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# On Collective Self-Determination and a Palestinian State

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**CLAREMONT McKENNA COLLEGE**  
**ON COLLECTIVE SELF-DETERMINATION AND A PALESTINIAN STATE**

SUBMITTED TO  
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AND  
DEAN GREGORY HESS  
BY  
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## I. Introduction

The end of the British Mandate for Palestine on 15 May 1948 spawned what has become an intractable conflict, which at its core concerns a right known as collective self-determination. A day before the end of the Mandate, the Jewish Yishuv<sup>1</sup> had declared its independence, but the Palestinians, the Arabs living between the Mediterranean Sea and the Jordan River, protested. While the Peel Commission had in 1937 called for partition of the region into a Jewish and Palestinian state, the White Paper of 1939 dismissed it, calling for one state in which Arab and Jewish rule would be proportional to population. The result was a war, in which an organized Jewish army with support from the international Jewry defeated a disparate Palestinian army without funding or significant help from neighboring Arab countries. At the end of the war, the new Hashemite Kingdom of Jordan had assumed control of what is now the West Bank, Israel had solidified its place as an independent sovereignty, and the Palestinians either living in Israel proper or the Palestinian territories, were again living under another sovereignty.

Nineteen years later, the Israelis would take control of the West Bank, and Palestinian claims for their own state would be born anew. The merits of their case in particular are the subject of much study in the fields of political science and international law. Additionally, philosophers work on the subject of the right to self-determination. What is lacking is a fusion of these two approaches, and that is what this paper proposes to do. The result will be a philosophically-based answer to the following question: “Do the Palestinians deserve a state?”

To answer this question, one must first provide an account of collective self-determination (CSD) and when a group is entitled to it. This starts with looking at the origins of

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<sup>1</sup> The Yishuv refers to the Jews living in present-day Israel before independence was declared, of whom there were roughly 700,000. They were semi-autonomous, with a highly functional governing body.

CSD, both to see if it truly is a right and, if so, what its nature is. I will argue that there is such a thing as a right to CSD, but due to its nature, it is not a universal right of all groups. Whether a group has a right to CSD depends on the conditions in which the group lives, and in this paper, I will tease out what these conditions are.

The result of such an analysis will be a set of criteria by which one can judge whether or not a group is entitled to CSD, given the conditions in which the group lives. With this criteria, I will look at the Palestinian case in particular and determine whether or not the Palestinians have a right to CSD. If so, they have a right to an independent state, since any group that exercises true CSD can determine whether or not they choose to live in such a state.

#### *What This Paper Is Not Concerned With*

CSD is often tangled in a web of other issues and concerns, but in this paper they serve only as distractions from my main goal of determining when a group is entitled to CSD. With this in mind, I will identify some of these distracting issues and place them safely on the sidelines.

The first thing that one usually thinks of in connection to CSD is international law. This should not be a surprise since international law, through bodies like the United Nations and its international courts, has much to say on CSD. Avishai Margalit and Joseph Raz make an important distinction, though, when they point out that there are rights and there are consequences of rights.<sup>2</sup> As I have stated, this paper is concerned with the nature of the right to CSD, and thus it is concerned with rights, not their consequences. Addressing the consequences of rights is the domain of law, and thus international law. Since this paper is not concerned with

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<sup>2</sup> Margalit, Avishai, and Joseph Raz. "National Self-Determination." *Journal of Philosophy*. Vol 87. 9 (1990): 441.

the consequences of CSD, it will not address international law or any other concerns that deal with consequences of rights as opposed to rights.

In the same vein, many accounts of CSD look at a group that has earned CSD and criticize how the group has exercised it, using consequences of CSD as a basis for evaluating whether or not the group should have had CSD in the first place. Such accounts are flawed. A group either had a right to CSD or it did not. Its successes and failures after achieving its right say nothing of whether or not the group deserved the right in the first place. The American revolution is thought of by most as justified not because of the great success that the United States has become, but rather because of the reasons found in the Declaration of Independence. With this in mind, this paper will not concern itself with the consequences of CSD, including what types of governing systems are the best.

In addition to this not being a paper about the consequences of CSD, it is not a political science paper. This means that in evaluating the conditions necessary for the right to CSD, I will take a normative approach that is only concerned with political realities in the sense that they are conditions in which groups live. The overall goal is teasing out the normative and prescriptive questions surrounding CSD so that we might understand how things should be, not seeking to do what is politically expedient.

One major topic that typically ushers in talk of politics is territory. Margalit and Raz argue that territory is essential for a group's claim to CSD, and if the group is scattered, it is because they were separated and are due their land via restitution.<sup>3</sup> That CSD requires territory is incontrovertible. A state is a monopoly of sovereignty over a specific territory. Because this is understood, I will grant it as an assumption entailed in CSD. Problems arise not from this

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<sup>3</sup> Margalit and Raz, 459.

assumption, but rather from a desire to clearly set borders and the claims of groups to specific lands that other groups control. Among cases that exemplify these problems are the conflicts in Cyprus, Kashmir, Sri Lanka, and above all Israel and Palestine. With regard to the first problem, there are groups with CSD that have contingent borders, like Israel.<sup>4</sup> These borders may fluctuate, but the group still has territory, and thus it can have CSD. On the second problem, Margalit and Raz appear to imply that any group that could have a right to CSD has a historic homeland to which they have a right based on restitution. This is a large step beyond the requirement that a group has control over territory, and it does not seem to match up with history. What would Margalit and Raz say of the Pilgrims who struck out to find territory in a new world? They were a new group that came together from various places, thus they did not have an historic homeland. Both problems mentioned distract from the basic requirement that groups wishing to have CSD need a territory in which they can have a monopoly on sovereignty.

### *Introducing Terms*

Already I have used some terms that are essential to any investigation of CSD, yet are often misunderstood. To facilitate my analysis, I will briefly define these terms, starting with the most important. CSD refers to the ability of a group of people to be the ultimate decision makers on collective group decisions and actions. This is a broad term, and under its umbrella are many other terms. One of these that is often confused with CSD is self-government, which refers to the ability of a group to participate in the process by which decisions are made that directly affect the group. CSD is self-government without limits, though, because a group might be self-governing to some extent, yet under the ultimate control of an outside group. Some examples of

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<sup>4</sup> United Nations Security Council Resolution 181 and 242.

self-government that show its difference from CSD are the case of the Scots or the Basques, who exercise large degrees of control over themselves, but ultimately are within sovereign states that have ultimate control. The Scots and Basques certainly have self- government, yet they do not have CSD.

Before going further, there is a point that must be addressed about a potential worry about my definition of CSD. Some might worry about what constitutes the people's ability to make the ultimate decision. If a monarch rules over one group, does that group have CSD? If the monarch forcibly took power and is not influenced by anyone outside of his sphere of power, we must say no, the group does not have CSD because they are not in control over the decision-making process. Richard T De George points out that this marks out two types of drives for CSD: taking it from another group, or taking it from within one's group. The first type are what we generally think of, but the second is like the French Revolution or the Russian Revolution. The point to be made from this is that even if a group lives under its own sovereignty, it is not the case that the group has CSD.

Two other terms that are often confused are state and nation. Often we think of nations as the same thing as states, but it is entirely possible to have a nation that is not a state and a state that is not a nation. A state is a political unit with complete sovereignty, and thus CSD. Nations, on the other hand, are groups that are tied together not by sovereignty, but rather through shared characteristics that range from shared language to a common ethnicity. Nations, unlike states, are tied together not just by any kind of objective ties, but also by "how they conceive of themselves," as David Miller describes.<sup>5</sup> To illustrate the difference, think of nationalities, like the Palestinians, the Kurds, the Native American tribes, or the Quebecois, that do not have states.

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<sup>5</sup> Miller, David. *On Nationality*. New York: Oxford University Press, 1995, 17.

These people might be geographically scattered, but they still form a nation because they feel connected. On the other side, states like Belgium are made up of different nations that live together in one sovereignty. There is no need that members of a state feel any sort of subjective attachment to each other.

Finally, I will elaborate on the simple difference between self-determination and CSD. Self-determination is often discussed as a group right, but it is also discussed as an individual's right. In order to avoid this confusion, CSD in the paper will refer to the right of a group, or a collective unit of people, to make the ultimate decisions for itself. Self-determination will refer to the individual right.

I should also address the relationship between CSD and secession, since the two terms are used in such similar ways.<sup>6</sup> Indeed there is a great deal of overlap between CSD and secession, but secession, as Lehning uses it, refers more to the political split of a group from the state it was a part of involving that state losing the territory inhabited by the departing group. CSD is broader. One could say that the international Jewry had a right to CSD in 1945, but granting it would not require secession, just the departure of the Jews from the various states they were living in. Put in terms of formal logic, secession is sufficient for CSD, but CSD is not sufficient for secession.

Having set out the task of this paper, removed potential distractions, and clarified essential terms, I will begin by investigating the nature of the right to CSD

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<sup>6</sup> Lehning, Percy B. "Theories of Secession: An Introduction." *Theories of Secession*. Ed. Percy B. Lehning. New York: Routledge, 1998. 2.

## II. The Basis of the Right to Collective Self-Determination

Before one can hope to understand the conditions that must be met for a group to have CSD, one must understand the nature of the right to CSD. In this section, I will build a concept of the right and use it to outline the conditions necessary for it, which I will build upon in the following sections.

Richard T De George argues that the right to CSD is a myth, based on his intuitively strong claim that, “Nations and states are not moral agents and cannot have moral rights, except in some derivative sense.”<sup>7</sup> We might claim that the Yankees baseball team has poor morals, but what we are really saying is that the individuals who form the Yankees have poor morals. Similarly, if we say of a group that it has a right to CSD, we are saying that the individuals in the group have rights that can be recognized through CSD. George is not saying that these claims to group rights are wrong, but rather that group rights are at best derived from individual rights.<sup>8</sup>

If there is a right to CSD, then, it must be derived from individual rights, but why should we think that individual rights can give us a collective right to self-determination? Liberals argue that the individual is the fundamental unit of worth, and that the idea of groups or communities having special rights is absurd. They would inherently violate individual rights. I will argue in this section that CSD does derive from individual rights, but that this is compatible with the liberal notion of individual rights.

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<sup>7</sup> George, Richard T De. “The Myth of the Right of Collective Self-determination.” *Issues of Self-Determination*. Ed. William Twining. Aberdeen, Scotland: Aberdeen University Press, 1991. 5.

<sup>8</sup> *Ibid*, 4.

## *Utilitarianism and CSD*

Margalit and Raz argue that group interests are connected to the interests of members of the group, but that group interests are independent because there are things that benefit the group but not necessarily the members of the group.<sup>9</sup> Space travel, for example, benefits the American nation because it proves that we are a technologically advanced nation and instills pride and patriotism. Space travel is expensive, though, and draws funds away from welfare programs, which directly help individuals, so there are ways for the group to benefit but the individuals to suffer.

This argument seems to imply a narrow and short-sighted conception of individual interest though. Approached from a utilitarian stance, perhaps the space program provides more utility to individuals through pride, excitement, and motivation than the welfare that could be bought with the space program money. This utility would not be as obvious as that which comes from welfare, and it may not be realized in the short term, but it should still enter into the utility function. The conception of cultural gains as separate from individual welfare comes from Margalit and Raz's politically conscious approach, in which cultural benefits and other non-quantified factors are not a part of the equation of an individual's well-being while GDP per capita and unemployment rates are.<sup>10</sup> By quantifying the unquantified factors, utilitarianism casts CSD as a right derived from individuals' welfare as opposed to the welfare of a group (a concept that George thinks makes no sense).

Margalit and Raz's approach brings utilitarianism into the picture, but there is a strong argument for why CSD is just a tool with which society maximizes utility. The argument is this:

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<sup>9</sup> Margalit, Avishai, and Joseph Raz. "National Self-Determination." *Journal of Philosophy*. Vol 87. 9 (1990): 450.

<sup>10</sup> *Ibid*, 440.

1. It is never the case that all the rights of all the members of a group can be protected.<sup>11</sup>
2. It is better to protect more rights than fewer rights.
3. Groups must act in such a way that protects the most rights

This argument accurately reflects the reality of group decision-making. The first premise is always true if there are those who would violate the rights of others, i.e. criminals. Society must restrict their rights to preserve the rights of other. The manner in which society restricts rights seeks to maximize the well-being of the individuals within it. John Rawls supports this utilitarian notion when he writes, “Individual liberty is so important that the only legitimate ground for restricting a particular basic liberty for everyone-like the right of political participation- is to secure a more extensive system of overall basic liberties for everyone.”<sup>12</sup> Utilitarianism, then, keeps society from inaction by guiding it when it is forced to make decisions that restrict rights.

The above argument has a powerful appeal, but it also leads us to undesirable conclusions. If the right to CSD is purely derived from utilitarianism based on the utility of individuals, it follows that CSD is owed to a group if it would yield the most benefit overall. When evaluating the effect of granting a group CSD, though, one must consider both the welfare of the people in the group and the welfare of those in the groups that will be affected by the granting of CSD. This means that if state X is composed of a majority, group A, and a minority, group B, group B is only entitled to CSD if it is more beneficial than harmful to the welfare of those in state X. Imagine, though, that the members of group B are the slaves of group A, and if

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<sup>11</sup> Locke, John. *Second Treatise of Civil Government*. Chapter 9, Section 123.

<sup>12</sup> Rawls, John. *A Theory of Justice*. London: Oxford University Press, 1971, 506.

they were to have CSD, the members of group A would not be able to take care of themselves and would plunge into poverty. A strict utilitarian account would deny group B CSD.

In addition to leading us to problematic conclusions on the lack of rights of minorities, utilitarianism also grants rights based on economics that do not seem right. Suppose group B in state X finds large deposits of gold in the area where it has territorial integrity (100% of residents in the region are members of group B). Since members of group B are the poorest people in state X and the region they live in lacks resources and a basic infrastructure, the gold would do the most good if it stayed in group B's region and group B could control use the use of it. In this case, utilitarianism would grant group B CSD because it is more beneficial to leave state X so that they do not have to share the gold despite the relationship with the state, which could have been harmonious and mutually beneficial.

The above conclusions are undesirable because they do not match up with our intuitive conceptions of rights or justice or morality. They show why it is wrong to think of CSD as purely derived from utilitarianism. Will Kymlicka points out that the first problem with the abused minority not having a right to CSD denies people the right to self-defense, which is something that seems like an indisputable right.<sup>13</sup> The second problem points out that non-rights related issues, like economic benefit, might influence something we see as a rights-based issue. Utilitarianism as an approach to the right of CSD is helpful because it shows that such a right is derived from individuals, but it leads to the same problems with its ability to deal with rights that Robert Nozick, among others, explores. It seems self-evident to us that all people are due certain, inalienable rights which cannot be properly situated in a purely utilitarian account. The

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<sup>13</sup> Kymlicka, Will. *Liberalism, Community and Culture*. New York: Oxford University Press, 1991, 163.

next section will look at an approach that seeks to reconcile the positive aspects of utilitarianism with these rights to provide an account of the nature of the right to CSD.

### *The Declaration of Independence and Natural Rights*

Thomas Jefferson, in the Declaration of Independence, makes one of the most concise and powerful arguments for CSD. He uses John Locke's account of natural rights and civil government as a basis for his positive account of when a group has a right to CSD. He takes into account the powerful claims that utilitarianism makes on CSD and is able to reconcile them with natural rights. Underneath his historic language is a strong argument for CSD as a right derived from the natural rights of individuals.

In order to understand this argument, though, one must consider the influence that Locke and others had on the Declaration. Jefferson never argued that the document was original,<sup>14</sup> and the document's vocabulary makes it obvious that he was heavily influenced by Locke's *Second Treatise of Civil Government*. In that work, Locke advocates a Kantian conception of morality as an *a priori* code derived from reason, which he calls the law of nature. Locke writes, "The *state of nature* has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all *equal and independent*, no one ought to harm another in his life, health, liberty, or possessions."<sup>15</sup> Jefferson echoes this idea of natural rights when he writes, "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with Certain inalienable Rights, that among

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<sup>14</sup> Reck, Andrew. "The Enlightenment in American Law 1: The Declaration of Independence." *Review of Metaphysics*. Vol 44. 3 (1991): 552.

<sup>15</sup> Locke, Chapter 2, Section 6.

these are Life, Liberty and the Pursuit of Happiness.”<sup>16</sup> Unlike the strict utilitarianist, Locke and Jefferson believe that there are at least some rights that should be respected regardless of whether or not it would benefit society.

The introduction of natural rights that must be universally respected is the first of two major steps that Jefferson’s argument makes. It is difficult to argue for this point, though, and Jefferson invokes the rights as “self-evident.” The moral relativist or utilitarian might contend that there are no such rights, and the claim that there are invokes paternalism. Proponents of each view have a genuine philosophical difference. Francis Hutcheson, though, offers a way for utilitarians to believe in universal rights by arguing for natural rights on utilitarian grounds. According to him, rights to life and liberty are essential to the general good, and thus they are “perfect rights.” The violation of perfect rights always goes against the general good, despite the illusion that it might bring more utility.<sup>17</sup> Hutcheson’s perfect rights based on utilitarianism leave us with two options to the aforementioned philosophical difference. First, we can agree with Locke and Jefferson and accept that there are *a priori* natural rights. Second, we can deny this and opt for utilitarian, but Hutcheson’s perfect rights lead us to the same conclusion as Locke and Jefferson: there are individual rights that must be universally respected.

One might deny that there are such universal rights by arguing that even the most advanced societies deny criminals rights of liberty and, in the United States, life. Criminals, though, are persons who have deprived other persons of their natural rights by choice. Kant argues that justice, according to his categorical imperative, requires us to punish the criminal by treating him as he saw it fit to treat others.<sup>18</sup> By violating the natural rights of others, criminals

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<sup>16</sup> Declaration of Independence.

<sup>17</sup> Reck, Andrew, 555.

<sup>18</sup> Kant’s first formulation of the Categorical Imperative.

have given up their own natural rights because they have denied that such rights are natural and universally applicable. It is wrong, then, to say that the natural rights of criminals are being violated because criminals, by definition, have given up their claim to natural rights.

After establishing the initial premise that all men have natural rights, Jefferson pulls from chapter nine of Locke's *Second Treatise*, stating that, "to secure these [Natural] Rights, Governments are instituted among Men."<sup>19</sup> This is not a disputed point. It channels Hobbes' view that people form societies because, "the life of man, solitary, poore, nasty, brutish, and short."<sup>20</sup> Because of this, Jefferson writes that, "whenever any Form of Government becomes destructive to these Ends [preservation of natural rights], it is the Right of the People to alter or to abolish it, and to institute new government."<sup>21</sup> This is second major move that Jefferson makes. He links natural rights of individuals to groups, with the primary function of groups, via governments, being to preserve these individual rights. If groups are not performing their primary function, he argues, the "People" of the group have a right to fix their situation just as someone would repair car that does not drive. This is also where he introduces the right to CSD. Altering, abolishing, and instituting new government requires CSD, and the right of the group to alter, abolish, and institute new government comes from the failure of the current government to carry out its function. Government's function is grounded in the natural rights of individuals. By the transitive property, the right to CSD is grounded in the natural rights of individuals.

One danger that the natural rights approach faces is the tendency of many to inflate the demands of natural rights until it becomes impossible for governments to uphold natural rights. Many independence movements have intentionally inflate the demands of natural rights so that

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<sup>19</sup> Declaration of Independence.

<sup>20</sup> Hobbes, Thomas. *Leviathan*. Cambridge: Cambridge University Press, 1991, 89.

<sup>21</sup> Declaration of Independence.

they can argue that the government is failing to protect natural rights. The American Revolution, for instance had its basis largely in taxation without representation even though the colonists were actually paying for less after taxes were introduced and the government they were paying them to had just fought a war that greatly improved life for colonists. Such inflation weakens the legitimacy of natural rights. Jefferson defends against such inflation by invoking aspects of utilitarianism in the name of prudence. As the argument for utilitarianism points out, it is impossible to completely guarantee all rights to all individuals. By entering into society, the individual sacrifices some freedom, and the pursuit of happiness must be made in accordance with morality. Governments, then, must maintain as many of these rights as possible, and inflating natural rights grants CSD in such a way that is not prudent with respect to the primary function of society. Jefferson recognizes this when he writes, “Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes.”<sup>22</sup> This means that groups do have a right to CSD if government is not guaranteeing their natural rights, but inflated views of natural rights that can be categorized as light and transient causes cannot justify this right.

At this point, Jefferson has reconciled utilitarianism with the problems previously identified. Because it is grounded in the preservation of natural rights of individuals, CSD is not a function of maximizing utility. It also prevents issues not related to rights from influencing the right to CSD. At the same time, Jefferson respects the highlights of the utilitarian account by limiting the inflation of natural rights through invoking utilitarian decision-making. Jefferson has created a picture of the right to CSD as one based on respect of natural rights of individuals, but sensitive to utilitarianism.

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<sup>22</sup> Declaration of Independence.

### *Drawing the Framework for Conditions Allowing for CSD*

The analysis of the right to CSD up to this point has shown that it is a right to it and it is based on the natural rights of individuals. Any conditions that tell us whether or not a group has this right must somehow affect the natural rights of individuals. This means we must have an account of what the natural rights of individuals are before we can know what conditions affect the right to CSD.

I have already briefly discussed the nature of natural rights in my exploration of the right to CSD as derivative of individual rights. Two justifications for the existence of natural rights were identified: the *a priori* account and the perfect rights of utilitarianism account. Although the advocates of these different accounts have differing arguments for why there are natural, universal rights, they have similar views of what these rights are. Hutcheson identifies rights life and liberty as perfect rights,<sup>23</sup> as do Locke<sup>24</sup> and Jefferson.<sup>25</sup>

What makes these two rights so valuable, though, that they are universal and thus natural? One might argue that life and liberties are complete goods because they are valuable in and of themselves, but this seems wrong because there are certainly people who have both life and liberty, yet derive no value from them. Because these things are not valuable in and of themselves, they must be sought for the sake of something else: an ultimate good. Aristotle properly describes the ultimate good for people as happiness in a holistic sense, which helps us understand the value of life and liberty. People need life and liberty to pursue what will bring them happiness. In this sense, Jefferson's attachment of a right to the pursuit of happiness is a

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<sup>23</sup> Reck, Andrew, 555.

<sup>24</sup> Locke, Chapter 2, Section 6.

<sup>25</sup> Declaration of Independence.

sort of ultimate natural right, or a restatement of man's function (to pursue his ultimate good), and the right to life and liberty are subordinate rights. The right to property that Locke attaches is also a subordinate right because property is only valuable insofar as it helps us pursue happiness. Natural rights, then, are rights that grant us the ability to pursue our function.

Based on this conception of natural rights, conditions that affect the right to CSD are those that affect our welfare. In this paper, welfare refers to our present level of happiness, or how close we are to achieving our primary function. Conditions that impinge on our natural rights lower our welfare. Accomplishing goals and desires increases it. Of course it is improbable that a significant number of people, if anyone at all, are completely devoid of any happiness or have complete happiness). Most people live somewhere inbetween. Despite this, living a worthwhile life seems quite attainable. This suggests that there is a range, and those within the range have a high enough welfare that they live a worthwhile, or meaningful, life. Because of there is a continuum of welfare, there are varying degrees of meaningfulness in life. People always seek to increase their welfare, but being in the range simply means that one can be said to have attained the ultimate good in some sense.

Natural rights play an integral role in this model. They are what allow us to have the individual self-determination necessary to improving our welfare or even to have the potential to have welfare. Without life, we are not even on the welfare scale, and without liberty our welfare is out of our control. Since the right to CSD is derived from natural rights, only conditions that have implications for natural rights affect the right to CSD. This means that conditions that simply increase or decrease a group's welfare are not necessarily conditions that affect the right to CSD. For example, getting hit by a natural disaster certainly decreases a group's welfare, but it is a condition affecting a group that intuitively does not affect the group's claims to CSD.

This requirement means that there are two basic categories of conditions that affect the right to CSD. The first category is self-defense, or a group's ability to defend itself from decreases in welfare. Self-defense can be subdivided into two subcategories. The first subcategory deals with in a standard sense, namely the ability of individuals to defend against threats to welfare as we generally perceive them. I will call these physical threats. The second subcategory deals with self-defense against threats to one's ability to be an active member of the communities that gives one's life definition. I will call this psychological self-defense. The second category of conditions deal with the ability to increase welfare.

### *Conclusion*

In this section I have built an account of the right to CSD that utilitarianism proves is based on individual rights, yet is dependent on natural rights being respected. The right to CSD is derived from the right of individuals to pursue their primary function as human beings, and natural rights are what allow us to do so. This means that only conditions that affect our natural rights affect a group's right to CSD. I have laid out the basic nature of such conditions as being related to self-defense from standard threats and threats to group membership as well as to the liberty to pursue happiness. In the following sections, I will expand upon the nature of each category so that we may fully understand when a group has a right to CSD.

### III. Physical Self-Defense

The right of the individual to self-defense, to at least some degree, enjoys nearly unanimous support. When Kymlicka points out that utilitarian approaches to personal liberties would take away such a right, it is meant to offend our perception of what is acceptable. There is debate, however, about what qualifies as self-defense and the nature of the defense that one is allowed to exercise, but there are no substantive accounts (that I know of) that would disallow an agent to prevent his or her death given the opportunity (I have already addressed the weaknesses of the utilitarianism in this respect). Philosophers tend to jump off of the justified self-defense train at various stops, though, as hypothetical situations become more ambiguous and problematic. For example, it is less clear that we have a right to prevent our death by killing an innocent bystander than it would be if we could do so by killing the person causing the threat to our life. Additionally, self-defense is not just an individual right. We think of groups as having a right to defend themselves against threats to their welfare as well. I will define group self-defense as the ability of a group to prevent drastic reductions to the welfare of its members.

CSD is an essential part of group self-defense. When a person or group faces a threat, it is because another person or group is seeking to take away the former's self-determination. The child would choose to buy lunch with his money, but the bully takes his right to self-determination by making taking the money. The bully can even make the child say words, like "uncle". Extending this to groups, any group would not willingly choose to do what harms its welfare, so when they do so, it is because another group has taken away CSD. The right to CSD, then, is the right to self-defense.

With this in mind, to see what conditions grant a group a right to CSD as a means of self-defense I will start with what I see as the most incontrovertible case of the right to self-defense and work my way down. I will seek to draw a line that will determine when a given condition is sufficient to grant the right to CSD based on the right to self-defense.

In the process of working down the ascendancy of threats and corresponding rights to CSD, one will notice that there are many potential types of threats that might face a group. At first, one usually thinks of the more standard threats, like physical or economic harm. These seem to be most pressing because they affect our ability to live or threaten our potential to reach the minimally meaningful life.

This chapter will look at these types of self-defense in particular, which I will call physical self-defense. The Zionist movement is one of the best examples of a group, the Jewish nation in this case, seeking physical self-defense through CSD. As they come up, I will identify conditions that do and do not merit the right to CSD. I will start by looking at the most grave of these threats, which is the immediate threat to one's existence. Next, I will consider preemptive action against non-immediate existential threats. Finally I will look at non-existential threats that pose a great enough danger to welfare that one might reasonably fear not being able to live properly if the threat is actualized.

### *Immediate Existential threats*

Perhaps the most compelling argument for the Zionist movement comes from perhaps the most horrendous events of the 20<sup>th</sup> century: the systematic attempt by Nazi Germany to eliminate the Jewish population. The Nazis had threatened the very existence of the Jewish group, and only in a state of their own with CSD, Zionists argued, could the Jewish people defend

themselves against such a threat.<sup>26</sup> To think of an entire population facing an existential threat can boggle the mind, so in order to discuss the nature of self-defense in the face of existential threats, it helps to think of individual cases, which is not problematic, since group rights are built on individual rights.

Judith Jarvis Thomson does a thorough analysis of self-defense against existential threats. She presents the Villainous Aggressor case, in which one faces an immediate threat to one's life, and the threat comes from an agent who has consciously decided to kill the person.<sup>27</sup> The only way for the first person to prevent the villainous aggressor from killing him is to kill first. In this case, she argues that one is morally permitted to kill the aggressor. There are different ways to justify this. Thomson does so by saying that one does not have to submit to the violation of the natural right to life. There are also prevention accounts that say we have a right to prevent people from violating the natural rights of others, including ourselves.<sup>28</sup> However one justifies it, though, there seems to be an absolute right to self-defense in the face of immediate existential threats. Based on the previous chapter, this is because life is necessary for having welfare, and threats to life are threats to our capacity to have welfare. Existential threats involve the most fundamental requirement for fulfilling our primary function of achieving happiness.

Groups, as well as individuals, can face existential threats. In the Zionist example, the European Jewish population during World War II is in the same position as Thomson's person who is threatened, with the Nazi regime being the villainous aggressor. Since it is the primary duty of government to defend the welfare of its members through defending natural rights, groups too have an absolute right to defend themselves against existential threats. Thus if a

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<sup>26</sup> Tenney, Jack. *Zion's Trojan Horse*. Hollywood: Standard Publications, 1954, 17.

<sup>27</sup> Thomson, Judith Jarvis. "Self Defense." *Philosophy and Public Affairs*. Vol 20. 4 (1991): 285.

<sup>28</sup> Draper, Kai. "Defense." *Springer*. Vol 145. (2009): 70.

group faces a condition that poses an immediate existential threat, the group is morally permitted to do whatever is necessary to defend against this threat. This means that groups facing such a condition have a right to CSD as a means of eliminating the existential threat. This is our first condition that grants groups the right to CSD. To state it concisely, if a group faces an immediate existential threat, that group has a right to CSD for self-defense.

Of course there is one major exception to the absolute right to self-defense against immediate existential threats. I mention it because it will be brought up later in the look at the Palestinian case. If the group whose existence is threatened is certain to threaten the existence of another group, that first group has already given up its rights to existence by disrespecting the rights of another group. In this case, the group in question is a villainous aggressor, and once an individual or group is a villainous aggressor, the option of being a victim who merits CSD for self-defense is not open.

### *Preemptive Actions against Existential Threats*

It is reasonable to say that no individual or group wants to face an immediate existential threat, which brings up the issue of preemption, or the prevention of threats by acting against them before they can develop. Preemptive action is much more difficult to deal with than immediate existential threats, though, because generally it is not always clear that they will lead to existential threats. Immediate existential threats are both indisputable and urgent. Preemption often deals with threats that are highly disputable and further down the road. Because of this, preemption does not rest on the same sort of absolute right to self-defense by any means necessary. While there are many controversial aspects of preemption, though, there are also

some that are less controversial. I will look at these to understand the underlying conditions of preemptive self-defense.

In *Another Cosmopolitanism*, Seyla Benhabib argues that since the UN Declaration of Human Rights in 1948, pluralism in states has been on the rise as the ability to move about the world is made easier and people from different groups mix together in states.<sup>29</sup> At the same time, there has been a shift in the talk of justice as governing inter-state relations to the way individuals behave to each other in a cosmopolitan global society.<sup>30</sup> This cosmopolitan justice should guide pluralist states in setting up political systems that prevent future existential threats from arising. Benhabib lists political conditions that must be fulfilled for cosmopolitan justice to be compatible with pluralism, and it is her first condition that is relevant to the present discussion. She says that in pluralistic states, there must be egalitarian reciprocity, which means that all citizens of the state have equal rights, regardless of what subgroup they identify with.

This condition is essential in terms of preemption because if there are firm rules that ensure egalitarian reciprocity, one group cannot pose an existential threat to another without first removing the legitimacy of those rules. Establishing such rules, then, constitutes a preemptive measure of self-defense that seems uncontroversial. Constitutions, like that of the United States and Canada, feature clauses that directly protect the equal rights of all citizens. That such provisions are enshrined in the most permanent and unchangeable form of law shows that egalitarian reciprocity is recognized as important to safeguarding against existential threats. Enforcing egalitarian reciprocity is a means by which government prevents the natural rights of its citizens from being violated, so those who would contend the need to establish it are advocating a stance in which the government's ability to carry out its function is hampered. The

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<sup>29</sup> Benhabib, Seyla. *Another Cosmopolitanism*. New York: Oxford University Press, 2006, 35.

<sup>30</sup> *Ibid*, 16.

conclusion we can draw from above is that a group living under a government that ensures egalitarian reciprocity will not face an existential threat unless the egalitarian reciprocity is lost or another state assumes ultimate control of the group that does not respect egalitarian reciprocity. Groups in such states might yet have a right to CSD, but it is not due to a preemptive right to defense against existential threats.

What, then, if a group lives in a pluralistic state without such principles and is open to potential existential threats? This is the position that Germany's Jewish population found itself in before the Holocaust. Slowly but surely their rights were stripped from them, and eventually they were helpless against the immediate existential threat of the Holocaust. It seems right to say that the German Jews had a preemptive right to CSD before it reached the point where they were helpless against the existential threat of the Holocaust.

This is not to say that all groups not living under egalitarian reciprocity should automatically deserve CSD. Consider the case of the Catholics of Northern Ireland from 1922 until 1969. They had very few rights, were under-represented in government to a point that Kymlicka would find unacceptable,<sup>31</sup> and would not have been able to defend themselves had the Northern Ireland Parliament posed an immediate existential threat. They were, however, able to move the society towards egalitarian reciprocity (through a civil rights movement, not Republican violence). Similarly, Margalit and Raz<sup>32</sup> as well as Martin Luther King Jr. advocated for groups to try to fix the state they lived in before seeking to leave and start another.<sup>33</sup> Seeking to establish egalitarian reciprocity, then, should be the first preemptive action taken against the non-immediate existential threat. If this fails, though, and there is no way to set up a defense

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<sup>31</sup> Kymlicka, Will. *Liberalism, Community and Culture*. New York: Oxford University Press, 1991, 184.

<sup>32</sup> Margalit, Avishai, and Joseph Raz. "National Self-Determination." *Journal of Philosophy*. Vol 87. 9 (1990): 450.

<sup>33</sup> King Jr., Martin Luther. "Letter from a Birmingham Jail." 1963.

against future existential threats, it seems right that a group should have a right to CSD because they can use it establish such safeguards for themselves.

I expect the main point of debate here will be over how a to tell when a group has tried to fix the existing state enough to know that it will not be possible, and thus when they have a right to CSD. Indeed this is a problematic topic. In arguing that the right to CSD is a myth, George concedes that there is a, “right of people to be free of foreign domination and of tyrannous rule,”, but this right is typically abused as movements cry wolf against whatever state they live in.<sup>34</sup> George is mistaken to say that because the right is generally misapplied, it is a myth though.

While it is difficult to establish universal limits that tell a group when it has a right to CSD, there are predictive conditions that raise and lower the threshold for this. For example, say that there is a minority group of green people living in country Y, which has a majority of blue people. The blue people are peace-loving and have never fought in a war or raised an army, yet there are no political guarantees of egalitarian reciprocity. The blue people do not see a reason to include any because they cannot conceive of ever needing them. In this case, the green people do not seem particularly at risk of facing an existential threat in the future, thus there is not much legitimacy in their claim to CSD due to the implicit assumption of egalitarian reciprocity. The case of the German Jews, on the other hand, featured increasing militarism and hateful xenophobia from the ruling regime towards the Jews. By the time they had been placed in the Ghettos, it seems obvious that there was urgency and legitimacy to their claim to CSD since they did not have the luxury of time that the green people do. This is by no means a precise answer to the objection, but it helps us understand why this condition that justifies a right

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<sup>34</sup> George, Richard T De. “The Myth of the Right of Collective Self-determination.” *Issues of Self-Determination*. Ed. William Twinning. Aberdeen, Scotland: Aberdeen University Press, 1991, 2.

to CSD (the inability to defend the group from existential threats) has intuitive appeal. As the likelihood of an existential threat increases, the amount of effort expended seeking to change the state necessary for a right to CSD lessens.

### *Significant Threats*

In addition to her work on immediate existential threats, Thomson also makes an important distinction between types of non-lethal threats. There are those that cause grave harm, like those that would remove a limb or cause one to be permanently too sick to leave bed, and there are those that are relatively minor, like the loss of a wallet or hat.<sup>35</sup> These latter threats would lower our welfare, but they are non-permanent. The person whose wallet is stolen can easily go on to live a meaningful life or continue one. The same is not necessarily true for the first type of threat. Say that instead of losing his wallet, a man loses his house, his means by which he can earn a living, and all of his savings. It is quite imaginable that this man will not be able to recover and will not be able to live a meaningful life again. I will call these types of threats Significant Threats

While significant and non-significant threats both merit self-defense in some respect, we would not consider it justified to kill someone who tries to steal my hat. If, however, a villainous aggressor is standing by a machine with a button that will forever prevent me from living a worthwhile life and will press it unless I shoot him, there seems to be a case for shooting him. Antony Lamb makes the case for this, saying lethal response is acceptable against threats that, “would leave the defender with an unacceptably low level of wellbeing over a significant period

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<sup>35</sup> Thomson, 286.

of time.”<sup>36</sup> Of course if the villainous aggressor were standing on a trap door and I could just as easily work the mechanism and trap him in a pit, this would be the preferred method, but my ability to live a worthwhile life is worth defending with lethal force. Since grave threats are defensible with lethal force, conditions featuring them have the same implications as conditions featuring existential threats. If there is an immediate grave danger or the state cannot be changed to protect against future grave dangers, the group has a right to CSD. For example, if the green people live in a state with red people, and the red people are mobilizing with the intention of putting the minority green people into slavery, the green people certainly have a right to CSD. If, however, the red people decide to tax their people of the state a 1% tax on tea, it does not seem like the green people have a right to CSD, despite their welfare being lowered.

One problem that some might have with this last criterion is the appearance that it allows for one group in power to discriminate against another group. If there is discrimination, though, that means that the government of the state has not instilled egalitarian reciprocity, which means that the group fearing discrimination can have a right to CSD if they try unsuccessfully to instill egalitarian reciprocity. This means that the mechanism I built in as a preemptive response curtails the possibility of a group facing discrimination and not having a possible of redress.

### *Conclusion*

This look at physical self-defense has determined that a group has a right to CSD if it is facing an immediate existential or significant threat. There is also a right to CSD if the group lives in a state that does not enforce egalitarian reciprocity and cannot be changed to do so. Non-significant threats, though, do not merit a right to CSD for the sake of physical self-defense.

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<sup>36</sup> Lamb, Antony. “Self-Determination, Wellbeing, and Threats of Harm.” *Journal of Applied Philosophy*. Vol 25. 2 (2008):148.

#### IV. Psychological Self-Defense

Having looked at physical self-defense and its relationship with the right to CSD, I will now turn my attention to self-defense against threats to group identity and psychological self-defense. When I say defending group identity, I am referring to the defense of the right of the individual to associate with a cultural or national and be a member of it. For example, when the Russians invaded Poland in the early 20<sup>th</sup> century, they sought to prevent the inhabitants from being Polish by outlawing the Polish language and Polish traditions and holidays. The Russians were threatening the right of the residents of Poland to identify as Polish.

It might not seem obvious at first that defending group identity constitutes self-defense as physical threats do, but there are convincing arguments that for why it is that seek to link our membership in groups with our welfare such that threats to the group constitute threats to the welfare of its members. In this section, I will start by showing that such a link matches with our intuition by looking at the Bloodless Invasion arguments put forward by David Rodin and analyzed by Antony Lamb.<sup>37</sup> Having made the idea of defense of cultural membership as self-defense more intuitively appealing, I will look at the argument for why there is a link between group membership and welfare. This starts by looking at Rawls' concept of a self-respect and then Will Kymlicka's expansion on the concept as he argues that group memberships are necessary for self-respect. From there, I will refine the argument so that we can discern what conditions would grant a group the right to CSD as a response to threats to group identity.

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<sup>37</sup> Lamb, Antony. "Self-Determination, Wellbeing, and Threats of Harm." *Journal of Applied Philosophy*. Vol 25. 2 (2008):145-158.

It is important to remember that Remember that the purpose of this section, as with the prior section on physical self-defense, is to pick out the conditions under which a group has a right to CSD.

### *The Bloodless Invasion Arguments*

At first it might not seem obvious that limiting one's ability to be a member of a group, even if it is a cultural or national group, constitutes a threat to one's welfare in the same way that the physical threats discussed in the prior section do. Looking at the arguments made by David Rodin and the response from Antony Lamb, though, it seems clear that we do intuitively grant people the right to defend their membership with certain groups. Rodin introduces the Bloodless Invasion argument to convince us that the right of a state to defend itself with force is not derived from physical self-defense alone.<sup>38</sup> He presents three cases. The first two show that we would see forceful defense against threats that do not pose physical harm as justified. The third case is what is pertinent to this paper though. In Bloodless Invasion 3, state D invades but will respond only to threats from state N, and when it is forced to respond it will do so with the minimal force necessary for self-defense. State D will seek to improve the welfare of those living in state N by imposing a government.<sup>39</sup> The lives of those living in state N are not threatened, yet Rodin believes that state N has a right to use force against state D. This means that physical threats to citizens are not the only thing that can justify a state's right to defense, leaving open the question of what does justify it outside of physical threats. Whatever it is, it must be connected with welfare in some way since self-defense, I have argued, is a response to threats that have the potential to harm our welfare.

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<sup>38</sup> Rodin, David. *War and Self-Defense*. Oxford: Oxford University Press, 2002.

<sup>39</sup> Lamb, 148.

Lamb agrees with Rodin's point that state N has a right to defend itself in the three Bloodless Invasions, but he views the phrase "threats to life" more broadly. Rodin clearly has in mind threats of physical harm, but Lamb argues that Bloodless Invasion 3 does threaten the lives of citizens in state N because it threatens their welfare. He challenges the premise of the invasion as one that improves the welfare of citizens in state N by arguing that the loss of political freedoms in that scenario will always outweigh the potential benefits of living under the control of state D because political freedoms are necessary for achieving an adequate level of welfare.<sup>40</sup> Lamb seeks to defend himself against the counter-claim that Bloodless Invasion 3 does not necessarily restrict political rights by presenting his Bloodless Invasion 4, in which state D does not restrict political rights of state N by allowing state N to self-govern. He argues that even in these conditions, state N should have a right to forceful defense because state D has taken state N's CSD and constitutes an on-going threat to the political rights of the citizens of state, which constitutes a threat to wellbeing.<sup>41</sup>

Lamb's conclusion seems problematic. Aside from the fact that state D posed that threat whether or not it was sovereign over state N given its ability to invade, falsely identifies why Bloodless Invasion 3 could justify forceful defense. Lamb argues that it is the loss of political freedoms that poses a threat to welfare. Imagine, though, that Bloodless Invasion 3 could allow those political freedoms in state N, but at a price. In this new scenario, call it Bloodless Invasion 5, state D invades and imposes a government that will be made up of only people from state N and elected only by people from state N. So far this sounds like Bloodless Invasion 4, but here is the difference. Only those who disavow their status as members of state N, speak the language of state D and not state N, and dress as members of state D and not N will be granted political

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<sup>40</sup> Lamb, 149.

<sup>41</sup> Ibid, 150.

freedoms. In this case, political freedoms, at least in the sense that Lamb talks about them, are open to all, but they come at the expense of one's identity as a member of state N. Bloodless Invasion 4 describes the cases of Scotland and the Spanish Basques. In both of these cases, the right of the state Ns (Scotland and the Spanish Basques) to forceful self-defense does not seem to be justified (reflected in the low level of support for ETA<sup>42</sup> and Scottish qualms about CSD<sup>43</sup>). It seems right, though, that Bloodless Invasion 5 warrants forceful defense from state N. The Irish case for independence in the late 16<sup>th</sup> century rested on the British Crown's policy of offering political rights and safety to those who converted to Protestantism and renounced their Irish identity while taking the rights of those who did not.<sup>44</sup> It seems intuitive that they have a right to forceful defense. The appeal of forceful defense in Bloodless Invasion 5 and the lack of it in Bloodless Invasion 4 highlights the intuition that it is our membership in groups that is somehow linked to welfare, meaning threats to it warrant self-defense just as physical threats do.

### *Rawls on Self-Respect*

The Bloodless Invasion arguments show that not only physical threats warrant self-defense, but also threats to group membership. Bloodless Invasion, though, merely looks at what seems intuitively right. In *A Theory of Justice*, John Rawls gives us the basis of an argument for why conditions that threaten our group memberships are conditions that merit CSD as a means of self-defense. He describes people as agents who seek to fulfill goals, purposes and roles that they feel will result in a good life. Rawls sees liberty as essential for this ultimate purpose of people because it gives one the freedom to evaluate and choose what goals, purposes, and roles

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<sup>42</sup> Euskadi Ta Askatasuna is a paramilitary devoted to achieving Basque CSD through force.

<sup>43</sup> "Scottish independence plan 'an election issue'." *BBC News* 6 Sep 2010.

<sup>44</sup> Traditional Irish dancing requires dancers to keep their arms down, which was a response to British laws against tradition dancing.

will result in a good life.<sup>45</sup> Underlying liberty, though, is what Rawls calls self respect, or the sense that one's plan of life is worth carrying out.<sup>46</sup> Liberty, then, serves the need for self-respect. Without it, there cannot be self-respect, and without self-respect, one cannot live a good, worthwhile life.

Because self-respect is necessary for living a worthwhile life and is a good for all people, regardless of their values, it is a primary good. In this sense, a primary good for Rawls is much like something to which one has a natural right. It is something that is good for all people because it is necessary for living a worthwhile life. I have already argued for the point that it is the primary function of governments to protect the natural rights of citizens. The conditions I have given as warranting a right to CSD turn on the fact that in all of them, the government has failed to fulfill this primary function. If self-respect is a primary good, and all people have a natural right to primary goods, it is the government's responsibility to protect the self-respect of citizens. Based on my definition of natural rights, anything that one has a natural right to is something that directly affects welfare. It makes sense, then, that there is a natural right to self-respect since self-respect is required for reaching a level of welfare that allows for a worthwhile life.

### *Kymlicka on the Link Between Group Membership and Self-Respect*

Will Kymlicka picks up the argument Once Rawls has shown that self-respect is a primary good needed for a worthwhile life. He points out that Rawls does not consider where the goals, purposes, and roles we have the liberty to choose from originate:

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<sup>45</sup> Rawls, John. *A Theory of Justice*. London: Oxford University Press, 1971, 4.

<sup>46</sup> *Ibid*, 178.

“The decision about how to lead our lives must ultimately be ours alone, but this decision is always a matter of selecting what we believe to be most valuable from the various options available, selecting from a context of choice which provides us with different ways of life.”<sup>47</sup>

Kymlicka argues that the options available are those that one gets from membership in his or her cultural or national group. Group membership,<sup>48</sup> then, gives us our range of options from which we choose what goals, purposes, and roles to pursue to have a worthwhile life.<sup>49</sup> This links self-respect with group memberships because self-respect requires choices, and choices come from the context of choice that is provided by group membership. Self-respect assumes group membership, and because self-respect is a primary good, anything that is needed for it is also a primary good, making group membership a primary good.<sup>50</sup> As a primary good, group membership is something to which all people have a natural right that the government must protect. Threats to this natural right constitute threats to welfare, and just as with physical threats, the group whose members are being threatened might have a right to CSD.

Just as all physical threats do not merit the right to CSD, not all threats to group membership earn a group the right to CSD. Kymlicka has shown that there is a link between group membership and welfare, but I must still tease out the details of when a group has a right to CSD in response to a threat to group membership.

### *Qualifying “Group”*

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<sup>47</sup> Kymlicka, Will. *Liberalism, Community and Culture*. New York: Oxford University Press, 1991, 164.

<sup>48</sup> Kymlicka deliberately uses “cultural membership” instead of “group membership”, but I will discuss this in the next section.

<sup>49</sup> *Ibid*, 165.

<sup>50</sup> *Ibid*, 166.

Kymlicka does not use the term “group membership.” He stresses the importance of cultural memberships with an implicit distinction between cultural groups and other types of groups, saying that, “Without such a cultural structure, children and adolescents lack adequate role-models, which leads to despondency and escapism...”<sup>51</sup> To prove that this is true, he points to psychological studies on the negative effects of acculturation, or the loss of one’s culture.

One might hit back at Kymlicka that this is mere paternalism (the notion that one culture is superior to others). There is merit behind this criticism as it relates to the quote above, but Kymlicka has hit upon an important feature of the defense of cultural membership as self-defense that differentiates it from physical self-defense. Existential threats and threats of physical harm are unconditionally bad because there are no cases in which the actualization of such threats is better for one’s welfare. This is not the case for threats to group membership though. This should not be interpreted as a paternalistic way of saying that some cultures are bad and some are good. Rather it has to do with the role of group membership as providing what Kymlicka calls a context of choice.<sup>52</sup> If a group does not provide a context of choice, or provides no options that will lead one to self-respect, it is not so bad membership in that group is threatened. At least there is not the same case for self-defense. Kymlicka seems to be using the term cultural memberships to refer to those that do provide such a context of choice.

What I have given is a broad explanation of when a group membership does not affect our welfare. Margalit and Raz, though, provide an account of when exactly group membership merits CSD if threatened. Their analysis is based on an agreement with Rawls and Kymlicka on the core issues. Margalit and Raz write that, “Individual well-being depends on the successful pursuit of worthwhile goals and relationships. Goals and relationships are culturally

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<sup>51</sup> Ibid, 166.

<sup>52</sup>Ibid, 166.

determined.”<sup>53</sup> This is clearly just another way of stating Kymlicka’s concept of the context of choice, but it follows rather nicely from Margalit and Raz’s wording that if one’s culture is taken away, so are one’s goals and relationships, and with those goes one’s well-being. Using Rawls and Kymlicka as a base, Margalit and Raz put forth six characteristics that are found in groups that provide a context of choice, which they call encompassing groups:

1. A common character and a pervasive common culture that encompasses many important aspects of life, like food, architecture, language, and artistic traditions, all of which help form the identity of the members of the culture.<sup>54</sup>
2. The individual that grows up in the group will acquire the group culture or will be affected by it to a significant degree.<sup>55</sup>
3. Membership in the group is a matter of mutual recognition, not through formal means, but rather through cultural means.<sup>56</sup>
4. Membership in the group constitutes a significant part of one’s identity.<sup>57</sup>
5. Membership in the group is a matter of belonging, not achievement. One does not have to earn his or her spot in the group.<sup>58</sup>
6. The group is not small with members knowing all other members. There is a degree of anonymity with mutual recognition based on possession of general characteristics.<sup>59</sup>

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<sup>53</sup> Margalit, Avishai, and Joseph Raz. “National Self-Determination.” *Journal of Philosophy*. Vol 87. 9 (1990): 448.

<sup>54</sup> Margalit and Raz, 443,444.

<sup>55</sup> Ibid, 444.

<sup>56</sup> Ibid, 445.

<sup>57</sup> Ibid, 446.

<sup>58</sup> Ibid, 446.

<sup>59</sup> Ibid, 447.

These conditions are helpful in pinning down the things necessary for a group to provide a context of choice. Condition 1 establishes that there are group characteristics that narrow down the options of what a happy life entails and condition 2 ensures that those who grow up in the culture perceive their options through the horse-blinders of the group culture. Conditions 3 and 5 ensure that the context of choice provided by the group will not be taken away from the individual. Thanks to Margalit and Raz, we know what a group must have to be in the running for a right to CSD in response to threats to group membership.

Despite the merits of their conditions, Margalit and Raz fail to frame the issue properly, arguing that nations and peoples are the obvious candidates for rights.<sup>60</sup> What they should say is that they are the groups who are obvious candidates for rights to self-defense, grounded in the need to protect the context of choice for individuals. It seems right that there can be groups that do not meet the above conditions, yet have a right to CSD based on physical self-defense. Margalit and Raz use the example of Tottenham Hotspur supporters as a group that clearly does not have rights because they do not meet their conditions.<sup>61</sup> Imagine, though, that a group of militant Arsenal supporters take over British government and issue an order to round up all Tottenham Hotspur supporters for mass murder. Clearly the Tottenham Hotspur supporters have a right to CSD as a means of defending themselves. They are faced with an immediate existential threat. With this said, group membership in the Tottenham Hotspur supporters group does not provide a context of choice because the group does not meet the conditions set out by Margalit and Raz. This means that threats to group membership, maybe preventing one from wearing Tottenham jerseys or going to games, do not warrant the right to self-defense.

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<sup>60</sup> Margalit and Raz, 443.

<sup>61</sup> Ibid, 443.

Kymlicka's initial worry (about acculturation) did not concern groups that do not provide a context of choice though. It concerned those that do not provide an adequate context of choice, referring to the loss of culture as something that leads to "despondency and escapism."<sup>62</sup> This leads to the second condition that eliminates a group from having a right self-defense based on a threat to membership alone. The whole reason that group membership is so important is that it is needed for self-respect, and self-respect is needed for living a worthwhile life. Thus, if a group provides a context of choice, yet all of the choices they provide will inevitably prevent one from feeling self-respect and living a worthwhile life, there is no justification for the defense of that group's membership. Group memberships that do not provide a context of choice fail to affect welfare, but those that provide a strictly negative context of choice are only harmful to welfare.

One might respond by saying that there are no groups that provide a strictly negative context of choice. Yes, people will choose options that do not bring them happiness, but liberty, as Rawls describes it, allows us to readjust based on errors and reformulate what we desire. This is the anti-paternalistic argument. It holds that no group that meets the conditions set out by Margalit and Raz can provide a strictly negative context of choice. Society, though, does see some groups as having a wholly negative effect on members. For instance, gangs might meet all of the conditions of encompassing groups. Members of gangs, though, have a limited context of choice that drives them to many myopic pleasures that damage one's welfare in the long run. Doing drugs, committing crimes, and putting oneself in danger are not good options, yet they seem to be the result of goals and purposes found in gang culture. When Kymlicka worries that Innuits who turn from their culture have their welfare negatively impacted, he is worried that

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<sup>62</sup> Kymlicka, 166.

they are joining groups that have an inadequate context of choice. The response of society is an attack on group membership of groups such as gangs or cults that seems to be justified.

### *Intent and Acculturation*

While it seems obvious that cases such as the Russian invasion of Poland or the British intolerance of Irish culture warrant a right to self-defense, the case becomes less clear when acculturation is unintended. As globalization rages on, the context of choice is continually being broadened. With the cultures of the world immediately accessible on the internet, people can choose from far more goals, purposes, and roles that they think will make them happy. Often this discovery of new cultures means letting go of old cultures. What can be said about acculturation that is not the product of intentional actions from an outside group?

There seem to be three causes for acculturation. The first type is the intentional will of an outside group, which I have already said warrants self-defense. There is also acculturation that comes from within the culture without the help of outside groups. Between these two is acculturation that happens within a culture, but is the unintentional result of actions of another group. An example of this would be the Native Americans, who were driven to ruin not only by the United States' policy of ethnic cleansing, but also by the introduction of alcohol into tribal culture. First I will address the unintentional or negligent cause from other group case. Having done so, I will briefly discuss acculturation from within.

With regard to negligent acculturation caused by an outside group, the case can be made that the offending group did not intend to cause harm to group membership and thus should not be blamed. As I have mentioned, though, self-defense is a response to a dangerous threat, and the intent of the source of the threat does not change the need of the victim group for self-

defense. Thomson argues for this when she presents the aggressor, who poses the same existential threat as the villainous aggressor, yet is controlled remotely to cause the threat.<sup>63</sup> In this case, one has a right to self-defense with whatever means are necessary. Thus so long as the offending group threatens the welfare of the victim group by threatening group membership, the victim group has a right to self-defense.

Threats to group membership from within are easier to sort out, as far as how they relate to the right to self-defense. Kymlicka stresses that his view of culture is not an absolute one that states members of group X must attend church A, wear clothes B, and eat food C. Culture is based on community, and modifications in community alter the culture.<sup>64</sup> It is obvious that if the entire group changes at the same time, group membership is not threatened because no one is left outside of the group. There are cases, though, when members, especially younger, seek to depart from the group. In this case, though, they are simply exercising their liberty and choosing the goals, purposes, and roles that they think will bring them happiness. Those things just happen to lie outside of their original culture. In this case, there is nothing that self defense or even CSD can do, nor is there something it should do. Those leaving the culture do so out of liberty and in the wider context of choice, which means that all natural rights are being respected.

### *Self-Government vs. CSD*

So far, I have discussed the right to self-defense based on threats to group membership, but I have not introduced CSD. Not all conditions that require self-defense require CSD. What is needed now, then is a look at when the need for self-defense demands CSD.

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<sup>63</sup> Thomson, Judith Jarvis. "Self Defense." *Philosophy and Public Affairs*. Vol 20. 4 (1991): 285.

<sup>64</sup> Kymlicka, 167.

With regard to physical self-defense, it seems right that if one can defend against a threat either by opening a trapdoor and causing the aggressor to fall into a cage or by killing the aggressor, one should choose the first option. The corollary with group membership self-defense is the difference between self-government and CSD. If group membership is under attack from another group, it is certainly the case that the threatened group has a right to self-defense, but does this necessarily mean that there is a right to CSD? If the aim of self-defense is simply to eliminate the threat, it does not seem like there is an inherent right to it if the group under threat will be granted the ability to self-govern in a way that will remove the threat to group identity. What, then, can be said about the right to CSD if there is another option that will achieve adequate self-defense?

Answering this question requires considering the differences between self-government and CSD. Lamb's Bloodless Invasion 4 case might seem helpful in doing this, but he is concerned with a group that had CSD, then had it taken and replaced with self-government by a state that had no right to do so. The question at hand is whether or not a group has a right to CSD if it can defend itself by accepting a self-government situation.

What we are dealing with on this issue is the question of secession. Keith Dowding analyzes accounts of what justifies secession under liberal theory, looking in particular at Harry Beran and Allan Buchanan.<sup>65</sup> Beran's consent account argues that the group has formed hypothetical contracts with the others in the state, but a group can dissolve those contracts by simply voting to secede.<sup>66</sup> Dowding points out that this account leads to too many groups having

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<sup>65</sup> Dowding, Keith. "Secession and Isolation." *Theories of Secession*. Ed. Percy B. Lehning. New York: Routledge, 1998, 71.

<sup>66</sup> *Ibid*, 72.

a right to secession, including groups that have illiberal practices.<sup>67</sup> He prefers Buchanan's account, which requires that the group seceding has a legitimate title to the territory it is claiming for its new state, in addition to requiring consent.<sup>68</sup>

While Buchanan has a loose conception of what a legitimate title is,<sup>69</sup> the idea seems right. Secession implies that a territory under the control of a state will be moved to the control of another state. Most all territory in the current world is under the control of a state. Even if it were not this way and there was an open territory, we would not call one group leaving a state to establish a new one in the uninhabited land secession, but rather migration. Granting a group CSD through secession, then, means that the state the group was in will lose territory. Of course the state will also potentially lose many other things (tax revenue, means of defending the state), but territory is always lost in secessions. With this in mind, Dowding points out that in a liberal state (one that ensures egalitarian reciprocity), secession is never justified.<sup>70</sup> More importantly for our case, the group whose identity can be defended by entering into self-government or CSD does not have a right to CSD under Buchanan's account. The group does not have a legitimate title to the territory that they would be annexing from their former state because they would be just as safe self-governing within that state. If self-government within the state does not provide them with the ability to defend their group membership, then the group has a legitimate claim to the land and thus a right to secede and a right to CSD.

This might seem to greatly limit the right of groups to CSD, but Kymlicka argues in his essay, "Is Federalism a Viable Alternative to Secession?" that federalism and the creation of

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<sup>67</sup> Ibid, 76.

<sup>68</sup> Ibid, 77.

<sup>69</sup> Dowding, 78.

<sup>70</sup> Ibid, 79.

states within states is inherently unstable.<sup>71</sup> Such multi-group states are usually multi-ethnic, which means that there are minorities. Kymlicka argues that sometimes, in order to ensure the liberty and self-respect of minorities, they must be given more rights than the majority, just as the mentally handicapped child requires more resources in his education. This imbalance of rights tends to lead to problems that over time lead to friction and eventually threats to the welfare of the minority, if not both groups. With this in mind, it is quite difficult to ensure that a group is safe under self-government, or if the threat rises again, that group will have a right to CSD because they have a legitimate claim to the land. Kosovo is a fine example of this. The disputed territory has a 92% Albanian population that has lived under genocidal conditions in Serbia, and fearing that self-government was not enough to protect them preemptively, they seceded, declaring independence. Under this conception of secession, the Kosovars had a right to CSD. The requirements of self-government that would ensure safety of group membership are very high.

What, then, is our answer to the question of when a group has a right to CSD for defense against threats to group membership? When there is not a physical harm threat, a group has a right to CSD if it is a group that offers members a context of choice, the right to be a member of the group is under threat from an outside force, and the threat cannot be resolved through egalitarian reciprocity or achieving self-government within the state.

### *Conclusion*

The Bloodless Invasion arguments show us that we intuitively see our group memberships as linked to our welfare and thus worthy of self-defense. This intuition is

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<sup>71</sup> Kymlicka, Will. "Is Federalism a Viable Alternative to Secession?" *Theories of Secession*. Ed. Percy B. Lehning. New York: Routledge, 1998, 112.

supported by the argument started by Rawls, but completed by Kymlicka, who shows that cultural memberships give us a context of choice in which we pursue a happy life and self-respect. Margalit and Raz help out by clarifying which groups provide a context of choice and thus deserve self-defense when membership in them is threatened. Given this, if individuals in a group that provides context of choice have their memberships in that group threatened by an outside group (either an intentional or unintentional threat), that group has a right to CSD if the threat is not defended against by living in the state under a self-governing situation.

## V. Rights to CSD Not Derived from Self-Defense

So far I have looked at justifications of CSD that derive from self-defense, both physical and psychological. CSD is a means of self-defense since it is the basis on which groups can choose actions to defend themselves. If CSD can prevent welfare from declining, though, is it also the case that it can improve the welfare of groups that already protect the natural rights of group members? In this section I will address this question by looking for conditions that would allow a group the right to CSD not based on self-defense.

Because there are issues of self-defense in any state that does not ensure the natural rights of all citizens and the need to look at situations free of issues of self-defense, this section is only concerned with states that do protect natural rights. Natural rights are desirable because they allow us to achieve our primary function in life, namely to live worthwhile lives. Since this topic deals with groups that live under governments that do guarantee natural rights, all groups discussed have ensured that their members have the ability to live worthwhile lives. The question, then, is whether or not a group can earn a right to CSD to better its already sufficient situation. Margalit and Raz have a good argument for why national groups can have a right to CSD to better their situation. It is based on their conclusion that nation-states are better than purely political states. While it might be true that national groups<sup>72</sup> are preferable to political groups, sometimes there are conditions under which national groups are benefitted by entering into multinational states. I will look at why this is the case and what implications this has on the right to CSD.

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<sup>72</sup> In this section I use the term national groups to refer to cultural groups that are irreducible and encompassing.

*Margalit and Raz's Argument for Nation-States*

Margalit and Raz have a simple, yet powerful argument for why national groups are preferable to purely political groups.<sup>73</sup> The first part of the argument runs like this:

1. Political groups are composed of parts.
2. Political groups are founded on the basis of consent.
3. The parts of the state can always withdraw consent

This ability to withdraw consent means that political groups are always open to instability. The result of a part withdrawing consent is intra-state conflict, either in civil war, political inefficiency, or secession, which shakes up the nature of the state. This instability is becoming more and more common as the world becomes more cosmopolitan and states are made up of more and more parts who can withdraw their consent and cause intra-state conflict.

Having established that purely political groups are by nature prone to instability, Margalit and Raz continue their argument by looking at national groups:

4. National groups are irreducible to parts.
5. National groups are not based on consent.

So far in the argument, “parts” has referred to various nationalities or cultures living in the same state as other groups. Yes, there are ways to separate a national group, or any group for that matter, into parts, but it is what is irreducible for the purpose of this argument refers to the inability to break up a group further by nationality. Part of the reason Margalit and Raz think national groups should not be thought of as reducible comes from premise 5, where they write that membership in encompassing groups is a matter of mutual recognition based on general

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<sup>73</sup> Margalit, Avishai, and Joseph Raz. “National Self-Determination.” *Journal of Philosophy*. Vol 87. 9 (1990): 456.

universal characteristics, not a matter of choice.<sup>74</sup> The idea of withdrawing consent to being American seems as odd as a blond withdrawing consent to be naturally blond. One's nationality is a descriptive quality that is still there even if one revokes citizenship and moves to another country.

Having established that national groups are irreducible and not based on consent, the argument continues:

6. Groups not based on consent are preferable to those based on consent.
7. Irreducible groups are preferable to reducible groups.
8. National groups are preferable to political groups.

Premise 6 seems true because consent is often transitory and leaves the group prone to instability if it is what the group is based on. Some might say that making groups based on consent increases accountability, but it does not seem clear that this is necessarily the case. Governments are accountable if the governed population can influence the government in a way that makes it clear when they have done wrong or right.. There is an understanding that accountability is important because it allows for government to be fixed. If consent is the basis of the group, it is more likely that the group will crumble when faced with difficulties though. Premise 7 seems true because an irreducible group is free from internal ethnic conflict and from the need to compromise. In Northern Ireland, power is divided between the Catholic and Protestant parties. Each group would certainly have more control over their affairs, and thus more than likely a higher welfare, if they did not have to give another group power to make decisions.

From premises 6 and 7, the conclusion must follow, but what is meant by preferable? Preferable certainly seems a long ways off from justifying a right to CSD for all national groups.

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<sup>74</sup> Margalit and Raz, 447.

Judging from how the term is used, preferable simply means that a national group's welfare has the potential to be higher if the national group has CSD. Note that I am not saying that separation of nations into nation states always raises welfare, but rather that only when nations have CSD can they maximize their welfare. The concept behind this is the same as that put forward by Hobbes and Locke that the individual gives up liberties when entering society. Similarly, when national groups are part of liberal, multi-national states, there is an inherent glass ceiling for welfare. National groups generally do enter into or find themselves in multi-national states though. It follows that while national groups are preferable to political groups, it is sometimes in the best interest of a national group to be a part of a political group.

It is rarely the case that national groups voluntarily enter into states with other national groups, though, which is problematic. States established without the consent of those who make up the state are built upon a violation of group liberty, which Rawls holds as a primary good that governments must defend. This means that national groups that have been forced into states have had one of their natural rights violated. This becomes a case of self-defense, in which the national group's CSD is stolen. Because a group can only lose its CSD justly by consenting to entry into a multi-national state, national groups living in states that they were forced into have a right to their stolen CSD. This right is codified in article 47 of the Geneva Convention,<sup>75</sup> and it is observable through the splintering of states created in the Treaty of Versailles, like Yugoslavia and Czechoslovakia. Since this chapter is not concerned with self-defense, though, it will only deal with the right to CSD of national states that voluntarily entered into multi-national states.

### *Contractualism and Ontological Moral Duties*

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<sup>75</sup> Geneva Convention, Article 47.

Contractualism is the best approach to an analysis of the rights of national groups that voluntarily entered into multi-ethnic states. When national groups agree to live together in a state, there is a contract, usually explicit but sometimes implicit, that governs the nature of their interaction in the new state. This is how all mergers work, whether it is marriage, a business merger, or a player joining a team. Such a contract results in obligations, or duties, for each party. For instance, imagine that the blue people nation and the yellow people nation join to make the green nation. Both groups do so out of a need for security, and they sign a contract agreeing to support the other nation if they are attacked. If the red people nation attacks the yellow people nation, then, the blue people have an obligation to defend the yellow people. The utilitarian and economist would advise the blue people to stay out of the fight because the red people surely do not have the power to fight them after they have fought the yellow people. This would be a violation of the contract, though, and it seems morally unacceptable to do so. Kant's account of morality helps explain why it would be wrong. The ontological account of morality he advocates requires one to treat others as ends in themselves rather than means to our own ends.<sup>76</sup> If the blue group does not uphold its end of the contract, it is treating the yellow group as simply a means to improving its welfare, not as a fellow group that has rights. Allen Buchanan also would oppose the blue people nation's claim to CSD, saying that, "Government's exercise of power is legitimate only if it refrains from *exploiting* one group for the benefit of another."<sup>77</sup> The blue nation would be exploiting the yellow by violating their social contract and kicking them out of and abandoning them. It follows that the blue nation people do not have a right to CSD if their CSD would violate the contract they freely entered into.

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<sup>76</sup> Kant, Immanuel. *The Groundwork of the Metaphysics of Morals*. Ed. Christine Korsgaard. Cambridge: Cambridge University Press, 1997.

<sup>77</sup> Buchanan, Allen. *Secession: The morality of Political Divorce from Fort Sumter to Lithuania and Quebec*. Boulder, CO: Westview Press, 1991, 44.

This does not mean, though, that once a national group enters into a multi-national state, it will never have a right to CSD. Contracts are often replaced, and if conditions change such that it is advantageous for all members of the state to separate into nation states, then it seems like the national groups have a right to CSD. Imagine that the red group, who caused the blue and yellow people to join out of fear, adopts a genuine policy of peace, disbanding its armies and removing itself as a threat. If the threat posed by the red people was all that was important in the contract between the blue and the yellow people, and the threat is removed, both groups have a right to CSD. There is no longer any way that they can violate the terms of the contract. National groups, then, only have a right to CSD free of self-defense if the contract that they voluntarily entered into is no longer valid.

### *Conclusion*

This chapter has argued that groups have a right to CSD if it was taken from them without their consent or if the contract that governs the loss of their CSD is no longer valid. This condition is based on the premise that all national groups have an inherent right to CSD, an assumption that comes from contractualism and the idea that all individuals have such a right that they surrender when they enter society.

## VI. The Palestinian Case for CSD

Having teased out the conditions under which a group has a right to CSD, I will now use them to decide whether or not the Palestinians have a right to a state. To make this chapter as clear as possible, I will list all the conditions that the previous three chapters have established. If a group is living under any of the following conditions, it has a right to CSD.

1. There is an immediate existential threat or threat of significant harm, and the group in question does not pose either type of threat to another group.
2. The state in which a group lives does not and will not protect the group against future existential threats or threats of significant harm. Self-government within the state is not an adequate self-defense.
3. Membership in the group, which is an encompassing group, is under threat from an outside force, and being given self-government does not adequately protect the group from the threat.
4. The national group has had its CSD taken away without its permission or the contract under which the group voluntarily gave up CSD is no longer valid.

In this chapter, I will take a systematic approach, looking at whether or not the Palestinians are living in each of the four conditions. Only one, though, will be sufficient for the Palestinians to have a justified claim to a state. With that said, I will not stop until I have looked at all four conditions in the Palestinian case.

*Condition 1: Immediate Existential or Significant Threats*

Genuine immediate existential threats are horrific. Cases in which one group seeks to wipe out another shock the conscience, to borrow a term from American legal thought. In the past, groups like the European Jewry and Tutsi Rwandans have experienced this condition, but it is rare, fortunately, for a group to face an immediate existential threat. The Palestinians clearly do not live under an immediate existential threat. The Israelis have never acted on a policy designed to immediately eliminate the Palestinians.

Significant threats, on the other hand, are more common. While existential threats deal only with threats to one's life, significant threats can come in the form of physical harm or the holding a group in poverty. What makes a physical threat significant is if it prevents the group from being able to defend the natural rights of its members. Examples of immediate significant threats include the policy of slavery, the threat to blacks in Apartheid South Africa, and the Catholics in pre-1969 Northern Ireland. In all of these cases, the victim group is prevented from raising its welfare to an adequate level by another group. To see if the Palestinians are living under such a threat, we must determine if they as a group are being prevented from achieving an adequate level of welfare. To answer this question, I will briefly look at the state of Palestinian welfare and to see if they are being held at an inadequate welfare. If so, I will determine if it is because their natural rights are being violated.

Welfare, as I have described it so far, is determined by one's ability to achieve the goals and desires that one thinks will lead to happiness. Currently, though, the Palestinians around the world are not able to pursue their goals or desires. Those Palestinians living in the West Bank and Gaza Strip (roughly 39% of all Palestinians<sup>78</sup>) are denied the ability to move freely, the ability to participate in a free market, the ability to access their property, and the ability to seek

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<sup>78</sup> "The Wandering Palestinian." *The Economist*, 10 May 2008.

medical help by the Israeli Defense Force (IDF). There are currently 59 permanent checkpoints in the West Bank,<sup>79</sup> as well as flying checkpoints, which restrict the ability of Palestinians to move from place to place. A person in Ramallah is not able to go to the Dead Sea, the coast of which is technically in the Palestinian Territories. As a result, families are separated and farmers cannot access their fields, which are necessary for earning a living. This means that Palestinians are being denied the ability to pursue strong family ties, which are essential to the worthwhile life in Palestinian culture.

Additionally, Israeli security is harmful to the economy due to the instability that it causes in the Palestinian territories and the inherent difficulty of importing and exporting goods. The result is that the Palestinian people are held in poverty, unable to reap the benefits of globalization and a free market. Although the Netanyahu government has recently been working to allow the Palestinian economy to function, the negative effects are just mitigated, not resolved. This means that the majority of Palestinians live in poverty with no means of rising out of it.

Another 55% of Palestinians live in either Israel or neighboring Arab countries. These Palestinians are also living under immediate significant threats. In Israel they are treated as second-class citizens, who are never given permission to build structures are subject to eviction. They are not permitted to re-enter Israel if they leave for more than six months,<sup>80</sup> they are not permitted to enter the army, which is highly important in securing a good job, and they receive almost no state services (schools, trash pickup, and welfare money). In the Arab countries, they are treated as refugees without citizenship. In Lebanon, they are forced to live in refugee camps, which are often run by militant groups and suffer from high levels of poverty. In Jordan, they

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<sup>79</sup> "Information on Checkpoints and Roadblocks." *B'tselem*. 28 Nov 2010, [www.btselem.org/english/](http://www.btselem.org/english/).

<sup>80</sup> Siniora, Hanna. Personal Interview with the Author, 5 Jul 2010. Tantur, Jerusalem.

mostly live in the poor neighborhood of East Amman, which is separated from wealthier West Amman. Because they do not have citizenship, it is hard to do basic things necessary for pursuing happiness.

Given all of this, roughly 95% of the Palestinians face an immediate significant threat. The response from the Israeli government to this accusation is that they have choice but to limit these “human rights,”<sup>81</sup> because the Palestinians pose a significant threat and potentially an existential threat to them. This claim would be laughable if its consequences weren’t so tragic. The one open war that was fought between Israel and the Palestinians was the war of 1948, and it was a one-sided affair. Sari Nusseibeh, an academic who lived through the war, sums it up best when he says, “While the Arabs were so disorganized that they couldn’t even stop street rabble from looting Arab shops, the Jews had a well-oiled quasi-government apparatus.”<sup>82</sup> The Palestinians were left on their own by the neighboring Arab states,<sup>83</sup> and thus lacked the resources for a sustained fight. On the other side, the Jewish army had significant financial support from abroad and had experience from World War II. According to Nusseibeh, “Theirs was a Spartan army, steeled by the horrors of Europe. It was also far better equipped than the local Arabs, as it had access to large numbers of weapons that had been smuggled into the country from Europe or stolen from the British during the war.”<sup>84</sup>

This dynamic has not changed. The Israelis have one of the most state-of-the-art militaries in the world. They spend 7.3% of their GDP on their military, which is the 6<sup>th</sup> highest percent in the world.<sup>85</sup> Additionally, the United States annually gives Israel \$3 billion to support

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<sup>81</sup> Halevi, Yossi Klein. Personal Interview with the Author, 28 May 2008. German Colony, Jerusalem.

<sup>82</sup> Nusseibeh, Sari. *Once Upon a Country*. New York:FSG Books, 2007, 44.

<sup>83</sup> *Ibid*, 46.

<sup>84</sup> *Ibid*, 46.

<sup>85</sup> “Israel.” *The CIA World Factbook*, Accessed 28 Nov 2010.

weapons research and Israeli defense.<sup>86</sup> The Palestinians, on the other hand, are divided and are on the brink of civil war between the moderate Fatah party and the Islamist Hamas party. Despite this, Qassam rockets that are illegally smuggled into the Gaza Strip are their heaviest firepower. These rockets are not fired under the auspices of the Palestinian government though. There is overwhelming evidence that the Palestinian state would be able to efficiently police these paramilitary threats if they are given more power.<sup>87</sup> It is also clear that a significant majority of Palestinians do not support efforts to eliminate Israel. Roughly 67% of Palestinians believe that Hamas should change its position towards the elimination of Israel.<sup>88</sup> Additionally, 55% of Palestinians would support a two-state solution to the conflict.<sup>89</sup> Even so, such threats have never caused a significant threat to Israel and to say they will in the future is paranoia.

### *Condition 2: Failing to Achieve Egalitarian Reciprocity*

As I have discussed, the Israelis, via the IDF, pose immediate significant threats to the Palestinians in the West Bank and Gaza Strip by limiting freedom of movement and the ability to earn a living. They also have instituted a system that greets imminent significant threats that, while not immediate, are almost certain to arise sooner or later. One manifestation of this is the system of martial law that the IDF has instituted in the West Bank. At any point in time, they may imprison anyone they choose without need for justification.<sup>90</sup> This right has generally been exercised with fluctuating consistency, but it means that for Palestinians there is a constant worry

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<sup>86</sup> McArthur, Shirli. "A Conservative Estimate of Total Direct U.S. Aid to Israel: Almost \$114 Billion." *Washington Report on Middle East Affairs*. Nov 2008.

<sup>87</sup> Knegt, Hein. Personal Interview with the Author, 8 Jul 2009. American Colony Hotel, Jerusalem.

<sup>88</sup> "NEC's Monthly Monitor of Palestinian Perceptions Towards Politics and Religion." Near East Consulting, Jul-Oct 2010.

<sup>89</sup> Pollock, David. "Palestinian Public Opinion Turns Pragmatic as Peace Talks Open." *The Washington Institute for Near East Policy*, 1 Sep 2010.

<sup>90</sup> "Administrative Detentions." *B'tselem*, [www.btselem.org](http://www.btselem.org). Accessed 28 Nov 2010.

that they or their loved ones might disappear indefinitely. This violates our American value of Due Process, which we take to be a natural right.

On the other side, the IDF fails to protect Palestinians in the West Bank from Israeli settlers living there. These settlers consistently physically abuse Palestinians, destroy their crops, vandalize their property, and steal their land.<sup>91</sup> The IDF fails to protect Palestinians against these threats. They open investigations into reported incidents that are seldom if ever followed up on.<sup>92</sup>

In addition to issues of policing, the IDF's security system poses a threat to the lives of Palestinians by limiting their access to medical facilities. Childbirth in particular is problematic since many women live with checkpoints that close between and hospitals, meaning that often women cannot get to hospitals to give birth. This issue in particular has become an interest of the United Nations, who has ruled that the current situation is inhumane.<sup>93</sup>

This dynamic of a perpetual, imminent significant threat is the result of a severe lack of egalitarian reciprocity between Israel and the territories that it has occupied. Given the inherent distrust of Palestinians that is pervasive in Israeli culture, it appears impossible for the Palestinians to establish egalitarian reciprocity. Given the nature of the occupation as one that is seeking to separate the Palestinian population centers into isolated areas, separated by Israeli development, self-government is also not an adequate self-defense for the Palestinians. Because of this, the Palestinians do live under condition 2.

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<sup>91</sup> Al-Azzah, Hashem. Personal Interview with the Author, 12 Jun 2009. H2, Hebron.

<sup>92</sup> Tal.

<sup>93</sup> "Report of the United Nations High Commissioner for Human Rights on the issue of Palestinian pregnant women giving birth at Israeli checkpoints: A/HRC/13/68." *United Nations General Assembly*. 21 January 2010.

### *Condition 3: The Threat to Palestinian Identity*

It is clear that the Palestinians have a right to self-defense against physical threats, but are there threats to Palestinian identity? In the West Bank and Gaza Strip, it is hard to make the argument that there are. Israel is interested in keeping its population separate from the Palestinians. They allow Palestinians to identify as such and despite retaining the right to arrest whoever they choose for whatever reason, they generally allow them speak Arabic, worship as they see fit, and eat the food they traditionally have eaten. The Palestinians clearly meet all of Margalit and Raz's qualifications for an encompassing group. The group provides a context of choice to its members, and while the Israelis threaten the ability of the Palestinians to achieve their goals and desires, they still have the liberties to choose those goals and desires.

In Israel proper, though, the case is different. Palestinians who were not forced out during the 1948 war became citizens of Israel, which has provided benefits, usually in the form of higher economic welfare, but has also had major costs. Around the Arabic world, Israeli-Arabs are known as the "dogs of the Jews." Inside Israel, they are not welcomed as full citizens either. The cost of achieving a more full citizenship is sacrificing identity as a Palestinian. In 2010, Prime Minister of Israel, Benjamin Netanyahu, backed a bill that would require Arab members of the legislature to take a loyalty oath to Israel as a Jewish state. Threats like these make it difficult for Palestinians to hold onto their national identity, yet they never seem to come to fruition. The Israeli supreme court and the international community keep Israel from adopting policies like the loyalty oath that threaten Palestinian identity in such an outright way. Thus while threats constantly are looming, the ability of Israeli-Arabs to identify as Palestinians is not under threat. Palestinians do not live under condition 3.

#### *Condition 4: What Contract Did the Palestinians Enter?*

The final condition under which groups may have a right to CSD is of particular importance to the Palestinians. As I discussed in chapter 5, a national group has a right to CSD unless it willingly gives it away. When national groups give away their CSD, they do so under the conditions of a contract between themselves and the political group into which they are entering. They only have a right to CSD again when the contract is no longer valid. Palestinians living in the West Bank, Gaza Strip and Israel, though, never voluntarily gave up their right to CSD. They have been forced into states for hundreds of years, with the Israelis just the most recent state to annex them by force. In the war of 1967, the Israelis removed the Jordanians from control of the West Bank. The Jordanians had been in control of the West Bank as a result of a military incursion in 1948. Before they had control, the West Bank and Israel were under the control of the British Mandate.

The history of powers that have forcefully controlled the West Bank and the Palestinians there continues back for hundreds of years. The bottom line, though, is that the Palestinians did not voluntarily enter a state; they were forced into it. The Palestinian right to CSD was recognized in 1947 by the United Nations when they called for the establishment of separate Jewish and Arabic states in what is now Israel and the Palestinian territories.<sup>94</sup> The United Nations additionally recognized the “inadmissibility of the acquisition of territory by war,”<sup>95</sup> and called for the, “Withdrawal of Israel armed forces from territories occupied in the recent conflict.”<sup>96</sup> This constitutes recognition that the Palestinians had been stripped of their right to

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<sup>94</sup> United Nations General Assembly Resolution 181. 29 Nov 1947.

<sup>95</sup> United Nations Security Council Resolution 242. 22 Nov 1967.

<sup>96</sup> Ibid.

CSD, thus there was no contract, or at least no contract that would be acceptable according to Rawlsian morality. With this said, it is clear that the Palestinians live under condition 4.

### *Conclusion*

This brief look at the Palestinian case has shown that the Palestinians are living under conditions 1, 2, and 4. As I said, if a group is living under any of these conditions, they have a right to CSD. It follows that the Palestinians have a right to CSD, and consequently they have a right to a state of their own, a Palestinian State.

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