

Mandatory Rescue Killings*

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This is the peer reviewed version of the following article: 'Mandatory Rescue Killings' (The Journal of Political Philosophy 15/4 (2007): 363-384), which has been published in final form at <https://ezproxy-prd.bodleian.ox.ac.uk:3688/doi/full/10.1111/j.1467-9760.2007.00282.x>. This article may be used for non-commercial purposes in accordance with Wiley Terms and Conditions for Use of Self-Archived Versions.

1. Introduction

Many believe that the needy have a (*prima facie*) moral right to receive assistance from those able to provide it, particularly so when their life is at stake. For example, many believe that those who are starving to death have a moral right that the better off (in their own country and abroad) help them gain access to food. Many also believe that a child who is in danger of drowning in a shallow pond has a moral right that passers-by rescue him. Disagreements such as there are on these issues do not pertain to the appropriateness of conferring such rights on the needy in the first instance but, rather, to the precise contours of rights to assistance (who exactly is under a duty to provide food to the starving or to help the imperilled? Up to what point are they under such duty? etc.)

Now, some individuals need assistance because they are subject to a lethal threat at the hands of another person, from which they cannot defend themselves. Do they have a right against potential rescuers that the latter provide them with assistance by killing the attacker? To put it differently, does the duty of good Samaritanism include a duty to kill in defence of another?

Most people believe that one is sometimes morally permitted – indeed, that one has the right – to kill one's attacker in self-defence, at least in those cases where one would die (or suffer a serious injury) otherwise. There is, in fact, a considerable body of work on the subject. By contrast, rescue killings have received far less attention. Moreover, whatever attention they have received has been focused on their permissibility, not on their obligatoriness.¹ And yet, whether or not individuals are under a duty to kill in defence of another is of enormous moral, political, and legal importance. Thus, it is sometimes said that powerful states are not merely entitled to wage a war of intervention in defence of a genocidal tyrant's victims, but are also under a moral duty to do so (provided that they abide by the rules of war.)

In this paper, I shall argue that killing in defence of another is sometimes mandatory at the bar of justice. More specifically, in section 2, I shall argue that the duty to provide assistance includes a duty to help others ward off attackers, by

* I am grateful to Alejandro Chehtman, Axel Gosseries, Cécile Laborde, David Lloyd Thomas, Dan McDermott, Tamar Meisels, Anne Phillips, Amy Reed, Saul Smilansky, Alex Voorhoeve and two anonymous referees for *The Journal of Political Philosophy* for very helpful written comments on earlier drafts. I would also like to thank the members of the Nuffield Political Theory Workshop and the LSE Political Philosophy and Philosophy and Public Policy Seminars for useful discussions on the issues addressed here.

¹ With the exception of the Talmudic tradition. See G. P. Fletcher, "Defensive Force as an Act of Rescue", *Social Philosophy and Policy*, 7 (1990), 170-179.

exercising lethal force if necessary. In section 3, I shall argue that the case for or against the legal enforcement of this specific duty remains inconclusive. I shall also claim that, if enforcement is called for, then conscientious objectors to killing can sometimes be granted immunity from punishment for failing to do their duty, but *not* on grounds of conscience.

Four preliminary remarks before I start. First, I shall assume that killing the attacker (A) is the only way to save the victim's (V) life, and that A will die if the rescuer (R) acts. Thus, the act of rescue is both necessary and successful.

Second, I shall assume that V is permitted, and has the right, to defend herself against A. I shall also assume that R is permitted, and has the right, to come to her help if she so asks.²

Third, the phrase "R is under a duty to kill A in defence of V" needs disambiguating. For it can mean either that it would be morally wrong of R not to kill A, or, more strongly, that he would violate V's right to be rescued were he not to kill A. Unless otherwise stated, I shall have the second, rather than the first, of those interpretations in mind, so that a statement of the form "R is under a duty to V to kill A" implies a statement of the form "V has a right against R that the latter kill A", and vice-versa.

Fourth, one must distinguish between morally culpable and morally innocent attackers. One must also distinguish between attackers, who *act* in such a way as to pose a lethal threat (whether morally culpable or innocent), and passive (and thus innocent) threats, to wit, individuals who pose a lethal threat to some other person simply in virtue of their location or movements. Whether or not it is permissible to kill a morally innocent attacker or a passive threat in self-defence is a controversial issue, and I do not wish to add to an already voluminous literature.³ Accordingly, I shall focus on cases where V's life is at risk from a morally culpable attacker.

2. Defending the moral duty to kill in defence of V

A.

Let me begin with a few points on the duty of assistance in general. Different arguments have been deployed in support of it. For example, some aver that the value of citizenship, understood as the enjoyment of civil and political rights, is important enough to dictate that all individuals should have the material help which is required by the effective exercise of those rights. Some, by contrast, claim that citizenship should be construed broadly as membership in the social, rather than

² One might think that being permitted to do *x* implies that one has the right to do so, and vice-versa. However, rights, or so I assume here, correlate into duties, so that to have a right to do *x* means that others are under a duty to let us do *x*. Just as one can sometimes be permitted to do something which others are not under a duty to let us do (as is the case, for example, in Hobbes' state of nature), one can sometimes have the right to do something which one is not permitted to do (as is asserted, for example, by those who, on the one hand, believe that reading pornographic material is morally wrong and, on the other hand, maintain that others should let us do it if we so wish.)

³ For the view that the self-defensive killing of the innocent is permissible, see, e.g., J. J. Thomson, "Self-Defence", *Philosophy and Public Affairs* 20 (1991): 283-310; S. Uniacke, *Permissible Killing: The Self-Defence Justification of Homicide* (Cambridge University Press, 1994). For powerful arguments against that view, see, e.g., J. McMahan, "Self-Defence and the Problem of the Innocent Attacker", *Ethics*, 104 (1994), 252-290; M. Otsuka, "Killing the Innocent in Self-Defence" *Philosophy and Public Affairs*, 23 (1994), 74-94.

exclusively political, community, and requires that individuals give one another the means to be citizens in that broad sense. Others point to the inherent unfairness of asking others to bear the burdens of social cooperation on terms - such as poverty - which they cannot reasonably be expected to endorse. Others still argue that individuals generally have a duty to provide others with the material help they need in order to lead a flourishing life.⁴ I shall not defend the duty of assistance here. Instead, I shall provisionally assume, with the latter, that if individuals are in a position significantly to improve someone else's prospects for a flourishing life by helping them meet their needs, then individuals are under a duty to do so at the bar of justice, which is also to say that the needy have a right to assistance.

This assumption is provisional, because there are limits to what individuals owe to the needy. Drawing the line between cases where the duty would be too burdensome and cases where it would not is beyond the scope of this paper. As a rough guide, let me note, first, that to be under a moral duty to do something for the sake of another can be costly in the sense that it would prevent the rescuer from leading a flourishing life, where leading such a life means being minimally autonomous, that is, being able to frame, revise, and pursue a meaningful conception of the good. Someone who wishes to be exempt from a moral duty to help may thus make either of the following claims: (1) having to help would deprive him of the all-purpose means necessary to lead any meaningful conception of the good; (2) having to help would deprive him of the specific means necessary to lead the conception of the good which he finds the most meaningful and the pursuit of which makes his life flourishing. Obviously not all conceptions of the good are meaningful, and one ought not, therefore, to take individuals' own judgements about what makes their life flourishing at face value. Imagine a potential rescuer, R, who is agoraphobic and never leaves his flat. He is connected to the outside world by phone and the internet, and lives a materially comfortable life. From his point of view, he tells us, a flourishing life is one lived solely within the confines of his home. Yet, it does not seem that he is in fact leading a flourishing life, all things considered. In the light of this particular example, R's judgment to the effect that his preferred conception of the good makes his life a flourishing one should be taken seriously if, and only if, there is no other conception of the good which, having thought rationally and critically about it, R would find meaningful.

With these assumptions in hand, I submit that individuals are under a duty to help only if the following three conditions obtain: (a) they are physically able to help; (b) the costs of doing so is not such as to jeopardise their prospects for a flourishing life; and (c) giving the required assistance would not put them at a high risk of incurring those costs.⁵

⁴ See, e.g., E. Anderson, 'What is the Point of Equality', *Ethics*, 109 (1999), 287-337; Harry Frankfurt, 'Equality as a Moral Idea', *Ethics* 98 (1987), pp. 21-43; A. Gewirth, *The Community of Rights* (Chicago: Chicago University Press, 1996); D. Harris, *Justifying State Welfare* (Oxford: Blackwell, 1987); L. Jacobs, *Rights and Deprivation* (Oxford: Oxford University Press, 1993); M. Nussbaum, *Women and Human Development – The Capabilities Approach* (Cambridge and New York: Cambridge University Press, 2000.)

⁵ I defend the right to receive assistance and set out its limits in my *Whose Body is it Anyway?* (Oxford: Oxford University Press, 2006), ch. 1. As I also argue there, the right to receive assistance imposes far greater duties on third parties than is usually supposed – most notably a duty (within the aforementioned limits) to provide the medically needy with the organs they need in order to live a flourishing life.

We shall return to those constraints on the duty to provide assistance presently. Meanwhile, let us first look at two clear cases where individuals are, uncontroversially, under a moral duty to help, and then assess whether the reasons why that is so also provide reasons to hold R under a duty to kill A in defence of V.

My two clear cases are the following:

Food. Someone needs food as a matter of life and death. R has food at his disposal.

Drowning. A two-year old child is in danger of drowning in a river. R is a very good swimmer and would not risk drowning if he rescued him.

In those two cases, it would be morally wrong of R not to help the person in need. In fact, the latter has a right that R help her. I take it for granted that this is true in *Food*. But I contend that this is also true in *Drowning*. For the same considerations which support the view that the needy have a right, as a matter of justice, to some of the material resources of the well-off also support the view that the imperilled have a right, as a matter of justice, to the personal services of those who are in a position to help. To summarise briefly an argument to that effect which I make elsewhere, personal services such as rescue services are resources – fungible and scarce – which we need in order to pursue our ends. In that respect, they are sufficiently analogous to material resources to be considered appropriate subject matter for duties of justice. Moreover, if individuals' interest in survival is important enough to hold others under a duty to give them material resources, then it is important enough to provide them with emergency assistance in cases where, absent such assistance, they would not be able to survive. The fact that, in the former case, material resources are needed, whilst in the latter, personal services are, is not weighty enough to justify, on the one hand, holding the well-off under a duty to distribute and, on the other hand, exonerating would-be rescuers from a duty to help.⁶

Consider now the following two cases:

Gun. V is being attacked by A. R has a gun with which V could easily defend herself.

Police. V is being attacked by A. R witnesses the attack from the safety of his flat and is in a position to ring the police.

Now, if R is under a duty to provide food to someone who is in danger of starving, then it seems that he is also under a duty to make his gun available. And if R is under a duty to provide a rescue service to someone who is drowning, then it seems that he is also under a duty to ring the police. The fact that, in *Food* and *Drowning*, R's act of rescue would not harm anyone, whereas it would contribute to do so in *Gun* and *Police*, is not weighty enough to hold R under a duty in the former two cases, but not in the latter two, since V's attacker has lost his claim not to be killed. (I assume, remember, that V has the right to kill A, and that R has the right to help her do so.) I suspect, however, that the claim that V has a right against R that he call the police will strike many as plausible, whereas the claim that she has a right against R

⁶ See my *Whose Body is it Anyway?*, Chapter Two.

that he give her his gun will not. For in calling the police, they might think, R's causal responsibility for the attacker's demise is much weaker than if he hands his gun to V in the knowledge that V will immediately use it to kill A. Still, it is doubtful that one could thus justify holding R under a duty in *Police* and not in *Gun*. For in calling the police, R helps V procure a resource (by way of police protection) which, *arguendo*, she would not have been able to get otherwise, which is crucial to securing her survival, and which will be used to kill A. In fact, in ringing the police, trained as they are to exercise lethal force, R might well contribute more directly to A's death than if he hands his gun to an inexperienced V. (I assume, remember, that A will die if a rescue operation is attempted.)

Let us turn to the following, final case:

Killing. V is being attacked by A, whom R is in a position to kill. V will die unless R acts.

There are factual differences, of course, between *Police* and *Gun* on the one hand, and *Killing* on the other hand, but they are not sufficiently salient to exonerate R from a duty to help V in *Killing*. Compare, first, *Police* and *Killing*. In *Police*, R activates the provision of a service by the police (namely, killing A), whereas in *Killing*, R provides that service itself. However, this does not count against holding R under a duty to help V in *Killing*, given that, *ex hypothesi*, in *Police* the police will get there on time and kill A.⁷

Now compare *Gun* and *Killing*. In the former case, R is in a position to provide a resource, whereas in the latter case, he is in a position to provide a service. In so far as one is, in general, under a strong moral duty to engage in acts of Good Samaritanism, one cannot invoke this factual difference between the two scenarios to foreclose the possibility that one is under a strong moral duty to kill an attacker in rescue of his victim – that is, that one is under a moral duty to provide *lethal* rescue services.

This is not to deny, of course, that there are limits on the duty to kill. At the outset of this section, I noted that individuals are under a duty to provide assistance to the needy only if doing so would neither be so costly as to jeopardise their own prospects for a flourishing life, nor expose them to a high risk of incurring such a cost. Let us start with the issue of costs. At the bar of this proviso, R is not under a duty to kill A if he would die in so doing, or, indeed, if he would sustain, in the process, the kind of injury which would render his life less than flourishing. There is no hard and fast principle to help us determine which kinds of injury counts as such, but whilst being completely paralysed from the waist down would (in that it would deprive us of the ability to move around freely, to have sex, to reproduce, etc), breaking one's thumb in all likelihood would not. And so on.

The psychological costs attendant on providing this particular kind of assistance are harder to pin down. In that respect, the duty to kill is clearly more

⁷ At this point, someone one might be tempted to argue in favour of a duty to call the police and against a duty to kill A on the grounds that the state has monopoly over the exercise of legitimate violence which it devolves to the police, and to the police only. If so, though, one would in fact be arguing, counter-intuitively, against the *permissibility* of killing a culpable attacker in defence of his victim.

burdensome than the duty to, say, provide food, even when there is not enough food to save all those who are starving. True, both involve making a choice between lives. However, the difference between having to withhold resources from a needy individual for the sake of saving another person, and killing in defence of V, is that in the former case, whoever allocates resources lets someone die, whereas in the latter case, R actually kills V's attacker. As many would undoubtedly argue, there can be fewer more morally portentous acts than the act of killing another human being. When committing such an act, they would say, even in legitimate self-defence, one crosses a boundary set by millennia of cultures, values, and traditions, and in so doing one sets oneself apart from fellow human beings. The psychological costs of being so set apart are likely to be high indeed, and the question, then, is whether one could ever be held under a duty to incur them.

To be clear, the issue at stake here is not that if R were to be held under a duty to kill A, he would incur the costs attendant on violating one of his moral principles. I shall deal with this particular case in section 3. Rather, the issue is that R would incur the costs attendant on doing something - killing a culpable attacker - which, although it is deemed permissible by many and (I assume) by R himself, nevertheless elicits horror, or at the very least is tainted with the opprobrium which most societies cast on most acts of killing.

The thought that the costs incurred by R are too high for him to be under the relevant duty has some force, at least at first sight, in so far as it appeals to the familiar psychological phenomenon of, on the one hand, believing that doing something is permissible, and on the other hand, finding the prospects of doing it repellent, or finding it horrifying that others should do it. Consider a pregnant woman, for example, who wishes she were not pregnant, who, having thought long and hard about the issue, thinks that women (including herself) are permitted to have an abortion, but who nevertheless cannot bring herself to terminating her pregnancy. Or consider the contempt and distaste which public executioners often elicit in societies which nevertheless endorse the death penalty as a rightful punishment for murderers.

Now, as we saw above, individuals are not under a duty to provide assistance to others at the costs of their own prospects for a flourishing life. More precisely, they cannot be held under a duty to help if it would deprive them of the all-purpose means necessary to frame, revise and pursue any meaningful conception of the good. Nor can they be held under a duty to help if it would deprive them of the specific means necessary to pursue the one meaningful conception of the good which they believe, having thought rationally and critically about it, would render their life flourishing. The question, then, is whether R can be held under a duty to do something which he himself agrees is permissible, at the cost of horrifying himself, or/and being generally hated, despised, or ostracised, by others.

Being the target of such feelings could conceivably count as thwarting R in the first of the two ways I have just outlined, in so far as one cannot develop and pursue any meaningful conception of the good if one cannot enter in relationships with others. By contrast, feelings of revulsion and horror at oneself, in that particular instance, would not suffice to provide R with a justification for not being held under a duty to V. For even if R finds it difficult to frame, revise and pursue that conception of the good which renders his life flourishing, the cost of killing A is not one which would thwart R's pursuit of the conception of the good which, having

thought *rationally* about it, he would most like to hold. In so far as killing a culpable attacker is permissible, committing it surely is compatible with pursuing such a conception of the good.

At this juncture, a critic might be tempted to insist that there are some kinds of acts which most individuals find so repulsive that they simply cannot bring themselves to performing them. Thus, many would find it impossible to eat cadaveric human flesh even though they might believe themselves permitted to do so. Likewise, many would find the thought of engaging in consensual incestuous sex (with one's adult sibling, for example) impossible to entertain, even though they might accept that this kind of sex is morally permissible. In those cases, the objection goes, surely the agent is not under a moral duty to perform those acts. By the same token, even though R believes that killing A in defence of V is permissible, the psychological costs for him of so doing might be so high as to provide him with an agent-relative prerogative to let V die.⁸

Those two examples are not entirely apposite to the issue at hand, but they do highlight a sense in which the psychological cost of killing is relevant to the question of whether or not there is a duty to kill in defence of another. As described, they do not involve a needy third party, the victim, whose survival depends on the rescuer's willingness to act. Suppose, then, that R will be able to help injured V, who is trapped with him for days in a collapsed building, only if he eats the cadaveric flesh of another victim. Or suppose that V is held hostage by a kidnapper who will kill her unless R has video-taped sex with his own (adult) sister. In those revised examples, where V's need is pressing and constitutes the reason why R is called upon to act, it is not so clear (at least to me) that R's repulsion alone is enough to exempt him from a duty to help.⁹ It must be the case that his repulsion either makes it impossible for R to help V as required, or undermines his prospects for a flourishing life once he has so acted.

As the examples given here powerfully illustrate, there might well be cases, then, where R would experience such feelings of revulsion at the thought of killing A that he simply could not muster the willpower and strength to actually move his body as required by the act of rescue. In such extreme circumstances, and in virtue of the principle that "ought" implies "can", R cannot be held under a duty to kill A in defence of V. In other cases, R's feelings of revulsion at the thought of killing A will not be such as to make it physically impossible for him to do it. However, they might cause him to suffer a severe nervous breakdown, and thus undermine his intellectual, psychological and emotional ability to frame, revise and pursue any conception of the good. In short, psychological costs are on a par with similarly disabling physical costs, and ought to be treated accordingly.

Let us now consider the issue of risks. It is plausible to hold that individuals cannot be held under a duty to incur a high risk of dying for the sake of another - thus, that they cannot be held under a duty to enter a burning building in order to rescue the child who is trapped on its third floor, indeed that they cannot be held

⁸ I owe those two examples to an anonymous referee for *The Journal of Political Philosophy*.

⁹ It might be enough to provide him with an excuse for not doing his duty. As M. Otsuka pointed out to me in discussion, the fact that rescuers would experience considerable self-disgust for having killed someone is generally not as weighty as one might think. In those cases, for example, when the rescuer is called upon to save the life of a close relative, such as his sibling or, *a fortiori*, his child, self-disgust would seem to have very little weight at all.

under a duty to rescue a swimmer from choppy waters if they themselves are bad swimmers with a heart condition. However, it would not be plausible to hold that individuals cannot be held under a duty to incur *any* life-threatening risk, however minute, for the sake of another. Accordingly, whether R is under a duty to kill in defence of V depends on how high a risk he is incurring, and this in turn depends on, for example, how good a shooter he is, whether the attacker has seen him and could turn on him, etc. There is no reason to believe that there would be *no* situation where R could not rescue V without taking unacceptable risks to his life and limbs. Thus, R might be able to shoot at V's attacker from a very safe hiding place, such as a high wall, whose only and narrow crack would provide perfect support for his gun, and which would enable him to aim without exposing any part of his body to the attacker's fire. And so on.¹⁰

B.

To recapitulate, I have argued that, subject to costs- and risks-related considerations, R is under a moral duty to kill a culpable attacker in defence of V. Whether or not R's moral duty is the kind of duty which ought to be turned into a legal duty will be addressed in section 3. Beforehand, however, let us draw out some of the more political philosophical issues which arise from the thesis defended here. In arguing that R is under a duty to kill A for V's sake, I have argued, in effect, that his duty is not necessarily a contractual duty. This may appear to fly in the face of our intuition that cases where it clearly seems that an agent is under a duty to kill in defence of another person are those where he has volunteered to take on that particular job – for example by joining the police or signing up for the army. My point, though, is that volunteering to fulfil a role, part of which involves helping others, cannot be a necessary condition for being under a duty to provide such help. For if it were, one would not be under a moral duty to rescue a child from a pond unless one were a lifeguard; one would not be under a moral duty to administer CPR to a passer-by unless one were a paramedic, and so on. As I have shown in section A above, this view is implausible in general; moreover, killing is sufficiently similar to other kinds of assistance to warrant the conclusion that it is not necessarily a contractual duty.

This is not to deny, however, that whether or not an agent volunteers to fulfil such a role makes a difference to the scope and demandingness of his duty to V. As we have just seen, individuals are not under a duty to incur a high risk of death or injury for the sake of another. But if they volunteer to do jobs which will lead them to incur such risks, then they are under the (contractual) duty to do just that. Thus, I, a private citizen, am not under a duty to enter a burning building to save the child trapped inside, but you, as a fire-fighter, are. Likewise, I, a private citizen, am not under a duty to attempt to kill A if there is a chance that I will catch a bullet in the chest, but you, as a policeman, trained as you are to deal with such situations and furnished with adequate protective equipment, are. Of course, there are limits to the kinds of risks which one can ask volunteering professionals to incur for the sake of others. Thus, the fact that someone has joined the police is not enough to justify asking him to incur senseless risks; moreover, the fact that someone, for whatever reason, is willing to take senseless risks might not (or so some would argue) constitute enough of a reason to accede to his request. Be that as it may, it remains the case that

¹⁰ I owe this example to S. Smilansky's fertile imagination.

one can ask more of volunteers than of conscripts (in a wide, not only military, sense.)

The foregoing point has some interesting implications for the issue of humanitarian intervention. At the outset of this paper, I pointed out that, on some views, powerful states are not merely entitled to wage a war of intervention in defence of a genocidal tyrant's victims, but are also under a moral duty to do so (provided that they abide by the rules of war.) In the light of the conclusions reached so far, this claim is open to question. For those wars, fought as they are on the ground and in the face of considerable resistance from the attacked army (whose soldiers will often resort to guerrilla-type tactics), impose high risks of death and severe injury on individual members of the intervening forces. If my argument regarding risks and costs is correct, then states are *not* under a duty to wage wars of humanitarian intervention unless they can raise an army of volunteers for that particular task. In fact, and more strongly, governments are not entitled, vis-à-vis their own citizens, to take an army of conscripts to such a war.

It is tempting to think that, by implication, *if* it were possible to wage such a war (and to wage it justly) at hardly any risks at all to the intervening forces (for example, by dropping smart bombs from a high altitude on the enemy's military targets, etc), then states would be under a duty to do just that. But that would be too quick. For in so far as those modes of warfare require very specific skills on the part of soldiers, they could only be fought by highly trained individuals – in short, by professionals. Thus, the only way to get civilians to do that job effectively, if they do not volunteer to do it by signing up for the army, is to force them to become professional soldiers. Now, although individuals are, under some circumstances, under a duty to provide a service to the needy, conscripting the able-bodied into specific professions for the sake of the needy would undermine their autonomy and thus their prospects for a flourishing life. A just society, in other words, is one where there is freedom of occupational choice. More generally, individuals are not under a duty to acquire the skills with which they might be in a position, at some stage, to help the imperilled – any more than they are under a duty to ensure that they have surplus material resources just in case they might chance upon someone who is starving. Accordingly, if the warfare-related facts stated here are correct, individuals cannot be held under a non-contractual duty to participate a war of humanitarian intervention, and thus under a non-contractual duty to kill the genocidal tyrant's soldiers, even if they would incur hardly any risk of death or serious injury in so doing.

This claim is subject to the following qualification. In some countries such as Israel, citizens are required to do a military service, and thereby do acquire those technological skills. One might think, then, that *if* fixed-term conscription is permissible and *if* conscripts are able to fight a war of humanitarian intervention at very low risks to their lives and limbs, they can be held under a moral duty to do so. That conclusion is correct, with a proviso. To reiterate, individuals are not under a moral duty to acquire specific skills for the sake of the needy, and conscription into wars of humanitarian intervention is therefore impermissible. However, conscription might be permissible for reasons other than the needs of the imperilled – on the grounds, for example, that it is necessary for national self-defence. In the course of their military service thus justified, conscripts might learn the skills required by a minimal-risk/minimal-cost humanitarian intervention, and would thereby be in a

position to help the tyrant's victims. Under those conditions, and in virtue of my argument here, they would be under a moral duty to do so.

3. From a moral to a legal duty to kill

A.

So much, then, for the thesis that R is (sometimes) under a moral duty to kill A in defence of V. Should he be under a legal duty to do so? To ask whether or not a moral duty ought to be turned into a legal duty is to inquire, in part, about the moral limits of the law. Needless to say, I cannot do full justice to this issue in this paper. Suffice it to say that any argument to the effect that a moral right ought to be legally enforced must show that the act prohibited or prescribed by the duty falls within the purview of state authority. It must also show that enforcement would not undermine some important interest of the right-holder's, the duty-bearer's or some third party's, and would be practically possible. I shall assume (I hope uncontroversially) that the state can on principle consider making it its business to ensure, not merely that its members not harm one another grievously, but also that they provide one another with life-saving resources: this, after all, is what it does when levying taxes for the purpose of funding welfare services. The question which shall occupy us here is whether, if that assumption is correct, turning the specific moral duty to kill in defence of another into a legal duty would fall foul of the requirement that enforcement neither undermine some important interest(s) of V's, R's or some other party's, nor be practically impossible.¹¹

Now, it is sometimes argued that rights to assistance as provided in the form of a service, rather than in the form of material resources, generally ought not to be enforced, on the grounds, for example, that it would be impossible for the courts adequately to assess whether a rescuer was in a position to help, or whether he was under a duty to do so in the particular circumstances of the case.¹² And it might seem that those arguments against enforcing duties of assistance are particularly strong when the duty in question is a duty to kill. Consider the conditions which must be met in order for R to be under a moral duty to kill A: (a) he can reasonably be expected to believe that A is about to culpably kill V; (b) he can reasonably be expected to believe that there is no state agent on the scene which will do a better job than him of protecting V; (c) he can reasonably be expected to think that coming to V's rescue would not represent an unacceptably high risk to his prospects for a flourishing life; (d) he can reasonably be expected to think that killing V is the option of last resort. If R cannot be expected to form either of those beliefs, then he cannot

¹¹ This requirement allows for the possibility that whilst conferring a moral duty on someone might not be tantamount to imposing on him a particular cost C, enforcing that duty might, to the point where one ought not to do so. Suppose that parents are under a moral duty (and one, moreover, of justice) to secure equality of educational opportunities between their children irrespective of gender. It seems to me that this particular duty ought not to be enforced, on the grounds that enforcement (unlike the moral duty itself) would require intolerable levels of state intrusion in family life. Similarly, it may well be (and this is what needs to be established here) that although holding individuals under a moral duty to kill in defence of another does *not* impose on them a given cost C, enforcing that duty would do so, and to such an extent as to be rejected.

¹² See, e.g., H. Malm, "Liberalism, Bad Samaritan, and Legal Paternalism," *Ethics* 106 (1995): 4-31; "Bad Samaritan Laws: Harm, Help, or Hype?," *Law and Philosophy* 19 (2000): 707-750.

be held under a moral duty to kill V, in which case he cannot be held under a legal duty to do so.

The task of the courts, then, would be to decide whether R could reasonably have been expected to have formed all four beliefs in the case under judgment. Clearly, this is an immensely difficult task. Whilst this does not undermine the claim, defended here, that *if* those four conditions obtain, R is under a moral duty to kill A in defence of V, it dictates (according to the objection under consideration) against turning V's moral right to be rescued into a legal right, and thus against making R liable to punishment for breach of his duty. For faced with such epistemic difficulties, courts would go down either one of two equally treacherous routes: either they would be too harsh on potential rescuers, by punishing individuals who rightly did not provide assistance, or they would be too lenient, by letting go individuals who should have done so.

The view that epistemic difficulties of the kind I have just described are sufficiently severe to resist enforcing duties of Good Samaritanism in general, and the duty to kill in particular, is vulnerable to the charge that, by that very same token, the moral duty to desist from engaging in non-consensual sexual intercourse should not be legally enforced. For consider. In order to establish whether M was guilty of wrongdoing by having sex with W, who is accusing him of rape, we need to know whether, under the circumstances, M could reasonably have been expected to believe that W was not consenting to having sex with him. As is well known, courts have found it extraordinarily difficult to make that kind of judgement – and yet, rape is a crime in almost all jurisdictions. So why not make the failure to do one's moral duty to kill a crime as well?

Because, or so might someone insist, establishing the truth of the matter in rape cases is easier than it would be in cases of rescue killing. For a start, one might press, assessing the truth of the matter in rape cases requires assessing what actually happened. By contrast, assessing the truth of the matter in rescue killing cases requires assessing the veracity of R's counterfactual defence to the effect that (for example) he reasonably believed that he would have incurred a serious risk to his life and limbs had he tried to help V. And in so far as determining the truth of a counterfactual is harder than determining whether or not a fact happened, determining whether or not R was in a position to help V is harder than determining whether or not M raped W.¹³

I agree that getting counterfactuals right is harder than getting facts right. However, I am not persuaded that this objection to the legal enforcement of rescue killings succeeds. The reason why one is more likely to get the facts right than to get counterfactuals right is that, in the case of the latter, one will soon have to concede that there is simply no way of knowing whether a given state of affairs would have obtained had some event taken place. Unfortunately, rape cases are similar, as one all too often has no way of knowing, beyond a reasonable doubt, what actually took place. To be sure, in cases of rescue killings, R's failure to help means that V has died; by contrast, in cases of rape, there is a victim whose words can be heard against the rapist's account of the case, indeed, from whose body evidence can be collected so as to establish the facts. Yet, in the absence (usually) of witnesses to the deed who might have been in a position to either support or undermine M's putative defence that he

¹³ I owe this objection to Axel Gosseries.

could not have known what W really wanted, most rape cases do not even make it to trial. In so far as the epistemic problem is not generally thought to support decriminalising rape, it ought not to be thought to support not criminalising breaches of the moral duty to kill in defence of another. Moreover, if it is true that, as is often argued, the epistemic problem explains (at least partly) why the conviction rate for rapes is so low, then this suggests that courts are loath to send someone to prison in the face of such uncertainty as to the facts of the matter.¹⁴ This should alleviate possible worries that, were the moral duty to kill be enforced, courts would end up sending to prison potential rescuers who were not, in fact, under a duty to kill precisely because they could not have been reasonably expected, under the circumstances, to form the requisite beliefs.

Opponents of Good Samaritan laws will remain unpersuaded. If that explanation is correct, they will argue, it provides a sound basis for another objection to Good Samaritan laws namely that the courts, faced as they will be with the difficult task of ascertaining whether or not R should have helped V, will be reluctant to impose punishment in cases where it is, in fact, called for. This, the argument goes, will in turn weaken the message which such laws are meant to convey, namely that the duty at issue is important enough to be enforced.¹⁵

This is not as convincing as it may sound. For *if* the moral duty to provide assistance in the form of a service (as opposed to the form of material resources) is as important as opponents of its legal enforcement generally concede, then surely enforcing it sends a clearer signal to potential wrongdoers than not enforcing it: laws can have symbolic value even if they are enforced less comprehensively than they should.

Might there be other, more convincing reasons as to why the moral duty to kill ought not to be turned into a legal right? As I assumed above, if an important interest of either V, R, or third parties were harmed by enforcement, then V's right should not be enforced. Suppose that would-be rescuers, fearing prosecution if they did not kill what they perceived to be an attacker, would make rash judgement calls and end up killing the wrong person. Or suppose that would-be rescuers, in order to ensure that they would kill a culpable attacker and thus escape prosecution, would feel under considerable pressure to put their own life and limbs at risk (something which, as we saw above, they cannot be held under a duty to do). These considerations would count as strong reasons against enforcement, since enforcement would violate some important interest of third parties' and R's respectively.

It is very difficult to know how likely it is that enforcing V's right against R would undermine some important interest of some party's (be it V, an innocent bystander, or indeed R himself) to such an extent as to count against it *generally*. Accordingly, the case for or against enforcement remains, to my mind at least, inconclusive. In section B below, I will assume that R's moral duty ought to be enforced (or at least can be), and address the problem of the conscientious objector.

¹⁴ See for example the recent study on conviction rates for rape, commissioned by the UK Home Office, L. Kelly, J. Lovett, L. Regan, *A Gap or a Chasm? Attrition in Reported Rape Cases*, Home Office Research, Development and Statistics Directorate, February 2005. According to this study, in the UK, only 5% or so of reported rapes result in convictions.

¹⁵ Malm, "Bad Samaritan Laws: Harm, Help, or Hype?". She also expresses the worry that Bad Samaritan laws might result in wrongful convictions.

Before I do so, however, it is worth teasing out the implications of enforcing the moral duty for two issues, namely the issue of the state's monopoly over legitimate violence, and the issue of gun control.

The claim that individuals should be held under a legal duty to kill in defence of others implies, uninterestingly, that the state lacks monopoly over the use of violence. More interestingly, it is compatible with the view that the state retains monopoly of the *authorization* of the use of violence. Suppose that V is not in a position to defend herself, but that P, an armed policeman who happens to be on the scene, has a clear shot at A. To ask whether P is under a duty to kill V's attacker is to ask, in effect, whether the state is entitled to devolve to some individuals – namely, police officers – the task of protecting other individuals – namely, members of the public – at the cost, if necessary, of attackers' life.

Any plausible answer to that particular question will turn on a convincing justification for state legitimacy – a justification which I cannot provide in full here. In a nutshell, though, it does not seem wholly implausible to argue, in a broadly Lockean way, that the state is legitimate provided, and to the extent that, it respects and promotes the rights which we have against one another, and that those rights are better protected under it than they would be were it not to exist. Absent the state, I submit, we have a number of rights, such as rights that others not attack us or provide us with assistance. We also have a right to self-preservation, which includes a right to defend ourselves against attackers (as I posited at the outset of this paper), as well as a right to punish others for rights violations. Clearly, it is in our interest to minimise occasions on which we will have to exercise the rights to self-defence and punishment, as well as to ensure that we do not fall prey to others' mistaken belief that we have violated, or are about to violate, their rights. If we protect our rights more effectively by authorising some body to do so on our behalf, then that body acts rightfully by so doing, through its agents such as the police and the judiciary (provided, of course, that it meets other necessary conditions for legitimate state authority such as there may be.) And indeed, we do better if we entrust the state's agents with the task of protecting our rights in general, and our right to defend ourselves from culpable attackers in particular, simply because those agents are trained and thus competent to recognise when our right not to be attacked is being violated and to decide how best to deal with lethal threats. In addition, the state can set up procedures which its agents must follow when protecting our rights, such as, for example, insisting that police officers always work in pairs. This, in turn, makes it easier to find out, *ex post*, what exactly the police did when called upon to act at the scene of an attack, and thus to hold police officers accountable for their action.

The state, then, has the right to defend our rights, and, relevantly to the issue at hand, to authorise some of its agents to exercise lethal force in defence of victims. Accordingly, if V does have the time to call the police and wait for them to arrive, and thus need not tackle her attacker herself, then she ought to do so – for the police are better placed than she is to assess her predicament and decide how best to help her. However, if P will not get there on time, and if R happens to be on the scene, then the state authorises R to kill A. More strongly (or so I have suggested here) there might be good reasons for thinking that the state can *insist* that R kill A and hold him accountable for his use of violence. Note, though, that in so far as the state cannot set up safety and accountability procedures for civilian rescuers in the same way that

it can with its own agents, it has a greater reason for exercising restraint when prosecuting the former for failing to do their legal duty.

If a case can be made, convincingly, for the view that the state can insist that R kill A, does this imply that it ought to grant R the right to bear arms? Not necessarily. At first sight, one might think that it ought to, on the grounds that prohibiting gun ownership would make it extremely difficult for individuals to discharge their duty to victims. However, the view I defend in this paper is compatible with the claim (on which I need not take a stand here) that individuals lack that right. For my view is that if R *is* materially in a position to kill A in defence of V, then he is under a duty to do so (subject to the aforementioned costs and risks-related conditions.) Whether R ought to be allowed to put himself in the best possible position to help V is another matter. To be sure, if gun ownership were prohibited, then, on the assumption that most individuals are law-abiding, fewer victims would receive the help they need, since fewer citizens would have the wherewithal to kill attackers. On the other hand, it might be that allowing private individuals to bear arms would lead to such an increase in violent crimes as to outweigh the benefits attendant on ensuring that victims receive help. I am agnostic on this point. It does, however, raise the following issue. Suppose that possessing a particular kind of gun is legally prohibited, that R is unlawfully in possession of just such a gun, and that he is in a position to rescue V from A's lethal intents by shooting the latter. To hold him under a legal duty to do so might seem unduly harsh, given that he would thereby, in all likelihood, disclose the fact that he is in breach of gun control laws and open himself up to prosecution. Yet, I believe that he can be held under such a duty, for although he would expose himself to being punished for possessing that gun were he to rescue V, he would incur a cost (a fine, a jail sentence, etc.) to which he is liable anyway.

At this juncture, opponents of gun control might express the following worry about turning R's moral duty to kill A into a legal duty. The legal prohibition on possessing that gun, together with the legal imposition of the duty to rescue, would land R in a rather difficult situation. On the one hand, if R does his duty by V, and thus avoids being punished for failing to be a Good Samaritan, he will nevertheless, and in all likelihood, be punished for owning the gun. On the other hand, if R does not rescue V and gets caught, he will incur punishment for owning a gun *and* for failing to be a good Samaritan. It seems, here, that R is caught in a "double whammy" – damned if you do (rescue V but go to jail for owning the means which enabled you to do precisely that), damned if you don't (don't rescue V and go to jail both for failing to do so and for owning that gun.) This, however, is not as troubling as one might think. For by not rescuing V, R would simply *compound* his initial offence (unlawful gun possession), for which he is liable to punishment anyway, with the offence of not helping V. Once one sees that, there is no reason to reject the two-pronged proposal that R should be legally barred from procuring that which would, should the occasion arise, enable him to help V, *and* that he should be held under a duty to help V if he is in a position to do so.¹⁶

¹⁶ Note that in this paragraph, I focus on the case where R has procured the gun for reasons (whatever they are) other than helping V. I do not address the case where R unlawfully procures the gun in order to help V. Whether or not, in such a case, V's need would provide R with an excuse for breaking the law would take us more deeply into the issue of gun control than I have space for here.

B.

Let us assume, then, for the sake of argument, that V's moral right against R that the latter kill her attacker ought to be (or at least can be) turned into a legal right. A crucial question, at this juncture, is whether some would-be rescuers could request exemption from their legal duty to help V, on grounds of conscience. To be clear, the issue raised by conscientious objector R is not whether R has a case for not being held under a *moral* duty to kill A; *ex hypothesi*, it is assumed that R is under such a duty. To be sure, one could imagine a scenario where for someone not to be able to live according to the dictates of his conscience would be so psychologically costly as to blight his life. Were that the case, as we saw in section 2, R would not be under a duty to help V. However, the case of the conscientious objector is different, since at its heart is the thought that R *would* wrong V by refusing to obey the law. This implies, oddly I admit, and contrary to what is standardly thought, that a conscientious objector is *not* someone whose life would be blighted if he had to obey the law.¹⁷ Setting that point aside, the issue, then, is whether the fact that R believes that he ought not to kill A warrants granting him immunity from punishment if he refuses to do so, *even though, ex hypothesi*, his belief is mistaken. In the remainder of this section, I outline a strong justification for allowing the deployment of conscientious objections in general, and argue that it does not apply to this particular case.

In order to justify his request that he should be exempt from a particular legal requirement, a conscientious objector must deploy publicly available reasons. As Nagel puts it, "we shouldn't impose arrangements, institutions or requirements on other people on grounds that they could reasonably reject (where reasonableness is not simply a function of the independent rightness or wrongness of the arrangement in question, but genuinely depends on the point of view of the individual to some extent.)"¹⁸ More widely and more plausibly interpreted, the requirement of public justification stipulates, not merely that public reasons be advanced in support of *imposing* arrangements and institutions on others via the coercive power of the law, but also that they be advanced in support of imposing on them the costs attendant on one's refusal to comply with those arrangements and institutions. It would be incoherent, on the one hand, to insist that public reasons be provided in support of

For a careful assessment of arguments for and against gun control, see H. LaFollette, "Gun Control", *Ethics* 110 (2000): 263-281.

¹⁷ There is another important difference between someone who is not under a moral duty to kill in defence of V in the first instance, and someone who is under a moral duty to do so but is granted exemption from the corresponding legal duty on grounds of conscience. In the latter case (but not in the former), in so far as R *ex hypothesi* owes something to V, he may be asked to provide something by way of compensation, and in lieu of this specific service, by way of a special tax, for example, or of some alternative service – just as conscientious objectors to the military draft are usually required to perform a civilian service.

¹⁸ T. Nagel, "Moral Conflict and Legitimacy", *Philosophy and Public Affairs* 16 (1987): 215-240, at 221. The position that there are constraints on the reasons which individuals can advance when justifying to others, in the public forum, the imposition of institutional arrangements and normative principles is known as justificatory liberalism, some of the most prominent accounts of which are, e.g., B. Barry, *Justice as Impartiality* (Oxford: Oxford University Press, 1995); G. Gaus, *Justificatory Liberalism* (Cambridge: Cambridge University Press, 1996); C. Larmore, *Patterns of Moral Complexity* (Cambridge: Cambridge University Press, 1987); J. Rawls, *Political Liberalism* (New-York: Columbia University Press, 1993).

imposing a legal requirement on others, and, on the other hand, to allow individuals to adduce private reasons to justify their claim that they ought to be exempt from the law.

The extent to which public reasons should depend on the individual's own point of view is a contentious issue. Whereas some argue that they should depend on individuals' *actual* points of view as expressed through deliberative procedures (the aim of which is to render those points of view reasonable to others), others maintain that they should depend on such *reasonable* points of view as would be held by rational individuals. Those differences notwithstanding, the notion of reasonableness is central to the conscientious objector's justificatory task. Accordingly, any account of what an acceptable reason consists in is vacuous unless it is supplemented by an account of what is a reasonable ground for making an exemption request (henceforth, E). Providing such an account is notoriously difficult, but the following set of necessary conditions which a justification for E must meet in order for E not to be rejected on reasonable grounds sounds plausible. Firstly, E must not rest on, or involve, a claim which available evidence reveals to be false. Secondly, E must, on principle, be intelligible to others from their own point of view. Thirdly, the justification which is given for E must not invoke the denial of the claim that all individuals are owed equal concern and respect as persons.

One may think that the foregoing rules out religious reasons from the range of acceptable justifications for E. Indeed, liberals committed to the idea that one must be able publicly to justify imposing demands and costs on others routinely reject the view that one can do so by appealing to religious reasons alone. This, they say, is because those reasons are not intelligible to many of the citizens to whom they are directed, or rest on the non-verifiable claim that God exists. I do not think that this is right. Religious reasons are in fact intelligible to non-believers from their own, parochial point of view, for the latter can understand the appeal to an ultimate and unverifiable source of moral authority, even if they disagree about the nature of that source and the role - if any - that it ought to play in the believer's life. What a non-believer cannot be expected to accept is an appeal to religious reasons which does not in any way cohere, even implicitly, with his moral worldview.

The conscientious objector, then, may deploy a justification for E by appealing solely to religious considerations, *provided* that his justification also appeals to norms, values and principles which a non-believer can accept, and even if he himself is entirely indifferent to the fact that it has that particular feature. This implies that reasons such as "I cannot be forced to do x because God/the Pope/the Prophet tells me that x is grievously wrong" cannot support E, since the non-believer, to whom the justification is directed, cannot be expected to submit to the *ex officio* judgment of the Pope or the word of God as found (allegedly) in the Bible and the Koran. However, the non-believer can accept as a valid reason a claim along the lines "God, who is all powerful and all knowing, tells me that I should not do x; for me to disobey God's command is grievously wrong; and to make me do that which I believe to be grievously wrong is a violation of my autonomy." For the non-believer need not accept that God exists (or, *mutatis mutandis*, that the Prophet and/or the Pope have the authority which the conscientious objector ascribes to them), to understand the importance for the latter of acting according to the dictates of his conscience. Put differently, the claim that forcing someone to act against the dictates

of his conscience does violence to their autonomy constitutes a publicly available justification for allowing individuals to live as their conscience demands that they do.

This claim offers a strong justification for conscientious objections. When sketching out an argument in support of the duty of assistance at the outset of section 2, I claimed that individuals are under a duty to provide others with the resources they need in order to live a flourishing life (subject to costs- and risks-related conditions.) I also noted that in order to lead such a life, one must be minimally autonomous – that is, one must be able to frame, revise and pursue a meaningful conception of the good. Now, for all individuals (except psychopaths), moral beliefs form a part of their conception of the good life – a more or less important part, depending on the extent to which they are, and regard themselves, as moral persons, but a part nonetheless. Thus if we are to allow individuals to frame, revise and pursue their conception of the good, then we ought not to impose on them a legal requirement to act against the dictates of their conscience.¹⁹

Such, then, is a general argument for conscientious objections, which rests on publicly available reasons which can be endorsed from within – to use Rawls' phrase – most comprehensive conceptions of the good life. Crucially, it allows for cases where, however convinced individuals are that they would be committing a wrongdoing by obeying the law, we cannot accede to their request. Thus, we cannot accede to someone's request that, as his religion requires of him the periodic sacrificial killing of a number of children, and as he should be allowed to live according to the dictates of his conscience, he ought not to be prosecuted for murder. To allow this individual to live according to the dictates of his conscience is not, in fact, to preserve his moral integrity, and thereby his autonomy, since the life he proposes to lead cannot in any conceivable way be regarded as meaningful. This, of course, is an easy case. Harder cases are those where there seems to be a genuine conflict between the conscientious objector's interest in preserving his moral integrity some other party's interests. R's case falls in that category. As I shall now argue, however convincing the general argument for conscientious objections is, it cannot support R's request that he not be made to kill A in defence of V.

To see why, it is important to keep sight of another feature of conscientious objections, which distinguishes them from civil disobedience. An individual who engages in an act of civil disobedience seeks the abolition of a law which he deems unjust, or, less ambitiously, aims merely to make his opposition to an unjust law known. His is a public act. By contrast, a conscientious objector asks to be exonerated from the demands which the law places on him on the grounds that his conscience morally prohibits him to obey it. His is a private act, and one, moreover, which need not commit him to a wholesale rejection of the law in question. Thus, in refusing to refer his patients to abortion clinics, a devoutly Catholic general practitioner is not necessarily committed to the view that abortion should be made illegal. In fact, he may well think that, on balance, it is preferable for the state to legalise abortion (even though he believes that abortion is morally wrong), and nevertheless insist that, in the light of *his* religious beliefs, *he* ought not to have to take part in such an act. The question, then, is whether R's interest in living in accordance with the dictates of *his* conscience is strong enough for him to be immune from

¹⁹ For an argument along similar lines, see J. Raz, *The Authority of the Law* (Oxford: Clarendon Press, 1979), ch. 15.

prosecution should he desist from fulfilling, not simply a moral duty, but one deemed so important that it has been turned into a legal duty. Put starkly, in the specific case at hand, the question is whether R's interest in his moral integrity outweighs V's interest in surviving A's attack.

I do not think that it does. For R must be able to justify his refusal to do what is, *ex hypothesi*, his moral and legal duty, to those who will suffer the consequences of his failure to act. More specifically, he must justify his decision to three (overlapping) categories of individuals: (a) V, who will die unless he intervenes; (b) any other potential rescuer, whom he is in a position to help rescue V, and who might be seriously harmed as a result of his decision not to help; (c) anyone who is under a legal duty to kill in defence of another. Accordingly, for R's request to be successful, he must be able to show to all those individuals that they, from their own point of view, can be reasonably expected to accept his refusal to kill A. Now, he might be able to do just that to individuals who are under a moral duty to kill A but who would not incur a harm, or a risk of a serious harm, as a result of his dereliction of duty. However, V, and other individuals who would incur such a harm (for example, because they too are involved in rescuing V, and need R to do it), cannot be reasonably expected to accede to his request. To be sure, they might as a matter of fact do so. Thus, as a matter of fact, V might not want to insist that R help her, precisely on the grounds that, whilst she herself would kill in defence of R were the roles reversed, she can understand why he cannot bring himself to helping her. In such cases, R would not wrong V by refusing to kill A, since V's consent would mean that R is no longer under the relevant duty. My point, though, is that V, who will die unless R complies, cannot be *expected* to agree that it is reasonable for R, from his own viewpoint, to privilege the preservation of his moral integrity over her life. Nor can other potential rescuers be expected to endorse R's request, if they would incur a higher risk of a serious harm in R's absence.

To be absolutely clear, my claim is that R's interest in preserving his moral integrity is not strong enough to exempt him from the legal duty to help when the costs of his refusal to obey the law results either in the death of someone who had a moral right that he give her assistance, or in the death of (or high risks thereof) of third parties who might be involved in the rescue attempt. Nothing I have said so far implies that one cannot deploy a conscientious objection to being made to do something for the sake of another. In fact, I believe that the argument I sketched out above in favour of conscientious objections in general does not merely apply to cases when one defects from participating in the production of a (non-excludable) public good (as arises with conscientious objections to contributing to national defence by way of military service). It also applies to other cases when one defects from giving others that to which they have a moral right (as arises with conscientious objections to giving blood to someone who needs it in the course of minor surgery.²⁰) To repeat, though, it does not protect R from V's legally enforced moral claim that he kill A in her rescue.

²⁰ In Chapter 4 of my *Whose Body is It Anyway*, I argue that organ donors can raise conscientious objections to being made to provide their organs to those who need them, even though potential recipients would die as a result. As my argument in this paper implies, I no longer believe that this is true.

At this juncture, someone might object that there are very good pragmatic reasons for victims and other rescuers themselves to accept a system of rules where exemptions are allowed on grounds of conscience. For example, those who believe that killing is not permissible might use the fact that they are made to act in violation of their conscience as a pretext to derail important policies and political projects the success of which is more conducive to a just, peaceful, stable society than ensuring that a few isolated victims get the help which they need.²¹

This justification for exempting those individuals from the legal duty to kill is not pragmatic. It is, in fact, highly moral. For it appeals to some important interest(s) of third parties, amongst which, quite possibly, V herself, which would be violated if refusing to grant exemptions from the legal duty to kill had the aforementioned consequence. Thus, one can easily imagine a situation where, say, a religious minority incensed by the majority's refusal to accept their conscientious objections to killing would, as a result, use their lobbying power to halt legislation aimed at legalising gay marriage. In so doing they would harm gays' important interests in acquiring the legal status of a spouse and in not being discriminated against on grounds of sexual orientation. By adducing this consideration in support of granting that minority an exemption from the legal duty to kill, one is making a normative, moral argument, as to whose interests, or needs, matter the most (to wit, the non-survival but nevertheless important interests of very many gays versus the survival needs of a few victims.) Note, however, that this normative claim derives whatever strength it has entirely from facts such as the political influence of the minority in question, the likelihood that the majority would give in to their demands, the degree of popular support for a law enforcing the duty to kill, and so on. This is not to dismiss those facts. On the contrary, in some cases, they might prove absolutely critical. Rather, this is to say two things. First, in cases where such facts are absent, R ought not to be granted immunity from punishment for refusing to kill A in defence of V. Second, and more importantly, the reason for accepting R's request in cases where such facts are present is not that his moral integrity is more important than V's survival. In other words, even though R deploys what he thinks is an objection *of conscience*, it is not, and ought not to be, regarded as such and given the weight which those objections normally warrant.

4. Conclusion

To conclude, I have argued that the duty of Good Samaritanism *does* include a moral duty to kill a morally culpable attacker in defence of his victim, but only if rescuers would not jeopardise their own prospects for a flourishing life by doing so. As I noted, this view yields a more nuanced position on the duty to wage a war of humanitarian intervention than might be thought, and is compatible with the claim that gun ownership should be controlled.

Having thus defended the moral duty to kill, I turned to the issue of its legal enforcement. Standard epistemic objections to the legalisation of duties of assistance, I suggested, are not convincing, but other considerations, such as the harm which would accrue to some parties were the moral duty to kill be enforced, might come into play. In so far as it is extremely difficult to make those kinds of judgements, the case for enforcement remains inconclusive. This result is not as modest as it might

²¹ This objection was raised by an anonymous referee for *The Journal of Political Philosophy*.

seem, for the simple reason that it goes against what I take to be the view of the overwhelming majority of people (namely that the moral duty to kill, if there is such a duty, should not be enforced). More controversial is the claim, with which I ended, that a legal duty to kill in defence of others might admit of exemptions, but not on grounds of conscience.