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A thesis submitted in partial fulfillment of the requirements for the Doctor of Philosophy degree in Philosophy

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THE ETHICS OF HUMANITARIAN INTERVENTION

Monograph

by

Amanda Porter

Graduate Program in Philosophy

A thesis submitted in partial fulfillment
of the requirements for the degree of
Doctorate of Philosophy

The School of Graduate and Postdoctoral Studies
The University of Western Ontario
London, Ontario, Canada

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Abstract

This thesis investigates ethical debates that surround the definition, the conduct, and the occasions for humanitarian military intervention. I argue that properly-called humanitarian interventions must be directed by partly-altruistic intentions, and just war theorists should resist the emerging trend that discards right intention as a central requirement in favour of a more consequentialist analysis. I argue that interventions must be conducted in a manner that is consistent with the humanitarian purpose and would be accepted by the innocent non-combatants who are themselves risked by the rescue effort. This morally requires that interveners weigh harm to non-combatants particularly heavily in their proportionality assessments, even if that harm is merely an unintended side-effect of otherwise permissible acts, or even if that harm is primarily attributable to an aggressor's anticipated unjust reprisal to intervention. The extraordinary justice of an intervener's cause cannot license mass killing, and defenders of intervention should resist the urge to privilege abstract principles above policies that might better protect the most basic interests of innocent persons. In the end, I contend that the justified occasions for full-scale intervention will tend to be restricted to cases of mass-atrocities.

Keywords

Humanitarian intervention, just war tradition, right intention, pacifism, proportionality.

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Introduction

In an often-cited paper, Peter Singer provocatively argues that, when it comes to saving lives, distance is morally insignificant.¹ He argues that just as a passerby ought to save a drowning child from a pond, so too are we morally obliged to contribute to relief efforts to save distant others from preventable deaths. In both cases, he argues that the good at stake is enormous, and the cost relatively small. Though it is also intended to save distant others from death, humanitarian military intervention is much more difficult to justify than is the humanitarian aid that Singer recommends. Unlike humanitarian aid, military rescue attempts often pose considerable danger for both the rescuers and the beneficiaries. Many who endorse Singer's articulation of the duty to aid distant others may reject the permissibility of humanitarian intervention. As David Luban writes, "[d]istributive justice may require your money, but it cannot require your life."² This thesis investigates some of the reasons military intervention for humanitarian ends inspires disagreement even among those who are generally convinced that we have duties to aid distant others. In particular it is concerned with the manner in which intervention should be conducted, and the occasions that might rightly call for intervention.

The first chapter specifies a definition of humanitarian intervention. Upon hearing the general topic of my thesis, colleagues often rhetorically reply, "Has there ever *been* a humanitarian intervention?" Often implied is the view that properly-called humanitarian interventions must be entirely altruistic and that since a state's mobilization

¹ Peter Singer, "Famine, Affluence and Morality," *Philosophy and Public Affairs* 1, no.3 (Spring, 1972), 229-243.

² David Luban, "Intervention and Civilization: Some Unhappy Lessons from the Kosovo War," in *Global Justice and Transnational Politics*, ed. Pablo De Grieff and Ciaran Cronin (Cambridge, Massachusetts: MIT Press, 2002), 94.

of its army is never entirely selfless, there never has been a true instance of humanitarian intervention. I think this is mistaken and that rightly-called humanitarian interventions need not be wholly and exclusively altruistic. Nonetheless, I argue that humanitarian intentions are an important component of rightly-called humanitarian interventions, and that any additional, self-interested intentions must be morally consistent with the interests and rightful autonomy of those intended as the central beneficiaries of the action.

In his paper “Ending Tyranny in Iraq”, Fernando Tesón argues that the 2003 invasion of Iraq was justified as an instance of humanitarian intervention.³ He argues that the invasion had a humanitarian rationale to free the victims of tyranny and defend the free world from terrorists by forcibly spreading democracy into rogue states which act as breeding grounds for terrorism.⁴ In response, Terry Nardin argues that Tesón drastically extends the traditional understanding of humanitarian intervention which, he argues, involves a much more limited strike against the perpetrators of ongoing or imminent mass atrocities as a means of saving *others* from unjust aggression (rather than as a means of protecting the intervening state itself from unformed and distant harm).⁵ Nardin argues that Tesón’s view might be better described as defending ‘reform intervention’ or ‘revolutionary intervention’. He contends that Tesón’s position belongs in the literature on empire, rather than that on humanitarian intervention. In his rebuttal, Tesón dismisses Nardin’s complaint as “merely terminological,”⁶ insisting that the central question is not whether the invasion of Iraq is an instance of humanitarian intervention, but whether it is

³ Fernando Tesón, “Ending Tyranny in Iraq,” *Ethics and International Affairs* 19, no. 2 (September, 2005), 1-20.

⁴ *Ibid*, 11.

⁵ Terry Nardin, “Humanitarian Imperialism,” *Ethics and International Affairs* 19, no.2 (September, 2005), 21-26.

⁶ Fernando Tesón, “Of Tyrants and Empires,” *Ethics and International Affairs* 19, no.2 (September, 2005), 27.

justified. “I don’t particularly care about labels,”⁷ Tesón writes.⁸ Yet, he continues to use the term ‘humanitarian intervention’ to describe the 2003 invasion. Throughout his rebuttal this continued use of the term might merely be careless use of language, but his refusal to give it up also enables him to trade on the qualified moral approval that it often evokes. The terminological discussion is certainly not the pivotal moral debate about the Iraq war. Still, it is an important one given that the term ‘humanitarian intervention’ often carries a positive connotation and considerable rhetorical force. The first chapter attempts to articulate a definition of humanitarian intervention that is thick enough to account for the qualified positivity the term often inspires, but also not so thick as to suggest that rightly-called humanitarian interveners must be, in every respect, above criticism or blame.

The second chapter reviews various pacifist arguments against military force in general, and humanitarian intervention in particular. It is often argued that military action cannot help itself to the language of humanitarianism; that war is, by its nature, non-humanitarian. While there could be a clear tension between humanitarian goals and military means, I argue that force can coherently be used in defense of humanitarian ends, and that circumstances may be sufficiently dire that military force will be the lesser of two evils. I contend that military intervention can be welcomed by those who are themselves endangered by the rescue effort when the alternative is, for example, near-certain death by a murderous mob. Indeed the (reasonably believed) consent to intervention by those who are supposed to be its beneficiaries is morally required. I

⁷ Ibid, 28.

⁸Against the charge of imperialism, Tesón writes, “...a world without a hegemon but replete with dictators is worse than a world in which a hegemon exercises beneficial influence. If being a humanitarian imperialist means advocating that the hegemon use its might to advance...freedom, human rights, and democracy then I am a humanitarian imperialist.” Ibid, 30.

argue that pacifism fails to adequately equip the targets of aggression, but also that the humanitarian purpose places special restraints on the permissible conduct of intervening military agents.

In the third chapter I examine the just war tradition's requirement of proportionality and reasonable prospect of success. I argue that humanitarian interveners must satisfy a thicker conception of proportionality than self-defenders, so humanitarian intervention is not necessarily justified whenever revolution is. I argue that humanitarian interveners are required to give considerable weight to anticipated reprisals and to weigh harm to non-combatants particularly heavily. This thick conception of proportionality makes certain kinds of modern military tactics morally off-limits to humanitarian interveners, such as the use of overwhelming air power. This conception of proportionality may sometimes require interveners to limit themselves to modest goals that risk few lives, if grander goals are likely to leave significant carnage in their wake.

In the fourth and final chapter I examine the justified occasions for intervention. I argue that the occasions for intervention should generally (though not absolutely) be limited to situations of ongoing or imminent mass atrocities. Fernando Tesón argues that humanitarian intervention should be permissible against non-mass atrocity committing tyrannies, when, among other conditions, the victims of tyranny want intervention and when intervention satisfies the requirement of last resort and proportionality.⁹ I argue that, while Tesón's position is not categorically mistaken, I show that his conception of proportionality is problematic. A policy of full-scale intervention against tyrannies the

⁹ In addition to his previous works cited, see Fernando Tesón, *Humanitarian Intervention: An Inquiry Into Law and Morality*, 3rd ed. (Ardsley, New York: Transnational Publishers, 2005); Fernando Tesón, "Eight Principles for Humanitarian Intervention," *Journal of Military Ethics* 5, no. 2 (2006), 93-113.

world over is unlikely to satisfy a robust conception of proportionality given the harms that are predictably inflicted by the use of military force.

Against pacifist criticism, I argue in the second chapter that war can be restrained, but I do not pretend that modern war is an act of surgical precision. Some argue that humanitarian intervention should be likened to police action rather than war,¹⁰ but I think this is mistaken because it unrealistically softens the impression of what intervention is likely to entail. If humanitarian intervention can be justified, it must be justified in a way that openly acknowledges its destructiveness, a perplexing and horrible fact that understandably leads many to endorse pacifism.

In an attempt to persuade the Virginia House of Burgesses to send troops into the American Civil War, Patrick Henry is attributed as saying, “give me freedom or give me death!”¹¹ Individuals or unified communities may fairly make such claims, and they may choose to risk their lives for the sake of political freedom. But if Henry’s quotation is re-imagined from the perspective of third-party interveners attempting to root out a non-atrocity-committing tyranny, it might be ‘Give *you* freedom, even though it’s going to be bloody.’ Something goes morally amiss when Henry’s sentiment is imagined from a third-party perspective, and for a variety of reasons interveners cannot kill people to free them from tyranny. They cannot, as one American major put it, ‘destroy the town to save it.’¹² In general, the occasions for full-scale military intervention must be

¹⁰ George R. Lucas Jr., “From *jus ad bellum* to *jus ad pacem*: re-thinking just-war criteria for the use of military force for humanitarian ends,” in *Ethics and Foreign Intervention*, ed. Deen K. Chatterjee and Don Scheid (Cambridge: Cambridge University Press, 2003), 73. For a similar view see, J. Bryan Hehir, “Intervention: From Theories to Cases,” *Ethics and International Affairs* 9, no.1 (March, 1995), 7.

¹¹ Speech available online at <http://www.history.org/almanack/life/politics/giveme.cfm> (accessed October 23, 2010).

¹² Attributed to an American army major in Vietnam by Peter Arnett in “Major Describes Move,” *New York Times*, February 8 1968.

particularly egregious, and even in the face of egregious atrocities, interveners are bound not only to pre-empt or stop aggression but to minimize harm to innocents.

I argue that moral philosophers who engage the ethics of war should pay considerable attention to how their theorizing may be employed in the world. Arguments that rely heavily on abstract thought can produce conclusions that would be extraordinarily dangerous in the world in which we live. At the same time, arguments that involve detailed thought experiments can be valuable insofar as they reveal discrepancies between actual military ventures and the ‘ideal’ case. In doing this, abstract theorizing about remote possibilities may help challenge the half-truths so often furthered by government spokespeople. I do not contend that abstract theorizing is utterly misplaced in the ethics of war literature, but I do think that philosophers should consider the consequences that may follow from the adoption of their views. This is not always a responsibility that philosophers acknowledge.

This thesis is not centrally concerned with the legal status of humanitarian intervention.¹³ Chapter VII of the UN Charter permits war in self-defense, and wars authorized by the Security Council when these address threats to international peace and security.¹⁴ Various agreements prohibit states from terrorizing their citizenries, but nonetheless prohibit third parties from intervening militarily on behalf of the victims.¹⁵ Even the 1948 *Convention of the Prevention and Punishment of the Crime of Genocide* permits the prosecution of the perpetrators of genocide, but does not authorize armed

¹³ For a detailed work on this subject see Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (New York: Oxford University Press, 2001).

¹⁴ Taylor Seybolt, *Humanitarian Military Intervention: The Conditions for Success and Failure* (Oxford: Oxford University Press (SIPRI), 2007), 9-10. See also, *Charter of the United Nations*, Chapter VII: <http://www.un.org/en/documents/charter/chapter7.shtml>. (accessed 23 October 2010).

¹⁵ See, for example, *Declaration on Principles of International Law, Friendly Relations and Co-Operation Among States in Accordance with The Charter of the United Nations*. Available at <http://www.hku.edu/law/conlawhk/conlaw/outline/Outline4/2625.htm> (accessed October 18, 2006).

intervention to stop genocide.¹⁶ The interventions approved by the Security Council in the 1990s have been formally authorized under Chapter VII analyses, rather than under any independent doctrine of humanitarian intervention.¹⁷ This continued interpretation of what constitutes a ‘threat to international peace and security’ has led some to argue that there is in fact a customary law or precedent for humanitarian intervention, even if the right does not exist in any explicit, codified form.¹⁸ This thesis is centrally interested in the moral debate, though in many ways the moral and the legal debates are connected. Eventually, the purpose of the moral debate is to critically examine current law and determine whether it is morally defensible. I present this thesis as a contribution to what is, and must be, a multi-disciplinary discussion.

¹⁶ Charles B. Shotwell and Kimberly Thachuk, “Humanitarian Intervention: The Case for Legitimacy” *Strategic Forum* 166, (July 1999), 3 Available at <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA394703&Location=U2&doc=GetTRDoc.pdf>

¹⁷ Thomas Weiss, *Humanitarian Intervention* (Cambridge: Polity Press, 2007), 47-48.

¹⁸ Fernando Tesón has defended the existence of a customary right of intervention since at least 1988. See, *Humanitarian Intervention*, 1st ed. (Dobbs Ferry, New York: Transnational Publishers, 1988), 127-200.

Chapter 1

Defining Humanitarian Intervention

1.1 Introduction

This first chapter attempts to determine a conceptually and morally tenable definition of humanitarian intervention. Although in common conversation the term ‘humanitarian intervention’ sometimes refers to the work of bodies like the Red Cross, here it describes the use of military force to end humanitarian atrocities, and I reserve the term ‘humanitarian aid’ to describe the work of organizations such as the Red Cross. The fairly common, sympathetic response that is elicited by the term ‘humanitarian intervention’ makes it vulnerable to political exploitation, and its exploitation has led some to believe that any action publicized as ‘humanitarian intervention’ is really just thinly-veiled cultural imperialism- or worse. Such critics may see no point in articulating a more careful definition. However, I argue that the term ‘humanitarian intervention’ is worth salvaging from political misuse because it is also associated with an important practice (or at least an idea) that is worth preserving. The goal of this chapter is to discern how the term should be defined and employed. To begin, I broadly identify some of the current meanings of the term and highlight their central points of disagreement.

I argue that there are five possible conceptions of humanitarian intervention and that most actual conceptions of humanitarian intervention can be understood as variations on these five. The first conception requires both entirely altruistic intentions and a perfect outcome. The second requires entirely altruistic intentions only. The third requires the desired outcome and only some altruism, while the fourth requires only some

altruistic intention. The fifth requires only a good outcome. Multiple variations on these five general positions are possible. For example, one can argue that humanitarian intervention requires both a decent but imperfect outcome and some altruistic intention, or perhaps that it requires a purely altruistic intention with a relatively good but not completely bloodless outcome.

In the end, I argue that properly called humanitarian interventions are interventions against ongoing or imminent atrocities in a foreign state that involve considerable altruism and a morally consistent agenda. Interveners must intend, and publicly declare their intention, to protect potential victims of atrocity and/or attempt to contain the aggressors. While I think that many already assume that humanitarian interventions must have publicly declared humanitarian intentions, the view is worth articulating in part because there is a growing movement among some academic just war theorists that questions or even explicitly rejects right intention as one of the necessary features of a just war.¹⁹ I also argue that humanitarian interventions must have reasonable prospects of causing only proportionate harm, and I follow George R. Lucas in his insistence that they also require careful planning which, at the very least, seeks to avoid even the unintentional commission of injustices such as the ones it tries to stop.²⁰

Before describing the five general conceptions of humanitarian intervention, I must say something about the view that humanitarian intervention exists whenever an intervening agent identifies it as such, as though calling it a ‘humanitarian intervention’ makes it so. There seem to be two possible versions of this view, one dangerously naïve

¹⁹ David Mellow, “Iraq: A Morally Justified Resort to Force,” *Journal of Applied Philosophy* 23, no.3 (2006), 300; Jeff McMahan, “Just Cause for War,” *Ethics and International Affairs* 19, no.3 (2005), 5.

²⁰ George R. Lucas Jr., “From *jus ad bellum* to *jus ad pacem*: re-thinking just-war criteria for the use of military force for humanitarian ends,” (see n.10) 78.

and the other much more cynical. On the one hand, one might believe that if the agents of the intervening state call it a humanitarian intervention, then it is one. On this entirely implausible view, virtually anything would or could count as humanitarian intervention, so long as it was publicized as such.

On the other hand, one might argue that humanitarian intervention exists whenever it is in a state's interest to invade another country under the guise of humanitarianism. This definition strips the term of any moral worth and, though it solves the naivety of the first definition, it essentially denies the possibility of an intervention that centrally intends the halting of humanitarian atrocities (or at least it assumes that, if such an action *were* ever to exist, it wouldn't be rightly called a 'humanitarian intervention'). Here too, anything would count as a humanitarian intervention though its being rightly called one would do nothing to recommend it. Neither the naïve nor the cynical versions of the 'calling it makes it so' definitions of humanitarian intervention are adequate. Both rob the term of any moral currency.

1.2 Five Conceptions of Humanitarian Intervention

In order to save its moral currency and to protect against its political exploitation, some argue that a rightly-called humanitarian intervention must have *entirely altruistic* ends and that these ends must be *sufficient* to motivate the intervening agent(s) involved. George R. Lucas Jr. sometimes seems to adopt this view, arguing that,

Intervening nations and their militaries should possess no financial, political, or material interests in the outcome of the intervention, other than the publicly proclaimed humanitarian ends, nor should they stand to gain in any way from the outcome of the intervention, other than from the general

welfare sustained by having justice served, innocent peoples protected from harm, and peace and order restored.²¹

Anthony Arend and Robert Beck similarly require pure altruism of humanitarian interveners, insisting that “the intervention’s purpose must be essentially limited to protecting fundamental human rights.”²² This constraint on appropriately labelled humanitarian interventions is largely responsible for Arend and Beck’s refusal to describe military actions that are commonly referred to as humanitarian interventions as such, and to conclude that “...genuine instances of humanitarian intervention have been ‘few and far between,’ if they have occurred at all.”²³

In addition to a kind of Kantian purity of heart utterly unpolluted by self-interest, this first view requires that agents are successful in their intentions because they halt atrocities *and* injure a minimal number of innocents, if any at all. Call this first conception the *Successful Altruist* view. Not only must the interveners, on this first view, aim *only* at halting atrocities, but they must actually achieve their aim. The intention, the act, and the consequences must be, in a sense, perfectly synchronized.²⁴

Imagine, for example, an intervention against a campaign of ethnic cleansing underway on a far-off, isolated island of no political significance to any other country. Imagine that the island’s humanitarian crisis poses no material threat to international peace or security. Still, the altruistic agent successfully intervenes, injuring no innocents. The absence of any additional motives for intervention- apart from a desire to stand up for the victims of atrocity- enables us to see more clearly that the humanitarian intention

²¹ George R. Lucas Jr., “From *jus ad bellum* to *jus ad pacem*,” 87.

²² Anthony Arend and Robert Beck, *International Law and the Use of Force* (London and New York: Routledge, 1993), 113

²³ *Ibid*, 114.

²⁴ Nicholas Wheeler is a good critic of this view in his book *Saving Strangers: Humanitarian Intervention in International Society* (New York: Oxford University Press, 2000).

is sufficient and wholly responsible for the intervention. Certainly *if* such a wholly selfless action were successfully executed, leaving no innocent dead, then I think it would be rightly described as a humanitarian intervention.

One might argue, however, that it is wrong- too strict and demanding- to reserve the term 'humanitarian intervention' entirely for actions that are successful and kill no innocents. A second possible view is that humanitarian interventions can include actions that despite having purely altruistic intention and despite making the utmost effort, including the acceptance of significant personal risk, are ultimately unsuccessful. Call this second conception the *Unsuccessful Altruist* view. An intervention might be unsuccessful either because it fails to end the atrocities, or, rather differently, in ending the atrocities it causes a significant amount of unintentional harm to the very victims it seeks to protect. On this second view, despite its unfortunate consequences, the altruistically intended action against ongoing atrocities is sufficient to qualify the action as a humanitarian intervention. The harm it causes is of course regrettable, but does not morally indict its agents nor disqualify it as a humanitarian intervention. Supporters of this view might insist that it is better to make some rather than no military effort against atrocity, even if ultimately it only serves an expressive function. Failed attempts at rescuing victims of atrocity, on this second view, are humanitarian interventions, nonetheless.

Both of these first two conceptions of humanitarian intervention are criticized as being too exacting, for losing in realism what they gain in moral credibility. At least in our current world order, it seems that states (or their organizations) are the only possible agents of intervention and it's reasonable to doubt that states, as we know them, could

embark on risky and *entirely* selfless military campaigns. As Mona Fixdal and Dan Smith acknowledge, “Humanitarian intervention is never purely humanitarian.”²⁵ Indeed many add the normative claim that states *ought* not to be the kinds of institutions that embark on risky and entirely selfless military campaigns.²⁶ Two possible reasons might support this view. The first is that a humanitarian intervention should answer to what Allen Buchanan has called the internal legitimacy problem, that is, the problem of justifying to the members of the intervening state the expense and serious risks of a military campaign.²⁷ The second, related reason to insist that interveners have some self-interest in the campaign is that self-interest may more reliably sustain the political will necessary to satisfactorily carry through a military action. In the absence of any self-interested reason for intervention, interveners might retreat and return home at the first sign of danger. Interventions in Rwanda and Somalia are often described as cases where interveners had little self-interested reason to stick around, and so withdrew quite quickly after meeting resistance.

For some, the necessary or likely involvement of a state’s self-interest simply means that genuine humanitarian intervention in our current world order is impossible, but for others it means that a less idealized conception of humanitarian intervention is required. A third possible view, therefore, is that an altruistic concern for the plight of victims should be necessary and dominant, but needn’t be the *only* goal of the humanitarian intervener. As C.A.J. Coady concedes, the humanitarian motive “need only

²⁵ Mona Fixdal and Dan Smith, “Humanitarian Intervention and Just War,” *Mershon International Studies Review* 42, (1998), 284.

²⁶ Tony Blair, “Doctrine of the International Community” (speech, Economic Club, Chicago Hilton, April 22, 1999) <http://www.globalpolicy.org/component/content/article/154-general/26026.html>.

²⁷ Allen Buchanan, “The Internal Legitimacy of Humanitarian Intervention,” *The Journal of Political Philosophy* 7, no.1 (1999), 71-87.

be dominant, not exclusive.”²⁸ Or, as Thomas Weiss argues, even if the altruistic intention isn’t *dominant*, it is nonetheless very important: “As motivations are inevitably mixed, the humanitarian rationale need not be exclusive, but it should be explicit.”²⁹

Let’s call the view that requires some altruism coupled with the actual achievement of the desired outcome the *Successful Partial Altruist* view. An advantage of this view is that it better corresponds with actual historical examples widely (though not uniformly) described as genuine humanitarian interventions, such as Tanzania’s 1979 intervention in Uganda.³⁰ In such cases, part of the intervening state’s intention is to pursue its interests, such as, for example, its interest in stopping a flood of refugees or its interest in preventing the expansion of violence across state borders.

Alternatively, it might be argued that some altruistic intention to end atrocities should be, on its own, sufficient for a military action to be rightly called a humanitarian intervention. On this fourth view, *neither* real success nor Kantian purity of heart is required. Call this the *Unsuccessful Partial Altruist* view. This fourth conception of humanitarian intervention is the least demanding so far, requiring neither purity of heart nor the achievement of the desired outcome. Its most plausible defence might involve imagining a case where interveners, despite their making the utmost effort and taking on substantial personal risk, ultimately were unable to achieve their goal perhaps because, upon reconsideration, the full execution of the plan would have resulted in an

²⁸ C.A.J Coady, “The Ethics of Armed Intervention,” *Peaceworks* 45, (July 2002): 5, <http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=30075> (accessed on October 28, 2010).

²⁹ Thomas G. Weiss, *Military-Civilian Interactions: Humanitarian Crises and the Responsibility to Protect*, 2nd Ed., (Lanham: Rowman and Littlefield, 2005), 34.

³⁰ Though, Weiss himself denies that Tanzania’s campaign was properly described as an instance of humanitarian intervention, *Ibid*, 181-189. Nicholas Wheeler defends a more common view of Tanzania’s campaign in *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 111-136.

indefensible number of deaths.³¹ A mission might also fail to protect innocents because it is understaffed or because it wrongly attempts to maintain neutrality between aggressors and their victims, employing a peacekeeping model where there is no peace to keep.

Both the *Unsuccessful Altruist* and the *Unsuccessful Partial Altruist* views might be criticized for failing to require that, in addition to certain kinds of intentions, humanitarian interventions require successful outcomes. A fifth and final possible view, therefore, might maintain that it is simply the overall consequences that qualify an action as a humanitarian intervention. Call this the *Good Outcome* view. There seem to be two versions of this position.

The first version, advanced by some consequentialist-minded pacifists, holds that what matters morally is not what you intend but what you actually accomplish. The idea is that violence that predictably leaves any innocents dead cannot call itself humanitarian, no matter how altruistically intended. Robert Holmes, for example, argues that “intentions are of questionable relevance to the moral assessment of acts” and that, “if one prohibits the killing of innocents, he cannot then invoke good intentions to justify proceeding to kill them.”³² Effectively Holmes denies that any realistic military action can be called ‘humanitarian’ or that any reasonably possible war could be just since military actions (at least as they currently proceed) inevitably kill innocents. Holmes’s view on humanitarian intervention would seem to be that since even a military action intended to halt atrocities cannot reasonably avoid killing innocents, there simply is no such thing as justified armed intervention.³³

³¹ Determining a defensible number of deaths may well be a near-impossible task, not to mention morally repulsive for many. Proportionality assessments are discussed in Chapter Three.

³² Robert Holmes, *On War and Morality* (Princeton: Cambridge University Press, 1989), 11.

³³ I take up Holmes’s pacifist challenge in greater depth in Chapter Two.

The second version of the *Good Outcome* view, advanced by decidedly more militaristic theorists, is that what matters ultimately is that good things happen as a result of military action. So long as, overall, humanitarian goals are served, it is irrelevant how the interveners conceptualize their actions or describe their motivations. Militarists might continue that we only care about altruistic intentions because we associate them with certain kinds of good outcomes, but if the desired outcomes can be brought about without any altruism at all, then so be it. Some might dismiss the concern with intentions as a kind of academic fussiness, prissy moralism, or unrealistic idealism, if more selfish intentions can be said to do as well or better.³⁴ After all, it might be argued, it is the welfare of the victims, not the purity of the intervener's character, which is our main concern.

Both of the *Good Outcome* views rightly impress the importance of actually achieving humanitarian ends and taking responsibility for the predictable consequences of our actions, something that the dominant debate about legitimate intentions certainly under-appreciates. Indeed, in the context of something as severe as military force, faith in the Kantian idea that the good will is all that matters morally seems at best irresponsible, and at worst, positively dangerous.³⁵ Yet, the *Good Outcome* view might also give the name of humanitarian intervention to a military action that was solely intended to usurp a country's oil or diamond resources, for example, but incidentally and unwittingly ended atrocities. While one should always be pleased to see the end of

³⁴ Brian Orend has argued that some war realists insist that the humanitarian consequences of war would be *less* severe if military action was de-linked from claims about morality. The idea is that morality encourages a hot-blooded, crusading mentality that is best left out of military matters. Orend, *The Morality of War* (Peterborough: Broadview Press, 2006), 230.

³⁵ Immanuel Kant, *Groundwork for the Metaphysic of Morals* (New York: Harper and Row, 1964), 62.

humanitarian atrocities, it nonetheless seems dishonest and politically dangerous to describe such actions as humanitarian interventions.

Both the pacifist and the militarist versions of the *Good Outcome* view wrongly gloss over morally significant differences between various kinds of military campaigns. Intention and motive are certainly not all that matter morally, but sometimes they rightly make a difference both with respect to how we describe actions and to whether we think them justified. For example, a person who sits horrified as she is forced to watch her friend drown (perhaps because she cannot swim herself and has no accessible life preserver) *witnesses* a death. Contrastingly, a qualified life guard with a life preserver at her feet who happily sits and watches a friend drown in order to inherit her friend's fortune *allows* a death or, arguably, *kills*. The person who happily watches her friend drown might also be described as merely witnessing a death, but this would hardly be the most informative or relevant description of her act. The *Good Outcome* views dismiss how the intentions and motives of agents can make a material difference not only to our moral evaluation of particular acts, but to how we describe what actually happened.

A parallel from criminal law might be useful here. In order for a crime to be proven, prosecutors must demonstrate that the accused completed *both* the physical element required for the crime, or *actus reus*, and the mental element, or *mens rea*. Failure to adequately demonstrate that the accused possessed the 'guilty mind' at the time of the relevant action disqualifies that action as a crime. Though the contexts are rather different, and I'm not suggesting that humanitarian intervention ought to be considered criminal, the parallel seems to be that both domestic crimes and humanitarian

interventions require the conjunction of the appropriate mental and physical elements. Neither element on its own suffices.

After rejecting both the naïve and cynical versions of the ‘calling it makes it so’ conceptions of humanitarian intervention, I’ve outlined five basic views. *The Successful Altruist* view requires perfectly executed Kantian altruism, whereas the *Unsuccessful Altruist* view requires only altruism. *The Successful Partial Altruist* view requires successfully executed partial altruism, and the *Unsuccessful Partial Altruist* view requires only some altruism. Finally, I described two versions of the *Good Outcome* view, the first requiring no killing of innocents, and the second requiring merely a favourable benefit to harm ratio (setting aside for the moment the difficult question of how such ratios can be measured at all). Multiple variations and qualifications are made to these possible conceptions of humanitarian intervention, but drawing out these basic positions helps to illuminate some of the important points of disagreement, including whether rightly called interventions require purity of heart, or some altruism, and/or whether they require actual success, and if so, how much.

1.3 Objection #1: States Don’t Have Intentions

There are two important objections that can be made to the discussion so far. The first is that states and their agents, who are currently the only viable agents of intervention, simply aren’t the kinds of entities that can have intentions.³⁶ Any talk of a

³⁶ There is increasing concern that private mercenary armies may soon overtake states in their capacities to engage in humanitarian interventions. While the use of private, for-profit armies raises dire concerns about accountability, their use is increasingly common by the United States government in its current campaign in/invasion of Iraq. At least one such company (Blackwater USA) has expressed an interest in being contracted to engage in ‘humanitarian interventions’. “Private Security” on *The Current* CBC Radio, May 11, 2006.

state's 'purity of heart' involves a kind of category error, since states simply aren't unified entities that have mental states we can meaningfully describe as either pure or impure.

I use 'intervener's intention' in this discussion to describe what can be reasonably taken to be the collective intentions of a state's top decision-makers who endorse and authorize a military campaign. In a democracy these intentions may vary amongst the individual agents who together make up a single government, so I take it that a state's intentions are likely to be very mixed and rather fluid. Also important is that these intentions may or may not reflect the wishes of the majority of a country's citizens. A state's governing agents, for example, can intend and initiate an aggressive invasion of another country even when a substantial number of the citizenry are opposed to it or, at least, do not have an informed opinion about it. In such a case, though the state in question invaded another, it would be wrong to say that the invasion was sustained by a collective intention shared by all (or even most) of the state's members. It seems that there are acts committed by and rightly attributed to states, even though the state as a whole, citizenry and government together, cannot be said to have stood behind it in a morally robust way. In the current state of affairs, given the wide discrepancy of opinion that can exist between citizens and their governments, it's descriptively true that state actions needn't necessarily be propelled by a collective intention shared by all or most of the state's members. The desperate need for greater accountability of politicians and for genuine democratic involvement extends beyond the scope of my project here, but it is certainly of central importance in the wider project of promoting genuine, long-term, international peace. At any rate, reference to a 'state's intentions' or 'an intervener's

intentions' is used here as a short hand way of discussing the collective intentions of a state's top decision-makers when they initiate and perpetuate military action.³⁷ Again, I take it that in real world cases such intentions are very likely to be rather mixed affairs.

Matters are complicated when the objectives of a state's government change or expand *after* the initiation of a military action whether humanitarian or not. This phenomenon of "mission creep" poses an interesting problem for defining humanitarian intervention. Do humanitarian intentions or objectives need to be present from the very beginning of a campaign for it to be rightly called a humanitarian intervention? Suppose a state's intentions in carrying out a military action change so that a rightly called humanitarian intervention could grow out of what was initially a non-humanitarian military action. Logically it seems possible for a state's intentions to alter so dramatically after the initiation of a campaign that a rightly-called humanitarian intervention might be said to emerge out of a non-humanitarian military campaign. Practically, however, the prospect seems unlikely. It seems more likely that a non-humanitarian mission might be found to have some very good humanitarian consequences and that these consequences get trumped up as motivating or central goals as a means of 'selling' the war. Humanitarian emergencies might also develop in part because of a state's aggression (perhaps because the military campaign demolished power plants and hospitals, or worsened a food shortage), and the aggressing state might then rightly accept responsibility for addressing the resulting humanitarian crisis. Again, it seems dishonest and conceptually confused to refer to a state's attempts to provide for the very people it

³⁷ I set aside for the moment the extent to which individual soldiers must share the intentions of the intervening state's government, and the related question of the extent to which they can be considered rightly responsible for the consequences of actions authorized by higher ups.

deprives of basic life-sustaining services as a humanitarian intervention, however important and praiseworthy such provision is.

1.4 Objection #2: Narrow Conception of State Interests

A second objection that might be made to the definitional discussion so far is that I have interpreted the concept of state interests too narrowly. One might argue that it *is* in a state's interest to halt humanitarian atrocities even when they pose no threat to its own or its allies' peace and security. States can have an interest in upholding the human rights of peoples with whom they are wholly unconnected, one might argue.

While I think that broadening the scope of a state's interests to include the upholding of human rights everywhere reveals a commendably cosmopolitan spirit, ultimately, I do not think it is accurate to say that it is in a state's *interest* to intervene against humanitarian atrocities on far-off, isolated islands with which it is utterly dissociated. In the absence of anything like a United Nations military, it may well be that states do have *moral responsibilities* to attempt to protect victims of atrocity, but this is not to say that it is always in a state's *interest* to do so. Likewise, simply by virtue of being at the right place at the right time, individuals can acquire moral responsibilities to attempt to aid others, even if it cannot reasonably be said to be in the individual's *interest* to attempt a rescue, especially if the rescue attempt poses some personal risk. One might hold a thoroughly Socratic view wherein everything good one can do is in one's interest because it nurtures or brings harmony to one's soul. It is difficult to see, however, how this Socratic interpretation of interests can meaningfully apply to states. It would be bizarre to say that a state ought to intervene or else its soul will be corrupted. In short,

it's mistaken to conflate responsibility with interests. States have interests in those things that support or facilitate the functions for which they are supposed to exist, and it is not a defining function of a state that it attempts to prevent or halt all humanitarian atrocities the world over. States, however, when they are appropriately situated to aid, may well have responsibilities that extend beyond their interests.

Critics of my view may defend a currently popular argument that it *is* in the security interests of Western states in particular to intervene against the humanitarian atrocities committed within so-called rogue or failed states. Tyrants or chaotic anarchies left unchecked weaken the stability of the international order, it is argued, either by emboldening tyrants who might go on to undermine their neighbours' rightful sovereignty, by providing opportunities for drug trafficking, by producing environments where health pandemics thrive, or by providing environments in which anti-Western terrorism might bloom.³⁸ There is certainly truth to such claims, and I appreciate the pragmatic benefits of linking humanitarian atrocities to the financial, health and security interests of Western powers. Westerners might be more inclined to care about the plight of distant others if we can be made to see that our vital interests are also at stake. I fear, however, that it is something of an overstatement to say that halting humanitarian atrocities the world over is, always and everywhere, in the interests of Western states, given that Western powers, including Canada, seem content to continue 'business as usual' with brutal tyrannies when it is deemed to be economically beneficial. The containment or removal of some genocidal tyrants may well coincide with the security

³⁸ The Will to Intervene Project (Roméo Dallaire and Frank Chalk, Co-Directors), *Mobilizing the Will to Intervene: Leadership and Action to Prevent Mass Atrocities* (Montreal: Montreal Institute for Genocide and Human Rights Studies, 2009), 3-14, <http://migs.concordia.ca>.

interests of the West, but there is not always a necessary or robust connection between allowing atrocities to continue and the increased insecurity of Western states.

1.5 A Critical Defense of the Requirement of Partial Altruism

Ultimately I defend a *Partial Altruist* view of humanitarian intervention. Though an altruistic intention is one essential feature of what makes a military action an appropriately called humanitarian intervention, pure altruism seems an unrealistic standard, too ideal to be of much use. I argue that humanitarian interventions require morally consistent agendas, by which I mean that rightly called humanitarian interventions may involve additional, non-altruistic intentions when these intentions are morally (not merely logically) consistent with the intention to end atrocities and empower victims. Rightly called humanitarian interventions cannot involve additional intentions that are fundamentally at odds with the intention to rescue victims for their own sakes. They may, however, involve additional, extraneous or incidental intentions when these are not to the subject country's disadvantage and do not undermine the victims' autonomy.

Determining whether an intervener has a morally consistent agenda is not something that can be mechanically deduced since, in a technical sense, all sorts of intentions can be artfully construed as being consistent with the intention to aid and empower victims of atrocity. Ascertaining the consistency of an intervener's moral agenda will require critical analysis. For example, some creatively argue that the intention to take over a country's resources after the atrocities are ended would be morally consistent with the intention to rescue victims of atrocity. This might be

suggested when the state in question is so devastated by the intervention that it could not properly take care of itself. While it may well be that in some places temporary UN-led protectorates are necessary to help a country's citizens reorganize, this is, at least in principle, quite different from a project of foreign control by ambitious capitalists or zealous communists, for example. The intention to exploit a country's resources for private gain, or to annex and subjugate a country, is not morally consistent with the spirit of empowering and protecting victims of atrocity, no matter how well such consistency is defended by crafty spin doctors. A morally consistent agenda, however, may well include some strategic purpose in addition to the humanitarian end, such as, for example, the intention to reduce a flood of refugees over state borders.

Again, determining whether a state has a morally consistent agenda is not likely something that can be ascertained by using threshold conditions, though there are certainly extreme cases where a morally inconsistent agenda will be manifestly apparent to any reasonably impartial observer. Ascertaining whether interveners' actions do not disadvantage the subject country or undermine their reasonable autonomy is likely to be a qualitative and messy judgement. Agendas can be more or less consistent, more or less defensible as humanitarian. For example, interveners may not attempt to overtly usurp a subject country's resources, but they may demand access to its resources, or discounted rates for its resources as a kind of compensation for the risks and expenses accrued to them over the course of an intervention. The greater the scope and strength of such demands, the less morally consistent the humanitarian agenda appears.

My insistence on a morally consistent agenda might be objected to by Alex Bellamy and Fernando Tesón, using the distinction often made in moral and legal

philosophy between motives and intentions. Both Bellamy and Tesón have recently argued that what matters in humanitarian intervention is that a state's *intentions* are partly altruistic, its *motives*, they continue, are inconsequential.³⁹ They agree that while state leaders may be selfishly motivated, their *intentions* may be entirely legitimate and that it is *intention* that matters in describing and assessing state actions. Selfish motives, they agree, might morally indict state leaders' *characters*, but they are irrelevant to defining a state's actions unless, presumably, the motives grossly undermine the humanitarian outcome.

Tesón then controversially contends that the ongoing war in Iraq was and is a humanitarian intervention, and that those who deny this fail to comprehend the distinction between motive and intention. Tesón argues that even *if* the US government was *motivated* by a desire to gain power, or access to oil or to suppress a potential threat, its *intention* and its effect was to liberate oppressed people from tyrannical rule, and, therefore, it was a humanitarian intervention.⁴⁰ He insists, "It is bizarre to oppose the intervention in Iraq when it had the intent of deposing a horrific tyrant and did so, merely because the men leading the intervention had motives unrelated to the act of liberation."⁴¹ Later Tesón insists that, in fact, US agents' motives *were* partly humanitarian.⁴²

³⁹ Alex Bellamy, "Motives, Outcomes, Intent, and the Legitimacy of Humanitarian Intervention," *Journal of Military Ethics* 3, no. 3 (2004), 225. Tesón, *Humanitarian Intervention*, 3rd ed., 117-120. Fernando Tesón, "Ending Tyranny in Iraq," *Ethics and International Affairs* 19 (2005), 1-20. See also, Anthony Ellis, "War, Revolution, and Humanitarian Intervention," in *Humanitarian Intervention: Moral and Philosophical Issues*, ed. Aleksandar Jokic (Peterborough: Broadview Press, 2003), 18. David Mellow, "Iraq: A Morally Justified Resort to Force," *Journal of Applied Philosophy* 23, no. 3 (2006), 298-300.

⁴⁰ He writes, "...the intervention that I consider here is a good action (liberating people) performed out of a bad or non-altruistic motive (gaining power, or access to oil, or suppressing a threat)... Just as we do not acquit someone who did a bad deed just because he had a good motive, so we do not condemn a government who did a good deed just because he had a bad (or merely non-altruistic) motive." Tesón, "Ending Tyranny in Iraq," 7.

⁴¹ Tesón, "Ending Tyranny in Iraq," 10

⁴² He writes, "Liberating Iraq was always part of the motivation for the invasion." Ibid, 10.

Tesón is careful to insist that after liberating a people from atrocities humanitarian interveners can neither rightly abandon the newly liberated victims nor seek to impose their own brand of tyranny.⁴³ He rightly argues that imposing a new form of tyranny would negate the moral value of the initial act of rescue, transforming it into a mere stepping stone of a much more sinister plot. However, while I agree that there are no doubt certain personal and non-humanitarian motives that leaders might have that cannot, in and of themselves, be said to undermine an intervention's morally consistent agenda (such as, for example, incumbency, or a wish to make their mothers proud), I feel compelled to point out that not all non-humanitarian motives are created equal. While we might be too harsh to insist, as Kant did, that a morally estimable act must be motivated by duty and duty alone, we would certainly not be demanding enough if we supposed that a humanitarian action could be one that is widely motivated by, for example, a desire to secure more power in the Middle East. In identifying humanitarian interventions, one cannot simply bracket all unsavoury aims as 'mere motives' and then select and trump up the morally better ones as 'intentions'. While my insistence on a morally consistent agenda in humanitarian intervention is not wholly at odds with Bellamy or Tesón's view on the significance of motives, I think that they are wrong to argue that this distinction is underestimated or "crucial"⁴⁴ to the humanitarian intervention debate. It would truly seem that we were misdirecting our philosophical and political efforts if we were to spend our time sifting through leaders' motivational structures, deciphering and arguing about what counts as a mere motive and what as a full-blown intention. I prefer instead to simply put all of a state leader's goals on the table and make them subject to moral

⁴³ Ibid, 7, 13.

⁴⁴ Tesón, "Ending Tyranny in Iraq," 6.

scrutiny. We should abandon this misplaced talk of motives versus intentions, and replace it with the question ‘does the intervener have a morally consistent agenda that is centrally or importantly humanitarian?’

Another, somewhat different critic of my *partial altruist* view might argue that a state’s real intentions are virtually impossible to decipher, making intentions superfluous to identifying an action as a humanitarian intervention. Critics might argue that sinister or self-serving intentions can always be packaged or marketed in humanitarian-sounding language. As Bellamy himself warns, even Hitler “insisted that the 1939 invasion of Czechoslovakia was inspired by a desire to protect Czechoslovak citizens whose ‘life and liberty’ were threatened by their own government.”⁴⁵ Intentions, this objection says, are immaterial for defining and identifying humanitarian interventions because humanitarian intentions can all too easily be fabricated.

Admittedly the intentions of an intervening state may often be different from its expressed intentions. Again, calling a military action a humanitarian intervention doesn’t make it so. In this vein, many have convincingly argued that it is often the case that we can reliably ‘read-off’ an agent’s intentions by his or her actions.⁴⁶ As Brian Orend argues in a somewhat different context,

...intentions are not infinitely redescrivable, nor irreducibly private.... Agents are not free to claim whatever laudable intention they want in order to justify their actions, however heinous. Intentions must meet minimal criteria of logical coherence and, moreover, must be seen as being connected to patterns of actions that are publicly accessible.⁴⁷

⁴⁵ Alex Bellamy, *Just Wars: From Cicero to Iraq* (Cambridge: Polity Press, 2006), 200.

⁴⁶ See, for example, Elizabeth Anscombe, “War and Murder” in *War and Morality*, ed. Richard Wasserstrom (Belmont, California: Wadsworth, 1970), 51.

⁴⁷ Brian Orend, *War and International Justice: A Kantian Perspective* (Waterloo: Wilfred Laurier Press, 2000), 165.

Take again, the invasion of Iraq in 2003. Humanitarian concerns are often cited as central intentions in that campaign and indeed some academics, such as Tesón and David Mellow, justify it entirely in humanitarian terms.⁴⁸ However, many are distrustful of the claimed humanitarian intentions given that they were widely promoted only after other reasons given for the war proved misguided or false. Despite attempts to warn civilians about impending attacks, coalition bombing and ground warfare is argued to have foreseeably killed thousands of civilians.⁴⁹ In addition, it seems that relatively few preparations were made regarding how to protect and provide for civilians in the immediate post-combat setting.⁵⁰ Quite apart from the issue of the just cause for war, if one were to read-off the intentions from such actions, then it seems that one would be hard-pressed to call them robustly humanitarian even if there did lurk a genuine sympathy for Saddam Hussein's victims, and even if the military action provided some important humanitarian benefits.⁵¹ To borrow Kantian language for a moment, it seems that in the context of military action an intention is not to be understood as "a mere wish," but rather as "the straining of every means so far as they are in our control"⁵² to secure its realization. Sometimes determining what an agent's intentions are will involve serious

⁴⁸ Tesón, "Ending Tyranny in Iraq," 7. Mellow, "Iraq: A Morally Justified Resort to War," 294-298.

⁴⁹ Thomas Weiss, *Military-Civilian Interactions: Humanitarian Crises and the Responsibility to Protect*, 2nd ed. (Lanham, MD: Rowman and Littlefield, 2005), 172. The figure is much lower according to Human Rights Watch, *Off-Target: The Conduct of the War and Civilian Casualties in Iraq*, December, 2003, <http://hrw.org/reports/2003/usa1203/index.htm>. See also: Iraq Body Count Project, [www.iraqbodycount.org](http://iraqbodycount.org); The Opinion Research Business (ORB), *Update on Iraqi Casualty Data*. January, 2008, www.opinion.co.uk/newsroom.aspx (accessed October 29, 2010). The statistics for the number of Iraqis killed as a result of the war vary tremendously in part because they measure different time periods and they include or exclude different populations. The figures provided by the ORB are truly horrifying with an estimated one million Iraqis killed from March 2003 to August 2007.

⁵⁰ Human Rights Watch, *Hearts and Minds: Post-war Civilian Deaths in Baghdad Caused by U.S. Forces*, October, 2003, <http://hrw.org/reports/2003/iraq1003/>. See also: Weiss, *Military-Civilian Interactions*, 172-173

⁵¹ Tesón has argued that US planning for the post-combat period was 'imperfect' but denies that it reveals a lack of underlying humanitarian intention. "Ending Tyranny in Iraq," 13.

⁵² Immanuel Kant, *Groundwork of the Metaphysics of Morals*, trans. H. J. Paton (New York: Harper Torchbooks, 1964), 62.

moral work and admittedly it may be that in some difficult cases an agent's *real* intentions will forever be obscured. Often, however, it seems that intentions are not inalterably mysterious and inscrutable.

Tesón himself agrees that a state's intentions cannot simply be taken to be whatever a state publicly declares them to be. He says, "[w]ords lack magical power, so whether the intervention is humanitarian cannot depend on the government saying so."⁵³ Generally this point is meant to discourage people from assuming a state's intentions are benevolent simply because the state publicizes them as such. Yet, Tesón takes this insight in a rather unusual direction, insisting as he does that a state may engage in a humanitarian intervention without publicly declaring any humanitarian intention. State leaders, he says, may secretly possess humanitarian intentions but choose not to pronounce them if they think their publics or the international community wouldn't be supportive of war for humanitarian reasons.⁵⁴ That is, Tesón rejects the reliability of a state's stated intentions not only because states might attempt to exploit humanitarian causes for selfish benefits, but because of the possibility of essentially covert humanitarian wars. "[P]oliticians," he says, "have all kinds of reasons to prefer some rhetoric over another, usually based on their calculations about how best to sell their policies to the public."⁵⁵ Governments, that is, may have humanitarian justifications that they choose not to use.⁵⁶

⁵³ Tesón, *Humanitarian Intervention*, 3rd ed., 113-114.

⁵⁴ *Ibid*, 114.

⁵⁵ *Ibid*, 114.

⁵⁶ *Ibid*, 114. In "Ending Tyranny in Iraq" Tesón adds, "Suppose a government has two available justifications for a contemplated act. If it chooses to justify its behaviour under one of them, it does not follow that the act cannot be justified under the rationale it did *not* choose to invoke. The justification is still valid, and if it applies it may justify the act even if the government did not invoke it."(4)

There is some historical support for this claim. India's 1971 incursion into East Pakistan, Vietnam's 1979 deposing of Cambodia's Khmer Rouge, and Tanzania's campaign into Uganda and removal of Idi Amin, were all ultimately (though not entirely) defended as actions of self-defense rather than as humanitarian interventions.⁵⁷ While India did initially describe its action as a humanitarian one, it encountered international resistance to a right of humanitarian intervention and so amended its argument to one of self-defense.⁵⁸ All three of these actions are now commonly, though not unanimously, described as humanitarian interventions.⁵⁹ *If* these actions are rightly called humanitarian interventions, then it might lend some support to Tesón's view that properly called humanitarian interventions needn't publicly declare any humanitarian intent.

However, I generally find Tesón's argument dangerous and implausible. Dangerous because it invites *post-hoc* humanitarian rationalizations given for non-humanitarian wars, and implausible because it seems that in this day and age a politician would only strengthen her case for a particular military campaign by citing genuine humanitarian intentions. There is growing international support for the permissibility of using military force to end humanitarian atrocities, including, for example, support for the International Commission on Intervention and State Sovereignty's publication *Responsibility to Protect* (often referred to as 'R2P') that was adopted, with some revision, in 2005 by the United Nations General Assembly.⁶⁰ This document

⁵⁷ Seybolt, *Humanitarian Military Intervention*, 10.

⁵⁸ *Ibid*, 10.

⁵⁹ Wheeler, for example, describes all three of these cases as humanitarian interventions, while Weiss argues that none of them should be so described. Tesón describes both Tanzania's and India's actions as humanitarian interventions, but denies Vietnam's action was one given its subsequent installation of a puppet government in Cambodia. Wheeler, *Saving Strangers*, 55-136; Weiss, *Military and Civilian Interactions*, 181-189; Tesón, "Eight Principles for Humanitarian Intervention," 100-101, 105.

⁶⁰ Fiona Dove, "The Responsibility to Protect," *Development Dialogue* 53, (November, 2009), 79. According to Dove, the main and important difference between R2P and the resolution adopted by the

emphatically endorses the permissibility of the international community's resorting to military force as a last resort to ending atrocities. It also seems less likely than it once was for a war defended in part on humanitarian grounds to be denied UN Security Council authorization, because in the last twenty years the Security Council has repeatedly argued that humanitarian atrocities can be a threat to international peace and security, and authorized military action to halt atrocities under Chapter VII of the UN Charter. Given this political and intellectual context it seems unlikely that a state would have a sufficiently compelling humanitarian justification that it would choose *not* to use.

In theory, I suppose, leaders could be 'conniving' to initiate covert humanitarian interventions without the consent of their citizenries because they do not actually want to endorse a more general duty to aid or the legalization of a clear doctrine of humanitarian intervention. Yet, if that *was* the case, such behaviour would hardly seem worth promoting, revealing as I think it does support for the continued concentration of military power in the hands of the few and disrespect for democracy, not to mention contempt for the prospect of developing adequately restraining international laws on humanitarian intervention.

I do not deny that it is probably easier for politicians to convince their citizenries to endorse a proposed military campaign by using self-interested, rather than humanitarian language, and that this may give rise to the need to supply additional, non-altruistic reasons for action.⁶¹ David Luban, for example, has noted that in attempting to 'sell' the Kosovo war, Bill Clinton sometimes insisted on taking the 'moral low ground'

General Assembly is that the General Assembly refused to legitimize unilateral interventions against states that failed to protect citizens from avoidable catastrophes, such as starvation.

⁶¹ A committee member reminds me that, for example, the US waited for self-interest in kick in before committing to either World War.

by defending the war as serving America's commercial interest in European stability.⁶² This admission that more traditionally self-interested arguments may be required to mobilize public support for humanitarian interventions, however, seems entirely compatible with the view endorsed here that properly-called humanitarian intervention must nonetheless be, in large part, aimed at stopping atrocities, and must publicly declare such aims before the fact. These humanitarian aims must be part of a morally consistent agenda that does not exploit the victims it intends to rescue, or undermine their rightful claims to autonomy.

I do not think that there is as much international antagonism towards the idea of humanitarian intervention now as there was in the 1970s when India, Vietnam and Tanzania eschewed talk of 'humanitarian intervention' and opted instead to use the language of 'self-defense'. This is not to suggest that a 'right' of humanitarian intervention is utterly uncontroversial today only that the international community seems to have considerably warmed to the idea.⁶³ Few, in either the global North or South, think that humanitarian intervention is absolutely never justified.⁶⁴ This makes it less likely that a genuine humanitarian intervener would feel compelled to describe and defend its actions in non-humanitarian language. It also makes public declaration and right intention seem worth holding onto as conditions for a rightly called humanitarian intervention.

It seems that a more realistic and perhaps scarier objection than that malign intentions can be dressed up in humanitarian-sounding language, is that aggressors can be

⁶² Luban, "Intervention and Civilization," 82.

⁶³ I put 'right' in scare quotes because many prefer to talk about a responsibility, rather than a right, to intervene, arguing that this better focuses our attention on the victims of atrocity rather than the potential interveners.

⁶⁴ Weiss, *Military-Civilian Interactions*, 22.

themselves convinced by their own rhetoric. One worry here is that the possibility of re-describing intentions enables agents to go ahead with whatever they desire, deluded in a crusading conviction that all their aims are good. Interveners may deceive themselves into thinking that their cause is centrally humanitarian in order to overcome lingering internal moral conflict. Another worry is that those who are convinced of the overwhelming justice of their cause will come to think that such a great good justifies any amount of mass suffering caused in its pursuit. Either way, the objection again is that ultimate intentions are of questionable relevance to determining whether an action is a humanitarian intervention.

This difficult problem haunts the ethics of war literature more generally. If aggressors in history, pacifists often argue, have always been persuaded by the justice of their cause and have believed themselves to be intending good, then in order to avoid the scourge of war we must simply abandon the use of military force as a permissible means of conflict resolution altogether. Yet a wholesale rejection of the realistic possibility of justified humanitarian interventions has its own problems, an issue I take up in the following chapter on pacifism. First, I would answer that humanitarian intentions should never be considered a sufficient condition for an action to be a humanitarian intervention, nor do I think that anyone has ever seriously made such a proposal. For the moment, I'll simply repeat that we must always investigate a state's claimed intentions and consider how well their actions reflect them. When an intervening state consistently pronounces humanitarian intentions, but employs means that markedly increase the risks to civilians and virtually eliminate the risks to themselves, the humanitarianism rings hollow.

Some have avoided the problems associated with including humanitarian intentions in the definition of a genuine humanitarian intervention by defending a sort of hybrid of the *Good Outcome* and *Partial Altruist* views. Nicholas Wheeler, for example, argues that the *minimum* threshold conditions for a humanitarian intervention should *exclude* a state's intentions because such a requirement wrongly directs the focus of attention to the interveners, rather than the experience of the victims of atrocities.⁶⁵ Wheeler cautions, however, that interventions that only satisfy his minimum threshold conditions (just cause, last resort, proportionality and positive humanitarian outcome) should not be praised.⁶⁶ Praise, he says, should be reserved for those actions that are intended, at least in part, as disinterested, humanitarian actions, and, better yet, publicized as such. He argues that the means chosen to carry out an action are of paramount importance, arguing that "the key question is not the purity of motives but the relationship between motives and humanitarian outcomes."⁶⁷ He continues,

...non-humanitarian motives disqualified an intervention as humanitarian only if it could be shown that these, or the means employed, undermined a positive humanitarian outcome. Interventions that satisfy the criteria of humanitarian motives, humanitarian justifications, legality, and selectivity have progressively better humanitarian qualifications than those that meet only the minimum threshold requirements.⁶⁸

Taylor Seybolt has similarly argued against the primacy of humanitarian intention, insisting that the just war tradition's criterion of right intention "is important but overrated"⁶⁹ and that it is in fact preferable for states to have self-interested motives that

⁶⁵ Wheeler, *Saving Strangers*, 37.

⁶⁶ *Ibid*, 39.

⁶⁷ *Ibid*, 47.

⁶⁸ *Ibid*, 52.

⁶⁹ Seybolt, *Humanitarian Military Intervention*, 25.

accompany the humanitarian intention in order to better assure that they will 'stick it out' even after taking some casualties.⁷⁰

In many ways I find Wheeler's proposal attractive. He isolates the bare conditions required for a mission that is rightly described as a humanitarian intervention, arguing that if it is rightly-called a humanitarian intervention, then it is justified though perhaps not praiseworthy; it is permissible but not laudable. So, not just any military action with humanitarian benefits can call itself a humanitarian intervention and, also, being rightly-described as a humanitarian intervention doesn't guarantee that the action is praiseworthy.

Yet, I remain uneasy about the prospect that on Wheeler's view a rightly-called humanitarian intervention may be entirely and unabashedly self-interested, so long as the means and outcome are, overall, desirable. I maintain that the minimum threshold conditions for being rightly described as a humanitarian intervention should include a publicly stated, partly altruistic and morally consistent agenda, because, in principle, it seems that people with entirely self-interested goals shouldn't get to call themselves humanitarians. It is gravely disingenuous to adopt the term humanitarian intervention to describe a purely self-interested mission, even if the mission produces some desirable humanitarian consequences, and even if the mission might, all things considered, be justified.

⁷⁰ Ibid, 27. Michael Walzer has similarly deflected criticisms of mixed motives arguing, "The victims of massacre or 'ethnic cleansing' disasters are very lucky if a neighboring state, or a coalition of states, has more than one reason to rescue them. It would be foolish to declare the multiplicity morally disabling. If the intervention is expanded beyond its necessary bounds because of some 'ulterior' motive, then it should be criticized; within those bounds, mixed motives are a practical advantage." Walzer, "The Argument about Humanitarian Intervention," *Dissent* (Winter, 2002): 6, <http://www.dissentmagazine.org/article/?article=629> (accessed August 18, 2008).

Wheeler's decision to exclude right intention from the minimum conditions may also have unintended bad consequences. It seems that interveners might be held to higher standards of caution in their actions if humanitarian intentions were explicitly stated than if they claimed only self-defense, for example. I worry that civilian lives lost collaterally (or indeed intentionally) will be more easily dismissed if the interveners make no claim to be engaging in a humanitarian mission and instead see *themselves* as the threatened victim, engaging in a war of self-defense. Self-identified interveners might be more likely to use means that minimize risks to civilians than military personnel who understand their mission as a crusade by the victimized, free world to root out terrorism, for example. The act of calling a military action a humanitarian intervention may have a significant effect on the manner in which it is carried out.

1.6 Must Properly-Called Humanitarian Interventions be Successful in Producing the Desired Outcome?

In addition to my lingering concern about the importance of intentions in humanitarian intervention, I wonder what sorts of failures might disqualify an action from being called a humanitarian intervention. Jeff McMahan has argued decidedly that “[i]n the case of intervention... the intended effects need not be realized. An unsuccessful intervention is still an intervention.”⁷¹ I agree with McMahan's basic view, but a little more explanation is needed. It seems that rightly-called humanitarian interventions are likely to become humanitarian failures for two reasons. First, the interveners adopt some practices meant to significantly reduce their own risk of injury at the expense of non-

⁷¹ Jeff McMahan, “Intervention and Collective Self-Determination,” *Ethics and International Affairs* 10, (1996), 4.

combatants. Second, they fail because they are under-equipped, and/or underestimate the complexity or seriousness of the situation.

My account of what kinds of humanitarian failure are consistent with an action being rightly called a humanitarian intervention requires a brief summary of the just war tradition's three areas of analysis. The first area of study identifies constraints on the justified resort to force, and collectively these constraints are understood as the *jus ad bellum* requirements. These requirements include some or all of: just cause, right intention and public declaration, proportionality and reasonable prospect of success, right authority, and last resort.⁷² The second area of inquiry describes constraints on the manner in which just military ventures can be carried out, and these constraints are collectively referred to as the *jus in bello* rules. These requirements at least include some or all of: non-combatant immunity/discrimination, proportionality, necessity, and a prohibition on certain kinds of heinous weapons.⁷³ The third, developing area of inquiry involves articulating constraints on the justified terms of post-war settlements, which taken together are referred to as the *jus post bellum* requirements.⁷⁴ The requirements of the just war tradition are notoriously elastic, so even after establishing the terms of the debate particular just war theorists will often disagree about whether the conditions are satisfied in particular cases. The just war tradition is best understood as a tool for discussing, and hopefully restraining, military action than as a formula that can mechanically deduce the rightness or wrongness of particular cases.

I contend that a rightly-called humanitarian intervention must at the very least satisfy the basic *ad bellum* criteria of the just war tradition. It would be wrong to call a

⁷² Orend, *The Morality of War*, 31-65.

⁷³ Ibid, 105-137.

⁷⁴ Ibid, 160-189.

military venture a ‘humanitarian intervention’ if it had insufficient cause for the use of force (for example, the rights-violating regime wasn’t sufficiently atrocious to warrant a resort to armed force).⁷⁵ It would also be wrong to call a military action a ‘humanitarian intervention’ if it was supremely likely to cause a disproportionate amount of harm, or if other non-violent means of conflict resolution have a reasonable chance of successfully achieving the just cause.⁷⁶ And, as I have argued, it is wrong to refer to the use of armed force that is neither intended to nor declares an intention to end atrocities as a humanitarian intervention. Just cause and right intention are neither individually nor jointly sufficient for a military campaign to be rightly called a humanitarian intervention. It is not enough that atrocities are ongoing and a just cause exists, nor that interveners have a desire to end those atrocities. Having reasonably satisfied all of the *ad bellum* conditions, the initial *resort* to force will tend to be prospectively justified, or at least excused, in a rightly-called humanitarian intervention. That is, the resort to force will tend to be morally permissible, or ultimately wrong but not blameworthy such as if, for example, the intervening agents’ proportionality assessments were based on faulty but very reasonably believed judgments of the circumstances.

Rightly-called humanitarian interventions, however, may on occasion fail to abide by all of the *in bello* rules, making them, in some respects, humanitarian failures that are rightly subject to serious criticism. Such violations would usually occur because they were deemed necessary as a means of protecting the interveners themselves from lethal risk. With properly-called humanitarian interventions that violate some of the *in bello* rules, it may be more accurate to describe the mission as a whole as *excused* rather

⁷⁵ I explore the issue of just cause more particularly in Chapter Four.

⁷⁶ I explore the requirements of proportionality and reasonable prospects of success in Chapter Three.

than *justified*. That is, the action *would* have been just had its intentions been carried out using means that were more truly discriminating, proportionate, and necessary to the achievement of the just cause. It says *something* in favour of an action that it is properly called a humanitarian intervention, but it does not rightly insulate its agents from all criticism or blame.

We should be profoundly suspicious of the intentions of self-proclaimed 'humanitarian interveners' who persistently and consistently violate *in bello* rules. Their *in bello* violations may be so gross and systemic that their humanitarian intention is called into question. This would make their satisfaction of the *ad bellum* requirements doubtful, and thus challenge their claim to the use of the term humanitarian intervention. A single, isolated violation of the *in bello* rules probably wouldn't disqualify an action from being rightly described as a humanitarian intervention, but sustained or repeated violations could. It would be difficult for interveners who repeatedly impose wholly disproportionate and unnecessary carnage on innocents to convincingly or fairly describe themselves as having the right intention, *even if* there is a just cause and even if the use of force is rightly deemed a last resort to achieving it. Appalling and regular violations of *in bello* rules will tend to forfeit rightful use of the word 'humanitarian intervention.'

Sometimes, however, humanitarian failures can result not because of overt violations of the *in bello* constraints, but because of a shortage of resources and personnel. Under-equipped missions may be humanitarian failures, but they should often still be called humanitarian interventions. That is, a militarily-backed rescue attempt whose agents take significant personal risk and who closely adhere to the *in bello* rules seems rightly described as a humanitarian intervention, even if the effort is ultimately

unsuccessful. In such cases we should applaud those who made some effort while simultaneously investigating whether a larger and better equipped force might have been more successful.

Importantly, even those interventions that are often held up as decided failures tend to have had some important humanitarian benefits. For example, during the UN's mission in Rwanda in 1994 (UNAMIR) up to 800,000 non-combatants were slaughtered, yet UN soldiers were nonetheless successful in sheltering some 20,000 Tutsis in stadiums and hotels.⁷⁷ Or, during the UN's mission in Bosnia from 1992-1995 (UNPROFOR), many of its attempts to protect humanitarian deliveries were thwarted and many of the so-called safe-areas were decimated by Serb forces. Yet, still, UNPROFOR troops were an important component of the moderately successful effort to protect those who fled to Sarajevo.⁷⁸ Both of these UN missions seem rightly described as humanitarian interventions, even if overall they were shamefully inadequate. Some might argue that such woefully inadequate missions don't deserve the name of humanitarian intervention,⁷⁹ but I think this would be an overstatement. Unsuccessful actions (or at least certain aspects of unsuccessful actions) may be rightly called humanitarian interventions, though we can still roundly criticize leaders for sending troops with inadequate mandates and resources.

I should add that it is also possible that a humanitarian intervention could yield dire but reasonably unforeseen consequences. Intervening agents don't have objective

⁷⁷ Seybolt, *Humanitarian Military Intervention*, 70-78. Note, this figure of Tutsis protected by UNAMIR varies somewhat. Estimates extend upwards to 30,000.

⁷⁸ *Ibid*, 67.

⁷⁹ Some might add that such missions ought not be embarked upon; 'Better not to have done anything at all, than to have falsely raised people's hopes' one might say. Critics sometimes argue that feeble efforts only make a mockery of the UN. Yet, while such claims have some rhetorical force, surely it is better to have saved some innocents than not to have saved any at all. I will address this issue in greater depth in Chapter Three of this work.

certainty about whether the means they employ will be successful or are best all things considered. Even well-planned and well-executed actions that are reasonably predicted to risk only proportionate harm can end up inadvertently producing harms that are observably disproportionate to the benefits gained, or may simply fail to achieve the desired ends. It may be that sometimes such an action would be best described as a humanitarian intervention, though it might also be considered objectively or retrospectively unjustified, all things considered.

1.7 Conclusion

I have argued that rightly called humanitarian interventions are actions that prior to initiation appear to satisfy the spirit of the basic *ad bellum* requirements of the just war tradition including just cause, reasonable prospect of success, proportionality, last resort, public declaration and right intention. Ideally, they should also be carried out in accordance with the just war tradition's *in bello* rules of discrimination (civilian immunity), proportionality, and necessity, though some instances of failure in these respects wouldn't necessarily disqualify them from being rightly called humanitarian interventions. Repeated or consistent violations of *in bello* rules (usually as a means of insulating the interveners themselves from any risk) does, however, rightly disqualify an action from being called a humanitarian intervention. I have defended a version of the *Unsuccessful Partial Altruist* conception of humanitarian intervention. Rightly-called humanitarian interventions require humanitarian rescue as a central goal of a morally consistent agenda. It is possible, however, for a rightly-called humanitarian intervention to be unsuccessful in some respects if, for example, it makes civilians bear a

disproportionate amount of the risk exposing them to harm that isn't strictly necessary, or if the effort is under-funded and under-equipped. A rightly-called humanitarian intervention might also be unsuccessful if the effort produces some unforeseeable harm despite its agents taking every risk possible to protect innocents and despite its being well-equipped.

By strengthening the conditions required of a properly called humanitarian intervention relative to Tesón and perhaps Wheeler, I am pressed to hold that in properly called humanitarian interventions the initial resort to force should be prospectively justified. At least, that is, the resort to force needs to be reasonably believed by the intervener to satisfy all of the just war tradition's *ad bellum* rules. I emphasize that the belief needs to be reasonable, so interveners are rightly held to an objective standard of reasonableness. It would not be sufficient for interveners to subjectively, but wholly unreasonably, believe that they satisfied the just war tradition's *ad bellum* constraints. Yet, the mission as a whole might nonetheless be retrospectively unjustified if it produces some disproportionate, unnecessary, avoidable or unforeseeable harm. In such cases, it might be more accurate to describe the interveners' initial resort to force as *excused*, rather than justified.

My critic might argue that we should simply describe any war with some humanitarian benefits as a humanitarian intervention, and then move on to the more substantive and independent issue of whether the action was or is justified. Opponents might say that the definitional debate is entirely unnecessary.

While I see the attraction of this route, I am ultimately not persuaded. In part this is because I think it would be very difficult to remove the positive attitude towards the

interveners that the term ‘humanitarian intervention’ often implies, and so some effort should be made to articulate conditions whose satisfaction would warrant that positivity. I stress that being rightly called a humanitarian intervention should not make interveners totally immune to moral criticism. Though it speaks in favour of an action that it is a properly-called humanitarian intervention, it does not guarantee that the interveners should be shielded from any and all blame.

Relative to Wheeler’s position, my view has a peculiar implication. It implies that an action that saves huge numbers of civilians from imminent attack but is intended only as a means of self-defense will not be a rightly-called humanitarian intervention, while an action that is largely unsuccessful at protecting innocents but is well-intended will be a rightly described humanitarian intervention. A critic might dismiss me as a misguided Kantian, preferring an unsuccessful but well-intended mission to a successful, self-interested one. I would respond by insisting that actions that are wrongly described as humanitarian interventions might nonetheless be justified; one is not faced with a choice between justifying one and not the other. And while I would naturally prefer a mission to be successful at saving innocents, so too would I prefer it to be *intended* to save innocents, and carried out in a manner consistent with that intention. A certain kind of moral commendation should be reserved for agents or states that actually intend the humanitarian benefits they achieve, and who achieve their ends using carefully crafted means. These conditions strike me as implicit in many ordinary persons’ usage of the term ‘humanitarian intervention’, though they are rarely explicitly stated.

Chapter 2

The Pacifist Challenge: Can War be Humanitarian?

*“A man overeats, smokes heavily, drinks too much, and gets no exercise. He learns he has high blood pressure and a weak heart. He decides to switch to filters, drink a little less, skip seconds on desserts, and walk a few blocks now and then. Is that not a step in the right direction? Certainly. But it probably will not save him. What he needs is a change in his whole way of life. We, too, can go on fuelling the furnace of war and take our chances on being able to control the heat. But let us not deceive ourselves that this is likely to save us either.”*⁸⁰

*“A world where aggressors are allowed to triumph, and then to inflict rights-violating brutality, is not part of any sane person’s idea of the best life....”*⁸¹

2.1 Introduction

Any positions allowing that militarily backed humanitarian interventions can ever be justified must first engage with pacifism. Pacifism comprises a range of beliefs broadly united by their opposition to warfare. Often in the philosophical literature, pacifists are lumped together as a homogenous group, pejoratively dismissed either as idealists out of touch with the real world or solipsists concerned only about protecting their own moral purity. Though ultimately I argue that pacifists don’t provide adequate means for responding to humanitarian atrocities, part of the goal of this chapter is to articulate more charitably some of the central pacifist arguments. I am convinced that some military ventures identified as humanitarian interventions have been hardly humanitarian and that we should have a default suspicion of calls for military action. The possibility that military force might have been successfully used much earlier to prevent

⁸⁰ Holmes, *On War and Morality*, 11.

⁸¹ Orend, *The Morality of War*, 247.

or halt atrocities such as the Rwandan genocide in 1994, however, stands out as a vivid counterexample to the value of the pacifist's wholesale rejection of military force.

Pacifists reject war for varied reasons, but this chapter explores four important and common kinds of pacifist argument. These four kinds of pacifism do not exhaust possible or actual pacifist views, and, moreover, many actual pacifists adopt a mixture of the four views identified. The four examples addressed in this chapter are chosen because they seem to be dominant views in Western writing and activism. First, I explore absolute pacifism which is the view that opposes any uses of force, period. Second, I explore *near-absolutist* arguments which permit some limited use of *force*, but reject the permissibility of any instance of what is identified as *violence*. Near absolutists are particularly opposed to the intentional killing or injury of human beings that military action entails, as opposed to what they think of as the unintentional, defensive killing by an innocent victim of their unjustified attacker. Third, I consider a consequentialist version of pacifism that is centrally opposed to the intentional killing of large numbers of human beings and the mass chaos and destruction attached to military engagements. Consequentialist pacifists reject the permissibility of humanitarian intervention because they argue that the use of military force makes bad humanitarian sense. Fourth, I consider a more deontological version of pacifism which is more particularly against the killing of *innocent* human beings. Even if military action *could* be effective at curbing humanitarian atrocities, deontological pacifists argue that there is a fundamental inconsistency between the means and the ends of so-called interventions, and that genuinely humanitarian effort must, by definition, exclude all military activity.

2.2 Absolute Pacifism

Those who reject military action because they are against any use of physical force as a means of conflict resolution are often referred to as absolute pacifists (or absolutists).⁸² Duane Cady laments that pacifism is usually equated with this absolutist position, arguing that “few if any actual pacifists have held this view.”⁸³ Nevertheless, the many instances of absolute pacifism among some Christian communities serve as counterexamples to Cady’s insistence that the absolutist position is merely a caricature.

Christian pacifism is usually set aside by secular philosophy since it relies on controversial metaphysical claims that are accepted as articles of faith. Nonetheless, since many, if not most, practicing absolutists in the Western world identify themselves as Christian pacifists some brief description of Christian pacifism is relevant. Important to note is that Christian pacifists are a diverse lot, and this short summary is not meant to be a comprehensive exegesis of the range of views contained within this version of pacifism. Moreover, there is some debate about whether an outsider to the tradition can ever adequately understand or represent it.⁸⁴

In addition, I stress that it is not the case that most self-identified Christians are pacifists, Christian scholarship is, after all, where the Western just war tradition gets its start. However, many absolutists identify themselves as Christians, and believe that their absolutism follows from their religious commitment.

Despite significant internal differences, Christian pacifism seems to be centrally derived from the conviction that Jesus was a pacifist who taught that one ought to ‘turn

⁸² Duane Cady, *From Warism to Pacifism* (Philadelphia: Temple University Press, 1989), 58.

⁸³ *Ibid.*, 58.

⁸⁴ See, for example: Theodore Koontz, “Christian Nonviolence: An Interpretation,” and Michael Cartwright, “Conflicting Interpretations of Christian Pacifism” in *The Ethics of War and Peace*, ed. Terry Nardin (Princeton: Princeton University Press, 1996) 169-196, 170-213.

the other cheek' and love even one's enemies.⁸⁵ The Peace Churches (the Anabaptists, the Quakers, and the Church of the Brethren) separated themselves from other Christians in Europe in the sixteenth century, believing that Christianity had unreasonably drifted away from Jesus' original pacifist teachings.⁸⁶

Some Christian pacifists see forceful defence against aggression as short-sighted interference in God's plan. Theodore Koontz argues that,

[H]istory is finally in God's control, and ...it is our responsibility to act as Jesus teaches us to act, and... as we do so, God will bring about the outcome of history that God intends. We are simply not smart enough to know what the outcomes of our various actions will be... We have no "responsibility" to violate standards revealed to us in order to help God out....the conviction that we do not bear the burden of history's outcome alone frees us from a compulsiveness about stopping what we perceive as evil or achieving what we perceive as good that, in the final analysis, from a Christian pacifist perspective, reflects a kind of functional atheism.⁸⁷

Our inability to fully know God's plan and our grave epistemic shortcomings, Koontz argues, will never allow military action to be anything but misguided intrusion.

Scriptural support for this view is sometimes garnered in Romans: 12, "Do not take revenge, my friends, but leave room for God's wrath for it is written: 'it is mine to avenge; I will repay,' says the Lord."⁸⁸

⁸⁵ "...Do not resist an evil person. If someone strikes you on the right cheek, turn to him the other also."(Matthew. 5:39). And, "You have heard that it was said, 'Love your neighbour and hate your enemy.' But I tell you: Love your enemies and pray for those who persecute you that you may be sons of your Father in heaven."(Matthew. 5: 43-45). The International Bible Society, *The Holy Bible: New International Version* (Grand Rapids, Michigan: Zandervan, 1984), 553-54.

⁸⁶ John Rempel, "Peace Churches," in *Encyclopedia of Christianity*, ed. John Bowden (Oxford and New York: Oxford University Press, 2005), 907.

⁸⁷ Koontz, "Christian Nonviolence: An Interpretation," 191.

⁸⁸The passage continues, "On the contrary, 'if your enemy is hungry, feed him; if he is thirsty give him something to drink; for by doing this you will heap burning coals on their heads.' Do not be overcome by evil, but overcome evil with good." International Bible Society, *The Holy Bible: New International Version*, 647. (Romans: 12)

Some (certainly not all) Christian pacifists go so far as to encourage non-resistance, as opposed to simply non-violent resistance.⁸⁹ Moreover, some do not insist that the spread of Christian pacifism will alleviate violence in the world, resigned as they are to the fact that, since the Fall, humans have been naturally sinful and imperfect.⁹⁰

The metaphysical premises for Christian pacifism are naturally rejected by non-Christians and, as well, by Christians who don't share the presented interpretation of scripture. It is theoretically possible that absolutism can be secular, but in practice it is difficult to find anyone who consistently defends a secular version of pacifist absolutism. Gandhi's teachings, for example, are sometimes thought of as secular absolutism (or at least non-denominational absolutism), and indeed in many passages he seems like an absolutist. Yet, Gandhi also maintained that it would be morally better for a person to courageously engage in warfare than to hide among pacifists out of cowardice.⁹¹ Given such a view, it is not clear that he's rightly described as an absolutist.

The chief argument against absolutism regards the unreasonableness of its denial of the right to self defense. Critics often imagine a case of an innocent victim and a guilty aggressor and insist on the permissibility of an innocent using strong or lethal force to repel the threat to life. They argue that the wholesale rejection of physical force, including in self-defence, unreasonably restricts our ability to handle aggression. Critics of absolute pacifism often buttress this point by citing Gandhi's now infamous insistence that the Jews imprisoned in Nazi concentration camps would have been wrong to try to

⁸⁹ See, for example, Guy F. Hershberger, "Pacifism," and "Non-Violence," in *The Global Anabaptist Mennonite Encyclopedia Online*, (1957), <http://www.gameo.org/encyclopedia/contents/P340.html> and <http://www.gameo.org/encyclopedia/contents/N6680> (accessed August 8, 2007).

⁹⁰ Ibid.

⁹¹ See Mohandas K. Gandhi, "On Satyagraha," in *Nonviolence in Theory and Practice*, eds. Robert Holmes and Barry Gan (Illinois: Waveland Press, 2005), 81. Reprinted from Mohandas Gandhi, *The Moral and Political Writings of Mahatma Gandhi*, ed. Ragharan Iyer (Oxford: Oxford University Press, 1986).

overtake their captors had they had the chance.⁹² Yet, if ever there was a justified case for forceful self-defence, critics continue, the Holocaust was it.

While an absolutist position is very well meaning, I agree with its critics that, even in its secular form, a rejection of all force is profoundly problematic. However, I admire the resolute commitment to non-violence, the refusal to accept that in even the darkest hour physical supremacy should be the means of conflict resolution between human beings. It seems especially important to hear an absolutist voice during periods of tense negotiation, since Western populations so repeatedly reveal an alarming eagerness to resort to war. As William James noted, with the exception of a small minority, war taxes seem to be the only taxes that people *don't* complain about paying.⁹³ An absolutist voice reinforces the importance of exhausting non-violent alternatives to military action and challenges our casual acceptance of the institution of war. At the same time, the absolute pacifist's 'no matter the consequences' attitude is ultimately unreasonable.

I do not contend that absolutism is inconsistent, as Jan Narveson has argued.⁹⁴ Narveson rejects secular absolute pacifism as "self-contradictory,"⁹⁵ "confused,"⁹⁶ and

⁹² It is popularly argued that Gandhi thought that the Jews imprisoned in Nazi concentration camps should commit mass suicide. This interpretation of Gandhi's advice was first made by George Orwell in "Reflection on Gandhi" in the *Partisan Review*, January 1949. This interpretation of Gandhi's advice has since been perpetuated by almost every other writer on war, including Michael Walzer in *Just and Unjust Wars*, 3rd ed. (New York: Basic Books, 1977), 332. Orwell was replying to a passage found in Louis Fischer, *The Life of Mahatma Gandhi* (New York: Collier Books, 1950), 350, a passage that quotes Gandhi making some highly contentious claims about how the Jews imprisoned in Nazi concentration camps ought to have behaved. Some argue that a closer, more contextual reading of Fischer shows that Gandhi did not in fact recommend collective suicide, but recommended instead non-violent resistance. For many, however, this recommendation is effectively indistinguishable from the recommendation that the Jews commit collective suicide and so even this more contextual reading does, I think, little to recommend this absolutist claim.

⁹³ William James, "The Moral Equivalent of War," in *War and Morality*, ed. Richard Wasserstrom (Belmont, California: Wadsworth, 1970), 5.

⁹⁴ Jan Narveson, "Pacifism: A Philosophical Analysis," *Ethics* 75, no.4 (July, 1965), 259-271

⁹⁵ *Ibid*, 266.

⁹⁶ *Ibid*, 269.

“logically untenable,”⁹⁷ and argues that an absolutist position reduces to the view that, “Violence is wrong, *and* it is wrong to resist it.” “But”, he continues, “the right to resist is precisely what having a right of safety of person is, if it is anything at all.”⁹⁸

It is important to note that absolutists needn’t necessarily couch their argument in terms of rights as Narveson supposes. Moreover, I follow Jenny Teichman in arguing that there is no logical inconsistency in the contention that violence is wrong *and* it is wrong to resist it.⁹⁹ I agree that a wholesale rejection of force is inadequate, but it is not self-contradictory or *logically* untenable to say that defense of one’s rights should be restricted to certain kinds of means, even if those means are inadequate to the task of protecting the right in question. Teichman argues that the substantive question is whether violence “is or is not one of the methods permissible in defence of rights,” and she rightly says that this simply cannot be answered with a formal, purely conceptual analysis of the sort Narveson attempts.¹⁰⁰ Absolutism *does* conflict with a considered judgment about the permissibility of certain kinds of self-defense that most are unwilling to give up, but it is not incoherent. I do not mean to suggest that actual absolutists are callous to human suffering, but it *is* true that absolutism cannot satisfactorily distinguish between force used aggressively and force used defensively.

A secular absolutist might reply that were we to accept her recommendations, then all aggression would be eliminated and there would never be any *need* for defensive force. Perhaps, she might admit that there would be a period of transition from our own

⁹⁷ Ibid, 260

⁹⁸ Ibid, 269

⁹⁹ Jenny Teichman, *Pacifism and the Just War* (Oxford and New York: Basil Blackwell, 1986), 29-37.

¹⁰⁰ Ibid, 36-37.

world of highly imperfect behaviour to the absolutist paradise, but insist that the paradise is, nonetheless, achievable.

While I imagine that the world certainly would be a more peaceful place if everyone resolutely abdicated all use of force, such a world seems a rather far way off. Though I don't attribute it to divine punishment, it *does* seem that human beings are unlikely to rise above any and all resort to force.¹⁰¹ This is not to say that moral theorizing in the realm of non-ideal theory should simply accept as morally right whatever ways we have behaved in practice. I do not propose that we go the way of the realist. Self-identified realists in the ethics of war literature often seem to identify some of the *worst* ways that human beings have behaved in practice and take this behaviour as paradigmatic of the human condition. The realist's mistake is that she pessimistically takes the lowest common denominator as what can be reasonably expected of people. The secular absolutist's opposite mistake might be an undue optimism about the potential for ridding the world of any and all aggression, even at the interpersonal level.¹⁰²

Admittedly, I have not proven that human beings can be reasonably expected to behave better than the realists suppose, nor that we can be reasonably expected to behave worse than some absolutists might hope. I can only repeat my intuition that it is unlikely that violent rages and the need for defensive force can be made a thing of the past. I certainly think that much aggression is preventable, but within the realm of non-ideal

¹⁰¹ See, for example, Peter Singer's argument for why he thinks large-scale aggression is an inevitable feature of the human condition at the beginning of his chapter on genocide in *One World*, 2nd ed. (New Haven and London: Yale University Press, 2000), 106-112. For my own part, I do not go so far as to say that war and genocide is inevitable, but some aggression (if only between individuals) does seem inescapable.

¹⁰² Admittedly, this is all somewhat hypothetical since it is unclear whether, in fact, there *are* any fully secular and consistent absolutists.

theory (where the ethics of war literature resides) one is required to engage with the likely prospect of a certain amount of human aggression.

Notice, however, that the Christian absolutist's case doesn't necessarily rest on a belief that the world might rid itself of human aggression, and so remove the desire to use defensive force. Even in the face of aggression, says the Christian absolutist, one is to steadfastly turn the other cheek. I have argued that such a view, while not incoherent, is ultimately unreasonable. It is certainly permissible for individuals to refuse to defend themselves with violence (if violence is necessary to effectively repel the threat), but it is unreasonable to argue that even if one wished to, one cannot defend oneself in such a manner. Equally (if not more) troubling is that the absolutist does not permit one to physically defend a helpless neighbour, or even one's child, against brutal assault.

2.3 Near-Absolute Pacifism

Absolutists might respond to the criticism that absolutism unreasonably denies the permissibility of self-defense by insisting that there is dignity in the endurance, but never in the infliction of suffering.¹⁰³ Other pacifists, however, respond by drawing a distinction between force and violence and then defend some limited use of *force*, but uphold a rejection of all *violence*. These *near-absolute pacifists* defend the kinds of forceful actions that might be required to remove oneself from imminent harm, but still denounce all forms of military action.

¹⁰³ See, for example, Martin Luther King Jr., *A Testament of Hope: the Essential Writings of Martin Luther King Jr.*, ed. James Melvin Washington (San Francisco: Harper and Row), 18, quoted in Andrew Fiala "Pacifism," in *Stanford Encyclopedia of Philosophy*, ed. Edward Zalta (Stanford, CA: Metaphysics Research Lab, 2007), 7, <http://plato.stanford.edu/entries/pacifism/> (accessed June 21, 2007).

In his book, *From Warism to Pacifism: A Moral Continuum*, Duane Cady argues that the distinction between force and violence relies on a difference in intention. Violence, he argues, is “any physical act intending to injure, damage, or destroy a person or object.”¹⁰⁴ Force, on the other hand, is simply “the imposition of physical strength.”¹⁰⁵ The kind of violence of particular concern here involves the imposition of *physical* force, committed by and against persons. Often the force is mediated by some kind of technology, and importantly, is not intended to benefit those it harms. Cady concludes that not all force is violence since it does not always intend injury (imagine, for example, pushing a child out of the way of oncoming traffic), though all violence (of the kind we’re interested in here) necessarily involves force.¹⁰⁶ Near-absolutists sometimes argue that police officers may use some limited force in order to apprehend dangerous criminals. Soldiers, however, employ both force and violence since they not only impose physical (or technological) strength, but also intend the destruction or injury of an enemy. For the near-absolutist, typical forms of soldiering are impermissible.

Though on the face of it the near-absolutist seems to more adequately equip us for handling aggression than the absolutist, it too falls short. In particular, it is still unclear how it justifies the use of force in self-defence. Suppose, for example, that by an unlucky turn of fortune one found oneself being attacked in a dark alley and reasonably believed the only way to escape certain and dire harm was to stab one’s attacker. Assuming the belief in the threat was reasonable, the stabbing proportionate to the perceived threat and no less-bloody options for escape were available, it seems that stabbing would be

¹⁰⁴ Cady, *From Warism to Pacifism*, 61.

¹⁰⁵ *Ibid*, 61.

¹⁰⁶ *Ibid*, 61.

justified. It would, however, involve an intention to ‘injure, damage, or destroy’ and it certainly wouldn’t be intended to *benefit* the attacker. It should, therefore, on Cady’s definition, qualify as violence and be unjustified. Absolutists are perfectly content to deny the permissibility of ever intending to injure one’s attacker as a means for escape, but *if* the near-absolutist wants a moral view that can accommodate the permissibility of self-defense, then somehow it needs to be explained how forceful self-defense does not intend any injury, damage, or destruction, even if only as a means to a permissible end.

One way that the near-absolutist might respond would be to insist that in stabbing one’s attacker one would not actually intend injury or destruction, but only one’s own preservation.¹⁰⁷ This is the approach taken by some defenders of the Doctrine of Double Effect which is the view that although one cannot rightly intend certain harmful effects either as ends or means, it is permissible to bring about those effects as the undesired but foreseen side-effects of otherwise good intentions and permissible, proportionate acts. The near-absolutist might insist that repelling a threat would be the intended end, killing or injury merely a foreseen side-effect. If the injury or killing of an unjust attacker were merely a foreseen side-effect, then it is not properly thought of as an intended harm. That is, it would not be an instance of *violence*. Evidence that the injury or killing is merely a foreseen side-effect (rather than the intended end or means) might be issued by the self-defender’s insistence that she would have preferred not to injure or kill her attacker if other less destructive means of escape had been available.

I think that this attempted construal of defensive injury or killing as a mere side effect, rather than an intended means to a permissible end is implausible, even though it is

¹⁰⁷ Similarly, near absolutists might argue that in hunting down a criminal the police intend only the public’s safety, rather than harm to the criminal.

not an uncommon view.¹⁰⁸ While it is certainly true that the self-defender's ultimate end is self-preservation, it seems that he or she no less intends the necessary and available means. In order to justify self-defense it is unnecessary (not to mention somewhat bizarre) to say that while one inserts a knife into one's attacker one does not actually intend any injury. It seems more accurate simply to say that the harm *is* intended as a necessary means to escape and that sometimes (though rarely) intending harm is permissible.

In this example there are not two distinct effects- repelling a threat and injuring the attacker- there is one effect, differently described. I certainly do not reject the intend/foresee distinction wholesale, for example, when I save money for tuition rather than giving to Oxfam I do not intend the hunger of those who might have been helped by the charity.¹⁰⁹ There are examples where the intend/foresee distinction is very appropriate. However, it strains credibility to say that in, say, stabbing someone one does not actually intend any injury. One might as well say that one doesn't intend to torture a captive, but only to elicit possibly important information. Certainly in a situation such as the one we've been imagining the self-defender would no doubt *prefer* to have the option of using non-violent means for self-preservation and, again, the self-defender's ultimate *end* would not be injury or destruction. This does not mean, however, that the self-defender does not intend the injury reasonably perceived to be necessary to save him or herself from certain and serious harm *as a means*. He or she would intend the injury or killing, perhaps with deep regret that it was the only effective means of escape.

¹⁰⁸ G.E.M. Anscombe, "War and Murder," in *Collected Philosophical Papers*, Vol. 3, *Ethics, Religion and Politics* (Minneapolis: University of Minnesota Press, 1981), 54. In other passages of this same work, Anscombe is herself quite critical of some uses of the intend/foresee distinction, so my disagreement with Anscombe is, on this topic, not thorough-going and complete.

¹⁰⁹ I borrow this example from Shelly Kagan, *Normative Ethics* (Boulder, Colorado: Westview, 1998), 103

The near-absolutist might insist that one does not intend that which one regretfully brings about, but reasonably feels forced to do for lack of better alternatives. In the uncomplicated case of self-defense, the innocent is truly faced with a choice between saving her own life or her attacker's. Killing in military actions, the near-absolutist might say, is never so forced; one never *has* to resort to military force. Perhaps then, the near-absolutist might argue that the self-defender acts knowingly in injuring his or her attacker, but does not *intend* the injury (as a means to his or her escape) because unlike the soldier he or she genuinely has no other reasonable choice. The idea here is that one cannot fairly be said to *intend* the necessary means you take to protect your own survival, and that contra the self-defender, military forces always have available to them other means of self or other protection.

Ursula Franklin rather poetically makes a closely related point when she describes all military action as “resourcelessness” and contrasts it with non-violent resistance which she describes as “resourcefulness.”¹¹⁰ Violence, she says, is always a mere failure of humanity to use all available resources. It involves a lack of imagination. Military action, for Franklin, always reveals that we have merely given up on (rather than exhausted) our capacity for finding non-violent solutions.

This argument raises the difficult issue of whether military forces too might ever reasonably argue that they have no other realistic options for protecting their own lives, or, in the case of humanitarian intervention, the lives of others who are unable to protect themselves. Although I think Franklin is correct to suggest that actual military actions are often falsely characterized as last resorts, I think her blanket description of all military

¹¹⁰ Ursula Franklin, interviewed by Mary Hynes, *Tapestry*, CBC Radio, August 19, 2007. See also, Ursula Franklin, *The Ursula Franklin Reader: Pacifism as a Map* (Toronto: Between the Lines, 2006), 46-135.

force as a 'giving up' is too sweeping. Defensive military actions against active *génocidaires* with whom all good-faith negotiations and targeted economic sanctions have failed, for example, would seem wrongly described as a mere lack of imagination. In a certain sense, Franklin and other near-absolutists are correct in that military force is always a choice. In the face of ongoing genocides, we can always refuse to fight violence with violence. The issue is whether, after every other non-violent effort has been considered, choosing to use the military can ever reasonably appear to be the least evil, and most humanitarian option available.

Contra the near-absolutist, I prefer to simply deny any categorical prohibition of intending harm as a means to good. It seems that self-defenders often rightfully (even if regretfully) intend harm. However, if one claims that the self-defender does *not* truly intend any injury (even if only as a means to a permissible end) because she has such poor options, it opens the door for a similar argument to be made by soldiers. They might insist that, after exhausting every non-violent alternative to a permissible end, the injuries they cause are not intended because they too function under a particularly bad set of circumstances.

A near-absolutist might also attempt to argue that the self-defender doesn't intend harm because the target of his or her defensive force is not innocent. That is, only force used against innocents is truly harmful, non-innocents forfeit their rights to life and thus proportionate force used against them isn't rightly thought of as *harm*. This manoeuvre also strikes me as one that, for consistency's sake, would also have to be allowed to the disciplined soldier fighting in a well-ordered humanitarian intervention. Humanitarian interveners would then be able to similarly claim that they neither intend nor do harm

because their targets are non-innocents. In both the interpersonal and the military case, I find this argument implausible. It seems unnecessary and dishonest to claim that where the victim is non-innocent, there is no harm. Again it seems like in both cases there *is* intended harm, but it may sometimes be justified.

Those who for the most part reject physical modes of conflict resolution often defend not only the renunciation of war, but also a more fundamental reform in the way we approach the world and each other. Brian Orend has usefully described pacifists who primarily emphasize the cultivation of a peaceful, life-revering or loving character as *teleological pacifists* since their rejection of war follows from what they take to be the end or goal for which human beings should strive.¹¹¹ Gandhi's sweeping rejection of physical modes of conflict resolution, for example, is part and parcel of his general reverence for life that includes a commitment to vegetarianism, environmental stewardship, and a rejection of ascriptive social hierarchies. Gandhi's pacifism is part of a more general prescription to cultivate a compassionate character.¹¹²

Orend contends that the absolutism or near-absolutism often associated with teleological pacifism is problematic since living well may sometimes require that we use some force.¹¹³ While we certainly should strive to live in harmony with the world, there are times when the world is decidedly not in harmony with us, as when, most dramatically, some of us become the targets of ethnic cleansing or genocide. In some kinds of situation when all non-forceful alternatives are either exhausted or utterly inapt,

¹¹¹ Orend, *The Morality of War*, 246.

¹¹² Gandhi insisted that we should live in harmony with, rather than dominating over, other living things: "... we should learn to become one with every creature. This is man's privilege and that distinguishes him from the beasts. This can happen only when we voluntarily give up the use of physical force and when we develop the non-violence which lies dormant in our hearts. It can be awakened only through real strength..." Gandhi, "On Satyagraha," 81.

¹¹³ Orend, *The Morality of War*, 247.

the virtuous thing to do may be to use some defensive force. As Orend argues, “A world where aggressors are allowed to triumph, and then to inflict rights-violating brutality, is not part of any sane person’s idea of the best life....”¹¹⁴ If justice is a virtue, then, Orend argues, sometimes living well might oblige us to postpone immediate peace.

2.4 Consequentialist Pacifism

Many pacifists reject war not because of a principled opposition to any use of force, or because they claim that it is always wrong to intend injury, or because they think that resorting to physical confrontation reveals bad character and distracts us from our proper ends, but simply because institutionalizing military action is, overall, too costly. *Consequentialist pacifists* argue that military action has a demonstrable record of causing mass destruction and the killing of large numbers of human beings. In addition, they argue that military action entrenches disagreement and undermines efforts to establish a system of non-violent conflict resolution. They oppose war and military action more generally on the grounds that, overall, its likely harms outweigh its benefits. While there could exist a pure act-consequentialist pacifism that considered non-violent conflict resolution as more desirable in every likely or reasonably possible instance, most consequentialist pacifists seem to defend either a rule consequentialism wherein non-violent resistance is defended for its long-term prospects, or some mixture of act and rule consequentialism.

¹¹⁴ Ibid, 247.

Consequentialist pacifists tend to reject the use of analogies between military action and individual self or other-defense.¹¹⁵ In discussions of humanitarian intervention, an equally popular and potentially problematic analogy is made between intervening to protect victims of atrocity and rescuing a child from an abusive parent.¹¹⁶ It is not the case, say the consequentialist pacifists, that from the simple case of self or other defense we can deduce the permissibility of large-scale military action *even if* that action is genuinely defensive. Consequentialist pacifists, therefore, sometimes admit the permissibility of using violent self-defense, but insist that self-defense be restricted to particular kinds of means; in particular, those means that are unlikely to produce consequences that are as bad or worse than the ones being averted.¹¹⁷ Interpersonal self-defense may more easily be justified since its consequences are apt to be more contained than, say, the short or long-term consequences of unleashing a large group of young people, trained to kill without hesitation, into a situation of catastrophic anxiety and upheaval.

Brian Orend has objected that there is a fundamental inconsistency between the consequentialist pacifist's prohibition of military action and her commitment to doing whatever it is that will produce the best consequences overall.¹¹⁸ The idea is that one cannot reject all use of military force, while simultaneously insisting, as a consequentialist does, that nothing is, in principle, impermissible. This is similar to the more general objection to rule-utilitarianism which says that if one is a utilitarian

¹¹⁵ See, for example, Duane Cady, "Pacifist Perspectives on Humanitarian Intervention," in Robert Philips and Duane Cady, *Humanitarian Intervention: Just war Vs. Pacifism* (Lanham, Maryland: Rowman and Littlefield, 1996), 43, 78.

¹¹⁶ See, for example, Tesón *Humanitarian Intervention*, 3rd ed., 75. Also, Robert Philips, "Ethics of Humanitarian Intervention," in *Humanitarian Intervention: Just War vs. Pacifism* (see n. 115), 9

¹¹⁷ See, for example, Martin Benjamin, "Pacifism for Pragmatists," *Ethics* 83, no.3 (April, 1973), 207.

¹¹⁸ Orend, *The Morality of War*, 252.

one cannot consistently defend rules that one knows may not maximize overall utility in every instance.

Act consequentialist pacifists might defend themselves against the charge of inconsistency by maintaining that the concession, in principle, that some theoretically possible wars might be justified does little to dilute their resolve against any wars that are reasonably likely to occur on earth.¹¹⁹ Admitting that, in theory, some logically possible wars might be justified does not commit one, on pain of inconsistency, to just war theory. As consequentialists they have to admit that there may be logically possible wars that produce the best overall consequences. They would insist, however, that given the state of the world such situations are sufficiently unlikely to occur that they can comfortably align themselves with a policy of anti-warism. Rule consequentialist pacifists, on the other hand, prohibit military action as a matter of policy. They would presumably simply repeat that whatever moral costs might accrue by the abandonment of war in the short term will be worth the sacrifice if it can bring about the enormous and overwhelming good of stopping all war, for all time.

A second objection that Orend makes to consequentialist pacifists is that they do a lot of hand-waving when it comes to specifying those consequences that they seek to avoid. He says:

There is a lack, in the literature, of a detailed breakdown of war's costs and benefits; pacifists prefer instead to gesture towards very general- almost clichéd- understandings of war's destructiveness.... Could this tendency towards sweeping generality and abstraction exist due to a lack of confidence in the results of a more finely grained analysis?¹²⁰

¹¹⁹ Holmes, *On War and Morality*, 212.

¹²⁰ Orend, *The Morality of War*, 250.

Orend continues to identify the various kinds of costs that can accrue when we refuse to use military force. Military inaction, he says, can effectively reward aggression and weaken the stability of the state system. In the context of humanitarian atrocities, he adds, military inaction can mean the mass killing of innocents.¹²¹ He cautions, “It is very simple to cluck one’s tongue and shake one’s head at the destruction of warfare- “War is bad!”- and quite another to think through the costs of pacifism and what they might involve relative to just war theory.”¹²² Orend contends that if consequentialist pacifists made a concerted effort to identify all the potential costs and benefits of particular military operations, then they might sometimes find the consequences of inaction worse than military action. Some things, he thinks, could be worse than war.

A common consequentialist pacifist response to the criticism that they inaccurately calculate the relative costs of military action is to make clear that they do not recommend passive surrender.¹²³ Pacifists, as Cady notes, are not ‘passivists’, who fatalistically give in to the whims of wrongdoers.¹²⁴ According to most pacifists wrongdoing *should* be resisted, but resisted non-violently. Pacifists promote first and foremost negotiation and in the worst case scenarios some endorse massive, organized campaigns of non-cooperation coupled with economic punishment from without.¹²⁵

Economic sanctions against an offending regime, however, have come under increased moral criticism. Albert Pierce, for example, argues that economic sanctions can sometimes themselves be less humanitarian than overt military action, likening them

¹²¹ Ibid, 251.

¹²² Ibid, 251.

¹²³ While I think that the popular belief that pacifists propose that we do nothing in the face of aggression is generally misguided, there seems to be an element of truth in its application to some Christian pacifists who reject non-violent resistance in favour of non-resistance. See, Hershberger, “Non-Violence,” and “Pacifism,” (see n. 89).

¹²⁴ Orend, I must note, is not one who is guilty of caricaturing pacifists as ‘passivists.’

¹²⁵ Cady, “Pacifist Perspectives,” 47.

to a kind of siege warfare.¹²⁶ Pierce warns that sanctions can essentially use the suffering of an innocent civilian population as a means of obtaining a political end, while the real culprits either remain insulated from any very serious inconvenience or actually find ways of profiting from emerging black markets.¹²⁷

Critics might also retort that even if the consequentialist pacifist doesn't mean for us to simply submit to aggression, the kinds of non-violent tactics they recommend are unlikely to be effective against serious aggression. It is often argued, for example, that Gandhi's prolonged campaign of non-violence was only successful in attaining Indian independence from English rule because the English were relatively reasonable tyrants. The English, some argue, shared some of Gandhi's ultimate values, making his non-violent campaign fall on willing ears.¹²⁸ Others argue that Gandhi was effective against the English because of their chivalrous ideals of combat or commitment to just war theory, which made them shamefully withdraw in the face of non-violent civilian resistance.¹²⁹ Still others argue that Gandhi was effective against the English in part because the English were worn out and broke after the end of World War II.¹³⁰ The objection is that non-violent resistance only works against liberal or chivalrous oppressors, or perhaps against oppressors who are too tired to oppress anymore, but it is powerless against any truly brutish threats.

¹²⁶ Albert C. Pierce, "Just War Principles and Economic Sanctions" *Ethics and International Affairs* 10, no. 1 (1996), 99-113.

¹²⁷ *Ibid.*, 102-103.

¹²⁸ See, for example, Orend, *The Morality of War*, 263; Walzer, *Just and Unjust Wars*, 3rd ed., 331-333; Hannah Arendt, *On Violence* (New York: Harcourt Brace Jovanovich, 1970), 53.

¹²⁹ Nazis, they continue, were only egged on by non-violent resistance, taking it as confirmation of others' slavish inferiority. Walzer importantly adds that the confidence in the power of non-violent resistance presupposes aggressing soldiers who abide by the war convention. Walzer, *Just and Unjust Wars*, 3rd ed., 333-335.

¹³⁰ Orend, *The Morality of War*, 249; Peter Ackerman and Jack Duvall, *A Force More Powerful* (New York: Palgrave, 2000), 110.

Some consequentialist pacifists respond by countering that non-violent resistance has indeed been successful against truly brutish threats. Against the argument that the English were “comparatively nice,” Duane Cady recalls the Amritsar Massacre on April 13th, 1919 where English soldiers trapped and opened fire on a gathering of peaceful, unarmed protestors, killing 379 and wounding 1137 more.¹³¹ Others have noted that against the Nazis, non-violent resistance also had some encouraging results. Martin Benjamin, for example, refers to some evidence that Nazi soldiers were, “at least on occasion, thwarted by resistance and defiance which did not aim at bodily harm.”¹³² Benjamin quotes B.H. Liddell Hart, a British military historian who interviewed German generals after the war about the non-violent resistance they had encountered primarily in Denmark, Holland and Norway and concluded that,

They [the Nazis] were experts in violence, and had been trained to deal with opponents who used that method. But other forms of resistance baffled them- and all the more in proportion as the methods were subtle and concealed. It was a relief to them when resistance became violent, and when non-violent forms were mixed with guerrilla action, thus making it easier to combine drastic suppressive action against both at the same time.¹³³

Benjamin does not argue that Hitler himself would have been deterred or flustered by a more widespread, non-violent civilian resistance, but he does think that such a movement might have weakened the will of the ordinary German soldiers and thereby enfeebled the Nazi effort.

Another response to the objection that pacifism is ineffective against serious threats is to note that military action itself isn't always effective. The bloody record of

¹³¹ Cady, *From Warism to Pacifism*, 101-102.

¹³² Benjamin, “Pacifism for Pragmatists,” 202.

¹³³ B.H. Liddell Hart, “Lessons from Resistance Movements- Guerilla and Non-violent,” in *Civilian Resistance as a National Defense*, ed. Adam Roberts (Baltimore: Penguin Books, 1969), 240, quoted in Benjamin, “Pacifism for Pragmatists,” 202.

war is hardly a resounding success. Those with a just cause do not always win, and even when they do win, they do not always fight justly. It is also far from clear that state measures meant to improve military security, such as the development of nuclear weapons and the military reinforcement of borders, always make citizens safer.¹³⁴ Importantly, Benjamin adds that consequentialist pacifists usually concede that non-violent resistance has its own bad consequences. He admits that even a well-disciplined, non-violent resistance against violent aggressors is likely to incur casualties and runs the risk of failing.¹³⁵ Relatively speaking, however, he thinks that the consequences of organized non-violent resistance are bound to be less severe than those produced by large-scale violence.

Consequentialist pacifists also commonly argue that the *kind* of peace they seek simply cannot be achieved by military means. They argue that military conflicts may well force one side to surrender, but they cannot secure any more meaningful peace. They seek mutual understanding and reasoned agreement, rather than the temporary cessation of hostilities brought about by military surrender or defeat. To use Cady's language, they seek positive, rather than just negative peace.¹³⁶ Genuine, deep-seated peace, they say, cannot be effectively produced through military might.

In many ways, the relative effectiveness of non-violent resistance is an empirical question that cannot be settled by philosophical argument. Few, however, have been interested in making a concerted effort to enact pacifist political reforms, such as the elimination of national armies, or to actively train and mobilize a citizenry in non-violent resistance. Some pacifists argue that until a determined effort has been made to invest in

¹³⁴ Andrew Alexandra, "Political Pacifism," *Social Theory and Practice* 29, no. 4 (October, 2003), 603.

¹³⁵ Benjamin, "Pacifism for Pragmatists," 208.

¹³⁶ Cady, *From Warism to Pacifism*, 77-80, 117-120.

pacifist reforms, then pacifism is doomed to look unreasonable or impracticable.¹³⁷ This reluctance to enact pacifist strategies, however, seems to stem from a general skepticism about the effectiveness of already existing examples of non-violent resistance. Critics argue, for example, that civilian resistance was neither necessary nor sufficient for the Allies' winning the war and that Allied victory was more fundamentally the result of military triumph. Moreover, it seems that in those places where non-violent resistance did have some effect on the Nazis, in Holland and Denmark, the populations were viewed by the Nazis as sharing in racial superiority; they were populations the Nazis did not *want* to exterminate.¹³⁸

Though more empirical work needs to be done, it does seem at least plausible that significant bloodshed might be avoided if we adopted some of the pacifists' institutional reforms. If we eliminated the production and trade of ever more powerful rockets, for example, it seems plausible that we would appear less threatening to each other and thereby reduce aggression. And, as Jessie Wallace Hughan argues, if any of us were attacked but resisted non-violently then we might through sustained and organized non-cooperation be able to compel the aggressors' withdrawal. He says, if there were "no battles, no opposing armies, no dangers, no chances for heroism.... Neither army morale nor war fever in the aggressor nation is likely to hold out long against this reversal of all that makes the spirit of a campaign."¹³⁹ If we dismantled some of the very system that makes people feel threatened and rally around their armies, then it seems credible that at least some interstate invasions might be curtailed.

¹³⁷ John Howard Yoder, *When War is Unjust: Being Honest in Just-War Thinking* (Eugene, Oregon: Wipf and Stock, 1996), 73, 79.

¹³⁸ See, for example, Ackerman and Duvall, *A Force More Powerful*, 211.

¹³⁹ Jessie Wallace Hughan, "Pacifism and Invasion," in *The Quiet Battle*, ed. Mulford Q. Sibley (Boston: Beacon Press, 1968), 326, quoted in Benjamin, "Pacifism for Pragmatists," 207.

I remain uneasy, however, about the ability for non-violent resistance to adequately respond to genocides or campaigns of ethnic cleansing. First, non-violent resistance needs time to work, to sink in, and shame its targets into desisting. Unfortunately, the victims of atrocities do not often have much time to bend the will of their oppressors. In the Rwandan genocide, for example, 800,000 people were killed in the short span of one hundred days. Second, and more importantly, the goal of genocide or ethnic cleansing isn't the taking over of a community, but rather its annihilation. Non-violent resistance might well hold some promise against aggressors who want to colonize an already inhabited territory and enlist its residents, but it seems to hold less promise against aggressors who simply want their victims dead. Well-organized forms of non-violent resistance seem to have enormous power in campaigns to end serious kinds of oppression such as, for example, in the campaign to end segregation in the Southern United States, but their ability to adequately deflate wild-eyed genocidal maniacs (often themselves the victims of propaganda) seems, in some cases, simply implausible.

Now it may well be that if we were to adopt all of the pacifists' recommendations, then the racial, ethnic or religious tensions that underlie genocides or ethnic cleansing would diminish. We might, for example, develop a more cosmopolitan system that dampens nationalistic spirit, dissolves group-based antagonisms, and roots out 'us' versus 'them' thinking. The potential for an international cosmopolitan revolution to reduce group-based antagonism definitely warrants sustained attention by anyone concerned about war.¹⁴⁰ At the same time, however, I think that examples such as the Rwandan genocide show us that some limited defensive military action might still be justified in

¹⁴⁰ See, for example, Thomas Pogge, "Preempting Humanitarian Interventions," in *Humanitarian Intervention: Moral and Philosophical Issues*, ed. Aleksandar Jokic (Peterborough: Broadview Press, 2003), 93-108.

order to pre-empt or halt mass slaughter. It would be a strange moral position indeed that refused any military intervention by members of the international community in an ongoing genocide as a means of enlivening cosmopolitan spirit.

The other objection explored in this section was that consequentialist pacifists cannot consistently be both consequentialist, thus opposed in principle to nothing, *and* against all use of military force. I find this objection generally less persuasive than the objection about effectiveness. Indeed, I tend to think that there is an admirable *consistency* in the pacifist position insofar as it doesn't just claim that war is bad, but actively recommends a substitution. If just war theorists agree with the pacifists that war is ghastly, then it certainly seems strange that we spend so much of our time talking about when war is justified. Jenny Teichman nicely makes a related point when she concludes, "We might well say that the point is not to justify war but to abolish it. The pacifist by his actions in war and peace at least proves that he really believes *that*." ¹⁴¹

So while I think that one can consistently or logically be a pacifist and a consequentialist, I do worry about whether consequentialist pacifists accurately calculate the consequences of the *refusal* to use military action in this highly imperfect world. I am not suggesting that we slavishly and unimaginatively enforce our current domestic and international institutional arrangements, as though such things are inalterable facts of the human condition. I think that we *should* work towards modes of organization that better incline us towards peace, but unfortunately the future society where intense group-based hatreds, power hungry tyrants and/or malleable war-loving societies are no more seems a very long way off. I do not claim that war and large-scale aggression are inherent and permanent fixtures of humanity as some do. I do claim, however, that if something like a

¹⁴¹ Teichman, *Pacifism and the Just War*, 111.

pacifist revolution does happen, it will be long, arduous, and incremental. During this process, it would be unreasonable to refuse to use any military force as a means to ending a genocidal campaign, especially if such force might realistically be capable of abiding by the central requirements of the just war tradition.

I think there is something especially sinister in the rule consequentialist's position in that it willingly imposes or requires massive sacrifices from the world's most vulnerable people now for the sake of people not yet born. Certainly it is often appropriate for those of us currently living to forgo some material possessions or change certain economic or environmental practices in order to build a better, more sustainable world for future generations. Yet, giving up claims to military protection when one becomes a target in genocide or ethnic cleansing strikes me as a rather substantial and unreasonable sacrifice, however noble the long-term goal. Rule consequentialist pacifists refuse to sanction the means that could be required to protect some innocents now with an eye to saving others, perhaps entirely unrelated to the case at hand, in the future. While we should certainly strive to achieve institutions and understanding that better incline us towards peace in the long-run, it simultaneously seems like currently living innocents who are the targets of mass atrocities can nonetheless have an overwhelmingly compelling claim to military protection. The long-term project of creating a rights respecting world and the short-term project of adequately protecting innocents who find themselves the subjects of widespread atrocities must be made compatible.

2.5 Moderate Deontological Pacifism

Consequentialist pacifists insist that a policy of widespread institutional change and organized non-violent resistance will produce the best consequences overall. Other more deontologically-minded pacifists insist that independent of whether pacifist proposals will produce the greatest overall good, pacifism is always morally preferable to military action because, quite simply, military action inevitably and foreseeably kills innocents. As deontologists, they insist that there are important moral constraints on the pursuit of even objectively good ends. As *moderate* deontologists, however, they may disagree with the absolutists or the near-absolutists that one can *never* permissibly intend harm, such as, for example, harm to aggressors. While many moderate deontological pacifists are likely to agree with the consequentialist pacifists that the long-term consequences of non-violent resistance are likely to be better than the consequences of continued war, they do not rest their whole case on it. Often individual pacifists use many different kinds of arguments in favour of the abolition of military action, so I don't mean to suggest that these various kinds of pacifism are discrete and competing factions.

Moderate deontological pacifists are particularly concerned with the conduct of *modern* military action, as opposed to earlier methods of military action where it is believed that warfare generally took place on distant battlefields far removed from civilians. Indeed, many statistics support the view that warfare is becoming worse, not better, for civilians. Some estimate, for example, that one in every ten casualties in WWI was a civilian, that one in every two casualties in WWII was a civilian, and that nine in

every ten casualties in the wars of the 1990s were civilians.¹⁴² Yet, despite such abhorrent statistics, it would be incorrect to paint war before the twentieth century as being chivalrous and genteel. Lawrence Keeley, for example, convincingly argues that the current tendency to look back on wars past as though they were the ‘good old days’ of clean warfare is a gross oversimplification.¹⁴³

Often when moderate deontological pacifists condemn the killing of innocents they have in mind what has come to be known as ‘collateral damage’ when this refers to the foreseeable yet unintentional killing of civilians who are utterly uninvolved in the military. Lives lost ‘collaterally’ are often dismissed by military officials and philosophers alike through this bit of military jargon. The term is problematic because it implies that the killing is necessarily justified because it is not the work of sadists, but rather the work of well-intended soldiers. Moderate deontological pacifists insist that it is not enough that soldiers kill innocents with good intentions. Innocents, they argue, ought not to be killed at all, thus they defend a moral constraint against *doing* harm, and not simply what they take to be the just war theorist’s more lenient constraint against *intending* harm.

In his various works, but especially in his book *On War and Morality*, Robert Holmes provides a very powerful defence of moderate deontological pacifism. Holmes argues that though the constraint against the intentional killing of innocents might be *stronger* than the constraint against foreseeably killing innocents, both constraints are

¹⁴²Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Stanford, Cali.: Stanford University Press, 1999), 8, 100, quoted in Weiss, *Humanitarian Intervention*, 70.

¹⁴³ Lawrence Keeley, *War Before Civilization* (New York: Oxford University Press, 1996).

strong enough for the killing of innocents in war to be prohibited.¹⁴⁴ That is, while it might be *worse* to intentionally kill an innocent than to foreseeably do so, both kinds of killing are impermissible. Holmes's moderate deontological pacifism is in many respects very compelling, even according to many just war theorists, and so I propose to investigate his account in some detail.

Holmes contends that innocents have a stronger claim not to be killed, than soldiers or interveners have a claim to kill them, *even if* the killing is merely foreseen and granting that the soldiers' ends and means are all good.¹⁴⁵ As he so concisely puts it, "Human beings have as much right to be spared destruction by good people as by bad."¹⁴⁶

When pressed with the objection that foreseeably (but unintentionally) killing some innocents might also save a greater number of innocents from being killed by another, Holmes simply does not budge. He maintains that those who insist that we ought to foreseeably kill some innocents when doing so might prevent an aggressor from killing a greater number of others wrongly suppose that it is always equally wrong to cause the deaths of innocents as to allow them so that the only thing left to do when faced with aggression is to attempt to minimize overall fatalities. Though he admits that *sometimes* allowing the death of an innocent can be just as bad as killing an innocent person oneself,¹⁴⁷ Holmes denies that doing and allowing are always on a par. For Holmes, 'letting' an innocent die *can* be just as bad as killing an innocent oneself, especially if, for example, one intends the death as a means to a private end, or if one has

¹⁴⁴ Robert Holmes, "Pacifism for Nonpacifists," *Journal of Social Philosophy* 30, no. 3 (Winter, 1999), 391

¹⁴⁵ *Ibid.*, 392.

¹⁴⁶ Holmes, *On War and Morality*, 211

¹⁴⁷ A good example might be James Rachels's case of the cousin who happily watches her cousin drown in the bathtub in order to inherit her fortune. See also, Holmes, *On War and Morality*, 210

a special relationship to the potential victim that might oblige one to provide her with positive aid.¹⁴⁸ But, he insists, letting die isn't always as bad as doing the killing oneself. He adds that in general the strength of our obligation to refrain from killing innocents is stronger than any supposed obligation to save innocents from others' threats by sacrificing ourselves and/or killing other innocents.¹⁴⁹ Presumably, Holmes's view does not prohibit a person's sacrificing only herself in order to save the life of a distant other, but simply considers such sacrifice supererogatory.

Insofar as he seems to place considerable stock in what agents do (rather than just the overall outcomes to which they contribute), his position is importantly different from the consequentialist pacifist's. The consequentialist's case for pacifism seeks to prevent the mass chaos and destruction attached to military action, Holmes, on the other hand, is centrally interested in restricting agents from *doing* certain things. Holmes also disassociates himself from absolute and near-absolute pacifism.¹⁵⁰ He does not condemn all war by contending that force or violence is always, in principle, wrong. In theory, he says, an innocent's entitlement not to be killed *could* be overridden if enough was at stake, but the threshold at which the innocent's entitlement might be overridden is so high that no prospects involved in reasonably possible modern military actions satisfy it.¹⁵¹

Holmes admits that "any plausible moral theory, to be sure, must take some account of consequences...."¹⁵² He even agrees that agents can sometimes be justifiably accountable for harmful consequences they foresee but are mediated by others' actions. He agrees we should, for example, hold an agent responsible for the chaos she instigates

¹⁴⁸ Ibid, 210.

¹⁴⁹ Ibid, 210.

¹⁵⁰ Ibid, 212.

¹⁵¹ Ibid, 212.

¹⁵² Ibid, 205.

by shouting ‘fire’ in a crowded theatre.¹⁵³ For Holmes it is not the case, however, that agents are *always* properly held to account for the harmful responses they foresee will follow from their actions. Such a principle, he says, would simply be a recipe for the worst kind of social conservatism, as though interracial marriage could be rendered wrong because of the foreseeable and harmful reactions of bigots.¹⁵⁴ So while Holmes is appreciative of consequences, and also admits that *sometimes* agents can be properly blamed for their causal contributions to mediated consequences, he denies that when faced with unjust human aggression one ought simply to do whatever salvages the best overall consequences.

According to Holmes, the overall consequences do matter, but they are not the only things that matter; it also matters that agents guide their actions according to what he calls “moral personalism” wherein it seems that persons are expected to behave, as Nagel puts it, in ways that those persons on the receiving end could reasonably be expected to accept.¹⁵⁵ Holmes insists that, “persons are pre-eminently worthy of respect and have claims upon those whose conduct may affect them to be treated in certain ways that do not diminish them.”¹⁵⁶ His view is that the killing of innocents that inevitably happens in the course of modern military action violates the demands that moral personalism impose between the innocent who is killed and the well-intentioned soldier who kills her.

To summarize this section so far: In the context of war, Holmes defends a constraint against *doing* harm to innocents, whether that harm is intended or ‘merely’

¹⁵³ Ibid, 206.

¹⁵⁴ Ibid, 208.

¹⁵⁵ Thomas Nagel, “War and Massacre” *Philosophy and Public Affairs* 1, no.2 (Winter, 1972), 133-136.

¹⁵⁶ Holmes, *On War and Morality*, 43. Though moral personalism seems to be an important guiding constraint throughout his work, Holmes does not have very much more to say about it. See *On War and Morality*, 24, 43, 213.

foreseen. That is, according to Holmes, one cannot rightly kill non-combatants intentionally (presumably as a means of saving other non-combatants), nor kill them foreseeably in one's defensive efforts against enemy combatants. Intending harm by one's own hand is worse than foreseeing harm by one's own hand, but causing 'merely' foreseeable harm to innocents in military actions is nonetheless impermissible. Holmes is also generally suspicious of intentionally *allowing* harm to innocents as a means to an unjust end, though he has less to say about this than about his restriction against intentionally *doing* harm to innocents in war.

Holmes permits harm to innocents that is not intended, but is foreseen and involves an allowing rather than a doing. An example might be refusing to engage in military operations that would kill some innocents and foreseeing that, in a certain sense, this refusal *allows* the aggressor to continue unimpeded. In addition, he also permits some harm to innocents when it is unintended and involves a doing, but the foreseen harm is mediated by the unjust aggression of some other human agent. Holmes insists that he is not an absolutist about either the constraint against doing or intending harm. In principle, he says, these constraints could be overridden. In practice, however, he says the thresholds at which the constraints might give way are simply never met, and couldn't reasonably be met by modern military actions.

Holmes's position might be said to involve a variation on the Doctrine of Double Effect (DDE). Ordinarily, defenders of the DDE permit a person to *do* some harm to innocents when it is neither intended as an end or a means and when the merely foreseen harm is proportionate to the good achieved. Holmes, on the other hand, seems to say that one is permitted to *allow* some harm when it is neither intended as an end or a means to

one's end, and when the merely foreseen harm is chiefly attributable to another's unjust aggression. He does not deny that there is a moral distinction between *intending* and *foreseeing* harm. What he rejects is the view that foreseeably but unintentionally doing harm can be justified every time so doing contributes to an overall good.

Generally I agree with Holmes and other moderate deontological pacifists that a person's refusal to prevent the deaths of some innocents by killing others is not as bad as being an aggressor oneself. I also agree on his more particular point that just war theorists sometimes try to pass off as 'merely foreseen' consequences that seem more rightly described as intended means. It may nonetheless be mistaken, however, to refuse to use military force when enough lives are at stake and the victims of atrocity accept the added risks of intervention. Thus, while intentionally killing innocents is certainly worse than allowing them to be killed by refusing to (unintentionally) kill other innocents in defensive action, allowing an aggressor to kill unimpeded might nonetheless be wrong when the threat to be avoided is sufficiently grave and the targeted population cries out for military assistance.

2.6 Innocence and Non-Combatant Immunity

Throughout the discussion so far, 'innocents' have been taken to mean non-combatants who are utterly uninvolved in the military, children and the elderly being paradigmatic examples, whereas 'non-innocents' have been taken to mean combatants and those who are actively engaged in or directing hostilities. However, the categorizing of all non-combatants as innocents and all combatants as non-innocents is the subject of considerable debate. The worry is that sometimes combatants are more accurately

thought of as victims, innocent pawns in the hands of aggressive, war-mongering elites, while some non-combatants are reasonably thought of as morally guilty, such as newspaper publishers who fan and exploit ethnic tensions that contribute to war.

Interestingly, both Robert Holmes and Michael Walzer, the paradigmatic pacifist and just war theorist respectively, lean towards absolving soldiers of responsibility for their initial decision to fight, insisting that they usually have little grasp over the decision to resort to war. Even when they are not conscripts, Holmes and Walzer note that soldiers are often actively deceived by their governments, lack education and opportunity, and are socialized to see patriotism and self-sacrifice as virtuous and intrinsically worthwhile.¹⁵⁷

If Holmes and Walzer are correct about the moral innocence of many ordinary soldiers, then it seems that the moderate deontological pacifist's concerns are only amplified. If military action is wrong because it foreseeably kills innocents *and* modern-day soldiers are themselves innocents, then for the moderate deontological pacifist even the most stringent application of the principle of non-combatant immunity is problematic. Since the killing of combatants would itself be the killing of innocents, it would mean little to boast that one had successfully restricted one's killing to combatants. This is not to say that a moderate deontological pacifist necessarily shares the view that soldiers are innocent pawns. A moderate deontological pacifist might prefer to side with Jeff McMahan and Brian Orend, who both argue that the coercive pressures on ordinary, non-conscripted soldiers are sometimes exaggerated.¹⁵⁸ A moderate deontological pacifist

¹⁵⁷ Holmes, *On War and Morality*, 186; Walzer *Just and Unjust Wars*, 3rd ed., 40, 138, 304-316.

¹⁵⁸ Orend, *The Morality of War*, 109; Jeff McMahan, "The Ethics of Killing in War," *Ethics* 114, no.4 (July, 2004), 700.

might insist that at least some combatants are rightly described as non-innocents, but still continue to reject war for its reasonably foreseeable effects on innocent non-combatants.

A person could, rather oppositely, reject the moderate deontological pacifist's prohibition on foreseeably killing innocents by denying that most non-combatants are innocents, thus rendering virtually an entire population a legitimate military target. One might argue, for example, that because an aggressing country is a democracy and thus is at least implicitly endorsed as a system by most of its members, most of the collective is liable to intentional defensive attack. In a similar vein, some have argued that in extreme circumstances, payment of taxes to a blood-thirsty, genocidal regime can be sufficient to make one rightly liable to attack in a humanitarian intervention.¹⁵⁹ In effect, this line of argument says that almost everyone is fair game by virtue of their complicity or association (however attenuated) with an offending authority. This rather extreme position responds to the moderate deontological pacifist's concerns by *expanding* the category of non-innocents to include ordinary civilians.

While I think that this possible objection rightly challenges the assumption that non-combatants are always wholly innocent with respect to their states' aggression, the moderate deontological pacifist is unlikely to be moved by it. Indeed even most just war theorists tend to reject an extension of liability to intentional attack to non-combatants within an unjust regime. Given the huge diversity of opinion that can exist within modern states and the gulf that often exists between the politicians who initiate wars and those they claim to represent, any temptation to tar a whole enemy society with the same brush should be resisted.

¹⁵⁹ See, for example, Erin Kelly, "The Burdens of Collective Liability," in *Ethics and Foreign Intervention*, eds. Deen K. Chatterjee and Don E. Scheid (Cambridge: Cambridge University Press, 2003), 133, 135.

That being said, it's true that non-combatants have an obligation to try to ascertain and assess their government's actions. We should certainly scrutinize our governments and attempt to separate ourselves from them when they act in ways we deem criminal and/or morally unjust. I am no apologist for moral laziness, but my concern is that in times of crisis military personnel and political leaders engaged in what they perceive to be defensive military actions can rashly portray foreigners as a homogenous and uniformly hostile group. Philosophers ought not to serve as apologists for this kind of criminal simplification, however just the ends and however urgent the call to arms. In the case of humanitarian interventions, it is important not to overstate the case against ordinary non-combatants as a means to help well-meaning interveners sleep better at night.

I have two reasons for preferring to maintain the immunity of non-combatants, despite the fact that non-combatants are admittedly not always rightly described as innocent with respect to the aggression in question. First, in principle, the most serious threat of all (i.e. the threat to life itself) should be reserved for those who are themselves overtly or directly engaged in threatening. Heinous though it is, paying taxes to a genocidal regime ought not make a person liable to intentional lethal attack in military intervention. Even when non-combatants are not themselves the victims of terror and propaganda, and they happily pay their taxes to support a genocidal government, the principle of discrimination and non-combatant immunity should hold. Making non-combatants liable to lethal attack violates a sense of proportionality between the wrongdoing and the redress.

My second reason for preferring to uphold the immunity of non-combatants despite the obvious problems with describing non-combatants as uniformly innocent is consequentialist. Put simply, the potential consequences of generalizing liability over an entire population could be catastrophic. If paying taxes to a rights-violating regime were sufficient to make one liable to military attack, then there may be very few tax-payers in the world who could confidently deserve the protection of non-combatant immunity. It's worth noting that this tendency by some otherwise progressively-minded liberals to generalize moral guilt across a whole citizenry as a means of justifying civilian casualties is not unlike the reasoning used by defenders of suicide bombing and terrorism more generally. Even those with a just cause need to avoid the inclination to make a monolith of offending groups, lest they become just like the party they resist. The immunity of non-combatants may well be more of a conventional than perfectly principled rule, but it seems one well worth preserving.

Naturally it makes me uncomfortable to defend the immunity of those who willingly support genocidal regimes, and the worry is that doing so reveals a misplaced loyalty and is callous to the victims of atrocity. I am not insensitive to the fact, however, that there could arise a humanitarian intervention that satisfies all of the criteria of a thick version of just war theory, but can only be executed by risking the foreseeable, but unintended killing of some non-combatants. Whether non-combatants can *ever* rightly be the victims of 'merely' foreseeable killing is controversial and on this issue moderate deontological pacifists and just war theorists part ways. Holmes insists on what in effect turns out to be the virtually absolute immunity of non-combatants, and Walzer insists

only on the doctrine of double effect coupled with what he calls the requirement of due care.

2.7 Due Care and Moral Personalism

Walzer's requirement of due care requires that soldiers have a "double intention," they must intend a good end through a permissible means *and* must also attempt to minimize all foreseeable harm to non-combatants by accepting some costs to themselves. Walzer argues that there can be no fixed rules about how much risk soldiers must accept but that the "limits of risk are fixed...roughly at that point where any further risk-taking would almost certainly doom the military venture or make it so costly that it could not be repeated."¹⁶⁰ For Walzer, the interests of soldiers engaged in a just war or humanitarian intervention must be risked before innocent non-combatants are foreseeably killed.¹⁶¹

Insofar as his requirement of "due care" can be interpreted to make a fairly important break from how modern wars tend to be conducted, Walzer can be thought to share some of the moderate deontological pacifist's concern with the world's seemingly nonchalant acceptance of collateral damage. Indeed he writes that "most campaigns are planned and carried out well below the line" militaries can be reasonably expected to absorb in their attempts to avoid civilian casualties.¹⁶² By virtue of their having volunteered for military service, Walzer would rightly support some transfer of risk from the innocent victim to the humanitarian intervener. He does not, however, go so far as to

¹⁶⁰ Walzer, *Just and Unjust Wars*, 157.

¹⁶¹ Ibid, 157. Walzer later adds that though there is no algorithm to determine how much risk one can rightly require military personnel to absorb in minimizing the foreseeable consequences of their actions, one can nonetheless "blame commanders who don't make minimal efforts, even if one doesn't know exactly what a maximum effort would entail." Ibid, 319.

¹⁶² Ibid, 319. See also Walzer, "The Argument about Humanitarian Intervention," 7.

say that innocents have absolute or near-absolute entitlements to be free from attack, restricting their rightful claims instead to 'due care.' Anything more than a civilian's right to due care effectively denies the permissibility of any defensive military action at all, no matter how overwhelmingly significant the cause.¹⁶³

I side with Walzer on the issue of the strength of non-combatant immunity during humanitarian interventions but hasten to emphasize that Walzer's proviso of due care can be reasonably interpreted to make a radical break from the way modern military operations tend to be conducted. If modern military actions were to be truly conducted in accordance with the principle of due care, it would take place in a much more restrained manner. For a humanitarian intervention to be justified it would be crucial for interveners to err on the side of caution and treat all non-combatants as though they were innocents, indeed as innocent as the very victims they are intervening to protect. I think the importance of such caution is buttressed by the likelihood that non-combatants who support their murderous governments have themselves been manipulated and terrorized by their governments. At the very least, non-combatants support for their governments often seems to be the cumulative effect of years of carefully crafted state propaganda that exploits and manipulates pre-existing tensions, dehumanizes the victims of atrocity, and gradually wears down a citizenry's natural moral impulses. This is not meant to justify the actions of those citizens who fail to disassociate themselves from their blood-thirsty governments, only to account for my thinking that their killing should be actively and consciously avoided by even well-intended interveners.

Even though Holmes attempts to distance himself from absolute pacifism which unconditionally rejects any and all defensive force as a matter of principle, his view is

¹⁶³ Orend, *The Morality of War*, 261.

equally inadequate when it comes to responding to humanitarian atrocities. Holmes himself must admit that there may be certain very undesirable consequences of following his prohibition of military action, but he insists that it is not the job of the pacifist to solve the problems created by non-pacifists.¹⁶⁴ His line seems to be that since pacifist recommendations could be consistently followed, there might be no need for defensive military action and thus it is unfair to require that the pacifist answer those who refused to listen. Even if it's true that we could avoid many of the messes we get into if the whole world adopted pacifist reforms, it seems negligent to refuse to articulate *some* criteria and terms for military action in the event that some groups return to (or persist in) military aggression and, in the case of humanitarian intervention, the world is faced with ongoing or imminent, large-scale and violent humanitarian atrocities.

I think that imposing the risk of foreseeably killing innocents may, in very particular and extreme kinds of circumstances, be consistent with the perspective of moral personalism that both Holmes and Nagel advocate. In very desperate circumstances, innocents whose lives are risked by military intervention might support the intervention despite its risks. It seems at least plausible that someone who is herself faced with near-certain extermination might argue that Holmes's thresholds for permissible killing (or risk of killing) are simply too high. It seems false to suggest that foreseeably killing innocents can only ever appear justified from an isolated, overall consequentialist perspective. Persons in Nazi-occupied Europe, for example, may well have cheered on Allied raids, despite the obvious risks such raids posed for their own security. Moderate deontological pacifists don't credibly have a monopoly on what Holmes calls the perspective of moral personalism. I stress, however, that I do not want

¹⁶⁴ Holmes, *On War and Morality*, 275-276.

to justify and sweep under the carpet any amount of so-called 'collateral damage' by humanitarian interveners. It is certainly not the case that all that matters are good intentions. It seems, however, that a person who is herself faced with near-certain extermination might well argue that Holmes's thresholds for permissible killing (or risk of killing) are simply too high.

In writing this, I certainly do not wish to align myself with those who might reason that it doesn't matter whether intervention kills innocents since without an intervention they would have died anyway. I do not think that interveners can permissibly do anything to me because my death, or my neighbour's death, at the hands of others is already likely. Imposing any risk of foreseeably killing innocents should always be profoundly disturbing and it understandably leads many to defend some version of pacifism. Unfortunately, however, in some reasonably possible circumstances the humanitarian consequences of pacifism seem even worse. It seems even more disturbing that the world should be restricted to petitions, sanctions, and labour strikes even when such techniques have no influence on halting mass slaughter. When such techniques do have some sway we should undoubtedly use them, but when they don't, the suitability of other avenues needs to be explored. Both the just war theorist who defends intervention under very strict terms and the pacifist who insists on only non-violent means of response face deplorable consequences. Yet, considering the gravity and scale of the kinds of atrocities here considered, it seems like *sometimes* military action may be the lesser of two evils, and may be an evil that its potential victims welcome.

The potentially serious risks attached to even the most carefully executed humanitarian intervention, however, should make us seek out ways of preventing

humanitarian atrocities from happening at all. Equally as much as controversial terms for intervention should be debated, so too should we investigate means for pre-empting the outbreak of humanitarian crises.¹⁶⁵

2.8 Conclusion

This chapter explored various pacifist arguments as a means of determining whether a case for military action against humanitarian atrocities has any merit at all. If military action can never be justified, then the argument stops here. Ultimately I have argued that while I am sympathetic to much that pacifists say, a blanket rejection of all forms of military action is too sweeping, and leaves the targets of violence ill-equipped to respond to aggression.

I argued that absolute pacifism and near-absolute pacifism both fail because they reject or fail to account for the permissibility of forceful or even lethal self-defense in order to repel a threat to one's life. Absolute pacifists explicitly reject self-defense, preferring instead to turn the other cheek, while near-absolute pacifists try to justify self-defense by implausibly insisting that self-defenders don't mean their attackers any harm. Near-absolutists might creatively re-describe the self-defender's intention as the repelling of a threat and the aggressor's subsequent death or injury as an unfortunate, wholly unintended side-effect. While I certainly have not rejected the intend/foresee distinction altogether, it is more accurate and intellectually honest to say that the self-defender intends harm to the attacker as a necessary means to a wholly just end. Sometimes, but no doubt very rarely, intending injury or death as a means to an end is morally permissible.

¹⁶⁵ Pogge, "Preempting Humanitarian Interventions," 93-109.

Next, I explored consequentialist pacifism and the possibility of using non-violent methods of responding to aggression. I defended consequentialist pacifists against the charge that there is an inconsistency between being a pacifist and thus opposed to all military action *and* a consequentialist so opposed to nothing in principle. However, I argued that even a well-organized non-violent resistance may not always be adequately effective in repelling aggression; in particular it is unlikely to hold much promise against blood-thirsty *génocidaires* who simply want their victims dead. Consequentialist pacifists admit that non-violent tactics may leave some dead, but they insist that it will be a smaller number than would die through a continued resort to defensive military force. Yet I am unconvinced that the calculus is necessarily going to work out in favour of non-violent resistance. By all means, it seems that some of the institutional recommendations that consequentialist pacifists endorse are worth pursuing, such as, for example, training populations in tactics of non-violent resistance, eliminating nuclear weapons, and working towards methods of domestic and international organization that are more genuinely democratic and better incline us towards peace. Nonetheless, a wholesale abdication of military action seems to make bad consequentialist sense.

Finally, this chapter explored moderate deontological pacifism for which I took Robert Holmes as a paradigmatic example. Moderate deontological pacifists reject military action because they insist that it inevitably and foreseeably kills innocents. After some discussion regarding who counts as an ‘innocent’, I concluded that while Holmes is correct to be so critical of the world’s seemingly blasé attitude towards collateral damage, he is wrong to insist that collateral damage is, in any reasonably possible military action, wholly unjustified. I emphasized, however, that very stringent conditions should be met

to make imposing the risk of foreseeably killing innocents permissible. Most notable among these conditions is Walzer's requirement of due care which says that soldiers must increase the risks to themselves in their efforts to shield innocents from foreseeable harm. In the end, I speculated that sometimes in very desperate and gruesome circumstances, military intervention and the risks they impose will be allowed by their potential innocent victims. Even those who are disposed to accept certain constraints on our pursuit of an overall good can deny that these constraints are so severe as to require that only non-violent methods of conflict resolution be employed to fight genocide or some equally weighty humanitarian catastrophe.

Chapter 3

Reasonable Prospect of Success and Proportionality

3.1 Introduction

After attempting to sift through competing conceptions of humanitarian intervention and determining, contra the pacifist, that it is at least in principle possible for humanitarian interventions to be justified, I now move on to consider more particularly some of the just war conditions under which intervention could be justified. There is no very precise set of threshold conditions that can be mechanically applied to troubled areas of the world and that would inform us of whether intervention is justified. This does not, however, make the effort to articulate any substantive rules useless. So long as mass atrocities persist, ongoing discussion of the justifying conditions for military intervention is important. It is, however, unlikely that one could discover any very precise algorithm that would determine when intervention is justified. The discussion that follows is, therefore, essential but necessarily broad.

This chapter investigates the just war tradition's requirements of reasonable prospects of success and proportionality. I argue that these just war conditions can be reasonably understood as more difficult to satisfy for humanitarian interveners than for those fighting in self-defense because interveners are required to weigh a greater range of harms in their proportionality assessments, and to give an especially high weight to any foreseeable harm to non-combatants. This interpretation of the proportionality requirement, I argue, makes certain kinds of modern military tactics off-limits to fully justified interveners. I also argue, however, that while humanitarian interveners may be required to include a greater range of harms in their proportionality assessments than self-

defenders, and weigh harm to non-combatants particularly heavily, they may also be permitted to include a greater range of goods in their proportionality assessments than some just war theorists suppose. I begin, however, with a few very general comments about what it means for military action to be *justified*.

3.2 The Just War Tradition and Moral Justification

Philosophers sometimes use the word ‘justified’ to mean that an agent is properly immune from blame and under no duty to compensate those she harms. Sometimes these philosophers admit that even an agent who is justified in her action should be expected to feel some regret regarding her connection to (perhaps unintended) harm. If she celebrates the harms, then it reflects badly on her character and we may become suspicious about the virtue of her intention. A total lack of regret regarding one’s causal role in bringing about some harm (in particular, harm to innocents) seems to call into question a person’s humanity. Nonetheless, some will reserve the word ‘justified’ for actions that, however deeply regrettable or tragic, the agent is not properly to blame for. Redress is not her duty, even if she herself is (wrongly) plagued by this belief. Some claim that justified agents can have a duty to *explain* why they did what they did, but no more substantive duty to compensate or apologize to those they harmed.¹⁶⁶

Other philosophers contend that blameworthiness and/or a duty of redress isn’t always and only tied to actions that are unjustified. They argue that one can be unjustified, but not blameworthy because one was coerced or psychologically impaired in some way. Equally, and more controversially, one can be justified and also rightly

¹⁶⁶ Terrance C. McConnell, “Moral Residue and Dilemmas,” in *Moral Dilemmas and Moral Theory*, ed. H.E. Mason (New York and Oxford: Oxford University Press, 1996), 42.

blamed for some of the consequences of one's permissible action. This residual moral culpability may give rise to certain duties to compensate victims (or their families, or communities). That is, a person can owe a debt to someone (or a group of people) she harms even if she was justified in bringing about (or contributing to) the harm.

Joel Feinberg provides a nice example where an agent is justified but nonetheless owes a duty of compensation. He writes:

Suppose that you are on a back-packing trip in the high mountain country when an unanticipated blizzard strikes the area with such ferocity that your life is imperilled. Fortunately, you stumble onto an unoccupied cabin, locked and boarded up for the winter, clearly somebody else's private property. You smash in a window, enter, and huddle in a corner for three days until the storm abates. During this period you help yourself to your unknown benefactor's food supply and burn his wooden furniture in the fireplace to keep warm.¹⁶⁷

Feinberg argues that the back-packer is justified, but nonetheless acquires a duty to compensate the cabin owner for the damage to her property.¹⁶⁸ The property owner has a *right* to compensation, and the back-packer's paying compensation is not supererogatory or charitable, but rather a duty. Though no rights were *violated*, because the back-packer acted permissibly, the cabin owner's rights were *infringed* or justifiably overridden, and this infringement entitles her to some redress. Feinberg doesn't claim that every time a person's rights are infringed she acquires a right to compensation or redress, but nonetheless argues that some instances of justified rights infringements warrant redress by the person who did the infringing.

One might think that the back-packer in Feinberg's example owes a duty of redress to the cabin owner, but that it would nonetheless be inappropriate or unreasonable

¹⁶⁷ Joel Feinberg, *Rights, Justice, and the Bounds of Liberty* (Princeton, New Jersey: Princeton University Press, 1980), 230.

¹⁶⁸ *Ibid*, 230.

for her to feel a sense of guilt or remorse for the damage she causes, or for the cabin owner to *blame* her. Redress, it seems, can be owed by an agent even in cases where an uneasy and painful sense of remorse might be inappropriate. In other cases, however, a benevolent agent who does the right thing, all things considered, but in so doing commits or allows some serious harm *can* be expected to feel remorse or guilt.

Michael Slote argues that a well-intentioned public official who violates the rights of innocents in order to avoid a large-scale disaster should, “feel distaste at what he does even though he correctly believes that he is acting rightly.”¹⁶⁹ This distaste, he continues, demonstrates “sensitivity to genuine moral cost.”¹⁷⁰ Slote rightly argues that this moral distaste, or residual agony, is inappropriate in those cases where one *prima facie* obligation easily overrides another,¹⁷¹ such as when, for example, one breaks a promised dinner engagement in order to save a drowning child, or burns someone’s wooden furniture to keep from freezing to death. He also thinks that this moral distaste or residue is different from the helpless feeling one should have when anything one can possibly do is entirely wrong.¹⁷²

Though the public-official, the back-packer, and the promise-breaker all have good (or at least permissible) intentions and are justified in their actions, the public official may be unique if, in her bringing about some very important social good (or avoiding a grave harm), she causes or contributes to a particularly serious kind of harm. Particularly serious harms sit uneasily with benevolent intentions. Slote argues that,

¹⁶⁹ Michael Slote, “Utilitarianism, Moral Dilemmas, and Moral Cost,” *American Philosophical Quarterly* 22, no. 2 (April, 1985), 165.

¹⁷⁰ *Ibid.*, 165.

¹⁷¹ *Ibid.*, 165.

¹⁷² *Ibid.*, 165.

“benevolence ...can (must?) also involve a concern not to harm anyone and not to leave anyone’s well-being neglected.”¹⁷³ He continues,

Benevolence aims not only to do the best it can in a given situation and to help rather than hurt people on balance, but also to leave no one- at least no object of its concern- badly off and uncared for, and this aim can leave a sense of moral consternation, when one’s maximizing actions have left someone neglected or worse off than previously.¹⁷⁴

Benevolence is, in a sense, double-headed requiring a desire to help as well as a desire not to harm. Slote’s view about benevolence nicely parallels Walzer’s insistence that the principle of due care involves a “double-intention,” requiring a military agent to intend a good end through a permissible means and to attempt to minimize all foreseeable harm to non-combatants by accepting some costs to herself. Following Slote, I argue that a benevolent intention coupled with (all things considered) right action can rightly accompany residual moral guilt and a duty of redress. This is true when the right act involves committing very serious rights infringements. This conception of benevolence can be quite demanding, since it will not be enough to simply avoid gratuitous harm to innocents. Benevolently-intentioned agents must actively try to minimize instances of serious, *prima facie* wrong acts. When further harm prevention becomes incompatible with pursuing the weighty good (or preventing a horrific wrong) perhaps because it makes the effort unbearably costly, justified agents must still (if circumstances allow) contribute to reasonable efforts at redress after-the-fact.

War provides many examples where agents’ moral justifications are less than fully exculpatory and where, despite acting permissibly (even courageously), agents acquire duties to compensate their victims to the extent that compensation is possible.

¹⁷³ Ibid, 166.

¹⁷⁴ Ibid, 166.

Even agents in very well-intended wars with just causes, carefully planned to risk only proportionate harm, and who have exhausted all other avenues for achieving the just cause seem to bear some residual moral blameworthiness for the unintended harm they cause, such that we expect them to help rebuild, for example, the civilian institutions and infrastructure damaged by the military action. Even if one thinks that blame would be inappropriate, one might agree that some remorse (and not merely regret) might reasonably be expected.

Entering into war, even a just one, seems to involve a kind of moral quicksand. In part this is because of the severity of the harms that are being imposed by war (i.e. the killing of innocents) and the great likelihood of harming that war's unintended consequences seem to stick to agents so persistently. The kinds of situations where the use of military force may seem appropriate seem to be the kinds of cases where anything one can possibly do, including remaining 'neutral', involves doing wrong things and one is destined to bear some blameworthiness, or at least some duty to redress.

In "War and Massacre" Thomas Nagel makes a similar argument when he insists that in war permissible actions are not necessarily 'all right.' Nagel argues that sometimes all available options are terrible. "[T]he world", he says, "can present us with situations in which there is no honourable or moral course for a man to take, no course free of guilt and responsibility for evil."¹⁷⁵ He describes such situations as 'moral blind alleys' and they exist when the actions of others force us into situations where everything we can do is morally wrong in some respect, where what we ought to be able to do, we

¹⁷⁵ Nagel, "War and Massacre," 143.

cannot. He concludes that, “it is naïve to suppose that there is a solution to every moral problem with which the world can face us.”¹⁷⁶

Academic defenders of various incarnations of the just war tradition often feel pressed to say that they only very reluctantly endorse the permissibility of some wars. They usually try to distance themselves from those who are thought to romanticize or glorify war, such as Hegel or Schmitt. They don’t defend war as a means of building community spirit, or as a ‘coming of age’ for new states, or as a means of inspiring great works of art or literature. Rather, academic just war theorists often harbour continued moral dissatisfaction about the use of military force, even as they recommend it. Academic just war theorists are somewhat resigned to, rather than inspired by, their own proposals. Nagel’s moral blind alleys abound and academic just war theories are an attempt to feel around in the dark, that is, to navigate and guide judgment in morally overwhelming circumstances.

It has been argued that expanding the just cause condition to include the prevention or halting of humanitarian atrocities is inconsistent with the reluctance that normally characterizes academic just war theories.¹⁷⁷ If they are truly reluctant to endorse the permissibility of war, just war theorists shouldn’t be coming up with new reasons to resort to war, the argument goes. While I don’t think that this argument cuts very deeply into the just war tradition, I think that it does rightly highlight that humanitarian intervention is a kind of *war*. It’s not just about delivering aid, but about using force to stop the mass slaughter of innocents. Defenders of humanitarian intervention cannot pretend that such actions can be bloodless; and since interventions are

¹⁷⁶ Ibid, 144.

¹⁷⁷ Lorainne Besser-Jones and Colleen Murphy, “Foundationalism and the Criteria of Just War Theory” (lecture, Canadian Philosophical Association, Vancouver, BC, June 2008)

likely to kill people, their justification is always accompanied by profound regret and remorse that things should ever come to this. Even justified intervening forces should feel remorse for their contributions to harm and will often acquire residual responsibility to help rebuild the war-torn society after the atrocities are ended. Expanding the just cause condition to include the halting of mass atrocities does not mean that just war theorists are now enthusiastic about war, only that the world contains many more morally dark corners than the traditional focus on self-defense supposes.

3.3 Proportionality and the Just War Tradition

As was briefly noted in the first chapter of this work, the just war tradition contains three levels of justification. The *ad bellum* requirements constrain the resort to war, the *in bello* requirements constrain the execution of war, and the *post bellum* level has to do how to justly end war. Traditionally the *ad bellum* requirements include some or all of: just cause, proportionality, last resort, reasonable prospect of success, right intention, public declaration, and right authority. Failure to satisfy some or any of these requirements makes the resort to war unjust. The *in bello* requirements tend to include some or all of: discrimination (that is, a prohibition on intentionally targeting civilians), proportionality, and necessity. Within an already ongoing war, each battle or military excursion must meet these requirements in order for the war to be fought justly.

In a fully just war, proportionality must be satisfied at both the *ad bellum* and *in bello* levels. The resort to war must be reasonably expected, overall, to impose a proportionate amount of harm, and each action within a war must also predictably impose only a proportionate amount of harm relative to the expected gains. In the past it has

been argued that the *ad bellum* and *in bello* requirements are entirely distinct.¹⁷⁸ So, a warring party might fail to satisfy the *ad bellum* requirements and unjustly resort to war, but nonetheless fight justly. Or, a warring party might justly resort to war but then fight unjustly. Conceiving of the two levels of just war theory as distinct is supposed to encourage all parties to a conflict to be reined in by rules that, when upheld, will help to contain and limit the horrors of war. Regardless of the justice of the resort to war, *everyone* must agree not to cause wild and purposeless destruction.¹⁷⁹

This traditional view, however, has fallen out of favour with many contemporary just war theorists including McMahan, Orend, and Hurka who insist that *ad bellum* and *in bello* rules are not entirely distinct.¹⁸⁰ A war with an unjust cause, they argue, cannot possibly be carried out in a proportionate manner since the harms it imposes will not be outweighed by the goal it pursues. If the goal is unjust, then any harm produced in pursuit of the goal simply magnifies the wrong. On this view other *in bello* rules, like civilian immunity, may be upheld by those fighting an unjust cause, but there is no way for them to act proportionately.

Other critics of the complete separateness of the two levels of justification have specifically contested the claim that this separability helps to limit the horrors of war.¹⁸¹

Rather than restraining just combatants, the separation of the two levels of justification

¹⁷⁸ Walzer, *Just and Unjust Wars*, 38-39.

¹⁷⁹ Walzer has argued that only state leaders can be held responsible for ensuring that the *ad bellum* rules are satisfied, ordinary soldiers, for example, have no responsibility for such matters. Military personnel and ordinary soldiers, however, can be reasonably expected to ensure that the *in bello* rules are satisfied; given that war has been initiated, military personnel can be expected to consider whether their actions intentionally, recklessly or unnecessarily hurt civilians. See, Ibid, p. 34-41; Brian Orend, *Michael Walzer on War and Justice* (Cardiff: University of Wales Press, 2000), 111.

¹⁸⁰ Orend, *The Morality of War*, 118; Hurka, "Proportionality in the Morality of War," *Philosophy and Public Affairs* 33, no.1 (Winter, 2005), 45; McMahan, "Just Cause for War," 5-7.

¹⁸¹ Anthony Coates, "Is the Independent Application of *jus in bello* the Way to Limit War?" in *Just and Unjust Warriors: The Moral and Legal Status of Soldiers*, eds. David Rodin and Henry Shue (Oxford: Oxford University Press, 2008), 176-192.

has the effect, some argue, of wrongly legitimizing the actions of unjust combatants. By separating the two levels of justification soldiers may feel that they do not have to reflect on the justice of their cause, but only on their conformity with the *in bello* rules. This removes the incentive for soldiers to think critically about their assigned goals, and may increase, rather than decrease, the occurrences of war.¹⁸²

Some of the *in bello* constraints, such as civilian immunity and a prohibition on certain kinds of heinous weapons, can be upheld by those with unjust causes, but I agree with the critics that those with a fully unjust cause are simply unable to satisfy the *in bello* proportionality requirement. For this reason, the rest of this chapter is largely concerned with the *ad bellum* and *in bello* proportionality assessments of those with a just cause. I temporarily set aside the difficult question of whether it is morally prudent to continue to publicize the complete separateness of the two levels of just war theory.

Proportionality is a bizarre (and morally problematic) standard because it implicitly suggests that there is some amount of harm (including harm to innocents and grave rights infringements) that is worth the achievement of a just cause. This makes the proportionality requirement one of the just war tradition's most contentious commitments and one which in practice it is difficult to find agreement. Indeed, as Orend argues, it may be much easier to identify a disproportionate military action than a proportionate one. Orend writes,

The common sense of the abstract need for balance and moderation is clearly there, but it remains very difficult to define precisely, especially under battlefield conditions. ...it may turn out that proportionality is more of a limiting factor, a

¹⁸² The importance of maintaining some separation between *jus ad bellum* and *jus in bello* is defended by Dan Zupan, "A Presumption of the Moral Equality of Combatants: A Citizen-Soldier's Perspective" in *Just and Unjust Warriors* (see n.181), 214-225.

negative condition, so to speak- setting outside constraints on force- than it is a positive condition which adds new content to the just war equation.¹⁸³

While there may be clear cases of obviously disproportionate harm, in many instances assessing proportionality will be highly controversial. Proportionality assessments are infinitely complex, and if it weren't for the urgency of the human suffering they attempt to address then one might be inclined to say, as some pacifist absolutists do, that such assessments are beyond the abilities of mere-mortals.

Despite its infinitely complex nature, the proportionality requirement holds considerable power within the just war tradition. It might rule out the permissibility of an intervention or war *even if* the military action can reasonably be considered a last resort. Disproportionate harm is impermissible even if it is entailed by the only available alternative that might succeed at attaining a just cause. This is a significant power.

The significance of the proportionality requirement on its own is challenged, however, when appeals to proportionality are used to defend all sorts of truly awful acts in war. For example, some insist that the bombing of Hiroshima and Nagasaki were proportionate to the good of securing Japan's surrender in WWII.¹⁸⁴ Luckily, just war theorists can appeal to the *in bello* rules of discrimination and necessity to explain why the atomic bombing of Japan was wrong. That is, given the potential crudeness of real-life proportionality assessments, just war theorists assure themselves with the additional civilian immunity and necessity requirements. The proportionality requirement is an important component of the just war tradition, and its complexity makes it an interesting

¹⁸³ Orend, *The Morality of War*, 119.

¹⁸⁴ Henry Lewis Stimson, "The Decision to Use the Atomic Bomb," *Harper's Magazine*, February 1947, p.97-107.

subject for moral investigation. Yet, the proportionality requirement must always be understood as a part of a larger whole.

3.4 Reasonable Prospect of Success

While the requirements of proportionality and reasonable prospect of success are usually identified as separate just war criteria, I follow Hurka in his view that the criterion of reasonable prospect of success can be understood as contained within a robust interpretation of the proportionality requirement.¹⁸⁵ Hurka writes,

Imagine that a war has no chance of achieving any relevant goods. This fact, which makes it violate the reasonable hope of success condition, surely also makes it disproportionate, since its destructiveness now serves no purpose whatever. The same is true if the war has only some small probability of achieving relevant goods, since then its expected harm is excessive compared to its expected good.

Since the risks associated with even a very carefully executed military venture are so serious and probable, an intervention with only a small prospect of success will never be proportionate. In identifying an action as imposing a proportionate amount of harm to good, one implicitly claims that the proportionate outcome is reasonably likely. One cannot reasonably identify a military response as proportionate if one simultaneously thought its successful execution was improbable.

It has been noted that restraining military responses according to their probability of success makes it particularly difficult for small communities to respond to aggression by larger ones (e.g. for East Timor to employ the just war tradition to rise up against Indonesia). However overwhelmingly just their goal, small militaries (assuming the persecuted have a military) will be hard pressed to ever satisfy the proportionality and probability of success criterion. It would seem then, that the just war tradition leaves

¹⁸⁵ Hurka, "Proportionality in the Morality of War," 37.

small armies or unarmed communities at the mercy of the strong, with no means of just and forceful self-defense.

Walzer has acknowledged that the probability of success criterion may stifle efforts at self-defense by small militaries, and has suggested that small militaries be sometimes permitted a show of self-defense even when the effort is unlikely to be triumphant.¹⁸⁶ The likelihood of success/proportionality criterion, he says, shouldn't be a condition used to force legitimate but militarily weak forces to simply submit to aggression, like lambs to the slaughter, adding that there is a certain kind of moral triumph in resistance to aggression even when it is not ultimately successful. Walzer's argument highlights ambiguity in the concept of success, which can be taken simply to mean the physical overpowering of an enemy, or, alternatively, to mean the registering of profound moral disapproval.¹⁸⁷ Even so, Walzer is not oblivious to the moral costs of brutal defeat. He requires that some restraint and caution be exercised by the leaders of small militaries and insists that military action is not justified simply by virtue of having a compelling, just cause, writing that sometimes, when the costs might be extreme, "there might even be a duty to seek peace at the expense of justice."¹⁸⁸

While some might go so far as to completely waive the probability of success criterion for small militaries fighting against their own unjust persecution, others might temper that view by insisting that small militaries not persist through to their force's utter decimation. Still others will insist that the probability of success criterion does indeed hold for small forces fighting against their unjust persecution, and contend that where

¹⁸⁶ Walzer, *Just and Unjust Wars*, 67-72.

¹⁸⁷ Nick Fotion and Bruno Coppieters, "The Likelihood of Success," in *Moral Constraints on War*, 2nd ed., eds. Bruno Coppieters and Nick Fotion (Lanham, MD: Lexington Books, 2008), 101-102.

¹⁸⁸ Walzer, *Just and Unjust Wars*, 69.

reasonable hope of physical triumph is lacking, small forces must restrict themselves to non-violent modes of collective resistance.

3.5 Humanitarian Interveners versus Self-Defenders

Ned Dobos has argued that those fighting off their own persecution needn't be constrained by the probability of success/proportionality criterion.¹⁸⁹ Specifically, that is, when persons are fighting off what he calls 'extraordinary' oppression that threatens their most basic rights, such as right to life and freedom from slavery. In such cases the prospect of success/proportionality criterion yields to the urgency of self-defense. He adds, however, that interveners fighting on behalf of the persecuted *must* constrain their actions according to their probability of success. Rebels fighting to free their own communities from unjust attack do not lose their rights to forcefully defend their communities because they anticipate poor outcomes, but interveners fighting to protect those same communities are rightly held back when poor outcomes are predicted.

For Dobos, what accounts for this asymmetrical applicability of the reasonable prospect of success/proportionality criterion? Dobos answers that interveners are required to include a greater range of harms in their proportionality assessments than those fighting on their own behalf, making the condition harder to satisfy for third-party interveners. He argues that we expect interveners to include in their proportionality assessments the anticipated and unjust response of the aggressors against their defensive action as well as any harmful international trends their actions may inspire. Those fighting on their own behalf, however, are not required to include the aggressor's

¹⁸⁹ Ned Dobos, "Rebellion, Humanitarian Intervention, and the Prudential Constraints on War," *Journal of Military Ethics* 7, no. 2 (2008), 102-115.

reprisals in their proportionality assessments, nor the potentially grave consequences of emboldening others to rise up against their own governments. He writes, “Citizens facing violations of their basic human rights retain their right of self-defence irrespective of how others can be expected to react to the exercise of that right.”¹⁹⁰ And, “...rebels need not (while humanitarians must) take mediated consequences into account: consequences that are brought about via the agency of other parties.”¹⁹¹

The preceding may not be thought to *justify* the asymmetrical interpretation of the proportionality/probability of success criterion. Critics might reasonably think it strange for other-defense to be forbidden when it is anticipated to cause no more harm and produce no less good than a campaign of self-defense. While I don't think that Dobos entirely justifies the more exacting interpretation of the proportionality requirement for interveners, I think that he correctly identifies a widely-held moral intuition that interveners need to be especially sensitive to how their actions reverberate in the world. This extreme sensitivity to mediated consequences is not demanded of those who are simply fighting for their own or their families' lives. Of course, this is not to say that armed interveners can never satisfy the proportionality/probability of success requirement, only that public opinion expects them to carefully think through the short and long-term ramifications, the proximate and distant effects, and the mediated and unmediated consequences of intervention and compare these to the likely consequences of sticking only to non-military means of pursuing the just cause. Interveners are expected to include a greater range of harms in their proportionality assessments than those defending only themselves.

¹⁹⁰ Ibid, 110.

¹⁹¹ Ibid, 109.

In part, this may be attributable to the importance of clearly establishing consistency between interveners' avowed humanitarian ends and their chosen means, and of ensuring that they don't produce humanitarian havoc in the pursuit of humanitarian ends. The interveners' more demanding proportionality requirement may be a way of testing the merit of their claimed humanitarian intentions. Perhaps self-defenders are permitted to give less weight to mediated consequences in their proportionality assessments because they needn't make any similar appeal to impartial humanitarian good. They may only claim a desire to protect themselves against unjust aggression, a basic interest that few would deny. Remote, mediated consequences that result from their self-defense would not undermine or contradict their declared ends.

3.6 Mediated Harms: Anticipated Reprisals

The foreseeable, mediated harm that comes from an unjust aggressor's unjust response to defensive action is one of the most morally perplexing harms for proportionality assessments. The question is if defensive action is likely to motivate the initial aggressor to pursue some further atrocity, say, by massacring a bunch of civilians, should the likely massacre count as a relevant harm in the defensive party's proportionality assessments? When one party can anticipate that the aggressor they're defending against will respond to the defensive action with further aggression, should that weigh against the proportionality of the proposed defensive action?

Some are inclined to argue that others' unjust responses to defensive force should not be included in the proportionality assessments of just combatants. Wrongdoers' wrongdoing is their own to account for, and cannot render defensive action against them

disproportionate. This principle seems most plausible at the interpersonal level. For example, one should be permitted to defend oneself against the dark alley attacker even if doing so infuriates the attacker and, in his fury, he goes on to attack two other innocents. The aggressor's decision to inflict further harm is his own to account for, and it cannot count against the proportionality of the innocent's defensive action that it will lead to the infuriated aggressor's further wrongdoing.

Sometimes, however, the view that aggressors' unjust responses are immaterial to the proportionality of defensive action can be morally problematic. This seems especially true the greater the number of lives at stake. Consider the example of the economic sanctions against Iraq following the 1991 Gulf War. The sanctions, which lasted over a decade, were a UN response to Iraqi aggression against Kuwait. Their purpose was to get Iraq to pay war reparations and to disclose and dismantle all weapons of mass destruction.¹⁹² Hussein refused to comply with all UN demands, and so the sanctions persisted. Yet, the twelve year-long sanctions were known to have devastating humanitarian effects, and materially contributed to the deaths of over a million Iraqis, many of them children.¹⁹³ Two UN civil servants charged with overseeing the UN Humanitarian Programme, as well as the Head of the World Food Program resigned in opposition to the continued sanctions.¹⁹⁴ Defenders of the sanctions will argue that those one million deaths cannot properly count against the proportionality of the sanctions because, while enormously tragic, the deaths are attributable not to the sanctions

¹⁹² Hans von Sponeck, *A Different Kind of War: The UN Sanctions Regime in Iraq* (New York and Oxford: Berghahn Books, 2006), 4, 7.

¹⁹³ Denis Halliday, "Responsibility to Protect- Why not?" *Development Dialogue*, 53 (November, 2009), 84. On the same page, Halliday describes the UN sanctions against Iraq as satisfying the legal definition of genocide.

¹⁹⁴ John Pilger, "John Pilger on Why We Ignored Iraq in the 1990s" *Newstatesman* 4 October 2004, <http://www.newstatesman.com/200410040012> (accessed August 17, 2010).

themselves, but to Hussein's unjust refusal to comply with UN demands. Critics of the sanctions, however, argue that those deaths *are* relevant to the sanctions' proportionality, even if Hussein himself should be considered most blameworthy.

There is a tension here between two intuitive principles. The first is that political leaders and military personnel need to be attentive to *all* of the foreseeable harms of their actions, no matter their causal history and no matter who is most to blame for those harms. The second is that those with justice on their side shouldn't be restrained from responding to aggression because of the aggressor's own propensity for bloody revenge or disregard for civilian lives. Hurka makes the point extraordinarily well when he argues,

On the one hand, one wants to say that we must take the world as we find it and not ignore features of our choice situation because we disapprove of how they came about. If an act of ours will kill civilians, that is the morally salient fact and far more important than the precise reason why it will do so. On the other hand, one wants to say that agents should not be morally protected by their bad characters: that they have performed or will perform seriously wrong acts should not make tactics against them impermissible that would be permissible if they were less grossly immoral. At the same time, the issue is vitally important for current moral debates about particular wars. At the bottom of these debates is a disagreement about how far, if at all, the harms an act of ours will cause are discounted if they also depend on others' wrongful choices.¹⁹⁵

An aggressor's tendency towards brutal revenge shouldn't insulate her from defensive responses, but, at the same time, defensive agents need to be sensitive to how their actions might reverberate in the world. Proportionality assessments shouldn't ignore others' likely wrongful reactions, and there may be cases where those predictable responses will be so massive and brutal that they undermine the defensive action's proportionality.

¹⁹⁵ Thomas Hurka, "Proportionality and Necessity," in *War: Essays in Political Philosophy*, ed. Larry May (Cambridge: Cambridge University Press, 2008), 139.

Earlier I followed Ned Dobos in arguing that outside interveners more than self-defenders seem obliged to include such mediated harms in their proportionality assessments. In part this seems to be because interveners have special obligations not to make things worse than they already are. Humanitarianism rings hollow when, at the end of the day, more people are dead. In addition, those who are defending themselves (rather than defending others) seem permitted at least to give the aggressor's anticipated reprisals a more reduced weight in their proportionality assessment because the right of self-defense is so fundamental and basic. The right seems to trump concerns about indirect, mediated consequences.

Arguably, one of the important moral differences between interveners and self-defenders that accounts for differing expectations with respect to the inclusion of reprisals in their proportionality assessments is that interveners are probably contemplating reprisals that would hurt others (i.e. the targets of atrocities), while self-defenders are facing reprisals for which they themselves (or their families) are the likely targets. Interveners are in the position of making decisions whose consequences are most deeply felt by others, while self-defenders are making decisions for themselves. We may be allowed to undertake actions that predictably make our own selves worse off, but forbidden from making those same decisions for others.

This raises the difficult question of whether intervention could rightly be deemed proportionate despite the anticipation of brutal reprisals against the targeted community *if* that targeted community accedes to the intervention in full knowledge of the likely gruesome response by the aggressor. One might try to avoid this moral quagmire by simply insisting that interveners are unlikely to reliably *know* the informed views of the

targets of atrocity on this matter, and so must avoid any tactic likely to inspire brutal reprisals on the targeted community. I don't think this moral dilemma can be entirely avoided by citing epistemic shortcomings, though certainly such practical obstacles are always important to consider. But if, for the sake of argument, interveners did reliably know that the victims of atrocity wanted armed intervention in spite of the predictable reprisals by the aggressors, then I think it would be much more difficult to know how to proceed. Theoretically at least, it seems like intervention in spite of predictable, brutal reprisals could be described by the targets of oppression as a kind of moral triumph. They might, theoretically, welcome the additional risks as the cost of the moral triumph of resistance to aggression, and, theoretically, this consent would give the anticipated reprisals a reduced weight in the interveners' proportionality assessments.

Even if, however, the targets of atrocity did welcome the additional risks, I might be reluctant to endorse the proportionality of military intervention that is likely to produce grave, extensive reprisals against the targeted population. Persons fighting against their *own* subjugation or annihilation seem entitled to pursue armed resistance that is likely to be, at best, a kind moral triumph insofar as it registers a fierce opposition to the aggression. Even if the resistance mainly has a symbolic value, armed resistance in defense of one's own community may be permissible.¹⁹⁶ Interveners fighting on behalf of the persecuted, however, seem to be less free to pursue actions that are likely only to have symbolic value (because brutal reprisals are anticipated from the initial aggressor, cancelling out any humanitarian benefits obtained by the intervention).

¹⁹⁶ Though military resistance certainly isn't morally required. I do not want to suggest that those facing unjust attack have any moral obligation to take up arms, though I think that victims of aggression do have a duty not to collude with their oppressors.

As I have already briefly noted, there exists in the just war literature two very different conceptions of 'success'. The first involves the physical overpowering of an enemy, and the second involves a non-physical, moral triumph. Interveners seem restricted to uses of force that have a reasonable hope of securing some degree of physical, and not just moral, success. The success needn't be complete, it may only be partial, but it must have more than a merely expressive function. This is all simply to repeat and expand on Dobos's essential argument that interveners need to include a greater range of harms in their proportionality assessments than do self-defenders, or at least, they must accord any anticipated, mediated harms more weight than self-defenders. There is no doubt that intervention has a symbolic, expressive power and this power does warrant inclusion in interveners' proportionality assessments, but an otherwise disproportionate action cannot be made proportionate by appeal to the expressive function of resisting aggression with force. Interveners need to be careful not to privilege principles above persons, however important those principles are.

3.7 Mediated Harms: Encouraging Unjustified Interventions

A second, more remote kind of mediated harm consists of inspiring others to take up arms in what they take to be similar circumstances elsewhere in the world. Dobos argues that while self-defenders don't have to consider the potential bloodshed that might result from their inspiring others to rise up forcefully against their own persecution, interveners must give weight to the possibility of inspiring others to initiate humanitarian interventions. That is, interveners must consider the harms that might result from further loosening the presumption against using force across state borders, including the

possibility of inspiring others to initiate aggressive campaigns that masquerade as humanitarianism. Since the 2003 invasion of Iraq, a campaign described by some as humanitarian intervention, this worry about inspiring faux-humanitarianism seems especially strong.

It might be added that a humanitarian intervention that turns out to be quite harmful in some respects might, rather than encouraging aggression that disguises itself as intervention, discourage future interventions where they might do tremendous good. If an intervention imposes severe costs on civilians or on the interveners themselves, then any doctrine of humanitarian intervention will become a tougher sell. States may refuse to become entangled in international rescue efforts in the future, even where they might be sorely needed and have great prospects for success. Politicians may revert back to their conceptions of unconditional state sovereignty and mass-murdering systems may become protected from international military response. This potential for sullyng the reputation of a doctrine of humanitarian intervention also seems deserving of some weight in the proportionality calculations of humanitarian interveners, though such mediated, future harms are no doubt very difficult to quantify.

3.8 Diversion of Resources

Another kind of harm whose inclusion and weight in proportionality assessments is particularly controversial is the deprivations that are correlated to the diversion of monetary resources towards the military. Should it weigh against the proportionality of an intervention that the intervening state will now have fewer resources to commit to education and health care for its own citizens, or to commit to international aid?

Alternatively one might put the question this way: Should the victims of atrocities give up on intervention if the resources that would have to be devoted to intervention could instead be used to save an even greater number of people from poverty-related illnesses?

David Mellow has argued that such deprivations should count in the proportionality analysis of interveners only if those deprivations involve needs that the intervening agent is duty-bound to serve. On his view, such deprivations would not count in proportionality assessments if the intervening agent was merely permitted, but not required to fill them. Mellow writes,

While it does seem plausible that certain losses resulting from forgoing one's (prima facie) duties often should count in determining the rightness or the wrongness of an act... the same is not true of losses that are the result of forgoing virtuous acts that are merely permissions and not duties.¹⁹⁷

And he continues, "...general losses from forgoing an alternative course of action should not be included in proportionality calculations *unless that alternative course of action is one to which one is in some sense duty-bound...*"¹⁹⁸ Mellow himself speculates that using every reasonably possible resource to minimize the effects of poverty is not a moral duty. For Mellow, a leader "does not generally violate her duties if she spends those [state] resources in ways that do not maximize the benefit for the poor."¹⁹⁹ It would not count against the proportionality of a proposed intervention, on Mellow's view, if it employed resources that might otherwise be used to relieve the effects of poverty. This is

¹⁹⁷ David Mellow, "Counterfactuals and the Proportionality Criterion," *Ethics and International Affairs* 20, no.4 (2006), 449.

¹⁹⁸ *Ibid*, 449.

¹⁹⁹ *Ibid*, 450.

because it is not morally required that all available resources are used to improve the lot of the poverty-stricken or distant needy.²⁰⁰

Mellow adds that a failure to uphold distinct moral duties only counts against the proportionality of a proposed military action if resources are so constrained that the agent must choose between *either* engaging in military action *or* upholding the competing moral duties. If a state/agent is perfectly able to pursue a humanitarian intervention *and*, for example, provide a baseline level of education, health care, and social assistance for its citizens (supposing for the sake of argument that this is a moral duty of any state with the available means), then it cannot count against the proportionality of the intervention that these basic needs within the intervening state are, in fact, left unmet. Their being left unmet, he says, is not “necessarily tied”²⁰¹ to the decision to pursue military action. Both avenues might have been adequately pursued, and neglect in one area isn’t fairly attributable to action in the other.

Mellow’s position has some intuitive appeal, but it raises as many moral issues as it addresses. It forces one to specify, for example, the extent of a state’s duty to help the poor and needy (both domestically and abroad), and to account for why states don’t have a duty to minimize the plight of the poor as much as possible when this can be done without sacrificing the populace’s basic wellbeing.²⁰² Without a clearer articulation of

²⁰⁰ Mellow also argues that, similarly, it would not count in *favour* of the proportionality of military action if in the absence of such military action the state is likely to give tax breaks to the rich (and, in so doing, hurt the poor). He gets us to imagine a case of possible intervention. If leader A doesn’t pursue the intervention, then she’ll use the money to help the poor. If leader B doesn’t pursue the intervention, then she’ll give tax breaks to the rich. Mellow argues that neither of these alternatives would count as relevant consequences in the intervention’s proportionality assessment, writing “leader A’s more virtuous use of the resources under the nonwar counterfactual does not affect the likelihood of her meeting the proportionality test. In other words, the counterfactual baseline proposal I have offered does not provide the less moral leader with a better chance of satisfying the proportionality criterion.” Ibid, 450.

²⁰¹ Ibid, 451.

²⁰² See Singer, “Famine, Affluence and Morality.” (see n.1)

what our moral duties actually are, it is not clear what it means to say that only those deprivations we are duty-bound to address count in proportionality assessments. Those with a more expansive conception of states' duties to relieve poverty and provide social services may find it harder for just combatants to satisfy the proportionality requirement than Mellow supposes.

Mellow argues that rich countries rarely face a choice between *either* acting to halt humanitarian atrocities *or* helping to relieve poverty. These deprivations do not count in the military's proportionality assessments because they are not "necessarily tied" to the decision to employ the military. Critics of Mellow's view on the relevant evils for proportionality assessments might contend that though it is logically possible for states to pursue both humanitarian interventions and to simultaneously give substantially to international aid efforts, for example, states are *likely* to reduce their contributions to international aid when they spend millions on humanitarian interventions. Logically there is no necessity in the deprivations, though practically they are probable. These critics might then continue that, given their likelihood, such deprivations should indeed count as relevant harms in the proportionality assessments of proposed interventions.

Evaluating Mellow's view of proportionality is further complicated by his own apparent ambiguity, since he argues that a state's support for aid can be a relevant good for choosing to *forgo* military action, even if a failure to give that same aid wouldn't be a relevant harm in the decision to *pursue* military action. He writes,

(Even though I've argued that losses resulting from forgoing nonobligatory acts should not generally count in proportionality calculations, it still may be the case that when those nonobligatory actions involve very good consequences, they provide a leader with relevant reasons for choosing not to go to war. Thus, if leader A decides not to go to war, her moral case for the appropriateness of that decision

may well be stronger if not going to war enables the leader to use those resources to provide domestic or international programs for the poor.)²⁰³

Is it not clear to me that one can consistently argue that deprivations do not count against the proportionality of proposed military action, but the fulfilment of those needs does count in favour of the proportionality of forgoing military action. It seems like if the likely consequences on aid programs are relevant for defending the permissibility of forgoing military action, then they should also be relevant factors in determining the proportionality of pursuing military action. It can't be that they count only when it is useful for defending the choice to forgo military action. Again, this is not to say that if certain deprivations do count as relevant harms in the proportionality assessments of military action, then military action will never be justified, only that the proportionality criterion may be reasonably interpreted as harder to satisfy (because it should include a greater range of harms) than Mellow admits.

3.9 Chemical Incapacitation

The moral requirement that humanitarian interveners give particular weight to foreseeable harm to non-combatants (whatever its origin and regardless of the purity of the interveners' hearts) in their proportionality assessments makes certain kinds of military tactics impermissible. I argue that one such tactic is the use of incapacitating chemical agents. Michael Gross controversially proposes that powerful just combatants (those fighting a just cause) should be permitted to use weapons that stun or temporarily paralyze civilians as a means of rooting out any unjust combatants who hide among

²⁰³ Mellow, "Counterfactuals and the Proportionality Criterion," 450.

them.²⁰⁴ In the absence of a right to employ such weapons, Gross thinks that the more powerful, just combatants will be doomed to violate the proportionality requirement by killing lots of civilians. For every unjust combatant that gets rooted out, twenty, thirty, or fifty civilians might be killed. Of course, some might try to argue that such harms *are* proportionate to the good of rooting out a single unjust combatant. After all, the unjust combatant might possess key ingredients for weapons of mass destruction, or might go on to kill hundreds of other civilians, one might say. Gross, however, agrees that the charge of disproportionality in such circumstances may well be accurate and he concludes, “If the international community is going to censure nations for violating the principle of proportionality, then it must also be prepared to consider the merits of non-lethal warfare.”²⁰⁵ If unjust combatants consistently hide among civilians, and one wants to minimize civilian casualties and condone the permissibility of the just combatant’s military goals, then options such as non-lethal weapons must, he says, be opened-up.

There are numerous practical concerns that Gross’s position raises,²⁰⁶ but his weakening of the civilian immunity requirement is especially problematic. Indeed, Gross essentially waives civilian immunity as a means of satisfying proportionality. Gross

²⁰⁴ Jeff McMahan uses the terminology ‘just combatants’ and ‘unjust combatants’ to refer to those fighting for a just cause and those fighting for an unjust cause respectively. This terminology has been adopted by many in the academic just war literature, and I use it here too. In using this terminology, I do not mean to suggest that engaged forces are always entirely justified or unjustified. Military forces can have mixed justifications, being neither wholly justified, nor entirely unjustified. In the present section, I also certainly don’t mean to suggest that the more powerful forces always have justice on their side. I use McMahan’s terminology simply as an aid to discussing moral problems of asymmetric warfare in the abstract. Jeff McMahan, “The Morality of War and the Law of War,” in *Just and Unjust Warriors: The Moral and Legal Status of Soldiers*, eds. David Rodin and Henry Shue (Oxford: Oxford University Press, 2008), 21.

²⁰⁵ Michael Gross, “The Second Lebanon War: The Question of Proportionality and the Prospect of Non-Lethal Warfare,” *Journal of Military Ethics* 7, no. 1 (2008), 17.

²⁰⁶ One concern with Gross’s proposal is that the chemical weapons he recommends are known to sometimes kill those they are supposed to protect. Also of concern is his misleading suggestion that just combatants are frequently faced with a choice between either ‘unintentionally’ killing large numbers of innocents to root out combatants, or intentionally targeting them with non-lethal weapons. While there may be cases that appear to impose such a choice, we need to be extraordinarily cautious about such claims of military necessity.

himself acknowledges the criticism and, in response, he simply bites the bullet, arguing that it should be permissible to intend some relatively smaller harm to civilians as a means of avoiding some foreseeable, but unintended, and more severe harm. Earlier I argued that what sometimes might save real-life proportionality assessments from being merely crude cost-benefit analyses is the civilian immunity requirement. We avoid things such as the atomic bombing of Japan by requiring civilian immunity. Yet, here we find the civilian immunity requirement itself being waived, the very thing that was supposed to protect the world from the “the abyss of utilitarian apologetics for large-scale murder.”²⁰⁷

I admit that absolutism with respect to civilian immunity is untenable for just war theorists. There could be reasonably possible cases where just combatants would be hard-pressed to argue that their killing of non-combatants was a wholly accidental side-effect and still, the killing might be justified. I also admit that one can construct an entirely hypothetical thought experiment where targeting civilians with non-lethal weapons in order to spare them near-certain death by lethal weapons could be justified. Such a thought experiment would, however, probably be very different from the kinds of cases that just combatants are likely to face in actual wars with the technology currently available. If the non-lethal weapons were truly benign, if the unjust combatants were easily identifiable and couldn't possibly be pursued by other means, if the good at stake in this particular battle was overwhelmingly weighty and the harm imminent, then Gross's proposal would be less troubling. As it is, however, such circumstances are extraordinarily unlikely to obtain. Even though moral theorizing about war involves a

²⁰⁷ Nagel, “War and Massacre,” 126.

certain amount of distancing or abstraction from actual cases, it shouldn't make pronouncements based on overly idealized and sanitized thought experiments.

Gross would likely argue that the civilians in the cases he imagines are being targeted as a means of protection from greater harm, whereas the civilians in Hiroshima were targeted merely as a means of protecting American soldiers. Gross might contend that soldiers can target innocents for their own good but not for the good of soldiers themselves. While one can certainly see a moral distinction between the two intentions, I think one needs to be very careful of suggesting that one is doing someone a favour by paralyzing her (and her children) with chemical agents. Hiding amongst a civilian population is undoubtedly a war crime, but the response to such war crimes shouldn't be a further weakening of civilians' rights to immunity. Just war theorists have usually found some comfort in thinking that the proportionality requirement is restrained by the civilian immunity requirement. Yet, rather terrifyingly, we've seen that the civilian immunity requirement is now itself being challenged by some who are grappling with contemporary military dilemmas.²⁰⁸

Civilians who are the targets of genocide or ethnic cleansing may sometimes willingly accept the imposition of some additional risks if these are necessary for a rescue attempt. I cannot imagine, however, that the targets of such atrocities are likely to consent to the widespread, intentional use of chemical agents as a means of protecting them from unintended killing by the rescuers. Chemical agents are known to frequently (though unintentionally) kill those they are intended to protect. Moreover, I think the

²⁰⁸ Of course, Gross is not the only just war theorist to propose waiving the civilian immunity requirement. Controversially, the civilian immunity/discrimination requirement is also waived by all those who defend Walzer's supreme emergency doctrine which permits the violation of all the *in bello* rules in defense against enemies who are poised to overtake, and then massacre or enslave one's entire political community. The supreme emergency doctrine is one of Walzer's most contentious.

targets of atrocity would rightly have little confidence that interveners would be able to 'pick out' the aggressors once everyone lay paralyzed and/or unconscious. It strains credibility to think that such tactics are likely to truly make intervention easier or more precise. I think if one belonged to a targeted group, then one would likely prefer tactics that drew the aggressors out of civilian areas, that destroyed the chain of command leaving enemy soldiers directionless, that destroyed the enemy's arsenals of weaponry, that cut-off hate-mongering and propagandizing media, that established safe-areas or (if necessary) refugee camps, and protected persons and supplies travelling to safe areas.

What I take to be a presumable lack of consent of innocent targets of chemical weaponry (when chemical incapacitation is meant to spare them near certain death by bullets or bombs) is a morally relevant consideration in assessing Gross's proposal, but it is not necessarily definitive. That is, even if specific victims of chemical weaponry would or did consent to their use (because they thought it might spare them more certain harm), that wouldn't necessarily be sufficient to make their use permissible. Chemical weapons might be prohibited on the grounds that, as a matter of practice, we ought not challenge the conventional prohibition on chemical weapons. The consequences of legalizing the use of chemical war are doomed to be worse than whatever localized benefits might be gained by their use in particular battles.

Gross himself acknowledges this criticism but answers that it would be possible to develop firm legal constraints on which chemical agents are permissible to use and when. He adds that the consequences of continuing to use only weapons that are likely to be lethal may well be worse than watering down the chemical/non-chemical divide.

Gross imagines cases where tactics that refuse to target innocents with chemical weapons won't be sufficient to achieve the just cause. He is interested in cases where one has a choice between either unintentionally killing or intentionally incapacitating civilians as a means of rooting out a very dangerous enemy poised to commit grave crimes. While I certainly admit that such cases are logically possible, I worry that, like the hypothetical ticking-time bomb scenarios that are used to defend the selective use of torture, this scenario opens the door to grave war crimes. I worry that Gross's proposal will be used to rationalize the targeting of civilians with chemical agents in all sorts of situations where there isn't truly a forced choice between either the chemical incapacitation of innocents, or their near-certain killing by bullet or bomb. I find Gross's proposal a dangerous one because it denies the possibility of simply refusing to directly pursue those particular enemy soldiers, at that particular time and by means of direct force.

Moral philosophers are not necessarily wrong to discuss extreme examples like the ones Gross imagines; and, to the extent that it is possible in morally atrocious circumstances, we should attempt to provide reasoned argument for what we deem to be the best courses of action. At the same time, however, moral philosophers and academics more generally need to be sensitive to how their work might be employed. Rather than being viewed as a powerful, critical voice against the relative increase in civilian deaths in contemporary warfare, academia has come to be viewed by some as merely providing an erudite endorsement of the industrial-military complex, and a rationalization of war crimes.²⁰⁹ I worry that proposals like Gross's will do little to curb the trend of increasing

²⁰⁹ See, for example, Chris Hedges, *Empire of Illusion: The End of Literacy and the Triumph of Spectacle* (Toronto: Knopf Canada, 2009), 91.

civilian casualties, or to establish academia as a critical, restraining voice in contemporary military ethics.

Gross's proposal for how just combatants can satisfy the proportionality requirement seems especially misplaced in humanitarian interventions, where the point is to end atrocities using means that don't themselves victimize those whose protection is sought, or other non-combatants caught in the crossfire. Humanitarian interveners may have to give up on particular enemies who are deliberately hiding among civilians until such a time when the unjust aggressor herself can be more easily identified and targeted. Gross is correct that there may be circumstances when aggressors cannot be easily targeted and interveners who pursued them might be doomed to violate the proportionality requirement. Rather than using non-lethal, chemical agents in an attempt to minimize civilian fatalities while pursuing the aggressors, it may be better for interveners to simply let those aggressors go (for a time).

As has been noted previously, relative to soldiers in more traditional kinds of war, humanitarian interveners seem to have a special obligation to avoid even the unintentional commission of the kinds of actions they try to prevent. Public opinion seems to hold them to an especially high standard of care given that their whole purpose is the protection of innocents. Given a humanitarian end, humanitarian interveners are expected to adopt means that are at least passably humanitarian, and the intentional and widespread incapacitation of civilians via chemical agents (however pure the agent's heart) does not pass. This constraint that interveners employ means that are passably consistent with their humanitarian ends may mean that given a choice between potentially

saving many lives but causing lots of harm, or saving fewer lives but causing no harm, interveners may be required to opt for the latter.

In addition to emphasizing the consistency of interveners' ends and means, no one should want to encourage a practice of foreigners imposing themselves in complex, hostile situations with overwhelming force only to thrash around and kill or injure non-combatants in ways that are, from the perspective of non-combatants, indistinguishable from the initial wrongdoers. The credibility of a doctrine of humanitarian intervention depends on its refusal to license interveners who recklessly impose themselves in foreign lands, killing or injuring non-combatants with naïve, crusading conviction. A special degree of caution and restraint is expected. In order for the doctrine of humanitarian intervention to distinguish itself sufficiently from imperialist wars of the past, the doctrine must particularly emphasize that interveners' means be precise and carefully calculated to target wrongdoers.

Gross's proposal that just combatants use chemical agents on non-combatants should not be adopted by humanitarian interveners. The proportionality requirement cannot rightly be satisfied by waiving the civilian immunity requirement. The immediate and long-term consequences of such a practice are indefensible. The adoption of Gross's proposal by humanitarian interveners would cleave a fairly obvious tension between their pronounced ends and their chosen means. The acceptance of Gross's proposal by interveners is also likely to undermine efforts to develop a conception of humanitarian intervention whose restraint makes it easily differentiated from colonial war.

3.10 Overwhelming Force

I have argued that the restraint that is expected of humanitarian interveners places limits on the kinds of tactics that can be used and satisfy the proportionality requirement. One prominent modern military tactic involves the almost exclusive use of intense air power, and I argue that this tactic of using overwhelming air force also sits uncomfortably in a doctrine of humanitarian intervention. This tactic is characteristic of the Powell doctrine which has come to be understood as the view that US forces should employ an overwhelming amount of air force as a means of protecting American soldiers from risk and of securing a speedy end to any war.

Though not specifically concerned with the context of humanitarian interventions, Paul Gilbert has denounced tactics that rely almost exclusively on intense air power as disproportionate.²¹⁰ Gilbert rejects the Powell doctrine because he says it denies enemy troops the opportunity to surrender in the face of certain defeat, and kills too many of them all at once.²¹¹ Soldiers entering the profession and ignorant about whether they might ever find themselves overwhelmed, he says, would likely condemn tactics like the Powell doctrine and prefer modes of engagement that leave open the choice to be taken prisoner.²¹²

Up to this point in the chapter, the proportionality requirement has been described as weighing harm to non-combatants very heavily, but Gilbert's first argument against

²¹⁰ Paul Gilbert, "Proportionality in the Conduct of War," *Journal of Military Ethics* 4, no. 2 (2005), 100-107.

²¹¹ Gilbert insists that his views on proportionality do not mean that "lives on each side must be counted as of equal value in determining tactics," and continues, "one's own soldiers' lives must, in a sense, be valued more highly than those of one's enemy..." (Ibid, 105). The moral equality he envisions is rather that soldiers must respect that there comes a certain point when overwhelming losses among the enemies' ranks becomes morally intolerable. Proportionality allows combatants to kill somewhat more of the enemy, he says, but not a very great (though unspecified) number all at once and without the prospect for surrender.

²¹² Ibid, 102.

overwhelming air power raises the interesting question of whether an action might ever be deemed disproportionate because it harms too many unjust combatants. Is there some great number of Hutu extremists that it would have been disproportionate for interveners to harm in their effort to protect innocents? While I think that humanitarian interveners will sometimes be required to expose themselves to some risk, it is much easier to justify interveners absorbing such risks, and forgoing intense air power, when it helps to limit harm to non-combatants than when absorbing risk is primarily meant to limit harm to unjust combatants. If one does think that justice is on one's side, then it could seem unreasonable to expose oneself to greater risk by forgoing tactics like the Powell doctrine as a means of giving one's opponent (the perceived aggressor) a chance to surrender or as a means of not harming too many of one's opponents at one time.

However, I argue that Gilbert provides a reason why one can sensibly reject the use of overwhelming air force as disproportionate without having to answer the impossibly difficult moral question of how many unjust combatants can be permissibly and proportionately harmed in pursuit of a just cause, or determining in any very precise terms the relative worth of the lives of just and unjust combatants. In his paper, Gilbert also rejects the Powell doctrine's use of overwhelming air power as disproportionate because he says that the imposition of overwhelming losses without the chance for surrender will erode the commitment of US enemies to other *in bello* constraints.²¹³ No matter the justice of the cause, he says, proportionality assessments cannot endorse overwhelming harms to enemy combatants or else one inadvertently encourages the enemy to resort to the use of heinous means, including biological weapons or human shields. Overwhelming losses make the enemy desperate, and such desperation will make

²¹³ Ibid, 107.

subsequent battles deadlier and more dangerous for civilians. Proportionality, Gilbert thinks, requires the stronger party to fight, as one American general puts it, “with one arm tied behind them.”²¹⁴

While I think Gilbert’s initial contract-based argument against the use of overwhelming air power is interesting, an aversion to producing collateral damage or to inspiring others to use chemical weapons may provide the most compelling reason for powerful forces to forgo such tactics. One might add the obvious point that tactics that predictably kill overwhelming numbers of combatants may well be tactics that also predictably and directly kill large numbers of civilians. Even those who deny that just combatants owe it to the unjust to fight with ‘one arm tied behind them’ might agree that restrained fighting is preferable as a means of avoiding civilian casualties. One could agree with Gilbert that the Powell doctrine should be thrown-out, and insist that just combatants be committed ‘to the ground,’ but deny that this would be for the sake of limiting harm to unjust combatants or because the lives of unjust combatants weigh particularly heavily in proportionality assessments.

There is a temptation to believe that just combatants should be permitted all available means at their disposal to crush their enemies, but in spite of this temptation I think that a compelling case against the use of overwhelming air power in humanitarian interventions can be made by citing its likely dire consequences for civilians. If the plight of unjust combatants seems irrelevant to (or perhaps deserving only a very small weight in) proportionality assessments, then one might nonetheless reject tactics advanced by the Powell doctrine as disproportionate because of their likely effects on civilians. These consequences would include the direct harm that would result to

²¹⁴ Gary Brown, “Proportionality and Just War,” *Journal of Military Ethics* 2, no. 3 (2003), 183.

civilians by the intense bombing, as well as the indirect, or mediated harms that would predictably result to civilians by virtue of the unjust combatants' subsequent perceived desperation.

3.11 Non-Combatants and Just Combatants in Proportionality Assessments

I have been arguing that the lives of non-combatants weigh especially heavily in the proportionality assessments of humanitarian interveners, and that the special weight accorded to the lives of non-combatants can rule out the proportionality of certain kinds of military tactics. These comments lead inalterably to the (grisly) questions: Do the lives of civilians and just combatants weigh equally? How much risk is an intervening force rightly expected to absorb in the effort to protect non-combatants? Or, put another way, what does Walzer's proviso of due care commit humanitarian interveners to doing?

Before going near these questions I note that there are various kinds of non-combatants involved in humanitarian intervention, including those who are the potential victims of atrocity, and those who belong to the group largely responsible for the atrocities. The latter group may include supporters as well as critics of the atrocities which makes the label 'enemy civilian' morally problematic. Matters may be still more complicated if the supporters of the atrocities have themselves been frightened or coerced into complicity by threats to their own families. Since it may be difficult to distinguish the morally innocent civilians from the morally complicit ones, and since the morally complicit ones may themselves have been strongly coerced into collusion, humanitarian interveners may be required to treat all non-combatants as if they were as innocent as the victims of atrocity they seek to protect. In individual, hypothetical cases, I admit that it

may seem utterly unreasonable for humanitarian interveners to expose themselves to greater risk in order to protect the supporters of genocide from harm. In practice, however, strenuous effort to avoid killing non-combatants, in spite of its risk to interveners, will be the morally best policy given the importance of using means that are compatible with the claimed humanitarian ends.

In humanitarian interventions, some might argue that interveners should be prepared to risk a *greater* number of their own as a means of protecting a smaller number of civilians, because soldiers lose most of the privileges associated with non-combatant status by virtue of their volunteering for military service. Hurka makes this kind of argument when he writes:

[S]oldiers' deaths in general count less than civilians' ... by voluntarily entering military service, soldiers on each side freely took on the status of soldiers and thereby freely accepted that they may permissibly be killed in the course of war... Their situation is like that of boxers who, in agreeing to a bout, permit each other to do in the ring what would be forbidden as assault outside it. This explains not only why targeting them in war is not wrong, but also why their deaths count less in assessing a war or act for proportionality or necessity: by making their deaths not unjust they themselves gave them less weight.²¹⁵

Extrapolating Hurka's view to the case of humanitarian intervention, he might argue that by volunteering for military service, interveners make their own lives weigh less in proportionality assessments than the lives of civilians. On this view, it could be proportionate to pursue an action that killed a greater number of interveners in order to protect a smaller number of civilians.

Alternatively, some might argue that interveners should be prepared to risk only a smaller number of their own (or sometimes even none of their own) for the sake of protecting a greater number of civilians, insisting that rightly-called humanitarian

²¹⁵ Hurka, "Proportionality and Necessity," 136.

interveners are as innocent as the lives they are trying to protect. On this view it would be disproportionate for interveners to risk a larger number of their own in order to protect a smaller number of foreign civilians. Indeed Samuel P. Huntington goes so far as to argue that no intervener's life should be risked, insisting in relation to the US action in Somalia that "it is morally unjustifiable and politically indefensible that members of the [US] armed forces should be killed to prevent Somalis from killing one another."²¹⁶

To a certain extent, I think that both of these intuitions are correct. Interveners do give their lives a somewhat reduced weight in proportionality assessments by virtue of their volunteering for military service, *and* interveners can also be innocents whose deaths should weigh considerably in proportionality assessments. Barring any particularly special relationship between the interveners and the civilians they seek to protect, I am inclined to argue that it is proportionate for humanitarian interveners to risk a smaller number of their own as a means of protecting a larger number of civilians. Proportionality should not be interpreted to require politicians or military generals to pursue missions or tactics that risk the lives of as many humanitarian interveners as the action might save. However, the greater the number of civilians that could be protected by an intervention (or by a particular battle within an intervention), the greater the number of interveners it will be proportionate to risk, assuming reasonable prospects of success.

I have argued that those who undertake interventions should be willing to risk a number of their own if doing so has the potential to save a greater number of non-combatants. This kind of sacrifice strikes me as implicit in the agreement that soldiers make when they sign up for military service. When an extraordinary number of non-

²¹⁶ As quoted in Wheeler, *Saving Strangers*, 31.

combatants might be saved by the sacrifice of a relatively smaller number of interveners (as might have been the case in Rwanda), then the sacrifice seems proportionate. I do not think, however, that proportionality should be interpreted to require interveners to expose themselves to harms equal to (or greater than) the ones they try to prevent.

Proportionality should give substantial weight to both the lives of non-combatants and interveners, but the proportionality requirement will be unreasonably demanding if it is interpreted to require interveners to pursue tactics and missions likely to kill them in droves. The harm that results to an intervener from her willing and intentional self-sacrifice to protect innocents is rightly given a reduced weight in proportionality assessments, but, at the same time, proportionality shouldn't be interpreted to require interveners to make themselves as vulnerable as the people they try to protect.

A critic might argue that if the interveners' lives are given a reduced weight, then the proportionality criterion can be interpreted to require them to sacrifice themselves in numbers greater than they expect to save. I respond that the interveners' volunteering for service helps account for why any sacrifice from their particular group can be reasonably requested, but their volunteering does not make it reasonable to request that they subject themselves to the same scale of harm that inspired the world's moral outrage. A useful, though admittedly imperfect, analogy might be drawn with firefighters. We expect firefighters to expose themselves to certain risks that we would not expect of ordinary civilians by virtue of their having voluntarily entered the profession in exchange for the living it provides. Yet, we do not request that firefighters submit themselves to egregious, mass, and dire harm even if doing so would, somehow, save a large number of innocent people from a burning building.

3.12 Relevant Goods

Up to this point I have been interested in the relevant harms (and the relative weighting of the relevant harms) for proportionality assessments. I have argued that humanitarian interveners are expected to include a greater range of harms in their proportionality assessments than self-defenders, and that they are required to weigh the lives of non-combatants particularly heavily. I continued that the inclusion of mediated harm to non-combatants in interveners' proportionality assessments, and the significant weight accorded to direct harm to non-combatants generally makes certain kinds of military strategies morally off-limits to humanitarian interveners. I turn now to consider some of the relevant *goods* for proportionality assessments.

It is generally agreed that proportionality calculations should not include all of the good consequences that might result from military action. For example, it cannot rightly count in favour of a war's proportionality that it will be profitable for the companies that supply an army with uniforms or weapons. This kind of good is not considered relevant for proportionality which does not weigh the universal benefits and harms against each other, but rather includes only a limited subset of the anticipated benefits.

Mellow and McMahan argue that the goods that can rightly count in proportionality assessments are restricted to those that are contained in the just cause for military action.²¹⁷ That is, the only goods that count are those that can be permissibly pursued by means of military action. McMahan writes:

If just cause indicates the range of goods that may permissibly be pursued by war, then no goods that fail to come within the scope of the just cause, or are instrumental to achieving it, can count in the proportionality calculation. If they

²¹⁷ Mellow, "Counterfactuals and the Proportionality Criterion," 448; McMahan, "Just Cause for War," 4-5.

did, that would imply that a war is justified, at least in part, by the fact that it would achieve certain goods that cannot permissibly be achieved by means of war.²¹⁸

And later he repeats, “when there are no goods that may be pursued by means of war, there are no goods that can properly be weighed against the bad effects that an act of war would cause....”²¹⁹ The kinds of causes that justify the resort to war (e.g. self or other-defense, or the prevention of mass atrocities) are the only goods that count in proportionality assessments, and once they are achieved, just combatants must cease fighting.²²⁰

Contrary to Mellow and McMahan, Hurka argues that the goods that can legitimately count in proportionality assessments can include goods that, on their own, wouldn’t count as adequate grounds for resorting to war.²²¹ These ‘contributing causes’ can nonetheless strengthen the proportionality of a proposed war after a sufficient just cause for war (such as self or other-defense, or the halting of genocide) has been established.²²² One contributing cause for war that can increase a mission’s proportionality, according to Hurka, is the halting of certain human rights abuses that are, in and of themselves, insufficient grounds for resorting to war. He argues,

²¹⁸ McMahan, “Just Cause for War,” 5.

²¹⁹ *Ibid.*, 6.

²²⁰ Sometimes, McMahan adds, a war will have a just cause but will fail the proportionality test, because the good at stake is not sufficiently significant. He imagines a scenario where a tiny acre of land that is used as a garbage dump in country A is invaded by country B, who regards the acre as a holy site. Though A might have just cause in defending its territorial integrity against B, McMahan argues that to go to war over the acre would be disproportionate because the good at stake isn’t worth the likely harms of military action. He cautiously speculates that Britain’s actions in the Falklands war in 1982 might be an example of a campaign with a just cause that was nonetheless disproportionate because the land at stake was insufficiently important to Britain. He quickly adds, however, that supporters of the Falklands war defend its proportionality on the grounds that it reinforced the important principle of territorial integrity and deterred would-be, future aggressors.

²²¹ Hurka, “Proportionality in the Morality of War,” 41.

²²² In his more recent paper, “Proportionality and Necessity,” Hurka uses slightly different language. Instead of ‘sufficient and contributing just causes’ he writes of ‘independent and conditional just causes’. His meaning, however, remains essentially the same.

I think most people would say that the Taliban's repression of Afghan women was not a sufficient just cause; a war fought only to end that repression would have been wrong. But once there was a sufficient just cause in the Taliban's harbouring of terrorists, the fact that the war would improve the lot of Afghan women became a factor that counted in its favour and helped make it proportionate.²²³

In addition to the halting of human rights abuses, other relevant, contributing goods for proportionality assessments are, for Hurka, the incapacitation of an aggressor for future aggression, and the deterrence of future aggression.²²⁴

Of course, on Hurka's view, not just any good can count as a contributing cause for war. Profit for arms manufacturers does not, for Hurka, count as a relevant good. At one point Hurka argues that there is no unifying feature of contributing just causes, concluding that they are just 'items on a list.'²²⁵ Later, however, he specifies that the contributory goods must be directly connected to the achievement of the sufficient just cause, rather than mere inadvertent side-effects of the means taken in pursuit of that cause.²²⁶ This is, admittedly, a rather broad principle whose application might well yield different conclusions.²²⁷

I find the topic of the relevant goods for proportionality assessments extraordinarily difficult. It is certainly always beneficial that human rights abuses come to an end, but McMahan is right that it is morally strange if the suspension of such abuses

²²³ Hurka, "Proportionality in the Morality of War," 42. I have been asked why the treatment of Afghan women before the overthrow of the Taliban would not count as a *sufficient* just cause for intervention. This is a difficult and morally challenging question to answer, but I make some attempt in the next chapter on the just cause requirement.

²²⁴ Hurka, "Proportionality in the Morality of War," 41.

²²⁵ Ibid, 43,

²²⁶ Ibid, 43. Hurka adds that not just any goods that are causally downstream from the achievement of the just cause count. For example, he says, it cannot be a relevant good that "a nation's citizens get pleasure from its military victory." ("Proportionality and Necessity," 134.)

²²⁷ Importantly, Hurka argues that precedent effects can sometimes make non-violent, diplomatic approaches *disproportionate* insofar as they can teach aggressors that their own violence will not be forcefully resisted. Diplomacy can inadvertently reward aggression thereby encouraging it, a sentiment that is commonly emphasized by the US government when it insists that it will not negotiate with terrorists, for example. Precedent and deterrent capacity is, for Hurka, relevant to proportionality assessments of both military and diplomatic means of conflict resolution.

counts in favour of a *war's* proportionality if those abuses are not themselves sufficient to justify a resort to war. Certainly human rights abuses of all kinds should be addressed, but whether they can legitimately improve the proportionality of a proposed *war* is a separate matter.

It seems like if we allow goods other than the ones that provide a sufficient cause for resorting to war to enter into proportionality assessments, including deterrent effects, then defensive war against any aggression (no matter how small) might always be deemed proportionate by emphatic appeal to its precedent and deterrent effects. States might defend the proportionality of full-scale wars that kill thousands (or hundreds of thousands) of soldiers in defense of tiny, insignificant pieces of territory by appeal to the importance of resisting aggression so as to deter future aggression down the line.

Another worry about opening up proportionality assessments to include things like the incapacitation of an aggressor and the deterrence of would-be aggressors is that it may open the door to so-called preventive war and forcible democracy promotion. Defenders of forcible democracy promotion often repeat what has come to be known as the democratic peace thesis, which is the thesis that democracies never go to war with each other and so the forcible spread of democracy will secure world peace. So-called preventive wars that forcibly impose democracies might always be deemed proportionate by appeal to the long-term good of having a democracy where there wasn't one before, and the deterrence of a potential aggressor. The problem is that virtually any war might be deemed proportionate if it is promoted as a sure means to world peace. Interpreted in this way, I worry that the proportionality requirement will become too easy to satisfy, that

it will hold little power to restrain, and will lead to the increase of aggression with grand, world altering, humanitarian agendas.

Despite these problems, I think Hurka's basic view can be made very credible with certain added qualifications and emphases. First, it is important to emphasize that there is a sharp limit on the kinds of goods that can be included in proportionality assessments as contributing just causes. Not just any good can count, for example, profits for arms manufacturers do not rightly count. The admission of contributing just causes into proportionality assessments does not render the proportionality requirement a virtual 'rubber-stamp' for any proposed armed venture.

If halting those human rights abuses that fall short of genocide or mass atrocities can help to improve the proportionality of a proposed humanitarian intervention, then it must be added that these abuses must threaten very basic human rights of a large number of people, such as, for example, women's rights to freedom of association. It cannot be the case that it improves the proportionality of a proposed military venture when it will enable working adults to enjoy a right to leisure time. I think persons do have a right to leisure time and that this is a right worth staunch defense; it is not, however, a right whose promotion should increase the proportionality of military action.

My second qualifier for Hurka's view is that the cessation of human rights abuses must only be included in proportionality assessments when the abuses cannot realistically be ended by any other means. The ending of human rights abuses can only rightly be included in proportionality assessments if there are no non-violent, alternative means of bringing the abuses to an end. It seems wrong to include improvements in the lot of Afghan women in proportionality assessments of the current war in Afghanistan, for

example, if those improvements might have been accomplished through concerted, non-violent means. This, of course, might be a topic of considerable debate and I think that many might reasonably doubt this possibility.

Third, Hurka's view must be qualified by adding that that the short-term benefits of military action should be weighed more heavily than the more distant, long-term, precedent-setting benefits. The bulk of the good at stake in a just military campaign should consist of immediate lives saved and communities protected. The bulk of the good needs to be experienced by those communities that are currently living and are themselves burdened by the use of force. It cannot rightly be the case that proportionality is achievable when the only ones likely to benefit are far removed in time and place. The good for distant others may be a relevant good in proportionality assessments, but it cannot be determinative. A disproportionate war can't be made proportionate by an appeal to precedent or deterrent effects.

Finally, a military action that has attained its independent or sufficient just cause cannot continue for the sake of pursuing contributing just causes, with the possible exception of the contributing cause of incapacitating an aggressor for future aggression (when it is reasonable to believe that the aggressor is likely to resume its aggression). Hurka is likely to agree that once the sufficient just cause is achieved (a genocide is ended, or an unjust invasion is reversed), all fighting must stop, even if continued fighting might, for example, reasonably be thought to bring an end to 'moderate' human rights abuses or serve as a deterrent to other potential aggressors.

I have argued that the relevant goods for proportionality assessments may include what Hurka calls contributory or conditional just causes. These are goods that are not

themselves sufficient to justify the resort to war, but may increase a war's claim to proportionality once a sufficient, independent just cause is established. Contributing just causes, however, must be strictly limited. I argued that a cessation of human rights abuses that, on its own, wouldn't justify the resort to war may be included in proportionality assessments if the abuses in question threaten the very basic rights of a large number of people and if, in addition, the cessation of these abuses cannot be accomplished through any other means but military might. I also argued that proportionality must give greater weight to those persons and communities that are currently living and are affected by the use of force. Deterrence of future aggression while a relevant good is not so weighty as those goods that benefit the currently living and in whose name military resistance is carried out. The proportionality of a military venture cannot be won by its anticipated restraining effect on would-be, future aggressors. The admission of contributory just causes into proportionality assessments should not be such that it renders the proportionality requirement impotent to restrain. The proportionality requirement cannot rightly be constructed to run rough-shod over the interests of flesh and blood humans for the sake of grand principles, however important these principles are. Finally, I argued that all fighting must cease when the sufficient just cause is achieved; fighting cannot rightly be sustained by appeal to the contributing just causes after the sufficient just causes have already been realized.

3.13 Conclusion and Summary

A common and recurring criticism of humanitarian interventions is that just war theorists endorse inconsistent or selective responses to various humanitarian disasters of

comparable severity. They will intervene in Eastern Europe, but allow atrocities to continue unimpeded in places like Chechnya or Tibet. Critics argue that hiding behind claims about ‘proportionality’ and ‘prospects of success,’ the theory of humanitarian intervention is really nothing more than an elaborate rationalization of international bullying by the strong over the militarily weak. For skeptics, the selectivity of intervention robs the practice of any moral credibility.²²⁸ Better not to intervene at all, some might conclude, than to intervene only when strategic interests are at stake.

While this criticism rightly exposes some of the morally problematic aspects of real-life proportionality assessments, the selective intervention criticism goes too far if it discounts the moral permissibility of any interventions at all. Certainly, humanitarian atrocities shouldn’t be ignored for the sake of protecting the trivial consumer interests of the rich, and countries should expose and challenge the human rights abuses of their allies. Undoubtedly, Canada’s record on this score is dismal. Still, prudential considerations ought to play a part when considering military intervention. As Guenter Levy warns, “even a good cause is not worth any price.”²²⁹ No one should promote military action that would predictably produce a disproportionate amount of relevant harm out of a concern for consistency. Indeed, as Walzer notes, “we have to *hope* that prudential calculations shape the decision to intervene or not.”(my emphasis)²³⁰ So, selective intervention does not automatically undermine the legitimacy of any given

²²⁸ Even the International Commission on Intervention and State Sovereignty which is decidedly in favour of the use of military force for humanitarian ends notes, “...for all the rhetoric about the universality of human rights, some human lives end up mattering a great deal less to the international community than others.” ICISS, *The Responsibility to Protect*, 1.

²²⁹ As quoted in Fixdal and Smith, “Humanitarian Intervention and Just War,” 304.

²³⁰ Walzer, “The Argument about Humanitarian Intervention,” 10.

intervention, but it certainly should make us examine more closely how proportionality is being measured.

A failure to engage militarily for a just, humanitarian cause is defensible when any possible action is doomed to inflict a disproportionate amount of relevant harm. Inconsistent responses to just causes, however, are indefensible when they depend on morally problematic proportionality assessments, either because they exaggerate the benefits to be gained or the harms to be avoided, unduly prioritize the lives of compatriots, or wrongly privilege economic over more basic humanitarian goods.

This chapter investigated the constraints of reasonable prospects of success and proportionality, and, on the one hand, I argued that the constraints may be particularly difficult, though certainly not impossible, for humanitarian interveners to satisfy because they must weigh a particularly wide range of possible harms. On the other hand, I also argued that more than the sufficient just cause(s) for resorting to war may be given some weight in proportionality assessments, and this might make the proportionality condition somewhat easier to satisfy than McMahan proposes. While I think that properly called humanitarian interventions are a particular kind of just war, making contemporary just war theory an appropriate tool for evaluating proposed interventions, I also think that the requirements of contemporary just war theory may be somewhat differently interpreted in cases of humanitarian intervention than in cases of more traditional wars of self-defense.

Proportionality is an infinitely complex subject, both for humanitarian interveners and other kinds of just combatants, and I do not pretend that this chapter is anything like an exhaustive account. I also do not want to suggest that lives are the only things risked by military action. Military action often poses environmental harm, or destroys cities.

Less immediate harms include the normalization of violence as a means of conflict resolution, the entrenchment of hostilities between communities, the long-term psychological harm of soldiers and civilians, and, sometimes, the acquisition of nations' ever larger supplies of weaponry. I noted that with humanitarian intervention there is particular concern that softening a prohibition against intervention will lead to more aggressive actions that masquerade as humanitarianism. Some of the harms attached to military action are immediate and concrete, while others are more ephemeral or distant. The relative weighting of such disparate, incommensurable values and consequences is enormously difficult and impossible to submit to exact mathematical calculation. Nonetheless, I hope to have made some substantive contribution to identifying what the proportionality condition requires, especially of humanitarian interveners.

Chapter Four

Occasions for Humanitarian Intervention

“Humanitarian interventions are not justified for the sake of democracy or free enterprise or economic justice or voluntary association or any other of the social practices and arrangements that we might hope for or even call for in other people’s countries. Their aim is profoundly negative in character: to put a stop to action that, to use an old-fashioned but accurate phrase, ‘shock the conscience’ of humankind.”²³¹

4.1 Introduction

This chapter investigates occasions of justifiable humanitarian intervention. In the first section, I present the range of arguments given in defense of a general presumption *against* intervention, and note some of the criticisms against them. Understanding the rationale for the presumption against intervention also explains the need for exceptions. I argue that it is not necessary to be an ethical relativist or radical communitarian to defend the general presumption against military intervention. Although the need to protect peoples’ processes of self-determination often carries some of the moral justification for the prohibition against particular interventions, the general presumption against intervention can reasonably be maintained on more standard consequentialist grounds.

The next section considers the kinds of harmful acts or circumstances that can justify exceptions to the general presumption against military intervention; I outline the kinds of atrocities a state must commit or allow for the presumption against intervention to give way. Specifically in the second section I argue that there are compelling reasons to limit full-scale military intervention to cases of mass atrocity crimes. Full-scale military intervention against severe tyrannies that terrorize their population but that do

²³¹ Michael Walzer, *Arguing About War* (New Haven and London: Yale University Press, 2004), 69.

not commit mass atrocities should be resisted in part because permitting such military interventions may dramatically increase the number of wars that are fought. Such interventions also seem to have much more difficulty comfortably satisfying the proportionality requirement than interventions against states that commit or permit mass atrocities. I concede that there are reasonably possible scenarios where what Walzer calls ‘force-short-of-war’ (for example, the maintenance of no-fly zones) against a non-atrocity committing tyranny may satisfy the proportionality requirement. Full-scale war, however, with the killing, maiming, and displacement it entails, should be restricted to the most heinous situations and just war theorists should resist the temptation to paint war as an efficient, surgical procedure that can be used to quickly manage any rights-violating regime.

In the third section, I argue that it would be wrong to insist that intervention is only ever justified in cases where the atrocities are already on-going, and contend that under some reasonably possible circumstances pre-emptive intervention may be permissible. I specify that, in general, justified pre-emptive action must be a response to an imminent threat posed by aggressors with a distinct, well-equipped plan to carry out mass atrocities. Humanitarian military intervention is not justified as a response to an ephemeral or distant threat even when the perception of threat is rational. Full-scale preventive military action against distant threats has difficulty satisfying the *in bello* rule of discrimination since those individuals who would be preventively attacked have not made themselves into aggressors by carrying out, or mobilizing for any unjust assault. Full-scale preventive military action will also, in most circumstances, have difficulty satisfying the requirements of proportionality and last resort.

4.2.1 The Presumption Against Intervention: Self-Determination

Many contend that helping a foreign population struggle for liberation from a domestic tyrant using military force is usually and generally wrong. John Stuart Mill argues that a people's commitment to liberty is measured by their willingness to defend it physically, "[t]he only test possessing any real value, of a people's having become fit for popular institutions, is that they, or a sufficient portion of them to prevail in the contest, are willing to brave labour and danger for their liberation."²³² In fighting for their liberty, he argues persons come to better value and understand the liberty they finally achieve, making resulting institutions more lasting and stable. Of an oppressed people he writes,

if they have not sufficient love of liberty to be able to wrest it from merely domestic oppressors, the liberty which is bestowed on them by other hands than their own, will have nothing real, nothing permanent... Men become attached to that which they have long fought for and made sacrifices for, they learn to appreciate that on which their thoughts have been much engaged; and a contest in which many have been called on to devote themselves for their country, is a school in which they learn to value their country's interest above their own.²³³

Freedom is valuable, Mill argues, but it is best achieved when fought for and won than when forcibly imposed by outsiders. Hard-won freedom, he thinks, is more deeply felt and its resulting institutions less easily corrupted or usurped. Foreigners cannot adequately accomplish what is best achieved by a people themselves.²³⁴

Mill's defense of non-intervention has been criticized as implying that people always deserve the governments they get, that those suffering under repressive

²³² John Stuart Mill, "A Few Words on Non-Intervention 1859" in *The Collected Works of John Stuart Mill, Volume XXI- Essays on Equality, Law, and Education*, ed. John M. Robson (Toronto: University of Toronto Press, London: Routledge and Kegan Paul, 1984), http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=255&chapter=21666&layout=html&Itemid=27 (accessed 4 November, 2010).

²³³ Ibid.

²³⁴ Mill does not extend this principle to all people, and infamously argues that 'uncivilized' societies are not best left to their own devices. Ibid.

governments deserve their repression because their ‘love of liberty’ isn’t sufficient for them to free themselves. This blame-the-victim criticism is best stated by David Luban who wrote in 1980, “It seems that Mill suspects that the state would not be there if the people did not secretly want it. This seems to me to be an absurd, and at times even obscene view, uncomfortably reminiscent of the view that women are raped because secretly they want to be.”²³⁵

Walzer offers a more deontological version of Mill’s argument for the presumption of non-intervention. Self-determination, he argues, is valuable in itself even if the process isn’t guaranteed to yield anything that is philosophically correct.²³⁶ Individuals, he argues, have the right to live in communities that are the product of their shared, local history and to live under whatever institutions they, in their own time and in their own way, collectively author.²³⁷ Many theorists echo this view arguing that victimized populations usually prefer domestic solutions to intervention and occupation by foreigners, and this preference requires foreigners to stay out of the way.²³⁸ Sometimes it is added that a preference for domestic solutions may inform a patriotic backlash against humanitarian interveners, making intervention less likely to succeed.²³⁹

An advantage of this kind of argument for the presumption against intervention is that it does not have the unsavoury implication that people *deserve* the murderous governments they might find themselves with, and focuses attention on the desires and

²³⁵ David Luban, “Just War and Human Rights” *Philosophy and Public Affairs* 9, no.2 (Winter, 1980), 179-180.

²³⁶ Michael Walzer, “The Moral Standing of States: A Response to Four Critics.” *Philosophy and Public Affairs* 9, no. 3 (Spring, 1980): 215, 219-222, 225, 228.

²³⁷ *Ibid*, 211.

²³⁸ Richard Miller, “Respectable Oppressors, Hypocritical Liberators: Morality, Intervention, and Reality,” in *Ethics and Foreign Intervention* (see n.10), 224-226.

²³⁹ Burleigh Wilkins, “Humanitarian Intervention: Some Doubts,” in *Humanitarian Intervention: Moral and Philosophical Issues*, (see n.39), 37.

wishes of the victims of aggression. Even in awful circumstances, people are likely to have preferences regarding how they would wish to emerge from these circumstances and this argument for a general rule of non-intervention at least takes these wishes seriously.

Both David Luban and Richard Miller contend that Walzer's argument for the presumption of non-intervention overvalues political autonomy.²⁴⁰ A political community may be the authentic product of people trying to organize themselves, and still be profoundly unjust. Authenticity, they argue, isn't all that matters; states genuinely endorsed by (most of) their citizens may still be morally atrocious. A communitarian might reply that states that commit barbarous acts against their citizens only ever enjoy consent that is highly coerced, and that such political communities cannot be said to be robustly self-determining and, thereby, rightly immune to intervention. Luban agrees that murderous states sustain themselves by coercion, but cautions that some majorities have a demonstrated capacity to willingly participate in and endorse heinous crimes committed by their states against internal minorities. Majorities seem especially able to condone atrocities against internal minorities when the majority has in the past been done wrong by, or feels threatened by, the now persecuted minority. The point remains that self-determining societies do not necessarily, by virtue of their authenticity alone, warrant protection.²⁴¹ The presumption against military intervention may well be justified, but not because self-determination is morally supreme.

²⁴⁰ Miller, "Respectable Oppressors, Hypocritical Liberators," 221-223; Luban, "Intervention and Civilization" (see n.2), 93.

²⁴¹ Luban acknowledges that it is unlikely that profoundly unjust states enjoy the unanimous support of their citizenries, but he argues that in politics, consent is never unanimous. He writes, "Even a legitimate regime can engage in repulsive human rights violations, and the legitimacy argument would immunize it against humanitarian intervention... in politics consent is never unanimous, and widespread support, which even repressive governments can enjoy, is all that can reasonably be required for consent-based legitimacy... even if a murderous regime like the Argentinian junta was legitimate, that does not make it wrong for outsiders to halt its atrocities if they can." Luban, "Intervention and Civilization," 92-93.

Luban and Miller also argue that Walzer overestimates the prevalence of political communities that really are shaped by a collective effort that includes all or most of their members. They contend that Walzer's argument for the presumption of non-intervention would make more sense in a world where there existed a better 'fit' between governments and the people they represent, but that, as it is, the world includes many states where, '[t]he government fits the people the way the sole of a boot fits a human face....'²⁴²

Some theorists reject Walzer's argument for the presumption against intervention by specifying that the only persons whose wishes warrant moral concern are those of the *targeted* population whose rescue is the object of intervention. A torturer cannot reasonably use her interest in self-determination as a trump against intervention intended to save the innocent she straps down to torture.²⁴³ Nevertheless, Walzer might reply that those who are the immediate targets of atrocities may sometimes reject military intervention, and their refusal requires outsiders to forgo military means. Victims of grave injustice may not want foreign military intervention, or may not want the kind of military intervention that is offered by the international community.

The self-determination argument for the presumption against military intervention that depends on the desire of people to sort things out for themselves has also been countered by Thomas Weiss who argues that vulnerable or targeted peoples generally *do* want intervention, citing research on the matter indicating openness rather than resistance to intervention by foreigners. He writes,

...the only survey done to date of victims in war zones suggests that there is too little, rather than too much, humanitarian intervention. A full two-thirds of

²⁴² David Luban, "The Romance of the Nation-State," *Philosophy and Public Affairs* 9, no. 4 (Summer, 1980), 396.

²⁴³ Tesón, "Ending Tyranny in Iraq" (see n.3), 16. Tesón, *Humanitarian Intervention*, 3rd ed. 79.

civilians under siege who were interviewed in twelve war-torn societies by the ICRC wanted more intervention, and only 10 percent wanted none.²⁴⁴

Certainly, more empirical research of the sort that Weiss describes would be useful.

Indeed, in general, moral theorizing on war and intervention could be significantly improved if it involved greater collaboration with those with front-line experience of war and reliable empirical expertise.

Yet, even Walzer agrees that there comes a point when non-intervention cannot be convincingly maintained on the grounds that it improves chances for self-determination. Walzer is not an absolutist regarding the rule against intervention. At a certain point, he argues, atrocities are of such a sort that any talk of self-determination becomes “cynical and irrelevant.”²⁴⁵

4.2.2 Ignorant Outsiders

A general presumption against intervention is also sometimes maintained on the grounds that interveners are unlikely to adequately understand the complexity and history of the humanitarian situation.²⁴⁶ Foreigners, it may be argued, don’t know the history or the cultures well enough to act rightly in morally complex situations. Examples of foreign interveners underestimating or misunderstanding internal strife are abundant, and the worry is terrifyingly captured in a speech given by Major General Lewis MacKenzie (head of the UN’s military mission in Bosnia) to the Royal United Services Institute on December 9, 1992, where he was quoted as having insisted that, “The last thing that a

²⁴⁴ Greenberg Research, *The People on War Report* (Geneva: ICRC, 1999), xvi, quoted in Weiss, *Military-Civilian Interactions* (see n.29), 22.

²⁴⁵ Walzer, *Just and Unjust Wars*, 90.

²⁴⁶ Walzer, “The Moral Standing of States,” 212.

peacekeeper wants to know is the history of the region he is going into. It complicates the task of mediation.”²⁴⁷

This argument for non-intervention, however, is also criticized on the grounds that outsiders often *can* understand intra-state conflict well enough to know how to act, and that few cultures and societies are so isolated that outsiders would be incapable of understanding the nature of the conflict.²⁴⁸ Indeed, some might add that an outsider to a society can sometimes see its moral problems more clearly.

4.2.3 International Stability

A general policy of non-intervention in a people’s struggle against domestic rights violations is also often defended on the grounds that a policy of foreign military intervention in states’ domestic policies will destabilize the international order. The worry is that the relative stability of the international system relies on mutual assurances that states will not intervene in others’ domestic affairs. This ideal of international society being composed of self-determining sovereign states that are rightly immune to international military intervention persists today, but in this past century it was perhaps especially poignant after the Second World War when, to some, the greatest threat to humanity seemed to be inter-state aggression.²⁴⁹

While inter-state military aggression continues to be a real threat, aggression committed or permitted by states against their own people is an arguably equal or greater threat. Burleigh Wilkins notes that in the twentieth century, four times as many deaths

²⁴⁷Quoted in Carol Off, *The Lion, the Fox, and the Eagle: A Story of Generals and Justice in Yugoslavia and Rwanda* (Toronto: Random House, 2000), 123.

²⁴⁸David Luban, “The Romance of the Nation-State,” 395.

²⁴⁹Michael Ignatieff, “Human Rights, Sovereignty and Intervention” in *Human Rights, Human Wrongs*, ed. Nicholas Owen (New York: Oxford University Press, 2003), 53.

greater threat to human rights than tyranny. The view is that prioritizing and honouring state sovereignty will, in the long run, best serve human rights.²⁵⁴ Sometimes theorists also respond by repeating that people require freedom from external threat in order to deal with their own internal threats.²⁵⁵

The argument for the presumption against intervention that appeals to international stability rightly highlights the destructiveness of war, and the moral significance of maintaining order. At its extreme, the international stability argument for non-intervention implies that preserving order is more important than justice.²⁵⁶ Critics, however, challenge that states' injustices can and commonly do reach such proportions that a policy of propping up the status quo is at least as likely to disrupt the world order as the occasional foreign intervention.²⁵⁷ Justice denied is a recipe for disorder, and in that sense, justice (through intervention) is more important than, or a precondition for order and stability.

It would be simplistic to argue that either order or justice is normatively privileged, and that one value always takes precedence over the other. Both matter

²⁵⁴ A related and common argument is that gross abusers of human rights need to be engaged, rather than ostracized by the international community. Unfortunately this last argument seems (more often than not) to serve merely as a cover for moral indifference, and as a way to rationalize the privileging of markets over human rights.

²⁵⁵ Walden Bello writes, "Now, for some people in the North, who belong to states that dominate the rest of the world, national sovereignty may seem quaint. For those of us in the South, however, the defense of this principle is a matter of life and death, a necessary condition for the realization of our collective destiny as a nation-state in a world where being a member of an independent nation-state is the primordial condition for stable access to human rights, political rights, and economic rights. Without a sovereign state as a framework, our access to and enjoyment of those rights will be fragile. So long as nation-states remain the prime political collectivities of human beings ... our defense of national sovereignty must be aggressive." Walden Bello, "Humanitarian Intervention: Evolution of a Dangerous Doctrine," *Global Policy Forum: Focus on the Global South* (January 19, 2006), 1-2.

<http://www.globalpolicy.org/component/content/article/154/26060.html> (accessed 4 November 2010).

²⁵⁶ See also, Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001), 25.

²⁵⁷ Fernando Tesón, "The Liberal Case for Humanitarian Intervention," in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, eds. J.L. Holzgrefe and Robert O. Keohane (Cambridge: Cambridge University Press, 2003), 112.

tremendously, but sometimes the particular circumstances will be such that one value outweighs the other. And while they can genuinely conflict, it would also be mistaken to suggest that they are always separable. ‘Order’ based on racial segregation, for example, is unlikely to be very stable and radical revolution or intervention may be morally compelling but cannot claim to be just if it means numbers of ‘charred babies.’ Even those who criticize humanitarian intervention on the grounds of international stability are not usually absolutists about non-intervention. Modern just war theorists do not commonly argue that humanitarian intervention is absolutely never justified out of concern for international instability.

4.2.4 The Horror of War

All of the above arguments for the presumption against military intervention have merit. However, the general presumption against humanitarian intervention is most easily, or least objectionably defended using Luban’s most recent argument that war, even when it goes relatively well, is almost incomprehensibly awful, and so should be generally avoided. In his recent work, Luban suggests that the presumption against military intervention is not best accounted for as a rule that is necessary to protect self-determination, but rather as a rule to avoid war. He writes, “...it would be a mistake to suppose that the real evil of war is the assault on sovereignty rather than the untold sorrow of modern war.”²⁵⁸ His recent view doesn’t deny that self-determination by a people and international stability are valuable, it only denies that they are what best account for the general presumption against military intervention.

²⁵⁸ David Luban, “Preventive War,” *Philosophy and Public Affairs* 32, no. 3 (Summer, 2004), 218.

I think Luban is correct that the immediate and distant consequences for soldiers and non-combatants are sufficient to justify the presumption against intervention. In general, the presumption against intervention holds simply because military action involves horrifying consequences and agents doing awful acts. There are circumstances when despite its horrors, military force can seem appropriate, but the point is to avoid war up to the point where avoiding war calls into question our humanity; we avoid war except when a refusal to employ some force undermines our moral identity as defenders of basic rights and yields wholly intolerable consequences.

The presumption against military intervention also seems justified by the sordid history of wars claimed to be humanitarian. History is rife with examples of aggressors claiming humanitarian intent, and most critics (and indeed many defenders) of humanitarian intervention will begin their papers by noting the supposed ‘humanitarian’ impulse of European colonizers of North America and Africa, and of Spanish conquistadors during the Crusades. There is a palpable and warranted concern that a permissive doctrine of humanitarian intervention will be used as a façade for aggression, expansionism, and a desire to forcibly refashion the world in an aggressor’s image.

Yet the presumption against military intervention is only a presumption, not an absolute rule. Jean-Christophe Merle goes so far as to argue that when non-military means of conflict resolution are ineffective or inapt, it becomes the duty of powers who oppose military intervention to justify why it is impermissible. He writes

...there ought to be a reversal of the burden of proof. Whereas intervening powers previously have had to demonstrate that they were justified in intervening for humanitarian reasons, today they should have to justify *not intervening* militarily in the absence of other efficient means to stop massive human rights violations.²⁵⁹

²⁵⁹ Jean Christophe-Merle, “The Problem with Military Humanitarian Intervention and its Solution,” *The Philosophical Forum* 36, no. 1 (Spring, 2005), 63.

While I think that Merle overstates the case somewhat since I don't agree that the burden of proof should be reversed, it is undoubtedly true that critics of military intervention must offer and materially support alternative means of pursuing the just cause. I am also troubled by his use of the word 'efficient' because I think that it reveals a dangerous tendency to view military action as a way to 'get results fast'. Even when military action can be plausibly seen to be the most efficient means to achieve a just cause, military force is not justified simply because it achieves a desired result faster and with fewer resources than the alternatives.

I acknowledge that the increasing numbers of large-scale humanitarian atrocities are making the justified exceptions to the non-intervention rule less and less exceptional.²⁶⁰ Despite the increase in widely-publicized, mass atrocities, humanitarian intervention must continue to be an exception to the general presumption against military force for humanitarian ends. Military force, even when carefully executed, imposes dire humanitarian risks, and strong states do claim humanitarianism as a shield for power politics. As J. Bryan Hehir notes,

Because of the diversity of states and the dangers of rationalization, the wisdom of Westphalia should be heeded. Intervention may be necessary but it should not be made easy. Hence the need to sustain the presumption against it.²⁶¹

Hehir continues that "[t]he 'just causes' for intervention must go beyond genocide. The intellectual and political challenge is to identify a wider range of exceptions without

²⁶⁰ Walzer, "The Argument about Humanitarian Intervention," 1.

²⁶¹ J. Bryan Hehir, "Intervention: From Theories to Cases" *Ethics and International Affairs* 9, no. 1 (March, 1995), 8.

eroding the presumption against intervention.”²⁶² The next section of this chapter investigates occasions where the presumption against intervention might give way.

4.3 Occasions for Humanitarian Intervention

There are two related subjects of debate in the literature on the occasions for humanitarian intervention. The first has to do with the *scale* of the atrocities that might rightly trigger an intervention. Here some argue that repressive governments that routinely violate the basic rights of its citizens are candidates for military intervention.²⁶³ Others insist that rightful candidates for military intervention must be not ‘merely’ tyrannical and repressive, but also massively murderous.²⁶⁴ The second debate has to do with the *time* when military intervention can be justified. Here some argue that intervention will only ever be justified against on-going atrocities,²⁶⁵ and others contend that intervention may also be justified against imminent atrocities.²⁶⁶ Some even defend military intervention against anticipated future (but not imminent) atrocities,²⁶⁷ or in part as punishment for past atrocities.²⁶⁸ Yet, the issues of scale and timing are not entirely separable. A currently popular view is that tyrants who persist in carrying out over a period of years human rights violations that do not rise to the level of ethnic cleansing or genocide can become rightful targets of military intervention once they accumulate a

²⁶² Ibid, 8.

²⁶³ Luban espoused this view in “Just War and Human Rights,” 175.

²⁶⁴ Roth, “War in Iraq: Not a Humanitarian Intervention,” 3.

²⁶⁵ Shotwell and Thachuk, “Humanitarian Intervention: The Case for Legitimacy,” in *Strategic Forum*, 5.

²⁶⁶ Nardin, “Humanitarian Imperialism” (see n.5), 22.

²⁶⁷ Allen Buchanan and Robert Keohane, “The Preventive Use of Force: A Cosmopolitan Institutional Proposal,” *Ethics and International Affairs* 18, no.1 (2004), 1-22.

²⁶⁸ Jean Bethke Elshtain, “Terrorism, Regime Change, and Just War: Reflections on Michael Walzer,” *Journal of Military Ethics* 6, no. 2 (2007), 137.

critical number of victims and non-violent modes of curbing their violence are unlikely to succeed.

I argue that military intervention should generally be restricted to very large-scale campaigns of brutal violence, killing, enslavement, or forced displacement calculated to terrorize and/or kill a particular group. I argue that violence need not be ongoing to justify intervention, but it should be imminent. Non-military forms of intervention can and should be used in defense against many kinds of human rights violations, but *military* intervention, particularly full-scale war, should only be an option in the most egregious cases.

4.3.1 Scale

Michael Walzer has consistently argued that the occasions for humanitarian intervention must be of a particularly serious sort.²⁶⁹ He argues that the relevant occasions differ in kind, rather than by degree from other kinds of repression. The circumstances that might call for military intervention are not at the far end of a continuum of nastiness, but an entirely different sort of horror, separated from others by a moral chasm.²⁷⁰ “We should not allow ourselves to approach genocide by degrees,” he writes. On one side of the chasm are a wide range of brutal injustices that states can commit against their own people and in response to which non-military modes of intervention or containment may be called for. On the other side is genocide, ethnic cleansing, or systematic massacre. Such occasions, he argues, cry out for foreign intervention. In recent years, David Luban has also come around to the view that only in

²⁶⁹ See, for example, Walzer, “The Moral Standing of States,” 217-218.

²⁷⁰ Walzer, “The Argument about Humanitarian Intervention,” 2.

such extreme humanitarian crises should humanitarian intervention be considered, arguing that military force should be countenanced only against behaviour that is uncivilized to the point of being *barbaric*.²⁷¹

Luban admits that the distinction between civilized and uncivilized has been drawn in different places at different times. He argues that the distinction is grounded in part on sentiment or conscience, rather than on impartial reason.²⁷² Luban would acknowledge the strength of Peter Singer's warning that, "[t]he problem with ... [the] appeal to the "conscience of mankind" criterion is that this conscience has, at various times and places, been shocked by such things as interracial sex, atheism, and mixed bathing."²⁷³ Yet, despite the undeniable role of relativistic sentiment and conscience in identifying some cases of serious rights violations, Luban also argues that uncivilized behaviour crosses an unmistakable line when it is barbaric in character. He writes,

As an intellectual matter, one can recognize that standards of civilized behaviour vary greatly among times and places, and that no *a priori* argument is going to settle the question. When we witness barbaric evil in action, matters assume a different aspect. The perpetrators become incomprehensible to us; the victims' sufferings overwhelm our imaginations. At that point, the distinction between the civilized and the barbaric appears like a bright line inscribed in the world; relativistic doubts evaporate.²⁷⁴

It is important to note that neither Walzer nor Luban endorse the view that *only* genocide provides a just cause for humanitarian intervention. Both now agree that mass murder, ethnic cleansing, and similar large-scale acts can be sufficient. Their views differ from the Clinton administration's view during the Rwandan genocide when it so

²⁷¹ Luban, "Intervention and Civilization," 101. In earlier work, Luban defends a more permissive rule that allows military intervention against states that violate any socially basic rights. See "Just War and Human Rights," 160-181.

²⁷² Luban, "Intervention and Civilization," 105-106.

²⁷³ Singer, *One World*, 122.

²⁷⁴ Luban, "Intervention and Civilization," 107.

carefully avoided use of the word ‘genocide’ in public statements, supposing that only in that event would a moral and legal duty of intervention arise.

Walzer and Luban’s (revised) view on suitable occasions for intervention are rejected by some as too limiting. Some, such as Fernando Tesón, think that severe tyranny, unaccompanied by ethnic cleansing or similarly large-scale acts may give a sufficient cause for military intervention. In ‘severe tyranny’ Tesón includes states that commit “pervasive and serious forms of oppression.”²⁷⁵ He specifies the kinds of oppression that meet this standard:

Let us imagine that in a South American country a military junta overthrows the democratic government, suspends all constitutional liberties and imposes martial law. The regime dismisses all suspect judges, replacing them with loyalists, and rigidly controls the media, the schools, and the universities. It targets dissidents for arrest, and tortures and summarily executes the leaders. All in all, the regime kills about two thousand people a year and beats up and tortures many more. The whole population (not just a few members) is subject to surveillance and arrest for disloyalty. This dismal situation is buttressed by relentless ideological propaganda. People abhor the regime, but, alas, the prospects of peaceful or violent return to democracy are nil, as the regime has the weapons. Here, people are not dying in huge numbers, but their lives depend on the whims of a tyrant, who kills enough of them weekly so as to keep them subjugated, yet not enough to cause a massacre... There are no massive killings, no extermination camps, no genocide, no ethnic cleansing. Yet it seems to me that in these cases the victims have a right to seek outside help, and that foreign governments may assist them, even by force (assuming acceptable costs).²⁷⁶

According to Tesón, tyranny that might warrant military intervention must be severe in the sense described above.

Tesón rightly challenges the sanctity of state sovereignty. However, I am nonetheless deeply troubled by the prospect of expanding the occasions for military action in the way he suggests. The first problem with Tesón’s view is the very real

²⁷⁵ Tesón, “Ending Tyranny in Iraq,” (see n.3), 15.

²⁷⁶ Tesón, “Of Tyrants and Empires,” (see n.6), 27-28.

possibility that permitting intervention against severe tyranny might lead to a third world war. Severe tyranny similar to the sort that Tesón describes is fairly common, and if military intervention against such states were permitted, then the occasions for war would multiply exponentially. It might be argued that in a world where severe tyranny was less common, there would be nothing wrong with humanitarian intervention against a severe tyranny that does not commit (or allow) mass atrocities because in such a world these would be isolated and uncommon cases. In a world where severe tyrannies were rare, Tesón's standard would indeed be less dangerous, than in our world. But even in this hypothetical world, there remains a residual wrongness about using full-scale military force against a non-atrocity committing tyranny. In this world, intervention will have difficulty in satisfying the thick conception of proportionality that should be, and often is expected of humanitarian interveners.

Importantly, Tesón qualifies his view with several conditions; he does not suppose that the presence of severe tyranny is sufficient to justify military intervention. He requires, for example, that the intervention not pose an undue burden on the interveners.²⁷⁷ He also requires that interveners not impose their own brand of tyranny after ousting the domestic tyrants, and argues that interveners must help to build free democratic institutions in the reconstruction stage.²⁷⁸ Furthermore, interveners must generally comply with the doctrine of double effect, injuring innocents only when it is a necessary and undesired side-effect of well-meaning action.²⁷⁹ Crucially, he insists that the victims on whose behalf the intervention is launched must welcome the

²⁷⁷ Tesón, "Eight Principles for Humanitarian Intervention," (see n.9), 97-98.

²⁷⁸ *Ibid*, 101.

²⁷⁹ *Ibid*, 102-105.

intervention.²⁸⁰ In various places he also endorses versions of the just war tradition's requirements of last resort and proportionality.

Tesón's added qualifications abate some fears about his policy. If non-military modes of intervention have no prospects for success, and if the victims of severe tyranny want intervention, then why not endorse Tesón's more permissive view that military intervention is justified against severe tyranny? Why restrict intervention to cases of ethnic cleansing, genocide, or other large-scale atrocities?

A critic of Tesón's relatively permissive rule for intervention might argue that his position is reasonable in principle, but dangerous in practice because it opens the door to grave abuse. Under his more permissive rule, any state whose politics or economic practices are ideologically at odds with the powerful might be deemed tyrannical and become a target of 'humanitarian intervention'. Tesón himself admits the danger of abuse, but responds that it is reasonable to think that some occasions of intervention against tyranny might be genuine and praiseworthy and specifies that he means only to

²⁸⁰ Ibid, 107. This condition is remarkably dismissed by David Mellow. Mellow imagines a case where a group of armed attackers are torturing and threatening to kill an innocent family. He further imagines that a group of hunters happens by the scene, and as a last resort to stopping the killing, the hunters aim their guns at the aggressors, but the targeted family members plead with the hunters not to shoot the aggressors, "explaining that they are committed pacifists and have chosen to suffer and die." ("Iraq: A Morally Justified Resort to Force," 297) Mellow argues that the hunters would be permitted to shoot the aggressors even if the family didn't want them to, and adds that this is especially true if the targeted family includes children on whose behalf the parents are making decisions. (297) He concludes, "Similarly, in a case of systematic large-scale government oppression, killing and torture, military intervention represents a sufficient just cause even if the vast majority of the victims are opposed to that intervention." (297) Mellow's domestic analogy is intriguing and I agree with the *general* view that persons are not always obligated to respect others' stated wishes (or their wishes for their children), but his argument is problematic. In refusing military intervention, groups that are the targets of large-scale violence don't necessarily want to 'suffer and die,' but still might reasonably prefer not to endure the added risks of a proposed military intervention. In general, I think that Mellow misdirects our attention when he analogizes the victims of atrocity who refuse an international military intervention to a group of innocent, absolute pacifists who fatalistically give themselves up for slaughter. I think that the more traditional insistence on having the victims' consent (or implied consent) to intervention is correct, and that the wishes of a targeted population against intervention should take precedence over the wishes of armed and indignant foreigners. I am reminded of C.A.J. Coady's warning that "Outrage is no substitute for insight." "The Ethics of Armed Humanitarian Intervention," 16.

²⁸⁰ Tesón, "Eight Principles for Humanitarian Intervention," 102-107.

justify those instances.²⁸¹ If the possibility of abuse is extreme, it is not clear that this response adequately rebuts the objection, and a better defender of his view might try to look for a creative legal or institutional mechanism to deter abuses.

My own reluctance to endorse Tesón's more permissive rule regarding the occasions for interventions stems from his articulation of the proportionality requirement, and the heavily discounted weight he gives to unintended harm by well-intended interveners. In the first and second editions of his book on humanitarian intervention, Tesón reveals a particularly weak proportionality requirement, arguing that a humanitarian intervention can be proportionate even if it kills more people than it saves, when, in so doing it achieves a goal with the moral weight of the removal of a tyrant. That is, the significance of rooting out a tyrant justifies interveners in killing more people than the tyranny will. He writes, "[h]umanitarian intervention can be just even if the intervenor infringes the rights of innocents, and even if, in rare cases, more necessary infringements will occur than the intervention will prevent."²⁸² He continues, "[i]n some cases of humanitarian intervention more lives will be lost than saved. The moral imperative to fight evil sometimes overrides calculations in terms of deaths and sufferings."²⁸³ In more recent work, Tesón softens his tone, but the underlying conception of proportionality remains, arguing,

The goal of restoring minimally just institutions and practices is normatively privileged independently of the advancement of the general welfare... sometimes innocent persons may be morally bound, as it were, to suffer extreme burdens for

²⁸¹ Ibid, 102-107.

²⁸² Fernando Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality*, 1st ed. (New York: Transnational Publishers, 1988), 100. This is repeated in the second edition of his book, published in 1997.

²⁸³ Tesón, *Humanitarian Intervention*, 1st ed., 116.

the sake of an end higher than making sure that the rights of the innocent are not infringed upon.²⁸⁴

I contend that it is in part because Tesón has such a weak proportionality requirement that he is comfortable with severe tyranny as an occasion for intervention. In repeating these quotations, I cannot help but be reminded of Jonathan Glover's discussion of ideology and its power to overwhelm ordinarily existing moral sensibilities and restraints.²⁸⁵

Part of what is remarkable about Tesón's discussion of proportionality (especially in his early work) is that while he is comfortable condoning military 'rescues' that kill more people than they are expected to save, he simultaneously criticizes a utilitarianism of rights for its willingness to sacrifice the rights of some for the sake of maximizing overall rights satisfaction.²⁸⁶ One would expect someone who is critical of individuals being sacrificed for the majority to be more concerned with interventions that leave more victims dead than they expect to save. His insistence on the moral urgency of ending tyrannies (even if doing so kills more than it is expected to save) is also surprising given his simultaneous resolve that interveners use means that are consistent with the humanitarian purpose.²⁸⁷ Foreign interveners cannot credibly claim that their means are consistent with their humanitarian ends if they kill more innocents than the tyranny. His early discussion of proportionality also fits awkwardly with his repeated claim that the intended beneficiaries of an intervention must welcome it. It seems unlikely that persons

²⁸⁴ Tesón, "Eight Principles for Humanitarian Intervention," 104. Also, Tesón, *Humanitarian Intervention*, 3rd ed., 105-107.

²⁸⁵ "Macbeth's self-justifications were feeble- and his conscience devoured him. Yes, even Iago was a little lamb too. The imagination and the spiritual strength of Shakespeare's evildoers stopped short at a dozen corpses. Because they had no *ideology*." From, Alexander Solzhenitsyn, *The Gulag Archipelago* quoted in Jonathan Glover, *Humanity: A Moral History of the Twentieth Century* (New Haven and London: Yale University Press, 1999), 252. See also, 252-364 of Glover's book.

²⁸⁶ Tesón, *Humanitarian Intervention*, 1st ed., 95-102

²⁸⁷ *Ibid*, 106.

would endorse a military intervention that kills more of them than it expects to save.

Though he removes some of the most morally objectionable claims from the 2005 edition of his book, he continues to argue that innocents should be willing to suffer ‘extreme burdens’ for the sake of fighting evil. In a footnote he approvingly quotes Daniel Montaldi who writes, “It is ... conceivable that in situations in which stopping persons from being grievously disrespected is of greater importance than merely ensuring that persons enjoy the freedom to pursue their interests.”²⁸⁸ Despite improvements in the revised work, his underlying, vaguely crusading conviction persists, and it is precisely the ease with which he dismisses the most basic interests of currently living persons that makes his proposal worrisome. It is his lack of ‘sensitivity to genuine moral cost’ that is so alarming.²⁸⁹

Undoubtedly, Tesón is correct in saying that tyrants are particularly heinous and evil. As he rightly notes, not only do tyrants murder and torture large numbers of people, but they also abuse their positions of public office, tormenting the very people they ought to serve.²⁹⁰ Importantly, however, a rejection of Tesón’s view does not mean that liberal states should continue business as usual with severe tyrannies. Other, non-violent strategies aimed at containing, or ‘de-clawing’ a tyrant will be required. Tesón often perpetuates the ‘with us or against us’ reasoning so favoured by some militaristic policy-makers, but a refusal to endorse the expanded occasions for war is not, categorically not, to endorse tyranny.

²⁸⁸ Daniel Montaldi, “Towards a Human Rights Based Account of Just War,” *Social Theory and Practice* 11, (1985), 145 quoted in Tesón, *Humanitarian Intervention*, 3rd ed., 107.

²⁸⁹ Slote, “Utilitarianism, Moral Dilemmas, and Moral Cost,” 165.

²⁹⁰ *Ibid*, 99-100.

My critic might argue that intervention against severe but non-atrocity committing tyranny may still be permissible if it could satisfy a more restrictive conception of proportionality. Tesón may be wrong to interpret the proportionality requirement the way he does, but perhaps I am wrong to reject severe tyranny as an occasion for military intervention. Intervention against severe tyrannies that do not commit mass atrocities may in some circumstances satisfy a thicker, more restrictive conception of proportionality.

I admit that in particular cases the calculus could work out in favour of military intervention against a severe tyranny even if the tyranny does not commit organized, mass atrocities. The victims of the severe tyranny may be calling out for military assistance after all other means of containing or overcoming the tyranny have failed. This is possible, and I don't claim that any kind of military intervention against severe tyranny is categorically and in principle wrong, whatever the circumstances. Absolutist pronouncements are difficult to maintain in the ethics of war.

It seems most plausible, however, that intervention against a non-mass-atrocity committing tyranny is more likely to satisfy an adequate conception of proportionality if it involved a very particular, limited military strike, or what Walzer calls force-short-of-war, including the maintenance of no-fly zones. Since such uses of military force may impose fewer risks to innocents, they more credibly claim to satisfy a robust conception of proportionality. I caution, however, that interveners may be over-confident in the likelihood that they might quickly and easily neutralize a tyranny using limited military strikes, and add that such strikes may run the great risk of precipitating full-scale war. So, defenders of force-short-of-war will have a heavy burden of proof even if force-short-

of-war may be justified on some occasions where full-scale war wouldn't be, because it may, in some circumstances, carry few risks and great prospects for enormous good.

My essential opposition to Tesón's position stands. Even with heroic interveners who expose themselves to considerable risk in order to minimize the risk to innocents, full-scale war imposes risks that are so severe that they may only be proportionate as responses to mass-atrocity crimes. I agree that respect for basic human rights is to be promoted, and that nothing about liberalism requires that we stay silent about others' rights abuses.²⁹¹ It is permissible and indeed desirable to exert political, social or economic force on states that fail to respect their populations' basic human rights and interests. I conceded also that uses of force-short-of-war may, in some extreme cases, be justifiable. But full-scale military force, given that it almost certainly entails the killing of innocent persons, should be restricted to the most egregious cases.

On its own, satisfying a robust conception of proportionality is not sufficient to justify humanitarian intervention. The other conditions that Tesón requires, including, for example, last resort and the consent of the intended beneficiaries, are also crucial and necessary. His position is not morally incomprehensible, but it is dangerously detached from the welfare of the currently living.

4.3.2 Timing

Theorists are also divided on the *time* when humanitarian intervention can be justified. Some argue that humanitarian intervention is justified only as a response to

²⁹¹ Michael Blake, "Reciprocity, stability, and intervention: the ethics of disequilibrium" *Ethics and Foreign Intervention* (see n.10), 53-71.

ongoing atrocities, and not as a response to merely possible or past atrocities.²⁹² An attraction of this view is that interventions against atrocities that are already underway are more likely to satisfy other just war criteria, such as last resort and proportionality. In the face of ongoing atrocities, non-violent modes of intervention might more reasonably appear ineffective, and the use of military force more persuasively be advanced as a last resort. Limiting military force to such occasions would also put proportionality assessments on firmer ground since in the case of ongoing atrocities it is more apparent what consequences are being avoided or curtailed by military might; in the absence of ongoing horrors, it would never be clear what exactly was avoided. On a more practical note, even if interveners are correct in thinking that mass atrocities are very likely to take place, foreign publics may be reluctant to authorize the use of their military resources and personnel against humanitarian disasters not yet seen.

However, restricting humanitarian intervention to cases where the atrocities are already ongoing seems short-sighted and unreasonable. There may well be cases where atrocities are imminent, though physical aggression has not yet been overtly initiated and intervention is reasonably called for. The discovery of arms caches and the military's detailed plans for widespread killing in early 1994 in Rwanda seems to be one such example. Rt. Gen. Roméo Dallaire has argued that the pre-emptive action of raiding the arms caches might have prevented the genocide altogether and required fewer intervening soldiers than would have been needed to stop the atrocities once they were underway. The claim that intervention is a permissible response only to already ongoing atrocity appears inadequate when faced with virtually certain impending atrocity, and the possibility for fairly precise means of pre-emption.

²⁹² Shotwell and Thachuk, "Humanitarian Intervention: The Case for Legitimacy," 5.

The raiding of arms caches in Rwanda might better be described as a pre-emptive *attack*, rather than a full-scale pre-emptive *war*. Precise, limited, pre-emptive attacks of this sort are easier to justify than pre-emptive wars given that they are more likely to satisfy the proportionality requirement, posing as they do fewer risks to innocents.²⁹³

Importantly, The International Commission of Intervention and State Sovereignty (ICISS) similarly condones intervention for what it refers to as “actual or apprehended” atrocities. According to ICISS, the killing need not be underway for intervention to be justified; however, the atrocities must be imminent and preparatory steps by the aggressor must already have been taken. Merely the suspicion that a regime is capable and willing to commit atrocities cannot justify intervention, according to ICISS.

I am drawn to the view that interveners should, when possible, act to stop atrocities from breaking out, rather than acting merely to contain them after they have already materialized. If acting now, rather than later, will protect lives, and if the outbreak of atrocities is reasonably expected to be imminent, these are powerful reasons for acting now. However, I am also attentive to the dangers of this kind of reasoning. I do not want to falsely imply that military force is best when it is initiated long before the ‘enemy’ has had a chance to arm itself. I am keenly aware that this kind of reasoning is used to defend so-called ‘preventive wars’ that anticipate future threats before they are fully-formed.

Tesón goes further than defending genuinely pre-emptive attacks aimed at outmanoeuvring soldiers poised for atrocities (or destroying arms caches), arguing that “the requirement of imminent or ongoing massacres, genocide, or crimes against

²⁹³ Luban “Preventive War,” 214.

humanity is too strict.”²⁹⁴ He argues that military intervention can be justified not only to pre-empt imminent atrocity, but also against a state that might commit *future* atrocities revealed by its history of past atrocities and/or continued tyrannical behaviour.²⁹⁵ Tesón supports not only a limited doctrine of pre-emptive war against aggressors who have already explicitly conspired to commit atrocities and stock piled arms for that purpose, but also an expansive doctrine of preventive war against states with atrocious humanitarian records, even if these states do not have any current plan to repeat their past atrocities.

Tesón is not alone in defending humanitarian intervention to prevent possible future, but not imminent atrocities. Allen Buchanan and Robert Keohane endorse a more limited doctrine of preventive humanitarian intervention in those cases where it is reasonably believed that there is a high degree of probability that massive and serious violations of basic human rights will be carried out at an unspecified, but not imminent point in time, that uses weapons of mass destruction, and that cannot be deterred by any other means.²⁹⁶ It is important to Buchanan and Keohane’s argument that the threatened human rights violations be massive and severe, and that the aggressors are reasonably expected to use weapons of mass destruction that will, very suddenly, produce massive devastation (they use the example of a virulent lethal virus).²⁹⁷ It is also crucial to their argument that there be no reasonable alternative to preventing the outbreak of hostilities except by preventive military action. In cases of justified preventive action the aggressors must have a *distinct plan* to carry out the aggression (a condition not required

²⁹⁴ Tesón, “Of Tyrants and Empires,” 27.

²⁹⁵ Tesón, “Ending tyranny in Iraq,” 15.

²⁹⁶ Buchanan and Keohane, “The Preventive use of Force,” 5-7.

²⁹⁷ Allen Buchanan and Robert Keohane, “Justifying Preventive Force” *Ethics and International Affairs* 19, no.2 (September, 2005), 111.

by Tesón), but the planned hostilities may be somewhat removed in time, suggesting that “several weeks”²⁹⁸ would satisfy this description. They argue that it is this lack of *imminent* aggression that makes any force used against them rightly-described as preventive rather than pre-emptive.

Acknowledging the risk of states abusing a doctrine of preventive war/intervention, Buchanan and Keohane insist that any proposed preventive force be put to a vote at the Security Council or a coalition of democratic states. If preventive action is endorsed, the intervening agents must then submit themselves to an impartial body for review after the fact. This impartial body will determine whether, knowing all of the facts, preventive action was reasonable, and if so, authorize sanctions against those who opposed the preventive action. Alternatively, the impartial body may determine that preventive action was unreasonable, and so authorize sanctions against those who endorsed and carried out the preventive action. Buchanan and Keohane’s hope is that such an institutional arrangement would hold everyone to account, both proponents and opponents of preventive action alike, and encourage responsible international conduct. In their view, preventive military action is not inherently wrong, and the challenge is to ensure that states are bound by institutional arrangements that discourage bad faith claims about the need to use force preventively.²⁹⁹

Echoing an argument made by Walzer, Steven Lee argues that Buchanan and Keohane fail to show that the targets of preventive intervention are rightly liable for the

²⁹⁸ Ibid, 111.

²⁹⁹ Luban has also recently endorsed a limited doctrine of preventive war, but contra Buchanan and Keohane he denies that preventive action by third-parties (agents who are not themselves the anticipated victims of future aggression) is permissible. Luban also proposes that the imminence requirement be re-interpreted in probabilistic rather than temporal terms. So, a permissible preventive action must satisfy the imminence requirement, but by ‘imminence’ he means that the anticipated aggression is overwhelmingly likely but perhaps not in the near future. I’m not convinced by Luban’s re-interpretation of the imminence requirement. See, Luban, “Preventive War,” 207-248.

use of force against them.³⁰⁰ Lee argues that since the soldiers who would be the targets of preventive action are not actually doing harm or preparing to do imminent harm, preventive war/intervention cannot possibly satisfy the just war tradition's *in bello* requirement of discrimination. He writes, "... the military personnel of the state that is a target of preventive intervention are not at that time causally responsible for harm they may be ordered by their leaders to undertake in the future."³⁰¹ He continues, "An individual is a combatant in the morally relevant sense not simply by being in a military organization, but rather by being part of a military organization that is engaged in conflict."³⁰²

Critics debate whether military personnel are only rightly treated as combatants when they are overtly engaged in fighting and while this is an important debate, I think that the permissibility of preventive intervention may also be challenged with reference to the requirement of last resort or necessity. If the planned atrocities are not imminent, then it is difficult to understand how there may be no other way to deter them than by carrying out preventive military action. Without imminence, it's hard to see force as a last resort to averting the anticipated, future atrocities. Even if legal action is practically impossible, attempts should be made to publicize the plan (and protect informants) and impose targeted economic restrictions on elites. And even if future uses of weapons of mass destruction are being planned, the 2003 Iraq war gives us reason to question whether the agents of preventive war/intervention are likely to be in a position to make

³⁰⁰ Steven Lee, "A Moral Critique of the Cosmopolitan Institutional Proposal" *Ethics and International Affairs* 19, no.2 (September 2005), 104. Also, Walzer, *Just and Unjust Wars*, 80.

³⁰¹ Lee, "A Moral Critique of the Cosmopolitan Institutional Proposal," 105.

³⁰² *Ibid*, 105.

accurate or reliable calculations regarding the risks they seek to avoid.³⁰³ It is not logically impossible to satisfy all of Buchanan and Keohane's conditions simultaneously, but perhaps very unlikely.

My view of Buchanan and Keohane's argument on the permissibility of preventive war is similar to the feeling I have about Michael Gross's proposal (discussed in the third chapter) that just combatants should be permitted to use non-lethal, chemical weapons to incapacitate a civilian population in order that the unjust aggressors who hide among them can be rooted out. While I agreed that Gross's proposal has some plausibility if an enormous number of conditions are satisfied, I argued that it is likely to serve as a rationalization of war crimes, and will do little to curb the trend towards increasing civilian casualties or to establish academia as a restraining voice in military ethics. Buchanan and Keohane's argument in defense of preventive war may have similar results. Bits and pieces of their view may well be selected and used to rationalize aggression, while others are quietly dismissed as unreasonable or impracticable.

Of course, this worry does not undermine the truth of their argument. An argument is not made wrong because people are likely to misuse it. But the problem isn't just that people might misuse their view, for this is a problem with any moral proposal, but that the multiple conditions it requires of justified preventive force are unlikely to obtain and the temptation to resort to preventive force is, in some quarters, very strong. I concede that just war theorists must consider new moral problems raised by the emergence of biological weapons that are, we are told, relatively easily acquired and are massively destructive. A refusal to engage intellectually with this new mode of killing will make just war theorizing even less relevant to policy makers than it is now.

³⁰³ A related point is also raised by Luban in "Preventive War," 227.

My great fear, however, is that any benefit gained by isolating the remote, hypothetical scenario in which preventive war is permissible, is outweighed by the danger of loosening the prohibition on preventive war. The moral prohibition on preventive force is a levee holding back immeasurable bloodshed.

At the same time, specifying the conditions under which military force is morally justified is the first step in discovering the best possible laws of war, and determining to what extent our actually existing laws are justified or need amendment. It is perfectly consistent to endorse the desirability of something like Buchanan and Keohane's institutional reforms while insisting that the prohibition against preventive war should be upheld given that the actually existing institutional order is very different from the one they recommend. The difficulty then becomes figuring out how to accomplish their institutional reforms.

4.4 Conclusion

This chapter has investigated the occasions for humanitarian intervention, understood as the use of military force. I argued that the presumption against humanitarian intervention can be defended on various grounds, but that the least objectionable argument regards the importance of avoiding the horror of war. Against Fernando Tesón, I also argued that given our current institutional order humanitarian intervention should generally be restricted to cases of ongoing or imminent mass atrocities.

Much of my argument for the occasions for humanitarian intervention has centered on how to justify actions that will involve killing innocent persons. Even if

humanitarian interventions are carried out exactly as they ought to be, they will be imperfect. There is no quick and easy way to end atrocities, and no perfect resolution to horror. If one isn't going to defend pacifism, then one needs to develop thresholds and rules for interventions in full appreciation of the non-surgical nature of modern war.

Some theorists resist the articulation of moral rules for intervention and prefer to leave it to a case by case analysis. I think that articulating general rules regarding the occasions for intervention is an important moral enterprise because it provides a way to measure the consistency, authenticity, and urgency of claimed humanitarian military ventures. In the absence of pre-established moral parameters we are easily duped into supporting aggression that masquerades as humanitarianism. Without explicating and justifying general rules for intervention we leave ourselves easy prey for government spokespersons.

Conclusion

This thesis investigates definitional and moral problems surrounding humanitarian intervention. Specifying a definition of humanitarian intervention is important because the word carries enormous rhetorical power and is currently used to describe very different kinds of military venture. I argue that humanitarian interventions are rightly understood as military actions that are carefully crafted and conducted to protect innocents from massive and brutal violations of their most basic rights. I argue that neither the purity of the interveners' hearts nor an entirely positive outcome is a necessary or a sufficient condition for a rightly-called humanitarian intervention. I also argued that humanitarian interveners must possess an agenda that is centrally humanitarian and does not undermine the autonomy and interests of the victims they seek to rescue. I further argue that, no matter how good the initial intention or how good the final outcome, actions that systematically violate the *in bello* requirements of the just war tradition ought not be described as humanitarian interventions.

In chapter two I explore various pacifist objections to humanitarian intervention and argue that, while some versions of pacifism are much more powerful than others, pacifism usually leaves victims ill-equipped to respond to aggression. I argue that deontological pacifists who reject war because it predictably kills innocents pose a potent challenge, and I admit that the very concept of humanitarian *war* has an air of paradox. While there is tension between humanitarian ends and military means, I argue that the stakes may be high enough and the military efforts restrained enough that military means can be consistent with a humanitarian purpose and may be acceptable to the persons

whose lives they risk. In particular, I argue that humanitarian interveners must plan and abide by Michael Walzer's requirement of due care, which requires that combatants minimize risks to non-combatants by accepting some costs to themselves. Abiding by the requirement of due care not only helps to earn the necessary moral support of the intended beneficiaries of intervention, but satisfies the requirement that interveners make their military means as consistent as possible with the declared humanitarian purpose.

The third chapter investigates the just war tradition's requirement of proportionality and reasonable prospect of success. I argue that humanitarian interveners are expected to include a greater range of harms in their proportionality assessments than self-defenders, and to weigh harm to non-combatants heavily. The relatively thick conception of proportionality that interveners must hold is another way of attempting to ensure that humanitarian interveners not only pursue just ends, but minimize harm as well. The interveners' proportionality requirement is not simply a consequentialist duty to bring about the best overall state of affairs, but it is a dual-duty to seek good and minimize harm to non-combatants. This means that there may be times when interveners are required to give up achieving certain great goods if doing so will cause great harm to innocents, and restrict themselves to more modest goals risking fewer lives. This relatively thick understanding of the proportionality requirement for humanitarian intervention makes certain kinds of modern military tactics morally off-limits, such as the use of incapacitating chemical agents to root out unjust combatants who hide among civilians, or the use of overwhelming air power.

The fourth and final chapter considers more particularly the kinds of situation where humanitarian intervention might be called for, and sides with Walzer and Luban

that the occasions for humanitarian intervention ought to be of a particularly egregious sort. Walzer argues that the presumption against intervention as well as the permissible exceptions to this presumption are best accounted for by the value of self-determination. I argue that the importance of self-determination carries some of the justification for the presumption against intervention, but a considerable portion of its justification is carried by the moral importance of refraining from activities that will knowingly cause disproportionate death, injury and dislocation to innocent people. I argue that concerns about proportionality do a considerable amount of the justification for why exceptions to the non-intervention rule should generally be limited to cases of mass atrocity. The moral requirement of avoiding disproportionate harm, as well as the requirement of last resort, also account for the importance of preserving the general prohibition on preventive force against distant or unformed threats. In addition, this final chapter briefly considers the purpose of just war theorizing, which I argue is not merely to engage with abstract possibilities but to have an appreciation for how academic pronouncements might be actually applied.

At the end of this thesis, I realize that I have only scratched the surface and that the moral issues raised by the argument are extensive. In future work I would like to examine the requirements of last resort and right authority, and the issue of whether humanitarian intervention is properly understood as a permission or a duty (or neither). I also look forward to participating in the emerging and enormously difficult discussion of how to end wars justly. I am particularly interested in whether humanitarian interveners should aim at regime change, and, if so, what sort of regimes they should erect or promote.

I hope in this thesis to provide greater philosophical clarity to some of the moral problems that surround the definition, the conduct, and the occasions for humanitarian intervention. I mean this thesis as a contribution to an infinitely complex debate that must include lawyers, political scientists, historians, military personnel, governments, human rights activists, and civilians with direct experience of tyranny, mass atrocities, and war.

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