

A Civilian Noncombatant's Duty to Aid A Dying Enemy Combatant

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Abstract: Does a civilian noncombatant have a duty to aid a wounded or dying enemy combatant she encounters during war? In general it is accepted that there is a universal duty to aid a person in need in emergent life threatening situations. If you see a child drowning in a pond and you are in a position to easily save her, you are required to do so. You are not permitted to simply continue on your way and let the child drown. However, one might think it odd that a noncombatant has the same duty to save the life of an enemy soldier, given that one of the objectives of war is to kill enemy combatants. This paper examines whether or not noncombatants have a duty to aid injured or dying enemy combatants they encounter during war and discusses on what grounds, if any, the duty is defeated.

Key Words: Duty to Aid, Duty to Rescue, War, Combatants, Noncombatants

## I. Introduction

This paper aims to look at the duties of civilian noncombatants in war, specifically the duty to aid. I will examine whether or not noncombatants have a duty to aid injured or dying enemy combatants they encounter during war and discuss on what grounds, if any, the duty is defeated, and it is morally permissible to do nothing and let them die.<sup>1</sup> Usually we have a deep-seated moral intuition that it is impermissible to let a person die when you are in a position to reasonably save her. One's duty to aid a dying person in need is not easily defeated. Though it seems like such a strong duty would readily carry over during war, some people, such as myself, have the intuition that the duty may not be as binding during war, and a civilian does not have the same duty to aid a wounded enemy soldier as she does others. It may be praiseworthy and good to save the soldier, but she is not duty bound to do so, and it is morally permissible to do nothing. This is the intuition I hope to take to task in this paper.

In the first part of this paper I will discuss the duty to aid and show that there is universal agreement that there is a duty to aid in emergent life threatening situations. In the following section I will consider the argument that a noncombatant's duty to aid an enemy combatant is

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<sup>1</sup> While duty to aid in general is quite expansive and can be understood to extend to a myriad of situations in and out of war such as providing food for the hungry or sending relief aid to a natural disaster, this paper confines the duty to aid to immediate and emergent situations analogous to that of a drowning victim, where failing to aid results in death.

defeated on the grounds that soldiers fighting in war surrender their right to life. Although plausible, I will show that combatants surrendering their right to life does not defeat one's duty to aid. In the final section, I will develop the view that during war the scope and parameters of how we calculate the cost of aid is different from that during a time of peace. Factors that normally are not considered in the calculation of cost incurred by the rescuer, specifically the possibility of future threats, become morally relevant in war. Outside of war during emergent situations the scope of the costs borne by the rescuer is limited to the immediate costs incurred during the rescue itself. I will argue that during war it may be morally permissible for a noncombatant to deny aid and let a combatant die, even though in times of peace, if she were to encounter someone in a similar situation, she would be obligated to try and save him. It becomes permissible because, when determining whether her duty to aid is defeated, in war the rescuing agent is allowed to consider factors outside of the rescue itself which she otherwise would not consider during times of peace.

## II. Duty to Aid

While many people's intuitions differ and vary widely with respect to certain aspects of the duty to aid, such as the stringency of one's obligation to contribute to international aid, one's duty to feed the hungry, or whether or not distance has an impact on one's duty to aid<sup>2</sup>, there is a subset of cases where intuitions converge, and there is a clear duty to aid. Those are cases of rescue and saving, emergent life-threatening situations where the victim will likely die or be made to suffer serious further harms if you do not act.<sup>3</sup> For example, it is obvious that if you see a building on fire and hear screams coming from inside, you are clearly not permitted to walk by and do nothing. While the duty to aid may not require you run into the burning building, it does require you at the very least to call 911. Patricia Smith goes as far as to argue that the duty to aid in an emergency is a universal positive duty and is recognized as universally binding, just as not causing harm is a universal negative duty, because an agent's 'intentional inaction is analogous

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<sup>2</sup> See Kamm, Frances M. "Does Distance Matter Morally to the Duty to Rescue," *Law & Philosophy*, 19, 6 (2000); Singer, Peter. "Famine, Affluence, and Morality," *Philosophy & Public Affairs*, 1, 3 (1972); Igheski, Violetta. "Perfect and Imperfect Duties to Aid." *Social Theory and Practice* 32.3 (2006).

<sup>3</sup> See Singer and Igheski, *supra* note 2; Smith, Patricia. "The Duty to Rescue and the Slippery Slope Problem." *Social Theory and Practice* 16.1 (1990); Gewirth, Alan. *Reason and Morality*. Chicago: U of Chicago, 1978.; Woollard, Fiona. 'Saving Strangers: Analysis of Intuitions.' *Doing and Allowing Harm* (Oxford, 2015); McCall Smith, Alexander, and Menlowe, Michael. *The Duty to Rescue : The Jurisprudence of Aid*. Aldershot: Dartmouth, 1993.; James, Scott M. "Good Samaritans, Good Humanitarians." *Journal of Applied Philosophy* 24.3 (2007)

to willful and reckless disregard for human life.<sup>4</sup> For years philosophers have made use of Peter Singer's drowning child thought experiment which draws on our strong intuitions to motivate the duty to aid; it goes as follows: 'Imagine that [your] route to the university takes [you] past a shallow pond. One morning you notice a child has fallen in and appears to be drowning. To wade in and pull the child out would be easy but it will mean that you get your clothes wet and muddy, and by the time you go home and change you will have missed your first class.'<sup>5</sup> When presented with this scenario people unanimously agree that you have an obligation to save the child. Our intuitions that you are not morally permitted to continue onto class and let the child die are quite fervent. There is a duty to aid in emergent life threatening situations such that is morally impermissible to let someone die when you could easily have provided aid. Though the duty to aid holds for more than rescue cases involving burning buildings and drowning children. Imagine you are walking home from the grocery store on a scorching hot day and you see a man on the other side of the street stumble and fall. You go over to see if he is alright and realize that he has passed out from the heat. If nothing is done and he does not receive aid, his condition will quickly worsen to heat stroke, and he will die. Clearly you have a duty to try and save him by giving him some water and food from your grocery bag. Importantly we still think we have a duty to aid even if we dislike the person, they are offensive, or if we are on opposing sides of some issue. For example, even if it is the case that you identify as LGBTQ and you know that the man suffering from heat stroke is a homophobic bigot who actively campaigns against gay rights, we still think that it is impermissible for you to simply let him die. You would be doing something wrong if you walked away without doing anything. During war however, it is unclear that a noncombatant has this same duty to rescue a dying enemy combatant. If combatants on your side of the war are there to eliminate the enemy and get to kill enemy soldiers, it is counterintuitive that you are required to help them. It seems strange that as a civilian, were you to witness an enemy combatant shot by an ally soldier during combat, you would then have a duty to save the enemy's life immediately after he is shot by one of your own. But as the universal duty to aid is so strong, there must be something specific that defeats the noncombatant's duty, which I will consider in the following section.

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<sup>4</sup> See Smith, *supra* note 3, at 22, 24.

<sup>5</sup> Singer, Peter. "The Drowning Child and the Expanding Circle." *New Internationalist* 289 (1997): 28-30.

### III. Right to Life Surrendered

I will now examine the intuition that a civilian may not be required to aid an enemy combatant because he is a combatant.<sup>6</sup> Under this account the relevant difference in situations of aid during war that makes not saving a person's life permissible is that the agent in question is a combatant. There is something special about the status of being a combatant that makes letting him die morally permissible. In his theory of combatant equality Michael Walzer posits that individuals participating in war surrender their right to life. In light of being a combatant and engaging in warfare, an agent has surrendered his right to life, and therefore a noncombatant is not obligated to save the enemy combatant, making it morally permissible to do nothing and let him die. To evaluate this argument, I will first show that it is reasonable to accept the premise that combatants surrender their right to life, owing to the fact that a core tenet of just war theory is based on this argument. I will then argue that even if it is true that combatants surrender their right to life, this fact does not defeat one's strong duty to aid and make it permissible to let a wounded enemy combatant die. I will demonstrate that although a combatant may surrender his right to life it does not follow that he also surrenders his claim to aid. I will also argue that upon closer investigation, within the context of just war theory, 'surrendering one's right to life' takes on a very specific connotation. Combatants surrender their right to life in that they are liable to be attacked and killed; the surrender of rights does not extend to 'letting die.'

Death is a seemingly inevitable consequence of war. In every war there are soldiers on opposing sides who engage in combat, attack, and kill one another; that is the nature of war. However a combatant's position is somewhat unique since, all things being equal, it is accepted that combatants can be killed, but noncombatants are off limits and may not.<sup>7</sup> In war, soldiers are permitted to attack and kill opposing forces, where ordinarily outside of war that action is not permitted. Yet even in war it remains impermissible to target noncombatants. Any plausible theory of the morality of war must show why it is permissible for combatants on either side of the war to kill other combatants, but not noncombatants. Seth Lazar writes, 'People have, as a matter of justice, a duty to respect others' right to life. To kill, in almost any other context

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<sup>6</sup> It is worth noting, that if this argument goes through, then the permissibility of forgoing aid and letting combatants die applies to all combatants both friend and foe alike.

<sup>7</sup> Noncombatant immunity is accepted by traditionalist and revisionists alike. See Walzer, *Just and Unjust Wars*, 2015. Primoratz, *Civilian Immunity in War*, 2007. Lazar, 'Strengthening Moral Distinction,' 2018. Arneson, 'Just Warfare Theory and Noncombatant Immunity,' 2006.

besides war, is to breach that duty.<sup>8</sup> It is the task of the just war theorist to show why, in war, the duty to respect others' right to life changes, and how killing in war is justified when in almost any other setting it is not.

Michael Walzer, whose work provided the foundation for modern just war theory, accounts for this discrepancy by maintaining that killing combatants is justified because of a principle he calls combatant equality. It is from this principle that we get the concept of combatants surrendering their right to life. This principle is central to traditional just war theory because it accounts for why it is the case that combatants on either side of the war are permitted to kill each other but not other noncombatants. According to this principle, combatants on both sides of the conflict are morally equal to each other and as such have equal rights to kill one another.<sup>9</sup> Walzer argues for his thesis in the following passage,

‘Simply by fighting, whatever their private hopes and intentions, they have lost their title to life and liberty, and they have lost it even though, unlike aggressor states, they have committed no crime. “Soldiers are made to be killed,” as Napoleon once said; that is why war is hell. But even if we take our standpoint in hell, we can still say that *no one else is made to be killed*. This distinction is the basis of the rules of war. Everyone else retains his rights.’<sup>10</sup>

According to the moral equality of combatants, combatants lose their own right to life because, as combatants, they threaten the lives of others.<sup>11</sup> Additionally, by joining the army and opting to fight, a combatant ‘has allowed himself to be made into a dangerous man’ and consequently surrenders his right.<sup>12</sup> Therefore, when someone takes on the role of combatant, he forfeits his right to life. Since noncombatants do not engage in warfare, they do not surrender their right to life and are granted noncombatant immunity.<sup>13</sup> Given that one of the central tenets of traditional just war theory is justified in part by the argument that combatants surrender their right to life, it is reasonable to think that their surrendering of their rights defeats a noncombatant's duty to aid. The dying enemy combatant you encounter, having surrendered his right to life, is not entitled to

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<sup>8</sup> Lazar, Seth. "Responsibility, Risk, and Killing in Self-Defense." *Ethics* 119.4 (2009): 699-728, at 699.

<sup>9</sup> While traditionalists defend the principle of combatant equality, most revisionists such as Jeff McMahan and David Rodin do not hold the view that all combatants equally forfeit their right to life and therefore would reject the notion that it is permissible to do nothing and let the combatant die because she has surrendered her right to life.

<sup>10</sup> See Walzer, *supra* note 7, at 136.

<sup>11</sup> *Ibid.* at 142.

<sup>12</sup> *Ibid.* at 145.

<sup>13</sup> *Ibid.* at 136.

your aid, and consequently you, as a civilian noncombatant, are morally permitted to refrain from attempting to rescue him, and are permitted to walk away without doing anything, allowing him to die.

I will now examine whether or not surrendering one's right to life necessarily entails a surrender of one's right to aid or rescue. One might intuitively think that if an individual has done something, or engaged in some activity that results in forfeiting her life, then in situations where her death is imminent, since she has surrendered her right, one has no obligation to do anything to prevent her death. However, simply because a person loses her right to life in one context it does not follow that she forfeits it absolutely. Let us first consider a case where an agent dies, and it is clear that the agent surrendered her right to life. Take the following scenario:<sup>14</sup> A police officer is dispatched to the scene of a bank robbery. Upon the police officer's arrival, the bank robber flees the scene of the crime. The officer pursues the suspect on foot. During the pursuit the suspect shoots at the officer several times. The officer then, defending himself, returns fire shooting the suspect in the leg. The bullet hits the suspect's femoral artery; she bleeds out in less than a minute and dies. In this example, the suspect's death is justified, and she is in no way wronged by the police officer's actions. When she attacked the police officer attempting to use lethal force, violating the officer's right to life, the suspect forfeited her own right to life.<sup>15</sup> It is because the suspect has forfeited her right to life that when the officer shoots and subsequently kills her it is understood that he acted in a morally permissible manner. Now imagine the exact same scenario with only one difference: The officer's bullet misses the femoral artery, and the suspect does not die immediately from her wound. However, if she does not receive medical attention she will bleed out and die. The officer has two options available to him. The first is to call for an ambulance; the second is to let the suspect succumb to her injuries, slowly bleeding to death. Because the shot to the leg was not immediately fatal, it is clear that the officer has a duty to call an ambulance. He is not permitted to withhold aid, effectively ensuring the suspect's death even though she forfeited her right to life to the officer when she shot at him. One argument for why, in the second scenario, the officer would be morally remiss in not calling 911 and denying the dying suspect aid is because

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<sup>14</sup> Scenario modified from: Emerton, Patrick, and Toby Handfield. "Order and Affray: Defensive Privileges in Warfare." *Philosophy & Public Affairs* 37.4 (2009): 382-414.

<sup>15</sup> Thomson, Judith Jarvis. "Self-Defense." *Philosophy & Public Affairs* 20.4 (1991): 283-310, at 302-305.

the imminent threat to his life is averted.<sup>16</sup> The suspect, having been shot and wounded, is incapacitated and is no longer infringing upon the officer's right to life. Since she is not, at that moment, violating the officer's right, the suspect regains her right to life and therefore cannot be allowed to die. She is still entitled to emergency aid. One might think the officer's providing aid is specific to his role as a policeman; however, our intuition remains the same when we replace the officer with regular citizen. Here, the individual in question has surrendered her right to life, yet we think that she still has a right to receive aid.

If it were the case that combatants have surrendered their right to life not temporarily but completely, then we would expect to see policies regulating warfare which reflect that. It would be acceptable and common practice to leave wounded combatants from the opposing side to die on the battlefield. If they are dying and have forfeited their right to life, then military forces would be justified in not saving the enemy and letting them die. This course of action makes strategic sense, as it decreases the number of opposing forces and does not require them to expend their valuable resources. However, in modern warfare, this has not been common practice; when battles ceased, both sides tended to their wounded, and if one side maintained military control over the battle field, that side provided medical aid not only to their own soldiers but also to the wounded enemy soldiers also.<sup>17</sup> Additionally, in 1906, the Geneva Convention was revised to include articles relating to the sick and wounded stipulating, 'Officers, soldiers, and other persons officially attached to armies, who are sick or wounded, shall be respected and cared for, without distinction of nationality, by the belligerent in whose power they are... After every engagement the belligerent who remains in possession of the field of battle shall take measures to search for the wounded.'<sup>18</sup> As evidenced by this article, it appears that even though combatants forfeit their right to life, they do not surrender their right to aid and humane treatment. While Napoleon may be correct when he said soldiers are made to be killed, they are still human and should not suffer unnecessarily. Just because combatants surrender their right to life, it does not make it permissible to let them die when aid can be given.

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<sup>16</sup> No other action is necessary to eliminate the threat. For a detailed account see: Frowe, Helen. "The Role of Necessity in Liability to Defensive Harm." *The Ethics of Self-Defense*. Oxford UP, 2016.

<sup>17</sup> See Gregory P. Noone's *The History and Evolution of the Law of War Prior to World War II*, 2000.

<sup>18</sup> International Committee of the Red Cross (ICRC), *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (Geneva Convention on Wounded and Sick)*, 6 July 1906.

Furthermore, a closer examination of what the argument that combatants surrender their right to life is actually meant to justify in just war theory, reveals that when Walzer and other traditionalists speak of surrendering one's right to life, it means something very specific within the context of war. In the context of war, to surrender one's right to life means that one is liable to attack and liable to be killed. Recall that one of the primary aims of just war theory is to explain why killing carried out in war is different than killing outside of war. When theorists appeal to the fact that combatants lose their right to life, they are doing so in order to justify and give an account of why it is the case that, within the confines of war, soldiers are morally permitted to kill one another. Walzer uses the forfeiture of rights argument to justify why it is permissible for combatants from opposing sides to target, attack, and kill each other, but not civilians. In this way, Walzer's language and terminology of losing, surrendering, or forfeiting one's 'right to life' is somewhat misleading. It does not mean that combatants have no right to live, that their deaths in war, however they transpire, are always permissible and justified. Rather, it means that combatants have forfeited their right not to be killed, whereas noncombatants have not. This is why combatants can be targeted and killed to satisfy some military objective while noncombatants cannot. Even more specifically, it means that combatants are liable to attack. As Jeff McMahan explains, 'To attack someone who is liable to be attacked is neither to violate nor to infringe on that person's right, for the person's being liable to attack *just is* his having *forfeited* his right not to be attacked.'<sup>19</sup> This distinction is important because liable to attack and liable to be killed are sometimes used interchangeably, which is understandable since permissibly attacking someone often results in him being killed, and the objective of a targeted attack is to kill. However, when theorists maintain that combatants are liable to be killed it does not mean that they are liable to die, for any reason, at any time, 'the form of forfeiture that corresponds to liability to attack in war is highly specific.'<sup>20</sup> Combatants have surrender their right to life just to the extent that they are liable to attack from military forces of the opposing side. Therefore when a noncombatant encounters a dying enemy combatant her duty to aid still holds. The duty to aid another human being in an emergent situation is not defeated on the grounds that the combatant has surrendered his right to life. The combatant surrendered his right not to be attacked, therefore he was not wronged in being

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<sup>19</sup> McMahan, Jeff. *Killing in War*. Oxford: Oxford University Press, 2009. at 10.

<sup>20</sup> *Ibid.* at 9.

attacked; however, his forfeiture of rights does not extend so far as to make it morally permissible for a passerby to let him die, when, if it were any other stranger dying, the noncombatant would be obliged to save him by the universal duty to rescue. The combatant is liable to attack, and possibly liable to be killed, but he is not liable to being left to die.

#### IV. Expanding the Scope of Defeating Factors to Include Potential Threats

Since a combatant's surrendering his right to life does not defeat a noncombatant's duty to aid, then as it stands, if she encounters a wounded enemy combatant, and can easily save him, she is obligated to do so. However, there are still instances in war where one intuitively thinks that a noncombatant does nothing wrong by not saving an enemy combatant, even when she could easily do so. In this section, I defend a modified view of the duty to rescue on which a noncombatant may be justified in not providing aid to an enemy combatant even when the rescue and aid is easy. Current accounts of the limits of the duty to rescue only consider the possibility of costs and risks born by the agent during the course of the rescue as potential defeating factors. I submit that in war, relevant considerations go beyond the costs and risks a rescuing agent takes on during the process of rescue; they extend to the future risks and potential costs that she assumes as a result of providing aid that she would not otherwise be subject to. I will argue that a noncombatant's duty to aid a dying enemy combatant is defeated if the combatant in question poses a threat to her.

The duty to rescue has been formulated by different philosophers many different ways. To give a few:

- a) An agent has a duty to rescue another when he can do so 'with no unreasonable cost, risk, or inconvenience' to himself or others.<sup>21</sup>
- b) 'If it's in our power to prevent something bad from happening without sacrificing anything of comparable moral importance, we ought, morally to do it.'<sup>22</sup>
- c) 'If someone can prevent a serious harm to another person at minimal cost to herself, then she has a moral duty to do so.'<sup>23</sup>

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<sup>21</sup> Feinberg, Joel. "Failures to Prevent Harm." *The Moral Limits of the Criminal Law Volume 1: Harm to Others*. Oxford UP, 1987. Feinberg, Joel. "The Moral and Legal Responsibility of the Bad Samaritan." *Criminal Justice Ethics* 3.1 (1984): 56-69.

<sup>22</sup> See Singer, *supra* note 2, at 231.

<sup>23</sup> Rulli, Tina, and Joseph Millum. "Rescuing the Duty to Rescue." *Journal of Medical Ethics* 42.4 (2016): 260-264, 260.

- d) ‘Whenever some person knows that unless he acts in certain ways other persons will suffer basic harms, and he is proximately able to act in these ways with no comparable cost to himself, it is his moral duty to act to prevent these harms.’<sup>24</sup>

In each of these formulations, there is a level of cost or sacrifice that the aiding agent is expected to bear in order to fulfill her duty to aid the person in emergent need, whereby if the cost to the rescuing agent exceeds some amount X, then she is not duty bound to provide aid, and she is morally permitted to let the individual die. While there is no set consensus among philosophers as to what that level of cost is, many have modified Singer’s drowning child thought experiment in different ways or constructed similar scenarios to show that the duty to aid still holds even when it comes at financial sacrifice to the rescuer, or certain physical sacrifices.<sup>25</sup> For example most people intuitively maintain that if I were on my way to the airport to catch a flight when I encounter the drowning child, I would still have a duty to rescue her even if it meant being late and missing my \$2,000 nonrefundable flight.<sup>26</sup> Similarly, Fiona Woollard argues that an agent would still be required to save the child even if she knows she will break her leg, or even permanently lose a finger, in the process.<sup>27</sup> In each of these discussions of cost, all of the relevant costs concern those born by the agent during the rescue, and any relevant costs that occur after the rescue are relevant only in that they are further effects of a sacrifice made during the process of the rescue.<sup>28</sup> Relevant considerations do not include potential costs that the agent may incur after the rescue, which she would not have otherwise born, had the rescue not taken place. For example, say you save the drowning child. It just so happens that the child is a cat burglar, and two weeks after you save her, she robs your house, taking \$2,000 in jewelry. This eventually becomes a cost you incur as a result of rescuing her, but this particular cost is outside of the scope of what costs are considered relevant to one’s duty to aid because it is not born during the rescue itself. Similarly, in discussions of risk, the risks that are considered are those

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<sup>24</sup> See Gewirth, *supra* note 3, at 217.

<sup>25</sup> It is not the purpose of this paper to stipulate what counts as reasonable cost or what costs born in the process of rescue defeat the duty to rescue. It is enough to show that even with the disagreement about the cost of rescue, throughout the literature, discussions regarding what costs and risks might possibly defeat one’s duty do not go beyond risks assumed during the rescue, and costs born during the rescue. Even discussion of future costs to the rescuer which arise after the rescue pertain to the lasting effects and impact of costs paid during the rescue.

<sup>26</sup> See Ignieski, *supra* note 2, at 442.

<sup>27</sup> See Woollard, *supra* note 3, at 131.

<sup>28</sup> *Ibid.* at 130 for Woollard’s discussion of Peter Unger’s Bugatti thought experiment.

related to the act of rescue itself.<sup>29</sup> The reason you are not morally required to run into the burning building, and duty only requires you to phone 911, is because if you were to perform the rescue yourself, you risk burning up and dying in the process. Similarly, a noncombatant is not duty bound to aid any combatant, enemy or ally, amidst a gun fight due to the risk of being herself mortally wounded in the process. Likewise a person who can swim, but is not an exceptionally strong swimmer, is not morally required to rescue a child who is drowning in rough waters; it is permissible for her to let the child die because she herself would risk dying in the process of saving him.<sup>30</sup> Once a rescue becomes 'too risky or too costly an agent is justified in not performing it.'<sup>31</sup> These risks correspond to costs, not just any potential costs, but costs the agent faces during the rescue itself. In the first two scenarios she faces serious, perhaps permanent, injury as well as potential death in the process of rescuing the agent in need, and guaranteed death in the drowning case. The risks to the rescuing agent are confined to those that she assumes during the period of time that it takes to make the rescue.<sup>32</sup> Based on how the duty to aid is currently spelled out, the costs and risks which may defeat ones duty to aid are limited to the events and circumstances of the rescue itself.

I argue that in war the scope of relevant costs and risks is expanded to include factors outside of the rescue process itself. In war there are scenarios where a noncombatant may be morally permitted to let an enemy combatant die, even when saving him constitutes an easy rescue, where the rescue process is virtually risk free and costs the noncombatant very little. Consider the scenario posed in section II where a noncombatant encounters an enemy combatant dying of heat exhaustion. All that is required of her to save him is to provide him food and water, which she happens to have on her. The cost to her is a mere bottle of water and a protein bar, and, if we are to factor in the risk involved in the act of rescue, handing over the food and water, there is none. On the existing model of our duty to aid she clearly has a duty to aid. Now imagine the exact same scenario only set in Germany occupied Poland during WWII, and the rescuing agent is a Jew in hiding, called Mary, who encounters a dying S.S. officer in need of food and

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<sup>29</sup> See Gewirth, *supra* note 3, at 218.

<sup>30</sup> Ignieski, Violetta. "Rescue and the Duty to Aid." Ph.D. diss., University of Toronto (Canada), 2001. at 218-19.

<sup>31</sup> *Ibid.* at 219.

<sup>32</sup> It is possible that discussions of risk have been limited to the act of rescue because theorists have not considered the possibility that there are risks related to saving an individual that have nothing to do with the cost or risk of performing the actual rescue.

water. Because the S.S. officer's job is to seek out, capture and ultimately exterminate Jews, and he would do so if he discovered Mary, I take it to be true that she is not required to provide aid, and is therefore morally permitted to let the officer die. However, as the cost and risk involved in the actual physical act of rescue is identical in both scenarios, there must be some other relevant factor, not captured by our current cost risk paradigm, which makes not providing aid morally permissible. I believe there is a way in which we think, and rightly so, that if she were required to save the Nazi soldier it would cost the rescuing agent her life. With the wounded S.S officer, the anticipation is that upon receiving aid, he will turn her in to the gestapo where she will be killed or sent to a concentration camp. Hence, if she were required to save the Nazi soldier it would most likely cost the Mary her life. But as this cost does not befall Mary during the actual rescue, unless the theory is modified, her duty is not defeated, and she is still required to provide aid. I also do not think anyone would deny the fact that Mary risks her life by saving the German officer even though it is the case that she is not in danger or at any risk of harm to her basic well-being when she is actually providing aid. The reason one is correct in maintaining that she puts her life at risk when she aids the Nazi is because given that he would harm or imprison her if ever he got the chance, rescuing him endangers her life. While he may not be a threat to her when he is incapacitated, once she helps save his life he becomes one. He does not pose a minor threat, but a major threat to her life, freedom, and basic well-being. In saving him, she puts herself at risk to a threat that she otherwise would not be in danger of, namely the threat of being arrested, detained in a concentration camp or exterminated. While walking away and not providing aid is a disproportionate response to the cost, risk, and any immediate threat to her well-being that Mary may face during the rescue process, it is proportional to the extraordinary danger to her that may come about from saving him.

As one's right to life, and by extension one's right not to be harmed, is the most fundamental natural right, an agent should not be made to renew an averted or existing threat to her life or aid in the creation of a new threat to her life. The idea that exposure to a threat can defeat one's duty to aid is not unique to my view. If we look back, traces of this reasoning are already present in our current conception of the duty. We would call into question any account of a duty to aid that would require a rescuing agent to subject herself to a threat to her life in order to save another. It is why, were it not possible to call 911, the passerby is morally permitted to let the people die in the fire, and why the weak swimmer is not required to rescue the drowning

child, because providing aid to them would threaten her own life. However, as illustrated in the WWII example, in war there are threats to a rescuing agent's life that are associated with aiding an enemy combatant which go beyond the perils of the rescue itself. Because the S.S. officer poses a threat to the noncombatant's life, her duty to aid is defeated, and she is therefore not required to provide aid.

One of the reasons the example with Mary is so compelling is because the likelihood that the noncombatant's life will become at risk upon aiding the enemy combatant is extremely high. If she provides aid and saves the soldier's life, it is more than likely that she will be helping to introduce a threat to her life that would otherwise not have been present. If you know with absolute certainty that the individual you are providing aid to is going to cause you harm or kill you at some point in the future after you have saved him, as in the Nazi case, you are not morally obligated to provide aid. However, I believe the noncombatant's duty to aid is defeated even if it is not absolutely certain that the enemy combatant will ever cause her harm and only poses a potential threat. That is, even in cases where there is no guarantee that the combatant in need is a threat or will become a threat to you after you save him, you are not required to rescue him. If the noncombatant has reason to believe that the enemy combatant will pose a threat to her life if he is rescued, then it is permissible for her not to provide aid.<sup>33</sup> In order to gain a better understanding of the types of cases to which I am referring, think back to the Vietnam war. Consider the atrocities the Vietnamese experienced at the hands of U.S. soldiers during that war. Although the My Lai massacre is the most well-known act of barbarism committed by U.S. soldiers, there are countless other documented cases of mass murder, rape, and torture of Vietnamese civilians by U.S. forces that have been corroborated by both Vietnamese and Vietnam veterans alike.<sup>34</sup> Still, not all soldiers participated in violence against Vietnamese noncombatants. One Vietnamese villager who lived through the war recounted, 'Sometimes U.S. troops handed out candies. Sometimes they shot at people. Sometimes they passed through a

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<sup>33</sup> It is worth noting that the potential threat that the enemy combatant poses is a threat to the noncombatant's life, freedom, or basic well-being; which include, but are not limited to, death, imprisonment, rape, torture, and maiming. As what is at stake for the person in need of aid is his life, for your duty to be defeated, and you be justified in letting the individual die, the threat you assume the risk of happening to you, were you to save him, must also be sufficiently high.

<sup>34</sup> For a detailed discussion of the violence against Vietnamese noncombatants see Turse, Nick. *Kill Anything That Moves: the Real American War in Vietnam*. A Metropolitan Book, 2014.

village hardly touching a thing. Sometimes they burned all the homes.<sup>35</sup> Imagine a Vietnamese villager is returning to her home, walking down a road that dead ends at her village. Along the way she comes across an unconscious U.S. soldier bleeding out. She knows how to tourniquet his wound to staunch the bleeding so that he will survive. However, as the road on which the soldier is traveling leads only to one place, it is apparent that he was on his way to her village when he sustained his injury. Based on either her personal experience, or stories she has heard from others of the actions of U.S. soldiers she has good reason to believe that if he lives he will go on to torture, massacre, or gravely violate the people of her village, herself included. Though she is aware that there is a chance that he may be one of the decent soldiers, that he may pose no threat to her once he receives her aid and recovers, and is only on his way to take stock of the village, there is the greater risk that if she gives him aid and he lives, he will pose a serious threat to her life, as well as the lives of those in her village. In this context, the combatant in need poses a potential threat to her life. Even in this case, where the villager is not certain that aiding the soldier will result in an actual threat to her life, she is justified in not providing aid because if she saves him and he does pose a threat to her it could cost the villager her life. She would be saving his life only to provide him the opportunity to harm her once he is able.

It is clear that when rescuing does in fact produce a threat to the rescuer, or revives a previously eliminated threat, the duty is defeated, as you are not required to endanger yourself.<sup>36</sup> However, many noncombatant encounters with enemy combatants are similar to the Vietnam example where it is not known whether aiding the enemy combatant will give rise to a serious threat to the noncombatant following the rescue. Saving the enemy combatant either will or will not result in a threat to the noncombatant's life, but it is impossible for the noncombatant to know for sure. One only knows if the combatant is a threat in hindsight, and when answering the question *do noncombatants have a duty to aid enemy combatants during war* it is not enough to stipulate that her duty is defeated if aiding the enemy combatant actually poses a threat to her life; that does not do an agent any good when she asks of herself *Do I have a duty to help this person?* or *Am I doing something wrong if I do nothing and let him die?* A theory of the duty to aid must also be action guiding. In instances such as these the duty must be assessed from the perspective of the noncombatant. This is why the agent's reasonable belief that the rescue poses

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<sup>35</sup> *Ibid.* at 132.

<sup>36</sup> A threat of a scale that will damage your basic well-being: Death, rape, torture, imprisonment.

a threat is enough to defeat her duty to aid an enemy combatant in war. Kimberly Kessler Ferzan maintains a similar position for evaluating the justification of self-defense from the view point of the victim. She argues:

‘From a God’s eye point of view, an act either will or will not happen – the risk is either 0 (no) or 1 (yes). However, because we do not have this omniscient perspective, we assess risks. And the degree of risk may change depending upon the person assessing the risk because the amount of information that any actor has may differ... A [victim] cannot know the outcome. Rather, he must play the odds. And his action, like any epistemically limited action, must be assessed from this viewpoint... The law must not only tell people what to do when they are certain of the result, but what to do when they face risks.’<sup>37</sup>

Just as the victim in Ferzan’s account of self-defense, the noncombatant must play the odds. She faces the risk that aiding the enemy combatant will cost her her life. Just as the weak swimmer is not required to assume the risk to her life that goes along with saving the drowning child, the noncombatant is not required to assume the risk that accompanies saving the enemy combatant. A noncombatant is justified in not providing aid to an enemy combatant if she has reason to believe that rescuing him will engender a threat to her life.<sup>38</sup>

If you are permitted to let an enemy combatant die because he poses a threat, this might lead one to consider whether you are permitted to kill him. You are not. While the potential rescuing agent is not morally required to provide aid on the grounds that she cannot be made to aid a potential threat to her life, it is morally impermissible to for her to proactively kill the combatant. The reason for this is twofold. Firstly, while your duty to aid is defeated, the combatant in emergent need still has a right to aid, and as such, the duty to aid still holds for others to whom he does not pose a threat. Killing him denies the possibility of anyone else coming to his aid. Although you are not required to save him, you cannot prevent someone else from saving him. Secondly, and more importantly, whereas you do have a right not to put yourself at risk to a potential threat to your basic well-being by providing that person aid yourself, you do not have a right to inflict harm upon or kill that person. This is because the

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<sup>37</sup> Ferzan, Kimberly. "Justifying Self-Defense." *Law and Philosophy* 24.6 (2005): 711-749, at 722, 726.

<sup>38</sup> If the villager had a magic ball which told her with 100% certainty that the soldier would not pose a threat to her after she saves him then yes, she would be required to provide aid and try to save his life; she would not be not morally permitted to let him die. If she is in an epistemic position to know that there is no threat or potential threat, she cannot let him die simply because he is a U.S. soldier. Just like the homophobic victim in section II, it is morally impermissible to deny aid because she dislikes him or is on opposing sides.

enemy combatant in need is not currently posing a direct threat to you and therefore is not liable to any direct harm from you.

It is natural to wonder now, if reasonable belief that the person one is aiding is a threat to one's life defeats a civilian's duty to aid during war, then why is it the case that it does not defeat one's duty to aid outside of war? The answer lies in the role that the state normally plays during times of peace, that of protecting citizens against violence, a role that is often absent during war. Consider the fact that even in cases of self-defense the victim still has a responsibility to her attacker.<sup>39</sup> If a person is attacked and she shoots her attacker, once the immediate danger is eliminated and threat to the victim's life is no longer imminent, she is not permitted to cause him further harm. Just as she is not permitted to shoot him repeatedly until he is dead, once he is down she is not permitted to let him bleed out and die, she must call for an ambulance.<sup>40</sup> Nevertheless, if that person attacked her, then one can assume that the victim has reason to believe that he poses a threat to her and will pose a threat to her once she saves him. So why is she required to aid him when in war the reasonable belief that he poses a threat is enough to defeat her duty? It is because in calling 911 she not only ensures that he will receive aid, she also simultaneously appeals to the authorities for protection against that potential threat. Police involvement, in conjunction with the legal and judiciary systems, seriously reduces the likelihood of the attacker following through on the threat he poses to the victim's life, even if she provides him aid and saves his life. Crucially, outside of war there are systems in place to protect you from threats that are not yet imminent, which is why harming another person, and plausibly the converse of allowing harm, is restricted to instances 'where the danger is present and immediate, and there is not time to resort to a central authority.'<sup>41</sup> Because there is a system in place where you can turn for protection from the threat the person in need of your aid poses to you, your duty holds, and you are still required to provide aid; you are not permitted to withhold aid and allow him to die. However, Whitley Kaufman notes that 'if the imminence restriction is premised on the fact that the state can otherwise provide protection against violence, it follows

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<sup>39</sup> While inflicting harm in self-defense is not strictly analogous to allowing a person in need to suffer further harms you could prevent, the parallels between the cases will shed light on why the noncombatant is justified in letting the enemy combatant die and the attack victim is not.

<sup>40</sup> As self-defense must be proportional to the threat, and there is no longer an imminent threat, allowing him to die is neither proportional nor necessary, hence she must call an ambulance.

<sup>41</sup> Kaufman, Whitley R.P. "Self-Defense, Imminence, and the Battered Woman." *Criminal Law Conversations*. Oxford UP, 2011. at 410.

that if the state is unable to do so then the imminence rule is suspended.<sup>42</sup> During war the noncombatant is not justified in not aiding the enemy combatant because there is no time or meaningful possibility to resort to a central authority to mitigate the threat, but rather because there is no central authority for her to resort to at all. There is no police or state authority that a Jewish person in Nazi occupied Poland could turn to for protection against the threat the S.S. officer posed to her once she provided him aid, saving his life. Similarly with the villager in Vietnam, there is no system in place, nor any central authority to which she can resort to ensure that, after she satisfies her duty to aid by tying off his wound, he will not continue on to execute her and her village. Significantly, if Kaufman is correct, then it is plausible that a potential threat can also defeat one's duty to aid outside of war if the state has proven unable or unwilling to play its role as protector. For instance a black man in the south during Jim Crow might not be required to rescue a drowning man who has threatened to lynch him that night even if he can easily save him. Because the racist police are unwilling to protect him from the man trying to lynch him, the drowning man will still be a threat to his life after he saves him. It appears as though the nature of war does not actually change the duty to aid, it just modifies how the duty is spelled out, and allows us to clarify our current account of the duties limits. The cost and risk of potential threats outside of the actual rescue may always be relevant considerations, but outside of war the power of the state generally makes them non-existent.<sup>43</sup> It happens to be the case that in war these threats actually count against a noncombatant's duty to aid because there is no state to protect her.

## V. Conclusion

The aim of this paper was to determine whether a noncombatant's duty to aid holds for an enemy combatant in war. I considered, and rejected, the argument that her duty does not hold because the combatant surrendered his right to life. I argued that a noncombatant's duty to aid an enemy combatant in war is defeated only when she has reason to believe saving him poses a threat to her life. If she believes he may pose a threat to her life she is not required to provide aid, and it is morally permissible for her to do nothing and let him die. If a noncombatant has no reason to believe that rescuing the enemy poses a threat to her life, freedom, or basic well-being,

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<sup>42</sup> *Ibid.* at 412.

<sup>43</sup> That these types of situations do not often occur during times of peace, where the state is playing its role, may explain why they have never been considered in the literature.

then her duty to aid still stands, and she is required to provide aid. She is not justified in denying him life-saving aid simply because he is the enemy. In general, a noncombatant does have a duty to aid a wounded enemy combatant in war; the duty is only defeated in circumstances when she has reason to believe her life will be threatened or put at risk if she were to provide him aid.

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