

RECENT WORK ON THE ETHICS OF SELF-DEFENSE

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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.¹ There is, however, little agreement about *why* you can kill. Nor is there much agreement about when else you can kill in self-defense. But there has been a huge amount of work on both topics in the last twenty years. This article surveys it.

1. A Rights-Based Account of Why You Can Kill in Self-Defense

Judith Jarvis Thomson and Suzanne Uniacke offer this explanation of why you can kill in self-defense:

RIGHTS—It is permissible to kill X in self-defense if and because X lacks a right not to be killed.²

And, they claim, X lacks this right if and because if you don't kill him, he will violate your right not to be killed. Murderer, Thomson and Uniacke would think, meets these conditions; RIGHTS explains why you can kill him. They argue that other threats meet RIGHTS's conditions, too. Take

Threat From Projectile—A tornado spins through Projectile's town in Kansas, lifting and hurling him towards you. The only way to save your life is to vaporize—and kill—him. The only way for him to survive is to land safely on you. You know all this. You kill him.

Thomson and Uniacke would think Projectile meets RIGHTS's conditions; it explains why you can kill him.³

Generally, they argue, if someone is posing a threat to you that is not just, the threat meet RIGHTS's conditions. Whether or not the threat is *doing* anything—Projectile isn't—is irrelevant. Whether or not the threat is *morally responsible* for what is happening to you—Projectile isn't—is irrelevant. To many, these are attractive features of Thomson and Uniacke's view.

Now take

Human Shield—Projectile is hurled through the air by tornado. The only way to save your life is to lift up Bystander, a light, sturdy guy walking by you, a man responsible for no threat to you, and use him to deflect Projectile. Doing so will kill him, won't kill Projectile. You know all this. You use Bystander as a shield.

RIGHTS does not imply you can kill Bystander. To even more people, this is attractive.

RIGHTS is a *why-thesis*, explaining why you can kill in self-defense. Thomson and Uniacke's view also comprises a *which-thesis*, enumerating which things you can kill in which cases. That thesis does not include Bystander in Human Shield or, further, any bystander; the thesis does include Murderer in Threat From Murderer and Projectile in Threat From Projectile. Obviously, it includes more, but the entire which-thesis is unimportant for our purposes.

I should note that, however attractive, RIGHTS is *not* Thomson's whole explanation of why you can kill in self-defense.⁴ RIGHTS gives merely a sufficient condition, there being cases, Thomson thinks, where you can kill in self-defense that RIGHTS does not explain. Take

Tactical Bombing—Bomber fights for the just side in a war. He bombs a munitions factory, but the bombs aren't precisely targeted and, in dropping them, Bomber kills civilians. Some civilians fight back in self-defense. He bombs and kills again.

Thomson believes both Bomber and the civilians act permissibly but believes, too, that both sides retain rights not to be killed. So Thomson thinks RIGHTS is not the whole story of why you can kill in self-defense.

Tactical Bombing obviously differs from the other cases so far discussed in pitting the self-defense of one against the self-defense of many and, to boot, taking place in a time of emergency, that is, a time where the well-being of many is in the balance. Unless otherwise specified, I focus just on one vs. one cases involving no emergency where, furthermore, killing is the only way to save your life. When it comes to such cases, RIGHTS is Thomson's whole story of why you can kill in self-defense. If so, it not only fails to imply that you can kill Bystander in Human Shield, but it explains why you cannot: Bystander retains a right not to be killed.

Thomson and Uniacke allow you to kill anything threatening your life when that threat is not just. They do so without allowing you to kill *anything* in self-defense. Their explanation of these permissions isn't obviously right and is subject to subtle worries about the nature and workings of rights,⁵ but it is evidently attractive.

2. Two Problems for Thomson and Uniacke's View

Thomson and Uniacke conjoin a thesis about which things you can kill in self-defense and when—a which-thesis—and a thesis about why those things can be killed—a why-thesis.

Jeff McMahan, Michael Otsuka, and Noam Zohar argue the conjunction is unstable. In Threat from Projectile, you are about to be crushed to death by a helpless, wind-hurled man. Thomson and Uniacke believe you can kill this man because he will, if you do nothing, violate your right to life, and, because of this, is bereft of his own. McMahan, Otsuka, and Zohar make

The Instability Argument

Projectile will violate no rights of yours. Hence,
RIGHTS does not explain a permission to kill him.⁶

Defending the premise, they point to considerations like these: a boulder falling on you violates no rights of yours—it *does* nothing to you and can't help what will happen. Neither does Projectile *do* anything. Neither can Projectile help what will happen.⁷ Projectile, they say, is more or less a fleshy, misshapen boulder. Furthermore, though you have a right not to be killed, you have no right that Projectile “refrain from unavoidably killing you.”⁸ And what Projectile is doing to you he cannot avoid. Because of all this, Projectile retains his right not to be killed. So RIGHTS does not explain why you can kill him.

If sound, the Instability Argument might only show that though RIGHTS is right and, though Thomson and Uniacke are right that you can kill Projectile, something other than RIGHTS explains that permission. In other words, RIGHTS isn't the whole of the why-thesis for one vs. one cases. This is an important view and I return to it but for now I assume it away. Given that assumption, the Instability Argument, if sound, shows Thomson and Uniacke's which-thesis or why-thesis must go. McMahan and Otsuka maintain the which-thesis must go: it is wrong to kill Projectile. They argue as follows:

The Bystander Argument

It is wrong to kill bystanders in self-defense.⁹
There are no differences between bystanders and Projectile that justify a
permission to kill one but not the other. Hence,
It is wrong to kill Projectile.

The Bystander Argument—its second premise, really—is extremely surprising. But the argument—the second premise, really—has been powerfully defended by McMahan and Otsuka and, as a result, the argument has had a powerful appeal and has inspired two of the most significant ideas in the self-defense literature in last 15 years:

1. Thomson and Uniacke's attractive which-thesis must go. The true which-thesis is more restrictive than theirs.

This is because:

2. The true why-thesis must appeal to the agency of those you can kill in self-defense.

3. Culpability-Based Why-Theses

Thomson and Uniacke would reject the Bystander Argument, claiming you can kill Projectile because he will violate your rights, whereas no bystander will. Because he accepts the Instability Argument's claim that Projectile violates no rights, David Rodin rejects this. And because he endorses the Bystander Argument, Rodin rejects Thomson and Uniacke's which-thesis. He retains, however, Thomson and Uniacke's why-thesis. RIGHTS is right, he argues, but culpability is needed for a rights violation. Murderer is culpable for the unjust threat to your life, hence will violate your rights, hence lacks a right not to be killed, hence you can kill him, Rodin argues. Neither Projectile nor Bystander is culpable for the threat to you, hence neither will violate your right to life, hence you can't kill either.¹⁰

Culpability figures more directly in some why-theses: You can kill, say, Murderer because and only because he culpably poses a threat to your life. No appeal to rights need be made.¹¹

If culpability matters in this more direct way or if it matters as a basis of RIGHTS, Thomson and Uniacke's which-thesis must go—Projectile can't be killed—and the true why-thesis appeals to Projectile's lack of agency, in particular, his lack of culpability.

4. Justice-Based Why-Theses

A simple worry about the view that you can kill Murderer because he culpably poses a threat: why does Murderer's *culpably* posing an unjust threat explain a permission to kill him though Murderer's posing an unjust threat does not? That someone is culpable shows she is doing something bad and, really, should know better, but why does that suffice for a permission to *kill* her? Would it suffice in a case in which Murderer is culpably trying to kill you but, solely because of luck, will fail?

It is clear why culpability matters to Rodin: culpability explains a rights violation and that explains why you can kill. Another explanation of why culpability matters: culpability explains the *justice* of killing Murderer and that explains why you can kill.¹²

Along with RIGHTS,

JUSTICE —It is permissible to kill X in self-defense if and because it is just to do so

has dominated the last twenty years of writing on self-defense.¹³ JUSTICE leaves open who it is just to kill and why. So it leaves open whether it is just to kill X when and only when X lacks a right not to be killed. And it leaves open whether it is just to kill Murderer or Projectile and so leaves open in which cases you can kill. Different theorists close this opening differently.

McMahan's view, the most influential and developed defense of JUSTICE, is this: It is permissible to kill X because 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.¹⁴

Murderer meets these conditions; McMahan's view explains why you can kill him. Like RIGHTS, JUSTICE is only a sufficient condition for a permission to kill in self-defense and not the whole story of why you can kill in self-defense. But it is, I think, McMahan's whole story of why you can kill in one vs. one cases with no emergency. Since Projectile does not meet the above conditions, McMahan would hold you can't kill him in Threat from Projectile.¹⁵ Hence, McMahan agrees with the culpability theorists discussed above that Thomson and Uniacke's which-thesis is too expansive and agrees that the true why-thesis will appeal to agency. Where the culpability theorists discussed in the previous section think it appeals to an agent's culpability, McMahan thinks it appeals to an agent's responsibility.

McMahan's and the culpability views discussed above converge in their judgments on Threat From Murderer—can kill—Threat From Projectile—can't kill—and Human Shield—can't kill. They differ on cases where you are morally responsible for a threat without being culpable for it. For example, you carefully, alertly drive to the store for ice cream but en route slide on a hidden patch of ice. As a result, you are going to

lethally flatten a pedestrian. The pedestrian can save himself by vaporizing your car and you.

McMahan claims you are responsible for an unjust threat to him. You are responsible because you engaged in an activity—driving—you knew put pedestrians at risk. Because you are responsible for the threat and because it is not just, McMahan believes the pedestrian can kill you in this case. Since you aren't culpable for the accident, no culpability view concurs. McMahan moved from a culpability-based view partly in order to accommodate his judgment about this case.¹⁶

5. Objections to McMahan's View (Analog of Which Apply to Other Views)

McMahan's which-thesis forbids killing bystanders. But his why-thesis creeps towards permitting killing them. To see this, modify Threat from Murderer so that Murderer is simply posing a one in six chance of killing you, playing Russian Roulette, say. McMahan believes you can kill. So his why-thesis should be modified slightly to allow you to kill people who expose you to a great enough—how great?—risk of death. Modify the case still further so that Murderer is trying *and failing* to kill you. To boot, Murderer's Brother is trying to kill you, too, and, in fact, will succeed unless you use Murderer as a shield. McMahan believes you can kill here, too.¹⁷ So his why-thesis needs to be modified further to allow you to kill people who are trying even if failing to kill you when you need to do so to save your life. But, as McMahan himself notes, Murderer, however nasty and badly-intentioned, is a bystander, responsible for no threat to your life. And McMahan's which-thesis forbids killing bystanders.

This problem isn't peculiar to McMahan's view. He presses something like it against culpability views.¹⁸ The idea is simple: certain why-theses support that killing certain threats to your life is permissible. But, to render these why-theses plausible, they have to be modified, and those modifications creep towards supporting that you can kill things that aren't threats to your life. Without a way of stopping these creeping why-theses, McMahan's view and culpability views are subject to the objection that they are unstable: their which-theses forbid killing bystanders but, at once, their why-theses make it hard to see why you can't kill some bystanders since it is permissible to kill culpable or responsible people who pose not threat to you.¹⁹

6. Summary

Take

The Bystander Argument

It is wrong to kill bystanders in self-defense.

There are no differences between bystanders and Projectile that justify a permission to kill one but not the other. Hence,

It is wrong to kill Projectile.

If sound, this argument guarantees that you shouldn't kill Projectile. But it does not explain why you shouldn't. I considered several ways of doing so. There are objections unique to each, but probably none is more powerful than the most obvious: each implies you are required to let Projectile crush you to death in Threat From Projectile, and you are not so required.²⁰

But anyone who thinks you are not so required needs to show what is wrong with the Bystander Argument.

7. Quong's Why-Thesis And Response to the Bystander Argument

Recoiling from the restrictive which-theses urged by friends of the Bystander Argument, Jonathan Quong says that Thomson and Uniacke's which-thesis is "roughly right"²¹ and, hence, the Bystander Argument is unsound. However, Quong endorses

The Instability Argument

Projectile will violate no rights of yours. Hence,
RIGHTS does not explain a permission to kill him

and draws from all that that RIGHTS is wrong. What, then, is the right why-thesis? And why is the Bystander Argument unsound?

Quong's own why-thesis is this: in a situation in which your options are to kill X or let X kill you, it is permissible to kill X because and only because X is going to kill you and death would be a cost imposed on you so X may live. All else equal, you aren't required to bear such costs. So, all else equal, you can slough it off.²² Since all else is equal in Threat From Murderer, the case where Murderer tries to kill you simply because he is fed up with you, you act permissibly when you kill him. And since all else is equal in Threat From Projectile, the case where you are about to be crushed by a wind-hurled man, you act permissibly when you kill him. Killing Murderer and Projectile is how you slough off the costs they would impose on you.²³

Quong's why-thesis seems to lead not to Thomson and Uniacke's which-thesis but, rather, to one much more expansive.²⁴ Recall Human Shield, the case in which Projectile is about to crush you to death, but you use Bystander as a shield to save yourself. You act wrongly here, but if Quong's why-thesis is right, why is this? You are not required to bear the cost Projectile would impose on you in Threat From Projectile. Why can't you, in Human Shield, avoid that cost by using Bystander? Generally, why can't you kill any bystander to save your life?

In response, Quong permits some killing of bystanders but only in cases where you are not *using* a bystander. Quong then explains that you use someone if he or his property is needed to save your life. So his response to the Bystander Argument is two-fold. The first premise is false—you can sometimes kill bystanders. And the second premise is false—you don't *use* Projectile when you kill him, you do use some bystanders, e.g. Bystander in Human Shield, and this difference justifies a permission to kill Projectile.

As a matter of course, one might scrutinize the account of use or scrutinize whether use has the moral significance Quong thinks it has.²⁵ To make the second point vivid, consider the following case:

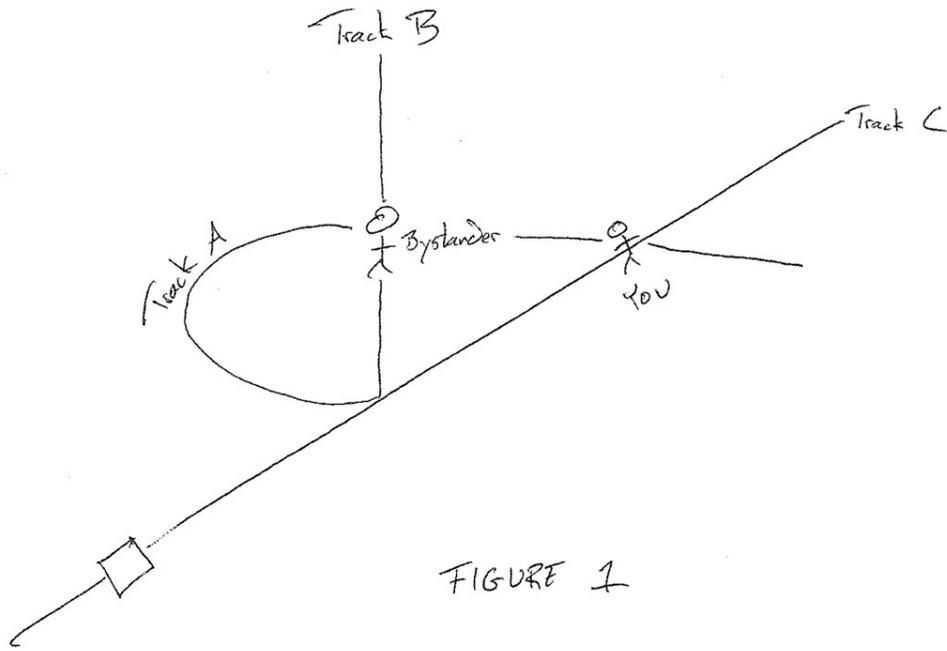


FIGURE 1

A lethal trolley will presently run you over unless you switch it to another spur. You switch to track B. You don't use Bystander here—your life is saved when the trolley switches tracks, well before it flattens Bystander—so Quong holds switching in self-defense is permissible. Already some will balk. Thomson in “Self-Defense” claims it is impermissible to kill in self-defense in such a case. What if you switch to A? Quong's restriction on use implies that switching to A is impermissible—if you switch to A and Bystander is not present, you die. This is strange. If it's permissible to kill Bystander in this case—and Quong thinks it is—how could it fail to be permissible to kill him via either track?

So I think there is something fishy about the no-use restriction. But without it, Quong's why-thesis leads to a which-thesis *much* more expansive than Thomson and Uniacke's.²⁶ Are *all* bystanders fair game?

8. Bystanders and the Importance of Tactical Bombing

Are some? Take

Tactical Bombing—Bomber fights for the just side in a war. He bombs a munitions factory, but the bombs aren't precisely targeted and, in dropping them, Bomber kills civilians. Some civilians fight back in self-defense. He bombs and kills again.

The consensus view is that Bomber and the civilians act permissibly.²⁷ Because of their judgments about this case Thomson thinks RIGHTS is not the whole explanation of why you can kill in self-defense and McMahan thinks JUSTICE isn't the whole one. Why can civilians kill Bomber? Why can he reply in kind, killing more bystanders?

This is an important case because, if the consensus view is right, then it is an example in which some bystanders can be killed in self-defense. But it is otherwise important. Tactical Bomber prompted McMahan to endorse, in addition to JUSTICE, this why-thesis: if X is wronging you and in doing so is going to kill you, it is permissible to kill X. Bomber meets these conditions: he is wronging civilians—they are no threat to him. The civilians, too, wrong Bomber—he does no wrong in bombing.²⁸

Sounds good. But why isn't this the whole why-thesis? It could explain why you can kill Murderer—he wrongs you. It wouldn't imply you can kill Bystander—he doesn't. Would it permit killing Projectile? McMahan denies it because he denies Projectile *wrongs* you. And he denies Projectile wrongs you because Projectile lacks moral responsibility for what is happening to him. But so far as it is plausible that citizens can fight back against Tactical Bomber, it's plausible they can fight back against a sleeping bomber who's put into the cockpit, propped against the BOMBS AWAY button. The sleeping bomber, like Projectile, isn't responsible for what happens to you and, hence, does not wrong you. So if McMahan is right that people like the sleeping bomber do not wrong you and wronging is all that explains a permission to kill tactical bombers, then it is impermissible to kill the sleeping bomber. This seems wrong.

9. Wallerstein's Why-Thesis and Response to the Bystander Argument

Instead of focusing, as McMahan does, on what the threat is doing in a case like Tactical Bombing—wronging—you might instead focus on what the victim is doing—nothing

morally objectionable. Regardless of whether he is being wronged, the victim is in no way liable²⁹ to death. Focus on this aspect of the victim is crucial to Shlomit Wallerstein's why-thesis which, roughly, is this: Someone is going to die because X threatens you. You aren't liable to death. Because of these facts, it is fair that X be the one to die. If and because it is fair, it is permissible to kill X.³⁰

This why-thesis is obviously like McMahan's view of why civilians and Bomber can kill in self-defense in Tactical Bombing. In its emphasis on the importance of X forcing a choice, Wallerstein's why-thesis is like those in Montague, "Self-Defense...", Ryan, and Wasserman. In its emphasis on the importance of fairness, it is like that in Draper, "Self-Defense..." and JUSTICE. (It is unclear whether anything hangs on Wallerstein's and Draper's choice of "fair," Montague's and McMahan's choice of "just.") In its insistence on the importance of a lack of liability, it is like those in McMahan, "The Basis...", Haque, and Frowe, "A Practical Account..." In its insistence that you can slough off costs others are imposing on you, it is like that in Quong.³¹

It is unclear to me whether Wallerstein's view is deeply different from RIGHTS. The two are consistent. Wallerstein herself rejects RIGHTS, but if RIGHTS is right—and Thomson and Uniacke's views of when rights are violated—are right, they could be the foundation of Wallerstein's view—it is because your rights are going to be violated that you aren't liable to death or that it is fair that X be the one to die. Instead, Wallerstein's view might be the foundation of RIGHTS—it is because you aren't liable to death that X lacks a right not to be killed.³²

In non-lethal cases, something like Wallerstein's view is plausible. You come into my shop and willfully break a glass. I am not liable to pay the cost to replace it; it is only fair that you pay.³³ The lethal analog is Threat From Murderer. It is permissible to make Murderer pay with his life.

You come into my shop and accidentally fall onto a glass. I am not liable to pay the cost to replace it; it is only fair that you pay. The lethal analog is Threat From Projectile. It is permissible to make Projectile pay with his life. Wallerstein, then, agrees with Thomson and Uniacke about Threat From Murderer and Threat From Projectile, and, in fact, endorses their which-thesis.

What's more, Wallerstein has a clear response to the Bystander Argument's claim that there are no differences between bystanders and Projectile justifying a permission to kill one but not the other: Projectile differs from a bystander by posing a threat to you to which you are not liable.

McMahan demurs. Take

Human Shield—Projectile is hurled through the air by tornado. The only way to save your life is to lift up Bystander, a light, sturdy guy walking by you, a man responsible for no threat to you, and use him to deflect Projectile. Doing so will kill him, won't kill Projectile. You know all this. You use Bystander as a shield.

That you are going to die in Human Shield stems not only from what is happening to Projectile but from Bystander failing to shield you from Projectile. That Projectile is the *threat* rather than the thing that, by its immobility, is causing you to be under threat is not the sort of thing to justify a permission to kill. Describing Wallerstein's view, I claimed

you could kill X because you aren't liable to death and X forced the choice by threatening you and it is only fair to turn that threat back on X. McMahan's point is that Bystander, too, forces your choice by not intervening. So why isn't it fair that the threat be turned on Bystander? As the Bystander Argument insists, they seem to be morally alike.³⁴

10. Bystanders: What They Are, in Which Cases They Can Be Killed

In the recoil from the restrictive which-thesis the Bystander Argument implies, it is hard to land exactly on Thomson and Uniacke's intuitive which-thesis. Earlier, I claimed that the Bystander Argument has had a powerful appeal and has inspired two of the most significant ideas in self-defense literature in last 15 years:

1. Thomson and Uniacke's attractive which-thesis must go. The true which-thesis is more restrictive than theirs. This is because:
2. The true why-thesis must appeal somehow to the agency of those you can kill in self-defense.

The rejection of these two developments has produced, more recently, a third significant idea:

3. Thomson and Uniacke's which-thesis must go. The true which-thesis is more expansive than theirs—some bystanders are fair game.

This third idea raises an obvious question: when can you kill them? And a still more obvious one: what's a bystander?

I have largely focused on one vs. one cases where there is no background emergency. Some think that in such cases, bystanders can never be killed. Certainly, that's the view of proponents of

The Bystander Argument

It is wrong to kill bystanders in self-defense.

There are no differences between bystanders and Projectile that justify a permission to kill one but not the other. Hence,

It is wrong to kill Projectile.

Wallerstein and Quong try to show the second premise is false. What of the first? Quong denies it. And though most self-defense papers repeatedly claim that bystander killing is impermissible or rely on that premise, permissible bystander killings are sometimes noted and being tempted by them is sometimes conceded.

Tactical Bombing, for example, is a case of permissible bystander killing.

Montague describes a case in which you are on one spur of a Y-shaped trolley track, about to be crushed to death, but are able to switch the trolley to the other spur where it will kill a bystander. "Clearly," he says, you are so permitted. Quong agrees. In some cases like this, Alexander agrees.³⁵

Thomson implies that in a case where you are one of five on the Y-shaped track, you can switch, crushing a bystander.³⁶

And she says that if Murderer has a tank about to crush you and the only way to destroy it involves killing the innocent human shield attached to it, you can.³⁷

McMahan describes a case in which a villain is trying and failing to kill you, just as *another* villain tries to kill you. He doesn't *quite* say using the first as a human shield from the second is permissible, but he inclines towards that view even though the first is quite obviously a bystander to the threat the second puts you under.

The permissibility of *some* bystander killing induces the fear that *all* bystander killings are on-limits. (The fear is evident in McMahan.³⁸) And *certain* bystander killing is clearly beyond the pale. Part of the reason Tactical Bombing is interesting is its similarity to cases where bombing is clearly wrong, cases where *the point of the exercise* is killing civilians.

Well, perhaps the civilians aren't bystanders. They pay for the war, don't they?³⁹ Perhaps no characters just mentioned are bystanders. Perhaps the shield, for example, strapped to Murderer's tank to protect it, is no bystander. He is, Frowe claims, part of what threatens you.⁴⁰

Or take a case where you are on a spur of a Y-shaped trolley track with a lethal trolley bearing down on you and Obstructor ignorantly resting on the other spur of the track. You have a button that can switch the trolley from your spur to Obstructor's. Is Obstructor a bystander? On the one hand, it's the trolley that is going to crush you. On the other hand, Frowe argues, if Obstructor intentionally, culpably got on the track, intending to prevent you from switching, it is hard to believe he would be a bystander. But, she argues, whether he intends to put himself on the track makes no difference to whether he is a bystander. Hence, in the original cases, Obstructor is not a bystander.⁴¹

While I think it is clear you can't kill Bystander in Human Shield, there is enough unclarity about what a bystander is and there is enough consensus that *some* bystander killing is permissible to make one suspicious of the Bystander Argument's claim that bystander killing is impermissible. Certainly some bystander killing is impermissible; but the Bystander Argument needs more than that.

11. Conclusion

Thomson and Uniacke defend RIGHTS, a plausible account of why you can kill in self-defense—a why-thesis—and a plausible list of which things you can kill in which cases—a which-thesis. The which-thesis includes Murderer in Threat From Murderer, Projectile in Threat From Projectile, and any threat to your life that is not just. I explained two objections to their view: the Instability Argument which, if sound, shows their which-thesis is inconsistent with their why-thesis and the Bystander Argument which, if sound, shows their which-thesis is wrong since Projectile can't be killed. These objections led to views according to which agency is an important aspect of the true why-thesis. For culpability theories, culpability is what's important. For responsibility theories, responsibility is. And these theories, like the Bystander Argument, lead to restrictive which-theses. Such restrictive which-theses are quite restrictive. The rise in such restrictive which-theses led to the development of expansive which-theses. But such theses are quite expansive.

Explaining these theories, I focused on what strike me as straightforward cases—such cases are hard enough. But the literature discusses significantly harder cases. I stipulated in each case except Tactical Bombing that you have a choice between exactly

one life or another: you aren't choosing between yourself and ten projectiles or choosing to save your own life and another rather than a third or ... And I stipulated in each case except Tactical Bombing that there is, in the background, no emergency: there is no war, killing your victim does not deprive the world of a cure for cancer, etc. And I stipulated in each case that your life is on the line and not simply your teeth or your mental health or ... And I stipulated in each case that the only way to save your life is to take a life: there is no option of saving your life by letting, say, Projectile break your leg or by telling Murderer to stop or ... These stipulations greatly simplified discussion but at the cost of much nuance and omission of a great deal of interesting work. Spurred by McMahan's work on the connection between killing in self-defense and killing in war, there has been an enormous amount of discussion of cases of self-defense where none of my stipulations holds.⁴² But, as I said, cases where my stipulations hold are, for me, quite hard enough.⁴³

WORKS CITED

- Alexander, Lawrence. "Justification and Innocent Aggressors." *Wayne Law Review* 33 (1987): 1177-1189.
- . "Self-Defense, Justification, and Excuse." *Philosophy and Public Affairs* 22 (1993): 53-66.
- Alexander, Lawrence and Ferzan, Kimberly Kessler. *Crime and Culpability*. Cambridge: Cambridge UP, 2009.
- Benbaji, Yitzhak. "Culpable Bystanders, Innocents Threats, and the Ethics of Self-Defense." *Canadian Journal of Philosophy* 585 (2005): 623-640.
- Davis, Nancy Ann. "Abortion and Self-Defense." *Philosophy and Public Affairs* 13 (1984): 175-207.
- Draper, Kai. "Self-Defense and Fairness." *Social Philosophy and Practice* 19 (1993): 73-92.
- . "Defense." *Philosophical Studies* 145 (2009): 69-88.
- Fabre, Cécile. "Guns, Food, and Liability to Attack in War." *Ethics* 120 (2010): 36-63.
- Ferzan, Kimberly Kessler. "Justifying Self-Defence." *Law and Philosophy* 24 (2005): 711-749.
- Ferzan, Kimberly Kessler and Grabczynska, Arlette. "Justifying Killing in Self-Defence." *Journal of Criminal Law and Criminology* 99 (2009): 235-254.
- Finkelstein, Claire. "Self-Defense as a Rational Excuse." *University of Pittsburgh Law Review* 57 (1996): 213-262.
- Fletcher, George. "Proportionality and the Psychotic Aggressor." *Israel Law Review* 8 (1973): 367-390.
- Fletcher, George and Chisea, Luis. "Self-Defense and the Psychotic Aggressor." *Criminal Law Conversations*. Ed. Paul Robinson, Stephen Garvey, and Kimberly Kessler. New York: Oxford UP, 2009.
- Friedman, Alexander. "Return of the Trolley." Unpublished manuscript.
- Frowe, Helen. "Equating Innocent Threats and Bystanders." *Journal of Applied Philosophy* 25 (2008a): 277-290
- . "Threats, Bystanders, Obstructors." *Proceedings of the Aristotelian Society* 108 (2008b): 365-372
- . "The Justifiable Infliction of Unjust Harm." *Proceedings of the Aristotelian Society* 109 (2009): 345-351.

- . "A Practical Account of Self-Defence." *Law and Philosophy* 29 (2010): 245-272.
- Haque, Adil Ahmad. 2009. "Rights and Liabilities at War" *Criminal Law Conversations*. Ed. Paul Robinson, Stephen Garvey, and Kimberly Kessler. New York: Oxford UP, 2009.
- Harman, Gilbert. "Moral Relativism Defended." *Philosophical Review* 84 (1975): 3-22.
- Hobbes, Thomas. *Leviathan*. Cambridge: Cambridge UP, 1991.
- Kadish, Sanford. "Respect for Life and Regard for Rights in the Criminal Law." *California Law Review* 64 (1976): 871-901.
- Kagan, Shelly. *The Limits of Morality*. New York: Oxford UP, 1989.
- Kamm, Frances Myrna. *Intricate Ethics*. New York: Oxford UP, 2007.
- Kasachkoff, Tziporah. "Killing in Self-Defense: An Unquestionable or Problematic Defense." *Law and Philosophy* 17 (1998): 509-531.
- . "Comment and Reply to Suzanne Uniacke's 'A Response to Two Critics.'" *Law and Philosophy* 19 (2000): 509-531.
- Kaufman, Whitley. "Torture and the 'Distributive Justice' Theory of Self-Defense: An Assessment." *Ethics and International Affairs* 22 (2008): 93-115.
- . 2009. "Can 'Moral Responsibility' Explain Self-Defense?" *Criminal Law Conversations*. Ed. Paul Robinson, Stephen Garvey, and Kimberly Kessler. New York: Oxford UP, 2009.
- Kerstein, Samuel. "Treating Others Merely as Means." *Utilitas* 21 (2009): 163-180.
- Lazar, Seth. "Responsibility, Risk, and Killing in Self-Defense." *Ethics* 119 (2009): 699-728.
- . "The Responsibility Dilemma for *Killing in War*." *Philosophy and Public Affairs* 38 (2010): 180-213.
- Levine, Susan. "The Moral Permissibility of Killing a 'Material Aggressor' in Self-Defense." *Philosophical Studies* 45 (1984): 69-78.
- Leverick, Fiona. *Killing in Self-Defence*. New York: Oxford UP, 2006.
- Mapel, David. "Moral Liability to Defensive Killing and Symmetrical Self-Defense." *Journal of Political Philosophy* 18 (2010): 198-217.
- McMahan, Jeff. "Self-Defense and the Problem of the Innocent Attacker." *Ethics* 104 (1994): 252-290.
- . Review of Uniacke, *Permissible Killing*. *Ethics* 106 (1996): 641-644.

- . *The Ethics of Killing: Problems at the Margins of Life*. New York: Oxford UP, 2002.
- . "The Ethics of Killing in War." *Ethics* 114 (2004): 693-733.
- . "The Basis of Moral Liability to Defensive Killing." *Philosophical Issues* 15 (2005): 386-405.
- . "Self-Defense and Culpability." *Law and Philosophy* 24 (2005): 751-774.
- . *Killing in War*. New York: Oxford UP, 2009.
- . "Self-Defense Against Morally Innocent Threats" *Criminal Law Conversations*. Ed. Paul Robinson, Stephen Garvey, and Kimberly Kessler. New York: Oxford UP, 2009.
- . "Reply." *Criminal Law Conversations*. Ed. Paul Robinson, Stephen Garvey, and Kimberly Kessler. New York: Oxford UP, 2009.

Miller, Richard B. "Killing, Self-Defense, and Bad Luck." *Journal of Religious Ethics* 37 (2009): 131-158

Montague, Philip. "Self-Defense and Choosing Among Lives." *Philosophical Studies* 40 (1981): 207-219.

- . "The Morality of Self-Defense: A Reply to Wasserman." *Philosophy and Public Affairs* 18 (1989): 81-89.
- . "Self-Defense and Innocence: Aggressors and Active Threats." *Utilitas* 12 (2000): 62-78.
- . "Self-Defense, Culpability, and Distributive Justice." *Law and Philosophy* 29 (2010): 75-91.

Norcross, Alastair. "Off Her Trolley? Frances Kamm and the Metaphysics of Morality." *Utilitas* 20 (2008): 65-80.

Otsuka, Michael. "Killing the Innocent in Self-Defense." *Philosophy and Public Affairs* 23 (1994): 74-94.

- . "Double Effect, Triple Effect, and the Trolley Problem." *Utilitas* 20 (2008): 92-110.

Øverland, Gerhard. "Killing Civilians." *European Journal of Philosophy* 13 (2005): 345-363.

Parfit, Derek. *On What Matters*. New York: Oxford UP, forthcoming.

Pufendorf, Samuel von. *De Officio Hominis et Civis Juxta Legem Naturalem Libri Duo* vol. 2. New York: Oxford UP, 1927.

Quong, Jonathan. "Killing in Self-Defense." *Ethics* 119 (2009): 507-537.

Richardson, Henry. "Discerning Subordination and Inviolability: A Comment on Kamm's *Intricate Ethics*." *Utilitas* 20 (2008): 81-91.

Rodin, David. *War and Self-Defense*. New York: Oxford UP, 2002.

- . "The Moral Inequality of Soldiers: Why *jus in bello* Asymmetry Is Half Right." *Just and Unjust Warriors*. Ed. David Rodin and Henry Shue. New York: Oxford UP, 2008.

Rodin, David and Henry Shue. *Just and Unjust Warriors*. New York: Oxford UP, 2008.

Ryan, Cheney. "Self-Defense, Pacifism, and the Possibility of Killing." *Ethics* 93 (1983): 508-524.

Scanlon, T.M. "Thomson on Self-Defense." *Fact and Value*. Ed. Alex Byrne, Robert Stalnaker, and Ralph Wedgwood. Cambridge, MA: MIT Press, 2001.

--. *Moral Dimensions: Permissibility, Meaning, Blame*. Cambridge, MA: Harvard UP, 2008.

Tadros, Victor. "Doubts About the Responsibility Principle." *Criminal Law Conversations*. Ed. Paul Robinson, Stephen Garvey, and Kimberly Kessler. New York: Oxford UP, 2009.

Thomson, Judith Jarvis. "Self-Defense and Rights." *Rights, Restitution, and Risk*. William Parent, Ed. Cambridge, MA: Harvard UP, 1986.

--. *The Realm of Rights*. Cambridge, MA: Harvard UP, 1990.

--. "Self-Defense." *Philosophy and Public Affairs* 20 (1991): 283-310.

--. "Turning the Trolley." *Philosophy and Public Affairs* 36 (2008): 359-374.

Uniacke, Suzanne. *Permissible Killing*. Cambridge: Cambridge University Press, 1994.

--. "In Defence of *Permissible Killing*." *Law and Philosophy* 19 (2000a): 627-633.

--. "Rights and Relativistic Justifications: Replies to Kasachkoff and Husak," *Law and Philosophy* 19 (2000b): 645-647.

Waldron, Jeremy. "Self-Defense: Agent-Neutral and Agent-Relative Accounts." *California Law Review* 88 (2000): 711-749.

Wallerstein, Shlomit. "Justifying the Right to Self-Defense: A Theory of Forced Consequences." *Virginia Law Review* 91 (2005): 999-1035.

--. 2009. "Why Causal Responsibility Matters." *Criminal Law Conversations*. Ed. Paul Robinson, Stephen Garvey, and Kimberly Kessler. New York: Oxford UP, 2009.

Wasserman, David. "Justifying Self-Defense." *Philosophy and Public Affairs* 16 (1987): 356-378.

Zohar, Noam. "Collective War and Individualistic Ethics: Against the Conscriptio of 'Self-Defense.'" *Political Theory* 21 (1993): 606-622.

--. "Innocence and Complex Threats: Upholding the War Ethics and the Condemnation of Terrorists." *Ethics* 114 (2004): 734-751

¹ I know of no paper denying that you are permitted to kill Murderer. Ryan and Finkelstein contain materials for such a denial, but neither article builds it.

² Kadish; Thomson “Self-Defense”; Uniacke, *Permissible Killing*, “In Defence...,” and “Rights...”; Rodin, *War...*; Benbaji; Leverick; and Draper, “Defense” defend this thesis or one quite like it. “RIGHTS” comes from McMahan, “Self-Defense and the Problem...”

³ Typically, papers on self-defense discuss a case intermediate between Threat From Murderer and Threat From Projectile, a case in which the threat to you—on drugs, berserk, etc.—tries to kill you but has no control over what he does. Nearly every work on the topic argues you can kill in both the intermediate case and Threat From Projectile or in neither case. Fletcher and Fletcher and Chisea are the only exceptions I know of.

⁴ It is unclear to me whether RIGHTS is Uniacke’s whole why-thesis.

⁵ Worries pressed by Thomson herself in Thomson, “Self-Defense and Rights,” and by Draper, “Self-Defense...”; McMahan, “Self-Defense...” and “Review...”; Kaschakoff, “Killing...” and “Comment”; Wallerstein, “Justifying...”; Draper, “Defense”; Ferzan and Grabczynska; and Montague, “Self-Defense, Culpability,...” Uniacke, “In Defence...” and “Rights...”; Benbaji; and Leverick respond to some of the worries.

⁶ Zohar, “Collective War...”; McMahan, “Self-Defense and the Problem...”; and Otsuka, “Killing...” Cf. Alexander, “Justification...”

⁷ An underdiscussed issue: if Murderer, in the heat of the moment, fights back in Threat From Murderer, it is hard to believe he can help this: your threat is imminent, the desire for self-preservation overwhelming. But if that he can’t help what he does shows that Projectile does no wrong, it is hard to see why Murderer does wrong when he fights back. But almost all writers on self-defense would hold Murderer does do wrong in fighting back. Hobbes and Harman are exceptions.

⁸ Draper, “Defense,” 72. Draper endorses the Instability Argument.

⁹ Some subtlety here about intentionally killing bystanders is discussed in McMahan, *Ethics of Killing*.

¹⁰ Thomson touts RIGHTS’s ability to accommodate Rodin’s view. See her “Self-Defense,” 301-303. Rodin, *War...* offers a detailed account of why RIGHTS is right and why it explains a permission to kill Murderer but not a permission to kill Projectile or Bystander. See Rodin, “The Moral Inequality...,” too.

Draper, “Defense” offers a view like Rodin’s but without the motivation of the Bystander Argument and with a subtlety discussed in footnote 32.

¹¹ See Alexander, “Justification...” and “Self-Defense...”; Ferzan; and Alexander and Ferzan for views like this, though considerably more nuanced.

Alexander, for example, believes culpability is not all that matters to whether you can kill in self-defense but also “relative moral fault, fair allocation of risks and incentives,...nonappropriation of others,...relative ages of the parties, incentive effects on productive and protective conduct, the benefit of easy-to-follow...rules, and so forth” (“Self-Defense...,” 61-62).

Alexander’s and Ferzan’s views, like less nuanced culpability views, imply in at least some cases like Threat From Projectile, you cannot kill the projectile.

See McMahan, “The Basis...” and “Self-Defense and Culpability” for criticism of culpability-based views. See Benbaji on the importance of culpability and Thomson, “Self-Defense” on the topic.

¹² Better: the facts that Murderer is culpably trying to kill and that, if you don’t kill him, he will succeed explain the justice of killing him. What of a case where Murderer is

culpably trying to kill you but won't succeed? Is it nevertheless just to kill him? Such a case raises subtle issues of proportionality I put aside.

¹³ See Montague "Self-Defense and Choosing..." "The Morality of Self-Defense..." "Self-Defense and Innocence..." and "Self-Defense and Culpability" and McMahan, "Self-Defense and the Problem..." *The Ethics of Killing...*, "The Ethics of Killing in War," "The Basis..." "Self-Defense and Culpability," "Self-Defense Against..." and "Reply." For criticism see Rodin, *War...*; Benbaji; Kaufman, "Torture..." and Draper, "Defense." "JUSTICE" comes from McMahan, "Self-Defense and the Problem..."

¹⁴ My interpretation of McMahan's view differs from the interpretations in Lazar, "Responsibility..." and "The Responsibility Dilemma..." and Montague, "Self-Defense, Culpability,..." I have flattened the contours of McMahan's view in order to fit it into the space allotted. For a more accurate presentation see McMahan, "The Basis..." and *Killing in War*.

For criticism of responsibility-based views, see the papers just cited and Kaufman, "Can 'Moral Responsibility' ..."; Tadros; and Wallerstein, "Why Causal Responsibility Matters."

¹⁵ To be clear, these implications follow not from JUSTICE but from JUSTICE and what McMahan adds to it. Montague, who endorses JUSTICE, would accept a permission to kill Projectile. See Montague, "Self-Defense and Innocence..." and "Self-Defense, Culpability,..."

¹⁶ In "Self-Defense and the Problem..." McMahan stressed culpability rather than responsibility as essential to the true why-thesis. By *The Ethics of Killing...*, he had switched to stressing responsibility. The driver case appears in *The Ethics of Killing...* and in many more recent works.

¹⁷ This is an example of a culpable attempter, a character appearing in McMahan's work since "The Basis..." Related characters appear in Uniacke, *Permissible Killing*; Kaufman, "Torture..." and Tadros.

¹⁸ McMahan, "Moral Liability..." and "Self-Defense and Culpability." See McMahan "Self-Defense Against..." and "Reply" and Tadros for an application of the objection to McMahan's own view.

¹⁹ Ferzan, Alexander and Ferzan, and Lazar, "Responsibility..." warn that McMahan's which-thesis is inconsistent with his why-thesis. They argue that you and Projectile, in Threat From Projectile, are responsible for the threat to you. So McMahan's why-thesis implies Projectile can kill you and you him. That would not be McMahan's view of the case.

To boot, in Threat From Projectile, Projectile seems to meet McMahan's conditions for being responsible for the threat to you: he moved to *Kansas*, not Oregon. Surely, he knew there was some tiny risk of being hurled through the air by a tornado. But if he did, McMahan's why-thesis seems to imply what the which-thesis denies: you can kill Projectile.

²⁰ As noted in footnote 1, the pacifist option is never defended. Moreover, it is almost never considered. While there has been a swing towards which-theses much more restrictive than Thomson and Uniacke's, no one has defended the most restrictive view: no threat can be killed. No doubt this is partly because the most restrictive view is eye-

poppingly implausible. But the view that you must let Projectile crush you to death surprises me, at least, only slightly less.

²¹ Quong, 509.

²² I have not put Quong's why-thesis in agent-relative terms though he does. For criticism of agent-relative why-theses, see Alexander, "Justification..."; Thomson, *The Realm of Rights* and "Self-Defense"; Uniacke, *Permissible Killing*; Kaschakoff, "Killing...;" and Leverick. For defense, see Davis and Levine.

²³ Quong's view is consistent with RIGHTS being right about why you can kill Murderer in Threat From Murderer. Quong agrees with Thomson and Uniacke that Murderer will violate your rights and, hence, is bereft of his own right not to be killed. Because of this, Quong's why-thesis can be understood as a hybrid of Thomson and Uniacke's why-thesis and another why-thesis covering Projectile. Quong rejects this understanding, but Davis, Levine, and Miller endorse hybrid theories.

²⁴ That views like Quong's lead to expansive, false which-theses is urged by McMahan, "Self-Defense and the Problem..."; Kaschakoff, "Killing..."; and Leverick.

Note that Quong is clear that you can slough the cost of death on to bystanders so long as you do so by *letting them die* rather than killing them: you move out of the way of a projectile, say, and let it crush Bystander to death rather than using him as a shield.

²⁵ Norcross unfairly and insightfully parodies no-use restrictions as claiming that "it's OK to [kill] someone so long as it doesn't do any good" (Norcross, 76). For recent discussion of use and what is objectionable about it, see Kamm, *Intricate Ethics*, chapters 1, 4, 5; Norcross; Otsuka, "Double-Effect..."; Richardson; Scanlon, *Moral Dimensions...*; Kerstein; and Parfit.

²⁶ Quong's which-thesis is more expansive than I have so far let on. Unlike Thomson and Uniacke, he allows it is permissible for Projectile to fight back when you try to kill him.

A still more expansive view is offered in Frowe, "The Justified Infliction..." and "A Practical Account..."

²⁷ Alexander and Ferzan deny the consensus view. McMahan shows signs of doubt in "Reply."

²⁸ McMahan, "The Basis..." 399-401. See Mapel for an extended discussion of cases where each can kill the other in self-defense. Otsuka, "Killing..." credits Gary Gleb with a case of two men like Projectile, threatening each other. Such a case, Otsuka thinks, raises a problem for the conjunction of RIGHTS and Thomson's which-thesis.

Waldron claims symmetrical permissions to kill in self-defense are paradoxical. Quong denies this.

²⁹ This notion is crucial to Wallerstein and to McMahan's theory of self-defense (for reasons elided here but explained in McMahan, "The Moral Basis..."). It's taken as a primitive, though McMahan explains what liability isn't in "The Moral Basis..."

³⁰ I say "roughly" because in two ways the view I put here doesn't match the view in Wallerstein, "Justifying..." I don't see her view as a hybrid, justifying a permission to kill Murderer differently than a permission to kill Projectile—she does. And Wallerstein focuses on the transfer of bad luck from victim to threat—I don't. For criticism of the bad luck aspect of Wallerstein's view and some more general criticism of it, see McMahan, "Reply."

³¹ Wallerstein's insistence that the person imposing the cost on you be the one to bear it is a clear way in which her view differs from Quong's.

³² Earlier, I classified Draper as holding RIGHTS. He does. But he also holds JUSTICE. Draper claims "an adequate justice-based [why-thesis] must be rights-based" ("Defense," 70).

Draper's view and the closeness of Wallerstein's view to RIGHTS and JUSTICE raises something not much discussed in the literature: what the main differences are between RIGHTS and JUSTICE.

³³ Why does the fact that you aren't liable suffice to show it is *fair* to make you pay? Good question, analogous to the question of why it is *just* that Murderer be killed. As JUSTICE is tied to theories of justice, Wallerstein's why-thesis is tied to theories of fairness.

³⁴ McMahan's objection to Wallerstein echoes Lazar, "Responsibility..."s and Ferzan's objection to McMahan's own view that you, the victim, are partly responsible for the threat Projectile poses to you.

³⁵ See Montague, "Self-Defense..." 210; Alexander, "Self-Defense..." 63; and Quong.

³⁶ In "Self-Defense," Thomson only discusses trolley cases where you are off the track. But, on her view, if a person off the track can switch, so can a person on the track. (Alexander, "Self-Defense..." interprets Thomson, "Self-Defense" as denying that one of the five could switch though, he thinks, she accepts that a third party could switch.) Thomson no longer holds an off-track person can switch. See Thomson, "Turning..." The connection between the trolley case and self-defense is noted in fn. 6. See Friedman for a view like Thomson's.

See McMahan, "Review..." and Quong for short discussions of the connection between the trolley case and self-defense.

³⁷ Thomson, *Realm of Rights*. In "Self-Defense," Thomson says she has changed her mind about some of the self-defense cases in her *Realm of Rights*. Though she does not specify which, I assume this shield case is one of them. For discussion of Thomson's views on the shield case, see Scanlon, "Thomson..."

³⁸ See, especially, *The Ethics of Killing* and "Self-Defense and Culpability."

³⁹ See Øverland; Fabre; and Lazar, "The Responsibility Dilemma..."

⁴⁰ See Frowe, "Equating Innocent Threats..." and "Threats..." She is endorsing a view of Gerald Lang's.

⁴¹ Culpable Obstructor appears in Zohar, "Collective War..."; Alexander, "Self-Defense..."; Uniacke, *Permissible Killing*; McMahan, "Review..."; and Frowe, "Threats..." Uniacke, *Permissible Killing* traces the character back to Pufendorf.

Frowe, "Threats..." makes the argument that Obstructor is no bystander. That paper and Kagan discuss exactly how Obstructor obstructs your survival.

⁴² With regard to war, see, for example, Rodin; Zohar, "Innocence and Complex Threats"; Benbaji; Rodin and Shue; Fabre; and, especially, McMahan, "The Ethics of Killing in War" and *Killing in War*.

⁴³ [Deleted] greatly improved this paper. Thanks to each of them.