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*Draft—Not for Circulation*

### Justifying the State Right of Self-Defense<sup>1</sup>

States regularly go to war in order to defend their sovereignty and their territory against unjust aggression. Both statesmen and political theorists justify a state's going to defensive war by appealing to that state's right of self-defense. All states have a moral right to defend their sovereignty and their territory from unjust aggression, they claim, just like all individuals have a moral right to defend their autonomy and bodily integrity from unjust aggression.<sup>2</sup> And while the state right of self-defense does not always justify going to war (just like the individual right of self-defense does not always justify the use of lethal force), in certain circumstances—when the relevant conditions are met—the use of defensive war, like the use of individual lethal force, is thought to be justified. (Of course, it is one thing to say that going to war is justified, and another thing to say that particular actions taken in the course of prosecuting a war are justified. My focus in this paper is on the former, not the latter.<sup>3</sup>)

This claim that all states have rights of self-defense that sometimes justify going to war is one of the cornerstones of both modern international relations and the just war tradition in political philosophy. But while the idea is intuitively plausible, it is not obviously true. We need a reason for thinking that states have rights of self-defense that sometimes justify going to defensive war, especially considering the host of serious, large-scale harms that inevitably come with war. As an

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  - 2 Throughout, I am discussing moral rights, not legal rights. While the interplay between moral and legal rights is interesting and complex, my focus is on the morality of war, rather than its legality.
  - 3 Typically, this distinction between the justice of going to war and the justice of particular wartime actions is referred to as the distinction between *jus ad bellum* and *jus in bello*. There is some debate in the literature as to whether these two are logically independent; I follow Jeff McMahan in thinking that they are connected but not co-extensive. See Jeff McMahan, "The Ethics of Killing in War," *Ethics* 114 (July 2004): 693-733.

example, 2.5% of the world's population—over 60 million people—died in World War II, which is often cited as the paradigm case of a justified defensive war.<sup>4</sup>

The reason commonly offered by both just war theorists and international relations theorists in support of the claim that states have rights of self-defense that sometimes justify going to war is the so-called 'domestic analogy.'<sup>5</sup> This analogy is between states and individuals, and maintains that just as individuals have rights of self-defense that sometimes justify the use of lethal force, so too do states have rights of self-defense that sometimes justify going to war. The domestic analogy is both suggestive and intuitive, especially given our natural tendency to personify states. We speak of states “taking decisive action”—or failing to do so—in response to terrorism, of their “consenting” to trade agreements and the like, and of their “having special relationships” with other states. Given this, it is intuitively plausible to think that states, like individuals, have rights of self-defense that sometimes justify otherwise impermissible actions (such as going to war).

But while the domestic analogy is a persuasive, and pervasive, idea, it is not yet an argument for the claim that states have rights of self-defense that sometimes justify going to war. For the domestic analogy to provide an analogical argument for this claim, it would have to show that the reasons we have for accepting that individuals have rights of self-defense provide grounds for concluding that states have rights of self-defense as well. In other work, I have attempted to show that such an analogical argument, however it is cashed out, will not succeed in justifying the claim that all (or, following Rawls, even most) states have rights of self-defense that sometimes justify going to war. Whatever reasons we have for thinking that all individuals have rights of self-defense

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4 I.C.B. Dear, *Oxford Companion to World War II*, Oxford: Oxford University Press, 2005.

5 Hedley Bull calls it the domestic analogy in *The Anarchical Society*, New York: Columbia University Press, 1977, as does Michael Walzer in *Just and Unjust Wars*, New York: Basic Books, 1977. Although he does not call it by that name, the analogy is readily apparent in Plato's *Republic* (he considers what justice is for the city in order to determine, by analogy, what justice is for the individual). Plato, *Republic*, trans. C.D.C. Reeve, Indianapolis: Hackett Publishing Company, 2004.

cannot, I maintain, ground the analogous claim that all states have rights of self-defense. So, assuming that we want to continue to endorse some variation of this claim, we need a new and different argument for it.

In this paper, I provide such an argument. I argue that states have rights of self-defense that sometimes justify going to defensive war when they are organized so as to properly protect their populations. I begin with the widely accepted claim that individuals have rights of self-defense. Initially, I assume rather than argue for this claim, because it is a point of agreement between myself and those who accept the domestic analogy. We all agree that individuals, when they have done nothing to forfeit their rights of self-defense, have and continue to have rights of self-defense. And furthermore, to the extent that individuals are not able to effectively exercise their rights of self-defense, they deserve protection. From here, I move on to determining how such protection should be provided. By considering what has happened historically to individuals, I argue that the entity best situated, in the world as it is, to provide such protection is the state. This protective role is one of the primary functions of the state.

Then, I argue that when states are fulfilling their protective role, they have rights of self-defense that sometimes justify going to war, because state rights of self-defense enable states to better protect their populations. Conversely, states that are not fulfilling their primary protective role do not have rights of self-defense that sometimes justify going to war. Put simply, the state right of self-defense, unlike the individual right of self-defense, is conditional on a state's being organized so as to fulfill its primary protective role.<sup>6</sup> This means that, contrary to common opinion, the presumption is not in favor of all states having rights of self-defense. Only those states that are organized so as to properly protect their populations have rights of self-defense, because only they

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<sup>6</sup> It does not follow from this that a newly created state does not have a right of self-defense. I explain more below.

meet the necessary condition for having a state right of self-defense.

I then discuss what it takes for a state to count as providing protection to the members of its population. I argue that what counts as protection will depend on the justification provided for the claim that individuals have rights of self-defense. I develop a Kantian argument for the individual right of self-defense, and from that develop an account of what a state must do to fulfill its primary protective role. Broadly, a state fulfills its primary protective role when its deliberative processes, laws, institutions, and policies recognize and respect the dignity of its individuals, considered as rational autonomous agents. And when states fulfill their primary protective role in this way, they have rights of self-defense that sometimes justify going to defensive war.

My argument has a number of implications for just war theory, perhaps the most important of which concerns inter-state interventions. In my final section, I point out that interventions are not straightforwardly ruled out as instances of rights violations in my proposed system, but rather may be justified in certain circumstances. (Of course, it does not follow from a state's not having a right of self-defense that all, or even most, interventions against it are justified.) I conclude that my proposed system of state rights is better than the current system, which tends to straightforwardly rule out interventions as unjust aggressions in all but the most extreme cases. Given this, we should adopt my proposed system: not only does it provide a justification for the claim that (at least some) states have rights of self-defense that sometimes justify going to defensive war, but it is also better—in terms of protecting individuals—than our current system.

### I. The Individual Right of Self-Defense: An Assumption (For the Time Being)

The default view among many moral and political philosophers is that all individuals have moral rights of self-defense. Put simply, having the moral right of self-defense means that it is

morally permissible for individuals to defend against unjust threats to and unjust attacks on them. Importantly, for the purposes of such defense, individuals may perform otherwise impermissible actions.<sup>7</sup> For example, let us assume that interrupting is normally impermissible. Despite this, Ashley may permissibly stop Zed from unjustly interrupting her by interrupting his interruption (on the assumption that interrupting him is necessary to get him to stop). She may do this because she is defending against Zed's unjust attack; it is a way of forcing Zed to acknowledge that Ashley has a right to speak uninterrupted. On the other end of the spectrum, Ashley may permissibly—assuming that it is necessary—maim or kill Zed to stop him from unjustly maiming or killing her. She may do this because she is entitled to defend herself against unjust aggression in whatever way is necessary to stop or block the unjust aggression.<sup>8</sup> I refer to this entitlement to defend herself as her individual right of self-defense.

The individual right of self-defense thus justifies normally impermissible actions, when those actions are necessary to block or stop the relevant unjust aggression.<sup>9</sup> However, it is important to note here that the individual right of self-defense does not extend to defending oneself against *justified* aggression. If you act wrongly and others defend themselves against you, you may not in turn defend yourself against their defense. By acting wrongly, you forfeit your right of self-defense in that situation. For example, Zed may not defend himself against Ashley's justified interruption, because, by unjustly interrupting her in the first place, he forfeits his right to defend himself against her

7 Judith Jarvis Thomson brings out this point in her paper, "Self-Defense," *Philosophy and Public Affairs* 20.4 (Autumn 1991): 283-310.

8 David Rodin, *War and Self-Defense*, Oxford: Clarendon Press, 2002, 40-1. Rodin, like Thomson and others, agrees that you may only do what is necessary to stop or block the unjust aggression against you. The individual right of self-defense does not justify doing anything you like in your own defense; it only justifies those actions that are needed to stop or block the relevant unjust aggression.

9 There is widespread (although not universal) agreement that unjustly threatened individuals may not kill innocent bystanders in order to save themselves, even when doing so is necessary to the threatened individuals' survival. I tend to think that this so-called 'bystander exception' is correct, although I cannot provide an argument for it here. See, among others, Judith Jarvis Thomson, "Self-Defense," Yitzhak Benbaji, "Culpable Bystanders, Innocent Threats and the Ethics of Self-Defense," *Canadian Journal of Philosophy* 35.4 (2005): 585-622, and George Fletcher, Proportionality and the Psychotic Aggressor, *Israel Law Review* 8 (1973): 367-90.

justified defense.<sup>10</sup> Of course, Zed does not forfeit his right of self-defense permanently; rather, he forfeits it only in relation to his unjust aggression.<sup>11</sup> So, he may not defend himself against Ashley's interruption, because her interruption is a justified defensive response to his unjust aggression against her. However, he may defend himself against the random person who attempts to mug him. The mugger unjustly aggresses against Zed, and so Zed, notwithstanding his unjust aggression against Ashley, is entitled to defend himself against the mugger.

This is a very quick sketch of the basics of the individual right of self-defense. We need not go into more detail just yet.<sup>12</sup> So long as an account can be given in support of the claim that individuals have rights of self-defense that sometimes justify otherwise impermissible actions, including the use of lethal force, my argument goes through. Furthermore, this claim is a point of agreement between myself and those who endorse the domestic analogy; we all start from the claim that individuals have rights of self-defense, and that those rights of self-defense operate roughly in the way that I have described.<sup>13</sup> So at this point, I simply accept without argument that individuals have rights of self-defense that sometimes justify otherwise impermissible actions.

## II. The Case for States: A Historical Argument

Individuals have rights of self-defense because they need—given the world as it is—protection against unjust aggression. However, as at least two major political philosophers point out,

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10 Jeff McMahan has a nice discussion of this in chapter 1 of his book, *Killing in War*, Oxford: Oxford University Press, 2009.

11 See Joel Feinberg's discussion regarding forfeiting rights in "Voluntary Euthanasia and the Inalienable Right to Life," *Philosophy and Public Affairs* 7.2 (Winter 1978): 93-123.

12 The specifics of the individual right of self-defense have been discussed at length in the philosophical literature. See, among others, Judith Jarvis Thomson, "Self-Defense," George Fletcher, "Proportionality and the Psychotic Aggressor," Yitzhak Benbaji, "Culpable Bystanders, Innocent Threats and the Ethics of Self-Defense," and Jeff McMahan, *Killing in War*.

13 In fact, it is hard to find anyone working in the just war tradition who does *not* endorse this claim. For prominent endorsements of this claim among those who utilize the domestic analogy, see Michael Walzer, *Just and Unjust Wars*, Thomas Hurka, "Proportionality in the Morality of War," *Philosophy and Public Affairs* 33.1 (2005): 39, Brian Orend, *The Morality of War*, 2006, and Charles Beitz, *Political Theory and International Relations*, 69.

individuals in isolation do not often succeed at protecting themselves. Thomas Hobbes argues that life for individuals without a state is full of “continual fear and [the] danger of violent death;” it is, famously, “solitary, poor, nasty, brutish, and short.”<sup>14</sup> Although individuals have the right to defend themselves, according to Hobbes, that right does not do them much good in the so-called state of nature, because they are simply not able to successfully protect themselves against all or even most of the aggression that is likely to occur.<sup>15</sup> John Locke also argues that life for individuals without a state will go badly for those individuals. He argues that “nothing but confusion or disorder will follow” from living in a so-called state of nature, because individuals will not be able to perform all of the actions needed in order to successfully defend themselves and their property.<sup>16</sup> We are simply not able, because of individual human limitations, to fully protect ourselves on our own. (As a modern rights theorist might put it, the individual right of self-defense in the state of nature is a formal right, but not an effective one.<sup>17</sup>)

Both Hobbes and Locke argue from the claim that individuals with rights of self-defense are unable to protect themselves in the state of nature to the conclusion that a state is needed to provide that protection. However, this is too quick; all Hobbes and Locke have shown is that some form of protection is needed, because individuals are not able to exercise their rights of self-defense effectively on their own. Hobbes and Locke have not yet shown that that protection should, or needs to, take the form of a *state*. Their argument is, as it stands, unfinished. So, to complete their argument, I provide a historical argument for the claim that the protection of individuals is best provided by states. By a state, I simply mean a political organization that successfully claims a monopoly on the use of legitimate physical force within a bounded territory and that successfully

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14 Thomas Hobbes, *Leviathan*, chapter 13.

15 Thomas Hobbes, *Leviathan*, chapter 13.

16 John Locke, *Second Treatise of Government*, chapter 2, sections 13-5.

17 Tim Anderson, “The Political Economy of Human Rights,” *Journal of Australian Political Economy* 50 (2002): 200-227.

claims authority, disseminated via the rule of law, over the individuals within that territory.<sup>18</sup> This is the common sociological view of what it is for something to be a state, and as such, I think that it is what most international relations theorists, just war theorists, and statesmen have in mind when they refer to states.<sup>19</sup> However, there is no consensus on the most appropriate definition of a state; there are many ways in which the understanding that I have provided can be questioned.<sup>20</sup> Despite this debate in the literature, I will work with the sociological view of the state that I have put forth, as it is the most commonly accepted definition among the theorists and statesmen with whom I hope to engage.

To see that states are the entities best situated to provide protection for individuals, let us consider what has happened historically to individuals that do not have states. Typically, when individuals do not have states to protect them, they neither flourish nor, in some cases, survive. Consider the plights of the Jewish people in Eur-Asia, the Roma people in central Europe, and the Irish Travellers in Great Britain and the United States. The Jewish people in Eur-Asia were, throughout much of the medieval and early modern periods, considered outcasts and undesirables.<sup>21</sup> To name two prominent examples, the Russian pogroms in the nineteenth and twentieth centuries and the Holocaust during World War II were both aimed at the extermination of the Jewish people.<sup>22</sup> In each case, although the Jewish people who were attacked and killed lived in the relevant

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18 This sociological understanding of a state is most famously put forward by Max Weber in *Politics as a Vocation*, in *Weber: Political Writings*, Cambridge: Cambridge University Press, 1994.

19 See, for example, John Rawls, *Political Liberalism*, Michael Walzer, *Just and Unjust Wars*, David Rodin, *War and Self-Defense*, Charles R. Beitz, *Political Theory and International Relations*, 52, Thomas Hobbes, *Leviathan*, chapter 13, and The Charter of the United Nations.

20 For a good introduction to this topic, see Erika Cudworth, *The Modern State: Theories and Ideologies*, Edinburgh: Edinburgh University Press, 2007, Brian T. Nelson, *The Making of the Modern State: A Theoretical Evolution*, 2006, and Colin Hay, "State Theory," *Routledge Encyclopedia of International Political Economy: Entries P-Z*, 2001, 1469-1475. For an earlier version of this debate, see John Locke, *Second Treatise of Government*, chapter 7, sections 89-93.

21 Salo Wittmayer Baron, *A Social and Religious History of the Jews in Three Volumes*, New York: Columbia University Press, 1937. Raymond P. Scheindlin, *A Short History of the Jewish People: From Legendary Times to Modern Statehood*, Oxford: Oxford University Press, 1998.

22 See, among others, John Klier, "The pogrom paradigm in Russian history." Wilhelm Heitmeyer and John Hagan,



states, they were not considered to be members of those states.<sup>23</sup> The Jewish people were not protected by the state, and so, lacking a monopoly on legitimate physical power and de facto political authority, they were unable to protect themselves against state-sanctioned attacks. In a world of states, individuals need states in order to protect themselves. (Notably, the Jewish people themselves recognized this: the persecution they suffered led directly to the creation of the Zionist movement, i.e. the movement to create a Jewish state.<sup>24</sup>)

Importantly, the history of the Jewish people, considered in this context, is not a special case; other peoples without states have fared poorly throughout history as well. Throughout the eighteenth, nineteenth, and early twentieth centuries, both the Roma people in central Europe and the Irish Travellers in Great Britain and the United States were, like the Jewish people, not under the protection of any state, although they were recognized as members of distinct communities by the states in which they lived and through which they passed.<sup>25</sup> Considered to be inherently criminal, both Roma and Irish Travellers were regularly attacked by state authorities. At several points throughout Great Britain's history, there were concerted efforts to wipe out, not only individual Irish Travellers, but their people as a whole.<sup>26</sup> And although the Roma people were romanticized in

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*International handbook of violence research, Volume 1*, Springer 2005, 352-55. Dinah Shelton, ed, *Encyclopedia of genocide and crimes against humanity*, Macmillan Reference, 3 vol. 2005. Dekel-Chen, Jonathan, et al. eds. *Anti-Jewish Violence: Rethinking the Pogrom in East European History*, Indiana University Press, 2011. Jack Fischel, *The Holocaust*, Greenwood Publishing Group, 1998. Yehuda Bauer, *Rethinking the Holocaust*, New Haven: Yale University Press, 2002.

- 23 See, among others, Richard J. Evans, *In Hitler's Shadow*. New York: Pantheon, 1989. Christopher Browning, *The Origins of the Final Solution: The Evolution of Nazi Jewish Policy, September 1939 – March 1942*, Jerusalem: Yad Vashem, 2004. John Klier, "What was a Pogrom?," *Russians, Jews, and the Pogroms of 1881-1882*, Cambridge: Cambridge University Press, 2011. David Engel, "What's in a Pogrom?," *European Jews in the Age of Violence*, in *Anti-Jewish Violence: Rethinking the Pogrom in East European History*, Indiana: Indiana University Press, 2010.
- 24 Isaiah Friedman, "Theodor Herzl: Political Activity and Achievements," *Israel Studies* 9.3 (2004): 46-79.
- 25 David M. Crowe, *A History of the Gypsies of Eastern Europe and Russia*, New York: St. Martin's Press, 1994. Angus Fraser, *The Gypsies*, Oxford: Blackwell Publishers, 1992. Judith Okely, *The Traveller-gypsies*, New York: Cambridge University Press, 1983.
- 26 Anthony Drummond, "The Construction of Irish Travellers (and Gypsies) as a Problem," *Migrants and Memory: The Forgotten "Postcolonials"*, Cambridge: Cambridge Scholars Press, 2007, 2–42. Judith Okely, *The Traveller-gypsies*, New York: Cambridge University Press, 1983.

literature<sup>27</sup>, the reality of their situation was far more harsh. They were put into forced labor camps by Spain in 1749<sup>28</sup>, were considered slaves in Romania until the 1850s<sup>29</sup>, were forbidden from immigrating to some areas outside of Europe (the United States outlawed the entry of the Roma in 1885, as did Argentina in 1880)<sup>30</sup>, and were targeted by the Nazis during the Holocaust.<sup>31</sup> Although both the Roma and the Irish Travellers attempted to defend themselves against state authorities, they were unable to do so because they lacked the concerted physical power, as well as the de facto political authority, of a state. As a result, many of their members died, and much of what made them culturally unique has been lost.

Although I have chosen to focus on three particular examples of peoples that have been unable to protect themselves successfully in the absence of a state, there are other examples that we might give. Most notably, we could consider the history of the Native American peoples, or that of the Aboriginal peoples of Australia. But what these histories tell us, in sum, is that in a world of states, individuals are not able to protect themselves without a state. States, because of their monopoly on legitimate physical power and de facto political authority, are the entities best situated, in the world as it is, to protect individuals. (To see this, imagine what would have happened if the Jews, Roma, and Irish Travellers had had states; it seems plausible that their histories would have been very different, because they would have been able to utilize the legitimate physical power and de facto political authority of their states for their protection.) This provides a good reason for endorsing the existence of states: states are worth having, we might say, because they protect their populations from unjust aggression and, by so doing, enable them to survive and flourish.

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27 Heathcliff, of *Wuthering Heights* fame, is of Roma origin.

28 Antonio Gómez Alfaro, "The Great "Gypsy" Round-up in Spain," 1993.

29 Viorel Achim, *The Roma in Romanian History*, Budapest: Central European University Press, 2004.

30 David M. Crowe, *A History of the Gypsies of Eastern Europe and Russia*, New York: St. Martin's Press, 1994.

31 János Bársony, "Facts and Debates: The Roma Holocaust," in János Bársony and Ágnes Daróczi, eds., *Pharrajimos: The Fate of the Roma During the Holocaust*, New York: International Debate Education Association, 2008, 1-12.

Of course, the state's protection of its individuals may not be its only worthwhile role; however, the evidence of history gives us good reason to think that this protective function is one of the state's primary roles. (Evocatively, states that fail to protect their members are often referred to as “failed states.”<sup>32</sup>) Historically, states originated in many different ways and for several different ostensible purposes, many of which had nothing to do with protection. For example, South Africa was created by Great Britain primarily for trading purposes,<sup>33</sup> while China was forcibly unified by the Emperor Ying Zheng in order to enrich his family's power.<sup>34</sup> But origins aside, by considering the role that states play—because of their monopoly on legitimate physical power and their de facto political authority—in the protection of individuals from unjust aggression, we can see that one of the primary roles of the state is the protection of its population.

### III. The State Right of Self-Defense

So far, I have attempted to show that individuals deserve protection (in virtue of having rights of self-defense that they cannot effectively exercise in the absence of a coercive political authority) and that one of the state's primary roles is to provide that protection (because, in a world of states, individuals cannot successfully protect themselves without a state). In this section, I argue that a state has a right of self-defense only when it is internally organized so as to provide the protection that its population deserves. A state's right of self-defense enables it to protect itself justifiably against both external—foreign threats and attacks—and internal—domestic threats and attacks—unjust aggression with the use of otherwise impermissible actions, e.g., by going to defensive war. And by protecting itself against both external and internal unjust aggression, a state is

32 Stewart Patrick, "'Failed' States and Global Security: Empirical Questions and Policy Dilemmas," *International Studies Review* 9.4 (2007): 644–662.

33 William Beinart, *Twentieth-Century South Africa*, Oxford: Oxford University Press, 2001.

34 Derke Bodde, “The State and Empire of Qin,” in Denis Twitchett and Michael Loewe, eds., *The Cambridge History of China: Volume I: the Ch'in and Han Empires, 221 B.C. – A.D. 220*, Cambridge: Cambridge University Press, 1987, 20-103.

able to maintain the conditions (namely, its continued existence) that are conducive to the continued protection of its population.

But, if a state is not fulfilling its protective role with regard to its population, then it is hard to see why it should be able to protect itself justifiably against instances of external or internal unjust aggression. When a state is not internally organized so as to provide the protection that its population deserves, it does not have the right to defend itself, because the main reason for having a state right of self-defense is so that a state can more effectively protect its population. So if a state is not attempting, through its internal organization, to protect its population in the first instance, then it does not meet the conditions necessary for having a right of self-defense that sometimes justifies going to defensive war. Ultimately, only those states that are internally organized so as to protect their populations have rights of self-defense, because only they meet the necessary condition—the fulfillment of their primary protective role—for having a state right of self-defense.

This is one of the main ways in which my view differs from the domestic analogy. Consider the individual case: regardless of the moral worth of an individual, she has the right to defend herself against unjust aggression. Now, it is true that an individual may forfeit or lose her right of self-defense in a variety of ways. Most commonly, she forfeits or loses her right of self-defense by unjustly aggressing against another. Her right of self-defense also may be overridden in some cases—e.g., her right to defend her property might be overridden by another individual's right to life.<sup>35</sup> (Notice that, in the overriding case, the individual does not forfeit or lose her right of self-defense; it is simply overridden by other concerns. That this is true may make certain other actions, such as apologizing and paying reparations if possible, appropriate on the part of the person with the overriding right to life.) However, in general, individuals do not have to fulfill any positive necessary

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<sup>35</sup> Joel Feinberg discusses a nice case of this in “Voluntary Euthanasia and the Inalienable Right to Life,” *Philosophy and Public Affairs* 7.2 (Winter 1978): 93-123.

conditions in order to have rights of self-defense; all they need to do to maintain their rights of self-defense is refrain from unjustly aggressing against others. The default understanding of individuals is that they have rights of self-defense.<sup>36</sup>

The same is not true of states. States' rights of self-defense, unlike individuals', are conditional on their fulfillment of their primary protective role. If states fail to be organized so as to provide the protection that their populations deserve, they do not have the right to defend themselves against external or internal unjust aggression. (However, just because a state lacks a right of self-defense, does not mean that another entity is justified in threatening or attacking it. Whether an instance of aggression is justified depends on many factors, not simply on whether the object of the aggression has a right of self-defense. I explain more below.) Because a state's right of self-defense is dependent on its fulfillment of a positive necessary condition, the default view of states should be that, to determine a state's international standing, we must consider not only how that state acts vis-a-vis other states, but also how it acts domestically. This goes against the view that, in dealing with international relations, we should treat all states as identical "black boxes."<sup>37</sup> Of course, there is much more to a state's international standing than its right of self-defense; however, in at least this one crucial respect, how a state acts domestically—*viz.*, whether it is organized so as to provide the protection that its population deserves—determines how it may justifiably respond to instances of external and internal unjust aggression.

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36 See, among others, Judith Jarvis Thomson "Self-Defense," David Rodin, *War and Self-Defense*, Jeff McMahan, *Killing in War*, George Fletcher, "Proportionality and the Psychotic Aggressor," Yitzhak Benbaji, "Culpable Bystanders, Innocent Threats and the Ethics of Self-Defense," Tony Honoré, "The Right to Rebel," *Oxford Journal of Legal Studies*, 8.1 (1988): 34–54, and C.A.J. Coady, "Terrorism and Innocence," *Journal of Ethics*, 8 (2004): 37–58.

37 The United Nations Charter treats states as black boxes: it claims that, regardless of domestic status, all states have a right of self-defense. See Article 2(4) and Chapter VII of the UN Charter. Although Helen Stacy's view is different than mine, she agrees that, on the international level, states should not be treated as black boxes. See her "Humanitarian Intervention and Relational Sovereignty," S. P. Lee, ed., *Intervention, Terrorism, and Torture: Contemporary Challenges to Just War Theory*, 89–104, Springer, 2007.

Importantly, it does not follow from my view that a newly created state does not have a right of self-defense. A state fulfills its primary protective role both by being dedicated to the protection of its population and by creating and implementing laws, institutions, and policies that work to protect the members of its population. (I have not yet spelled out what counts as protection. I do this below.) A state does not fulfill its protective role if its laws, institutions, and policies just happen to protect the members of its population by accident; nor does it fulfill its protective role if its dedication to protecting its population never manifests itself in the creation and implementation of appropriately protective laws, institutions, and policies. However, laws, institutions, and policies are constantly being created, implemented, altered, annulled, and re-instated. So, although a newly created state might still be in the process of creating and implementing appropriately protective laws, institutions, and policies, so long as it is dedicated to protecting its population and is manifesting this dedication through that process, it has a right of self-defense.

Of course, this right of self-defense is provisional in a certain sense, in that it depends on the new state actually getting the appropriately protective laws, institutions, and policies up and running. But this is hardly surprising; because a state's right of self-defense is both important for enabling the state to better protect its population and conditional on the state protecting its population in the first instance, if the state is working to fulfill its protective role as it gets organized, it gets some leeway in terms of having a right of self-defense. However, once the state is organized, if the laws, institutions, and policies that it has in place are not appropriately protective of the members of its population, or if it ceases to be dedicated to the fulfillment of its protective role, then it loses the provisional right of self-defense that it had as a newly created state. My view thus allows that some newly created states do have rights of self-defense, without having to accept the standard just war theory claim—which is supported by the domestic analogy—that all states, by default, start out with rights of self-

defense.<sup>38</sup>

Further regarding the state's fulfillment of its primary protective role, we might inquire of any particular law, institution, or policy whether it actually protects the members of the state's population. Given that there will undoubtedly be competing considerations and trade-offs among the various laws, institutions, and policies put into place by a state, it seems that requiring that every law, institution, and policy perfectly protect the members of a state's population is too high of a standard. Instead, we should say that the laws, institutions, and policies of a state must, for the most part and to the extent possible, protect its individuals, and more importantly, that the deliberative process by which the state comes to agree on various laws, institutions, and policies must show a deep appreciation of and regard for its individuals' protection. Reasonable people can and will disagree throughout the course of the political deliberative process, and that is perfectly acceptable, so long as they agree that the ultimate goal is to decide on and implement appropriately protective laws, institutions, and policies. That is, the state's deliberative process must manifest its dedication to the protection of its population. When these requirements are met, even if some laws, institutions, and policies do not perfectly protect some members of the state's population, the state is still organized so as to provide the protection that its population deserves and so has a right of self-defense that sometimes justifies going to war.

Of course, there is a balance to be struck between the state actually successfully protecting its population and its failing to do so while nonetheless being organized to do so. A state can be well-organized and still fail to protect some members of its population in any given instance; however, this does not mean that the relevant state has lost its right of self-defense. A state maintains its right

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38 For discussion of this claim, see Michael Walzer, *Just and Unjust Wars*, Jeff McMahan, *Killing in War*, and Michael Doyle, "A Few Words on Mill, Walzer, and Nonintervention," in *Reading Walzer: Sovereignty, Culture, and Justice*, eds Yitzhak Benbaji and Naomi Sussmann, London: Routledge, 2014.

of self-defense so long as it is dedicated to protecting its population and is manifesting that dedication through the implementation of appropriately protective laws, institutions, and policies that come out of a deliberative process that is focused on the protection of its population. So while the well-organized state's actual failure to protect some members of its population in any given instance is a failure, it does not mean that the state loses its right of self-defense. Conversely, though, if the state is consistently failing to protect some portion of its population over time, then that is good evidence that its implemented laws, institutions, and policies are not actually appropriately protective. States, given their protective role, need to be sensitive to evidence regarding how well their laws, institutions, and policies are actually working to protect their populations, considered both independently and as a whole. So while actual perfect protection of a state's entire population is much too high of a standard, given the contingencies of implementation and the practical trade-offs that undoubtedly occur in politics, there is something important to be said in favor of states actually managing non-accidentally to protect their populations over time. A state's right of self-defense, then, is dependent on its organization, but its being well-organized importantly includes the ability to, over time, successfully implement laws, institutions, and policies that are, for the most part and to the extent possible, actually protective of its entire population.

Importantly, the state right of self-defense is a defensive right; it potentially justifies the use of war by the state only when that state is being unjustly threatened or attacked. Furthermore, because the state right of self-defense is conditional on the state's fulfillment of its protective role, a state is justified in exercising its right of self-defense only when doing so will be conducive to its ability to better protect its population. So, when State A unjustly threatens or attacks State B, State B—assuming that it is fulfilling its protective role and so has a right of self-defense—has the right to defend itself with otherwise impermissible actions (including going to war). But, whether State B



should defend itself in such a situation depends on whether its doing so will, in fact, be conducive to its overall ability to better protect its population.<sup>39</sup> This is a particular application of a more general question, namely, the question of under what circumstances ought we to exercise our rights.

Consider the case of Finland in World War II. Finland declared war against the Soviet Union (this is sometimes referred to by historians as the 'Winter War').<sup>40</sup> The Finnish declaration of war was in response to the Red Army invading 70 miles of Finland in order to block the eastern German offensive against Leningrad. Despite assurances from Moscow that the Red Army would retreat after Germany was defeated, Finland refused to cede the border territory to the Soviet Union, and, after negotiations failed, declared war in late 1939. After massive military and civilian casualties on both sides, Finland agreed to cede both the contested territory and additional territory to the Soviet Union, and the Moscow Peace Treaty between Finland and the Soviet Union was signed in March of 1940.<sup>41</sup>

Arguably, the Finnish defense of its territory was not conducive to the protection of the Finnish citizenry; Finland knew that its military forces were vastly outmatched by the Red Army, and had assurances not only from Moscow, but also from Great Britain, that the Soviet Union would return the contested territory to Finland after the German threat to Leningrad was neutralized. (Great Britain assured Finland that it would, if necessary, help to evict the Red Army after the German threat was neutralized.)<sup>42</sup> Furthermore, Finland knew that having the Red Army on its border would block the eastern German offensive from possibly attacking Helsinki; the Soviet

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39 This goes against Michael Walzer's view; he seems to argue that states should always exercise their rights of self-defense when it is permissible for them to do so, regardless of what the outcome of exercising those rights is likely to be. See *Just and Unjust Wars*, especially chapter 4.

40 Robert Edwards, *White Death: Russia's War on Finland 1939–40*. London: Weidenfeld & Nicolson, 2006.

41 Robert Edwards, *White Death: Russia's War on Finland 1939–40*. London: Weidenfeld & Nicolson, 2006.

42 William R. Trotter, *The Winter War: The Russo–Finnish War of 1939–40* (5th ed.), New York: Workman Publishing Company, 2006.

forces, by protecting Leningrad, would also inadvertently protect thousands of Finnish civilians.<sup>43</sup> So, it seems that although Finland permissibly exercised its right of self-defense when it declared war on the Soviet Union, its doing so was, all things considered, a serious mistake. Finland took heavy military and civilian casualties, as did the Soviet Union, and also ended up losing more territory than the Soviet Union had requested before the war.<sup>44</sup> In addition, the Winter War took both Soviet and Finnish attention away from the eastern German offensive, which arguably enabled the German offensive to maintain complete control over Poland, Latvia, Lithuania, and Estonia.<sup>45</sup> Following Jeremy Waldron, we should conclude (as my view does) that Finland acted wrongly in exercising its right of self-defense.<sup>46</sup>

However, let us assume that State B should defend itself, i.e., that it both has a right of self-defense and that its exercise of its right of self-defense will be conducive to the better protection of its population. There is still a further question about *how* State B should defend itself. Unsurprisingly, the answer to this question also depends on State B's primary protective role; in particular, how State B ought to defend itself depends on what will best enable State B to better fulfill its protective role with regards to its population. If going to defensive war will best enable State B to protect its population, then that is what State B ought to do. However, if surrendering to the unjust aggressor and then engaging in sabotage will better enable State B to protect its population, then that is what it ought to do. Notably, Denmark did just this in World War II. Denmark surrendered to Nazi Germany in 1940 and then promptly proceeded to sabotage the Nazi program, saving over 7,000 Danish Jews from being sent to concentration camps.<sup>47</sup> The Danish sabotage of the Nazi program

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43 A. Chubaryan, "Foreword," in E. Kul'kov, O. Rzheshesvkii, H. Shukman, *Stalin and the Soviet-Finnish War, 1939–1940*. London: Frank Cass, 2002.

44 Edwards, *White Death*.

45 Needless to say, this was very bad: over 3 million of the 6 million Jewish victims killed in the Holocaust were Polish. Michael Berenbaum, *The World Must Know*, United States Holocaust Museum, 2006, 104.

46 Jeremy Waldron, "A Right to Do Wrong," *Ethics* 92:1 (October 1981): 21-39.

47 Henrik Dethlefsen, "Denmark and the German Occupation: Cooperation, Negotiation, or Collaboration,"

was a form of state self-defense, albeit not a form that is often recognized as such in the just war tradition. But as Charles Beitz rightly points out, there is more to defense than putting boots on the ground; states can defend themselves in a multitude of ways.<sup>48</sup> And given the multiple forms that a state's self-defense can take, there is a question about what form it ought to take. Because the state right of self-defense is linked to the protective role of the state, the “shape” (so to speak) of the state right of self-defense is sensitive to questions of what will best enable states to better protect their populations. In the face of unjust aggression, this will sometimes, but not always, mean going to defensive war.

#### IV. What Counts as Protection? The Individual Right of Self-Defense Revisited

The state right of self-defense is conditional on the state's fulfillment of its primary protective role. A state, to fulfill its protective role, must a) be dedicated to the protection of its population, b) manifest that dedication in its deliberative process for creating and implementing laws, institutions, and policies, and c) have laws, institutions, and policies that, for the most part and to the extent possible, successfully protect the members of its population. In short, the state must be organized so as to provide the protection that its population deserves. However, to determine whether a state meets these criteria, and thus has a right of self-defense, we need to know what counts as protection. Schematically, a state protects its population when it does what the individual right of self-defense is supposed to do. Recall that one of the main reasons (although, of course, not the only reason) why individuals need a state is because they are unable to exercise their individual moral rights of self-defense effectively in the absence of a state. One of the state's primary roles is to provide the protection that individuals deserve, but that they are practically unable to provide for

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*Scandinavian Journal of History*. 15.3 (1990): 193–206.

48 Charles Beitz, “Justice and International Relations,” *Philosophy and Public Affairs* 4.4 (Summer 1975): 387.

themselves; so, states protect their individuals when they protect, through their deliberative processes, laws, institutions, and policies, that which individual rights of self-defense are supposed to protect.

Now, to determine what individual rights of self-defense are supposed to protect, we need an account of the justification for the claim that individuals have rights of self-defense. I provide a Kantian justification for this claim, although I think that it is possible to go different ways here. Most reasonable justifications of the individual right of self-defense will give similar pictures of what that right is meant to protect, and so will provide similar conditions for what a state must do in order to count as providing protection to its population. So, although I think that the Kantian justification for the individual right of self-defense that I provide below is correct, I do not want to tie the success of my main argument to this claim. My main argument works so long as there is a reasonable justification of the individual right of self-defense in the offing, one that both limits individual self-defense to recognizably defensive actions<sup>49</sup> and that permits and justifies some otherwise impermissible actions in self-defense when certain conditions (such as the imminence, proportionality, and necessity conditions) are met. Such a justification can be plugged in, so to speak, to the relevant place in my argument regarding the state right of self-defense, and will generate an understanding of what counts as protection that can then be brought to bear on the question of whether states are organized so as to properly protect their populations. Assuming that the relevant understanding of protection that arises from any reasonable justification for the individual right of self-defense requires some positive action on the part of the state, (that it can fail to do), my main argument goes through.

That being said, for the sake of completion, I now provide a Kantian justification for the

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49 As opposed to a Hobbesian conception of self-defense, which allows that the best defense is a good offense.

individual right of self-defense. Individuals have a right to defend themselves because this enables them to protect their dignity, which they have in virtue of being rational autonomous agents.

Dignity, according to Kant, is “not merely a relative value, that is, a price, but an inner value...[had by] that which constitutes the condition under which alone something can be an end in itself.”<sup>50</sup>

Rational autonomous agency, as I explain below, constitutes the condition under which something can be an end in itself.<sup>51</sup> So individuals' dignity just is their intrinsic, objective worth as rational autonomous agents; because individuals are and aspire to be rational autonomous agents and are thus ends in themselves, their worth is absolute, “beyond compare” and “above all price.”<sup>52</sup> Our individual rights of self-defense are necessary to maintaining our dignity, we might say, because they enable us to demand and enforce the respect that we are owed as rational autonomous agents whose worth is beyond all price.<sup>53</sup>

To be a rational agent is to be capable of both acting on the basis of reasons and being governed by the laws of our practical reason.<sup>54</sup> That is, we not only act for reasons, but we act for reasons because we recognize them as reasons to act. This rational nature is, Kant thought, unique to humans, and is what allows us to give the moral law to ourselves.<sup>55</sup> As James Rachels puts it, “the moral law is the law of reason.”<sup>56</sup> We, as rational agents, can comprehend what we should do according to the moral law and then can freely do it from a sense of duty. This capacity to freely choose to be governed by the moral law is the capacity of autonomy, and it also is unique to

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50 Kant, *Groundwork of the Metaphysics of Morals* 4: 434-435; translation in Kant, *Practical Philosophy*, ed. and trans. Mary J. Gregor, Cambridge, Cambridge University Press, 1996, 84-85.

51 Kant, *Groundwork of the Metaphysics of Morals* 4:428.

52 Kant, *The Metaphysics of Morals*, 6: 434-435.

53 This is similar to Feinberg's view of the role of individual rights. See his “The Nature and Value of Rights,” *Journal of Value Inquiry* 4.4 (1970): 243-257.

54 David Velleman, “A Brief Introduction to Kantian Ethics,” 49-50.

55 Kant, *Lecture on Ethics*.

56 James Rachels, “Kantian Theory: The Idea of Human Dignity,” *The Elements of Moral Philosophy*, 115.

humans, according to Kant.<sup>57</sup> So individuals, insofar as we are and aspire to be both rational and autonomous agents, are the embodiment of the moral law itself in the world. As such, our value is absolute.

Furthermore, individuals are not just one more thing of value among others. Rather, as rational autonomous agents, we are ends in ourselves, that is, we are the determiners of value in the world.<sup>58</sup> Things have value because we, through our desires and goals, assign them value. As Velleman puts it, individuals “shed value” onto things; individuals “are things for the sake of which other things can have value.”<sup>59</sup> So, to treat an individual merely as one valuable thing among others is to make a mistake; it is to fail to recognize individuals as ends in themselves, as the source of value in the world. To take Velleman's example, why think that my happiness is valuable at all?<sup>60</sup> Well, it seems that my happiness matters because I matter. It is not straightforwardly that my happiness is valuable because it is a means to my self-preservation; rather, it is valuable because of the underlying concern that I have for my worth as a rational autonomous agent. I value my happiness, not for *its* own sake, but for *my* own sake. And more generally, we think that happiness is valuable because we think that people are valuable and so that their happiness matters. People are those things for the sake of which we care about happiness (or justice, or well-being). Because individuals play this role, our worth is beyond compare; without us, the moral dimensions of the world would fall away.<sup>61</sup>

Because our value, as rational autonomous beings, is absolute and above all price, we should treat individuals with a certain respect; in Kant's own language, we should “act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means

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57 Kant, *Groundwork of the Metaphysics of Morals*, 4:435.

58 David Velleman, “A Brief Introduction to Kantian Ethics,” 47-9.

59 Velleman, 47-9.

60 Velleman, 47-8.

61 Velleman, 49, and Rachels, 115.

only.”<sup>62</sup> This is one formulation of Kant's ultimate moral principle, from which he thinks all moral duties, obligations, rights, and privileges are derived. Kant refers to this ultimate moral principle as the *categorical imperative*. Now, there are other formulations of the categorical imperative in Kant's works, and there is a great deal of debate in the literature both about how the various formulations ought to be interpreted and about which formulation ought to be regarded as primary.<sup>63</sup> For the purposes of this paper, I focus on the 'humanity as an end' formulation, because it most clearly brings out the moral status of individuals with which I am concerned.

To treat humanity as an end is to recognize and respect the absolute moral worth, i.e., the dignity, of both oneself and other individuals. On its face, this means that we (individuals) have a duty to treat individuals beneficently; we must avoid harming them, we must strive to promote their welfare, and in general, we must attempt to help further their ends.<sup>64</sup> More specifically, because individuals have dignity in virtue of being rational autonomous agents, we must recognize and respect their dignity by recognizing and respecting their rationality and autonomy. And this means that we must treat individuals as rational autonomous agents who are capable of setting their own ends, acting from reasons, and in general are capable of being governed by the moral law. More specifically, we may not use or manipulate individuals without their consent in order to further our own ends. To do so would be to fail to recognize and respect their dignity as autonomous determiners of value; it would be to treat individuals as only having the value that we shed onto them (*visz.*, as means), rather than as value-sources in their own right (*visz.*, as ends).

In addition, we (individuals) must allow other individuals to live their lives as they so choose, so long as they are not unjustly aggressing against anyone else. Failing to allow people to determine

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62 Immanuel Kant, *Groundwork of the Metaphysics of Morals* 4:429

63 See, among others, the work of Onora O'Neill, Christine Korsgaard, and Thomas Hill.

64 James Rachels, "Kantian Theory: The Idea of Human Dignity," 115.

and carry out their own life plans, so long as those plans do not unjustly harm any other individuals, is a form of disrespect; it shows either a lack of recognition that people are rational autonomous agents, or a lack of caring that they are. (Some theorists argue that you cannot both recognize a person's dignity and fail to treat her as a rational autonomous agent; the inappropriate treatment, on this view, shows that you do not actually recognize her as having dignity. I take it that the correctness of this view turns on what is involved in recognition.<sup>65</sup>) Regardless, the point is that the dignity of individuals makes a moral demand on us; it demands that we allow individuals to set and fulfill the course of their own lives, so long as they are not unjustly aggressing against others.

However, it is a commonplace that people do not always respect others' dignity. As both Hobbes and Locke surmised (although not using this precise language), and as we learn from history, people often fail to treat others as rational autonomous agents. People lie, steal, cheat, manipulate, and in general often seriously disrespect other individuals. More abstractly, in the world as it is, individuals often fail to adhere to the 'humanity as an end' formulation of the categorical imperative; they treat others as mere means to their own ends. Individual rights of self-defense thus play an important role; they enable individuals justifiably to demand for themselves that others respect their rationality and autonomy, and they formally enable individuals justifiably to attempt to enforce their demands for respect with otherwise impermissible actions if necessary. Individual rights of self-defense are thus necessary for individuals' maintenance of their dignity in the actual world.<sup>66</sup>

Recall Zed's unjust interruption of Ashley; in this instance, Zed is failing to respect Ashley as a rational autonomous agent. Ashley's individual right of self-defense enables her to demand—via

65 J.L.A. Garcia discusses this in his paper, "The Heart of Racism." *Journal of Social Philosophy* 27.1 (Spring 1996): 5-45.

66 It is a further question whether individual rights of self-defense would be necessary in a world where everyone, without exception, adhered to the 'humanity as an end' formulation of the moral law. Joel Feinberg thinks so; I am not so sure. See his "The Nature and Value of Rights," *The Journal of Value Inquiry* 4.4 (1970): 243-260.



defensively interrupting him—that Zed stop disrespecting her and recognize her privilege, as a rational autonomous agent, to speak uninterrupted. Similarly, when Zed unjustly attempts to kill or maim Ashley, her individual right of self-defense enables her to attempt, justifiably, to enforce the demand of morality that Zed respect her as a rational autonomous agent. (E.g., it permits her to attempt to stop his unjust aggression with whatever action, up to and including the use of lethal force, is necessary to do so.) Individuals have rights of self-defense, then, so that they can justifiably protect—with otherwise impermissible actions if necessary—their dignity as rational autonomous agents.

With this Kantian argument for the claim that individuals have rights of self-defense in hand, we can now turn back to the question that prompted it, namely, what must states do to count as protecting the members of their populations? As I said above, states protect individuals when they protect that which the individual right of self-defense is supposed to protect. Given that individual rights of self-defense are meant to protect the absolute moral worth of individuals, considered as rational autonomous agents, I conclude that states protect their individuals when those individuals are non-accidentally able to maintain their moral status as rational autonomous agents. This means, in the first instance, that the laws, institutions, and policies of the state must, for the most part and to the extent possible, recognize and respect the dignity of the members of its population. In addition, the state must be dedicated to recognizing and respecting the dignity of the members of its population, and must manifest that dedication in its deliberative process for creating and implementing its various laws, institutions, and policies.

Now, this is somewhat vague and schematic. As Thomas Hill has rightly pointed out, it is exceedingly difficult to say with certainty which specific deliberative processes, laws, institutions, and policies will recognize and respect individual dignity, because of the various considerations and real-

world complications that have to be taken into account.<sup>67</sup> (Such considerations and complications include, among others, the practical bases of rational autonomy, the circumstances of history and contemporary contexts, the relative scarcity of resources, the impact on the economy, and the relative ease of communicating. I take up the issue of the practical bases of rational autonomy, in particular the need for community, in other work.) However, to say that states must recognize and respect the members of their populations as rational autonomous agents does provide us with some limitations on what a state can allow and still be fulfilling its primary protective role. And perhaps more importantly, it provides a principled basis for criticizing existent state deliberative processes, laws, institutions, and policies.

Broadly, any state that perpetrates or condones domestic mass killings, mass mutilations, and/or slavery is straightforwardly not recognizing and respecting the dignity of the members of its population, and so does not have a right of self-defense. (Again, it does not follow from this that threats or attacks against such a state are justified. I say more below.) But while a state's failure to recognize and respect the dignity of its individuals may well take the form of state-perpetrated or condoned massive human rights violations, it may also take the form of egregious neglect—for instance, allowing its population to suffer from large-scale unnecessary famines or treatable epidemics, or allowing some large set of private individuals systematically to persecute some other large set of private individuals without penalty—or the form of positive laws, institutions, and policies that manifestly do not recognize and respect the dignity of many of its individuals. For example, the structural racism that appears to be enshrined in current US laws, institutions, and policies may represent a failure of this sort.<sup>68</sup> Because there are a variety of ways in which a state can

67 Thomas Hill, "In Defense of Human Dignity: Comments on Kant and Rosen," in Christopher M. McCrudden, ed., *Understanding Human Dignity, Proceedings of the British Academy*, Oxford: Oxford University Press, 2014.

68 See Sally Haslanger, "Oppressions: Racial and Other," in Levine and Pataki, eds., *Racism in Mind*, 97–123, and Joshua Glasgow, "Racism as Disrespect," *Ethics* 120.1 (October 2009): 64–93.

fail to recognize and respect the dignity of the members of its population, there are a variety of ways in which it can fail to fulfill its primary protective role. And if and when a state fails to fulfill its protective role, then it lacks a right of self-defense.

Of course, it is easy to recognize states that are so obviously failing to be internally organized so as to protect their populations. A more difficult question concerns states that are failing to protect their populations in some ways, but succeeding in others. I think that the correct way to consider this problem is to think of the state right of self-defense as being stronger or weaker, depending on how well, and to what degree, the relevant state is succeeding in being organized so as to protect its population. While there will be so-called “bright line” cases where states clearly are not internally organized so as to protect their populations, such as the situations mentioned in the paragraph directly above, there will also be many borderline cases.<sup>69</sup> For such cases, and in general, roughly, the better a state is at being organized so as to protect its population, the stronger its right of self-defense is (*viz.*, the more it may do in its own self-defense). The worse a state is at being organized so as to protect its population, the weaker its right of self-defense is (*viz.*, the less it may do in its own self-defense).<sup>70</sup> It is hard, if not impossible, to pinpoint the exact level of appropriately protective organization at which a state loses or gains a right of self-defense; but nevertheless, linking a state's right of self-defense to its being more or less well-organized in this way allows us to evaluate both the strength and existence of that state's right of self-defense.

## V. An Implication for Just War Theory

It is possible, and indeed plausible, to think that at least some states that exist in the world

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<sup>69</sup> Thanks to Tom Hill and Carl Ficarrotta for pushing me on this point.

<sup>70</sup> Of course, regardless of how strong a state's right of self-defense is, that is, regardless of how well-organized so as to protect its population a state is, that state is still prohibited from committing aggressive actions in the name of its population. The state right of self-defense under discussion is not Hobbesian, and so it has to do only with defensive, not aggressive or preventative, actions. (In other words, the state right of self-defense under discussion is limited by the imminence condition.) Thanks to Bernie Boxill for pushing me on this point.

today do not have rights of self-defense. Contrary to many views within the just war tradition and international relations theory,<sup>71</sup> I maintain that only those states that have the proper domestic attributes have rights of self-defense that can justify their going to defensive war against instances of aggression. This has many implications for just war theory, one of the most important of which concerns inter-state interventions. As David Luban nicely points out, many theorists have taken it to follow from the claim that all states have rights of self-defense that inter-state intervention is generally ruled out as unjustified, and so non-intervention among states should be, as a matter of justice, the rule.<sup>72</sup> Recently, some political theorists have argued that, although non-intervention is the rule, in certain extreme cases (most notably when members' basic human rights are being violated on a large scale by their own state), that state's right of self-defense can be overridden and so interventions into its domestic affairs by other states can be justified.<sup>73</sup> My view differs from this in that it does not maintain that a state's right of self-defense, in such cases, can be overridden; rather, in such cases the relevant state does not have a right of self-defense at all, and so interventions into its domestic affairs by other states are not straightforwardly—as rights violations—ruled out as unjustified.

Now, although interventions against states without a right of self-defense are not

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71 For iterations of this view, see, among others, Michael Walzer, *Just and Unjust Wars*, David Rodin, *War and Self-Defense*, Thomas Hobbes, *Leviathan* chapter 13, The Kellogg-Briand Pact of 1928 (quoted in J. L. Brierly, *The Law of Nations*, 6th ed., ed. Humphrey Waldock, Oxford: Oxford University Press, 1963, 409), Yehuda Melzer, *Concepts of Just War*, Leyden: A. W. Sijthoff, 1975, 28-9, Hersch Lauterpacht, *International Law and Human Rights*, London: Stevens, 1950, 167, The United Nations Charter, Article 2(4) and Chapter VII, and the Carter Administration's response to Vietnam's invasion of Cambodia during Pol Pot's regime (Henry Kamm, "The Cambodian Dilemma," *The New York Times Magazine*, 4 February 1979, pp. 54-5).

72 David Luban, "Just War and Human Rights," *Philosophy and Public Affairs* 9.2 (Winter 1980): 164-6. John Stuart Mill also maintains that non-intervention should be the rule in international relations, although he reaches this conclusion by a different argument. J.S. Mill, "A Few Words on Non-Intervention," *Fraser's Magazine*, 1859.

73 Michael Walzer, *Just and Unjust Wars*, and "The Moral Standing of States," *Philosophy and Public Affairs* 9.3 (Spring 1980): 209-229. See also Charles R. Beitz, "Bounded Morality: Justice and the State in World Politics," *International Organization* 33: 405-424, and Gerald Doppelt, "Walzer's Theory of Morality in International Relations," *Philosophy & Public Affairs* 8.1 (1979): 26.

straightforwardly ruled out as unjustified, this is not yet to say that such interventions are ever, sometimes, or always justified. It is simply to say that states without a right of self-defense may not justifiably defend themselves against interventions, *regardless of whether those interventions are justified*. Of course, other entities, such as individuals, locally-organized community militias, and UN security forces, might well have the standing to defend against unjustified interventions in these sorts of cases. I have not said anything to rule this out. It is simply that the attacked state may not justifiably defend itself (e.g., it may not utilize its military to defend itself, nor seek to defend itself via nonmilitary measures such as sabotage, nor call for its international allies to defend it), because it does not have a right of self-defense.

A natural objection at this point is that my view seems to carry with it a very counter-intuitive response to a common occurrence in the actual world. Say that a so-called bad state—i.e., a state that is, in various ways, failing to be organized so as to recognize and respect the dignity of the members of its population and so does not have a right of self-defense—is invaded by a worse state.<sup>74</sup> Based on what I have said so far, it seems that, according to my view, the bad state may not defend itself against the worse state's invasion. And that response is, I agree, wildly counter-intuitive. But it is important to recall here that I have not ruled out the permissibility of other entities defending against unjustified invasions in these kinds of cases; although the bad state does not have a right of self-defense, the individual members of the bad state maintain their individual rights of self-defense and so may defend themselves from the worse state. In addition, they may form local community militias (through express consent), and they may call for international aid. However, the situation becomes more complicated if we assume that these individuals, due to being members of a bad state, do not have the resources necessary to defend themselves, and so are at serious risk of

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<sup>74</sup> The situation, still occurring at the time of writing, between Ukraine and Russia (I am here referring to the Russian intervention that began in 2014) appears to be an instance of this sort.

being slaughtered by the invading military forces of the worse state. What then?

In response to this kind of case, I maintain that the bad state does not have a right to defend itself. However, allowing its people to be slaughtered is also wrong. So, the bad state here faces a choice between two evils, and it should pick the lesser of the two. In almost every case, that will mean defending itself against the worse state, although this is true not as a matter of necessity or logic, but as a matter of the moral weight of various courses of action in the actual world. Importantly, though, when there is a choice between two evils, and you choose the lesser evil, you have not thereby done something right. You have still done something wrong, albeit less wrong than the relevant alternative. The bad state that defends itself against the worse state has, as it should, picked the lesser of two evils; but there is still an important sense in which it has done something wrong. Sometimes, and especially in these kinds of high stakes lesser-evil cases, it is possible both to do what you ought to do and to act wrongly.<sup>75</sup>

To see this, consider the following example. Let us say that Al Capone is being threatened by a rival mobster encroaching on his territory. Capone chooses to fight back because he knows that this rival will kill all of Capone's own people and, in so doing, will create a dangerously chaotic situation throughout the midwest. And besides, Chicago is Capone's territory. Capone's choice to fight back, it seems, is the lesser of two evils all things considered, given that Capone is right about what his rival will do to his people. But the fact that Capone's fighting back is the lesser of two evils is not thereby enough to say that Capone's action is right, because what Capone is doing is defending his ability to carry on doing something wrong. (Let us assume—I think non-contentiously—that Capone's mob operations are wrong). In much the same way, a bad state defending itself against a worse state may well be choosing the lesser of two evils, but it is not thereby doing what is

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<sup>75</sup> Utilitarianism denies this, of course; but I say so much the worse for utilitarianism.

right, because it has no right to defend itself, that is, to defend its ability to carry on doing something wrong. (I here assume that a state that fails, in various ways, to be organized so as to recognize and respect the dignity of the members of its population is doing something wrong.) In this situation then, the bad state, like Capone, is merely doing what is less wrong when it defends itself against an unjustified intervention.<sup>76</sup>

Importantly, while interventions are not straightforwardly ruled out by the fact that all states have standing rights of self-defense on my view, they may generally and for the most part be ruled out by other considerations. Assume that State B is not organized so as to provide the protection that its population deserves, and so does not have a right of self-defense. Despite this, State A's intervention against State B may be unjustified, because it might be practically impossible for State A to intervene against State B while fulfilling its primary protective role in regards to its own population. Say that State A, in order to intervene in State B's affairs, would have to create a military force out of unwilling conscripts. In this case, State A should not intervene against State B, because to do so would be to contravene State A's own primary protective role. More broadly, to see whether an intervention is justified, we must consider several factors, only one of which is whether the state against which we might intervene has a right of self-defense. Overall, my point here is that the question of intervention is more complicated than the just war tradition (with its strong emphasis on states' rights) would have it.

We must also consider what domestic and international effects a state's intervening in another state's affairs will plausibly have. Domestically, the key question is whether a state's

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76 This is a very brief analysis of how to think about some high stakes lesser-evil cases. It is not meant to be exhaustive, as there are many complex issues surrounding lesser-evil cases, but rather is meant merely to sketch a plausible answer to an intuitive objection to my view. For more on (political) lesser-evil cases, see, among others, Michael Walzer, "Political Action: The Problem of Dirty Hands," *Philosophy & Public Affairs* 2.2 (Winter 1973): 160-80, Yitzhak Benbaji, "Dehumanization, Lesser Evil and the Supreme Emergency Exemption," *Diametros: An Online Journal of Philosophy* 23 (2010): 5-21, and Michael Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror*, Princeton: Princeton University Press, 2004.

intervening in another state's affairs is compatible with the first state's fulfilling its primary protective role. Internationally, the key question is whether the intervention will have the effect of making the world one in which individuals' dignity is more, rather than less, recognized and respected.

Furthermore, we must consider whether it is practically possible to intervene in a way that recognizes and respects the dignity of the individuals in the state in which we are considering intervening.<sup>77</sup> After all, just because their state does not have a right of self-defense, does not mean that the individuals of that state have less dignity, or are less deserving of protection. Overall, only if an intervention will a) be against a state that lacks a right of self-defense, b) have on the whole more good effects than bad in terms of protecting the dignity of individuals, and c) be done in a way that recognizes and respects the dignity of the individuals in both the intervening state and the intervened-against state, is it justified.<sup>78</sup> So while justified interventions might be more common in my proposed system than in the current system (which generally straightforwardly rules out interventions in all but the most extreme cases), they will not be so common as all that, because the bar for interventions to be justified is (appropriately, given the known difficulties of intervening well) high.

My proposed system, wherein states have rights of self-defense only when they fulfill their primary protective role, makes interventions possibly justified in precisely the right kinds of cases. It allows us to consider intervening not only when individuals are being brutally repressed and killed on a large scale by their state, but also when they are being allowed by their state to unnecessarily

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77 As Helen Stacy puts it, interventions, to be justified, must have not only the end goal of improving respect for human rights in the relevant state, but also must proceed in such a way that those human rights are immediately more respected than they were prior to the start of the intervention. Stacy, "Humanitarian Intervention and Relational Sovereignty," S. P. Lee, ed., *Intervention, Terrorism, and Torture: Contemporary Challenges to Just War Theory*, 89–104, Springer, 2007.

78 My discussion focuses solely on inter-state interventions, because this is the type of intervention that is primarily discussed in the philosophical literature. However, we could discuss interventions by other groups, as well. The same considerations would apply, with the addition of questions of standing: do non-state entities have the appropriate standing to intervene in the affairs of states?



suffer and die, and also when they are being slowly, subtly robbed by their state of the dignity that is an essential part of living well. So considered in light of what matters most—protecting the dignity of individuals—my proposed system is better than the current system. Not only does it allow the possibility of intervening in precisely the right kinds of cases, but it also provides a much-needed justification for the widely accepted claim that at least some states have rights of self-defense that, in certain circumstances, justify going to defensive war.