

10 Weighing Civilian Lives in War: Domestic versus Foreign

Saba Bazargan-Forward

I Introduction

When we wage war, we do so to achieve aims. The aims for which we fight and the means by which we achieve those aims must satisfy the constraint of proportionality. The constraint states that the harms for which we are responsible in that armed conflict cannot be outsized relative to the harms that the armed conflict prevents. All things being equal, civilian deaths ought to receive substantial weight in the proportionality calculation. The issue I address here is this: ought we to weigh the deaths of civilians on the enemy's side (i.e., enemy civilians) as heavily as the deaths of our own civilians (i.e., domestic civilians)?¹

Here is the type of case I have in mind. Suppose that we are fighting in furtherance of a just aim in accordance with the constraints of necessity. The only way to save the lives of domestic civilians is by targeting enemy military installations. Doing so, however, will collaterally kill enemy civilians. Whether this is permissible – that is, whether it is permissible to collaterally kill in order to save lives – depends, of course, on the number killed and the number saved. But it also depends on the comparative weight these lives receive in the proportionality calculation.

I argue that the lives of domestic and enemy civilians should not receive equal weight in our proportionality calculations. Rather, the lives of enemy civilians should receive less (though certainly not zero) weight in comparison to the weight that domestic civilians receive. That is, the lives of enemy civilians ought to be “partially discounted” relative to the lives of domestic civilians. We ought to partially discount the lives of enemy civilians for the following reason (or so I argue). When our military wages a just war, we as civilians vest our right to self-defense in our military. This permits our military to weigh our lives more heavily. Before arguing for this view I first explain why recent accounts attempting to show the opposite – that enemy civilians ought to be weighed more heavily – are mistaken. I begin, though, by laying out several caveats clarifying the scope of the discussion.

¹ For a groundbreaking discussion of this issue, see Hurka, T. (2005). Proportionality in the Morality of War. *Philosophy & Public Affairs*, 33, 34–66.

II Caveats

First, I only consider cases in which we are warring in furtherance of a just aim satisfying the constraint of necessity. This assumption might seem overly restrictive, but there are good reasons to adopt it. The issue I am addressing here is how heavily we should comparatively weigh the deaths of enemy civilians versus domestic civilians when calculating whether a military act or aim satisfies the proportionality constraint. If the war we are fighting is unnecessary for achieving the aim in question, then military violence aiming at protecting domestic civilians will unavoidably fail to satisfy the necessity constraint as well, since there is by hypothesis a peaceful way to achieve that end: by ceasing to aggress against the enemy. Indeed, we are morally required to cease hostilities because, by hypothesis, the war we are fighting is unjust. Since in such cases we already know that engaging in military violence as a means to saving domestic civilians is unjust on the grounds that it fails the necessity constraint, determining whether it also fails to satisfy the constraint of proportionality is largely otiose. For this reason I restrict my discussion of weighing civilian lives to cases in which we are warring in furtherance of a just aim in accordance with the necessity constraint.

Second – and as a corollary of the first – I only consider cases in which our adversary is engaging in military violence in furtherance of an unjust aim or, alternatively, in furtherance of a just aim unjustly. After all, if the adversary were acting in furtherance of a just aim justly, resisting it would be unjust, in which case attempting to ascertain whether doing so violates proportionality would again be otiose.

Third, I assume that our aim in undertaking military violence is either to save civilian lives on our side or to secure some equally weighty interest² – and that doing so does not substantially promote any other unjust aims. More specifically, either (1) there are no such unjust aims or (2) there are unjust aims but the pursuit of the just aim does not substantially contribute to (nor is it substantially contributed by) the pursuit of the unjust aim. This assumption is largely to keep the discussion tractable.

III Beneficiary's Burden Principle

Some have argued (correctly, in my view) that standards for imposing risks on enemy civilians ought in general to be more stringent than the standards for imposing risks on domestic civilians.³ Specifically, in cases where (1) imposing a risk is necessary to bring about a substantial benefit and (2) the benefits

² The sovereignty of a legitimate state might qualify as such as a good. See Fabre, C. and Lazar, S. (eds.) (2014). *The Morality of Defensive War*. Oxford: Oxford University Press.

³ McMahan, J. (2009). *Killing in War*. New York: Oxford University Press, pp. 74–75, 215.

accrue to domestic civilians, it is worse to impose that risk on enemy civilians than it is to impose that risk on domestic civilians.

To see why this is so, consider the following case. Suppose we are constructing a massive power plant (either a hydroelectric dam or a nuclear power plant) that will benefit all domestic civilians in the region. There is a small but nontrivial chance of a catastrophic malfunction causing massive destruction. Still, for any given domestic civilian she is better off (in the evidence-relative sense⁴) with the power plant. There are, though, two ways to build the power plant. One method will channel the destruction in the event of a catastrophic malfunction toward the domestic civilian population. The other method will channel the destruction away from the domestic population and toward the people of a bordering country. Both will result in roughly the same harm. Given that one of the two methods must be chosen, we ought to choose the first. It is worse for the potential costs of a benefit to be imposed on those to whom that benefit is not expected to accrue than on those who are antecedently expected to benefit. The standard of risk imposition in a case such as this applies more stringently to the foreign population because they are not expected to benefit from the risk-imposing activity.

How does this result apply to warfare? It suggests that we can gamble with the lives of domestic civilians in ways that we cannot with enemy civilians when the benefits of winning the gamble accrue solely to the domestic civilians.

Suppose, then, that a domestic civilian population resides along the border of a country with which we are at war. That population is at risk of enemy bombardment. We can cripple the enemy's ability to do so by destroying one of two enemy military installations. We are in a position to choose either. One of the installations is close to our border; destroying it risks collateral harm to the very same civilians who are threatened by enemy bombardment. The other is near enemy civilians; destroying it risks collateral harm to them. Suppose further that, despite the collateral harms that will result when we target the enemy installation, any given domestic civilian in that area is nonetheless made better off (in the evidence-relative sense) should we target that installation than if we do nothing, given the otherwise imminent threat of enemy bombardment. It is morally better, then, to target the military installation near our own border because for *either* choice the expected benefits accrue solely to our civilians – not theirs. And it is unfair to shift the costs of that benefit to those who are not expected to be made better off by that benefit.

As in the power plant example, there are asymmetric standards of risk-imposition between war and domestic civilian life. It is worse to impose risks on enemy civilians given that it is solely domestic civilians who are expected to enjoy the benefit of imposing that risk. Let us call this the

⁴ Parfit, D. (2011). *On What Matters*. Oxford: Oxford University Press, pp. 150–51, n. 18.

Beneficiary's Burden Principle

When a beneficial event carries unavoidable risks and when we can choose where those risks will fall, it is worse to impose those risks on the individuals who are not beneficiaries of that event than to it is to impose those risks on those who are indeed beneficiaries of that event.

This principle, even if correct, will rarely militate in favor of granting extra weight to the lives of enemy civilians. Notably, it does not apply to cases in which we have to decide between imposing a risk on enemy civilians and accepting a risk to our own – the very sort of case we began with. Such a case is not one in which we have reason to decide who bears the costs of an expected benefit accruing to our civilians. Rather, it is simply a case of deciding where a harm should fall. So even if we are correct in thinking that there are asymmetric standards of risk-imposition in cases where the benefits of that risk accrue asymmetrically, this claim simply does not help adjudicate between options when we have to decide whether to cause harm to enemy civilians or allow harm to befall our own.

To the extent that the Beneficiary's Burden Principle does indeed apply to war, it will tend to do so in favor of partially discounting the lives of enemy civilians when we wage a just war, in that the enemy civilians will receive comparatively less weight in the calculation of proportionality than domestic civilians will. This is because civilians often benefit from the military as an institution – it provides defense against foreign aggression. Of course, it is not always the case that the people derive a net benefit from their military. Exceptions include all-too-common instances in which the military is used to enforce the oppressive policies of their government thereby subjugating the people it is tasked with protecting. But I focus, for the moment, on cases in which the people benefit from the protection their military provides. In such cases, forming and maintaining a formidable military force carries with it a risk – the risk that the institution will morally malfunction by impermissibly aggressing rather than defending. When that risk manifests – when a country's military unjustly aggresses – the civilians who have so far benefited from the protection that military force provides have a duty to see to it as far as they can that the costs of this protection are not imposed on those who are not beneficiaries of that protection.⁵ This is just an application of the Beneficiary's Burden Principle.

Of course, when a country goes to war unjustly, civilians are typically ill situated to shift the costs of that aggression away from the civilians of the country against which their military is aggressing. Doing so will often involve insurmountable coordination problems. But the country against whom their military is aggressing is in a position to vicariously discharge that duty by

⁵ Jeff McMahan makes this sort of argument in *Killing in War*, pp. 74–75, 215

partially discounting the lives of enemy civilians in cases where doing so will save the lives of domestic civilians. This is precisely the sort of case we started off with. By doing so, our military effectively does for enemy civilians what they are otherwise morally required to do but cannot: namely, shift the costs of their morally malfunctioning military away from the civilians of the country against which their military is aggressing, and back toward those who have up until now benefited from the protection that military affords. By partially discounting the lives of enemy civilians in cases where doing so saves the lives of domestic civilians, we effectively enforce the application of the Beneficiary's Burden Principle.

An upshot is that to the extent the Beneficiary's Burden Principle is relevant to warfare, it militates in favor of weighing the lives of enemy civilians less than the lives of domestic civilians. In this way, forming and maintaining a military is like building a beneficial but risky power plant; if the risk manifests, the costs should go to those who have benefited so far. They should not be shifted to those who have not.

This being said, a "principle of efficiency" might overwhelm the principle of fairness underlying the Beneficiary's Burden Principle. Suppose that if the costs of the malfunctioning benefit are shifted to third parties, those costs would lessen in that either (1) the number of victims would increase but the amount each suffers would be much smaller or (2) the total amount of harm would decrease. In these cases, the totality of reasons might require that we shift the costs to third parties. But in deciding whether to do so, the unfairness of that option receives its due weight, even if it is outweighed. In this way, the Beneficiary's Burden Principle is still operative even in cases where it makes sense to shift the costs of the benefit to third parties.

One might raise an objection, though, about what counts as benefiting from the military. Suppose that an adventurist government has authorized its military to engage in numerous unjust conflicts over the past few decades. This might be burdensome to the country's own population in two ways.

First, fighting numerous unjust wars will divert state funds that might have gone to public welfare. Suppose this makes the people worse off than they would have been if their country had not waged these numerous unjust wars. It might seem, then, that the Beneficiary's Burden does not apply in the way I have suggested because the people do not in fact benefit from their military. But this does not follow. The relevant counterfactual by which to determine whether the people benefit from the military is not one in which the military does not wage unjust wars, but rather one in which the military does not exist. It is not unreasonable to conclude that a military that diverts funds toward unjust wars is still better for the people of that country compared to the absence of a military altogether, especially if that country has aggressive neighbors. So long as the people are made better off all things considered relative to the absence of the military, they count as beneficiaries, and thus they have a duty

to absorb some of the costs of that benefit; a failure to do so unfairly shifts that cost to third parties. Accordingly, the victims of their country's unjust aggression can – within limits – permissibly weigh enemy civilians less than domestic civilians in the proportionality calculation where doing so saves the lives of domestic civilians.

But there is another more direct way the people might be made worse off when their government wages unjust wars – they might be maimed, killed, or otherwise immiserated. When a large enough portion of the population suffers in this way, the Beneficiary's Burden Principle does not apply in that it does not permit us to discount the lives of enemy civilians when we are waging a just defensive war against their country. Doing so has a high chance of discounting the lives of those who have *not* relevantly benefited from their military. In such a case, we have no duty to vicariously discharge on their behalf – specifically, no duty to prevent imposing the costs of their morally malfunctioning military on third parties. This accords, I believe, with intuitions in this case: the enemy civilians have already paid the price of their country's unjust military adventurism. Partially discounting their lives would overburden them.

A result is that the application of the Beneficiary's Burden Principle is highly contingent. In the just wars we wage where enemy civilians have up until now benefited from their military, we are permitted to partially discount the weight their lives receive in the proportionality calculation when doing so is necessary to save lives on our side. This permission is derived from a permission to vicariously discharge a duty that they have to refrain from shifting the cost of their morally malfunctioning military onto third parties. But determining whether the enemy civilians have in fact benefited, and the degree to which they have done so (which might impact the degree of risk they are required to absorb) is empirically difficult.

There, is, though, a more reliable basis for thinking that we are permitted to partially discount the lives of enemy civilians when we wage a just war. I turn to this next.

IV Agent-Relative Permissions and Fiduciary Duties

There are both agent-relative and agent-neutral reasons. A reason is agent-relative if it ineliminably refers to the person to whom the reason applies. A reason is agent-neutral if it does not ineliminably refer to the person to whom the reason applies. To use a canonical example, suppose you are walking through the woods when you chance upon a child drowning in a pond. You can easily save her. The reason you have is agent-neutral in that it is a reason applying to anyone capable of saving the child. You just happen to be in the right place at the right time, so the reason contingently picks out you. But now suppose that the child is your daughter. You still have an agent-neutral reason to save her since you have an agent-neutral reason to save *any* drowning child.

But because she is your daughter, you also have an agent-relative reason to save her because she is *your* child. The special relation you bear to her gives you a reason to save her – a reason that makes ineliminable reference to the child’s parents.

If agent-neutral reasons, such as the reason to promote overall well-being, are left unchecked, they will overwhelm our lives by forcing us to abandon our personal projects that fail to maximize the overall good. These personal projects are partly constitutive of our practical identity. They are our ground level, long-term commitments which, from our own point of view, make our lives worth living and our actions worth undertaking. To threaten these commitments is to threaten, in a real sense, who we are. An account of morality forcing us to abandon suboptimal personal projects is neither psychologically plausible nor normatively desirable.

To address this worry, several philosophers have argued that agent-neutral reasons are defeasible – specifically, by a certain type of agent-relative reason yielding an agent-relative *permission* to act in accordance with our personal projects. There are, at the broadest level of generalization, two types of arguments in favor of agent-relative permissions: derivative and non-derivative arguments.

According to derivative arguments for agent-relative permissions, consequentialist reasons to make things go impersonally best ground agent-relative permissions to give special weight to personal projects. This is because a doctrine forcing us to abandon any and all suboptimific personal projects would be psychologically devastating to its adherents, thereby failing to maximize the impersonal good. In this respect consequentialism is partially self-effacing; we are permitted to act *as if* there is no requirement to maximize the impersonal good because deliberating from that standpoint is more likely to maximize the impersonal good. Peter Railton is best known for this kind of argument for agent-relative permissions.⁶

According to the most popular non-derivative arguments for agent-relative permissions, our moral permission to pursue personal projects without regard for whether doing so makes things go impersonally best is grounded either in (1) the intrinsic personal value manifest in the permitted project or in (2) the more general value of having “space” in which to pursue our personal lives free from the tyranny of the impersonal point of view. Thomas Nagel is the most well-known proponent of the first view; Samuel Scheffler is the most well-known proponent of the second.⁷

Thomas Nagel points out that from an impersonal point of view, we determine whether we should act in accordance with a personal project by evaluating it

⁶ Railton, P. (1984). Alienation, Consequentialism, and the Demands of Morality. *Philosophy & Public Affairs*, 13(2), 134–71.

⁷ Nagel, T. (1989). *The View From Nowhere*. Oxford: Oxford University Press; Scheffler, S. (1982). *The Rejection of Consequentialism*. Oxford: Oxford University Press.

solely according to whether there are agent-neutral reasons to act in accordance with that project. Most personal projects will be sub-optimific and will thus fail the test. But he argues that personal projects generate their own values, intelligible only from the point of view of the individual adopting that personal project – that is, only from a personal point of view. These values are real; they speak in favor of acting in accordance with the project, though only for those whose project it is. Accordingly, the reasons those values generate are agent-relative, in that they ineliminably reference the bearer of the personal project generating the reason. Thus agent-neutral reasons do not exhaust the reasons you have to undertake the various pursuits that you value – whether it is child raising, mountain climbing, or stamp collecting. Agent-neutral reasons, then, are defeasible: a sufficiently important agent-relative reason can provide an all-things-considered justification for undertaking ends for which there are agent-neutral reasons to reject.

This does not mean, however, that our personal projects are inviolable. My personal project of collecting designer jeans will yield an agent-relative reason not to ruin mine by wading into a pond to save a drowning child. But the values that this personal project generates are simply not important enough to outweigh the agent-neutral reasons to save the child. This is one way that personal projects are violable, even assuming a framework in which such projects generate agent-relative reasons. In this case the agent-relative reasons are “still there” – they count in the moral calculus – but ultimately the agent-neutral reason to save the child carries the day.

Samuel Scheffler also worries about the tyranny of agent-neutral reasons – that they threaten to overwhelm our personal lives. But Scheffler’s strategy is to argue that each of us has an agent-relative prerogative to refrain from doing what makes things go impersonally best. This gives us space to pursue our impersonally sub-optimific projects. The prerogative is agent-relative in that each person has a special permission to pursue her own sub-optimific projects; this reason does not extend to a permission to help others pursue their sub-optimific projects. On this view, the value of a protected space of conduct is defeasible. This prerogative to act sub-optimifically does not allow us to pursue just any personal projects. Some projects – such as those aiming at rights violations – ought not to be protected on the ground that they are not the sorts of projects that we should have freedom to pursue.

Whether we take Scheffler’s, Nagel’s, or some other non-derivative or derivative account of what grounds agent-relative reasons, they all have at least one thing in common: they permit each individual to give extra weight to her own life over the life of a stranger when deciding between the two (provided that she has done nothing to waive or forfeit her right to life).

So, for example, I might have an agent-relative permission to save my own life rather than the lives of two strangers. But this agent-relative permission to give extra weight to my own life does not provide an otherwise uninvolved

third party with a permission to save my life over the lives of two other strangers. But it is possible, or so I argue, to vest an agent-relative permission in a third party, thereby permitting that party to give the extra weight to your life that you are permitted to give. Put differently, the right to act in accordance with an agent-relative permission to give extra weight to your own life can function as a *fiduciary* right – a right that belongs to you, but which you have vested in someone else who can thereby vicariously discharge that right on your behalf.

Suppose you and two others are drowning and your bodyguard can either save you or the two others; she is permitted to save you. A bodyguard can act in this sub-optimal way even though her own life and ground-level interests are not at stake because her charge has vested his agent-relative permission to give his own life extra weight in the bodyguard.

But why believe that agent-relative permissions, which are generally thought to be ineliminably first personal, can function as a fiduciary right? Examining the role that agent-relative permissions play helps answer this.

Agent-relative permissions are important practically in that they allow us to live recognizably independent lives. They are also important (as I pointed out) in that they manifest our status as self-originating sources of ends. Because these agent-relative protections are so important, there is reason to think that we possess the power to recruit others to help us further these protected ends.⁸ This is why the bodyguard in whom I vest my right to self-defense has an agent-relative reason to give extra weight to *my* life. The claim that we cannot legitimately ask others for assistance in furtherance of the ends that agent-relative protections vouchsafe belies the supposed importance of those protections if it turns out that those from whom we ask assistance – such as the bodyguard – are not permitted to give extra weight to those supposedly protected ends. (Indeed this restriction against vesting our agent-relative permissions in others is especially unfair to the severely handicapped. Such a restriction prohibits them practically from giving their own ends the extra weight that they are entitled to give those ends. This is especially troubling when we consider that such protections manifest our status as persons.)

If what I have argued is correct, it is possible (by means that I have not articulated here) to vest our right to self-defense in others. Something like this is what happens when our country wages a just defensive war. Our soldiers are fighting on our behalf in the sense that they are relevantly like our bodyguards. Inasmuch, we vest in them our right to give our lives extra weight (or, put alternatively, to partially discount the weight that lives of enemy civilians receive) in cases where our soldiers have to weigh our lives against the lives of enemy civilians.

⁸ Cécile Fabre makes a similar point in Fabre C. (2012). *Cosmopolitan War*. Oxford: Oxford University Press, pp. 201–2.

If this is correct, then soldiers waging a just war can partially discount the lives of enemy civilians in the calculation of proportionality when they are acting in furtherance of the goal of saving the lives of domestic civilians. This does not entitle them to target enemy civilians, of course. But it does suggest that soldiers waging a just war are permitted to inflict more collateral harms that just war ethicists might have thought, when doing so is necessary to save the lives of domestic civilians.

Against this, one might raise the following point: though an individual who has not waived or forfeited her right can refrain from saving two to save herself, no such individual can permissibly kill an innocent – even collaterally – to save herself. Since we have no such right, we cannot vest such a right in soldiers fighting on our behalf. So it seems that soldiers fighting a just war cannot partially discount the lives of enemy civilians they collaterally kill in furtherance of saving our own lives after all.

It is true that an individual cannot collaterally kill an innocent when necessary to save her own life. But we need not think otherwise to show that those in whom we have vested our right to self-defense can partially discount the weight of enemy civilians. Suppose that the agent-relative reason I have to weigh my own life more heavily permits me to multiply the value of my life by 1.2. Or, put alternatively, it permits me to partially discount the weight of the lives of other innocents by multiplying the value of those lives by 0.8. Now suppose that I am permitted to kill an innocent only if doing so is necessary to avert 50 times the amount of weighted harm that the killing consists in. (These numbers are largely arbitrary – the same point can be made by filling in different values.) I would therefore not be permitted to kill an innocent even if doing so saves me, because the amount of good it does is only 1.2 times greater. But suppose that 42 people have vested their right to life in a bodyguard. Now suppose that the only way that the bodyguard can save the lives of those 42 people is by killing an unjust aggressor – but doing so will collaterally kill one by-standing innocent person. Now, if each of these 42 has vested in the bodyguard their right to multiply the weight that their lives receive by 1.2., then this means that the bodyguard can multiply the value of the 42 by 1.2, which is 50.4. The bodyguard then does indeed avert more than 50 times the weighted harm that the collateral killing of the innocent consists in. Put differently, a stranger cannot kill one to save 42; but a bodyguard can, even though none of those 42 is individually permitted to collaterally kill one to save herself.

The lesson is that even if a vested fiduciary right to weigh a life more heavily is not strong enough to warrant killing an innocent collaterally to save the individual who vested that fiduciary right, it can still affect the permissibility of inflicting collateral deaths when the numbers get high enough. And this is precisely what happens in war.

If this is correct, we are indeed permitted to partially discount the value of the lives of enemy civilians provided that we are waging an unjust war with an aim

of saving the lives of domestic civilians. Note that if we are waging an unjust war, we are not permitted to do this discounting because we in general have no agent-relative permission to grant extra weight to our own lives when the individuals in whom we vested that right precipitate the threat to our lives. For example, suppose that we hire a bodyguard who against our wishes proceeds to endanger our lives by attacking our neighbors; they can repel the attack only by inflicting collateral damage on us. Though we too are victims here, the bodyguard cannot defend us by discounting the lives of the neighbors on our behalf. This is not because we have contributed to the bodyguard's aggression and thereby forfeited our defensive rights. (We can stipulate that there is no sense in which we caused the bodyguard to attack the neighbors; she did so for her own reasons and would have done that anyway.) Rather, the reason the bodyguard cannot discount the value of the neighbors' lives in defending us is that the bodyguard is the one who wrongly created the situation in which we need to be defended in the first place. This invalidates the duty to discharge the vested right of self-defense for the same reason that individuals in general cannot permissibly invoke a right of self-defense against justified aggression: there is no permissible defense against justified defense. Since the bodyguard unjustly aggressed, she can no longer invoke the *vested* right of self-defense, since doing so would, in effect, give her a right to defend against justified defense. The individuals who vested the right in the bodyguard can, however, exercise their right of self-defense directly since it is not they who unjustly aggressed; nor are they (by hypothesis) responsible for their bodyguard's aggression.

It is impossible, then, for us to vest a right of self-defense in an unjust aggressor when that aggressor is the one who created the situation endangering our rights in the first place. So if I am correct in characterizing the military as an institution in which we have vested a right to self-defense, that vested right provides a permission to vicariously discount the value that enemy civilians lives receive (or, put differently, augment the weight that domestic lives receive) in situations where the military has to decide between collaterally harming enemy civilians and allowing harms to befall domestic civilians. But this is only if the military has not wrongly created the situation in which the lives of the domestic civilians are in danger in the first place – that is, only if the military is not fighting in furtherance of unjust aims, or just aims unjustly.

V Implications

Note that the argument I have presented in favor of the view that we can partially discount the weight of enemy civilians when waging a just war does not rely on an agent-relative permission to weigh the lives of co-nationals more heavily. It is not, for example, because the Turkish military is protecting fellow Turkish nationals that they are permitted to augment the value that their

lives receive in the proportionality calculation. There is nothing special about sharing nationality per se. Rather, it is because Turkish nationals have vested their right to self-defense in their country's military that the latter is permitted to augment the value that their lives receive, by acting vicariously in accordance with the fiduciary right of self-defense.

Thomas Hurka considers a permission grounded in co-national partiality and rightly casts doubt on how much weight it can bear – though I am even more pessimistic about its prospects than he is.⁹ Suppose an American must choose between saving 100 American nationals or 105 French nationals; it is absurd to claim that the American in virtue of sharing the same background as the victims is permitted to save the fewer number of lives. But if what I have argued is correct, an American *soldier* might indeed be permitted to save her own civilians, not because she is permitted to be biased in favor of Americans, and not because they share a background and culture, but because those American have antecedently vested in her an agent-relative permission to weigh their lives more heavily. In theory, this right could be vested in anyone of any background – it just so happens that it tends to be done in accordance with national identity. But this concomitance tempts the spurious view that it is national partiality rather than something else – namely, vested rights – that grounds the permission soldiers have to grant the lives of domestic civilians extra weight.

So the permission to weigh the lives of domestic civilians more heavily is jurisdictional, in the way that the obligations of police officers or firefighters are jurisdictional; the duties pertain to a particular population not because they share a common background but because it is that population that vested the relevant fiduciary rights. An important upshot of these grounds for giving extra weight to the lives of domestic civilians is that, unlike grounds of co-national partiality, it is fully compatible with the sort of cosmopolitan approach to the morality of war animating post-Walzerian, revisionist treatments.

Consider the following real-life example. In 1980, Iraq under Saddam Hussein launched an unprovoked invasion of Iran in the midst of the chaos following Iran's Islamic revolution. Iraq had two ultimate aims: to prevent the spread of Iran's revolutionary fervor to Iraq's long-suppressed Shia majority and to gain control over Iran's natural resources (specifically those in Khuzestan) as well as the Arvand River waterway. Iran had, at first, just one ultimate aim: to repel Iraq's attack.¹⁰ Presumably this aim was just; regardless of the legitimacy of the nascent Islamic regime in Iran, the people had a right

⁹ Hurka, *Proportionality in the Morality of War*.

¹⁰ Iran had a chance to end the war in 1982 by accepting antebellum borders. Its failure to do so suggests that the war thereafter no longer had a just aim. For more on the ethics of wars whose aims change over time, see Bazargan, S. (2013). Morally Heterogeneous Wars. *Philosophia*, 41(4), 959–75.

not to suffer under the brutal heel of Hussein's anti-Shia totalitarianism. But whether the defensive war satisfied the constraint of proportionality is less clear. The war cost the lives of hundreds of thousands of civilians, on both sides. Perhaps the cost to Iranian lives was worth it for the Iranians, in that it is preferable to bear those costs than to suffer indefinitely under Hussein's anti-Shia totalitarianism. But the issue is whether the benefits of waging a successful defensive war against Iraq was worth it considering that it also cost the lives of hundreds of thousands of *Iraqi* civilians. If what I have argued is correct, the Iranian military was morally permitted to weigh the lives of its own civilians more heavily than the lives of Iraqi civilians because Iranian civilians possessed a right to self-defense vested in the military. The military was discharging that right on behalf of its civilians by repelling an invading army that would have otherwise violated the basic rights of countless Iranian civilians in perpetuity. Accordingly, the agent-relative permission that the Iranian civilians possessed – a permission to weigh their own well-being more heavily – was passed on to their military. This does not itself prove that Iran's decision to defend itself against Iraq satisfied proportionality, but it does suggest that the bar to doing so is less stringent than it might first appear. A consequence is that defensive wars, such as Iran's, might be easier to justify than what some pacifists have assumed.

In spite of all that I have argued here, I do not suggest that we voice to military and civilian leaders the view that they are permitted to give extra weight to the lives of domestic civilians when they wage just wars because (1) they presumably believe this already (albeit for the wrong reasons), and (2) they probably already overvalue the lives of domestic civilians over foreign civilians, given that many seem to recognize only prudential reasons to avoid collateral damage.¹¹ Our task should be to scale back the degree to which they discount the lives of foreign civilians. But if what I have argued here is correct, the degree to which they ought to scale back is not as great as it might seem: when fighting a just war justly, the military has an obligation to weigh more heavily the lives of domestic civilians.

¹¹ See (Crawford, 2013).