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Book Section:

Bowen, J. orcid.org/0000-0002-5328-6036 (2021) *Humanitarian Intervention, Other-Defense, and Consent*. In: *Oxford Studies in Political Philosophy Volume 8*. Oxford University Press, Oxford, UK, pp. 245-276. ISBN 9780192856906

<https://doi.org/10.1093/oso/9780192856906.003.0009>

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Humanitarian Intervention, Other-Defense, and Consent

Joseph Bowen, Stockholm University

This is a pre-publication draft of a paper forthcoming in *Oxford Studies in Political Philosophy*, Vol. 8.

Abstract. This paper examines the role that the consent of intended beneficiaries plays in the moral permissibility of humanitarian intervention. When consent is not unanimous among a group to be defended, as will likely be the case in wars of humanitarian intervention, many doubt that consent has any bearing on the permissibility of defending others. So the thought goes, allowing the refusal of consent to bear on the permissibility of other-defense wrongly enables some subset of the group to control whether the group as a whole is saved. I argue this is mistaken. Ordinarily, one may not justify subjecting people to a risk of harm for their own good—one both may not justify one’s conduct by appeal to the good this does, and peoples’ rights against being subjected to that risk remains in deliberation. All this is true, I argue, when people are part of a group that requires defending. By refusing to consent to intervention, people leave in deliberation their rights against being subjected to risk and make it impermissible for interveners to appeal to the good of saving them. This makes it harder to justify intervention. Conversely, by consenting, people allow interveners to appeal to the prospective good of saving them to justify intervention. This makes it easier to justify intervention.

Keywords. Humanitarian Intervention; Just War Theory; Consent; Other-Defense; Self-Defense; Rights.

1. Introduction¹

Wars of humanitarian intervention involve the defense of some people by others. This paper examines the role that the consent of the intended beneficiaries to such defense plays in the

¹ Thanks to audiences in Birmingham and St Andrews, and to participants at the 2016 Stockholm Centre for the Ethics of War and Peace Graduate Reading Retreat, especially Massimo Renzo for an insightful response. For

moral permissibility of such wars. I begin, in section 2, by considering cases of other-defense among individuals—that is, cases in which a third party imposes harm on one agent in the course of averting a threat to another. I defend the *Consent Requirement*. According to the Consent Requirement, an act of other-defense is permissible only if the intended beneficiary consents to intervention, unless the intended beneficiary is not in a position to competently consent or refuse to consent. I compare this with a weaker version of the requirement, which holds that consent is required only for acts of other-defense that subject the intended beneficiary to a risk of harm.

Section 3 examines how the Consent Requirement operates in cases in which a group of individuals is threatened, and the group members do not unanimously consent to defense. This will likely be the case for any war of humanitarian intervention. When consent is not unanimous among those to be defended, some people doubt that consent has any bearing on the permissibility of other-defense. According to these writers—including, among others, Andrew Altman, Christopher Wellman, Jeff McMahan, and Helen Frowe—allowing refusal to bear on the permissibility of other-defense wrongly enables some subset of the group to control whether the group as a whole is saved. Against this, I argue that *some* principle is required to aggregate intended beneficiaries’ consent and refusal to consent, in order to reflect that people might disagree about, among other things, how risk averse to be and the goodness and badness of an intervention, compared to non-intervention of affairs. Building off the Consent Requirement from the previous section, I argue consent is relevant to the permissibility of intervention because intervention is permissible only if there is sufficient admissible good to justify the costs that come with intervention; and this includes both costs to bystanders and costs to those who refuse consent. By refusing consent, intended beneficiaries make intervention harder to justify.

Whereas section 3 concerns the effect of consent on the permissibility of a war of humanitarian intervention as a whole (traditionally called *jus ad bellum*), section 4 ventures into less-discussed terrain, addressing how consent affects the permissibility of particular acts of war (traditionally called *jus in bello*). I argue that, even if a war of humanitarian intervention is permissible ad bellum because a sufficient number of people have consented to intervention, the refusal of some intended beneficiaries to consent has a role to play in determining the ways that

written comments and discussion, my thanks to Stephanie Bowen, Rowan Cruft, Stefano Lo Re, Thomas McKenna, Colin McLean, Jeff McMahan, Michael Robillard, and Saranga Sudarshan. Thanks to an anonymous referee for this volume, whose challenging comments greatly improved the paper. And, finally, a special thanks to Helen Frowe, Jonathan Parry, and Theron Pummer for multiple sets of comments. This research was supported by the Knut and Alice Wallenberg Foundation, Grant Number 1521101.

the war should be fought. Particularly, although it is sometimes permissible for interveners to impose more risk on potential beneficiaries than the interveners incur themselves, this is permissible only when those intended beneficiaries consent to intervention. As a corollary, I argue we should treat imposing risks on intended beneficiaries who refuse to consent as we would treat imposing risks on non-benefiting bystanders. Section Five concludes.

2. Self- and Other-Defense

Suppose that Threatener unjustifiably poses an unjust lethal threat to Victim. Victim can defend herself only by killing Threatener before Threatener kills her. Intuitively, when other things are equal, it is permissible for Victim to kill Threatener. The standard explanation of this verdict is that, by unjustifiably threatening to unjustly kill Victim, Threatener makes herself liable to be defensively harmed by Victim. To say that an individual is liable to be harmed is to say that harming her would not violate her rights nor would it wrong her.²

Now consider a case in which Victim cannot defend herself.

Other-Defense. Threatener unjustifiably threatens to kill Victim. Victim is unable to defend herself. A passerby, Rescuer, can defend Victim, but only by killing Threatener.

While self-defense has been much discussed in the literature, other-defense has received comparatively little attention. This would be unsurprising if the permissibility of self-defense goes hand in hand with the permissibility of other-defense. Judith Jarvis Thomson thinks that, in self-defense, it is ‘because of the entirely impersonal fact that [Threatener] will *otherwise violate* [Victim’s] rights that they not kill [Victim] that [Victim] may proceed’ (Thomson 1991, 308). This impersonal fact may also be acted upon by Rescuer.

However, consider the following variation of *Other-Defense*.

Risky Other-Defense. Threatener unjustifiably threatens to paralyze Victim from the waist down. Victim is unable to defend herself. There is a 99% chance Threatener will succeed unless Rescuer shoots Threatener in defense of Victim.

² This is a fairly broad view of liability, e.g., (Tadros 2016, 113–14). On a narrower view, some agent is liable to be harmed only if she has *forfeited* her rights against being harmed, e.g., (McMahan 2009, 10; Frowe 2014a, 3).

This carries a 5% chance of causing Victim to lose the use of one of her arms.

Victim competently refuses her consent to Rescuer's defending her.

Let us stipulate that being paralyzed from the waist down is worse than being exposed to a 5% chance of losing the use of one of one's arms. Were Victim unconscious, it would be permissible for Rescuer to kill Threatener in defense of Victim because she may presume consent when refraining from acting is worse for Victim. Yet, since Victim *has* refused to consent to intervention, when we put other considerations aside, it is intuitive that it would be wrong for Rescuer to kill Threatener. This much seems true even though Threatener is acting unjustifiably and is liable to defensive harm. While Rescuer might not wrong Threatener nor violate her rights, she wrongs Victim.³

One explanation of why intervention in *Risky Other-Defense* is impermissible is that, although Threatener has forfeited her rights against being harmed, Victim retains her right not to be subjected to risks of harm. Were Rescuer to intervene without Victim's consent, Rescuer would violate that right. This gives us reason to endorse the,

Weak Consent Requirement. An act of other-defense that subjects the intended beneficiary to a risk of harm is permissible only if the intended beneficiary consents to intervention, unless the intended beneficiary is not in a position to competently consent or refuse to consent.

If the intended beneficiary is not in a position to competently consent or refuse to consent to intervention, it can be permissible to intervene without her consent, provided that, for example, the intervention is expected to avert a serious harm to the beneficiary, and the intervener lacks evidence that the beneficiary would refuse consent if she could. We generally permit such intervention in the context of emergency medical treatment, for example, even if the treatment carries some risk to the patient. I assume that the same is true in cases of other-defense. I do not further explore these conditions here, since my focus is the permissibility of defending, and imposing risk on, those who either issue or competently refuse consent.

³ For support, see (McMahan 2010a, 49; Finlay 2010, 294); Parry says that it 'may' wrong the beneficiary (Parry 2017, 358). I say more on the connection between liability and other-defense below.

The Weak Consent Requirement works in the following way.⁴ In cases of other-defense, rescuers have reason to intervene on behalf of their victims. When threateners have made themselves liable to be harmed and all else is equal, the strongest reason opposing intervention ceases to exist (namely, that the threatener has a right against being harmed).⁵ When victims consent to intervention (or consent can be presumed), this is enough to explain why it is permissible for rescuers to intervene. However, when victims refuse to consent to intervention, and intervention imposes a risk of harm on victims, (at least) two things happen. First, the moral significance of the risk to victims (instantiated by their rights against being subjected to risks of harm) remains salient to interveners' deliberations. These considerations are silenced when victims consent. Second, the potential benefits of other-defense to victims are excluded from deliberation. These benefits speak in favor of intervention when victims consent. It is helpful to compare this to a more mundane case of consenting. Suppose someone has slipped on an icy pavement and is struggling to get back up. I have reason, perhaps most reason, to help the person up to make them feel better. However, when that person refuses their consent, that reason is silenced—it is excluded from my deliberation. This is analogous to how rescuers might have most reason to intervene, impartially considered, yet intervention can still be impermissible because some of those reasons are inadmissible.

Some people will think that the Weak Consent Requirement is too weak. This is because they think that other-defense can be impermissible when, and because, victims have refused consent to intervention even when other-defense poses no risk to them.⁶ Take,

Pacifism. Threatener unjustifiably threatens to paralyze Victim from the waist down. Victim is unable to defend herself. Rescuer can defend Victim, but only by killing Threatener. Victim competently refuses to consent to Rescuer's intervening on her behalf because Victim is a committed pacifist.

⁴ Thanks to an anonymous referee for pushing me on this.

⁵ This is not to say that the threateners' rights against being harmed cannot come back into existence when circumstances change, for example, when harming threateners is no longer going to be an effective or necessary means of defending victims. *Cf.* (Thomson 1986).

⁶ Those who agree include (Fabre 2009; 2012; McMahan 2010a; Finlay 2010; Parry 2017; Frowe 2020); (Renzo 2018, 229–30) implies the refusal to consent provides (contributory) reason not to intervene. See, also: (Tadros 2011, 295–96).

I think it is intuitively impermissible for Rescuer to kill Threatener in defense of Victim. Yet, since Rescuer's potential intervention does not pose any risk to Victim, the Weak Consent Requirement cannot accommodate this verdict. Instead, we would need to endorse the,

Strong Consent Requirement. An act of other-defense is permissible only if the intended beneficiary consents to intervention, unless the intended beneficiary is not in a position to competently consent or refuse to consent.

Why might this stronger version of the Consent Requirement be true? It is helpful to think of the complaint that Victim might have in *Pacifism* if Rescuer were to intervene on her behalf. Her likely complaint is that the justification for Rescuer's action appeals to the value of saving her life (after all, Rescuer could not proceed if intervention had no chance of saving Victim). Yet, it is *Victim's* life, and she does not want it to be used in this way. If this complaint has force in *Pacifism*, it also has force in *Risky Other-Defense*. Here too, Victim's interests are invoked to justify causing harm, and yet Victim has not consented to the use of her interests in this way. The Weak Consent Requirement cannot accommodate the fact that Victim seems to have two complaints in *Risky Other-Defense*: Rescuer not only subjects her to a non-consensual risk of harm, but also justifies harming Threatener on the grounds that this reduces the expected risk of harm to Victim, which Victim does not want.

Jonathan Parry offers an account that nicely grounds these complaints (Parry 2017). Parry argues that individuals have a normative power to control whether others may act to promote their good. The idea is that, just as others may not use a person's body or property without their consent, others may not justify their conduct by appeal to the good this will do for a person without their consent. Parry calls this the *Power of Prudential Exclusion*, and argues it plays a central role in explaining paternalism's wrongness (Parry 2017, 370–76).

One might wonder how this idea connects with liability. When introducing the permissibility of self-defense at the beginning of this section, I said a standard explanation of permissible defense is that, by unjustifiably threatening to harm others, threateners make themselves liable to be defensively harmed, where to say that someone is liable to be harmed is to say that harming them will neither violate their rights nor wrong them. This is also true of Threatener in *Risky Other-Defense* and *Pacifism*. Does not Threatener's liability suffice to permit Rescuer to kill Threatener? It does not. Many liability theorists hold that liability is not itself a justification for

the use of defensive force.⁷ Rather, liability is the removal of a weighty reason against using defensive force—namely, that the threatener has a right against being harmed. The justification for using force usually comes in the form of the good of saving the victim. Yet, given Parry’s Power of Prudential Exclusion, Victim renders this good inadmissible by refusing consent to intervention. While Threatener is liable to be harmed, and has no right against being harmed, there is no positive admissible reason to justify Rescuer’s intervening—and so intervention is all-things-considered impermissible.

The following example both supports Parry’s Power of Prudential Exclusion and explains how it connects with liability:

Collateral Damage. Threatener unjustifiably threatens to paralyze Victim from the waist down. Victim is unable to defend herself. Rescuer can defend Victim, but only by killing Threatener, though this will break Bystander’s arm as a side-effect. Victim competently refuses to consent to Rescuer’s intervening on her behalf because she does not want Bystander to be harmed for the sake of saving her.

Threatener is liable to be harmed. Yet there is still a weighty reason against intervening—namely, that intervening will cause harm to Bystander, a non-liable party. Let us stipulate that it is proportionate to break a non-liable party’s arm for the sake of saving someone from paralysis from the waist down. This means that the good to be achieved through intervening—the good to Victim of not being paralyzed—is sufficient to justify infringing Bystander’s rights against being harmed. Parry’s idea is simply that Victim has the power to authorize whether Rescuer gets to use the good to her in this way.

One might think there is a wrinkle in the above. I said that most liability theorists argue that liability is not itself a justification for force. Jeff McMahan is a potential dissenter to this view, as might one think I am (McMahan 2016a, 196; 2016b, 827–73; Bowen 2016, 81–83). McMahan argues that liability is a distinctive (partial) justification for harming because it is essentially instrumental—that is, harms to which we are liable are harms that we may be forced to suffer only for the sake of securing some further goal. This distinguishes liability-based justifications for harming from desert-based justifications, since desert-based justifications hold that imposing harm on deserving individuals is an end in itself. Since liability is instrumental, threateners can be liable to a

⁷ (Fabre 2009; Firth and Quong 2012; Frowe 2014a; Parry 2017; Quong 2020).

harm only if there is sufficient instrumental reason to harm them. If there is sufficient instrumental reason to harm someone who is liable, liability must itself be a complete justification for harming. And if liability is a complete justification, and if Threatener is liable in our cases of other-defense, then consent cannot be necessary for the permissibility of defensive force.

We need not accept that liability is a full justification for harming to make sense of its instrumental character. When a defender can save someone from harm, she has *reason* to intervene even if the victim refuses her consent. It is just that, according to the view outlined here, that reason is excluded from the defender's deliberation. But the reason persists, and thus harming the threatener still serves that instrumental goal, which grounds liability. Consider a variation of *Collateral Damage* in which saving Victim will kill Bystander, and thus intervention is disproportionate. Rescuer has reason to harm Threatener—doing so will save Victim. Harming Threatener is instrumental in achieving this good. This good is proportionate to the harm that Rescuer will impose on Threatener. Because of this, Threatener is liable to be harmed. However, the reason Rescuer has to harm Threatener is outweighed by her reason not to harm Bystander. Threatener's liability is not a justification for harming him in this case.⁸

I have introduced the Consent Requirement, in both a weak and strong form. I say no more on choosing between these versions of the requirement. Because it is very likely that a large portion of intended beneficiaries of humanitarian intervention will be subjected to risks of harm through intervention proceeding, either version of the Consent Requirement is compatible with the views defended in the remainder of the paper.⁹ I have introduced the stronger variant since I think it offers a fuller account of the role consent plays in other-defense; this is good to have in the back of our minds when we turn to group cases of other-defense.

3. Consent and the *Ad Bellum* Permissibility of Intervention

⁸ Because of this, one can maintain that necessity is internal to liability, since threateners cannot be liable to harm that serves no instrumental goal—as I argue in (Bowen 2016)—while holding that consent and wide proportionality are external to liability (as I argue in the text).

⁹ When the implications do differ depending on which version of the requirement we prefer, I draw attention to this.

In the previous section I argued that an act of other-defense that subjects the intended beneficiary to a risk of harm is permissible only if the intended beneficiary consents to intervention, unless they are not in a position to competently consent or refuse to consent. The stronger version of this requirement drops the qualification that consent is morally necessary only in cases of other-defense that subject the intended beneficiary to risk of harm. With this understanding of the role of consent in cases of individual other-defense in mind, we can turn to the role that consent plays in the moral permissibility of wars of humanitarian intervention. Of course, interventionist wars are more complicated, in various respects, than individual cases of other-defense. Nevertheless, if consent is a constraint on the permissibility of other-defense among individuals, we have good reason to think that consent is also a constraint on interventionist wars.

This section concerns how consent bears on the overall permissibility of intervention (that is, *jus ad bellum*).¹⁰ Some people argue that consent has no role to play. According to these writers, allowing consent to affect the permissibility of intervention objectionably gives those who refuse consent the power to decide whether a whole group is saved. I argue this is not in itself objectionable. In subsection 3.1, I work through two sorts of reason for why intended beneficiaries might refuse to consent to intervention. Building on this, I suggest that intended beneficiaries' refusal to consent ought to have *some* bearing on the permissibility of intervention. In subsection 3.2, I then work through the effect that consent and the refusal to consent has on the permissibility of intervention.

3.1 The Normative Dominion Objection

Standardly, the permissibility of wars of humanitarian intervention depends upon the war's being proportionate, necessary, and having a reasonable prospect of success.¹¹ Roughly put, that the war is proportionate requires that the good brought about by the war outweigh the bad caused (hence, just cause is entailed by proportionality). That the war is necessary requires that the war

¹⁰ I do not explore here the question of how consent relates to future generations. It does not seem unnatural for someone to say, "We must wage this war not only for us, or for our children, but for our children's children!" However, waging a war of humanitarian intervention is going to have significant non-identity affects—it will affect the identities of our "children's children". Because of this, we cannot say fighting this war will be *better for* our "children's children" (at least, if we are referring to the "children's children" at the token- and not type-level). Addressing these non-identity issues requires much more space than I can permit. For general discussion of the non-identity problem, see (Boonin 2014).

¹¹ Some think there are additional requirements for *ad bellum* permissibility, e.g., (Teson 2006). Others think there are fewer requirements, e.g., (Hurka 2005; McMahan 2009). We can be agnostic on this.

is the least harmful available means to achieve the war's aims. And, that the war has a reasonable prospect of success requires that the war be sufficiently likely to achieve its aims. The Consent Requirement introduces an additional requirement: that the people on whose behalf the war will be fought consent to the intervention. This means that even if the prospective war is proportionate, necessary, and has a reasonable prospect of success, it is impermissible if the potential beneficiaries refuse to consent to intervention. (If we prefer the Weak over the Strong Consent Requirement, consent is required from only those people on whose behalf the war will be fought who will be subject to risk of harm through intervention.)

One challenge to applying the Consent Requirement to wars of humanitarian intervention concerns the likely lack of unanimity among those on whose behalf the war will be fought. We need a way of aggregating individuals' consent and refusal to consent to reach some verdict on whether intervention is impermissible. Call what we are after our *aggregation principle*. An intuitive initial thought is that the Consent Requirement is satisfied if a majority of the intended beneficiaries consent to intervention. After all, when it comes to a group of individuals making a decision that affects them all, we often think that a simple vote is a good way to decide things. Call this the Majoritarian Consent Principle. In this subsection, I deal with a very general objection to the idea that consent matters in cases in which a group is threatened. The Majoritarian Consent Principle acts as a good foil against which to raise this objection. In the following subsection, I improve upon the Majoritarian Consent Principle.

Suppose that we are thinking about waging a war of humanitarian intervention. The war would be proportionate, necessary, and sufficiently likely to succeed. However, the majority of intended beneficiaries refuse to consent to intervention. If the Majoritarian Consent Principle is correct, intervention is impermissible. This means that the majority of the group have been empowered to decide whether the minority are saved. Andrew Altman and Christopher Wellman think that this is implausible. They argue that it is 'dubious to hold that a group has this type of normative dominion over its members' (Altman and Wellman 2008, 243). In support of this objection, they have us suppose that the American Confederacy successfully seceded from the North and continued its legal institution of slavery. They continue: suppose that the now independent North is considering armed intervention in order to eradicate slavery. 'According to the logic of [the Majoritarian Consent Requirement], this intervention would have been permissible only if a majority of the slaves welcomed the North's intervention' (Altman and Wellman 2008,

243–44). They think this is implausible, so conclude that consent is not a necessary condition of the permissibility of intervention.¹² Let us call this the Normative Dominion Objection.

Consider the following simplified case, which draws out the Normative Dominion Objection further:

Not-So-Risky Other-Defense. Threatener unjustifiably threatens to paralyze five victims from the waist down. The victims are unable to defend themselves. Rescuer can defend the victims, but only by killing Threatener. Killing Threatener imposes a trivial chance of death on all the victims. Three of the victims competently refuse to consent because of the trivial risk posed by intervention.¹³

If the Majoritarian Consent Principle says intervention is permissible only if a majority of the intended beneficiaries consent to intervention, intervention is impermissible in this case. Yet, that looks intuitively implausible. As per the Normative Dominion Objection, the three who refuse to consent should not get to determine whether the two who consent to intervention are saved. In the following subsection, I offer a diagnosis of why intervention is permissible in this case despite the fact that the majority refuse their consent. Before that, I want to offer a general reply to the Normative Dominion Objection: we see that we should not conclude consent is unnecessary for other-defense just because the Majoritarian Consent Principle is mistaken. This leads to how consent is relevant to group other-defense in the following subsection.

It is worth noting two things before tackling the Normative Dominion Objection. First, the Normative Dominion Objection is not simply an argument against the Majoritarian Consent Principle, but against *all* robust principles of aggregating consent.¹⁴ For, whatever aggregation principle we endorse, it means that *some* portion of the group is empowered to decide the fate of the whole group—and, this implies that some subgroup has ‘normative dominion over its members’. For example, suppose we endorse a Sub-Majoritarian Consent Principle, on which at least twenty-five percent of intended beneficiaries must consent to intervention. This still means a group of non-consenters large enough to stop a sub-majority from forming (say, seventy-six percent) are empowered to decide whether the group is saved. Altman and Wellman say their ‘key

¹² For similar reasons, this conclusion is shared by (McMahan 2010a, 52; Frowe 2014b, 109; Oberman 2015, 273).

¹³ If one endorses the stronger version of the Consent Requirement, one can do away with the risk of harm altogether.

¹⁴ This includes Parry’s sophisticated ‘Proportionate Consent Requirement’ (Parry 2017, 386).

point [...] is that human-rights violations are sufficiently important to trump the preferences of the majority' (Altman and Wellman 2008, 244). And, it is unclear why this would not be true even if a supermajority refused to consent to intervention.

Second, even if one accepts the Normative Dominion Objection, one might nonetheless think that consent has a role to play in determining whether we ought to wage wars of humanitarian intervention, where this ought has more of a practical flavor. In wars of humanitarian intervention, potential interveners might be implicitly led astray in judging the permissibility of intervention by their own motives (McMahan 2010a, 53). Intended beneficiaries have an intimate knowledge of the facts on the ground, so are well placed to make judgements about the risks of intervention (Altman and Wellman 2008, 245). Intervention might be more likely to succeed with the cooperation of the intended beneficiaries, and consent is a good way to gauge whether this will be forthcoming (Buchanan 2013, 299–03). Because of any combination of these reasons, it might be wrong for potential interveners to disregard the refusal to consent of a group of intended beneficiaries. However, on this picture, consent has only a secondary, epistemic role to play. It is not itself directly relevant for the permissibility of intervention. It is this claim—that consent is not directly relevant for the permissibility of intervention—that I challenge in the remainder of this section.

In reply to the Normative Dominion Objection, let us begin by noting two salient features of wars of humanitarian intervention. First, many intended beneficiaries will not survive intervention (let alone survive unharmed). Second, intended beneficiaries will be subjected to different *kinds* of risks from intervention than from non-intervention. The gravity of the risks faced by intended beneficiaries in the absence of intervention is determined by (i) the harm resulting from the types of human rights violations that they might suffer under the regime and (ii) the likelihood of their suffering those violations. The gravity of the risks that those same individuals would face were intervention to go ahead is determined by (iii) the different types of harm that might result as side-effects of intervention and (iv) the likelihood of suffering those harms (as well as (v) the harm they might face were the intervention to fail). Altman and Wellman's argument assumes that the severity of the prior human rights violations ((i) & (ii)) and the risks of the intervention ((iii), (iv) & (v)) do all the work in determining the permissibility of intervention. It will determine whether the war is proportionate, necessary, and has a reasonable prospect of success.

Suppose some potential intervention satisfies these constraints on permissibility. Now ask, why might some of the intended beneficiaries nonetheless refuse to consent to intervention?

At least two answers present themselves, unified by people having differing conceptions of the good. First, people might have differing conceptions of acceptable levels of *risk imposition*. They may agree about the goodness or badness of intervention and non-intervention but disagree when it comes to how risk adverse to be, and so prefer non-intervention. Second, people may have differing conceptions of the *goodness* of certain benefits and the *badness* of certain harms. They might agree about how risk adverse to be but disagree about the goodness or badness of intervention and non-intervention.¹⁵ And, of course, these disagreements may combine. Such disagreement seems as though it should render potential intended beneficiaries' consent, and refusal to consent, morally significant.

Consider the following case: suppose that if there is no intervention, the otherwise intended beneficiaries will live without political freedom, under the boot of a political tyrant, with the risk of moderate to severe economic deprivation because of trade sanctions. However, their lives would be somewhat stable and have a relatively high chance of continuing if they follow whatever draconian laws are in place. If intervention were to take place, those intended beneficiaries would be subject to the risk of their homes, towns, and cities being destroyed, having to become refugees, and, ultimately, that they and their loved ones might die. On the assumption that the intervention would meet the conditions of permissibility set out above (proportionality, necessity, and reasonable prospect of success), and yet that there would be non-negligible risks along the lines I have cited, it seems that the intended beneficiaries' consent, or refusal to consent, bears on the permissibility of intervention.

It is worth contrasting the point I am making here with the earlier point about the epistemic role of beneficiaries' consent and refusal to consent. The earlier thought is that although the distribution of consent has no direct bearing on the permissibility of intervention, it might nonetheless have an indirect role to play. It offers intervenors good evidence of whether they are correct in judging that the war will be proportionate, necessary, and sufficiently likely to succeed. My point here about disagreement is different. My claim is not that, because the intended beneficiaries have refused to consent to intervention, this gives us reason to think we might be mistaken about whether the war is proportionate, necessary, or likely to succeed. Rather, my claim

¹⁵ We can include under the scope of the goodness or badness of intervention and non-intervention reasons that have a less prudential flavor. For example, people might refuse to consent to intervention because they are deeply committed to non-violence, because they want to pursue liberation on their own terms, because they do not want to be assisted by some particular third-party, and so on.

is that we ought not proceed in virtue of the fact that those on whose behalf we are fighting, who we will inevitably subject to risk of harm, refuse to consent to our doing so. The refusal itself renders intervention impermissible. It does not serve as a mere proxy for other features that might make render intervention impermissible.

3.2 The Relevance of Consent

The worry behind the Normative Dominion Objection is that, if consent is necessary for other-defense, this implies that part of a group has the power to decide whether the group as a whole is saved. And this is supposedly implausible. In the previous section, I drew attention to some of the reasons people might refuse to consent to intervention—because they have differing conceptions of risk imposition, and of the goodness and badness of intervention and non-intervention. In virtue of these disagreements, I suggested that the distribution of consent should have some bearing on the permissibility of intervention. Yet, this prompts two points. First, *what* bearing does the distribution of consent have on the permissibility of intervention? Second, I have pointed to two sorts of considerations for why people might refuse to consent. But the Strong Consent Requirement, which I endorse, says victims may refuse to consent to intervention in individual cases of other-defense even when intervention poses no risk to them. How is this view consistent with the considerations I advanced in the previous subsection? Let us take these points in turn.

Imagine we intervene on behalf of a group and some members of the group refuse consent. One way to characterize our action in this case is as non-consensually subjecting those who refuse consent to a risk of harm for the sake of saving the rest of the group. There are familiar cases in which we may non-consensually subject someone to risk of harm for the sake of saving others.¹⁶ For example, many theorists think that it is permissible to divert a trolley away from five onto a side-track where it will, as an unintended consequence, kill one. (If one does not agree that it is permissible to turn the trolley to save five, make the number larger.) In this case, the one on the side-track has a right against being harmed, yet we permissibly infringe this right for the sake of saving the five. Now suppose there are two people on the side-track. Let us stipulate that, while it is permissible to infringe one person's right against being killed for the sake of saving five, it is impermissible to infringe the rights of two for the sake of saving five. (Again, one can vary the numbers as one sees fit.) If one of the two people on the side-track consents to being harmed

¹⁶ Thanks to Helen Frowe for helping me see the relevance of this.

for the sake of saving the five, she waives her right against being killed. Because of this, I submit, it is permissible to turn the trolley. The consentor has removed one of the reasons against turning the trolley: killing her no longer infringes her right. Thus, we are now faced with a case of infringing one person's rights to save five, which, as in the original case, is permissible.¹⁷

With this in mind, recall the Consent Requirement from section 2. When victims refuse to consent to intervention, victims make inadmissible appealing to the good of saving them to justify intervention and, if intervention carries with it some risk of harm, leave in deliberation their rights against being subjected to that risk of harm. Now recall the case I introduced in the previous subsection to put pressure on the Majoritarian Consent Requirement.

Not-So-Risky Other-Defense. Threatener unjustifiably threatens to paralyze five victims from the waist down. The victims are unable to defend themselves. Rescuer can defend the victims, but only by killing Threatener. Killing Threatener imposes a trivial chance of death on all the victims. Three of the victims competently refuse to consent because of the trivial risk posed by intervention.

Intervention seems permissible in this case even though the majority of intended beneficiaries have refused their consent. This is for two reasons. First, while the three's refusal to consent may well give Rescuer reason not to intervene, the two's claims to be saved from death are sufficiently weighty to defeat the three's rights not to be exposed to a trivial risk of death.¹⁸ Second, while the three make inadmissible appealing to the good that will be achieved by saving them, Rescuer nonetheless has sufficient reason to justify intervention: she can appeal to the good of saving the two who consent to intervention. These two points combine to explain why intervention is permissible despite the three's refusal to consent.

It is helpful here to consider how duties to rescue function in general. Suppose that two people will be paralyzed from the waist down. The only way to save them will, as a side-effect, subject three people to trivial risk of death. When the risk to bystanders are this low, we may

¹⁷ More precisely, the one's consent turns it from a case in which we can (i) save five with the side-effect of killing two, both of whom have rights against being killed, to a case in which we can (ii) save five with the side-effect of killing two, only one of whom has a right against being killed. And, while we still have reason not to harm those who have consented to being harmed, this reason can be defeated by preventing harm to others of a much smaller magnitude. For example, with my consent you may break both of my arms to prevent someone else from having one arm broken. Because of this, saving five with the side-effect of killing two, one of whom has consented to being killed for that goal, is sufficiently similar to saving five with the side-effect of killing one, and so we can conclude it is permissible.

¹⁸ This way of putting things owes a lot to (Frowe 2014b, 109).

subject the bystanders to this risk for the sake of saving the two. Now suppose that the threat the two face is from an unjustified threatener. The only way to save them is to kill the threatener in defense of the two victims, but this will subject three bystanders to trivial risk of death as a side-effect. The good of saving the two is again sufficient to justify both killing the threatener and subjecting the three bystanders to the trivial risk.

The foregoing suggests there are at least two ways in which the refusal to consent of some intended beneficiaries can make an otherwise permissible intervention impermissible. First, by refusing consent, victims remove their good from the pool of admissible reasons intervenors may use to justify intervention. This makes it harder for intervention to be proportionate.¹⁹ Recall *Collateral Damage* from section 2, in which Victim's refusal to consent made the good of saving her inadmissible. This meant there was insufficient admissible good to justify harming Threatener and Bystander. Now consider a group analogue of that case:

Group Collateral Damage. Threatener unjustifiably threatens to paralyze five victims from the waist down. The victims are unable to defend themselves. Rescuer can defend the victims only by throwing a grenade, which will paralyze a Bystander from the waist down as a side-effect. Four of the victims competently refuse to consent to intervention because they do not want Bystander to be harmed for the sake of saving them.

Let us stipulate that it is proportionate to paralyze a bystander as an unintended side-effect of saving five from paralysis. By refusing to consent to intervention, the four victims preclude appealing to the good of saving them. This makes the rescue analogous to one in which Rescuer can save one person from paralysis with the side-effect of paralyzing a bystander, which is commonly taken to be disproportionate. By refusing consent, the four make intervention impermissible when it otherwise would have been permissible, were they to have consented to intervention.²⁰

¹⁹ This is noted by (Parry 2017, 384–87).

²⁰ For those who prefer the Weak Consent Requirement, recall that, when victims are subjected to risk of harm to, even to which they are an expected beneficiary, they make inadmissible appealing to the benefits of interfering with them. So, while the four victims' refusal to consent will not be transformative in *Group Collateral Damage*, for there is no risks to the victims, their refusal to consent would be transformative as explained in the text in a variant in which intervention carried with it some risk.

My view entails that, sometimes, it is impermissible to rescue people who want to be saved because other people have refused their consent to being rescued. Again, in *Group Collateral Damage*, by refusing consent the four make it impermissible to save the person who wants to be saved. And recall that the Normative Dominion Objection holds that this is grounds to reject the relevance of consent to other-defense. Yet, I think my view has the correct result. We each have the power to authorize when others may justify their actions by appealing to the good this will do for us. It just so happens that, unfortunately, the good we can secure for those who want to be saved is sometimes insufficient to justify intervention.

Let us turn to the second way that the refusal to consent of some intended beneficiaries can make intervention impermissible. By refusing to consent, intended beneficiaries leave in deliberation their rights against being subjected to risk. Sometimes it may nonetheless be permissible to expose these intended beneficiaries to a risk of harm for the sake of saving others, as in *Not-So-Risky Other-Defense*. But sometimes the refusal to consent may be decisive. Consider,

Group Risky Other-Defense. Threatener unjustified threatens to paralyze five victims from the waist down. The victims are unable to defend themselves. There is a 99% chance Threatener will succeed unless Rescuer shoots Threatener in defense of the victims, though this carries with it a 10% chance of death to the victims. Three of the victims competently refuses to consent to intervention.

Let me stipulate two things for sake of argument. First, paralysis from the waist down is worse than a 10% chance of death. This means, if the victims were unable to competently consent and Rescuer lacked evidence that any of the victims would refuse to consent, then intervention would be permissible because Rescuer could presume their consent. Second, it is impermissible to non-consensually subject three people to a 10% risk of death for the sake of saving two people from paralysis from the waist down. (If one disagrees, one can increase the probability of death.) In *Group Risky Other-Defense*, the three victims who refuse consent thereby leave in deliberation their rights against being subjected to a 10% chance of death (in addition to making inadmissible appealing to the good of intervening on their behalf, as explained above). In so doing, they make intervention impermissible, for we have stipulated that it is impermissible to save two from paralysis from the waist down with the side-effect of non-consensually subjecting three people to a 10% risk of death. Put differently, the rights of three people not to be subjected to a 10% risk of death are stronger than two's claims to be saved from paralysis from the waist down, so

intervention is impermissible. By refusing their consent, the three make intervention impermissible when it otherwise would have been permissible, were they to have consented to intervention.

Again, my view has the implication that it can be impermissible to save some consenting victims because other victims have refused their consent. In *Group Risky Other-Defense*, by refusing to consent the three make it impermissible to save the two. Again, I think this is the correct result. While the two who want to be saved do have a claim to be saved, the three who refuse to consent have rights against being subjected to a risk of harm, even if they are expected beneficiaries of being exposed to that risk.²¹ If there were only one prospective victim, and they refused to consent to intervention, it would be impermissible to expose them to risk of harm for the sake of conferring a benefit on them, as in *Risky Other-Defense*. It is not plausible that, just because others are involved, we can now disregard individuals' rights against being subjected to risk *and* permissibly appeal to the good of saving them.

The preceding suggests that consent is relevant to the defense of groups in the following way. Intervention on behalf of a group is permissible only if there is sufficient admissible reason to justify the costs that come with intervention (the proportionality constraint tells us as much). These costs include harm, and risk of harm, to bystanders. But they also include risk of harm to intended beneficiaries who refuse to consent to intervention.²² And, of those intended beneficiaries who refuse to consent, the stronger their rights against being subjected to intervention, the harder intervention is to justify, other things being equal. Yet, on the other side of things, of those intended beneficiaries who consent to intervention, the stronger their claims to be rescued, the easier intervention is to justify, other things being equal. We have seen that, by refusing consent, victims remove their good from the pool of admissible reasons intervenors may use to justify intervention and leave in deliberation their rights against being subjected to risk. By the same token, by consenting to intervention, victims that are expected beneficiaries authorize use of their good in the pool of admissible reasons intervenors may use to justify intervention and remove from intervener's proportionality calculation the significance of the risks to them. In both ways,

²¹ Thanks to an anonymous referee for help on this.

²² While Parry explicitly sets aside risk of harm to intended beneficiaries (Parry 2017, 370 fn. 38), this suggests his view is incomplete when he says that since 'victims' refusal [to consent] renders the fact that they would benefit inadmissible for the purposes of establishing justifications for harming innocents, there is an important sense in which we can treat victims' refusal as morally equivalent to their nonexistence' (Parry 2017, 386–87). Victims who refuse to consent to intervention remain in existence and have claims not to be subjected to risk of harm, even if they are expected beneficiaries of that intervention.

consenters make it easier to justify intervention. Further, the stronger an expected beneficiaries' claim to be saved, the more bad that can be justified as a side-effect of satisfying their claim. For example, plausibly, you may break a bystander's arm to save someone else from death, but not to save someone from having their leg broken.

We are now able to address the second point, introduced at the beginning of this subsection. In subsection 3.1, I drew upon two sorts of considerations for why people might refuse to consent to intervention: because they disagree about how risk adverse to be and about the goodness and badness of intervention and non-intervention. Yet, my argument for the Strong Consent Requirement holds that victims' refusal to consent to intervention in individual cases of other-defense is morally transformative even when intervention carries with it no risk. How are these consistent?

The sorts of considerations I drew on in subsection 3.1 may actually explain why some people refuse to consent to intervention to which they are an expected beneficiary, even if intervention carries with it no risks to them: because they disagree that intervention should go ahead, and do not want their good to be used to justify that intervention. They do not want intervention to be fought in their name. For example, they may think the risks to third-parties are too great. They may place a greater emphasis on self-determination than others, and prefer solving their country's problems internally. The only cases in which the Strong but not Weak Consent Requirement is in play are cases in which the intended beneficiary will not be subjected to risk of harm by intervention. My point is that, even in these cases people may still have reason not to authorize the use of their good in justifying intervention, and the harm that may well impose on others.²³

4. Consent and the Permissibility of Individual Acts of Humanitarian War

In the previous section, I argued that the distribution of consent is relevant to the overall permissibility of humanitarian intervention in the following way. Intervention is permissible only if there is sufficient admissible good to justify the costs that come with intervention, including costs to

²³ In the following section, we examine what happens when people refuse to consent to intervention for morally problematic reasons. As we see, while I see the appeal of saying their refusal to consent should not matter in those cases, I am skeptical this position is defensible.

bystanders and those who refuse to consent. Much of the philosophical work on wars of humanitarian intervention focuses on this dimension of its permissibility—that is, on the war as a whole. In this section, I argue that consent also affects the (*jus in bello*) permissibility of how wars may be fought: namely, the refusal of affected citizens to consent has a role to play in determining the level of risk it is permissible to impose on them.

Jeff McMahan argues that it is not ‘wrong for combatants to fight in ways that involve a lower risk to themselves but expose noncombatants to new risks, provided that the noncombatants are nevertheless expected beneficiaries of the defensive action’ (McMahan 2010b, 360).²⁴ Let us call this the *Beneficiaries Principle*. McMahan also argues, perhaps less controversially, that combatants ought to fight in ways that expose noncombatants who are expected beneficiaries of intervention to greater risk of harm than they expose third-parties to. To begin with, I focus on the distribution of risk between intervenors and expected beneficiaries. I turn to the distribution of risk between expected beneficiaries and bystanders below.

Underwriting the Beneficiaries Principle is the idea that, were it not for the intervener’s actions, things would be worse for the intended beneficiaries. And, the thought goes, intervenors can therefore justifiably shift some of the risk they would otherwise incur onto those on whose behalf they intervene. Consider,

Rescue. Through no fault of her own, Victim is being swept towards a waterfall and, if she goes over the falls, she will die. A passerby, Rescuer, can save her in one of two ways: (1) will not harm Rescuer, but will break Victim’s arm; (2) will dislocate Rescuer’s shoulder, but will not harm Victim.²⁵

It is plausible that Rescuer may choose either option. One might think that this is because, were Rescuer not to act, this would be much worse for Victim. While Victim might prefer option (2), the broken arm of (1) is better than Rescuer’s not acting at all. And so, Victim has no grounds for complaint if Rescuer intervenes in way (1).²⁶ Let us call this the No Complaint Argument.

²⁴ This conclusion is shared by (Fabre 2012, 203–6; Draper 2015, 160–65). Frowe says in passing of McMahan’s argument that it ‘seems to me to be correct’ (2014b, 102); *cf.* (Frowe 2020, 909–10), where she seems more skeptical.

²⁵ Based off (Fabre 2012, 203). A case with a similar structure appears in (McMahan 2010b, 361), though Rescuer’s two ways of intervening may harm either Victim or a bystander.

²⁶ Both (McMahan 2010b, 361; Fabre 2012, 203) make this comparative point.

The No Complaint argument requires refinement. Currently it permits Rescuer to shift costs onto Victim, regardless of how great these costs to Victim are and how trivial the costs to Rescuer would be were she to intervene in a different way.²⁷ For example, suppose that Rescuer can save Victim either (i) by lifting Victim from the water in some way which will not harm Rescuer, but which will leave Victim paralyzed, or (ii) by lifting her in a way which will not harm Victim, but will break Rescuer's finger. We can presume that Victim would prefer paralysis to death, so would rather Rescuer intervene in the first way *rather than not at all*. Yet, she still has grounds for complaint if Rescuer intervenes in that way. The costs to Rescuer of intervening in the second way, which will break her finger, are trivial compared to the costs to Victim of Rescuer intervening in the first way, which will cause paralysis to Victim. In support of this verdict, theorists tend to think one would be under a duty to incur the harm of a broken finger to save someone from paralysis. Because of this, we can say that it is wrong for Rescuer to intervene in the first way, which would paralyze Victim, insofar as Rescuer would be under a duty to incur a broken finger to save Rescuer from paralysis.

Yet, it is intuitive that Rescuer would not ordinarily be under a duty to bear harm equivalent to a dislocated shoulder for the sake of saving Victim from a harm equivalent to a broken arm. If so, we have reason to think that, given the No Complaint Argument, Rescuer may intervene in the second way in *Rescue*, which dislocates Victim's shoulder.

Now consider the following case, in which we apply the reasoning underlying our verdict in *Rescue* to intervention:

Humanitarian Intervention. A just war of humanitarian intervention is in progress. Target's regime takes 100 noncombatants hostage and declares that it intends to kill 50 of them. The government of Intervener must choose between (1) foreseeably risking letting 5 of the noncombatants be killed by Target while storming the building, but not risking any casualties to their combatants; and (2) saving all 100 noncombatants, but foreseeably risking letting 5 of their combatants be killed by Target.²⁸

²⁷ Fabre is sensitive to this (Fabre 2012, 203). Thanks to Helen Frowe for discussion on this refinement.

²⁸ Based off (McMahan 2010b, 360, 365).

Let us say that a noncombatant is an expected beneficiary of intervention if the intervention would diminish her expected risk of harm. This is the case with option (1): each potential beneficiary's chance of survival is increased from 0.5 to 0.95. This is true even if it turns out that the intervention is worse for some of the expected beneficiaries because they are killed during the intervention but would have been among the 50 not killed if the intervention had not taken place. And, while *Humanitarian Intervention* differs from *Rescue* to the extent that there is a chance that any intended beneficiary will be left worse off after the fact, at the time of deciding whether to intervene the beneficiaries' prospects are much better than they would have been were intervention not to have gone ahead. So, given the No Complaint Argument, this gives us reason to endorse the Beneficiaries Principle introduced above: as applied to *Humanitarian Intervention*, it is permissible for Intervener to choose (1), subjecting their combatants to lower risks but exposing the noncombatants, on whose behalf they intervene, to a new risk.

For all this, we should not be so quick to endorse the Beneficiaries Principle in this unqualified way. This is because the Beneficiaries Principle is insensitive to whether intended beneficiaries have consented to intervention. And, when expected beneficiaries have refused to consent to intervention, the Beneficiaries Principle is false.

Ordinarily, it is impermissible to subject another individual to risk of harm to which they competently refuse consent, even if they are an expected beneficiary of that risk being imposed on them. That said, at times, intervention may nonetheless be permissible because that action will also benefit others, and enough of those other people have consented to intervention. In these cases, it is objectionable to impose *more* risk on those non-consenting beneficiaries than they would otherwise have been subjected to, had the interveners fought in ways that involved subjecting themselves to higher risks, on the grounds that the non-consenters are, nonetheless, expected beneficiaries of such action.²⁹ In support of this verdict, we can see that the No Complaint Argument fails as it applies to non-consenting beneficiaries. The No Complaint Argument says that an expected beneficiary has no grounds for complaint if an intervention is riskier for her than available alternatives because, without the intervention, the expected beneficiary would

²⁹ When I say non-consenting beneficiaries here and for the remainder, I do not mean to include those who have not consented because they are unable to consent (e.g., children). I mean only those beneficiaries who have refused to consent. I stick to using non-consenting beneficiaries for ease of exposition.

be much worse off. However, non-consenters *do* have grounds for complaint. They have refused to consent—they have said that they *would rather that* intervention not go ahead.

More generally, even if it is sometimes permissible for combatants to impose higher risks on expected beneficiaries than they incur to themselves, it is impermissible for combatants to impose higher risks onto those intended beneficiaries who refuse to consent. This gives us reason to endorse the,

Consenter/Non-Consenter Asymmetry. Other things being equal, it is easier to justify imposing risk on consenting expected beneficiaries than it is to justify imposing risk on non-consenting expected beneficiaries.

There are at least two ways this asymmetry can play out. First, it can impact the distribution of risk among consenting and non-consenting intended beneficiaries. Second, it can increase the stringency of the proportionality requirement, since we cannot so easily justify subjecting those who have refused to consent to intervention to risk of harm. I return to this below.

The Consenter/Non-Consenter Asymmetry leaves open how we ought to treat imposing risk on non-consenting beneficiaries. One might think that while there is *an* asymmetry between the risks that we may impose on (i) consenting beneficiaries and (ii) non-consenting beneficiaries, this does not show that this asymmetry is as great as the asymmetry between the risks that we may impose on (ii) non-consenting beneficiaries and (iii) bystanders. And, there is potentially *a* morally significant difference between non-consenting beneficiaries and bystanders—non-consenting expected beneficiaries are still, nonetheless, expected beneficiaries of the risk imposition, whereas bystanders are not. Perhaps this means we should endorse the,

Non-Consenter/Bystander Asymmetry. Other things being equal, it is easier to justify imposing risk on non-consenting expected beneficiaries than it is to justify imposing risk on bystanders.

Taken together, the two asymmetries imply it is hardest to justify imposing risk on non-benefiting bystanders, easier to justify imposing risk on non-consenting expected beneficiaries, and easiest to justify imposing risk on consenting expected beneficiaries.

One might argue for the Non-Consenter/Bystander Asymmetry on the following grounds. The benefit one provides to the non-consenting beneficiaries, with respect to decreasing

their expected risk of harm, goes some way to compensating them for the risk of harm being non-consensually imposed on them. No such compensation is delivered to the bystander.³⁰

This justification fails. We are under duties, correlating with others' rights, not to harm them. If we fail to satisfy those duties, that usually triggers certain restitutive duties. The preceding argument for the Non-Consenter/Bystander Asymmetry says that, by subjecting non-consenters to risks from which they might benefit, we go some of the way to satisfying our restitutive duties towards them, and that is not true of subjecting bystanders to risk. Yet, the restitutive duties are separate from the primary duties on which they are parasitic. We cannot use the fact that we *will* satisfy the restitutive duties as a justification for failing to respect the primary duties themselves. We do not satisfy our primary duties by violating those duties and then compensating our victims. This is especially true in light of our aversion to paternalism—that is, the widely-held view that it is impermissible to interfere with a competent individual for their own sake. In the absence of the beneficiary's consent, the benefits that one might bring about are excluded from one's deliberation. We saw in section 2 that this is an attractive way to think about the Consent Requirement, in both its weak and strong variants. So, we may not use these reasons to justify our imposing risk onto a non-consenting beneficiary rather than a bystander—the benefits to the beneficiary are inadmissible. As a result, we should treat imposing risk onto non-consenting beneficiaries as we would treat imposing risk onto non-benefiting bystanders.

In sum, I have argued that it is harder to justify imposing risk on non-consenting expected beneficiaries than it is to justify imposing risk on consenting expected beneficiaries. I have also argued that it is no easier to justify imposing risk on non-consenting expected beneficiaries than it is to justify imposing risk on non-benefiting bystanders. Let me consider an example that brings these claims together.³¹

Suppose that Intervener is waging a just war of humanitarian intervention against Target. 80% of the civilians persecuted by Target (who mostly live in the cities) welcome intervention, while 20% (who mostly live in the mountains) refuse. All are expected beneficiaries. Given this, when flying bombing raids over the cities Intervener's pilots are permitted to fly higher than they are in the mountains (avoiding anti-aircraft fire, but decreasing the accuracy of their bombing and

³⁰ This was suggested to me by Jonathan Parry, and is defended by (Draper 2015, 160–65).

³¹ This hypothetical shares some features with NATO's intervention in Kosovo in 1999. For discussion, see (McMahan 2010b; Fabre 2012, 202–3; Pattison 2014).

thereby killing more citizens). However, when fighting in the mountains (when flying over those expected beneficiaries who have refused to consent), Intervener's pilots must fly at a lower altitude than required when flying over the cities. This leaves open how high Intervener's pilots may fly when fighting over the mountains, where most expected beneficiaries refused to consent to intervention. If the Non-Consenter/Bystander Asymmetry were sound, Intervener's pilots would be permitted to fly at a higher altitude than they would be permitted to fly at if they were bombing Target's combatants over the territory of a non-benefiting neutral country. This is because the Non-Consenter/Bystander Asymmetry says that it is easier to justify imposing risk on non-consenting expected beneficiaries than on bystanders. But since the Non-Consenter/Bystander Asymmetry is false, when flying over the mountains Intervener's pilots must fly at the same altitude as when they are bombing Target's combatants over the territory of a non-benefiting neutral country. Imposing those higher risks on the minority of non-consenting intended beneficiaries living in the cities will be justified on lesser-evil grounds, as when we foreseeably harm a bystander as a means of saving a much greater number of victims.

With the foregoing in mind, one might object that the Consenter/Non-Consenter Asymmetry incentivizes refusing consent in cases in which intervention will go ahead regardless of whether one consents. For, if one refuses to consent to intervention, one will be exposed to lower risk when intervention takes place. Inasmuch, the asymmetry appears to encourage non-consenters to freeride on those who have consented to intervention.³² In reply, we might be tempted to think that the refusal to consent is only going to be morally transformative when exercised for the correct sort of reasons (Parry 2017, 370, fn. 82; Renzo 2020, 240–41). We could explain this restriction by suggesting that intended beneficiaries are under a duty not to freeride on others' consent. Those who refuse to consent so they can freeride violate that duty. So, we should disregard their refusal to consent.

While this idea is certainly tempting, it is also problematic. Ordinarily, we can consent or refuse to consent for whatever reason we wish, and this does not stop one's consent from being morally transformative. This is so even when we explicitly violate a duty not to consent or refuse to consent for some reason. For example, suppose that I promise my partner I will not consent to others touching me. If I then consent to someone touching me, while I do wrong my partner

³² Thanks to Helen Frowe and an anonymous referee for raising this objection.

in violating my promissory duty to them, my consent is nonetheless morally transformative: I do free the person to whom I consent from their duty not to touch me.

But if, ordinarily, we may not disregard consent or refusal to consent because it is exercised in a morally objectionable way, why may we disregard freeriders' refusals to consent on the grounds that their doing so is morally objectionable? This implies we ought to take freeriders' refusal to consent seriously. Nevertheless, we should not be overly worried about this implication, at least with regards to the Consenter/Non-Consenter Asymmetry. As I said, we can ordinarily consent or refuse to consent for whatever reason we like. Further, people often exert analogous forms of power over others for a whole range of suspect reasons, and yet this does not impugn the moral transformative nature of that power. For example, many people think one may vote for a particular electoral candidate for any reason one wants, despite the fact that voting is other regarding. Non-consenters do act wrongly by refusing to consent in order to freeride. But that does not mean we can disregard their refusal to consent.

5. Conclusion

This paper has covered a lot of ground. The take-home message is this: ordinarily, one may not justify subjecting people to a risk of harm for their own good—that is, one both may not justify their conduct by appeal to the good this does, and peoples' rights against being subjected to those risks remains in deliberation. Further, if the Strong Consent Requirement is correct, people have control over whether one may permissibly appeal to the prospective good to them to justify acting regardless of whether this subjects them to risk of harm. All of this remains true when people are part of a group that requires defending. By consenting to intervention, people allow interveners to appeal the to prospective good to them to justify intervention. By refusing to consent, people leave in deliberation their rights against being subjected to risk and make it impermissible for interveners to appeal to the good of saving them. This makes it harder to justify intervention, other things equal. Finally, it is no easier to justify imposing risk on non-consenting expected beneficiaries than it is to justify imposing risk on bystanders—the reason why it is easier to justify imposing risk on non-consenting beneficiaries—namely, that they are an expected beneficiary—is inadmissible given their refusal to consent.

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