

2011

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Recommended Citation

Lefkowitz, David. "On a Duty of Humanitarian Intervention." In *New Wars and New Soldiers: Military Ethics in the Contemporary World*, edited by Paolo Tripodi and Jessica Wolfendale, 87-101. Burlington: Ashgate Publishing, 2011.

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Chapter 5

On a Duty of Humanitarian Intervention

David Lefkowitz

Perhaps the most discussed topic amongst just war theorists during the 1990s was the moral (and legal) justifiability of armed humanitarian interventions. Not surprisingly, that changed after the 9/11 terrorists attacks and the invasions of Afghanistan and Iraq, with topics such as the morality of terrorism, torture, and preventive war receiving the lion's share of attention. Nevertheless, for reasons both good, such as the International Commission on Intervention and State Sovereignty's endorsement of a limited duty of intervention in its report, *The Responsibility to Protect*, and bad, such as the conflict in Darfur, the morality of humanitarian intervention remains a live topic amongst theorists and practitioners alike. A striking feature of the contemporary discussion is the extent to which one prominent feature of the debate during the last decade of the twentieth century, namely the tension between intervention and respect for sovereignty, is no longer at issue. Theorists writing today almost universally endorse the moral permissibility of humanitarian intervention, at least under certain conditions. Disputes remain, of course, as to precisely what those conditions are, who enjoys the right to carry out a humanitarian intervention, and exactly how to balance those moral considerations that count in favor of it, e.g. protecting those subject to a genocidal campaign, against those that count against, e.g. preserving some degree of respect for the rule of international law and state sovereignty. Yet the fact that hardly any theorist, and not a few practitioners, would deny that under certain conditions humanitarian intervention is morally permissible, and indeed, something that certain agents have a right to do, marks a significant and, in my view, positive change from the previously dominant position.

With a limited moral right to humanitarian intervention now relatively uncontroversial, a growing number of just war theorists have begun to add their voices to those of the few thinkers who previously argued for a duty, and not just a right, to wage such a war. For the most part, these theorists focus on demonstrating that the same moral argument that establishes a right to carry out a humanitarian intervention also entails a duty to do so (Bagnoli, 2006; Buchanan, 1999; Davidovic, 2008; Lango, 2001; Tan, 2006). Unlike in the case of a right, however, an agent subject to a duty must bear certain restrictions on his freedom that he would not have to bear were he not subject to that duty. In contrast, though an agent's exercise of a right may entail the acquisition of certain restrictions on his or her freedom, since the agent is free not to exercise that right the possession of it does not necessarily entail any costs for the agent. This asymmetry between rights and

duties, together with the assumption (shared by many theorists) that restrictions on individual freedom stand in need of justification, suggests that the defense of a duty of humanitarian intervention calls for an additional step not required for the establishment of a right to humanitarian intervention, namely a demonstration that the conduct of such a war will not impose excessive or unreasonable costs on those who undertake it.

The purpose of this paper is to offer just such a demonstration. I begin with a critical appraisal of separate attempts by James Pattison and Jovana Davidovic to show that in any case where an armed humanitarian intervention meets the *jus ad bellum* criteria for a right to wage war, the cost of carrying out that intervention will not be unreasonable. I then consider Cécile Fabre's argument that the cost to those who participate in a humanitarian intervention almost always exceeds what it is reasonable to require of them, with the consequence that such wars are almost always supererogatory, or beyond the call of duty. Drawing on the idea that all persons (at least) have basic moral rights, and that all moral agents have a correlative duty to do their fair share to see to it that all persons securely enjoy these rights, I maintain contra Fabre that neither the cost to individuals of acquiring the skills necessary to carry out an armed humanitarian intervention, nor the risk of suffering harm that individuals bear as a result of participating in such a war, constitute an excessive or unreasonable burden. With respect to the first of these two claims, I contend that agents have no moral grounds for objecting to a *pro tanto* duty to bear their fair share of the burdens involved in applying and enforcing the law, even if that requires several years of service, especially if they stand little risk of serious bodily injury or death as a result. The same conclusion holds, I maintain, in the case of an armed humanitarian intervention. As for the second of the two claims I defend here, the key premise concerns how we ought to conceive of the harms likely to befall some of those who carry out the intervention. I argue that we should do so in terms of the likelihood for any individual with a duty to contribute his or her fair share to ensuring that all enjoy their basic rights that he or she will suffer harm as a result of helping to conduct a humanitarian intervention. So conceived, the likelihood of suffering harm as a result of participating in a humanitarian intervention that meets the *jus ad bellum* criteria for a just war is quite small. If correct, these arguments entail that the cost to individuals of waging an armed humanitarian intervention are not ones it is unreasonable to require them to bear.

* * *

James Pattison (2008, 272) attempts to rebut the claim that the cost of carrying out a humanitarian intervention almost always renders such conduct supererogatory by arguing that "an intervener would not have a *right* to intervene if intervention is excessively costly to its people." While this is true—if an agent has no right to intervene then, necessarily, he has no duty to do so—it is also beside the point. What must be shown is that where an agent has a right to intervene he also has

a duty to do so, and that conclusion does not follow as a matter of deontic logic. Pattison fails to rule out the possibility of cases in which the costs of conducting an intervention are high enough to render such a course of action optional, but not so high that they render such a war unjustifiable. Perhaps it is true, as Pattison (2008, 270) contends, that if carrying out an intervention will leave a state “unable to provide vital services, such as clean water provision, for its home population,” then that intervention cannot meet the *jus ad bellum* criterion of proportionality or, given the likely opposition from the home population, the criterion that the war stands a reasonable chance of success. Nevertheless, it seems not only possible but plausible to think that situations will arise in which intervention would impose a serious burden on a state and its subjects without coming anywhere near making it impossible for that state to provide its subjects with vital services. In other words, it is far from obvious that the category of interventions that excessive cost renders optional, i.e. ones that agents have no duty to conduct, is coextensive with the category of interventions that excessive cost renders impermissible, i.e. ones that agents have no right to conduct. Granted, without a precise formulation of what counts as an unreasonable cost this rejoinder may seem to be little more than an assertion. Still, the fact that many people endorse the existence of supererogatory acts in other contexts suggests that the burden of proof lies with those, like Pattison, who reject the possibility of supererogatory humanitarian interventions.

In her defense of a duty of humanitarian intervention, Jovana Davidovic (2008, 140–1) denies that a humanitarian intervention can meet the *jus ad bellum* requirement that it stand a reasonable chance of success and yet also impose an unreasonable cost on those who wage it. Specifically, she writes that,

the reason this concern about danger to the intervener is not mentioned explicitly [among the conditions for a just war] is because the role of the notion of danger to oneself in calculations of minimal decency can be captured by an appeal to the condition of reasonable chance of success. ... [T]o be able to say that there is a reasonable chance of success we have to assume that the intervener can alter the conditions on the ground without thereby losing some unreasonable number of soldiers. In other words, due to the interdependence of danger to self and chance of success it is not possible to say that all the conditions of justice of war have been met, but that the expected loss of life of soldiers of the intervening nation, i.e. the danger to self, could invalidate the obligation to intervene.

I believe this line of argument contains two errors. First, the class of cases in which an agent stands a reasonable chance of successfully intervening to protect others from some harm is not co-extensive with the class of cases in which the cost to the agent of attempting to do so is one it is reasonable to require him to bear. For example, in some cases the odds of an agent successfully rescuing another from an imminent harm may be quite high, but so too may be the odds that in doing so the agent will suffer a harm that will substantially shorten his life, e.g. by exposing him to a great deal of radiation or to certain fatal diseases. Similarly, the bulk of

the danger posed by a military mission may arise only after the achievement of its aim, as in the case of planes having to navigate fully-awakened air defense systems after they have completed their bombing runs. Finally, it is conceivable that a war of humanitarian intervention could stand a reasonable chance of success and yet also prove too costly, say if it left the intervening state ill-prepared to defend itself against another looming threat.

A second and more important reason to reject Davidovic's reasoning, however, is her assumption that the harms suffered by an intervening force should be understood solely in terms of the cost they impose on the state. The death of a few soldiers may do little to impair the state's ability to pursue its ends, but it is obviously a total loss for those who are killed, and will likely be thought by many to be an unreasonable cost to require these soldiers to bear. Earlier in her paper, Davidovic argues that state sovereignty is valuable only to the extent that it serves to protect basic human rights. This suggests that Davidovic endorses value individualism, i.e. the view that only the lives of individual human beings have ultimate value, with collective entities such as states valuable to the extent that they contribute to the value of individual's lives. Since an assessment of the costs involved in carrying out a humanitarian intervention solely in terms of the effect they will have on the state runs counter to value individualism, it is surprising to see Davidovic argue as she does. Indeed, even many of those inclined to assign independent value to the flourishing of collective entities are unlikely to go so far as to treat individuals as having value only to the extent that they contribute to the state's flourishing. It follows that for all but the most extreme communitarians the assessment of the burdens involved in conducting a humanitarian intervention must take into account setbacks to the interests of the individual combatants that carry it out, as well as the state in whose military they serve.

John Lango (2001, 186) suggests that doing so leads to a moral paradox of intervention: "even if it is obligatory for (the citizens of) a state (collectively) to intervene, it can still be only supererogatory (individually) for its citizens." The alleged paradox disappears, I believe, if we recognize that even when a group acts collectively the costs of doing so ultimately consist of setbacks to the interests of the individual members.¹ In some cases, collective action allows for, or coincides with, the distribution of costs in such a way that they are not unduly burdensome for any member of the group, though they would be were any one member to bear the costs in full. In other cases this is not so, either because the costs remain excessive even when distributed amongst the group or because it is impossible to distribute the costs. It is easy to see how we can be led to posit the alleged paradox Lango identifies if we begin by asking whether *states* have a duty to engage in humanitarian intervention. Like Davidovic, Lango notes that the deaths of a few (hundred?) combatants will often have a negligible effect on the state, though unlike Davidovic he also recognizes that the cost to those individual

¹ This is so even where the direct cost is to the ability of the group to function well as a group, as in the case of reductions in the efficacy and/or efficiency of state institutions.

combatants are enormous. But if we begin instead by asking whether individuals have a duty to participate in humanitarian interventions via institutions designed to facilitate collective action, including (but not necessarily limited to) states, we do not encounter any paradox. Rather, all of the costs are understood in terms of the individuals who ultimately bear them, in which case Lango ought to conclude that (the citizens of) states sometimes have a duty to shoulder certain economic burdens involved in carrying out a humanitarian intervention (e.g. to provide armored personnel carriers to those prepared to carry out the intervention, as in Lango's own example), but no duty to serve in such a war.²

The issue of the costs to the state of carrying out a humanitarian intervention are not uninteresting, even for those who deny that its flourishing has any value independent of the contribution it makes to the lives of individual human beings. I set this issue aside here, however, in order to focus on the costs humanitarian intervention imposes on those individuals who carry it out, and in particular the question of whether these costs are so high as to render such actions supererogatory, rather than obligatory.

* * *

Though she maintains that the duty to rescue encompasses a duty to kill under certain circumstances, Cécile Fabre (2007) argues that it follows from the reasonable cost proviso on the moral duty to assist others in need that no one bears a duty of humanitarian intervention. Given that those conducting a humanitarian intervention often face serious risks of harm, and that no agent "is under a duty to provide assistance to others at the cost of their own prospects for a flourishing life," Fabre (2007, 369) concludes that states may justifiably employ only volunteers to wage a humanitarian war. Of course, it is conceivable that in some cases a state might carry out a humanitarian intervention while exposing its individual combatants to little or no risk; arguably, NATO's intervention in Kosovo, and the United Nation's intervention in East Timor, provide actual examples of such "low-risk" interventions.³ Yet even in these cases Fabre (2007, 372) argues against a duty of humanitarian intervention. She reasons as follows: humanitarian interventions will be low-risk only if they are conducted by those with specific skills the acquisition of which requires considerable investment; or in other words, only if such interventions are undertaken by military professionals. However, while

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

² I challenge this second claim below.

³ I set aside here legitimate concerns that low-risk interventions such as the NATO air campaign against Serbia almost always violate the *jus in bello* principle of discrimination (or non-combatant immunity) and its legal analogs.

flourishing life. 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 imperiled—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.

I challenge several premises in Fabre's argument below. First, however, I want to consider the possibility of rejecting it because it leads to an absurd conclusion, namely that conscription is morally unjustifiable even in the case of morally justified wars of national defense.

Wars of national defense often require that those who fight them bear a high risk of death or serious injury, or at least considerable sacrifices of time and effort necessary to acquire those skills that allow them to wage war at relatively little risk to themselves. Fabre claims that these costs render participation in an armed humanitarian intervention supererogatory. If true, then in the absence of any morally relevant difference between wars of humanitarian intervention and wars of national defense, Fabre's argument entails that participation in a war of national defense is also supererogatory. If, as some will likely maintain, such a conclusion is absurd, and again, if there are no morally relevant differences between the two types of war at issue, then this calls into question the truth of Fabre's argument against a duty of humanitarian intervention.

Are there any morally relevant differences between humanitarian intervention and a war of national defense? Someone might argue that a war of national defense is not an instance of assisting the needy, and that therefore the reasonable cost proviso does not apply. I think this claim erroneous. Either a combatant fighting in a just war of national self-defense is attempting to aid his co-nationals by protecting them against unjust aggressors, or he is engaging in personal self-defense, or both. Insofar as the duty to aid the needy is necessarily qualified by the reasonable cost proviso, that is true regardless of whether those who are to be rescued are co-nationals or not. As for the case of personal self-defense, I know of no compelling argument for either a duty of self-preservation or a duty to assert one's moral rights, e.g. to just political institutions, regardless of how much or how little it will cost one to do so.⁴

Of course, there may be grounds other than a duty to provide aid or to rescue those in need that serve to justify conscription for a war of national self-defense, but not for a war of humanitarian intervention. Co-nationals, or fellow citizens, may share a special relationship analogous to that of immediate family members, one they do not share with citizens or subjects of other states. Alternatively, co-nationals may owe one another, but not foreigners, a duty of fair-play or reciprocity. Elsewhere (Lefkowitz, 2006) I criticize both of these positions, but were they to

4 In certain circumstances agents may have duties *to others* that require them to pursue self-preservation, but that is not the same as having a duty to oneself to preserve one's life or to live under just political institutions.

be true they might well entail a duty to fight in a war of national defense, or at least set the bar for when the cost of doing so is unreasonable far higher than in the case of a duty to provide aid to any moral agent in need.⁵ Moreover, my own view (which Fabre may well share) is that the denial of a duty to participate in a war of national defense in cases where doing so will be quite costly does not constitute an absurd conclusion. I will not belabor the point here, however, since I argue below that in many cases of armed humanitarian intervention the cost to individuals of participating in such a war is not an unreasonable restriction on their individual liberty or their pursuit of a flourishing life.

Though intuitively attractive, I contend that Fabre's argument against a duty of humanitarian intervention is mistaken with respect to both low-risk interventions as well as those likely to result in a moderate number of injuries and deaths to the persons conducting them. Consider, first, Fabre's (2007, 372) argument against a duty to carry out low-risk humanitarian intervention. The key premise in this argument is that "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." I think this claim overly broad and therefore false. Suppose, what I take to be fairly uncontroversial, that people can securely enjoy their basic moral rights only if they live under certain types of institutions; for example, ones charged with making, applying, and enforcing the law. If so, and if peoples' basic moral rights correlate to duties on others to do their fair share to see to it that they securely enjoy those rights, then it follows that all those with the duties in question are morally required to contribute their fair share to the creation and operation of those institutions. This might well require limited service in the police, judiciary, or of special interest here, the armed forces. Keep in mind that we are assuming a case in which humanitarian intervention will impose little cost on those who carry it out *if they are military professionals*. By hypothesis, then, the combatant engaging in a humanitarian intervention faces little more risk to his future flourishing than does the typical judge or traffic enforcement officer in a generally law-abiding and moderately just society. What is at issue is the cost involved in acquiring and employing certain skills over a limited, though not insubstantial, portion of one's life. I see no reason to think that, if it constitutes one's fair share of the collective moral task of providing all with the secure enjoyment of their basic moral rights, a period of service amounting perhaps to several years in total necessarily undermines a person's autonomy or their prospects for a flourishing life. Moreover, I suggest that if the only way to ensure the creation and operation

5 Strictly speaking a moral duty to participate in a war of national defense is not the same thing as a duty to obey a law mandating military service in a war of national defense. Nevertheless, the reasons for rejecting the latter (at least for many citizens of modern states) also provide reasons for rejecting the former.

of these morally necessary institutions is through coercion, then there exists a *pro tanto* moral justification for doing so.⁶

Obviously universal service in the judiciary, internal or external security forces, etc, is often unnecessary because there are a sufficient number of agents willing to fill those positions voluntarily. Or rather, they are willing to do so conditional on the receipt of a certain level of compensation, compensation that is provided primarily by those freed from the burden of service by these individuals' willingness to work as judges, police officers, and so on. Why should the same not be true of serving in the state's armed forces? That is, the duty to contribute one's fair share to the collective moral task of seeing to it that all enjoy their basic rights may require from many only that they transfer a portion of their economic resources to pay those willing to serve in the armed forces, at least if such transfers will result in a sufficient number of volunteers. Admittedly, Fabre focuses on cases where only coercion can produce individuals with the necessary skills. But suppose it is only possible to provide a level of compensation sufficient to entice the necessary number of judges and police officers by employing a coercive system of economic transfers; i.e. a tax. I suspect few will find such a system morally problematic when employed for this end. Nor, I submit, should we be troubled by the use of this means to generate an army of volunteers willing to conduct a humanitarian intervention.

In contrast to Fabre I contend that where it is necessary to ensure that people securely enjoy their basic moral rights a system of conscription aimed at ensuring that a sufficient number of individuals acquire those skills necessary to achieve this end does not violate the autonomy of any of those agents. If on the basis of our concern to respect others' autonomy conscription troubles us in a way that taxation does not, that may be due largely to two assumptions, each of which should be called into question. The first of these is the conception of military service as a full-time commitment that requires putting aside almost all of the other projects one might pursue. It is not clear how accurate this depiction of military service is – for example, many of the personnel in the US military serve on a part-time basis – nor, more importantly, whether military service must be a full-time commitment. Consider, too, that many countries grant conscripts a certain degree of flexibility in exactly when they must complete their military service; for instance, permitting them to complete a university degree before discharging their military obligation. The second, and more important, assumption is the belief that the effects on most individuals' ability to pursue a flourishing life that follow from active-duty military

6 In my view, perfect duties, by which I mean ones that an agent must discharge on every occasion when she can do so, provide a *pro tanto* justification for others' use of coercion to ensure that the agent does what she has a duty to do. That *pro tanto* justification can be overridden or defeated if, for example, enforcement is likely to produce a morally worse outcome than non-enforcement, or if by its very nature the duty is one that cannot be enforced, as in the case of a duty to apologize, or a duty to display gratitude, both of which require that the agent act with a specific motive.

service far exceed the limitations imposed by the payment of taxes. That this is always or even often so is far from clear to me; moreover, it is important to note that its truth turns on the length of service and the level of taxation, and perhaps other factors as well. Deployment overseas obviously places great burdens on an agent, but then so too do the taxes an agent must pay over the course of his or her lifetime. Military service often does require individuals to bear a risk of harm in a way that taxation does not, of course. But remember, in the case of low-risk humanitarian interventions what is at issue is the cost of acquiring the skills of a military professional, not the likelihood that one will suffer harm while fighting a war.⁷

What of Fabre's (2007, 372) claim that "individuals are not under a duty to acquire the skills with which they might be in a position, at some stage, to help the imperiled." This seems true of paradigmatic cases involving a Samaritan duty. In such cases, the risk of significant harm is immediate and typically abnormal both in terms of the frequency with which people are exposed to it and the number of people who suffer such exposure. It follows from the very nature of the risk that it cannot be addressed by institutional means, and therefore the duty falls on those who happen to confront the person in danger. The foregoing discussion highlights a different type of positive duty, however, one that requires agents to do their fair share to ensure that all are secure from the most grievous harms or wrongs endemic to a state of nature, or from rule by those who manifest no principled commitment to respect for others' basic moral rights. All are at risk of suffering these harms, and perhaps more importantly, the risk can be alleviated to a considerable extent by the creation and operation of various institutions. One question that must be addressed, then, is whether a duty of humanitarian intervention is properly conceived of as a kind of Samaritan duty or as a positive duty correlative to peoples' basic moral rights. Fabre assumes the former in her analysis of a duty of humanitarian intervention. However, many contemporary theorists (Shue, 1980; Orend, 2002) argue that while an individual's first claim to the secure enjoyment of her basic moral rights is against her state or fellow citizens, in the event that this claim goes unmet the individual has a claim against

7 Our ability to determine whether a given humanitarian intervention will be a low-risk one may be quite unreliable, of course. If true, that fact may warrant a strong presumption against conducting any such operation. This point is distinct from the one at issue in the text, however, since Fabre maintains that even if we can be certain that a given intervention will be low-risk there is still no duty to carry it out, or more precisely, that no one has a duty to acquire those skills that would make an intervention low-risk, while I argue for the opposite conclusion. Moreover, the level of risk borne by combatants conducting a humanitarian intervention depends a great deal (though certainly not entirely) on choices their leaders make regarding both the specific mission and the type and number of military assets committed to the operation. While caution should be the byword when considering whether to undertake a humanitarian intervention, it would be an exaggeration to claim that we can never judge with sufficient confidence that a particular intervention will be a low-risk one.

the international community, understood to consist of all states, or perhaps more accurately, all moral agents. If these theorists are correct, then it follows that there is a duty to acquire the skills necessary to carry out a humanitarian intervention if this can be done at a reasonable cost, as I maintain that it can.

While I reject the view that all cases that call for armed humanitarian intervention are properly conceived of as instances in which others have only a Samaritan duty to intervene, I do not mean to assert the opposite. Even in a world with a reasonably well functioning institution designed specifically to address the need for armed humanitarian intervention, circumstances might arise in which, say because of its other on-going commitments, this institution cannot respond adequately to a campaign of ethnic cleansing. Here the features of a paradigmatic case involving a Samaritan duty are all present: people face an immediate risk of significant harm that cannot be ameliorated even by well designed institutional mechanisms. Do all agents have a duty to acquire the skills of military professionals just in case such a situation occurs? Here I largely agree with Fabre: given that they have done their fair share to create and maintain the institution charged with responding to the need for humanitarian intervention, agents have only a Samaritan duty to acquire the skills (and other resources) necessary to help the imperiled should the aforementioned institution be unable to do so.⁸ To the extent that the acquisition of these skills will be excessively costly, and given that the successful undertaking of a (low-risk) intervention requires possession of these skills, it follows that such agents will have no duty to carry out an intervention in the situation in question. In short, the duty to ensure that all persons securely enjoy their basic moral rights does entail a *pro tanto* duty to acquire those skills necessary to serve in institutions without which it is extremely unlikely that all will securely enjoy their basic moral rights. That includes institutions designed to carry out humanitarian interventions, or at least low-risk ones, for the same reason that agents have a duty to contribute their fair share to the creation and operation of domestic institutions that enact, enforce, and apply law. As long as they fulfill that duty, however, agents have only a Samaritan duty to devote additional time and effort to developing skills or acquiring resources that may be necessary to rescue others from perils that go unaddressed even when these institutions function reasonably well.

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Of course humanitarian intervention often does require those who undertake it to bear significant risks of death or serious injury, at least if they wish to conduct

8 I say I largely agree, because Fabre maintains that there is no duty to acquire such skills, while I claim that there is a duty to do so if it can be done at a reasonable cost. In a nearly just world with well-functioning institutions designed (in part) to address situations that call for humanitarian intervention, the likelihood of needing to intervene because those institutions fail to do so will be so small that almost any cost involved in acquiring those skills will be one it is unreasonable to demand that people bear.

their intervention in line with the moral principles of *jus in bello* and their legal analogs. Does it follow, as Fabre maintains, that given the reasonable cost proviso on the duty to assist others in need there is no duty of humanitarian intervention in such cases? It depends, I suggest, on how we ought to conceive of the risk of harm involved in conducting a humanitarian intervention. Fabre (2007, 370) writes, rightly in my view, that “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.” What matters when it comes to calculating whether the cost of providing aid to others is reasonable is not only the potential harm to which an agent will be exposed but also the likelihood that he or she will actually suffer that harm. That likelihood is the sum of a large number of variables, of course, but the one I want to focus on here concerns the pool of agents with the potential to provide assistance, and in particular, to participate in a humanitarian intervention. Specifically, I will argue that if the pool of those able to contribute to such a war is large enough, then the likelihood of any one of them dying or suffering a grievous injury while fighting in it is low enough that it is reasonable to demand that they shoulder that risk.

Earlier I proposed that all agents have a duty to contribute their fair share to the collective moral task of ensuring that all people securely enjoy their basic moral rights. If correct, this claim entails that the pool of potential participants in a humanitarian intervention is coextensive with the class of all moral agents.⁹ Fairness requires that the costs involved in conducting a humanitarian intervention, and in particular the risk of suffering some serious harm, be distributed equally among those in this pool. Or, more realistically, the risk of harm should be distributed as equally as possible. On the assumption that training and deploying all of the agents in the pool of potential participants is neither feasible nor morally desirable, I suggest that the use of a lottery to determine who should actually serve in a humanitarian intervention provides the best account of how the duty in question ought to be discharged.¹⁰ If, as will sometimes be the case, only a small percentage of those in the pool of potential participants in a humanitarian intervention will actually need to do so in order for that intervention to be successful, and if only a small percentage of those will actually suffer serious harm as a result of their participation, then for each agent in the pool the risk of

9 It may be that there are some moral agents with physical or mental disabilities that render them practically unable to participate in a humanitarian intervention, or any other type of war. Agents that are freed from an obligation to participate in a humanitarian intervention on these grounds should not be confused with those that have the duty in question, but that are also subject to other moral duties that sometimes outweigh or defeat their duty to bear their fair share of the burden involved in conducting a humanitarian intervention.

10 For a defense of lotteries as a just means for distributing benefits and burdens among those with a claim or liability to them, especially in cases where the benefits or burdens cannot be distributed, see Stone, 2007.

harm posed by a humanitarian intervention will be quite small. In other words, for each agent with a duty to participate in a humanitarian intervention, the cost of doing so—understood in terms of the likelihood of suffering grievous harm and the other opportunities forgone while engaged in military service—is not an unreasonable one. Therefore the reasonable cost proviso on a duty to take positive steps to ensure that others securely enjoy their basic moral rights does not entail that there is no duty to participate in a humanitarian intervention. And while more needs to be said to establish this conclusion, I believe it also follows from this line of argument that a state, or at least a legitimate one, has a right to use a fair method of conscription to staff a military force capable of carrying out moderately dangerous humanitarian interventions.¹¹

The practice of mandatory immunizations, which most people appear to view as morally unproblematic, provides some intuitive support for these conclusions. In the case of many immunizations there is a small probability of serious harm to the person who receives the immunization. Nevertheless, it might be that one has a duty to do one's fair share to protect others from the serious harm that will occur if no one, or indeed, not enough people submit to an immunization. Likewise, in at least some cases of humanitarian intervention there is a large population at risk of suffering severe harm or death, and a means for preventing this outcome that will result in severe harm or death to only a few of those in a position to contribute to its prevention. If we think that people have a duty to submit to immunizations, or at least that the state has a right to command people to submit to immunizations, and to compel them to submit if they refuse, then I contend that we ought to draw the same conclusion when it comes to these cases of humanitarian intervention.

Someone might challenge this argument by analogy by pointing out that the person who submits to immunization also stands to benefit from it, which is far less likely to be true of those who carry out a humanitarian intervention. Yet it seems to me that even someone who is only a carrier of a disease still has a duty to submit to immunization, since his failure to do so poses a risk to others even if it poses no risk to himself. Similarly in the case of humanitarian intervention, it is the benefit to others that generates the duty, and any benefits to oneself that follow from discharging it are a happy addition, not a condition for the being under the duty in the first place. Alternatively, it might be said that the carrier of

11 There is some reason to believe that the larger the force carrying out the intervention, the smaller the probability that any one of them will suffer harm. This is so not only because those opposed to the intervention will have more targets from which to choose, thereby reducing the probability that any particular individual will be a target, but also because a larger force will do a better job at disrupting and deterring those who might want to attack them. If this is right, then there may be a tradeoff between reducing the likelihood that those participating in a humanitarian intervention will suffer grievous harm or death as a result, and reducing the number of agents with a duty to acquire the skill set of a military professional (at a not insignificant cost to their ability to pursue other ends).

a disease poses a threat to others, while the refusal to intervene does not, and that this explains why a carrier has a duty to submit to immunization while no one has a duty to participate in a moderately dangerous humanitarian intervention. We must be careful not to be misled by a metaphor here: the carrier of a disease does not literally threaten others, since the threat he poses is not the result of any intentional action on his part. But just as a person may act wrongly if he knows he is a carrier and refuses to submit to immunization, so too agents in a position to carry out a humanitarian intervention at a reasonable cost may act wrongly if they fail to do so. In both cases the agents in question allow others to suffer a harm that they could prevent (with cooperation from a sufficient number of others) without exposing themselves to much risk of harm.

It may appear that one morally relevant disanalogy between immunization and humanitarian intervention is the certainty of achieving a good outcome. States typically, and probably rightly, mandate immunizations only in those cases where they have a justifiably high level of confidence that this will protect their populations from the targeted disease. A similarly high level of confidence in the likelihood that intervention will successfully prevent or end genocide or ethnic cleansing will frequently be unjustifiable. In some cases a lesser degree of confidence may reflect the fact that humanitarian intervention would be morally problematic, since likelihood of success plays a crucial role in the moral justification of any war. Nevertheless, this apparent disanalogy does not undermine the defense of a duty to carry out humanitarian interventions offered here. Rather, it serves only to highlight a condition on that duty, one that holds with respect to many other moral duties including a duty to submit to immunization, namely that it obtains only in cases where the likelihood of achieving a morally desirable outcome exceeds a certain threshold.

An agent's duty to participate in a humanitarian intervention may also be conditional on his ability to discharge it without compromising certain special obligations he has to his compatriots. For example, combatants may have no obligation to carry out an armed humanitarian intervention—indeed, they may have a duty not to do so—if it will expose their compatriots to a significant risk of armed invasion, or leave their state with few resources with which to respond quickly to a major natural disaster. Even if this is the case, the existence of a special obligation to compatriots does not undermine the argument I offer here for a duty of humanitarian intervention. Nor, I suggest, is there reason to believe that in practice special obligations to compatriots will always override the duty of humanitarian intervention. After all, few if any of the armed interventions conducted over the past two decades that can plausibly claim to have been humanitarian ones (a contested category, I admit) have exposed citizens of the intervening states to the risks identified above. Moreover, it may be that the duty to contribute one's fair share to ensuring that all enjoy their basic moral rights requires citizens of many states to contribute more to facilitating armed humanitarian interventions than they currently do. Among other things, this might require an increase in military spending so that there will be fewer

occasions on which combatants' special obligations to their compatriots trump the duty of humanitarian intervention.¹²

If correct, the arguments presented here provide some reason to think that a reasonable cost proviso on the duty to provide assistance to those at great risk of serious harm does not in principle preclude a duty of humanitarian intervention. At present, of course, no procedure exists for selecting participants for armed humanitarian interventions amongst all those with a duty to see to it that others securely enjoy their basic moral rights. The claims defended in this paper provide a justification for creating such procedures, however. Or, seen from a different perspective, they rebut the position that no such procedure need be instituted because, given its costs, humanitarian intervention is never morally obligatory.

Furthermore, even in the absence of a morally adequate procedure for distributing the burdens involved in conducting a humanitarian intervention amongst all those with a duty to contribute, it may still be possible to employ the argument presented here to sustain the claim that individuals, and the states in whose military they (can) serve, have a duty to carry out a particular humanitarian intervention. Specifically, in any case where it is reasonable to believe that humanitarian intervention will pose an equal or lesser risk of harm than what an agent would bear if all moral agents were to actually "place their names in the hat" of the ideal procedure, the cost to that individual of carrying out the intervention is not unreasonable. Or at least this is so if I am right when I claim that, distributed across a very large number of agents, the costs involved in intervention are very low. *Ceteris paribus*, it follows that this agent has a duty to participate in the intervention. So for example, the argument presented here might be used to demonstrate that the British combatants who carried out the May 2000 intervention in Sierra Leone had a duty to do so, even in the absence of a fair process for selecting them for this task from amongst all those with agents with an equal duty to contribute to it.

All else may not be equal, of course. In particular, it may be that the agent in question has already contributed his fair share to the collective task of protecting all persons from genocide, ethnic cleansing, and other types of threats that clearly provide grounds for humanitarian intervention, say by participating in some earlier war of this type.¹³ This may even have been true for the British troops that intervened in Sierra Leone. As these remarks indicate, the idea that the risk of harm involved in carrying out a humanitarian intervention should be distributed fairly amongst all those with a duty to contribute to it functions in two distinct

12 Michael Gross (2010, 227–8) discusses this point in the context of the European Union's plans for a rapid response force designed specifically to conduct humanitarian interventions, and suggests that the duty to distribute fairly the risks involved in carrying out an armed humanitarian intervention may justify conscription.

13 Some (Murphy, 2002), argue that no duty obtains in such circumstances, while others (Singer, 2004) claim intention is still morally required though the intervening agents also have a claim to compensation from those whose failure to contribute entails a need for the intervening agents to do more than their fair share.

ways in the argument for a duty of humanitarian intervention. First, it plays a key role in establishing that when properly conceived this duty imposes little cost on those agents with the duty. Second, it provides a key premise in an argument for the creation of a specific type of institution that will identify who in particular ought to carry out a given humanitarian intervention.

Bibliography

- Bagnoli, C. (2006), "Humanitarian Intervention as a Perfect Duty: A Kantian Argument," in Terry Nardin and Melissa S. Williams (eds), *Humanitarian Intervention* (New York: New York University Press).
- Buchanan, A. (1999), "The Internal Legitimacy of Humanitarian Intervention," *Journal of Political Philosophy*, 7:1, 71–87.
- Davidovic, J. (2008), "Are Humanitarian Military Interventions Obligatory?," *Journal of Applied Philosophy*, 25:2, 134–44.
- Fabre, C. (2007), "Mandatory Rescue Killings," *The Journal of Political Philosophy*, 14:4, 363–84.
- Gross, M. (2010), *Moral Dilemmas of Modern War* (Cambridge: Cambridge University Press).
- Lango, J. (2001), "Is Armed Humanitarian Intervention to Stop Mass Killing Morally Obligatory?," *Public Affairs Quarterly*, 15:3, 173–89.
- Lefkowitz, D. (2006), "The Duty to Obey the Law," *Philosophy Compass*, 1:1, 1–28.
- Murphy, L. (2002), *Moral Demands in Non-Ideal Theory* (Oxford: Oxford University Press).
- Orend, B. (2002), *Human Rights: Concept and Content* (Peterborough, Ontario: Broadview Press).
- Pattison, J. (2008), "Whose Responsibility to Protect? The Duties of Humanitarian Intervention," *Journal of Military Ethics*, 7:4, 262–83.
- Singer, P. (2004), *One World* (New Haven: Yale University Press).
- Shue, H. (1980), *Basic Rights* (Princeton: Princeton University Press).
- Stone, P. (2007), "Why Lotteries are Just," *The Journal of Political Philosophy*, 15:3, 276–95.
- Tan, K. (2006), "The Duty to Protect," in Terry Nardin and Melissa S. Williams (eds), *Humanitarian Intervention* (New York: New York University Press).