

The Ethics of Humanitarian Intervention

An Introduction

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3 Intervention and Consent

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3 Intervention and Consent

3.1 Introduction

In this chapter, we continue evaluating the interference objection to humanitarian intervention. In the previous chapter, we uncovered an important point: In general, whether it is wrong to interfere in other people's lives depends on whether they consent to, or reject, our interference. When we interfere with somebody with their consent or at their request, the wrong of interference disappears. Indeed, it seems odd to describe these as cases of 'interference' at all. This point has important applications to the case of humanitarian intervention. Rather than imposing a blanket constraint on intervention, the interference objection should only apply to cases of *non-consensual* intervention.

To reflect this insight, several theorists have argued that we should introduce an additional *jus ad bellum* condition for humanitarian intervention. In order to be justified, an intervention must not only satisfy the requirements of just cause, proportionality, last resort, etc. In addition, the people subjected to intervention must consent to it (or, at very least, do not explicitly reject intervention).¹ Let's call this the 'consent requirement'.² This requirement finds support in contexts other than intervention. For example, it is often argued that non-state belligerent groups may only resort to rebellion or insurgency if they have the support of the population they claim to be defending.³ More broadly, we might agree with Yitzhak Benbaji that in practically *any* war, including wars of national-defense, "groups on whose behalf the war is fought... are entitled to veto the war" (Benbaji, 2018: 300).⁴

The consent requirement seems plausible in the abstract. But, as we will see, several complications arise once we try to work out how the requirement would work in both theory and practice.

3.2 The Value of Consent

What is the rationale for the consent requirement? One simple explanation focuses on consent's instrumental value (Pattison, 2007: 580–581). On this view, the importance of seeking consent lies in the fact that a consensual intervention is more likely to satisfy some other *jus ad bellum* requirement, compared to an intervention

that is opposed by those subjected to it. This understanding is common among military planners. As an official British peacekeeping manual puts it:

Without the broader co-operation and consent of the majority of the local population and the leadership of the principal ruling authorities, be they party to the dispute or government agencies, success is not a reasonable or realistic expectation... Put simply, consent (in its broadest form) is necessary for any prospect of success.

[Cited in Pattison, 2007: 580]

This seems plausible. If an intervention lacks the consent of the target population, the intervening forces are likely to encounter much greater resistance (Gizelis and Kosek, 2005). The intervention is therefore more likely to fail or cause disproportionate harm. A different instrumental argument focuses on the epistemic value of consensual intervention. On this view, the local population are likely to be good judges of whether an intervention will improve their situation, given their intimate knowledge of the facts on the ground. If the population supports intervention, this is a good indication that the intervention will succeed in protecting human rights. By contrast, if the population opposes intervention, this is strong evidence that intervention is unlikely to be justified (Chopra and Hohe, 2004).

Though the instrumental view clearly explains *part* of the value of the consent requirement, it doesn't seem like the central rationale. Rather, the core value is a non-instrumental concern for the autonomy or self-determination of those subjected to intervention. To help illustrate the general idea, consider a simple example:

Other-Defence: Vicky is being unjustly attacked by Angie. Robert is walking by and is able to use force against Angie in order to protect Vicky. Vicky competently and explicitly refuses Robert's defensive assistance.

In this kind of case, many find it intuitive that it would be wrong for Robert to defend Vicky against her will (Parry, 2017b; Clark, 2023; Finlay, 2010). But the moral significance of Vicky's consent (and refusal) is not explained by its instrumental value. The intervention seems wrong not because Vicky is likely to resist, or because Vicky has some special knowledge relevant to the success of the rescue. Rather, the natural explanation is that Robert is required to respect Vicky's decisions about how she wants to live her life. Perhaps she is a pacifist, or wants to settle the matter herself without outside interference. Maybe she does not want to be defended *by Robert* specifically (perhaps they have a troubled history). When it comes to her own life, Vicky has the ultimate authority to decide if and how others may defend her.

On this view, the consent requirement is grounded in the broader anti-paternalist thought that persons have the right to direct their lives as they see fit. Others are required to respect our self-regarding choices, even if this means allowing us to come to harm. Insofar as humanitarian intervention is a large-scale case of

defending others, we can think of the population subjected to humanitarian intervention as roughly analogous to Vicky. Just as respect for the autonomy of individual victims imposes a consent requirement on other-defence, respect for those subjected to humanitarian intervention grounds a consent requirement on the use of force to protect human rights.

Before we turn to evaluating the consent requirement, it's worth noting that the requirement can be defended in two complementary ways. On one natural view, the requirement is grounded in the importance of respecting *collective* self-determination (which we discussed at length in the previous chapter). But intervention also involves significant interference with the lives of *individual members* of the community subjected to intervention. These individuals plausibly have their own, independent claims against interference (especially insofar as intervention exposes them to risks of harm). Respect for those individuals may ground a requirement to seek their consent or authorisation before intervening. The consent requirement can thus be defended in terms of both the value of collective self-determination *and* the value of individual autonomy.

An important upshot is that the consent requirement might still apply even if intervention would not transgress any collective rights against interference. Even if the population subjected to intervention does not qualify as a self-determining collective, it does not follow that the interference objection evaporates. Since intervention still involves interfering with the lives of individuals, the consent (or refusal) of those individuals may still be relevant to whether or not intervention is justified.⁵

3.3 The Problem of Acquiring Consent

It is one thing to say that humanitarian intervention requires the consent of those subjected to it. But how are interveners to judge whether popular opinion genuinely favours or opposes intervention? There are (at least) two challenges here (Buchanan, 2013: 317–318).

The first problem concerns how the target population are supposed to express or communicate their consent (or refusal) to potential interveners. In ideal cases of large-scale decision-making, there are official channels and mechanisms through which a community can express their will (such as elections, public consultations, and referenda). But these mechanisms are unlikely to be available when it comes to expressing an opinion about whether to accept humanitarian intervention. One problem is that humanitarian crises can unfold very quickly, so there may be little time for interveners to investigate whether the population would welcome intervention. Another problem is that oppressive regimes often prevent their citizens from expressing their political views. If the citizenry is able to freely deliberate and communicate their preferences, they are unlikely to need intervention in the first place. We don't want oppressive regimes to be able to render intervention unjustified simply by preventing their citizens from expressing their consent to intervention. As Cécile Fabre summarises:

Insisting on explicit consent clearly would be too demanding, insofar as it would deprive of protection victims who are not in a position to give their consent. The problem is particularly salient in humanitarian conflicts, whose victims quite often are very young children (who are thus not morally able to give or withhold consent), or individuals who are subject to such severe hardship that they simply do not have the means (physical, psychological, and material) to make themselves heard.

[Fabre, 2012: 175]

Hence, one challenge for the consent requirement is whether interveners can reliably identify whether the target population endorse or oppose intervention.

A second problem concerns the fact that consent must not only be communicated, it must also be *valid*. To illustrate, consider the case of medical intervention. Normally, it is wrong to treat a patient unless the patient consents to treatment. But if a patient consents to (or refuses) treatment on the basis of false beliefs, or because they are being coerced or manipulated by another party, then their consent (or refusal) might not be morally effective.

This question of validity also arises in the case of humanitarian intervention. Under conditions of repression and censorship, the population may lack information about the extent of human rights violations in their state, as well as the prospects for outside intervention.⁶ The population's views about intervention may also be influenced by coercion. One obvious worry is that repressive regimes may coerce their citizens to reject intervention. But, conversely, we may also worry that domestic groups agitating for intervention might use fear and intimidation to encourage their co-citizens to express approval for intervention. Both cases cast doubt on the validity of the population's expressed preferences. A further validity-based worry concerns the influence of oppressive ideologies on the population's attitudes towards their own plight and to external intervention. As Carla Bagnoli points out, in some cases:

[O]ppression works by imposing an ideology the oppressed themselves embrace. In this case, the oppressed would not feel entitled to any treatment other than the one they are subjected to; they feel unworthy rather than oppressed, and see no cause for rescue.

[Bagnoli, 2006: 135]

To illustrate the concern, imagine that North Korean citizens overwhelmingly reject outside intervention on their behalf, because they believe the beloved Kim dynasty has a divine right to rule them. It seems implausible that such refusal could itself render intervention impermissible. Even though the hypothetical North Koreans have successfully communicated their lack of consent to intervention, their refusal seems morally ineffective because it is the product of an oppressive ideology. This raises a dilemma. On the one hand, it seems deeply disrespectful for outsiders to tell oppressed persons that they are not competent to make decisions

about their lives. On the other hand, deferring to their tainted choices, and leaving them to suffer human rights abuses, may seem even more disrespectful (Bagnoli, 2006: 135; Finlay, 2010: 292).

In light of the communication problem and the validity problem, a pessimistic conclusion is that the consent requirement is unworkable and should be abandoned. On this view, the justification of intervention is determined by whether it would have overall good effects, and not by the attitudes of target population.

Let's consider some possible responses on behalf of the consent requirement. One initial reply holds that interveners' ability to identify the views of target populations might not be quite as bleak as critics allege. For one thing, the increasing spread of technology (such as smartphones) makes it easier to communicate with oppressed populations directly, potentially bypassing their regime's attempts at suppression. Moreover, while it might be particularly difficult to assess the population's preferences in fast-moving humanitarian crises, not all cases of intervention are like this. In some instances, intervention may target longstanding human rights-violations. In this kind of case, we might be more optimistic that interveners could have enough information to gauge the views of the target community.

A different line of response accepts that it will often not be possible to get explicit and valid consent from a target population. But instead of abandoning the consent requirement, we should instead rethink what counts as acquiring consent, in the morally relevant sense. In non-ideal circumstances, we should try to honour the anti-paternalist spirit behind the consent requirement. When it is not possible to get others' explicit and valid consent, interveners should try their best to approximate it.

One possible strategy appeals to *proxy* consent.⁷ The idea here is that interveners should try to assess the views of the target population by consulting persons who are *representative* of that population. These proxies can be taken to 'stand in' for the views of the population as a whole.

This raises the question of who qualifies as a relevant proxy. There are many options. One obvious approach would be to consult a representative sample of *the target population* themselves. Another option would be to survey members of the target states' *diaspora community* who reside abroad. Yet another approach would be to ask people who have suffered similar human rights violations and have been subjected to humanitarian intervention. Though these proxies do not share a community with the target population, they might nonetheless be considered representative in virtue of their shared *experiences*.⁸

When evaluating these proposals, two things are worth noting. First, these approaches are neither exhaustive nor exclusive. There may be many other relevant proxy candidates, depending on the case at hand. And it may be optimal to consult a variety of proxies and combine their inputs. Second, some trade-offs will likely be required. On the one hand, we want our proxies to be as similar as possible to the target population. On the other hand, the aim of using proxies is to avoid the communication and validity problems. These goals might pull in different directions. For example, members of the diaspora community may be more easily accessible

and less impacted by censorship and coercion, compared to members of their community ‘back home’. But they may also differ from their compatriots in terms of their identity and interests. Consider, for example, the Cuban and Iranian diaspora communities in the United States. Their political opinions often diverge from those of the typical citizen of Cuba or Iran (since difference of political opinion is a driver of emigration). In addition, diaspora members have less ‘skin in the game’ when it comes to the question of intervention, since they do not have to bear the costs of intervention or risks of failure. Hence, we may worry about the extent to which the proxy’s attitudes towards intervention are representative of the target population.⁹

A different approach to approximating consent to intervention retains a focus on the target population itself, rather than appealing to proxies. Rather than modify *whose* views are relevant to consent, the proposal modifies what the target population *has to do* in order to qualify as consenting to (or refusing) intervention. On this view, the communication and validity problems arise from assuming an excessively demanding standard for acquiring consent.

One option is to revise what counts as the default moral position. In ideal circumstances, we are typically required to treat people as not consenting to beneficial interference unless they explicitly consent. But under non-ideal conditions, things may be different. It may be appropriate to treat others as consenting to intervention *unless they explicitly and validly refuse*. To illustrate, consider the medical context. It is normally impermissible to treat a person unless they consent. But if a person is brought into hospital unconscious and at risk of imminent harm unless they receive a blood transfusion, then it may not be necessary to get their consent in order to permissibly treat them. Instead, the *absence of refusal* on the part of the patient may suffice.¹⁰ An ‘opt out’ rather than an ‘opt in’ model of consent seems appropriate here.

An analogous idea might be applied to the case of humanitarian intervention. Instead of requiring that the target population explicitly authorise intervention, a revised consent requirement would only insist that the population does not explicitly and validly refuse intervention (Parry, 2017b: 358). This modified formulation of the consent requirement captures the intuition that we don’t want a consent requirement that is too restrictive and excessively burdens communities who suffer the misfortune of being unable to express consent to intervention. But it also captures the intuition that if a community is able to express their opposition to intervention, this should still impose a strong constraint on intervention.

It might be objected that this interpretation of the consent requirement is too permissive. According to this objection, there are cases in which the consent requirement should prohibit intervention, even when the population has not explicitly rejected it. Massimo Renzo has recently offered two interesting arguments for this possibility (Renzo, 2020).

The first argument points out that even when a person is not able to consent to (or refuse) an intervention at the time, their *past* consent (or refusal) might still be morally relevant. To illustrate, let’s return to our case of the unconscious patient, but add the following detail: Prior to their accident, the patient decided that (due to

their religious commitments) they would not want to receive a blood transfusion and had this preference tattooed on their body. Intuitively, this additional detail makes a significant moral difference. Even though the patient is unable to consent to (or refuse) treatment in the present, it seems impermissible to give the patient the blood transfusion, in virtue of their past refusal.

Renzo argues that the notion of past consent is also applicable to humanitarian intervention. For even if a community is presently unable to autonomously consent to (or refuse) intervention, it may have previously expressed an autonomous preference, in anticipation of this eventuality. For example, a self-determining state may make treaties with other states, which sets out conditions under which the community would consent to intervention (including what *kinds* of intervention and by *whom*) in the future, if its self-determination becomes impaired. On Renzo's view, when there is evidence of prior consent or refusal, this should have priority for determining whether the consent requirement is satisfied. Of course, it will often not be possible to identify any clear past consent (or refusal). But one interesting implication of Renzo's argument is that, if we are committed to the values that underpin the consent requirement, we should work to create institutional mechanisms that enable political communities to formally record their preferences regarding intervention, should the need arise in the future.¹¹

In cases where past consent is lacking, Renzo offers a second argument. The central idea is that even when a person is not able to explicitly consent – in the present or the past – it does not follow that beneficial interference is permitted by default. In these cases, we should not only consider whether the person has *actually* consented (or refused), but also whether that person would *hypothetically* consent (or refuse) if they were able to, in light of their values and commitments. When it is not possible to consult a person directly, the next best way to respect their autonomy is to act in accordance with their values and commitments, rather than simply following one's own judgement of their best interests.¹² Consider, again, our unconscious patient. Let's imagine that the patient is currently unable to express consent (or refusal) and has not done so in the past. However, the doctor knows about the patient's deep religious commitments and also that the patient is fiercely independent. Given this additional information, it is no longer clear that the doctor is permitted to proceed with treatment. If the doctor can confidently predict what the patient *would* want, respect for the patient seems to require deferring to the patient's hypothetical choice. On Renzo's view, the relevance of hypothetical consent can be extended to the case of humanitarian intervention. In order to determine whether the consent requirement has been met, interveners must not only consider whether the target population has expressed a preference, but also what preference they would express were they in a position to do so, in light of the community's values, commitments and political traditions.¹³

If we are persuaded by Renzo's suggestions, we might be tempted by a hierarchical approach to interpreting the consent requirement in specific cases. On this view, intervention ideally requires the explicit consent of the target population.

But if that is not possible, interveners should look for past consent (or refusal) on behalf of the community. Failing that, interveners should consider whether the target population would hypothetically consent to intervention, given their particular values and culture. Finally, if none of the preceding are possible, we should interpret the consent requirement as satisfied just in case the target community has not explicitly refused intervention.

Alternatively, we might think that the relevant interpretation of the consent requirement is context-specific. Perhaps, in some cases, a more minimal standard is appropriate, so that intervention is justified just as long as the target population does not explicitly and overwhelmingly reject it. For example, this seems most plausible in cases where: (i) human rights violations are extreme, (ii) intervention does not pose great risks on the target population, and (iii) intervention is limited to preventing the immediate human right abuses. But in some cases, a more demanding interpretation of the consent requirement might be appropriate. This seems most intuitive in cases where: (i) human rights violations are less extreme, (ii) the intervention is riskier for the target population, and (iii) the intervention involves longer-term occupation and institution-building. Here, explicit consent might be required for permissible intervention.

Let's consider one final modification of the consent requirement, proposed by Allen Buchanan (2013). Buchanan argues that in some cases, the best way to respect the spirit of the consent requirement will be to intervene *in order to assess the target population's explicit and genuine preferences*. As he explains:

[I]n principle, intervention could help establish the conditions under which outsiders could have reliable evidence about whether there is widespread valid consent to or authentic approval of intervention... This could occur, for example, if the intervener could impose a cease-fire, physically separate the two sides, and then investigate the attitudes of the population ... under conditions in which they can be freely expressed.

[Buchanan, 2013: 321]

For Buchanan, taking the consent requirement seriously requires a two-stage approach to intervention. The first stage involves a limited intervention in order to create the conditions under which the target population are in a position to consent to (or refuse) intervention. This stage of intervention can be morally justified in the absence of consent. But once this first stage is complete, further outside intervention is limited by a fairly robust consent requirement, which requires explicit and valid authorisation from the target population.¹⁴ Interestingly, then, Buchanan's proposal is both weaker and stronger than some of the alternative proposals we have considered. Weaker in the sense that it permits a significant degree of outside intervention unconstrained by a consent requirement (indeed, one might worry that by the time the intervener has done enough to create the conditions for valid consent, it will have exhausted the mandate set by the just cause). But stronger in the sense that, when consent is required, this involves the explicit and valid consent of

the actual population (consent is not delegated to proxies, nor is the standard for consent relaxed by invoking past or hypothetical consent.)

3.4 The Demos Problem

We will now move on to two additional challenges for the consent requirement (Parry, 2017a). Each challenge starts from an obvious disanalogy between humanitarian intervention and small-scale cases of defensive assistance (like *Other-Defence*), in which the consent requirement seems most intuitive. Whereas the latter involves defending a single victim, humanitarian intervention involves subjecting large groups of people to defensive action. This makes it unclear how we should apply the consent requirement to intervention, since there is no straightforward sense in which a group can univocally consent to (or refuse) the use of force in the same way that an individual can. The key issue is that groups do not have a single, unified will. Groups are composed of individuals, each with a will of their own. Moreover, groups are not homogenous. Within any population, it is unlikely that the preferences of all members will be unanimous. In any realistic case, some members of the target population will be in favour of outside intervention, while other members will be opposed. Under these conditions, what does the consent requirement say? Is intervention prohibited or not?

The consent requirement thus needs to be refined if it is to tell us what counts as an overall “yes” or “no” in these cases. How much consent is ‘enough’ for justified intervention? More precisely, we need an *aggregation principle*, which tells us how we should move from the consent and refusal of individual group members to an all-things-considered judgement about whether or not the consent requirement has been satisfied. As we shall see, this is no easy task. But without an aggregation principle, the consent requirement will be incapable of giving determinate verdicts.

One very intuitive proposal is to adopt a *majoritarian* version of the consent requirement. On this view, in order for humanitarian intervention to be justified, a majority (or perhaps a supermajority) of those subject to intervention must consent to it. Though it is rarely explicitly defended, proponents of the consent requirement often seem to have something like this in mind. This seems reasonable enough, given the democratic credentials of majority-rule.¹⁵ In many other contexts of group disagreement, majority-rule seems like the morally optimal means of decision-making. Insofar as we think that the consent requirement is grounded in the value of *collective* self-determination, it is natural to understand the consent requirement in majoritarian terms. However, as we shall see, the majoritarian interpretation of the consent requirement raises two important challenges.

The first challenge concerns *whose* preferences should be counted when it comes to the consent-requirement. This is a version of a more general problem in democratic theory, known as the ‘demos’ or ‘boundary’ problem.¹⁶ The problem is that while we may agree that certain matters should be decided by a collective decision procedure – such as majority-rule – this doesn’t tell us anything about the relevant class of persons who should be included in the procedure. This is important

because the decision about who to include will often determine which verdict the procedure will yield.

To illustrate the general issue, imagine we have to decide whether to introduce a new rule for British professional football that caps player salaries, and that this should be settled by a majority vote (Parry, 2017b). There are three ways of doing so. First, we could restrict the vote to fans of the richest teams, such as Manchester United and Chelsea, who will be most disadvantaged by the rule change. If we use this method, a majority will vote against the new rule. Second, we could hold a vote among the fans of all football teams. If we do so, a majority will vote in favour of the salary cap. Third, we could broaden the franchise even further to include all British citizens. This will yield a majority vote against the proposal (let's assume the British public generally want to attract the best players to their league.) As this example illustrates, we get different results depending on how we specify the scope of the majoritarian procedure. The crucial question, then, is whose preferences are relevant? This question cannot be settled by any voting procedure.

The demos problem has important implications for the case of humanitarian intervention. If majority consent is required in order for intervention to be morally justified, among what class of persons should we look for this majority?

One natural proposal is that all the members of a state subject to intervention are entitled to a say over whether the intervention goes ahead. On this view, if France were considering whether to intervene in the Syrian civil war in order to halt the Assad regime's human rights abuses, then this would only be permissible if a majority of Syrian citizens were in favour of intervention.

However, this 'all-members' view has been criticised for being too inclusive. One obvious problem is that it includes the preferences of those members who may be perpetrating the very human rights abuses that intervention seeks to remedy. 'Perpetrators' can be understood broadly, to cover those who support the perpetrators, those who profit from human rights violations, and/or those who culpably failed to prevent those violations. The all-members view thus implies that intervention would be impermissible in cases where a majority group within a state is persecuting a minority, and the members of the majority group overwhelmingly refuse intervention. This is very counter-intuitive. Wrongdoers should not get a say in whether their wrongdoing is prevented (Teson, 2003: 106–107; Renzo, 2020: 240).

In response to this problem, we might take a more restrictive view and hold that only the victims of human rights violations get to decide whether intervention takes place. The 'victims-only' view avoids the previous problem, since perpetrators are excluded. However, it also excludes members of the target state who are neither wrongdoers nor victims, but are instead bystanders (Teson, 2017: 140). This restriction seems plausible in certain cases. To illustrate, imagine that sectarian violence (re)erupts in Northern Ireland. Paramilitary groups begin to launch widespread attacks on civilians and the British government is unable to restore order. France is considering an intervention in Northern Ireland to protect civilians. In this case, it is not obvious that France requires the consent of a majority of the members of

the United Kingdom in order to permissibly intervene. Why should uninvolved residents of London or Newcastle get a say? Furthermore, if the preferences of English people are included (as the all-members' view recommends) this implies that it would be impermissible for France to intervene on behalf of the Northern Irish if a majority of the English refuse, even if *all* the Northern Irish civilians consent to it (since the English make up the vast majority the population of the United Kingdom). This looks like the wrong result.

However, perhaps we should not be too quick to exclude bystanders. While bystanders may be uninvolved *in the human rights violations that generate a just cause for intervention* (either as victims or perpetrators), this does not mean that they would be uninvolved *if an intervention takes place*. In our hypothetical Northern Ireland example, what may be driving the intuition that bystanders' preferences are morally irrelevant is that the effects of the French intervention are assumed to be localised to the Northern Irish. But this will not be true of most interventions, which will typically have significant effects on bystanders.

In light of this, it might be argued that bystanders sometimes do have a legitimate stake in intervention, so that they are entitled to a say about whether intervention goes ahead. One argument appeals to the value of collective self-determination. It points out that interventions often have wide-ranging and pervasive effects on the political institutions within a target community. If we grant that community members have a strong interest in shaping their social and political environment, this may give them some claim to have their preferences taken into consideration, even if they are neither victims nor perpetrators (Renzo, 2020: 240). A second argument points out that interventions often expose bystanders to a risk of harm. Most obviously, bystanders are at risk of being collaterally killed and injured. But they are also exposed to many other risks, such as economic hardship, losing their homes, and becoming displaced. It might then be argued that *at-risk* bystanders have a personal stake in the intervention, which entitles them to inclusion within the demos.

If we find either of these arguments plausible, this suggests a third response to the demos problem. On this view, whether a person's preferences are relevant to the justification of intervention depends on whether that person is likely to be *sufficiently affected* by the intervention. However, this 'all-affected' view has an interesting implication. It may turn out that bystanders who are not members of the state subject to intervention should also be included in the demos. This is because the negative consequences of intervention may extend beyond the borders of the state in which the intervention takes place. For example, members of neighbouring states may be exposed to risks of collateral harms caused by the intervention. It seems arbitrary to deny these individuals a claim to have their preferences included merely on the basis of their citizenship (Pattison, 2007).

The preferences of one additional group might also be relevant: those whose *resources* will be used to carry out an intervention (Pattison, 2007; Benbaji, 2018). Humanitarian interventions are extremely costly, and we usually think that citizens are entitled to a say over what their state does with their collective resources. Given this, it may be the case that citizens of the *intervening state* (as well as those

states that materially contribute to intervention) are entitled to a say in whether the intervention takes place. One important factor here concerns whether citizens have moral duties to contribute resources for interventions to protect human rights overseas (Buchanan, 1999). If they do, this may place limits on their claim to a say over what is done with their resources, since we do not generally have discretion over whether to fulfill our duties.¹⁷ For example, one might argue that during the Second World War US citizens were under an enforceable moral duty to contribute via taxation to Roosevelt's Lend-Lease program, which provided military aid to the Allies. If so, that program may have been justified irrespective of whether US citizens endorsed it. We will return to questions about duties to support interventions in Chapter 9.

As we can see, identifying the group of persons whose preferences are relevant to justifying intervention is far from straightforward. An additional level of complexity is worth noting. This is whether we should count the preferences of all relevant individuals equally, or whether we should give them different weightings. For example, should the wishes of affected bystanders have the same standing as the preferences of victims? Or do certain groups have priority over others? Even within groups, should we treat all members' preferences equally? Or should we weigh them in proportion to how greatly they would be affected by the use of force?¹⁸ These are important, but very difficult questions. Nevertheless, a full response to the demos problem requires grappling with them.¹⁹

3.6 The Aggregation Problem

The demos problem highlights how the majoritarian version of the consent requirement is open to competing interpretations. But it grants the assumption that *some* sort of majoritarian procedure is the right one for aggregating consent and refusal. However, should we accept this assumption in the first place? In this section, we will consider a second challenge to the majoritarian view, which rejects the intuitive idea that intervention would be impermissible if the majority of those subject to it are opposed.

To illustrate the objection to majoritarianism, consider the following example:

Kidnap: Five members of a religious group have been kidnapped and are being tortured by their captor. Luckily, Rachel is nearby and can shoot the kidnapper with her sniper rifle, thereby rescuing all the victims. However, while one member of the victim group wants to be rescued, the remaining four victims competently and explicitly refuse Rachel's intervention because they are deeply committed to nonviolence (based on Altman and Wellman, 2008: 244).

In this case, the overwhelming majority of the victims refuse defensive assistance. Yet most people judge it permissible for Rachel to intervene nonetheless. If this

is right, it looks like majority consent is not a necessary condition for permissibly defending others after all, including cases of humanitarian intervention.

While the majoritarian interpretation of the consent requirement enjoys democratic credentials, cases like *Kidnap* highlight an intuitive moral limit to group decision-making. Why should the majority have the right to decide whether the minority's basic rights are protected? As Andrew Altman and Christopher Heath Wellman put it, when basic rights are at stake, "It seems dubious to hold that a group has this type of normative dominion over its members" (Altman and Wellman, 2008: 243). On this view, individuals' rights don't only place moral limits on how groups may treat their members. They also place limits on how groups may prevent their members from being protected by third-parties. This reflects a common theme throughout our discussion of the interference objection: Our judgements about the ethics of humanitarian intervention often reflect our broader judgements about the relative claims of groups and their members, and how these should be resolved when they conflict.

If we agree that cases like *Kidnap* are powerful counterexamples to the majoritarian interpretation of the consent requirement, then what alternative aggregation principle should we put in its place? Theorists who are convinced by these examples often take them to support the following view: It may be impermissible to intervene to protect others if the victims *unanimously* refuse the intervention. But if *any* member(s) of the victim group wants to be rescued, then it is permissible to intervene. Let's call this the *minimal* interpretation of the consent requirement.

To illustrate the intuitive pull of the minimal interpretation, consider some variations on the *Kidnap* example. First, imagine that *all* the members of the religious group competently and explicitly refuse Rachel's intervention. It doesn't seem implausible that it would be wrong for Rachel to intervene. The minimal interpretation of the consent requirement accounts captures this judgement. Second, imagine a series of cases in which one victim consents to Rachel's intervention, but the number of refusing victims keeps increasing. Would there be *any* point at which the number of additional refusers renders intervention morally wrong? It seems plausible that the answer is no (or, at least, that it would take *a lot* of additional refusers to make intervention impermissible). Reflection on these examples suggests that while unanimous refusal may prohibit defending others, the consent requirement is satisfied just as long as *some* victim consents to rescue.

However, the minimal interpretation of the consent requirement has quite radical implications. In any real-world case, there will never be unanimous refusal among the victim group. Hence, for proponents of the minimal view, the consent requirement imposes only a trivial constraint on humanitarian intervention, one that will be satisfied in every case. In effect, this involves jettisoning the consent requirement. Proponents of the minimal view tend to endorse this rather striking conclusion. Helen Frowe concludes, on the basis of cases like *Kidnap*, that "we should not include consent as a separate component of justification for intervention"

(Frowe, 2014: 109).²⁰ On this view, the moral status of a humanitarian intervention is solely determined by consent-independent *jus ad bellum* conditions (such as just cause, proportionality and last resort). If these conditions are satisfied, there is no further work for the consent requirement to do.²¹ Reflection on the aggregation problem may yield the most powerful objection to the consent requirement we have considered so far.

In the final part of this chapter, we will consider a recent – though rather complex – attempt to rehabilitate the consent requirement. This proposal agrees with criticisms of the majoritarian interpretation, but also rejects the minimal interpretation. Instead, it aims to defend a more demanding aggregation principle. Importantly, this interpretation of the consent requirement does not make any appeal to collective values, such as communal self-determination. Rather, it aims to show that the consent requirement can impose a significant constraint on intervention, even if we focus solely on individuals' rights and interests.

The central idea is that there is a close relationship between the consent requirement and the proportionality requirement on the use of force. The proportionality requirement holds that an intervention is only justified if the relevant goods it brings about are sufficient to outweigh the relevant harms it causes. According to the *proportionality interpretation* of the consent requirement, the consent or refusal of each individual subjected to an intervention matters morally, because each affects the moral significance of the goods and bads associated with that intervention (Parry, 2017b; 2018).²² Each individual thus plays a role in determining whether an intervention is overall proportionate or not.

How does individuals' consent or refusal bear on proportionality? The proportionality interpretation identifies two distinct possibilities. First, when an individual who is an intended *beneficiary* of an intervention *opposes* intervention on their behalf, this *counts against* the justification of that intervention. It does so by *discounting that benefit* in the proportionality calculation for the intervention. Let's call this the 'negative' thesis.

To illustrate the negative thesis, we can revisit some of our earlier examples. Recall:

Other-Defence: Vicky is being unjustly attacked by Angie. Robert is walking by and is able to use force against Angie in order to protect Vicky. Vicky competently and explicitly refuses Robert's defensive assistance.

According to the negative thesis, it is impermissible for Robert to defend Vicky. This is because, by refusing intervention, Vicky blocks off part of the justification for Robert harming Angie: the fact that doing so would be good *for Vicky*. On this view, when Vicky refuses protection, she is effectively saying to Robert "It's my life and my own good, and I get to decide whether you are allowed to use my good to justify harming people!" As a result, Robert lacks sufficient justification for harming Angie.

Let's now turn to another previous example:

Kidnap: Five members of a religious group have been kidnapped and are being tortured by their captor. Luckily, Rachel is nearby and can shoot the kidnapper with her sniper rifle, thereby rescuing all the victims. However, while one member of the victim group wants to be rescued, the remaining four victims competently and explicitly refuse Rachel's intervention because they are deeply committed to nonviolence.

In this case, the negative thesis delivers the intuitive verdict that Rachel is morally justified in intervening, despite the majority of victims refusing. The reasoning is as follows: When each of the four victims refuses rescue, this means that the benefit to each of being rescued is discounted in Rachel's justification for intervening (just as the benefit to Vicky is discounted in *Other-Defence*). However, this does *not* mean that Rachel lacks a sufficient justification for intervening. This is because one victim does consent to be rescued. Since the benefit of rescue to that single victim is *sufficient* to justify harming the captors, the intervention is justified (because proportionate) despite the fact that the majority of victims refuse.

So far, the negative thesis gives similar verdicts to the minimal interpretation of the consent requirement. But a major difference emerges when we turn to cases where (like most real-world humanitarian interventions) rescue involves harming innocent people. To illustrate, consider a variation on the *Kidnap* example:

Kidnap 2: Five members of a religious group have been kidnapped and are being tortured by their captor. Luckily, Rachel is nearby and can blow up the kidnapper by throwing a grenade, thereby rescuing all the victims. However, the grenade also risks inflicting some harm on an innocent bystander, Billy. While one member of the victim group wants to be rescued, the remaining four victims competently and explicitly refuse Rachel's intervention, because they are deeply committed to nonviolence.

[Parry, 2017b]

According to the negative thesis, it may be *impermissible* for Rachel to intervene in this case. Just as in the original *Kidnap* case, each refusing victim 'chips away' at the benefits that serve to justify using force. But, in this case, this discounting of benefits might be enough to render intervention disproportionate, given the additional risks involved. If the risk to Billy is significant enough, the refusal of four victims may be enough to make it impermissible to intervene.

A second way in which the consent and refusal of the subjects of intervention might affect proportionality is as follows: When an individual *who is exposed to a risk of harm by the intervention* consents to intervention, this *counts in favour* of the justification of the intervention, by *discounting that harm* in the proportionality calculation. Let's call this the 'positive' thesis. To demonstrate the positive thesis, consider another variation on the *Kidnap* case:

Kidnap 3: Five members of a religious group have been kidnapped and are being tortured by their captor. Luckily, Rachel is nearby and can blow up the kidnapper by throwing a grenade, thereby rescuing all the victims (who all want to be saved). However, the grenade also risks inflicting some harm on an innocent bystander, Billy. However, Billy is willing to bear this risk for the sake of the five victims and consents to Rachel's intervention.

In this case, Billy's consent intuitively makes it easier for Rachel to satisfy the proportionality requirement, compared to if he did not. After all, it's Billy's rights and interests that are threatened by the intervention. He seems entitled to a degree of control over how much these stand in the way of intervention. If Billy is willing to bear the risks of intervention, these risks should have less weight in Rachel's proportionality calculation (compared to if Billy was not willing). Depending on how great the risk is, Billy's consent may make all the difference for whether Rachel's intervention is justified or not (by determining whether the risk of harm is proportionate or not).

The proportionality interpretation of the consent requirement does not give a simple answer to the aggregation question. Unlike the majoritarian and minimal interpretations, there is no fixed threshold for 'how much' consent or refusal is required for justified humanitarian intervention. Instead, this will vary on a case-by-case basis. We will need to consider at least four factors:

- (i) How many people would benefit from the intervention, and by how much?
- (ii) How many of these beneficiaries are opposed to intervention? (So that the negative thesis comes into play.)
- (iii) How many innocent people are at risk of being harmed by the intervention, and by how much?
- (iv) How many of the people at risk support intervention, despite the risks? (So that the positive thesis comes into play.)

In cases where the benefits and risks of intervention are finely balanced, the consent and refusal of a relatively small number of people might make a significant difference to whether the intervention is proportionate. For example, intervention might only be justified if *almost all* the potential beneficiaries support the intervention (or, at least, do not reject it). Put differently, a small *minority* of refusers could be enough to render intervention morally unjustified.

By contrast, in cases where the benefits of the intervention significantly outstrip the risks of harm, the intervention might satisfy the consent requirement even if the majority of people subjected to intervention are opposed to it. This is because, in these cases, the intervention might be justified solely in virtue of the benefits to the minority who welcome it. This justification would not require appealing to the benefits of intervention to the non-consenters (and is therefore consistent with the negative thesis). Nor would it require discounting risks of harm to the non-consenters (and is therefore consistent with the positive thesis).

According to the proportionality interpretation, the requirement that humanitarian intervention have the consent of those subjected to it may be very demanding, or very undemanding, depending on the circumstances of the particular intervention. Defenders of the proportionality interpretation argue that we should embrace this conclusion. However, critics may argue that the view simply inherits the counter-intuitive implications of both the majoritarian and minimal interpretations.

3.7 Conclusion

In this chapter, we have considered the intuitive idea that justified humanitarian intervention requires the consent of those who are subjected to it. However, as we have seen, once we try to work out the details of this proposal we encounter some serious challenges. What counts as acquiring consent? Whose consent is relevant? How much consent is required? Somewhat paradoxically, even though the importance of respecting others' choices seems most compelling in the case of armed intervention, it is extremely unclear what it means to actually do so. That said, the consent requirement is a relatively recent and underexplored aspect of the ethics of intervention. Perhaps we should be cautiously optimistic that progress can be made.

Discussion Questions

1. Do you think it is permissible or impermissible for Robert to intervene in the *Other-Defence* example? How useful is this example for thinking about the case of humanitarian intervention?
2. What is the most plausible way of approximating the consent of the subjects of intervention, given the difficulty of acquiring the consent of the subjects themselves?
3. What is the 'demos problem'? Why can't it be resolved simply by using a democratic procedure?
4. Is it permissible to intervene if a majority of the intended beneficiaries reject intervention on their behalf?
5. How do the majoritarian, minimal, and proportionality interpretations of the consent requirement provide different answers to the aggregation question?

Notes

- 1 Rather than functioning as an additional *ad bellum* requirement, one might instead think that the consent requirement is a reinterpretation of the existing *ad bellum* requirement of 'legitimate authority'. See Parry (2017a) for discussion.
- 2 For endorsements of the consent requirement see, for example, Tésou (1997: 126–129), Pattison (2007), Miller (2008), Parry (2017b), Renzo (2020) and Bowen (2021).
- 3 See, for example, Finlay (2010), MacPherson (2007), Gross (2015: 37–44).
- 4 Parallel claims are also sometimes made in discussions of non-military humanitarian interventions, such as aid operations. For example, Scott Wisor argues that "if a particular [aid] project is opposed by its intended beneficiaries, then this is a near-decisive reason to reject the distribution, even if the foreseeable consequences of the project are still very good" (Wisor, 2012: 43).

- 5 This can be thought of as a continuation of a point we discussed in the previous chapter: That even if a population does not qualify as self-determining, there may still be valid claims against intervention at the sub-population level.
- 6 Even in the absence of these distorting factors, we might worry about whether a population are able to satisfy the *understanding* requirement on valid consent, given the indeterminacy and uncertainty surrounding a proposed intervention. On the understanding requirement, see e.g. Dougherty (2020).
- 7 For a very helpful overview of proxy representation (and informal representation more generally) outside the context of intervention, see Salkin, 2022.
- 8 For example, one might consider the public opinion surveys used to evaluate the attitudes of Liberians who were subjected to the UN peacekeeping operations (Krasno, 2006), or findings from the 'People on War' surveys conducted by the International Committee of the Red Cross (ICRC, 2016).
- 9 This paragraph draws on the very helpful discussion of diaspora representation in Vasanthakumar (2016).
- 10 This is roughly the position of the UK National Health Service, for example (NHS, n.d.).
- 11 On the legal and institutional possibilities of treaty-based intervention, see Hathaway et al. (2013), Wippman (1995; 2015), and Buchanan and Keohane (2011).
- 12 For a good discussion of hypothetical consent, see Enoch (2017).
- 13 Cécile Fabre also defends a version of the hypothetical consent standard: "It seems natural ... to claim that as long as [the intervener] has good reasons to presume that victims would consent to the intervention if they were in a position to do so, then it may act as if they had explicitly authorized it to put a stop to the rights violations" (Fabre, 2012: 175).
- 14 Note that Buchanan also argues that there are substantive limits on the right of a political community to decline outside interference (see Buchanan, 2016).
- 15 Though for dissent on this point, see Saunders (2010).
- 16 For a good introduction, see Goodin (2007).
- 17 A similar point can also be applied to bystanders: If bystanders have a duty to shoulder a certain level of risk, they may lack a claim to decide whether or not to bear that risk.
- 18 For a discussion of 'stake-sensitive' approaches to majority decision-making, see Brighouse and Fleurbaey (2010).
- 19 For further discussion, see Benbaji (2018).
- 20 For a similar conclusion, see McMahan (2010: 52–53).
- 21 Note that one implication of the minimal interpretation of the consent requirement is that we can sidestep the acquisition and demos problems entirely.
- 22 See Bowen (2021) and Clark (2023) for developments and criticisms of the general approach.

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