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War and Sacrifice in Kosovo

The most striking ethical issue to arise in the aftermath of the Kosovo intervention is whether the extraordinary asymmetry of risk that characterized the NATO deployment—NATO forces were destroying and killing without themselves suffering losses—is morally defensible. The appearance of riskless war is profoundly disturbing to many, not because they believe it to be inherently wrong, but because they do not know how to think about it at all. Our moral intuitions were formed when war was a confrontation of armies on a battlefield; these intuitions may no longer be reliable sources for evaluating military conduct. Was mutual risk simply an unavoidable fact of war in the past or is mutual risk a morally compelling requirement of a just war?

While the military deployment was still under way, questions about the morality of a policy of riskless warfare were framed in terms of its tactical consequences. The policy meant, for example, that the use of ground troops was ruled out. Many critics believed that without ground troops, or at least a credible threat of their use, an air campaign could not succeed. Others argued that an air campaign conducted with pilot safety as the first concern would at worst hit unintended targets, and at best take such a long time to be effective that the Serbs would have ample opportunity to accomplish their policy of ethnic cleansing.

At this point, it is hard to know how effective the air campaign was on its own terms, how much the outcome of the war turned on diplomacy—particularly

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Russian pressure on the Serbs—or how critical was the decision to extend the air campaign to civilian targets in Serbia proper (especially the electrical grid). Nevertheless, the wartime critics' tactical concerns seem to have been substantially misdirected. It is hard to believe, for example, that NATO could have mounted a ground campaign more quickly, that such a campaign would have caused less collateral damage, or that it would have led to a military outcome more advantageous than the withdrawal of the Serbian army and the return of refugees that we have seen.

The question of the morality of riskless warfare, however, persists quite independently of the debate over tactics. Indeed, the moral puzzle of riskless warfare is oddly proportional to the success of the intervention. If the intervention had not been successful, it would be easy to agree with the critics that the failure to assume risks was a failure to adopt military means commensurate with the morally compelling task of preventing atrocity. The real puzzle is why we should continue to have any qualms even if the military intervention is judged to be a success.

A Matter of Chivalry?

Every state wants to minimize its own losses when it commits itself to the use of force. There is nothing new in this. NATO policy, however, seems to have crossed from a goal of minimizing losses to a qualitatively different goal of no losses at all. That the war lasted for several months, and included some 35,000 sorties, without the loss of a single NATO serviceman from hostile activity tells us that this ambition may have become reality.

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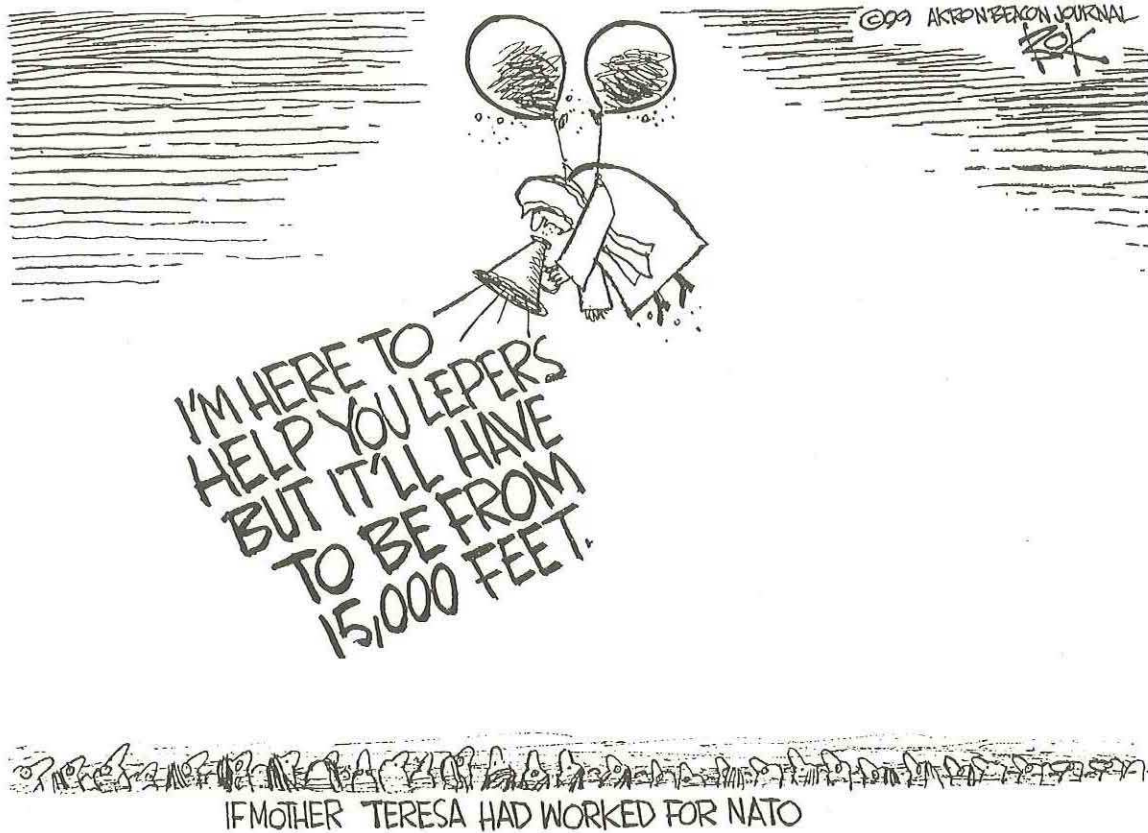
That riskless warfare even raises a moral puzzle may seem, at first, no more than a lingering cultural remnant of a world in which battle was governed by rules of chivalry—a romantic ideal that has been out of touch with actual combat for most of this century. Conventional warfare has become a confrontation of mechanical means, in which combatants rarely see directly the targets of their actions. It is no longer far-fetched to imagine military conflicts waged by small groups of high-tech warriors who select targets, push buttons, and are home for dinner. Though some commentators object to the "sanitizing" of war—leading, they warn, to moral callousness and a disregard for humanitarian norms—their worries may seem like vestiges of an ethos that has been decisively displaced.

Recent experience suggests, moreover, that personal confrontation may itself exacerbate a tendency toward atrocity. Within Kosovo, a war *was* waged at the direct, person-to-person level: the campaign of ethnic cleansing by the Serbs. But it was hardly the case that chivalry retained a place in this context—just the opposite. The worst examples we have of genocide and ethnic cleansing in the past decade—Rwanda, Bosnia, and Kosovo—all share the element of direct personal confrontation between the violator and his victim.

This double failure of the chivalrous ideal reflects a deeper moral asymmetry in the conduct of war today. One hundred years ago, war was still considered a legal means of contesting or advancing the interests of the state. That meant that each party to a conflict could confront the other on morally neutral terms. If war was "politics by other means," then there was no necessity that combatants view their opponents as the enemies of mankind or as tainted by the immorality of their ends. A morally neutral battlefield also meant that third parties did not have to take sides. Today, the international use of force is prohibited under the United Nations Charter. Increasingly, this prohibition on the use of force is thought to apply to many internal conflicts as well. We do not approach these military conflicts from the perspective of neutrality, but rather with the understanding that there is a legal and illegal, a good and bad. Chivalry lacks a foundation in such a moral universe, because it suggests that a code of personal honor may link combatants to each other over and above the difference in the ends for which they fight.

Today, illegal wars tend to be fought by illegal means. When the decision to use force already amounts to a violation of a fundamental norm of international law, it is unlikely that an aggressor's choice of tactics will be constrained by international law. Earlier in this century, the opposite concern seemed no less urgent: that countries fighting for legal ends, particularly self-defense, might put those ends at risk were they to *comply* with the rules of war. The refusal to accept such a risk led, for example, to the threat to use weapons of mass destruction rather than accept defeat. In all of this, the importance of the end—whether legal or illegal—seems to overwhelm the legal regulation of the means.

A policy of riskless intervention indicates a similar refusal to allow the means of warfare to generate moral norms apart from the ends. Now, however, the reasoning is that if our end is virtuous, there can be no justification for suffering "unnecessarily" in its pursuit. In a confrontation between good and evil, why should the good suffer?



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War as Police Action

If chivalry is dead, and we are confident in our ability to identify unjust situations perpetrated by men who deserve to be stopped, what sort of moral position could require us to sacrifice more, rather than fewer, of our own combatants? If our end is to stop the ethnic cleansing in Kosovo, then are we not morally better off if we can manage to do so without the risk of injury to ourselves? Why should the innocent suffer to stop the guilty? From this perspective, there seems to be a moral imperative to develop forms of warfare that would allow us to do just this: to punish and deter the unjust without risk to the innocent, whether our own soldiers or civilian victims. If we could completely differentiate the guilty from the innocent, injuring only the former, would we not have perfected, or even transformed, the moral basis of war?

Indeed, in modern international law, "war" is not a term that is used. Instead, the illegal use of force is characterized as "aggression" and the response is "self-defense." In Kosovo, NATO was not at war, but rather was pursuing "humanitarian intervention" in response to violations of human rights law. International actions responding to illegal use of force are "police actions." If the idea of a morally neutral war conducted under a code of chivalry is a thing of the past, and modern wars are best thought of as police actions, then perhaps we should substitute our

moral intuitions about police forces for those about armies at war. Michael Walzer has suggested this in analogizing intervention in response to human rights violations to firefighters seeking to put out a fire.

Walzer's point is that we expect firefighters to take risks to save others. One cannot be a good firefighter or policeman if one thinks of saving oneself before helping others. We expect those responsible for public safety to take risks proportionate to their ends. Yet, we would not be troubled if they could accomplish their ends without risk to themselves. We don't believe that there is a moral problem with a police force that manages to respond effectively to particular crimes without exposing its own members to risk of death or injury—unless that end is accomplished by subjecting the offenders to some disproportionate use of force. If this is the appropriate analogy, then there is nothing morally troubling about riskless warfare unless it is unsuccessful or disproportionately destructive.

The moral argument in favor of elimination of risk to the innocent can even go one step further. The entire calculation of whether and when to deploy force must be recast if we can wage war without risk. What possible grounds are there not to deploy force to stop gross injustice if the cost to us can be measured in dollars, not lives? In an age of international human rights, do we not have an obligation to intervene to vindicate and protect those rights? While the issue of whether we can

ask the innocent to sacrifice their own lives to save others is morally complex, and appropriately leads to a presumption against intervention, the presumption would seem to run just the other way when there is no real risk of death or injury attached to the intervention.

If we view the NATO campaign, then, from the perspective of the intervening states, it is hard to identify a convincing set of reasons that could support the moral intuition that there is something problematic about riskless warfare. Nevertheless, there remains something disturbing in the picture of the United States responding to the next Kosovo by simply sending in cruise missiles to hit targets selected through satellite surveillance.

Morality in the Message

Warfare is not subject to a straightforward cost-benefit analysis. A community's decision to resort to force is not merely about changing the behavior of others, but about the moral character of the deciding community as well. Decisions to use force communicate messages about the community and about its views of others. In any given instance, then, we have to ask what message is being conveyed by a decision to deploy force in a particular manner. This concern with the communicative aspect of the use of force is independent of the actual consequences—the effectiveness—of that use. The traditional rules of warfare did not make warfare any less dangerous, but compliance with, or violation of, those rules conveyed certain messages. The Serbs understood this when they violated the human rights of the Kosovars. There are numerous ways to encourage massive emigration; their way sent a particular message.

The morality of the risk-free use of force is not a matter of chivalrous conduct among combatants, but of the moral meaning of assuming, or failing to assume, particular risks in specific contexts. In part, what is so troubling in the Kosovo situation is the message that was sent by the endless reports of actions taken or not taken on the grounds that the risks to NATO personnel were too high. NATO focused the attack for many weeks on air defenses; its planes operated from great height; it would not risk pilots in refugee relief operations; and President Clinton announced from the beginning that there would be no ground intervention.

Wholly apart from tactical and strategic issues concerning the effectiveness of the military decisions, the moral message is this: the lives of NATO personnel are of greater value than the lives of those who might benefit from these interventions. This message is morally troubling precisely because it undermines the purported justification for the NATO operation. A humanitarian intervention, justified by appeals to universal standards of human rights, represents a commitment to a vision of

the fundamental equality of all persons. This means recognition of their right to life and respect for their distinct communities. These ideals are denied by the policy of waging riskless war. The contradiction is there as soon as the policy is announced, even if it were to turn out that in the particular case the means adopted were as effective as could reasonably be expected.

We suspect that if the people on the ground had been citizens of NATO countries, we would not have heard that a pilot could not attack Serbian troops because the risk *to himself* was too great. Rather, we would have heard of the sacrifice demanded of and made by a pilot

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to save others because the risk *to them* was too great. A riskless war, even a successful one, is stripped of opportunities for moral heroism. Ironically, that heroism stands on a stronger ground of democratic equality than does the conduct of a war limited by the concern that casualties might disturb public opinion.

Riskless warfare in pursuit of human rights is, therefore, actually a moral contradiction. If the decision to intervene is morally compelling, it cannot be conditioned on political considerations that assume an asymmetrical valuing of human life. This contradiction will be felt more and more as we move into an era that is simultaneously characterized by a global legal and moral order, on the one hand, and the continuing presence of nation-states, on the other. What are the conditions under which states will be willing to commit their forces to advance international standards, when their own interests are not threatened? Riskless warfare by the state in pursuit of global values may be a perfect expression of this structural contradiction within which we find ourselves.

In part, then, our uneasiness about a policy of riskless intervention in Kosovo arises out of an incompatibility between the morality of the ends, which are universal, and the morality of the means, which seem to privilege a particular community. There was talk during the campaign of a crude moral-military calculus in which the life of one NATO combatant was thought to be equivalent to the lives of 20,000 Kosovars. Such talk meant that even those who supported the intervention could not know the depth of our commitment to overcoming humanitarian disasters. Is it conditioned upon the absence of risk to our own troops? If so, are such interventions merely *moral* disasters—like that in Somalia—waiting to happen? If the Serbs had discovered a way to inflict real costs, would there have been an abandonment of the Kosovars?

We can't know whether a failure of the policy of avoiding risk would have led to a deeper commitment or to withdrawal. However, the very fact that the question was inevitably raised by the policy creates a perception of inequality. A willingness to sacrifice offers a form of moral assurance, an assurance that one is serious about the ends and willing to pursue those ends within a single calculus in which the lives of Kosovars count at least on the same scale, if not exactly the same amount, as the lives of NATO troops.

Risk and Democratic Legitimacy

The policy of riskless intervention may be the cost for popular support of military intervention when national interests are not threatened. But there is also a worry that popular support here is really only popular indifference. Without casualties, or the threat of casualties, the democratic process may not engage the issue very much at all.

Many fear the moral quality of the political judgments of the leadership of the West, and of the leadership of the United States in particular. It has not been that long since we pursued secret military interventions in Central America, which were profoundly offensive to human rights norms. Secrecy in those interventions played much the same political role that risklessness plays today. Both dampen political debate by suppressing the public prominence of a use of force. A political leadership that must justify in democratic debate a policy of sacrifice is likely to be disciplined by the force of public opinion.

The puzzle today is whether such discipline is a good thing. The more we trust our political leadership, the more willing we may be to accept less public debate for the sake of advancing a human rights agenda. Public opinion may make the leadership more cautious than it would otherwise be. Caution in the pursuit of human rights is not necessarily a virtue. The Kosovo experience showed us that there can be genuine conflicts between the domestic legitimacy that arises from popular approval of political action and the moral imperative of international human rights. An executive branch that is serious about the latter may have to be satisfied with less of the former. President Clinton appears to have made such a trade-off in his policies on Kosovo. The same dynamic was visible in Russia, but working in the opposite direction: a more democratic government there may have found itself even more committed to supporting the Serbs.

For many, however, the source of concern is not an absence of American intervention, but rather the threat of unilateral intervention by the sole remaining superpower. Riskless warfare may be too easy politically. It may give too much power to an executive

operating without the political legitimacy that comes from real popular support.

Policemen of the World

Alongside these worries about the message sent, the depth of the commitment, and political legitimacy, there lies a final moral complexity. We inevitably ask by what right our nation interferes in the affairs of other nations. Not just isolationists, but those genuinely concerned for others, are troubled by the widely expressed challenge: "Who made us the policemen of the world? These are not our fights, so why should we presume to determine their outcomes?" Our uneasiness about riskless intervention arises, in part, from the difficulties associated with justifying intervention of any kind.

Surely the mere existence of universal human rights norms does not in itself set the standard for permissible intervention, either as a matter of law or of morality. Just at this point the analogy to a domestic police force breaks down. On the international level, there are

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competing moral claims between the universal demands of human rights and each community's right to shape its own history. This competition does not exist within a single community under law. Claims that a new global community governed by human rights law has emerged over and above nation-states seem wildly exaggerated when precisely what the world lacks is a police force willing to enforce these norms. NATO members, including the United States, certainly have not expressed a willingness to take on this role generally: they did not act in Rwanda and resisted action in Bosnia.

This tension between the national and the global is especially acute when the intervening party uses military force without the approval of that institution—the United Nations Security Council—with primary responsibility to keep international peace. NATO may have been responding to violations of international law, but it was not authorized to act by the only global institutions that we have. Russia and China publicly took the position that the NATO intervention was illegal. Kosovo was not Serbia against the world, but Serbia against NATO.

This is the same kind of asymmetry that many find disturbing in Spain's recent legal action against former Chilean president Augusto Pinochet. Pinochet

may indeed have violated universal standards of human rights, but still he is a special problem for the Chilean community to resolve. The fact of his violations may not be enough to justify judicial intervention by Spain, which has so little at stake in dealing with this ex-dictator.

Americans, in particular, stand on a complex history of self-determination, in which we have not been without moral fault but in which we have insisted on working out these faults by and for ourselves. Terrible as the Civil War was, I do not think that many Americans believe we would have been better off had some third party intervened to right our wrongs. We have not always respected a similar right of nonintervention by other states, but this has only subjected us to the charge of hypocrisy.

Sharing a History

Without taking up the complexities of this conflict between the universal morality of human rights and the moral claim to community autonomy, I want to suggest that this conflict helps explain why the possibility of riskless war is profoundly troubling. After a century of genocide, we know that there are limits to a country's right not to be interfered with: at a certain point, intervention becomes morally compelling. But a willingness to sacrifice, on the part of those who would intervene, is critical in reaching that point.

When we announce that we are willing to sacrifice for others with whom we have no bond other than a common understanding of justice, we intervene not as a moral enforcer but as a participant. We now make the oppression of others a part of our own history; the injustices that might have seemed distant become injustices against ourselves. We come to share a common history with the victims and together form a new community.

It is true that in acting to protect the Kosovars, we certainly seem like third-party interveners to the Serbs. We are not a part of *their* community, so why are we there? But the Serbs do not have a right to define the boundaries of the community against which they are acting. They cannot stop others from saying that they too are Kosovars.

Communities do not come with predetermined boundaries. States, for example, divide or join together as peoples come to see themselves differently. The peoples of the former Yugoslavia should know this better than anyone. When we are willing to sacrifice on the field of battle, we actively remake the boundaries of communities. The expansion of the moral community of identification is at the foundation of justified intervention.

This is not to say that a nation declaring its moral identification with others is always entitled to intervene on their behalf. We can be, and often have been, wrong in our decisions to use force; our willingness to take risks does not in itself prove that we have intervened on the deserving side. So there is an inescapable need for moral judgment. The problem is that moral judgment is not enough. We do not have a license to intervene whenever we think one side in a conflict is right and the other is wrong.

The appeal to a community of identification as a rationale for intervention clearly places a substantial burden on the victim community, on those for whom we intervene. Their behavior must be such that it can sustain a sense of cross-cultural identification, of membership in a common community. When the victims take advantage of the intervention to carry out symmetrical violations against their enemies, they undermine this identification. The reaction of other states will rightly be moral disengagement, a sense that this is not our fight, nor should it be. We may be entering this stage in the Kosovo saga.

Standing with the Kosovars is not the same as standing on a claim to enforce universal human rights. Because we are not willing to intervene in countless places around the world in which individuals suffer injustices as great as those in Kosovo, the latter claim inevitably looks hypocritical. But the former claim is not subject to the same charge of hypocrisy. Identifying with the suffering of others and acting on their behalf is not an all-or-nothing proposition. Yet, by insisting that its intervention would only proceed in a riskless fashion, NATO placed in doubt even this more limited justification. It suggested that the pursuit of human rights may be a modern version of Clausewitz's vision of war itself: the pursuit of national policy by other means.

Riskless war seems to be without costs, but it is only at the cost of sacrifice that we build a community, of whatever extent. Outside of our own community, the right to intervene, even in a good cause, is never clear.

—Paul W. Kahn

Paul W. Kahn is Nicholas deB. Katzenbach Professor at Yale Law School and Director of the Orville Schell Jr. Center for International Human Rights. Sources: Michael Walzer, "Politics and Morality in Kosovo," *Dissent*, vol. 46, no. 3 (Summer 1999); Paul W. Kahn, "On Pinochet," *Boston Review*, vol. 24 (February/March 1999).