

# Standards of Risk in War and Civil Life

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## Abstract

Though the duties of care owed toward innocents in war and in civil life are at the bottom univocally determined by the same ethical principles, Bazargan-Forward argues that those very principles will yield in these two contexts different “in-practice” duties. Furthermore, the duty of care we owe toward our own innocents is *less* stringent than the duty of care we owe toward foreign innocents in war. This is because risks associated with civil life but not war (a) often increase the expected welfare of the individuals upon whom the risk is imposed, (b) are often imposed with consent, and (c) are often imposed reciprocally. The conclusion—that we have a *pro tanto* reason for adopting a more stringent standard of risk imposition toward foreign innocents in war—has implications for not only what standards of risk we should adopt in war, but also how we should weigh domestic versus foreign civilian lives.

## 1. Background

We often act in ways that foreseeably but unintentionally (i.e., collaterally) risk infringing the rights that other people have. We routinely do this in war. We put innocent enemy civilians at risk *directly* by attacking military targets with civilians nearby. And we put innocent enemy civilians at risk

*indirectly* by disrupting or destroying civilian facilities and infrastructure.<sup>1</sup> Risky conduct is not limited to war, however. We also act in ways that risk infringing the rights of innocents in everyday civil life. We construct dams and nuclear power plants posing small but significant risks of catastrophe, we construct airports in densely populated zones, we build factories that emit carcinogens, we fund and maintain a criminal justice system and a health care system which risk harming innocents, and so on. And individuals routinely impose risks on each other in civil life as well, most notably by driving automobiles.

There are presumably moral standards that govern imposing risks on innocents in both the context of war and in the context of civil life. We might think that the moral standards governing risk-imposition in civil life are more stringent than the moral standards governing risk-imposition in warfare. After all, warfare – even ethical warfare – is ineliminably a *destructive* activity, whereas the risks we impose in a technologically advanced society are the side-effects of individual and collective *constructive* endeavors. Accordingly, we might think that the norms governing risk-imposition would reflect this difference.

But according to revisionism<sup>2</sup> about the ethics of war, there are no *sui generis* moral principles governing the resort to or conduct in warfare. The moral principles governing our conduct in everyday civil life are at the most fundamental level the same as those governing our conduct in war, in the following sense: in either context, we are permitted to put innocents at substantial risk of lethal harms if doing so is necessary to avert a harm of sufficient moral importance. It just so happens that this condition is fulfilled more often in the context of warfare than in context of domestic civil life. But the stringency of the constraint articulating a) *what goods* can be legitimacy sought by way of putting others are substantial risk, and b) *how*

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<sup>1</sup> The Geneva Declaration Secretariat states, based on data from armed conflicts between 2004 and 2007, that “a reasonable average estimate would be a ratio of four indirect deaths to one direct death in contemporary conflicts” (Geneva Declaration Secretariat, 2011, p. 32).

<sup>2</sup> For example of revisionist work in the ethics of war, see (McMahan, 2009), (Fabre, 2012), (Frowe, 2015), and (Draper, 2015), among others.

*much good* must be achieved by doing so given the degree of risk imposed, applies univocally.

Revisionists are correct in arguing that there are no *sui generis* moral principles governing the resort to or conduct in warfare. But I will argue that there are nonetheless contingent differences between warfare and domestic civil life which ground contingent differences in standards governing risk-imposition in the two contexts. In particular, I will argue that there is at least one reason for thinking – perhaps surprisingly – that the moral standards governing risks imposed on innocents in warfare will tend to be *more* stringent than the moral standards governing risks imposed on innocents in civil life.

I argue that in the context of civil life there are at least three factors affecting the permissibility of imposing a risk of a given degree on an innocent. The first is whether imposing that risk increases the expected welfare of the individual upon whom the risk is imposed. The second is whether the individual upon whom the risk is imposed consents to that risk. And the third is whether the individual upon whom that risk is imposed reciprocally imposes that risk on others. These factors, when present, individually and jointly reduce the stringency of the standards governing risks imposed on innocents relative to contexts in which these factors are absent. And I argue that these factors are routinely present in civil life but rarely present in warfare. The result is that there is at least one important reason for thinking that the standards governing risks imposed on innocents in war are actually *more* stringent than those governing risks imposed on innocents in the context of domestic civil life.

Some writers seem to assume that if a standard governing risks imposed on innocents is acceptable in domestic civil life, then certainly it must be an acceptable standard for imposing risks on innocent enemy civilians in war. The assumption, in other words, is that warfare does not raise the standards governing-risk imposition. Take, for example, Jeff McMahan's argument against what I call 'proportionality-based' contingent pacifism.<sup>3</sup> He argues

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<sup>3</sup> This type of pacifism states that wars, as they are currently fought and will continue to be fought in the foreseeable future, are unjust on the grounds that the

against this type of contingent pacifism by attempting to show that the restriction against killing innocents is not as strong as proportionality-based contingent pacifists think.<sup>4</sup> Contrary to what contingent pacifists believe, he argues, the restriction does not prohibit killing a few innocents as a necessary means or side-effect of preventing the wrongful killing of many others. Crucially, McMahan attempts to show this by arguing that if under conditions of uncertainty we adopt a very stringent constraint against killing, we thereby commit ourselves to denying that accepted practices in domestic civil life are in fact morally impermissible. And herein lies the problematic assumption that I've alluded to: namely, that the standards governing risks imposed on innocent enemy civilians in war are no more stringent than the standards governing risks imposed on innocent in civil life. But if I am right, there are consistently present contingent factors that pry apart these two standards of risk-imposition in that there will typically be a reason favoring greater standards of care toward innocent enemy civilians than toward our own.

How we compare standards of risk-imposition in war and in civil life is also relevant to the broader issue in just war theory of how we comparatively weigh domestic versus foreign civilian lives. Sometimes the only way to save the lives of our own civilians is by collaterally killing enemy civilians. Whether doing so is permissible depends in part on how we weigh these lives in the calculation of proportionality. Thomas Hurka has argued that in such cases co-national partiality permit us to partially discount the weight that the lives of innocent enemy civilians receive relative to the weight that the lives of innocent domestic civilians receive.<sup>5</sup> I also argue in favor of such discounting, but for very different reasons: civilians can vest an agent-relative privilege to weigh their own lives more heavily in the combatants fighting on their behalf in furtherance of achieving just aims, which thereby permits those combatants to partially discount the lives of enemy civilians in the

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good they achieve cannot justify the harm they cause. For more on contingent pacifism see (Bazargan, 2014).

<sup>4</sup> (McMahan, *Pacifism and Moral Theory*, 2010).

<sup>5</sup> (Hurka, 2005).

calculation of proportionality.<sup>6</sup> Now, if the operative standard governing risks imposed on enemy civilians in war is more stringent than the operative standard governing risk in civil life – which is what I argue here – it will have consequences for how we comparatively assign weights to domestic versus foreign civilian lives in the context of war. Specifically, it will imply that we ought to add in the mix of considerations relevant to comparatively evaluating domestic versus foreign civilian lives an important *pro tanto* reason (which does not vitiate the reasons running in the opposite direction) in favor of weighing the lives of innocent enemy civilians more heavily than the lives of innocent domestic civilians.

In what immediately follows I discuss three factors morally relevant to assessing the permissibility of imposing a given risk on an innocent. I then argue that the relevance of these factors provides an important consideration in favor of the view that we have more stringent duties of care toward foreign innocents in war than toward our own in everyday civil life.

## **2. Consent, Benefit, and Reciprocation**

Organizations both public and private often provide goods and services that impose small but significant risks of catastrophe upon those to whom the goods and services are provided. But (ideally) these risk-imposing projects and policies generally accrue net benefits to those who are put at risk. To reiterate several examples presented earlier: transportation facilities, factories, power plants, the criminal justice system, the health care system, and so on, are all supposed to make everyone better off which is partly what justifies the risks that these projects impose. Or more accurately, these projects and policies increase everyone's expected welfare; it is accordingly antecedently rational in the evidence-relative sense<sup>7</sup> to accept the risk in question, which I will call a 'beneficial risk'. Of course, often such risks are illicitly shifted to populations with less political, economic, and social capital, while the benefits accrue to others, more privileged individuals. This is an

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<sup>6</sup> (Bazargan-Forward, (forthcoming)).

<sup>7</sup> This is Derek Parfit's terminology. See (Parfit, 2011, pp. 150-174). For a defense, see (Tadros, 2011, pp. 214-40).

injustice. But part of what explains why this is unjust is itself parasitic on the view that certain risk-imposing activities and policies are justified by the benefits accrued *to those upon whom the risks are imposed*.

This is not to say that so long as a risk increases expected welfare imposing it is permissible. Respect for the autonomy of others requires that we defer to them by seeking their consent where possible for imposing even those risks it would be antecedently rational for them to accept. In democracies, the decision to impose beneficial risks is (supposed to be) made via a decision procedure whereby an individual's participation in it (or even an individual's voluntary decision not to participate in it) confers consent to the outcome of that procedure – even if the outcome is contrary to that individual's preferred outcome. A referendum is an obvious example of such a procedure. More often, though, an official or group of officials make the decision to impose (or to allow imposing) the beneficial risk in question. As long as those official are fairly voted into office, and as long as the decision to impose or allow the beneficial risk resides legitimately within the ambit of their authority, their decision preserves the consent of the people –or so goes the theory. The upshot is that fairly distributed beneficial risks imposed under these circumstances satisfy the requirement of consent.

Suppose, though, that the risk of harm manifests – the nuclear power plant has a meltdown, the hydroelectric dam bursts, the refinery or the manufacturing plant causes those living in its vicinity to suffer from a disproportionately high rate of cancer, the criminal justice system imprisons some innocents, the health care system harms some of those it's tasked with providing medical assistance, and so on. How do we morally evaluate these harms? Supposing that – a) those who suffer these harms consented to the risk, and b) those who suffer the harms were nonetheless antecedently expected beneficiaries of that risk – we ought to substantially discount the weight that those harms receive in a proportionality calculation.

To see this, suppose that we have to decide between two courses of action. The first course of action imposes a risk statistically likely to result in a hundred deaths over the next decade, but which also results in substantial gains for the survivors who number in the tens of millions. The risk was imposed consensually and it increased the expected welfare of everyone on whom it was imposed. We can, alternatively, take a course of action that is

overwhelmingly likely to reduce the number of deaths from 100 to 75. However, it does so by shifting the risk from those who are antecedently expected to benefit to those who are not (and accordingly do not consent to being put at risk in this way). Though this alternative course of action saves 25 lives, *it is arguably less preferable*.

We might make sense of the moral difference between the two courses of actions in one of two ways. The resulting deaths in either course of action receives negative weight in the proportionality calculation determining the permissibility of each course of action. But perhaps the 75 deaths in the second course of action receive greater negative weight than the 100 deaths in the first course of action *because the 75 but not the 100 were wronged*. Alternatively, we might think that the victims in both courses of actions were wronged, but that the 75 were wronged more severely than the 100 precisely because the 75, unlike the 100, were not antecedent beneficiaries and did not consent to bearing the risk. I tend to think that the first explanation is correct on the grounds that the victims suffer bad option luck. Others might demur. But regardless of which explanation is correct, the 75 deaths would be weighed more heavily than the 100 deaths. I will call this upshot:

‘The Consent Principle’

We ought to partially discount the disvalue that a harm receives in a proportionality calculation if that harm is the result of a manifested risk imposed on individuals who consented to that risk.

One might point out, though, that most people in the world do not live under conditions that satisfy the conditions specified in the Consent Principle. Even in advanced democracies, the prevalence of social injustices cast doubt on whether those who are antecedently expected to benefit from a risky project consent to it given that such risks are often disproportionately borne by those with less political, social, and economic capital.

Does, then, imposing a beneficial risk on those who do not consent to that risk violate their right not to be harmed? Not if risks of harm do not themselves qualify as harms.<sup>8</sup> Still, by imposing that risk upon them we

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<sup>8</sup> For a modern classical on this issue, see (Finkelstein, 2003).

violate their autonomy even if the risk does not manifest. If the risk does indeed manifest, the victims are certainly wrongfully harmed, and egregiously so. But whether they were expected beneficiaries still has a role to play in assessing the wrongfulness of that harm. I contend that it is morally worse to harm an innocent by imposing a risk which ultimately manifests where that risk antecedently *decreases* the victim's expected welfare than it is to harm an innocent by imposing a risk which ultimately manifests where that risk antecedently *increases* the victim's expected welfare. This is certainly not to say that we are morally permitted to impose non-consensual risks that increase the victim's expected welfare. Rather, the claim is that doing so isn't *as* wrongful as imposing a non-consensual risks that decreases the victim's expected welfare.

Why this is so depends on the sort of transformative work consent does. We might think that that there is merely a prima facie reason to increase the expected welfare of others; the reason is prima facie in that the absence of consent does not merely outweigh but eliminates the considerations in favor of that reason. The result is that absent (available) consent there is *no* residual reason – not even an outweighed one – to increase the expected welfare of that individual. Alternatively, we might think that there is always at least a *pro tanto* reason to increase the expected welfare of others, but a stronger reason to refrain from acting contrary to the way that individual consents to be treated. Absent that (available) consent, the *pro tanto* reason is still operative but is outweighed by the strength of the reasons to refrain from acting non-consensually.

Which characterization of consent's transformative power is correct? I believe that the second is. To see why, assume that by *reductio* the first were correct. Now, suppose for example that we have no choice but to treat one of two persons non-consensually: we can either prohibit Person A from smoking or we can prohibit Person B from exercising. In both cases we'll be acting against the victim's will in that Person A's considered preference is to continue smoking and Person B's considered preference is to continue exercising. If we have to choose one, it makes sense to choose the former rather than the latter in that it seems we can repair to paternalistic reasons where we have no choice but to violate autonomy. But this reasoning is unavailable if the absence of consent does not merely outweigh but *eliminates* paternalistic reasons. Accordingly, I take it that consent as it applies to the



permissibility of imposing benefits does not function by transforming the normative valence of the reason to provide that benefit, but rather functions by providing a distinctive reason – one of substantially greater strength than paternalistic reasons – to act in accordance with the person’s (considered) wishes. If this is correct, we should think that imposing non-consensual risks *increasing* the victim’s expected welfare is wrong, but not as wrong as imposing non-consensual risks *decreasing* the victim’s expected welfare. I summarize this as follows:

‘The Beneficiary Principle’<sup>9</sup>

The disvalue that a harm to an innocent receives in a proportionality calculation, where that harm is the result of imposing a risk that increases expected welfare, ought to be partially discounted relative to the weight that an equally severe harm would receive where that harm is the result of imposing a risk that decreases expected welfare.

So even in places – such as in non-democratic countries or in countries with malfunctioning democracies – where beneficial risks are imposed non-consensually, the weight that the resulting harms receive in the calculation of proportionality will be less than the weight that harms receive resulting from non-consensually imposing *non*-beneficial risks.

The discounting in the Consent Principle is presumably greater than the discounting in the Beneficiary Principle. But the point here is that in both cases the harms will be discounted relative to those resulting from risks that decrease expected welfare. And even if the discounting in the latter case is relatively small, they are aggregative, as I will argue.

So far I have argued that when imposing beneficial risks results in a harm, we ought to partially discount the weight that those harms receive in the proportionality calculation if the risks were imposed in a way that respected the victim’s autonomy. And even when this condition is not satisfied, we still ought to partially discount (albeit less so) the weight that the harm receives

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<sup>9</sup> Daniel Butt, among others, discuss a related principle which states that the unwilling beneficiary of wrongful acts have duties of restitution to that act’s victims. Such a principle is largely orthogonal to the one I’m espousing here. See (Butt, 2007).

in the proportionality calculation on the grounds that imposing the risk increases the expected welfare of the victim.

But there are some risks imposed on many of us on nearly a daily basis in domestic civil life which are not antecedently expected to benefit us. Notably, most of us on nearly a daily basis are put at risk by other drivers. And unlike the risk of being harmed by malfunctioning public projects and policies – such as power plants, the criminal justice system, the health care system, and so on – the presence of other drivers presumably does not yield a net increase to any given driver’s expected welfare.

If drivers nonetheless consent to a regime permitting such risks, then imposing such a risks is presumably permissible. The result is that the harms resulting from such risks ought to receive diminished weight in the proportionality calculation, in accordance with the Consent Principle, even if they do not increase any given individual’s expected welfare. But what about drivers who do not consent to such a regime? I argue that even for such individuals the harms that result from the manifestation of the risk imposed upon them by other drivers ought to be partially discounted in a calculation of proportionality when and if such risks manifest – even if they do not consent to being subjected to such risks. This is because most individuals reciprocally impose such a risks on others, substantially reducing their standing to complain about being subjected to such a risk themselves. I am not relying on the claim (true though it might be) that it is permissible to impose unconsented risks on others in furtherance of achieving your legitimate aims if they do the same to you. Rather, I am appealing to a more conservative claim: even if imposing reciprocally non-consensual and non-beneficial risks on others is impermissible, the stringency of the requirement not to do so is substantially diminished when they are doing it to you. This diminishes the negative weight that such harms receive (when they manifest) in the proportionality calculation, yielding the following:

‘The Reciprocation Principle’

There is a moral requirement that you refrain from imposing a non-consensual, non-beneficial, and non-trivial risk on another in furtherance of your otherwise legitimate aims. But the stringency of this requirement is substantially reduced if the individual upon whom you impose that risk is likewise imposing a non-consensual,

non-beneficial, and non-trivial risk of roughly the same degree upon you. Hence, such harms ought to receive diminished weight in the calculation of proportionality.

Of course, not all drivers impose the same risks on each other. Some people drive more often, more dangerously, and in crash-incomparable vehicles.<sup>10</sup> But take a driver who imposes on average a smaller risk on others than the typical driver imposes on her. This imbalance in risk-imposition gives her a *prima facie* basis for complaint should a more risky driver cause her harm. But her standing to complain is still diminished relative to someone who imposes no reciprocal risk at all. The strength of the standing to complain is determined in part by the difference in the degree of mutually imposed risk. The badness of the harm that the more risky driver causes to the less risky driver is still diminished relative to the badness of the harm that the more risky driver causes someone who imposes no such risk.

But what about individuals who not only refrain from consenting to a regime permitting driving but who do not drive? Even such individuals derive *pro tanto* benefits from the driving of others. Stores are stocked -- schools, hospitals, and a variety of others socially beneficial institutions both public and private are staffed and maintained -- through the use of automobiles. It is true that an alternative regime restricting or eliminating private auto use in favor of mass transportation would substantially increase everyone's expected welfare. Relative to that possible regime, the status quo does indeed diminish expected welfare. Nonetheless, accepting the *pro tanto* benefits of the risk-imposing activities of others in ways that create demand for and thereby contribute to the risk-imposing driving of others might (arguably) reduce one's standing to complain about being exposed to such risks for reasons similar to why reciprocally imposing that risk likewise diminishes one's standing to complain. But most of these contributions will be marginal and indirect relative to the risks we impose by actually driving. Consequently, it is unlikely that these sorts of contributions will substantially diminish the negative weight that the deaths of these contributors receive in the proportionality calculation.

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<sup>10</sup> For discussion, see (Husak, 2004).

But we need not belabor this issue since the fact remains that the presence of *some* individuals who refrain from driving on principled grounds does not vitiate the general thesis that the Principles of Consent, Benefit, and Reciprocation provide reasons for thinking that the duties of care toward foreign innocents in war are more stringent than toward our own civilians in peacetime – or so I will argue.

### 3. Comparative Duties of Care

The Consent, Benefit, and Reciprocation Principles, if correct, generally provide reasons for partially discounting the harms resulting from many of the risks we impose on innocents in civil life. Yet the Principles have little to no purchase in most wars in that they do not generally provide reasons for partially discounting the harms resulting from the risks we impose on foreign innocents in the course of waging even just wars.

In the context of killing innocents collaterally in war, the Consent Principle has little application. The civilians we collaterally put at the risk in furtherance of achieving a just aim generally do not consent to that risk. Exceptions include those wars of humanitarian intervention in which the people of a country consent to the risks we would have to impose upon them in furtherance of defeating a threat they face – either an oppressive domestic regime or an invading foreign aggressor. Such cases, though, are rare.<sup>11</sup>

The Beneficiary Principle also has little application to morally assessing the risks we impose on foreign civilians in war. Generally we do not benefit the civilians of the country we are warring against when we collaterally put them at risk of being immiserated, maimed, and killed – even if the war is just. The benefits derived from doing so accrue to *us* rather than to them. So a particular reason in favor subjecting them to risks of harm and death – a reason articulated in the Beneficiary Principle – is absent. Again, wars of humanitarian intervention might serve as an exception in this generalization. Such wars, if they are just, will benefit the civilian population – or more likely a sizeable segment therein – of the country being assisted. If these

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<sup>11</sup> See (Scheid, 2014).

civilians are in fact expected beneficiaries of the military intervention, then the Beneficiary Principle might partially discount the negative value of the some of the harms we impose upon them. This is tantamount to saying that the standard of care owed to them is less stringent than it would be if they were not expected beneficiaries.<sup>12</sup>

The Reciprocation Principle likewise has little relevance to morally assessing the risks we impose on foreign civilians in war. Except in a *levée en masse* or in guerilla warfare in which civilians serve as ‘part-time’ combatants (a characteristic of how some of the Viet Cong operated during the Vietnam War) civilians do not reciprocally impose threats on combatants. Recall that according to the Reciprocation Principle, when you impose a non-consensual, non-beneficial risk on an innocent, that act diminishes your standing to complain should that individual reciprocally impose a non-consensual, non-beneficial risk on you. This in turn affects how we weigh any harms resulting from that exchange. Now, the sense in which a typical civilian in a war imposes a non-consensual, non-beneficial risk on combatants fighting on the other side is so attenuated compared to the sense in which a typical combatant imposes a non-consensual, non-beneficial risk on civilians that it cannot be said to substantially diminish the civilian’s standing to complain about the harms she collaterally suffers. The upshot is that the Reciprocation Principle provides virtually no basis for diminishing the negative weight of the collateral harms civilians suffer in war.

I have claimed that in general there are *pro tanto* reasons to partially discount the harms resulting from risks imposed on individuals who either a) consent to the risks imposed upon them, b) are expected to derive a net benefit from such risks, or c) refrain from reciprocally imposing such risks on others. This applies univocally, to wars and civil life. It just so happens that it tends to apply far more often in the latter. The vast majority of civilians we put at risk in furtherance of pursuing just aims in war do not consent to those risks, are not expected to derive a net benefit from such risks, and are not reciprocally imposing such risks on our soldiers. It is safe, then, to make the following statistical claim: for the vast majority of foreign civilians we put at risk in war, and the vast majority of domestic civilians we put at risk

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<sup>12</sup> For a thoroughgoing discussion of this issue see (McMahan, 2010).

in civil life by way of undertaking public projects and policies, the constraint against imposing risks on the foreign civilians is greater than the stringency of the constraint against imposing risks on the domestic civilians. (Or, more accurately, there is a *pro tanto* reason for thinking that the constraints differ). The result is that there is at least one important albeit contingent reason for thinking that we have greater duties of care toward enemy civilians in wartime than toward our own civilians in peacetime.

So when it comes to weighing the harms resulting from imposed risks on innocents in the context of domestic civil life, there tends to be for the vast majority of individuals a ‘thumb on the scales’ in favor of imposing that risk. But in the context of war, that ‘thumb on the scales’ is absent. Of course, the risks we impose on foreign civilians in war are far, far greater than the risks we impose on each other when we build nuclear power plants, allow private transportation, develop health care and criminal justice systems, and so on. The claim I am making, though, is that when the imposed risks manifest by causing death or some other grievous harm, how we ought to weigh that harm depends in part on whether the Beneficiary, Consent, and Reciprocation Principles apply. Hence, whether imposing the risk in the first place satisfies the proportionality constraint likewise depends on whether those principles apply. And since whether those principles apply reliably track whether the risks are imposed on our own people in civil life or on enemy civilians in the context of war, it turns out that we ought to weigh the harms we collaterally inflict on innocents in civil life differently from how we weigh the harms we collaterally inflict on innocents in war.

This point can be put differently. Whether it is permissible to impose some risk of harm –  $n\%$  of death – on an innocent will of course depend on what the value of ‘ $n$ ’ is. But it also depends, I claim, on whether the Beneficiary, Consent, and Reciprocation Principles apply. This is because, in determining the permissibility of imposing that risk, we have to morally weigh the prospect of its manifestation against the loss of whatever goods would be gained by imposing the risk. In morally weighing the prospect of its manifestation, we (standardly) multiply the probability of its manifestation by the disvalue of its occurrence. And how we weigh the disvalue of its occurrence depends on whether the Beneficiary, Consent, and Reciprocation Principles apply to the risk that resulted in the harm. If any of them do, then the disvalue of the harm is partially discounted. Consequently, its

expected value is less than it otherwise would be, which in turn can affect whether the risk satisfies the proportionality constraint. Consequently, the Beneficiary, Consent, and Reciprocation Principles can affect the calculation of proportionality regardless of what the value of 'n' is. The risk of the harm might be very high or very small – either way, the Beneficiary, Consent, and Reciprocation Principles have a role to play in determining how we assess the permissibility of imposing the risk.

One might argue, though, that as 'n' increases to certainty – that is, as the probability of imposing a lethal risk approaches certainty – the amount of good that imposing the harm must do to be justified becomes *disproportionately* greater. So, for example, suppose that we can permissibly impose a 5% chance of death on an innocent (who does not benefit from, consent to, or reciprocally impose that risk) in order to prevent a 100% chance of death from befalling some other innocent. At first this might seem to suggest that imposing a harm on an innocent is permissible so long as it prevents 20 times that harm from befalling someone else. Accordingly, we can kill one innocent to prevent 20 other innocents from being killed. But against this, we might be morally required to be risk averse with respect to the risk of harm we impose. If this is correct, the relationship between the risk of harm we impose and the amount of good that must be done in order for the risk to be justified is not linear. So we can consistently say that it is permissible to impose a 5% chance of death on an innocent in order to prevent a 100% chance of death from befalling some other innocent, while simultaneously denying that we can kill one innocent to prevent 20 other innocents from being killed. If the claim that we ought to be morally risk averse is correct (which is an issue beyond the scope of this paper) then it suggests that the large risks we impose on foreign civilians in war ought to receive *disproportionately* greater weight than the small risks we impose on our own people in civil life.

So if we morally ought to be risk averse, it follows that the standards governing risks imposed on civilians in war are more stringent than the standards governing risks imposed on civilians in civil life, since the risks we impose on the former tend to be far greater than those we impose on the latter. This would serve as an additional reason for thinking that we ought to weigh the harms inflicted collaterally on innocent civilians in war more heavily than the harms we inflict collaterally on our own people in the

context of civil life. But regardless of whether we morally ought to be risk averse in this way, I have argued that there are additional reasons, reflected in the Beneficiary, Consent, and Reciprocation Principles, which generate a greater duty of care toward foreign innocent civilians in war than toward our own in civil life.

#### **4. Conclusion**

The civilians upon whom we impose risks in war rarely see the benefits of doing so (except, perhaps, in wars of humanitarian intervention), whereas those put at risk by socially beneficial projects and policies will typically see the benefits. And the civilians upon whom we impose risk in war rarely consent to our acts (again, excepting wars of humanitarian intervention), whereas those put at risk by socially beneficial projects and policies often do. Finally, many of the risks we impose in civil life are imposed reciprocally; a relationship of mutual risk-imposition is typically absent between civilians and combatants in war.

I argued that these factors give us reasons to decrease the negative weight of the harms resulting from beneficial, consensual, or reciprocally imposed risks. Since risks satisfying such conditions are far more prevalent in domestic civil life than in war, we will in general have a reason to adopt more stringent standards of risk-imposition in war than we do in civil life. So though the standards for imposing risks on innocents in war and in domestic civil life are at the bottom univocally determined by the same ethical principles, those very principles will yield in these two contexts different ‘in-practice’ standards of risk-imposition. Put differently, there is at least one important reason for thinking that the duty of care we owe toward foreign innocents in war is greater than the duty of care we owe toward one another in domestic civil life.

I believe this has an interesting implication for how we think in the broadest terms about the morality of war. We often think of war as a context in which, morally speaking, much is permitted that is usually prohibited, in order to secure a just peace. On this view, morality slackens in war. But if what I have argued is correct, this gets things exactly backwards. In waging war, we impose risks on innocents. But the standards for imposing risks on



innocents are a central element governing not just war, but a peaceful social order as well. But they do not apply in the same way: the duties of care as they apply to warfare, I have argued, are more stringent than the duties of care as they apply to civil life. If this is correct, the constraints governing the risks we can impose *in furtherance of* a just peace are more stringent than the constraints governing the risks we can impose *within that* just peace. In this respect, morality is more restrictive in war than it is domestic life. Comparing what we owe innocents in domestic life with what we owe them in war lends some credence to contingent pacifism.

Of course, there might be other moral considerations from the other direction ultimately swamping the reasons for thinking that the duties of care toward innocents in war are more stringent than the duties of care toward innocents in domestic life. But the lesson here is that addressing the morality of imposing risks in war requires appreciating the fact that duty of care owed to our own innocents can come apart from those owed to the innocent foreign civilians we put at risk in waging even just wars.

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