

# **Why a Defensive War against Mitigated Aggression can be Proportionate. Extending the Right of Self-Defense to our "Primary" Interests.**

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## **Introduction:**

My goal in this paper is to give a positive account of why a defensive war (on a reductivist account of national-defense) against mitigated aggression can be proportionate. On a reductivist account of national-defense, a nation exercising its right of national-defense just is the people of that nation collectively exercising their right of personal self-defense. My strategy is straightforward: I argue that the things that mitigated aggression seeks to take away are, by themselves, of sufficient value to defend via lethal force. I begin by stepping into the realm of personal self-defense and asking: what makes something, other than one's life, sufficiently valuable so as to warrant one in lethally defending it? Intuitively, the right of personal self-defense extends to things other than one's life (e.g. bodily integrity). My aim in the first part of this paper will be to give more of an account of what things, other than one's life, fall under the right of personal self-defense and why. The account I give discusses human interests. More specifically, I suggest that what can be called our "primary" interests, those interests that are indispensably necessary for our well being, are what can be lethally defended. Following Joel Feinberg and others I discuss two kinds of "primary" interests: welfare interests and central interests, and I suggest that their natures are such that they can be lethally protected. After arriving at what I take to be a plausible account of what makes something valuable enough to defend with lethal force, I argue that mitigated aggression can threaten both the welfare interests and central interests of the people that comprise a victim nation.

### **Extending the Right of Self-Defense (Welfare interests and Central interests):**

So what makes something, other than one's life, sufficiently valuable so as to warrant one in lethal defending it? Richard Norman suggests that something is worthy of lethal defense only if it, like life itself, is "irretrievable" once it is taken or destroyed. The dangers faced by a victim, if she is justified in killing her attacker, must be "final and irreversible" in the sense that there is no possibility of future redress. For Norman, the rapist, enslaver, and kidnapper threaten dangers that meet this criterion.<sup>1</sup>

It's not clear though what exactly constitutes "future redress", or the lack thereof. On the face of it, what Norman has in mind is the possibility of compensation. But if this is the case, one can seemingly be compensated (say monetarily) after being enslaved or raped. Whatever Norman has in mind, he suggests that there is the possibility of future redress for a victim nation-state that has been conquered by a mitigated aggressor. For an occupied victim nation that has been denied it's 'common way of life' always has hope that there will be a future revival and flourishing of its political life.<sup>2</sup> But if this is the case, it's not clear to me that the impossibility of "future redress" is a requirement on whether something has worth comparable to life itself. For surely a people that have been enslaved can have hope that one day they will be able to throw off their yoke of slavery and regain their freedom. But Norman (and most people) wouldn't want to claim that the freedom that has been taken away from them is not valuable enough to lethally defend.

The question of what determines something to be worthy of lethal defense is certainly not an easy one to answer, thus my answer, in what follows, is meant to be suggestive rather than

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<sup>1</sup> See Richard Norman, Ethics, Killing and War (Cambridge: Cambridge University Press, 1995), pp. 128-129.

<sup>2</sup> *ibid*, pp. 137-138.

incontrovertible. At the very least I hope to show that the way I go about answering the question offers the most promise of finding an adequate answer.

### Human Interests:

My strategy in answering this question is to talk in terms of human interests (or put differently, the various goals, ends, and aspirations, that typical people have). Following Joel Feinberg, a person's interests (taken as a collection) are those things she has a "stake" in. Roughly, a person has a "stake" in X when she stands to gain or lose depending on the nature or condition of X: as a person's interests flourish or languish, so does she flourish or languish.<sup>3</sup> An interest of a person is negatively affected (or set back), roughly, when she is kept from pursuing and realizing that interest. To set back a person's interests is distinct from hurting him. To be hurt, roughly, is to undergo a painful, disappointing, or undesirable experience. Someone can hurt me without setting back a legitimate interest of mine; say by preventing me from stealing a car and thereby causing me to feel frustration. Furthermore, not all set backs to legitimate interests are hurtful. For example, someone can steal my "identity" and make purchases in my name but me be unaware (at least for a time) of what's being done.<sup>4</sup>

In what follows, I compare and contrast two primary models for weighing the importance of our interests: the spatial model and the network model.<sup>5</sup> Both models have their own version of what can be called "primary" interests. These interests are crucially important to the well

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<sup>3</sup> Joel Feinberg, Harm to Others, vol.1 of *The Moral Limits of the Criminal Law*, (Oxford: Oxford University Press, 1984), pp.33-34.

<sup>4</sup> For examples along these lines see, David Archard, "The Wrong of Rape", *The Philosophical Quarterly*, vol., 57, no, 28, 2007, pp. 378-379.

<sup>5</sup> *ibid*, pp. 387-393.

being (or flourishing) of human persons. I argue below that these "primary" interests are what can be lethally defended from villainous attack.

### The Spatial Model:

On the spatial model, outlined by David Archard, "interests, according to a helpful metaphor, occupy a space which helps to define the self or personhood, and the most important interests are those that are closest to, are at the core of, a person or the self."<sup>6</sup> Central interests are those at the "core" of our person and thus the most important; they are those that define who and what we are as persons, which is, fundamentally, a source of value that is worthy of respect. They are fundamental to the sense of ourselves, and as such, are necessary for human flourishing.<sup>7</sup> Because central interests constitute the core of who and what we are as persons, to violate them degrades us i.e. egregiously represents us as having little worth or value (to violate a non-central interest can be degrading as well, but not to same the degree).<sup>8</sup> To set back a central interest is to, in effect, say to the victim, "you do not count, or count for very little, even in respect of that which matters very much to you".<sup>9</sup>

Presumably, central interests are objective in the sense that they define who and what we are as persons, regardless of whether some individuals happen to think of themselves as not having these interests, or happen to think that these interests are not very important to them.<sup>10</sup> Our interest in exercising our rationality and autonomy to at least some degree seems to be a good example of an objective central interest. The idea is that perhaps it's possible that some individuals may have genuinely central interests that are not central to their *own* conception or sense of themselves. Regarding these individuals, I am agnostic as to the nature of the harm they

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<sup>6</sup> *ibid*, p. 387.

<sup>7</sup> *ibid*, p. 392.

<sup>8</sup> *ibid*, pp. 389-390.

<sup>9</sup> *ibid*, p. 390.

<sup>10</sup> *ibid*, p. 392.

face upon having a central interest set back. Violating a central interest(s) of theirs will still be to treat them as something that they are not; hence they will still seemingly be degraded. But perhaps their *sense* of themselves will not be fractured i.e. perhaps they won't, upon having a central interest violated, be forced to view themselves as something they are not. In any event, it seems plausible to suppose that generally people will both value and see themselves as having their central interests, and this is what I will be assuming throughout.

### The Network Model:

As I understand this model, many of our interests are interconnected, forming a network of sorts.<sup>11</sup> Some interests are an effective means to the realization of other interests, while some are necessary conditions for the realization of others.<sup>12</sup> Three kinds of interests that comprise a person's interest network, listed in ascending order of ulteriority, are as follows. Instrumental wants,<sup>13</sup> welfare interests, and focal interests (sometimes referred to as our more ulterior goals, or our higher goals).<sup>14</sup> The notion of an instrumental want and its relation to our network of interests is a bit obscure. But to take an example, at a given time I may desire to exercise, or to work overtime, or to not eat junk food.<sup>15</sup> It may be in my interest to work overtime and exercise, for doing so is a means to realizing my interests in maintaining my health and financial stability.

Regarding welfare interests, virtually everyone, at all times, possesses the same core set of welfare interests (presumably this cannot be said of instrumental wants). Roughly, the core

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<sup>11</sup> This model is endorsed by Feinberg, pp. 37-64, esp. 55-64.

<sup>12</sup> Archard, p. 387.

<sup>13</sup> Instrumental wants are contrasted with mere passing wants, which in ordinary cases are not considered interests. My desire to eat a candy bar is an example of a passing want. For some, if my aim in eating a candy bar is just to gain pleasure, strictly speaking I don't 'have an interest' in eating it (Feinberg, pp. 55-56). I'm not entirely convinced that this is the case. It seems to me that people have an interest in experiencing moderate amounts of pleasure on a relatively consistent basis. But I will not pursue this here.

<sup>14</sup> Feinberg, p. 56.

<sup>15</sup> *ibid*, p. 57.

set is as follows. Minimal physical health: the normal functioning of vital organs, the absence of chronic sickness. Bodily integrity: the absence of grotesque disfigurement and paralysis. Emotional stability. Minimal intellectual ability. Social stability: the capacity to engage normally in social intercourse and to maintain and enjoy friendships. Economic stability: minimal level of income. Liberty: a certain amount of freedom from interference and coercion.<sup>16</sup>

Our more ulterior interests, unlike welfare interests, generally admit of more variance from person to person. Examples that readily come to mind include "writing a good novel, creating beautiful works of art, achieving leisure for handicraft or sport, successfully raising a family, advancing a social cause, ameliorating human and animal suffering, gaining political power, reaching spiritual development, and solving a crucial scientific problem."<sup>17</sup> Generally, one has a "stake" in her more ulterior interests precisely because she desires their fulfillment.<sup>18</sup> This is not generally true, however, concerning our welfare interests. I have a "stake" in the normal functioning of vital organs, for example, regardless if I desire such a thing. For virtually all persons, achieving and or maintaining a welfare interest is good for that person, whether or not he desires such an achievement and or maintenance.<sup>19</sup> Finally, our more ulterior interests, generally, unlike our welfare interests, are seen as (at least in part) ends in themselves.<sup>20</sup> However, the achievement of some of our more ulterior interests can be an effective means to the achievement of other more ulterior interests. Gaining high political office, for example, is a means of promoting one's favorite policies.<sup>21</sup> But the realization of our more ulterior interests can also be an effective means to realizing some of our welfare interests and instrumental

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<sup>16</sup> *ibid*, p. 37.

<sup>17</sup> *ibid*, p. 37.

<sup>18</sup> *ibid*, p. 42.

<sup>19</sup> *ibid*, p. 42.

<sup>20</sup> *ibid*, pp. 59-60. But regarding welfare interests, some people only have these, and don't have more ulterior interests over and above them. For these people, it's not entirely correct to say that welfare interests are instrumental to their higher goals (i.e. to their higher good). See footnote 27 below.

<sup>21</sup> *ibid*, p. 45.

wants.<sup>22</sup> Acquiring an ideal job can help ensure that one doesn't become impoverished, and it may, for example, provide one with a lot of leisure time in order to exercise (this illustrates somewhat the interconnectedness of interests).<sup>23</sup>

Regarding welfare interests, these are plausibly the most important interests a person has. For (most of the time, unless there exists very special circumstances) persons can achieve more ulterior aims only if their welfare interests are realized. And, roughly, the achievement of one's more ulterior ends is constitutive of (it's at least necessary for) one's ultimate well being in life.<sup>24</sup> Furthermore, generally, when welfare interests are negatively affected, more of one's whole network of interests is negatively affected. For, again, when the former are thwarted, one's higher aspirations are thwarted too (on the other hand, if it's just an ultimate goal that is set back, the same damage is not exacted on her entire network. For, presumably, you at least have the necessary tools to regain what you lost if you have only had a non-welfare interest damaged).<sup>25</sup> Similarly, damages to welfare cannot be cancelled out by strengths in welfare that are true of the person in question. Thus a person's good health, for example, cannot compensate for the fact she is imprisoned.<sup>26</sup>

As a final note, while the fulfillment of one's welfare interests are absolutely necessary for a person's well being (a good life), they are clearly insufficient.<sup>27</sup> Typically, if a person just has personal welfare, then they don't have much. For achieving and maintaining one's welfare

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<sup>22</sup> Ibid, p. 61.

<sup>23</sup> While the realization of some of our focal aims may be an effective means to the realization of some of our welfare interests and instrumental wants, focal aims are typically not seen as necessary conditions for the realization of our welfare interests and instrumental wants.

<sup>24</sup> Ibid, p. 37.

<sup>25</sup> Ibid, p. 37.

<sup>26</sup> Ibid, pp. 37-38; 57.

<sup>27</sup> There are exceptions to this. Some people (possible examples include those living in hunter/gatherer societies, and perhaps the old and infirm) "survive day to day". Just "making it" day in and day out under difficult circumstances can be "source of pride" and a "challenge to toughness and ingenuity". For these people, achieving their welfare just is to achieve their well being. See Feinberg, p. 58.

interests (i.e. one's welfare) is to achieve and maintain a bare minimum of physical and mental health, material resources, and liberty.<sup>28</sup> However, not having personal welfare seriously damages prospects at getting anything else. As Feinberg says, "while one cannot live on bread alone, without bread one cannot live at all".<sup>29</sup>

### The Network Model vs. the Spatial Model:

David Archard has recently claimed that the spatial model ought to be adopted over the network model. But his argument for this claim, it seems to me, is less than compelling. Archard uses the case of rape and its wrongness to illustrate how the spatial model is more plausible than the network model. For Archard:

"The following, finally, tells in favor of the spatial model. The network model favors thinking of persons in terms of agency. It conceives of the person as an agent to whose realization his interests are a means. But the ideal of a human being as a source of value, as worthy of respect, is prior to that of a person as an agent. For to think of people as entitled to pursue their ends and goals requires one to first think of them as possessed of value...as being selves owed respect...We respect people's choosing of ends and their pursuit of them because we respect the self who makes the choices and acts.

Rape, on the network model, is wrong because it stops a person from doing what she chooses. On the spatial account, rape is wrong because it denies that she is, in regard to what is central to her personhood, worthy of respect. It is wrong to deny somebody her choices. But that is because, first of all, it is fundamentally wrong not to think of somebody as a person and hence as a source of value".

I take Archard's argument to be the following: if we accept the network model, then we are committed to viewing persons as primarily agents. As a consequence, the proponent of the

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<sup>28</sup> *ibid*, p. 57.

<sup>29</sup> *ibid*, p. 57.

network model problematically claims that what is fundamentally wrong with rape is the fact that it prevents a person from achieving her ends and goals in life. But persons are not to be conceived of as primarily agents. Rather, they are to be conceived of as primarily objects that are worthy of respect. Even the proponent of the network model must concede that this is the correct conception of what a person fundamentally is. For the reason why we respect a person's agency (which proponents of the network model obviously do) is because we, first and foremost, respect her as a person (an object of value worthy of respect). The spatial model gets it right vis-à-vis the correct conception of personhood.

In response, however, it's not clear that proponents of the network model are forced to view persons as primarily agents. But even if proponents of the network model do view persons as primarily agents, it's not clear that proponents of the spatial model, unlike proponents of the network model, have an explanation of what makes a person worthy of respect (or, put differently, why the self should be respected). Plausibly, what makes persons worthy of respect are the cognitive and emotional capacities that they have. A prime example of such a capacity is their agency—roughly, the capacity to choose ends and the means to those ends. Or we could perhaps say that, roughly, agency constitutes personhood, and respecting persons just is, at least in part, respecting their agency. If being autonomous is a central interest (if anything is a central interest then I would think that this), then being autonomous is what constitutes to a large degree personhood. And if this is the case, I don't see why the idea of the self as an object of respect is prior to, more fundamental than, the idea of the self as an autonomous agent.

I see no reason, then, to adopt the spatial model to the exclusion of the network. But it's not my aim here to argue for one model as opposed to the other. For my purposes, I see no reason why we couldn't claim that human persons can have both welfare and central interests that

are of equal importance. Some interests that we have are properly called welfare interests: those that when set back, prevent us from pursuing and realizing a great many of our ultimate ends.<sup>30</sup> And some interests that we have are central interests: those that when set back are degrading and can severely damage our sense of who we are as persons. It seems to me that many of the interests we have qualify as both welfare and central interests. Both kinds of interests are "primary" interests in that they are both, for different reasons, necessary for human well being and flourishing, and the thwarting of these interests makes one lost.<sup>31</sup>

I suggest that given the specific nature of each of our "primary" interests, we at least have a sufficient condition for what makes something worth defending via lethal force. Regarding central interests, it seems that both the fractured sense of self and the level of diminishment and degradation that comes with having a central interest set back permits one to lethally protect herself from an unjust and imminent attack on such an interest. Regarding welfare interests, two reasons suggest why one is permitted to lethally defend them. First, the indispensability of having our basic welfare intact "if we are to have any chance at all at achieving our" more ultimate life aspirations.<sup>32</sup> Secondly, and similarly, to experience the level of unhappiness that accompanies not even having one's basic welfare, seems to me to be sufficiently dire, in and of itself, independent of the fact that not having one's welfare makes it very likely that one's ultimate aspirations will be thwarted.<sup>33</sup>

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<sup>30</sup> Or perhaps we can say "the majority of our ultimate ends", or a "sufficiently high" number of our ultimate ends. H.E. Baber uses this language of the setback of a welfare interest(s) preventing us from realizing "a great many of our more ultimate ends". See her, "How Bad is Rape", *Hypatia*, Vol 2., No 2., Summer 1987, pp. 130-132. She employs the network model of interests to assess how rape and menial work harms women.

<sup>31</sup> Feinberg, p. 37.

<sup>32</sup> *ibid*, p. 57.

<sup>33</sup> Given the nature of a person's welfare--basically only a bare minimum of physical and mental health, material resources, and liberty--is she permitted to kill someone in self-defense who would otherwise (somehow) villainously keep her at a level of welfare and prevent her from achieving her full human well being? The idea is that the villain in this case doesn't violate a welfare interest, yet at the same time prevents her from realizing a more robust flourishing life. I am skeptical that this scenario is even possible. For by *preventing* one from achieving her full

If it's plausible to suppose that, if something is either a welfare or central interest, then the right of self-defense extends to it, then it seems that a good many of our intuitions about what can be lethally defended are accounted for. Most of us think, for example, that a person can lethally defend himself from being enslaved. This account explains why one would be so permitted: for one, being an autonomous agent (or exercising one's autonomy) is plausibly a central interest of ours. Furthermore, surely to be enslaved is to have a welfare interest in liberty impeded. A slave is denied the opportunities and resources to pursue and achieve a great many (if not all) of her own more ultimate ends in life; ends that she had while becoming enslaved, and ends that she could have had if she were not to become enslaved. Consider other possible scenarios involving welfare interests. Seemingly most of us would agree that someone would be permitted to kill a thief who tried to steal her last bit of money, without which she would become an indigent either permanently or for a sufficiently long duration. There's also widespread agreement that we can lethally defend ourselves from becoming paralyzed, blind or deaf. Seemingly our welfare interest in bodily integrity amounts to, at the least, an interest in not becoming severely disabled in the ways just mentioned. More fancifully, many would seemingly agree that I, for example, could kill an attacker of mine who tried to feed me a pill that would render me (either permanently or for a sufficiently long duration) socially inept, emotionally unstable, or intellectually impaired. For, again, if my attacker succeeds, he would severely limit the number of my ultimate aspirations I can achieve, thereby significantly reducing the amount of well being I can experience.

But there are weaknesses to what I have been suggesting, particularly in regards to our welfare interest in bodily integrity. Does our welfare interest in bodily integrity amount to an

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well being, the villain is seemingly thereby violating some welfare interest or other of the victim. In any case, if such a situation is possible, I am again inclined to think that, given the nature of a person's welfare, the victim can lethally protect herself from this situation, provided that the other requirements on self-defense are fulfilled.

interest in, for example, not losing a finger, or even a hand or a foot? The answer to this question will depend on whose finger, hand, or foot it is. Perhaps a poor farmer, who depends on the functioning of both his hands for his livelihood, has such a welfare interest. But it's not entirely clear that someone who does not rely on both of her hands for her livelihood has such a welfare interest, for it's not clear that her hand is necessary for the achievement of her more ultimate ends. Is having both hands, let's say, a central interest of ours? It's not entirely clear that it is. All this to say that some people will be unsatisfied with how this account is silent on whether the right to self-defense extends to protecting things like a person's hand, foot, or finger (I should note that I don't have particularly strong intuitions that the right to self-defense should extend to such things).<sup>34 35</sup>

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<sup>34</sup> But there is something else to consider. Losing a hand, or things similar to it, can negatively affect, in a chain reaction of sorts, other welfare interests of ours. We can be pushed below the threshold of welfare emotionally and or financially upon losing a hand for example.

<sup>35</sup> I should mention at this point that there's another account that could be adopted that bears affinities to the one I have given thus far and will give below. See Deane-Peter Baker, "Defending the Common Life: National-Defence After Rodin", *Journal of Applied Philosophy*, Vol. 23, No. 3, 2006, pp. 259-275. Baker lists as "primary" interests Martha Nussbaum's (there is some variation from Nussbaum's list) 10 central human functions (see pp. 265-266 for these functions): 1. **Life**. 2. **Bodily health**. 3. **Bodily integrity**. 4. **Senses, imagination, and thought**; "[b]eing able to use the senses, to imagine, think and reason—and to do these things in a...way [both] informed and cultivated by an adequate education" and free from censorship. 5. **Emotions**... "[n]ot having one's emotional development blighted by overwhelming fear and anxiety". 6. **Practical Reason**. "Being able to form a conception of the good and to engage in critical reflection about the planning of one's life". 7. **Affiliation**. To be able to live with and towards others;...to engage in various forms of social interaction". Importantly, to be able to affiliate with other members of our society, for it's the "web of relations" we find ourselves in, qua members of a society, that "underpin[s] our very identities" (p. 266). 8. **Other Species**. Being able to live with concern for...the world of nature". 9. **Play**. 10. **Control over one's environment**. "Being able to hold property...[and] seek employment on an equal basis with others"; also, "being free from oppressive political influence or domination that undermines the individual's ability to exercise any or all of the capabilities [functions] listed" (p. 267). For Baker, all human beings must realize to a certain degree these 10 functions in order to live a truly human life; a life that is appropriate to the kind of thing we are (pp. 264-265). Quoting Nussbaum, these "functions are particularly central in human life, in the sense that their presence or absence is typically understood to be a mark of the presence or absence of human life" (p. 265). Because of this, for Baker, the right of personal self-defense extends to these functions (p. 264). But to my mind, the account I have sketched above gives more explanation of how it is (or of what it is about) the presence or absence of these functions (or functions like them) marks the presence or absence of human life. Baker goes on to argue that mitigated aggression disrupts the common life that one experiences with her countrymen, and it is this common way of life that is necessary if one is to realize the 10 functions, particularly functions 6 and 7 above (pp. 264-267). Thus, a country is permitted to defend its common life from mitigated aggression. It seems clear to me though that Baker has raised more questions than he has answered. What is this common life that fellow countrymen experience? How is this common life necessary for the realization of the 10 functions? How does mitigated aggression disrupt or destroy this common life? What's the difference between this 'common life' and 'society' that is mentioned in 7 above? How exactly are we to understand this idea in 7 above that the "web of relations" we find

### **Mitigated Agression (Welfare interests and Central interests):**

My view is that what mitigated aggression threatens (or can threaten) is, by itself, of sufficient value to defend via lethal force. More specifically and not surprisingly, it seems to me that what mitigated aggression threatens is a particular interest that can be characterized as both a welfare and central interest. In what follows, I examine in more detail what exactly mitigated aggression threatens. I then show how it is both a central and a welfare interest. I also attempt to show below how mitigated aggression can affect other welfare and central interests.

So what exactly does mitigated aggression threaten? I take it that there will be variation in cases concerning what exactly a mitigated aggressor seeks to accomplish. We can imagine cases where a mitigated aggressor seeks to annex from another country some relatively small, uninhabited piece of land. If doing so will not seriously affect the day-to-day lives of anyone, then it's not clear to me that such an act of annexation is sufficiently egregious to justify a defensive war. Likewise, my case (below) for the permissibility of defensive war against mitigated aggression would not justify the country in lethally protecting this piece of land. My case, then, is not meant to justify current International Law, which arguably would justify the victim country in lethally defending its lot of land; for to take that land would be to violate that country's territorial integrity and political sovereignty.<sup>36</sup>

The kind of mitigated aggression I will discuss in this paper is the kind where a mitigated aggressor seeks to conquer and rule over a people (I suppose motivations for conquering and ruling a people will vary. I suspect in many cases a primary motivation will be to gain control of

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ourselves in "underpins our very identities"? There are seemingly other societies that are constitutive of the identities of their members. What is the relationship between this fact (if it is one) and the use of lethal defensive arms? I take it that Baker's response to Rodin is a rough sketch of the possible. My aim is to (and has been) to fill in some important details and to give an overall more plausible response to Rodin.

<sup>36</sup> Perhaps International Law is correct in warranting the country (assuming it does warrant the country) in lethally protecting its lot of land. My claim is just that my case for the permissibility of defensive war against mitigated aggression doesn't provide justification for this victim country, nor does it likewise provide a full moral justification for current International Law.

land and natural resources). I can't give a detailed analysis on what exactly conquering and ruling a people involves, but speaking very generally, I take it that for a people to be conquered and ruled typically involves having their 'national community' (or 'common way of life') significantly disrupted or destroyed and having a foreign way of life forced upon them. It's a people's own distinctive national community (or common way of life), then, that mitigated aggression threatens or seeks to take away. But how are we to understand what a national community (or common way of life) is? The basic answer to this question can be found in a brief discussion of what a nation and a state are.

Consider the two notions of a "vertical" and "horizontal" contract that people can enter into. Regarding the latter, a group of people can enter into a "horizontal contract" with one another effectively creating a community amongst themselves.<sup>37</sup> Usually this coming together is done tacitly. As Walzer says, "Over a long period of time, shared experiences and cooperative activity of many different kinds shape a common way of life. 'Contract' is a metaphor for a process of association and mutuality..."<sup>38</sup> What arises from this horizontal contract is a nation, or a *people* that share a distinctive way of life.

Regarding the former, once a nation is formed, it can enter into a "vertical contract" with a state, which is roughly defined as the apparatus of government that rules over a particular *people* or nation.<sup>39</sup> This vertical contract is roughly a process (either explicit or implicit) whereby the people of a nation consent (in some sense) to be ruled by a state, thereby making the state legitimate. For simplicity's sake, call a nation and its legitimate state a nation-state.<sup>40 41</sup> A person

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<sup>37</sup> David Luban, "Just War and Human Rights", in War and Moral Responsibility, ed. Marshall Cohen, (Princeton: Princeton University Press, 1974), p. 202.

<sup>38</sup> Michael Walzer, Just and Unjust Wars, 3<sup>rd</sup> ed., (New York: Basic Books, 1977) p. 54; Luban, p. 202.

<sup>39</sup> Luban, p. 203.

<sup>40</sup> I will sometimes use nation or country as short-hand terms for nation-state. At the risk of jumbling terminology, we could perhaps call several nations under one legitimate state a 'nation-state'.

who is a member of a nation-state (given both the "horizontal contract" she has entered into with other members of her nation and the "vertical contract" her nation has entered into with its state) experiences and participates in a 'national community' or a 'common way of life' with her fellow members of the nation-state.

I mentioned that for a people to be conquered and ruled by a mitigated aggressor typically involves having their 'national community' (or 'common way of life') significantly disrupted or destroyed. How does this take place? Again, speaking generally, I take it that an aggressive state will supplant the government (state) that the victim nation-state has consented (in some sense) to be ruled by, forcing upon them foreign laws and policies. Perhaps these official policies would somehow seek to coerce the victim population into giving up what remains of their common way of life; say, for example, it becomes illegal for the people of a victim nation to speak their own language in public. But perhaps these official policies will not be so hostile in the way just described. In any event, whether the policies are hostile in this way or not, it seems to me that for a people to come under a state that is not in any sense "their's" is to have their common way of life significantly disrupted.<sup>42</sup> Similarly, I take it that typically, a victim nation could see, in addition to foreign laws and policies, an influx of foreigners (from the aggressive country) seeking to take up residence within their borders. Perhaps these foreigners would villainously seek to denigrate the people around them and their culture, or perhaps not. In any event, it seems to me that a victim nation can't help but to have its common way of life

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<sup>41</sup> David Miller uses the terms 'nation' and 'state' in roughly the same way that I have but with a bit more variation. See David Miller, *On Nationality*, (Oxford: Oxford University Press, 1995), pp. 18-19. Others don't use these terms in exactly the same way. Walzer, for example, uses the term 'state' to refer to the union of a nation and its government. See Walzer, "The Moral Standing of States: a Response to Four Critics", *Philosophy and Public Affairs* (1980)", p. 212.

<sup>42</sup> It could very well be that the occupying regime would have policies that seek to both disintegrate as many communal bonds of the people they have conquered as possible, and encourage the conquered people to assimilate into the common way of life of their conquerors. This can serve to, over time, quiet any would-be resistance. If everyone under a state experienced basically the same common way of life, there would be less room for hostility between people, and between people and the government.

disrupted if, apart from it overseeing and regulating the influx of migration, foreigners with a common way of life of their own "move into" their land. I have tried to describe what I take to be a typical case of mitigated aggression. It's this kind of aggression that I am interested in showing to be sufficiently egregious to warrant a victim nation in lethally defending itself.<sup>43</sup>

Central Interest in our National Community (Common Way of Life):

Thus far I haven't given an exhaustive list of our central interests. But several thinkers have claimed that we (i.e. most of those who have been "born and bred" in a national community) do have a central interest in the integrity of and our participation in our national community (hereafter: 'interest in our particular national community'). How so exactly? A person's national identity in large part makes someone the person that she is, and gives her a sense of meaning in life; it's central to her self-understanding.<sup>44</sup> To a large extent, a person is who she is in virtue of her national community membership.<sup>45</sup> Our national community provides us with "a way of being in the world... a way of meaningful thinking, acting, and judging".<sup>46</sup> Rodin has said that the character of our national community can "become interwoven with our own".<sup>47</sup> Because national culture is in the sense described above constitutive of their identities, people develop both a commitment to and a deep attachment to the character (including its

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<sup>43</sup> Mitigated aggression could take a form different than I have suggested. An aggressive nation could seek to exert influence over a victim government without completely supplanting it and replacing it with a new one. If "exerting influence" involves forcing the victim state to adopt a sufficiently large number of laws and policies that it otherwise wouldn't (or if it involves forcing the victim state to not adopt a sufficiently large number of laws and policies that it otherwise would), then we still have a situation where the people of a country are forced to live under a state that is not "their's"; thus making it so their common way of life is significantly disrupted. I also take it as possible that depending on the level of forced change that occurs within the victim government, a victim country could have their common way of life sufficiently destroyed in the absence of any foreign migration.

<sup>44</sup> David Miller, pp. 10-11, 59. Daniel Bell, Communitarianism and its Critics, (Oxford: Oxford University Press, 1993), pp. 90-113. Avishai Margalit and Joseph Raz, "National Self-Determination", *The Journal of Philosophy*, vol. 87, no., 9, (Sep., 1990), pp. 442-447. David Rodin, War and Self-Defense, (Oxford: Oxford University Press, 2002), pp. 149-150.

<sup>45</sup> Miller, p. 59.

<sup>46</sup> Bell, pp. 94-95. Also Rodin pp. 149-150.

<sup>47</sup> Rodin, pp. 149-150.

physical markers e.g. its architecture) and way of life of their national community.<sup>48</sup>

Importantly, they have a sense of shared fate with their national community; as it disintegrates, so does the understanding of the self.<sup>49</sup> Likewise, if it is destroyed and another one ushered in, those who had shared it ... "have to undergo a process of cultural adaptation that is painful and disorientating while it's happening, and rarely wholly successful in its outcome".<sup>50</sup> To get some sense of this, imagine that Americans who speak English had to learn and speak Spanish.

Certainly incorporating this language into our daily lives would be difficult and time consuming. But this is not all. As George Fletcher writes, "we could [still] write laws, tell jokes, recite love poetry, and swear at each other in a new syntax. It would be difficult to deny, however, that in switching to a new language we would suffer a deep alienation from our past."<sup>51</sup> This is just one example; but this, it seems to me, illustrates how having one's national community (common way of life) erode and having to participate in a new one can cause a person to experience herself as something that she is not (which is to have, as I am using this term, a fractured or fragmented sense of self).

I've tried to unveil the seeming fact that our interest in our particular national community is at the "core" of our person, a central interest. Our particular national community plays an important defining role in who and what we are as persons. Before considering a few objections to what I have said so far, a brief clarification is in order. One could (rightly) claim that not every person has a national identity, has been a member of a national community that is 'constitutive' of their identity (I will say more about this notion of a community being

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<sup>48</sup> Bell, pp. 91-92; 110.

<sup>49</sup> *ibid*, pp. 98-99.

<sup>50</sup> Miller, p. 86. Margalit and Raz, p. 444.

<sup>51</sup> This example of Americans having to adopt the Spanish language comes from George Fletcher, "The Case for Linguistic Self-Defense", in, The Morality of Nationalism, ed. Robert McKim and Jeff McMahan, (Oxford: Oxford University Press, 1997), p. 332. Regarding the "writing of laws" in the example, Fletcher points out how many of our legal terms and concepts (e.g. "fairness", "reasonableness") could not be translated into many other languages and thus could not be employed in daily life.

constitutive of one's identity below). So if all human persons have basically the same set of central interests, how is it that all persons have the kind of central interest in their national community that I have been describing? The way to answer this, I think, is to claim that all human persons (with maybe the exception of a few rare individuals) are "social beings" in that they are members of some constitutive community or other (perhaps it's a national community or not) that has to a large extent shaped and molded their identities. Thus all persons have a central interest in the integrity of and membership in their constitutive communities, whatever those happen to be. Incidentally, when it comes to mitigated aggression, the constitutive community under threat is a national one.

Objection:

Now it could be claimed that even if we grant that people have a central interest in the their particular national community, certainly there are other communities and groups, besides the national community, that we are members of and "identify" with. But, the objection continues, certainly we don't want to say that people can kill in defense of every community that they identify with.<sup>52</sup>

In response, not every group we are a member of, is genuinely constitutive of our identities. Daniel Bell identifies "three ways of answering the question, 'how can constitutive communities be identified'"<sup>53</sup> as opposed to, "other forms of association and contingent facts about one's identity"<sup>54</sup> The first step is simply to ask people who they are. The idea is that when forced to be reflective about "who they are", people will reveal their constitutive communities. That is, they will say such things as "I am an American", or a "member of such

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<sup>52</sup> Rodin seemingly makes an objection along these lines. See Rodin, War and Self-Defense, pp. 158-159.

<sup>53</sup> Bell, p. 94.

<sup>54</sup> *ibid*, p. 94.

and such a family", rather than a "member of the PTA", for example.<sup>55</sup> Secondly, as mentioned above, "constitutive communities provide a largely background way of meaningful thinking, acting, and judging; a way of being in the world which is much deeper and many more-sided than any possible articulation of it".<sup>56</sup> This is seemingly not the case with all forms of association. There are some groups (e.g. clubs and associations) for which the description of "what it is to be a member" is readily at hand and can be captured in full by its members.<sup>57</sup> Relatedly, membership in constitutive communities is largely involuntary; they are communities, roughly speaking, in which one has been "born and bred".<sup>58</sup> Because of this, unlike voluntary associations, one cannot completely shed one's group membership and the impact that it has on one.<sup>59</sup> Thirdly, as a consequence of what has been said in the first two points, to have your ties to a constitutive community severed, to not be engaged in your constitutive community for a sufficiently long time, is to be thrown into a state of severe disorientation.<sup>60</sup> For Bell, examples of constitutive groups, other than one's national community, include one's family, neighborhood, and or city.<sup>61</sup>

Like Bell, Margalit and Raz distinguish what they call "encompassing groups", (which are essentially equivalent to Bell's constitutive groups) from other forms of association.

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<sup>55</sup> *ibid*, p. 94.

<sup>56</sup> *ibid*, p. 95. Miller seems to be of the same mind set as Bell. Speaking of one's national community, Miller too claims that its nature lies beyond a complete description. Members of a national community have an intuitive sense of its character and how it differs from the character of foreign national communities, especially when it is confronted with foreign ways of life p. 27. Similarly, our sense of our national allegiances is oftentimes only brought to the forefront of our minds after such events as national sporting contests and natural disasters befalling our countrymen pp. 14-15.

<sup>57</sup> Bell, p. 95.

<sup>58</sup> *ibid*, pp. 95-96. Margalit and Raz echo Bell concerning involuntariness, pp. 446-447.

<sup>59</sup> Bell, p. 103.

<sup>60</sup> *ibid*, p. 103. Describing the phenomenon of "culture shock" could perhaps be a colloquial way of putting this last point.

<sup>61</sup> Could an association have all the earmarks of a constitutive group and yet be voluntary? Would such an association be genuinely constitutive of the identities of its members? I'm not sure what to say here. I'm inclined to think that if a group is constitutive in the ways mentioned above and yet its members have voluntarily joined, then it is worth lethally defending.

Encompassing groups are such that "individuals find in them a [pervasive] culture which shapes to a large degree their tastes and opportunities, and which provides an anchor for their self-identification and the safety of effortless and secure belonging".<sup>62</sup> Possible examples of encompassing groups, for Margalit and Raz, other than one's national community,<sup>63</sup> include tribal, ethnic and, religious groups.<sup>64</sup>

All this to say that, first, it is not just any group membership that is sufficiently valuable to protect with lethal force. For not all groups (e.g. various clubs and associations) are genuinely constitutive of one's identity (or encompassing), and thus--and this is the bottom line--not vitally important to the well being of its members, and this despite what non-reflective members of these groups may say about their membership. Secondly, it seems to me that this further discussion by Bell and Margalit and Raz on the nature of constitutive communities lends further evidence that national communities are indeed constitutive ones.

But it's obvious that what I've been saying so far entails that people can be permitted to lethally defend their other constitutive (and encompassing) groups to which they belong, for

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<sup>62</sup> Margalit and Raz, p. 448.

<sup>63</sup> I have been using "national community" (and likewise "common way of life") specifically to refer to what arises after both a 'horizontal' and 'vertical' contract. It's not clear that Margalit and Raz have this exact specification in mind. For one, they claim that national communities (or nations) are serious candidates for self-government (pp. 442-443), which may imply that they have some sort of 'horizontal' contract in mind. In any event, for them, a national community is the paradigmatic example of an 'encompassing group'; and these groups, for them, are serious candidates for self-government. My point is that national communities in the sense that I am using the term are encompassing in the relevant sense, and I see no reason why Margalit and Raz would deny this.

<sup>64</sup> *ibid*, p. 447. More specifically, Margalit and Raz list six features that define an encompassing group (pp. 444-447): 1. "The group has a common character and a common culture that encompass many, varied and important aspects of life, a culture that defines or marks a variety of forms or styles of life, types of activities, occupations, pursuits, and relationships." 2. "...people growing up among members of the group will acquire the group culture, will be marked by its character." 3. "The groups concerned are not formal institutionalized groups, with formal procedures of admission. Membership in them is a matter of informal acknowledgment of belonging by others generally, and by other members specifically." 4. "These are groups, members of which are aware of their membership and typically regard it as an important clue in understanding who they are, in interpreting their actions and reactions, in understanding their tastes and their manner." 5. "Membership is a matter of belonging, not of achievement. One does not have to prove oneself... in order to belong and be accepted as a full member." 6. "The groups concerned are not small face-to-face groups, members of which are generally known to all other members...they are anonymous groups where mutual recognition is secured by the possession of general characteristics". This last criterion does seem to distinguish encompassing groups from constitutive communities for the latter include families some of which are not anonymous groups.

people certainly belong to other constitutive groups besides their national community. Some will undoubtedly find this entailment still too permissive and unsatisfactory. The first thing to note, in response, is that not all cities, neighborhoods, tribal, ethnic, and religious groups automatically qualify as constitutive groups; the claim is only that they can qualify as such a group.<sup>65</sup> But, in addition to this, given the nature of constitutive groups and their importance to their members, I don't find the claim that they are worth lethally defending terribly problematic. Assume that the Jewish community is a constitutive community for those who have been born and bred in it (if the Jewish community is not satisfactory pick any constitutive community that meets the above criteria). When I say "Jewish community", there are seemingly a couple of ways of conceiving of what this is exactly. First there is, roughly, the Jewish community per se that consists of all Jewish people that participate in a Jewish 'way of life' that inhabit various regions of the world. Second, there are particular Jewish communities that are located in particular regions of the world. Take the former and imagine that people worldwide have villainously mounted a serious organized campaign to eradicate Jewish culture, traditions, and customs. It's difficult to say exactly how the Jewish 'way of life', worldwide, could be eradicated without killing Jewish people. But say there is a campaign of legislation, persecution and propaganda that is backed by lethal force if Jewish people do not comply. I am inclined to think that if the *only* way to preserve the Jewish way of life were through lethal force, then Jewish people would be permitted to take up lethal arms. This is not to say that lethal force is permitted if that is the only way to avoid persecution. Rather the claim is that if it has reasonably been determined by the members of the Jewish community that there are really *only* two options--either death of their community at the hands of villainous aggressors or the taking up of lethal arms to defend it--then Jewish people (and others) can perform the latter given the centrality of the group to the identities of

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<sup>65</sup> I am of course assuming that one's national community always qualifies as a genuinely constitutive group.

individual Jewish people [when I say "others", the idea is that the Jewish community is extremely valuable for Jewish people, the vast majority of people who have been "born and bred" Jewish. But seemingly non-Jewish people (and people who have voluntarily entered the Jewish community later in life), recognizing both the value of the Jewish community for Jewish people and the value of constitutive communities in general for their members, can rally alongside Jewish people and help defend their community]. But there is something else to consider. The claim has been that if a group is genuinely constitutive, then a necessary condition for proportionality has been met, not a sufficient one. So, the Jewish community is valuable enough to warrant lethally defending it; but it could be that lethally defending it would have evil consequences (the killing of other innocent civilians) that are excessive compared to any good that would be secured by a lethal defense.

Regarding the necessity requirement, things become a bit more complicated when we think of the destruction of constitutive communities that are tied to a particular location or region. What if, for example, the 'way of life' for a particular Jewish *neighborhood* (assuming this is a genuinely constitutive community) somehow faces dissolution? Would the members of this community be required to not lethally defend themselves and instead move out of this neighborhood and be absorbed by another Jewish community (or neighborhood) located in a different location? I am inclined to think that *if and only if* they are able to move locations with relative ease (determining what counts as 'relative ease' of course would be difficult), they would be required to do so. (I take it that, in the actual world, when it comes to a national community, it is not able to move with 'relative ease' to another location and assume its way of life).

Furthermore, it seems to me that in the actual world, constitutive communities that are distinct from national communities come under threat from mitigated aggressors seeking to rule

and conquer a people (seeking to destroy one or more national communities). By threatening the integrity of the national community, the integrity of other constitutive communities can be threatened in the process. Seemingly what adds to the justification of a victim nation warring against a mitigated aggressor (and what explains in part the motivation of a victim nation wanting to take up arms) is the defense of these other important constitutive communities.

Before moving on to examine another possible way that mitigated aggression can violate a central interest, another comment on national communities is in order. It should be mentioned that it's perhaps possible that there could be citizens of a national community (or any community for that matter) that is genuinely constitutive of their identities, but they for whatever reason do not see this as being the case about themselves, even after reflection. Furthermore, perhaps not all citizens of a particular national community (perhaps immigrants) will be such that the national community is genuinely constitutive of their identities. I take it that these latter citizens wouldn't have a central interest in the national community of which they are a part. So would these citizens be justified in taking up lethal arms to defend against mitigated aggression? Some of what I have to say in the remainder of this paper seemingly does justify them (but I should note that the focus of the remainder of this paper is not intended to be on this kind of citizen; it's just that it applies to them). Furthermore, it's seemingly the case that these citizens (e.g. immigrants), like the example of the people rallying alongside Jewish people, can see the value the national community has for their fellow citizens for whom it is a constitutive community and thus fight for their sakes.<sup>66</sup>

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<sup>66</sup> Admittedly, what I have said so far (and some of what I say below) would not be very compelling to someone who adamantly denies that constitutive communities even exist, or that the national community is a constitutive one. I'm not entirely sure what to say to such an objector other than *if* there are constitutive communities, and the national community is one of them, then there is reason to think that mitigated aggression can be met with lethal force. Furthermore, it seems to me that the burden of proof is on those who would deny either that constitutive communities exist or that the national community is constitutive.

### Central Interest in our Autonomy:

There's seemingly another angle from which to view the fact that mitigated aggression violates a central interest of the members of a victim nation-state: the central interest I have in mind is in being autonomous.<sup>67</sup> As mentioned above, all persons seemingly have a central interest in being, at least to some degree, autonomous. Human persons are beings that are capable of governing their own lives according to their own life plan; and seemingly most persons, at least to some degree, conceive of themselves as such.<sup>68</sup>

I mentioned above that to enslave someone is a clear example of violating that person's central interest in being autonomous. It seems to me that mitigated aggression is on a par with enslaving the people of a victim nation, though it's admittedly not as egregious as enslavement. How so? A state (as I have been using the term) is roughly the apparatus of government that rules over a people or nation. A legitimate state is one whose rule has been consented to (in some sense) by the people or nation. Thus the individual members that constitute a people or nation collectively govern themselves, qua people or nation, through their legitimate state. Simply put, mitigated aggression replaces a nation's government with a foreign one and thus forces a nation (ultimately the individuals that comprise the nation) to be ruled in ways that they have not chosen for themselves. Presumably (seems highly likely that) the invading regime will not reflect, in their laws and forms of government, the shared values and practices of the people they seek to conquer and rule over. I take it that many of the policies of any state (in virtue of being a state) will be coercive and affect, to a substantial degree, the day-to day lives of the

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<sup>67</sup> For an argument along these lines see Rodin, War and Self-Defense, pp. 154-155. Baker also makes a similar claim. He claims that mitigated aggression "undermines the exercise of practical reason that has led to the particular arrangement of things in that particular society" (i.e. it violates function 6 on Nussbaum's list; see footnote 27 above). Baker, p. 268. Below I clarify what exactly is arranged and in what sense it is arranged.

<sup>68</sup> I don't mean to suggest that persons are beings (and conceive of themselves as beings) that should on every occasion always get their way or have every desire fulfilled. Moreover, there's admittedly going to be variation in people's conception in just how autonomous they are. I try and make this more evident below.

individuals living under it. Thus when you add to this the fact that the policies are foreign and not consented to, the individuals that comprise the victim nation will be unable to govern a significant portion of their lives. Because of this, these individuals would justifiably feel as though they are kept from exercising their autonomy, particularly in the area of how they should govern themselves collectively [also, seemingly, in the area of what direction they should take their nation-state as time goes on]. That is, each individual that comprises the victim nation (or at least a sufficient majority of them) will seemingly have had her central interest in being autonomous violated.

There's a similar point to be made here. The individuals of the victim nation could experience an influx of unwelcome foreign cultural influences that lie beyond and in addition to the policies of the new aggressive state that would seemingly erode away the victim nations common way of life. This amounts to, again, forcing people against their will to live their lives differently than they normally would. I don't want to suggest that foreign cultural influence per se is bad. The idea is that the influence would seemingly be unwelcome and beyond their ability to monitor.

Objection:

But there's a problem when we consider non-democratic societies, which comprise the majority of the societies in the world today. Individuals that live in these societies are not living under political institutions (a state) that they have chosen for themselves (it's a stretch to say that they are governing themselves collectively by means of their state). Likewise authoritarian governments do not reflect, in their laws and forms of government, the shared values and practices of the people they rule over. And because of this, it doesn't make sense to say that the individuals living under these authoritarian regimes will have their autonomy undermined if they

are invaded and given a foreign system of government. And it seemingly follows from this that no case has been given for why many/most societies in the world (the non-democratic, authoritarian ones) are justified in responding to mitigated aggression with lethal force.<sup>69</sup>

But it's seemingly dubious to claim that necessarily a non-democratic state doesn't reflect the values and practices of its nation in its laws and forms of government. Walzer is seemingly right to claim that foreigners can't presume to know, in the absence of clear evidence to the contrary, that there automatically isn't a 'fit' between an authoritarian government and its people.<sup>70</sup> For foreigners, looking upon a union of an authoritarian regime and its people, "don't know enough about its history, and they have no direct experience, and can form no concrete judgments, of the conflict and harmonies, the historical choices and cultural affinities, the loyalties and resentments, that underlie it".<sup>71</sup> But beyond this, it seems that the presumption should be that a nation--under a non-democratic state--has shaped its own political institutions according to its "accumulated historical experience and its inherited culture and traditions".<sup>72</sup> 'Shaped', of course does not mean something like, "elected through democratic processes". Rather, the idea is that the non-democratic institutions are a natural outgrowth of the culture, religious convictions, opinions, habits, and feelings of the people.<sup>73</sup> There are, it seems to me, examples that support this presumption. Consider Muslim countries and their governments. Many of these authoritarian governments seem to enjoy popular support given the religious culture of their people (c.f. Iran under the Ayatollah Khomeini in the late seventies and early

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<sup>69</sup> The objection just discussed comes from Rodin, *War and Self-Defense*, pp. 156-157.

<sup>70</sup> Walzer, "The Moral Standing of States", pp. 212-214.

<sup>71</sup> *ibid*, p. 212.

<sup>72</sup> *ibid*, p. 212; quote taken from Norman, p. 149.

<sup>73</sup> Walzer, "The Moral Standing of States", p. 216.

eighties).<sup>74</sup> All this to say that people living in non-democratic societies can still seemingly have their central interest in autonomy violated if they are forced to live under a foreign regime.

Things get trickier concerning genuinely illegitimate states, and my aim is not to give a full analysis concerning their nature and their relationship to other states that might be aggressive towards them. Nonetheless, it seems possible for people living under an illegitimate state to have their central interest in autonomy violated by a foreign nation committing mitigated aggression. How so? If a state is illegitimate (i.e. it does not reflect the values and practices of its people in its laws and forms of government), then there would be no intimate connection between nation and state, thus it's not as though you have soldiers fighting, on behalf of their countrymen, for a common way of life they share with them. Rather, it's the soldiers of the state fighting to retain sovereign control over a territory, which presumably they wouldn't have a right to do. But even so, replacing this illegitimate state with a different state can still ignore and override the desires of the people living under the illegitimate one. Perhaps the people, while oppressed, found their regime tolerable; or perhaps they decided on prudential grounds that it wouldn't be wise to try and overthrow it.<sup>75</sup> The bottom line is that forcing upon a people a state that isn't in any sense "theirs" is to govern them in ways that they haven't in any sense consented to, and this despite the fact that their original state governed them in ways that they haven't consented to. Likewise, it seemingly doesn't follow that the oppressed nation in question, qua nation, doesn't possess some semblance of a distinctive shared way of life, a shared way of life that is not given full expression given the illegitimate regime. Mitigated aggression could presumably still threaten that shared way of life, forcing on that nation a way of life that is

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<sup>74</sup> See Norman pp. 152-153 for this example.

<sup>75</sup> Walzer, "The Moral Standing of States", pp. 214-215.

different than their own, thus violating the autonomy of the persons who comprise the nation in question.

As a final note, the issues of revolutionary war and wars of intervention are complex, and it goes beyond the scope of this paper to adequately address them. But what I argue for in this paper suggests that a nation would be warranted in militarily overthrowing its oppressive illegitimate state. And another nation-state could perhaps be justified in militarily coming to the aid of that oppressed nation. But surely a requirement on a nation-state embarking on intervention (in addition to ensuring that the ensuing war is necessary and doesn't have excessively bad consequences) is that its intentions are to help restore the victim nation's own common way of life.

#### Welfare Interest in our National Community (Our Distinctive Common Way of Life):

As this paper comes to a close, I move to the issue of welfare interests. I suggest that our participation in our national community or common way of life can be characterized as a welfare interest, in addition to being characterized as a central interest. Something is a welfare interest, recall, if and only if it is indispensably necessary for the realization of our more ultimate interests. Our membership in our common way of life, it seems to me, is necessary in this way. Without the flourishing of our common way of life and our participation in it, it can become extremely difficult if not impossible to realize a good many of our more ultimate interests, which again, conduce to our overall well being.<sup>76</sup> I offer several suggestions in an effort to show this.

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<sup>76</sup> I seem to be walking a fine line here. I don't mean to be simply saying: since the members of a nation-state that is the victim of mitigated aggression will not experience well being, these members therefore have had their welfare interests violated. That they don't have well being doesn't entail that their welfare interests have been set back. But what I am trying to show is that our common way of life is necessary for our more ultimate ends in life. And the way to show this is to show that without our common way of life, the realization of our ultimate ends become extremely difficult if not impossible.

The most straightforward example, to my mind, that illustrates how the common way of life of a people is necessary if its members are going to have any chance at realizing their more ultimate interests, is a mitigated aggressor that is a tyrannical regime conquering a democratic society. Intuitively, those who are accustomed to, yet denied, such liberties as freedom of speech/thought, association, and religion, will be significantly prevented--quite literally kept by the regime--from pursuing and realizing their more ultimate ends; perhaps because those more ultimate ends do not coincide with what the regime would want for its subjects. I see no reason, however, to suppose that only members of democratic societies need their common way of life if they are to realize their more ultimate interests, or that only oppressive tyrannical regimes can disrupt a common way of life. An incoming foreign regime (even a non-tyrannical one) could either not respect (it can lack respect without being brutal) or not understand (or both) the common way of life of the people it is conquering. Because of this, the foreign regime could, through its laws and policies or lack thereof, prevent the people of the victim nation from realizing many of their more ultimate interests (the people of the victim nation, in virtue of being co-nationals, will presumably share many ulterior interests in common).

I've mentioned how the imposition of foreign laws and policies by a mitigated aggressor--which constitutes disrupting the common way of life of a victim nation--can prevent the people of the victim nation from realizing their more ultimate interest.<sup>77</sup> But seemingly another way of showing that the common way of life for a people is necessary if they are to realize their more ultimate interests is to focus once again on the nature of the common way of life itself. Consider what Rodin says concerning the value a national community or common way of life has for its members:

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<sup>77</sup> Admittedly, what I have said thus far could be characterized as mitigated aggression undermining people's welfare interests in liberty (or autonomy), not in their common way of life per se. But the point still stands that mitigated aggression can undermine a welfare interest of people, and thus can be lethally defended against.

"...the shared values and laws, language and literature, history and traditions, as well as the less tangible expectations and understandings which together constitute the cultural identity of the group come to be special and cherished possessions...many of the goods which give meaning to our lives are dependent on our participation in [our national] community. Even such seemingly personal activities as forming judgments of value, the creation of and reflection upon works of art, and characteristic forms of human relationship such as love and friendship are only made possible by a shared linguistic and conceptual framework embodied in a community or common life..."<sup>78</sup>

It's seemingly plausibly to suppose that a significant portion of the "goods" (mentioned by Rodin) that give meaning to our lives are our various ultimate life aspirations that we pursue. Thus Rodin highlights how our common way of life provides for us the necessary "linguistic and conceptual framework" that enables us to achieve our ultimate ends.

Margalit and Raz, speaking of national communities, make essentially the same claim as Rodin:

"Individual well-being depends on the successful pursuit of worthwhile goals and relationships. Goals and relationships are culturally determined. Being social animals means not merely that the means for the satisfaction of people's goals are more readily available within society. More crucially it means that those goals themselves are (when one reaches beyond what is strictly necessary for biological survival) the creatures of society, the products of culture. Family relations, all other social relations between people, careers, leisure activities, the arts, sciences, and other obvious products of "high culture" are the fruits of society. They all depend for their existence on the sharing of patterns of expectations, on traditions preserving implicit knowledge on how to do what, of tacit conventions regarding what is part of this or that enterprise and what is not, what is appropriate and what is not, what is valuable and what is not. Familiarity with a culture determines the boundaries of the imaginable. Sharing in a culture, being a part of it, determines the limits of the feasible."<sup>79</sup>

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<sup>78</sup> Rodin, pp. 149-150.

<sup>79</sup> Margalit and Raz, pp. 448-449.

Margalit and Raz (as well as Rodin) seem to think that if a linguistic and conceptual framework that people are accustomed to is sufficiently disintegrated, many ultimate interests will go unfulfilled, or become extraordinarily difficult to realize. To be in a position in one's day-to-day dealings where one no longer knows what's expected, valuable, or appropriate can indeed be (as was mentioned above) painfully disorientating and stultifying. And this is seemingly not a recipe for the pursuit and realization of the ultimate interests one has, nor for the setting of new aspirations. Moreover, for Margalit and Raz our distinctive common way of life to a large extent informs and shapes what our more ultimate interests (e.g. career, leisure activities, relationships with friends and family) are and will be. Our common way of life significantly marks what our career choices will be, what leisure activities count as enjoyable, what features of lifestyle count as appropriate and valuable, and the customs and habits as well as the expectations and attitudes that govern our relationships with friends, family, and strangers.<sup>80</sup> Consequently, as Margalit and Raz claim, if the common way of life begins to disintegrate, "or if it is persecuted or discriminated against, the options and opportunities open to its members will shrink, become less attractive, and their pursuit less likely to be successful."<sup>81</sup> The idea is seemingly that given the degree to which a person's common way of life molds her personality, and in turn her more ultimate ends, as the integrity of the common way of life erodes, so does her ability and motivation to achieve her more ultimate ends. Put differently, one's national community (common way life) is a source of ideas about what's valuable and worthwhile, and people participating in the national community in question shape their life plans

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<sup>80</sup> *ibid*, p. 444.

<sup>81</sup> *ibid*, p. 449.

accordingly.<sup>82</sup> As one's national community disintegrates and is replaced with a foreign one (as I suggest happens as a result of mitigated aggression), a different way of life, a different mind-set about how to live is ushered in. When this happens, it's natural to suppose that many of the original life plans of the people being conquered will become very difficult, if not impossible, to realize. It's frankly hard to say with precision just how it will become more difficult or impossible. Perhaps it arises as a result of legislation (as alluded to above), or as a result of old institutions being taken away and new ones established, or as a result of the mitigated aggressor having full control over the natural resources of the victim nation, or perhaps as a result of the incoming migrants denigrating the common way of life of the victim nation.

To conclude, I've suggested that the kind of mitigated aggression I am interested in, where an aggressive state 'conquers and rules' the people of a victim nation will inevitably disrupt to a significant degree the common way of life (national community) of the victim nation and usher in a foreign common way of life. Perhaps it could be said though that I would be hard pressed to deny the possibility that a mitigated aggressor (that seeks to 'conquer and rule') would have a minimal affect on the common way of life. Say, for example, the victim nation's way of life would be sufficiently represented by the new government. And the effect of the influx of foreigners would be no different than if a normal wave of immigration had occurred. If the citizens of the victim nation facing mitigated aggression had good reason to believe that their common way of life would not be significantly impacted, then what I have said in this paper would not justify them in warring against their aggressor. Perhaps this is a weakness in my account. It seems to me, though, that in the actual world a nation facing mitigated aggression would have good reason to believe that their common way of life would stay sufficiently intact

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<sup>82</sup> See David Copp, "Democracy and Communal Self-Determination", in, The Morality of Nationalism, pp. 283-284. This is Copp's discussion on encompassing groups.

only if either the mitigated aggressor was very benevolent such that it took measures (even at the cost to its own self-interest) to ensure that the common way of life was intact (never mind how feasible it would be for a mitigated aggressor with genuinely benevolent intentions to keep the common way of life of the victim nation sufficiently intact), or the common way of life of the aggressive nation is astoundingly similar in important ways to the victim nation's common way of life. I am skeptical about either one of these two scenarios being the case in the actual world. Regarding the latter, one would be hard pressed to find two nations that are astoundingly similar in important ways. Also, it does seem to be true that the more similar one nation is to another the less likely they will be aggressive towards one another e.g. the adage that democracies don't attack one another seems to be an empirical truth. Regarding the former, that a nation would be willing to kill the citizens of a victim nation if they don't submit to its invasion is hardly indicative of benevolence and instead indicative of disrespect. Also, one wonders what the motivation of a mitigated aggressor would be if it's really the case that it intends to ensure that life for the people of the victim nation will essentially be no different than if it wasn't occupied and ruled by a foreign power. I take it that how a nation utilizes its natural resources constitutes a significant part of its common way of life. Thus it's not clear that a mitigated aggressor could utilize the foreign natural resources for itself (I suspect this is a primary motivation for committing mitigated aggression) and at the same time leave intact a people's common way of life.