homo Sacer Sovereign Power and Bare Life*, p.82.
[193] Giorgio Agamben, *Homo Sacer Sovereign Power and Bare Life*, p.123.
[194] Giorgio Agamben, *Homo Sacer Sovereign Power and Bare Life*, p.123.

Anymore, the new political subject of the modern era was not only *homo* but also *corpus*. What Agamben tries to draw to attention here is that the bare life shows up in the political area as such taken into the sovereign ban. On the other hand, for Agamben, what comes to light in order to be exposed is the body of *homo sacer*, namely bare life. In this way, *homo sacer* does not disappear but is shattered and disseminated into every individual body. In other words, Agamben associates the *corpus* (bare life) with modern democracy in terms of sovereign power:

> And the root of modern democracy's secret biopolitical calling lies here: he who will appear later as the bearer of rights and, according to a curious oxymoron, as the new sovereign subject (*subiectus superaneus*, in other words, what is below and, at the same time, most elevated) can only be constituted as such through the repetition of the sovereign exception and the isolation of *corpus*, bare life, in himself.[195]

In the light of this information, the case of this thesis – the killing of Gaddafi - will be discussed in the context of these theories about *corpus* (body), the power of the sovereign power upon life and death. After the intervention, Gaddafi was killed by rebels on 20th October, 2011. His brutal killing[196] is important in terms of the argument concerning whose life is worth to mourn and who decides upon one's killing without paying a price (impunity).

When we see the images or watch the videos of Gaddafi's killing, we witness not only the killing of a person, but also killing of a body; a body around which politics is centred which allows 'some' lives to be terminated without its killers being punished.

On this thesis' level of analysis, Gaddafi is not accepted as the sovereign power since he had lost his power over the other tribes (except al-Qaddadfa) of Libya. Also, for this case, organisations imposing international sanctions and

[195] Giorgio Agamben, *Homo Sacer*, 124.
[196] "Full video of Muammar al Gaddafi being tortured and killed - Gaddafi's last words and moments," YouTube video, 2:11, posted by "Ragon theHitman," September 3, 2013, accessed May 7, 2014, http://www.youtube.com/watch?v=M8wtW4Z5d8U.

international power groups are acknowledged as the 'power' which has the authority to say whose life is worth mourning. In fact, at some point in history, Gaddafi himself represented the sovereign power. However, this thesis inquires about the moment when he lost his status as the sovereign power, the moment in which the hazardous power relations among the lost national sovereignty and the new sovereignty – which were raised out of the intervention - mirrored on Gaddafi's body. This is why, in the following sections, while Gaddafi's killing will be explained in company with the concept of *homo sacer*, the arbitrary power relations among those two understandings of sovereignty should be considered to the extent of how they affect the perspective to understand Gaddafi's judicial and moral status.

Entering the discussion why Gaddafi's situation is similar to *homo sacer*, firstly international power groups or international organisations did not publicly mention that Gaddafi, as a 'dictator', should be killed. On the other hand, some authorities – discussed below - did not mention (or some addressing this matter did not insist on) the application of a proper trial. In this situation, Gaddafi could not be killed; but whoever killed him did not appear in court. Namely, his life was open to death; it was not permitted to sacrifice him but the one (or ones) who killed him would not be condemned for homicide. Herein, a crucial point needs to be clarified; Gaddafi was not killed by the international power groups but killed by rebels. However this does not make the situation complicated, since France admitted that they armed Libyan rebels[197] while the United States unlawfully provided material support to them[198]. Thus, it is hard to say that the rebels' power is unconnected to Western support.

Secondly, as *homo sacer* belongs to neither the realm of human jurisdiction nor the realm of divine law, Gaddafi belongs to the zone of indistinction at the moment he was killed. He, of course, did not live his entire life

[197] David Jolly and Kareem Fahim,"France Says It Gave Arms to the Rebels in Libya," *New York Times*, June 29, 2011, accessed May 7, 2014, http://www.nytimes.com/2011/06/30/world/europe/30france.html?_r=0.
[198] Alex Newman, "Libya Now What?," *The New American*, November 10, 2011, accessed May 7, 2014, http://www.thenewamerican.com/world-news/africa/item/8365-libya-now-what.

as *homo sacer*: At some point in history, he himself represented the sovereign power. But, in this thesis attention is paid to the moment when he lost power as sovereign, when he belonged to neither the profane nor the divine, when he was in the zone of indistinction in the state of exception. Herein, we witness how Gaddafi transforms from sovereign power to *homo sacer* in this unique phenomenon (the moment he was killed).

> At the two extreme limits of the order, the sovereign and *homo sacer* present two symmetrical figures that have the same structure and are correlative: the sovereign is the one with respect to whom all men are potentially *homines sacri*, and *homo sacer* is the one with respect to whom all men act as sovereigns.

To grasp how Gaddafi is excluded from the zone of profane and divine law; or how he belongs to the zone of indistinction, it can be examined with the argument concerning why Gaddafi did not appear in the International Criminal Court. Legally, a dictator who violated human rights should have been in the International Criminal Court[199] according to the regulations of the United Nations. On the other hand, there was no serious initiative to emphasise this fact even after he was killed. Those responsible for Gaddafi's killing did not conduct any investigation either. Herein, it is noteworthy to mention that international non-governmental organizations called for an investigation into Gaddafi's killing and indicated that his killing also might be against international law. For instance, on 21st October, Amnesty International urged an investigation as to whether Gaddafi's death was a war crime[200]. Also Human Rights Watch said that "The National Transitional Council (NTC) in Libya should promptly open an independent and impartial investigation with international participation into the

[199] See Rome Statute: "Rome Statue of the International Criminal Court," http://www.icc-cpi.int/nr/rdonlyres/add16852-aee9-4757-abe7-9cdc7cf02886/283503/romestatuteng1.pdf, accessed May 10, 2014.
[200] "Libya urged to investigate whether al-Gaddafi death was a war crime," Amnesty International, accessed May 10, 2014, http://www.amnesty.org/en/news-and-updates/libya-urged-investigate-whether-al-gaddafi-death-was-war-crime-2011-10-21.

deaths of the former leader Muammar Gaddafi and his son Muatassim Gaddafi [...]"[201].

In addition to all these, although the NTC has ordered an investigation into the death of Gaddafi[202], the International Criminal Court did not initiate an international investigation.[203]

At this point, we are faced with the fact that Gaddafi's killing does not require an investigation into those suspected of killing him. The reason for such an approach to this case will be examined and detailed in the next part, but it can be concluded that at least on a theoretical level, Gaddafi and his killing do not seem to belong to the zone of 'profane' law just like *homo sacer*. This is why, despite some NGOs' demands for an investigation into Gaddafi's death, it is not worth conducting, especially when he is in the zone of indistinction.

Before getting the discussion of 'whose life is worth to mourn', it is important to mention once again the transformation of Gaddafi from the sovereign power to *homo sacer*. Agamben seeks the analogy and correspondences in the juridico-political status of the bodies of *homo sacer* and the sovereign. He specifies that "[…] there is no juridico-political order… in which the killing of the sovereign is classified simply as an act of homicide."[204] As it is known, the killing of *homo sacer* does not constitute homicide. The most important correlation between these two cases is that in both, the killing of a man does not constitute an offence of homicide.[205] In other words, although Gaddafi's position on the line of juridico-political status has been changed, his killing in both roles (the sovereign

[201] "Libya: Investigate Deaths of Gaddafi and Son," Human Rights Watch, accessed May 10, 2014, http://www.hrw.org/news/2011/10/22/libya-investigate-deaths-gaddafi-and-son.
[202] "Libya's NTC Orders Probe into Gaddafi Killing," *Al Jazeera,* last modified October 24, 2011, accessed May 10, 2014, http://www.aljazeera.com/news/africa/2011/10/201110241335885080 9.html.
[203] "ICC Says No International Investigation into Gaddafi's Death for Now," *RIANOVOSTI,* last modified December 21, 2011, accessed May 10, 2014, http://en.rian.ru/world/20111221/170399950.html.
[204] Giorgio Agamben, *Homo Sacer*, 102.
[205] Giorgio Agamben, *Homo Sacer*, 102.

or *homo sacer*) would not be classified simply as 'killing'. In the both cases, Gaddafi's body represents some meanings which are quite similar:

> What unites … *homo sacer,* and the sovereign in one single paradigm is that in each case we find ourselves confronted with a bare life that has been separated from its context and that, so to speak surviving its death, is for this very reason in compatible with the human world.[206]

3.2.2. Whose Life is Worth to Mourn?

This section begins with some remarks uttered just after Gaddafi was killed. These remarks, from the ruling elites and authorities of the Western states, are crucial in two terms: first, they will be referred to in the context of Judith Butler's theory on the question of 'whose life is worth to mourn?'; second, those also substantially argue the monstrosity discourse and post-colonial attitude.

Right after Gaddafi was killed by the rebels, the media started to expose his tormented and/or dead body through widespread coverage. During this media presentation, Western states' authorities uttered some remarks which can be regarded as a celebration and imply the success of the humanitarian intervention.[207]

If we examine here the reactions of certain authorities in the mainstream media, it is seen that common characteristics of these remarks are striking:

[Former] French President Nicolas Sarkozy called Qaddafi's death "a milestone in the Libyan people's battle"[208] and said "The disappearance of Muammar Gaddafi is a major step forward in the battle fought for more than eight

[206] Giorgio Agamben, *Homo Sacer*, 100.
[207] Alex Newman, "Libya Now What?."
[208] "Qaddafi's death met with little sadness," *CBC News*, October 20, 2011, accessed 14 May 2014, http://www.cbsnews.com/stories/2011/10/20/501364/main20123328.shtml.

months by the Libyan people to liberate themselves from the dictatorial and violent regime imposed on them for more than 40 years."[209]

[Former] Italian Prime Minister Silvio Berlusconi said that "Now the war is over. *Sic transit gloria mundi* [Thus passes the glory of the world]"[210]

German Chancellor Angela Merkel said that "With this, a bloody war comes to an end, which Gaddafi led against his own people. Libya must now quickly take further resolute steps towards democracy and make the achiev[e]ments so far of the Arab Spring irreversible."[211]

When we examine the remarks of former President of France, Prime Minister of Italy and Chancellor of Germany, it is possible to observe two main characteristics. Firstly, they assume that his killing would be the end of oppression and cruelty in Libya. (This argument will be handled in the next section.) Secondly, there is no mention of a trial in the International Criminal Court which is the most suitable location according to international criminal law and human rights law. Especially, the former President Sarkozy interprets Gaddafi's killing as 'disappearance'; the words chosen here are important because there is a connotation between saying 'disappearance' and not mentioning a trial. Basically, Gaddafi seems here an outlaw as if the one whose appearance in the Court is not necessary because only 'human beings' may be in the field of law. In other words, herein it is a way of determining what to be really 'human' – one who can benefit from human rights law - is.

[209] "Gaddafi's Death: World Reaction," *Al Jazeera*, October 20, 2011, accessed 14 May 2014, http://www.aljazeera.com/news/africa/2011/10/201110201352164872l4.html.
[210] "Gaddafi's Death: World Reaction," accessed May 14, 2014.
[211] "Gaddafi's Death: World Reaction," accessed May 14, 2014.

The Former US Secretary of State Hillary Clinton shared a laugh with a TV news reporter after hearing deposed Libyan leader Gaddafi had been killed.[212] And she made a joke: "We came, we saw, he died"[213].

In spite of the fact that she later called for an investigation about his killing[214], her first reactions demonstrate that she normalised the situation in which a person was killed. Thus we confront here why one's life cannot be grievable in terms of being an 'outlaw'.

The normality of the killing of Gaddafi or the futility of grieve/mourning brings to mind this question: Whose life is worth to mourn? In this context, of course I do not expect the reactions given to the ones responsible for mass atrocities and killings to be similar to that of those, for instance, being human rights advocates. Nevertheless, when the remarks above are considered, we do not see a human being; in contrast, it is something non-human. This is why I use the terms 'grievable' or being worth to 'mourn' within this discourse; a discourse which normalises a death without mentioning its characteristic of taking a 'life'; rather, seeing the issue as a 'disappearance'.

Returning to the question 'whose life is worth to mourn?' and 'who decides the limits of humanity?' Judith Butler says that "[...] if a life is not grievable, it is not quite a life; it does not qualify as a life and is not worth a note. It is already the unburied, if not the unburiable."[215] Butler examines the body's invariably public dimension depending upon Foucault and Agamben's theories in *Precarious Life The Powers of Mourning and Violence* and she states:

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[212] Corbett Dally, "Clinton on Qaddafi: 'We came, we saw we, he died," *CBSNews* video, 0:12, October 20, 2011, accessed May 14, 2014, http://www.cbsnews.com/news/clinton-on-qaddafi-we-came-we-saw-he-died/ /.
[213] Corbett Dally, "Clinton on Qaddafi: 'We came, we saw we, he died," *CBSNews* video, 0:12, October 20, 2011, accessed May 14.
[214] Luke Harding, "Gaddafi's Will Tells Libyans: We Chose Confrontation as a Badge of Honour," *The Guardian,* October 23, 2011, accessed May 14, 2014, http://www.guardian.co.uk/world/2011/oct/23/gaddafi-will-libya.
[215] Judith Butler, *Precarious Life The Powers of Mourning and Violence* (London; New York: Verso, 2004), 34.

> Although we struggle for rights over our own bodies, the very bodies for which we struggle are not quite ever only our own. The body has its invariably public dimension. Constituted as a social phenomenon in the public sphere, my body is and is not mine. Given over from the start to the world of others, it bears their imprint, is formed within the crucible of social life [...][216]

Herein this inference about the body, which is constituted as a social phenomenon in the public sphere, brings the question of whose lives are real. For Butler, those whose lives are unreal have already suffered the violence of derealisation. Therefore, if the violence is commited against those who have unreal lives or are unreal, their lives are not injured or negated because their lives have already been negated. This is why Butler states, "[t]hey cannot be mourned [...] they are always already lost or, rather, never 'were,' and they must be killed, since they seem to live on, stubbornly, in this state of deadness."[217]

If those lives have already been negated and are exposed to violence, what is the relationship between the violence by which these ungrievable lives were lost and their ungrievability? Butler probes into the 'dehumanisation' here and emphasises that "[...] the dehumanization emerges at the limits of discursive life, limits established through prohibition and foreclosure. There is less a dehumanizing discourse at work here than a refusal of discourse that produces dehumanization as a result."[218] This is why the violence against those who are unreal and are already not quite living, namely living in a state of suspension between life and death, leaves a mark that is no mark at all.

In light of Butler's inferences, how may Gaddafi's killing be examined? The remarks mentioned at the beginning of this section demonstrate that his killing is not grievable. The words used do not involve any sense which shows us a human being was killed. In contrast, there is no mention of this dimension of his killing. Therefore Gaddafi, with his killing, leaves a mark that is no mark, a mark which is not worth expressing; as if he had never lived or what he had was not

[216] Judith Butler, *Precarious Life*, 26.
[217] Judith Butler, *Precarious Life*, 33.
[218] Judith Butler, *Precarious Life*, 36.

'quite' a life. In my estimation, this is not irrelevant to the sovereign's discourse; that is Western power in the international relations which identifies whose life is worth to mourn or grievable, or who really is a human.

3.2.3. The Dehumanisation of Gaddafi

Returning to the question of why Gaddafi's killing does not require an investigation, the sovereign power determines not only whose life is grievable but also who really is human. A proper investigation should be conducted after one has been killed, the one who is a human being. In my estimation, the reason of all these questions - why his life is not grievable, why his killing is not worth investigating or why there was no mention about the need to take one to the International Criminal Court - is not irrelevant. In contrast, all these points are relevant in the sense of unilateral decision-making mechanism. Considering his life ungrievable is a way of ignoring his existence as a human. It is a way of reinforcing the monstrosity discourse and deciding unilaterally what will be counted as humane (and also 'human'). Butler rightly refers to a point while examining the treatment of Guantanamo Bay prisoners and she criticises the United States' attitude to interpretation of the doctrine (Geneva Convention) unilaterally:

> [...] in the very moment in which it [the United States] claims to act consistently with the doctrine, as it does when it justifies its treatment of the Guantanamo Bay prisoners as "humane," it decides unilaterally what will count as humane, and openly defies the stipulated definition of humane treatment that the Geneva Convention states in print.[219]

Although Guantanamo Bay is not the case of this thesis, it throws light on a crucial point of Gaddafi's case: namely, the way he was treated during his killing or the process after he was killed is, actually, independent from the claims

[219] Judith Butler, *Precarious Life*, 40.

of a humanitarian doctrine. And when the Western authorities formed a view on his killing, they had the 'right' to interpret what humane is. By this means, they also had the right to determine who a human is. Clearly, Gaddafi was out of this zone, the zone of humanitarian treatment, the zone of unilaterally deciding. Gaddafi's killing (to the extent of decisions which are unilaterally determined by dominant powers in the international relations system) shall not be considered as the killing of a 'human'. In contrast, as long as he is out of the field of law, that is the zone of indistinction, he is dehumanised.

Herein, the ambiguity lies behind this paradox; on the one hand, the Western world postulates itself as the advocate of human rights and constantly indicates the need to raise the standard of human rights; on the other hand, as the sovereign power, they have the power to determine who should not be in the zone of these standards. It is not a coincidence that the first response to all those authorities – stated above - was for a newly 'liberated' Libya after the 'disappearance' of a 'dictator'. Because Gaddafi, in the process leading to his killing, was a kind of a figure who, first of all a monster – some 'thing' but not human - and who was an obstacle in the way of a more 'Westernized' Libya. This is why his life was not worth mourning nor was worth conducting an investigation into his death. Hence his life was open to death, a life which was not ordered to be killed but could be killed with the unpunishability of its perpetrators.

3.3. Liberated Libya: Democracy and the End of Mass Atrocities?

In the light of the discussion on dehumanisation, it would be beneficial to examine what British Prime Minister David Cameron said after Gaddafi's killing: "I'm proud of the role that Britain has played in helping them to bring that about and I pay tribute to the bravery of the Libyans who have helped to liberate their

country."[220] And also he pointed out that "...[UK] will help them, we will work with them, and that is what I want to say today."[221]

If the remark of Prime Minister Cameron is analysed, we may see the similar tendency with the United States which is cited previously, Barack Obama's remark. Herein, we again face the attitude to 'bring' or to 'help' for a more liberated system which seems possible with the 'assistance' of superior powers. (In this remark also there is no mention of the need to bring one to the international court for this case.) Similar to the other authorities' remarks, Cameron's remark implies that Gaddafi's killing would be the end of oppression and cruelty in Libya.

Herein, mentioning Orford's idea about the 'narrative' of humanitarian intervention would be contributive. Orford stresses that "[t]his narrative involves the deployment of colonial stereotypes, according to which the native other is represented as in need of reform, protection, education and governance."[222] In other words, she implies that human rights victims are shown for those who identify with the international community. For her, the display of those suffering natives or human rights victims serves for establishing the identity of the 'heroic' international community. In this way, while the international community develops a heroic identity, those, who are shown vulnerable, are being centred on the politics of the discourse which sees the so-called Third World as "[...] the site of the 'raw' material that is 'monstrosity', is produced for the surplus value of spectacle, entertainment, and spiritual enrichment for the 'First World'".[223] These heroic narratives are important in the sense of being an apparatus that masks the role played by the international organisational priorities in contributing to the humanitarian crises and provides creating 'valuable' selves and unified

[220] "David Cameron: Remember Colonel Gaddafi Libya Victims," *BBC*, October 20, 2011, accessed May 14, 2014, http://www.bbc.co.uk/news/uk-15387273.
[221] "David Cameron: Remember Colonel Gaddafi Libya Victims," accessed May 14, 2014.
[222] Anne Orford, *Reading Humanitarian Intervention*, 189.
[223] Anne Orford, *Reading Humanitarian Intervention*, 189.

communities. Thus the relationships underpinning the international order may seem 'just' and 'ordered'.[224]

Orford's theory is crucial to the extent of pointing to the necessary relationship between post-colonial attitudes (monstrosity/dehumanisation discourse) and legitimising the activities of the international community. Since a strict border is drawn between 'we' and 'other' that is monster, vulnerable, failed, victim or rogue, the violence carried out in the name of the international community is rationalised and legitimised. As Orford says "[t]his attempt to draw distinctions between us and them works to erase the violence of practices authorised by the international community, such as aerial bombardment, economic sanctions or forced economic restructuring."[225]

Reinforcement of the monstrosity discourse is clearly seen in the remarks cited above. Going back to the analysis of Cameron's remark in the light of Orford's theory, first of all, we may see a figure that is proud of 'helping' and 'bringing' liberation. If the question of how all these were brought to Libya is asked, we may see many of the violations of international law such as illegally arming the rebels, the lack of a call for an investigation and a recall of the necessity of the International Criminal Court. But rather, here, the figure is proud on behalf of his own state and the international community because a monster is toppled by the sensitive and valuable international community and the 'bravery' of Libyans, no matter which instruments are used and how many violations are committed. Thus, as Orford explains, the violence of practices authorised by the international community may be erased thanks to the heroic narrative of the humanitarian intervention. In other words, no Western authority will be responsible of the killing of a person, which is a human rights violation. In contrast, judging by remarks, it is not worth speaking of Gaddafi's killing because first he is not a human being but a monster (or dehumanised) and second his killing promises a new Libya which would not have conflicts and wars. The

[224] Anne Orford, *Reading Humanitarian Intervention*, 189.
[225] Anne Orford, *Reading Humanitarian Intervention*, 190.

second point that can be derived from this remark is related to the theory which criticises cultural superiority. It was seen how the monstrosity/ dehumanisation discourse legitimises the violations of the international community by Orford's post-colonial critique and in the second dimension of this remark's analysis, we face the attitude that was implied before in this thesis: cultural superiority. Herein a Western authority – similar to the other remarks - sees the Western world as the saviour of the vulnerable who is incapable of having a proper regime without Western assistance. At this point, this power not only determines what the standards of a best regime are, but also sees itself as the provider of the best political regime and leader. Seeing these 'victims' of monstrosity as the ones who are incapable achieving a revolution without any Western assistance is quite problematic in a way of seeing itself culturally superior.

Therefore, for this remark (and the other ones cited before), the following inferences can be made: first, Western authorities still have the tendency to be the saviours of the so-called Third World (a post-colonial attitude). This is why Cameron and the other authorities are proud of the role which their states and the international community have played. Second, the Libyan people are seen incapable of reform or toppling a ruler on their own. Therefore they are mirrored as if they need the assistance of the one who has the capacity to reform a system or regime (monstrosity, the vulnerable one, and heroic narrative). Third, the previous two inferences show that the West still tends to see itself as the one which is culturally superior. Because remarks point to nothing but 'democracy' and 'liberalisation' in the Western sense as if these are for the benefit of everyone and there is nothing else to be governed. Since democracy is identified with Western culture, without the West's emancipatory politics, it seems almost impossible for the Libyan people to 'achieve' it on their own.

In my estimation, all these inferences demonstrate that the post-colonial attitude of the Western world and the way of seeing itself culturally superior are quite decayed and problematic. Besides, this attitude on humanitarian intervention

is also relevant to the understanding of whose life is worth to mourn and who is really human. This is why the discussion of this part should be read along with the previous discussions; namely, all these questions and cases should be examined together.

It was stated before that Gaddafi was seen and presented as an obstacle in the way of a liberated and democratic Libya. This is why, his killing was shown as if all Libya's problems in the sense of being democratic and liberated were solved.[226] For instance, if we consider European Council President Herman Van Rompuy's remark, "The death of Gaddafi marks the end of an era of despotism [...] [Gaddafi's death] means an end also to the repression from which Libyan people have suffered for too long"[227] or the remarks of Merkel and Berlusconi – cited above - there is a promise which determines Gaddafi's killing as the end of war in Libya. Herein it should be asked whether these promises came true; in other words, whether Gaddafi's killing really provides the peace in Libya. Therefore, the question of 'does this intervention and Gaddafi's killing really prevent and halt mass atrocity crimes?' will be inquired.

Did all necessary measures and all kinds of interferences, including unlawfully providing material support, work for the benefit of all Libyans? Alex Newman claims that some parts of society in Libya were ill-treated by rebels. "Soon the rebels' rage focused on people with dark skin in what some analysts called genocide and 'ethnic cleansing,' sparking condemnation worldwide from human-rights groups and officials."[228] Newman states that cities and towns formerly occupied by blacks were ultimately ethnically cleansed and destroyed by rebels. Speaking by numbers, "[b]y mid-September, the coastal city of about 10,000 mostly black residents had essentially been wiped off the map."[229] In this

[226] See remarks stated before:
http://www.cbsnews.com/stories/2011/10/20/501364/main20123328.shtml and
http://www.aljazeera.com/news/africa/2011/10/201110201352164872l4.html, May 23, 2014.
[227] "Gaddafi's Death: World Reaction," accessed May 23, 2014.
[228] Alex Newman, "Libya Now What?"
[229] Alex Newman, "Libya Now What?"

article, Newman points out those remaining inhabitants of the city were rounded up and shipped to camps by rebel forces and he adds as follows:

> Finally, graffiti reading "slaves," "negroes," and "abeed" — a derogatory term for blacks — was painted all over the ruins by NATO's revolutionaries. The former city then became a "closed military area," according to rebels guarding a checkpoint interviewed by the McClatchy news service. "Tawarga no longer exists," a rebel commander told the *Wall Street Journal.* Another rebel fighter boasted: "We are setting it on fire to prevent anyone from living here again."[230]

All this news was gloomy for the future of a 'liberated' and 'democratic' Libya. While the Western powers wished for a new Libya after Gaddafi was killed, even before his killing, the rebels who were supported by the West started the genocide and ill-treatment. If we examine this case with the principles of human rights doctrine, this kind of ill-treatment is clearly human rights violence as well as Gaddafi's attitude to his citizens. Then the attitude of Western powers should be questioned, those who identify themselves as the advocates of human rights, especially in the sense of their way of being ambiguous. Ambiguity here lies in criticising Gaddafi for his human rights abuses while supporting the rebels who also commit crimes against humanity.

In her review, which was published in November 2011, Nebahat Tanriverdi O. draws attention to the problem that the political party tradition in Libya is quite weak; this is why the political structure should be restructured and armed tribes should be disarmed for political stabilisation.[231] Her assignation is important to the extent of emphasising the existence of the tribal system in Libya. Although the Western authorities tended to emphasise the 'success' of brave Libyans, they did not urge on the problems that might occur because of the tribal system and the power relations between those, in the sense of a successful

[230] Alex Newman, "Libya Now What?"
[231] Nebahat Tanriverdi O., "Kaddafi Sonrası Libya ve Demokratikleşme Sorunu," *Ortadoğu Analiz*, Vol.3 No. 35 (November 2011): 43. (In this thesis, translated by me.)

democracy. Since Gaddafi was killed, political stability could not be achieved. One of the most dramatic expressions of continuing instability was the 2012 US consulate attack. A mob with firearms burned down the consulate in Benghazi to protest a US-made film which ridicules Islam's Prophet Muhammad. Three officers and Ambassador J. Christopher Stevens were killed in this attack.[232] The important point here is that "[t]here have been indications in recent months that radical, armed Islamic groups have gained a foothold in Libya since the fall of the Qaddafi regime."[233] As of May 2014, the internal conflicts were not over: Libya set a date for parliamentary elections to stave off the possibility of civil war.[234]

All those experiences show that Gaddafi was not the only obstacle in the way of Libyan democracy. In fact, there are a lot of elements that should be considered such as the lack of political tradition, powerful tribes and intertribal strife. Therefore, to introduce Gaddafi's killing as the day of Libyan democracy is problematic as well as ignoring the crimes against humanity by rebels.

To sum up this part of the thesis, to grasp the discussions of the 'global mission' of the international community and Western power groups, and heroic narratives which are based on 'othering', Butler's *Frames of War* will be examined. In this book, for the issue of global responsibility in times of war, Butler has an inference as follows:

> [...] we must be wary of invocations of "global responsibility" which assume that one country has a distinctive responsibility to bring democracy to other countries. I am sure that there are cases in which intervention is important-to forestall genocide, for instance. But it would be a mistake to conflate such an intervention with a global mission or, indeed, with an arrogant politics in which forms of government are forcibly implemented

[232] "Assault on U.S. consulate in Benghazi leaves 4 dead, including U.S Ambassador J. Christopher Stevens," *CBC News*, accessed May 25, 2014, http://www.cbsnews.com/news/assault-on-us-consulate-in-benghazi-leaves-4-dead-including-us-ambassador-j-christopher-stevens/.
[233] "Assault on U.S. consulate in Benghazi leaves 4 dead, including U.S Ambassador J. Christopher Stevens," accessed May 25, 2014.
[234] "Libya to Hold Elections amid Chaos in Tripoli," *BBC,* May 20, 2014, accessed May 25, 2014, http://www.bbc.com/news/world-africa-27495894.

> that are in the political and economic interests of the military power responsible for that very implementation. In such cases […] this form of global responsibility is irresponsible, if not openly contradictory. We could say that in such instances the word "responsibility" is simply misused or abused.[235]

In addition to this inference, Butler discusses the 'othering' during times of war. She states that war can be taught as dividing populations into those who are grievable and those who are not. This is why, people's reactions to certain deaths vary. "When a population appears as a direct threat to my life, they do not appear as 'lives', but as the threat to life (a living figure that figures the threat to life)."[236] In my estimation, at the time that Gaddafi appeared as the 'threat' to the standards of the international society, he did not appear as a life. And the feelings to a death have quite strong bonds with the establishing of 'we' and 'others' (with the discussions of both Butler and Orford). "Those we kill are not quite human, and not quite alive, which means that we do not feel the same horror and outrage over the loss of their lives as we do over the loss of those lives that bear national or religious similarity to our own."[237] [238] For me, the reason why there was no mention of Gaddafi's killing as a 'human' killing in the remarks of Western authorities is related to this idea of othering. Gaddafi's life was not grievable to the extent of his situation of being 'other' that is the threat. This othering which makes Gaddafi a threat also creates the heroic narrative that not only demonstrates the Libyans as vulnerable but also hides the failures of the international society.

3.4. The State of Exception

The concept of state of exception is defined in the previous parts with the Agambenian perspective. To grasp the complete nature of the concept, the book,

[235] Judith Butler, *Frames of War: When Is Life Grievable?* (London; New York: Verso, 2009), 37.
[236] Judith Butler, *Frames of War*, 42.
[237] Judith Butler, *Frames of War*, 42.
[238] Herein, we may observe the cultural selectivity of the humanitarian intervention with the example of the US intervention to ISIS. The US launched air strikes against ISIS when the 'Christian' Yazidis were under threat.

State of Exception, will be analysed and the Libyan intervention and Gaddafi's killing will be discussed according to Agamben's discussions in the last instance.

Contrary to what is believed about the concept of 'state of exception', Agamben does not interpret it as the suspension of the juridical order. He differently approaches the concept and asks the question of how such a suspension still can be contained within this order. For this question, he explains his idea as follows:

> In truth, the state of exception is neither external nor internal to the juridical order, and the problem of defining it concerns precisely a threshold, or a zone of indifference, where inside and outside do not exclude each other but rather blur with each other. The suspension of the norm does not mean its abolition, and the zone of anomie that it establishes is not (or at least claims not to be) unrelated to the juridical order.[239]

In this context, the state of exception should not be perceived as a concept which is unrelated to juridical order. In fact, like *homo sacer*'s situation as an *exceptio*, the modern state of exception is an attempt to include the exception itself within the juridical order. This is why, with an Agambenian perspective, the state of exception is no longer a threshold which guarantees articulation between an inside and outside, namely between anomie and the juridical context. Conversely, "[…] it is, rather, a zone of absolute indeterminacy between anomie and law, in which the sphere of creatures and the juridical order are caught up in a single catastrophe."[240]

To briefly summarise: first, "[t]he state of exception is not a dictatorship […] but a space devoid of law, a zone of anomie in which all legal determinations— and above all the very distinction between public and private— are deactivated."[241] Second, in line with the first inference, the nature of the acts committed during the state of exception seems to escape all legal definitions; in

[239] Giorgio Agamben, *State of Exception*, 23.
[240] Giorgio Agamben, *State of Exception*, 57.
[241] Giorgio Agamben, *State of Exception*, 50.

other words, since these acts are "[…] neither transgressive, executive, nor legislative, they seem to be situated in an absolute non-place with respect to the law."[242]

When the situation of the Libyan people who were killed by rebels or Gaddafi before, during and after the intervention is considered, we face a zone of anomie in which all legal determinations are deactivated. The situation in which those people lost their lives is not the matter of a juridical order even though legally binding international law already exists for this situation; no one was brought to account in the state of exception.

On the other hand, Gaddafi, to the extent he was the standing obstacle, did not belong to the realm of any juridical order. Despite the fact that there is an international law that can be enforceable in these kinds of situations (War Crimes Tribunal, International Criminal Court and so on), Gaddafi was pushed from the zone of juridical order to the zone of anomie. As long as Gaddafi was a threatening figure for the new juridical order of Libya, he had to be killed. And this was quite possible in a state of exception in which the threshold between life and death, anomie and zone of the juridical order is blured and nested. As Agamben says, "[...] necessity does not acknowledge any law".[243]

When Gaddafi's killing and withal Libyan intervention are considered along with all discussions in this thesis, we witness a course in which the international law and its norms make ambiguous, a certain juridical order is replaced with the anomie, and human rights are suspended for a certain part of humanity.

In my estimation, there are two reasons to examine the case study of this thesis with the theory of the state of exception. First, as it was explained, in the state of exception, in spite of the existence of a juridical order, subjects belong to

[242] Giorgio Agamben, *State of Exception*, 51.
[243] Giorgio Agamben, "For a Theory of Distituent Power," (from the public lecture in Athens, Greece, November 16, 2013) accessed May 25, 2014, http://www.chronosmag.eu/index.php/g-agamben-for-a-theory-of-destituent-power.html.

the zone of indistinction where the lines between anomie and the juridical order blur. In the previous parts of the thesis, I mentioned the unlawful procedures such as arming the rebels and intervening in domestic affairs. The Libyan intervention has some dimensions which cannot be explained by legal codes. On the other hand, it is hard to tell that all legal codes were lifted during the intervention. This is why, we face a sovereign power (in this context, it can be Western power groups or the international community) which unilaterally decides upon the actions as being unlawful or lawful unilaterally. Second, in the state of exception, "[…] a human action with no relation to law stands before a norm with no relation to life."[244] In other words, we can say that 'life' and 'norm' are intermingled in the state of exception. Gaddafi, as long as he was defined as a monster, was out of the field of law rather he belonged to the zone of indistinction in the state of exception, the zone where life and norm are intermingled.

As it was cited previously, this thesis's level of analysis is international relations. What I mean by 'zone of indistinction' should be regarded as the blur zone of anomie and the juridical order in terms of international law. This is why the sovereign power here are the Western power groups and the international community that have the privilege to determine who is human, whose life is worth mourning and which intervention is just. In the light of this information, we should pay attention to what Agamben says about this political order in the state of exception:

> Indeed, the state of exception has today reached its maximum worldwide deployment. The normative aspect of law can thus be obliterated and contradicted with impunity by a governmental violence that— while ignoring international law externally and producing a permanent state of exception internally— nevertheless still claims to be applying the law.[245]

[244] Giorgio Agamben, *State of Exception*, 86.
[245] Giorgio Agamben, *State of Exception*, 87.

To sum up, in this chapter, I aimed to portray Libya's situation and Gaddafi's killing in relation of the debates of cultural relativity and post-colonial critiques. Also those debates were associated with the theories of Foucault, Agamben and Butler on life, outrage, biopolitics and death. In this way, I concentrated on the case study with the theoretical debates of the thesis.

CONCLUSION

In the first chapter, I aimed to portray the ambiguous structure of the concept of human rights by criticising its claims of universality, individuality, indivisibility and state's sovereignty on rights in conjunction with its ties to natural law. Some authors such as Freeman claim that human rights do not imply Western values on non-Westerners, this is why human rights universalism is not 'cultural imperialism'.[246] Freeman's counter-argument to those who accuse universalism of being cultural imperialism is that the universalism of the origins of human rights lies in opposition to Nazi imperialism.[247] In this context, he accuses the modern forms of rule of producing gross violations of human rights standards.[248] In my estimation, this counter-argument is insufficient to explain the results of these 'violations'. This kind of approach fails to account for the consequences of ignoring cultural relativism. For instance, his answer to the advocates of relativism who object to human rights universalism for being imperialistic is to recall the concept's origins which were in revulsion against Nazism. However, cultural relativism does not necessarily mean the affirmation of Nazism. And it is quite possible to defend a system which is against Nazism with the arguments of relativism. Of course, the concept is valuable to the extent that it disapproves of Nazism, but this does not mean that people should pass over the discussions of relativism and accept all forms of universalism just because its defenders laid opposition in the course of time in Nazi Germany.

As another problematic dimension of the concept of human rights, it was argued how the concept was squeezed into the lines of 'citizenship' in the first chapter. Agamben states that "In the system of the nation-state, the so-called sacred and inalienable rights of man show themselves to lack every protection and reality at the moment in which they can no longer rake the form of rights

[246] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 103-104.
[247] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 104.
[248] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 105.

belonging to citizens of a state."[249] In other words, Agamben criticises the French Declaration of the Rights of Man and Citizen, of 1789, because the declaration degrades the notion of 'human' rights to the rights of 'citizens'. That is to say, as long as one has a citizenship under the power of 'sovereign power' (in this context, it is the nation-state), he or she can benefit from 'human' rights. He presents the relationship between 'birth' and 'principal of sovereign': "The fact that in this process the 'subject' is, as has been noted, transformed into a 'citizen' means that birth which is to say, bare natural life as such - here for the first time becomes […] the immediate bearer of sovereignty."[250] In spite of the fact that Article 1 of the Universal Declaration of Human Rights claims that all human beings are born free and equal in dignity and rights[251], Agamben argues the expression of 'freedom of a human being' in a nation-state by biopolitics:

> It is not possible to understand the "national" and biopolitical development and vocation of the modern state in the nineteenth and twentieth centuries if one forgets that what lies at its basis is not man as a free and conscious political subject but, above all, man's bare life, the simple birth that as such is, in the passage from subject to citizen, invested with the principle of sovereignty.[252]

I believe that we should not rule out what Agamben draws attention to about the links between the nation-state paradigm and the biopolitics on human beings (or citizens). Because, in my estimation, as long as modern sovereignty is based on this original fiction which arises out of the continuity between human and citizen, and nativity and nationality, it becomes insufficient to grasp and provide the standards that human rights claim.

Cultural relativism and critiques of the post-colonial approach, which were examined in the second and third chapters, are in quite strong relations with the debates in the first chapter. In my opinion, these debates of human rights and humanitarian intervention are relevant in the sense of reading ambiguous structure

[249] Giorgio Agamben, *Homo Sacer*, 126.
[250] Giorgio Agamben, *Homo Sacer*, 128.
[251] "Article 1," The Universal Declaration of Human Rights, accessed May 30, 2014, http://www.un.org/en/documents/udhr/index.shtml#a1.
[252] Giorgio Agamben, *Homo Sacer*, 128.

settlements and associations. For instance, RtoP, which was analysed in the previous chapters, states that "[...] we must remind Member States not to undermine RtoP by confusing civilian protection with other motives such as regime change or resource control."[253] Herein, we should ask the question of how a declaration (namely, a mission) deviates from its aim. Because it is clear that the NATO forces and unlawful Western support to rebels caused a regime change. This is why, we face here more than a responsibility to humanity. In this thesis, I aimed to explain these kinds of contradictions between the lawful and unlawful in terms of ambiguous structure of humanitarian intervention.

It can be deduced from the thesis: first, human rights with its specific ties to Western culture and its value system (the emergence and development of natural rights) establish a hierarchy between cultures because of the universality claim which aims to generalise norms arising out of Western culture as universal facts. Second, in line with the first inference, this universalist understanding of the Universal Declaration Model causes a value system over humanitarian intervention which is decided whether it is just or unjust unilaterally. This characteristic is relevant to the post-colonial attitude which establishes heroic narratives about the so-called Third World. While this narrative of humanitarian intervention provides for the creation of valuable selves and unified communities, it creates an image of a vulnerable, victimised and needy society of so-called Third World. In this way, the relationships underpinning the international order seem just and orderly. Third, a zone of indistinction is established along with this naturalist, universalist and post-colonialist attitude in the state of exception by the sovereign power. That is to say, as long as Gaddafi is dehumanised and the Libyan society is reflected as if they are in need of the assistance of the 'liberated' West, all kinds of (lawful or unlawful) interventions will be just and Gaddafi's life will not worth to mourn as a 'monster' who is standing as an obstacle in the way of a more Western Libya.

[253] "Impact of Action in Libya on the Responsibility to Protect," accessed June 30, 2014.

Basically, with all these discussions, I aimed to depict the contradictions between claims and implementations of humanitarian intervention in terms of unilateral decision-making mechanism. In my estimation, it is the same (sovereign) power which decides which norms of human rights should be universal, which intervention is just or fair, whose life is worth to mourn, and who really is human. This is why my concern in this thesis was to analyse these unequal forms of association.

Finally, I would specify my concern on the critiques: My aim is not to legitimise mass human rights violations and atrocities; nor do I suggest lifting the concept of human rights with the critical debates cited previously. On the other hand, we should be able to criticise these unequal forms of association which occur when the humanitarian intervention is instrumentalised for the benefit of some ruling elites. Note that Libya is still in a state of exception and it is hard to speak of a stable political system there in terms of the humanitarian intervention's promises. As Orford states "[...] in some ways the promise of humanitarian intervention may be more damaging to 'human rights victims' than grounding intervention on security or national interest."[254]

[254] Anne Orford, *Reading Humanitarian Intervention*, 201.

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