

## Humanitarian Intervention and Consent: Two Puzzles

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### 1. Introduction

Recent events are reopening longstanding debates about the moral justification of military humanitarian intervention. When confronted with the brutal practices of organisations such as Islamic State, many feel that it may be permissible, perhaps even obligatory, for outsiders to use force in order to prevent extreme and persistent human rights violations.

Here's a simple argument for the moral permissibility of military intervention, which appeals to a connection between the justification of self-defence and the justification of defending others: If a threat of unjust harm is sufficiently serious to permit *the victims* of that injustice to defend themselves by military means were they able to, then it must also be permissible for *third-parties* to use those same means in order to achieve the same end. This seems pretty intuitive in cases of defence between individuals. For example, if Victor would be justified in inflicting a broken leg on Agatha in order to defend himself against her unjust attack, how could it be impermissible for a bystander Barry to break Agatha's leg if Victor is unable to do so himself?

Of course, there are important empirical arguments against intervention: intervention may not be an effective means of halting human rights abuses, at least in the long term; the costs in terms of blood and treasure may be too great; perhaps interventions make aggressive wars more likely. But, in this brief discussion, I want to explore a more principled kind of objection to intervention, and to the simple argument I set out above. The objection holds that we cannot straightforwardly infer the permissibility of intervention from the permissibility of self-defence, because intervention has an additional morally problematic feature: It involves interference in the lives of others. Furthermore, those subject to intervention may not welcome this interference on their behalf.

In its more polemical forms, this objection is sometimes phrased in terms of the wrongness of imposing "Western" or "Liberal" values on those who do not share them. But I think the objection is best understood as a concern that humanitarian interventions run the risk of paternalism, which is in fact a deeply liberal worry. On a fairly standard conception, one acts paternalistically if one interferes with another individual, against their will, for the sake of their good. The wrongness of paternalism lies in the idea that individuals are autonomous agents and have the exclusive right to decide how their lives will go. When others interfere with us against our wishes, even if altruistically motivated, they violate our sovereignty over ourselves.

For example, imagine that Bob is in an accident and is taken to hospital. At the hospital Bob's doctor informs him that he will die unless he is given a blood transfusion. However, after considering the matter, Bob decides not to have the transfusion, since it would go against his deeply held religious beliefs. In this case, most people (or at least most moral philosophers) believe that it would be seriously wrong for Bob's doctor to go ahead and give him the transfusion against his will. Even if we think Bob is making a bad choice (and even if we are right), it's Bob's life and he is the only person who may decide how it goes.

The intended beneficiaries of humanitarian intervention seem relevantly analogous to Bob. Just as it would be wrong for Bob's doctor to act against his wishes, so too it would be wrong for outsiders to militarily intervene on behalf of those who do not desire it. The paternalism worry does not show that intervention is always wrong. But it does show that the simple argument outlined above is mistaken, since there is an additional constraint on defending others – the avoidance of paternalism – that does not apply in cases of self-defence. We therefore cannot infer the permissibility of the former from the latter. It is not enough that an intervention would prevent serious injustices at a proportionate cost. It must also be the case that those subject to intervention consent to it (or, at very least, do not overtly refuse.)

The idea that there is a consent requirement for justified humanitarian intervention is both widely endorsed and, as we have seen in the case of medical intervention, finds strong support in common-sense morality. However, in what follows I will set out two problems for applying the consent requirement in practice. These problems do not challenge the general claim that consent is necessary for justified intervention. Rather, they raise the question of *what counts* as having sufficient consent to satisfy the requirement.

## **2. The Demos Problem**

Each of the two problems arises due to an obvious disanalogy between cases of humanitarian intervention and ordinary intervention cases such as Bob's. While the latter typically involve single individuals, the subjects of humanitarian intervention are *groups*. This makes the application of the consent requirement to humanitarian intervention far more complicated, since there is no straightforward sense in which a group can univocally consent or refuse in the same way that Bob can. The requirement thus needs to be refined if it is to tell us what counts as an overall "Yes!" or "No!" in these large-scale cases. More precisely, what we need is an *aggregation principle*, which tells us how we should move from the consent and refusal of individual group members, to the conclusion that the consent requirement is either satisfied or not satisfied.

By far the most common 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. Since majority-rule is generally considered the morally optimal means of

collective decision-making in a range of other contexts, the majoritarian interpretation of the consent requirement has considerable intuitive appeal.

The first problem with the majoritarian proposal concerns the question of *whose* preferences should be counted for the purpose of justifying interventions. This is a version of a more general problem raised in discussion of democratic theory, known as the 'demos' or 'boundary' problem.<sup>1</sup> The problem follows from the fact that while we may agree that certain matters should be decided by a collective decision procedure – such as a majority vote – 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 what verdict the procedure will yield.

Here's an example to illustrate the problem. Imagine we have to decide whether to impose a new rule for professional baseball that imposes a cap on player salaries. Let's also imagine we want to decide this matter by a majority vote and that there are three ways we could go about doing so. Firstly, we could restrict the vote to fans of the wealthiest teams, such as the Yankees and Red Sox, who will be most disadvantaged by the rule change. If we adopt this method, a majority will vote against the new rule. Secondly, we could include the fans of all baseball teams. If we do so, a majority will vote in favour of the salary cap. Thirdly, we could broaden the franchise even further to include all American citizens. This will yield a majority vote against the proposal (perhaps Americans generally oppose interference in markets.) As we can see, we get different verdicts depending on how we set the scope of the majoritarian procedure. The crucial question, then, is how should we determine whose preferences are the relevant ones? One could make a moral case for each of the three procedures outlined above.

This general problem has some important implications in the specific case of humanitarian intervention. If we think that the consent of the majority is required for justified intervention, among what class of persons should we look for this majority?

One obvious response is to say that all the citizens of a state subject to intervention should get a say. For example, if the UK is considering an intervention in Syria, then it could only be permissible to do so if at least a majority of Syrians desire it. However, on reflection this seems too broad, since it would include the preferences of those within a state who are perpetrating the injustices that a humanitarian intervention would seek to remedy. This has the implication that intervention would be impermissible in cases where a majority ethnic group within a state is violating the fundamental rights of a minority group, since the majority of the state's citizens

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<sup>1</sup>For discussion, see Robert E. Goodin, 'Enfranchising All Affected Interests, and its Alternatives', *Philosophy and Public Affairs* 35, No.1 (2007), 40-68.

would refuse intervention. This is pretty counter-intuitive. Wrongdoers presumably do not get a say in whether their wrongdoing is prevented.<sup>2</sup>

Instead, perhaps we should take a more restrictive view, which holds that only members of *the victim group* get a say. This avoids the problem raised above, since it excludes wrongdoers. In addition, it also excludes those who are neither wrongdoers nor victims, but are simply bystanders. This extra restriction seems plausible in certain cases. For example, imagine that the Welsh start to violently oppress the Scots, and that France is considering an intervention in Scotland to protect its inhabitants (the British government is unable to do so). Under these circumstances, it is not obvious that *my* preferences, as an uninvolved English person, are relevant to whether it is permissible for the French to save the Scots, even though I'm a citizen of the state subject to intervention. Furthermore, if the preferences of English people are included, this seems to have the implication that it would be impermissible for France to intervene on behalf of the Scots if a majority of the English refuse, even if *all* the Scots desire it (since the English make up the vast majority of citizens of the United Kingdom). This looks like the wrong result.

That said, perhaps we shouldn't be too quick to exclude bystanders. While they may be uninvolved *in the injustices 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*. Bystanders may be seriously affected by intervention. Most obviously, they may risk being collaterally killed and injured. This may give at least some bystanders a claim to have their wishes included when we determine whether an intervention satisfies the consent requirement.

However, this view has an interesting, and perhaps unexpected, implication. If the right way to determine whose preference are included in the decision procedure is by looking at who would be affected by intervention, it may turn out that bystanders who are not citizens of the state subject to intervention should also be included. This is simply because the negative effects of intervention may extend beyond the borders of the state in which the intervention takes place. For example, members of neighbouring states may also suffer collateral harms caused by the intervention. It would be arbitrary to deny these individuals a claim to have their preferences included in the decision procedure on the basis of their citizenship.<sup>3</sup>

As we can see, identifying the class of persons whose consent is relevant to justifying intervention is far from straightforward. Furthermore, an additional complication is worth mentioning. This concerns whether we should count the preferences of all relevant individuals equally in the procedure, or whether we should give them different weightings. For example, should the wishes of affected bystanders have the same weight as the preferences of victims? Among affected parties, should we treat

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<sup>2</sup> See Fernando Teson, 'The Liberal Case for Humanitarian Intervention' in J.L Holzgrefe and Robert O. Keohane (Eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge: Cambridge University Press, 2003), 93-130.

<sup>3</sup> James Pattison, 'Representativeness and Humanitarian Intervention', *Journal of Social Philosophy* 38, No.4 (2007), 569-587.

their preferences equally? Or should we instead weigh them in proportion to how greatly they will be affected by intervention?<sup>4</sup> Until we can determine the correct principles for identifying the relevant class of consenters, and what weights their preferences should have, it will often be indeterminate whether or not the consent requirement has been met, and hence whether intervention is permissible or not.

### 3. The Aggregation Problem

The demos problem focuses on the fact that the majoritarian version of the consent requirement is open to multiple interpretations. But it grants the assumption that *some* sort of majoritarian decision procedure is the right kind of response to the demand that humanitarian interventions must have the consent of those subject to them. However, should we accept this assumption? In this section, I will briefly outline a second problem for the majoritarian consent requirement, which I call the 'aggregation' problem. This problem challenges the intuitive idea that intervention would be impermissible if a majority of those subject to it are opposed.

To illustrate the objection, consider the following example: Ten members of a religious group have been kidnapped and are being beaten and tortured by their captors. Luckily, you are walking by the kidnappers' lair and you can shoot the kidnappers with your sniper rifle, thereby rescuing all the victims. However, while two members of the victim group eagerly desire rescue, the remaining eight victims explicitly refuse intervention on their behalf, because they are committed to the non-violent teachings of their religion.<sup>5</sup>

Here we have a case in which 80% of the victims clearly refuse intervention. But I find it extremely counter-intuitive that intervening would be impermissible, as do the vast majority of people to whom I have presented this example. In this case, it seems clearly permissible to intervene, *despite* the fact that most of the subjects of intervention do not want it. If this is right, then it looks like majority consent among the subjects of intervention is not a necessary condition for permissible intervention after all.

As I mentioned above, the majority consent requirement gains a lot of credibility from the fact that majority-rule seems morally desirable in many other contexts. The objection under consideration here may be understood as an appeal to idea that there are important moral *limits* on majority-rule. Why should the mere fact that victims of injustice share some characteristic – such as ethnicity or religion – give the majority the right to decide for the minority when it comes to matters of basic human rights? As Andrew Altman and Christopher Heath Wellman nicely put it,

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<sup>4</sup> On this point, see Harry Brighouse and Marc Fleurbaey, 'Democracy and Proportionality', *Journal of Political Philosophy* 18, No.32 (2010), 137-155.

<sup>5</sup> Based on a case in Andrew Altman and Christopher Heath Wellman, 'From Humanitarian Intervention to Assassination: Human Rights and Political Violence', *Ethics* 118, No.2 (2008), 228-257 at p.244.

when these rights are at stake, “It seems dubious to hold that a group has this type of normative dominion over its members.”<sup>6</sup>

Importantly, this line of objection does not deny that there is a consent requirement for permissible intervention. What it denies is that majority-rule is the correct aggregation principle for determining what counts as satisfying the requirement. The example above suggests that the correct principle must be weaker (in some sense) than majority-rule, but it does not tell us very much beyond this. As with the demos question, until we work out precisely what the correct aggregation principle is, there will be a problem of indeterminacy as to whether the consent requirement is satisfied in particular cases of intervention.

#### **4. Conclusion**

I began this short article by pointing out that adequate account of the morality of military humanitarian intervention is incomplete unless it includes a consent requirement. But, as I have tried to show, the moral work does not stop here. An adequate account of the role of consent in justifying intervention will need to resolve both the demos and aggregation problems.

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<sup>6</sup> Ibid., p.243.