Victims of War

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Abstract
In my thesis, I explore the moral status of different types of agents who suffer harm. I seek to determine whether these agents are victims of wrongful harm, that is, whether they had a right not to suffer harm. Since a victim has certain claims on others - including claims to aid or compensation, to the punishment of the victimizer, or to an apology - it is important to establish who counts as a victim and how victims’ claims compare in strength. In the thesis, I consider the moral status of accomplices, risk-takers and provocateurs, and explore the extent to which such people might lack rights against harm. I also consider the comparative status of victims of unjustified harm and victims of justified harm. I focus on these types of agents because their victimhood is challenged by recent arguments in the literature. I show that some of these arguments unjustifiably weaken or deny a sufferer’s victimhood and her concomitant rights.

In the first paper, I argue that accomplices, those who contribute to but do not directly pose a threat, often forfeit rights to a lesser extent than principal wrongdoers who pose the threat. Treating accomplices as morally on par with principals would often wrong them. I offer an account that helps to determine the extent to which an accomplice lacks rights against harm. In the second paper, I argue against the view that taking a risk of suffering a wrongful harm diminishes the strength of one’s right against the harm. Risk-takers compromise their rights only if their risk-taking imposes unjustifiable costs. In the third paper, I argue that provocateurs are similar to agents who contribute to another’s wrongful threat. In contrast to wrongdoers who forfeit their rights in proportion to the threat they pose, provocateurs often forfeit rights only against a lesser harm. Treating provocateurs as morally on par with wrongdoers would therefore wrong them. Lastly, I consider innocent victims of justified harm and innocent victims of unjustified harm. I argue that the stringency of their claims to compensation does not differ. I thereby push back against arguments that want to see the perceived differential moral residue of justified and unjustified harm reflected in the victim’s compensation claim. In order to defend my conclusion, I discuss the grounds on which compensation is owed to innocent victims of justified harm in the fourth paper.

Keywords: ethics of war, rights, harm, victimhood, complicity, risk, provocation, compensation.

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INTRODUCTION

I. THE PROJECT

War causes widespread harm to a range of people. It causes harm to combatants fighting unjust wars and combatants fighting just wars, to civilians who contribute to unjust wars, and to civilians who contribute to just wars. War causes harm to journalists, medical personnel and others who chose to work on the frontlines and so expose themselves to a higher risk of harm. It causes harm to civilians who, at comparatively little cost, could have avoided harm if they had left the battle zone. War can cause harm to those who were inciting violence with deliberate provocation and war-mongering propaganda. And it harms many wholly innocent civilians who do not make any contribution, do not support any unjust causes and who could not avoid exposure to risks of harm. Sometimes those innocent civilians suffer entirely gratuitous harm, but sometimes the harm they suffer is justified as a lesser evil because it prevents an even greater harm to others.

All these people might be commonly described as ‘victims of war’, in both ordinary discourse and in the philosophical literature. The Oxford English Dictionary defines a victim as “one who suffers some injury, hardship or loss, is badly treated or taken advantage of”, or, more concretely, “a person who is put to death or subjected to torture by another; one who suffers severely in body or property through cruel or oppressive treatment.” Jeff McMahan, in his seminal book Killing in War, uses a similarly broad interpretation of victimhood. He uses the term victim in various but altogether sparse ways to refer to everyone who has been harmed in conflict. McMahan, for example, talks about harms that a victim deserves to suffer or that the victim is liable to suffer. At other times, he refers to the ‘innocent victim’, indicating with the qualification of ‘innocent’ that having a right against harm is, in his view, not a necessary component of victimhood.

On this popular understanding, suffering harm is a sufficient condition for qualifying as a victim. As a consequence, everyone who suffers harm qualifies as a victim, irrespective of other moral considerations, such as responsibility or desert. But being a victim often confers certain claims, including claims to aid or compensation, to the punishment of the victimizers or apologists. In this respect, victimhood is not just a description of facts and states but also has normative implications. For this reason, harm can only be a necessary, but not a sufficient condition for victimhood.

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3 McMahan, Killing in War, 24.
4 McMahan uses the term “innocent victim” on several occasions McMahan, Killing in War, 73, 159, 161, 179-83.
5 We might want to include the risk of suffering a wrongful harm as well. Some consider risks to be a harm in itself. Risk lowers the victim’s welfare and sets back his legitimate interests in not being exposed to risk of harm. See e.g. Claire Finkelstein, “Is risk a harm?,” Pennsylvania Law Review 151, (2003): 963-1001.
This thesis assumes that victims are only those who suffer wrongful harm. A wrongful harm is harm that the victim has a right not to suffer. This means that a person counts as a victim if she has a right to suffer no harm at all, or to suffer less harm than she does. The fact that the agent has a right against harm makes harming her especially hard to justify and confers certain claims on her.

This thesis considers the moral status of accomplices, risk-takers and provocateurs and seeks to establish whether these agents are victims of wrongful harm. The thesis explores the extent to which such people might lack rights against harm. This affects how strong their claims are. It also considers the comparative status of innocent victims of unjustified harm and innocent victims of justified harm. I consider, for example, whether a person who suffers a rights violation has a stronger claim to compensation than a person who suffers a rights infringement. Since suffering a wrongful harm is commonly taken to be a ground for compensatory claims, each of these investigations has implications for how we should adjudicate the compensatory claims of those who are harmed in war. The comparative aspect of my thesis is especially pertinent to post-conflict situations, since these are typically situations under conditions of scarcity - that is, situations in which an agent might owe compensation to different groups of victims but cannot satisfy all compensatory duties. In such contexts, we need to know whether there is reason to prioritize one group of claimants over the others. Such prioritization could be justified on the ground that certain factors strengthen or weaken the victims’ claims to compensation – for example, that the victims was justifiably harmed, or that she knowingly incurred an increased risk of being harmed.

The factors I consider in the five papers of the thesis – complicity, risk-taking, provocation, subjection to justified and unjustified harm – are not the sole determinants of who counts as a victim of wrongful harm, nor of how we should weigh compensation claims. However, I hope that my analysis of these features will go some way to illuminating the difficult question of who counts as a victim of wrongful harm, and the comparative status of the claims of different types of victims.

I focus on these types of agents – accomplices, risk-takers, provocateurs, innocent victims of justified and unjustified harm – because their victimhood is challenged by recent arguments in the literature. Much of the thesis pushes back against recent arguments in the literature that hold that certain types of agents have either no rights against or less stringent rights than previously thought. I show that some of these arguments unjustifiably weaken or deny a sufferer’s victimhood and her concomitant rights.

This brief sketch of my project will now be followed in section II by an introduction of the literature on which I rely and key terms and concepts that I will use. In section III, I provide summaries of the five papers that make up the thesis.
II. ASSUMPTIONS, BACKGROUND AND INTRODUCTION OF KEY TERMS AND CONCEPTS

My work is firmly embedded in contemporary ethics of war. And although I hope to make some contributions of my own, I rely and build upon the extensive literature in this field. The papers making up this thesis are largely self-standing, and thus each introduces the relevant terms and concepts as needed. Nonetheless, I offer a brief overview over the core ideas that recur throughout.

For the most part, scholars working in the ethics of war are committed to three major claims: reductive individualism, nonconsequentialism, and cosmopolitanism. I endorse all these claims.

Reductive individualism is the view that the moral rules governing war are, ultimately, the same rules that govern permissible harming between individuals outside of war. This follows from the more general reductivist view that there is single set of moral principles that governs all human activity, rather than distinctive sets of principles for different spheres of activity. This view has important implications for the ethics of war. One such implication is the revocation of the traditional jus in bello doctrine, which subjects all sides to a conflict – whether just or unjust - to the same moral rules. Reductivism suggests, contra this traditional view, that unjust wars cannot be justly fought. Just as in cases of an individual’s use of force, if it is impermissible to use force, then one cannot (usually) fight in a just manner. Force used in pursuit of an unjust aim could not satisfy any of the in bello principles such as necessity and proportionality. Another implication of reductive individualism is that the moral status of individuals in war – that is, whether they have rights against harm – will not be (exclusively) determined by their belonging to the groups of combatants or non-combatants. Instead, their moral status will depend on their own individual actions. Although many scholars nonetheless offer defences of civilian immunity, commitment to reductive individualism implies a rejection of any purely group-based exemptions or permissions.

Reductive individualism requires us to ask whether any particular individual, whatever side of a conflict she finds herself on, or whatever group she belongs to, is permitted to use force, or may be permissibly harmed. Therefore, many of my arguments are developed in the context of interpersonal harming, rather than in the context of war. But, assuming the truth of the reductivist model, furtherance of our knowledge of the moral rules that govern an individual’s rights forfeiture will also allow us to draw conclusions for war. All my arguments are relevant for determining who the victims of war are.

Most of the recent literature on the ethics of war endorses non-consequentialism. As Adil Ahmad Haque explains: “the moral norms governing violence in war regulate not only the consequences of our actions but also their causal and intentional structure.” Although

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8 Though there might be some exceptions. Cécile Fabre for example argues that an initially unjust war can turn into a just war. Cécile Fabre, “War Exit,” Ethics 125(3), (2015): 631-652.
9 Haque, Law and Morality at War, 9.
consequences are not irrelevant – far from it – the ethics of war is, according to most scholars in the field, guided by deontological principles that focus on the rights and duties of agents, underpinned by, for example, distinctions between doing and allowing harm, and intentionally and merely foreseeably causing harm. Still, like most philosophers working within the ethics of war, I accept that consequences matter, particularly for the justification of so-called rights infringements. Throughout the thesis, I use the term “rights infringement” to refer to permissible infringements of rights. In contrast, I speak of “rights violations” to refer to impermissible infringements of rights. An agent’s right against harm is usually a sufficient reason to make the infliction of harm impermissible. At times, however, the fact that much greater harm to one or several others can be averted makes it permissible to harm even those who have a right against harm. Even in those cases, deontological constraints are in place. What makes an infringement permissible is not the mere fact that it produces better consequences. Rather, the consequences must be substantially better so as to overcome the asymmetry between doing harm and allowing harm and (sometimes) the moral asymmetry between manipulative and eliminative harming.

Two of my papers (“Should infringers pay compensation?” and ‘Priority for Victims of Violations?’) explore rights infringements. I take for granted that such infringements can be permissible and do not discuss how much good one would need to secure in order to make a rights infringement permissible. Instead, I am interested in the compensation claims and duties that arise in infringement cases.

The third widely-accepted feature in contemporary ethics of war is cosmopolitanism. Moral cosmopolitanism holds that the interests of distant strangers matter as much as the interests of those in close proximity to us. Though I am sympathetic to this view, I have little to say about it here.

This much on the general background. As noted in the previous section, I am primarily interested in various factors that affect the wrongfulness of harm, such as type of harm inflicted and the type of agent subjected to the harm. To that end, it is worth briefly presenting some key concepts and claims upon which I rely.

The correct ground of rights forfeiture and liability to harm is contested. Kimberly Ferzan, for example, defends a culpability-based account of forfeiture. On the culpability account, posing an objective threat is not necessary for loss of rights: rather, culpable intentions to harm explain the loss of rights. Victor Tadros defends a duty-based account of liability according to which one is liable to harm if one has an enforceable duty to bear that harm. On this view, one need

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10 Often the term “infringement” is used for both permissible and impermissible infringements of rights. The term “rights violations” is used only for impermissible infringements. See Judith Jarvis Thomson, Self-defense and Rights - Findley Lecture 1976 (Lawrence, KA: University of Kansas Press, 1977), 10.
not have forfeited rights or be causally connected to a threat in order to be liable to harm.  

On the rights-based account, as defended by Judith Jarvis Thomson, liability requires neither culpable intentions nor moral responsibility for a threat of unjust harm. Rather, threatening to violate another’s rights suffices for liability, and one can violate rights without agency.

Following, among others, Jeff McMahan, Helen Frowe, Cécile Fabre and Seth Lazar, I take moral responsibility for a threat of unjust harm to be the ground for rights forfeiture and liability. I do not defend this approach here. An agent has moral responsibility for a threat if her actions are relevantly linked to the threat and if she had relevant beliefs or intentions. Within criminal law, a culpable mental state is required for legal responsibility. Intent, knowledge, recklessness and negligence are considered culpable mental states which are necessary for criminal responsibility. They are also the relevant mental states in order to ascribe moral responsibility to an agent whose actions bring about a wrongful harm. However, some, like McMahan, argue that moral responsibility is even broader than that. Even without culpable mental states, an agent can be morally responsible for a harm if she knowingly or with foresight imposes a risk of that unjust harm on others. I will have little to say on culpable mental states, knowledge and foresight of risks of harms. I take for granted that an agent who is morally responsible had the relevant mental states or knowledge or foresight of the potential risks of her action. The other standard requirement for liability, in addition to the relevant mental state, is a relevant link between the agent’s action and the wrongful outcome. This link is usually described as a causal link between the action and the threat. Often the exact nature of the relevant link or the correct theory of causation is left undefined in accounts of liability. In my first paper, I argue that we should understand the “relevant link” between an agent’s actions and the outcome in terms of control. Control, as I will explain, is not a strict causal notion. I argue that control better explains how agents come to have moral responsibility for threats. Thus, on my view, an agent has moral responsibility for a threat if she had a relevant mental state and control over the occurrence of the threat. Control comes in different degrees. I will give a detailed explanation of how an agent’s liability to harm can vary with the degree of control an agent has over the threat (Paper I: ‘Determining Accomplice Liability’).

The notion of moral responsibility within the wider philosophical discourse is commonly understood as the basis for moral appraisal. The ethics of war, however, is less concerned with praise and blame and instead takes moral responsibility as underlying the loss of rights and the incurring of duties. In this sense, moral responsibility as used in the ethics of war literature resembles more closely the type of responsibility that Thomas Scanlon labels “substantive responsibility”. Judgements about an agent’s substantive responsibility express claims about

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17 McMahan, Killing in War, 34, 166.

what people are required or not required to do for each other and how burdens should be distributed. Substantive responsibility is not concerned with blame and praise.

An agent who is morally responsible for an unjust threat of harm loses her rights against being harmed. One can directly pose a threat, or contribute to another agent’s threat. Helen Frowe offers the following descriptions of those two ways of being morally responsible for a threat. A direct threat is “a person whose movements, actions or presence will kill Victim unless someone acts to prevent this. A person counts as a direct threat to Victim if she kills him through the use of a tool, if there is no intervening agency between her actions, movements, or presence and Victim’s death.” In contrast, an indirect threat is a “person whose movements, actions, or presence contribute, or have contributed, to the threat to Victim’s life, but who will not kill Victim. Contributing to the threat can include helping to bring the threat about, or obstructing a valuable escape route of which Victim could avail himself.” In these respects, many indirect threats will be considered accomplices in the legal realm. In the thesis, I am particularly interested in the moral status of indirect threats, and the closely related group of accomplices. In Paper I: ‘Determining Accomplice Liability’, I argue that accomplices often forfeit rights to a lesser extent than principals. In Paper III: ‘Provocateurs and their Rights to Self-Defence’, I argue that provocateurs are similar to indirect threats and therefore do not lose all their rights against harm.

Rights forfeiture is closely linked, and at times equated, to liability to defensive harm. Frowe explains the connection as follows: “a person is morally liable to a harm if she lacks a right against having that harm inflicted upon her because she has forfeited her usual rights by behaving in a particular way.” Jeff McMahan also equates liability and rights forfeiture. He writes, “[t]o attack someone who is liable to be attacked is neither to violate nor to infringe that person’s right, for the person’s being liable to attack just is his having forfeited his right not to be attacked, in the circumstances.” For the largest part, I also take liability to be the forfeiture of rights, though I suggest in Paper III, ‘Provocateurs and their Rights to Self-Defence’, that departure from this view is possible. Not everyone takes the view that liability just is rights forfeiture. Victor Tadros, for example, defends the view that an agent can be liable to harm even though she has not forfeited her rights. Forfeiture of rights is just one possible way among others to incur liability.

Many writers in the ethics of war argue that proportionality and instrumentality constrain liability and rights forfeiture. The exact nature of these two concepts and their relevance to rights forfeiture and liability are, however, subject to ongoing discussions and so it is worth explaining where I position myself in that debate.

I endorse proportionality as a constraint on rights forfeiture and liability. Proportionality determines the extent to which an aggressor forfeits rights against defensive harm. A very

19 Scanlon, *What we owe to each other*, 248.
20 Frowe, *Defensive Killing*, 32.
21 Frowe, *Defensive Killing*, 32.
general formulation of proportionality holds that proportionality “involves a ratio or comparison of scale between x and y; it implies that x and y stand in a relationship to one another that makes such comparison appropriate.” Numerous suggestions have been made as to what should be filled in for the variables. Proportionality in its most simple form could be a comparison of harms. Fending off a culpable aggressor’s threat to break a leg by breaking his leg in return would count as proportionate because the harms are roughly equal. The most common proportionality accounts use two variables to determine proportionality, namely the severity of the aggressor’s threat and the aggressor’s degree of moral responsibility. In addition to the simple comparison of harms, several accounts hold that the moral responsibility for the unjust threat also affects what counts as proportionate defensive harm. If, for example, the aggressor acted under duress, and is thus less morally responsible, proportionality requires more restraint than would otherwise be permitted. It might count as disproportionate to fend of the threat of a broken leg with equivalent defensive harm. The good that can be achieved by harming is another factor that many take to be relevant to determining the proportionality of that harm. Take the following example. An aggressor threatens to paralyse her victim. The victim cannot fend off the paralyzing in its entirety. But she could avert the paralyzing of one finger by killing the aggressor. Although killing the aggressor might be proportionate to avert the threat of paralyzing, saving one finger from being paralyzed might be too little good to justify harm infliction. In the thesis, I will not discuss how we should measure proportionality. Nonetheless, proportionality will be relevant in the first paper in which I suggest a new way of determining the extent to which accomplices forfeit their rights against harm. The discussion will thus illuminate what proportionate rights forfeiture means for accomplices.

The instrumentality constraint on rights forfeiture and liability is contested. McMahan’s strict version of the constraint holds that one can lose rights only against specific harms, namely those that are necessary for the aversion of the threat for which one is responsible. McMahan argues that one can be liable to a harm only if this is the least harmful means of averting the threat. Several authors have criticized this necessity constraint. Frowe rejects that view that one can be liable to only the least harmful means. On her understanding, “liability to defensive harm means liability to harm that can avert a threat.” An agent forfeits and becomes liable to harms that are instrumental to the aversion of the threat for which she is responsible.

However, even this less restrictive instrumentality is contested. I also have reservations about making the instrumentality of harm a constraint on rights forfeiture against this harm. In the addendum on my third paper, ‘Provocateurs and their Rights to Self-Defence’, I will say more on this issue. This does not mean that I take instrumentality to be irrelevant to the overall permissibility of harming, it simply means that the instrumentality of harm used against an

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aggressor does not affect an aggressor’s rights. Non-instrumental harm will be impermissible even if the targeted agent does not have rights against this harm. This issue will be relevant in the third paper on ‘Provocateurs’.

What has been said so far – and this largely mirrors the debates in the literature - has been primarily focused on liability to defensive harm. Understanding moral responsibility and rights forfeiture are crucial to understanding who is liable to defensive harm. Furthermore, a better understanding of these issues will also help us to draw conclusions for the compensation claims of victims. Such inferences are warranted since rights against harm entail rights to compensation and liability to defensive harm entails liability to pay compensation. Compensation, so it is widely held, is owed for a wrongful loss or harm. Thus, it is crucial for debates about compensation, just like it is for debates about liability to defensive harm, to better understand who suffered wrongful harm to what degree and how the wrongful harm compares to the harm suffered by other agents. Rights to compensation and duties to pay compensation will be the focus of two papers (Paper IV: ‘Should Infringers Pay Compensation?’ and Paper V: ‘Priority for Victims of Violations’).

Finally, a word on the relation between rights forfeiture, liability and overall permissibility. The fact that an agent has no rights against harm is insufficient to render harming her permissible. Even though an agent’s lacking a right against harm removes a major reason against harming, the infliction of harm demands further justification. The protection of an innocent life could provide such a justification. There could be several reasons why it is impermissible to harm an agent even though she does not have a right against harm. As suggested above, one such reason could be that the harm would not be instrumental to the averison of a threat. Another reason could be that the agent who is liable to be harmed has positioned herself in such a way that harming her would cause too much collateral damage. Permissibility and rights forfeiture can also come apart in another way. Sometimes, it can be permissible to harm an agent even if she has a right not to be harmed. When one has a lesser evil justification for harming, one may permissibly infringe the victim’s rights.

III. SUMMARY OF THE PAPERS

PAPER I: DETERMINING ACCOMPlice LIABILITY

In the first paper, I ask whether accomplices are liable to the same degree of harm as the principals to whose wrongdoing they contribute. An accomplice is someone who contributes to another’s wrongdoing. Many jurisdictions hold accomplices liable to the same degree of punishment as the principal perpetrators of the crime, regardless of the kind or size of contribution they make. In her account of liability to defensive harm, Helen Frowe argues that an agent who contributes to another person’s threat should be held liable to defensive harm in

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31 Frowe, Defensive Killing, 4.
proportion to the magnitude of the wrongful threat to which they contribute. Many, however, find the lack of differentiation of different kinds of contributions counterintuitive and argue that accomplices are liable to less punitive or defensive harm than principals.

In this paper, I largely side with the latter position. I argue that we can reach a more nuanced picture of accomplice liability if we consider the extent to which an agent controls the threat. I call this the Control Account. An agent can have two different types of control over a threat: control over the production of the threat and control over the prevention of the threat. Production control describes how close agents come to making a sufficient contribution to the outcome. Prevention control describes how close an agent comes to making a necessary contribution to the outcome. For illustration, think of two people who try to roll a boulder over a cliff to kill a victim standing below. If both of them are required to roll the boulder, neither of them has full production control but both of them have full prevention control. The two types of control can come in different degrees. With her contribution, an accomplice exerts some degree of control over the threat. Whether she is responsible for the threat or only for her contribution depends on the extent of control she has over the threat. Only if the agent has full control in at least one of the two senses is she responsible for the threat. The principal who directly inflicts harm will usually have full prevention control and/or full production control over the threat. Being responsible for the threat, the principal will be liable to defensive harm in proportion to the threat. I argue that in many cases, accomplices do not have full control over the threat in either sense. I explain that making contributions means less than full production control over the outcome. Furthermore, threats to which accomplices contribute will often be overdetermined or indeterminate, implying less than full prevention control. Accomplices who do not have full control in either of the two senses are liable to a lesser harm than the principal. My account thus suggests that accomplices will often be liable to less harm than principals. I show that this account explains intuitions about certain test cases. I also address the objection that not holding accomplices responsible for the full threat is problematic because it allows agents to escape responsibility.

PAPER II: TAKING RISKS AND SUFFERING WrONGs

In my second paper, ‘Taking Risks and Suffering Wrongs’, I argue that taking the risk of suffering a wrongful harm is morally irrelevant to the stringency of an agent’s rights against harm. I argue that the Risk Thesis wrongly holds that taking a higher risk of becoming a victim of wrongful harm weakens the stringency of one’s rights against harm. The Risk Thesis seems to explain intuitions about the moral relevance of risk-taking. Furthermore, the Risk Thesis garners support from luck egalitarians within distributive justice debates. For them, it is of central importance whether an agent’s disadvantage is the result of a voluntary choice, or of bad brute luck. Disadvantages that result from voluntary choice are considered just and need not be corrected. In recent work, Seth Lazar, Adil Ahmad Haque and Kai Draper have each defended versions of the Risk Thesis.  

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32 Frowe, Defensive Killing, 176.
As I show, risk-taking cases often confound two variables, namely risk-taking and the imposition of costs. I argue that is the latter, and not the former, feature that is morally salient in many risk-taking cases. We can explain intuitions by appeal to the Cost Thesis which holds that being morally responsible for the imposition of unjustified cost on others weakens the stringency of one’s rights against harm.

Furthermore, the Risk Thesis is over-inclusive. In some cases, our intuitions about risk-taking are mistaken – specifically in those cases in which risk-taking does not impose a cost. Such risk-taking can be understood as an expression of a lower value that the risk-taker assigns to the good protected by the right. However, we should be reluctant to make the stringency of a right dependent on the value the right-bearer assigns to the good protected by the right.

I also consider how we should treat rescue cases. Even though rescue usually entails a cost to the rescuer, I argue that there still is reason to assign equal stringency to the rescue claims of risk-takers and non-risk-takers. Overall, the conclusion of my argument is that risk-taking in itself is morally irrelevant and does not affect the stringency of agents’ rights.

**PAPER III: PROVOCATEURS AND THEIR RIGHTS TO SELF-DEFENCE**

The third paper considers the extent to which provocateurs – agents who aim to incite a (forceful) reaction from the respondent - forfeit their rights. Provocateurs do not pose a threat of harm, but neither are they entirely innocent should their provocation lead to a violent response. They seem to fall somewhere between wrongdoers and innocent victims. Kimberly Ferzan argues that provocateurs forfeit their rights against harm that they foresaw the respondent would inflict. They forfeit rights because they themselves bring about the conditions of their own defence – that is, a situation in which they are exposed to harm.

I argue that Ferzan’s account is problematic because it explains a provocateur’s rights forfeiture by the fact that she created a risk of harm to herself. Such a rationale does not properly constrain rights forfeiture, clashes with intuitions about proportionality, and can make provocateurs worse off than aggressors in terms of defensive rights. Since these problems stem from the two different rationales that Ferzan invokes for a provocateur’s and an aggressor’s rights forfeiture, I suggest that a unified forfeiture account, which applies the same rationale across a range of cases, is preferable. Forfeiture is grounded in moral responsibility for an unjust threat. A provocateur contributes to the creation of a partially excused unjust threat and therefore forfeits some of her defensive rights. She is still not liable to suffer harm because such harm would not be instrumental to the aversion of a threat. The provocateur and the respondent share responsibility for the threat, but how those shares are distributed might vary. However, I argue that the provocateur will not forfeit all her rights against harm and will still be allowed to self-defend with reduced force.

Ultimately, my account likens provocateurs to indirect threats and as such they will not ordinarily forfeit all rights against the respondent’s harm that they foresaw.

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PAPER IV: SHOULD INFRINGERS PAY COMPENSATION?

In this paper, I move away from questions concerning rights forfeiture and instead consider compensatory duties owed to innocent victims of justified and unjustified harm. In particular, I ask whether, and if so on what grounds, those who inflict the rights infringement bear compensatory obligations to the victim.

I consider two possible grounds on which infringers could be held liable to pay compensation. The most common ground on which an agent can incur compensatory obligations is moral responsibility for another’s wrongful harm. I call this the Responsibility Principle (RP). I argue that infringers cannot be held morally responsible for the harm the victim suffers. Moral responsibility presupposes that the agent had a reasonable alternative to their actions. Infringers do not have such a reasonable alternative because the costs of abstaining from the infringements are unreasonably high, either for themselves or for those who are saved by the infringement.

The second ground on which infringers could incur compensatory obligations is that of being a beneficiary of the infringement. I suggest the Broad Beneficiary Pays Principle (BBPP). My principle is broader than the original Beneficiary Pays Principle discussed in the context of historic injustices, insofar as it justifies the beneficiaries’ compensatory obligation even when they have a rightful claim to the benefit. The BBPP rests on a duty to enact rescue which binds everyone in a position to assist the victim of an infringement. However, the beneficiaries are under a particularly stringent duty to enact rescue because they stand in a special, reciprocal relationship with the victim. As a matter of reciprocity, it is now her turn to address the victim’s claims which arose as a consequence of her benefit. She can therefore be required to do more in assistance of the victim than any bystander.

Thus, the BBPP but not the RP, can ground an infringer’s compensatory obligations. With this clarification, we can explain why infringers sometimes owe compensation and sometimes not. Only those infringers who also benefit from the infringement will incur compensatory obligations. If they are not benefitting, infringers do not owe compensation. Instead, it will be up to the third-party beneficiaries and, if there are such, the wrongdoers who brought about the need for infringements in the first place.

PAPER V: PRIORITY TO VICTIMS OF VIOLATIONS

The exploration in the previous paper prepares the ground for the last comparative question in this thesis. In this final paper, ‘Priority to Victims of Violations?’, I consider whether innocent victims of justified and innocent victims of unjustified harm should be treated alike when it comes to compensation. Undeniably, harming innocent victims without justification is morally worse than harming innocent victims with a justification. For this reason, one might be tempted to endorse the Priority of Violations View which holds that victims of unjustified harm should be prioritized over victims of justified harm. The Priority View seems to accurately reflect the intuition that more moral residue lingers after the infliction of unjustified harm than after the infliction of justified harm. The two types of harming come with differential moral residue and some would like to see this reflected in the compensatory claims of and compensatory obligations towards the victims of these two types of harming. I consider three versions of the
Priority View which all attempt to capture the idea that the two different types of harming come with different moral residue. But all of them are either problematic or do not establish that it is the type of harming that makes a difference to the compensation claim.

I conclude that the Priority View is mistaken and that we cannot justify a prioritization of victims of violations. Instead, the strength of compensatory claims and obligations depends on the particular claimant-addressee relation. Claims are addressee-specific. Compensation is owed on different grounds and depending on the ground the stringency of the obligation and the claim varies. I explain why the Responsibility Principle grounds a more stringent compensatory claim and obligation than the Broad Beneficiary Pays Principle. I also consider third party obligations to compensate which are even weaker than obligations owed on ground of the RP and BBPP. We find that compensation claims of victims do only vary vis-à-vis different obligation bearers. It is not the type of harming per se that determines the strength of the compensation claim.
Svensk Sammanfattning

Människor tar skada av krig, oavsett vilken sida de står på, oavsett deras åsikters berättigande och oavsett om de kämpar som del av en väpnad grupp eller bidrar som civila i krigsansträngningen. Krig skadar de som av egen vilja tar sig till eller stannar i krigszonen, oavsett vilken sida de står på, oavsett deras åsikters berättigande och oavsett om de kämpar som del av en väpnad grupp eller bidrar som civila i krigsansträngningen. Oavsett om de kämpar som del av en väpnad grupp eller bidrar som civila i krigsansträngningen, kan krig skada de som av egen vilja tar sig till eller stannar i krigszonen, till exempel journalister och sjukvårdspersonal eller civila som inte vill lämna sina hem och därmed utsätter sig själva för fara. Krig kan också skada de som uppmuntrar våld genom provokationer och propaganda, men de skadar också många helt oskyldiga civila: de som inte bidrar till orättfärdigt våld, som inte stöder några orättvisor men som inte kan undvika våldets verkningar. Oskyldiga civila kan drabbas av godtyckligt våld, men ibland kan de skada de utsätts för rättfärdigas genom att det förhindrar en ännu större skada för andra.

Alla dessa människor beskrivs som ”offer”, både i vardagligt språkbruk och i den filosofiska litteraturen. Oxford English Dictionary definierar offer som ”one who suffers some injury, hardship or loss, is badly treated or taken advantage of”, eller mer konkret ”a person who is put to death or subjected to torture by another; one who suffers severely in body or property through cruel or oppressive treatment.” 1 I Jeff McMahans standardverk Killing in War ges en likaledes bred tolkning av begreppet ”offer”. ”Offer” syftar i McMahans bok till alla som utsätts för skada i konflikt, även de som från ett moraliskt perspektiv förtjänat att lida eller de som på något sätt har förverkat sin rätt att inte bli skadade. 2

Enligt denna tolkning kan alltså alla som skadas i krig betraktas som offer, oberoende av andra moraliska överväganden, såsom ansvar eller förtjänst. Offerstatus används dock i många fall för att rättfärdiga krav på upprättelse, såsom kompensation, stöd, straff till eller ursäkter från förövare. ”Offer” är inte bara ett beskrivande begrepp, utan även ett normativt sådant. Att ha utsatts för skada är ett nödvändigt, men inte ensamt tillräckligt villkor för att någon ska beskrivas som ett offer. Denna avhandling utgår från antagandet att offer är de som har lidit orättfärdig skada. Det betyder att en person räknas som offer när hon har rätt att inte drabbas av någon skada eller att drabbas av oproportionerligt stor skada.

Avhandlingen behandlar den moraliska statusen för medbrottslingar, risktagare och provokatörer, och undersöker i vilken utsträckning sådana människor förverkat sin rätt att skyddas från skada. Syftet är att fastställa om dessa personer kan vara offer för orättfärdig skada. Avhandlingen jämför även anspråk på upprättelse av olika typer av agenter. Exempelvis ställs frågan om de som utsätts för brott mot sina rättigheter har företräde framför de som utsätts för rättighetsintrång (tillåtlig överträdelser av rättigheter). Dessa frågeställningar har relevans för hur vi ska avgöra kompensationsanspråk för de som skadas i krig, då lidande av orättfärdig skada allmänt anses som grund för kompensatoriska anspråk. Den komparativa aspekten är särskilt relevant för vad som bör ske efter konflikter, då tillgängliga resurser är knappa och

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2 Jeff McMahan, Killing in War (Oxford: Oxford University Press, 2009), s. 8, 24, 73, 159, 161, 179-83.
samtliga offers krav på kompensation inte kan uppfyllas samtidigt. I sådana sammanhang måste vi veta om det finns anledning att prioritera en grupp med anspråk över andra grupper med anspråk. Kan prioriteringsordningen berättigas med motivering att vissa faktorer, som till exempel risktagande eller lidande av rättfärdigt skada, förstärker eller försvagar offers anspråk på kompensation? Min analys av olika faktorer kommer att belysa de svåra frågorna om vem som räknas som offer för orättfärdig skada och hur man ska jämföra styrkan i anspråk från olika typer av offer.


