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Against Self-Defense

Against Self-Defense

A thesis submitted in partial fulfillment  
of the requirements for the degree of  
Master of Arts in Philosophy

by

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Cedarville University  
Bachelor of Arts in Philosophy, 2011

May 2014  
University of Arkansas

The thesis is approved for recommendation to the Graduate Council.

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## **ABSTRACT**

Absolute Pacifism (or AP) is the thesis that no act of assault is morally permissible. This entails that all acts of self-defensive assault are impermissible. This essay defends AP against non-eliminativist theories of justified self-defensive assault – that is, theories of self-defensive assault which, contrary to AP, claim that at least some instances of self-defensive assault are morally permissible. Chapter 1 begins by defining assault and AP and subsequently exploring a species of AP wedded to the Doctrine of Double Effect (or DDE). Chapter 2 defends AP against the thesis that self-defensive assault is morally permissible but not morally obligatory. Against this, it is argued that there can be no mere right to self-defensive assault since that right would render permissible causing unnecessary harm. Chapter 3 defends AP against the thesis that self-defensive assault is not only morally permissible but also morally obligatory. Against this, it is argued that there can be no duty to engage in self-defensive assault because there is a trivializability constraint which makes the existence of those duties impossible. Since if there are permissible instances of self-defensive assault they are either mere rights or duties, and since there are no instances of either, it follows that there are no instances of permissible self-defensive assault.

## **DEDICATION**

This thesis is dedicated to the late Soran Reader (1963-2012), whose defense of pacifism motivated me to reconsider my own views. I came to defend a fuller peace, as she did, and I wish I could have told her so. Rest in *peace*.

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# CHAPTER 1:

## Theories of Self-Defense

### *1. Introduction*

Nearly everyone believes that there is a right to self-defense. What persons mean by this and why they believe as they do admits of considerable variation. But there is popular and widespread agreement that persons have a right to defend themselves in some robust sense. This confidence is readily apparent when others are asked what they believe about ‘pacifism’: even without a formal definition of the view, it is often immediately rejected on the grounds that it disallows what is allowed: self-defense.

But does pacifism disallow self-defense and, if it does, what kind of self-defense does it disallow? Moreover, *why* does it disallow self-defense of some kind (if it does)? The purpose of this chapter, and the following chapters, is to clarify what pacifism is and defend it against objections claiming a certain supposed self-defensive right: the right to self-defensive assault.

### *2. Self-Defensive Assault*

The focus of this essay is self-defense. But what is self-defense? Consider the following cases.

**WRESTLER** is engaged in a competitive match against matched talented Opponent. When forced into a headlock by Opponent, Wrestler defends herself against Opponent and pins Opponent for the required time, effectively winning the difficult match and emerging a state champion.

**DEFENDANT** is sued by Plaintiff on charges of fraud, and Defendant acts as his own attorney and defends himself in court against Plaintiff.

**COMBATANT** is deployed to Nazi-occupied France. His plane is shot down and he is forced to survive in enemy territory, occasionally defending himself against German ground troops.

Each of these cases – Wrestler, Defendant, and Combatant – is, in a general sense, a case of self-defense. Wrestler defends herself against Opponent; Defendant defends himself against Plaintiff; and Combatant defends himself against German ground troops. But these defenders do not defend themselves against identical threats, and do not use identical means to avert those threats. The threat to Wrestler is losing a state championship. For Defendant, the threat is a fine or perhaps imprisonment (or both). For Combatant, the threat is injury (minor or serious), tortured interrogation, and death. The means of the actors likewise differ: physical force (Wrestler), legal procedures (Defendant), and assault or attempted assault (Combatant).

This essay will address *self-defensive assault*. The limits are important to the scope of the following chapters and therefore to determining their success, as will become clear. The purpose of this section is to identify precisely what makes self-defensive assault the sort of act that requires justification if it is to be done permissibly. In this respect, self-defensive assault differs from (for example) drinking orange juice in the morning. The consumption of orange juice is *prima facie* not an act with some moral presumption against it. But assault, even self-defensive assault, is *prima facie* an act of that sort. The discussion has not yet been restricted to more specific cases of self-defensive assault (for example, assault against unjustified threats or proportional assault). It is fairly uncontroversial that not all self-defensive assault is justified, since justified self-defensive assault must meet multiple conditions. Thus, it should also be uncontroversial that there is a moral presumption against *unqualified* self-defensive assault.

Some hold that in order to identify what makes assault morally problematic (where it is so), it is necessary to make a distinction between consensual and nonconsensual self-defensive



assault. Self-defensive assault is *nonconsensual* if and only if the person assaulted does not consent to being assaulted. Providing greater content, let us say that Assaulted does not consent to being assaulted by Assaulter if and only if the following condition holds: were Assaulted to be given the (non-coercive) option to be assaulted by Assaulter in the present circumstance, Assaulted would not accept that offer.<sup>1</sup> Consensual assault, by contrast, includes all and only cases in which Assaulted would accept Assaulter's offer to be assaulted by Assaulter.

What results are entailed by this account of consent? First, ordinary combatants and ordinary professional boxers do not consent to being assaulted in self-defense, since they would not accept offers of assault from their opponents. We might say that combatants and boxers do not, *merely in virtue of being combatants or boxers*, consent to being assaulted in the respective ways. This is a controversial judgment in the ethics of war, however, as McMahan makes clear:

But it has been argued that what makes *all* combatants legitimate targets for their military adversaries, independently of whether they have a just cause, is that in one way or another they consent to be targets in exchange for the privilege of making other combatants their own targets.<sup>2</sup>

Indeed, McMahan explicitly compares Michael Walzer's view of warfare to a boxing match:

According to the first of Walzer's suggestions, war is analogous to a boxing match or a duel. Just as it is a part of the profession of boxing to consent to be hit by one's opponents, so it is part of the profession of arms to consent to be attacked by one's adversaries.<sup>3</sup>

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<sup>1</sup> It is not strictly necessary for consent that the offer is not turned down. If a waitress offers you the special and you fail to turn it down (say, within a millisecond), it would hardly follow that she is justified in charging you for the special. Thus, consent requires more than merely failing to reject something.

<sup>2</sup> McMahan (2011), 51.

<sup>3</sup> McMahan (2011), 52.

As McMahan observes, however, the boxing analogy appears poorly suited as an analogy of just warfare. While combatants *risk* harm to themselves, they do not thereby consent to that harm being done to them. McMahan offers an analogy in which a person “voluntarily walks through a dangerous neighborhood late at night” and effectively “assumes or accepts a risk of being mugged, but he does not consent to be mugged in the sense of waiving his right not to be mugged.”<sup>4</sup> Consider another analogy in which a person accepts a certain risk of harm, even a very high risk of harm, but does not consent to that harm.

**PATIENT** must undergo open-heart surgery to avoid certain health problems. The chances of Patient surviving this surgery are incredibly low: ten percent. He knows this. He signs a medical waiver to demonstrate his recognition that the odds are against him, and that it is not Doctor’s fault if Patient dies. Mid-surgery, Patient awakens to discover Doctor holding his beating heart. Doctor informs Patient that since Patient consented to the risks, Doctor can now permissibly stop Patient’s heart. Doctor then stabs the heart and kills Patient.

Two things appear clear in this case. First, Doctor wronged Patient by killing him. Second, Patient would not have been wronged if Patient forfeited his right not to be killed by consenting to the surgery. But then Patient’s acceptance of the surgical risks did not entail consenting to the foreseen harm. Likewise, combatants do not forfeit their right not to be harmed simply by engaging in an activity like warfare, which carries with it certain risks of harm.

There are ways to respond to both the Patient example and McMahan’s Neighborhood example. For example, perhaps Patient effectively consents to being killed as a result of natural (or, because Doctor is involved, ‘standardly expected’) causes foreseen by the surgery, but does not thereby consent to Doctor killing Patient for no legitimate medical reason. Thus, while Patient consents to being killed by Doctor accidentally as a result of risky but cautiously-made surgical procedures designed to assist Patient, Patient does not consent to being killed by Doctor

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<sup>4</sup> McMahan (2011), 52.

intentionally as a result of procedures designed to kill Patient. Killing Patient in the latter way would, in warfare, be analogous to killing combatants during a temporary ceasefire in which negotiations are held. Combatants do not consent to die in those circumstances, but it might be maintained that they do consent to die in ordinary circumstances of warfare: battles, skirmishes, and the like.

For present purposes, it is unimportant to take sides on whether self-defensive assault in warfare is consensual or nonconsensual. As an account of why self-defensive assault is *pro tanto* wrong, however, the consensual/nonconsensual distinction is merely designed to show that what might make self-defensive assault *pro tanto* wrong is that it includes harming others who do not consent to being harmed.<sup>5</sup> Certainly that does seem wrong. But there is a deeper explanation for why self-defensive assault is *pro tanto* wrong. Consider the following cases.

**INJURED** is rushed to the emergency room with an arrow in his shoulder. The attending physician realizes that the arrow can and should be removed safely, and does so, causing great pain to Injured.

**TORTURED** has a bad character, and Torturer knows this. Torturer captures Tortured and inflicts sometimes considerable and sometimes minor harm on Tortured to improve the character of Tortured.

**PROFESSOR** assigns a grade of “Fail” to Student, effectively ruining Student’s day.

**ESCAPEE** must hit Kidnapper over the head with a baseball bat to escape a dungeon.

Consent generates puzzles for assault. Injured is harmed but consents to the harm and the harm is crucial to preserving the wellbeing of Injured’s organism. This intuitively makes Injured not a victim of assault. Tortured is gravely harmed ‘for his own good,’ but even supposing the harm does incentivize Tortured to turn his life around and even if Tortured does consent to the grievous harm, it still appears as though Torturer assaults Tortured. If talk of consent can be

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<sup>5</sup> The view that combatants consent to be harmed in warfare is defended by Thomas Hurka, among others. See Hurka (2007). Cf. Walzer (2006), 25-29, 163-169.

clarified in the right way, an account of assault can be developed in which the important pieces are preserved without the added complication of consent. Thus:

**Defender assaults Threat at time  $t$  only if and because:**

- (i) Defender intentionally and directly causes a state of affairs C;
- (ii) prior to C, a fully-informed Threat would have had conclusive prudential reason to escape C (absent some other C-type circumstance if Threat succeeded in escaping C) if Threat aimed to protect Threat's organism; and
- (iii) Threat does not escape C.

On this account, several essential features of assault are present. The first is *intentionality*. Any unintentional harm is not assault; there can be no accidental assault. Assault is therefore purposeful, intentional.

The second is *directness*. If Defender hires Assassin to kill Threat, then Defender does not assault Threat. At most, Defender intends for Threat to be assaulted. Thus, assault requires causal directness. There are degrees and kinds of directness, however, but the directness condition is designed primarily to exclude as instances of assault cases in which some agent (*qua* agent) distinct from Defender harms Threat.

Threat is *fully-informed*. Consider a case in which, prior to C, Threat has conclusive prudential reason to escape C, but this conclusive prudential reason is grounded in some misleading epistemic consideration: Defender aims a gun at Threat but Defender does not intend to fire. This would hardly constitute assault. Thus, Threat must (again, prior to C) have conclusive prudential reason to escape C, where this conclusive prudential consideration holds on the assumption that Threat is fully-informed.

The circumstance, C, must itself be *counterfactually sufficient to motivate conclusive prudential reason to avoid C*.<sup>6</sup> Consider a case in which Threat attempts to escape C (say, by running out the back door of the pub) but, when attempting to escape, finds himself in another C-type circumstance (say, there is a violent gang outside ready to mutilate him). Staying in the bar and being shot in the leg might, from the standpoint of Threat's organism, be prudentially better than attempting to escape being shot in the leg.<sup>7</sup> Still, this would not make shooting Threat in the leg a case of non-assault. Circumstance C is one for which Threat has conclusive prudential reason to escape *absent* some alternate C-type circumstance.

Escaping C must be for the sake of Threat's *organism*. Someone might have conclusive prudential reason to move their car from the train tracks because, otherwise, someone else will intentionally and directly smash it to bits. But this would not be assaulting Threat because it is not an act against Threat's organism, even if it might have causal effects for Threat's organism.

Finally, that which Threat has conclusive prudential reason to avoid must *happen*. After all, Threat might have conclusive prudential reason to avoid C (where C is shooting Threat in the leg); there might be no other pressing C-type circumstance (no gang outside); and still Threat

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<sup>6</sup> Thus, all acts of assault are *pro tanto* wrong because they give persons conclusive prudential reason to flee for the sake of their organisms. Whether consent makes a difference to whether an act is an act of assault is not entirely clear. Sometimes, where a person consents to assault and it is best for that person's organism to die (as is sometimes the case in euthanasia – see footnote 7 below), it might be that it is not a case of assault. Other times, where a person consents to assault and it is not best for that person's organism to be injured or die, conclusive prudential reason remains for the person to flee since the intended act goes against what is best for the person.

<sup>7</sup> Perhaps this is why consensual euthanasia does not seem to be a case of assault. If it is in the person's best interest to die and if the person consents, it seems to many that killing the person (or, on passive variations, intentionally letting the person die) is compassionate and hardly an instance of providing prudential reason to avoid C. Where it is best for the person's organism not to escape but rather to die, it is not an act of assault to kill him (or, on passive variations, to intentionally let him die).

might escape C. Upon doing so, Threat would have avoided assault while meeting the other conditions. Thus, the prior conditions are not sufficient for assault. It is necessary that Threat fail to escape C for the account to be completed.

A final word about the purpose of this essay: this essay will address only those cases of self-defense which do not extend to other moral considerations. This omits cases in which agents assault threats in order to protect others (other-defense), to prevent catastrophe or other evils, for purposes of punishment, and the like. Thus, the essay is limited in its focus to cases of *self-defensive* assault: assaulting for the mere purpose of protecting oneself.<sup>8</sup>

### ***3. Theories of Self-Defense***

What are the currently-endorsed theories of self-defensive assault? More to the point: what are the theories of self-defensive assault with implications regarding whether and under what conditions self-defensive assault is *justified*? These theories come in two broad categories: eliminativist theories and non-eliminativist theories. Eliminativist theories entail that there are no instances of justified self-defense, whereas non-eliminativist theories entail that there are such cases.

Tyler Doggett has categorized the more significant non-eliminativist theories of justified self-defensive assault.<sup>9</sup> Though there is wide agreement that self-defensive assault can be justified, there is, by contrast, “little agreement about *why* you can kill” and when “you can kill

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<sup>8</sup> Other cases will be discussed and utilized for illustration, but they will not be the focus of the essay.

<sup>9</sup> Doggett (2011). Special thanks to Tom Dougherty at the University of Sydney for bringing this paper to my attention.

in self-defense.”<sup>10</sup> Because this essay concerns whether self-defensive assault is justified, both kinds of theses (‘why’ and ‘when’ theses) are relevant. A restatement of the non-eliminativist theories would be largely redundant to Doggett’s masterful summary, however, and therefore a restatement will be passed over. Instead, an eliminativist theory of justified self-defensive assault will be explicated. As eliminativist theories are omitted in Doggett’s literature review, this should serve as a helpful addendum and is more immediately relevant to a defense of eliminativism.

Eliminativism is a thesis about *justified* self-defensive assault, and not self-defensive assault. There are at least two ways to be this kind of eliminativist. The first is to claim that there are moral properties which supervene conditionally on natural or non-morally descriptive properties, like intent and behavior, but that in the actual world there are none of the latter properties on which moral properties like “Defender being justified in assaulting Threat” supervene. Thus, self-defensive assault would be justified if certain events obtained, and those events can obtain, but in fact none of them do obtain. On this eliminativist theory, the argument is that eliminativism is true in the actual world but not in all possible worlds. Often, this is considered to be a species of *conditional pacifism*.<sup>11</sup>

The second way to be an eliminativist is to claim that there are no moral properties like “Defender being justified in assaulting Threat,” and therefore self-defensive assault would not be

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<sup>10</sup> Doggett (2011), 220. Cf. Frowe (2011), 12-24.

<sup>11</sup> See Fiala (2010).

morally justified regardless of what turned out to be the case (how persons behaved, what they intended, etc.).<sup>12</sup> Eliminativism of this variety is a species of *absolute pacifism*.<sup>13</sup>

#### **4. Absolute Pacifism**

Species of absolute pacifism are notoriously difficult to characterize, in part due to qualms regarding inner coherence. For example, consider the following sketch of absolute pacifism:

**AP:            There is no possible world in which an agent is objectively morally justified in (intentionally) assaulting a person or intentionally permitting a person to be assaulted.**

One important objection to this view is that given by Narveson, who initiates his objection with an observation about AP:

To attempt to be consistent, at least, the pacifist is forced to accept the characterization of him at which we tentatively arrived. He must indeed say that no one ought ever to be defended against attack. The right to self-defense can be denied coherently only if the right of defense, in general, is denied.<sup>14</sup>

But Narveson thinks this opposition to self-defensive and other-defensive assault is self-defeating because “generally speaking, we measure a man’s degree of opposition to something by the amount of effort he is willing to put forth against it.”<sup>15</sup> When assault is necessary to preserve peace and the absolute pacifist fails to do what is necessary, she does not truly or primarily value peace. Narveson recognizes that pacifists might respond in various ways, but

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<sup>12</sup> The intention is not to assume a realist account of moral properties, but rather to explicate eliminativism in a way that makes use of a seemingly realist account of moral properties. Talk of properties here is therefore an illustration of eliminativism and not a commitment of it.

<sup>13</sup> Fiala (2010). Cf. McMahan (2010), 44.

<sup>14</sup> Narveson (1965), 265

<sup>15</sup> Narveson (1965), 265-266.



each response fails since the right not to be assaulted (which the absolute pacifist grants everyone, and absolutely so) is, like all rights, “a status justifying preventative action”:

To say that you have a right to *X* but that no one has any justification whatever for preventing people from depriving you of it, is self-contradictory. If you claim a right to *X*, then to describe some action as an act of depriving you of *X*, is logically to imply that its absence is one of those things that you have a right to.<sup>16</sup>

Such a conception of rights is far too simple, and the proper correction of it clears the pacifist of this charge.<sup>17</sup> There are some acts which are absolutely wrong: boiling young children for fun, for instance. Another plausible example is boiling young children in order to save yourself, where everything morally considerable is exhausted in the rights and value you and the children possess. Even if it is *necessary* to boil these children to save yourself, you still ought not to boil them. Boiling them would be wrong, all things considered. Thus, in the circumstance, the only act of self-defense which stands a chance at success at self-preservation is morally forbidden. Yet that conclusion does not entail that you lack a right not to be assaulted. Absolute pacifists can avail themselves of this strategy: all assault, including self-defensive assault, is absolutely wrong and therefore is not even a possibly permissible means of self-preservation. Of course, the absolute pacifist must *argue* for this, but the project of arguing that assault is absolutely wrong (at least in conjunction with the thesis that persons have the right not to be assaulted) is not excluded from the realm of *logical possibility*.

Although Narveson’s objection appears to fail, it succeeds in exposing concerns of internal consistency for AP. Thomas Nagel articulates a similar objection against absolutist

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<sup>16</sup> Narveson (1965), 266.

<sup>17</sup> Cf. Rodin (2002), 36-38. Rodin explicitly acknowledges that a claim-right to *X* is a claim-right to take measures to protect one’s right to *X*. Rodin does not, however, suggest that this latter right is an absolute right. There may be, and plausibly are, restrictions on how agents can permissibly pursue the protection of their rights.

pacifism, which Nagel describes as “the view that one may not kill another person under any circumstances, no matter what good would be achieved or evil averted thereby.”<sup>18</sup>

There could not, for example, without incoherence, be an absolute prohibition against *bringing about* the death of an innocent person. For one may find oneself in a situation in which, no matter what one does, some innocent people will die as a result. I do not mean just that there are cases in which someone will die no matter what one does, because one is not in a position to affect the outcome one way or the other. That, it is to be hoped, is one’s relation to the deaths of most innocent people. I have in mind, rather, a case in which someone is bound to die, but who it is will depend on what one does.<sup>19</sup>

Such cases are easily constructed. Modifying the example to concern killing some person, regardless of innocence (AP, after all, does not only forbid assaulting the innocent), consider the following case.

**TRAPPED.** Defender is under attack by Threat, and Threat will kill Defender unless Defender kills Threat. Defender and Threat know this.

Granting a few other assumptions, there are exactly two possible outcomes: Defender kills Threat or Threat kills Defender. If Defender decides not to kill Threat, then Threat will kill Defender. Thus, it appears that, no matter what Defender chooses, she allows or causes the death of some person. Since ought implies can, Defender does not have an obligation to avoid bringing about the death of *any* person because Defender cannot avoid bringing about the death of *some* person.

By Nagel’s lights, “[t]his problem is avoided, however, because what absolutism forbids is *doing* certain things to people, rather than bringing about certain *results*.”<sup>20</sup> AP, like absolutism generally, forbids *intentionally* bringing about absolute wrongs. For AP, the absolute wrong is assaulting a person. But AP does not forbid doing something which, if one does it,

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<sup>18</sup> Nagel (2013), 56.

<sup>19</sup> Nagel (2013), 59.

<sup>20</sup> Nagel (2013), 60.

would lead to the assault of a person.<sup>21</sup> Ordinarily, the distinction is made between what one intends and what one merely foresees.<sup>22</sup>

How might the distinction be motivated? Various accounts have been proposed, but one of the most appealing is T.A. Cavanaugh's account of intention, which he characterizes as *a plan of action*.

As a plan of action, intention is something concrete, complex, formed, and – when it comes to fruition – executed. It is concrete, insofar as it unifies specific elements to form an aggregate; complex, as comprised of ends (both intermediate and ultimate in a given series) and means (some of which serve as intermediate ends); formed, as the result of a process called deliberation; and executed, as the action it informs follows it.<sup>23</sup>

So construed, it appears that all *acts* are intentional. If you exit the grocery store, trip, and drop your prize watermelon, your doing so was not an act. Acts are behaviors agents commit for reasons, and acting-so-as-to-*X* just is intending to *X*.<sup>24</sup> Thus, all acts are intentional and all intentional behaviors are acts. On precisely those grounds a morally relevant distinction can be reasonably made: what agents do intentionally is morally evaluable; what they do unintentionally is not.<sup>25</sup>

Parents of impoverished families who spend the necessary amount to feed their family but accidentally spill their groceries when exiting the store, effectively ruining the food, do not act wrongly in spilling the groceries because their grocery-spilling behavior is not an act at all.

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<sup>21</sup> See Masek (2010). Masek contends that “an effect is intended (or part of the agent’s plan) if and only if the agent *A* has the effect as an end or believes that it is a state of affairs in the causal sequence that will result in *A*’s end,” 569.

<sup>22</sup> For more by way of explicating this distinction, see Hills (2007).

<sup>23</sup> Cavanaugh (2006), 94.

<sup>24</sup> Or, if acting-so-as-to-*X* includes some sort of objectionable circularity, behaving-so-as-to-*X* can be substituted.

<sup>25</sup> Culpable ignorance might be pressed as an exception. But ignorance, it seems, cannot be genuinely culpable unless an agent intentionally ignores relevant information, or intentionally refuses to access to information she is aware exists, which can and should be accessed by her. Cf. Smith (2011).

But this behavior, if intended, does constitute a wrong because it is evaluable and is an objectively bad state of affairs. Bad states of affairs, when intended by agents, become wrongs, and wrongs should be avoided.

AP requires that agents always avoid intentionally assaulting persons because it classifies all person-assaulting acts as absolutely wrong. How does abiding by AP work in cases like Trapped? Where the agent realizes that intending the death of Threat or intending the death of Defender constitutes assault and is therefore absolutely wrong, the agent can escape wrongdoing by failing to intend either outcome. Suppose Defender decides not to kill Threat, which results in Threat killing Defender. If Defender did not refrain from killing Threat with the goal of being killed by Threat, then Defender did not *intend* to be killed by Threat. By contrast, if Defender decided to commit suicide (which AP forbids sometimes, but not always) by means of Threat, then Defender would refrain from killing Threat *so as to be killed by Threat*.

Yet the intending/foreseeing distinction could just as easily cut against AP. In fact, there are *double-effect theories* of justified self-defensive assault.<sup>26</sup> According to the doctrine of double effect (or DDE), it is permissible to cause an evil effect only if the following conditions are met:<sup>27</sup>

Condition 1: the act performed is morally good or morally neutral;

Condition 2: the agent performing the act intends the good effect, but does not intend the evil effect;

Condition 3: the good effect fails to be caused by the evil effect;

Condition 4: there is sufficiently good reason for causing the evil effect.

Consider the following passage from Helen Frowe:

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<sup>26</sup> See also the sophisticated account of the DDE offered by Jeff McMahan (1994a).

<sup>27</sup> Cavanaugh (2006), 26.

The double-effect explanation of self-defence, then, insists that it would be wrong to *intend* harm to one's attacker. However, causing harm to the attacker can nonetheless be permissible provided that it is merely a foreseen side-effect of pursuing the good end of saving one's life. In other words, the permissibility of self-defence lies in the fact that the defender does not aim at doing harm, but aims only at the morally permissible end of saving their life.<sup>28</sup>

Judith Lichtenberg observes that, on traditional just war theory, it is absolutely prohibited to kill innocent persons in warfare. Yet, the DDE permits certain acts which might be impermissible on AP since, "[a]ccording to the DDE, it is never permissible to kill innocents *directly* – that is, one may never *aim at* or *intend* their deaths."<sup>29</sup> She continues:

You may kill innocents neither as an *end*, as you might if you were malicious, nor (the more likely alternative in war) as a *means*, as you might if you saw their deaths as a way of winning the war. But you have not necessarily done something impermissible or immoral, on this view, if in the course of a legitimate military operation – that is, one aimed at and intended only to destroy a military target – some civilians are killed, even if you know or foresee that they will be killed.<sup>30</sup>

Cavanaugh strikes a similar chord:

Consider terror and tactical bombing. Both bombers want victory as their good and commit themselves to its achievement, differing in terms of the means they adopt.<sup>31</sup>

Yet, according to Cavanaugh, an important difference emerges.

The tactical bomber, like the terror bomber, ultimately intends victory. He differs from the terror bomber insofar as he foresees, but does not intend the foreseen non-combatants deaths and serious harms that follow with causal necessity from his destruction of the military installation. This is so, although the killing of the non-combatants may conduce to victory. For the tactical bomber does not intend to achieve victory by means of non-combatant deaths. His foresight of civilian deaths and injuries does not guide his act; he does not confirm the presence of the civilians to bomb them.<sup>32</sup>

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<sup>28</sup> Frowe (2011), 20.

<sup>29</sup> Lichtenberg (1994), 349. Cf. Hills (2003). Hills defends the DDE in cases of foreseeing but not intending harm, arguing that the distinction does make a moral difference.

<sup>30</sup> Lichtenberg (1994), 349-350.

<sup>31</sup> Cavanaugh (2006), 114.

<sup>32</sup> Cavanaugh (2006), 116. Cf. FitzPatrick (2012), 183. Like Cavanaugh, FitzPatrick utilizes the terror bomber/tactical bomber cases as illustrative of the DDE.

Consider a domestic example of self-defensive assault in which Defender works for the railroad as a professional detonator. At 3:15pm, it is the job of Defender to detonate the dynamite on Track Alpha. Moments before Defender detonates the dynamite, Defender sees Threat who, in addition to intending to kill Defender unjustly, is also making way toward Defender along Track Alpha. The clock strikes 3:15pm, and Threat is very near the dynamite. Defender does not intend the death of Threat, but Defender detonates the dynamite, which kills Threat.

An acceptance of the intended/foreseen distinction might therefore be self-defeating for AP. The apparent dilemma for AP is this: either reject the intended/foreseen distinction, effectively collapsing into incoherence or denying that ought implies can; or, accept AP and concede that it can be permissible to intend some act where one consequence of that act is the assault of some person.<sup>33</sup>

Fortunately, in this case, the solution lies in the details. On any plausible variation of the DDE, of which the intended/foreseen distinction is a part, there are restrictions to the permissible use of that distinction. Consider the following passage, again from Cavanaugh:

Imagine foreseeably but not intentionally killing non-combatants while tactically bombing an artillery installation. Stipulate that the act satisfies the other criteria. The evils at issue (the terrorizing and killing of non-combatants) do not outweigh the goods (ending the lethal threat of the artillery, victory over the unjust enemy, self-preservation, self-determination). Thus interpreted, the fourth criterion [of DDE] permits such an act. Yet, what if there were some other, less harmful, way of bombing that would mitigate or entirely remove the evil? For example, what if different types of bombs, a different time, or a different approach would lessen or remove the harm?<sup>34</sup>

In response to this line of inquiry, Cavanaugh responds:

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<sup>33</sup> Some defenders of AP might avail themselves of this latter option, but this seems a hollow absolute *pacifism*. If one can engage in tactical bombing in a way that is consistent with absolute *pacifism*, then such a position hardly seems like pacifism.

<sup>34</sup> Cavanaugh (2006), 32.

Clearly, it would be wrong to cause gratuitous harm. Insofar as the realization that one ought to avoid evil underlies recourse to double effect, it would be odd, indeed perverse, to interpret the fourth condition [of DDE] as holding that evil is not to be eliminated or mitigated, when practically possible.<sup>35</sup>

Cavanaugh proceeds to point out a domestic parallel in cases of self-defense. On Aquinas' view, "the permissible act of homicidal self-defence must be *proportionatus fini*, proportioned to the end."<sup>36</sup> Aquinas asserts that persons have a greater obligation to care for their own lives than the lives of those they kill in just self-defense, which derives from the requirement that, when acting with a merely foreseen bad effect in order to achieve some good outcome, "the good must be greater."<sup>37</sup>

Defenders of AP might escape this implication by denying that saving oneself, or any good for that matter, is a good proportionately greater than avoiding killing or assaulting Threat. After all, an absolute prohibition against assault entails that assaulting is very wrong. But this begs the question and gets the defender of AP only so far, since it might be that assaulting Threat is absolutely wrong, in the sense that it is never permissible, and yet still be less wrong than assaulting oneself. Then, the defender of the intended/foreseen distinction (and perhaps DDE, as well) might press that it is permissible unintentionally to assault Threat because, although absolutely wrong as an act, Defender is not assaulting Threat as an act (because Defender does not intend Threat's death) *and* Defender is preserving the greater good (or minimizing the worse evil): the life of Defender (or, if the worse evil, avoiding the death of Defender).

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<sup>35</sup> Cavanaugh (2006), 33.

<sup>36</sup> Aquinas (1891). Cited in Cavanaugh (2006), 33.

<sup>37</sup> Cavanaugh (2006), 34.

A better reply remains available to the defender of AP. Another condition which must be met in order permissibly to perform an act with a merely foreseen but unintended bad effect is this: “the act in itself is good or indifferent.”

The first criterion [of DDE], that an act be good or indifferent, rules out the application of double effect to otherwise bad acts having good and bad effects. For example, Robin Hood’s intrinsically bad act of stealing has the good effect of relieving the poor and the bad effect of disconcerting the rich. However, as wrongful taking, it is not a candidate for [double-effect].<sup>38</sup>

Thus, if some act is absolutely wrong, it cannot be permissibly done, even if its evil effects are foreseen but not intended.<sup>39</sup> But this provides a foothold for the defender of AP, insofar as it forbids agents intentionally to *permit* persons to be assaulted. For double-effect cases, it works like this: an act is intended; the act has good and evil effects; and the good but not the evil effects are intended. But even if defenders of DDE deny that the evil effects are intended, they ought to concede that the act of *permitting* those effects is intended.<sup>40</sup> After all, if you intend some act knowing that some consequence will result, then (even if you do not intend the consequence) you intend to permit the consequence by acting. AP rules out the permissibility of intending such acts, because as a thesis about assault, it forbids not only committing assault, but also intentionally permitting assault. Thus, it is just as absolutely prohibited (on AP) for Defender to direct Threat to a room filled with hired guns looking for Threat (but, we shall

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<sup>38</sup> Cavanaugh (2006), 26-27.

<sup>39</sup> Cavanaugh uses “intrinsically” rather than “absolutely,” but surely absolutely wrong acts are likewise absolutely forbidden. After all, absolutely wrong acts are, by definition, acts that are always wrong.

<sup>40</sup> See Kamm (2007), 91-129. Kamm distinguishes between effects because of which we act and effects we act in order to bring about. For more on the significance of Kamm’s distinction, see FitzPatrick (2012), 189-190.



suppose, *not* because Defender hired the guns<sup>41</sup>) as it would be for Defender to place a bullet in Threat's skull herself.<sup>42</sup>

What of cases in which Defender is in a case like Trapped, but it does not occur to her that she can avoid wrongdoing simply by refraining from killing Threat but not intending her own death? Advocates of AP might insist that Defender acts wrongly if she intends Defender's death (or harm) or if she intends Threat's death (or harm). But this judgment might seem too harsh for cases in which Defender is unaware that she has an alternative. What motivates the harshness, however, matters a great deal. It cannot plausibly be harsh to say that it is *objectively wrong* not to choose the obligatory act. The DDE itself, like many other moral principles, implies that agents who perform an absolutely wrong act in non-culpable ignorance nonetheless act wrongly. What can be plausibly said is that Defender is not *blameworthy* for choosing the wrong act.

## 5. Conclusion

Assault is difficult to define with precision, but a provisional definition is acceptable if the definition captures paradigmatic cases of assault and avoids paradigmatic cases of non-assault. Such a definition was provided and defended in the beginning of this chapter.

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<sup>41</sup> If Defender hired the guns to kill Threat then, plausibly, Defender intended to kill Threat (or have Threat killed).

<sup>42</sup> Cavanaugh clarifies the first condition of DDE to be: "the act considered independently of its bad effect is not wrong" (2006, 27). On the account presented here, however, this presents no real challenge since, absent the effect, the acts are distinct because the intentions are distinct. Where an agent intends act *X* with evil effect *Y* (while not intending *Y*), the agent intends to perform *X* and intends to permit *Y*. The intentions change when the agent intends to perform an act *Z* without intending to permit *Y* since, even if *Y* results, the agent does not *intend to permit Y*. Thus, where the effects differ, so do the acts.

Theories of justified self-defensive assault come in two varieties: eliminativist and non-eliminativist theories. These latter theories have been defined, defended, and refined considerably in the literature. By contrast, eliminativist theories have been largely ignored, in part because they are notoriously difficult to defend when they are not possessed of internal logical consistency.

To meet this challenge (not met in the wider literature) a species of eliminativism – absolute pacifism (AP) – was defined. It was argued that AP is plausible and internally consistent when it makes use of the intended/foreseen distinction. It was conceded, however, there are limitations to its use of this distinction and, if the limits are not closely examined, AP collapses. Nonetheless, plausible restrictions on permissible uses of the intended/foreseen distinction, as argued, provide various footholds to defenders of AP, allowing AP to maintain internal coherence.

While the defense of the internal coherence of AP has not been exhaustive (there may be other challenges to the internal consistency of AP), the major objections to AP's internal coherence have been considered and refuted.

Nonetheless, internal coherence is obviously distinct from plausibility: many views possess internal coherence but fail to possess plausibility. In the next two chapters, AP will be defended against non-eliminativist theories of justified self-defensive assault. In Chapter 2, AP will be defended against claims of merely permissible self-defensive assault and, in Chapter 3, AP will be defended against claims of obligatory self-defensive assault.

## CHAPTER 2:

### Against ‘Merely Permissible’ Self-Defense

#### *1. Introduction*

The previous chapter sketched the nature of pacifism and included a defense against problematic implications from the doctrine of double effect (DDE) while simultaneously utilizing the doctrine’s resources. In this chapter, pacifism stands at a conceptual distance: the central argument presented here does not entail pacifism; though, if successful, it does offer a strong response to the particularly worrisome objection that self-defensive assault is sometimes deontically justified. The argument also does not attempt to sketch pacifism at a conceptual level: DDE was discussed because pacifism can and probably should make use of it, but making use of it runs certain risks of tension with the pacifist project. Thus, DDE *qua* pacifist tool was explored in the previous chapter, and a particular conceptual combination was defended.

The purpose of this chapter is to argue against a particular thesis of self-defense, namely,

**SELF-DEFENSE 1.**<sup>43</sup>

**All acts of justified self-defense are (merely) morally justified.**<sup>44</sup>

To say that all acts of self-defense are *merely* morally justified is to say that there is a moral permission but not a moral requirement to act in self-defense. The absence of a moral requirement to self-defend entails the permissibility of failing to act in self-defense. Thus, on

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<sup>43</sup> Hereafter, “SD1.”

<sup>44</sup> This account is not *strictly* implied in the literature discussed below. That literature largely implies only that *some* instances of justified self-defensive assault are merely justified. But that is logically compatible with the existence of obligatory instances of justified self-defensive assault. As the focus of this essay is to criticize merely justified self-defense, however, this will be set aside until the following chapter.

SD1, acts of self-defense are what Joel Feinberg terms “half-liberties.”<sup>45</sup> It is, however, not an implication of SD1 that *all* acts of self-defense are merely permissible and not obligatory (because SD1 is compatible with morally unjustified acts of self-defense). The claim and the focus of this chapter is cases of (and opportunities for) permissible but non-obligatory self-defensive assault.

Widespread acceptance is enjoyed by the thesis that self-defensive assault is sometimes morally permissible. Thomson says that many “think of self-defense as morally transparent. What could be clearer than that morality permits a person to save his or her life against threats to it?”<sup>46</sup> She then asks her readers to consider

**VILLAINOUS AGGRESSOR:** “you are standing in a meadow, innocently minding your own business, and a truck suddenly heads toward you. You try to sidestep the truck, but it turns as you turn. Now you can see the driver: he is a man you know has long hated you. What to do? You cannot outrun the truck. Fortunately, this is not a pure nightmare: you just happen to have an antitank gun with you, and can blow up the truck. Of course, if you do this you will kill the driver, but that does not matter: it is morally permissible for you to blow up the truck, driver and all, in defense of your life.”<sup>47</sup>

Thomson is explicit that this moral permission is not mere excuse, but that blowing up the truck (and the driver) is morally permissible, justified killing.<sup>48</sup> This is because

...blowing up the truck in Villainous Aggressor is not something you ought not do. We cannot plausibly say that you ought not blow up the truck, but will only be in a measure at fault, or in no measure at fault, for doing so: you simply *may* blow up the truck. Morality permits it.<sup>49</sup>

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<sup>45</sup> Feinberg (1980), 157, 237.

<sup>46</sup> Thomson. (1991), 283.

<sup>47</sup> Thomson (1991), 283.

<sup>48</sup> Thomson’s claim that “it does not matter” if the driver is killed is perhaps best understood as: it does not matter, all things considered (which is compatible with, but does not entail, the stronger claim that the death of the driver is morally irrelevant).

<sup>49</sup> Thomson (1991), 283-284.

Cases like Villainous Aggressor are widely regarded as paradigmatic for justified instances of self-defensive assault. Quong explicitly endorses Thomson's conclusion about Villainous Aggressor and other cases Thomson raises, writing, "Like Judith Jarvis Thomson, I think these are all cases where it is permissible to kill one person in order to save my own life."<sup>50</sup> Quong is hardly alone in this endorsement. Many philosophers endorse Thomson's conclusion about Villainous Aggressor and structurally similar cases, and in their comments suggest consensus:

Kai Draper:

In these circumstances, few of us would condemn you for killing in self-defense. Nor would we condemn a third party who intervened on your behalf by killing your attacker.<sup>51</sup>

Draper's talk of condemnation appears to support the view that defenders are in many cases unworthy of condemnation because they act rightly.

Jan Narveson:

...the simple point is that if somebody else is intent on leaving you dead, and there is strong immediate evidence that the only really feasible way to prevent this is to leave him dead first, then normal people prefer the latter to the former.<sup>52</sup>

Jonathan Quong and Joanna Mary Firth:

It is widely accepted, for example, that if one person, Albert, culpably threatens the life of another person, Betty, then he may have forfeited his rights against serious harm being imposed on him in Betty's defence.<sup>53</sup>

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<sup>50</sup> Quong (2009), 507.

<sup>51</sup> Draper (1993), 73.

<sup>52</sup> Narveson (2003), 158. Narveson's use of "normal people" is suggestive of consensus.

<sup>53</sup> Quong and Firth (2012b), 674.

If these judgments about Villainous Aggressor cases are true, then self-defensive assault is at least sometimes justified.<sup>54</sup> Beyond agreement about Villainous Aggressor cases, there is even broader agreement that self-defense is permissible:

Draper:

I want to explore the nature of what is perhaps the most widely recognized justification for inflicting harm. Using the term ‘defense’ to encompass both self-defense and other-defense, I refer to this justification as ‘the appeal to defense.’<sup>55</sup>

Jeff McMahan:

Most of us believe that there are conditions in which war is justified and thus that there are conditions in which the individual soldier is morally permitted, and nearly as often morally required, intentionally to attack and even to kill other human beings. Many people, indeed, accept this quite uncritically....<sup>56</sup>

Michael Otsuka:

Many philosophers subscribe to the common belief that you are morally permitted to kill a person who endangers your life whenever such killing is necessary to prevent yourself from being killed.<sup>57</sup>

Quong:

Sometimes it is morally permissible to seriously harm or kill people in self-defense, or in defense of others.<sup>58</sup>

Frowe:

When our lives are threatened, most of us think that it is permissible to try to defend ourselves even if we can do so only by inflicting very great or even lethal harm upon our attacker.<sup>59</sup>

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<sup>54</sup> Draper and Frowe make similar judgments in Draper (1993), 73; and Frowe (2010), 247.

<sup>55</sup> Draper (2009), 69.

<sup>56</sup> McMahan (1994c), 193. McMahan goes further than some in suggesting that self-defensive assault is just as often obligatory as it is merely permissible. Still, McMahan is a clear instance of a philosopher who endorses the permissibility of self-defensive assault.

<sup>57</sup> Otsuka (1994), 74.

<sup>58</sup> Quong (2012), 45.

Tyler Doggett:

Murderer can't bear you. Because of this, he tries to push you off a cliff. The only way to save your life is to shoot – and kill – him. You know all this. You kill him. The literature on self-defense agrees that killing Murderer in this case, 'Threat from Murderer', is permissible.<sup>60</sup>

Some philosophers even contend that the permissibility of self-defensive assault in some cases is either itself obvious or is itself entailed by obviously true moral principles. Among them are Seth Lazar<sup>61</sup>, McMahan, and David Rodin:

Defensive rights seem to be entailed in a very basic way by rights *to* things. Thus if I have a right to *X*, then it seems to follow as a simple corollary that I have the right to take measures to prevent my right to *X* from being violated.<sup>62</sup>

McMahan refers to justified self-defense as an *axiom* in contemporary ethical theory<sup>63</sup>, and certainly it appears to enjoy a lofty pedigree. Concurring with McMahan that ordinary morality includes the possibility of justified self-defensive assault, Lazar claims that self-defense can remove "*the whole wrong* in killing a person."<sup>64</sup> This suggestion makes theories of self-defensive attractive tools for those who believe that war can be justifiably waged. Rodin's powerfully simple observation that a right to something entails a right to preserve it supports the permissibility of self-defensive assault: if one's right to life is (wrongly) threatened, one is permitted to exercise one's right to do what is necessary to protect that right, including in cases where killing or seriously harming others is necessary to protect one's right to life.

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<sup>59</sup> Frowe (2011), 9.

<sup>60</sup> Doggett (2011), 220.

<sup>61</sup> Lazar (2009), 700.

<sup>62</sup> Rodin (2002), 37.

<sup>63</sup> McMahan (1994b), 252.

<sup>64</sup> Lazar (2009), 700 (emphasis mine).

Whereas some of these philosophers indicate that self-defensive assault is a duty, most others fail to indicate whether it is a mere right or a duty. Other philosophers appear, however, to endorse SD1 (or something very close to SD1):

Rodin:

The difference concerns the question of whether defensive rights are full liberties or half-liberties. It should now be readily apparent that the answer to this question will depend on their normative source. If a right of defense is derived from a right *to* the end of defensive action, then it will generally be a full liberty, in other words, one will be free to defend the end or not as one sees fit. The reason for this is that rights *to* things are generally discretionary.

Rodin concludes: “Thus defense of one’s own life is generally thought to be discretionary rather than obligatory.”<sup>65</sup> Hugo Grotius likewise endorses the view that self-defensive assault is a right but not a duty when he writes, “[W]hile it is permissible to kill him who is making ready to kill, yet the man is more worthy of praise who prefers to be killed rather than kill.”<sup>66</sup>

The former claim, that self-defensive assault is a right but not a duty (that is, a mere right), is the weaker claim and shall be examined in this chapter. The next chapter examines the thesis that self-defense is a duty.

## ***2. The Necessity Condition***

In addition to wide agreement about self-defensive assault being sometimes justified, it is also widely agreed that self-defensive assault is not *always* justified. For self-defensive assault to be justified, certain conditions must be met. As Frowe observes,

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<sup>65</sup> Rodin (2002), 39. Rodin is clear to make room for the possibility that some self-defensive acts are obligatory and therefore not merely permissible. However, insofar as he holds that some acts of self-defense are merely permissible and that the right to self-defense generally derives from the right *to* something, Rodin is not far off from accepting SD1.

<sup>66</sup> Grotius (1925), Book II, chapter 1: 176.



...the permission of self-defence is not unlimited. For example, most people think it permissible to use force only when doing so is *necessary*. And, most people think that there are limits to when I can use even necessary force to save my own life.<sup>67</sup>

The necessity condition for justified self-defensive assault is, like SD1, widely endorsed.

Draper makes mentions of “the usual restrictions on the appeal to defense (necessity, proportionality and discrimination),”<sup>68</sup> and elaborates further on the necessity condition:

An act of defense may also be impermissible if it inflicts more harm than is necessary. It is usually wrong, for example, to kill an aggressor if you know that you can just as effectively resist his aggression in disarming him.<sup>69</sup>

Many other philosophers endorse the necessity condition, even commenting on the consensus regarding it:

Rodin:

The legal and philosophical literature on self-defense has identified three intrinsic limitations to the right. These limitations are necessity, imminence, and proportionality.<sup>70</sup>

Frowe:

The *necessity* condition is also a standard requirement of permissible self-defence. This condition forbids using more force than one has to in the course of defending oneself.<sup>71</sup>

Lazar has done some of the most significant work regarding the necessity condition, and he begins by recognizing that “[p]hilosophers generally agree that justified self-defense must meet four conditions,” the fourth of which is that “the force used [in self-defense] must be necessary to avert the threat.”<sup>72</sup> He continues:

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<sup>67</sup> Frowe (2011), 10. See also 10-12 for discussion of the necessity condition and the proportionality condition.

<sup>68</sup> Draper (2009), 70.

<sup>69</sup> Draper (1993), 78.

<sup>70</sup> Rodin (2002), 40.

<sup>71</sup> Frowe (2011), 11 (emphasis original).

<sup>72</sup> Lazar (2012), 3-4.

The necessity constraint, however, has been generally neglected. This neglect would be less troubling if necessity were either immediately perspicuous, or peripheral to the ethics of self-defense. Unfortunately, closer examination proves the simple, pretheoretical account of necessity to be inadequate. And if defensive harm can be justified only if it is necessary, this constraint could hardly be more important. Nor is this only a problem in self-defense: necessity plays a crucial role in both popular and philosophical thinking about the ethics of war. We standardly think that, regardless of whether the other criteria for permissible harm in war are met, unless force is necessary to avert an unjustified threat, we should refrain.<sup>73</sup>

Lazar understands the pre-theoretical account of the necessity condition as follows:

Defensive harm H is necessary to avert unjustified threat T if and only if Defender cannot avert T without inflicting H.<sup>74</sup>

But Lazar finds this sketch is unsatisfactory, and he considers six other sketches<sup>75</sup> of the necessity condition before arriving at his own account:

*Necessity:* Defensive harm H is necessary to avert unjustified threat T if and only if a reasonable agent with access to the evidence available to Defender would judge that there is no less harmful alternative, such that the marginal risk of morally weighted harm in H compared with that in the alternate is not justified by a countervailing marginal reduction in risked harm to the prospective victims of T.<sup>76</sup>

Understanding the finer details of Lazar's analysis is not essential to this paper, but it is instructive to see just how far beyond the pre-theoretical account it is necessary to venture to arrive at a satisfactory account of the necessity condition. This might be false if Lazar is wrong about the pre-theoretical account, but it seems clear that the pre-theoretical account is in need of considerable refinement.

It will here be argued that standard accounts of the necessity condition, including Lazar's, are incomplete. They are incomplete because they fail to specify an important condition relevant

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<sup>73</sup> Lazar (2012), 4. Cf. Frowe (2011), 4, who briefly observes that complications arise when an occasion for self-defense arises in one's own home: there might be no duty to retreat but instead a right to stand one's ground.

<sup>74</sup> Lazar (2012), 5. Cf. Rodin (2002), 40; Frowe (2011), 11-12.

<sup>75</sup> Lazar (2012), 5, 7, 9, 11.

<sup>76</sup> Lazar (2012), 13.

to the necessity requirement for justified harm. When the necessity account is adequately modified, however, the proper account of necessity implies the falsity of SD1.

### 3. *Criticizing the Necessity Condition*

SD1 states that any instance of justified self-defensive assault is not morally required but is instead merely permissible. That implies that every instance of liberty to self-defend is what Feinberg calls a “full liberty”: one is permitted both to assault and to refrain from assaulting.<sup>77</sup> But we might motivate this latter claim – every self-defender is within her rights (that is, is justified) in foregoing self-defense – independently of simply granting it for the sake of assessing the implications of SD1. To begin, consider the case of

**MONASTIC SACRIFICE**, in which Monk opposes all violence, though Monk is not obligated to oppose any self-defensive violence. Threat attacks Monk and threatens Monk’s life. While Monk does not wish to die, he does not desire to harm his attacker. Monk fails to fight back and is killed.

It is plausible that Monk did not act wrongly in failing to defend himself. But then Monk had no all-things-considered obligation to defend himself, and therefore possessed the right to forego self-defense. It appears just as plausible to say that there is not, in general, even a *pro tanto* duty for Monk to self-defend, since it seems wrongheaded to claim that Monk has a presumptive duty to self-defend absent countervailing considerations. Similar cases can be constructed to show that while there may be a *pro tanto* duty to refrain from assaulting persons, there is no *pro tanto* duty against foregoing defensive measures. Recall the suggestions of Hugo Grotius, who claimed “while it is permissible to kill him who is making ready to kill, yet the man is more worthy of praise who prefers to be killed rather than to kill”<sup>78</sup>; and David Rodin, who

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<sup>77</sup> Feinberg (1980), 157, 237.

<sup>78</sup> Grotius (1925), 176.

claims that “there may be cases in which the decision not to defend one’s life would be not only permissible, but a laudable act of supererogation.”<sup>79</sup>

It appears to be a common view that some harm H should not be inflicted on Threat for some end E (usually, where E is the preservation of one’s life) if there is some non-harmful way NH to achieve E. We might express this more formally and generally in the following way:

**MEANS SELECTION PRINCIPLE:** Defender is justified in assaulting Threat as a means to the preservation of some good G only if there is no (reasonably accessible) non-assaulting alternative means available to Defender to preserve G.

This paraphrases the more nuanced accounts Lazar and others give, but it does so in a way that can be generalized beyond cases of self-defense. What counts for ‘G’ might be anything<sup>80</sup>: Defender’s life or well-being, the life or well-being of others, works of art or other social significance, etc. What the Means Selection Principle entails is this: if there is some (reasonably accessible) non-assaulting alternative means to preserving G, then (insofar as Defender intends to preserve G) Defender ought to avail herself of that means (or forego G<sup>81</sup>).

This implies Means Selection Necessity:

**MS NECESSITY:** Defender’s assaulting Threat as a means to some G is justified only if there is no (reasonably accessible) non-assaulting alternate means to preserving G.

But as it stands, this is incomplete, for it is not only in the case of *means* that agents ought to minimize harm, but also in the case of *ends*. Consider the following examples:

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<sup>79</sup> Rodin (2002), 39.

<sup>80</sup> The “only if” clause in the principle renders it compatible in principle with any further restriction on G.

<sup>81</sup> If Defender is not *obligated* to preserve G, then (other things equal) she could also permissibly avoid harm to Threat by not preserving G.

**GUARDIAN** is the legal guardian of Minor. Guardian beats Minor severely with his fists for no reason at all.

**AVENGER** was assaulted years ago by Perpetrator. Although Perpetrator no longer poses a risk to anyone, including Avenger, Avenger has the opportunity to bludgeon Perpetrator to death while Perpetrator is enjoying a lonely walkabout in the Australian desert. Avenger takes the opportunity, bludgeoning Perpetrator to death.

Guardian's selected end, "beating Minor for no reason at all," is an end for which there is an absolute moral prohibition. By consequence, Guardian ought not to select that end. Avenger's selected end, "bludgeoning Perpetrator to death," is more fully and better described as "bludgeoning Perpetrator to death *in the pursuit of justice.*" Avenger does not randomly select Perpetrator, after all: Perpetrator, we might suppose, deserves punishment, and it is just that he receives that punishment.<sup>82</sup>

In the former case, the locus of Guardian's wrongdoing is the selection of an absolutely wrong end. There are other ends that Guardian might permissibly select, ones which are not absolutely prohibited as ends. In the latter case, Avenger pursues justice (a generally permissible end) but pursues it in a way that causes more harm than is necessary to achieve justice. For it is not *unjust* for Avenger to forego punishing Perpetrator. (This is especially clear if we suppose, as many do, that all unjust acts are wrong and that Avenger fails to act wrongly in foregoing punishing Perpetrator. By failing to do wrong, Avenger fails to do anything unjust.) It is compatible with the demands of justice that Avenger instead adopt the end, "forgive Perpetrator *in the pursuit of justice.*" The alternative is to insist that the demands of justice are uniquely satisfied by bludgeoning Perpetrator. What can be said of that?

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<sup>82</sup> Defenders of AP will deny either that any person deserves assault in any form, including punishment, or that some person(s) might deserve assault but this fails to entail that assaulting the person(s) is permissible. These replies are overlooked for the sake of argument. For defense of the latter kind of reply, see for example Reiman (1997), 67-132.

Some ends are *uniquely* realizable: there is only one way, or one kind of way, to realize that end. Other ends are *multiply* realizable: there is more than one way, or more than one kind of way, to realize that end. If the demands of justice are *not* uniquely met by assault, then cases like Avenger appear analogous to cases in which Defender pursues the end of self-preservation: Defender has more than one way to accomplish that end (one involving assault and another not involving assault), and Defender selects means-by-assault to preserve herself. Such acts are wrong because they pursue a good and intentionally cause far more harm than is really needed to achieve that good. Suppose Defender's end is "saving the entirety of Asia from a nuclear holocaust" but Defender must make Threat fearful of some bad outcome in one of two ways to accomplish that end. Either Defender *causes* early nuclear detonations throughout Threat's home country, killing everyone in that country; or, Defender *threatens to cause* those same early nuclear detonations. Suppose either end would be effective in saving the entirety of Asia from a nuclear holocaust. Defender clearly ought to threaten to cause rather than cause nuclear detonations. The wrongness of doing otherwise is captured fully by MS Necessity.

But what of uniquely realizable ends? Suppose Attacker adopts the end "assault, for no reason, the first person seen on Main Street every Tuesday." Suppose on some Tuesday Attacker comes across Target, the first person Attacker sees on Main Street. Suppose that Attacker was stopped just prior to attacking Target by Samaritan, who has knowledge of Attacker's end and current intention to attack Target. Samaritan points out that assaulting any person for no reason is wrong, and thus Attacker is not justified in assaulting Target. If Attacker replied that assaulting Target is the only way to fulfill his end, this would fail to show that Attacker is justified in

assaulting Threat. Attacker's end is absolutely prohibited, and thus any means of pursuing it are likewise prohibited.<sup>83</sup>

Are there other possible grounds for absolutely prohibiting the pursuit of certain ends? Consider a case in which Defender Alpha holds the conjunctive end of "self-protection with as much suffering to Threat as possible." Defender Beta, by contrast, holds the conjunctive end of "self-protection with as little suffering to Threat as possible." Thus, Defender Alpha works not only toward self-protection but also *suffering-maximizing* self-protection, whereas Defender Beta works not only toward self-protection but also toward *suffering-minimizing* self-protection. A pursuit of the conjunctive end of Defender Alpha appears absolutely wrong, at least where there is an option instead to adopt the conjunctive end of Defender Beta, for the simple reason that evils like assault, suffering, and harm ought to be minimized insofar as one can permissibly do so.<sup>84</sup>

Return to the case of Avenger and suppose that the end of justice is uniquely accomplished by bludgeoning Perpetrator. Thus, Defender fails to act justly if Defender foregoes bludgeoning Perpetrator.<sup>85</sup> Yet, if Defender foregoes bludgeoning Perpetrator to pursue some other end (beneficence, for instance) Defender does not plausibly act *wrongly*. Thus, Defender is in this case not obligated to pursue the end of justice, and is permitted to adopt some other end, such as beneficence. If in this case Defender pursues justice with all that it entails, Defender

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<sup>83</sup> Similar restrictions apply in cases where the ends are cruelty and other absolutely prohibited ends.

<sup>84</sup> Incidentally, intending suffering-maximizing self-protection must entail intending suffering *as an end*, for suffering is not intended *only* insofar as it aids self-protection, but is intended beyond it.

<sup>85</sup> Again, this is assumed for argument, since defenders of AP will deny either that justice requires any person to be bludgeoned or in any way assaulted, or that justice lacks absolute priority and beneficence instead trumps justice.

foregoes beneficence. But then there are two good ends Defender might pursue, justice or beneficence, and Defender selects an end that involves more harm. But then Defender fails to minimize harm insofar as she can permissibly do so, which is wrong for the same reason that it is wrong for Defender Alpha to act as she does.<sup>86</sup> These conclusions entail the End Selection Principle:

**END SELECTION PRINCIPLE:** Where Defender assaults Threat as the unique means of accomplishing end E, Defender justifiably adopts E only if E is not absolutely wrong to pursue and E is not a conjunctive-end where one of the conjuncts is absolutely wrong to intend as an end.

This principle, in turn, implies End Selection Necessity:

**ES NECESSITY:** Defender is justified in assaulting Threat as an end E or assaulting Threat as a means to some end E, only if E is not absolutely wrong to pursue and E is not a conjunctive-end where one of the conjuncts is absolutely wrong to intend as an end.

Plausibly, what goes for means and ends goes likewise for foreseen effects. Consider some standard cases in which an agent assaults a person, but not intentionally. Consider the following case from Frowe:

**BOMB.** A runaway trolley is heading towards you as you lie trapped on the trolley tracks. You will be killed unless you throw a grenade at the trolley and destroy it. However, the

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<sup>86</sup> One might also say that two conjunctive ends are permissible here: “self-protect and cause harm” and “practice beneficence and forego causing harm.” Self-protection and practicing beneficence, however, are ways of preserving or promoting what is morally valuable; both work toward the end of acting permissibly or living the moral life. Thus, these ends might be reformulated as follows: “preserve some good G1 and cause harm” and “preserve some good G2 and forego causing harm”; or, “act permissibly/live the moral life and cause harm” or “act permissibly/live the moral life and forego causing harm.” But the former cases appear clearly impermissible, since some harm is intended beyond the goal of preserving a good, acting permissibly, or living the moral life. As in the case of Defender Alpha and Defender Beta, therefore, assault is intended as its own end.



blast from the grenade will also kill an innocent person who is lying unconscious by the side of the tracks.<sup>87</sup>

If you throw the grenade and destroys the trolley, killing the innocent person nearby, it might be questioned whether you in fact *assaulted* the innocent. Nevertheless, it is a case of killing or harming. Consider another case from T.A. Cavanaugh:

**TORPEDO.** A torpedo strikes the bow of a submarine and explodes. Water floods the forward compartments. The submarine begins to sink. The captain commands you to close the flood-door. You will thereby trap the submariners at the bow in a watery grave. Yet, if the door remains open, you, the entire crew, and the submarine itself will be lost.<sup>88</sup>

In Frowe's case, the act of bomb-throwing is permissible given the foreseen effects only if there is no reasonably accessible way to avoid killing the innocent. If you could instead roll out of the way, for example, it would be wrong to throw the bomb. (If you did throw the bomb regardless, in full recognition that you need not do so to prevent your death, your act would certainly constitute assaulting the innocent.) In Cavanaugh's case, the act of watertight-door-closing is permissible given the foreseen effects only if there is no reasonably accessible way to avoid killing the innocent. For example, if everyone could be saved by allowing them a further and harmless eleven seconds to exit the submarine's bow, it would be wrong to close the watertight door earlier. Cavanaugh explicitly concedes this:

Clearly, it would be wrong to cause gratuitous harm. Insofar as the realization that one ought to avoid evil underlies recourse to double effect, it would be odd, indeed perverse, to interpret the fourth condition [of permissible double-effect] as holding that evil is not to be eliminated or mitigated, when practically possible.<sup>89</sup>

Thus, there is a Foreseen-Effects Selection Principle:

**F.E. SELECTION PRINCIPLE:**

Defender is justified in assaulting Threat as a foreseen effect of the preservation of some

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<sup>87</sup> Frowe (2011), 21.

<sup>88</sup> Cavanaugh (2006), xiii.

<sup>89</sup> Cavanaugh (2006), 33.

good G only if there is no (reasonably accessible) non-assaulting alternative way available to Defender to preserve G.

In all double-effect cases, however, foreseen effects are justified (where they are justified) in virtue of preserving some good. In Bomb, the (rights-based) good of preserving your life justifies you in performing an act which, if performed, would have bad effects. In Torpedo, the goods of preserving your life, preserving a greater number of lives, and preserving the submarine justifies you in closing the watertight door, which kills others. In all cases, some good functions as the justification for the performance of an act which produces bad effects. As Cavanaugh puts it, it is “the realization that one ought to avoid evil” which “underlies recourse to double effect.”<sup>90</sup> Thus, if intending to bomb innocents or trap drowning submariners is wrong but the innocent must be bombed to save one’s life and the submariners must drown to preserve certain other goods, one can avoid intending these effects by instead intending merely to stop the trolley with a bomb, recognizing that an innocent will be killed as an effect, and closing the watertight door, recognizing that innocent submariners will die as a result.

But there is another sense in which one must avoid gratuitous harm. The Doctrine of Double Effect (hereafter, DDE) is standardly formulated as follows. Producing an evil effect is justified only if the following conditions are met:<sup>91</sup>:

Condition 1: the act performed is morally good or morally neutral;

Condition 2: the agent performing the act intends the good effect, but does not intend the evil effect;

Condition 3: the good effect fails to be caused by the evil effect;

Condition 4: there is sufficiently good reason for causing the evil effect.

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<sup>90</sup> Cavanaugh (2006), 33.

<sup>91</sup> Cavanaugh (2006), 26.

The fourth condition of the DDE is a proportionality requirement: “there is proportionately grave reason for causing the evil effect.”<sup>92</sup> What constitutes ‘grave reason’? On Cavanaugh’s view,

Obligations that attend one’s role as, for example, a mother, brother, friend, wife, fireman, teacher, doctor, soldier, or fellow countryman, partially constitute proportionately grave reasons. Consequences count. Obligations matter. Both comprise proportionately grave reasons.<sup>93</sup>

Thus, not only are agents duty-bound to avoid causing harm if they can achieve the good some other way; they are additionally duty-bound to avoid acts which would cause harm if the good for which they cause harm is not proportionate. If there is an alternative end for which the harmful effects are endured, that end must be obligatory to pursue. Given this condition and its centrality for permissible double-effect cases, and given the Foreseen-Effects Selection Principle above, the following principle is plausible:

**FORESEEN EFFECT NECESSITY:** Defender’s assaulting Threat *as a foreseen effect* is justified only if Defender is morally obligated to pursue the act that would include assaulting Threat as a foreseen effect.<sup>94</sup>

Yet MS Necessity, ES Necessity, and FES Necessity entail a modification to the account of the necessity condition<sup>95</sup>:

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<sup>92</sup> Cavanaugh (2006), 26.

<sup>93</sup> Cavanaugh (2006), 32.

<sup>94</sup> Given Ends Necessity, Foreseen Effect Necessity might be redundant for current purposes. In Foreseen Effect, agents are forbidden from selecting acts which result in assault in order to preserve some good, unless the selection of that good is obligatory. But here, the good functions as an end as it is what one does the act *for*. Still, given the complexity of double-effect cases and given that such cases do not obviously reduce to selecting assault as a means or an end, it is prudent to include a separate treatment of double-effect cases.

<sup>95</sup> The entailment is strict: if Defender assaults Threat, then it is Defender’s act that assaults or leads to the (avoidable) assault of Threat. This excludes cases in which Defender accidentally (that is, without intending and without selecting an act with the foreseen outcome of assaulting) harms Threat. (Alternatively, if it is possible to assault someone accidentally, there cannot be a

**NECESSITY:** Defender's assaulting Threat is justified only if Defender is morally obligated to do something which requires assaulting Threat.

But this makes trouble for the defender of SD1, as shown in the following argument:

*The Argument*

- (P1) If there are cases of justified self-defensive assault, they are cases of *merely* justified self-defensive assault. [SD1, assumed for *reductio*]
- (P2) There are no cases of *merely* justified self-defensive assault.  
[NECESSITY]
- (C1) Therefore, there are no justified acts of self-defense. [from P1 and P2]

Necessity (above) implies that if assault is justified, there is a moral obligation to assault. Thus, all cases of *justified assault* are cases of *morally obligatory assault*. No act can be both merely permissible and obligatory, from which it follows that no act of justified self-defense is merely morally permissible, which contradicts SD1.

#### 4. Objections

Forfeiture theories of justified self-defense raise special problems for The Argument. On forfeiture theories, when Threat unjustly attacks you, she forfeits her right not to be attacked. But if Threat forfeits her right not to be assaulted, then it cannot at the same time be true that there is some *pro tanto* duty not to assault Threat – for that is, *ex hypothesi*, precisely what Threat forfeited.

P2 of The Argument is supported in the following way. Every case in which it is merely permissible to assault in self-defense is also a case in which one's *pro tanto* duty not to assault

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corresponding moral duty not to assault persons accidentally, because unintentional actions are not the sort of thing agents have duties not to perform. But then this possibility makes no difference to the entailment.) If Defender knowingly assaults Threat, she either: assaults Threat as an end, assaults Threat as a means, or assaults Threat as a foreseen effect.

remains in place.<sup>96</sup> But if one's *pro tanto* duty remains in place, then (contrary to SD1) there cannot be any mere right to assault in self-defense. Where the argument goes wrong, according to the objection, is in assuming that *every case* in which there is a mere right to self-defensive assault is also a case in which the presumption against assault is maintained. That is false, at least if forfeiture theories are true (or possibly true).

The Forfeiture Objection is given strength and clarity by putting it in some standard argumentative form.

*The Argument from Forfeiture*<sup>97</sup>

- (P1) If Threat poses an unjust Threat to Defender, then Threat has forfeited his right not to be assaulted by Defender.
- (P2) If Threat has forfeited his right not to be assaulted by Defender, then Defender has a mere right to assault Threat.<sup>98</sup>

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<sup>96</sup> Whereas a right to assault *would* be sufficient to make self-defensive assault permissible, The Argument offers evidence against the very possibility of such a right, as it would condone causing unnecessary harm.

<sup>97</sup> More formally:

- (P1)  $U \rightarrow F$
- (P2)  $F \rightarrow R$
- (P3)  $R \rightarrow \sim D$
- (P4)  $U$
- (C1)  $\sim D$

<sup>98</sup> It has been pointed out that the antecedent "Threat has forfeited his right not to be assaulted by Defender" does not entail "Defender has a mere right to assault Threat," because there might be cases in which Threat forfeits his right and Defender is obligated to assault Threat. But consider the following revised argument:

- (P1) If Threat poses an unjust threat to Defender, then Threat has forfeited his right not to be assaulted by Defender.
- (P2\*) If Threat has forfeited his right not to be assaulted by Defender, then either: Defender has a mere right to assault Threat, or Defender has an obligation to assault Threat.
- (PX) Defender has no obligation to assault Threat.
- (CX) Therefore, Defender has a mere right to assault Threat.
- (P3) If Defender has a mere right to assault Threat, then Defender is not obligated not to assault Threat.
- (C1) Therefore, Defender is not obligated not too assault Threat.

- (P3) If Defender has a mere right to assault Threat, then Defender is not obligated not to assault Threat.
- (P4) Threat poses an unjust threat to Defender.
- (C1) Therefore, Defender is not obligated not to assault Threat.

So understood, there are at least two criticisms put forward by the defender of the Forfeiture Objection. The first is that The Argument begs the question against forfeiture accounts of self-defense by assuming their falsity and then arguing for their falsity. The second criticism is that while The Argument itself does not beg the question against forfeiture accounts, it is insufficiently or improperly motivated: the defender of forfeiture will merely deny that Necessity is true, given the possibility of forfeiture, and the defender of The Argument is left either stipulating that theories of forfeiture are false (which begs the question) or having failed to consider those theories (leaving The Argument in need of significant revisions or giving it a narrower victory than it claims).

These objections will be taken in turn. First, the responder has at least two plausible avenues of escape. The first is to provide a similar argument with importantly reordered premises to show that The Argument need not formally beg the question against the defender of forfeiture theories:

*The Argument Against Forfeiture*<sup>99</sup>

- (P1) If Defender is obligated not to assault Threat, then Defender has no mere right to assault Threat.

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Here, the antecedent of P2\* clearly entails its consequent. PX will be considered and refuted in the next chapter, leaving us with CX: Defender has a mere right to assault Threat. Following SD1, this chapter is restricted to theories of self-defense on which Defender has a mere right to assault Threat, thereby excluding forfeiture theories where Defender has an obligation to assault Threat.

<sup>99</sup> More formally:

- (P1)  $D \rightarrow \sim R$
- (P2)  $\sim R \rightarrow \sim F$
- (P3)  $D$
- (C1)  $\sim F$

- (P2) If Defender has no mere right to assault Threat, then Threat has not forfeited his right not to be assaulted.
- (P3) Defender is obligated not to assault Threat.
- (C2) Therefore, Threat has not forfeited his right not to be assaulted.

Note that P1 is both necessarily true and strictly implied by P3 in The Argument from Forfeiture<sup>100</sup>, and P2 is strictly implied by P2 in The Argument *from* Forfeiture.<sup>101</sup> More will be said about the defense of P3 as it was defended for The Argument, but for now it is sufficient to point out that there is no objectionable circularity in the argument. Furthermore, a proper defense of P3 will imply the falsity of P1 in The Argument *from* Forfeiture. P1 states that:  $U \rightarrow F$  and, by extended consequence,  $\sim D$ . Thus, any argument for D will entail the falsity of either U or, more plausibly,  $U \rightarrow F$ , assuming the truth of the intermediate steps.<sup>102</sup>

A defense of The Argument from the charge of formal circularity does not clear it of the charge of *motivating* circularity. Fortunately, The Argument can also be cleared of this charge. First, the cases motivating P3<sup>103</sup> in The Argument from Forfeiture fail to specify why self-defensive assault is permissible. But then the examples do not assume the falsity of forfeiture

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- <sup>100</sup> (P3)  $R \rightarrow \sim D$
  - (PX) D
  - (C)  $\sim R$

Therefore,

- (P1)  $D \rightarrow \sim R$
- <sup>101</sup> (P2)  $F \rightarrow R$
- (PX)  $\sim R$
- (C)  $\sim F$

Therefore,

- (P2)  $\sim R \rightarrow \sim F$

<sup>102</sup> Such an argument might be formulated as follows, where U is granted and the intermediate steps entailing PY (below) are assumed:

- (PY)  $(U \rightarrow F) \rightarrow \sim D$
- (PZ) D
- (C)  $\sim(U \rightarrow F)$

<sup>103</sup> In my central argument (The Argument), this is the defense of P2.

theories of self-defense. Insofar as these cases are plausible and acquire their plausibility without assuming the falsity of forfeiture theories, there is no motivating circularity.

Second, cases can be constructed in which forfeiture theories are initially explicitly *assumed* and then argued against. Consider, for example, the following case:

**FORFEITER** unjustly attacks Defender in a pub. In doing so, Forfeiter forfeits his right not to be assaulted. However, Defender need not assault Forfeiter to save her life: Defender can sidestep Forfeiter's attacks and easily escape the pub unscathed.

The defender of forfeiture accounts has two, and only two, possible moves in this case: either deny that this is a case of forfeiture or claim that Defender would not act wrongly in assaulting Forfeiter. The latter reply is false because it violates the Means Selection Principle and MS Necessity: if there is a reasonably accessible alternative to Defender, then Defender ought to take it. This plausibly leads to a motivated denial of the claim that Forfeiter forfeits his right not to be assaulted: when reasonably accessible means are available, there can be no right not to use those means, and thus there can be no forfeiture which would give one the right not to use those means.<sup>104</sup> A similar response can be given to the former reply: even if this is not a case of forfeiture, the following is motivated and, plausibly, holds: if there is some reasonably accessible, permissible end, then (by the End Selection Principle) there can be no mere right not to select that end, and thus no possibility of forfeiture entailing the right not to select that end.

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<sup>104</sup> On a variation of this reply, defenders of forfeiture theories could argue that no forfeiture occurs but there is an overriding consideration in play. Because the case does not describe any overriding consideration, one is left to assume that the only plausible overriding consideration is Necessity, but that extends to all cases and therefore does not help defenders of forfeiture theories.



Another objection concerns the status of the right to self-defensive assault as a *derivative* right. It is in virtue of certain rights Defender possesses that she has a right to self-defense. Rodin explains this well:

[T]he subject has a right *to* the good whose protection is the end of defensive action. Defensive rights seem to be entailed in a very basic way by rights *to* things. Thus if I have a right to *X*, then it seems to follow as a simple corollary that I have the right to take measures to prevent my right to *X* from being violated.<sup>105</sup>

The simplest cases are property protection, legal protection, and rights against assault. If Owner has a right to keep her property, then Owner has a right to store her property in a protective lockbox. If Defendant has a right to a fair trial, then Defendant has a right to an attorney. By extension, if Defender has a right not to be assaulted unjustly, then Defender has the corollary right to protect that right from violation or infringement. Where that right can be protected from Threat in no other way than self-defensive assault, Defender is justified in assaulting Threat.<sup>106</sup>

But the corollary Rodin suggests is surely false, and true only if modified. Agents cannot do simply anything to protect their rights from being violated or infringed. For instance, even if such means are necessary, Owner cannot permissibly torture the thief's children to recover the stolen property, and Defendant cannot threaten an attorney with death in order to acquire an attorney for defense. Likewise, Defender cannot permissibly assault Threat unless doing so is necessary in the sense that fulfills the required necessity conditions heretofore defended. The right not to be unjustly assaulted (call this right *Z*), for example, does not permit Defender to assault Threat if *Z* can be protected by fleeing or distracting Threat. But it also does not permit

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<sup>105</sup> Rodin (2002), 37.

<sup>106</sup> It will be assumed that this justification comes by way of a mere right, and not a duty. But it might be that there is a duty to protect one's rights, as considered (and rejected) in the following chapter.

Defender to assault Threat if it is not obligatory to defend Z, since an end other than Z is permissible to adopt and that alternative end does not require assault.

## ***5. Conclusion***

This chapter considered the following thesis about self-defense:

**SELF-DEFENSE 1:                    All acts of justified self-defense are (merely) morally justified.**

The view is widely held in the self-defense literature, and appears to be the consensus view. This chapter sought to criticize the consensus and argue against SD1. It was argued that certain restraints on justified self-defensive assault include the necessity condition. Narrowly, the necessity condition entails a Means Selection Principle and a Means Selection Necessity condition. This forbids defenders from assaulting threats when there is some reasonably accessible and permissible alternative to doing so. But any plausible necessity condition will likewise extend further to the End Selection Principle and the Foreseen Effects Selection Principle, which respectively entail the End Selection Necessity condition and the Foreseen Effects Necessity condition. These entail that defenders cannot justifiably assault threats as intended or foreseen ends unless there are no reasonably accessible, permissible, alternative ends or effects which do not include assault. Where such alternative means, ends, or foreseen effects are available, agents should select them. Since those alternatives are always available, given each agent's right to forego self-defensive assault, agents are obligated to select them, and this implies the falsity of SD1.

**CHAPTER 3:**  
**Against Obligatory Self-Defense**

***1. Introduction***

In the last chapter, it was primarily argued that self-defensive assault is not a mere right, and some considerations were also offered suggesting that it is not a duty. If both of these claims are true, it follows that there is no right to self-defense. Given the moral presumption against assaulting persons without justification, it was argued that it is wrong always, everywhere, and for anyone to assault a person unless doing so is obligatory. Though the chapter offered reasons to believe that self-defense is neither a mere right nor a duty, it offered stronger reasons to believe that it is not a mere right. This chapter is a partial effort to remedy that imbalance, strengthening the case against the following claim:

**SELF-DEFENSE 2:<sup>107</sup>      Acts of self-defense are (*pro tanto*) morally required.**

An act's being *pro tanto* morally required entails that all agents who intentionally and without justification fail to act in self-defense act wrongly. Setting aside the criticisms of obligatory self-defense from the previous chapter, there is some motivation to accept SD2. The majority of persons, including philosophers, maintain that there is a right to self-defense. But suppose it is first accepted both that any right to self-defense is necessarily either a mere right or a duty, and also that, as argued in the previous chapter, the right to self-defense is not a mere right. The only possible alternative for self-defense proponents is that self-defense is a duty. Thus, SD2 can be made initially plausible simply by disjunctive elimination.

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<sup>107</sup> Hereafter, "SD2."

The defense of SD2 is hardly reducible to a cornered fight, however. There has been, historically, some additional support for SD2.<sup>108</sup> Even absent these historical considerations, other theories of self-defense might provide backing for SD2. Jeff McMahan<sup>109</sup> employs the use of a legal analogy in support of a justice-based theory of self-defense:

It may be instructive to compare liability to defensive action to liability in tort law. Just as we may think of liability in torts as a matter of corrective justice, or justice in the distribution of harm ex post, so we may think of liability to defensive action as a matter of preventative justice, or justice in the distribution of harm ex ante.<sup>110</sup>

The legal analogy functions to highlight the *justness* of self-defensive assault: tort law provides justice for those already harmed, whereas self-defense provides justice to those who are being or would be harmed. Elsewhere, McMahan expands his justice-based account of justified self-defense:

...in cases in which a person's culpable action (whether past or present does not matter) has made it inevitable that someone must suffer harm, it is normally permissible, as a matter of justice, to ensure that it is the culpable person who is harmed rather than allowing the costs of his wrongful action to be imposed on the morally innocent. In particular, if one person's culpable action threatens the life of another, it is permissible as a matter of justice to kill that person rather than to allow his culpable action to kill a morally innocent person, for considerations of justice give the innocent priority over the morally noninnocent.<sup>111</sup>

Tyler Doggett summarizes McMahan's view:

It is permissible to kill X because it is just. It is just to kill X because X is responsible for an unjust threat to your life. X is responsible for that threat because he engaged in an activity that foreseeably put your life at risk and that risk eventuated.<sup>112</sup>

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<sup>108</sup> See Rodin (2002), 39:

It has been an element of certain Christian teachings that we are under a duty to preserve our own life (which is why suicide is considered a sin) and that self-defense is therefore obligatory.

<sup>109</sup> Also see the description of McMahan's position in chapter 2.

<sup>110</sup> McMahan (2005), 395.

<sup>111</sup> McMahan (1994b), 259.

<sup>112</sup> Doggett (2012), 223.

Defending a culpability theory of self-defense, Kai Draper writes:

...the fact that [the threat] is to blame for the threat to your life does provide you with a justification for killing him. For it is inevitable that either you or [the threat] will die, and this is entirely his fault. Thus, it would be unfair to expect you to die instead of him, for then you would be paying the foreseeable costs of his moral error.<sup>113</sup>

Whereas Doggett speaks explicitly of permissibility, McMahan speaks of the innocent having “priority” and Draper of fairness. Priority and fairness might be purely presumptive; that is, morally speaking, it may be up to the innocent whether or not they will act in self-defense. Following Rodin, we might say that the morally innocent are in possession of a *full liberty* to self-defense. To say that someone has a full liberty to *Y* is just to say that it is permissible both for that person to *Y*, and permissible for that person not to *Y*.<sup>114</sup> One alternative, however, is that the morally innocent lack a full liberty to self-defense, and instead possess only a half-liberty to self-defense, since failing to self-defend is impermissible for them.<sup>115</sup> We might say that the morally innocent lack a right to self-defense because the self-defensive course of action is not only just, or more just than failing to self-defend, but *uniquely* just. On this account, failing to self-defend is unjust (or, on Draper’s account, unfair) and therefore wrong. Such conclusions would, if plausible, entail SD2.

Thus far SD2 has been interpreted to claim that self-defense is obligatory *as an end*. But it might also be obligatory *as a means*. To see this, consider first the putative duty to other-defense:

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<sup>113</sup> Draper (1993), 75.

<sup>114</sup> Rodin (2002), 20. Rodin borrows heavily from Wesley Newcomb Hohfeld and importantly from Joel Feinberg. For an elaboration on Hohfeld’s ‘building blocks’ of rights, as well as qualifications suggested by Feinberg and Rodin, see Rodin (2002), 17-23.

<sup>115</sup> Rodin (2002), 20: “Thus, one may have a Hohfeldian liberty to do a certain thing with respect to a certain party and yet have no liberty *not* to do it.” The language of ‘half-liberties’ is Feinberg’s. See Feinberg (1980), 157, 237.

We usually think that if a person is unjustly attacked, it is morally permissible for others to come to their rescue. We might even think that rendering such assistance is, at least *prima facie*, morally *required*. We generally condemn those who stand by and do nothing when a person is under attack, which suggests that we conceive of other-defense as a duty rather than a mere permission.<sup>116</sup>

Suppose that in order to protect someone from unjust attack, it is necessary first to defend yourself. If other-defense is obligatory, then you ought to defend yourself in these circumstances. This can be inferred from the general principle that if *X* is obligatory and *Y* is necessary to bring about *X*, then *Y* is obligatory. Of course, this principle requires the implicit assumption that *Y* must not itself be impermissible. It is difficult to see how *X* could be obligatory if it required some impermissible act, *Y*, and the fact that *X* is *ex hypothesi* obligatory itself lends support to the thesis that *Y* is permissible.

Justice-based theories of self-defense succeed, however, in supporting SD2 where these latter means-based attempts at support fail. At best, these latter observations provide contingent support for SD2; they show that self-defense is sometimes obligatory as a means, but not that self-defense is itself *pro tanto* obligatory. To say that self-defense is *pro tanto* obligatory is to say that would-be victims are obligated to assault or kill in self-defense if other things are equal.<sup>117</sup> Thus, even if no others stand in need of protection, the would-be victim is morally required, absent countervailing considerations, to defend herself. Because self-defense is morally required of agents even when others are not at risk according to SD2, the duty to defend others cannot fully explain or support SD2. What the duty of other-defense cannot explain or support in this case, however, justice-based theories might. If, as noted earlier, self-defense is simply the only way to meet the requirements of justice, then self-defense is plausibly obligatory.

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<sup>116</sup> Frowe (2011), 24.

<sup>117</sup> While this is the standard view of *pro tanto* duties, its acceptance is not universal. For objections to this formulation, see Dancy (2006), 39-60.



Agents exemplifying this sort of moral ease act permissibly in cases where *X* is itself pretty trivial. Suppose *X* is the duty to respect the wishes of my friend not to modify the position of her ceramic penguin, since it slightly annoys her when the penguin faces any direction other than North. But suppose that you likewise have a duty, *Y*, to move the penguin because it has been filled with explosives which will detonate in seconds. It would certainly be wrong, all things considered, not to move the penguin, and the *pro tanto* duty *X* (the duty not to violate the wishes of your friend) is so seriously trumped that one would be justified in disregarding *X* with moral ease. All agents who perform *Y* over *X* in this case, and do so with moral ease, are quite justified in regarding *X* as morally inconsequential.

Other duties, other substitutes for *X*, are unlike the exploding penguin case. Let *X* be the *pro tanto* duty not to torture persons and assume, for the sake of argument, that *X* can be overridden or undermined, perhaps on grounds of self-defense or other-defense, as Steinhoff argues:

There is no morally relevant difference between self-defensive killing of a culpable aggressor and torturing someone who is culpable of a deadly threat that can be averted only by torturing him.<sup>123</sup>

In some theories of self-defense, it is permissible to assault culpable aggressors when necessary for self-protection because those aggressors have, via their culpability, forfeited their right not to be assaulted. Though many advocates of self-defense will not concede Steinhoff's assertion that self-defensive assault is morally indistinct from self-defensive torture, assume that

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strongly, that *X* is morally inconsequential, then one would act wrongly in choosing those actions.

<sup>122</sup> Cf. Nagel (2005), 75-90. Nagel suggests that citizens have an interest in having political leaders who are ruthless and carry out the business of the state, but their ruthlessness should not become internalized. (In the terms employed here, ruthless actions should not be carried out with ease.)

<sup>123</sup> Steinhoff (2006), 337. Cf. Steinhoff (2012), 19-26; Steinhoff (2013); Frowe (2011), chapter 9.



self-defensive torture is sometimes permissible on the grounds that *X* can be overridden or undermined.<sup>124</sup>

**UNEASY TORTURING DEFENDER** knows that self-defensive torture is permissible and finds herself in a circumstance in which torturing a person is her only means of self-defense. She tortures the threat but without moral ease: she does not enjoy it, is cautious to inflict only the harms she deems necessary, and participates with a high degree of hesitation and trepidation.

Uneasy Torturing Defender does not enjoy torture in any way; she regards it as unfortunate that it is at all instrumentally necessary for her own defense (or the defense of others). She realizes too that torture, even in self-defense, is a very morally serious activity, and she responds appropriately by taking great pains to be sure that each cut and each blow is absolutely necessary, giving her threat ample time between each clipped nail to reconsider sharing information relevant to the threat against Uneasy Torturing Defender.<sup>125</sup> But consider a variation on Uneasy Torturing Defender:

**NONCHALANT TORTURING DEFENDER** learns that Threat is nearby, and she decides to kidnap Threat and torture him for information necessary to save her life. With each electrical shock and pried fingernail, Nonchalant Torturing Defender proceeds with moral nonchalance: she does not give much additional thought to whether some harm she inflicts is necessary or whether her torturous acts are right.

Unlike Uneasy Torturing Defender, who responded appropriately to the moral graveness of torture, Nonchalant Torturing Defender fails to respond appropriately. Torture is intrinsically grave and the moral risks associated with it are plentiful: inappropriate emotional attitudes towards or reactions to harming others, objectifying victims, resorting to inappropriate means

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<sup>124</sup> See the challenge to this conclusion by Bufacchi and Arrigo (2006).

<sup>125</sup> This does not assume that there are no metaphysically vague cases in which it is indeterminate whether inflicting some harm *H* is necessary (or, is among a set of comparable alternatives, one of which is necessary) to achieve goal *G*, or that there are no cases in which it is epistemically unclear whether *H* is necessary to achieve *G*. Rather, the claim is simply that no agent is possibly objectively justified in *assuming* that *H* is necessary to achieve *G* when *H* is *pro tanto* seriously morally wrong.

(torturing non-threatening family, for example), torturing victims even after they have surrendered information due to uncertainty about the truthfulness of their claim to have surrendered the correct information, and more. Thus, even if torturing in self-defense is justified, this does not permit anyone to treat torture in any way that would constitute a nonchalant or casual attitude toward its moral seriousness. Everyone everywhere always has a duty to take torture seriously, even if they are inflicting it with justification.

This raises two significant questions. First, for members of the class of duties for which there is a trivializability constraint, what makes them members of that class? Second, if members of that class cannot be trivialized, what special moral relations and functions (if any) are rendered impossible in virtue of the constraint?

It is not necessary for the purposes of this paper to sketch the full set of necessary and sufficient conditions for what qualifies a duty for the trivializability constraint. It is enough to show that there is a trivializability constraint for assaulting persons. To this end, one sufficient condition will be identified and defended.

The short defense is as follows. All persons have properties, some of which are essential. One essential property of persons is *being extremely morally considerable*. This property necessarily confers a right<sup>126</sup> to all persons, a right they cannot forfeit and a right that cannot be countervailed: the right not to be treated carelessly or, when harming them, harming them casually.

The longer defense begins with a defense of the claim that all persons possess that essential property. To begin, consider that every person has a presumptive right against being

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<sup>126</sup> This is true only if there are rights. It is assumed that there are, but the following judgments about what is permissible and what is not do not depend upon the existence of rights.

harmful or killed. This right is absolutely presumptive: it holds absent any forfeiting or countervailing conditions.<sup>127</sup> Said another way, the right against being harmed or killed holds whenever the person being harmed or killed neither forfeits that right nor has that right countervailed. Consider such a case. Harmless is not attacking anyone and there is no moral good worth preserving or evil worth preventing. Thus, there is no moral reason to kill Harmless. If you harm or kill Harmless, you have wronged him, and this is true in all possible worlds in which you harm or kill Harmless under these conditions. By modal implication, Harmless necessarily has the right not to be harmed or killed absent forfeiture or countervailing conditions.

As it concerns harming or killing persons, the threshold at which countervailing conditions obtain is high. If a gallon of milk will be spilt unless Harmless is harmed or killed, we ought not to harm or kill Harmless. If Harmless will die unless he tosses Bystander under the Greyhound bus, Harmless still ought not to toss Bystander under the Greyhound bus. Restrictions on permissible harming and killing are plentiful, even in cases of justified self-defense.

Moreover, even in cases where countervailing (but not forfeiting) conditions do obtain, it is sometimes the case that there exists some *residual* duty to the person or persons harmed or killed. McMahan, for example, writes:

When one thus permissibly acts against a right, I will say that one *infringes* that right, whereas when one impermissibly does what another has a right that one not do, one *violates* that right. Even though an agent acts permissibly in infringing a right, the victim is nonetheless wronged and may thus be owed compensation.<sup>128</sup>

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<sup>127</sup> Forfeiture conditions operate in the following way: if some circumstance *C* obtains, then person *S* forfeits *S*'s right. Countervailing conditions operate in the following way: if some circumstance *C* obtains and is stronger than the relevant right, then *S*'s right is permissibly overridden (or trumped).

<sup>128</sup> McMahan (2011), 10.

A paradigmatic example of residual duty is a modified trolley case in which either Unlucky will lose his leg or five people will die. Assuming it is permissible to switch the track such that Unlucky loses his leg, it appears true both that Unlucky had a right not to have his leg taken and Unlucky is owed compensation. When non-combatants are unintentionally harmed as a direct result of tactical bombing or other means of offensive warfare, they too are plausibly owed compensation if such compensation can be provided.<sup>129</sup> More strongly, every person whose right is infringed in McMahan's sense is owed compensation, other things equal.

The moral significance of entities like persons, each of whom possesses a necessary presumptive right not to be harmed and a presumptive right to compensation in cases of right-infringement is nearly inestimable. These rights appear to confer an extremely considerable moral status: the rights are possessed presumptively, have a remarkably high countervailing threshold, and are possessed by every person in all possible worlds in which those persons exist. Furthermore, the extremely morally considerable nature of persons is grounded in the *modal* properties possessed, which persons continue to possess even if, for example, their right not to be harmed or killed is forfeited or countervailed in the actual world. Supposing that Threat's right to life or not to be harmed is forfeited or countervailed in the actual world, it hardly follows that those rights of Threat's or their presumptive force are forfeited or countervailed *transworldly*. Even if Forfeiter forfeits his right not to be assaulted today because he aggresses unjustly against Defender, Forfeiter does not thereby *absolutely* forfeit his right across possible worlds. Rather, Forfeiter retains his presumptive right not to be assaulted such that when there is no reason to harm Forfeiter, then harming Forfeiter is wrong. These essential properties of persons, therefore,

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<sup>129</sup> See Brummer. (1996).

ground the following right of persons: the right not to be treated carelessly or, when harming them, harming them casually.

### *3. Relations Affected by Trivializability*

Because of trivializability constraints, certain moral relations are affected. Relations affected by persons with the relevant rights will include, among other things, the *overdetermined relation*. To say that a duty to self-defend is overdetermined is to say that there is more than one independent duty in a single case whose normative implications include justified self-defense. For example, if one's duty to protect one's children<sup>130</sup>, *x*, implies that one must self-defend, and if one likewise has a duty to protect oneself<sup>131</sup>, *y*, and if defending oneself is likewise necessary to prevent catastrophe<sup>132</sup>, *z*, then one's duties to *x*, *y*, and *z* supply independent normative support for self-defending. The duty to self-defend is overdetermined because it is sufficient for one's duty to self-defend that *x* be one's duty, where *x*-ing entails self-defending: *x* determines, in the sense of grounding, that self-defense ought to be done. The addition of *y* and *z* further grounds and supports the duty to self-defend, effectively adding to the justification of self-defense *qua* obligation.

There is conclusive reason to believe that all theories of justified self-defense in principle permit overdetermination.<sup>133</sup> According to all such theories, self-defense is not absolutely wrong (that is, it would be actually justified in some possible circumstance *C*) and can be motivated (that is, there would be moral reason to self-defend in possible circumstance *C*). Each of these

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<sup>130</sup> See Davion (1990), 92; Derek Parfit (2011), 205; Narveson (1965), 262.

<sup>131</sup> See footnote 108.

<sup>132</sup> See Steinhoff (2006).

<sup>133</sup> Excluding, of course, skeptical or disaffirming theories of self-defense like pacifism, which imply that there is no right to self-defense.

conditions is strictly necessary for overdetermination.<sup>134</sup> If self-defense was absolutely prohibited, it would necessarily fail to make any duty justified (or contribute to the justification of any duty). Thus,  $x$  or  $y$  could make self-defense justified or, for that matter, contribute to that justification, only if self-defense is not absolutely prohibited.

Moreover, it must be the case that self-defense is possibly motivated. This assumption is not built into the conception of self-defense being actually justified in  $C$ , since self-defense might be justified even if there is no moral reason to act in self-defense. The criminal who breaks into someone's home in order to steal a leftover blood sample for a harmless science project might justify that person in using defensive measures to prevent the vandalism, but it is not clear that there is any *moral* reason to prevent this. The person who finds this activity strange but harmless is hardly lacking in moral reasons-responsiveness when she fails to defend herself against the taking of the sample.

While these observations alone do not conclusively support the conclusion that all theories of self-defense permit overdetermination, they do some work in clearing the way of conceptual obstacles. In particular, they show that two possibilities which necessarily would make overdetermination impossible do not hold for theories of self-defense. This provides some support for the conclusion that overdetermination is (necessarily) possible for theories of self-defense. Fortunately, stronger support can be given.

An extended fully *a priori* defense of the possibility of overdetermination includes cases in which overdetermination appears obvious. There are, necessarily, possible worlds in which

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<sup>134</sup> Both are likewise necessary for moral *determination* (again, in the grounding sense).

there is more than one duty which normatively implies a self-defensive requirement.<sup>135</sup> Call the particular circumstances of that world ‘*C*’. Returning to our earlier example, we have the following set of duties<sup>136</sup>:

- (i) *x*: all parents have a *pro tanto* duty to protect their children;
- (ii) *y*: all innocent persons have a *pro tanto* duty to protect themselves; and
- (iii) *z*: all persons have a *pro tanto* duty to prevent catastrophe.

Let us suppose that the following is true of *C* at time *t*:

- (iv) unless S self-defends at *t*, S will fail to *x*;
- (v) unless S self-defends at *t*, S will fail to *y*; and
- (vi) unless S self-defends at *t*, S will fail to *z*.

Suppose also that there is no duty distinct from *x*, *y*, and *z* which implies that S ought to self-defend at *t* in *C*, but that it is true that S ought to do so. Since something grounds S’s obligation to self-defend at *t* in *C*, it follows from this that *x*, *y*, or *z*, or some combination thereof, grounds S’s obligation to self-defend at *t* in *C*.<sup>137</sup> Furthermore, assume (as is plausible) that the following are likewise true of *C*:

- (vii) there is no lexical priority amongst *x*, *y*, and *z*; and
- (viii) there is no temporal priority amongst *x*, *y*, and *z*.

Thus, when S finds herself in *C* at *t*, there is no duty she first acquires and there is no duty which enjoys a ‘first-to-ground’ privilege in virtue of some sort of lexical priority. In such a case, it is true that no particular duty uniquely grounds S’s duty to self-defend in *C* at *t*. Yet since S’s duty to self-defend in *C* at *t* is grounded by *x*, *y*, or *z*, or some combination thereof, it follows that

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<sup>135</sup> Though this might appear question-begging, the relevant world will be described in a way that does not beg the question.

<sup>136</sup> The following set of duties can easily be substituted for a distinct set where the duties requiring self-defense are more obviously such that there is no lexical priority.

<sup>137</sup> The disjunction, therefore, is not assumed to be exclusive, but neither is it assumed to be inclusive. Thus, the question of whether overdetermination is possible is not begged by the inclusion of an ambiguous (though soon to be disambiguated) disjunction.

S's duty to self-defend in *C* at *t* is grounded by *x*, *y*, and *z* (each of which is sufficient for the duty to self-defend). Therefore, S's duty to self-defend in *C* at *t* is overdetermined.

There is another argument for this conclusion: a best-explanation argument. The duty to self-defend appears stronger in cases in which more is at stake than in cases where less is at stake. If S's failure to self-defend would result in the death of his family and the destruction of the greater Baltimore area, S's duty to self-defend is plausibly stronger than in a case in which S's failure to self-defend would result merely in his own death. In such a case, S's duty to self-defend appears stronger because of the normative influence of certain counterfactual considerations, namely, that the destruction of Baltimore would result and that would be worse. Thus, the fact that the duty to self-defend appears sensitive to these concerns is further evidence for the possibility of overdetermination.

The explanation acquires further strength when it is recognized that the relevant moral considerations (preventing the death of one's family and preventing the destruction of Baltimore) are each individually sufficient to motivate at least a *pro tanto* duty to self-defense. Because of this, each consideration is ordinarily duty-creating, and it is difficult to see why it would fail to be *duty-affecting* in these cases.

But why is overdetermination ruled out by the trivializability constraint? To see why, consider first that it is a necessary truth that for every agent *S* (as argued in chapter 2), *S* has a strong *pro tanto* duty to refrain from assaulting any person.<sup>138</sup> If *S* is to be justified in assaulting and even obligated to assault a person, then the *pro tanto* duty to refrain from doing so must be

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<sup>138</sup> It is a necessary truth because, as defended above, it is true in every possible world that if persons exist, they have a presumptive right not to be killed or harmed, which entails a corresponding duty on others not to harm or kill persons absent forfeiture and countervailing considerations. But if some claim is true in every possible world, then it is a necessary truth.



trumped.<sup>139</sup> But if it can be trumped and in a way that is overdetermined, a problem arises.<sup>140</sup> Suppose that if Defender is to avoid the horrific leveling of Baltimore, she must torture Threat. As in a previous case, Defender's spouse, children, parents, and extended family live in Baltimore. Defender is herself in Baltimore interrogating Threat. Grant lastly that torturing Threat is obligatory and overwhelmingly so. If this is true, then one's *pro tanto* duty not to assault Threat (which includes torturing Threat) is trumped severely by one's duty as defender, such that the initial *pro tanto* duty would be trivialized.

For strict forfeiture theories of justified self-defensive assault, concerns of trivializability work only somewhat differently. On strict forfeiture theories, Threat forfeits his right not to be assaulted by Defender by unjustly attacking Defender. Because this right uniquely grounds the *pro tanto* duty against assaulting Threat, its absence implies not a *trumped pro tanto* duty but an *absent pro tanto* duty. Thus, *if* trivializability is possible in these cases on forfeiture theories, it cannot be that the *pro tanto* duty is trivialized, because there is no *pro tanto* duty.

Recall that, as argued above, the rights of persons include the right not to be treated carelessly and the right not to be harmed casually. This does not entail that rights depend on whether persons forfeit their right not to be assaulted, for at least two reasons. First, the rights appear logically distinct. The right not to be assaulted does not entail the right not to be treated carelessly, for example. Second, the rights not to be treated carelessly and not to be harmed casually are essential to persons whereas (according to forfeiture theories) the right not to be assaulted is not an essential property of persons. Thus, the latter right can by hypothesis be

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<sup>139</sup> It might seem that trumping is unnecessary to justify assaulting a person, since it is commonly assumed to be sufficient that the *pro tanto* duty of no-assault be undermined (trumped/overridden), or given up (say, by forfeiture). But the mere absence of that *pro tanto* duty would be insufficient to ground a *duty* to assault.

<sup>140</sup> The metaphor of the trump card is illustrated powerfully by Dworkin (1984), chapter 6, 153.

forfeited, but the former rights are not forfeited when the latter right is forfeited and cannot be forfeited. What can be trivialized on forfeiture theories, then, is harming persons.<sup>141</sup>

We might tack on a fistful of other duties which coincide to overdetermine one's duty to torture Threat. In addition to *x*, *y*, and *z*, we might add *q*, *r*, *s*, and *t*, and so in. There might in principle be an infinite number of such duties, or at least such a swath of duties that the *pro tanto* duty to refrain from assault is inestimably outweighed. Recall the case in which a friend's wish to have her ceramic penguin face North ought to be violated since failing to move the penguin will otherwise result in loss of life or limb. The savior's *pro tanto* duty to act within the bounds of her friend's wishes is vastly overridden by the various duties requiring the savior to save lives. It is because of this significantly overdetermined trump that the savior would be justified in refusing to give even a second thought to tossing the penguin. Something similar could occur in some cases of assault, however, in which self-defensive assault can be and is (over)determinately justified. Yet this conclusion is vastly at odds with the existence of a trivializability constraint for assaulting persons. Because there is such a constraint and because the possibility of justified self-defensive assault entails the possibility of overdetermination, and because such overdetermination would result in trivializing a duty for which there is a trivializability constraint, we should conclude that self-defensive assault is not possibly justified.

#### ***4. Objections***

The lynchpin of the argument against SD2 concerns overdetermination. In that argument, it was claimed that any number of distinct duties might normatively affect the duty to self-defend

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<sup>141</sup> Where overdetermination occurs and objectively justifies casually harming Threat or treating Threat carelessly, there is no (absolute) right not to be harmed casually and no (absolute) right not to be treated carelessly. Where there are such (absolute) rights, trivializability and the overdetermination implying it are therefore impossible.

against an aggressor. Because of this, the moral presumption against assaulting a person would be trivialized in whichever possible worlds the horde of duties overdetermines the justification for assaulting a person. In virtue of this false modal implication, SD2 is false.

What might be said against this suggestion is that the argument itself provides principled reason to reject the very possibility of trivializing overdetermination while maintaining the possibility of some overdetermination. This might appear *ad hoc*, but it need not in fact be so. The argument offered here might as well be an argument against the possibility of excessive overdetermination, and one might suppose that this is logically compatible with the truth of SD2.<sup>142</sup> Moreover, this suggestion is compatible with agnosticism about what the precise cutoff conditions for normative influence are: which duties are disqualified, to what extent normative influence can occur, and the like. Thus, the objector might concede that the *a priori* argument above would be compelling if there were not countervailing *a priori* considerations, such as this argument provides. More specifically, the *a priori* argument would succeed in showing that trivializing overdetermination is made possible by SD2 only if there is no principled way for SD2 to remain true while ruling out trivializing overdetermination, but this is precisely what is made possible by the argument against SD2.

Beyond trivializing the presumptive duty against assaulting persons (call that duty ‘*p*’), there is a secondary constraint for *p*. Consider the following case:

**ALMOST NONCHALANT TORTURING DEFENDER** captures and tortures Threat to prevent a catastrophe. Defender realizes that torturing Threat cannot be trivialized, and she does not demonstrate a total lack of moral attentiveness to whether her actions are necessary, right, etc. She is not nonchalant. But she is *close* to being nonchalant; she remains very comfortable and assuming and regards torturing Threat as *nearly* inconsequential.

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<sup>142</sup> Unless, as has been argued here, and as will be further argued in a moment, SD2 does *entail* the possibility of trivializing overdetermination.

While not acting quite as wrongly as Nonchalant Torturing Defender, Almost Nonchalant Torturing Defender does act wrongly. She acts wrongly because torturing a person is not near-trivializable, and thus it is wrong to treat torturing a person as if it is near-trivializable. Thus, for some duties, there is a secondary constraint:

**CONSTRAINT 2:**

**There is some class of duties which are not near-trivializable.**

The account of near-trivializability is conceptually similar to the account of trivializability:

**NEAR-TRIVIALIZABILITY:**

**A duty,  $X$ , is nearly trivialized if there is some possible world in which some agent is objectively morally justified in treating or regarding a violation or disregarding of  $X$  as nearly morally inconsequential.**

To forbid agents from treating or regarding a violation or disregarding of some duty as nearly morally inconsequential is, again, not to require those agents to feel or believe a particular way about a duty. Furthermore, it is logically possible for some agent to violate her duty to observe the near-trivializability constraint for the duties admitting of such a constraint, yet fail to do so in a blameworthy way. An agent might be unaware that there is such a constraint, and thus would not plausibly be blameworthy for failing to abide by the normative demands of the constraint. Thus, the agent might be epistemically (or subjectively) morally justified in treating or regarding  $X$  as if it were morally inconsequential, but she could not be objectively morally justified.

As in the case of torture, I claim that there is a near-trivializability constraint for the duty against assaulting persons,  $p$ ; thus,  $p$  cannot be nearly trivialized. It would be objectively wrong for an agent to assault a person by breaking her finger in a morally near-nonchalant way, say, by

taking it seriously but in a borderline way: one is very nearly *not* taking it seriously. Because a near-trivializability constraint exists for *p*, which includes all cases of assaulting persons, it extends to cases in which assaulting persons is done under widely-believed justifying conditions for self-defense.

The argument from the trivializability constraint proceeded as follows: there is a trivializability constraint for *p*, which entails that *p* cannot be trivialized, and *p* would be trivialized if severe overdetermination for justifying violating *p* was possible. Necessarily, if SD2 is true, then severe overdetermination for justifying violating *p* is possible. Therefore, SD2 is false. The trivializability constraint for *p* draws a metaphorical line in the sand: there is a cap on the number of duties or extent to which duties can normatively affect one's justification for violating *p*. For example, suppose that *x*, *y*, and *z* each individually normatively justifies assaulting a person in self-defense and therefore violating *p*. If *x*, *y*, and *z* normatively justified this, they would severely overdetermine (and therefore trivialize) violating *p*. However, suppose that if only *x* and *y* normatively justified violating *p*, the violation of *p* would not be trivialized by severe overdetermination. In that case, *z* remains a *pro tanto* duty, but it does not normatively support violating *p* because it literally cannot do so.<sup>143</sup> This is analogous to a case in which the duty to prevent catastrophe does not imply that one ought to violate the duty to refrain from committing genocide: because genocide is absolutely wrong, it cannot be morally required, and thus no duty can stand in the relevant justifying relation. A trivializability constraint makes severe overdetermination impossible, and therefore makes impossible any and all relations which would entail such severe overdetermination.

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<sup>143</sup> Thus, *z* is a *pro tanto* duty in the following sense: it is normative or has normative implications, other things being equal. Absent special conditions, agents should *z*. Alternately or in addition, *z* is a *pro tanto* duty in the following sense: agents should *z*, but not all avenues to *z* are permissible (e.g., violating *p*).

The move attempted in the objection is to make possible some overdetermination with respect to  $p$ , but not enough to trivialize  $p$ . If successful, this move would, for example, effectively permit  $x$  and  $y$  to justify violating  $p$ , but would not permit  $z$  from simultaneously justifying a violation of  $p$ . It is helpful to think of the constraints as thresholds, and Figure 1 is helpful in illustrating the relations:

<u>Duty</u>	<u><math>p</math>-Affecting Status</u>
$z$	non-affecting
TRIVIALIZABILITY CONSTRAINT	
$x$	affecting
$y$	affecting

Above the constraint, which is rightly conceived and effectively illustrated as a threshold, no duties normatively affect  $p$ . Beneath the constraint threshold, duties can normatively affect  $p$ , even overdetermining the justification for violating  $p$ .<sup>144</sup> Because of the near-trivializability constraint, however, our scale must include a secondary threshold, as represented in Figure 2.

Suppose now that  $z$  remains above the trivializability threshold, which entails that it does not affect the justification for  $p$ . Unfortunately for  $x$  and  $y$ , while they did fall below the trivializability threshold, they would (if they affected  $p$ ) justify an agent in treating or regarding  $p$

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<sup>144</sup> Because specifying where the threshold ‘begins’ is a matter of specifying the total set of sufficient conditions for trivializability, and because this essay focuses on only one sufficient condition, no more will be said about the finer details of the constraint in regards to a scale as represented in Figure 1.

as nearly morally inconsequential. Thus, they fall above the near-trivializability constraint, and therefore do not affect the justification for  $p$ .

**Figure 2**

<u>Duty</u>	<u><math>p</math>-Affecting Status</u>
$z$	non-affecting
TRIVIALIZABILITY CONSTRAINT	
$x$	non-affecting
$y$	non-affecting
NEAR-TRIVIALIZABILITY CONSTRAINT	
$a$	affecting
$b$	affecting

A proponent of SD2 might and should accept this scale. No duty can affect the justification for  $p$  if its doing so would either trivialize  $p$  or nearly trivialize  $p$ . The trouble is with “nearness,” which is a paradigmatic example of an essentially vague predicate, or a predicate which essentially admits of vague cases. Figure 2 represents  $a$  and  $b$  as being duties which normatively effect  $p$ , but not in a way that would objectively justify any agent in regarding the violation of  $p$  as nearly morally inconsequential. Yet among the duties which would *pro tanto* require violating  $p$  (or would *pro tanto* require further violating  $p$ ), there are some duties which are metaphysically indeterminate with respect to affecting  $p$ , as represented in Figure 3.

**Figure 3**

<u>Duty</u>	<u><i>p</i>-Affecting Status</u>
<i>x</i>	non-affecting
<i>y</i>	non-affecting
<i>c</i>	non-affecting(?)
NEAR-TRIVIALIZABILITY CONSTRAINT	
<i>c</i>	affecting(?)
<i>a</i>	affecting
<i>b</i>	affecting

Some duties are weighty enough that they will nearly trivialize *p*. Others are weak enough that they will be considerably distant from trivializing *p*. And still other duties will be borderline cases: it will be neither true nor false that they trivialize *p*. This occurs in ordinary cases of nearness. If two objects are within half an inch of each other, they are near each other. If they are a mile away from each other, they are not near each other. But it is indeterminate whether they are near each other if they are, say, sixteen feet away from each other.

To think of it with a somewhat more extended analogy, suppose you were asked to determine whether two objects, O1 and O2, were near one another. They begin two feet apart, and you confirm that they are near one another. Suppose that at twenty feet, you claim that the objects are now no longer near each other. If the objects were moved half an inch closer to each



other, would they be near each other? There is a point at which it is neither true nor false that the objects are near each other.

Because duty *c* is a similarly borderline case, it might be represented as either affecting or non-affecting with respect to *p*. Of course, it cannot be the case that *c* both affects *p* and fails to affect *p*, since the law of excluded middle holds for whether *c* is duty-affective with respect to *p*. Yet as an indeterminate case, it would do just that. Such a status is logically impossible (since excluded middle holds) and, therefore, it is impossible for there to exist such indeterminate cases. But as a matter of conditional necessity, there are such cases if there is a near-trivializability constraint and if any duties whatsoever normatively affect *p*: some will affect *p*, some will not, and still others (the borderline cases) will do neither.

A final objection bears similarity to the last objection. There exists a view, much like the one defended here, which concedes the impossibility of trivializing self-defensive assault. But unlike the view defended here, this alternate view denies that Constraint 1 rules out overdetermination. The view is similarly motivated. (Trivializability appears impossible; therefore, it is impossible. If self-defensive assault is permissible at all, then overdetermined self-defensive assault is possible.) But this, the alternate view might argue, does not rule out overdetermination, even massive or infinite overdetermination. Rather, it rules out *trivializing* overdetermination, including *trivializing* massive and infinite overdetermination. In effect, no matter how severely the duty to self-defensive assault is overdetermined, it remains impossible to trivialize assaulting persons.<sup>145</sup>

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<sup>145</sup> Bekka Williams suggested this alternate view and raised it as an objection in conversation.

The alternate view's deficit concerns the implausibility of maintaining that the trivializability constraint, particularly Constraint 1, is necessarily unaffected by the various relations there are, including overdetermination. The truth of Constraint 1 fails to rule out as impossible any actual (or merely logically possible) relations, but it rules out certain relations which, absent Constraint 1, would be possible. Think of this in terms of moral theory. Some moral theories do not include Constraint 1, whereas others do. Of those that do not, certain moral relations, like trivializability-by-overdetermination, are maintained to be possible. Thus, Constraint 1 implies that some moral theories are false.

Now consider an analogy. Suppose it is claimed that the act of rotating a ceramic penguin to the slight annoyance of a friend cannot be committed in a morally casual way. Against this, it is reasonably argued that such an act can surely be done with moral ease. After all, if rotating the penguin is all that is required to prevent every catastrophe in the world (every war, every labored and asthmatic breath), surely some agent would be objectively justified in rotating the penguin without a second thought. The evidential basis for inferring trivializability is apparent: massive overdetermination. This is evidence for the conclusion that Constraint 1 is sensitive to overdetermination in the following way: overdetermination is sufficient for trivializability. But that is just what the defender of the alternate view denies. Thus, the alternate view is false.

### *5. Conclusion*

For various reasons, some believe and defend a particular thesis about self-defense, namely:

**SELF-DEFENSE 2:                      Acts of self-defense are (*pro tanto*) morally required.**

Here it was argued that SD2 is false in virtue of an untoward modal implication: that the presumptive duty against assaulting a person can be overridden or undermined so as to justify an act of self-defense, and that the duties which ground the duty to self-defensive assault can overdetermine the justification for self-defensive assault. Such overdetermination is impossible for duties for which there is a trivializability constraint, and there is just such a constraint for the presumptive duty against assaulting persons. As SD2 implies that there is some possible world in which the presumptive no-assault duty is trivialized and there is no such world, SD2 is necessarily false.

Against this, it was argued that the argument from trivializability itself permits advocates of SD2 to reject trivializing overdetermination while accepting overdetermination. But this is implausible because at least for the presumptive duty against assaulting persons, there is also an almost-trivializability constraint, and that constraint forces the defender of SD2 to claim that there are metaphysically indeterminate cases of the following sort: some duty,  $x$ , neither normatively requires self-defense nor fails to require self-defense. Since every duty necessarily does one or the other, this is impossible, and thus there can be no duties which normatively require self-defense. Plausibly, this is because self-defense is not the sort of thing that can be required because it is absolutely wrong.

## CONCLUSION

This essay addressed the moral permissibility of self-defensive assault. All cases of self-defensive assault involve a Defender and a Threat. The following provisional account of assault was defended:

**Defender assaults Threat at time  $t$  if and only if** Defender intentionally and directly brings about some state of affairs  $C$  in which a fully-informed Threat would have conclusive prudential reason to escape  $C$  if Threat aims to protect Threat's organism and if no other  $C$ -type circumstance would result if Threat attempted to escape  $C$ .

Self-defensive assault is a threat to Threat's organism. These threats might be intentionally brought about (as in cases where Defender personally or directly attacks or inflicts harm on Threat) or intentionally permitted to be brought about (as in cases where Defender impersonally or indirectly hires a hit-man to kill Threat or directs Threat to a dangerous area with the plan that Threat will be assaulted).

This essay was exclusively concerned with self-defensive assault and no other potential justifications for assault.<sup>146</sup> Thus, other-defense, punishment, prevention of catastrophe and other evils, and non-domestic grounds for initiating or engaging in warfare were excluded from full consideration. It was maintained, however, that whether there is a right to self-defense plausibly has implications for each of these other attempts at justifying assault.

The first chapter, "Theories of Self-Defense," offered a workable definition of assault, reviewed eliminativist and non-eliminativist theories of justified self-defensive assault, and showed that certain eliminativist theories can with internal consistency oppose all assault. It was also argued in that chapter that the Doctrine of Double Effect (DDE) is both friend and foe to

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<sup>146</sup> The exception occurred in Chapter 3 in which all possible moral considerations which might make self-defensive assault obligatory were refuted.

such theories, as such theories require DDE to maintain coherence but this acceptance of DDE must be cautious insofar as DDE has been sometimes supposed to offer justification for assaulting persons. One response for eliminativists is to avail themselves of the principle that it is wrong, always, everywhere, and for anyone, to intend acts which have as their effects some absolute wrong when those acts can be avoided merely by failing to intend them. This escape route was then defended from putative counterexamples.

The second chapter, “Against Merely Permissible Self-Defense,” defended eliminativism against the thesis that acts of self-defensive assault are morally permissible but not morally obligatory. It was shown that the broad literature on self-defensive theories supports certain requirements for permissible self-defense, including proportionality and necessity. Regarding necessity, it was argued that for an act of self-defensive assault to be permissibly employed against a person, assault must be the only reasonably accessible and permissible means to achieve the end of preserving oneself from harm. But in addition to this means-selection principle, it was argued that there are likewise applicable end-selection foreseen-effects-selection principles. According to those principles, it is wrong to choose an end requiring assault as a means when the selection of some other end, an end not requiring assault as a means, is permissible to choose; and it is wrong to choose an act with the foreseen effect that a person will be assaulted when there is some distinct act without such an effect which would be permissible to choose. Because allowing oneself to be harmed is always a right of persons and that is always a permissible option for persons to choose, persons ought to choose it. Thus, there is no merely permissible self-defensive assault such that *if* self-defensive assault is permissible, it is also obligatory.

The third and final argumentative chapter, “Against Obligatory Self-Defense,” defended the thesis that acts of self-defensive assault are not morally obligatory. On some theories of self-defense, such as justice-based theories, there is conceptual room to argue that self-defensive assault is obligatory since in circumstances where either Defender or Threat will bear the cost of Threat’s unjust assault on Defender, it is uniquely just to require Threat to bear that cost. On such views, because assaulting Threat in self-defense is the only way of making Threat bear that cost, assaulting Threat in self-defense is obligatory. It was argued that there exists a trivializability constraint for certain duties with the result that, if those duties cannot be morally trivialized (that is, if no possible agent would be objectively justified in regarding the violation of those duties as inconsequential), then certain justifying relations are impossible for the relevant acts. In particular, overdetermination is impossible in cases of justification for violation of a non-trivializable duty. Because one’s (alleged) duty to self-defend can necessarily be overdetermined, even massively or infinitely so, it follows that if there is a trivializability constraint for acts of assault on persons, then there is no duty to self-defend. As there is such a constraint, there is no duty to self-defend.

The latter chapters imply a dilemma for non-eliminativists about self-defense: if self-defense is permissible on any occasion, it is either permissible but not obligatory or permissible and obligatory. But, as argued in Chapter 2, self-defensive assault cannot be merely permissible, because that would sanction, among other things, intentionally causing unnecessary harm. As argued in Chapter 3, self-defensive assault cannot be obligatory, because there is a trivializability constraint regarding self-defensive assault which implies that such assault is absolutely prohibited, and that which is morally prohibited cannot simultaneously be morally required.

In conclusion, there are no permissible acts of self-defensive assault against persons, and therefore eliminativism about justified self-defensive assault is true. This conclusion is unorthodox and radical. Indeed, nearly no one defends it. But that does not show that it is false, although it does perhaps provide a presumption against the truth of eliminativism. The purpose of this essay was to offer reasons against that presumption and to offer a limited defense of eliminativism. That much has now been accomplished.

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