

# SELF-DEFENSE AND RIGHTS

by

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# Self-Defense and Rights<sup>1</sup>

Judith Jarvis Thomson

1. Suppose Aggressor has got hold of a tank. He had told Victim that if he gets a tank, he's going to get in it and run Victim down. Victim sees Aggressor get in his tank and start towards Victim. It is open country, and Victim can see that there is no place to hide, and nothing he can put between himself and Aggressor which Aggressor cannot circle round. Fortunately, Victim happens to have an anti-tank gun with him, and it is in good working order, so he can use it to blow up the tank, thereby saving his life, but of course thereby also killing Aggressor. I think that most people would say that it is morally permissible for Victim to use that anti-tank gun: surely it is permissible to kill a man if that is the only way in which you can prevent him from killing you!

On the other hand, one of the things we are firmly wedded to is the belief that human beings have a right to life, and this presumably includes the right to not be killed. Aggressor is a human being; so he, like the rest of us, has a right to life, and presumably, therefore, the right to not be killed. So how *can* Victim kill him? Precisely *why* is it permissible for Victim to use that anti-tank gun on Aggressor? I propose we look at three replies which I think come fairly readily to mind.

2. The first reply I am going to call "forfeit," and it goes like this. "We good folk all do have a right to life, and that does include the right to not be killed. But there is such a thing as forfeiting a right. We say such things as that the right to life, liberty, and the pursuit of happiness are 'natural rights,' and therefore unconditionally possessed by all people; but that is just so much high-minded rhetoric. What has happened in the case described is that Aggressor, by virtue of his attack on Victim, has forfeited his right to not be killed, and therefore his right to life. And *that* is why Victim may use his anti-tank gun on Aggressor, thereby killing him: he violates no right of Aggressor's in doing so."

But the fact is that this very natural first reply is not at all satisfactory. Suppose that as Victim raises his anti-tank gun to fire

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<sup>1</sup>I am indebted to the students and faculty of the Department of Philosophy at the University of Kansas, and to the members of the Society for Ethical and Legal Philosophy, for criticisms of earlier versions of the following paper.

it, Aggressor's tank stalls. Aggressor gets out to examine the engine, but falls and breaks both ankles in the process. Victim (let us suppose) now has time to get away from Aggressor, and is in no danger. I take it you will not think that Victim may all the same go ahead and kill Aggressor. But why not?—if Aggressor really has forfeited his right to not be killed by virtue of his attack on Victim.<sup>2</sup>

It could, of course, be said that at this point utilitarian considerations come into play. I.e., it could be said that yes, Aggressor has forfeited his right to life, but no, Victim cannot now kill him, and that this latter is true because Victim now has no need to kill Aggressor—indeed, because killing Aggressor would mean the loss of a life, whereas not killing Aggressor would mean no loss at all.

But I think this cannot be right. Suppose Victim is a great transplant surgeon. There is Aggressor, lying helpless next to his tank, with two broken ankles—but the rest of him physically fine and healthy. Can Victim now cart Aggressor off to surgery, cut him up, and give his one heart, two kidneys, and two lungs to five who need the parts? If Aggressor now has no right to not be killed (having forfeited it by his attack on Victim), so that utilitarian considerations are all we have to weigh here, it is hard to see why not. After all, five lives would be saved at a cost of only one. Yet surely Victim cannot do this.

I am inclined to think that it would no more be permissible for Victim to cut Aggressor up and parcel out his parts to save five than it would be for Victim to cut *you* up and parcel out *your* parts to save five. He cannot do this to you; and it is often said that the reason why he cannot (despite the fact that utilities might be maximized by doing so) is the fact that you have a right to life, and thus, presumably, the right to not be killed.<sup>3</sup> I should imagine that the very same thing makes it impermissible for Victim to do this to Aggressor, viz., the fact that Aggressor, now helpless and no danger to anyone, has a right to life, and thus, presumably, the right to not be killed.

There are, of course, those who think it permissible for a state to impose death, as a penalty, on one who commits one or another very serious crime. If any one of them is a friend of the reply I am

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<sup>2</sup>This question is asked by Sanford H. Kadish, in "Respect for Life and Regard for Rights in the Criminal Law," forthcoming. (In fact, this paper was caused by that one.)

<sup>3</sup>But it is not at all obvious that this is what explains the fact that Victim cannot cut you up and parcel out your parts to save five. Cf. footnote 7 below.

calling "forfeit," he will no doubt say that what makes it permissible is the fact that one who commits such a crime has forfeited his right to not be killed. But in the first place, I doubt that those who think of death as an acceptable penalty would think it an acceptable penalty for an (unsuccessful) attempt on the life of another, and it will be remembered that an (unsuccessful) attempt is all that Aggressor is guilty of. More important, even if it could be made out that it *will* be permissible, after trial and conviction, for an agent of the state to kill Aggressor, no agent of the state can kill him *now* (prior to trial and conviction). And Victim not only cannot kill him now, Victim—unless he is himself an agent of the state—is not going to be able to kill him at any time. So while it is (I suppose) open to those who regard death as an acceptable penalty for Aggressor's crime to say that he *will* (after trial and conviction) have no right to not be killed by an agent of the state, he at any rate *now* has a right to not be killed by Victim, indeed a right to not be killed by anybody at all, and thus a right to not be killed.

There are two moves open to a friend of 'forfeit.' He can say (1) that the fact that the tank stalled and Aggressor broke both ankles shows that it never was necessary for Victim to kill Aggressor, so that Aggressor never did forfeit his right to not be killed. Or he can say (2) that Aggressor did forfeit his right to not be killed when he launched his attack on Victim, but that he regained this right at the moment at which he ceased to pose a threat to Victim's life.

(1) would be an unfortunate choice for the purpose of 'forfeit.' For surely Victim could, permissibly, have killed Aggressor at any time between the launching of Aggressor's attack and the stall of the tank. (Who in such circumstances could be expected to know that the tank would stall? Who in such circumstances could be expected to wait in hopes of so freakish an accident?) That indeed was where we began: i.e., with the fact that it was then permissible for Victim to shoot. 'Forfeit' proposed to explain this fact by saying that Aggressor forfeited a right; yet (1) denies that he did.

(2) seems preferable for the purposes of this reply. If Aggressor did forfeit his right to not be killed when he launched the attack, that would explain why, between the launching of it and the stall of the tank, Victim could shoot; and if Aggressor re-acquired that right when he ceased to pose a threat to Victim, that would explain why, after the stall of the tank, Victim could no longer shoot.

But it is a far from happy choice. If it were by virtue just of the launching of that attack that Aggressor forfeited his right, then it

would seem possible to say that when the attack ceases, Aggressor re-acquires his right—the right being, as it were, in abeyance throughout the time of the attack. But it surely cannot be said to have been by virtue *just* of the launching of that attack that Aggressor forfeited his right. Compare a second aggressor and a second victim. Suppose that Second Aggressor launches a similar attack on Second Victim, but that Second Aggressor (by contrast with Aggressor) is innocent: Second Aggressor, let us suppose, is a schizophrenic, and he is under a hallucination that Second Victim is in a tank of his own, driving towards Second Aggressor's home and family, so that, as Second Aggressor sees it, he is merely trying to ward off an attack. Morality may not protect us from getting run down by lunatics in tanks, but it does permit our protecting ourselves from such a fate; and it seems plain that poor Second Victim, who is himself innocent, may permissibly use his anti-tank gun on Second Aggressor. Why is this permissible? It is an excellent question. But presumably 'forfeit' would be a most implausible reply in this case.<sup>4</sup> Perhaps Aggressor, being a villain, can be thought to have forfeited a right; Second Aggressor, however, being himself innocent, cannot. But then it is not by virtue *just* of launching an attack on Victim that Aggressor forfeits his right; Aggressor's bad intention figures too. Yet Aggressor's bad intention may be supposed to remain, even after he becomes helpless—we may imagine him continuing to plot as he is carried off to jail—and if that remains, how can he be thought to have re-acquired the right he forfeited at least in part because of that bad intention?

There is room for maneuver here. It could be said that the point is this: both Aggressor and Second Aggressor simply cease to have a right to not be killed when they launch their attacks on their victims, and both of them re-acquire that right when their tanks stall. (On this view, while Aggressor is guilty and Second Aggressor is not, this does not matter: launching an attack by itself—whether guilty or not—is what makes one lose the right to not be killed.) I shall come back to this idea later. For the moment, it should be noted that saying that Aggressor simply ceased to have the right is not the same as saying that Aggressor has forfeited the right. That is, *this* reply is entailed by the reply I am calling "forfeit," but is not identical with it.

3. The second reply I am going to call "specification." In fact,

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<sup>4</sup> Cf. again Kadish, *op. cit.*

I mean to use the term "specification" so as to cover two connected replies. Both begin in the same way. "You only think there's a problem here because you think that 'Aggressor has a right to life' entails 'Aggressor has a right to not be killed.' But it doesn't. We all do have a right to life, but that right to life is a more complicated business than it at first may appear to be. In particular, having a right to life *doesn't* include having a right to not be killed. Indeed, *nobody* has a right to not be killed: all you have is—" and here there are two ways in which the speaker may go on. I will call the first "moral specification": ". . . all you have is the right to not be wrongly, unjustly killed." I will call the second "factual specification": ". . . all you have is the right to not be killed if you are not in process of trying to kill a person, where that person has every reason to believe he can preserve his life only by killing you." There is what seems to me a serious objection, which bears against both of these equally. But first let us look at difficulties specific to each.

I used to think that the reply I have called "moral specification" was the right reply to make in the case I described, as in other, similar, cases. That is, I used to think it just a mistake to suppose that anyone has a right to not be killed. It is so obvious that there are cases in which it is permissible, and therefore no violation of anyone's rights, to kill a person that it seems right to say that the most we can plausibly be thought to have is a right to not be wrongly or unjustly killed. But if so, then it is hard to see how appeal to rights which we do or do not have can *explain* why it is or is not permissible for a person to kill. Consider Victim. We were asked to explain why it is permissible for Victim to use his anti-tank gun on Aggressor, thereby killing him; and consider the following answer: "The reason why it is permissible for Victim to kill Aggressor is that Aggressor has no right to not be killed—he only has a right to not be killed wrongly or unjustly—and in killing Aggressor, Victim would not be killing Aggressor wrongly or unjustly." One does not mind all circles, but this circle is too small. For it to be permissible for Victim to kill Aggressor *is* for it to be the case that in killing Aggressor, Victim does not act wrongly or unjustly; and we cannot say that the reason *why* Victim is not acting wrongly or unjustly in killing Aggressor is the fact that in killing Aggressor, Victim is not acting wrongly or unjustly.

The reply I have called "factual specification" is, I think, even less satisfactory. Let us look at it again. "Nobody has a right to not be killed: all you have is a right to not be killed if you are not in



process of trying to kill a person, where that person has every reason to believe he can preserve his life only by killing you." Hence Victim can kill Aggressor. For Victim violates no right of Aggressor's in killing him, for Aggressor is in process of trying to kill Victim, where Victim has every reason to believe he can preserve his life only by killing Aggressor.

But the fact is that there are a great many other cases in which it is permissible to kill a man—defense of your life against a villain is by no means the only one. Consider Second Aggressor again. Second Aggressor is no villain; yet Second Victim can shoot to kill.

Again, consider a case which involves what Robert Nozick calls an "innocent shield of a threat."<sup>5</sup> Third Aggressor is driving his tank at you. But he has taken care to arrange that a baby is strapped to the front of the tank, so that if you use your anti-tank gun, you will not only kill Third Aggressor, you will kill the baby. Now Third Aggressor, admittedly, is in process of trying to kill you; but that baby isn't. Yet you can presumably go ahead and use the gun, even though this involves killing the baby as well as Third Aggressor.

It would, of course, be consistent to opt for 'factual specification' in the original case of Aggressor and Victim, and yet not opt for a similar reply in these other cases. Yet it is hard to see what reason there could be for distinguishing. And if a similar reply is opted for in these other cases, we shall find ourselves having to say, not only that nobody has a right to not be killed, but also that you do not even have a right to not be killed if you are not in process of trying to kill a person, where that person has every reason to believe he can preserve his life only by killing you. We shall find ourselves having to say that the most you have is a right to not be killed if (a) you are not a villain who is trying to kill a person, and (b) you are not a schizophrenic who is trying to (as he sees it) ward off an attack on his home and family, and (c) you are not tied to a tank which will kill a person—where the threatened person in (a), (b), and (c) has every reason to believe he can preserve his life only by killing you.

And this is obviously not the end of it. Consider a case of a quite different kind, which I borrow from Philippa Foot.<sup>6</sup> You are

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<sup>5</sup> Cf. his *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 35.

<sup>6</sup> Cf. her "Abortion and the Doctrine of the Double Effect," *Oxford Review* 5 (1967).

the driver of a trolley. On the track ahead of you are five track workmen. The banks are very steep at that point, and they are not able to get off the track. Well, it is plain enough: you had better put on your brakes. Alas, the brakes do not work. You notice just then that there is a spur of track leading off to the right, and your wheel works so that you can turn off onto it. But again alas, you can see that there is one track workman on the track on the right, and he too cannot get off the track. So you can do nothing, in which case you kill five; or you can turn off to the right, in which case you kill one. Presumably it is morally permissible—some would even say it was morally required—that you turn the trolley off to the right, thereby killing one. But *why* is it permissible to kill that one? Does he not have a right to life?<sup>7</sup> Notice that *he* is not threatening anybody at all; nor is he an innocent shield of a threat. A friend of 'factual specification' will then presumably have to expand still further his list of conditions under which killing is permissible, and thus make still more complicated the right which—as he says—is the most we have in respect of life.

Where is this to end? Is there anybody who knows what right it is which (it is here suggested) is the most we have in respect of life?

Moreover, it is worth noticing that a kind of circle is going to turn up here too. What the friend of 'factual specification' has to do is to figure out when it is permissible to kill, and then tailor, accordingly, his account of what right it is which is the most we have in respect of life. But if that is the only way anyone can have of finding out what right it is we have in respect of life, how can anyone then *explain* its being permissible to kill in such and such circumstances by appeal to the fact that killing in those circumstances does not violate the right which is the most the victim has in respect of life?

But I think there is a still more serious objection, which bears equally against both 'moral specification' and 'factual specification.' What I have in mind is that both replies issue from what I think

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<sup>7</sup>If the workman on the right-hand track has a right to life (and it seems plain that if we do, he does), then we cannot explain the fact that a surgeon cannot cut you up and parcel out your parts to save five by appeal to the fact that you have a right to life. For so does the workman; yet the driver *can* turn the trolley onto him to save five. Mrs. Foot (*op. cit.*) has an explanation; another may be found in J. J. Thomson, "Killing, Letting Die, and the Trolley Problem," *The Monist* 59 (1976).

is an incorrect view of rights: neither would be opted for by anyone who did not take the view that rights are, in a certain sense, *absolute*. What this sense is may best be brought out if we make a terminological distinction. Suppose a man has a right that something or other shall be the case; let us say he has a right that *p*, where *p* is some statement or other. And now suppose that we make *p* false. So, for example, if his right is the right that he is not punched in the nose, we make that false, i.e., we bring about that he *is* punched in the nose. Then, as I shall say, we *infringe* his right. But I shall say that we *violate* his right if and only if we do not merely infringe his right, but more, are acting wrongly, unjustly in doing so. Now the view that rights are 'absolute' in the sense I have in mind is the view that every infringing of a right is a violating of a right.

This view of rights seems to me, as I said, to be incorrect. That it is comes out in the following case. You are rich, and therefore own lots of steak, which you keep in a locked freezer on your back porch. Here is a child with a terrible protein deficiency: he will die if I do not get some protein into him fast. I have none myself at the moment. I call you to see if you will lend or sell me a steak, but your answering service says you are out of town for the weekend, and they do not know where. The only way in which I can get some protein for that child is to break into your freezer and take a steak. Now most people would say it is okay, I can go ahead. But why? Don't you have a right that people will not break into your freezer and take a steak? If anyone thinks that rights are 'absolute,' then he is committed to saying that you do not after all have a right that people will not break into your freezer and take a steak, and this on the ground that I do not act wrongly or unjustly if I do so—and I surely do not act wrongly or unjustly if I do so, since it is permissible for me to do so. This is not to say he has to deny you have *any* rights over your freezer and your steak. We are all familiar by now with the kind of right he can say you have. He can engage in moral specification: he can say that although you do not have a right that people will not break into your freezer and take a steak, you do have a right that people will not do this wrongly or unjustly. Or, alternatively, he can engage in factual specification: he can say that the right you do have is that people will not do this except where they have in hand a child with a protein deficiency, who will die if it is not done. But the point, I think, is that the wrong move was made from the start. Surely you *do* have a right

that people will not break into your freezer and take a steak. If you had no such right, why would I have to compensate you later for having done so? And surely I do have to compensate you: I have to pay for the damage I caused to the freezer, and I have to replace, or pay you for, the steak I took.

If all you had was a right that I not wrongly or unjustly break into the freezer and take a steak, then I would have done nothing at all you have a right I not do; in which case, why would I owe you anything for what I did? Similarly, if all you had was a right that I not break into the freezer and take a steak when I do not have a starving child to feed, then since I did have a starving child to feed, I would have done nothing at all you had a right I not do; so once again, no compensation would be owing. The fact that compensation is owing shows (and it seems to me, shows conclusively) that I did do something you had a right that I not do. How are we to square this fact with the fact that I did not act wrongly or unjustly in doing so? I think we had better allow that there are cases in which a right may be infringed without being violated—i.e., cases in which one does a thing another has a right he not do, and yet in which one does not violate a right.

Now I do not suppose that if Victim kills Aggressor in the circumstances I described at the outset, then Victim must pay compensation to Aggressor's heirs. I do not suppose that if the trolley-driver turns off to the right, killing the one, then he must pay compensation to the one's heirs. But there surely are cases in which it is permissible to kill, and in which compensation is owed. If you are an "innocent threat"<sup>8</sup> to my life ( you threaten it through no fault of your own), and I can save my life only by killing you, and therefore do kill you, I think I do owe compensation, for I take your life to save mine. If so, I infringe a right of yours but do not violate it. And this means that at least some rights in respect of life—as well as at least some rights in respect of property—are not absolute.

It could, of course, be insisted that Victim (supposing he killed Aggressor) not only violated no right of Aggressor's, but also infringed no right of Aggressor's. And as I said, there is no need for Victim to compensate Aggressor's heirs, so there is not available *that* ground for saying that Victim infringed a right of Aggressor's. On the other hand, if we do say that Victim infringed a right of Aggressor's (and that the trolley-driver infringed a right of the one

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<sup>8</sup> The term is Robert Nozick's: *cf. op. cit.*, p. 34.

on the right-hand track, and . . .), then it is open to us to say—what had certainly seemed plausible at the outset—that we all of us do have a right to not be killed. Quite simply: a right to not be killed. Not an absolute right to not be killed, of course, only a non-absolute right to not be killed. And saying this would be entirely consistent with saying that we also have the (absolute) right to not be killed wrongly or unjustly, which the moral specifier attributes to us, and the (absolute) right to not be killed if (a) we are not a villain who is trying to kill a person, and (b) we are not a schizophrenic who . . . , which the factual specifier will attribute to us if and when he ever finishes specifying it.

It is not surprising that people are inclined to opt for the view that rights are absolute: if a person has a *right* to such and such how can it be that anyone may, permissibly, deprive him of it? Isn't a right something one can positively *demand* accordance with? But the fact is that there are occasions on which a right is infringed but not violated; and a moral philosopher has to find some way of explaining what makes this be the case when it is. A move which is familiar enough is to say that what makes this be the case when it is is the fact that the right in question is 'over-ridden.' It is a natural idea, then, that we should make the same move in respect of Victim and Aggressor. This brings us to the third of the three replies to the question I asked: for obvious reasons, I will call it "over-riding."

4. An over-rider begins as follows. "Yes, Aggressor does, like the rest of us, have a right to not be killed. A non-absolute right is all it is, however. And the reason why it is permissible for Victim to kill Aggressor is the fact that, the circumstances being what they are, Aggressor's right to not be killed is over-ridden." But what does "His right is over-ridden" mean? If it means only "It is permissible to infringe his right," then—so far as explanatory force is concerned—the over-rider might as well have instead said "And the reason why it is permissible for Victim to kill Aggressor is the fact that, the circumstances being what they are, it is permissible for Victim to kill Aggressor."

Moreover, by what is Aggressor's right supposed to be over-ridden? That is (as I take it), what is it in the circumstances such that, that thing being in the circumstances, it is permissible for Victim to kill Aggressor? An over-rider may be expected to answer in one or another of two ways. He may say "Aggressor's right to not be killed is over-ridden by the fact that a great lot of utility will

get produced if Victim kills Aggressor—much more utility than if Victim does not kill Aggressor.” Or he may instead say “Aggressor’s right to not be killed is over-ridden by a more stringent right of Victim’s.” I find the first of these two answers uninteresting: it is easy enough to add details to the story which, *prima facie*, at any rate, suggest that the utilities are not as the answer claims they are, and I think that a dispute as to whether or not they really do is not theoretically fruitful. So I shall attend only to the second of the two answers.

The answer obviously invites a question: “What makes one right be ‘more stringent than’ another?” If what makes Victim’s right (whatever it is) be more stringent than Aggressor’s right to not be killed is merely the very fact that it is permissible for Victim to kill Aggressor, then it is hard to see how we can explain the fact that it is permissible for Victim to kill Aggressor by appeal to a right in Victim which is more stringent than Aggressor’s right to not be killed. I do not say that no independent account of relative ‘stringency’ among rights can be given; I say only that an over-rider plainly needs one.

Moreover, there is a second question which the answer invites, and which we should take note of, namely the question “*What* right is it which Victim has, and which is more stringent than Aggressor’s right to not be killed, and which is such that, the circumstances containing the fact that that right of Victim’s is more stringent than Aggressor’s right to not be killed, it is permissible for Victim to kill Aggressor?” It is a good question, I think.

We might begin with this: the right which Victim has, and which meets those further conditions, is the right to preserve his life. But *is* Victim’s right to preserve his life more stringent than Aggressor’s right to not be killed? Certainly it just is not the case, quite generally, that one person’s right to preserve his life is more stringent than another person’s right to not be killed. Suppose I am starving, and need food or else I die. Suppose further that the only available food is *you*. I should imagine I do have a right to preserve my life; but surely your right to not be killed is more stringent than my right to preserve my life—surely it is not permissible for me to kill you to preserve my life!

Well, perhaps we simply fastened on the wrong right; perhaps we should instead have said that the right which Victim has, and which meets those further conditions, is the right to self-defense—more precisely, perhaps, the right to preserve his life against an

attack on it. (Your being the only available food does not make it be the case that you are *attacking* me.) But is Victim's right to preserve his life against an attack on it more stringent than Aggressor's right to not be killed? Certainly it just is not the case, quite generally, that one person's right to preserve his life against an attack on it is more stringent than another person's right to not be killed. Suppose I am being threatened with a gun, and the only way in which I can preserve my life against that attack on it is by grabbing some innocent bystander and shoving him in front of me. I should imagine I do have a right to preserve my life against an attack on it; but surely the innocent bystander's right to not be killed is more stringent than my right to preserve my life against an attack on it—surely it is not permissible for me to shove the innocent bystander in front of me!

I suppose it could be said that Aggressor's right to not be killed is less stringent than yours is, and than the innocent bystander's is, and that that is why Victim may act though I may not. Aggressor is a villain, after all, and neither you nor the innocent bystander is.

But then are we to suppose that after the stall of the tank, and Aggressor's breaking of his ankles, Aggressor's right to not be killed sweeps back to being just as stringent as yours is, and as the innocent bystander's is? For after that time, Victim may not kill Aggressor on any weaker grounds than would permit of his killing you or an innocent bystander.

The right to not be killed (as well as the right to preserve one's life, the right to preserve one's life against an attack on it, and the right to life itself) is traditionally thought to be a 'natural right,' i.e., a right a human being has simply by virtue of being a human being.<sup>9</sup> Now if a right is a right which we have simply by virtue of being human beings, it is not possible that some human beings possess it and others do not. Moreover, it is not possible that a human being possesses it at one time and not at another, so long as he remains a human being throughout.

Suppose the time now is after the start of Aggressor's attack on Victim, but before the time at which Aggressor ceases to pose a threat to Victim. If the right to not be killed is a natural right, so

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<sup>9</sup> Cp. H. L. A. Hart's definition of "natural right" in "Are There Any Natural Rights?," *The Philosophical Review* 64 (1955). Cp. also Joel Feinberg's definition of what he calls "human rights" in *Social Philosophy* (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1973).

defined (henceforth I shall take this qualification to be understood), then we plainly cannot say

- (1) Aggressor had (before launching his attack) and will again have (after breaking his ankles) a right to not be killed, but he does not have this right now. *That* is why Victim may now kill him.

But *is* the right to not be killed a natural right? It is by no means obvious that it is. Perhaps the right to not be killed is forfeitable. Hobbes thought that the right to not be killed is inalienable, but perhaps even this is wrong. Could one not voluntarily relinquish one's right to not be killed? Suppose I am terminally ill, and want to be able to provide for my children. Here is a rich man, who likes to kill. I say "For so and so much, to be given to my children, you may kill me now." Suppose, then, that he accepts my offer, and kills me. No doubt he does not act *well*. Perhaps he does what it is impermissible for him to do. But I think it arguable that he violates—even that he infringes—no right of mine, and that if he does act impermissibly, it is nothing to do with my rights that makes this so.

Moreover, even if the right to not be killed is a natural right, this does not settle what we are to say about the case in hand. Of course we may not say (1). I should imagine also that we cannot say

- (2) Aggressor has (at all times) a right to not be killed, but Aggressor's right to not be killed is (at all times) less stringent than any innocent person's is—so much less stringent as to be less stringent than Victim's right to preserve his life against an attack on it. *That* is why Victim may now kill him.

It is not inconsistent to suppose that a certain right is a right which we all have by virtue of being human beings, and nevertheless that it varies in stringency between human beings—in particular, between the innocent and the villains. We do of course say about natural rights that they are 'equal' in both of the following two senses: every human being has them, and no one human being's are any more stringent than any other human being's. But only the first follows from the definition of "natural right" which I gave above. So taking the right to not be killed to be a natural right does not rule out opting for (2). But I take it that what I drew attention to a moment ago *does* rule out opting for (2). What I have in mind



is the fact that after the stall of the tank, and Aggressor's breaking of his ankles, Aggressor's right to not be killed is surely just as stringent as yours is, and as the innocent bystander's is—for after that time, Victim may not kill Aggressor on any weaker grounds than would permit of his killing you or an innocent bystander.

This points, however, to a further possibility. It is not inconsistent to suppose that a certain right is a right which we all have by virtue of being human beings, and nevertheless that it sweeps back and forth from one degree of stringency to another in one human being—according as he is or is not threatening another. I do not think it is as commonly said that natural rights are also 'equal' in the following (third) sense: no one human being's are any more stringent at one time than they are at any other time. That they are 'equal' in this sense certainly does not follow from the definition of "natural right" I gave, or even from their being 'equal' in either of the two senses I pointed to. So it would be consistent to say that the right to not be killed is a natural right, and yet also opt for

- (3) Aggressor has (at all times) a right to not be killed, and Aggressor's right to not be killed was (before launching his attack) and will again be (after breaking his ankles) as stringent as any innocent person's is, but it is less stringent now—so much less stringent now as to be less stringent than Victim's right to preserve his life against an attack on it. *That is why Victim may now kill him.*

So far as I can see, nothing in the case rules this out.

But there is plainly yet another alternative. Don't we all of us have a right to kill a person who is currently giving us every reason to believe that he will kill us unless we kill him? And isn't this right as good a candidate for the status of 'natural right' as the right to not be killed is? And isn't it, moreover, *always* more stringent than the right to not be killed? If so, there is a fourth alternative:

- (4) Aggressor has (at all times) an equally stringent right to not be killed, but that right is (always) less stringent than the right—possessed by Victim—to kill a person who is currently giving every reason to believe that he will kill Victim unless Victim kills him. *That is why Victim may now kill him.*

Is there any principled ground for choosing between (3) and (4)? Indeed, between (1), (3), and (4)?—since, as I said, it is by no means obvious that the right to not be killed is a natural right.

The other side of the same coin is that (1), (3), and (4) are marvelously *ad hoc*. Consider the appeal in (1) to loss of, and then re-acquisition of, the right to not be killed; is there any reason to opt for (1) other than the fact that if we do, we seem to have in hand an explanation of why Victim may kill Aggressor? Similarly for the appeal in (3) to difference in stringency in one person across time. And what of that right to kill a person who is currently giving every reason to believe that he will kill you unless you kill him? Can there be any reason to suppose we have such a right other than the fact that it is permissible for a victim to kill an aggressor who is currently giving every reason to believe that he will kill the victim unless the victim kills him? Notice how carefully tailored to its explanatory purpose this right is.

Notice, moreover, how difficult it would be to find a lesson in any of this in respect of permitted killings generally. Take the case of the trolley driver I mentioned earlier. Surely the trolley driver may turn his trolley, to save five at a cost of one. Does it seem at all plausible to say that the reason why he may is that the one has ceased to have a right to not be killed, or that his right to not be killed is now less stringent than it was before he started work on that particular stretch of track? Of course we could say that the reason why the trolley driver may turn the trolley is that he has a right to turn his trolley onto one to save five, and that that right is always more stringent than the right to not be killed—cp. (4) above. But you might as well say: Leave me alone, I'm too busy to do moral philosophy this afternoon.

5. Many people who do moral philosophy these days appeal to rights to *explain* why this or that piece of behavior is or is not permissible. For example, it is common to say that the reason why you cannot maximize utility in such and such a case is the fact that the utility-maximizing course of action would involve infringing a right—indeed, violating a right, since the right in question is a stringent one, and the utility to be got not sufficiently great to over-ride the right. But when we say that, in that case, the utility-maximizing course of action would involve violating a right, *are* we saying anything more than that, in that case, it is not permissible to take the utility-maximizing course of action? If not, then we can hardly take ourselves to have explained why it is not permissible,

in that case, to take the utility-maximizing course of action. It is arguable that if there is to be any point at all in appealing to rights in such discussions, there had better be something independent of permissibilities and impermissibilities which fixes their existence and degree of stringency. It is not obvious that this is true. I.e., it might be that to attribute a right is only to talk about permissibilities and impermissibilities, but in a way that groups or collects them, and brings whole clusters of cases to bear on each other. I do not for a moment think it a novel idea that we stand in need of an account of just how an appeal to a right may be thought to function in ethical discussion. What strikes me as of interest, however, is that the need for such an account shows itself even in a case which might have been thought to be transparent.

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