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Chapter 7

The burdens of collective liability

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The notion of collective liability directs us to the moral significance of what we do, or fail to do, together with other people. Many grave and unjust harms follow from the action and inaction of groups of people: inequalities in wealth and access to basic resources, the fighting of unjust wars, racial discrimination, environmental damage. Narrowly focusing on individual action or inaction may obscure the moral significance of how a person's contribution interacts with the contributions of other people to produce a serious harm. This may make it too easy to assume that responding to a harm is someone else's business. Insofar as we are drawn to this perspective, exploring the nature of collective liability may lead us to reorient our sense of moral responsibility.

I

Accounts of collective responsibility, such as those developed by Peter French and Larry May, push us to recognize the moral importance of group membership. They examine the metaphysics of group identity and the significance of the concept of moral responsibility as it attaches to groups, and they urge us to understand the roles we play, however marginal, in groups that commit wrongs.¹ This represents an important contribution to ethics, especially for thinking about justice, in both its domestic and international applications. But these philosophers do not go far enough when it comes to thinking about morally permissible ways to distribute the costs of responding to injustice. In some important cases, these thinkers resist the idea that collective responsibility is distributive. Collective responsibility distributes to individual members of a group when they can be held responsible, if to varying degrees, for what the group does. This might mean that individual

members can be blamed for the group's action, that they incur obligations to make reparations for the wrongs their group has committed, or that harms may legitimately be imposed upon them when others take action to remedy the injustice. Collective responsibility that is corporate, by contrast, attaches to a group but not to its individual members. This means that the relevant burdens of corporate responsibility cannot legitimately be imposed on individual group members. Those who resist the idea that collective responsibility distributes to individual group members maintain that although people together produce a certain result, individually they may not be responsible for it. If individuals are not responsible, then they do not deserve to be blamed or to bear the costs of rectifying the group's wrong, and imposing costs on them would be wrong.

The problem with this line of thinking is that it may unduly hinder us from acting to alleviate serious injustices. It is often not possible to contain and direct the costs of such efforts only to those persons, such as a group's leaders, who have freely and willfully caused an injustice. The individual members of a society may ultimately and directly bear the costs of foreign military intervention or domestic rebellion, for example. Theories that deny that costs could legitimately be imposed on more passive members of involved groups would appear disproportionately to represent the interests of persons who, while not having actively promoted injustice, may have indirectly supported and benefited from it. This potentially self-serving and obstructionist position comes at the price of failing to acknowledge the moral urgency of the claims of persons who suffer an injustice.

Surely it is reasonable to think that people generally have a right not to be harmed or seriously burdened for the sake of benefiting others. The moral urgency of responding to injustice, however, should lead us to examine the circumstances under which persons may lose this right. This paper develops a moral notion of collective liability that provides us with reasonable grounds for distributing the costs of alleviating serious injustices. It specifies conditions under which it is permissible to impose special burdens on members of groups that have caused harms. These burdens may include those commonly associated with the use of military force, such as loss of authority, wealth, property or life.

I have suggested that those who resist the notion that collective liability distributes to individual group members often do so based on judgments of what persons deserve. I submit, however, that we should distinguish between liability and desert. Persons may sometimes legitimately

be forced to bear serious costs, even when those persons or the larger group cannot be said to deserve the costs that are imposed upon them.² Collective liability, as I will understand it, can be less metaphysically and morally exacting than the notion of moral desert. But although the criteria of collective liability fall short of establishing desert, they do not neglect our culpability as individuals altogether.

I will suppose that, generally speaking, when serious costs are imposed on a liable group for the sake of rectifying an injustice, all members of the group must be at fault in some respect, if not to the same degree. We should distinguish the moral concept of liability from the legal concept of strict liability. Strict liability describes a situation in which the requirement of contributory fault is relaxed.³ At the limit, no one is judged to be at fault, morally speaking. Sometimes companies assume strict liability for defects in their products as part of the cost of doing business. The legal assignment of strict liability is simply a way of covering the costs of harms that result from defects. It does not reflect judgments of moral blameworthiness. The distribution of moral liability, by contrast, presupposes the fault of each member via an act or omission. There are some important exceptions to this presupposition. Nevertheless, a presupposition of contributory fault should generally be maintained, even though each person's responsibility may be merely partial, indirect, and inessential.

Utilitarians and other consequentialists may object that this presupposition places too much moral importance on individual agency. They might claim that even a weak conception of contributory fault should be given up as a condition of distributive collective liability in favor of more simply determining what would promote the greatest overall good. I maintain, however, that persons who have not caused harm to others nor had an opportunity to renounce unjust benefits or otherwise to dissociate themselves from a serious injustice have a right not to be harmed for the sake of the greater good. This idea is behind our moral interest in the protection of basic rights and serves to orient our common-sense understanding of justice. The account of collective liability defended in this essay thus requires more than is presupposed by the concept of strict liability but less than what may be needed to establish desert.

Section II of this essay further analyzes the significance of claiming that collective liability is distributive. Section III elaborates an account of the criteria of collective liability. Section IV brings the account directly to bear on the topic of military intervention.

II

A response that violates the basic rights of perfectly innocent persons may sometimes be required to halt an extreme crisis such as genocide or "ethnic cleansing." In these kinds of circumstances, such rights violations may be morally justified; rights are not absolute. The concept of collective liability I am concerned to develop, however, is not addressed to these cases. Rather, the notion of collective liability speaks to cases in which there are grounds for doubting that persons who would bear the costs of addressing an injustice have a right not to be harmed. An account of collective liability is designed to fit situations in which there is some discretion about which among several possibly effective strategies to take in combating an injustice. It looks to when the actions and allegiances of persons who will be affected are relevant for thinking about which strategy to embrace. This may help us to think about whether the use of violence in order to contain an unjust regime or to liberate an oppressed group could be permissible. The notion of collective liability may also help us to think about, for instance, the extent to which civilian casualties should be minimized at the cost of the lives of combatants. The question is whether reasons to avoid harming civilians are weakened by the role, perhaps indirect, that those civilians have played in an unjust scheme.

Further, the notion of collective liability can be used to resolve questions about who owes reparations for harms done. We may think of reparations, in a broad sense, as encompassing various forms of assistance – from money and supplies to military personnel and action. Considerable controversy surrounds the question of when we are morally obligated to help others in need and how strong our obligation may be. On the view I defend, when we are collectively liable for harms we have caused, we may be obligated to provide aid.⁴ This might mean, for instance, that a state has an obligation to intervene on behalf of a group whose unjust suffering it has helped to cause. The fact that we have caused serious harms provides a clearer and more compelling basis for establishing our duty to help than simply examining the severity and urgency of people's needs. Surely the latter consideration also has moral force, but it is much harder to deny that one has a duty to respond to suffering one has helped to cause.

The costs we are considering in connection with collective liability are those that may result from the use of military action, the imposition of sanctions or the provision of non-military forms of aid. We

are addressing the matter of how these costs should be distributed when they are required in order to address a serious injustice. I will not present a full account of how this matter should be settled or which sort of response to an injustice would be most appropriate. I aim only to present some modest guidelines and to argue that imposing costs of these kinds on liable groups need not be a matter of wronging group members for the sake of a greater good. Persons who are wronged have a moral basis for complaint. When a group is liable for bearing certain costs, however, its members may have no such basis for complaint. Specifically, when the fault of each member suffices to render collective liability distributive, members of a liable group may have no legitimate complaint to bearing the costs of furthering the cause of greater justice.

We should, however, acknowledge an important exception to the general presupposition of contributory fault. This concerns practical obstacles to implementing ideal moral concepts.⁵ When dealing with large groups of people, we encounter some individuals who may not exemplify the features of group membership that warrant judgments of liability. These persons may reside in the same territory yet not be involved in a group's unjust activities. Practical pressures to choose a viable target, for instance, or to apply sanctions effectively may point toward a group of persons who are largely, but not entirely, collectively liable, strictly speaking. Action may urgently be called for to combat an injustice, yet it may not be possible to exempt all uninvolved persons from bearing the costs in question.

It is disturbing to think that persons who have done nothing wrong should ever be harmed for the sake of a greater good. This brings us back to the problem of when and whether some persons' rights may be infringed for the sake of greater justice. That is, as I have said, a problem that an account of collective liability will not enable us to solve. But we should acknowledge that insofar as we wish to implement a notion of collective liability in our thinking about justice, it might not always be possible to avoid permitting harm to some persons who are not liable. This is an unfortunate cost of the often blunt instruments of foreign policy and collective action. To be useful, the notion of collective liability must be a practical political notion. It has moral content, but cannot retain the precision of ideal moral theory. A practical moral philosophy must allow that a group that would otherwise be liable cannot necessarily shield itself from liability by pointing to the fact that it contains some members for whom we can identify no contributory fault. Those

members are not liable, but sometimes we may treat them as though they are.

III

I will assume, for the remainder of our discussion, that the relevant notion of collective liability is distributive. Now let us take up the question: How can liability distribute across groups? Persons can sometimes be held liable, I argue, when their actions together bring about an injustice.⁶ Some injustices could only have been produced collectively, through the coordination or interaction of a group of persons. This helps to give sense to the idea that liability must be collective. Difficulties for justifying a notion of distributive collective liability arise when we consider how direct or remote the causal contributions are that group members make to a harmful result. The more indirect people's causal contributions, the harder it becomes to make the case for distributive liability, especially when an individual's contribution is small. Also of concern are the conditions under which participation in a collective scheme takes place and whether those conditions can be said to be manipulative or coercive. Manipulation and coercion pose a serious challenge to an account of collective liability.

It may seem that persons can be held collectively liable only when they act together in a metaphysically strong sense, such as when individual members willfully participate and endorse the group's aims as their own. Some metaphysical accounts of joint action focus on a high degree of coordination and mutual responsiveness.⁷ In cases that interest me, however, persons may act out of self-interest and with little concern for how their actions interact with those of other people. Although they may be fellow citizens, participants could lack shared goals or what is sometimes referred to as a "we-attitude."⁸ Nevertheless, their interactions may be morally significant and could provide the basis for ascriptions of collective liability. I maintain that liability for an injustice may distribute to some extent to the group as a whole, even when the coordination among group members is weaker than what is required by most metaphysical accounts of collective action. Those accounts fail to illuminate the concept of collective liability most relevant to our topic.

This is not to deny that features of group membership may be needed to explain how people's actions causally interact in such a way as to bring about some harm. It may often be true that in order for persons together

to perpetuate an injustice they must share goals or a decision-making structure, acknowledge a common authority, be mutually responsive or experience a sense of solidarity. But none of these explanatory factors is essential to the concept of collective liability. Different explanations will apply in different cases. What is relevant, morally speaking, is more simply that a person causally contributes to an injustice, when we consider that person's actions together with the actions of others.

Thus let us begin by considering the following principle of collective liability: *Persons are collectively liable for an injustice when what each person does causally contributes to an injustice produced by the group* (P1). The injustices with which we will be concerned are severe. They involve, for example, widespread human rights violations. We may think of P1 as a principle of distributive justice. To be distributed are the costs of working to address a crisis. When serious costs are inevitable if the crisis is to be addressed, this principle states that it is acceptable, generally speaking, to generate those costs and more appropriate to impose them on persons who are together causally responsible for the crisis than on persons who are not.

In evaluating this principle, we should allow for the fact that the causal relationship of some members to the result caused by the group may be remote. Members of a firing squad who, as it turns out, have no bullets in their rifles, contribute to the successful functioning of the squad even though their participation does not directly cause the death of the condemned person. Since their involvement helps to enable the collective scheme, I will count their participation as an indirect causal contribution to the death of the condemned. It does not present a counterexample to P1.

In other cases, however, the actions of some may be causally irrelevant because the result has already been produced by other members. For example, the participation of a California voter in a national election is causally inefficacious when voters elsewhere have already determined the result.⁹ We should, however, still count the California voter as a full participant, morally speaking. Our principle should be revised in view of the possibility of causal preemption. One causal chain preempts another when it brings about an event that the other would have brought about had the first not already been completed.¹⁰ The causal chain that was not completed would have been completed under relevant counterfactual conditions. Consider P2: *Persons are collectively liable for an injustice when what each person does causally contributes to an injustice, or would have contributed to it under relevant counterfactual conditions.*¹¹ In these ways,

collective liability can legitimately distribute to non-essential members of a group.

It is important to note that the principle under consideration takes no account of how tightly organized a group is. Mobs and corporations may both be liable, and in a distributive sense, although the former has no discernable structure and the latter is highly structured. Here I position myself against some philosophers who take facts about the organizational structure of groups to bear directly on the question of whether a group's liability could be distributive.¹² They believe that when a group is highly structured, its structure tells against the idea that the group's liability distributes to individual members. French, for example, argues that collective liability can be distributive only when collectives are mere aggregates or collections of people and when, furthermore, the participating individuals have no valid excuse for their participation.¹³ In contrast to the lack of structure in such groups, the intentional agency of a corporation, for example, is made possible by decision structures that allocate authority and orchestrate the intentions and actions of its members. The interests, decision, and actions expressed and taken within these structures are, therefore, those of the corporate entity as such and are not attributable to its individual members. For instance, individual members may not intend the outcome but, rather, merely to do their specific jobs, they may not contribute significantly to the total outcome, and the outcome may not advance their goals. Also, they may not be essential to the group in the sense that the identity of the corporate entity survives change of membership. Accordingly, French holds that individuals within corporate entities cannot be held liable for corporate decisions and actions, although the corporate entity itself may be liable.

I am not here interested in the metaphysics of groups and so will set aside questions about whether a collectivity should be counted as an entity that exists in and of itself. Let us focus instead on the moral conditions for attributing liability. French's understanding of the limits of distributive collective liability is too strict. His conditions for the assignment of liability appear to be designed for use in justifying, for example, the punishment of corporations for criminal wrongdoing. There we can draw a meaningful distinction between penalties imposed on a corporation, such as fines or negative advertising, and penalties imposed upon individuals connected with it.¹⁴ But when dealing with the prospects of the use of sanctions or violence to achieve political aims, a non-distributive conception of collective liability has little relevance. This is because the costs to individuals cannot adequately be contained

and separated from the costs to the collectivity. To harm the collectivity is directly to harm its individual members. But, in French's view, if the injustice being addressed is the result of highly organized collective action, then costs directly imposed upon individual members of that collectivity cannot be justified, since those individuals do not meet the relevant agency requirements.

The fact that the group in which I participated could continue to exist and act without me hardly seems to imply that I bear no liability for its actions when I do participate. I may have contributed causally even when my contribution is non-essential in the following sense: the outcome would still have occurred without my participation since someone else would have assumed my place in the larger scheme. This fact does not block the distributive attribution of liability. It is morally relevant that I was actually involved in the collective scheme. Even a group's leaders may be non-essential, in the sense just elaborated, but surely we often are right to hold them liable. A more compelling objection is the idea that if a person plays a circumscribed and relatively unimportant part in a larger scheme, perhaps for no other reason than to earn a living or to avoid trouble, that person should not have to bear any special burden for rectifying the wrongs produced by that scheme. She may not have intended or foreseen the harmful result, and her reasons for action may, in themselves, be unobjectionable. Holding her liable for the harmful result seems unfair.

This argument has some force, yet its claims are too strong. We have a responsibility as members of larger groups to explore the implications of our participation. Imagine that as citizens of a democratic society we cast our votes for a leader who implements an oppressive policy against some people. Perhaps we do not intend what the leader does and did not know about his plans. Certainly our contribution was small and the effect of our action indirect. The same could be said for paying taxes under an unjust regime. We might pay taxes because we support government spending on public works and education or simply because we do not wish to break the law by refusing to pay. Imagine that our government uses some of the tax money to support an unjust regime with which it is allied, a regime that is guilty of human rights violations. It turns out that what we have done is causally linked to the violation of human rights, although we do not intend it and some of us may be unaware of this connection. However small the contribution any one of us has made, it is morally relevant that we have in fact acted together to empower an unjust regime. The fact that we, as voting and tax-paying

citizens, did not intend and are unaware of the harmful effects of our government's foreign policy should not serve to protect us from the costs of measures taken by others to address those harmful effects. The harms being suffered are not merely unfortunate, they are unjust. Since we together caused the injustice, it is more appropriate that we should bear the costs of repairing it than that those who have been harmed should continue to suffer or that some uninvolved third party should pay the costs.¹⁵

Nevertheless, we should qualify our principle in two ways. It is not necessary that members of a liable group should each have acted with the intention of causing the result that they together in fact caused. Nor is it required that they knew the result would ensue. But it is important that they could have foreseen the significant possibility that unjust harms would occur.¹⁶ This does not mean that the actual result must have been foreseeable, but only that members of the liable group could have foreseen the significant possibility of some unjust result or other. For example, given the history of American foreign policy, it is surely foreseeable that a US administration might well support an unjust regime somewhere to serve our national interests. The burden of collective liability for such support is one we assume by participating in a political society in which the government's activities are accessible to public scrutiny.

The second qualification states that members of a liable group must have had an opportunity to refuse the indirect causal role that they in fact played. This qualification is important for the following reason. The plausibility of assigning collective liability to us depends on the idea that we ought to explore the implications of our participation in larger groups. This idea is important, from a practical point of view, because it may help to forestall the possibility of injustice. Accordingly, we assume that if members of a liable group had explored the implications of their participation and opted out, the harms their group caused might not have occurred. Thus, to be held liable persons must have had some opportunity not only to foresee the possibility of unjust harms, but also to opt out.

While persons who contribute directly or indirectly to an injustice do not always benefit from the unjust scheme, it is often the case that they do. For example, they often enjoy access to goods and resources that flow from group membership. The moral repugnance of benefiting from an injustice should lead us to interpret the "opting out" condition to be quite weak. The opportunity to opt out of participation in political society

exists when persons have a right to protest or to emigrate. Perhaps it is even met when persons lack these rights, but could engage in these actions without incurring severe penalties, such as serious bodily harm, loss of life, substantial loss of liberty or impoverishment.

Of course, the fact that we may protest or emigrate does not make our participation in political society voluntary. We typically do not choose to be members of our political society, and the costs of leaving or engaging in serious political opposition may be high.¹⁷ But possessing these opportunities may be enough to show that we have no rightful objection to bearing the costs of rectifying an injustice in which we are, albeit indirectly, implicated. Recall that we are supposing that the injustices caused by a liable group are severe. Accordingly, the fact that the costs of refusing to participate in the group's unjust scheme are high should not relieve participating members from sharing liability. We are morally responsible for doing what we can to see that how we lead our lives does not harm others, even when altering our conduct is costly to us. Our participation in a harmful scheme is morally significant even when it is not voluntary and willful.

We should revise our principle to include the following provisos: *Persons are collectively liable for an injustice when what each person does causally contributes to an injustice produced by the group (P1), or would have contributed to it under relevant counterfactual conditions (P2), provided that: (a) they could have foreseen the significant possibility that an injustice would occur and (b) they had an opportunity to opt out of participation.* Call this principle P3.

This principle can be understood to recognize the implications for collective liability of the existence of highly repressive regimes and other serious threats to people's political freedom, and we should understand it in this way. The existence of threats may raise the stakes of opting out to such a degree that it would not be reasonable to maintain that refusal to opt out implies liability. We should accept P4: *Persons are not collectively liable for an injustice when their contributions to an injustice are indirect and they could not have opted out of the collective scheme without incurring credible threats to life, basic liberty, or bodily integrity.* Political resistance in China or the former Soviet Union is and was dangerous enough that even if people's passive compliance with their government could be said to have provided indirect support for their government's human rights abuses (for example, in Tibet or Eastern Europe, as well as domestically), we should not hold them liable. Similarly, we should not hold the citizens of Afghanistan collectively liable for the Taliban's support of Al Qaeda.

The existence of highly repressive regimes subsumes these cases under P4. To protest or attempt to emigrate would be so dangerous that we may regard the subjects of such regimes as, for practical purposes, like hostages. We do not hold hostages liable for the wrongful actions of their captors. Hostages are not, in a meaningful sense, agents of their own destiny.

P1 has been significantly qualified. Still, one might worry that the emphasis on causal responsibility in P3 is too narrow. It might be that some members of a group are not even indirectly causally responsible for harms caused by the group, and that how they have acted is not part of a causal chain that would, counterfactually, have been effective. Familiar attributions of negligence imply that one can be liable for harms one has not caused.¹⁸ Liability is established by virtue of one's failure to prevent the harms in question. Let us now consider P5: *Passive members of a group are distributively liable to the extent that they could each have played a role in preventing an injustice perpetuated by the larger group.*

May employs this sort of principle quite broadly. He argues that the responsibility of persons for a harm caused by their group can be traced to the role they could have played in averting it.¹⁹ What May finds relevant is the relative power each individual member had to influence the outcome. Suppose it is the case that the case that non-opposition by a passive sub-group was a necessary condition for the larger group to achieve its injustice; if the sub-group had been organized or if a critical number of its members had voiced some opposition, the sub-group would have influenced key people in the larger group to stop the injustice. Perhaps members of the sub-group could have achieved this together through widespread protest. In that sense, each member of the passive group could have played a role in preventing the injustice perpetuated by the larger group. Still, this possibility does not necessarily suffice to establish that collective liability distributes to the passive sub-group, thinks May. The reason is that there may have been nothing a given individual could have done to stop the harms from occurring. This is because she could not have persuaded enough other members of the passive group to take action, and she could not alone have achieved the desired effect. May thinks that in cases such as these, in which we could not have influenced enough other people, we may turn out to be blameless, even though we may, in a weaker sense, be morally tainted by what the larger group has done.²⁰ Nevertheless, it may still be true, he maintains, that the group as a whole is to blame.

May's line of thinking is guided by the idea that blame is a desert-entailing notion;²¹ it is appropriate only when certain strong metaphysical conditions on agency are satisfied. A group may deserve blame because it has acted freely and deliberately to cause some harm or it has failed to do what could have averted a harm. Yet this may not be true of individual group members. Thus collective responsibility may not reduce to aggregated individual responsibility.²² Blame does not distribute to the individual members of the group when they do not deserve it.

I question the idea that liability presupposes a desert-entailing notion of moral blameworthiness. The metaphysical presuppositions of liability may be weaker than what is required to establish moral blameworthiness.²³ Individual members of a group may rightly be held liable for a harm even when, as we have seen, their actions are not fully voluntary, they do not intend the harmful result, and their behavior is causally influenced by their culture and political environment. It is no less plausible to think that members of a sub-group are liable when it is true that members of the larger group have caused a harm that the sub-group could together have acted to avert.²⁴ We are liable if we fail to try to stop harms from occurring, when those harms are caused by our associates and we could have acted to prevent them. This is true even when the success of our efforts as individuals depends to some extent on what other people do; the requirements of justice may require collective action. This means that we may have no moral grounds for complaint when we are forced to bear the costs of repairing or responding to damage our group has caused. Consider p6: *The collective liability of a group distributes to its passive members when the passive sub-group could have acted together to prevent the injustice caused by the larger group.*

Still, even those who reject a desert-entailing notion of blameworthiness may dig in their heels. They may doubt the moral relevance of the fact that persons belong to a group that causes an injustice when those persons themselves have not have contributed, even indirectly, to the injustice and could not individually have done much to prevent it.²⁵ Why should we think that liability for harms should fall on passive and relatively powerless members of a causally responsible group, but not on third parties (that is, non-members), who may actually be in a better position to act?

The following line of reasoning addresses this objection. It is morally significant that other people can in effect act on our behalf. They may act as our political representatives, whether or not we endorse their actions.

They may, for instance, set up institutions or pursue policies intended to benefit people who are, in the relevant way (for example, by race, gender, ethnicity, nationality, or religion) like us. Benefits may flow to us as a result of those institutions or policies. The moral repugnance of profiting from an injustice that is perpetuated by a group to which we belong is sufficient to render us liable for that injustice when we could together have helped to prevent it. It is more appropriate that we bear the costs of remedying the injustice than that these costs should fall on some uninvolved third party. Thus let us replace p6 with p7: *Persons are collectively liable for an injustice when they either contribute causally to an injustice or benefit from an injustice, perpetuated by other members of their group, that the passive sub-group could together have played a role in preventing.*

Our topic concerns the permissibility of imposing special burdens on particular groups. This leaves us only to consider the case of passive members who live at a significant remove from a larger group that commits an injustice, as do, for instance, the Kurds in Iraq. Such persons are members of their larger society not by virtue of their participation or because they enjoy its benefits; they are members perhaps only insofar as they inhabit the same territory and possess the same nationality as persons who together have caused unjust harms. These passive members are not liable and imposing special burdens on them would violate their rights. Harming them could be justified only when a case can be made that infringing upon their rights is necessary in order to redress a greater harm. I will not attempt to outline what such a case might look like, although I acknowledge that in practice the need to do so could arise.

IV

The account I have proposed holds the following. Collective agents are liable for an injustice when:

- (1) The group or some of its members are causally responsible for an injustice via the political and social arrangements they impose or perpetuate.
- (2) Passive members of the group, that is, members who do not actively promote the offending result, benefit from the injustice and could together have played a role in preventing it.
- (3) Members of the group could have foreseen the possibility that some injustice or other could result.

- (4) Members of the group have had an opportunity, weakly construed, to exit the group, to take political action to combat the injustice, or to refuse the benefits that accrue to them as a result of the injustice.

Let us now address the question of which further moral conditions must be met in order to justify humanitarian intervention. I assume that the target of intervention is a group that is liable for a serious injustice. The group in question could be liable for abuses within the borders of its own state or in some other state. Thus the liable group could be a subset of a larger society, or it may be the society at large. We want to know whether and when we are permitted to interfere with a group's unjust activities, possibly through military force. Below I elaborate several conditions that it is reasonable to think permissible interventions must meet. The broader question of whether and when we could be justified in harming members of a non-liable group, if only as a side-effect of aiming at some other target, is not one that I take up here.

Implicit in my discussion of collective liability is a claim about the moral limits of sovereignty. To be explicit, those who are liable for a serious injustice should not be protected by a principle of state sovereignty. We should regard only just or decent states as sovereign and thus as morally immune to intervention by outsiders.²⁶ Sovereignty is compelling from a moral point of view only for states that protect the basic human rights of their members and comply with the terms of international justice. When a government violates the fundamental interests of some of its subjects or acts aggressively against another state, a principle of sovereignty could come to function as a protective device for the perpetuation of an injustice. This is unacceptable within a decent international society of societies. We should assume that respect for a state's sovereignty is conditional on that state's decency or minimal justice.

Turning now more directly to the question of intervention, I submit that when an injustice is severe, we are permitted to intervene with a group that is liable for it, provided that our action would help to alleviate the injustice and doesn't run afoul of other relevant moral constraints (specified below). I have argued that the liability of perpetrators allows us to focus primarily on the needs of victims, even at serious cost to the perpetrators. Establishing collective liability means that we may shift costs toward the perpetrators and away from the victims, as we act to address an injustice. But doing this is justified only when it helps to alleviate the injustice. Punishing perpetrators while leaving them fully

in power, for instance, would not be warranted. We should stipulate that:

- (5) The proposed intervention would (with significant likelihood) improve the cause of justice, and the alternatives are inadequate or more costly for the victims.

This principle is especially important since liability is not a matter of dealing out desert but, rather, concerns how to determine a fair distribution of the costs of alleviating serious injustice.²⁷ The prospects for improving the justice of a situation cannot, of course, be guaranteed, while the costs of using violence may be very great. Some think this a reason sharply to restrict the use of violence.²⁸ But we should be careful to avoid being overly restrictive. The ongoing violation of human rights itself involves great suffering, and it is hard to understand how states that form a global society through their complex interrelations could together affirm a conception of global justice that does not treat the systematic violation of human rights as morally urgent enough to warrant intervention.²⁹ The account of liability I have presented offers grounds for loosening moral prohibitions on the use of violence in response to injustice, even against non-combatants. The moral prohibitions loosen when non-combatants are members of a liable group. In this respect, my account deviates from standard liberal just war theory, which strictly prohibits the intentional harming of non-combatants.³⁰

At the same time, a principle of restraint will be an important aspect of any plausible account of permissible intervention. Restraint is important in order to contain the overall costs of using force and in recognition of its dangers. Hence we introduce the following principle:

- (6) The costs imposed on the liable group should not exceed what can reasonably be thought to be necessary in order to achieve the goal of rectifying an injustice.

Some serious injustices may be entrenched enough that only violence will stop them (for example, South African apartheid, the "ethnic cleansing" campaign in Kosovo). Yet the use of violence is so dangerous that it must be a last resort. We assume, again, that the targeted or significantly affected group meets the above stated criteria of liability for injustice. Our focus is on alleviating serious injustice, and in so doing, shifting the costs away from those who have already unjustly suffered.³¹ The idea is that when injustice is grave enough and violence is required to stop it, it is permissible to use violence, provided that only the minimum

necessary force is used and that those who will absorb its costs are liable for the injustice.

Disagreement will surface around the question of how to determine when a particular military strategy is necessary and whether, in making that determination, we ought to take into account existing political realities. Bombing campaigns conducted at high altitude are a case in point. Such campaigns are less risky for pilots but they reduce accuracy, putting civilians on the ground at greater risk. It may be that conducting an intervention is not politically feasible unless the risks to the intervening nation are minimal. Thus a bombing campaign conducted at high altitude may appear to be necessary. Here we should be cautious. I have claimed that harming civilians is not always objectionable when political realities require it and those civilians are liable for grave injustice. Even so, the intervening group must assume the burden of justifying the strategy it embraces, in full view of the consequences in human terms for those who are harmed. The range of politically feasible options may not be fixed. It is the task of political leadership to argue for the moral urgency of the cause without dehumanizing the enemy. Harming persons always comes at some moral cost, even when those persons are collectively liable. Responsible leaders will make the case for public support of intervention so that risking more than the most minimal casualties on their own side in order to reduce casualties and damage on the other side is politically feasible. The reality of suffering casualties should be accepted by the intervening agent as a risk of the business it is in.

Furthermore, what counts as necessary must be worked out in conjunction with a reasonable requirement of proportionality. This is so despite the relevance of determining who is liable and what the political constraints are. We should affirm the following principle:

- (7) The morally relevant costs of the means employed, in terms of the number and severity of resulting harms, do not threaten to surpass the moral importance of the goal achieved.

This principle is not a strict proportionality requirement that would allow, at most, as many casualties as are prevented overall. Inflicting greater casualties on a liable group may be permissible in order to protect the lives of persons who have already unjustly suffered and to promote just political institutions. The liability of the target group allows us to reject a moral limit of strict proportionality. Nevertheless, the moral urgency of alleviating an injustice must be measured against the number and severity of casualties likely to result from intervening. Some

constraint is affirmed. Serious attention to this matter is especially important, as the criteria of liability do not imply desert. It is doubtful, however, that a more concrete principle or formula is available to provide reasonable guidance; judgments will have to be rendered on a case by case basis. Longer-term costs (regarding health, poverty, the environment) as well as immediate consequences must be estimated. Surely these costs have too often been underestimated. Appreciating their relevance may well make the use of violence only rarely justifiable.

Further limiting the conduct of military intervention is the following:

- (8) Certain moral prohibitions on the conduct of intervention must be respected. For example, crimes of war may not be committed (torture, rape, the execution of prisoners of war, and so on).

And finally:

- (9) Safeguards against self-serving actions by the intervening agent must be established, for example, by requiring that proposed interventions be approved by fairly constituted international bodies.³²

In sum, an implication of the account of collective liability I have offered is that harming civilians, perhaps even deliberately, is not necessarily prohibited. Non-combatants could be liable for serious costs of alleviating injustice by virtue of their involvement with a group that has caused the injustice. They may be liable even though they are not directly responsible for the wrongs committed on their behalf. Perhaps they merely paid their taxes, obeyed the law and enjoyed the goods and services their society makes available to them. Which costs exactly it could be reasonable to impose upon them in order to alleviate an injustice requires serious discussion in recognition of principles 5–9. But the door is open to the use of violence.

I have claimed that it is commonly thought that an agent can deserve treatment of one sort or another only when she has acted freely or could have prevented some result. In the case of collective agency, an agent's responsibility may be thought to be a function of the features of the collective's organization that enable it to reflect, to deliberate and to make relatively autonomous decisions. Or collective responsibility may be understood as a function of the contributions its members make; for example, one might think that a collective agent deserves costs imposed upon it only when its members have all freely engaged in the objectionable behavior that produced a harmful outcome, when they could individually have acted to stop it, or when harmful action constitutes

the self-conscious endorsement by individuals of a group's collective identity.

These are strong conditions and I have been concerned to argue that members of a group may be liable even when conditions such as these are not satisfied. Liability depends on the exercise or, at least, the possibility of agency on the part of the group's members, but that agency need not exhibit the freedom, power, self-awareness or self-control that is characteristically presupposed by the notion of desert. It should be admitted that not all costs that morality requires us to bear for the sake of addressing an injustice or promoting a greater good are costs we deserve. Perhaps we sometimes have the bad luck of finding ourselves implicated in an unjust scheme that is not of our own design. But however bad this luck may be, other people's lot might be worse, for they bear the brunt of the injustice, until action is taken to alleviate it.

To have a sense of justice is to recognize that our liability as members of a group is the product of the role we play as individuals in a collective scheme. Our participation in a broader scheme means that other people's wrongdoing raises the stakes of our own individual action or inaction. As a result, we may legitimately be asked to pay a price for the indirect or possibly unexpected consequences of what we do. Moreover, benefits that we may not have sought out may confer upon us a special responsibility to bear the costs of confronting injustice.

NOTES

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- 1 See Peter French, *Collective and Corporate Responsibility* (New York: Columbia University Press, 1984); Larry May, *The Morality of Groups: Collective Responsibility, Group-Based Harm, and Corporate Rights* (Notre Dame, IN: University of Notre Dame Press, 1987); and Larry May, *Sharing Responsibility* (Chicago: University of Chicago Press, 1992).
- 2 For related discussion, see Erin Kelly, "Doing without Desert," *Pacific Philosophical Quarterly* 83 (2002), 180–205.
- 3 For elaboration of the notions of strict and vicarious liability, see Joel Feinberg, "Collective Responsibility," in *Collective Responsibility*, ed. Larry May and Stacey Hoffman (Savage, MD: Rowman and Littlefield, 1991), pp. 53–76.
- 4 As Wesley Hohfeld understands liability, a liability is not a duty, "it is a liability to have a duty created." Wesley Hohfeld, *Fundamental Legal Conceptions*, ed. Walter Wheeler Cook (New Haven: Yale University Press, 1923), p. 59.

- 5 There is another possible exception. This concerns cases in which it makes sense to maintain that collective liability can be inherited. Those who mature after an injustice has already occurred obviously should not be blamed for it. Nevertheless, we may want to hold them liable for rectifying, or in some way redressing, the wrongs of their predecessors. Perhaps we may rightly do this when such persons bear a close political, cultural, or historical relationship to those who committed the injustice and when they have inherited the latter's resources. These cases are most compelling, however, when liability is limited to monetary reparations. I shall set them aside for present purposes. For further discussion see Jürgen Habermas, "What Does 'Working Off the Past' Mean Today?" in *A Berlin Republic: Writings on Germany*, trans. Steven Rendall, introduction by Peter Uwe Hohendahl (Lincoln: University of Nebraska Press, 1997), especially pp. 17–21.
- 6 Each partially causes the injustice. For a discussion of partial causation, see Alvin I. Goldman, "Why Citizens Should Vote: A Causal Responsibility Approach," *Social Philosophy and Policy* 16, no. 2 (Summer 1999), 201–17.
- 7 See Michael Bratman, "Shared Cooperative Activity," in *Faces of Intention: Selected Essays on Intention and Agency* (Cambridge: Cambridge University Press, 1999); John Searle, "Collective Intentions and Actions," in *Intentions in Communication*, ed. Philip R. Cohen, Jerry Morgan, and Martha E. Pollack (Cambridge, MA: The MIT Press, 1983); and Raimo Tuomela and Kaarlo Miller, "We-Intentions," *Philosophical Studies* 53 (1991), 115–37. Christopher Kutz argues for a minimalist account of collective action, appealing to the idea of "overlapping participatory intentions." See his "Acting Together," *Philosophy and Phenomenological Research* 61, no. 1 (July 2000), 1–31. This account is elaborated in Christopher Kutz, *Complicity: Ethics and Law for a Collective Age* (Cambridge: Cambridge University Press, 2000). Even this account, I maintain, is too demanding. Persons who act together may not each foster collective ends in the way Kutz supposes.
- 8 See Searle, "Collective Intentions"; and Tuomela and Miller, "We-Intentions."
- 9 This is true unless we treat voting as a conventional causal system in which the system abstracts from the fact that voters cast their votes at different times and counts them all together. See Goldman, "Why Citizens Should Vote," 212–13.
- 10 For discussion of causal preemption and how it differs from causal overdetermination, see Martin Bunzl, "Causal Overdetermination," *The Journal of Philosophy* 67 (1979), 134–50. I set aside the controversial subject of causal overdetermination.
- 11 A person's actions are, thus, less counterfactually removed than in certain cases of moral luck. For example, Thomas Nagel describes the good moral luck of an individual who led a quiet and harmless life in Argentina, yet might have become an officer in a concentration camp if he had not left Germany for business reasons in 1930. See "Moral Luck," *Free Will*, ed.

- Gary Watson (Oxford: Oxford University Press, 1982), p. 175. I am stressing, by contrast, the moral relevance of persons' actual participation in an unjust scheme, although that person's participation may have been causally inefficacious.
- 12 See Feinberg; Virginia Held, "Can a Random Collection of Individuals be Held Morally Responsible?" *Collective Responsibility*, ed. Larry May and Stacey Hoffman (Savage, MD: Rowman and Littlefield, 1991); and French, *Collective and Corporate Responsibility*.
 - 13 *Ibid.*, p. 9. French does not deny that crowds, for example, act together. Rather, he stresses the difference between responsibility attributes of crowds and corporations. The former are distributive while the latter are not. See also Held, "Can a Random Collection of Individuals be Morally Responsible?", pp. 97–98.
 - 14 Corporate punishment has a trickle-down effect on persons such as stockholders, but French argues that this trickle-down effect is not morally troublesome, pp. 188–89.
 - 15 There is a similarity between this argument and the reasoning that Daniel Farrell thinks justifies self-defense. See Daniel M. Farrell, "The Justification of General Deterrence," *The Philosophical Review* 94, no. 3 (July 1985), 373.
 - 16 This implies that some cases in which leaders violate their mandate may not support claims of collective liability.
 - 17 See John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Harvard University Press, 2001), p. 93.
 - 18 I recognize that we sometimes describe harms as caused by neglect or negligence. I am using "cause" in a narrower sense.
 - 19 May, *Sharing Responsibility*, p. 106.
 - 20 See *Ibid.*, ch. 8.
 - 21 I borrow this phrase from T. M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1999), pp. 274–77. Scanlon's use of this phrase, however, is a bit different from mine. He uses it to mean that it would be a good thing for a blameworthy person in some way to suffer. I mean that a blameworthy person has acted freely and is responsible for what she is like.
 - 22 See May, *The Morality of Groups*, p. 76.
 - 23 A distinction between political liability and moral guilt can be found in Karl Jaspers, although his account of political liability differs from mine in some major respects. *The Question of German Guilt*, trans. E. B. Ashton (1947; New York: Capricorn Books, 1961), pp. 31–38, 75–79.
 - 24 This interpretation weakens the principle, making it easier to satisfy.
 - 25 The membership of these persons in the larger group obviously cannot be established by pointing to their causal contribution to the resulting injustice. But membership could be established by the fact that their interests were politically represented by people who bore causal responsibility.
 - 26 On this point I follow the work of Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979), part 2. See also John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), pp. 81, 93; and Erin Kelly, "Human Rights as Foreign Policy Imperatives," in *The Ethics of Assistance: Morality and the Distant Needy*, ed. Deen Chatterjee, forthcoming from Cambridge University Press. Cf. Michael Walzer, "The Moral Standing of States," *Philosophy and Public Affairs* 9, no. 3 (Spring 1980), 209–29; and Gerard Elfstrom, "Dilemmas of Intervention," *Ethics* 93 (July 1983), 709–25.
 - 27 I assume that a conception of justice as fairness contrasts with a conception of justice as desert. See Rawls, *Justice as Fairness*, pp. 72–79.
 - 28 See, for example, Charles Beitz, "Nonintervention and Communal Integrity," *Philosophy and Public Affairs* 9, no. 4 (Summer 1980), 390–91; also Beitz, *Political Theory and International Relations*, pp. 89–92.
 - 29 This claim is most plausible on a narrow understanding of human rights. See Kelly, "Human Rights as Foreign Policy Imperatives."
 - 30 See Michel Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), ch. 9; Thomas Nagel, "War and Massacre," in *Mortal Questions* (New York: Cambridge University Press, 1979); and G. E. M. Anscombe, "War and Murder," *The Collected Philosophical Papers of G. E. M. Anscombe, Volume Three* (University of Minnesota Press, 1981).
 - 31 Cf. Virginia Held, "Terrorism, Rights, and Political Goals," in *Justice, Law, and Violence*, ed. James B. Brady and Newton Garver (Philadelphia: Temple University Press, 1991), p. 238.
 - 32 I follow Beitz in formulating this principle. See *Political Theory and International Relations*, p. 90.