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Humanitarian Intervention, Consent, and Proportionality

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3.1 INTRODUCTION

However much one may wish for nonviolent solutions to the problems of unjust and unrestrained human violence that Glover explores in *Humanity*, some of those problems at present require violent responses. One cannot read his account of the Clinton administration's campaign to sabotage efforts to stop the massacre in Rwanda in 1994—a campaign motivated by fear that American involvement would cost American lives and therefore votes—without concluding that Glover himself believes that military intervention was morally required in that case.

Military intervention in another state that is intended to stop one group within that state from brutally persecuting or violating the human rights of members of another group is now known as “humanitarian intervention.” Those against whom the intervention is directed are almost always the government and its supporters, though this is not a necessary feature of humanitarian intervention. It is, however, a conceptual condition of humanitarian intervention that it does not occur at the request or with the consent of the government. The use of force within another state with the consent of the government counts as assistance rather than intervention. The principal reason that humanitarian intervention is contentious is that it seems to violate the target state's sovereign right to control its own domestic affairs.

Because humanitarian intervention is a response to human rights violations within the target state, it is regarded as altogether different from wars of defense against aggression. Indeed, since aggression is normally understood to be war against a state that has not attacked another state, humanitarian intervention itself usually constitutes aggression. Yet, it can happen that a state will engage simultaneously in external aggression and internal oppression, so that a war against it could be intended to stop both the aggression and the domestic violation of human rights. Such a

war would not be aggression, but would be both a war of defense *and* an instance of humanitarian intervention. So not all instances of humanitarian intervention count as aggression.

There are two broad questions about the morality of humanitarian intervention. The first is whether humanitarian intervention can be *permissible* and if so what are the conditions of its permissibility. The second is whether it can be morally *required* and if so in what conditions, of whom, and at what cost. I will address both these questions.

In earlier debates, the question of permissibility was paramount. The reason why this was so is primarily historical. For a considerable period prior to the twentieth century, there were no legal constraints on the resort to war. According to a certain view of states that is traceable to the Treaty of Westphalia of 1648 and that thereafter achieved orthodox status within the theory of international relations, states are sovereign individuals that are not subject to any authority higher than themselves. By the nineteenth century, the notion of state sovereignty had become so inflated that it was generally accepted that states had the sovereign prerogative, both legally and morally, to go to war whenever it was in their interest to do so. There was therefore no special question about the permissibility of war for humanitarian reasons. Yet, it was also widely believed that war motivated by humanitarian concerns would simply never occur because states were thought to act only for reasons of national interest. Humanitarian intervention was thus not a significant issue.

During the twentieth century, however, conditions changed. In the aftermath of World War I, the importance of regulating not only the conduct of war but also the resort to war became widely recognized. States continued to be viewed as sovereign individuals, but the catalogue of their sovereign rights was revised: the right to make war was replaced by the right against intervention. Because states were regarded as individuals, it was natural to suppose that their relations must be governed by the same moral principles that govern relations among persons. Around the turn of the century, one such principle that had come to be widely accepted among liberal thinkers was J.S. Mill's "harm principle," which is

that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant.¹

Theorists of international relations embraced a collectivist analogue of this principle, according to which domestic violence was to be understood as analogous to a person's harming herself. Intervention to prevent a state from harming itself was therefore objectionably paternalistic. Michael Walzer, who has offered a qualified endorsement of this general mode of reasoning, puts the point this way: "As with individuals, so with sovereign

states: there are things we cannot do to them, even for their own ostensible good.”²

After World War II, the UN Charter prohibited the resort to war except in defense against aggression or with the authorization of the Security Council. Humanitarian goals were ruled out as justifications for war unless they were pursued either with the authorization of the Council or as ancillary goals in a war of defense against aggression. During the Cold War, the effective ban on humanitarian intervention seemed to be vindicated by the way the United States and the Soviet Union carried out their self-interested acts of aggression behind a veil of pretended altruism that was usually transparent to all, but their own citizens. Yet, near the end of the twentieth century, conditions changed in important ways. The Cold War ended and the United States was denied the pretext that its predatory interventions were intended to protect people in other states from subversion by domestic agents whose ultimate allegiance was to the Soviet Union. A corollary of the end of the Cold War was the breakup of the Soviet Union, which facilitated the emergence of nationalist and secessionist movements in various regions, particularly in states where they had hitherto been held in check by repressive communist governments that, with the collapse of Soviet communism, lost their grip on power. At the close of the century, many governments throughout the world were murdering and torturing their own citizens in great numbers, often without the tangible benefits to the great powers that these activities had brought during the Cold War, campaigns of genocide were being carried out in such places as Rwanda, Yugoslavia, and Sudan, and the traditional obstacles to obtaining knowledge of such events and to addressing them effectively by military means were steadily diminishing. In these altered conditions, many of which persist to the present, most observers came to appreciate that the issue of humanitarian intervention urgently required rethinking.

Yet, even in these conditions, the familiar objections to humanitarian intervention based on the notion of state sovereignty retain considerable force. The ultimate goal of most nationalist movements is to have their own sovereign state. And particularly for smaller, weaker nations, the doctrine of state sovereignty offers some protection for their ability to be collectively self-determining. Even when the process of collective self-determination within a state involves violent domestic conflict, the doctrine of state sovereignty may still be right to prohibit external intervention, for it is often vital to collective self-determination that the outcome of a domestic conflict, even one that rises to the level of civil war, should be determined by the internal balance of forces rather than by external intervention. As Michael Walzer puts it, “The outcome of civil wars should reflect not the relative strength of the intervening states, but the local alignment of forces.”³ That this can be true even in a profoundly divided society is nicely illustrated in Graham Greene’s novel, *The Comedians*, in which a Haitian character who risks his life in opposing

the dictatorship of “Papa Doc” Duvalier nevertheless remarks that “I’m not sure I wouldn’t fight for Papa Doc if the Marines came. At least he’s Haitian. No, the job has to be done with our own hands.”⁴

The Haitian rebel regards himself and his allies as sharing a collective identity and a collective fate with Papa Doc and his supporters. They all accept that they will live together in a common territory as a single nation. The issues in dispute concern the character of their association and the distribution of power among them, and these are matters to be properly decided among themselves, not by those outside their community.

Yet, as nationalist and secessionist conflicts in the 1990s vividly demonstrated, states sometimes comprise ethnic and political communities that are so estranged and antagonistic as not to constitute a single nation or community. These states cannot properly be called nation-states, but are instead multinational states. Particularly during the communist era, different nations were often yoked together with apparent success by a latent threat of force. Yet, in many instances, and most spectacularly of course in Yugoslavia and the Soviet Union itself, when the centralizing power disappeared, the decades of “nation building” within the borders of the state were exposed as failures. In Yugoslavia, for example, it turned out that the Serbs, Croats, and Bosnian Muslims did not, after all, constitute a single nation. At least after the initial conflicts had erupted, there was no single collective “self” whose self-determination was at issue within the borders of the state. There were, rather, various collective selves—various self-identified and exclusionary national groups—whose efforts at self-determination were mutually incompatible. External intervention in Yugoslavia, therefore, would not have violated the right of collective self-determination of a single people, but would instead have advanced the self-determination of one or more groups while thwarting the self-determination of others.

Thwarting a group’s efforts at self-determination does not, moreover, necessarily involve violating the group’s right to self-determination. If, for example, external agents had intervened militarily to prevent the Bosnian Serbs from massacring Bosnian Muslims in the mid-1990s, that would not have violated any right the Serbs might have had to collective self-determination, for the right to self-determination does not encompass a component right to persecute, expel, or massacre innocent members of another group. Such acts are not protected by any right.

In some states that contain more than one nation, the government is aligned with, and disproportionately representative of, one nation only. If the national group that controls the government begins to violate the human rights of the members of one or more other national groups, there are then two general reasons why external intervention against the government that *would* violate the state’s legal sovereignty would *not* violate the right of collective self-determination of any group. When a society is divided and the government is representative of one group only rather than of the citizenry as a whole, intervention against it does not violate

a right of collective self-determination of the citizenry, for the citizenry does not constitute a collective self. Nor does intervention against the government violate the right of collective self-determination of the group that the government does represent, provided that it is limited to action to which the government and its supporters have made themselves liable through the violation of the human rights of the members of other groups.⁵

Even in cases of this sort, however, it might be better, at least in current conditions, to have a legal or conventional rule that prohibits humanitarian intervention that is not approved by the Security Council. For powerful states continue to have various self-interested reasons for intervening militarily in weaker states, and a claim to be acting for humanitarian reasons can provide a convenient pretext for an essentially predatory intervention. Even so, there have been and will continue to be instances in which humanitarian intervention is morally justified even in the absence of authorization by the Security Council. The Security Council is not an impartial body and its ability to authorize a morally justified humanitarian intervention can be blocked by the veto of a single permanent member that is allied to the state that would be the target of the intervention. So even if humanitarian intervention ought to be prohibited by international law, the question remains in what conditions it might be morally permissible, or even morally necessary, to violate the law.

3.2 CONSENT

I suggest that it is in general a condition of the moral permissibility of humanitarian intervention that the ostensible beneficiaries should clearly welcome it.⁶ The satisfaction of this condition provides some evidence that the intervening state can be trusted not to abuse the power it will acquire by intervening—or at least that the potential beneficiaries regard their situation as sufficiently desperate that they are willing to risk that abuse as the cost of being rescued. It also provides some evidence, though not much, that the intervention does not violate the right of collective self-determination of a single nation. For the willingness of the potential beneficiaries to risk the subordination both of themselves and of their oppressors to the intervening power in order to be rescued suggests that they may not identify themselves as members of the national and political community constituted by the government and its supporters. Yet a group's desire for external assistance in a struggle with a rival group certainly does not show that the two groups do not together constitute a single nation or political community. Even though the Haitian rebels in Greene's story are averse to American intervention on their behalf, dictators such as Papa Doc Duvalier have typically welcomed external military assistance in fighting their domestic foes, even when the conflict is clearly within a single national community rather than between different nations.

I will refer to the claim that it is in general a condition of justified humanitarian intervention that the beneficiaries should welcome it as the “requirement of consent”—though of course there is never any possibility that a persecuted community as a whole could explicitly give its actual consent to intervention on its behalf, and even if it could, the desire for intervention among the individual members of such a community is never universal. So the relevant requirement is much weaker and more nebulous than actual unanimous consent among the potential beneficiaries. It is something more like a widespread or general desire for intervention.

There is a parallel requirement of consent that governs third-party defense of individuals, or what is sometimes called “other-defense,” though it is seldom discussed because there is a standing presumption that a person who is under unjust attack must welcome defensive assistance. But in the rare cases in which there is reason to doubt that presumption, and especially in cases in which the victim or potential victim of an attack explicitly forbids intervention on her behalf, the plausibility of the requirement of consent is intuitively obvious. Suppose, for example, that a woman is being lethally assaulted by her own child, who can be prevented from killing her only by being killed. If a third party could save her, but she pleads with this person not to kill her child, it seems intuitively plausible to suppose that it would be wrong to kill her child, assuming that he could afterward be rendered harmless, even if he is culpable for his action. The defensive killing of the child by a third party might not wrong the child, or violate his rights, but it would nevertheless be unjustified because it would wrong *the mother*.

In the individual case, the presumption is that the potential victim would welcome defensive assistance and thus that if self-defense is permissible, so is third-party defense. This presumption is seldom overturned unless the potential victim explicitly rejects the offer of assistance. But given that states have often sought to justify unjust interventions motivated by national self-interest by claiming that they were actually instances of humanitarian intervention, the presumption in the case of humanitarian intervention must be that the ostensible beneficiaries do *not* want a war fought by a foreign power allegedly for their benefit. This presumption is of course defeasible even in the absence of any overt indications of consent. In Rwanda in 1994, for example, when hundreds of thousands of ethnic Tutsi were being butchered with machetes by the Hutu majority, there could be no doubt that the Tutsi would have welcomed military intervention by the United States or any other major power. They had no reason to fear the loss of collective self-determination to an intervening power because Rwanda was too insignificant for any major power to have had an interest in dominating it—which of course explains why no major power could be bothered to intervene, even though the risks involved in intervening were very low.

The case of Rwanda, where there was no humanitarian intervention,
 can be instructively compared with the continuing war in Iraq, which the

Bush administration defended as an instance of humanitarian intervention, at least after the claims about weapons of mass destruction began to seem increasingly implausible. The situation in Iraq was a paradigm case in which the presumption was against intervention in the absence of clear and compelling evidence that the majority of domestic victims of the Baathist regime were receptive to such an intervention. The territory that is now Iraq has a long history of subjugation to and exploitation by Western powers, in part because of its extensive oilfields, on which Western economies depend. Although the Baathist regime had earlier committed large-scale massacres when it was an ally of the United States, and later did so again in response to a Shiite uprising encouraged but abandoned by the United States in the aftermath of the Gulf War, there were no massacres or large-scale expulsions in progress or in prospect at the time of the invasion. Despite the routine killing and torturing of political opponents characteristic of dictatorships in that region, the vast majority of Iraqis were able to live their daily lives in comparative security. Because of this, there were, prior to the US invasion, no indications that a majority of Iraqis, or even a majority of non-Sunni Iraqis, welcomed a war to overthrow the government of Saddam Hussein. It may well be true that the great majority of non-Sunni Iraqis hated the Baathist regime—they certainly had reason to—but that is quite different from wanting the regime to be overthrown by means of war, especially a war fought by a foreign power, and especially if the foreign power is the United States. Although most Americans seemed to have difficulty remembering the recent history of American relations with Iraq, there can have been few Iraqis who were unaware that those who claimed to be their liberators were the same people who, a little over a decade earlier, had bombed their capital, destroyed the country's civilian infrastructure, and insisted on the continuing imposition of economic sanctions that caused the deaths of hundreds of thousands more Iraqis, and kept many others who had survived the war in deepest misery afterward. They even noticed that this second war fought in their country was led by the son of the man who had led the first, and that both were members of an American dynasty founded on oil wealth. They had little reason to trust the motives of the Bush administration in invading their country.

The most significant reason why the war in Iraq, considered as a putative instance of humanitarian intervention, illustrates the plausibility of the requirement of consent derives from the effects of the war so far. Although estimates vary considerably, virtually all observers accept that at least 100,000 Iraqi civilians have been killed in the course of the war since its inception in 2003. More than two million have fled the country and are living as refugees in neighboring countries, and nearly three million others have become refugees within the country, having sought safety in areas where the fighting has been less intense. Given that the prewar population of Iraq was fewer than 30 million, these figures mean that at least one in every 300 civilians has been killed while another seventeen

percent of the population have fled their homes in an effort to avoid being killed. The number of seriously wounded and maimed of course significantly exceeds the number killed.

This is what happens when a modern war is fought in the cities and towns in which people live. Because wars of humanitarian intervention are directed against domestically repressive governments and their armed protectors, they are of necessity fought in the territory in which the potential beneficiaries live, and it is entirely predictable that such governments will seek to impose moral restraints on the intervening forces by forcing them to fight in the areas in which those whom they are trying to rescue are concentrated. So even if a war that is promoted as an instance of humanitarian intervention is genuinely motivated by humanitarian concerns, it can seldom promise rescue without also endangering its intended beneficiaries. In Iraq, the harms caused to the supposed beneficiaries have been vast and dreadful. It is wrong to expose people to the risk of such harm in the absence of compelling evidence that they are willing to accept that risk for the sake of the promised benefits. In Iraq, as I noted, there was no such evidence. Nor was any sought. The Bush administration simply arrogated to itself the right to decide the fate of the Iraqi people, and then predictably conducted both the invasion and the occupation with utter indifference to the security and well-being of those whose savior it proclaimed itself to be.

Some argue that the Bush administration may ultimately be vindicated, if Iraq does gradually evolve into a flourishing secular democracy. There are, however, two replies to this point. The first is: tell that to the dead, the mangled, the ruined, and those who love them. The second is that six years of failure constitute failure *simpliciter*. As the years pass, the counterfactual comparisons become increasingly difficult to make. If domestic security, prosperity, freedom, and democracy had been achieved within a year of the invasion, that would have constituted success, for they clearly could not have come about in that brief time by alternative means. Yet, if these goods come after ten years, it will no longer be plausible to claim that they could not have been achieved in that time by alternative and less destructive means. For no dictatorship lasts forever.

One might argue that the example of Iraq does nothing to support the requirement of consent. For the objection to the war that I have just presented is only that the war has proved to be objectively disproportionate, in that the harms it has caused have outweighed the good effects it has achieved. If instead the good effects had greatly outweighed the bad, it would be no objection to the war that there was no evidence that the majority of the victims of the savage and despotic Baathist regime wanted a war fought for their liberation. It has, indeed, been forcefully argued that if a war of humanitarian intervention would in fact be proportionate, and in particular if the harms from which the beneficiaries would be spared by the war would significantly outweigh those the war would cause them to suffer, opposition to the intervention even by a majority of the intended

beneficiaries does not make intervention impermissible, for the majority have no right to prevent third parties from protecting the human rights of the minority.⁷ This is particularly obvious if the opposition of the majority is based on factual beliefs, such as that the intervention would be disproportionate, or that the intervening state would exploit its position of dominance within the country to establish a puppet government, that are in fact false.

The claim that the familiar principles of *jus ad bellum*, and especially the proportionality condition, do all the substantive work that the requirement of consent is supposed to do is largely correct as an account of the conditions of *objectively* justified humanitarian intervention. Although the practice of humanitarian intervention is governed by a principle of respect for the collective self-determination of the beneficiaries, the constraints imposed by that principle are comparatively weak. In part this is because collective self-determination is quite different from individual autonomy in that the “will” or “desire” of a large political collective is never univocal in the way that the will or desire of an individual person can be. Suppose, for example, that within a certain state there is a minority nation that is being violently persecuted by the government and its supporters. Roughly eighty percent of the members of this nation, however, oppose external intervention on their behalf. The claim that in these conditions, respect for national self-determination requires nonintervention is only a remote analogue of the claim that respect for the autonomy of an individual requires that one not defend her when she expressly insists that she not be defended. For what we call the will of the nation is compounded out of the wills of the individuals who constitute the nation, and in this case their wills conflict on the issue of intervention. The claim that the national will is opposed to intervention is just a rhetorical overstatement of the true claim that eighty percent of the nation oppose intervention. It suggests unanimity where in fact there is none.

It might therefore be permissible to intervene in such a case, provided that the requirements of just cause, proportionality, and so on are objectively satisfied, even if the ground on which the eighty percent object is not unreasonable—for example, that they, those who constitute the majority, would prefer to achieve self-determination by themselves, even if it would take longer and involve greater suffering on their part, than be rescued by a nation that once held their forebears in colonial subjection. This preference on the part of the majority, though reasonable, might nevertheless be overridden by the preference of the remaining twenty percent to be saved through external intervention rather than to continue to face the threat posed by their domestic persecutors.

Would intervention be permissible if *all* the intended beneficiaries object to it, though on the basis of beliefs that are in fact false—for example, the belief that the intervening agents want only to steal their country’s oil, a belief that the intervening agents themselves know with certainty to be false. The answer to this question is presumably the same

as it is when a single individual, on the basis of mistaken factual beliefs, opposes an act that would spare her from harm and affect no one else. But we need not pursue this question about paternalism in these cases because there simply are no actual instances in which all the members of a nation or large political community oppose an intervention that would be intended to benefit them. For all such groups contain children and others who have no views about the matter of intervention and yet may have a vital interest in whether intervention is undertaken on their behalf. Those who oppose intervention for their own sakes may have no right to prohibit the protection that intervention would afford to those who do not oppose it, if only because they lack the ability to have a view.

I concede, therefore, that the consent of the beneficiaries is not a condition of permissible intervention that is imposed by a requirement to respect their collective self-determination. So why suppose it is relevant at all? The answer is that consent has a second-order role in the justification of humanitarian intervention. It has no role among the conditions of objective justification in ideal theory, but in practice, decisions about intervention are ultimately made by those with the power to intervene, and there must be principles that govern their action in conditions of uncertainty. It is at this level of justification that the requirement of consent has an important role. States contemplating what they can describe as humanitarian intervention often have interests that can be advanced by intervening. When they do, the temptation to engage in self-deception is strong even in well-meaning people. Potential interveners may also, as outsiders to the domestic conflict, have less reliable access to the facts than the intended beneficiaries of their action. A war fought in the towns and cities where people live exposes them to very grave risks. Both the risks and the benefits of a prospective intervention are speculative. But even if they could be assigned reliable probabilities in advance, there could still be reasonable disagreement about what constitutes an acceptable risk, or an acceptable trade-off between risks and benefits. While potential interveners may believe that the risks to which intervention would expose the intended beneficiaries are ones the latter should be willing to accept in exchange for the benefits, the beneficiaries themselves may disagree.

So, in realistic conditions in which the risks to the potential beneficiaries of intervention are very grave, the benefits uncertain, and differing attitudes to risk equally reasonable, it is usually wrong for a potential intervening power to be guided by its own judgment in deciding whether to impose great risks on innocent people, at least when there are ways of trying to determine whether those people would welcome military intervention on their behalf. To the greatest extent possible, the potential intervener must allow the people themselves to decide whether to accept the risks. Of course, in cases in which many or most of the members of a political community are in imminent danger of being killed or expelled from their homeland, and there is in consequence neither uncertainty about their preferences nor time to confirm them, the requirement of

consent is obviously suspended. But, in less extreme conditions in which there is uncertainty about what the people want, the presumption must be against intervention. The onus is on the potential intervener to verify that its intervention would be welcomed by those for whose sake it would be done. And in cases in which the evidence suggests that the putative beneficiaries are hostile to the prospect of an intervention allegedly on their behalf, they have a *de jure* moral veto over the proposed intervention.

The reason that I call the requirement of consent a “second-order” principle of justification is that it is not so much a principle of right action as it is a principle about the allocation of rights to make decisions in conditions of uncertainty. According to some theorists, rights have this function quite generally. Michael Walzer, for example, claims that “rights are in an important sense distributive principles. They distribute decision-making authority.”⁸ Understood in this way, the requirement of consent is just the view that, for a combination of pragmatic reasons and reasons of fairness, decision-making authority with respect to humanitarian intervention, or at least a veto authority, must be vested in those identified as the potential beneficiaries.

Here, as elsewhere, rights are not absolute. As I have suggested, even if a majority of the beneficiaries are opposed to it, intervention may still be justified, particularly if the opposition is based on mistaken factual beliefs. Sometimes, for example, in countries in which the distribution of information is tightly controlled by the government, repression may be extensive but compartmentalized, so that each cluster of victims may think that their situation is unique. Still, whenever an external agent undertakes a humanitarian intervention in the absence of compelling evidence that it is welcomed by the intended beneficiaries, it takes a significant moral risk. If the intervention reveals that the beliefs that prevented the beneficiaries from welcoming it were false, and in particular if the beneficiaries are glad in retrospect that it occurred, this should vindicate the intervention as a justifiable infringement of the beneficiaries’ right of veto. But if the intervention fails on balance to benefit those it was supposed to rescue, or proves to be unjustified for other reasons, its having been undertaken without the consent of the ostensible beneficiaries increases the culpability of the intervener.

It is perhaps worth noting that the requirement of consent as a constraint on humanitarian intervention has a parallel in wars involving aggression and defense. Suppose that one country initiates an unjust war of aggression against another. Especially if the fighting is occurring on the territory of the victim, third parties must not join the fighting on behalf of the victims without the consent of their government. Collective defense against aggression is generally permissible, but not if the state that is the immediate victim of aggression wishes to fight unassisted. It is, for example, generally accepted that if the government of a state that is the victim of aggression decides that having the forces of an ally join the
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fighting on its territory would cause a degree of destruction disproportionate to the advantages the assistance would provide, its judgment must be respected and its ally must not intervene. The reason that this constraint on third-party defense is less controversial than the requirement of consent is that states, as the presumed representatives or even embodiments of entire peoples, are accorded various sovereign rights, including the right to refuse unwanted assistance. The moral grounds for this veto power are really no different from those for the requirement of consent. The main differences between the two constraints are based on epistemic considerations: principally that the voice of the government, unlike the voices of the individual victims of domestic repression, is univocal and can be clearly heard. There is, however, no reason to suppose that the voice of a government is more representative of the views of the people it speaks for than the voices of a sample of the victims of repression are of the views of the victims in general.

3.3 OBLIGATION

The upshot of the foregoing discussion is that traditional objections to humanitarian intervention that appeal to principles of state sovereignty or collective self-determination by the citizenry of a state often lack force in conditions in which a state encompasses two or more self-identified national communities, at least one of which is engaged in extensively and egregiously violating the human rights of members of another, usually at the instigation and with the support of the government. Yet there remain significant moral restriction on humanitarian intervention, particularly the *ad bellum* proportionality requirement and the largely pragmatic requirement of consent. In cases in which the conditions of permissibility are satisfied (or, as in the case of constraints such as the requirement of consent, justifiably overridden), the question may arise whether humanitarian intervention is also morally *required*. And if the plight of the victims is grave enough to make it seem that intervention *is* required, one must also ask, *of whom?*

The question of when one is morally required to go to war in defense of others is not specific to humanitarian intervention. It arises also in cases of unjust aggression by one state against another when third parties could join the war on behalf of the victim. Of course, circumstances are sometimes relevantly different in these latter cases because third-party states may be bound by treaty or other alliance commitments to provide military assistance to the victim, and all states have reasons to punish violations of the legal prohibition of aggressive war in order to deter further violations. But even after these considerations have been taken into account, the question remains whether and to what extent the people of one state are required to risk their own lives to save the lives of those who are not their fellow citizens.

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One bold answer to the question of when humanitarian intervention is obligatory has been given by Kok-Chor Tan, who argues that whenever the violation of human rights within a state is sufficiently serious to override the sovereign right of the state against intervention, thereby making humanitarian intervention permissible, it must also be sufficiently serious to override the sovereign right of other states to neutrality. Thus, according to Tan, whenever humanitarian intervention is morally permissible it is also morally required—though the requirement is imperfect in the sense that it may apply only to states that are in a position to conduct the intervention successfully and without incurring prohibitive costs.⁹

There are, however, two problems with this argument. One is that a state's sovereign right against intervention is a different type of right from its right to neutrality. The right against intervention is a claim-right that constrains other agents, whereas the right to neutrality is primarily a liberty-right—in effect, a permission not to become embroiled in the conflicts of others, which derives not so much from the claims of sovereignty as from the assumption that people are not morally required to put their own lives at significant risk in order to save the lives of strangers for whose plight they bear no responsibility. The right to neutrality may also, though secondarily, be a claim-right, in that people generally have rights not to be forced or coerced to do what it is permissible for them not to do. This difference between the two rights could explain how one state's right against intervention could be overridden while other states' rights to neutrality would not be.

More importantly, however, when humanitarian intervention is permissible, this is generally not because the sovereign right against intervention of the target state is *overridden*; rather, it is because it has been *forfeited* through the wrongful action that the intervention promises to bring to an end. It is perhaps worth saying that, because I accept a reductionist account of the rights of collectives, I hold that the sovereign right against intervention is ultimately reducible to the rights of individuals against certain forms of interference in their relations with one another. On this view, when the perpetrators of human right violations have forfeited their right against intervention and their victims have waived theirs (which most have done when the requirement of consent is satisfied), no sovereign collective right against intervention remains to be violated. While intervention might infringe the rights of some innocent individuals who oppose it, there is no collective right against intervention that remains in place when the individuals who together constitute that collective are either eager for intervention or have made themselves liable to suffer its effects.

By contrast, people in other states have presumably done nothing to forfeit their right to neutrality. If they are morally required to intervene, it is not because their right to neutrality has been either forfeited or overridden. It is instead because they either have no right of neutrality in the circumstances or because their only right to neutrality in the

circumstances is a claim-right. According to the first of these possibilities, the right to neutrality permits and protects neutrality only up to a certain point. Beyond that point, the consequences would be so terrible in the absence of intervention that nonintervention ceases to be a permissible option and states may, if possible, even be coerced to intervene. According to the second possibility, nonintervention ceases to be permissible at the same point, so that beyond that point there is no liberty-right to neutrality, but states nevertheless retain their claim-right to neutrality. In these conditions, the right of neutrality would become a “right to do wrong”—that is, a right not to be forced or coerced to do what one is required by morality to do.

These remarks do not directly challenge Tan’s conclusion, but only the reasons he gives for that conclusion. Still, the conclusion that humanitarian intervention is morally required whenever it is morally permissible seems too strong. Among other things, while the question whether an act is permissible does not seem to depend on the cost to the agent of doing it, the question whether an act is morally required or obligatory does seem to depend on the costs. Suppose that you and I are strangers walking in opposite directions across a high bridge. You have just dropped a \$1000 bill that is about to be blown off the bridge into the river far below. I can prevent this simply by stepping on it. Since it would cost me nothing to prevent you from suffering a serious loss, it is reasonable to suppose that it is obligatory for me to step on the bill. But suppose that the only way I could prevent the money from being blown away would require me to go over the bridge and fall to my death. No one would say that I would still have the same obligation to save your money but that I am excused for not fulfilling it because of the prohibitive cost to me in this case of saving the money. Rather, what we believe is that in the second case I have no obligation to save your money because of what it would cost me to do so. What it would be obligatory for me to do in the absence of any cost is not obligatory if it would require of me a sufficiently significant sacrifice. So a permissible intervention that would be obligatory if it could be done without cost is not obligatory if the sacrifices it would require are very great. This is uncontroversial in cases in which the harms that the intervening agent would suffer would exceed the harms that the intervention would prevent. (One might object that this is not a counterexample to Tan’s conclusion because such an intervention would be disproportionate and therefore impermissible, and if it would not be permissible it could not be obligatory. But proportionality does not prohibit people from *voluntarily* suffering a greater harm as a means or foreseen side effect of preventing someone else from suffering a lesser harm. So, such an intervention could be permissible and, if so, would also be obligatory on Tan’s view.)

Although I think that Tan’s argument is unsuccessful, it has the merit of avoiding any direct appeal to our intuitions about the morality of intervention. This is a merit because our intuitions about the sacrifices that we, both as individuals and in groups, may be required to make to save

the lives of strangers are notoriously confused and inconsistent. Peter Singer, in his contribution to this collection, cogently challenges the consistency between common intuitions about the importance of preventing mass killing through humanitarian intervention and intuitions about the importance of saving people from natural threats. It will be instructive to explore this comparison further.

In various instances of mass slaughter during the past two decades—in East Timor, Liberia, Sierra Leone, Rwanda, Bosnia, Kosovo, Darfur, and elsewhere—many people have argued passionately for humanitarian intervention. But few voices have been raised with equal passion about the much larger numbers of people who have died over the same period from preventable disease and malnutrition in impoverished areas of the world. Is it really defensible to suppose that humanitarian intervention may be morally required in order to prevent people from being killed by their own government even when it is not a moral requirement to devote comparable resources to saving a comparable number of people from natural threats?

Like Singer, I suspect that common intuitions are distorted by a variety of factors. One is that the killings, tortures, and expulsions that provide the occasions for humanitarian intervention are dramatic and newsworthy, whereas the daily death tolls from disease and malnutrition are chronic and familiar, a constant background condition to which most people who are not among the victims have become inured. When, by contrast, natural calamities are sudden and violent, like the tsunami of 2004, people's intuitive reactions become more like those that prompt demands for humanitarian intervention, and external observers become more inclined to regard life-saving assistance as obligatory rather than merely permissible. But whether environmental conditions kill a large number of people suddenly and dramatically, over a course of days, or prematurely kill a comparable number of people insidiously over a longer period, seems in itself irrelevant to whether others have an obligation to prevent those deaths.

Another difference between humanitarian intervention and forms of aid that save people from natural threats such as disease and famine is that humanitarian intervention is *heroic*, or involves heroism on the part of those who carry it out, and forms of aid that require heroism are, in many cases, more likely to seem obligatory than ones that do not. This may seem paradoxical, yet it seems to be true of both individual and collective action. To test our intuitions about this, compare the following two hypothetical cases. In the first, a man is the sole bystander when a car that was traveling at a reasonable speed hits an invisible patch of black ice, skids off the road into a tree, and bursts into flame. There are five people trapped in the car. While there is no immediate danger that the car will explode, unless the man pulls them out, the five people will burn to death. In pulling them out, however, the man would predictably suffer third-degree burns to one of his arms. He notices that the car's license plate is from Mexico and, hearing cries in Spanish from within the

car, correctly infers that the victims are foreigners. I conjecture that many people would say that he *ought* to intervene to save them, even at the cost of suffering third-degree burns on one arm. It is true that his saving them would involve a heroic sacrifice, but that does not entail that saving them is merely supererogatory. The fulfillment of duty can sometimes be heroic. It is also true that few would blame him if he refused to intervene, but that too is compatible with his having a duty to intervene. We frequently accept that people can be *excused* for failing to fulfill duties that require significant personal sacrifices.

Next, imagine another case involving this same bystander. Suppose that, entirely coincidentally, he has recently participated in some experiments performed by a team of psychologists and economists engaged in collaborative research on people's preferences about cost avoidance. Among the things that the team learned about this man is that he would be willing to pay \$10,000 to avoid third-degree burns to an arm, but not \$11,000. In other words, he regards the loss of \$10,000 as less bad than the burns, but regards the loss of \$11,000 as worse than the burns. Suppose that the same crash occurs but that in this version of the example he is temporarily confined to a wheelchair and is physically incapable of performing the rescue. Happily, a passerby shows up who declares his willingness to save the passengers in the car at the cost of suffering third-degree burns, but only if the man in the wheelchair pays him \$10,000 to do it. The burning car is old and dilapidated and its occupants are clearly too poor ever to repay the cost of the rescue. Here I conjecture that most people would *not* say that the man in the wheelchair *ought* to pay \$10,000 to save the five foreigners. That this is a reasonable conjecture is suggested by the fact that many people are aware that they could in fact save far more than five lives by donating \$10,000 to an organization such as Oxfam, yet very few believe it is their duty to do it and even fewer actually do it.

If it is right that only a very small proportion of people would believe that the bystander has a duty to sacrifice \$10,000 to save the five foreigners, while a significantly higher proportion would believe that he has a duty to pull them from the car at the cost of being burned, *even though* he regards the burn as worse than the loss of the money, this suggests that we sometimes demand heroic sacrifices in response to crises even when we do not demand more prosaic sacrifices. This, as I noted, seems true in the case of collective action as well. Many of us felt a certain disdain for the Clinton administration when it refused to intervene militarily in Rwanda. Its strenuous efforts to avoid going to the rescue of the 800,000 people who were slaughtered there in just a matter of months seemed contemptibly pusillanimous, even cowardly. But suppose there had been a country, such as Switzerland, that lacked the ability to conduct a large-scale overseas intervention but nevertheless had the opportunity to hire, at great cost, a large mercenary army that could have succeeded in stopping the massacres. Fewer people, I think, would have felt contempt for that country for failing to sponsor such a proxy intervention.

It seems, therefore, that whether an act of saving people requires heroism can make a difference to whether many people think of that act as obligatory or merely permissible. So, the heroism involved in humanitarian intervention seems intuitively salient and makes many people more disposed to find humanitarian intervention morally obligatory when they would not find it obligatory to save a comparable number of lives by, for example, increasing foreign aid to a country with a chronically high death rate from malaria. Yet this seems to be an instance in which our intuitions are unreliable. Heroic self-sacrifice may seem more admirable than merely writing a check, and shrinking from a fight or from some other danger may seem more contemptible than failing to write a check, but these reactions provide no basis for supposing that there is a stronger moral reason to save a life heroically than there is to save a life unheroically. So, if it is right that our intuitions about the obligatoriness of humanitarian intervention are responsive to the fact that it involves heroic self-sacrifice, that is a reason to view them with skepticism.

The comparison between humanitarian intervention and foreign aid for the prevention of cure of disease highlights a third factor that influences our intuitions about humanitarian intervention—namely, that humanitarian intervention is intended not only to prevent serious *harms* but also to prevent serious *wrongdoing*, or seriously immoral *action*. This is the fact on which Singer's discussion rightly focuses: humanitarian intervention is a response not just to misfortune, but to *evil*.

As Singer observes, many people feel that it is more important morally to prevent evil acts than it is to prevent natural events that would have comparably bad effects. But on this matter I think Singer is largely right. There are, of course, a number of reasons why it is often *contingently* more important to prevent wrongdoing than to prevent an accident that would cause comparable harm to the innocent. By preventing a person from wrongfully harming another, particularly if it is necessary to harm this person in order to do so, one may prevent or deter him from causing further wrongful harms in the future. One may also deter others from acting in the same way. One may prevent the person from morally defiling himself through the completion of his immoral action. And, finally, if immoral acts are impersonally bad events, one may prevent the occurrence of an impersonally bad event. Yet only the last two of these are necessary or inevitable concomitants of the prevention of wrongdoing, *if* indeed they are real effects. Suppose they are. Suppose that people do defile themselves when they act in certain ways that are seriously wrong and that this is a bad effect, and suppose also that in itself it is impersonally worse for wrongful acts to occur. Even so, these effects are easily outweighed. Suppose that one can *either* prevent an innocent stranger from being wrongfully pushed off a cliff *or* prevent an innocent stranger from accidentally (and faultlessly) walking off a cliff *and* prevent another stranger from losing (or even just breaking) a leg. And suppose that both acts of rescue would be equally heroic. Provided that the murderer would

not commit any further murders and that his act would not weaken the general deterrence of murder, it would be perverse to prevent the murder rather than the accidental death together with the nonlethal injury.

Or consider again the first case of the burning car. Suppose we think that the number of people trapped in the car is just below the number that would make the heroic rescue obligatory. (If one thinks that the saving of more than six lives would be necessary to make it obligatory to suffer burns to one's arm, imagine that it is a bus rather than a car that is on fire.) Recall that in this case the accident was caused by a natural condition: an unforeseen patch of ice in the road. But suppose instead that the car had been forced off the road by another driver who was trying to kill all of the car's passengers. If one's reason to prevent harmful wrongdoing is stronger than one's reason to prevent the same harm from natural causes, the addition of this factor might be sufficient to make it obligatory for the bystander to carry out the rescue. That is, if the heroic rescue is just barely below the threshold of obligation if the crash is the result of natural conditions, it should be above that threshold if the crash is the result of serious wrongdoing. So, if the bystander has initially reached the reasonable conclusion that he is not morally required to save the passengers, he would have to revise that conclusion and accept that the rescue is obligatory after all, if he were then to discover that the crash had been caused by malicious human agency.

One might object that, at this point, saving the passengers would not involve the prevention of wrongdoing, since the wrongful act has already been done once the bystander has a chance to intervene. At that point, he would simply be preventing harms rather than wrongs. Yet, while it is not in the bystander's power to prevent *any* wrongdoing from being done, it is in his power to affect the nature of the wrongdoing that has been done, and in particular to make it less serious than it would otherwise be. If he saves the passengers, the wrong that will have been done will be a combination of attempted murder and the injury of innocent people, whereas if he does not save them, the wrong will be the murder of five people.¹⁰ Much the same is true of humanitarian intervention. While it usually prevents some wrongdoing, many of its beneficial effects consist in preventing wrongful acts that have already been done from having their intended effects—that is, it also prevents attempts from becoming completed crimes, for example, by preventing orders from being carried out or policies from being implemented. And in any case, even those who think that the prevention of harmful wrongdoing is more important than the prevention of comparable harms from natural causes tend to accept that it makes no difference whether harmful wrongdoing is prevented by preventing the act from being done or by preventing its harmful effect. There is, for example, no more reason to prevent a murder by preventing the pulling of the trigger than by deflecting the bullet once the trigger has been pulled. If there were, and if one could attempt either of these means of preventing a murder, but not both, it might be morally preferable to

try to prevent the pulling of the trigger when that would have a ninety-five percent probability of preventing the murder than to try to deflect the bullet when that would have a ninety-eight percent probability of preventing the murder. But to try to prevent the pulling of the trigger in these circumstances would clearly be the wrong choice.

It seems, therefore, that there are various explanations of our tendency to think of humanitarian intervention as obligatory that tend more to undermine than to support that intuition. Because the events that call for humanitarian intervention are dramatic rather than familiar, because humanitarian intervention is heroic rather than merely costly, and because it prevents not only harm but also evil, we tend to overestimate the strength of the moral reason to engage in humanitarian intervention *in relation to* the strength of the moral reason to save comparable numbers of unrelated foreigners from death from natural causes, such as disease and malnutrition.

Yet I believe—though I cannot argue for this here—that we *greatly underestimate* the strength of our moral reason to save foreigners who, through no fault of their own, will otherwise die prematurely of preventable disease or malnutrition. Hence, even though I suspect that Singer is right that the reason to save people from being wrongfully killed by their government is not significantly stronger than the reason to save people from an equally premature death from natural causes, and that when it is stronger, this is generally for contingent reasons connected with deterrence and other such extrinsic factors, I nevertheless think that *on balance* we tend to significantly *underestimate* the strength of the reasons to engage in humanitarian intervention. That is, when we estimate the strength of these reasons only in relation to reasons whose strength we greatly underestimate, we get a distorted estimate of the absolute strength of these reasons. I think, in short, that the reasons that favor humanitarian intervention actually rise to the level of obligation far more often than we intuitively recognize.

This is not, of course, a criterion for identifying situations in which humanitarian intervention is obligatory. The conditions in which the rescue of a people becomes obligatory are a matter that resists articulation in a simple formula, or indeed in a complex formula. The relevant variables are many: the number of potential victims and the severity of the harm they are otherwise likely to suffer, the probability of counterintervention on behalf of the government and the risks of uncontrolled escalation, the expected costs to the interveners, both in lives and resources, the risks involved in destroying structures of political authority if the repressive government must be removed, the harms caused to innocent people, including the intended beneficiaries, as a side effect of modern war, and so on. So, just as I cannot say exactly when humanitarian intervention is permissible, but only that it is permissible more often than people have hitherto supposed, so I cannot say exactly when it is obligatory, but only that it is more often obligatory than we are inclined to think, despite

our bias in favor of humanitarian intervention in relation to our intuitive views about foreign aid.

3.4 PROPORTIONALITY

In cases in which humanitarian intervention is morally required, or even merely permissible and desirable, but not obligatory, the most significant obstacle to its actually being done is of course the cost to the potential interveners. One of the ironies of humanitarian intervention is that while many purely predatory interventions are cynically promoted as humanitarian by their perpetrators, these same states are wholly unwilling to intervene when there is genuinely an objective humanitarian justification but intervention would not serve their own interests. Many observers have suggested, for example, that it was the political unpopularity of the small losses that the United States suffered in Somalia that convinced the Clinton administration that it would be against its interests to intervene in Rwanda or Bosnia. Yet, as those genocides progressed unopposed, to the mounting horror of decent people everywhere, the Clinton administration became increasingly exposed to bitter criticism for its shameful efforts to *obstruct* intervention by others for fear that the United States would be dragged into the conflict and sustain unpopular losses as it had done in Somalia. This criticism probably helped to convince the administration that on balance it would be against its political interests to refuse yet again to intervene when the Serbs initiated a campaign to expel the ethnic Albanian population from the province of Kosovo. But Clinton discovered a way to reap the political benefits of intervention without incurring the costs. He decided to conduct a military intervention in which the United States would suffer no casualties.

The key to costless warfare in this case was to refuse to commit ground troops and to conduct the entire war from the air, always flying out of range of Serbian anti-aircraft weapons. In this way the United States and its NATO allies succeeded in conducting the entire war without suffering a single casualty. Yet bombing from such great heights prevented the pilots from having more accurate information about exactly who or what they were bombing, and also, even with the precision-guided weaponry available to them, from being able to hit their intended targets with the degree of accuracy that flying at a lower altitude would have made possible. The net effect was that although the United States suffered no casualties, it killed significantly more Serbian civilians, and even more Albanian civilians whom it was supposed to be rescuing, than it would have if it had conducted the war in a different way—for example, by flying lower or committing ground forces, or both.

The Clinton administration again suffered some sharp criticism for this strategy, both from the left and the right wings of the political spectrum.
 On the left, Noam Chomsky cited the well-known dictum of Hippocrates:

“First, do no harm.”¹¹ And on the right, Charles Krauthammer asked, “What kind of humanitarianism is it that makes its highest objective ensuring that not one of our soldiers is harmed while the very people we were supposed to be saving are suffering thousands of dead and perhaps a million homeless?”¹² These criticisms do not fit neatly into the framework for evaluating the conduct of war that has been provided by traditional just war theory. The objection is not exactly that the bombings violated the *in bello* requirement of proportionality. The proportionality test is usually understood to involve a comparison between an act of war, or a series of such acts, and engaging in no act of war at all. If the good effects of an act of war that are relevant to proportionality outweigh the bad, relative to what would have happened in the absence of any act of war, the act is proportionate. Since the effects of the bombings seem to have been better for the Albanian Kosovars than what would have happened to them in the absence of any intervention, it seems that the bombings were proportionate in the traditional sense. The objection to them is also not quite that they violated the *in bello* necessity requirement, usually referred to as the “requirement of minimal force.” This is standardly interpreted to prohibit acts of war when their good effects could be equally well achieved by alternative means that would cause less harm. This is a perfectly straightforward requirement when the harms that would be caused by both alternative acts would all be suffered by people whose moral status in the war is the same. So, for example, if two possible means of achieving the same end would be equally effective, but one would kill more innocent civilians as a side effect, and all other things are equal, the option that would kill more civilians is clearly ruled out by the requirement of minimal force. What was at issue in Kosovo, however, was more complex. An alternative strategy involving more than high-altitude bombing alone would have caused fewer casualties among civilians, but would also have resulted in the deaths of NATO combatants, with the number of NATO casualties increasing in proportion to the seriousness of the effort to reduce the civilian casualties. So the issue raised by the bombings is not strictly an issue of either proportionality or necessity, but is instead an issue of the fair distribution of the risks and harms of intervention among the people involved in a conflict. The objection to the NATO strategy is that NATO forces ought to have been required (or even just permitted by their commanders) to expose themselves to greater risks in order to reduce the harm their acts of war unintentionally inflicted on civilians.

For convenience, I propose to consider this objection as an issue of proportionality, understood more broadly than it typically is in the just war tradition. Proportionality in war is already considerably more complicated than most people suppose. It is not just a relation between the harm caused and the harm averted. It is, for example, sensitive to whether those who are harmed are liable to be harmed, and among those who are liable, the proportionality restriction on harming them becomes weaker
 the greater the degree of their liability is. In common sense morality,

proportionality is also sensitive to whether the harm caused is intended.¹³ Perhaps we should also say that harm that is unintentionally inflicted on the innocent in war is disproportionate if it is excessive in relation to what they would suffer in a *fair* distribution of the harms between combatants and noncombatants. We might say that, in the Kosovo war, although the harms caused were not disproportionate overall, they disproportionately burdened the innocent.

It is generally agreed that even in a war of national defense, combatants are morally obligated “to accept some risk to minimize harm to noncombatants,” as the *U.S. Army/Marines Counterinsurgency Field Manual* puts it. The *Manual* goes on to assert that

Soldiers and Marines are not permitted to use force disproportionately or indiscriminately. Typically, more force reduces risk in the short term. But American military values obligate Soldiers and Marines to accomplish their missions while taking measures to limit the destruction caused during military operations, particularly in terms of collateral harm to noncombatants.¹⁴

But if combatants are obligated to accept certain avoidable risks to themselves in order to avoid harming noncombatants in the *enemy* population in a war of defense, it seems that they should be obligated to accept even *greater* risks to avoid harming the noncombatants, whom it is precisely their mission to *save* in a war of humanitarian intervention. I will argue, however, that this view misses an important point and that there is something to be said on behalf of the Clinton administration’s strategy, even if it was motivated by base calculations of political self-interest.

Most of the Albanian Kosovars whom the Serbs were attempting to drive out of the country were entirely innocent people going about the ordinary business of life. But the members of the NATO forces that were summoned to help them were equally innocent in the relevant sense—that is, they were in no way responsible for any of the wrongs being committed in the Balkans at that time. They were for the most part young people from distant lands who were ordered to leave the peaceful conditions of their own homelands to rescue strangers for whose plight they bore no responsibility. Why should they rather than the Kosovars bear the costs of the rescue?

Consider an analogous case of individual rescue. Suppose that a person is being swept along in turbulent waters toward a waterfall and that if he goes over the falls, he will be killed. A passerby can pull him from the water in either of two ways. One method of rescue would dislocate the rescuer’s shoulder, but would not harm the victim. The other would break the victim’s arm while he was being extracted from the water, but would leave the rescuer unharmed. A broken arm is a worse injury than a dislocated shoulder, but even if the victim is in no way responsible for being in the water, he should bear the costs of his own rescue. He would have no cause for complaint after being pulled from the water in a way that broke his arm.

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Part of the explanation for this might be that it would be permissible not to save the person at all if saving him would require the passerby to sustain a dislocated shoulder. As I noted earlier in connection with the case of the burning car, our intuitions are not univocal in such cases. But if it would be permissible not to rescue the victim at all at the cost of suffering a dislocated shoulder, that would explain why the victim would have cause for nothing but gratitude if he were rescued in a way that foreseeably broke his arm; for one can have no justified complaint that another person failed to do what was supererogatory.

This case may, however, be different from the Kosovo intervention in one important respect. If the passerby chooses not to rescue the victim in the way that would be supererogatory, she would nevertheless seem to be morally required to rescue him in the way that would break his arm, since she could do that without any significant cost to herself. But the Kosovo intervention was costly in various ways, even though no American combatants were killed, and many people believe that those costs alone were sufficient to relieve the United States of an *obligation* to intervene. If that is right, then a permissible alternative to conducting the intervention in the way the United States did was not to intervene at all. If the intervention as it was carried out was better for the Albanian Kosovars than their situation would have been if the United States had not intervened, it is arguable that they had no justifiable complaint that the intervention was conducted as it was, and indeed had grounds for gratitude that it was done at all, even though many more of them died than would have if it had been conducted differently. On these assumptions, the intervention as it was conducted may have been unchivalrous, but it was neither disproportionate nor otherwise wrong.

We may even be driven to a stronger and indeed rather counterintuitive conclusion. Suppose that the Serbian civilians who were endangered by the intervention were wholly innocent in the same way that the United States and NATO combatants, as well as most of the Albanians, were: that is, they bore no responsibility for the conflict developing around them. That was in reality not true of many of them, who supported and collaborated in various ways in the unjust action taken against the Albanians. But suppose for the sake of argument that all those Serbian civilians who were put at risk by the intervention were entirely innocent in the same way that civilians in adjacent but neutral states were. It seems that the proportionality constraint on harming them as a side effect of military action should have been *even more restrictive* than that which governed the harming of the Albanian civilians.

To understand why, it may help to consider a variant of the individual rescue case. Suppose that the passerby has three options for rescuing the man who will otherwise go over the waterfall. In addition to the ones that would involve dislocating her shoulder or breaking the victim's arm, there is another that would shift the costs of the rescue to an innocent and uninvolved bystander, who would suffer harm comparable in severity to a

dislocated shoulder, but less serious than a broken arm. It seems intuitively that it would be unjust for the rescuer to harm the bystander when the cost of the rescue could instead be borne by the victim himself. Indeed, shifting the harm to the bystander seems to be the least acceptable of the three options, at least without the bystander's consent. For given that the passerby has the option of imposing the costs on the victim, if she decides for whatever reason not to do that, it seems she must accept them herself unless she could accomplish the rescue by imposing costs on a third-party bystander that would be significantly less than those she would have to accept herself. For it was *her* decision not to adopt the best course, which is to channel the costs of the rescue to the victim himself.

We have moved from a discussion of humanitarian intervention to a case of individual rescue. Let us take a further step back to a case of individual self-defense. Suppose that one can defend oneself from an otherwise lethal attack by a culpable aggressor, but only by acting in a way that will also kill an innocent bystander as a side effect. Many people believe that this would be impermissible. While there may be ways of shifting one's misfortune to another that are not unjust, one may not actively *harm or kill* another person to avoid an equivalent harm to oneself. There is, in particular, a moral presumption against killing, even unintended killing, that cannot be overcome unless the killing is necessary to avert a significantly greater evil. The saving of one life, even if it is one's own, is not sufficient to justify the killing of an innocent person, even if the killing is unintended. In general, the harms that one may permissibly inflict on other innocent people, even unintentionally in the course of individual self-defense, must be significantly *less* than those one would thereby avert.

This is true of third-party defense of others just as it is true of self-defense: one may not shift the costs of the defense to wholly innocent and uninvolved bystanders, even if one would harm them only foreseeably and not intentionally, unless doing so would substantially reduce the overall harm that innocent people would have to suffer. (And according to common sense morality, the reduction would have to be even greater still to make it permissible to harm or kill innocent people as an intended means of protecting others.) Yet, in cases of third-party defense, those who are beneficiaries of the defense have no such immunity to having the costs of the defense shifted to them. When it is those being defended rather than the defenders or others who stand to benefit from the action, the costs of the defense ought, in a manner of speaking, to be deducted from their benefits. If they would still derive a net benefit from the defensive action even after suffering the harms that are an unavoidable concomitant of a successful defense, they have no valid grounds for complaint that other innocent people were not made to take a share of those harms. This is why, if Serbian civilians were genuinely innocent bystanders, the proportionality constraint on harming them as a side effect of military action by NATO forces was more restrictive than the constraint on foreseeably harming Albanian civilians who were the intended beneficiaries of the rescue.

Many people will of course find this conclusion perverse. To the extent that they are right to do so, it is because they do not in fact accept that the Serbian civilians who were at risk of harm from the bombings intended for Serbian forces were genuinely innocent in the relevant sense. Suitably generalized, the conclusion is that the proportionality constraint on harming the intended beneficiaries of humanitarian intervention as a side effect of military action is weaker or less restrictive than that which governs the infliction of foreseeable but unintended harms on other civilians who are genuinely innocent bystanders to the conflict.

There is an obvious response to some of these claims about proportionality in humanitarian intervention. In my examples of individual rescue—the burning car and the man being swept toward a waterfall—the potential rescuer is a passerby who has made no antecedent commitment to save people in danger of being killed. But combatants in a national army occupy a professional role that gives them a duty to take risks or make sacrifices in the course of defending or rescuing others. A helpful analogy here might be with two cases in which a man is, through no fault of his own, trapped in a burning house. In one case, the only person who can rescue him is a passerby. In the other, that person is a firefighter. The risks involved in attempting the rescue may be such that the passerby is not morally required to intervene. And if he does intervene, he seems entitled to shift as much of the risk as possible away from himself and to the trapped man. If, for example, the passerby can lower the victim to the ground in either of two ways, one of which involves no risk for him but is moderately risky for the victim, and the other of which involves a small risk for him and no risk for the victim, he is permitted to choose the former, even though it involves a greater overall risk. The firefighter, by contrast, may be required to intervene and, if confronted with the same options for lowering the man to the ground, may also be required to adopt the method that is riskier for himself and less risky for the victim. And the difference is of course that it is part of the firefighter's *job* to take risks to save people from burning buildings. This is what he agreed to do when he voluntarily became a firefighter. And there are, of course, other jobs that require people to risk their lives for the sake of others: a lifeguard may be required to swim in dangerous waters to save a drowning person, and a police officer may be required to risk her life to capture a dangerous criminal. Similarly, combatants may be required to risk their lives to prevent innocent people from being killed by enemy combatants and may be required to shift some of the risks of combat away from those whom they are trying to save and toward themselves.

That it is part of the professional role of a combatant to take risks in the process of defending innocent people clearly supports the position taken by the critics of the Clinton administration's strategy in Kosovo. When United States and other NATO combatants bombed Serbian positions in ways that killed more of the people they were supposed to be defending, as well as more innocent bystanders, than they would have if

they had exposed themselves to greater risks, they were arguably failing to do their job properly—though they were of course not the ones who made the decisions about how to carry out their missions, so none of the blame for their failure to take greater risks should be directed at them. This still leaves open the larger question of the appropriate distribution of risk between combatants and civilians in humanitarian intervention. What we can say, on the basis of the argument so far, is that the Clinton administration's assignment of nearly absolute priority to the safety of its own forces was wrong, in part because it treated its combatants as if they were passersby rather than professional warriors—and did so for cynical reasons of political advantage. Yet, it is also clearly true that combatants are not required to make literally *any* sacrifices that might be necessary to avoid harming noncombatants in the course of their military operations, whether in a war of national defense or in a war of humanitarian intervention.

Furthermore, nothing I have said about the professional role of combatants weakens the claim that in cases of humanitarian intervention, the proportionality constraint on causing unintended harm to the beneficiaries is less restrictive than the constraint that governs the infliction of unintended harms on other innocent civilians who are not among the beneficiaries of the intervention. This claim is, in fact, supported by the analogy with the case of the firefighter. If, in the course of rescuing a person from a burning building, a firefighter must act in a way that will harm either the endangered person or an innocent bystander, he should choose the course of action that will harm the endangered person, unless the other option would harm the innocent bystander to a significantly lesser degree (and unless the bystander has voluntarily assumed the risk or acted negligently or recklessly in exposing himself to risk). And it seems to be a corollary of this that a firefighter should accept greater risks to himself to avoid harming an innocent bystander in the course of a rescue than he is required to take to avoid harming the beneficiary of the rescue.

One might object to the claim that it is a combatant's professional duty to take risks in defense of others that, just as a firefighter has no special duty to save people from drowning, and a lifeguard no special duty to rescue people from burning buildings, so combatants have no special duty to rescue foreigners from their own government. Rather, the professional duty of a combatant is just to defend his or her fellow citizens. As soldiers often say, their duty is to serve *their country*.

The obvious response to this objection is that even if it were correct that a soldier's commitment is just to serve his or her own country, it is not the soldier's prerogative to judge or determine what constitutes serving the country. It is for the government to determine what is best or right for the country and it is the soldier's job to do what he or she is told (provided, I would add, that it is not morally impermissible). If the government judges that the country ought to go to war in aid of an ally
that has been the victim of aggression, it is not the soldier's prerogative to

judge whether participation in the collective defense of the ally is really in the national interest. And the same is true of humanitarian intervention.

Humanitarian intervention does, however, raise special issues that may not arise so acutely in the case of other forms of war. For example, if a proposed humanitarian intervention is morally optional for the state that is considering undertaking it, ought it also to be optional for individual soldiers? If, as I believe, there should be greater legal tolerance of a soldier's conscientious refusal to fight in a war that he or she believes is unjust, would not many soldiers seek to exploit more generous provisions for conscientious objection by mendaciously claiming to have moral objections to fighting in a war of humanitarian intervention when in fact their sole concern would be to avoid taking risks for the sake of people they do not care about?

Because of these and many other problems, we should ultimately aim to assign the task of humanitarian intervention to a special international force under the control, not of any national government, but of an impartial, democratically controlled, international body. Ideally, such a force should not be drawn from the forces of any national military organization, but should instead recruit its own soldiers from the world at large and train them itself. Their training should be specifically in the kinds of operation characteristic of humanitarian missions and they should be imbued with a sense of the nobility of their profession as defenders of the weak and oppressed. Humanitarian intervention should be the sole *raison d'être* of this force. Because the force would be under the control of an impartial, multilateral body that would itself have no stake in the domestic conflicts in which it might intervene, the members of the force could have greater confidence that its missions would be just than the members of national military forces are usually justified in having. This is, however, a topic for future discussion, when our international legal institutions have evolved beyond their current rather primitive conditions.¹⁵

3.5 POSTSCRIPT

I conclude on a personal note. When I went to Oxford in 1976, I had just completed a BA in English literature but wanted to study philosophy. As I was unqualified to begin a graduate degree in philosophy, I registered for two of the three years of Oxford's undergraduate program in Philosophy, Politics, and Economics. Although that was during a golden age of philosophy in Oxford, ordinary language philosophy was still clinging to life and I found much of what I was required to study almost unbearably tedious. I was seriously considering bailing out of philosophy altogether when, in 1978, I discovered Jonathan Glover's *Causing Death and Saving Lives*, which had been published the previous year. I knew then what I wanted to do, which was to write philosophy the way Jonathan Glover did. I decided to apply to do a D.Phil. at Oxford, and when I was accepted

I begged my tutor to intercede for me to see if Glover would be willing to supervise my dissertation work. It was a turning point in my life when he agreed to take me on. Not only did he prepare me to do the sort of work I have done ever since (so that, drawing on an idiom from the monster movies of my youth, I think of my book, *The Ethics of Killing*, as “Son of *Causing Death and Saving Lives*”), but he and his wife Vivette personally befriended me and my wife Sally, inviting us frequently to visit them for meals at their house in London and welcoming us into their wonderful family. As we felt at the time rather like abandoned waifs in a foreign land, the warm friendship that the Glovers offered us was more of a lifeline than perhaps they knew.

Not only was Jonathan my inspiration in philosophy, but he and Vivette were Sally’s and my inspiration as parents as well. The Glover children—Daniel, David, and Ruth—always sat at the table with us and were encouraged to participate in the conversation, though no encouragement was ever needed by that point, as they were already accustomed to having their views on every conceivable subject elicited and received with interest and respect, and deservedly so, as they were remarkably bright and animated children. I recall my amazement on discovering that they called their parents by their first names—a practice that to me, a product of a South Carolina upbringing that required that parents be addressed as “sir” and “ma’am,” was thoroughly unknown and even unimagined. (Because Sally and I referred to each other by our first names rather than by “mom” and “dad” when we later spoke to our own children, they too spontaneously called us by those names, which gave me a gratifying sense of continuity with the parental practices of Jonathan and Vivette.)

Jonathan is known as a utilitarian, though not as one who is altogether doctrinally orthodox. Although most of us who have studied philosophy were taught early on to beware of utilitarians, who would lie to us, break their promises, betray us, and even extract our vital organs for transplantation if by doing so they could promote the greatest good, it has been striking to me that the professed utilitarians of my acquaintance in general do far better by the standards of ordinary commonsense morality than their opponents in ethical theory who go on about human dignity, integrity, humanity, fidelity, honor, and so on. Here I can cite Jonathan Glover as Exhibit A: no one could hope for a kinder, more sympathetic, reliable, or generous friend and mentor than he.

Notes

1. John Stuart Mill, On Liberty, in Marshall Cohen, ed., *The Philosophy of John Stuart Mill: Ethical, Political, and Religious* (New York: Modern Library, 1961), p. 197.

2. Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), p. 89.

3. Michael Walzer, “The Moral Standing of States,” in *International Ethics*, Charles R. Beitz et al., eds. (Princeton, NJ: Princeton University Press, 1985): pp. 217–37, p. 101.

4. Graham Greene, *The Comedians* (New York: Viking Press, 1966), p. 222.
5. For a more detailed discussion, see Jeff McMahan, "Intervention and Collective Self-Determination," *Ethics and International Affairs* 10 (1996): 1–24.
6. For a defense of a similar constraint on violent political action by domestic rebels who claim to be acting on behalf of some community, see Christopher Finlay, "Legitimacy and Non-State Political Violence" (unpublished manuscript).
7. Andrew Altman and Christopher Heath Wellman, "From Humanitarian Intervention to Assassination: Human Rights and Political Violence," *Ethics* 118 (2008): 228–57.
8. Michael Walzer, "The Moral Standing of States: A Response to Four Critics," *Philosophy and Public Affairs* 9 (1980): 209–29, 224.
9. Kok-Chor Tan, "The Duty to Protect," in Terry Nardin and Melissa S. Williams, eds., *Humanitarian Intervention: NOMOS XLVII* (New York: New York University Press, 2006), pp. 84–116.
10. Kantians reject the idea that luck can make a difference to the morality of action and thus think that attempts are as seriously wrong as completed crimes. But commonsense intuition and the law disagree. I cannot pursue this debate here.
11. Cited in David Luban, "Intervention and Civilization: Some Unhappy Lessons of the Kosovo War," in Pablo de Greiff and Ciaran Cronin, eds., *Global Justice and Transnational Politics: Essays on the Moral and Political Challenges of Globalization* (Cambridge, MA: MIT Press, 2002), pp. 79–115, 108.
12. Cited in *ibid.*, p. 109.
13. On the relevance of intention to proportionality, see Jeff McMahan, *Killing in War* (Oxford: Clarendon Press, 2009), sections 1.3 and 5.3.
14. *The U.S. Army/Marine Corps Counterinsurgency Field Manual* (Chicago, IL: University of Chicago Press, 2007), pp. 244–45.
15. I am greatly indebted to Allen Buchanan for comments on an earlier draft of this chapter.

