

From Humanitarian Intervention to Assassination: Human Rights and Political Violence*

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An international consensus has begun to take shape around that idea that the cross-border use of armed force by states is morally permissible if such force is required to stop or prevent human-rights abuses amounting to a supreme humanitarian emergency. At the same time, it is widely believed that political assassination is a form of murder and so morally impermissible in principle, regardless of the ends for which it is done. In this article, we reject these views. We argue that armed intervention¹ is morally permissible when (1) the target state is illegitimate and (2) the risk to human rights is not disproportionate to the rights violations that one can reasonably expect to avert.² Moreover, once one accepts that such intervention is sometimes permissible, it becomes untenable to hold that political assassination is impermissible in principle.

The article is divided into six main sections. In the first two sections,

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1. Adapting Terry Nardin's definition, we understand intervention as the exercise of coercion by one state within the jurisdiction of another state, without the uncoerced permission of the government of the latter state. See his "Introduction," in *NOMOS XLVII: Humanitarian Intervention*, ed. Terry Nardin and Melissa Williams (New York: New York University Press, 2006), 1.

2. Our moral analyses are framed in terms of "human rights" because it is the most commonly accepted moral vocabulary for discussing state violence and, we believe, the best way to capture at the deepest level of moral thought the demands that derive from the moral status of persons. Thinkers whose foundational moral commitments are otherwise can still accept the arguments of this article as long as they can understand reference to human rights as grounded in, or a surrogate for, what they regard as the most basic moral demands connected to the status of personhood. On the question of what rights are human rights, our view is that the best place to start is with articles 3–20 of the *Universal Declaration of Human Rights*, <http://www.un.org/Overview/rights.html>.

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we explain the consensus view on armed intervention, criticize the two main arguments on its behalf, and outline our alternative account. Next we argue that our account provides a more adequate treatment of intervention in wars of independence than does the consensus. In the fourth section, we contend that the permissibility of armed intervention does not depend upon the consent of the intended beneficiaries. The fifth section explores what the rules of international law ought to be for regulating armed intervention. The sixth section then takes up the permissibility of assassinating those state leaders who egregiously violate human rights.

I. ARMED INTERVENTION: THE CONSENSUS

The consensus view regarding the permissibility of armed intervention is reflected in the recent report of an international commission of scholars, jurists, and diplomats that was formed and funded by the government of Canada. The International Commission on Intervention and State Sovereignty (ICISS) wrote, “The starting point . . . should be the principle of non-intervention. This is the norm any departure from which has to be justified.” The commission proceeded to make it clear that “tough threshold conditions should be satisfied before military intervention is contemplated.” For example, diplomatic and economic sanctions should have been tried and proved unavailing. However, the commission held that armed intervention could be justified for “certain kinds of emergencies.” In particular, “military intervention for human protection purposes is justified . . . in order to halt or avert large-scale loss of life . . . or large-scale ethnic cleansing.” These sorts of emergencies are “conscience-shocking cases,” typically involving mass murder, widespread rape, and the forcible expulsion of populations.³

Although the task of the ICISS was the essentially political one of articulating principles on which there could be broad agreement among state officials, philosophical discussions of armed intervention have generally proceeded within the normative framework endorsed by the commission. As Michael Blake writes, “There is almost universal support for the thesis that governments ought to limit their interventions to those cases in which the abuses of human rights are most egregious.”⁴ It is important to note here both sides of Blake’s assertion: only in the most egregious cases is intervention permissible, but it is permissible in such cases.

3. International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), 29–33.

4. Michael Blake, “Collateral Benefit,” in *Justice and Global Politics*, ed. Ellen Frankel Paul, Fred Miller Jr., and Jeffrey Paul (Cambridge: Cambridge University Press, 2006), 218–30, 226.

What counts as “the most egregious”? Among the most prominent proponents of the consensus, Michael Walzer writes, “Humanitarian intervention is justified when it is a response (with reasonable expectations of success) to acts that ‘shock the conscience of mankind.’” In addition to genocide and enslavement, such acts include “massacre and massive deportation” and their moral equivalents.⁵ If a government was tyrannical but stopped short of perpetrating such extreme abuses, then armed intervention would be impermissible.

Taking a position similar to Walzer’s, Nicholas Wheeler has contended that forcible intervention can be justified but only if it is a response to a “supreme humanitarian emergency.” Elaborating on his view, Wheeler explains that “it is important to distinguish between what we might call the ordinary routine abuse of human rights that tragically occurs on a daily basis and those extraordinary acts of killing and brutality that belong to the category of ‘crimes against humanity.’ . . . Genocide is only the most obvious case but state-sponsored mass murder and mass population expulsions by force also come into this category.” He adds that “state breakdown” could also involve a supreme humanitarian emergency.⁶

Terry Nardin’s account of when armed intervention is permissible is much the same. He contends that “only the gravest crimes can justify the high costs of military action.” Expanding on what the “gravest crimes” include, he asserts that “genocide is clearly above that threshold and ordinary oppression below it.” Moreover, “intervention must be aimed at halting current or preventing imminent violence, not removing an oppressive regime whose violence falls below the threshold.”⁷

As a final example, we can turn to the director of Human Rights Watch, Kenneth Roth. In a report issued by his organization the year after the beginning of the war in Iraq, Roth writes that “as a threshold matter, humanitarian intervention that occurs without the consent of the relevant government can be justified only in the face of ongoing or imminent genocide, or comparable mass slaughter or loss of life.” He omits mass deportation and so might be in disagreement with Walzer and Wheeler on that score, although ethnic cleansing often involves large losses of life and so their two positions might be equivalent in practice. Moreover, as with Nardin and Wheeler, Roth contends that “other forms of tyranny are deplorable . . . but they do not . . . rise

5. Michael Walzer, *Arguing about War* (Princeton, NJ: Princeton University Press, 2004), 75.

6. Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 34.

7. Terry Nardin, “Humanitarian Imperialism: Response to ‘Ending Tyranny in Iraq,’” *Ethics and International Affairs* 19 (2005): 21–26, 22.

to the level that would justify the extraordinary response of military force.”⁸

Among advocates of the consensus, one of the guiding ideas in applying their threshold of a “supreme humanitarian emergency” has been that, although there will be exceptional situations in which the threshold is met, the routine operation of virtually all de facto states as they currently function falls below the threshold.⁹ This position does not mean that the consensus view presumes that most states are legitimate, at least in the sense that legitimacy involves the right of a state (or its government) to be obeyed by its citizens. To the contrary, the idea is precisely that a state’s illegitimacy in that sense—its lack of a right against insiders—is not sufficient grounds for permissible intervention by outsiders. But, when the functioning of an illegitimate state so degenerates that genocide, ethnic cleansing, or some other “supreme humanitarian emergency” develops and the emergency can only be stopped by armed intervention, then such intervention becomes permissible. That is the consensus view, at any rate.

Some commentators contend that, although the existence of a supreme humanitarian emergency is a necessary condition for a permissible intervention, it is insufficient and that, in addition, the intervention must be authorized by the UN Security Council. On this view, such authorization would be required to make the intervention not merely legally permissible but morally permissible as well. Unilateral interventions and even those that are decided upon by regional organizations such as NATO are considered excessively prone to partiality.

Whatever the cogency of this view, it is not part of the consensus. Walzer explicitly rejects the view, endorsing interventions that do not even have the approval of a multilateral organization, such as the Vietnamese intervention that overthrew the genocidal Cambodian regime of Pol Pot.¹⁰ The ICISS report argues that the possibility of legitimate interventions not authorized by the Security Council cannot be “entirely discounted” and that action by regional or subregional organizations might be warranted when the United Nations fails to act within a reasonable period of time. However, the ICISS is extremely vague about the conditions under which such organizations would have the legitimate authority to make a decision to intervene. Moreover, the ICISS expresses great concern that interventions unauthorized by the Security

8. Kenneth Roth, “War in Iraq: Not a Humanitarian Intervention,” Human Rights Watch Report (2004), available at <http://hrw.org/wr2k4/3.htm>.

9. North Korea might be an exception, because mass starvation seems to be part of its routine operation, at least during certain periods.

10. Walzer, *Arguing about War*, 80.

Council would be undertaken for impermissible reasons and/or have the effect of weakening the United Nations itself.¹¹

The vagueness of the ICISS report on the question of interventions not authorized by the Security Council, and its apparent ambivalence about such interventions, reflect the absence of consensus on the question of authority. This absence is not surprising given the relatively early stage of the current debates over humanitarian intervention, a debate which began in earnest only with the fall of the Soviet Union. Although it is true that there were debates over intervention decades and even centuries ago, those earlier debates took place in a vastly different institutional context. And the issue of authority raises complex questions of institutional design and feasible institutional options: Does the Security Council need to be reformed? If so, how? Are any feasible reforms likely to be adequate? What alternative institutions might be better than even a reformed Security Council? And so on.

The foregoing institutional questions involve important empirical issues regarding how institutions operate, and, in this article, we do not propose any answers to such empirically laden questions. On the other hand, the institutional questions are not entirely empirical, and it is unlikely that satisfactory answers will be forthcoming unless the debate over them is guided by an adequate account of the substantive ethical standard that dictates when an intervention is morally permissible. The best institutional arrangements for authorizing forcible humanitarian interventions are those arrangements, from among the feasible ones, that would be most reliable in tracking the requirements of the correct ethical standard. In the next section, we argue that the consensus view does not provide an adequate account of that standard.

II. MOVING BEYOND THE CONSENSUS

In this section we examine two main arguments for the consensus view of armed intervention. The first invokes a state's right to sovereign control over its internal affairs, and the second revolves around the claim that armed interventions invariably kill, maim, and otherwise do serious harm to individuals who have not done anything to make themselves liable to attack. Consider each in turn.

The first and most obvious argument in favor of the consensus stems from the value of state sovereignty.¹² The familiar idea here is that intervention violates a state's right to order its own internal affairs free from external interference. A state can forfeit its claim to self-deter-

11. International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, 53 and 55.

12. See *ibid.*, 7–8 and 16; and Michael Walzer, *Just and Unjust Wars*, 3rd ed. (New York: Basic, 2000), 86–91. Walzer's version of the argument is examined in Sec. III below.

mination if it engages in or otherwise permits the most egregious abuses of human rights, but otherwise it enjoys a morally privileged position of dominion over its self-regarding affairs, and outsiders have a corresponding duty not to intervene. Thus, in arguing for the demanding standard of a supreme humanitarian emergency, Vaughn Lowe asserts that very strong prohibitions on the interstate use of force “are essential to the maintenance of the sovereignty and independence of States. Without them [i.e., strong prohibitions], the right of each State to choose its political, economic and cultural systems could not be maintained.”¹³

We agree that countries can be entitled to political self-determination, but we deny that states retain this right as long as they steer clear of a supreme humanitarian emergency. We suggest, instead, that the same threshold that determines when a state has the right to rule insiders (“internal legitimacy”) also determines when a state has a right against interference by outsiders (“external legitimacy”). And, as even proponents of the consensus recognize, a state can lack a right to obedience from insiders when it has a very poor human-rights record, even though no supreme humanitarian emergency exists within its jurisdiction. (Countries like Saudi Arabia, China, and Zimbabwe may be good examples.) But is there any good reason to think that there is one and the same threshold for both internal and external legitimacy? We think that there is.

The protection of the human rights of its members is the key moral task that grounds the right of a state to coerce its members: the task is both urgent and cannot be adequately accomplished in any way other than the establishment of a coercive political authority that rules over a fixed territory.¹⁴ It is this same task that grounds a state’s right against outside intervention: the demand that outsiders refrain from intervention is valid only if a state is adequately protecting the rights of its members. Should a state fail in the performance of that task, it has no moral standing to stop an outside party from intervening in order to help rectify the state’s failure.

We are not claiming that it would be automatically permissible to intervene in the affairs of all countries lacking in internal legitimacy. Nor are we suggesting that the lack of internal legitimacy means that other states are morally at liberty to intervene in any and every aspect

13. Vaughn Lowe, “International Legal Issues Arising in the Kosovo Crisis,” Memorandum to the Select Committee on Foreign Affairs, House of Commons (UK) (February 8, 2000) available at <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmfaff/28/0020805.htm>.

14. The argument linking the protection of rights to internal legitimacy is elaborated at length in Andrew Altman and Christopher Heath Wellman, *A Liberal Theory of International Justice* (Oxford: Oxford University Press, forthcoming).

of a state's rule over its members. Rather, the claim is that, if there are sound moral reasons to avoid violent intervention in the affairs of internally illegitimate countries that are not suffering from a supreme humanitarian emergency, then those reasons do not stem from any right that these countries have against interventions aimed at stopping human-rights violations.

The second argument in defense of the consensus objects to military interventions, not because they disrespect the sovereignty of illegitimate states, but because virtually all such interventions foreseeably kill or maim noncombatants who have done nothing to make it morally permissible to harm them in such ways. Thus, Mirko Bagaric and John Morss write, "The first difficulty of humanitarian intervention stems from the inherent contradiction in using force in order to protect rights. Force invariably results in the killing of people, and hence violates what might be thought of as the most fundamental right of all—the right to life itself."¹⁵ Yet, the argument continues, the rights of these noncombatants, though very strong, are not absolute. If there is no other way to rescue far greater numbers of persons from death or grave bodily harm, then armed intervention might be permissible as a grim moral necessity. But only in such grim circumstances, where a supreme humanitarian emergency exists, can intervention be morally permitted. So goes the argument.

One might seek to rebut this line of argument by claiming that noncombatants who are killed or maimed by an intervention have their rights violated only if they are deliberately targeted for attack. One could proceed to argue that such targeting is the exception rather than the rule and so constitutes a tenuous ground on which to conclude that only the grim moral necessity of stopping a supreme humanitarian emergency makes intervention permissible. However, such a rebuttal ignores an important point. An individual's right to security can be violated not simply by actions that deliberately kill her or otherwise do serious bodily harm; actions that impose unreasonable risks on an individual also violate her human rights. Suppose that Jack and Jill are combatants, but Jim is not. Jack drops a bomb in Jim's neighborhood in an effort to kill Jill. There is a 99 percent chance that the bomb will kill Jim, even though Jack is not trying to kill Jim and would be happy to learn that Jim had escaped any harm. Even if Jim does manage to escape harm, Jack has violated his right to security, unless he has consented to the risk involved in Jack's dropping the bomb. In the absence of such consent, Jack has

15. Mirko Bagaric and John R. Morss, "Transforming Humanitarian Intervention from an Expedient Accident to a Categorical Imperative," *Brooklyn Journal of International Law* 30 (2005): 421–52, 439. These authors go further than the consensus by contending that intervention is not just permissible but obligatory in cases of a humanitarian emergency.

imposed an unreasonable risk on Jim and thereby violated his security right.

Accordingly, this second argument in favor of the consensus view need not assume that the use of military force usually involves the deliberate targeting of individuals who are not morally liable to attack. Rather, it requires only the more plausible premise that the use of such force imposes an unreasonable risk on individuals who are not morally liable to attack. Nonetheless, there is reason to doubt that the argument succeeds.

Consider the use of military force after the first Gulf War to create a safe haven and no-fly zone in northern Iraq. The zone was established and enforced by the allied troops in order to protect the Kurdish population. Its establishment constituted an armed intervention into Iraqi territory and was protested by the government. Still, the actual use of armed force was quite modest, mainly threatening Iraq's radar sites that sought to track the planes patrolling the no-fly zone.

An even more modest use of force can be found in the U.S. intervention in Haiti in 1994 to depose a military regime that had overthrown the democratically elected government led by Jean-Bertrand Aristide. After peaceful negotiations and then an economic embargo failed to return Aristide to power, the United Nations authorized member states to use "all necessary means" to depose the military regime and reestablish the rule of Haiti's legitimate government.¹⁶ President Clinton publicly threatened an invasion and sent the U.S. fleet toward the island. As the invasion force approached, a deal was brokered by former President Carter in which the Haitian military agreed to relinquish power. A U.S.-led multinational force arrived in Haiti, establishing relative security with only minimal resistance before turning its operations over to a UN mission.¹⁷

The second argument for the consensus would be more cogent if all armed interventions employed military force on the order of magnitude found in a full-scale war, because such war tends to impose unreasonable risks. As the cases of Haiti and the safe haven in northern Iraq show, however, interventions can involve risks and costs far lower

16. UN Security Council Resolution 940 (1994), par. 4. Although the term 'all necessary means' is standardly employed to include force, the subsequent use of force by the United States provoked Dante Caputo, UN envoy to Haiti, to resign. Caputo argued that the United States had acted without sufficient consultation with other member states. Additionally, many states "harbored serious reservations" about the legality of the U.S.-led intervention, on the ground that there was no threat to international peace and no supreme humanitarian emergency. See Brian D. Lepard, *Rethinking Humanitarian Intervention* (University Park: Pennsylvania State University Press, 2002), 18.

17. Andrea Kathryn Talentino, *Military Intervention after the Cold War* (Athens: Ohio University Press, 2005), 130.

than those of total war. And it seems problematic to suppose that the same level of grim moral necessity would be required to make any armed intervention permissible, whether the intervention involved the great costs of full-scale war or the much more limited costs of the northern Iraqi no-fly zone or the U.S. deployment of forces in Haiti. It is unclear why armed interventions on the relatively modest scale used in Haiti or northern Iraq would need to meet the standard of preventing a supreme humanitarian emergency in order for them to be permissible. Thus, the second argument seems insufficiently responsive to the vastly different scales on which military force is used in different interventions.

One might reply that use of military force may start out modestly but that there is the ever-present danger of escalation into full-scale war. There does seem to be much truth, after all, in Iris Young's assertion that "violent acts tend to produce violent responses in an escalating spiral. Too often, generals and politicians arrogantly assume that they can control the violent consequences of their own violent actions."¹⁸ However, there are many cases in which the modest use of military force had very little prospect of producing an escalating and uncontrollable spiral of reciprocal violence, cases in which it was clear from the outset that a modest use of force could accomplish the goal in question. This was true of the no-fly zone in northern Iraq: it was wholly unsurprising that Iraq made no serious effort to fight against the allied patrols.

One might claim that the no-fly zone opened the way for the subsequent full-scale war, with the allied flights used as a first stage of the 2003 invasion. However, it is important to note that the no-fly zone operated for a decade without any American administration intending to invade Iraq. Indeed, in the immediate aftermath of the first Gulf War, the Bush I administration did not even want to establish a safe haven for the Kurds, fearing that American troops would be sucked into a Vietnam-type quagmire.¹⁹ It was only with the tainted election of the Bush II administration that a second Gulf War was put on the agenda.

One might insist, though, that it is not possible to foresee whether an initially modest deployment of force will do the job and not require escalation. The increase of U.S. forces in Vietnam from a handful of advisors to half a million personnel testifies to the difficulties of determining such matters. However, there was a time well before the troop escalation reached into the hundreds of thousands when it was reason-

18. Iris Young, "Violence against Power: Critical Thoughts on Military Intervention," in *Ethics and Foreign Intervention*, ed. Deen Chatterjee and Don Scheid (Cambridge: Cambridge University Press, 2003), 251–73, 258.

19. Wheeler, *Saving Strangers*, 150–51. Secretary of State James Baker persuaded the president to create a safe haven, responding to congressional and public pressure on behalf of the Kurds.

ably foreseeable that the U.S. government could not achieve its goal of stabilizing and normalizing the South Vietnamese regime. This is one of the reasons why the continued prosecution of the war was so seriously culpable.

It should also be noted that in many cases the parties that need to be stopped are nothing like the Vietnamese, who were extraordinarily tenacious and disciplined fighters seeking to rid their country of foreign domination. Many of the worst human-rights abusers in recent years have been undisciplined forces mainly interested in what they can gain personally by joining in the atrocities. When confronted with substantial firepower, such abusers are not likely to put up the kind of resistance that would lead to an escalating cycle of violence. For instance, whatever else might have been said against armed intervention in Darfur, once the specter of genocide became apparent, one could not have plausibly invoked the possibility that the responsible parties in the Sudanese military and their Janjaweed accomplices would put up resistance so fierce and determined that full-scale, Vietnam-type war would have resulted. They simply did not have that much at stake in pursuing the genocide.

If our analysis is right, then neither of the two standard defenses of the consensus is sound. More positively, though, the problems we have examined point toward a more adequate normative account of armed intervention. Corresponding to the two main arguments on behalf of the consensus, this account would be two-pronged. First, such an account would have an “illegitimacy threshold”: armed intervention is permissible only if the target state lacks legitimacy because it fails to adequately protect human rights. If the target state does an adequate job of protecting individual rights, then intervention is ruled out as a matter of principle based upon the state’s right to self-determination, and the potential benefits to be gained from armed intervention should be disregarded as beside the point. If the target state is illegitimate, on the other hand, then one must consider a second condition which involves a proportionality principle: subject to certain conditions, an armed intervention is permissible if the risk to the safety and security of noncombatants is not disproportionate to the rights violations that one can reasonably expect to avert.²⁰ The conditions include the standard *jus in bello* requirements of just war theory—last resort, no targeting of noncombatants, reasonable chance of suc-

20. David Luban argued that “any proportional struggle for socially basic human rights is justified” in “Just War and Human Rights,” *Philosophy & Public Affairs* 9 (1980): 160–81, 179. We agree with Luban, with the important proviso that the proportionality principle applies only to intervention into illegitimate states.

cess, undertaken with the aim of correcting the injustice—as well as the illegitimacy threshold.²¹

Our suggestion, then, is that the consensus view fails to provide a sound moral principle for judging the acceptability of armed interventions and should be replaced with the position that intervention is permissible in case (1) the target state is illegitimate and (2) the risk to the safety and security of noncombatants is not disproportionate to the rights violations that one can reasonably expect to avert. Assuming that an intervention is appropriately targeted at combatants and military targets and that the only reasonable chance for successfully preventing (or stopping) human-rights abuses within the target state is through armed intervention, we should conclude that the intervention is permissible as long as it meets the above two conditions. At least, such a conclusion is where the criticisms of the consensus view lead. In the next section, we buttress our two-pronged account by considering wars of political independence.

III. WARS OF INDEPENDENCE

One of the most important aspects of world history in the twentieth century was the decolonization movement. In particular, many indige-

21. A word of clarification is in order regarding the relation of our account to the doctrine of double effect as it appears in theories of just war. Traditional versions of the doctrine combine (1) an absolute deontological prohibition on the intentional killing of noncombatants and (2) a permission for the foreseeable but unintentional killing of noncombatants, provided that the use of force meets the other conditions for a just war. We accept at least provisionally the idea of a deontological constraint against the intentional killing of noncombatants, and we endorse the norm that permits the foreseeable but unintentional killing of noncombatants. However, it seems to us that the deontological constraint should be not be understood as an absolute prohibition but rather as barring the intentional killing of noncombatants unless some extremely high threshold level of bad consequences is met and the intentional killing of noncombatants is the only way to avert those consequences. Below the “deontological threshold,” there is no weighing of the consequences to see how many intentional killings of noncombatants are permissible: any such killings are impermissible. But it is still permissible to impose some risk of death on noncombatants by military actions that do not intentionally kill them. Our proportionality principle operates as a constraint on the level of risk from foreseeable but unintentional killing to which any noncombatant may be subjected. Above the threshold, intentional killing is permitted but only to the extent necessary to avert the terrible consequences that would otherwise ensue. Additionally, the proportionality principle continues to apply to those noncombatants whose intentional killing is not necessary to avert the consequences in question. Even if we are wrong that a threshold deontology is more plausible than an absolutist one, our two-pronged approach to humanitarian intervention would not be undermined. Any use of military force would simply be assessed on the premise that the situation was below the threshold. More complicated emendations to our approach would be required if philosophers such as Frances Kamm, who reject the double-effect doctrine, are right. But our approach would not thereby be defeated. See Kamm, “Failures of Just War Theory: Terror, Harm and Justice,” *Ethics* 114 (2004): 650–92.

nous groups fought with the force of arms for their political independence from their colonial oppressors. In this section, we argue that our two-pronged account is superior to the consensus view in addressing questions about armed intervention in the context of such struggles.

Suppose that sometime in the past an imperialist state, Imperium, forcibly took control of a territory on which a certain group, Colonized, lived. The Colonized had constituted a legitimate state before Imperium conquered their land and made them into one of its colonies. Decades passed. Imperium treated Colonized in a way typical of imperial states: it systematically and harshly exploited the labor and resources of Colonized, and it deployed violence to squelch any aspirations the Colonized may have had of regaining their independence. But as imperial states go, Imperium was far from the worst, and no supreme humanitarian emergency existed among the Colonized. Still, as things now stand, the vast majority of the members of Colonized fervently desire to expel Imperium and reestablish a politically independent state. They are willing and able to create and maintain a legitimate state. Do they have a right to use armed force against Imperium?

We think that the Colonized are morally permitted to use proportional and appropriately targeted armed force against Imperium, on the condition that there is a reasonable prospect of success and no reasonable prospect for a peaceful route to political independence. The reason why the Colonized have such a right is succinctly stated by Jeff McMahan: "Successful aggressors remain liable to attack as long as they retain the spoils of their wrongful aggression."²² Imperium's initial conquest of the Colonized was a morally culpable act of aggression because it violated the latter's right of political self-determination. Most thinkers would agree that the Colonized had a right of self-defense against such aggression.²³ The point of self-defense in this context is to vindicate the group's right of self-determination. Having tried but failed to fight off Imperium, the Colonized do not thereby lose their right of self-determination, nor do the agents of Imperium who are enforcing its domination of the Colonized become immune from attack.

Suppose, then, that the Colonized revolt against Imperium's rule, starting a war of independence. Imperium is a daunting foe and so the Colonized ask for help. Can an outside state, Helper, permissibly use armed force against Imperium in intervening on the side of the Colonized? Our answer is "Yes." Imperium's rule over Colonized is illegitimate, and so Imperium has no right against Helper's intervention on

22. Jeff McMahan, "Just Cause for War," *Ethics and International Affairs* 18 (2005): 1–21, 12.

23. David Rodin takes the nonconformist view that states have no right of self-defense. See David Rodin, *War and Self-Defense* (Oxford: Oxford University Press, 2002).

behalf of Colonized. Thus, the first prong of our two-pronged test for permissible intervention is met. The second prong requires that the risk to the safety and security of noncombatants that arises from Helper's intervention not be disproportionate to the rights violations that the intervention helps avert. There is no reason to suppose that in wars of political independence this second condition cannot be met, and if it is in Helper's case, then the two-pronged account entails that intervention is permissible even if there is no supreme humanitarian emergency among Colonized.

In order to help confirm the two-pronged analysis of wars of independence, consider a hypothetical case involving individuals. Imagine that Jack invades Jim's home and keeps him prisoner there. Jim's life is not endangered, but Jack keeps him confined to the basement without means of communication to the outside world and subjects Jim to physical beatings. The police have been bribed by Jack or are otherwise not in position to intervene. But Jim is finally able to get a cell phone and send a text message to Jill. Jill comes to Jim's aid, finds it necessary to fight off Jack, and with the help of Jim, succeeds in overpowering Jack, who goes down fighting to his death. Jill and Jim acted permissibly in attacking and killing Jack. Jack not only lacked a right against Jill's intervention on behalf of Jim, his aggression had rendered him liable to attack by Jim and Jill. Morally, the situation among Imperium, Colonized, and Helper is analogous. Imperium's aggression meant that it had no right against Helper's intervention on behalf of Colonized and rendered it liable to attack by Colonized and Helper.

One might reply that the consensus view can be adjusted to incorporate an exception to the supreme-emergency threshold that would permit armed intervention in cases of wars of independence. However, such an exception appears inconsistent with the second of the two arguments made in favor of the consensus. If, *arguendo*, the violence of war and the casualties it brings are morally so bad that armed intervention is permissible only if needed to bring an end to a situation so egregious that it counts as a supreme humanitarian emergency, then Helper's armed intervention against Imperium is not permissible. But that is an implausible conclusion.

Walzer defends the consensus, relying mainly on the first of the two arguments standardly presented for it, the argument from the high value of political self-determination. At first glance, his treatment of wars of independence appears to support our judgment that Helper's aid to Colonized is permissible, while still recognizing a very strong presumption against intervention. He distinguishes between cases in which a people is struggling to throw off the yoke of a tyrant from cases in which "a particular set of boundaries clearly contains two or more political communities, one of which is already engaged in a large-scale

military struggle for independence.”²⁴ Walzer’s central contention is that military assistance to a tyrannized people (a case of the first kind) is impermissible intervention but that nothing is automatically wrong with assistance to a political community engaged in a military struggle for its independence from another community (a case of the second kind). Invoking the ideas of John Stuart Mill, he writes, “Self-determination . . . is the right of people ‘to become free by their own efforts’ if they can, and nonintervention is the principle guaranteeing that their success will not be impeded or their failure prevented by the intrusions of an alien power.” Walzer endorses Mill’s “stern doctrine of self-help,” according to which “people who have had the ‘misfortune’ to be ruled by a tyrannical government” must become free without outside assistance.²⁵ In contrast, if there are two distinct societies occupying the same territory, with one of them fighting for independence from the other, then, on Walzer’s view, it is permissible for outside forces to aid the society seeking political independence. The hypothetical case of Colonized would appear to be quite analogous to cases of this latter sort, and so external armed support for Colonized would be permitted. At the same time, Mill’s stern doctrine helps to ensure that intervention is permissible only in the most exceptional of circumstances.

Walzer’s position seems to us to be problematic. There is no intrinsically significant moral difference between a people who want to rule themselves but are oppressed by a tyrant and a people who want to rule themselves but are oppressed by the agents of another political community.²⁶ Walzer’s view is to preach the stern doctrine of self-help to the people in the former case but to allow external help to people in the latter case. The high value that he places on political self-determination does not dissolve the difficulty. The suffocation of self-determination by a local tyrant rather than by an external state is still an affront to a people’s right of self-determination. Their right to become free by their own efforts is a claim-right against anyone coercively interfering in their efforts to create a legitimate state. Walzer would reduce the claim-right to a mere liberty in relation to some local thug, although it would still be a claim-right against another people. But, if political self-determination is very valuable, as Walzer insists, it is difficult to see the moral logic in such a view.

Walzer might presume that in a society oppressed by a local tyrant the people themselves need to build the political institutions essential for realizing their self-determination and so might conclude that such

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

25. *Ibid.*, 87–88.

26. Compare Luban, “Just War and Human Rights,” 179; and Charles Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1979).

institutions can only be created through an internal struggle that does not rely on outside intervention. By contrast, he might say, in the case of a society where there has already been external intervention in the form of conquest by an imperial power, counterintervention to rid the society of that power is justifiable in order to permit the society to return to the status quo ante when it was able to exercise its own powers of self-determination.

In response, we do not question that there is considerable empirical truth in the Millian-Walzerian idea that a people learn much about building and sustaining suitable political institutions through its own struggle against a local tyrant. However, it is unclear to us that an exclusively internal struggle is the only way to build and sustain suitable institutions when a society is controlled by a local despot or that external assistance and internal struggle are mutually exclusive. It seems sensible to think that there is a right way and a wrong way for an external power to assist a society seeking to throw off the yoke of a local tyrant, just as there is a right and a wrong way for an external power to assist a society seeking to throw off the yoke of an imperial power. In both sorts of cases, justifiable forms of intervention must take careful account of the existing capacity of a society to build—or rebuild—legitimate political institutions. Accordingly, there does not seem to be any difference of principle between intervention to help a colonized society and intervention to help a society oppressed by a local tyrant.

IV. THE CONSENT OF THE RESCUED

Although the issue addressed in this section has not received as much attention in the literature as questions concerning how severe human-rights violations must be for intervention to be permissible, those thinkers who have addressed it generally agree that an intervention is not morally permissible unless the intended beneficiaries consent to their rescue. Agreement on this point is independent of whether a thinker also accepts the requirement of a supreme humanitarian emergency. Fernando Tesón contends that “the victims must welcome the intervention.”²⁷ Jeff McMahan essentially concurs, writing that intervention “must either be requested, or there must be at least compelling evidence that the intended beneficiaries would welcome rather than oppose intervention by the particular intervening agent or agents.”²⁸ And Richard Miller writes, “Outsiders ought to have warranted confidence that the

27. Fernando Tesón, *Humanitarian Intervention*, 3rd ed. (Ardsley, NY: Transnational, 2005), 160. Tesón makes an exception for “those extreme situations [in which individuals] have lost their autonomy” (160). Tesón is a critic of the consensus requirement of a supreme humanitarian emergency.

28. McMahan, “Just Cause for War,” 13.

vast majority of the intended beneficiaries of the intervention consent to the risks on the basis of adequate information.”²⁹

As a matter of strategy, it unquestionably helps if the intervention is welcomed. As the war in Iraq illustrates, it is not only important that the intended beneficiaries desire outside help, it can also be strategically crucial that they want it from the particular party intervening. But those who insist that outsiders should obtain the consent of the beneficiaries are invoking a moral principle, not merely making a point about military strategy. The claim being advanced is that, even if the outsiders have impeccable intentions, as a matter of principle it would be wrong for them to forcibly meddle in another country’s affairs unless they had good reason to believe that at least a majority of the intended beneficiaries would consent to this intervention. Although this claim may appear so obvious as to require no comment, there are serious reasons to doubt its validity.

According to the illegitimacy and proportionality conditions that we outlined above, in order for an armed intervention to be permissible (1) there must be sufficiently severe violations of human rights and (2) the prospects of the intervention’s success must be sufficiently good to justify the risks involved.³⁰ What theorists such as McMahan, Miller, and Tesón essentially propose is that a third requirement be added: (3) a majority (perhaps a supermajority) of the intended beneficiaries must consent to the intervention. But note that if one requires, beyond the first two conditions, that a majority of the victims welcomes the intervention, then one thereby empowers the group’s majority—whenever they so choose—to force the minority to remain in a position where their human rights are vulnerable to violation. It seems dubious to hold that a group has this type of normative dominion over its members.

To put this last point in more concrete terms, no one would claim that a majority is entitled to democratically vote to enslave a portion of the population. And if a group’s majority is not entitled to enslave a minority, then it is unclear why the majority in an oppressed group would have the moral standing to block the only effective means the group has of avoiding grave oppression. Imagine, for instance, that the American Confederacy had successfully seceded and continued its legal institution of slavery. Suppose further that the independent North was contemplating armed intervention in order to eradicate slavery and that such intervention would be the only way to abolish slavery. According

29. Richard Miller, “Respectable Oppressors, Hypocritical Liberators: Morality, Intervention, and Reality,” in Chatterjee and Scheid, eds., *Ethics and Foreign Intervention*, 224.

30. We are assuming that the intervention meets a “last resort” condition, so that there would be little likelihood of the rights violations ceasing in the absence of an intervention.

to the logic of requirement 3, this intervention would have been permissible only if a majority of the slaves welcomed the North's intervention. But it seems problematic to say that the majority in the Confederacy is not at liberty to employ a wicked institution like slavery while also maintaining that a majority of slaves is morally permitted to deny the minority its only reasonable chance to escape their slavery.

This point about the limits of the normative power of the majority can be illustrated with a more homespun example. Imagine that your alcoholic neighbor is wielding a pistol and mercilessly beating his five children (all of whom are at least eighteen years old). Just before you burst in to stop the abuse, however, you notice that three of the children are clearly imploring you to stay away, while the other two are equally obviously begging you to help. Are you required to defer to the wishes of the majority in this case, or does the severity of the abuse justify your barging in against the will of the majority of the victims? In our view, the samaritan rescue is unquestionably permissible, as long as the prospects for success are sufficiently good. And notice: our key point here is not that the preferences of the minority are important; it is that human-rights violations are sufficiently important to trump the preferences of the majority. Thus, while there are morally relevant differences between a majority voting to enslave a minority and a majority of slaves voting to reject armed intervention, it does seem that in both cases a proper regard for the individual rights of members places constraints on the scope of a group's right to self-determination.

If this is right, then in all cases in which our two conditions necessary for armed intervention to be permissible are satisfied, there is no normative room left for a group to be self-determining. Along these lines, notice that if the intervention were too risky, then the intended beneficiaries would be entitled to reject it, but the group's self-determination would do no moral work here because the intervention would have already been ruled impermissible for having failed to satisfy the second condition (the prospects of the intervention's success must be sufficiently good to justify the risks involved). Similarly, the victims might be entitled to reject an armed intervention if the abuse to which they were subjected was not sufficiently grave, but the group's decision is normatively impotent here as well because the intervention would in this case be prohibited for failing to satisfy the first condition (there must be sufficiently severe violations of basic human rights).

We do not deny that, if a majority of intended beneficiaries do not welcome an intervention, then that fact is potentially relevant to a well-grounded decision about whether an intervention is permissible. But its relevance is indirect and epistemic: it would normally provide reason to think that the risks of a military intervention are unreasonably great. After all, the intended beneficiaries are on the ground and possess an

intimate knowledge of local conditions. They are in good position to make a judgment about the risks, and, if a majority oppose intervention, it is likely due, in part, to their judgment that the risks of intervention are unreasonably high. But notice that the majority's judgment is not a criterion of permissible intervention; rather, it is evidence of whether a key criterion—the proportionality principle—is met. And the majority's judgment in this regard can be mistaken: the minority who favor intervention might be correct in thinking that the risks are not excessive.

We can conclude this discussion by putting the preceding points in terms of our imaginary example of an independent North contemplating armed intervention to rescue the oppressed blacks in the newly sovereign Confederacy. If the blacks were enslaved, and if the North could effectively eliminate the institution of slavery without imposing unreasonable risks upon those who were enslaved, then even the preference of the majority of slaves not to be rescued would not render the North's invasion impermissible, because the human right not to be enslaved entails that the slaves as a group do not have the collective right to reject a military operation to free all of them. If the North's proposed invasion were to impose unacceptable risks upon the slaves, on the other hand, then the intervention would be impermissible. But in that case the intervention would be straightforwardly prohibited by the second condition in our two-pronged account. No moral work would remain to be done by the consent requirement. Accordingly, we conclude that the proposed consent requirement should be rejected and that considerations related to group consent provide no reason to supplement our two-pronged account of armed intervention.

V. INTERNATIONAL LAW

Thus far, we have been concerned with the question, "What are the moral principles that apply to armed interventions by states seeking to prevent or stop human-rights abuses in other states?" A related but distinct question asks, "What should the rules of international law be for regulating armed intervention?"³¹ It is altogether possible that the legal rules that ought to exist for regulating interventions would be quite different from the moral principles, since sound principles of morality may need to be simplified or modified in other ways as they

31. Existing international law permits the cross-border use of force by states only for purposes of self-defense or when authorized by the UN Security Council as necessary to maintain international peace and security. There is considerable debate whether international law now incorporates an additional exception to the general ban on the cross-border use of force and permits such force to be employed to avert humanitarian catastrophes. The weight of opinion among international lawyers is that, at present, such an exception is not part of international law. See Ryan Goodman, "Humanitarian Intervention and Pretexts for War," *American Journal of International Law* 100 (2006): 107–41, 111–12.

are translated into legal rules for regulating international actors. With this in mind, let us now consider what the international law should say about armed humanitarian intervention.

The arguments offered to this point create a certain kind of presumptive case for incorporating the two-pronged approach into international law. In particular, the arguments provide a good (but certainly defeasible) reason for doing so, namely, that the two norms embodied in the approach reflect a more adequate account than its chief competitor of what moral demands and permissions flow from the requirement to respect human rights. This reason is *a priori* in the sense that the arguments establishing it abstract from all empirical considerations regarding how institutions in fact operate. The abstraction isolates one kind of good practical reason. Thus, if one knew nothing else but that moral principles permit intervention in cases of type A, B, and C, and one had to decide whether to have a rule of international law that permitted intervention in those sorts of cases, then one would have a reason to choose such a rule.

This presumptive case for having legal rules that directly reflect the two-pronged approach is, however, potentially vulnerable to a number of counterarguments. Persons sympathetic to the consensus view might mount some of these counterarguments in order to show that, even if their view does not capture the “deep morality” of humanitarian intervention, it does capture what the legal rules regarding intervention should be.³² Such counterarguments suggest that it would be better for international law to require a supreme humanitarian emergency as a condition of permissible intervention than for it to incorporate our two principles of legitimacy and proportionality.

First, consider the potential for abuse if our relatively permissive approach were translated into international law. The last century alone was littered with cases of aggressive wars waged under the banner of humanitarian intervention. Indeed, even when Nazi Germany invaded Poland in 1939, Hitler alleged that he was merely acting to protect the rights of the minority Germans in Poland. And given the lamentable tendency of leaders to publicly justify their aggression as selfless rescues, it would seem to be a mistake to translate directly into law an approach as permissive as our two-pronged one. After all, bellicose leaders and states might well become more emboldened if they needed only to allege that their armed incursions are against an illegitimate state and likely to have a net positive effect in terms of human rights.

Second, beyond worries about malicious leaders abusing the rules,

32. We borrow the term ‘deep morality’ from Jeff McMahan, who distinguishes the “deep morality of war” from the rules of a justifiable law of war. “The Ethics of Killing in War,” *Ethics* 114 (2004): 693–733, 730.

there are important concerns about the extent to which conscientious leaders might misuse them, and, here again, it seems that our two principles of legitimacy and proportionality would be excessively permissive as legal norms. Thus, consider our proportionality principle: subject to certain conditions, an armed intervention is permissible if the risk to rights is not disproportionate to the human-rights violations that one can reasonably expect to avert. Even if one agrees with us that this is a sound principle for the direct moral evaluation of cases of intervention, it seems much less likely to be correctly understood and consistently applied than the requirement of a supreme humanitarian emergency. The reason is that the supreme emergency requirement has only one fuzzy borderline, namely, the line between that which does and that which does not count as such an emergency, and all one needs to ask is whether the proposed intervention is above or below that borderline. Significantly, it is irrelevant how far above or below the intervention is. The proportionality principle, on the other hand, has a potentially infinite set of borderlines. And for any given case, one must answer the difficult question of whether the level of risk imposed is out of line with the expected human-rights gain. Accordingly, transposing the principle directly into international law would risk creating situations in which well-intentioned but misguided leaders embarked on tragically counterproductive missions to help foreigners.

The foregoing arguments based on the potential for abuse and misuse present substantial considerations against directly incorporating our principles of legitimacy and proportionality into international law. Nonetheless, they do not amount to a decisive case in favor of putting the consensus standard of a supreme emergency into the law. First, note that the considerations argue at least as strongly in favor of an absolute legal prohibition on humanitarian intervention as they do for a rule that permits interventions only in cases of a supreme humanitarian emergency. An absolute ban would seem to be less vague than a supreme-emergency rule and, to that extent, less prone to abuse or misuse. Thus, Simon Chesterman argues in favor of an absolute ban, claiming that any departure from “the cardinal principle of the prohibition of the use of force to intervene” would seem “likely to increase the number of interventions taken in bad faith.”³³ And Nico Krisch, who is also sympathetic to an absolute ban, highlights the fact that “the history of humanitarian interventions is one of abuse.”³⁴ Moreover, one could add that, in contrast to an absolute ban, a supreme emergency standard

33. Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (New York: Oxford University Press, 2001), 231.

34. Nico Krisch, “Review Essay: Legality, Morality, and the Dilemma of Humanitarian Intervention after Kosovo,” *European Journal of International Law* 13 (2002): 323–36, 323.

introduces the likelihood of well-intentioned but “mistaken” interventions, that is, interventions that rest on the mistaken belief that the conditions in question constitute a supreme humanitarian emergency. Accordingly, a concern with abuse and misuse might well lead one to agree with Krisch that “the establishment of an institutional system to preserve peace and to delimit the rights of its subjects (even if still deficient) outweighs that need for a right to humanitarian intervention, even on moral grounds.”³⁵

Advocates of incorporating the consensus standard of a supreme emergency into international law could respond by pointing to some gaps in the absolutist arguments. First, even conceding an increased risk of abuse and misuse by legally allowing some interventions, it is still possible that such an increased risk would be more than outweighed by an even greater increase in rights protected or rights violations averted. What is more, it is plausible to think that some governments would be deterred from permitting massive atrocities within their jurisdiction by the possibility of a legally authorized intervention and that there would be more overall deterrence by a system of international law that authorized interventions than in one that absolutely prohibited them. Third, world leaders have been increasingly mindful of international legal rules as international criminal law continues to emerge. In the past, leaders had lamentably little personal incentive to refrain from committing legally prohibited acts of aggression. As more and more rulers are subjected to international criminal prosecution and punishment, however, it is not unreasonable to expect future leaders to be ever more attentive to, and respectful of, the international laws regarding humanitarian intervention.

The foregoing replies to the absolutist position are, we think, sufficient to show that the absolutist has considerably more work to do before the case against legalizing humanitarian intervention can be clinched. But they reveal that the case for putting the consensus standard into the law is also far from decisive. The responses involve empirical suppositions that are, in the present state of knowledge, no better than partially informed guesses. It might not be unreasonable to speculate that legalizing intervention will deter some leaders from pursuing policies that involve widespread human-rights violations. But it *is* speculation. And one could equally speculate that any such deterrence will be insignificant or, at least, insufficiently robust to counterbalance the abuse and misuse. Moreover, the replies to the absolutist position do not by themselves argue for a supreme-emergency standard over the two principles that we have proposed. After all, one could also speculate that human rights would be better served, overall, by our two principles

35. *Ibid.*, sec. 6.

than by the consensus standard. We are not prepared to say that such speculation should dictate decisions about international law, but the same seems true regarding the speculation that would support the absolutist or the consensus positions.³⁶

Further reinforcing our agnosticism regarding international law is the complex interplay between the question of what the legal rules of intervention should be and the issue of which institution should have the authority to license interventions. The answer to the former question is a function, in part, of what institutional capacity exists, or could be created, to operate as the authority. In this respect, we follow Allen Buchanan, who has argued, in the context of just war theory, “Not just alternative norms but also alternative combinations of norms and institutions need to be evaluated.”³⁷ For example, existing international institutions might be bad candidates to apply our proportionality principle because they are driven too much by national geopolitical interests. Yet, it could be the case that newly created institutions would have the capacity to apply the principle in a reasonable and evenhanded manner. As Buchanan writes of norms governing the use of force in international affairs, “Where appropriate institutions are present, a more permissive norm may be valid than would be the case if these institutions did not exist.”³⁸ The issue of what institutional alternatives exist to the present international arrangements, and how they would use different norms for humanitarian intervention, is a difficult, empirically laden question that needs considerably more attention before anyone can reasonably consider it to be adequately resolved.

Some might object that acquiescence in the current state of the law is a consequence of our agnosticism about what the law of humanitarian intervention should be. Such institutional conservatism might seem, at best, a cop-out and, at worst, an unacceptable implication of our view. However, even if it is true that such conservatism is implied by our view, we reject the idea that acquiescence in the current state of the law is objectionable. If the law were not simply morally subpar but rather were morally intolerable, then agnosticism would indeed be untenable. But if the law were intolerable, then there would be normative arguments, with adequately supported empirical premises, showing that the law is so. Yet, even the most charitable understanding of the current

36. A very rare systematic empirical analysis of one aspect of the international law issue can be found in Goodman, “Humanitarian Intervention and Pretexts for War.” Analyzing data from the Correlates of War data set, Goodman comes to the conclusion that legalizing unilateral humanitarian intervention would not lead to problems of abuse and, in fact, would decrease the number of wars undertaken on pretextual grounds.

37. Allen Buchanan, “Institutionalizing the Just War,” *Philosophy & Public Affairs* 34 (2006): 2–38, 3.

38. *Ibid.*, 6.

arguments about the law of humanitarian intervention would be hard pressed to represent any of them as showing that the existing law was intolerable.

One other point regarding our agnosticism is in order. Although we have not taken a stand on empirical questions necessary to resolving the question of what legal rules should govern humanitarian intervention, we have made normative arguments that bear importantly on that question. In particular, we have argued that there is a presumptive case, albeit a highly abstract one, that the legal rules should incorporate our two principles of legitimacy and proportionality. Additionally, we have argued that those two principles capture the deep morality of intervention. And if we are correct on the score of deep morality, then the rules of international law should be fashioned to yield the optimum balance between discouraging impermissible and encouraging permissible interventions, where permissibility and impermissibility are determined by the two principles. It is true that this point does not resolve the issue of international law. However, the two principles do provide a normative framework that can orient and guide discussion and debate over the empirical dimensions of the issue, a framework superior to that of the consensus account of the deep morality of intervention. It would be quite heartening if someone could assert with justified confidence that a particular regime of legal rules strikes the optimum balance. But our agnostic claim that no one can yet make such an assertion does not leave thinkers groping around in the dark, because it is conjoined with a set of guiding normative principles.

VI. ASSASSINATION

Armed interventions have a substantial likelihood of imposing disproportionate risks upon individuals, even when there are severe rights violations within a possible target state. Yet, nonviolent strategies will often be insufficient to stop such violations. Accordingly, given our proportionality principle, it makes sense to explore a way of deploying violence that has the potential to impose a lower degree of risk on nonculpable individuals than does armed intervention. With this in mind, we turn to the question of whether it would ever be morally permissible to assassinate a political leader in order to prevent or stop severe human-rights abuses.

While a consensus is developing that armed intervention across international borders is sometimes morally permissible, the same cannot be said when it comes to the assassination of state leaders.³⁹ It may be

39. There is no authoritative definition of assassination. We will follow the one offered by Franklin L. Ford: "the intentional killing of a specified victim or group of victims perpetrated for reasons related to his (her, their) public prominence and undertaken

true that, at least since the 9/11 attacks, considerable support has developed for the assassination of the leaders of nonstate organizations that perpetrate terrorist actions.⁴⁰ Much of this support is undoubtedly due to the idea that such organizations are at war with liberal democracies. In contrast, when it comes to the peacetime assassination of the leaders of internationally recognized states, the general view seems to be much the same as that expressed in 1975 by the “Church Committee” of the U.S. Senate: “We condemn the use of assassination as a tool of foreign policy. Aside from pragmatic arguments against the use of assassination . . . we find that assassination violates moral precepts fundamental to our way of life.”⁴¹ Indeed, even when a ruler is responsible for moral atrocities within his own state, there is little, if any, support for the idea that he is a morally permissible target of assassination.⁴²

However, once one agrees that armed intervention is sometimes permissible, it becomes very difficult to argue consistently that assassination is always morally impermissible. Consider the fact that an armed intervention on the scale of a war will pose a grave danger to the life and limb of many thousands of persons who have little or no responsibility for the massive rights violations that the intervention is meant to halt. Even minimal forms of military intervention, such as no-fly zones, have the potential to kill or maim scores of persons who are, at worst, small cogs in the machinery of an illegitimate state. In contrast, assassination largely avoids collateral risk to substantial numbers of persons.⁴³ Thomas More long ago referred to this potential moral advantage of assassination. His Utopians rewarded the assassination of enemy kings. Although the encouragement of such killing may have seemed “like the cruel villainy of an ignoble mind,” the Utopians regarded themselves as “humane and merciful, because by the death of a few bad men they spare the lives of many innocent men who would otherwise die in

with a political purpose in view.” *Political Murder: From Tyrannicide to Terrorism* (Cambridge, MA: Harvard University Press, 1985), 2. Our concern in this article is with the peacetime assassination of the leaders of states.

40. See Ward Thomas, “The New Age of Assassination,” *SAIS Review* 25 (2005): 27–39, 29. Thomas cogently argues that “considerable evidence suggests that the norm [against assassination] has been losing strength in recent decades.”

41. “Alleged Assassination Plots Involving Foreign Leaders,” Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, November 20, 1975, 94th Congress, 1st Session, Report no. 94-465.

42. In this context, a ruler is “responsible” if he is perpetrating the atrocities or is capable of stopping them but chooses not to do so.

43. There *is* risk to persons other than the target of an assassination. Recall that John Connally was wounded during the assassination of President Kennedy. But the range of persons upon whom a serious risk is imposed is typically far less in an assassination attempt than during an armed intervention.

battle.”⁴⁴ From this sort of moral perspective, it appears at least *prima facie* paradoxical to adopt the position defended by Tesón when he argued (prior to invasion of Iraq) that armed intervention to overthrow Saddam Hussein was justifiable but the assassination of Hussein was morally impermissible.⁴⁵

The case for the permissibility of assassination can be bolstered by considering an analogy. The leader of an illegitimate regime perpetrating human-rights atrocities is morally analogous to an individual who has tied up another person and is proceeding to beat that person to death. If the only way for the person to be rescued is for a bystander to employ deadly force against the perpetrator, then the bystander does not violate any of the perpetrator’s moral rights in killing her. The perpetrator’s own actions have rendered her morally liable to be killed. Analogously, a political leader whose regime is perpetrating human-rights atrocities has made himself morally liable to be killed if such killing is necessary to stop the atrocities. There are, of course, many more victims in the case of a political leader than in that of a domestic criminal, but this fact only seems to make it even more apparent that political assassination is permissible when necessary to rescue a population from sufficiently severe human-rights abuses.

One might seek to distinguish assassination from armed intervention by arguing that assassination amounts to taking someone’s life without due process of law. Thus, in reference to the prewar situation in Iraq, Tesón argues, “assassination is banned, not because the punishment is necessarily inappropriate in light of Hussein’s crimes but rather because the agents of liberal democracy must conduct themselves in a way that honors the civic virtues for which they stand. Criminal punishment can only be imposed through the mechanisms allowed by liberal society.”⁴⁶ Indeed, Tesón should go further and point out that due process is itself a fundamental human right that is possessed even by a brutal ruler.

The flaw in Tesón’s reasoning rests on his assumption that assassination is necessarily a form of punishment, when, in fact, assassination can be an action that—similar to armed intervention—is aimed at rescuing persons from the human-rights abuses of an illegitimate regime rather than inflicting a punishment on the targeted leader. To emphasize: just as when one shoots a kidnapper (and unlike punishment), the

44. Thomas More, *Utopia* (New York: Appleton-Century-Crofts, 1949), 65. The Utopian policy of encouraging assassinations was, to be sure, designed as an instrument of war whose aim was to make a quick end to the hostilities.

45. Fernando Tesón, *A Philosophy of International Law* (Boulder, CO: Westview, 1998), 64–65.

46. *Ibid.*, 65.

point of assassination can be to rescue the victims, not to harm the oppressor. What is more, notice that the police do not violate the kidnapper's due process rights if they shoot her when she refuses to surrender and continues to torture her victim. The kidnapper's due process rights would be violated only if she were killed after she is taken into custody or is otherwise rendered nonthreatening. The same would be true of a tyrant responsible for massive atrocities that can be stopped only if he is no longer in power. If the ruler refuses to step down or change his policies, then assassinating him does not violate his due process rights.⁴⁷

One might press the argument against assassination, however, by pointing out that there is an important disanalogy between the kidnapper case and the case of a political leader. In the former, there is an official authority—the police force—that is licensed to “shoot to kill” under the appropriate conditions. In the latter case, however, there is no such authority. And it would be a very bad world if just anybody with access to a handgun felt licensed to assassinate those leaders they judged to be responsible for the most egregious rights violations.

In reply, we agree that the issue of authority is crucial and that there is currently no legal or political agency with the authority under law to kill corrupt rulers. However, it is unclear that no one could permissibly assassinate a ruler responsible for atrocities in the absence of such an agency. Surely, it would have been permissible for someone to have assassinated Stalin in the 1930s.⁴⁸ It seems, then, that political assassination is, in principle at least, a morally permissible means of stopping or halting human-rights abuses. Roughly, an assassination would be permissible if (1a) the target had rendered himself morally liable to being killed and (2) the risk to human rights is not disproportionate to the rights violations that one can reasonably expect to avert. Condition 1a is the analog of the armed intervention condition concerning the illegitimacy of the target state. Just as illegitimacy means that the target state lacks a right against intervention, the moral liability condition means that the targeted ruler has no right against being killed.⁴⁹ Condition 2 is the same as in the case of armed intervention

47. James Rachels recognizes this point about assassination not being punishment (and thus not being a violation of due process rights) in his essay, “Political Assassination,” in *Assassination*, ed. Harold Zellner (Cambridge: Schenkman, 1974), 9–21, 18.

48. Hitler was certainly eligible for assassination after September 1939, but our discussion concerns peacetime assassinations. He might also have been eligible before then, but it would be a complicated task to determine just when.

49. Notice that, according to our account, a ruler who lacks the right against being killed is not necessarily morally guilty or deserving of death. The permissibility of an assassination rests on the moral urgency of the situation and not on the need to punish the ruler.

and is intended here to be responsive to the fact that assassinations can also pose unreasonable risks upon the intended beneficiaries.

Still, even if assassination can be permissible in an institutional vacuum, this last objection points to the desirability of exploring the radical idea of an international institution set up to issue and carry out credible threats against dictators in extreme cases. Such an institution would be authorized to say to political leaders whose regimes are responsible for human-rights atrocities comparable to those of Stalin, Hitler, Pol Pot, or Idi Amin: "Unless you satisfy the following conditions (which would presumably include stepping down from power), we will deploy an assassination squad against you."

Clearly there would be difficult questions to address in designing such an institution: How would its members be chosen? Would it operate by majority vote? Would the public be informed that a given ruler is being investigated? Would an authorization to assassinate be made public? Who would carry out an assassination effort? Would the institution operate under UN authority? Would the ruler in question be given the opportunity to defend himself, to appeal a judgment against him, and/or to negotiate a deal? We have no favored answers to such questions. Our only suggestion here is that, whatever kind of institution would be morally good enough for authorizing armed interventions is likely to be morally good enough to issue credible threats against the lives of political leaders responsible for the world's worst human-rights abuses.

One might contend that any institution with the power to threaten leaders with assassination would be subject to intolerable abuse. The institution could, for example, fall under the control of states that employ it for purposes of increasing their power and influence in international affairs or, at least, for reducing the power of their enemies. One should never be cavalier about the potential for abuse, but we do not regard this objection as decisive. In our view, the admittedly ineliminable risks of abuse must be seen in comparison to the two other options: armed intervention and unbridled political leadership. Armed intervention is also subject to abuse, and giving leaders free reign over their constituents virtually guarantees the continued existence of massive human-rights violations by some of the world's most oppressive regimes. In comparison with the moral costs of these alternatives, the risk of abuse would not in itself seem to provide a decisive case against assassination. What is more, no proponent of the consensus view on armed intervention could object on these grounds because, while people have voiced similar concerns about intervention, advocates of the consensus hold that there is some institutional arrangement or other that can acceptably cabin any tendency toward abuse.⁵⁰

50. One might think that assassination is more liable to abuse than armed intervention

As troubling as the risk of abuse, we think, is the problem that even sincere, well-meaning people cannot simply be trusted to make reliable judgments on several essential matters. First, even when a ruler is quite brutal, his place may simply be taken by someone even more brutal. If assassinating Saddam had the consequence that his son, Uday, became ruler, then the rights of Iraqis might have been violated on even a more massive scale. Second, even if the successor is not more brutal, the assassination might have a backlash effect in which the public in the state of the now-dead ruler demands that the rights-violating policies of the slain leader be pursued and even intensified. Suppose that NATO had assassinated Milosevic in order to stop ethnic cleansing in Kosovo. The Serbian public might have become so inflamed by the assassination that it would have been politically impossible for any successor to negotiate a settlement with NATO that would have brought an end to the forced evacuations. Third, the assassination could create a power vacuum within a state, leading to a condition of anarchy or civil war in which rights violations are perpetrated on an even more massive scale than they were under the tyrannical regime. On this point, think of Yugoslavia after Marshall Tito's death. Before he died, people worried that Tito was the glue that held a fragile society together. For a while after his death, many were relieved that conditions did not unravel. Before too long, though, that society was torn apart in a more violent fashion than even the most pessimistic experts expected. Fourth, assassination does not require substantial military resources but, rather, is available to almost anyone who has a firearm. Accordingly, making it legally permissible might encourage disreputable and shadowy persons and organizations to use it, possibly exacerbating the three foregoing problems.

These issues reveal a telling disanalogy between the kidnapper and the tyrant cases. There are obviously difficult questions that must be answered when deliberating whether or not to shoot a kidnapper: Is this force necessary? Am I sufficiently confident that I can disarm the kidnapper without harming the hostages? Yet, the analysis is nothing like that required in the political case, because one does not typically have to worry about how others will react to one's killing the kidnapper. In the political case, on the other hand, it is often extremely difficult to know in advance how all the relevant parties will react to the assassination, and as we have detailed just above, the negative consequences are potentially quite grave. In our view, this concession does much to

both because the former can be carried out in clandestine fashion and because it does not require the politically "expensive" use of large numbers of troops. Surely these are relevant considerations. On the other hand, the relative ease of assassination also brings additional disincentives, since leaders know that there is a much greater chance of retaliatory assassination than retaliatory intervention.

undermine the case for authorized assassination. Assassination is not nearly so precise and simple as it might initially appear. As Franklin Ford concludes at the end of his book examining assassination plots from ancient through modern times, "The history of countless assassinations . . . contains almost none that produced results consonant with the aims of the doer, assuming those aims to have extended at all beyond the miserable taking of a life."⁵¹ And if this is right, then assassination appears unable to deliver as advertised, since very rarely could one be sufficiently confident that it would not impose unreasonable risks upon the intended beneficiaries in the targeted ruler's state. As a consequence, assassination is ultimately revealed not to be such a promising alternative in cases when full-scale armed intervention would not meet the proportionality condition.

Still, it may be premature to abandon the inquiry at this early stage, and we suggest that it makes sense to explore the possibility of a very conservatively designed institution that would authorize assassination only in those cases in which there was an extremely high level of justified confidence that the potential gains from assassination were worth the attendant risks. Without implying that Allen Buchanan would agree with our view of the value of exploring the possibility of such an institution, it seems apt to reiterate his general point about the interplay of institutions and norms governing the use of force: "Where appropriate institutions are present, a more permissive norm may be valid than would be the case if these institutions did not exist."⁵²

But here one might wonder why we remain interested in such an institution, despite the substantial risks involved, when we ourselves admit that it should be used only very sparingly. Our answer to this question stems from our estimation that most of the benefits of such an institution would not principally come in terms of assassinated rulers. This is for two reasons. First, the hope and expectation would be that the threat rather than the (possibly) subsequent assassination is what actually removes rulers from power. Because the chief goal is not to harm the rulers but to rescue those currently suffering from their evil or incompetent leadership, the aim would be merely to remove the leader from office. Accordingly, if an investigation concluded that a certain ruler was "eligible" for assassination, there would first be a warning and an opportunity to leave power. If the warning poses a credible threat, then it seems reasonable to hope that it will motivate leaders to step down before the threat is acted on. Second, such an institution has the po-

51. Ford, *Political Murders*, 387. It is worth noting that no assassinations to date have been authorized by an international agency designed to review political leaders with a view to liberating oppressed populations.

52. Buchanan, "Institutionalizing the Just War," 6.

tential to be beneficial beyond the particular cases in which threats are issued. The crucial point here is that the tragic level of political injustice in the world is no accident; it occurs because of the perverse incentive structure which currently exists. Put bluntly, there are too many carrots which encourage, and too few sticks which discourage, ruthless and opportunistic political tyranny. It is easy to imagine how an institution that can credibly threaten assassination would motivate leaders generally to refrain from the worst of human-rights abuses. It would not be necessary for each particular egregiously bad ruler to be threatened; the fact that some such ruler is threatened might be enough to convince the rest to bring an end to the worst abuses perpetrated by their regime.

The foregoing considerations do little more than suggest the kinds of empirical issues that must be addressed by any reasonable effort to examine the radical suggestion of legalizing the assassination of political leaders. Even though the prospects for vindicating such legalization appear dim, it is difficult to avoid the conclusion that treating assassination as automatically out of bounds is, in part, a result of the widespread but false belief that political assassination is murder, plain and simple. Once that belief is jettisoned, the institutional questions become crucial in considering a legal norm that would license assassination.

VII. CONCLUSION

In light of post-Cold War international developments that include genocide and ethnic cleansing, it is not surprising that serious thinkers have returned with renewed energy to the topic of humanitarian intervention. Although this interest in the topic is to be welcomed, the consensus that has developed around it is flawed. The consensus is correct to hold that armed intervention for the protection of human rights is morally permissible in principle, but it is wrong to hold that it is permissible only in cases of supreme humanitarian emergency. Illegitimate states have no right against armed intervention, and such intervention is in principle permissible when the risks to rights that it imposes are proportional to the rights violations that it can be reasonably expected to avert. Nonetheless, it does not automatically follow that this kind of proportionality standard should serve as a legal norm; it may well be that a more restrictive and/or less nuanced principle should be used for the purposes of international law. At the same time, despite significant moral similarities between armed intervention and assassination, there is virtually no support for the targeted killing of corrupt leaders. We understand that there are profound risks to creating an international institution designed to authorize assassinations, but there is no reason why assassination can be summarily ruled out as a matter of moral principle, and we believe it is worth dedicating greater attention to whether and how such an institution might be designed.