
DIFFERENTIATING MORAL DUTIES: A RESPONSE TO *VALUING FOREIGN LIVES*

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Should democratic governments place a value on life? If so, should the valuation of foreign lives be the same as the valuation of domestic lives? This Article examines the profound moral issues present when assigning quantitative value to human life in response to Rowell and Wexler. Starting with the assumption that all lives, domestic or foreign, have equal, intrinsic moral value, this Article argues that a justification for disparate life valuations between foreign and domestic lives are a result of the long-recognized difference between act and omission, between imposing a harm on another and failing to render aid. Using the current philosophical debate surrounding the scope of global distributive justice principles as a backdrop, this Article highlights the morally salient distinctions among the various duties we have towards individuals.

Democratic governments evaluate risks, and as part of that process make judgments about the value that the prevention of any given harm has. Such valuation judgments are typically reflected in the resources a government is willing to expend to prevent a specific harm. In *Valuing Foreign Lives*, Arden Rowell and Lesley Wexler focus on the question of whether the valuation of foreign lives should be the same as the valuation of domestic lives.¹ In their sophisticated and thought-provoking piece, Rowell and Wexler present one of the first detailed analyses of the often opaque foreign valuation practices of the United States in a range of contexts, including regulatory contexts, international armed conflict, and disaster aid.² These practices, they highlight, are extremely varied. Foreign lives are not assigned any value in the “seven largest regulations pending as of August 2011,”³ whereas domestic lives are valued by regulators at \$6 to \$9 million.⁴ By contrast, international laws of war and

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1. Arden Rowell & Lesley Wexler, *Valuing Foreign Lives*, 48 GA. L. REV. 499 (2014). The term ‘foreign life’ refers to an individual living outside a given country’s borders. *Id.* at 504.

2. *See id.* at 524–53.

3. *Id.* at 526.

4. *Id.* at 524–25.

United States rules of engagement (“ROE”) are such that foreign civilian lives are valued more than domestic combatants.⁵ In the context of disaster aid, the Office of Foreign Disaster Assistance provides \$400 for fatalities which are disaster related, but the domestic agency FEMA values life at \$2 million.⁶ Their research demonstrates that valuation judgments are currently made in an atheoretical manner, and they provide compelling reasons for why and how current foreign life valuation practices by the U.S. government should be improved. One of the main thrusts of Rowell and Wexler’s article is that foreign life valuation should be considered a topic in its own right, and governments must be transparent in the valuation method chosen so that their choices can be justified both domestically and internationally.⁷

Rowell and Wexler correctly recognize that foreign valuation raises profound moral issues, and it is on these issues that I focus in my article. Rowell and Wexler provide a brief overview of some of the key questions and debates salient for foreign life valuation,⁸ and my commentary builds and expands on this discussion. In particular, I argue that moral distinctions, such as between doing and allowing, as well as concepts from the literature on international distributive justice, provide rich theoretical resources for developing a principled moral grounding for the practice of foreign life valuation.

Before canvassing these resources, it is important to emphasize what is not being assessed in valuation exercises. Critically, the specific valuation exercises on which Rowell and Wexler focus do not express or reflect judgments about the intrinsic moral worth of a given life. Valuation, as defined by Rowell and Wexler, tracks duties and obligations, not intrinsic moral value.⁹ A basic starting assumption of all plausible moral theories is that all lives, domestic or foreign, have equal, intrinsic moral value. In examining below the moral issues surrounding foreign life valuation, I begin from this assumption. Differences in resource expenditures devoted to preventing harm do not automatically violate this assumption. Rather, differences may reflect instead variation in the existence and stringency of the moral duty an individual, or institution, has to guard against certain losses. Recognition of what is being judged—and what is not being judged—is important not just for analytic clarity but also for justificatory reasons. Insofar as differential amounts of resources are justified for preventing loss of domestic and foreign lives, respectively, this is not a function or reflection of different intrinsic moral value of those lives. Insofar as it is important, morally and politically, for governments to justify their policies both domestically and internationally, this is an important point to emphasize. In any morally justified scheme of valuation, all are moral equals.

5. *See id.* at 547–48.

6. *Id.* at 552.

7. *See id.* at 554.

8. *See e.g., id.* at 572–78.

9. *See id.* at 502.

If all human beings are moral equals, on what basis could differential allocation of resources to guard against losses be morally justified? Answering this question requires clarifying the sorts of considerations that, from a moral point of view, ground our moral duties towards others. Since the interest of Rowell and Wexler is on valuation in public policy,¹⁰ I focus here specifically on the obligations of governments towards individuals.

There is broad consensus among moral philosophers (most of whom are non-utilitarian) that one morally salient consideration is the relationship between an action or policy and a given loss. There is a widely recognized distinction made between doing and allowing.¹¹ It is morally worse to kill someone than to allow him or her to die. Similarly, the duty to avoid harming another is generally taken as more demanding than the duty to aid.¹² These examples highlight the idea that the *content* of the particular duty we have toward another individual matters. These distinctions hold regardless of who the individual in question is. In the context of government valuation exercises, this suggests that differences in valuation might track differences in the moral seriousness of the specific duties implicated in resource allocations to avoid or compensate for losses of life. Our actions might contribute to the loss of domestic and foreign lives in different ways. Loss of life could be a function of the direct infliction or authorization of a harmful action, or a failure to provide needed aid. Variance in valuations might track such differences.

Rowell and Wexler concentrate in their discussion of philosophical challenges to foreign valuation practices on the moral salience of state borders; they reference the debate between cosmopolitans and liberal nationalists on the permissibility of claiming that conationals (or fellow citizens) have more stringent duties towards each other than towards members of other states.¹³ This particular debate illustrates a broader moral issue, namely, the moral significance of what have come to be called “special relationships.”¹⁴ The central moral question posed by special relationships is: when, and for what reasons, does a relationship or role generate specific duties towards particular individuals not owed to others? For example, all adults have certain duties towards all children, such as the avoidance of the intentional infliction of harm. However, parents are widely taken to have special responsibilities towards their own children that they do not have towards other children, including

10. See *id.* at 501–04.

11. See Frances Howard-Snyder, *Doing vs. Allowing Harm*, in *STANFORD ENCYCLOPEDIA OF PHILOSOPHY* (2011), available at <http://plato.stanford.edu/entries/doing-allowing/>.

12. See, e.g., THOMAS POGGE, *WORLD POVERTY AND HUMAN RIGHTS: COSMOPOLITAN RESPONSIBILITIES AND REFORMS* 140–41 (2d ed. 2008).

13. For a cosmopolitan account, see GILLIAN BROCK, *GLOBAL JUSTICE: A COSMOPOLITAN ACCOUNT* 264–70 (2009). For a liberal nationalist view, see DAVID MILLER, *NATIONAL RESPONSIBILITY AND GLOBAL JUSTICE* 40 (2007); YAEL TAMIR, *LIBERAL NATIONALISM* 99 (1993).

14. See SAMUEL SCHEFFLER, *BOUNDARIES AND ALLEGIANCES: PROBLEMS OF JUSTICE AND RESPONSIBILITY IN LIBERAL THOUGHT* 56–58 (2001).

more demanding responsibilities to nurture, to educate, and to ensure that their own children are adequately nourished.¹⁵

In my view, there is no reason to assume that our explanation of the moral significance of a given role or relationship will be univocal across all kinds of relationships and roles a given individual may occupy.¹⁶ In the present context, contemporary philosophical debates about distributive justice at the global level, I believe, provide fruitful theoretical resources for determining the moral salience of state borders (and the relationships enjoyed by individuals in the same state) for questions of resource allocation.

Theories of distributive justice answer the question: what constitutes a just distribution of resources? Until recently, answers to that question implicitly assumed that resources were being distributed within a state and only among members of the state.¹⁷ However, increasing awareness of global inequalities in resources and the extent of global poverty forced philosophers to consider whether it is morally justified to restrict the application of principles of distributive justice to a single state. Within the literature on international distributive justice that has developed, scholars generally accept that governments and individuals have humanitarian obligations to assist individuals or communities in need.¹⁸ So theorists are *moderate cosmopolitans* in the sense that they recognize that governments have obligations to foreign individuals and/or communities. The global distributive justice debate concentrates on whether the more demanding duties of justice in the allocation of resources are owed to foreign individuals as well. In other words, the central issue concerns the *scope* of principles of distributive justice.¹⁹

Explanations of the scope of duties of distributive justice are often conditional: norms of distributive justice do (or do not) apply internationally provided international relations, or international institutions that structure interaction, have a given feature.²⁰ For example, John Rawls limits the scope of application of principles of distributive justice to single domestic communities because only when relationships are regulated by what he calls a “basic structure” do questions of distributive justice arise, and there is no global basic structure.²¹ By contrast, Charles Beitz argues that there already exists a global basic institutional structure, and so principles of distributive justice are global in application.²² Thomas

15. See, e.g., George P. Fletcher, *Loyalty*, in *A COMPANION TO PHILOSOPHY OF LAW AND LEGAL THEORY* 513, 517 (Dennis Patterson ed., 2d ed. 2010).

16. See COLLEEN MURPHY, *A MORAL THEORY OF POLITICAL RECONCILIATION* 44 (2010).

17. See, e.g., JOHN RAWLS, *A THEORY OF JUSTICE* 4–5 (1971).

18. See, e.g., Thomas Nagel, *The Problem of Global Justice*, 33 *PHIL. & PUB. AFF.* 113, 118 (2005); Pauline Kleingeld & Eric Brown, *Cosmopolitanism*, in *STANFORD ENCYCLOPEDIA OF PHILOSOPHY* (2013), available at <http://plato.stanford.edu/entries/cosmopolitanism/>.

19. See Arash Abizadeh, *Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice*, 35 *PHIL. & PUB. AFF.* 318, 322–25 (2007).

20. See A. J. Julius, *Nagel's Atlas*, 34 *PHIL. & PUB. AFF.* 176, 187–89 (2006).

21. RAWLS, *supra* note 17, at 242–46.

22. See CHARLES R. BEITZ, *POLITICAL THEORY AND INTERNATIONAL RELATIONS* 144–45 (1979).

Nagel also restricts the scope of justice to domestic communities, but for different reasons than those of Rawls.²³ Following Hobbes, Nagel connects sovereignty and justice, arguing that justice does not apply to relationships that are not mediated by a sovereign who can enforce rules and practices, providing assurance to individuals that others will follow mutually beneficial rules if he or she does.²⁴ A. J. Julius argues that the interaction must be sufficiently dense, which he claims it is in some contexts in the international arena.²⁵ Mathias Risse is a pluralist about grounds of justice, identifying shared humanity, membership in a state, governance by international institutions, and engagement in international trade all as salient for creating obligations of justice.²⁶ What these debates show is that contemporary arguments for restricting the scope of distributive justice principles take shared membership in a state to be morally salient *because of the way the state structures and shapes interaction*. Once international institutions regulate and structure interaction in the same manner, the principled ground for restricting the scope of application distributive justice principles is gone. These debates also show two distinct areas of disagreement, one theoretical and one empirical. The theoretical disagreement concerns what exactly matters morally about the way individuals interact within a state. The empirical debates concentrate on whether the feature that is morally salient also obtains when we look at interaction at the global level. The answer to the empirical question of course can change over time, as facts about the structure of interaction internationally change with, for example, changes to international law.

What does the above discussion mean for the question Rowell and Wexler take up, namely, the permissibility of valuing foreign lives differently than domestic lives? First, it highlights the importance of considering in any valuation exercise the actions that lead to certain losses. When losses are the function of the infliction of harm, that is in general more morally concerning than losses that an individual or government allows to occur. Thus, the high valuation placed on the lives of foreign civilians in the laws of war may reflect the stringency of the moral duty of combatants to avoid the intentional infliction of harm. There may also be a justification for differential valuation of foreign and domestic lives in disaster assistance. The lower valuation of foreign loss of human life may reflect the fact that foreign disaster aid is a fulfillment of a humanitarian duty of assistance to those in need. By contrast, domestic loss of life, with its correspondingly higher valuation, may track the fact that the consequences that befall citizens in, for example, natural disasters are influ-

23. Nagel, *supra* note 18, at 116–17.

24. *See id.* at 139–40.

25. *See* Julius, *supra* note 20, at 178.

26. *See* MATHIAS RISSE, ON GLOBAL JUSTICE 17–20 (2012).

enced by regulatory choices made by governments concerning the built infrastructure (e.g., buildings, roads, bridges).²⁷

Second, and relatedly, valuation judgments of domestic lives do not have to be uniform. Nor does the valuation of foreign lives have to be uniform. Disaster aid is a response to a humanitarian duty, and as such the valuation of foreign lives may be permissibly less in amount than the valuation of foreign (civilian) lives demanded by more stringent duties of justice in times of war.²⁸ Insofar as valuation tracks duties, we should not expect the valuation of either foreign lives considered in isolation or of domestic lives considered in isolation to be identical in these two cases.

Finally, governments must decide whether, and under what conditions, it is *morally* justified to differentially value foreign and domestic lives when we hold constant the actions or policy that risk a loss of life. Such decisions force governments to determine, implicitly or explicitly, the basis for any individual's justice-based claim to the scarce resources under a government's control. Sovereignty, dense (economic) interaction, being subject to institutional structures that profoundly determine how one's life goes, and basic shared humanity are all candidate answers one finds in the literature on global distributive justice. They are answers that also have varied implications. The criterion of dense interaction allows for differential valuation of some foreign lives (those lives with whom we do not interact in a dense way), but not others (those with whom a given country interacts in a sufficiently dense way). By contrast, sovereignty permits differential valuation of all foreign lives when and until a world state emerges. The strong cosmopolitan basis of shared humanity prohibits differential valuation.²⁹

My discussion to this point has concentrated on comparative assessments of valuations of foreign and domestic lives across a range of contexts. However, any valuation exercise also assigns some particular value to a specific loss in a given context, which is supposed to be commensurable with what is being measured. In the current context, moral valuations are tracking the stringency of the duties towards individuals to prevent or avoid death in a given context. Rowell and Wexler end their paper by considering four different ways such valuations of foreign lives might proceed in the United States, where domestic valuations are based on the willingness-to-pay criterion. Specifically, the value of a domestic life tracks how much an individual would be willing to pay to avoid mortality risks. Rowell and Wexler survey different options for analogous foreign valuation, which vary in terms of whose willingness-to-pay to avoid foreign mortality risks is being considered (e.g., domestic persons or foreign persons) and whose mortality risks are being averted (e.g.,

27. See Colleen Murphy & Paolo Gardoni, *Evaluating the Source of the Risk Associated with Natural Events*, 17 RES PUBLICA 125, 128–29 (2011).

28. Though I did not discuss just war theory explicitly, there is a long tradition of just war thinking in philosophy that articulates moral duties of justice in war. See, e.g., MICHAEL WALZER, JUST AND UNJUST WARS 127–28 (3d ed. 2000).

29. See BROCK, *supra* note 13, at 289–91.

domestic persons or foreign persons).³⁰ Setting aside for present purposes general moral concerns philosophers have raised about the possibility and desirability of monetizing all losses,³¹ I want to end by highlighting one basic question about willingness-to-pay methods that warrants further consideration. As noted above, valuation judgments in the context under consideration are not tracking the intrinsic value of individual lives. Nor are they tracking the value that an individual attaches to a given life. Rather, valuations track duties. When morally justified, I have suggested above, valuations specifically track morally salient distinctions among the various duties we have towards individuals. The questions that warrant further consideration are: do assessments of a person's willingness-to-pay to avoid certain risks actually track these morally salient distinctions? And whose assessments capture these distinctions? Understanding what influences willingness-to-pay judgments will put us in a position to determine whether this method of valuation of foreign lives tracks what we are interested in from a moral point of view.

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30. Rowell & Wexler, *supra* note 1, at 562–63.

31. See Allan Gibbard, *Risk and Value*, in *VALUES AT RISK* 94, 110 (Douglas MacLean ed., 1986).