A Theory of State Bystander Responsibility

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International law is broadly understood to require states not only to refrain from violating rights but also to protect rights from interference by other actors. Those latter obligations (sometimes termed "obligations to protect") reflect a significant step forward for the human rights program, but no generalized standard exists for defining their substantive content. In the event that some actor interferes with human rights—for example, a private individual engages in domestic violence, a corporation releases industrial waste into the water supply, or a state commits mass atrocities—how should international actors assess whether a state not involved in the interference has an obligation to step in and do something about it? And if a state has that obligation, what must it do to satisfy the obligation? This Article proposes a theoretical framework for answering those questions. It argues that "state bystander responsibility"—so termed because the state is responsible for standing by while another actor interferes with human rights-properly turns on three variables: (1) the bystander state's influence over the interfering actor; (2) the severity of the interference; and (3) whether the bystander state took reasonably targeted measures to enforce the interfered with norms against the interfering actor. After establishing the parameters of that theory, this Article demonstrates its practical relevance by applying it to appraise the claims made on three current human rights issues: so-called "religious defamation," the return of terrorism suspects to states that engage in mistreatment, and the extraterritorial application of human rights obligations.