

DEFENDING STATES AND PROTECTING INDIVIDUALS:  
A CRITICAL EXAMINATION OF THE PRINCIPLE OF NONINTERVENTION

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by  
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The undersigned, appointed by the dean of the Graduate School, have examined the dissertation entitled

DEFENDING STATES AND PROTECTING INDIVIDUALS: A CRITICAL  
EXAMINATION OF THE PRINCIPLE OF NONINTERVENTION

presented by Dustin Nelson,

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and hereby certify that, in their opinion, it is worthy of acceptance.

Professor Peter Vallentyne
Professor Robert N. Johnson
Professor Paul Weirich
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For Emily and Riley.

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## ABSTRACT

It is widely accepted that individuals have rights. It is also widely accepted (though less so) that states have rights, including a right against intervention. Yet, sometimes the rights of individuals become threatened by their own states or by other threats their state is unwilling or unable to prevent. So, this leads us to ask if it can ever be right to intervene into some other state to protect people *within* that other state. (Evans, 2006) In this dissertation, I argue that states actually do typically have a right against intervention, even when we, as Christopher Wellman suggests, “take human rights as seriously as we should”. (Wellman, 2012, p. 119) I argue that a state’s specific right against intervention is best determined according to whether the state in question is adequately respecting and protecting the rights of those within the state. In making this argument, I accept what we might call the individualist turn in international relations. That is, I endorse the view that a state’s right against intervention is uniquely linked to the protection of the rights of individuals.

# Chapter 1

## Introduction

### 1. Introduction

It is widely accepted that individuals have rights. It is also widely accepted (though less so) that states have rights, including a right against intervention. Yet, sometimes the rights of individuals become threatened by their own states or by other threats their state is unwilling or unable to prevent. So, this leads us to ask if it can ever be right to intervene into some other state to protect people *within* that other state. (Evans, 2006) In this dissertation, I argue that states actually do typically have a right against intervention, even when we, as Christopher Wellman suggests, “take human rights as seriously as we should”. (Wellman, 2012, p. 119)

I argue that a state’s specific right against intervention is best determined according to whether the state in question is adequately respecting and protecting the rights of those within the state. In making this argument, I accept what we might call the individualist turn in international relations. That is, I endorse the view that a state’s right against intervention is uniquely linked to the protection of the rights of individuals.

On its face, this view would appear to weaken the nature of a state’s right against intervention, making the right too easily forfeitable and thus potentially permissive of widespread intervention. I will argue, however, that this is not correct. A state, I argue, can maintain a right against intervention by simply adequately respecting and protecting the rights of those within the state. And I will show that a surprising implication of this

view is that most states will typically have a robust claim against intervention, even in cases in which there may be severe or widespread rights violations.

I begin briefly with this chapter, Chapter 1, by outlining the argument and presenting a major assumption that will be crucial for the remainder of the dissertation. The dissertation then proceeds by examining and evaluating various views regarding a state's right against intervention.

In Chapter 2, I more fully motivate the discussion and present the dilemma that lies at the heart of this investigation, namely, the tension between allowing individuals to determine their own political arrangements and protecting individuals within other states from their own, sometimes unsuitable states. I also present and reject some preliminary views regarding the right against intervention. The rejection of these preliminary views is grounded in what I refer to as a particularly strong and stable intuition. Namely, that intervention by foreign, military forces into a state to rescue individuals within that state from their own government does not always and necessarily wrong the target state. In accepting this intuition as legitimate, I accept that the right against intervention must, then, include the protection of individuals.

In Chapter 3, I present one of the most well-known views regarding a state's right against intervention – what I call the Communitarian View. And though it is grounded in concern for individual rights, I argue that this view suffers from a fatal objection – it doesn't take individual rights seriously enough. So, in Chapter 4, I present and examine the view that takes individuals rights *extremely* serious. This Strict Individualist View, as I call it, requires states to *perfectly* respect and protect the rights of those within the state in order to maintain a right against intervention. I argue, however, that this view is

implausible. States just cannot be required to perfectly respect and protect the rights of those within the state. Rather, at best, states must be required to only *adequately* respect and protect rights. Then, in Chapter 5, I begin to outline the immensely complex nature of this new position.

Finally, in Chapter 6, I defend a particular interpretation of this “adequacy” view regarding a state’s right against intervention. The lynchpin of this particular interpretation, I will argue, is what I call the Control Principle for States. The Control Principle for States says that states cannot be assessable for violations of rights of those within the state that are, in some sense, beyond the control of the state itself. It is this principle that pushes us toward the surprising conclusion that states typically have a right against intervention, even when we “take human rights as seriously as we should” and even sometimes in cases in which there are severe and widespread rights violations occurring within the state.

## **2. One Major Assumption**

I will be making one, major assumption that has serious implications for the dissertation.

I will assume throughout that states have rights. There are at least two immediate implications in making this assumption. First, it implies that states can be wronged.

Indeed, I will generally proceed as if this is the case. Second, accepting the legitimacy of state rights also implies that states can also have obligations themselves. This conforms to the view that states have some sort of responsibility to those within the state.

Nonetheless, I am careful to point out that I am not denying that state rights may be ultimately reducible to the rights of individuals. This, I believe, is a separate question.

When I mention a state having a right against intervention, it may very well be a right that can be reduced to the rights of individuals within the state. And when I mention a state being wronged, this may very well be a wrong that is distributed among those individuals within the state.

## **Chapter 2**

### **The Problem: Protecting States & Protecting Individuals**

#### **1. Introduction**

I will be defending the view that states typically have a claim against intervention, even when such intervention is aimed at protecting individuals within the target state. In this chapter, I provide the background context for the defense of my position. I begin by discussing the circumstances that give rise to the problem in the first place and explain some of the underlying concepts. Crucially, in this chapter I will be examining the complex moral contours of the principle of nonintervention. As I will discuss, it is the principle of nonintervention that gives rise to a sharp debate regarding the limits of protecting individuals within other states. So, we will spend a great amount of time evaluating, revising, and rejecting various possible version of this principle.

Let us begin this chapter, however, with two examples that highlight the problem.

#### **2. The Problem**

Just over ten years ago, the world stood by as nearly one-million Rwandan-Tutsi were raped and slaughtered at the hands of their Hutu compatriots. Although the massacre lasted for approximately one hundred days, no one from the international community came to the aid of the Tutsi. Many consider this to be one of the most significant moral failures of the international community in recent history. Even a modest use of military

force could have halted the violence.

Yet, the basic effectiveness of the use of military force to curtail such serious wrongdoing does not itself make the use of such military force permissible. Consider India. India is the world's largest democracy. When it comes to social issues, India is considered to be decently progressive. Homosexuality, however, is criminalized in India and the criminality of homosexuality was upheld in a 2013 decision of India's Supreme Court. Commenting on the court's decision, Meenakshi Ganguly of Human Rights Watch said that the Supreme Court "failed to recognize everyone's internationally protected right to privacy and non-discrimination" and that the ruling was "a disappointing setback to human dignity." (Bhowmick, 2013) The international community, however, is not clamoring to send a military force into India in order to protect these alleged, internationally protected rights.

This is the problem for our investigation. If the basic effectiveness of the use of military force to curtail serious wrongdoing does not itself make the use of such military force permissible, what *would* make it permissible? Can the use of military force be justified for cases like Rwanda, but prohibited for cases like India? Or could the use of military force be justified in both cases? Or, alternatively, should it simply be prohibited in both cases? These are difficult questions, and how we answer them may have far reaching implications. I will argue, in fact, that states typically have a robust claim against intervention and that the use of military force to protect foreigners would only rarely justified.

### 3. Humanitarian Intervention & Military Force

When it comes to the conflict between a state's claim against intervention and the safety of individuals, military force, even when used for humanitarian purposes, should not be confused with humanitarian aid. By military force, we typically mean the use of armed soldiers and weaponry. We do not mean, that is, medical assistance or the distribution of food and medical supplies. While the use of military force can be viewed as a type of humanitarian aid, the aid provided by the use of military force is only secondary to the purpose of the use of such force – to avert a threat. The use and threatened use of military force, however, *is* backed by a willingness and ability to use lethal force. An employment of humanitarian aid has no recourse to lethal force, nor need for it.

Military force, though, can be used for a variety of purposes: for example, to take down communications within a state, destroy military installations, or kill soldiers. *Military Humanitarian Intervention* is simply the use of non-consensual military force within the territorial jurisdiction of another state in order to prevent serious wrongdoing carried out, or allowed, by the targeted state. Regarding this particular type of military intervention, there are at least two distinguishing features that separate it from other types of military action.

First of all, humanitarian intervention is a *defensive* type of military action – its (at least partial) aim is to prevent some kind of “serious wrongdoing”. Humanitarian intervention, that is, is not merely the use of military force to further the interests of just the intervening state. This distinguishes humanitarian intervention from other forms of aggression. But for this distinction to be clear, of course, we must at least have some

account of what we mean by “serious wrongdoing”.

While it would be too ambitious at this point to give necessary and sufficient conditions for what actions count as “serious wrongdoing,” I think there we can establish an initial, basic idea. The “serious wrongdoing” that we’re discussing is the kind of wrongdoing that renders the state susceptible to intervention. It is effectively that which causes a state to surrender any claim it may have against intervention. The clearest example of such “serious wrongdoing” is the example discussed earlier: genocide. Genocide and forced enslavement by a state of its own people are paradigmatic examples of “serious wrongdoing”. And though we only have a basic idea of the concept now, we will try to get clear on what might legitimately count as “serious wrongdoing” over the course of this investigation.

The second distinguishing feature of humanitarian intervention is that it is aimed at protecting members of *other* states from wrongdoing. In a case of humanitarian intervention, that is, the intervening state does not act in order to protect *its own* citizens. Rather, the actions are aimed at protecting members of some *other* state.

Additionally, we should take care to keep separate the notion of state-sponsored humanitarian intervention from state-sponsored humanitarian aid. The paradigm case of *humanitarian aid* is the distribution of resources (e.g. food) by one state to severely impoverished individuals in some other state. For humanitarian aid, we can imagine that, if recipients of the aid resist the effort, the aid will simply be halted or revoked. There is no use of force to compel the recipients to accept the aid. For *humanitarian intervention*, however, the primary objective is to compel certain individuals within another state to cease their ongoing serious wrongdoing. If the targets of the intervention were to resist,

the consequences will be those that stem from the intervening state's use of military force. So, we are considering the circumstances under which a state may fail or cease to have a claim against intervention and when intervention may then be permissible. That is, we are seeking to identify the conditions under which the unwelcome use of military *force* within the territorial boundaries of a target state in order to protect members of that state would not itself wrong the target state.

#### **4. States, Boundaries, & Nonintervention**

Regardless of the humanitarian *aims* of humanitarian intervention, the use of military force in such cases is by definition *unwelcome* by the target state. Here lies the heart of our problem. Although the (at least partial) aim of humanitarian intervention is to protect individuals in the target states, these states are also typically considered to have protection from unwelcome aggression. And the unwelcome, humanitarian use of military force within a target state's territorial boundary seems to fall within the realm of this protection.

Presumably, there must be something morally significant about a state that generates a claim against interference from outsiders. But what, however, do we mean by "a state"? Many have attempted to define the idea of the state. Max Weber, for instance, famously defines the state as "a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory". (Breiner, 1996, pg. 127, quoting Max Weber) This is a good start, but defining the state is a complex matter, and I shall not address it here. I will restrict the discussion to the clearest examples of entities that we commonly think of as states: the US, Canada, etc. On this

basic understanding, then, a state will typically include a recognized boundary, a citizen population, and an organized political structure that controls and protects the citizen population within the recognized boundary. Thinking about states helps us focus our attention on the *target* of the use of military force (at least for the time being). So while both state and non-state entities may be permitted to intervene into a state, humanitarian intervention is, for the most part, typically carried out *against* states.<sup>1</sup> Yet, paradoxically, states also tend to have a special claim to non-intervention in the international community.

Political theorists and international relations scholars have long held that states have moral claims against one another regarding intervention. That is, if an entity is considered a state, then it is protected from certain kinds of unwelcome foreign interference, particularly foreign aggression. And the international community affirms corresponding legal prohibitions, underpinned by reasonable moral considerations. For instance, prohibiting unwelcome foreign interference safeguards political communities from external threats and allows communities to determine for themselves the best socio-political structure for their community. Additionally, this protection from interference also aims to maintain international peace by preventing unnecessary, and potentially brutal, warring among states.

What we see, then, is that a state's legally recognized, territorial boundary is also assumed to represent a *moral* boundary. While these ideas and concepts are typically tied to discussions and analyses of the concept of state sovereignty, we will not consider state

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<sup>1</sup> Of course, a humanitarian intervention may also be permissibly carried out against a tribe or a terrorist group, controlling a particular territory. We will not address this question directly here. Instead, we will later try to draw conclusions about these other sorts of cases once we have established our position for targeted *states*.

sovereignty in any detail in this investigation. What matters is not whether the humanitarian use of military force into the territory of another state threatens its sovereignty. What matters is determining when the use of such force would not be prohibited by a state's assumed *moral* boundary or claim against intervention. From the point of view of individuals within a territory, state boundaries represent a boundary of protection and, unless there are good reasons to think otherwise, they should be respected. To deny the importance of this assumed moral boundary of protection, then, requires a substantive view of the limits of this moral boundary of protection, even if territorial boundaries themselves have no moral valence.

So, entities that are recognized as states typically have well-defined territorial boundaries. Not only do these territorial boundaries mark off one state from another, but they typically also provide presumptive *moral* boundaries of protection for individuals within the territory. It is this recognition of the moral significance of territorial boundaries for individuals within a state that leads us to formalize the associated values into a moral principle – a principle of nonintervention – to govern how states interact with one another.<sup>2</sup> Yet, ironically, it is also this principle that comes into conflict with protecting individuals within states.

## **5. The Relation to Just War Theory**

Humanitarian intervention involves the use of military force. So, many scholars working on issues surrounding humanitarian intervention consider such military action as falling under the purview of Just War Theory. Yet, traditional accounts of Just War Theory do

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<sup>2</sup> It should be pointed out, though, that not all *legal* states, as recognized by the international community, have moral protections. Some *legally* recognized states might nonetheless be sufficiently unjust to warrant moral protections.

not clearly accommodate the possibility of a permissible humanitarian intervention. There's reason for this. Traditional Just War Theory typically takes the state to be the primary unit of moral consideration. The essential just cause for one state to go to war against another is as a response to unjust aggression from this other state. Yet, humanitarian intervention is not a state's response to unjust aggression from another state. It is a response, for example, to unjust aggression by the other state against its members. One major question, then, for traditional Just War Theory is whether (and how) the treatment of individuals within a target state can give rise to a just cause. So, Just War theorists have a choice to make: alter the traditional list of just causes or prohibit humanitarian intervention.

For this investigation, we will be primarily concerned with the possibilities for the first option – altering the list of just causes. Specifically, we will ask what kinds of wrongdoing within a state are such that intervention would not constitute an act of wrongful aggression. Not every wrongdoing, for instance, can constitute a just cause for war (or intervention). For instance, as discussed above, India's prohibition against homosexuality may be wrong, but may not be sufficiently wrong to constitute a just cause for war (or intervention). That is, there can be a just cause for intervention if and only if such intervention is not precluded by a valid version of a principle of nonintervention. It is only under such circumstances that humanitarian intervention can be justified.

Finally, since our main focus is what most would refer to as a *just cause* for intervention (i.e. over and above mere self-defense), we will not be concerned with the other, prominent Just War criteria. We can simply assume for the sake of argument that the other Just War conditions are met.

## 6. Examining the Principle of Nonintervention

Political self-determination, international peace, and war avoidance are all values for which an account of intervention must be sensitive. These values are best expressed by what we have been calling a principle of nonintervention. And it is this principle for which we will focus our attention. But let us start by considering a generally rejected view that denies that there is a principle of nonintervention that protects *any* state.

**Permissive View:** A state has no *special claim* against the use of military force by an outside state within its territorial jurisdiction.

On the Permissive View, since a state has no claim to nonintervention, the only considerations for whether an intervention would not be wrongful are just the moral considerations for the individual acts undertaken by a potential intervening party. That is, the fact that the intervening party acts within the assumed territory of another state does not, itself, make any fundamental moral difference to the actions themselves. If the actions wrong the individuals within the target state, then intervention would be wrongful regardless of assumed state borders. Similarly, if the intervening actions would not actually wrong the individuals within the target state, then the intervention would not be wrongful. The state would have no claim against intervention, so it could not be wronged by intervention.

Of course, realizing that individuals do in fact value their state's borders, the consequences for intervening actions must also be taken into account. For instance, an

intervention might be so heavily resisted by those within the target state that the intervention would cause more bloodshed than it was aiming to prevent. Intervening would not wrong the state, but would be wrong nonetheless because of its overall effects. This is the Permissive View. There is no state border that is morally relevant in and of itself and thus there can be no claim against intervention by any state. Intervention can wrong individuals, but it cannot wrong a state.

The Permissive View, however, fails to be persuasive. The main problem is that the position cannot countenance the very strong presumption of a people's right to form their own political community. On the Permissive View, even the full consent of all members of a political community to an authority of that community would give no moral claim to the community against outside interference. This view, though, is unreasonable. If the existence of a political authority is permissible at all, which we tend to accept, then surely it is permissible when there is full consent from all the members of the relevant community. So, if individuals possess a right to form their own political community, create and give consent to a political authority, then the Permissive View cannot be correct. It cannot be the case that any use of military force is permissible when the individual intervening actions are themselves otherwise morally permissible.

The point, here, is that state borders seem to be morally relevant. Borders represent something morally meaningful to those within them. In particular, state borders are, in some sense, the outward expression of a people's coming together in forming a political community. So, if people are indeed free to form political communities, a basic presumption for respecting borders may be required. The Permissive View then fails.

Rejecting the Permissive View, thus, requires us to endorse some type of principle

of nonintervention. We shall therefore consider several versions, starting with the strongest form of the principle – one that displays a strong commitment to the moral value of state boundaries:

**Strong Principle of Nonintervention:** A state has an unequivocal right against the non-consensual use of military force against its territorial jurisdiction.

The Strong Principle of Nonintervention, if correct, would justify the international community's unwillingness to employ military force against India over the criminalization of homosexuality. Yet, if correct, it would also justify the international community's lack of response to the genocide that took place in Rwanda. More generally, the Strong Principle of Nonintervention simply prohibits *all* instances of intervention—humanitarian or not. But there are good reasons to reject this principle that are independent of its implications for humanitarian intervention. The principle is clearly *too* strong.

The Strong Principle of Nonintervention is too strong because it does not allow room for a state to invade a state's territory in order to defend itself from that state's unjust attack. If any military action is justified, surely defensive action is.

If self-defensive, territory-breaching actions are permissible, then it cannot, as the Strong Principle asserts, *always* be *impermissible* to use military force against the territorial jurisdiction of another state. Thus, we see rather quickly that the Strong Principle of Nonintervention, as stated above, must be *too* strong. But since there are good reasons to accept some type of principle of nonintervention, we must reformulate

the principle rather than reject it outright.

Taking for granted the permissibility of a state's self-defense against unjust aggression, we can amend the principle of nonintervention. We can characterize the Classic View as accepting the following, reformulated principle:

**Classic Principle of Nonintervention:** A state has a right against the non-consensual use of military force against its territorial jurisdiction *so long as the state is not unjustly aggressing some other state.*

The Classic Principle says, roughly, that unless a state is unjustly threatening some other state, or individuals of some other state, the state will have a claim against intervention. This principle again reflects the commitment to the values of political self-determination, international peace, and war avoidance, while at the same time accounting for acts of self-defense. This position, however, must deny the there is a just cause for any use of military force that is not based in self-defense. Humanitarian intervention, then, in regards to the Classic Principle, would be unequivocally prohibited.

So, according to the Classic Principle of Nonintervention, a state may lose its right to nonintervention if it unjustly aggresses some other state. But it would not lose its right to nonintervention by carrying out serious wrongdoing against those *within* the state. And unlike the Permissive View and the Strong Principle of Nonintervention, there is a plausible defense of the Classic Principle.

There are several ways one may justify the amended, Classic Principle in ways that respect the supporting values of the principle. Regarding political self-determination,

for instance, we may just not be able to respect political self-determination, if we allow states to infringe on the political self-determination of some other state. So, the Classic Principle affirms the importance of borders but also recognizes that this affirmation cannot justify aggression. The point, here, is simply that the Classic Principle affirms the moral relevance of state borders by denying that the moral protection of state borders is absolute. So, the self-defense amendment included in the Classic Principle seems reasonable. In this regard, the Classic Principle is commonly described as adhering to what is known as the domestic analogy. (Walzer, 1977)

The domestic analogy claims that states within international society are analogous to individuals within domestic society. In domestic society, we typically intervene in an individual's life only when that individual's actions pose a threat to others. So, according to the Classic Principle, the use of force should occur only when one state's actions threaten *other* states. But if a state is violating the rights of some of its own citizens, this is simply analogous to an individual purposefully harming himself for some intended benefit (e.g. body piercing). Thus, humanitarian intervention will typically be wrongful because as long as the state is functional it will have a right against intervention. (Walzer, 1977) The Classic Principle, then, can allow the use of force for self-defense (and collective self-defense) without permitting humanitarian intervention. There are good reasons, however, to reject the Classic Principle of Nonintervention.

Though it was, at one time, thought to be the necessary position for keeping international peace, we have now come to see the Classic Principle as severely flawed. For one thing, the domestic analogy has shown to be ineffective. The domestic analogy assumes that states act largely autonomously. But, a state includes not only the leaders,

but also the members of the state. And for a state to act autonomously (as the domestic analogy requires), individuals within the state must have given full consent for the actions of the state. Yet, this robust kind of consent is lacking for most state actions. So, we cannot rightly conclude that a state acts as autonomous in international matters as individuals do in domestic matters. (Beitz, 2009)

Even so, there is a more ominous reason to deny the Classic Principle. Consider the implications that the Classic Principle would have for the previously discussed cases of Rwanda and India. The Classic Principle, like the Strong Principle, would prohibit intervening in India. The criminalization of homosexuality in India is not an act of aggression by India upon another state, so the use of force against individuals in India would be prohibited – which seems to be the intuitively plausible response. But, according to the Classic Principle, intervention would have also been wrongful in the case of Rwanda. Though the circumstances were brutal, the massacre did not extend beyond Rwanda’s border. So, unless the circumstances in Rwanda threatened some *other* state, the Classic Principle would seem to have prohibited the use of force to stop the genocide. Intuitively, though, this seems like the wrong judgment. So, if humanitarian intervention can be justified at all, the Classic Principle of Nonintervention will have to be amended further. As Carla Bagnoli similarly notes, “[h]umanitarian intervention is generally treated as an exception to the nonintervention principle.” But even though there are good reasons to accept such a principle, “the reasons for treating it as exceptionless do not seem equally compelling.” (Bagnoli, 2006, p. 117)

Many, of course, consider the case of Rwanda as a possible exception to the principle of nonintervention and an instance of clear moral failure on behalf of the

international community. If there ever were an instance of justifiable intervention, surely the case of Rwanda counts as such an instance. But given that such intervention would be ruled out by the Classic Principle of Nonintervention, it is reasonable to ask what would have made intervention in Rwanda permissible. The reason a state is protected by a principle of nonintervention is, in the first place, because of the people within the state. The state's protection from intervention is *for* the people, not for the state itself. So there is little reason to protect a state if doing so does not protect the people within it. The purpose of the principle cannot be to protect the savage actions of barbaric regimes. Thus, it has become increasingly clear that the way a state treats the people within its territory matters to a state's claim to nonintervention. But if this is the case, then the Classic Principle of Nonintervention is still too strong, the principle must be weakened further.

## **7. Looking Ahead**

As we noted earlier, no one thinks that the Strong Principle of Nonintervention is plausible. In particular, we think that a state may defend itself from unjust aggression, even if this involves acting within the territory of an aggressing state. The aggressing state, then, must (at least partially) lose its claim to nonintervention. So, we account for this by weakening the principle of nonintervention. We thus abandon the Strong Principle in favor of the Classic Principle. But the Classic Principle relies on an improper view of states and is itself also too strong. So, it is to the development and justification of a weaker version of the principle that we will now turn.

## Chapter 3

### The Communitarian View: Protecting Societies

#### 1. Introduction

In the previous chapter, we introduced the conflict between the plausible notion of a state's right to nonintervention and the strong intuition that it must sometimes be permissible to protect individuals within other states from serious wrongdoing. To overcome this conflict, we asked whether there is a way of understanding the principle of nonintervention that would both grant states a right to nonintervention as well as sometimes allowing for the possibility of non-wrongful, humanitarian intervention. Further, the mere fact we recognize this potential conflict already casts doubt on the traditional view, which claims that states have the ultimate authority within their territories. We are driven, then, to more fully consider the moral contours of the principle of nonintervention.

Recall, the basic idea of a principle of nonintervention is that there seems to be some standing reasons *against* the use of military force by one state within the territory of another state without that state's consent. The real possibility, though, that some individuals may need to be rescued from their own state compels us to question the force and limits of the principle of nonintervention. That is, we are taking the principle of nonintervention seriously, and we are asking whether it can be plausible on some suitable conception.

In the previous chapter, we considered three initial approaches to the principle of nonintervention: 1) the Permissive View, 2) the Strong Principle, and 3) the Classic Principle. We concluded that none of these approaches to the principle of nonintervention are currently plausible. Aside from the internal consistency of each view, none of them can coherently account for two strong and stable intuitions: 1) that states typically have some kind of claim against foreign interference, and 2) that intervention by foreign, military forces into a state to rescue individuals within that state from their government does not always wrong the target state. Though the views we have considered so far cannot account for these intuitions, they nonetheless serve as a backdrop for views on the principle of nonintervention that *do* attempt to account for these intuitions. These views are the ones that we will now begin to consider. In this chapter and the next, I will examine two of the most influential and popular views regarding humanitarian intervention: the Communitarian View and the Individualist View. We will focus our attention, in this chapter, on the Communitarian View.

## **2. The Communitarian View**

### **2.1 Historical Precedent: Mill and the Classic Principle**

The Classic Principle, recall, was somewhat of a weakening of the Strong Principle. The Communitarian View can also be seen as a further weakening of the Classic Principle. In this way, the Communitarian View is not, strictly speaking, antithetical to the Classic Principle. Rather, the Communitarian View is merely a further evolution of our understanding of the principle of nonintervention. So, let us take a closer look at this historical and philosophical evolution.

The Classic Principle of Nonintervention, recall, represents a demanding principle of nonintervention. The Classic Principle offers states a fairly considerable claim against unwelcome foreign interference. It counts as wrong *any* unwelcomed intervention into a state for any reason other than as a means of self-defense from an unjust attack. The Classic Principle, then, is still fairly strict. So much so, in fact, that many view it as implausible. Nonetheless, the primary reasoning for the view is actually well-grounded.

In “A Few Words on Non-Intervention”, John Stuart Mill lays out one of the earliest, basic justifications for the principle of nonintervention. According to Mill, states must be viewed as self-determining entities, much like individuals. (Mill, 1859) And if a state is to have ultimate freedom – and thus provide ultimate freedom to those within the state – the state must be free on its own. A state and a people cannot be free if its freedom is merely foisted upon it from the outside. Lasting freedom, according to Mill, can be achieved within a state only if the freedom is won by, fought for and defended by those within the state. Freedom imposed on a people from the outside would not be authentic. Such imposed freedom would not be consistent with the autonomy of the people of that state to shape their political life according to how they see fit according their own values.

The Classic Principle thus reflects Mill’s basic notion of nonintervention and appeals to the autonomy of the state itself to justify the particularly strong position on the state’s right to nonintervention. Similarly, on the Classic Principle, the only moral entity to be considered for the question of nonintervention is the state itself. In this way, states are like individuals – they are free to pursue their own interests, so far as they see fit, so long as they do not interfere with similar pursuits of others. So, if one state forcibly interferes with the pursuits of some other state, without good reason, the victim state is

permitted to defend itself. This parallels the individual case. When an individual forcefully interferes with the pursuits of another, without good reason, the victim is permitted to defend himself. Thus, we get a principle of nonintervention that allows states to act in whatever ways they want, so long as those actions do not unjustly threaten some other state.

Yet, even though the Classic Principle is a fairly strong principle of nonintervention, we nonetheless see that a state's right against intervention cannot be absolute. It does not preclude legitimate acts of self-defense. Thus, the principle is weakened to allow for such actions. That is, if a state were to rightfully engage in self-defense against a threatening state, the defending state would not be wronging the aggressing state in defending itself. Otherwise, however, states, like individuals, would be free to pursue the interests they deem valuable by their own lights. This principle, however, is still too strong to conform to our strong and stable intuitions regarding intervention.

The Classic Principle rules out *all* interventions within a state, even when doing so would be necessary and effective to protect the community within that very state. So long as the community within a target state *is in* the target state, the target state's treatment of that community, regardless of how bad that treatment is, would not constitute a threat to another state. So, the offending state would nonetheless maintain its claim against intervention. Any attempt to rescue individuals within a state that is only mistreating its own citizens would necessarily wrong the state. The Classic Principle, then, just cannot account for our strong and stable intuitions regarding the possibility of non-wrongful interventions for reasons other than self-defense. It is here, then, that we

will, along with Mill, part ways from the Classic Principle.

Mill, for his part, argued for reasonable exceptions to the principle of nonintervention. (Mill, 1859) It is in these exceptions that the Communitarian View begins to take shape.

## **2.2 From States to Communities**

One way to see the problems for the Classic Principle is to notice that the Classic Principle fails to account for the relationship between *the people* of the state and *the government* of the state. The Classic Principle assumes that the government of a state is *the only* morally relevant entity. The individuals governed are irrelevant. And, as such, a state forfeits its claim against intervention only by unjustly aggressing some other state. The government is seen as the authority and so unless the government gives consent, any intervention would simply wrong the state.

On the Communitarian View, however, the government is not the fundamental unit of moral significance. It is the society *within* the territory of the state that is morally relevant. So, according to the Communitarian View the actions undertaken by the government of a state are not necessarily the actions to which the society within the state gives consent.

For the Communitarian View, there are two entities that are relevant for the state's claim against intervention – the government of the state and the society within the state. The Classic Principle collapsed these entities together, in the moral direction of the government. The Communitarian View, however, gives priority to *the society* that resides within the state. It is the society, not merely the government of a state, that has autonomy.

And it is the autonomy of societies, not of mere states, that must be protected.

Once we move the focus from the government of a state to the society within a state, we can begin to make room for the possibility of interventions within a state to protect members of a target state. That is, we have now made room for the forfeiture of the right against intervention for reasons relating to how the individuals *within* the state are treated. If the prohibition against intervention is grounded in the will or interests of the society within the state, and not merely in the government of a state, then there may, in fact, be cases in which the society within a state may need to be protected from the government of that state. Where the Classic Principle assumes that the will and interests of the society and the dictates of government of a state always align, the Communitarian View allows for these interests to be distinct. And according to the Communitarian View, it is the society within the state that ought to be protected, not merely the government. So, the principle of nonintervention must recognize this relationship and the possibility of discord. Thus, we arrive at a further weakened version of the principle of nonintervention:

**Communitarian Principle of Nonintervention:** A state has a right against the non-consensual use of military force against its territorial jurisdiction so long as (1) the state is not unjustly aggressing some other state, and (2) *the will/interests of the society residing within the territory of the state is/are suitably represented by the state.*

So, on the Communitarian View, a state's right against intervention would again be forfeited were the state to engage in actions which threaten other states. Yet, unlike the

Classic Principle, the state may also lose its claim against intervention in some instances in which the society within a state fails to be suitably represented by the state, like in the extreme case in which the government of a state carries out mass murders against those within the state.

The *suitable representation* qualification here, of course, is crucial. For the Communitarian View, the government, or political authority, within a state need not be liberal nor democratic for the state in its entirety to have a claim against intervention. Rather, the society within a state need only be suitably represented within the state. For instance, if the society within a state wishes to have a religious, authoritarian government, then the society may in fact be suitably represented within the state by having such a government. Thus, such a state may ultimately maintain a right against intervention.

So, what is required for a society to be “suitably represented” by the state? The Communitarian View will be plausible only to the extent that this notion of suitable representation can be plausibly established. One, extreme view, for instance, would be that society fails to be suitably represented by the state *any time* there is disagreement between the society and the government. But consider the issue of marriage equality in the United States. Though there is strong public support in favor of same-sex marriage, there is still strong opposition. On an extreme view of suitable representation, a consequence of this strong opposition is that the US government, by ruling *against* bans on same-sex marriage, *fails* to suitably represent the society. This, of course, is too strong and implausible. There will always be individuals within a state that disagree with *something* that the state does. It just can’t be the case that suitable representation requires universal agreement.

A more reasonable account has been defended and popularized by Michael Walzer. A society is suitably represented within a state in Walzer's words, when the society is "governed in accordance with its own traditions" (Walzer, 1980, p. 212). In simple terms, the society within the state is suitably represented when the values furthered and protected by the state are the values of the very society within the state.

But, of course, there are different ways of interpreting the idea of "the society" within the state. After all, time marches on and cultures change. Societies sometimes abandon antiquated values and adopt more nuanced ones. And societies can be simultaneously conflicted. In other words, being governed by one's own traditions and values is a dynamic, and often times, ongoing process. The Communitarian View not only protects societies in those instances in which this process has stabilized, but it may seemingly do so for societies in which the process is ongoing. So what should we make of states undergoing such change? What about societies that are conflicted? Can a society *really* be suitably represented by the state when there is internal conflict and where the society seems fractured?

Like Mill's argument for the principle of nonintervention, defenders of the Communitarian View tend to accept that even states with unstable societies can have a right against intervention. This right helps secure the possibility for those societies within such states to shape the politics of their state, even if doing so requires struggle and hardship. Societies, these defenders argue, must learn *for themselves* how to exist as a state; they must learn how to be free. And this learning process is not only valuable for the society and the immediately resulting state; it is essential for the long-term success of the state itself. Walzer, defending the view, argues that the society within a state has a

right to shape the politics of its state, and, if the politics of a state were to be shaped according to the will of foreign interests, then this right of the society would be “usurped” (Walzer, 1980). This means, of course, that it is possible for a state to lose its claim against intervention, but only when the state is failing to govern according to the traditions of the society within the state.

The Communitarian View, then, is an advancement of our understanding of the principle of nonintervention. But it has its limits. To fully evaluate the view, let us simply consider the ideal case for the Communitarian View. That is, let us simply consider the instance in which the society *is*, without a doubt, suitably represented by the government. Let us consider this as the *ideal* circumstances for the Communitarian View. We are, of course, remaining neutral on whether such representation requires representing the total will or interests of the society. So, let us simply assume that the ideal case is one in which the society voluntarily supports the government of their state, and the government does a reasonably good job of protecting and furthering the will and interests of the society. In this way, we can simply assume to have the ideal case in mind when we critically consider the Communitarian View.

Notwithstanding our assumption for the ideal case, unlike the Classic Principle, the Communitarian Principle does not assume that the society is *always* suitably represented by the state. There will be instances in which a state can be said to *fail* to suitably represent the society, according to the Communitarian View. And these failures will depend on the values, history, and tradition that shape the will and interests of particular societies themselves. It is the relation between these *particular* societies and governments that determine whether the society is suitably represented by the state. One

thing that does seem certain, however, is that when a government of a state *intentionally* threatens the society within the state, it can hardly be said that there is a suitable representation of the society by the state.

Recall that the Communitarian Principle of Nonintervention applies mainly to the autonomy of particular, independent societies. But, as Walzer says, "when a government turns savagely upon its own people, we must doubt the very existence of a [society] to which the idea of self-determination might apply." (Walzer, 1977, p. 101) In other words, actions undertaken or allowed by the government of a state, expressly intended to destroy the society within the state, indicate that the state, in fact, fails to represent *that society*. "We can be sure that this is not simply a state governing its people in accordance with their traditions. The right to a culture-expressing government then drops out of play, (since the target state can no longer be presumed to fulfill this right), sovereignty is stripped of its moral underpinning, and the barrier to foreign intervention is lifted." (Dobos, 2010, p. 28) Practically speaking, there are only few such actions that would have this affect: genocide, ethnic cleansing, and mass enslavement. A state in which such actions are being carried out against the society within the state cannot be said to suitably represent the society within the state and would not hold a claim against intervention.

Yet, these are extreme cases. One may wonder, then, whether these are the *only* instances in which the state fails to suitably represent the society. These cases, of course, are the most *obvious* instances in which the state fails to suitably represent the society within the state. But, in principle, a society may fail to be suitably represented by the state when the government of the state engages in actions far less severe than genocide. This does not happen, then, only in those cases when the state engages in genocide or

mass enslavement – it surely happens in less severe cases as well. What is important, however, for our purposes, is that we are considering the ideal case for when the Communitarian Principle of Nonintervention holds – the case where the state *does* in fact suitably represent the society – and for when it clearly fails to hold – cases like genocide.

### **3. Problems for the Communitarian View**

#### **3.1 A Fatal Objection: The Absence of the Individual**

While there may be a number of minor problems for the Communitarian View, there seems to be one, fatal problem for the view: individuals, on the Communitarian View, are only indirectly morally relevant.

Several critics of what we have called the Communitarian View point out that the view seems to miss the whole point of a principle of nonintervention in the first place. The purpose of a principle of nonintervention is for the *individuals* within states, not the states or societies themselves. The value of a state, according to these critics, is secondary to the value of the individuals within the state. So, the principle of nonintervention must have *individuals* as the priority, not states or societies. The Communitarian View, however, puts the society within the state at the center of the principle of nonintervention. The Communitarian View, that is, seems “to privilege the value of communal integrity and give insufficient weight to human rights.” (Beitz, 2009, p. 337)

When the state or the society within the state is the sole object of the principle of nonintervention, individual lives lose value. What then becomes relevant is how well the society within the state is represented, not how well *individuals* are treated. Where the Communitarian View gives “more weight to considerations about cultural identity”

critics of the view “are more concerned about the overall impact of political decisions on *individual* well-being, in which cultural identity plays only a part (and not the same part for each person).” (Beitz, 2009, pp. 340, my emphasis)

This basic issue over the proper focus of the principle of nonintervention, though, goes further. We seem to want it to be the case, of course, that if a state systematically violates the rights of individuals within the state, then the state fails to suitably represent the will and interests of the society within the state, thus forfeiting its claim against intervention. But, unfortunately, the Communitarian View cannot guarantee that this conditional will always hold. For instance, consider a state in which almost all individuals within a state’s territory (e.g., 99.99%), want the state to enslave a small minority population within the state. In such a case, the Communitarian View would seemingly require us to conclude that the state suitably represents the society when it enslaves the minority population. Thus, according to the Communitarian Principle of Nonintervention, this state would *not* forfeit its claim against intervention. Yet, this is exactly the kind of case that we typically consider as a paradigm instance in which a state *would* lose its claim against intervention primarily because of its treatment of *individuals*.

The Communitarian View wants to deny a right to nonintervention for extreme cases. Walzer, for instance, argues that, for at least the extreme cases, the state must be seen as *failing* to suitably represent the society within the state. But as we now see, it looks as though the Communitarian View may *not* actually even be able to accommodate our intuitions for these extreme cases. As Ned Dobos says of the Communitarian View, “not even genocide constitutes conclusive evidence” that a state is failing to suitably represent the society. (Dobos, 2010, p. 30) The notion of *suitable representation* “turns

out to be even more resilient than [defenders of the view are] willing to acknowledge, withstanding not only ‘ordinary oppression’ but also ‘crimes that shock the moral conscience of humankind’”. (Dobos, 2010, p. 30) In other words, so long as “the society” as a whole favors the actions of the government, it does not matter what the government does, even if this includes systematically violating the rights of individuals within the state. The problem, here, is that when it comes to representing the society, “the only interpretation that has any purchase on reality” is one that appeals to numbers. (Dobos, 2010, p. 30) That is, “suitable representation” only makes sense interpreted as “the allegiance of ‘substantial numbers’”. (Dobos, 2010, p. 30) A state suitably represents the society, then, simply when the state has the allegiance of a suitably substantial number of the population within the state. But when this is what is meant by “suitable representation”, the Communitarian View quickly loses its grip on the strong and stable intuitions that we have regarding intervention. If a “substantial number” of individuals within a state want to enslave a minority population within the state, the Communitarian View seems to lack the resources to censure such a state.

This, of course, is a problem. It’s not a conceptual problem, but it shows that the Communitarian View just simply fails to align with our intuitions. Neither states nor societies ought to be protected simply according to the values of a “substantial number” of individuals within a state, even when that amount is overwhelming. Or even 99%! The Communitarian View simply fails to provide an adequate principle of nonintervention that coincides with two strong and stable intuitions that we have regarding intervention: 1) that states typically have some kind of claim against foreign interference, and 2) that intervention by foreign, military forces into a state to rescue individuals within that state

from their government does not always wrong the target state.

#### **4. Looking Ahead**

Accepting the moral relevance of individuals for the principle of nonintervention spells the defeat of the Communitarian View. And it sets the stage for the remainder of our examination. We will now begin to pivot and focus our attention on the relation between individuals and the principle of nonintervention.

The most influential advance in scholarship on this relationship between individuals and intervention has been in the proliferation of scholarship on individual human rights. It is the strength of the research on individual human rights that ultimately supports the fatal criticism of the Communitarian View. But, unfortunately, a consensus has yet to form around any particular application of the idea of individual human rights to the issue of intervention. It is clear to many that locating the foundation of the principle of nonintervention in the individual is the best way to proceed. From here, though, the theoretical landscape is still undecided.

In the next chapter, we will begin to examine how we might refocus the principle of nonintervention in the direction of individuals. But we will see that the problems for this individualist turn are no less complex or complicated than they are for the views we've already discarded.

## Chapter 4

### The Individualist View: Protecting Individuals

#### 1. Introduction

In the last two chapters we reviewed and dismissed various instantiations of the so-called Principle of Nonintervention. I have shown that the various iterations of this principle have either been internally inconsistent or not compatible with two strong and stable intuitions that we seem to have regarding intervention: 1) that states deserve some kind of protection against foreign interference, and 2) that it is sometimes permissible for foreign, military forces to intervene in a state to protect individuals within the target state. And over the course of our evaluations, one issue has remained constant – a state’s treatment of *individuals* is morally relevant. Specifically, if a version of the Principle of Nonintervention permits a state to systematically and intentionally harm individuals within the state, that version of the principle will simply not be persuasive. This underlying concern for individuals is thus a key element of the standard whereby we judge the plausibility of any principle of nonintervention.

So far, though, the appeal to a state’s treatment of individuals has been used primarily as measure to judge the plausibility and persuasiveness of particular versions of the Principle of Nonintervention. But over the course of the last few decades, nothing has shaped international policies more than the doctrine of human rights. Individual rights are now at the center of most of our scholarship regarding international relations. As such,

rather than being merely a consideration for which a Principle of Nonintervention must take into account, individual rights have become a central tenet of the Principle of Nonintervention.

For the remainder of the dissertation, I will assume that this central tenet of the Principle of Nonintervention is correct. By making this assumption, I will be examining and evaluating an approach to the Principle of Nonintervention that is currently highly favored, but also severely underdeveloped. In this chapter, I will examine and evaluate an initial attempt to construct a plausible and persuasive Principle of Nonintervention that countenances individual rights. We will see over the course of this chapter that this is not an easy task.

## **1.2 Motivating the Individualist View**

On the views we've considered so far, the state (or something like it) has been the primary object of moral concern. Individuals have always been in the background, of course, but only to the extent that they partially constitute the state or the society in question. On the views we have so far examined, states have been protected by the Principle of Nonintervention, and individuals have only indirectly benefited from this protection. For the views now under consideration, the individual becomes the primary focus. So, the ordering of the protection of the individual and the state is reversed. For individualist views, states are protected only indirectly through the protection of individual rights. An intervention wrongs a state only to the extent that it wrongs individuals within the state. Individuals, that is, take priority.

Broadly speaking, for the individualist approach we are accepting, there is a key

move that is being made. The key move consists largely in ascribing to a particular view of a state's particular purpose, namely, to protect individual rights. Fernando Tesón, for instance, says:

A major purpose of states and governments is to protect and secure human rights, that is, rights that all persons have by virtue of personhood alone. Because sovereignty serves valuable human ends, those who assault them should not be allowed to shield themselves behind the sovereignty principle...

[States] who turn against their citizens are on a different moral footing. By denying human rights they have forfeited the protection afforded them by international law. They are no longer justified qua governments, they no longer represent or are entitled to represent the citizens vis-a'-vis the outside world, and therefore foreigners are not bound to respect them. (Tesón, 2006, p. 96)

So, for individualists, as I'm characterizing them here, individuals are at the center of the moral worth of states. The value of the state is nothing over and above what it contributes to the lives of individuals. Let us then simply state this basic commitment to individualism as follows:

**Individualist Commitment:**

1. States are only instrumentally valuable, and
2. One purpose of the state is to respect and protect individual rights

Consequently, a state that fails to be valuable to its members will not be one worth protecting by a Principle of Nonintervention. And a state that severely mistreats its own members, then, would be the epitome of a state that fails to be valuable to its members.

Cecile Fabre says, for instance:

“A standard argument for the right to intervene takes the following form: a regime which violates the fundamental rights of its members undermines the very rationale for its existence and for its claim to authority, and thus forfeits its immunity from interference in its conduct” (Fabre, 2012, p. 170)

And expressing a similar view, Altman and Wellman can similarly be seen as endorsing the Individualist Commitment:

The protection of the human rights of its members is the key moral task that grounds the right of a state to coerce its members... the demand that outsiders refrain from intervention is valid only if a state is adequately protecting the rights of its members. Should a state fail in the performance of that task, it has no moral standing to stop an outside party from intervening in order to help rectify the state's failure. (Altman & Wellman, 2008, p. 233)

Tesón, Fabre and Altman and Wellman express what I'm calling the Individualist Commitment to the Principle of Nonintervention. And by appealing to the Individualist Commitment, we can also better explain the individualist opposition to the communitarian views on the principle of nonintervention.

The communitarian views on nonintervention would not only permit states to allow some violations of individual rights, but, more seriously, the views would also seemingly permit a state to *itself* violate individual rights. For the kind of individualist approach we're now considering, this is a serious problem. States, on an individualist view, are only instrumentally valuable. For a principle of nonintervention to potentially permit a state to itself violate the rights of individuals within the state would place the state's value over and above individuals. But this, of course, is not possible. States have no such value.

So, for now, we should see the Individualist Commitment ruling out any principle of nonintervention that would permit a state to itself violate individual rights. And a closer inspection of the Individualist Commitment and the motivation supporting it reveals where more work must be done. The basic starting point for this work is what we might call the Basic Individualist Principle of Nonintervention:

**Basic Individualist Principle of Nonintervention:** A state has a right against the non-consensual use of military force against its territorial jurisdiction so long as

(1) the state is not unjustly aggressing some other state, and

(2) *the state is respecting and protecting the rights of individuals within its territory*

But while this is a good starting point for thinking about an individualist approach to the principle of nonintervention, it is not fully developed. The second condition is not fully defined.

Two important details, then, should be noted about the positions described by Tesón, Fabre and by Altman and Wellman. In Tesón and Fabre's expression of what we are calling the Individualist Commitment, they both emphasize that for considerations for the Principle of Nonintervention, only *certain* individual rights matter – human rights and fundamental rights, respectively. Altman and Wellman, however, do not distinguish between individual's fundamental and non-fundamental rights. Yet, Altman and Wellman do emphasize another important consideration for the Principle of Nonintervention – adequacy. For them, in order to have protection against intervention, states are required to only *adequately* protect the rights of its members.

What we see, then, is that although there may be broad endorsement of the Individualist Commitment and acceptance of the Basic Individualist Principle of Nonintervention, there is not yet a consensus view about what specific version is most plausible. In what follows, we will examine this individualist approach to the principle of

nonintervention. But to see why Tesón, Fabre, Altman and Wellman are qualifying their views in different ways, it will be best to begin with a particularly striking version of the Basic Individualist Principle.

## 2. The Strict Individualist View

We see from just these few statements on the individualist view that getting clear on the appropriate qualifications may be more difficult than philosophers had originally expected. So I want to now pivot away from a state-centric view of the principle of nonintervention toward this individual-rights-centric view. In doing so, I will follow the same approach that I took in discussing the more statist approach to the principle. In discussing the state-centric approach to the principle of nonintervention, I began with an extreme statist view. So, I will begin the examination of the Individualist View by first considering an extreme individualist view.

**Strict Individualist Principle of Nonintervention:** A state has a right against the non-consensual use of military force against its territorial jurisdiction so long as

(1) the state is not unjustly aggressing some other state, and

(2) *the state is fully respecting and protecting the rights of individuals within its territory*

Now, the Strict Individualist View does not, on its face, seem implausible. We have carried over the qualification regarding unjust aggression toward other states and have only added a qualification about respecting and protecting the rights of individuals within the state. This qualification, however, is important. And the way it is formulated, here,

will be instructive for our discussion.

The Strict Individualist View says simply, but forcefully, that a state must fully respect and protect the rights of individuals within the state's territory in order to maintain a right against intervention. Intervention into a state that meets these conditions, then, would wrong the state. In other words, if a state falls short of full respect and protection of individual rights, it will forfeit any claim it might have otherwise had against intervention accorded to it by the principle of nonintervention and an intervention would not, in and of itself, wrong the state. Additionally, the Strict Individualist View does not yet distinguish between the kinds of rights that the state must respect and protect. For instance, there is so far no distinction between civil and political rights. The Strict View simply states that whatever rights individuals have must be respected and protected by the state.

We can then understand a state's *respect* of rights as simply the state refraining from violating individual rights. And, the notion of a state's *protection* of the rights of individuals will then simply be understood as meaning that the state protects individuals from having their rights violated by others. In other words, to say that a state protects my right to clean drinking water means that, if my rights to clean drinking water were threatened by others, the state would confront or mitigate the threat. Thus, if a state were to allow individuals' rights to be violated, that state could not be said to protect the rights of individuals within the state.

So, we can say that a state respects rights when it does not violate the rights of individuals within the state. And a state protects the rights of individuals within the state by ensuring that the rights of individuals within the state are protected against violations.

Given this basic understanding, we should now notice that the Strict Individualist View is extremely stringent regarding the requirements of a state to respect and protect rights. In fact, it seems like only something close to an *ideal* state could ever meet the requirements that would ensure a state's claim against intervention by the Strict Principle. Nonetheless, this view does have defenders.

Kit Wellman, a proponent of this Strict View, for instance, claims that “even a legitimate state has no principled objection to outsiders’ intervening in its internal affairs if this interference will prevent *just a single human rights violation*” (Wellman, 2012, p. 119, my emphasis). Wellman’s defense of the Strict View is not an aberration or a reduction. The argument for this radical position is, in fact, quite plausible and requires closer examination.<sup>3</sup>

Wellman asks us to consider a case in which a “state does not merely *satisfactorily* perform the requisite functions, it does so *perfectly*.” (Wellman, 2012, p. 124) Suppose, however, that the state has one imperfection. It wrongly convicts an individual for kidnapping. Wellman asks us to assume, however, that the state is not culpable for the wrongful conviction (imagine, for instance, that this is the result of an elaborate and sophisticated framing of the accused kidnapper). Let us assume, for instance, that the accused kidnapper was given appropriate due process, that the evidence against him was strong, but was meticulously planted and manipulated by the actual perpetrators, that the jury deliberated and determined judgment according to the evidence

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<sup>3</sup> Notice that this is a more radical view than Altman and Wellman’s position in 2008. Indeed, Wellman notes of his 2012 paper: “the ideas advanced here depart substantially from the positions [Altman] and I have jointly defended, so readers should not presume that Altman necessarily agrees with any of the following arguments and/or conclusions.”

that was available to them and that the jury arrived at their judgment fairly. The only truly culpable party, in this scenario, would be the *actual* kidnapers. So, assume that the accused kidnapper is sentenced to prison. Wellman asks us to consider whether his escaping prison would be permissible. According to Wellman, the “escape would not merely be morally excused; it would be entirely justified” (Wellman, 2012, p. 125). Wellman then ultimately asks whether it could be permissible for a foreigner to help this individual escape. Roughly, if the individual’s prison sentence is unjust and his escape is permissible, then surely helping him escape would also be permissible.

Let us imagine, in this case, that the foreigner can help the accused kidnapper escape prison without harming anyone. Nonetheless, the foreigner would be intervening in the territory of the target state, without the target state’s consent. The foreigner’s actions, then, would be a “humanitarian intervention into a legitimate state which is justified by its promise to prevent a single rights violation.” (Wellman, 2012, p. 126) So, what is the implication of the foreigner’s intervention?

Recall that the state in question is not culpable for the rights violation and that the kidnapper’s unjust imprisonment is the only rights violation that exists within the state. So, if we agree with Wellman’s intuitions that the foreigner does not act wrongly by aiding the accused kidnapper, then this has serious implications for the principle of nonintervention. For one, nothing seems to change about the case if we imagine the foreigner as a state actor from some other state. It looks, then, as though intervention can be justified in a target state even when there is even just one human rights violation within the target state. Hence, the Strict Principle is defended. A state can have a claim against intervention only if that state *fully* respects and protects the rights of those within

the state.

### **3. Problems for the Strict Individualist View**

#### **3.1 The Permissiveness Problem**

An immediate and obvious worry for the Strict Individualist Principle of Nonintervention is that it would seem to permit far more instances of intervention than we think would be permissible. As Eric Heinz points out, “as a theory that justifies humanitarian intervention by appealing to human rights... cosmopolitanism [i.e. the Strict Individualist View] is dangerously permissive.” (Heinze, 2009, p. 26) Indeed, the Strict Individualist Principle would have wide-ranging implications for our current understanding of international relations. The Strict Principle implies that no current state would necessarily have a claim against intervention. No state, that is, is perfect at fully respecting and protecting individual rights.

For the Strict Individualist View, if a state is not fully protecting rights of those in its territory, then it loses its claim against intervention. The worry, then, is that states that we might otherwise think of as protected by a principle of nonintervention would not be so protected. For instance, if India’s criminalization of homosexuality is a rights violation, then the Strict Individualist Principle of Nonintervention leaves India vulnerable to intervention. Few of us think, however, that it is permissible for some other state to invade India and take over the operations of the country because of such a law. The permissiveness problem is that in cases like this, states that we would otherwise think of as protected by the principle of nonintervention suddenly become targets of benevolent foreign intervention. This is not, of course, a theoretical problem for the view.

But, rather, the permissiveness problem brings to light a troubling, *practical* implication for the view.

Let us assume, now, for the sake of argument, that the criminalization of homosexuality *is* a violation of the rights of Indians. India is the world's largest democracy. So, presumably, the democratic political structure in India is structured to potentially correct such violations (at least eventually). Further, we typically consider democracy to be desirable and high on the list of important political values. But, according to the Strict View, India would not have a claim against intervention, even if the state were otherwise doing well respecting and protecting the rights of those within the state. Presumably, the state would lose its claim against intervention because intervention has the potential to benefit those "rescued". Yet, the mere fact that an intervention will be beneficial for those "rescued" is just not satisfactory as a justification for a principle of nonintervention.

Consider another type of case. Assume that in some liberal democracy, an overwhelming number of individuals vote to require motorists to wear seatbelts. Some individuals in this democracy, however, feel as though such laws violate their rights. Let us assume that these individuals are correct. If the Strict Principle is correct, it would mean that this liberal democracy, even when operating as justly as possible, even acting in ways to benefit those within the state, would not have a claim against intervention. *No* currently existing state, then, could convincingly have a claim against intervention.

In sum, the basic framework of the Strict Individualist Principle of Nonintervention implies that most currently existing states would not be protected by the principle of nonintervention. While this is not *theoretically* problematic, it is not the kind

of practical implication that is easily accepted. And, importantly, the implication seems to oppose the strong and stable intuition most have that some liberal states do, in fact, have claims against intervention. Moreover, assuming that the Strict View is correct, intervention would then likely be permitted into most currently existing states. But this is highly unintuitive. Worse still, if there are so few states that are actually protected against intervention, intervention for infelicitous reasons may not only become possible, but impossible to prevent.

### **3.1.2 Replying to the Permissiveness Problem: The Deference Strategy**

A defender of the Strict Individualist View, like Wellman, may nonetheless be able to reply to the permissiveness problem. To see how one may reply to the permissiveness problem, we only need to notice that the Strict Individualist View is not a position on when intervention will be all things considered permissible. Rather, the Strict Individualist View tells us, simply, that it is only a state that fully respects and protects rights that may have a claim against intervention. The Strict Individualist View, though, does not say when intervention against a state without a claim against intervention would itself be justified.

Consider, then, a state that fails to fully respect and protect the rights of individuals within the state. This state thus forfeits its claim against intervention. Intervention would not itself wrong the state and the state would not be permitted to defend against the intervention. But intervention is not automatically permissible simply because a state has lost its claim against intervention. Assume, for instance, that in Wellman's unjust imprisonment case the only way to rescue the unjustly accused would

be to use lethal force against multiple members of the target state. Recall, too, that no members of the target state are culpable for the unjustly accused's unjust imprisonment. So, the lethal force would be directed at morally innocent individuals. Intervention would thus be seemingly ruled out by other moral considerations. Intervention, for instance, in this case, "may be unjustified on [wide] proportionality grounds". (Teson, 2011, p. 195)

We may say, then, that although a state can forfeit its claim against intervention for failing to respect and protect just one individual's right, an outside entity may still not be justified in intervening in the target state for reasons that "do not stem from any right that these countries have against interventions aimed at stopping human-rights violations" (Altman & Wellman, 2008, p. 234). The defender of the Strict Individualist View can thus avoid the permissiveness problem by *deferring* to other moral considerations that may rule out an intervention. We will refer to this defense of the Strict Individualist View against the Permissiveness Problem as the Deference Strategy.

So, recall the seatbelt case described above. The state requires those driving within the state to wear seatbelts. But we assume that forcing people to wear seatbelts against their wishes is a rights violation. The permissiveness problem stresses the point that in such a case, the state may lose its claim against intervention by violating the rights of the individuals forced to wear seatbelts against their will. And, further, that intervention would be permitted. The implication, of course, is that this result is absurd. But, using the Deference Strategy, the defender of the Strict Individualist View can appeal to other relevant moral considerations to rule out such permissive interventions. If intervening in the seatbelt case, for instance, would be disproportionate, then this may be at least one reason why intervention would still be wrong.

A state may forfeit its claim against intervention by failing to fully respect and protect the rights of individuals within the state. But this does not entail that intervention will ultimately be permissible. So, while the Strict Individualist View seems radical and potentially “dangerously permissive”, a defender of the view can argue that the dangerously permissive nature of the view is only apparent, not actual.

#### **4. Problems for the Deference Strategy**

As we have seen above, the Strict Individualist View can potentially *defer* to other considerations to rule out broad ranging interventions. In doing so, this view is able to support a radically individualist principle of nonintervention, while also ruling out the idea that it would be all-things-considered permissible to intervene in any state that is not protected by the principle of nonintervention. Unfortunately for the defender of the Strict View, however, it is implausible that other moral considerations will be able to morally prohibit broad ranging interventions. I will argue in this section that the Deference Strategy fails and that the Strict Individualist View would ultimately result in more interventions that we typically think would be justified. Thus, I conclude that the troubling implication, the Permissiveness Problem, persists.

##### **4.1 Proportionate but Impermissible Intervention**

According to the Strict Individualist Principle of Nonintervention, a state loses its claim against intervention when it fails to fully respect and protect the rights of individuals within the state. The implication of this principle is that it is unlikely that any currently existing state is actually protected against intervention, giving no state a definitive

permission to defend its own territory. Supporters of the Strict Individualist View may nonetheless argue that broad ranging interventions will be restricted and limited according to other moral considerations. Intervening, for instance, may not be necessary or be disproportionate in some ways.

Commonly, the moral considerations thought to block the permissiveness of the Strict Individualist Principle are those associated with standard Just War Theory. A military intervention, Kok-Chor Tan says, is not always “the best strategy for protecting [individual] rights and liberties, or even a morally acceptable course of action (if the intervention would violate the moral limits of just war).” (Tan, 2006, p. 91) Interventions, that is, must be the last resort, be initiated with right intention and by an appropriate authority, have a reasonable likelihood for success, and adhere to considerations of proportionality. Proponents of the Strict Individualist View assume that one or more of these considerations, or considerations like them, will rule out interventions against most unprotected states. Unless the circumstances in the target state are particularly atrocious, the prospect of war will often be too great to justify an intervention. I will argue, however, that this is not so.

Let us assume for the sake of argument that a state has failed to fully respect and protect the rights of some individuals within the state. This state, then, according to the Strict View, lacks a claim against intervention and its permission to defend its territory against interveners. But the state’s failure to fully respect and protect the rights of individuals within the state need not be due to a lack of liberal or democratic values. The failure, that is, may be a direct result of the democratic nature of the state in question and arise out of disagreement over the nature of the issue in question. So the failure, let us

suppose, is the state's prohibiting same-sex marriage.<sup>4</sup>

Now, let us also assume that some international authority, like the United Nations, has devised a kind of intervention that would meet all additional just war criteria. Significantly, the intervention does not necessarily require the use of lethal force. Rather, the intervention only involves, say, the employment of a military presence in the territory of the target state. Additionally, we are assuming that the authority in this case constitutes an appropriate authority. And the intervention would be aimed at preventing rights violations, with a high likelihood of actually accomplishing this goal.

So, in this scenario, we have a democratically organized state, failing to fully respect and protect the rights of individuals within the state. And in this scenario, we are assuming that we have devised an intervention strategy that would nonetheless meet standard just war criteria. We should, however, reject the claim that intervention would not wrong the state. But if this is so, then we should reject the claim that the target state lacks a claim against this intervention.

The state, in this case, is structured in exactly the way we would want it to be in order to correct these sorts of problems. And the problems do not seem, on their face, severe enough to warrant immediate attention of foreigners. Rather, they may simply warrant the attention of voters. Whatever system of government we ultimately favor will require some deference to procedure and due process. And as Mill argued, a slow, positive change in the structure of society, resulting from a legitimate political process will simply and often be more valuable and palatable than the same change implemented quickly by force.

If we assume that the standard just war conditions *can* be met for the less serious

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<sup>4</sup> Assuming, that is, that prohibiting same-sex couples from marrying constitutes a rights violation.

cases like the one here, then it seems like the Strict View *could* actually justify widespread interventions into the territories of nearly every state currently in existence. To see why, notice first that an intervention, by definition, does not *require* killing. Wellman, for instance, describes the actions of the foreign rescuer in the kidnapping case as an instance of “intervention”. So, it is possible for an outside entity to intervene in the territory of a target state without killing any members of the target state.

In actuality, there is a wide range of actions that an intervening state may engage in that would not require killing but could not be counted as anything other than intervention. Military force can also be used to intimidate a target, to close trade borders, to demolish communications and fuel supplies and so on and so on. So, once we recognize the range of military force that can be used in an intervention, the Deference Strategy seems to lose its force.

For almost any state that lacks a claim against intervention – that is, a state that would not necessarily be wronged by an intervention - there will be a potential intervention strategy that can be carried out that can meet the standard just war criteria. Non-lethal military occupations, drone and war plane fly-overs, kinetic and non-kinetic cyber attacks and mass surveillance within a state’s territory would all seem to be permitted seemingly against nearly every state currently in existence. Yet, because such interventions would heavily restrict our liberty, the prospect of broad interventionism will be judged impermissible by most of us. In other words, the Deference Strategy ultimately fails to rule out the potential for wide-ranging, unwelcome interventions. And this is exactly the point of the Permissiveness Problem.

## 4.2 Summing up

So, although there are good reasons in favor of the Strict Individualist View, the problems with the view are too great. The view, as it stands, is too radical. The Strict View would permit wide-ranging interventions – almost no state would be protected. And this is not only counterintuitive but also seems to be deeply dismissive of the political autonomy of individuals in states throughout the world.

## 5. A More Moderate Individualist View

We argued in the previous sections that the Strict Individualist View faces significant problems. These problems stem largely from its very strict standards: allowing even one rights violation would open a state up to permissible intervention. Proponents of the Strict View, however, wish for the permissiveness of the view to be prevented by standard just war criteria. But, as I have argued, standard just war considerations might not actually suffice to keep the view from permitting broad ranging interventions, even for not-so-serious offenses. Nonetheless, one may be able to accept the Individualist Commitment and yet be able to salvage the import of the Strict Individualist View.

There is one, particularly promising way to qualify the Principle of Nonintervention in a way that may nonetheless respect the Individualist Commitment and yet avoid the problems that seem to plague the Strict View. The demand that the state *fully* respect and protect the rights of those within the state can be relaxed. Rather than requiring a state to *fully* respect and protect rights, some have proposed that the requirement should instead be that a state only *adequately* respect and protect rights.

## 5.1 Preview of a Qualified Individualist Principle

If the Permissiveness Problem is as serious as it seems to be, then the individualist must adopt something a position that requires less than perfect for a state to maintain a claim against intervention.. This position, of course, requires qualifying the individualist principle of nonintervention in a certain way – namely, by requiring adequacy rather than perfection. I want to now preview some implications for accepting the basic framework of this qualification.

With the qualification of the individualist principle, we have ultimately accepted that the basic principle of nonintervention will not require a state to perfectly respect and protect the rights of individuals within the state. That is, a state cannot be required to respect and protect the rights of *every* right of *every* individual within the state. So, while this less stringent view might seem more palatable, I want to suggest that defending such a view will have serious implications for the individualist approach that we have so far been considering.

Recall our starting point for thinking through the individualist view – the Individualist Commitment. I claimed that the individualist is committed to viewing the state as having only instrumental value with a major purpose of respecting and protecting individual rights. I argued that the Individualist Commitment manifests itself in a certain way when judging the plausibility of the principle of nonintervention. Namely, the idea was that if a principle of nonintervention could permit a state to itself violate the rights of individuals within the state, then this would be inconsistent with the Individualist Commitment. This is, in effect, the individualist critique of the communitarian view. It is clear, however, that the individualist, as we've conceived of the approach, is now in a

predicament. Since a state is neither required to perfectly respect and protect rights, it seems possible for a state to itself violate the rights of individuals within the state and yet maintain its claim against intervention.

So, it seems as though we're at an impasse. If we are to adhere to the Individualist Commitment, then we must, it seems, reject the move to adequacy and instead accept the Strict View. Or, of course, we accept a qualified individualist view, but only at the expense of abandoning the understanding of the Individualist Commitment.

## **6. Summing Up and Looking Ahead**

In this chapter, I first argued that the Strict Individualist View faces a serious obstacle to plausibility and persuasiveness from the Permissiveness Problem. I then presented a way forward for the individualist: a principle qualified by adequacy. This new view, I suggested, won't require perfection but only that a state *adequately* respect and protect only the rights of individuals within the state.

Without detailing any relevant notions of adequacy, I have suggested that the move to a more moderate individualist view would require rethinking, in some sense, the Individualist Commitment. Since the Permissiveness Problem seems too great to overcome, it seems the only way forward for the individualist is to indeed reconceive of the Individualist Commitment.

In the remainder of this dissertation, I will take up the task of carving out relevant notions of adequacy necessary for a plausible individualist view. In doing so, we will, of course, be required to rethink the Individualist Commitment. Doing so, however, generates a surprising result. We will begin to see the individualist position potentially

overlapping particular statist versions of the principle of nonintervention.

## Chapter 5

### The Moderate Individualist View: Protecting Individuals less than Perfectly

#### 1. Introduction

In the previous chapter I introduced and discussed at length “the paradigmatic” individualist position in regards to humanitarian intervention and the principle of nonintervention. (Aloyo, 2016, p. 318) This Strict View, as I called it, says “if we take human rights as seriously as we should, then even a legitimate state [i.e. a state that otherwise has a reasonable right to rule] has no principled objection to outsiders’ intervening in its internal affairs if this interference will prevent just a single human rights violation.” (Wellman, 2012, p. 119). In other words, a state that might otherwise have a right against outside interference could lose this right against intervention, if an intervention would prevent just a single human rights violation.

If the Strict View is correct, then there is likely no currently existing state that could claim a right against intervention. And if no state has a right against intervention, this would seem to suggest that widespread interventions would be permissible. Intervention against such a state could not be said to *wrong* the state. Of course, proponents of this view can respond by claiming that it would nonetheless only rarely be *permissible* to intervene since intervention would only rarely be necessary and proportionate overall.

Unfortunately, this response is too simple and naïve. For almost any instance in which a state can be said to lack a right against intervention, it will be possible to devise an intervention strategy that meets the standard criteria for just war and, consequently, for intervention. So, if a state lacks a right against intervention, it will almost always be possible to devise a permissible intervention strategy – one that would not fail the necessity and proportionality requirements. Intervention just simply need not be a crude and utterly destructive enterprise. From unmanned attacks to individual assassinations, intervention need not be a full-blown military affair. It can be precise, surgical and efficient. So, it is not the case that interventions will normally be judged impermissible by the usual standards of just war.

There is, of course, a way to be committed to “taking human rights seriously” without succumbing to the objectionable implications of the Strict View. We could weaken what is required of a state in order for the state to retain its right against intervention. This is, in fact, the primary approach for most individualists who endorse what I’ve called the Individualist Commitment (cf Ch. 5). Those individualists who do not hold the Strict View (like Wellman) adjust the individualist view by qualifying the principle of nonintervention in terms of adequacy rather than perfection. In this chapter, I will present this approach in greater detail. I will present and begin to examine the ways in which this modification contributes to a fully articulated individualist view of the principle of nonintervention. I will ultimately show, however, that moving away from the Strict View is not an easy task. In fact, the overall individualist landscape regarding the principle of nonintervention is inadequate and incomplete. So, in this chapter, I motivate and clarify some of the complexity of the landscape. I will later argue that, if we should

take human rights seriously, then the individualist view may look much different than what many assume. In fact, I will show that, when the details are worked out, a moderate individualist view may have much more in common with the more statist type views of which we first examined and rejected.

In this chapter, I begin by detailing and motivating the new adequacy condition that we are now considering for the principle of nonintervention. After discussing this condition, I present the complex landscape that we will now be examining in regards to the requirements for a state to maintain a right against intervention.

## **2. The Adequacy Condition**

An obviously radical component of the Strict Individualist View is the notion that a state can lose its right against intervention if it fails to prevent even one minor rights violation. This means that even paradigm liberal states would not necessarily enjoy a right against intervention. Additionally, this feature of the Strict Individualist View troublingly implies that widespread interventions to protect individual rights may be permissible. That is, because no state is perfect, it seems as though *no state* would enjoy a right against intervention. And if it were possible to design intervention strategies such that other just war criteria would be met (primarily proportionality), then widespread interventions *could be* permissible. Yet, most scholars see the implication of widespread permissible interventions as an indictment of the view itself. However, as I've already mentioned, we may be able to avoid these permissive implications by relaxing the requirement for a state to be maintain its claim against intervention.

The Strict Individualist Principle claims that a state must *fully* respect and protect *all* rights of individuals within the state. But this is implausible. So, let us consider, then, the following first adjustment:

**Moderate Individualist Principle of Nonintervention:**

A state has a right against the non-consensual use of military force against its territorial jurisdiction so long as the state is:

- (1) not unjustly aggressing some other state, and
- (2) *adequately* respecting and protecting the rights of individuals within its territory.

Since introducing the Basic Individualist Principle of Nonintervention, it has been clear that the theoretical action will center around the second condition. For the Strict Principle, the second condition was put forward in terms of perfection – states must *fully* respect and protect rights. That didn't seem to work. So, now the second condition is being put forward in terms of adequacy. The question, now, then is how to determine what it means for a state to *adequately* respect and protect rights.

Clearly, at this point, the adequacy qualification is not fully defined. For now, let us consider only a rough idea of the concept. Whatever it amounts to, adequacy does not require perfection. But it *does* seem to require the state to be significantly protecting individual rights. For instance, adequately protecting and respecting rights could require states to at least do as good as current states do on average at protecting rights. That's a relatively modest first pass at the adequacy notion. But, of course, we'll likely need more to make the view succeed. So, we at least have some pre-theoretical notion of what it

means to *adequately* respect and protect rights. But this cannot suffice if we are to fully endorse and defend the view. It would be helpful, then, if we could *justify* the move to adequacy.

Now, recall that we have already seen Altman and Wellman endorse the adequacy qualification to the Individualist View:

... the demand that outsiders refrain from intervention is valid only if a state is *adequately* protecting the rights of its members. Should a state fail in the performance of that task, it has no moral standing to stop an outside party from intervening in order to help rectify the state's failure. (Altman & Wellman, 2008, 233, my emphasis)

Similarly, they say:

If the target state does *an adequate job of protecting individual rights*, then intervention is ruled out as a matter of principle based upon the state's right to self-determination, and the potential benefits to be gained from armed intervention should be disregarded as beside the point. (Altman & Wellman, 2008, 237, my emphasis)

Now, of course, the move to adequacy helps us avoid the permissiveness problem. But can we *justify* the move to adequacy?

In his 2012 paper, Wellman presents the basic underlying justification for making the move to the adequacy qualification (although, of course, Wellman rejects this view).

Wellman says:

... the chief function of a state is to secure justice over its territory. Concerns of justice can be cashed out in a number of currencies, but most are now drawn to the language of human rights, and if one goes this route, then one believes that *the legitimating function of states is to protect human rights*. (Wellman, 2012, p. 120)

The function of a state, then, is to protect human, or individual, rights. But we should not expect a state to do this perfectly and we should be willing to set only “a threshold demand for mere competence.” (Wellman, 2012, p. 120) Simply put, the function of a state is to *competently* protect human rights.

Wellman claims that this crucial point can be clarified by considering, for instance, basic parenting:

We would not stand by and let parents abuse or neglect their children, but as long as parents are not excessively malicious or incompetent, we typically give them a great deal of discretion as to how to raise their children. [Even if a third party could do a better job raising my children than I, for instance, we insist that this person must not interfere as long as I am doing a satisfactory job.] You might cut this sentence and add ..., if you don't want to invoke this here (but you should address it below). In other words, parents need not carry out their parental responsibilities perfectly to enjoy a great deal of dominion over their children; they need achieve only a certain threshold of competence. (Wellman, 2012, p. 121)

So...

...rather than insist that a state can be legitimate only if it performs the requisite political functions perfectly, it seems more appropriate to demand merely that it do an adequate job. If the requisite political function is thought to be protecting human rights, for instance, it seems unreasonable to insist that a state cannot be legitimate unless it ensures that none of its constituents ever has her human rights violated. (Wellman, 2012, p. 121)

What we see, then, is that we may justify the adequacy qualification of the Basic Individualist Principle of Nonintervention by appealing to a functional account of what is required of a state. And it is not merely an ad hoc solution to the Strict View's troubling implication regarding widespread intervention.

The result of accepting the adequacy qualification, though, is significant. In the previous chapter, I argued that the Strict View does not have the resources to condemn rampant interventions, so long as those interventions are necessary and proportionate.

But, with the adequacy condition in place, a state can retain its right against intervention by simply *adequately* respecting and protecting the rights. The troubling permissiveness of the Strict View has now been subdued. But the notion of adequacy and how it relates to what is required of states is not yet clear. And it will not be clear until we determine the ways in which the notion of adequacy can affect what is required of states. So, before we are able to apply the adequacy condition, we must determine how it operates upon the requirements for states. I will present a first pass of these new requirements in the discussion below.

### **3. State Requirements: Respecting & Protecting Rights**

Now that we have a basic understanding the moderate view, we need to be able to understand the new condition itself. We simply begin with the same requirement motivating all individualist views – that states are required to respect and protect individual rights. Now, to say that rights must be respected and protected implies that there are particular *threats* to those rights. So, consider an individual in a particular state. There are particular kinds of threats to this individual's rights. And the adequacy condition may look different in the context of these various threats. I will thus begin by distinguishing between these various threats.

One, preliminary distinction can be made in terms of the *origin* of the threats to individual rights we're now considering. This is the distinction between *internal* threats and *external* threats. *Internal threats* are simply those threats to individual rights originating from within the state in question, posed by either individuals within the state or the state itself. *Internal threats* can, of course, be directed at *internal targets* (i.e.

individuals within the particular state) or at *external targets* (i.e. individuals within some other state). So, for instance, if a state were to threaten the rights of individuals within the state itself, this would be an instance of an *internal threat* against *internal targets*. But the state, or individuals within a state, can also pose a threat to those outside of the state itself. These instances would be categorized as *internal threats* against *external targets*. But, for our purposes, we are considering only the kinds of threats to individuals within the state itself.

### **3.1 Respecting Rights**

Our understanding of a state's requirements regarding respecting rights is likely the best understood consideration that we will examine. The source of the potential threat is clear, it is simply the state in question. And the requirement for a state in terms of respecting rights is also clear, it must simply avoid violating the rights of those *internal* to the state

What we have, now, is part of a basic framework for assessing the moderate individualist view. In particular, we have outlined what the requirement for respecting rights may cover. We see that there is a difference between respecting and protecting rights. Respecting rights, that is, concerns only rights violations that originate from the state itself. Respecting rights concerns the prevention of only those violations that come from a particular, *internal* threat – namely, the state. We have not, though, considered the impact that the adequacy condition would have on this requirement. That will come later. But we may already begin to see some points of tension.

One could argue, for instance, that it would be worse for a state to fail to respect the rights of its members than it would be to fail to *protect* those same rights of its

members. It would be worse, that is, for a state to carry out the murder of an innocent individual than it would be for the same individual to be murdered by an average criminal. In making these distinctions, we are able to better appreciate and understand the complexity of this new individualist position.

### **3.2. Protecting Rights**

Outlining the extent of a state's requirements to *protect* rights is slightly more complicated. Presumably, we're no longer talking about only the state as a threat, since that would be covered by respecting rights. So, here we're talking about protecting the rights of internal targets from threats that may originate *internally*, from within the state itself (but that is not the state), or *externally*, from outside of the state in question.

A state *protects* the rights of individuals, recall, by protecting individuals from rights violations from others. Let us, then, begin our investigation of the protecting requirement by considering a state's requirements to *protect* rights from *internal threats*. The main kinds of threats in this dimension are those posed against *internal targets*. That is, some individuals within a state pose a threat to other individuals within that state. The requirement of a state to protect the rights of those within the state from *internal threats* is just to protect individuals within the state from those non-state threats originating from within the state. And surely states would be required to protect rights like this. For instance, the protection requirement for the United States regarding *internal threats* is simply to protect U.S. citizens from threats posed by other U.S. citizens. Aside from whatever else a state may be required to do, it simply must protect its members from one

another. A state that does not protect its members from one another cannot plausibly be seen as having jurisdiction over those individuals.

So, what we have so far is the fairly basic framework for our pre-theoretical considerations of states' requirements to respect and protect rights. States cannot themselves violate the rights of those within the state and are, in some not-yet-specified way, required to protect the rights of those within the state. But we have only considered a state's protecting rights requirement from what I've called *internal threats*. Threats, that is, that originate from within a state itself. But, of course, these are by no means the only kinds of threats to individuals. There are also *external threats*. So, let us consider the potential requirements of a state to protect the rights of individuals in regards to *external threats*.

*External threats* are those threats originating outside of the state in question that could be directed at the state in question, at individuals within a separate, external state or against individuals within the external state itself. As an example of an *external threat*, consider some state S as the primary (i.e. *internal*) state in question and some other state R. Were R to unjustly invade S, R would be operating as an *external threat* to S. From the perspective of S, this would be an *external threat* against an *internal target*. Similarly, if R were to carry out genocide against individuals within R itself, this would constitute an *external threat* against an *external target*, from the perspective of S (but an *internal threat* against an *internal target* from the perspective of R).

For our purposes, we are considering only those *external threats* posed against *internal targets*. Yet, this particular consideration is one of the most important considerations in this entire landscape. Presumably, protecting individuals within the

state from external threats is one of the primary, original obligations of a state. A state's ability to protect individuals within the state from external threats may simply be necessary for protecting individuals' right to political self-determination altogether. (Walzer, 1980) So, aside from the requirement of a state to avoid violating rights of those within the state, protecting those within the state from *external threats* seems to clearly be an uncontroversial requirement of a state.

#### **4. Outlining State Requirements: A Summary**

The idea of respecting and protecting rights was simple on the Strict View. A state must simply do it perfectly in order to enjoy a right against intervention. But now, of course, we are considering when a state might have a right against intervention by respecting and protecting rights less than perfectly, but still adequately. And when we move from perfection to adequacy, the level of complexity drastically increases. There are, in fact, a variety of ways in which a state may succeed or fail to adequately respect and protect the rights of individuals.

When we make the move to adequacy, whether or not a state is fulfilling its obligations is no longer an all or nothing question. So, we must be clear on the variety of potential requirements of the state and how these requirements fit together. The rights of individuals within states are subject to unique threats posed from a variety of sources. Some of the sources of these threats are *internal* to the state and some are *external*. And the details within these distinctions are important as we consider our primary assumption – that states are required to respect and protect rights. When we make the move to adequacy, what it means for a state to adequately respect and protect rights seems as

though it may vary along these various dimensions. The goal so far has been to map out the landscape of this complexity.

Additionally, I have briefly suggested for the relative importance of some considerations over others. For instance, since states can be considered to have a special relationship to their own members, it is reasonable to think that failing to respect the rights of one's own members is to some degree worse than failing to protect these same rights. And I suggested that a state's protection of those within its borders is potentially *the* most important responsibility a state may have. It is this protection that allows the state to justifiably exist at all.

So, at this point, I have defended the move from perfection to adequacy and presented some of the basic characteristics of the adequacy condition. However, as I mentioned previously, there is a further, important distinction to be made before we can fully examine the overall merits of the view.

## **5. Respecting and Protecting What?**

The individualist approach to the principle of nonintervention places the moral focus of the principle on respecting and protecting the rights of those within the state. And while we now have a basic sense of the distinctions between respecting and protecting rights and between the notion of an *internal* and *external* threats, we have yet to fully describe exactly what should be respected and protected by a state. So, let us recall what I have termed the Moderate Individualist Principle of Nonintervention:

### **Moderate Individualist Principle of Nonintervention:**

A state has a right against the non-consensual use of military force against its territorial jurisdiction so long as the state is:

- (1) not unjustly aggressing some other state, and
- (2) *adequately* respecting and protecting the rights of individuals within its territory.

I have suggested above that the second condition, the adequacy condition, entails requirements for the state along three different dimensions: 1) Respecting rights, 2) Protecting rights from *internal threats*, and 3) Protecting rights from *external threats*. Focusing just on a state's responsibilities to those within the state, these are the relevant considerations for the adequacy condition for the principle of nonintervention. Thus, these three categories are represented by three separate adequacy criteria for the principle of nonintervention – one criterion for respecting rights and two criteria for protecting rights. The Moderate Principle of Nonintervention, though, calls for states to adequately respect and protect the rights of individuals within the state *overall*. So, we will have to consider how the various criteria relate and contribute to this *overall* determination. In the remainder of this chapter, I will begin this examination by considering what it means for a state to respect and protect rights in regards to the adequacy condition.

By moving to adequacy, we have abandoned the idea that a state can have a claim against intervention only if it is *perfectly* respecting and protecting rights. So, we are now considering how far *below* perfection a state may fall in terms of respecting and

protecting rights and still maintain a claim against intervention. Once we accept something less than perfection, however, the question of what constitutes *adequacy* in regards to respecting and protecting rights becomes immensely complex.

On the Strict View, recall, a state can have a claim against intervention only by perfectly respecting and protecting rights. There is then no need to look further into the question of *what* must be respected and protected. By requiring perfection, the Strict View simply requires *all* rights to be perfectly protected, whatever that perfection amounts to. Yet, once perfection is abandoned, some standard must take its place. If a state is no longer required to respect and protect *all* rights in order to maintain a claim against intervention, then there must be some plausible way to measure whether or not a state is actually *adequately* respecting and protecting rights. In this section, I will present two possible measures for determining the adequacy criteria: 1) Adequacy determined according to some quantitative measure, and 2) Adequacy determined according to some qualitative measure. I will argue that the appropriate measure for determining adequacy cannot be a quantitative one. Rather, whether or not a state has a claim against intervention is best determined by a qualitative approach. Let us consider the quantitative approach first.

## **5.1 Adequacy as a Quantitative Measure**

Whether or not a state is adequately respecting the rights of those within the state could seemingly be determined by simply considering the *quantity* of rights violations occurring within the state. So, for instance, we might put the threshold of rights violations at some particular quantitative threshold such that under that threshold the state would be

considered to be adequately respecting rights and over that threshold, the state would be failing. So, again, our starting point is perfection. If the state is perfect, then it will maintain its claim against intervention. Perfection, in terms of some quantity of rights violations, might simply mean zero rights violations. The level *below* perfection, then, would be some quantity of rights violations greater than zero. And the range between that greater quantity and perfection would be the adequate operating range for the state.

Let's say, for example, that one hundred rights violations are allowed against those within the state to meet the overall adequacy condition. So, as long as less than one hundred rights violations were occurring within the state, in some sense, the state would be adequately respecting and protecting rights – that is, the state would meet the second condition of the Moderate Principle. And if more violations than this occur within the state, then, of course, the state would be considered as *failing* this adequacy condition. This is a straightforward way of determining adequacy. Unfortunately, there are significant drawbacks to such an approach.

Using a quantity of rights violations alone would be too crude a measure of adequacy. Some rights violations are just objectively worse than others. Being unjustly tortured just *is* worse than having one's ear unjustly flicked. And appealing *merely* to some quantity of rights violations misses this nuance. This leads some proponents of the basic individualist approach to distinguish rights that are important for a state's claim against intervention from those that are not important. A common way of putting this is to distinguish between those rights that are, in some sense, fundamental from those that are not fundamental. Then, it may be possible to adjudicate the adequacy condition in terms of *fundamental* rights.

The move to fundamental rights, in fact, is fairly popular. Cecilé Fabre, a cosmopolitan, for instance, says:

“A standard argument for the right to intervene takes the following form: a regime which violates the *fundamental rights* of its members undermines the very rationale for its existence and for its claim to authority, and thus forfeits its immunity from interference in its conduct” (Fabre, 2012, p. 170, my emphasis)

A state, Fabre says, “...has a claim to govern over a given territory only if it respects and protects the *fundamental rights* of its individual members”. (Fabre, 2012, p. 170, my emphasis)

Now, while it’s true that many proponents of the individualist approach favor the language of “fundamental rights”, what this represents isn’t completely agreed upon. For instance, it seems, for the most part, that proponents of the individualist approach do not distinguish between fundamental rights and other sorts of rights. Thomas Weiss, for instance, says of states that states “are best positioned to protect *fundamental rights*”, but also that a key feature of a sovereign state is the state’s “respect for *human rights*”. (Weiss, 2004, p. 138) Altman and Wellman appeal only to “individual rights”, while Wellman (singly) appeals to “human rights”. Nonetheless, I will assume that “fundamental rights” and “human rights” are intended to pick out the same set of rights. Though, I recognize that there may be differences between these two notions. For our purposes, I will simply discuss the rights in question for this view as “fundamental rights”. This is not meant to pick out any rights that wouldn’t be picked out by the notion of “human rights”. Rather, it is being used in order to capture the idea that there may be a set of rights that are morally fundamental.

It is clear, then, that the notion of fundamental rights is intended to do important work for the principle of nonintervention. But to do this work it must be shown exactly what it means for some rights to be “fundamental”. Those who defend this notion, unfortunately, do not always sufficiently distinguish the rights they take to be fundamental from those they take to be non-fundamental. For instance, some claim that the range of fundamental rights is large and that “a state must honour the full complement of human rights *and liberties*... in order to enjoy the protection that sovereignty affords.” (Dobos, 2010, p. 27, my emphasis) Yet others claim that the range of fundamental rights is actually quite small. What is needed, then, is some distinguishing feature that would qualify some rights as fundamental and disqualifies others.

One way to think about fundamental rights as being distinct from the full complement of individual rights is to think of their fulfillment as being, in some sense, necessary for the fulfillment of any other rights. (Shue, 1980) That is, it may be necessary for some rights to be satisfied in order for us to enjoy other rights. For instance, the right to life may be fundamental in this way. To have any *other* rights satisfied, we must have our right to life satisfied. We can’t enjoy having rights if we’re dead! So, there may be a number of potential rights like this. The idea of a right to subsistence, for instance, may be included (Shue, 1980). Yet, the right to education may not be. All of this is just to say that there may, in fact, be ways of distinguishing fundamental rights from individual rights in general. And these various ways of distinguishing such rights will obviously affect what is required of a state for it to have a right against intervention.

However, there is good reason to reject the appeal to a kind of quantitative measure of rights violations as a reasonable measure for adequacy, even if it is restricted

to *fundamental* rights. First, of course, is the ambiguity in what constitutes a “fundamental” right. But, additionally, there are severe and implausible implications from making such a distinction in the first place. Assume, for instance, that the overall adequacy condition is restricted to just *fundamental* rights violations. Rights violations of non-fundamental rights, then, would not count against a state’s claim against intervention. But this is unreasonable. On such a view, a state could have the freedom to commit and allow an *unlimited* number of minor rights violations without risk to its claim against intervention. This just cannot be correct.

Eamon Aloyo, for instance, has recently argued that whether or not a state maintains its claim against intervention is strictly determined by whether or not the state commits “one or more...*severe* human rights abuses”. (Aloyo, 2016, p. 334, my emphasis) Aloyo thus singles out a particular set of individual rights as the most important ones. For our purposes, we can simply assume that these rights represent *fundamental* rights as we’re currently conceiving of them. Fundamental rights, for Aloyo, are those rights that, if violated, would prevent individuals from political participation. Aloyo suggests that unjust beatings, torture and killings would violate such rights. So, as long as the state is not committing violations of such fundamental rights, it maintains its claim against intervention. And this would presumably be true even if the harms from the non-fundamental rights violations would ultimately be severe overall. This, though, misses the mark.

Consider the following case. In states A and B, there are identical amounts of harm within the state from rights violations. In A, the rights violations are all violations of *fundamental* rights. In B, the rights violations are all violations of *non-fundamental*

rights. The same amount of harm occurs in both A and B. The only difference is whether this harm is a consequence of a fundamental or non-fundamental rights violation. But this doesn't seem to be enough to make a difference in terms of the principle of nonintervention. While it may be true that violations of fundamental rights *normally* produces more harm, this general observation is not enough to restrict our consideration to fundamental rights alone. Violations of non-fundamental rights could easily have just as severe impact on individuals within the state. Restricting the adequacy condition to fundamental rights misses this crucial detail.

So, the problem just described is significant, but it isn't the only issue for appealing to fundamental rights to determine overall adequacy. There is an additional reason to dismiss the use of fundamental rights to determine whether a state has a claim against intervention. To see the issue, consider my getting slapped in the face against my will. Presumably, my right to bodily integrity has been violated. Now consider an objectively identical slap from three different perpetrators: from my wife, from a stranger, from an agent of the state. There is a strong sense in which this slap would be all things considered worse for me coming from the state and from a stranger than it would have been for it to come from my wife. In other words, objectively identical rights violations can nonetheless fail to have identical impacts on individuals. This nuance is also overlooked by an appeal to some quantitative measure of fundamental rights.

It seems, then, that appealing to a distinction between fundamental and non-fundamental rights in order to determine whether a state is adequately respecting and protecting rights is not clearly plausible. In fact, this distinction itself seems to undercut its very justification – to protect the rights of individuals within their respective states.

## 5.2 Adequacy as a Qualitative Measure

Rather than appealing to a quantitative measure to determine adequacy, I want to suggest, instead, that the Adequacy Condition should be expressed by a kind of *qualitative* measure. It is a *qualitative* approach that best captures our intuitions regarding the requirements of a state to respect and protect individual rights. First, though, recall that we are accepting the Individualist Commitment.

The Individualist Commitment employs the idea of respecting and protecting individual rights as the means to protecting individuals. This is not the only way to be individualistic, but it is clearly the most popular approach in the discussion of the principle of nonintervention. So, I am accepting, for sake of argument, the Individualist Commitment and the view that the Principle of Nonintervention will be partially expressed in terms of the state's respecting and protecting individual rights. Since I have rejected a quantitative approach, I now want to tentatively defend a preliminary, *qualitative* approach for defining the Adequacy Condition. Specifically, in what follows, I will suggest that the threshold for adequately respecting and protecting rights can be determined by appealing to well-being.

Individual rights, though, according to some, are already tied to individual well-being. (Raz, 1992) I do not endorse or dispute this position. And the position that I will endorse does not depend on or necessarily contradict this view. Rather, the view that I want to now put forward is one that simply utilizes an appeal to well-being in order to set the criteria for adequately respecting and protecting rights.

Again, recall that perfection is our starting point. We have assumed that at least at the level of perfection, a state can have a claim against intervention. Now, we are considering what perfection looks like in terms of well-being. In the discussion above, putting the adequacy condition in terms of a quantity of rights violations, perfection was assumed to be something like zero violations. A state would be adequately respecting and protecting the rights of those within the state, then, by ensuring that the quantity of fundamental rights violations was within a certain range. Presenting the adequacy condition in terms of well-being, though, moves us away from such a rigid metric. Perfectly respecting and protecting the rights of those within the state would presumably equate to some level of well-being generated and maintained by the state. Then, moving away from perfection and towards the notion of adequacy would presumably be a move away from the “perfection” level of well-being within the state.

Presenting the Adequacy Condition in terms of well-being, thus, means that there must be some level of well-being lower than that generated by perfection that nonetheless allows a state to maintain a claim against intervention. The task, now, is to determine this bottom threshold of well-being – the point at which a state fails to meet the adequacy condition.

I propose that the adequacy condition be determined according to a measure of well-being *in the context of* respecting and protecting individual rights and in the failing of these tasks. In other words, the well-being that matters will be that which comes from the state respecting and protecting individual rights and the effects of failing to do so. States, that is, can and do generate and maintain a levels of well-being by respecting and protecting rights. For instance, if a state were perfectly protecting the rights of those

within the state from internal threats, then, presumably, there would be level of well-being within the state that comes explicitly from this protection. And when there harm from rights violations, this harm impacts this level of well-being. My suggestion, then, is that the adequacy condition be exclusively expressed in terms of this kind of well-being that is specifically generated and maintained by a state's respecting and protecting rights. Well-being that is generated by sources other than the state should just not count in a state's favor. Nor should impacts on well-being that do not come from a state's failing to respect and protect rights count against a state. What is appropriate, then, is that the measure we use to determine adequacy is a measure that is directly bound to the state's performance in respecting and protecting individual rights of those within the state. Some examples, I think, will help clarify the view that I'm now outlining.

Assume that within a state there is a human trafficking organization, targeting and exploiting migrant children. Assume for sake of argument that this organization actually produces a significant amount of well-being for individuals within the state. The problem, of course, is that this well-being is unjustly produced. In fact, the primary way of producing this well-being is by violating the rights of individuals. That's a problem.

If we were only appealing to well-being, then we would not be able to distinguish between that well-being which is justly produced from that which is not. In other words, the well-being that we're considering seems to actually have nothing to do with respecting and protecting rights. We should conclude, then, that to use a measure of well-being to determine the criteria for the Adequacy Condition, the measure must be, in some sense, appropriately tethered to respecting and protecting the rights of individuals. And one way to tether well-being to respecting and protecting the rights of individuals is to

require that the well-being that counts for adequacy be only that well-being which comes from the state's respecting and protecting the rights of those individuals within the state.

Within every state, there will be a certain level of overall well-being. Some of this well-being will be unjustly acquired. And some of this well-being will be utterly arbitrary to how well a state is respecting and protecting rights. For instance, my delight in seeing a migrating Monarch butterfly seems utterly arbitrary to how well a state is doing respecting and protecting the rights of individuals within the state. My suggestion, then, is that the well-being used to determine a state's claim against intervention should only be the well-being that is directly tied to a state's respecting and protecting rights and its failures in doing so.

Consider, again, the human trafficking case. On the view that I am now proposing, the well-being generated from such an unjust criminal organization could not count positively toward the measure overall well-being used to determine adequacy. But, since this would be a *failure* of the state to respect and protect rights, the effects of this failure *would* count. So, on this view, the measure of well-being generated *only* from respecting and protecting rights would positively count in a determination of adequacy. And only those impacts on well-being from the state's specific failures to respect and protect rights would count negatively in a determination of adequacy. And while this better conforms with the individualist approach that has been so far adopted, it also better corresponds to our starting point – the idea that perfection in respecting and protecting rights generates a claim against intervention.

The approach that I have articulated begins with the assumption that perfectly respecting and protecting rights generates for states a claim against intervention. Then the

question is how far from perfection a state may fall and still maintain this claim against intervention. When we moved this question to well-being, we began by considering the amount of well-being that would be generated if the state were actually perfectly respecting and protecting rights within the state. We do not, that is, begin with how much well-being could be *theoretically* achievable in the state. And there's good reason for this.

Consider some very small state where it could be possible for a handful of billionaires to give large sums of money to all individuals living within the state. The amount of well-being that *could* be generated within the state would be very high. But we simply cannot hold the state itself to a standard higher than perfection, to a higher level than what it could actually achieve. So, rather than beginning with an assumption about how much well-being is *theoretically* possible to obtain within a state, we begin with the assumption about how much well-being could be generated from the *particular* state's perfectly respecting and protecting the rights of those within the state. Thus, restricting the measure of well-being to only that well-being connected to a state's respecting and protecting rights mirrors this approach.

We have, then, an initial starting point for determining whether or not a state is adequately respecting and protecting the rights of those within the state. The adequacy condition says, then, that a state has a right against intervention only to the extent that it maintains an adequate level of well-being, specifically associated with the state's respecting and protecting rights. This suggestion is important. It tells us that states cannot simply "buy off" poor performance by artificially increasing overall well-being within the state. That actually respecting and protecting rights *of individuals* is what generates

and ensures the state's claim against intervention. So, we have thus suitably tethered the state's claim against intervention to individuals.

## **6. Summing Up, Looking Ahead**

In this chapter, I have laid bare the various components of state requirements for moving from the Strict Individualist View to a Moderate Individualist View. These various components significantly increase the complexity for any moderate individualist account. For instance, I argued that the Adequacy Condition actually consists of three independent considerations: 1) Respecting Rights, 2) Protecting Rights from Internal Threats, and 3) Protecting Rights from External Threats. These three considerations will be shown, in the next chapter, to significantly influence the overall criterion for the Adequacy Condition.

Additionally, I have tentatively argued that the criteria for the Adequacy Condition is best presented as a *qualitative* measure rather than a quantitative measure. Specifically, I argued that whether or not a state can be said to be adequately respecting and protecting rights should be determined by a criteria connected to the overall well-being strictly associated with the states respecting and protecting rights. What this criteria amounts to has yet to be determined.

In the next chapter, I will defend a particular conclusion regarding the application of the Adequacy Condition to the responsibilities of a state. The surprising feature of this view is that it will be shown to have a striking resemblance to the more statist views we have previously rejected.

## Chapter 6

### The Moderate Individualist View: Measuring Adequacy

#### 1. Introduction

The conclusion we have reached thus far is that the individualist approach to the principle of nonintervention faces a particular and complex challenge. The Strict View, recall, implausibly claims that a state can lose its claim to nonintervention if just one individual right were violated within the state. Yet, when we abandon the Strict View, we lose a great deal of the simplicity that the view provides. A plausible corrective for the problems of the Strict View was to move toward a notion of adequacy in regards to how well a state must do respecting and protecting individual rights of those within the state. Though this move is intuitively plausible, the real difficulty lies in defining a suitable criterion of adequacy for which to judge the performance of a state in regards to respecting and protecting rights.

In this chapter, I will present a series of arguments that lead to a particular and surprising conclusion. Namely, I will argue, on good individualist grounds, that states can be said to be adequately respecting and protecting individual rights even if there are numerous and even severe rights violations occurring within the state. The surprising aspect of this conclusion is that even though it is derived primarily from the central concerns from an individualist approach to nonintervention, it is largely congruent with the more statist approach to nonintervention that we earlier rejected.

Here's the upshot. Currently, it is only possible for individualists and statist (and those sympathetic to the statist position) to arrive at the same conclusion on intervention out of concerns over feasibility and practical effectiveness of the views. My concluding argument, however, is that the individualist position is not only *practically* congruent with the basic statist position, but that it is *theoretically* congruent with the basic statist position. *That* is a surprising conclusion! Though, this is only a preliminary conclusion, as there remains a vast amount of complexity surrounding this approach to the principle of nonintervention

I begin this chapter by arguing that the adequacy condition varies in certain respects between the various categories of respecting and protecting rights. In short, the adequacy requirement is arguably less strict for some categories than it is for others. This is a significant deviation from the Strict View, which does not seem to allow for any such variability. This variability, I argue, is simply an implication of a plausible and important moral principle concerning moral responsibility. From there, I argue for a particular understanding of the various, relevant adequacy conditions.

After arguing for a particular understanding of the various adequacy conditions, I then examine how the adequacy conditions interact with one another. I ultimately argue that whether or not a state is adequately respecting and protecting individual rights is best determined by an aggregative notion of adequacy. That is, whether a state is adequately respecting and protecting individual rights is a question about *overall* adequacy, not simply whether the state is adequate on any particular category.

Finally, given the arguments presented, I will show that when put in place, the view of adequacy presented so far leads to a surprising result. The view will share a remarkable similarity with the statist view.

To begin, however, let us begin with one of the most significant considerations for expressing the Adequacy Condition and the Moderate Principle of Nonintervention.

## **2. The Control Principle for States**

In the previous chapter, I argued that adequately respecting and protecting rights is best determined according to the well-being associated with a state's respecting and protecting rights and its failures in doing so. The basic idea is that the level of well-being that could be achieved within a state from the state perfectly respecting and protecting rights both guarantees that the state will have a claim against intervention and also sets the upper limit for the adequacy condition. The lower bound, then, would be some level of well-being short of this upper bound, which would similarly be tied to the state's performance in respecting and protecting the rights of those within the state. We thus have a method for determining adequacy. Now, and in the sections that follow, I will explore how some particular considerations affect the lower bound of the adequacy condition, the bare minimum. No consideration that I will mention, however, affects the adequacy condition more than the principle that I will refer to as the Control Principle for States. And this principle closely resembles a similar moral principle known simply as the Control Principle. Let's start with this well-known version.

The Control Principle says that we can be morally responsible (or assessable) only for those things that are under our control. Gideon Rosen presents the idea like this.

Imagine that “your dog escapes by an improbable route and bites a neighbor, despite your having taken every reasonable precaution to keep him in the house.” (Rosen, 2004, p. 296)

... if it is clear that you had taken every reasonable precaution to prevent the injury—if it is clear that you were neither negligent nor reckless nor malicious in causing the harm—then there is [a] sense in which you are not morally responsible for the injury. It’s not your *fault*; you are not *culpable*. Your neighbour should not blame you for it—he should not blame anyone—and you should not blame yourself. (Rosen, 2004, p. 296)

This is the nature of the Control Principle. To be properly, morally responsible for some action or event, we must exert some amount of control over the action or event itself. If we lack the requisite control, then we can’t be held wholly responsible. Of course, there are various ways of understanding the Control Principle, and not everyone accepts it. (Nagel, 1979) But, in general, the basic motivation for the Control Principle seems to provide a robust explanation for the theoretically rich concept of moral responsibility. Moreover, this idea readily translates to our thinking about states and respecting and protecting rights.

The Control Principle for States functions primarily as an arbitrator between the perfection that might have otherwise been required from a particular state and the realities of what is actually possible for a particular state. To see this, consider what it would mean to require a state to *perfectly* protect those within the state from some external threat. Such perfection is, of course, theoretically possible. But it is entirely implausible to actually require states to provide such protection. Regardless of what a state does in order to protect those within the state, there will *always* be a possibility for an outsider to violate the rights of some within the state (e.g. any number of terrorists attacks). The Control Principle for States accounts for this.

The Control Principle for states allows us to take into consideration those actions and events that occur within the state that can't be reasonably assessed to the state. The principle explains why it would be unreasonably demanding to require a state to, for instance, perfectly protect those within the state from outside threats. These threats are simply not sufficiently within a state's control. A state could not be wholly assessable or responsible for rights violations originating from such threats. I want to suggest, then, that we accept a kind of Control Principle for states in regards to respecting and protecting rights.

**Control Principle for States:** The degree to which a state is responsible for the harm which occurs from some rights violation within the state is conversely related to the control the state asserts over the threat which produced the violation.

Now there is a clear conclusion. The less control a state has over threats to individuals within the state, the less a state will be responsible for harms that come about from such threats. The less, that is, that such harm will be assessed negatively against the state.

Consider, for instance, a state that cannot feasibly do anything more to protect those within the state from threats from outsiders. Nonetheless, imagine that some individuals outside the state violate the rights of some individuals within the state. If the adequacy condition requires there to be *no* violations within the state, then this state would fail the adequacy condition for protecting the rights of those within the state. This, of course, would be too demanding to be plausible. And the Control Principle for States

explains why. The Control Principle for States would thus mitigate, to a degree, the amount of harm for which the state would be responsible.

The upshot of the Control Principle for States is that some of the negative impacts to the well-being within the state from rights violations should not actually be attributed to the state itself. What this means, of course, is that we cannot expect the level of well-being within the state to ever be at the level it could be if rights were perfectly respected and protected within the state. In fact, when we begin examining the ramifications of the Control Principle for States, it looks more likely to be the opposite. There is only a certain amount of control that a state can ever exert over the threats posed to individuals within the state.

A state, though, clearly has more control over some threats than it does for others. For instance, a state likely has the most control over whether it itself is a threat to individuals. But a state hardly has any control over whether some other state is a threat to its own members. And even when the state has a perfectly functioning domestic police force, there is still a significant lack of control over the harm from rights violations perpetrated by individuals within the state. So, there are drastic variations in the amount of control states have in regards to the threats posed against individuals within the state.

The implication is obvious. A significant amount of harm from rights violations within a state just cannot be attributed to the state. Nonetheless, this harm will have an impact on overall well-being. Some amount of harm, then, must be accounted for by the adequacy condition. In fact, since a considerable amount of harm from rights violations will not typically be within the state's control, the lower bound of well-being for the adequacy condition will be considerably far from perfection.

So, the principle of nonintervention that we are considering must actually permit a fair amount of harm from rights violations. Or, in other words, permit a significantly lower level of well-being than could be achieved if the state were perfectly respecting and protecting rights. This is a significant conclusion. We have, then, our first major consequence of moving from perfection to adequacy. Even when the measure of adequacy is sufficiently tethered to a concern for individuals, it is not feasible to expect perfection in regards to a state's respecting and protecting the rights of individuals within the state. The Control Principle for States suggests, in fact, that a significant portion of harm from rights violations within a state will be both inevitable and ultimately irrelevant to a state's claim against intervention.

The Control Principle for States, then, represents a major adjustment to the individualist approach to the principle of nonintervention. At least some amount of harm from rights violations must be acceptable under the adequacy condition. In the following section, I will show how the acceptable range for adequacy might get pushed even farther from perfection. In the following section, I will examine the individual considerations that make up the overall adequacy determination.

### **3. Variable Adequacy**

As I mentioned above, moving the principle of nonintervention from perfection to adequacy brings with it some surprising implications. I now want to consider how the adequacy condition operates among the various dimensions of respecting and protecting rights of individuals within the state. Recall, there are three relevant dimensions in this regard: 1) respecting the rights of those within the state, 2) protecting the rights of those

within the state from internal threats, and 3) protecting the rights of those within the state from external threats. We distinguish these dimensions of respecting and protecting rights not for mere convenience, but because there are fundamental differences in these considerations. For instance, for respecting rights, the state is the threat to individuals. But for protecting rights, the threat to individual rights is not the state.

What we're now considering is whether what it means to adequately respect and protect individual rights varies between these various categories. It will be shown in what follows that the criterion for adequacy *should* vary between the particular categories. For instance, what counts as adequate for *protecting* rights of some individuals should not similarly count as adequate for *respecting* the rights of individuals.

To see the issue, let's assume that adequately respecting the rights of those within the state requires there to be a certain amount of well-being generated by the state respecting the rights of those within the state. (This simply means, of course, that the state generates this well-being by not itself violating the rights of those within the state.) If there are to be no variations between the categories, then this means that *protecting* the rights of those within the state from non-state threats originating within the state would require generating an identical level of well-being. So, just to be clear, on the one category, the state must generate or maintain some level of well-being by respecting the rights of those within the state. And if there is no variation between the categories, this would mean that the state must also generate or maintain the same level of well-being by *protecting* the rights of those within the state from being violated by others within the state. This, of course, is both unreasonable and fails to account for the unique ways well-being is related to respecting and protecting rights.

First of all, the Control Principle for States, recall, absolves the state from some of the responsibility of the harms that come about from rights violations originating from threats to which the state lacks control. So, the well-being that must be guaranteed to meet the adequacy condition for protecting rights must permit more harm than what would be allowed for respecting rights.

States clearly have more control over what the state itself does. So, the threat posed against individuals within the state, originating from the state itself, will seemingly be significantly within the control of a state. But the threats posed against individuals within the state from other individuals within the state are not within such control of the state. So, what counts as adequacy for these two categories cannot be equivalent.

Additionally, since I have suggested that well-being must be significantly tethered to respecting and protecting rights, the criteria for adequacy just cannot be the same for all of the relevant categories. It may be true that a state can generate some amount of well-being within the state by respecting rights. But this just cannot be a significant source of well-being. Respecting rights just means that the state does not itself violate the rights of individuals. And the nature of respecting rights just does not lend itself well to generating well-being. Consider, for instance, the following scenarios: In Case A, I refrain from violating John's rights. In Case B, I protect John's rights from being violated which would have happened had I not intervened. John maintains his rights in both cases. But only in Case B does it seem like I've benefited John. In Case A, I provide no more benefit to John than an inanimate object would have. I generate significantly more well-being for John by protecting his rights than I do by respecting his rights.

So, if the criterion for adequacy for each consideration is tied to well-being in the context of respecting and protecting rights, those criteria just cannot be identical. The connection between well-being and respecting and protecting rights varies for each relevant consideration. Thus, we should expect the adequacy condition to vary across the relevant categories of consideration.

### **3.1 An Objection and Reply**

Above, I argued that what is required of a state in respecting and protecting rights may vary. One might object and argue that adequacy should simply be determined by one measure, and that the individual categories are irrelevant. For instance, we could simply consider overall well-being within the state rather than the well-being associated with the three relevant categories of respecting and protecting rights. This approach, however, would be a mistake.

Again, there is a significant difference between the control a state has over the threat it poses against those within the state and the control a state has over the threat others pose against those within the state. And this control can have a significant effect on a state's claim against intervention. While the Control Principle for States mitigates the harm that might be assessable to state, it also implies that there might be good reason to require a state to actually do better in regards to the threats that it actually *does* have better control over. So, for instance, we may allow a lower amount of well-being to count as adequate for one particular category due to the harm generated by threats outside of the state's control. But, for instance, it may simultaneously be unreasonable to permit a large amount of harm to impact well-being from failing to *respect* rights. This is because

when it comes to respecting rights, states have the most control. So, it is reasonable to hold states to different standards according to how much control the state has over the relevant threats. One, overall measure of well-being connected to respecting and protecting rights would miss this nuance.

Assume, for instance, that the well-being that could be generated by a state perfectly respecting and protecting rights is  $X$  and that the bottom level of well-being that would nonetheless grant the state a claim against intervention is  $Y$ . The amount of well-being  $Z$  is such that  $X \geq Z \geq Y$ . So, this means that the difference between  $X$  and  $Z$  inevitably includes some amount of harm, hence it's being less than  $X$ . If we are only concerned with an overall measure of adequacy, then there's not an issue. But the problem, of course, is that it is possible for all of that allowable harm to come from the state's failing to *respect* rights. *But this is what we should expect the state to do best!* So, appealing to just one, overall adequacy criterion is just not reasonable, at least not from the individualist approach with which I am currently operating under. So, for now, I want to suggest that what is required of a state varies between these relevant categories and that this variation cannot be captured with one, overall measure of adequacy.

This is a significant deviation from our starting assumption regarding perfection. What we now see is that once we abandon perfection, it is reasonable to even allow further deviations from perfection, depending on each particular requirement for a state. A preliminary ordinal ranking of the various relevant categories can now be sketched.

### 3.2 Variations in Respecting and Protecting Rights

States will typically have significantly more control over the threats that originate from the state itself. That is, when it comes to respecting rights, the state has the most control in satisfying this condition. This, though, might not be complete control. For instance, in prosecuting criminals, states rarely have perfect control over the evidence. So, even when nothing more could have been done, it is still possible for a state to violate the rights of an individual because of a lack of complete control. The same goes, for instance, for agents of the state. Agents of a state, though operating on the state's behalf, are not *completely* under the control of the state. They're individuals, and they make mistakes. Nonetheless, in terms of respecting rights, the state has the most control over this particular category. Thus, harm from violations resulting from failures to respect rights will almost certainly count negatively for determining adequacy.

Further, it is also clear that states will typically have more control over domestic threats to those within the state than they have over foreign threats to those within the state. But, for these threats, there is a significant *lack* of control. For instance, I see no police officers on my street right now. So, the possibility of having my rights violated by an individual on my street is significant. And this possibility is not entirely diminished, even if the state were doing all it could do to protect individuals within the state from having their rights violated by others within the state. So, there is significantly less control over these threats than the threats that originate from the state itself. Nonetheless, this is still significantly more control than states wield over external threats.

States typically protect against internal threats with threats of their own. Threats of punishment and public censure are among the most common methods. So, there is

actually a considerable amount of preventable measures that states can employ to protect the rights of those within the state from internal threats. But, this is not typically possible for threats originating from outside the state. The primary preventable measure is the maintaining of a military force. This, however, is primarily reactionary. Domestically, the protection is aimed more at preventing the motivations for the violations in the first place. For outside threats, however, the protection is aimed at preventing a threat that is being actualized against the state. In other words, there is far less control over the actual threats originating from outside the state. And with less control comes less responsibility for the consequences that might come about.

We have, then, an initial, basic understanding of how the Control Principle for States affects the ways in which a state can be assessable for how it respects and protects the rights of those within the state. And this basic understanding moves us farther and farther away from the conclusions of the Strict View. For instance, adequately respecting rights will seem to require more from the state than will adequately protecting rights. Thus, the adequacy condition will vary between the relevant categories of respecting and protecting rights primarily according to the Control Principle for States.

Further, due to the nature and origin of the threats posed to individuals within the state, states simply cannot have complete control over the variety of threats. And according to the Control Principle for States, states cannot be assessable for the entirety of the harm which comes about from violations which were not fully within the control of the state. Thus, it is possible for there to be a significant amount of harm and rights violations within a state without the state necessarily losing its claim against intervention.

The level of well-being that must be guaranteed by the state's respecting and protecting rights will be far short of perfection.

I cannot underscore this conclusion enough. It is a significant departure from the Strict View. And since we have accepted the basic individualist approach to the principle of nonintervention, this conclusion begins to move us in an odd direction.

For now, though, I want to further examine how the varying standards of adequacy interact and contribute to an overall determination of adequacy

#### **4. Non-Aggregative vs. Aggregative Adequacy**

We have now seen that the standard of adequacy will vary between the various dimensions for respecting and protecting rights. This, of course, is not surprising given the Control Principle for States. And this result has some particular, theoretical implications. If the standard of adequacy varies between the various, relevant dimensions, then it is not straightforward as to how these various standards contribute to the overall determination as to whether a state is adequately respecting and protecting rights within the state. There are at least two possibilities for how these standards interact with one another for contributing to overall adequacy determinations. It could be argued that failing *any* particular category or categories results in failing the adequacy condition overall. Or, it could be argued that the adequacy condition overall is determined by some secondary standard that compares all of the categories altogether. I will argue for the second, aggregative approach.

## 4.1 Non-Aggregative Adequacy

To begin, let us clearly define Non-Aggregative Adequacy. Non-Aggregative Adequacy is the position that if a state fails to meet the standard of adequacy for any *particular* category (e.g. respecting the rights of those within the state), then the state fails to meet the adequacy condition overall. For instance, assume that a state does great on all but one of the dimensions for respecting and protecting rights of those within the state. So, whatever the standard is for those dimensions, the state is achieving those standards. Assume, though, that the state fails to meet the standard for one particular category. And to make this clear, imagine that the failure is the bare minimum over what would have otherwise been allowed. According to the Non-Aggregative Adequacy position, this minor failure would be enough to cause the state to forfeit its claim against intervention.

Consider, as an example, one kind of Non-Aggregative Adequacy position. Let's call it *respecting rights focused*. On this particular view, a state could be perfectly adequate for the other considerations. But if *itself* violated the rights of individuals within the state above the standard (whatever it amounts to), then the state would fail to meet the overall adequacy condition. Failing in just this one category, no matter how small, would undermine the state's claim against intervention.

This position is, of course, clearly appealing. This view in particular conforms to the general intuition that it is worse for a state itself to violate the rights of those within the state. And such an approach provides a straightforward way to determine whether a state meets the adequacy condition. If it fails any category, then it doesn't satisfy the condition. Thus, according to the Moderate Individualist Principle of Nonintervention, such a failure would result in a state's forfeiture of its claim against intervention. Yet,

however appealing Non-Aggregative Adequacy may be, there are good reasons to reject it.

I have argued that the measure for the adequacy condition should be given in terms of the well-being derived from a state's respecting and protecting rights and failing to do so. So, assume that a state meets the relevant standard for every category. Thus, the state would meet the adequacy condition and have a viable claim against intervention. But now consider a case in this state in which someone within the state makes himself liable to defensive harm from the state, for example, by trying to commit an armed robbery. The state responds with defensive force against this individual. Yet, assume that the state has imposed a harm on this individual greater than that which the individual is liable. Assume that *this* tips the scales in the particular category. That is, the level of well-being generated by the state's respecting rights falls below the level that must be maintained in order to ensure a right against intervention. So, the state would fail the adequacy condition in respecting rights. Thus, according to Non-Aggregative Adequacy, the state would also no longer be adequately respecting and protecting rights *overall*.

On such a non-aggregative view, it is only the amount of *extra* harm that pushes well-being below the acceptable level, no matter how slight. The individual in our case might have been, for instance, liable to being neutralized with 80% physical force, but a state actor neutralized the individual by using 81% physical force. It is just this 1% of excessive force, perpetrated by the state actor, that pushes the state past the adequacy threshold and causes the state to lose its claim against intervention.

This, of course, is unreasonable. Non-Aggregative Adequacy just seems to get only part of the explanation correct. There may be something wrong about failing to meet

one particular adequacy standard, like respecting rights. But it is not clear that such wrongness *necessarily* entails a forfeiture of the right against intervention.

One, of course, might argue that the standard is something more serious like the right to life. And that a state goes over the threshold only when the right to life is violated by the state. So, for instance, as long as a state isn't violating individuals' right to life, it is adequate. But, consider a case, again, in which a state is otherwise adequate but for which one particular act results in the state failing to meet this standard of adequacy. Consider a case in which a state actor has consumed an excessive amount of alcohol while on the job. While working, he takes a state vehicle out driving. While out, he strikes and kills a pedestrian. The net well-being, after all relevant calculations are complete, results in the state failing the relevant consideration of adequacy. Now, what we might otherwise label as a culpable and avoidable accident now seems to entail that the state itself loses its right to nonintervention.

Again, this is unreasonable. The strictness of a non-aggregative view on adequacy seems to miss the relevancy of the details of the particular rights violations or harms. In a sense, a non-aggregative view of adequacy is simply too rigid to use as a guide for determining whether a state is adequately respecting and protecting rights overall. So, given these particular weaknesses of the Non-Aggregative Adequacy position, I will argue that we ought to adopt an Aggregative Adequacy position in regards to the Adequacy Condition.

## 4.2 Aggregative Adequacy

On an aggregative understanding of adequacy, it will not be true that failing in one category *necessarily* entails failing overall. The notion of Aggregative Adequacy, instead, utilizes a system of compiling the overall, net well-being, which would include harms from rights violations along each dimension of consideration. This approach, however, will be incredibly complex. So, I will only sketch how this might go.

Recall that the Control Principle for States presumably allows more harm from rights violations from some categories than others without entailing the state's forfeiture of its claim against intervention. So, the well-being that the state must guarantee *for each category* will likely be much less than the well-being that would be generated if the state were perfectly respecting and protecting rights. And this means, of course, that what might count as adequate along one dimension might not count as adequate along another. And above, I argued that a state's failure along any particular dimension should not necessarily entail the forfeiture of a claim against intervention. So, there must be some method for determining how the well-being which is calculated for each category is calculated overall. I will provide an initial sketch of how this might go.

For each category of consideration for the adequacy condition, there will be a question of how much harm from rights violations would be acceptable. The Control Principle for States allows for more harm for the considerations in which the state has less control. So, for instance, there may be more harm allowed in terms of the state's protecting the rights of those within the state from outside threats than there would be for the state's respecting of rights. The consequence of this is that the well-being that the

state must guarantee along each of these considerations will be far short of what could be generated and maintained if the state were perfectly respecting and protecting rights.

So, let us assume that there is a certain amount of harm from rights violations occurring in each relevant category. And this amount of harm impacts the amount of well-being that would otherwise be generated by the state. The question, now, is how the impact on well-being from each category relates to the determination of overall adequacy. To begin with, it is clear that as long as the state meets the adequacy condition for each dimension, it must be adequate overall. This much is clear. We are now simply considering how *failing* to adequately respect or protect rights in a certain category factors in to the ultimate determination of whether the state meets the adequacy condition.

Ultimately, I believe that this determination is dynamic and complex. And it is largely for this reason that the non-aggregative approach seems to fail. I suggested earlier that one, overall measure of well-being will not suffice as a criterion for the adequacy condition. To see why, consider the following. Suppose that three individuals each needs seven units of food to survive and that I have twenty-one units of food to offer. In the first case, I give them each seven units of food. In the second case, I give two of them eight units of food and one of them five units. In both cases, I've given twenty-one units of food to the individuals. But the two cases are not equivalent. I seem to have done worse in the second case. In the second case, I have failed to adequately take care of the three individuals. Nonetheless, I denied the non-aggregative approach and suggested that failing in any one category does not necessarily entail failing the adequacy condition overall.

Consider another example. In this case, three individuals again need seven units of food each to survive. Assume, for sake of argument, that these individuals actually have a right to the twenty-one units of food that I have. In this case, though, fourteen units of the food is desirable to the three individuals and seven units are undesirable. Suppose I give all fourteen units of desirable food to two individuals and the seven remaining units of undesirable food to the other individual. In doing so, let us suppose, I have violated the rights of the third individual. (Let us leave open whether or not this was intentional.) Yet, suppose that I have also laced this third individual's food with medicine that will protect them from illness and disease. In fact, assume that this will bring a greater benefit to this individual than having the desired food. I want to suggest, then, that it may be possible to compensate for the rights violation. And this is especially true for the case in which the rights violations were unintentional.

When the state fails to meet an adequacy condition for one category, the failure may not necessarily be intentional. So, it may be possible to compensate for that failure by maintaining a higher level of well-being in some other category. And here's why. The individuals affected in each category are the same individuals. Just like in the previous example, the individual whose rights have been violated can be the same individual benefited by some other action. If a state fails to fully respect my rights, but has provided robust protection of my rights, then the failure to fully respect my rights *could be* offset by the increase in my well-being that comes from the state's protecting my rights. The fact that the individuals are the same in each category makes this possible. This, of course, is not to say that *all* failures can be compensated. But this does explain why we

cannot simply appeal to one, overall measure for adequacy and how the individual aspects may fit together.

The suggestion, then, is that a particular failure in one category can be compensated by an increase in well-being generated by the state better respecting or protecting rights within the state. So, failing in any one particular category does not mean that the state must fail the overall adequacy condition. Yet, we should not accept that just *any* increase in well-being will be able to compensate for rights violations. Increasing well-being, for instance, cannot come at the expense of violating individual rights. If a state were to generate and maintain a level of well-being *at the expense of* respecting or protecting the rights of others, then the well-being generated could simply not count in the state's favor for meeting the adequacy condition.

So, the Control Principle for States suggests that a state cannot be required to generate the level of well-being that it could generate by perfectly protecting rights. It's just not possible. The argument being put forth in this section, however, is that failing to adequately respect or protect rights in any particular category does not necessarily entail that the state fails the overall adequacy condition. Instead, I have tentatively argued that a state may be able to partially compensate for rights violations by better respecting or protecting the rights of individuals whose rights have been violated. This is not to say, though, that well-being can be increased at the expense of respecting and violating rights. Doing so, in fact, would constitute a failure to respect or protect rights.

So, I have argued that one, overall measure of adequacy will be insufficient. I have further argued that failing to meet a particular adequacy condition will not

necessarily entail a failure to meet the overall adequacy condition. In what follows, I will tentatively argue how this approach relates to the overall determination of adequacy.

### **4.3 Satisfying the Overall Adequacy Condition**

Whether a state adequately respects and protects rights, I have argued, is best determined according to the well-being strictly associated with the state's respecting and protecting of the rights of individuals within the state. Further, I have argued that the state should be held to a higher standard for some particular categories. A state, for instance, is held to a higher standard for respecting rights than it will be for protecting rights against external threats. This variation, then, precludes us from appealing to one, overall measure of well-being to determine whether or not a state meets the adequacy condition. Finally, I argued that it is unreasonable to allow the failure in one particular category to constitute a failure overall. But that, instead, failures (and near failures) can be compensated, but ultimately can have a significant negative impact on the determination of adequacy.

## **5. When Does a State Fail?**

I argued above that whether or not a state adequately respects and protects rights should be determined by overall, aggregate adequacy (cf. § 5.2). Unfortunately, nothing I have argued so far gets us any closer to determining when a state actually fails to adequately respect and protect the rights of those within the state. We have, finally, arrived at determining what constitutes a state's failure to adequately respect and protect rights. In this section, I present two methods for determining overall adequacy. I will tentatively endorse one of the proposed methods.

## 5.1 Comparative Adequacy

Once we take everything into consideration, how do we set the criteria for the adequacy condition? We know, for instance, that the criteria will be short of what a state could do if the state were perfectly respecting and protecting. But how short of perfection could the criteria be? One way to set the relevant criteria would be to appeal to how well *other* states are doing.

Here, then, is our first suggestion for determining when a state might actually fail to adequately respect and protect rights:

**Comparative Adequacy:** A state is adequate overall, or adequate in a particular category, if it is not doing significantly worse at respecting and protecting rights than what some other willing state could do.

The basic idea with Comparative Adequacy is that if there is some other state, willing to do the job a particular state is doing, and could respect and protect the rights of those within the state significantly better, then the state in question could simply not be satisfying the adequacy condition. Let us consider an example.

If State A were perfectly protecting the rights of those within the state from internal threats, the well-being that could be generated would be X. Let us assume that the well-being generated from protecting these rights, once the impact of harms from the failures to protect these rights are factored in, is Y. And that Y is fairly lower than X. Assumer, further, that if State B had the authority over the territory, the well-being that could be generated by State B from perfectly respecting and protecting rights would be Z. And Z is significantly higher than X. And after all actual benefits and harms are

calculated, State B could actually generate a level of well-being greater than Z but still greater than X. In this way, State A must be considered to be doing significantly worse than State B when it comes to protecting the rights of those within the state from internal threats. Thus, according to Comparative Adequacy, State A would fail to meet the adequacy condition for protecting the rights of individuals within the state from internal threats.

Comparative Adequacy represents, then, a straightforward and quasi objective method for determining adequacy. Yet, it also respects the practical limitations that affect a state's ability to *perfectly* respect and protect rights. Further, Comparative Adequacy does not require all states to be equal in terms of respecting and protecting rights. Just that a state should not be significantly worse than what some other willing state could do. This reflects the idea that there is and will almost forever be room for improvement. And, in a nod toward Mill, this allows states to try to achieve freedom on their own. There is, then, much to appreciate about Comparative Adequacy.

Comparative Adequacy, though, suffers from at least one, significant problem.

Consider three states, Q, R and S and how those states fare in terms of protecting rights:

State Q: 6 units of benefits produced by the state, 4 units of harm allowed by the state, net 2 units of well-being within the state

State R: 40 units of benefits produced by the state, 10 units of harm allowed by the state, net 30 units of well-being within the state

State S: 15 units of benefits produced by the state, 5 units of harm allowed by the state, net 10 units of well-being within the state

Using Comparative Adequacy, it isn't clear if, for instance, State Q or S would be considered to be doing significantly worse than R. If we just consider overall well-being,

then Q and S *do* seem to be doing significantly worse. But if we consider how much harm is occurring within the states from failing to protect rights, Q and S seem to actually be doing *better* than R. What, then are we to make of this?

What this shows us is that Comparative Adequacy cannot, by itself, determine what constitutes satisfying the adequacy condition. For instance, we would need a further argument as to what should be compared. We could compare the net well-being, just the benefits or just the harms. But, alone, Comparative Adequacy does not distinguish between these approaches. But, more importantly, any such determination will not be sufficient.

We cannot make the determination for Comparative Adequacy because each culture may value benefits and harms differently. Individuals in one state may highly value maximizing benefits. Individuals in another state may, instead, value minimizing harm. And if there are good reasons to hold both positions, Comparative Adequacy will inevitably be insufficient to adjudicate between how well states are doing respecting and protecting rights. It would simply be unreasonable to judge a culture according to standard at odds with their traditions and values.

## **5.2 Simple Adequacy**

I have now argued that Comparative Adequacy cannot be justified as a method for determining whether a state satisfies the adequacy condition. I tentatively propose, then, that we judge states according to Simple Adequacy:

**Simple Adequacy:** A state is adequate overall, or adequate in a particular category, if it is not doing significantly worse at respecting and protecting rights

than what would be reasonably expecting by utilizing the resources it could reasonably acquire.

Simple Adequacy jettisons the comparative approach of Comparative Adequacy. Simple Adequacy is, in a sense, an *internal* determination of adequacy. It begins with the resources that a state actually has and asks how well a state is doing *with those resources*. For instance, if a state is doing as good as it can respecting and protecting rights with the resources it has, then the state will meet the adequacy condition. And the justification for Simple Adequacy comes from none other than the Control Principle for States.

For Simple Adequacy, we are assuming that the state is already constrained by its resources. What this means, then, is that the state cannot be assessable for not doing more with resources it doesn't have for reasons beyond the control of the state. To simply require more of the state would be unreasonable and inappropriate. What we ask, then, is whether the state could be doing significantly better *with the resources it has or could reasonably acquire*. If it can, then it will fail the adequacy condition.

One might object, here, that this misses a crucial point. It would permit states with very little resources to not do well in terms of respecting and protecting rights when another state could do much more for those within the state in question. There is some truth to this. But it's a half truth. Here's why. We have been talking all along about the principle of nonintervention. And the principle of nonintervention grants states a claim against intervention so long as certain conditions are met. The purpose is to protect states from unwarranted takeover from some other state.

The objection that we are now considering fails to recognize that there is a difference between humanitarian intervention and humanitarian aid. The principle of nonintervention protects against unwarranted intervention. So, Simple Adequacy might, in fact, grant a state a claim against intervention even when individuals within the state are doing poorly. This, though, is not a reason for an intervention and takeover. It is a reason for aid.

Consider the following case: A mother and child are in a car wreck and the mother's car is teetering on the edge of a cliff. The child is in danger. But there's nothing the mother can do to help. It would be unreasonable, then, for one to only save the child, especially if it were possible to rescue them both. Similarly, just because one state may be able to do better at respecting and protecting rights than some other state cannot, itself, give the better state permission to intervene. But it could give a reason to aid.

So, consider our resource poor state once again. Some other state could do better respecting and protecting rights, mainly because the state has more resources. Now, if humanitarian *aid* were given or offered to our poor state, then those resources become resources that the poor state would have. And if the state were to refuse or squander those resources, then this *would* seem to cause the state to be doing worse with the resources it had. The state may then, actually, fail to be adequately respecting and protecting rights. Simple Adequacy, then, does not necessarily preclude intervention for poor states. But it *does* preclude it for those cases in which those poor states did not have an opportunity to do better.

I have, then, articulated the basic notion of Simple Adequacy. But we have not yet determined what it would mean for a state to actually *fail* to adequately respect and

protect rights according to this conception. We do, however, have some guideposts. A state cannot be held to a higher standard than what could be reasonable expected given the available resources. This is, again, a significant departure from the Strict View. This means, of course, that states with less resources are permitted to do worse in terms of respecting and protecting rights while nonetheless maintaining a claim against intervention.

The starting point for determining Simple Adequacy is thus the resources possessed by a state. From there, we ask how well the rights of those within the state could be respected and protected *with those resources*. That would be starting point. Then, we would be forced to make a quasi-comparative judgment. We ask how well a state in general could be expected to do with those resources. If the state in question does significantly worse than that determination, then the state will fail the Simple Adequacy test and the overall adequacy condition.

## **6. A Surprising Conclusion**

I have tentatively argued for a particular individualist approach to the principle of nonintervention. First, I argued that the principle is best expressed in terms of the well-being strictly associated with how well the state does respecting and protecting the rights of those within the state. I then argued that the adequacy condition for respecting and protecting rights is severely impacted by the Control Principle for States. The conclusion, there, was that we must permit some amount of harm from rights violations within a state due to the lack of control that a state has over the relevant threats. I argued further that what it means for a state to be adequately respecting and protecting rights will vary

between the various, relevant considerations. This precluded us from establishing one, overall measure for the adequacy condition.

I then argued that we should accept an aggregative account of adequacy rather than a rigid, non-aggregative account. Finally, in the previous section, I argued for what might be considered an *internal* measure of overall adequacy. I referred to this view as Simple Adequacy. The result is that a state can maintain a claim against intervention even if respecting and protecting rights within the state is far from perfect. In fact, at every step along the way, it seems we have moved the needle farther and farther from perfection. At this point, it would be reasonable to expect a state to maintain a claim against intervention even if there are numerous and even severe rights violations occurring within the state. This is a surprising result.

Nowhere in this most recent discussion have I abandoned the primary, individualist approach. In fact, I accepted that approach as a starting point and have articulated relevant positions in order to be consistent with that individualist approach. Nonetheless, we now seem driven to conclude that a state can maintain a claim against intervention even when there are numerous and even severe rights violations occurring within the state. And this has an impact on the promise of the individualist approach.

The conclusion just reached means that the lofty goals of the individualist approach to the principle of nonintervention cannot hold up under examination. It means that the individualist and the statist (i.e. Walzer) have more in common than we might otherwise expect. The views are not so diametrically opposed as we might have otherwise believed. In fact, the views are theoretically congruent. A state will typically have a claim

against intervention, possibly even in those cases in which there are numerous and severe rights violations occurring within the state.

## **Chapter 7**

### **Conclusion**

I have argued that a state's claim against intervention is best determined by whether the state in question adequately respects and protects the rights of individuals within the state. Far from being a straightforward view, however, this approach to the issue of intervention is not well defined. I have tentatively argued for some relevant considerations for guiding future discussion and inquiry of this particular approach to the issue of intervention. I now want to close by reinforcing some of the major conclusions of the dissertation and by pointing to aspects of the view which are still under developed.

#### **1. Major Conclusions**

One major advancement of this dissertation was the dismantling of a popular reply to a persistent objection regarding views on intervention. The objection is roughly as follows: any view that weakens a state's right against intervention will open the door for widespread interventions. This implication, then, is that widespread interventions would be detrimental and so this is a reason to reject any view that seems to weaken state's rights. Some have replied, however, that even for states that lack a right against intervention, "foreign actors are unlikely to be able to meet the just war theory criteria other than just cause except in rare circumstances." (Aloyo, 2015, p. 333) Thus, even in those cases, intervention would not be widespread. I argued in the dissertation, however,

that this is false. It will almost always be feasible to design an intervention strategy that would be permissible, even on the standard just war criteria. So, this appeal to other considerations does not pacify the objection. Any view on the issue of intervention, then, must take the permissiveness objection seriously.

The second, and potentially greatest advancement of the dissertation, has been the discovery of the Control Principle for States. This principle, I argue, has wide ranging implications for the question of intervention. The principle suggests that states cannot be assessable for rights violations that occur within the state that are, in some sense, beyond the control of the state. The mere fact that rights violations occur within the state is not necessarily a fact that affects the state's right against intervention. Rather, it can only be those violations that are, in some sense, within the control of the state that apply to the state. This principle, then, has major implications for how we are to think about a state's claim against intervention and what it looks like to adequately respect and protect rights.

The last major conclusion of this dissertation has been the realization that a view on a state's claim against intervention that is focused on respecting and protecting individual rights may nonetheless grant a right against intervention to states even in those cases in which there are widespread and severe rights violations occurring within the state. The surprising feature of this conclusion is that it seems to contradict the objection to the earlier views that were rejected in the dissertation. The Communitarian View on the right against intervention, for instance, was rejected because it did not take individual rights seriously enough. On this view, states could commit and allow rights violations and nonetheless maintain a claim against intervention. Emphasizing individual rights was supposed to correct this defect. Unfortunately, though, I argued that moving to respecting

and protecting individual rights does not result in a view on the right against intervention that fares significantly better than the more state-centric Communitarian View.

## **2. Future Work**

Again, the discovery of the Control Principle for States seems to be one of the major revelations of this dissertation. Moreover, the principle itself does not seem limited to only the question of intervention. For instance, I also appealed to the principle in discussing what we should expect from states given the resources the state has and could reasonably acquire. Nonetheless, the Control Principle for States seems as though it might be useful for future and diverse inquiries into how we assess states. One potential and fruitful area in which this principle might be useful is in the discussion of political authority.

Some have argued (e.g. Simmons 1979) that states lack political authority due to individuals lacking political obligations toward their states for various reasons. Some of these reasons, however, may be mitigated when we consider the Control Principle for States. For instance, if a state has authority of those within the state only if the state has full consent, this would seem to violate the Control Principle for States. It may simply not be reasonable to require a state to obtain full consent of those within the state if obtaining such consent would be beyond the control of the state. I am not, here, intending to defend such a view. Rather, I am pointing out only the far-reaching influence that the Control Principle for States may have.

In addition, I have largely accepted the Control Principle for States without much question. While it conforms to basic intuitions, this does not amount to a sustained

defense. And since the Control Principle for States largely mirrors the Control Principle in action theory, it is reasonable to suspect that the Control Principle for States may not be completely uncontroversial. So, while the Control Principle for States may be a valuable tool in thinking about states, the principle itself stands in need of a robust defense.

Finally, in concluding the ultimate view defended in the dissertation, I suggested that states can be held accountable only in relation to those resources it has and could reasonably acquire. What is still needed, however, is a proper way to understand and evaluate how well a state does with the resources it has and could acquire. While I have rejected a comparative approach in regards to the right against intervention in general, comparisons may ultimately be necessary for some of the more relevant considerations. The only way to assess whether a state is doing well with the resources it has is to compare it to how well *other* states do with similar resources. Future work, then, will require more involved and detailed comparisons of these issues.

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## VITA

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