

## Subjectivist Cosmopolitanism and the Morality of Intervention

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Traditionally, reflection on state sovereignty—the conditions under which states ought to be free from external intervention to organize their polities and conduct their internal affairs as they see fit—has been dominated by the conception of the nation-state that emerged at the Peace of Westphalia. On this view, states are wholly autonomous agents that ought to be free from external interference so long as they themselves are not interfering into the affairs of neighboring states. This Westphalian view is venerable, frequently invoked even in contemporary discourse, and has served as the foundation for international relations for the better part of the past 350 years.

It is also highly controversial, and various developments over the last fifty years make this traditional orthodoxy seem implausible. On the one hand, vast institutional changes make it difficult to decipher how this vision of international relations applies to contemporary affairs. The United Nations and its Declaration on Human Rights, along with the establishment of international law and its various treaties and covenants, create commitments that have weakened the strength of national sovereignty. At the same time, the growth of international non-governmental agencies and the myriad of social, economic, and political forces that fall under the general heading of “globalization” make the picture of isolated and autonomous nation-states seem quaint.

More seriously, recent work in liberal political theory has called into question the coherence of the traditional doctrine. For what is it about states that grants them this far-reaching moral protection? The traditional Westphalian view of states has been replaced by a new kind of cosmopolitan orthodoxy among contemporary political theorists that asserts the typical liberal concern for the individual and suggests that state autonomy is at best a derivative good.<sup>1</sup> On this cosmopolitan view, individuals are the ultimate units of moral concern and states must earn their sovereignty through the just treatment of persons within their borders.

In this paper, I agree that cosmopolitans are right to think that state sovereignty is best understood as being derived from individuals (over against statist or nationalist theories). Nevertheless, many cosmopolitan formulations of the principles of state sovereignty and the morality of intervention are typically too demanding in the expectations that they place on illiberal regimes, and too aggressive in their willingness to intervene in order to get countries to shape up

and meet the full range of liberal rights. What is problematic is not merely the familiar practical concerns that surround intervention (military or otherwise), but the way in which such theories fail to adequately recognize what might be worrisome about coercively imposing practices or political institutions on a people that might not accept them, even when this is done to satisfy objective and benevolent moral ends. More specifically, what is at issue with these theories is that they do not account for the attitudes of the persons within a country that is subject to intervention. I shall call such theories “objectivist.” The idea here is that state sovereignty is wholly a matter of a state’s conformity to the objective demands of liberal justice. In contrast, those theories where the attitudes of citizens do matter I shall call “subjectivist.” Subjectivist cosmopolitans do not deny the objective demands of liberal justice, but argue that state sovereignty is at least partly a matter of the subjective attitude of citizens toward their state. This paper will try to highlight the reasons why such coercive impositions are troubling and also try to diagnose why such objectivist cosmopolitan theories rather characteristically fail to recognize them. The aim of this paper is not to defend a statist or nationalist account of state sovereignty, but rather to articulate a more moderate kind of subjectivist cosmopolitanism that is able to balance liberal concern with the protection of individual freedom and welfare with a worry about the imposition of political institutions or practices on a state that does not accept them.

### I. The Structure of Cosmopolitan Sovereignty

Cosmopolitans are international liberals, committed to universal civic and political rights, and the guarantee of the material conditions for individual welfare. More specifically, cosmopolitanism is most often understood to be constituted by three components: *individualism*, *universalism*, and *generality*.<sup>2</sup> Such theories are individualist insofar as they see human beings as the ultimate units of moral concern, rather than families, tribes, communities, or states. Such groups might possess some kind of moral standing, but if they do, it is ultimately because of their effects or importance to individual persons. Second, the special status of persons is universal and applies to all human beings everywhere, and not merely to particular kinds of subsets of persons. Third, the special moral status that persons possess obliges all generally, and not merely persons who are in some special relationship such as family members or compatriots.

In contrast to a cosmopolitan vision of international politics, Westphalian accounts take state boundaries to be of intrinsic normative import. Perhaps part of the reason for the hold that the traditional Westphalian view of state sovereignty has traditionally had is the ease with which the analogy between the autonomy of individuals and states suggests itself. We typically think that just as individuals ought to be free to pursue their own conceptions of the good without external interference, so too do states deserve to be wholly autonomous over their own

affairs. This analogy is an old one. Hobbes famously suggested that if anyone doubted the reality of the state of nature, she need only to look at the relations between states where there is no sovereign to impose order.<sup>3</sup>

Yet, however natural the analogy, there are good reasons to be suspicious of its claims. Such an argument is, of course, only as powerful as the relevant similarity between the analogues, and on reflection, this analogy is not particularly compelling. For in what sense is a state like a person? We take the protection of individual autonomy to be important because of the intrinsic value persons have and the great good that we associate with allowing persons to control their lives without coercive external interference. States, however, do not have the obvious intrinsic moral value that we think individual persons do. While we often talk about states as actors with ends and interests, this talk is highly analogical—states cannot themselves think, will, or act, and do not themselves appear to possess the relevant features that make the idea of individual autonomy compelling.

As Charles Beitz points out,<sup>4</sup> a more persuasive strategy for defending the traditional Westphalian view of sovereignty would be to ground state autonomy in a framework of individual rights. On this approach, interference in a state's affairs is morally troubling because it interferes with the will of the people that the state represents. This strategy depends upon a particular picture of states as associations of individuals bound together by voluntary consent. On this picture, the legitimacy of a state and its rights against interference derive from the fact that it is a kind of voluntary association, a group of persons who freely associate in order to pursue some common end. To interfere in a state's internal or self-regarding affairs is to exert coercive control on the citizens of that state, imposing institutions or a set of policies on them against their will. In this way, state autonomy is defended not because it is *analogous* to individual autonomy, but rather because it is an *extension* of individual autonomy. To interfere with a state's affairs is to interfere with the lives and free decisions of its citizens.

As Beitz notes, however, the difficulties with this picture of states as voluntary associations are familiar and insurmountable, and apply to every attempt to justify the state as a special instance of freedom of association. Actual states cannot plausibly be described as free associations. Few if any actual political institutions are associations into which people have freely joined. Most citizens are simply born into political societies and are subject to their coercive control without ever having the opportunity to voluntarily consent to their rule. The mere fact that they remain in such situations cannot be taken as a sign that they consent to membership in the association. For even if they are free to leave, the burdens and costs that such individuals would have to bear would not fulfill the conditions that we typically think need to exist in order for consent to be morally binding. Consent must be given in conditions of freedom and full information, and if my situation is such that the rejection of membership is overly onerous, then my decision to remain is as consensual as the loss of my wallet to an armed thief. Thus, even immigrants who choose to become naturalized citizens cannot simply be taken to have voluntarily joined their states if the conditions of their immigra-

tion were overly burdensome. In this way, choosing to stay in a particular political society, immigrating, voting or other acts cannot of themselves be taken to constitute the kind of consent, tacit or otherwise, that would bring a person into membership in that particular association.<sup>5</sup>

Beitz's observations are not meant to advance the far-reaching thesis that because virtually no government can plausibly be described as a voluntary association, no government is legitimate (as John Simmons claims, a point to which I will return later). Rather, he aims to show that arguments that ground the autonomy of states in the free consent of the governed rely upon an implausible picture of what actual political societies are like. If states really were free associations then it would be easy to see why there ought to be significant constraints on acts of intervention. But no state satisfies this description, and therefore, state autonomy cannot simply be understood as an instance of individual autonomy and rights of association. If intervention can be criticized simply because it involves coercive interference against individuals without their consent, then virtually all domestic governments would be subject to the same criticism. Thus, if intervention into another state's affairs is illegitimate simply because it is coercive, then the actions of a state against its own citizens would be equally illegitimate. In short, Beitz wants to suggest that all coercive actions are of a piece, whether they occur between individuals and their own state, or individuals and someone else's state. Arguments for state autonomy then face a dilemma: "If legitimate domestic governments exercise coercive power over their own citizens without their consent, and if illegitimate violations of autonomy by external agents might be described in precisely the same way, how can one form of coercion be distinguished from the other?"<sup>6</sup>

The typical objectivist cosmopolitan answer to this dilemma is that the most plausible way to explain why coercive interference is at least sometimes legitimate is to appeal to an account of legitimacy rooted in the demands of liberal justice. So, for example, Beitz claims that a legitimate state is one that "*would be* consented to by rational persons subject to its rule."<sup>7</sup> Beitz does not spend much time developing any particular interpretation of this idea, but the general argument suggests that legitimacy and the conditions of justifiable intervention are set by the familiar terms of John Rawls's original position. In short, for objectivists a state is legitimate just when it upholds standard liberal rights. With regard to debates about state autonomy, the significance of this account of legitimacy is that it makes no distinction between the sources of coercive interference. If we are forced to do something that is in accord with a standard picture of liberal justice, then the act of coercion is justifiable regardless of its source. There is no principled difference between coercion from one's own government and someone else's. Liberal justice is what matters.

While Beitz's account has its own particularities, it captures the central commitments of the objectivist cosmopolitan approach to such questions.<sup>8</sup> Given the commitment to the overriding value and importance of individual persons, the only plausible account of state sovereignty links legitimacy and sovereignty to

domestic justice. States deserve to be free from external interference just when they satisfy the appropriate principles of domestic justice—this is to say the range of rights that are typically acknowledged by liberals: basic rights of personal and political liberty, along with various welfare rights, especially those concerning distributive justice.<sup>9</sup> The result for objectivists is an account of state autonomy that is rooted in individual rights, is morally demanding, and grants a presumption in favor of liberal justice. On this account, the concepts of sovereignty and legitimacy are ultimately reduced to liberal justice; states must earn their sovereignty by promoting justice. To the extent that states fail to do this, they may be rightly subject to rehabilitative intrusions.

## II. Cosmopolitanism and Intervention

Consequently, for states that fail to satisfy the demands of liberal justice, there is a *prima facie* justification for intervention. For example, Darrel Moellendorf argues that “the cosmopolitan conception of sovereignty holds that an intervention into one of the domains reasonably claimed by a state is a violation of sovereignty if and only if the intervention will not attempt to advance the cause of justice either in the basic structure of the state or in the international effects of its domestic policies.”<sup>10</sup> Similarly, Simon Caney’s account of state sovereignty suggests that:

persons have political human rights . . . and economic human rights. It argues further that political institutions . . . have worth only insofar as they protect these values. Thus political institutions lack legitimacy when they fail to protect these rights. Furthermore, given that all persons have duties to respect and protect these human rights . . . it follows that intervention is justified when it could successfully protect these rights. . . . Indeed, it is not only morally permissible: it is a duty.<sup>11</sup>

Such interventions are, of course, subject to the usual constraints of the principles of *jus ad bellum*. For example, the intervention in question must be proportional to the injustice it seeks to rectify, and must stand a reasonable chance of success; intervention must also be a last resort and be conducted by a legitimate authority. Of course, various thinkers interpret these provisions in different ways, and there remains a fair degree of controversy over various provisions.<sup>12</sup> Generally, however, objectivist cosmopolitan accounts of intervention are rigorous and demanding, rooted as they are in accounts of liberal rights.

Despite the clarity of these objectivist accounts of intervention, one might nevertheless worry that the identification that they make between state sovereignty and liberal justice lend them a naturally aggressive posture. Speaking of his own account, for example, Thomas Pogge concedes that, “it may seem that my more aggressive liberalism will lead to greater international conflict. And this may be so in the case of human rights.”<sup>13</sup> Despite this concession, most objectivists are sensitive to this charge and are quick to argue that their accounts of intervention are not intrinsically aggressive. Kok-Chor Tan, for example, argues that human

rights violation by states does not automatically “mean that armed intervention is necessarily permitted, that comprehensive liberals are thus ‘drawn down the path of intervention.’”<sup>14</sup> Rather, it is important to keep in mind a distinction between “making a judgment and acting on that judgment.” In many instances, “given the high human and social costs of armed activities, this option should be rarely used.” States can instead employ a wide variety of non-violent measures to express moral disapproval and encourage change: international debates, resolutions, economic incentives, and penalties. In short, given the severity of war and its great costs, intervention is not automatically justified even when there are human rights violations. Interventions need not invoke military action and are subject to the constraints of *jus ad bellum*.

Such considerations, however, do not necessarily seem to address all of the kinds of concerns that one might have about objectivist cosmopolitan accounts of intervention. Tan’s argument is that intervention is always balanced against the physical harm that might arise as a result. But, one might worry not just about the material harms that might result from an intervention, but about the intervention itself, and the way in which it might amount to a forcible imposition upon a populace that rejects it.

That the attitude of the citizens who are subject to an intervention is morally irrelevant to its evaluation is surprising, for on the face of it such attitudes would appear to be a morally salient desideratum when evaluating its propriety. Who has a greater stake in a possible intervention than those for whom the intervention was undertaken? For objectivists, however, such attitudes do not matter. Indeed, such considerations are excluded by the very structure of their accounts of legitimacy. Remember that for objectivists, coercive political power is justifiable just when it is done for the sake of liberal justice. This is so because, for objectivists, it is difficult to draw a principled distinction between the sources of coercive intervention. If coercive political power was only legitimate if it was granted by the actual free consent of the governed, then it appears that virtually no government is legitimate. Consequently, they retreat to a hypothetical account of state legitimacy where legitimacy is connected only to what appropriate constructed hypothetical citizens *would* consent to, even if their actual counterparts do not. It is the objective moral features of political institutions in which legitimacy resides, not any features of the citizens themselves or their relationship to their political institutions. This is a structural feature of objectivist cosmopolitan theories. From this perspective, the source of the coercion is normatively insignificant, and in the realm of international relations there is no substantive difference in kind between the coercive acts by one’s own state and those of someone else’s. Both are equally justifiable if done for the sake of justice.

This claim, however, is counterintuitive. Ordinarily, the source of coercive imposition matters a great deal. My mother might have the right to force me to take piano lessons, and it might even be the case that reasonable hypothetical persons might want to take piano lessons, even if I do not. This, however, seems to be very different from someone else’s mother forcing me to take piano lessons.

At least one of the differences between these two cases is that I accept or at least tolerate my mother's authority over me, but do not accept someone else's mother's authority. Here we see that in normal cases of coercive imposition, what matters is not just *what* is done to a person, but *by whom* it is done, and a person's actual relationship to the source of coercive imposition. The sources of coercive intrusion matter a great deal, but this is a normative dimension that the objectivist approach does not appreciate, precisely because, from this perspective, all coercion is of a piece. Objectivist cosmopolitan theories are structurally blind to such considerations.

To further illustrate the way that cosmopolitans seem insufficiently concerned with coercive intervention into other states' affairs, and why citizens' actual attitudes matter, we might imagine a regime where the political arrangements fall short of the full range of liberal rights that are typically associated with cosmopolitan theories of international justice, but in which there is widespread actual support or affirmation of the state by its citizens. John Rawls, for example, imagines a moderate Islamic state, Kazanistan, where church and state are not separated but where "other religions are tolerated and may be practiced without fear or loss of most civic rights."<sup>15</sup>

In such an example, the political institutions seem to fit the Islamic culture within the state's boundaries. More important, the state enjoys widespread support. The government is genuinely committed to the common good of the populace and promotes the general welfare. There are, perhaps, religious and ethnic minorities, but their basic rights of life and liberty of conscience are not violated, even if there is a differential distribution of liberties. Of course, the citizens of this state have not formally consented to be governed, but citizens embrace their political institutions as an expression of their own deepest moral commitments.

Is intervention in the affairs of this state justified? A standard objectivist cosmopolitan understanding of the conditions of political autonomy would seem to sanction an effort of intervention in proportion to the injustices that are committed, subject to the constraints of *jus ad bellum*. From this perspective, states earn their autonomy and protection from intervention to the extent that they protect and promote social justice.

Such an intervention, however, does not seem justified. Liberal states are not obliged to think that Kazanistan would not be better off if it respected the full range of liberal rights, or that such a state could not be morally improved. They are not obliged to abandon their own convictions about what morality and justice demand. Nevertheless, intervention into the affairs of such a state would seem to amount to the forcible imposition of political institutions and a conception of justice that the citizens there do not themselves accept. The point here is not that such citizens are bound by some "Burkean contract" as Walzer suggests in his well-known nationalist account of intervention.<sup>16</sup> Rather, what is important is that they, in fact, embrace and affirm their political institutions. The institutions and conception of justice that real citizens *actually* affirm is an important consider-

ation in the evaluation of a regime's legitimacy and the conditions under which intervention might be justifiable. There is a difference between an illiberal regime that nevertheless is generally affirmed by its populace, and one that is not affirmed. In the former cases, intervention for the sake of social justice is not just a narrow coercive imposition on a tyrannical regime, but upon a whole populace who will view such interference as an alien imposition upon their common life.

In response, objectivists might argue that because such an intervention is unlikely to succeed, these worries are addressed by the traditional just war requirement that interventions must have a reasonable chance of success. Thus, no intervention would be licensed in the above case because no intervention would be likely to succeed. The point here, however, is not merely that such efforts at intervention—when one is competing against a whole culture and populace—are not likely to work (though this also is surely true), but that the very act of coercive interference is itself objectionable, even if it were to succeed.

In considering such cases where there is widespread affirmation of a decent but illiberal regime, Beitz concedes that intervention may in fact be unjustified. Writing in the afterword of *Political Theory and International Relations*, Beitz allows that in such cases intervention might be objectionable, though such cases are practically negligible. He describes this kind of objection as “communitarian”<sup>17</sup> and notes that it is distinct from the specific kinds of argument related to sovereignty that he was considering. More important, he suggests that this specific worry about interference into a people's common life obtains only when two empirical conditions are met. First, there must be a relatively far-reaching moral consensus among the citizens of a polity—the community must be “essentially united with respect to the significance and meaning of its political traditions.”<sup>18</sup> Second, there must be political fit between these political traditions and the actual institutions that order the society. When either of these conditions fails to be satisfied, then it appears that the objection fails.

Beitz argues that while the communitarian objection raises certain hard cases for cosmopolitan accounts, it is of little practical importance since these two empirical conditions are so rarely satisfied: “There is no obvious reason to presume that these are likely to be satisfied in the kinds of cases in which benevolent intervention might actually be considered. To the extent that this is right, the communitarian argument simply loses its practical interest—a point whose significance is not diminished by the fact that it rests mainly on empirical rather than philosophical considerations.”<sup>19</sup> However, while it is true that such cases are probably rare, this does not minimize the philosophical importance of the admission. Remember that for Beitz and other objectivists the legitimacy of a political regime and its concomitant right to sovereignty and non-interference rested in its conformity to principles of justice that would be selected by hypothetical rational citizens. What actually happens is of no normative significance. Indeed, Beitz suggests that if an account of legitimacy depended upon *actual* as opposed to hypothetical consent, then we would have to determine that virtually no regime is legitimate, as the vast majority of citizens have not consented to be



governed under conditions which make such consent morally binding. But even if citizens have not given their consent, their actual attitudes toward their political regimes nevertheless matter a great deal. Attitudes are empirical, but their significance is philosophical. Most cosmopolitans lack the conceptual tools to register the morally significant difference between a state like Kazanistan, whose regime is widely supported by its populace, and an equally illiberal but decent state that is not (or even perhaps a liberal regime that is not supported by its citizens). This is a philosophical problem for standard cosmopolitan accounts of state sovereignty.

### III. Justification and Legitimacy

As we have seen, it is a characteristic feature of objectivist cosmopolitan accounts of sovereignty that they do not account for the actual commitments of citizens in appraising the conditions of justified state sovereignty and the morality of intervention. For these accounts, the source of coercive imposition is normatively insignificant. It seems more accurate to say, however, that the sources of coercion matter a good bit and not just anyone can force a person to do things, even if they are justifiable in some way. What would it matter to me, if hypothetical versions of myself would consent to conditions that I myself actually do not consent to?

This feature of objectivist theories is characteristic of a more general Kantian approach to liberal political theory. A. John Simmons has recently offered an interesting diagnosis and critique of why this is. He argues that Kantians are prone to conflate what ought to be seen as two separate categories of the moral evaluation of political institutions.<sup>20</sup> The first, *justification*, refers to the objective claims that might be made to justify a political institution. To justify a state would be to “show that one or more specific kinds of state are morally defensible.”<sup>21</sup> A regime might be justifiable because it meets certain objective standards of justice or respects human rights and individual welfare. In contrast, *legitimacy* is a subjective or agent-centered concept that refers to the particular relationship between a citizen and her state. It is “the complex moral right [a state] possesses to be the exclusive imposer of binding duties on its subjects, to have its subjects comply with these duties, and to use coercion to enforce the duties.”<sup>22</sup> The significance of legitimacy is that it draws attention to the particularizing, duty-creating circumstances, and the moral relationship between a citizen and her state that justification does not bring into view. They stand as two separate categories of the moral evaluation of political institutions. It is one thing for a state to be just; it is another for it to be legitimate.

Simmons argues that Kantians are particularly prone to ignore this distinction because in their reliance on hypothetical contract mechanisms, they fail to take coercion and individual freedom seriously enough. Kantian theorizing focuses on the structure of political institutions, but ignores the normative relationship between a state and its citizens. Such a state might seem, from the perspective of

those living under it, impersonal and alien. For Kantians, as is put so clearly by Beitz, justification just is legitimacy. If a state is justified because it satisfies the demands of liberal justice, there is nothing more to say about it from the moral perspective. The actual choices of real people are brushed aside to make way for the reasonable choices of their hypothetical, ghostly counterparts. As Simmons says, “How we have actually freely lived and chosen, confused and unwise and unreflective though we may have been, has undeniable moral significance; and our actual political histories and choices thus seem deeply relevant to the evaluation of those political institutions under which we live.”<sup>23</sup>

#### **IV. Subjectivist Cosmopolitanism**

For Simmons, this distinction between justification and legitimacy highlights an important dimension of the moral evaluation of political institutions that objectivists typically fail to recognize and attempts to assert the importance of subjective considerations in debates about legitimacy and political obligation. As a Lockean, Simmons is particularly interested in the significance of consent, and the way in which many contemporary liberal political theorists fail to take voluntarism seriously enough. More generally, however, the distinction between justification and legitimacy helps to illuminate the moral importance of subjective considerations relating to the relationship between citizens and their states, and provides a conceptual framework and diagnosis of some general structural features of objectivist cosmopolitan theories for understanding what is going wrong in the above cases.

With regard to debates about state sovereignty, the distinction helps to expose a range of cases where intervention, even when done for the benevolent ends of promoting justice, might involve a troubling kind of coercive imposition that ought only to be trumped when there are serious violations of human rights. Cosmopolitan accounts of state sovereignty and intervention can license rather far-reaching and aggressive interventions even when they would be met with widespread resistance from the populace that they aim to liberate. This aggressive character arises from the cosmopolitan tendency to ignore the normative significance of people’s actual political commitments. This is to say that the appraisal of the objective features of these relationships does not exhaust all of the morally salient dimensions of evaluation.

While objectivist cosmopolitanism is more dominant, there are a number of prominent subjectivist cosmopolitan accounts that include provisions to account for the attitudes of those who are subject to rehabilitative interventions. For example, James Pattison has recently argued that because discussions of humanitarian intervention have focused on the traditional criteria of just war theory, they have tended to ignore the issue of “representativeness,” the extent to which an intervention reflects the opinions of both the citizens of the intervening state (internal representativeness) and those who are subject to intervention (external representativeness).<sup>24</sup> Pattison offers three arguments in favor of the importance of

external representativeness—a consequentialist argument that externally representative interventions are more likely to be successful; a “burdens argument” that representativeness is important since those subject to intervention will shoulder its primary burdens; and an argument concerning the importance of individual self-government.

Fernando Tesón has offered a well-known account of humanitarian intervention that also takes into account subjectivist considerations.<sup>25</sup> Tesón’s account is demanding in its defense of liberal rights. For Tesón, “the reason for creating and maintaining states and governments is precisely to ensure the protection of the rights of individuals. A necessary condition to justify political power exercised by human beings over their fellow human beings is that the rights of everybody be respected. Thus states and governments do not exist primarily to ensure order, but to secure natural rights.”<sup>26</sup> When states fail to protect these human rights, other states have a right to intervene. Such interventions for Tesón are subject to important constraints. An intervention is permissible when it involves “proportionate international use or threat of military force, undertaken in principle by a liberal government or alliance, aimed at ending tyranny or anarchy, welcomed by the victims, and consistent with the doctrine of the double effect.”<sup>27</sup> For our purposes, it is the fourth of these conditions that is most relevant. Tesón argues that “a necessary condition for humanitarian intervention is that the victims of human rights violations welcome the invasion,”<sup>28</sup> and adds that “the aim of intervention is to rescue individuals from their own government. If the citizens whose rights are being violated do not wish to be rescued—if they consent to their government—then foreigners should not substitute their judgment for that of the citizens.”<sup>29</sup> Thus, while Tesón’s account is rigorously liberal, licensing humanitarian interventions for breaches of human rights, such intervention can be trumped by subjective factors.

What is interesting about both of these accounts is the subjective consideration that both Pattison and Tesón think is relevant for evaluating the propriety of humanitarian interventions. Tesón argues that it is consent that matters. He is unclear, however, about whether he thinks a state’s legitimacy (and its concomitant rights of autonomy) is ensured by the actual consent of its citizens or rather the hypothetical consent of reasonable persons. At one point he argues that:

States and governments exist because individuals have consented, or would ideally consent, to transfer some of their rights in order to make social cooperation possible. I need not deal here with the issue whether consent is actual or hypothetical. While lines are sometimes hard to draw, in most cases the oppressive nature of a regime is apparent. In an appraisal, both actual and hypothetical consent play a role: actual consent, as reflected in the presence or absence of democratic institutions and effective protection of individual rights; hypothetical consent, as a philosophical standpoint from which to improve and perfect those free institutions.<sup>30</sup>

While Tesón attempts to embrace both kinds of consent, both options will be equally problematic. For if the consent that matters is hypothetical then citizens’

actual attitudes toward an intervention would seem to be immaterial. What matters is not what people actually choose but rather what they should choose, and if citizens irrationally reject an intervention for their own good, then so much the worse for their actual, unreasonable views. On this view, Tesón becomes an objectivist cosmopolitan and he would not be able to sustain the thrust of this condition. Alternately, actual consent will be no less problematic, for Tesón seems to be unrealistically sanguine that states might receive widespread actual consent. As we saw above in Section I, there is virtually no state that has received anything like widespread consent from its citizens, and while Tesón suggests that democratic participation amounts to an act of consent, there are good reasons to be skeptical of this claim.<sup>31</sup> If it is actual consent that matters, then it is likely that no state is legitimate, and again, the only remaining normative category to satisfy is justification. While it offers an attractive picture of state legitimacy, actual consent under the conditions that are necessary to make such consent binding is unlikely to be achieved anywhere.

Conversely, Pattison suggests that it is citizens' "opinions on the intervention" that matter and here he has in mind "an individual's view on whether humanitarian intervention should be undertaken," as well as secondary factors such as "an individual's views on the specific form of intervention . . . on who should intervene, and on how long the intervention should last."<sup>32</sup> Similarly, I have focused on an attitude of affirmation. Both amount to subjective pro-attitudes that citizens might have toward their state or to a proposed intervention. Affirmation is a weaker standard than consent, but shares many of consent's attractive features and offers an important standard that needs to be met in order to license intervention in another state's affairs. Like consent, affirmation is subjective and personal, and if a state receives widespread support from those whom intervention aims to rescue, and the intervention itself receives widespread disapproval, then it is hard to see how a state could justify an incursion, unless perhaps the regime in question was committing the most grotesque violations of core human rights.<sup>33</sup> In such a case, the severity of the rights violations would outweigh the concerns about coercive interference. Of course, it is hard to imagine citizens affirming such a state. Similarly, when affirmation is less than fully widespread, one needs to balance the extent of the affirmation over against the severity of the rights violation.

What results from bringing subjective considerations into view is a more moderate subjectivist cosmopolitan account of sovereignty and intervention. To summarize, this view suggests that *interventions (both military and otherwise) into other states are justified when there are gross violations of core human rights, such as in cases of genocide, or when other rights are violated and the target state is not affirmed by its citizens or the intervention is welcomed by them, subject to the requirements of proportionality and the other demands of just war theory.* Far from being "communitarian," the account is rooted in what ought to be a properly liberal worry about both objective considerations about justice and subjective considerations about legitimacy.

It will perhaps seem that the account defended here bears certain affinities to the theory John Rawls defends in *The Law of Peoples*. Rawls rejects Westphalian accounts of sovereignty, but nevertheless defends a surprisingly modest account where less than fully liberal regimes are nevertheless tolerated and accepted as full and equal members of the Society of Peoples if they are genuinely committed to the welfare of all and respect basic human rights. Unlike Rawls's account, however, the account of sovereignty defended here would be more permissive. Rawls argues that, "to tolerate means not only to refrain from exercising political sanctions—military, economic, or diplomatic—to make a people changes its ways. To tolerate also means to recognize these nonliberal societies as equal participating members in good standing of the Society of Peoples."<sup>34</sup> Such a standard, however, seems overly strict, going beyond our typical standards of the treatment of individual persons. We typically do not think that the moral respect of a person's freedom and autonomy requires us to refrain from offering any sort of criticism of his decisions or even conceptions of the good. I do not violate a person's freedom and autonomy by criticizing him and encouraging him to change his ways. Why should our treatment of nations and cultures be more stringent?

Thus, on this account, respecting the limits of intervention does not require that liberals refrain from criticism, attempts at persuasion or acts of censure. Neither does it require that they give up their commitment to individual rights and liberal accounts of justice or embrace communitarian or statist ideals. Liberals can still desire that other nations become more liberal, and encourage them to change their ways. There are important moral differences between instances of censure, protest, and perhaps even inducements on the one hand, and embargoes, economic sanctions, and military interventions on the other. The precise extent to which these things may be used to express criticism and promote reform are open to debate, but there does appear to be a fair range of actions that a nation can undertake without placing coercive pressures on a state and violating principles of national legitimacy.

This, of course, is only an outline of a comprehensive and detailed account of humanitarian intervention. I have not, for example, given a detailed analysis of the kinds of rights violations that might justify interventions (whether, e.g., economic injustice within a state might justify intervention), or said more about how exactly I understand the requirements of just war theory (what, e.g., legitimate authority to conduct an intervention amounts to). The main point of the paper has been to try to assert the importance of subjective considerations within a cosmopolitan account of sovereignty and the morality of intervention.

I began this paper by worrying about the kind of aggressive character of certain kinds of cosmopolitan accounts of justice. Such objectivist theories seem overly interventionist in licensing acts of aggression into the internal affairs of a state, which, while performed in the name of justice, can nevertheless be troubling. The aggressive character of such theories is not reliably tamed by familiar considerations from just war theory, and arises out of particular structural features of such theories, namely their inability to recognize the normative import of

citizens' actual attitudes of affirmation toward their states. I have attempted to defend an alternative subjectivist cosmopolitan account that is equally rooted in liberal understandings of individual rights, but offers an account of state autonomy that is less aggressive in its demands, but still sensitive to the range of rights that preoccupy liberal theorists. There are, of course, many facets of this account which I have not developed, but the theory in general is meant to demonstrate how an alternative account of state autonomy might be grounded not in contentious nationalist or statist accounts of states and their citizens, but rather in what ought to be a properly liberal worry about the importance of citizens' affirmation of their political regimes. This latter point is, I think, particularly important because it highlights a particular feature of the common Kantian accounts of justice and diagnoses why it is that they are insufficiently unconcerned with coercive intervention and prone to aggression.

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## Notes

<sup>1</sup> See, for example, Brian Barry, "Statism and Nationalism: A Cosmopolitan Critique," in *Nomos* XLI, ed. Ian Shapiro and Lea Brilmayer (New York: New York University Press, 1999): 12–66; Charles Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1999), 67–124; Simon Caney, *Justice Beyond Borders* (Oxford: Oxford University Press, 2005), 226–62; Darrel Moellendorf, *Cosmopolitan Justice* (Boulder, CO: Westview Press, 2002), 102–27; Thomas Pogge, "Cosmopolitanism and Sovereignty," *Ethics* 103 (October 1992): 48–75; Kok-Chor Tan, *Toleration, Diversity, and Global Justice* (University Park, PA: Penn State University Press, 2000), 79–102.

<sup>2</sup> For example, Pogge, "Cosmopolitanism and Sovereignty," 48–49; and Barry, "Statism and Nationalism," 35. Barry labels the third condition "equality," but aims at the same notion.

<sup>3</sup> Thomas Hobbes, *Leviathan*, I, 13, xii (Indianapolis: Hackett Publishing Company, 1994), 78.

<sup>4</sup> Beitz, *Political Theory and International Relations*, 77–78.

<sup>5</sup> For more on these difficulties, see A. John Simmons, *Moral Principles and Political Obligations* (Princeton, NJ: Princeton University Press, 1979), 57–100.

<sup>6</sup> Beitz, *Political Theory and International Relations*, 80.

<sup>7</sup> *Ibid.*

<sup>8</sup> See also Allen Buchanan, *Justice, Legitimacy, and Self-Determination* (New York: Oxford University Press, 2007), 233–60; Caney, *Justice Beyond Borders*, 232–35; Moellendorf, *Cosmopolitan Justice*, 104–5; Tan, *Toleration, Diversity, and Global Justice*, 79–102.

<sup>9</sup> There are, of course, important differences between various cosmopolitans and the particular rights violations that might trigger intervention. Simon Caney, for example, argues that economic injustice within a nation might justify an intervention. Fernando Tesón denies this. Despite these differences, they share a relatively rigorous commitment to human rights and the connection between rights violations and justifiable intervention.

- <sup>10</sup>Moellendorf, *Cosmopolitan Justice*, 105.
- <sup>11</sup>Caney, *Justice Beyond Borders*, 234–35.
- <sup>12</sup>Caney for example argues that interventions can only be undertaken by legitimate authorities, while Moellendorf is somewhat skeptical about this requirement.
- <sup>13</sup>Thomas Pogge, “An Egalitarian Law of Peoples,” *Philosophy and Public Affairs* 23 (Summer 1994): 195–224, at 218. This particular point is made in the context of Pogge’s account of international distributive justice. His point is that while cosmopolitan accounts of international justice seem open to the criticism that they will lead to greater international conflict, this is not an objection that could be made to this account of international distributive justice since presumably poorer countries would welcome the “intervention” of wealthier nations redistributing their wealth via a global resource tax. The context of Pogge’s remark directly concerns issues of distributive justice, though it is also exactly on target with regard to human rights and intervention.
- <sup>14</sup>Tan, *Toleration, Diversity, and Global Justice*, 82.
- <sup>15</sup>John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), 75–76.
- <sup>16</sup>Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), and Michael Walzer, “The Moral Standing of States: A Response to Four Critics,” *Philosophy and Public Affairs* 9, no. 3 (Spring 1980): 209–29.
- <sup>17</sup>A moniker that I consider misleading as the considerations in which this objection is rooted ought to be properly liberal.
- <sup>18</sup>Beitz, *Political Theory and International Relations*, 195.
- <sup>19</sup>*Ibid.*, 196.
- <sup>20</sup>Simmons, “Justification and Legitimacy,” *Ethics* 109 (July 1999): 739–71.
- <sup>21</sup>*Ibid.*, 742.
- <sup>22</sup>*Ibid.*, 746.
- <sup>23</sup>*Ibid.*, 763.
- <sup>24</sup>James Pattison, “Representativeness and Humanitarian Intervention,” *Journal of Social Philosophy* 38, no. 4 (Winter 2007): 569–87.
- <sup>25</sup>See, for example, Fernando Tesón, *Humanitarian Intervention* (Dobbs Ferry, NY: Transnational Publishers, Inc., 1988), and Fernando Tesón, “The Liberal Case for Humanitarian Intervention,” in *Humanitarian Intervention*, ed. J.L. Holzgrefe and Robert O. Keohane (New York: Cambridge University Press, 2003), 93–129.
- <sup>26</sup>Tesón, *Humanitarian Intervention*, 112.
- <sup>27</sup>Tesón, “Liberal Case for Humanitarian Intervention,” 94.
- <sup>28</sup>Tesón, *Humanitarian Intervention*, 119.
- <sup>29</sup>*Ibid.*, 120.
- <sup>30</sup>*Ibid.*, 112–13.
- <sup>31</sup>See for example, Simmons, *Moral Principles and Political Obligations*, 91–93.
- <sup>32</sup>Pattison, “Representativeness and Humanitarian Intervention,” 570–71.
- <sup>33</sup>One might worry here that because consent can never be achieved, then no state is legitimate and therefore the only relevant standard of moral evaluation of states is justification. Thus, subjectivist cosmopolitanism turns out to advance an attractive, but completely unrealizable ideal, and is useless for determining the conditions of justifiable intervention. In fact, I think that affirmation is a sufficiently robust ideal to make sense of state legitimacy and I develop this account in an as yet unpublished paper, “Legitimacy as Affirmation.” For the purposes of the subjectivist account of intervention that I am developing here, however, one need not accept this whole theory of legitimacy, but rather the simpler and less controversial idea, expressed by both Pattison and Tesón, that if the victims that an intervention aimed to rescue themselves rejected it, the intervention would be wrong, an unjustifiable coercive imposition into the affairs of another state.
- <sup>34</sup>Rawls, *Law of Peoples*, 59.