
Introduction

This book advances a theory of international justice. The theory is a liberal one in that it places the individual and her rights at center stage and insists that political states are legitimate if they adequately protect the human rights of their constituents and respect the rights of all others. It is not uncommon to insist that a state enjoys authority over its individual members if it satisfactorily protects their rights, but it is becoming increasingly controversial to suppose that any state has a moral right against the rest of the world to order its affairs as it sees fit. In other words, while few doubt that a state may justifiably coerce its constituents when this coercion is necessary to adequately secure their human rights, thinkers increasingly defend a certain form of cosmopolitanism, arguing that every state is under a duty to turn over some substantial portion of its sovereign powers to international institutions. In contrast, our theory holds that a legitimate state has a moral right of political self-determination that not only grounds its authority over its own members, but also absolves it of any duty to alienate its sovereign powers to international arrangements. As long as a state adequately protects and respects human rights, it possesses such a right of self-determination. Moreover, we contend that this right of self-determination is irreducibly collective and so held by the group of persons who constitute the state. Our theory is thus quite distinctive insofar as it combines the orthodox liberal notion that the lives of individuals are what ultimately matter morally with the putatively anti-liberal idea of an irreducibly collective right of self-governance.

In the course of exploring the implications of our theory, we address issues of justice that arise in a world of politically independent, modern states. In particular, we seek to illuminate and answer questions relating to democracy, political self-determination, secession, international criminal law, armed intervention, political assassination, global distributive justice, and immigration. Some of the views we defend run against the grain of current academic opinion. Here are some examples: there is no human right to democracy; separatist groups can be morally entitled to secede from legitimate states; the fact that it is a matter of brute luck whether one is born in a wealthy state or a poorer one does not mean that economic inequalities across states must

be minimized or even kept within certain limits; most existing states have no right against armed intervention; and it is morally permissible for a legitimate state to exclude all would-be immigrants.

There is another way in which this book runs against the grain. In recent years, the focus of scholarship on global affairs has been on the conditions leading to a decline in the power and independence of nation-states and on the consequences of that decline; the international system of independent states has often been treated as a dying one, soon to be consigned to the dustbin of history. Over a decade ago, Giorgio Agamben confidently expected the full completion of “the process of dissolution of the nation-state and of its sovereignty.”¹ And notice as well that these days theorists often speak of “global” rather than “international” justice and assume that globalization spells the end of the sovereign state. The questions on which we focus, however, are ones that arise against the background of a global order of politically independent states.² Although such a focus might seem outdated, the fact is that, unless there is some radical change in world affairs, the human population will continue to be divided into territorially distinct states exercising important sovereign powers and regulating their interaction, to a certain extent at least, by means of international law. Accordingly, we agree with Ulrich Beck that “it is thoroughly misleading to assume that state sovereignty and globalization are irreconcilable with one another.”³ More importantly from an ethical point of view, according to the account of political self-determination we defend in this book, legitimate states would be morally entitled to retain their independence and sovereign powers even if there turned out to be important advantages to dismantling all existing states and dispersing the powers of sovereignty among various local, regional, and global levels of governance.⁴ Accordingly, even as movement toward such a cosmopolitan form of governance appears to be the trend of the future, questions will and should persist concerning the justice of relations that independent political states have with each other and with the individuals who live within or beyond their borders.

In this initial chapter, we sketch the main ideas of our theory of international justice and present a summary of each subsequent chapter. The detailed explication and defense of these ideas are found in those chapters. We begin here with the two main concepts from which contemporary discussions about international justice have been woven: human rights and sovereignty.

We understand human rights to be a subset of individual moral rights which are distinguished in terms of their connection to basic human interests or, better yet, human needs. Put succinctly, one might say that human rights are individual moral rights to the protections generally needed against the standard and direct threats to leading a minimally decent human life in modern society. We cannot settle here the highly controversial and complex question of what constitutes a decent life, but we do want to emphasize two points. First, in the

context of the contemporary human life, the threshold of decency seems to us to be reasonably well captured by Articles 3–20 and 25–26 of the *Universal Declaration of Human Rights*.⁵ At any rate, these articles, presenting a range of civil, political, and economic rights, strike us as a good place to start a discussion of what individual moral rights must be respected and protected for human beings generally to have sufficient prospects for a decent life. Second, we do not allege that it would be strictly impossible for a victim of a human rights violation ever to live a minimally decent human life: the rights do not provide logically necessary conditions for a decent life. Victims of torture and vicious racial persecution can, despite the enduring psychological and physical scars of their ordeal, still lead decent and even inspiring lives. Witness Nelson Mandela. We claim only that Articles 3–20 and 25–26 collectively constitute a list that is a reasonable first approximation of the protections that individuals generally need against the standard and direct threats found in modern society to living a decent human life.⁶

A crucial premise of our overall argument is that human rights are connected to political legitimacy. The nature of the connection can be explained as follows. A key feature of states is that they employ coercion and, more generally, exercise ultimate decision-making power over a territorially based population on a wide range of matters. If a state possesses legitimacy, then it has the moral right to exercise such power and other agents have a duty to respect the decisions made in the exercise of that power.⁷ The moral right to that power involves an internal and external dimension: it is a right to coerce the individual constituents of the state to comply with its duly authorized rules and regulations, and a right against outsiders, imposing upon them a duty to refrain from interfering with the state's decisions regarding its own constituents. But this exclusive right of a state to govern coercively and impose duties in the exercise of its decision-making power stands in need of justification. What, then, grounds legitimacy?

Our contention is that legitimacy rests on the ability and willingness of a state to adequately protect the human rights of its constituents and to respect the rights of all others. If a state adequately protects and respects human rights,⁸ then we will say that it successfully carries out the “requisite political functions.” That is, the state is doing the job that it needs to do in order to justify its coercive power and thereby be legitimate.⁹ This conception of legitimacy stands free of any particular account of which specific rights ground legitimacy. It holds only that there are some individual moral rights such that any state that adequately protects and respects those rights is thereby legitimate. Put another way, there are certain individual rights that are the measure of political legitimacy. If this is correct – and it is a substantive normative question as to whether it is – then there is the further substantive moral question of which rights form

that measure. Our judgment is that rights that are connected in the appropriate way to a decent human life are the rights that form the measure of political legitimacy. Simplifying a bit, we can say that a state has earned legitimacy if it is willing and able (a) to protect its own members against “substantial and recurrent threats”¹⁰ to a decent human life – threats such as the arbitrary deprivation of life or liberty, and the infliction of torture – and (b) to refrain from imposing such threats on outsiders.¹¹

As measures of political legitimacy, human rights place constraints on the permissible exercise of power by states. This constraining function was central to the human rights revolution that took place in international law after the end of World War II. The rulings in the Nuremberg Trial, the adoption of the *Universal Declaration* by the General Assembly of the United Nations, and later legal and political developments called for a rethinking of the idea of state sovereignty. It was no longer reasonable – if it ever was – to think of sovereignty in terms of the Westphalian idea of the absolute dominion of a state over its territory and its members.¹² Thus, certain egregious human rights abuses, such as genocide, came to be seen as crimes that could be legitimately tried by international tribunals, regardless of the consent of the state in which the abuses took place and even if the state’s criminal laws did not prohibit the abuses. What, then, is one to make of the concept of sovereignty?

Among the key ideas in contemporary thinking about sovereignty is that it is best understood not as a single power, but rather as a bundle of powers.¹³ One can point to five main sets of sovereign powers: (a) to make, enforce, and adjudicate valid legal rules within a defined territory; (b) to wage war in self-defense; (c) to enter into binding treaties and agreements; (d) to be free from outside interference in ordering its legal, political, and economic system and other aspects of its basic structure; and (e) to preserve its territorial integrity. The bundle approach surely illuminates the different kinds of powers exercised by a modern state. However, it is possible to conceive of the different powers in the bundle as tied together by a more abstract power, namely a state’s power of self-determination. Each power in the bundle constitutes a different way in which a state can exercise or protect its dominion over its affairs, so that it can determine what kind of state it is to be.

This is not to say that every *de facto* state has a right of self-determination. To the contrary, a central thesis of our theory is that only a *legitimate* state has a *moral right of self-determination*.¹⁴ Moreover, we hold that this right is *irreducible* to the individual rights of the constituents of the state. The right is a group right: it belongs to the members of the state as a collective body, because it can only be exercised jointly by the members. The right is also irreducible in the following sense: even a legitimate state is a nonconsensual form of association, and so one cannot simply say – as many liberals are prone to do – that the

self-determination of a legitimate state just is the self-determination of each individual through his or her consent to the rule of the state. No modern state has garnered the morally meaningful consent from all, or even most, of its citizens. Accordingly, the state's right of self-determination stands free from the individual rights of autonomy held by its citizens.

The idea that states can have an irreducible moral right to self-determination has been derided as a "Hegelian myth" by one prominent theorist of international justice.¹⁵ This myth treats the state as though it were a super-important person and ascribes to it such a weighty moral significance that individual rights are properly sacrificed to the interests of the state. In our view, any understanding of the state in those terms is both incompatible with liberalism and deeply misguided.

Liberalism does not simply hold that individuals have moral rights that restrict the legitimate exercise of state power. More fundamentally, liberalism rests on a position that has been called "value individualism," namely that the weal and woe of individuals is, ultimately, all that matters morally. We endorse value individualism as an important element of liberalism. But we will argue that value individualism is consistent with recognizing a basic and irreducible moral right of self-determination held by legitimate states. Moreover, our theory is not committed to any Hegelian myth about the state. The state is not a person, much less a super-important one. The state is a territorially based population of politically organized persons. Most important, our theory rejects the idea that the rights of individuals are properly sacrificed to the interests of the state. Rather, a state's legitimacy, and so its right of self-determination, depends on its protecting and respecting the rights of individuals. Thus, very much contrary to the Hegelian myth, the rights of states are morally subordinate to the rights of individuals. Individual rights not only place limits circumscribing the rightful exercise of a state's powers of self-determination, those rights also provide the normative considerations that ground a legitimate state's own right to self-determination.

Our theory's account of the grounds of a state's right to self-determination has important implications for the question of which groups have a valid claim to constitute a state. A popular notion is that a group must share a thick set of cultural and historical ties. It must be a "nation" or something very much like a nation. Our theory rejects such a view. Any group can constitute a state, no matter how culturally heterogeneous and no matter how divergent the branches of the tree of human history from which its members have descended. As long as the group is willing and able to establish and maintain institutions that perform the requisite political functions, it has a right to constitute a state with the powers of self-determination. The measure of a group's right to statehood is not the shared culture or ancestry of its members, but rather their ability and willingness to create a legitimate state.

An increasingly popular view is that the only form that a legitimate state can take is that of a democracy. This view is closely connected to the contention that there is a human right to democracy. We argue, to the contrary, that there is no human right to democracy and that there is no bar, in principle, to a legitimate state having a form of nondemocratic rule. The measure of legitimacy is not democracy but adequate protection and respect for human rights, and democracy is best understood as a valuable means for securing such protection and respect.

In our account of political self-determination, the following idea plays an important role: If an agent has a basic moral right to self-determination and makes a certain choice in the exercise of that right, then other agents have a deontological reason to respect that choice. When we speak of deontological reasons, we are referring to reasons that are not simply put in “the balance” and weighed along with other reasons in order to decide what ought to be done. Rather, such reasons have two main features. First, they demand a certain course of action because any contrary course would wrong someone. Second, they are “exclusionary reasons” to *not* act on the overall balance of reasons in deciding what to do.¹⁶ Combining the two aspects gives us the following: they are reasons that (a) demand a particular course of action as the only action in the situation that avoids wronging someone and (b) mandate disregard for other considerations that would, absent the wrong, count as reasons for or against the action. An example will illustrate this idea of a deontological reason.

Suppose that Jane and Jack are typical parents of two young children. As part of their right to self-determination, they are together entitled to raise their children as they see fit, within certain limits. Let us assume that Jane and Jack have neighbors who would do a better job when it comes to making decisions about the education of Jane and Jack’s children. It is not that Jane and Jack would be negligent. It is just that the neighbors know much more about education and would make better-informed decisions. Nonetheless, in our view, one should not say that this fact about the neighbors counts in favor of the conclusion that the neighbors are at liberty to override the decisions Jane and Jack make about the education of their children. Jane and Jack are (non-negligently) exercising their parental dominion in making their decisions, and so there is a deontological reason to respect these decisions. The presence of a deontological reason means that if the neighbors ask themselves whether they should block some educational decision of Jane and Jack, then the action they take in response should not be dictated by the overall balance of considerations that bear on their contemplated intervention. Rather, the neighbors should reason: “It would wrong Jane and Jack to interfere with their decision, and that is all that counts in this situation.”

We argue that the same sort of answer – with an important qualification – is the proper one when it comes to decisions that legitimate states make that fall within the scope of their right of self-determination. Not all those decisions will be morally optimal or even beyond serious moral criticism. But even if they could in practice be countermanded, the decisions should be respected in the same way that Jane and Jack's (nonnegligent) decisions about their children's education should be respected. The balance of reasons should not dictate action in contravention of the state's decisions, and it should not do so in order to avoid wronging anyone. But wronging whom? The state? Our answer – and here is the qualification – is that it would not be the state that is wronged. It would be inconsistent with our endorsement of value individualism to posit that the state is the wronged party, because the state is not an individual whose well-being or life ultimately matters morally. Rather, the individual members of the state are the ones whose lives matter, and they are the ones who would be wronged. It is the wrong to them that requires respect for the self-determination of their state.

In the remainder of this chapter, we summarize the main issues and arguments of the subsequent chapters, each of which addresses a distinct set of issues connected to a specific dimension of international justice. By addressing these issues, we aim to elaborate on the meaning and justification of the two central theses of our theory: (a) a state is legitimate if, and only if, it adequately protects certain basic moral rights of its individual citizens and respects the basic moral rights of all other agents¹; and (b) a legitimate state has a basic moral right of political self-determination that is irreducible to the individual rights of its members.

SELF-DETERMINATION AND DEMOCRACY

This chapter provides an initial articulation and defense of our theory of political self-determination and then applies this theory to the contemporary debate over the noninstrumental value of democracy. Our defense begins by noting that an account of group self-determination is necessary to capture the inherent wrongs of colonialism and the forcible annexation of legitimate states. Transposing these insights to the literature surrounding the value of democracy, we argue that the inherent value of democratic rule cannot be grounded in individual rights but rather must be based on an irreducibly collective moral right of political self-determination. Thus, if the state chooses a nondemocratic form of governance that can perform the requisite political functions, then no individual member who prefers democracy is thereby necessarily wronged.

SECESSION

Our account of political self-determination leads us to conclude that separatists may qualify for a right to secede as long as their group is both able and willing to perform the requisite political functions. Although statist recoils from the conclusion that a group may be entitled to secede from a perfectly legitimate state, and nationalists will object that we underestimate the importance to statehood of a group's shared cultural characteristics, we argue that a group's rights to political self-determination should ultimately hinge strictly upon its political capacities. Many commentators will object that our standard for the right to secede is entirely too lax, but our theory does not entail any commitment favoring secession. On the contrary, we are emphatically *not* fans of state-breaking. Just as one might defend the right to no-fault divorce without believing that more people should separate, we defend the right to secede despite having no interest in a world populated with an increasing number of small, more homogeneous states.

INTERNATIONAL CRIMINAL LAW

We share the prevalent view that a system of international criminal law is both desirable and in the process of being created. The development of such a system is especially important so that instances of widespread or systematic human rights abuses may be prosecuted before tribunals other than those of the state in which the abuses occurred. However, we reject the conventional arguments offered in support of such prosecutions. On the conventional arguments, international criminal law justifiably gains jurisdiction in cases of widespread or systematic human rights abuses because the abuses have harmful effects that spill across borders into states other than the ones in which they were perpetrated. Refugee outflows, regional economic dislocation, and other cross-border effects provide the ground on which international jurisdiction can gain a foothold. But underlying this conventional argument is the mistaken premise that a state's sovereignty protects it from unwanted international jurisdiction unless conduct occurring within the state has harmful effects beyond its borders. This obsolete, Westphalian conception is insupportable. In contrast, on our conception of a state's right of self-determination, any state in which widespread or systematic human rights violations are being perpetrated has no claim against the exercise of international criminal jurisdiction within its borders. Moreover, on our account, there is no need to restrict such jurisdiction to genocide, crimes against humanity, and other "supercrimes." A state with an ineffective legal system that failed to adequately protect the human rights of its citizens would be open to international jurisdiction even for such "ordinary" crimes as murder

and rape. Critics of international criminal law have leveled many charges, from wasteful spending to political bias, against international criminal tribunals. Some of the critics suggest that all such tribunals be abandoned and criminal justice be returned entirely to domestic jurisdiction. We argue against abandoning the project of developing institutions of international criminal justice and make the case that it is not unreasonable to hope that the International Criminal Court will one day become a reliable enforcer of some of the most fundamental human rights.

ARMED INTERVENTION AND POLITICAL ASSASSINATION

The use of armed force against one state by another state or by a group of states involves some of the most complex and urgent issues of international justice. In recent years, a consensus has begun to develop around the idea that such force is morally permissible only if it is necessary to prevent or end massive human rights violations amounting to a “supreme humanitarian emergency.” We argue that this consensus should be abandoned in favor of a more permissive, two-pronged approach. Specifically, we suggest that armed intervention is morally permissible when (a) the target state is illegitimate and (b) the risk to human rights is not disproportionate to the rights violations that one can reasonably expect to avert. We then consider a more targeted response to end human rights abuses: the assassination of leaders of grossly illegitimate regimes. Assassination seems to be murder, pure and simple, but we argue that it is not so. After sketching how a system of internationally authorized assassination might work, we analyze its practical and moral drawbacks and find that the question of whether such a system would be morally permissible is an open one.

INTERNATIONAL DISTRIBUTIVE JUSTICE

An increasing number of theorists are coming to espouse what might be called “egalitarian cosmopolitanism,” the view that it is unjust for a person’s life prospects to be substantially affected by the country in which he or she happens to be born. We reject this position. A reasonable egalitarian principle of distributive justice would not require the elimination of the effects of brute luck on the lives of individuals. Rather, it would demand the elimination of conditions, whatever their origin, that make the less advantaged vulnerable to exploitation and oppression at the hands of the more advantaged. It is perfectly possible, even in today’s increasingly globalized world, for different

states to have very different levels of average wealth, without the less wealthy being vulnerable to oppression by the more wealthy. Despite resisting egalitarian cosmopolitanism, however, we do not defend anything like the status quo. Among the many things seriously objectionable about the global economic system is the fact that the citizens of wealthy states fail to meet their minimal samaritan duties to assist the hundreds of millions of people who live and die in absolute poverty.

IMMIGRATION AND MEMBERSHIP

Appealing to the moral value of freedom of association, we defend a state's right to control immigration over its territorial borders. Just as an individual has a right to determine whom (if anyone) he or she would like to marry, a group of fellow citizens has a right to determine whom (if anyone) it would like to invite into its political community; and just as an individual's freedom of association entitles one to remain single, a state's freedom of association entitles it to exclude all foreigners from its political community. We do not deny either the egalitarian claim that those of us in wealthy societies have stringent duties of global distributive justice or the libertarian contention that individuals have rights both to freedom of movement and to control of their private property. Yet, we conclude that every legitimate state has the right to close its doors to all potential immigrants, even to refugees seeking asylum from incompetent or corrupt political regimes that are either unable or unwilling to protect their citizens' basic moral rights. This is not to say that legitimate states have no duties whatsoever toward such refugees. States do have a duty to aid them, but it is a duty that can be discharged in a number of different ways.