

What Liberals Should Tolerate Internationally

Andrew Jason Cohen

Department of Philosophy, Georgia State University, USA;
cohenaj@gsu.edu

Andrew Jason Cohen is Professor of Philosophy at Georgia State University. He is the author of *Toleration and Freedom from Harm* (Routledge, 2018) and *Toleration* (Polity, 2014) as well as articles in journals like *Ethics*, *The Canadian Journal of Philosophy* and in new reference works like *The Cambridge Companion to Liberalism*. He is increasingly examining the role of toleration (or the lack thereof) in our system of criminal law and in business ethics.

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Abstract

The purpose of this paper is to shed light on what liberal states should tolerate outside their borders. This requires definitions of 'liberalism,' 'toleration,' and 'state.' In the first section of this paper, I briefly indicate how I use those and other terms necessary to the discussion and introduce the normative principle I take liberals to be committed to. In the second section, I continue clearing the path for the rest of my discussion. In the rest of the paper, I draw conclusions about what liberals should tolerate outside their state that I believe follow from the proffered definitions and principles. I limit myself to interference aimed at providing humanitarian aid, but do so in a way that is meant to provide resources for thinking about other sorts of interventions. In the third section, I consider humanitarian interventions done with the permission of the other state and will point toward a toleration-based view; here we are really talking about non-toleration of suffering. In the fourth section, I consider humanitarian interventions done *without* the permission of the other state; here we are talking about non-toleration of a state that harms its residents. I consider an objection in section five.

Keywords: toleration, international, harm principle.

I Introduction

The purpose of this paper is to shed light on what liberals should tolerate outside the borders of their own state. Put another way, I seek to help illuminate when interference by a liberal state in affairs outside its borders is permissible.¹ That is less straightforward than it may seem, requiring definitions of 'liberalism,' 'toleration,' and 'state.' In the first section of this paper, I briefly indicate how I use those and other terms necessary to the discussion and introduce the normative principle I take liberals to be committed to. In the second section, I continue clearing the path for the rest of my discussion. In the rest of the paper, I draw conclusions about what liberals should tolerate outside their state that I believe follow from the proffered

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I note at the outset that some will think it odd to consider humanitarian aid in a discussion of toleration. After all, humanitarian aid is *aid* and we often think of failures to tolerate as attempts to *hinder*. When we aid, though, we do so in order to prevent or stop something from happening. We might, for example, seek to end starvation and suffering. If it's a stretch to say we seek to hinder starvation or suffering, it's not much of a stretch. It's reasonable to think we want not to tolerate suffering, especially suffering wrongly caused by others.

While I attempt to shed light on what should be tolerated internationally, I do not claim to settle the issue. Rather, this paper is meant to provide a framework for thinking about international interventions at the limits of toleration and to encourage more work about how such a framework would be applied, especially by those who are unconvinced that liberalism must be built upon an assumption that autonomy or equality must be everywhere promoted (which is not to deny that either has value to be *protected*).² That is, I hope to see more work that takes toleration as the root value of international liberal theory.

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I. Definitions, etc.

My understanding of liberalism begins with an assumption that it is committed to both toleration and autonomy. I begin with my definition of toleration as *an agent's intentional and principled refraining from interfering with an opposed other (or their behavior, etc.) in situations of diversity, where the agent believes she has the power to interfere* (Cohen, 2014).³ I assume that it does not matter whether the agent that tolerates – or the other she refrains from interfering with – is an individual or a group. Indeed, the group could be a national or international group or even a state.⁴ It is important, though, that this is a definition only and so offers no normative guidance about *what* to tolerate. Fortunately, we have access to a well-established liberal principle of toleration that does: John Stuart Mill's harm principle.

We can take liberalism to be a family of political theories that have a primary and weighty commitment to Mill's principle – it is, after all, a normative principle of toleration that protects autonomy (and, by definition, toleration).⁵ It reads, recall: 'the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection ... the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others' (Mill, 1978/1959, p. 9). In permitting interference to prevent harm to others, the harm principle allows for the protection of autonomy, which we can take to be *an ability to independently choose for oneself without dependence on others*,⁶ but the specific account of autonomy need not concern us here.

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Importantly, though the harm principle will have us protect autonomy, it will not necessarily require that autonomy be *promoted*. Indeed, the promotion of autonomy would, in various cases, require curtailing toleration – in a way, it should be noted, that promoting toleration would not curtail autonomy. Consider that if we work to promote autonomy within a traditional hierarchical religious community – perhaps by promoting women’s rights – we would seem not to tolerate that communities’ traditional way of life. Deciding to tolerate the way of life, by contrast, would involve only the non-promotion of autonomy, not the non-protection of autonomy. We could both tolerate the communities’ traditional way of life and protect any women within the community who (attempt to) exercise their autonomy – for example, by protecting their right to exit the community.⁷

Liberalisms, of course, vary. Few accept the harm principle as written, insisting that preventing harm is not the only justification for state action. Some liberals, for example, think some non-harmful offenses must also be included in the category of actions that warrant interference by the state (Joel Feinberg is the primary proponent of such a view).⁸ Others think some principle regarding the positive welfare of citizens is required (for our purposes, we can count John Rawls and his Difference Principle in this category, though the principle operates at a different level). For present concerns, these count as variations of liberalism. The variations will differ from my account in terms of what they dictate we tolerate (or not) outside the state (as well as within!),⁹ but discussing liberalism in terms of the harm principle should be instructive nonetheless. All versions of liberalism share a commitment to normative toleration that includes some version of the harm principle,¹⁰ indicating that state interference to prevent or rectify harm is permissible.

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The harm principle is a normative principle of toleration that provides justification for interference from both individuals and groups of all sorts, including governments and states. All other things equal, if the harm principle rules out my interference in Joe's marijuana smoking, for example, it rules out government interference therein. Of course, all other things are rarely equal and there may be reasons external to the current discussion that would justify a government's interference that do not justify an individual's interference. More importantly, for our purposes, the harm principle deals explicitly with questions of when it is acceptable to interfere in the lives of individuals. We can write the principle large, however, to form a normative principle of toleration that applies to groups, including international groups:

GHP, Group Harm Principle: The sole end for which Group A (or its members) is warranted in interfering with the activity of Group B (or its members) is if that activity harms Group X (or its members), where X can be A or any group other than B.¹¹

The groups we will be concerned with here are international groups, including, but not limited to states, nations, peoples, and the like. For the most obvious example, if one state attacks another, it likely harms the second, or members thereof. Similarly, though, if a state attacks a group within its borders. Members of a cultural or religious minority, for example, are members of a group within a state even if they are also members of that state.

I work here with the GHP because, as noted, I take it to be the harm principle writ large and my interest is, in part, in testing the hypothesis that such a principle can serve our needs in the international sphere. Putting this differently, the GHP is

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a specification of the harm principle (hereafter, HP) so that all violations of the GHP are violations of the HP (but not all violations of the HP are violations of the GHP). If the GHP does not have this relationship to the harm principle, that would be reason, by my own lights, to ignore what follows. I don't think that is the case and I do think the principle can be applied to the international arena. Moreover, I think it gives the correct verdicts for international cases. I'll discuss several; if you have reason to think the permissions the GHP grants are wrong, you have reason to doubt the GHP and thus reason to doubt the harm principle can serve the international arena.

Before moving on, there is one last definition to put on the table. We need to understand what is meant by the term 'state.' For my purposes, a state is a social grouping of individuals with a sovereign governance structure where to be sovereign means no other entity (social, political, or other) is successfully and systematically challenging its ability to execute its law (where law need not be codified).¹² Generally, but not with necessity, those social groupings are organized geographically contiguously (in a loose sense) and have shared norms (esp. of language and behavior).¹³

Given the definitions just discussed, we can say a liberal state is a state, as already defined, that takes state action to be morally limited to actions permitted by liberal normative principles of toleration, including (some version of)¹⁴ the harm principle and GHP. Now we can begin to consider what liberal states should tolerate.

II. Further Path Clearing

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In my 2007 'What the Liberal State Should Tolerate Within Its Borders,' I argue that ideal liberal states tolerate illiberal communities within their borders so long as those communities are non-coercively developed and maintained (pp. 497 ff). Such communities could develop when people choose to live with others and give some of the others power over themselves. For those of us with liberal tendencies, it is difficult to imagine sacrificing our own autonomy to the will of others and I certainly do not encourage such behavior. Indeed, I think that when the sacrifice is significant, the agent doing the sacrificing may be subject to testing to determine if their consent is fully voluntary and informed. Only fully voluntary and informed consent could make coercion of the subject something to be tolerated; without it, coercion is likely a harm and, per the harm principle, toleration may end.

The key to the permissibility of illiberal communities within the liberal state is that the liberal state can – and must – guarantee that entrance into the community is fully voluntary and informed. In this way, the *Volenti* principle – *volenti non fit injuria* – is satisfied, thus also satisfying the harm principle. For an agent that voluntarily agrees to have her interests set back cannot claim to be harmed in the process. 'In law, if I consent to a potential harm being done to me, then no legally cognizable harm has taken place ... In morality, similarly, If I consent ... the moral harm of coercion no longer seems to exist' (Blake 2013, p. 85).

What does liberalism require us to tolerate internationally? The analysis summarized above should be of help. Illiberal communities are permissible if their members enter with fully voluntary and informed consent. Within an ideal liberal state, the state itself guarantees this is the case. Internationally, though, there is no

single body that is responsible for guaranteeing fully voluntary and informed consent in illiberal states. Liberal states may handle this requirement internally, but illiberal states are not likely to. Liberal states, for better or worse, are not likely to – and certainly have not so far – been willing to ensure that members of other states are such members of their own accord.

Illiberal states do not, either empirically or conceptually, develop from individuals banding together with fully voluntary informed consent. As David Hume argued, states are generally founded on ‘usurpation or conquest.’¹⁵ This does not mean that illiberal states must not be tolerated. After all, even liberal states were formed through usurpation or conquest. So, more is involved. On my view, if all members of a state currently consent (with full voluntariness and full information) to its laws, its treatment of them will not warrant interference.¹⁶ Regardless of what it does internally, such a state must be tolerated unless it acts in some way that is harmful to those in *other* states.

I am not suggesting that any existing state enjoys the consent of all those living within its confines. However, what can be done – and what should be tolerated within states – is not my topic here. Hence, to simplify matters I simply assume *internal legitimacy* (perhaps because all citizens consent) of a state that is deciding whether or not to end toleration and interfere elsewhere.

There are multiple complications involved in toleration outside a single state. First, neither the tolerator nor the toleratee need be a state. Either can be a state, members thereof (individually or collectively), or non-state actors such as NGOs. Second, a more standardly recognized complication: there is a simple practical concern that failure by one state to tolerate activity in the realm of another state

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can have serious strategic – especially military and economic – costs and consequences. Finally, another standard concern is that providing the minimal justification needed to allow for interference in intra-state cases will not be enough in the inter-state case as the justification must meet the additional burden of overcoming the *prima facie* moral prohibition of violating state sovereignty – the requirement, that is, of not challenging the other state’s ability to execute its law.¹⁷

Importantly, there will often be strategic concerns that sometimes trump more standardly moral concerns. Some strategic concerns are themselves inherently moral and cannot be ignored in moral analysis. Choosing to send soldiers into an armed conflict cannot be considered a non-moral issue as soldiers are persons with moral worth. As such, some will say that if an interstate failure to tolerate – i.e., an international intervention – is permissible, it is also required. The idea here is that if an intervention is to be permissible, it must require no great moral loss and that when no great moral loss is at risk, prevention of great moral harm (via intervention) is required. To see this more clearly, consider a simple case of international rescue.

In the territory of country B, there is a coup and much chaos. In the midst of that chaos, the visiting Ambassador from country A is kidnapped by the new ruling party that credibly threatens to kill her. Country A may want to send in a special-operations military unit to save its Ambassador. Sending such a force involves risks – the men of the unit may be killed. Assuming, *in arguendo*, a *prima facie* right to rescue its ambassador, the greater the risk to the unit, the less morally permissible, all things considered, the attempted rescue. If that risk can be removed (*per impossibile*), the danger to the Ambassador seems to make the permissible rescue mandatory. It is, after all, only when there are countervailing moral costs that

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we are unsure whether we should prevent moral costs.¹⁸ To see the point again in general terms, consider the following table.

		<u>Does the interference involve a risk of moral loss?</u>	
		YES	NO
<u>Is the interference necessary to prevent a harm/moral loss?</u>	YES	1. Problem cases	2. interfere
	NO	3. Do not Interfere	4. Do not interfere

If there is no harm to prevent, there is no reason to interfere (boxes 3 and 4). If there is a (great) harm to prevent and no loss would be risked, we should intervene to prevent the harm (box 2). If there is a harm to prevent, but also a risk of a (great) loss, my interlocutor says, although *successful* interference would be desired, we are not permitted to interfere (box 1). Hence, only in cases where interference is required (box 2: harm prevented, none risked), will it be permissible. On this reasonable view, gambling with moral losses is not permissible.¹⁹

There are two points to be made in response to such a view. First, the view is simplistically consequentialist in reasoning; the idea is that the great moral good done by interfering (e.g., saving the ambassador) that *would* make the interference permissible absent countervailing loss, will not be permissible if outweighed by that loss (e.g., loss of members of the military unit). Such simplistic consequentialist reasoning should be doubted. Consider analogous interpersonal cases. Sally is morally permitted to try to save John from his burning apartment even if at risk of great harm to herself. That there is such risk is why we consider Sally to be heroic, engaging in a supererogatory act, if she tries to save John. It does not make her attempt impermissible (or required). Comparable international cases are not hard to come

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up with. In addition to the kidnapped Ambassador case, consider that if a man from a theocratic state marries an American woman, has a child with her, then takes the child away from her to his homeland without her consent and his state refuses to help her, it is (I think) permissible for her state to interfere. I doubt it is required.²⁰

The second response to the claim that morally permitted international interventions must also be morally required is that the view is, essentially, myopic and fails to distinguish between the class of things that are morally permissible and the class of things that are *morally permissible* by this state *all things considered*. When China invaded Tibet, a moral harm was committed, and the GHP indicates international intervention in response is *prima facie* permissible. Of course, U.S. intervention would involve risk of great moral harm and thus may not be morally required. It may well be that given the great risk of harm, U.S. intervention is not, all things considered, permissible.²¹ However, if there were another international player that could intervene with little risk of harm to itself or its citizens, it would surely be permitted (perhaps even required) to interfere. Permissibility should not be defined in overly simplistic or U.S.-centric terms. It should be defined independent of the particular players of the case. Once this is recognized, it becomes obvious that the class of things that are morally permissible and the class of things that are morally required are different even if the class of things that are *morally permissible* by this state *all things considered* is the same as the class of things *morally required* by this state *all things considered*.

Although there are complications, liberal theory can offer guidance as to when toleration is called for, forbidden, or merely permissible. While liberalism

arose in a context wherein individuals were concerned to oppose monarchic power For *Critical Review of International Social and Political Philosophy*, Vol 24, No. 1, 2021 and *The Politics and Ethics of Toleration*, Ed. by Drerup and Kühler, Routledge, 2021.

within smaller polities, it is not an outdated theory given a world of nation-states, multi-national states, for-profit and non-profit multi-national organizations, and new federal or consociationalist forms of government. International governance structures have existed for centuries in the form of bilateral and multi-lateral interstate treaties. It may be that these less eroded the weight of state sovereignty in the past than they do now, but it is not clear that weight should be maintained. Liberals are, again, concerned to limit the reasons that legitimate interference to those granted by the harm principle (and GHP) and other appropriate normative principles of toleration. Hence, liberal states are committed to *only* allowing themselves to interfere in cases where these principles are violated – but it is not the case that *all* violations of these principles will warrant intervention. The class of actions warranting intervention is entirely within the class of actions violating these principles, but the two classes are not equivalent. Some violations of these principles will not violate them seriously enough, given countervailing factors, to warrant interference.²²

III. Humanitarian interventions With the Other State's Permission

What can we say about what should be tolerated internationally? Given the conceptual definition, we can begin by noting we do not tolerate anything internationally (or otherwise) unless we oppose it. If we approve, for example, of healthcare policy in Britain, there can be no question of our tolerating it. We also know that if we are to tolerate, we must be intending to not interfere on principle. The question, then, is when we should do so, when we should refrain from interfering for merely pragmatic reasons, and when we should interfere.

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If our liberal state does not oppose some activity overseas, like British healthcare policy, we cannot (conceptually) tolerate it and so there is no question of whether we *should* tolerate it. (Which is not to say we interfere.) Many will wonder, though, if we should *aid*. Should we aid the people of ThirdWorldVania against starvation? We might think we should. Such cases – any cases of genuinely humanitarian foreign aid to impoverished regions – can easily be framed in terms of toleration, though it is uncommon to do so. The question is simply whether we should tolerate starvation and disease in those lands – clearly, we oppose them. If we should not tolerate them, we may want to intervene – whether via grants to the governments of the starving people or in some other way. Importantly, in the sorts of cases considered in this section, the government of the region wherein aid is provided welcomes the assistance. There is thus no question about interfering with that government. The question is only about interfering with the starvation and suffering. Assuming these were not caused by harms, the GHP (and harm principle), taken strictly, quickly indicate no interference is warranted.²³ Conceptually, toleration (and hence, non-toleration) of the suffering is possible. Normatively, the principle considered here indicates no interference with the activity of Group B (or its members) is warranted.

We should be careful here. After all, there is no group (or individual) to be interfered with – the state wherein the suffering occurs welcomes the aid and no one else is imposed upon by it. Charitably helping the suffering population is thus permissible. Put differently, the GHP, like the harm principle, indicates when we can limit the freedom of others – but here no one's freedom is being limited by the aid.²⁴

²³ For *Critical Review of International Social and Political Philosophy*, Vol 24, No. 1, 2021 and *The Politics and Ethics of Toleration*, Ed. by Drerup and Kühler, Routledge, 2021.

Considering humanitarian intervention in terms of toleration is, I think, instructive. Foreign aid from one government to another, notoriously, does not work well. It often does little more than aid the recipient government in harming minority groups.²⁵ Moreover, it suppresses trade, restricts the flow of private foreign investment, raises the real rate of exchange, promotes rent-seeking instead of productive behavior, often encourages problematic collectivization, discourages agricultural production and favors investment in unviable (often industrial) projects.²⁶ Framing the question in terms of toleration, though, forces us to consider the form of possible interventions so as to prevent running afoul of the harm principle – for if our interventions cause harm, we would be subject to interference. If, though, we can interfere to end starvation in Bangladesh, for example, without causing the problems associated with government aid programs, it may be that we should. It may turn out that the best form of interference is direct grants to individuals; it may turn out that the best action is no action. The context, obviously, will matter. These questions tend to get swept aside in current discussions.

Let's take a step back. Assume any private citizen's donation of resources to other citizens of their own state must be tolerated. Similarly, their donation of resources to citizens of *other* states must be tolerated, at least when those states are not opposed. This may even be morally praiseworthy given the right conditions.²⁷ Indeed, I think most accept that 'although well-off individuals have a great deal of discretion as to how to address the most serious injustices of the world, they also have a duty of justice to take action to mitigate such injustices' (Altman and Wellman 2009, p. 142). I take it for granted, also, that a government's (with its citizens' agreement) donating to citizens of other states must be tolerated – again, at least

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when recipient states are not opposed. They may even be permitted to donate to other governments – with the same caveat and the additional concern that the bolstered government might be harmful. Perhaps the most difficult question is whether to violate a state’s sovereignty in order to help. If an individual or state interferes with a sovereign state to help individuals in that state against its wishes, some will think there is a moral wrong that ought not be tolerated. I return to this in the next section.

Assume now that there is a moral principle indicating that states (or citizens therein) that have adequate (or better) resources have an obligation to aid those in states that have inadequate resources. Such a principle, of course, would require some change to the GHP. While I am skeptical of such a move, it is widely accepted that such obligations exist.²⁸ Even absent such an obligation, many of us will think we should (charitably) provide assistance. Importantly, though, whether we can charitably offer assistance or we have an obligation to help, we cannot conclude that states (or citizens therein) that have adequate (or better) resources (like us) should (charitably or obligatorily) aid those in states that have inadequate resources (like ThirdWorldVania) *in their society*, nor aid those other states qua states. Although many that write in defense of international redistribution often fail to recognize it, emigration – perhaps coupled with remittances—is an important method of international redistribution.²⁹ Hence, it might be enough – indeed, it might be better – to help those in states with inadequate resources to migrate to a place with better resources (perhaps our own state).³⁰ Though I am skeptical of an *obligation* to provide such aid, as a matter of charitable activity, I endorse it.

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Picture an island devastated by floods, now incapable of supporting agriculture. The people there need help. If there is a good reason to believe the island cannot be made life-supporting (a dubious situation to be sure), the people have to move and at most our aid should be aiding emigration (and resettling). More realistically, the island will take some years to become life-sustaining again. Perhaps, then, we ought to help them with temporary food supplements. But perhaps aiding emigration remains the best option. Certainly, in the more extreme case, where the island *can't* support life, we simply cannot conclude that we must sustain the people *on the island*. Some might bemoan the loss of the 'island culture' that would follow mass emigration,³¹ but given the extreme nature of the natural disaster, that is unavoidable. The only possibilities are losing the culture and the individuals or (possibly) losing the culture but saving the individuals by relocating them.

What should be clear now is that no duty to aid individuals outside (or in) our borders can require, in all cases, that we help them to continue to lead the sorts of lives they previously lived (or would choose to live) in the environment they were living in (or would choose to live in). There may nonetheless be a duty to help such individuals. Moreover, even without such a duty, we may wish to help. The point here is only that when warranted, humanitarian interventions may not require intervening to sustain an existing way of life – they may require intervening to help individuals migrate to places where they can lead better lives than they currently lead. When we seek to *not tolerate* the suffering individuals endure in other states, our interference can take a variety of forms, not all of which involve sending help to those states (or the people in them); some require allowing or helping those individuals to migrate. I take it that many cases of international aid are like this. Where

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the recipient state's government welcomes such aid, there is little risk of harm though great promise to end considerable suffering and so such aid is permissible – though perhaps not obligatory.

As indicated, we must be careful to avoid causing or risking harm in the process of helping to alleviate suffering. The risk of harm, though, greatly increases where the aid would be provided against the will of the recipient state's government. In such situations, it is likely that the relevant government is acting in ways harmful to the residents in its borders – and there is thus a question not only about non-toleration of suffering, but also of that government.

IV. Humanitarian interventions Without the Other State's Permission

Some believe that within a nation-state, toleration should only extend so far as the behavior tolerated does not violate any of the nation's basic mores. (So, in the U.S. for example, they might not want to tolerate voluntary cannibalism.) This also seems to be how Rawls understands toleration in the international arena. He thinks we must tolerate nonliberal peoples so long as they are *decent*; should they violate human rights, however,³² toleration may end: 'provided a nonliberal society's basic institutions meet certain specified conditions of political right and justice and lead its people to honor a *reasonable and just law for the Society of Peoples*, a liberal people is to tolerate and accept that society' (Rawls 1999, pp. 59-60, italics added). If 'reasonable and just' international laws required only that liberal societies should tolerate nonliberal societies so long as the latter do not harm any other groups (or individuals therein), I would likely agree. That is the requirement specified by the

GHP. Rawls, however, likely means more.

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Rawls insists that nonliberal societies be 'decent,' especially indicating that they respect human rights. He tells us that the fulfillment of human rights 'is sufficient to exclude justified and forceful intervention by other peoples, for example, by diplomatic and economic sanctions, or in grave cases by military force' and 'is a necessary condition of the decency of a society's political institutions and of its legal order' and, finally, that 'liberal and decent peoples ... simply do not tolerate outlaw states' (Rawls 1999, 80 and 81). Outlaw states, of course, are unlikely to agree to intervention by other, especially liberal, states – even humanitarian intervention, which is our concern here.

My view likely differs from Rawls's view in more often requiring non-interference – that is to say, I draw the limits (and so, the range) of toleration more widely. While I agree that as a matter of self-defense, a state need not tolerate an aggressor state, Rawls also claims that regimes that are not aggressive to other states (or the people therein) but that violate human rights 'must be made to realize that without honoring human rights, their participation in a system of social cooperation is simply impossible, and that such a system would be to their benefit' (Rawls 1999, p. 94 note 6). While I agree that such participation is likely to be to their benefit, I am uncomfortable with the prior (presumably moral) impossibility claim. Rawls adds 'A system driven by slavery and the threat of human sacrifice is not a system of cooperation, and cannot be a part of an international system of cooperation.' Indeed, he thinks that if the 'offenses against human rights are egregious and the society does not respond to the imposition of sanctions ... intervention would be acceptable and would be called for' (Rawls 1999, p. 94). This view is compelling, but

I see no argument for it and I suspect that it is at odds with what Rawls says in the *For Critical Review of International Social and Political Philosophy*, Vol 24, No. 1, 2021 and *The Politics and Ethics of Toleration*, Ed. by Drerup and Kühler, Routledge, 2021.

same work about equality. He claims that we can treat a People as equal to us in the Society of Peoples even though that People does not treat its members as equals (Rawls 1999, 69-70). Yet, here he insists we cannot cooperate with a People if its members aren't cooperating with one another. But, to use an example like those he uses to support his claim about equality, I can cooperate with a business partnership (say by selling the partnership my services) even if the members of that partnership are not cooperating with each other (say one member of the partnership is being slowly forced out of the business). I will not push this internal critique of Rawls here.

Undoubtedly, a state's violating human rights – likely a particularly egregious way a state would lack cooperation with some of its members – seems like a good reason for humanitarian intervention. Violating human rights, after all, is usually harmful and according to the GHP, liberal states (Group A) ought not interfere in the activities of another state (Group B) unless that latter state (or its members) engage in activity harmful to others. Where there is harm, then, there is warrant for non-toleration. As already indicated, though, 'warrant' is not 'requirement.' Significant moral costs must be considered. There is, we might say, an ordinary duty to rescue, but such a duty can be overridden and, if the harmed individual or group is within the harming (and hence, illiberal) state, that state's sovereignty may be an issue.

The possibility of significant moral cost reducing or eliminating a duty to interfere in another's (including another state's) acts is a significant limitation to permissible interference. It's a limit that I suspect Rawls would accept. There is

another important limit that I suspect he would not accept: where the recipient state

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opposes it, the interference must be to prevent (or rectify) *genuine* harms – these are wrongful setbacks to someone’s interests.³³ That they are wrongful requires that the individual harmed not consent to them. Hence, in the first section I indicated ‘The key to the permissibility of the illiberal communities within the liberal state is that the liberal state can – and must – guarantee that entrance into the community is fully voluntary and informed. In this way, the *Volenti* principle – *volenti non fit injuria* – is satisfied, thus also satisfying the harm principle. For an agent that voluntarily agrees to have her interests set back cannot claim to be harmed in the process.’ A corollary to that is that *Volenti* can be satisfied – and the harm principle (and GHP) *not transgressed* – if the individual whose interests are set back consents by remaining in the situation despite being able to exit.

On the view advocated here, a decision to not tolerate activity in another society because of harm done to individuals in that society, requires that those ostensibly harmed not have a protected right to exit. A violation of human rights would ordinarily be a harm³⁴ and thus entail a violation of the harm principle (or GHP),³⁵ making permissible an intervention (an act of non-toleration). If, however, the individual ostensibly harmed can leave and thus not be subject to the activity in question, the individual can avoid the harm. If the individual remains, then, there is some reason to think the individual consents to the activity – and that the activity is thus not harmful (or a violation of a right), even though it is (by presumption) a setback to the individual’s interests.³⁶ The presence of a protected right to exit means that what would be a harm – even if it would be a violation of a human right – is not a harm.

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Of course, we cannot expect that an illiberal society will guarantee a right to exit to those it persecutes. Indeed, it is likely that most cases of human rights violations include a violation of the right to migrate. I won't try to make that case here; my point is only that we can address the problem – of real harms caused in another state to residents of that state – with the provision of aid to exit. That is, if an individual is the subject of a human rights violation, she can be aided by helping her to emigrate from the state wherein her right is being violated. This parallels the claim from the last section that one way to aid those in a devastated state is to help them immigrate to one's own country.

Some will rightly worry about children in these scenarios. Protected rights to exit, along with aid to do so, they may claim, *might* be acceptable when speaking of autonomous adults, but cannot be sufficient when discussing pre-autonomous children. In their case, it may be insisted, we ought to promote autonomy and not merely protect it. Putting this point differently, even if protected exit rights imply sufficient consent on behalf of adults, it says nothing about those who are not yet capable of consent. There is something importantly right about this. Pre-autonomous children are not capable of consent, so we cannot say they consent when they have a right to exit. Two things need to be recognized though. First, it's clear that pre-autonomous children can be harmed and if we take the HP (and GHP) seriously, we should simply accept that harm to children may make interference with a state permissible – just as we accept domestically that when parents harm their children interference may be permissible. Second, though, none of this suggests we must interfere in order to promote the autonomy of children in other states (or ours).

Doing so charitably and without opposition from their government is, of course, For *Critical Review of International Social and Political Philosophy*, Vol 24, No. 1, 2021 and *The Politics and Ethics of Toleration*, Ed. by Drerup and Kühler, Routledge, 2021.

permissible. Doing so by force and despite opposition from their state (or parents) is a different issue. At the very least, doing so requires some argument that autonomy is necessarily good for the children in question. Such an argument is, I think, harder to make than many philosophers seem to think.

I agree that autonomy is a good thing. My life, lived heteronomously, would be less valuable than it is. That, though, is due partly to contingent factors about *me*. Some people – probably most reading this – do well living autonomously. Others do not. Some people are able to lead better lives without autonomy (or without extensive autonomy) than they can with it. For some people, having to live autonomously leads to lower quality of life than they might have heteronomously. For these people, if they must choose for themselves, they are likely to either suffer great distress due to that fact *or* simply make life mistake after life mistake (taking out the wrong sort of mortgage, taking the wrong sort of job, having children they cannot raise well, etc.) *or* both. Of course, some will think that such people simply need better education, but it's not clear why we should believe this.³⁷ I also think it is clear that some people become autonomous *despite* lack of education or any other attempt to promote autonomy (this should be obvious from consideration of history; in centuries past, education was reserved for the few and yet there have always been individuals outside the few that managed to achieve greatness in opposition to what their societies expected of them). These individuals should have their developed autonomy protected. All deserve to be protected from harm, whether the harm is related to their being autonomous or not. One way to help protect people is to help guarantee their right to exit their community, including their state.

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To be clear, I take every state to be obligated to guarantee a right to exit, even from the state itself. Should the presumable victim of a human rights violation by her own state not have access to such a right, liberal states should offer aid in protecting that right and so offer to help the individual leave the state harming her. Her refusal of such aid, then, would change the moral situation. With access to exit and refusal to use that access, *Volenti* suggests there is no genuine harm (a 'hurt' may be present) and thus that no further interference is warranted. That is, the individual in question is (in a minimal sense) consenting to the activity that, absent her consent, would count as a harm.

Of course, there are always costs to exit; nonetheless, it hardly seems unreasonable to assume that an autonomous agent consents to her treatment if she refuses help in exiting from the situation where the treatment takes place.³⁸ As liberals, we should uphold the *Volenti* principle and coupled with a failure to exercise a protected right to exit, *Volenti* implies consent of those ostensibly harmed – thereby rendering what they suffer mere hurt, not harm. Of course, if there is reason to doubt the hurt individual actually has an ability to exit – reason to think, for example, that the individual's family would be killed if he tried to leave or, even more straightforwardly, that the individual is simply denied permission to leave through government controlled ports – the hurt is not consented to and constitutes a harm. In such cases, intervention may be permitted. Such interference, I suggest, should be as non-intrusive as possible – beginning with aid to exit.

We must, as already indicated, recognize that there are complications. Many will say states have sovereignty rights other groups do not and that such rights prohibit our interference. Assume that states do have such sovereignty rights. Would

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aiding exit from a state infringe its sovereignty? Perhaps in a limited way. On the understanding of sovereignty I have proposed in my definition of the state (§ I above) – ‘to be sovereign means no other entity ... is successfully and systematically challenging its ability to execute its law’ – a state can be sovereign to varying degrees. It might be that states that violate individual rights should have less sovereignty – limits on (or ‘piercings’ of) their sovereignty are likely more permissible.³⁹ If this is right, we should presumably think that when there are only a few harms, only limited infringements to protect harmed individuals’ rights to exit would be permitted. We should presumably also think that in cases of massive violations of rights, far more interference would be warranted. In such cases, sovereignty might even be destroyed.

One might wonder, though, why we should assume sovereignty matters at all, especially when the state in question may not be legitimate. An illegitimate state, it might be asserted, has no right to sovereignty at all. Indeed, sovereignty rights might be thought of as not merely limited by, but also *determined by* the correct moral principles of international affairs, including perhaps the GHP. Indeed, this seems to be the consensus amongst philosophers that consider the topic. (Instead of legitimacy being conceived of as one of the principles that determine the correct form of international law, as non-philosophers seem to consider it.) That strikes me as essentially right. I do not think some idea of pre-existing sovereignty rights should affect our view of when interference is permissible. It remains, though, a practical factor that complicates matters – because states tend to be willing to defend what they see as their sovereignty (whether or not it is) and the wars

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that such tendencies might cause would have significant costs, moral and other, as already indicated.

Importantly, what we conclude here is that foreign humanitarian intervention is permissible even when a recipient state opposes that intervention if there are significant harms done to people therein and they have no protected right to exit. This is permission, not requirement. Indeed, the permission may not hold where there are serious moral costs. Further consideration would be needed to determine if the intervention should be attempted.

V. The Legitimacy Issue

Some will worry that I inappropriately take acquiescence to be a form of consent, that I then simply assume that the consent of the governed provides a state its legitimacy, and that such legitimacy makes interference impermissible. I take the second and third parts of that worry to be correct and won't seek to defend those claims further. I am happy to agree that if everyone within a territory autonomously and with full information consents to a regime, the regime is legitimate – even if it is unjust and the people therein poorly treated. Still, it should be clear that I do not give much weight to state's rights.

Consider a domestic analogy. Say that Bert illegally enters Ernie's house. Bert has harmed Ernie by wrongfully entering his house, setting back his privacy and security interests. Interference would be permitted to undo or rectify the harm. An easy analogy here is China's occupation of Tibet, which wrongfully set back the security and self-determination interests of the people of Tibet. Interference would,

ceteris paribus, be permitted to undo or rectify the harm. Interestingly, it may be For *Critical Review of International Social and Political Philosophy*, Vol 24, No. 1, 2021 and *The Politics and Ethics of Toleration*, Ed. by Drerup and Kühler, Routledge, 2021.

that in time – say 100 or 200 years – we would say that while China might owe some debt to any Tibetans descended from pre-Chinese-occupation Tibetans, another state invading the area we now call Tibet would then harm China in exactly the way China harmed Tibet.

Return to Bert and Ernie. Bert is in Ernie's house when Ernie returns. Ernie tries to force Bert to leave but Bert gets the upper hand. He subdues Ernie and says 'look, its a shame you got home too soon, but I am not done here – I need to find a book that was hidden here before you bought the place; you are welcome to stay, but if you do, you have to help me find that book and submit to my punching you when I get aggravated with the search; but I won't force you – you can leave (we are too far from anyone else for it to matter – by the time you get help I will be long gone).' We're not likely to say that if Ernie decides to stay he is not harmed because he consents to Bert's control. We say, in fact, that Bert adds to the harm he does Ernie, compounding it, making the crime worse.

Now say that China does the same to Tibetans. That is, the Chinese regime leading Tibet tells the people living there 'you are free to leave, but if you stay you must abide by our laws, including some that will set back your interests.' We're not likely to say that the Tibetans that stay are not harmed because they consent; we say that China adds to the harm, compounding it, making the crime worse. This is because even if the Tibetans agree, they only do so because forced into a situation they did not choose.⁴⁰

Return to the case where State B is harming members of a subgroup within its confines. I think what we should say here is that if those in the subgroup autonomously and with full information consent to State B, it is legitimate and there is

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no call for interference. If they do not consent at all, then any hurts done to them are harms and the GHP indicates interference is permissible. I am frankly less sure what to say about cases wherein they only consent in the weak sense discussed above (acquiescence). I imagine these are typically cases where the stronger party insists that the weaker party 'consent or else.' No one really consents to abide by such decrees – fully *autonomous and* voluntary consent must be present if the decree is to be legitimate.

Let's pull this together. Interference would be permitted to help Tibetans if they gave no consent to China (as, I assume, things are in the real world). However, to change the historical case, imagine that the Tibetans wanted to become part of China and, after a unanimous vote (for simplicity), asked the Chinese government to take over. In such a case, the Chinese regime must be tolerated even if it says 'abide by this law or leave.' (Similarly, if Ernie had asked Bert to take over his home.) What if there is consent but it was only acquiescence – i.e., in the face of an illegitimate 'consent or else' decree, the Tibetans consent (i.e., acquiesce)? On the one hand, it seems clear that the Chinese state's rights are not extensive enough to think nothing can be done. On the other hand, interference would likely have significant moral costs. The exit solution suggested above is a natural, though imperfect compromise. If the state permits exit without imposing a penalty,⁴¹ the individuals involved can avoid (further) harm and we can avoid the moral costs of interference. If, though, the state does not permit exit, further thought – taking into consideration the moral costs of interference (as well as non-interference) – will be necessary. This should be expected; difficult moral situations require extensive moral analysis.

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Conclusion

It should be clear that accepting the GHP means accepting that intervention aimed at capturing natural resources against the wishes of the state one intervenes with, intervention meant merely to spread one's own state power, and indeed any intervention not meant to aid people who have been or are going to be harmed, are ruled out. Similarly, it should be clear that interventions of clear self-defense are permitted. All of this, I take it is commonly accepted. Yet, some will insist, my view is deficient because while I indicate when intervention is permitted, I have not indicated where it is required.

Where there is harm, intervention is *prima facie* permitted whether the recipient state welcomes it or not – in such cases, toleration *of the harmer* (as well as the suffering) *may* end. Costs, though, must be considered. In cases where there is no harm, intervention is not permitted if the recipient state does not welcome it. Importantly, because forcing people to stay in a bad situation is harmful, a lack of protected exit rights would indicate a harm is present – and thus that interference is *prima facie* permissible. If the recipient state *does* welcome it, charitable intervention is permitted – in such cases, toleration *of the suffering* may end. Intervention in these latter cases is nonetheless not required (the costs may be too great), unless there is some other relevant factor. For example, if two states have a treaty wherein they agree to help in cases of humanitarian crises, the permission likely becomes a requirement. Investigating this further, though, is beyond the scope of this paper. Nonetheless, what I have said here about humanitarian intervention will hopefully be helpful in thinking more clearly about other sorts of interventions.

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Notes

- ¹ My project here is similar to Michael Blake's in his *Justice and Foreign Policy*, with two important differences: first, Blake takes autonomy to be the fundamental value underlying liberalism and assumes it must be promoted while I reject the latter claim; second, my aim here is more exploratory and suggestive than Blake's (as befitting the length). The first difference means my substantive conclusions differ from Blake's. Substantively, what I say here largely agrees with what Loren Lomasky and Fernando Teson say in chapters 8 and 9 of their *Justice at a Distance*. Like them, I take noninterference to be generally, but not always, required; here I seek to provide a way to determine the normative limits of toleration. Like Lomasky and Teson, I think permissible interference is about protecting persons; unlike them, I do not put this in terms of rights.
- ² For a contrasting view, see Drerup (2019).
- ³ For different views about this, see Michael Kühler 'Can a value-neutral state still be tolerant?' (esp. §II and §III), Elisabetta Galeotti 'Rescuing Toleration,' in this volume and section 1 of Drerup (op cit). I offer an improved version of my definition in my 2018.
- ⁴ I do not, though, mean to adopt the now-outdated Westphalian paradigm wherein states are the only international agents. The relevant agents might be states, but they might also be NGO's, business corporations, and individuals who act in the global sphere.
- ⁵ For a different view – a modus vivendi account – see John Horton 'Toleration and Modus Vivendi,' this volume.
- ⁶ See my 1999.
- ⁷ If all of the women in the community exercised this right (or otherwise exercised their autonomy), the community would have to change or cease existing, but that would not be due to our (outsiders') lack of toleration. See my 2007.
- ⁸ See Feinberg's 1988.
- ⁹ Charles Beitz, for example, argues that Rawlsian liberalism requires an international difference principle. Rawls himself contests this. I agree with Rawls on this score, but differ from him on others. See Beitz 1979 as well as his 2000, esp. p. 688 ff. Also see Rawls's 1999.

- ¹⁰ Or something similar. Arthur Ripstein, for example, proposes a sovereignty principle in his 2006. See also his 2009. I am not persuaded by Ripstein's arguments for the sovereignty principle over the harm principle, but won't address that here (see my 2018).
- ¹¹ Larry May also defends international use of a harm principle (see chapter 5 of his 2005). My view differs from May's. While I don't deny, of course, that there are different morally relevant factors in the international arena, I don't think those factors need alter the principle we use. The GHP also differs from attempts at rendering the harm principle large in my 2007. What I say here is closer to what I say in 2014 and, even more, my 2018.
- ¹² I think sovereignty thus understood is weak enough to withstand the convincing assault launched on the concept by Christopher Morris in his 1998 at pp. 204-212. Allen Buchanan claims a 'state is a persisting structure of institutions for the wielding of political power' (2002, p. 691).
- ¹³ On this definition there can be a government-less state (i.e., an anarchic state) so long as it has what can be considered law. I cannot here discuss what is necessary for that. The first contingent factor in the definition – geographic contiguity – is meant to recognize the contemporary condition and recognizes that 'contiguity' has to be taken loosely in order to allow that Greece, for example, is a state even though it is in part a collection of islands that are, in an obvious sense, not physically contiguous. The second contingent factor – shared norms – serves a conceptual purpose. It is meant to recognize that if territorial state A conquers territorial state B and allows no communication or transportation between the two territories such that no shared norms develop even though the government of A is the uncontested government of B, they may remain two states (with the sovereign governance structure for both headquartered in A). It nonetheless allows that people living in the middle of Kansas, having few if any norms in common with people living in NYC, are part of the same state.
- ¹⁴ On a strict version of the HP, only prevention or rectification of harm justifies interference; on less strict versions, other things – like offense or benefiting others – also justify interference.
- ¹⁵ See Paragraph 6 of Hume's 'Of the Original Contract.'
- ¹⁶ Such a state is *internally* legitimate. Throughout, I intend to use 'legitimate' as A. John Simmons uses the term and distinguishes it from justification (see, for example, his 1999). It may be that a state with fully voluntary and informed consent of all its members is belligerent, refusing to respect its neighbor states, and thus not to be tolerated on those grounds – the state's actions would be unjustified and warrant interference by others. (It would not be *externally* illegitimate.) It may also be that in the process of forming the state, territory was stolen from previous residents. This would not, on my view, challenge the legitimacy of the state (and not necessarily the justification), though it may well challenge the legitimacy of the state's territorial rights.
- ¹⁷ We may need to reconceptualize sovereignty and its limits. I say more about this below.
- ¹⁸ The unfortunate consequentialist bent here is due to the nature of political entities and not a meta-ethical point. Even a moral deontologist can allow that if a state is to act, it should act to create the greatest good – or, better, to minimize moral costs.
- ¹⁹ It might seem that cases in box 2 are those where interference is required and cases in box 1 are those where interference is permitted but not required. This is, I think, the right view if only the agents making the decision about interfering would suffer the risks involved. Things are, of course, different when one agent makes a decision that creates risks for another. I can decide to risk my life to save another, e.g., but the president cannot decide to risk my life to save another (at least this latter requires further justification that the former does not).
- ²⁰ Admittedly, the first response will not satisfy the simple consequentialist who might insist that (a) real and substantial risk to her state or any of its citizens makes interference morally impermissible and (b) the interpersonal case is not analogous since Sally risks only her own safety while the state risks the lives of others who do not consent (if they do, the situation is different).
- ²¹ See Nahshon Perez 2010 for an argument that justification for a lack of toleration of illiberal groups does not amount to justification for interference.
- ²² This is just recognition that harm is a necessary, but not sufficient, condition for interference if we abide by the HP and GHP.
- ²³ If they are caused by harms, the GHP indicates intervention is warranted. Consider Thomas Pogge's talk of international resource and borrowing privileges. Complicity in these privileges is, one may plausibly believe, doing harm. See his 2008, esp. 118-122.

- ²⁴ This assumes that the resources for the aid are voluntarily contributed. Coercively raising the funds, on the other hand, would seem to require an additional normative principle.
- ²⁵ Consider, e.g., the Sudanese government's use of foreign aid to massacre those in Darfur circa 2003.
- ²⁶ The locus classicus of these arguments is in Lord Peter Bauer's work. Recent work from economists supports Lord Bauer's arguments. See, for example, Botero et al 2004 and Djankov et al 2002.
- ²⁷ It might not be, though, if it has the effect of hindering a nascent – or blossoming – industry that would better serve the region (via job creation, for example) than the donation. There are examples where charitable Americans and Europeans have inadvertently but effectively destroyed nascent industries in the Third World by donating what the industry was creating (clothing, for example).
- ²⁸ This may be one of the first claims widely accepted in the field since the resurgence of interest in international political philosophy roughly four decades ago. For example, by Beitz *op cit*; see esp. 136-143. Lomasky and Teson (2015) is the exception.
- ²⁹ According to the World Bank, 'Officially recorded remittances to developing countries amounted to \$431.6 billion in 2015' (<http://www.worldbank.org/en/news/press-release/2016/04/13/remittances-to-developing-countries-edge-up-slightly-in-2015>, accessed 12/17/16).
- ³⁰ Thus, even if Allen Buchanan is right that there is a natural duty of justice such 'that each person has a limited moral obligation to help ensure that all persons have access to institutions, including legal institutions, that protect their basic human rights' (2004, p. 74), it may be that such institutions should be *our* institutions (or those of other states).
- ³¹ See Avery Kolers 2009, especially pages 52ff, for a view that might suggest this. (His view may have changed since.)
- ³² I do not intend here to imply (and do not believe) that human rights are mere social mores.
- ³³ I take the terminology from Joel Feinberg. See, for example, his 1984. I modify this understanding of harm in my 2018. At least one Rawlsian, Michael Blake, is unlikely to accept the limit I specify in the text. See his discussion of 'Borduria and Syldavia, part 11' (2013, pp. 115 ff). On the view espoused here, Syldavia (or anyone else) would only have warrant to interfere if the poverty in Borduria were caused by a harm – and Blake does not suggest that is the case in this scenario. Of course, on this account, Syldavia (and others) might seek to help as a matter of charity, but given lack of warrant to end toleration, this must not be forced (Blake does not indicate whether the recipient state welcomes the aid or not). (Even as a matter of charity, I think, costs of aid reduce the permissibility.)
- ³⁴ I am assuming a moral conception of human rights. Human rights as legally construed are a different matter. According to Article 23 of The Declaration of Human Rights, for example, there are rights 'to free choice of employment,' 'to equal pay for equal work,' and 'to form and join trade unions.' It is easy to imagine a situation where such rights are unavailable (not legally instantiated) and where no harm occurs. Perhaps I am the only employer hiring in Smalltown and I am only willing to hire Joe if he takes a lower salary than I pay others for the same work and I do not allow unions. Joe has only one option for employment, it is not for equal pay, and he cannot join a union. Still, Joe wants the offered salary. I don't think we could reasonably say I (or the state) harm Joe.
- ³⁵ Strictly speaking, we are not discussing transgressions or violations of the HP or GHP, but harms that *activate* or make the harm principle relevant. The principle operates as a sort of warning indicating that when there is harm, toleration may end. When the warning is activated, we determine if there is an actual harm and, if there is, determine if the costs of interference are such that we should interfere.
- ³⁶ I say much the same in my 2007, 2014, and 2018.
- ³⁷ For more on this view, see my 2015, p. 202.
- ³⁸ I adapt what I say here from my 2007 (*op cit*), 501. Some will insist, of course, that it is reasonable for oppressed people to claim they have as much right to stay where they are as their oppressors. I do not deny this. The question here, though, is only about where interference to help them and what sort of help is permitted.

- ³⁹ 'Piercings' is a term from Altman and Wellman, but they prefer (as do I) to jettison the Westphalian notion of sovereignty and thus allow for substantial limits to a moral right of sovereignty such that international interventions are permissible when a state transgresses those limits. See Altman and Wellman 2004, p. 51.
- ⁴⁰ We might say they have autonomy to choose *given* the background conditions, but not autonomy to set the background conditions. Of course, none of us can choose all of our background conditions, so if there is a difference in kind, it is because in the normal situation, *no one chooses* the background conditions we face, but in the worrisome situation, *someone who should not* chooses them for us.
- ⁴¹ Presumably, anyone emigrating will have unavoidable costs in leaving their home. What is important is that the state not itself impose (additional) penalties. A state's sovereignty rights are limited by maintenance of exit rights.

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