



BRILL

Moral Excuse to the Pacifist's Rescue¹

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Received: 2 December 2022 | Accepted: 6 October 2023 |

Published online: 1 December 2023

Abstract

Pacifism is the view that necessarily, the nonconsensual physical harming of pro tanto rights-bearers is all-things-considered morally impermissible. Critics of pacifism frequently point to common moral intuitions about self-defenders and other-defenders as evidence that pacifism is false and that self- and other-defense are often morally justified. I call this the Justification View and defend its rival, the Excuse View. According to the latter, a robust view of moral excuse adequately explains the common moral intuitions invoked against pacifism and is compatible with pacifism. The paper proceeds in five steps. First, I identify ten intuitive data points that require explanation. Second, I introduce the justification/excuse distinction. Third, I demonstrate the Excuse View's equal explanatory power with respect to the intuitive data. Fourth, I defend the Fair Use Principle: When evaluating the plausibility of rival theories J and E, the use of datum *d*'s *full intuitive force* against E and for J is epistemically permissible only if (i) *d* is better explained by J than E and (ii) no intuitive components of *d* are equally well-explained by E. Finally, I conclude that the conjunction of pacifism and the Excuse View renders the intuitive defense of the Justification View largely moot, and that this is a substantial victory for pacifism.

Keywords

pacifism – moral intuitions – moral justification – moral excuse – duress

¹ I'm grateful to Ned Dobos and three anonymous reviewers at this journal for their helpful comments.

1 The Intuitive Argument Against Pacifism

Pacifism is the view that nonconsensual physically harming² pro tanto rights-bearers is necessarily all-things-considered morally impermissible.³ Why is pacifism a minority view?⁴ Consider the following case:

Gunpoint. Villain presses a loaded gun to Victim's head and issues an ultimatum: "Unless you kill me, I will kill you." As Villain knows, Victim also has a loaded gun.

Most persons have a strong intuition that Victim is morally permitted to kill Villain. Because pacifists deny that intuition, pacifism is almost universally dismissed as too counterintuitive (Leverick 2006: 44). Let's call this anti-pacifist category of arguments *bottom-up* intuitive arguments, as they use moral intuitions about particular cases to support moral principles. Thus, they run as follows:

Bottom-Up Intuitive Arguments

1. Actual and hypothetical paradigmatic cases of self-defense C_I - C_N are such that the defensive actions are morally permissible.
2. If (1), then pacifism cannot explain C_I - C_N , which is counterintuitive.
3. Therefore, pacifism is counterintuitive.

The intuition that Victim is permitted to kill Villain is better construed as *a set of moral intuitions* rather than a single intuition, as the following passages reveal:

We cannot plausibly say that you ought not blow up the truck, but will only be in a measure at fault, or in no measure at fault, for doing so: you simply *may* blow up the truck. Morality permits it.

THOMSON 1991: 283

2 Unless otherwise noted, I have in mind *physical* harming throughout the paper.

3 Contemporary defenders of the radical pacifist view include Cheyney Ryan (1982) and Blake Hereth (2017, 2021, 2022). Other pacifists, whom we might call *war-pacifists*, defend the more modest thesis that warfare is necessarily all-things-considered morally permissible. For defenders of that view, see McKeogh (2002) and Holmes (2016). For discussion of different species of pacifism, see Ryan (2013), Hawk (2013), and May (2011).

4 For an historical consideration of this question, see Ryan (2023).

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

DRAPER 1993: 73

Thomson and Draper appeal to the apparent *blamelessness* of Victim's defensive action as constitutive of, or at least evidence for, the conclusion that Victim acted permissibly. Further, most persons have a strong intuition that Villain is morally *blameworthy*, *liable*, and so on. This reflects the more general sentiment that *ought implies (reasonably) can* is evidenced by our moral sentiments, as Brian McElwee explains:

[I]t *can* be an objection to a theory of moral obligation that it requires one to do something extremely difficult in order to fulfill one's moral obligations—just because the feelings of blame mandated by a judgment that a moral obligation has been violated may be out of place when it is extremely difficult to perform the action in question.

MCELWEE 2016: 28

Assuming we trust our moral intuitions (Bengson, Cuneo, & Shafer-Landau 2020), pacifists and anti-pacifists must account for them.⁵ Moreover, the tight connection between these intuitions about Victim and the seeming permissibility of Victim defensively harming Villain suggests that, epistemically speaking, we *should* lower our credence levels for the former if we don't assume the latter. For example, the counterfactual *if Victim is morally justified in harming Villain then Victim is morally blameless for harming Villain* is obviously true. So, if we adjust our credences downward for the consequent, we should do the same for the antecedent. Here's a brief summary of the intuitive data:

Datum 1: Victim is *morally blameless*.

Datum 2: Victim is *morally nonliable*.

Datum 3: Expecting Victim to forego defending against Villain is *unreasonable*.

Datum 4: Victim killing Villain is (objectively) *justified*.

Datum 5: Villain is *morally blameworthy*.

Datum 6: Villain is *morally liable*.

Datum 7: Expecting Villain to forego attacking Victim is *reasonable*.

Datum 8: Villain killing Victim is (objectively) *unjustified*.

⁵ For a challenge to the reliability of intuition Datum 3, see Braddock (2013).

Each of these intuitions is broadly shared, so I won't defend their inclusion on the list of intuitive data requiring explanation. In addition to these, I propose adding the following:

Datum 9: Victim's agent-regret for killing Villain is *rational*.

Datum 10: Villain's agent-regret for killing Victim is *rational*.

The latter is uncontroversial, but the former is less so. For example, Jeff McMahan (1993: 279) denies it. Even so, I argue in section 3 that we have good reason to accept Datum 9.

How should these data points be *weighted*?⁶ As some are more intuitive than others, it's worth providing a provisional epistemic 'ranking'. I have grouped the intuitive data points into three groups: *Highly Intuitive*, *Intuitive*, and *Weakly Intuitive*. Here are my provisional rankings, with the larger numbers indicating stronger intuitiveness, along with brief explanations for each:

Highly Intuitive

Datum 8: Because the wrongness of Villain killing Victim is extremely intuitive and serves as the basis for other moral intuitions about the central case.

Datum 7: Because the wrongness of Villain's act plus their attendant blameworthiness overdetermine and necessitate the judgment that Villain could reasonably have been expected to forego attacking Victim.

Datum 5: Because Villain's blameworthiness is apparent given their free and fully informed choice to attack Victim, whom Villain knows to be innocent.

Datum 10: Because it is rational to regret unjustified, blameworthy acts.

Intuitive

Datum 6: Because agents are prima facie liable for performing unjustified, blameworthy acts.

Datum 1: Because Victim cannot reasonably be blamed for Villain's unprovoked, unjustified attack.

Datum 3: Because in light of facts about Villain's guilt and liability and Victim's innocence, it seems unreasonable to expect Victim to forego self-defense.

⁶ My thanks to an anonymous reviewer for raising this question.

Datum 4: Because if it's unreasonable to expect Victim to forego self-defense, then Victim's self-defense must be justified. (Otherwise, it would be reasonable to expect Victim to forego self-defense.)

Weakly Intuitive

Datum 2: Because Victim's self-defensive action is justified and it seems unjust to harm someone for performing a justified act, which entails they aren't liable to that attack.⁷

Datum 9: Because Villain's liability, culpability, and unjustified behavior and Victim's nonliability, nonculpability, and justified behavior combine to make this the least intuitive claim.

Returning now to the intuitive case against pacifism, the objection is sometimes put very strongly: Anti-pacifist views of moral liability to defensive harm are *so obviously true* that there can't be any defeaters for believing them. Of course, no philosopher has (yet) had the gall to say this *in print*. But they say it nonetheless. It seems to me that no position is obviously true if one or more of its implications seems deeply unobvious. That is, a position is obviously true just in case the position's implications in *every* possible case strike us as intuitive. For my part, the fact that anti-pacifist views of moral liability permit the painful killing of a culpable aggressor even though she will cry in agony for her mother as she unavoidably dies makes those views *anything* but obvious. Perhaps I'm too empathetic or perhaps I have too weak a stomach for that sort of thing, but I doubt it's just that. Being responsible for such suffering, even to save my own life, strikes me as one of the *least obviously permissible* things in the world—lightyears away from the obvious permissibility of, for example, loving your neighbor or tucking your puppies into bed. I suspect this is why killing brutalizes people: Not because they've done something they believe to be obviously right, but because they are filled with doubts about what might have been, about their own motivations, and about the very principles of self-defense in which they once believed (Marquis 1989: 189). This adds experience to intuition, moral perception to moral intuition.

Against the dominant view, I contend that pacifism is *explanatorily competitive* with respect to the set of moral intuitions outlined above. The next section shows how pacifism allows for the possibility of moral excuse, which I contrast with moral justification. An argument is made that a sufficient condition for moral excuse is present for Victim in *Gunpoint*. In section 3, I defend

⁷ Hosein (2014) contends that justification *doesn't* defeat (or imply the absence of) liability. Frowe (2018) claims that *obligation* defeats liability. However, self-defense isn't (typically) obligatory. For these reasons, I have designated Datum 2 as weakly intuitive.

the intuitive explanatory power of the Excuse View. Section 4 defends the Fair Use Principle which prohibits the anti-pacifist from laying claim to a host of intuitive data. The sum of this paper, then, is that the bottom-up intuitive case against pacifism is far weaker than has been recognized.⁸

2 The Justification/Excuse Distinction

Detached reflection cannot be demanded in the presence of an uplifted knife. Therefore, in this Court, at least, it is not a condition of immunity that one in that situation should pause to consider whether a reasonable man might not think it possible to fly with safety or to disable his assailant rather than to kill him.

JUSTICE OLIVER WENDELL HOLMES, *Brown v. United States*⁹

Moral justification is a species of moral permission.¹⁰ Thus, the former entails the latter. As such, pacifism is incompatible with the view that Victim is morally justified in killing Villain in *Gunpoint*. Like most anti-pacifists, I assume that Victim killing Villain requires justification.

By contrast, moral excuse is not a species of moral permission (Gardner 2007). Rather, most theorists regard excuse as a species of moral wrongdoing or a lack of agency. Kimberly Ferzan characterizes the distinction between moral justification and moral excuse as “the distinction between speaking to the character of the act (justification) and speaking to the accountability of the actor (excuse)” (2004: 218; cf. Alexander 1993).¹¹ Elsewhere, she writes:

As to the definitions, many theorists argue that justifications concern the act, whereas excuses concern the actor. A *justification* renders an ac-

8 Nicholas Parkin (2014) defends pacifism from cases of supreme emergency, arguing that the necessity of modern war is morally tragic and thus excusable. However, Parkin doesn't extend this argument to domestic self- or other-defense.

9 The full ruling can be read here: <https://www.law.cornell.edu/supremecourt/text/256/335>.

10 Not all morally permissible actions require justification. For example, actions that aren't even pro tanto impermissible, like drinking orange juice or counting to five, don't require justification. (What would the justification even *be*?)

11 As some readers may regard *justification* as a property of actions and *excuse* as a property of agents, they may struggle to see the inconsistency I claim exists. However, the dominant view in the literature is that agents whose actions are morally excused have performed actions that are, objectively, all-things-considered impermissible. I assume the correctness of the dominant view throughout the paper.

tion “right,” “permissible,” “not wrongful,” or “not punishable.” An *excuse* means that the offender is not blameworthy or, at least, not punishable. And because justifications apply to the rightness of the act, they universalize, that is, they apply to any actor, whereas excuses are said to be “personal” because the excusing circumstances apply solely to the defendant.

FERZAN 2011: 241

Similarly, Peter Westen writes:

All normative theories of excuse are accounts regarding when actors ought to be exculpated for engaging in prohibited conduct, and, as such, they presuppose a definition of that for which they claim to account—namely, “excuses.”

WESTEN 2006: 292

Following Ferzan and Westen, we can offer partial accounts of moral justification and moral excuse. The accounts are partial insofar as they fall short of definitions for the concepts. However, we need only highlight a key difference between the two:

MORAL JUSTIFICATION

If person *S* is *morally justified* in doing *A* at time *t*, then *S* is morally permitted to do *A* at *t*.

MORAL EXCUSE

If person *S* is *morally excused* from doing *A* at *t*, then (i) *S*'s doing *A* at *t* is morally impermissible but (ii) *S* isn't blameworthy or morally liable for doing *A* at *t*.¹²

12 This characterization of moral excuse is somewhat controversial. For some, moral excuse applies exclusively in cases of *incapacity*, but actions brought about by incapacity are neither permissible nor impermissible because the person's agency is dormant or compromised. Call that the *Incapacity-Exclusive View* of moral excuse. However, I propose to set aside the Incapacity-Exclusive View for two reasons. First, it's a minority position that most anti-pacifists reject. Second, when applied to classic bank teller cases in which a bank teller is threatened at gunpoint to hand over the money, it generates weird results. Suppose the teller prefers not to be killed and thus hands over the money. Either the teller was incapacitated or not. If she was, then *duress* incapacitates. If she wasn't, then she's unexcused. The latter allows for the teller to be liable to criminal or economic sanctions, which is counterintuitive, whereas the former represents a highly liberal conception of incapacity—indeed, one that is compatible with what I say in this section. Thus, we should conclude either that the Incapacity-Exclusive View is false or that it's compatible

Among the possible excusing conditions is *duress*, though there are competing explanations as to *why* duress excuses.¹³ According to one account, duress excuses *because it undermines agency* (Uniacke 1989; Baker 1974).¹⁴ According to another, it's *because it undermines reasonable alternatives to act otherwise* (McMahan 2009: 162).¹⁵ For example, Michael Gorr defends the following principle in criminal law contexts:

If S commits a crime in order to avoid grievous bodily harm either to himself or to someone to whom he has a close relationship, then S's legal culpability for that crime should be significantly reduced.

GORR 2000: 12

In a similar vein, Joshua Dressler defends a *choice-centered* account of duress in which agents are under duress when they can reasonably invoke “no-fair-opportunity” claims:

Punishment is unjustifiable if it will produce no benefit in the form of crime reduction, and it is at least empirically plausible that the legal threat of punishment will not deter criminal conduct that is the result of certain threats, particularly imminent deadly ones. Nor, it might be added, is there likely to be reason to consider most coerced actors dangerous or in need of rehabilitation.

DRESSLER 2011: 283

with my view of moral excuse. For a defense of the Incapacity-Exclusive View, see Bergelson (2018: 403). For a critique, see Dressler (2011). In their discussion of war crimes, Talbert & Wolfendale (2019: chapter 5) argue that war criminals are typically blameworthy for having committed war crimes because they are legitimate “targets of reactive attitudes like resentment” (2019: 109).s

- 13 Cf. Dougherty (Forthcoming), Agule (2020), and Patterson (2016) for more on duress.
- 14 Talbert & Wolfendale (2019: chapter 4) review a slew of arguments for the conclusion that most war criminals are morally excused for their war crimes due to a mixture of extreme stress and bad moral luck.
- 15 Uniacke (1994: 15-17) lists subjective justification as a separate, standalone ground for moral excuse. However, subjective justification is supposed to matter only because the agent whose act is objectively wrong but subjectively justified due to their false belief in the act's rightness (1994: 16). In other words, subjective justification's prospects for grounding moral excuse are parasitic on moral ignorance's prospects for grounding moral excuse. As I consider moral ignorance as a standalone ground for moral excuse, I will not examine subjective justification further.

Consequently, Dressler reasons, the “best explanation of duress is that coercion excuses when a person lacks a fair opportunity to act lawfully” (2011: 285). For McMahan, Gorr, and Dressler, persons under duress remain agents despite being blameless and nonliable. Thus, duress excuses by mitigating blame and liability but not agency. In his paper addressing moral excuse for war crimes, Gideon Rosen remarks:

[H]ow can duress possibly constitute an excuse in cases in which a knowledgeable and competent agent acts wrongly? The answer is that when morality is extraordinarily demanding, failure to comply with its demands may reveal a pattern of concern that does not warrant social distancing.

ROSEN 2014: 89

As actions like Victim's in *Gunpoint* show, Victim would kill Villain *only if and because* Victim sees no alternative to save their life. That is, Victim strongly prefers *not* to kill Villain. Let's now focus on a paradigmatic case of excuse-by-duress from Helen Frowe:

Duress. Villain holds a gun to Hostage's head, and threatens to shoot Hostage unless Hostage kills Victim.

FROWE 2014: 77

Here's Frowe's analysis of the case:

Of course, we might say that Hostage is excused if she caves in to Villain's threats and tries to kill Victim. But we would not, I think, say that she acted permissibly. This suggests that although the cost to Hostage of not killing Victim is very high, it is nonetheless a reasonable cost, since it is a cost that we expect her to bear rather than kill Victim. The cost facing Hostage is not so much greater than the harm she must inflict on Victim....

FROWE 2014: 77-8

Commenting on a similar case, McMahan remarks:

When we say that duress is irresistible, we usually do not mean that literally. We can see that some people could and indeed would resist, and then it was physically and in some sense psychologically possible for the person who failed to resist to have resisted instead. There is therefore a

basis for holding him responsible. But the standard of responsibility is not the standard of culpability.

MCMAHAN 2009: 162

Notice that Victim faces the same choice in both *Gunpoint* and *Duress*: kill an unjustified threatener or be killed.¹⁶ Like Hostage, they face the same threat and thus act under duress. Why, then, should we not accept the following argument?

The Generalized Excuse Argument

1. Hostage would be morally excused for killing Victim because Hostage is under duress to kill Victim. [Frowe's Assumption]
2. Victim is under duress to kill Villain. [Assumption]
3. Therefore, Victim would be morally excused for killing Villain. [From 1-2]

Here is the answer I expect: Victim's defensive killings, unlike Hostage's, are not excused but rather *justified* because Victim's targets pose unjust and unjustified threats whereas Hostage's victim does not. In other words, the moral difference lies in who's targeted. But that answer is question-begging: It works only if you *assume* the presence of a liability-based justification, the existence of which is precisely what's disputed in this essay. Someone's liability doesn't itself entail an all-things-considered justification for harming them, as I discuss below regarding Datum 6.¹⁷ For now, it's sufficient to recognize that the only thing barring the possibility of Victim's defensive killings being excused is the prospect of moral justification.¹⁸

16 Cf. Aristotle's (1999: 30) remarks in *Nicomachean Ethics* 3.1, 1110a6-13: "But what about actions done because of fear of greater evils. . .? Suppose, for instance, a tyrant tells you to do something shameful, when he has control over your parents and children, and if you do it, they will live, but if not, they will die. These cases raise dispute about whether they are voluntary or involuntary. However, the same sort [of unwelcome choice] is found in throwing cargo overboard in storms. For no one willingly throws cargo overboard, without qualification, but anyone with any sense throws it overboard to save himself and the others. These sorts of actions, then, are mixed."

17 For extensive replies to challenges to the moral possibility of excuse by denying its separateness from moral justification, see Westen (2006: 311-329).

18 Cf. Dressler (2011: 287): "Blackstone wrote that a coerced person 'ought rather to die himself than escape by the murder of an innocent,' a quotation frequently repeated in modern case law. To state what one *ought* (or not) to do is to speak of what is (or is not) justifiable. It says nothing about what ought-not conduct might be excusable."

Before continuing, I'll offer yet another argument for the conclusion that *all* cases of justified self-defense are also cases of duress.¹⁹ This conclusion will be significant later in the paper for establishing the Excuse View. For the moment, let's ask: What are the essential properties of duress? *Imminence*, understood either temporally or epistemically, is one essential property (Dressler 2011: 270-271; Heim 2013: 176). Another is *necessity*, the sense that one had no reasonably accessible alternative to acting as one did (Richards 1987: 30; Heim 2013: 176). Third is the *severity* of the threat one hopes to avert. In particular, the threat must be grave for duress to occur (Murphy 1981: 87; Dressler 2011: 272). Jointly, these necessary conditions are *sufficient* for duress. As it happens, these are also essential properties of paradigmatic cases of justified self-defense. Imminence, necessity, and a grave threat are broadly believed to be *necessary* for justified self-defense (Coons & Weber 2016; Fishback 2016). As both duress and justified self-defense share an overlap of essential properties, it follows that the justified self-defender is also under duress. More formally:

The Co-Extension Argument

1. Necessarily, if *S* is under grave and imminent threat *T* and *S*'s only alternative to suffering *T* is doing *A*, then *S* is under duress with respect to *T*. [Nature of Duress]
2. Necessarily, if *S* is morally justified in inflicting defensive harm *H* to avert threat *T*, then *T* is grave and imminent and *S*'s only alternative to suffering *T* is inflicting *H*. [Nature of Justified Self-Defense]
3. So, necessarily, if *S* is morally justified in inflicting defensive harm *H* to avert threat *T*, then *S* is under duress with respect to *T*. [From 1-2]

More simply:

The Simplified Co-Extension Argument

1. Necessarily, all the sufficient conditions for duress are necessary conditions for justified self-defense. [Nature of Duress; Nature of Justified Self-Defense]
2. So, necessarily, all cases of justified self-defense are also cases of duress. [From 1]

19 Horder (1998: 149) asks the same question: "Duress cases, then, also involve responding to unjust threats. So wherein lies the difference from self-defense cases?" Like me, he expresses similar dissatisfaction with the common answers.

Furthermore, because duress *necessarily* mitigates blame, liability, and what we can reasonably expect of agents, it follows that self-defenders *would be* blameless, nonliable, and such that we could not expect them to act otherwise *even if* their actions were impermissible.²⁰ In what follows, I suggest this is no coincidence but rather reflects moral excuse.

One final hurdle remains. In the cases of duress I examined, the threat to Victim is *imminent*: that is, either soon to occur or certain to occur. What can the Excuse View say about cases in which the threat to Victim is not imminent? Intuitions will diverge here, but the Excuse View can accommodate a spectrum of intuitions. On my own view, even epistemically certain-but-far-off threats can cause duress, “I will kill you and your family in ten years’ time” being one example (Baron 2011; Buchanan 2010). If duress excuses, then it will also excuse nonimminent threats in cases where the choice is to act now or suffer harm later.²¹ For epistemically uncertain threats, the rule is simple: the greater the uncertainty, the less one is excused for harming (Lazar 2019; Guerrero 2007).²²

3 The Excuse View’s Explanatory Power

Having introduced the excuse/justification distinction in the previous section, I can now portray them as competing explanations for our intuitive data:

THE JUSTIFICATION VIEW

The best explanation for our moral intuitions about defensive harming is that defensive harming is *morally justified*.

THE EXCUSE VIEW

The best explanation for our moral intuitions about defensive harming is that defensive harming is *morally excused*.

In what follows, I defend the *prima facie* superiority of the Excuse View over the Justification View.²³ To keep things manageable, I will divide our moral in-

20 See Heim’s (2013) case for allowing duress defenses for civilian war criminals.

21 I don’t here address the possibility of *chronic* duress, but I am deeply sympathetic to application of moral excuse in cases of chronic duress (e.g., amid civil war). For more on this, see Lippke (2014).

22 For more on imminence and necessity, see Schwarz (2020), Moore (2014), Statman (2011), and Bickenbach (1983).

23 Claire Finkelstein (1996) argues we should reconceive self-defense as morally excused rather than morally justified. However, Finkelstein’s argument bears little resemblance

tutions into three groups: intuitions supporting a *positive* appraisal of *Victim's* actions, intuitions supporting a *negative* appraisal of *Villain's* actions, and intuitions supporting *rational agent-regret* on the parts of *both Victim and Villain*.²⁴

3.1 *Intuitions About Victim*

Let's first consider our moral intuitions about Victim, setting aside intuitions about Victim's agent-regret for section 3.3. The four intuitive data points for Victim are as follows:

Datum 1: Victim is *morally blameless*.

Datum 2: Victim is *morally nonliable*.

Datum 3: Expecting Victim to forego defending against Villain is *unreasonable*.

Datum 4: Victim killing Villain is (objectively) *justified*.

We have already seen that moral excuse mitigates blame (McMahan 2009: 110), so Datum 1 is easily accounted for under the Excuse View. As Wesley Buckwalter helpfully explains,

In fact, virtually any moral obligation can be broken both blamefully and blamelessly in various circumstances, and some of the clearest cases of the latter involve unfulfilled obligation due to inability, of various sorts. For these reasons, it does not follow from the fact obligations could sometimes exist without ability that agents are blameworthy for their behavior.

BUCKWALTER 2020: 91²⁵

to the current argument, as 'justified in X' entails 'being encouraged to X' in criminal law, whereas it carries no such implication in the philosophical literature.

24 Westen (2006) defends an *attitudinal* view of moral excuse on which normative facts about our moral attitudes (e.g., whether we should or shouldn't *resent* an agent for their behavior) are constitutive of moral excuse. My account is compatible with, but does not entail, Westen's view.

25 Buckwalter raises a further challenge for the Justification View in the following passage: "We frequently apologize to others when we fail to fulfill our moral obligations and such apologies typically include excuses that feature facts about our inability to act. But the ubiquity of appeals to inability when offering excuses and apologies raises the following puzzle: if moral obligation entails ability, and an agent fails to do something because they are unable to act, then what exactly, in such circumstances does one need to apologize for or be morally excused for doing? Contrary to how it might seem, no obligation can exist in such circumstances if ought implies can is true, and hence, no behavior needs to be excused. If no behavior needs excused then no ethically meaningful apology can be made." (2020: 85)

The same is true of moral justification under the Justification View. Thus, we should consider the two views explanatorily ‘tied’ with respect to Datum 1.

Datum 2 concerns Victim’s lack of moral liability. As McMahan and others note, moral excuse mitigates moral liability:

The more a person is excused for some objectively wrongful act, the less responsible he is for the consequences, and the less liable he may be to defensive action to prevent those consequences from occurring. [...] If, for example, an unjust combatant is fully excused for fighting in an unjust war, that may mean that his liability to defense of action is comparatively weak.

MCMAHAN 2009: 158

Frowe claims moral responsibility for an unjust harm is a *necessary condition* for moral liability and construes moral responsibility as follows:

I suggest that a person is morally responsible for posing a threat if she intentionally fails to avail herself of a reasonable opportunity to avoid posing that threat.

FROWE 2014: 10

She continues:

Whether or not an opportunity to avoid posing a threat is *unreasonably costly* to an agent is sensitive to a range of considerations: (i) the cost to the agent (and two other innocent people); (ii) the prospective harm to Victim (and to other innocent people) if she fails to take the opportunity; (iii) whether the agent will threaten directly, indirectly, or as an indirect costs; (iv) whether the agent will be causing herself to threaten, or allowing herself to threaten.

FROWE 2014: 73-4

Villain threatens Victim with lethal harm in *Gunpoint*. So, Frowe’s condition (i) is satisfied: the cost to the agent is unreasonably high. So, killing Villain to survive is not reasonably avoidable for Victim. So, Victim isn’t morally responsible for killing Villain. So, Victim isn’t morally liable for killing Villain. So, moral excuse generated by duress explains Victim’s nonliability. So, the Excuse View adequately explains Datum 2. Oddly, the Justification View fares *less* well with Datum 2, owing to the ongoing debate over whether justification defeats liability. McMahan (2008: 5-9) claims it does, but Adam Hosein (2014) disputes

this. We need not resolve that debate to see the point: Moral excuse *necessarily* defeats liability, but it's unclear whether moral justification does.²⁶ Thus, the Excuse View enjoys superior explanatory scope than the Justification View with respect to Datum 2, if only slightly.

Moving on to Datum 3, which claims it's *unreasonable* to expect Victim to forego killing Villain and die instead.²⁷ The explanatory challenge here can be expressed thusly: Is expecting Victim to forego self-defense unreasonable *and thus excusable* or unreasonable *and thus justified*? On one popular view, moral obligations never impose unreasonable burdens (Carbonell 2012; Kaufman 2010; Cholbi 2010; Scheffler 1994: 20).²⁸ If that's true, then it can't be impermissible for Victim to kill Villain. Those who accept this standard must interpret actions of extreme self-sacrifice as *supererogatory*. However, there are well-known problems with this account of supererogation, two of which are developed by Alfred Archer. First, many persons who perform apparently supererogatory acts "claim they would have been unable to live with themselves" if they hadn't acted as they did, thus making the *non-performance* of the act unreasonably burdensome for the agent (Archer 2018: 6).²⁹ Second, the account presumes a *less sacrificial* alternative course of action open to the agent, yet some cases of apparent supererogation involve no such alternatives (Archer 2018: 6).³⁰

To see a separate problem with this view of moral obligation, return to Frowe's *Duress* case. If you reject Frowe's analysis because you think the prospective costs to Hostage *are* unreasonable, then (provided you also accept the burden standard) you will think Hostage is morally permitted to kill Victim.

26 Frowe (2018) seeks to fill the gap in McMahan's account by claiming that where lesser-evil justifications accompany liability justifications for killing noncombatants (as a side effect) in war, the lesser-evil justifications are not mere justifications but *obligations*. She infers that persons cannot be liable for doing what they are morally required to do.

27 Carbonell argues that moral obligation is what we can reasonably demand of each other, that what counts as a 'reasonable' demand is partially a function of what's reasonable to believe, and that exposure "to moral saints can change what it would be reasonable to believe about how much of a sacrifice it would be to take on certain actions or patterns of behavior" (2012: 242). If sound, this argument can be adapted to *undermine* Datum 3: Our exposure to *pacifist* moral saints like Martin Luther King Jr. and Mahatma Gandhi epistemically defeats our belief that nonviolent resistance is unreasonably costly. So, our exposure to pacifist moral saints changes what others are obligated to do "by way of removing a defeater of obligations" (2012: 242). I lack the space to defend this possibility here.

28 For further discussion, see Frowe (2018 & 2015), McElwee (2017), Berkey (2016), Cullity (2016 & 2003), Goodin (2009), and Sobel (2007).

29 Cf. Archer (2016a) and Carbonell (2015).

30 Cf. Archer (2016b) and Williams (1993). See also Benn (2018) and Dougherty (2016).

But suppose Victim defends herself against Hostage. Would this be permitted? If so, then Victim is permitted to impose *the very same* burden on Hostage that Villain does. If not, then Villain is required to suffer *the very same* burden that Hostage is not required to suffer. Neither option is attractive. So, we should conclude that Frowe's analysis of cases like *Duress* are correct. This means we should reject the following conjunction:

- (a) The prospective costs to Hostage in *Duress* are *unreasonable*.
- (b) Moral obligations can make unreasonably costly demands.

So, we should conclude either (a) that the prospective costs to Hostage are unreasonable, in which case Hostage killing Victim is excused; or (b) reject the burden-restrictive view of moral obligation. Despite requiring them to *act* differently to save their lives, Hostage and Victim nevertheless face *identical burdens*, and that should be the primary focus when evaluating whether a burden is reasonable.³¹ So, we should reject (b) rather than (a). Thus, the Excuse View can adequately explain the role of burdens in Datum 3: they excuse but don't justify actions.

Furthermore, consider that even influential defenders of ought-implies-reasonably-can principles, such as McElwee, accommodate moral excuse in cases of duress:

It seems to me that the best account of this distinction will make reference to normal circumstances. Roughly: some action is morally wrong just if someone with merit feelings of blame for doing it in normal circumstances. Features of one's situation which are abnormal may make a case one of blameless wrongdoing; in such cases, one has an excuse in virtue of specific features of one's situation—for example, one snapped at a friend because one had been under severe stress; one failed to keep a promise to meet up because one had been suffering from depression; one have a legitimate complaint short shrift because one had a debilitating headache.

MCELWEE 2016: 30

McElwee claims these agents “would merit blame under normal circumstances” for their actions, but in these cases they don't “because of the idiosyncratic situation” in which they find themselves (2016: 31). This tracks with Frowe's remark that it “is generally impermissible to inflict non-consensual harm on

31 For more on objective standards for the capacity theory of excuses, see Horder (2007: 125-137) and Dressler (1988: 711).

others" (2014: 1). Once we characterize paradigm cases of self-defense as paradigm cases of duress, we can interpret the former as instances of blameless wrongdoing (i.e., excuse).

Finally, there's Datum 4. It clearly cannot be explained by the Excuse View as they are explicitly incompatible. However, the Justification View *just is* the view that Datum 4 is true, so the Justification View explains Datum 4.

3.2 *Intuitions About Villain*

The second set of intuitions concerns Villain, which are as follows:

Datum 5: Villain is *morally blameworthy*.

Datum 6: Villain is *morally liable*.

Datum 7: Expecting Villain to forego attacking Victim is *reasonable*.

Datum 8: Villain killing Victim is (objectively) *unjustified*.

My suspicion is that intuitions about Villain will differ in my *Gunpoint* case and Frowe's *Duress* case. In the former case, Villain acts under duress; in the latter, Villain isn't under duress. If you have the intuitions that Victim is morally blameless, morally *nonliable*, and *cannot* reasonably be expected to forego attacking Victim, the Excuse View easily explains these intuitions.³²

However, matters are more complicated with Frowe's case. Strictly speaking, the Excuse View doesn't claim *all* nonconsensual harming is morally excused. And given Villain's apparent blameworthiness, moral liability, unjustified infliction of harm, and the reasonableness of the expectation for Villain to refrain from it, I conclude Villain acts impermissibly *without* excuse. This conclusion, however, is consistent with pacifism, as are most of its constitutive data points (i.e., data 5, 6, and 7).

This leaves Datum 6: Villain's apparent moral liability. To say Villain is morally liable to defensive harm entails Villain forfeited their moral right against harm and is hence not wronged by the infliction of that harm.³³ The Excuse View is in the clear as Villain's actions are culpable and thus unexcused, so moral excuse does not block the possibility of Robber's moral liability. But con-

32 Tannenbaum (2007) borrows Scanlon's (2008) account of moral blame to show why agents acting under duress or (nonculpable) ignorance are not blameworthy.

33 For independent challenges to moral liability to defensive harm, see Campbell (unpublished) and Kershner (2017) on the problem of symmetrical threats, Gordon-Solmon (2017) on the problem of multiple threats, and Cheyney Ryan (1982) on the psychological possibility of killing.

ceding Villain's moral liability might seem to undermine pacifism's commitment to the necessary impermissibility of nonconsensual harming.

There are two options for the pacifist. First, bite the bullet and claim our moral intuition about Villain's apparent moral liability is mistaken. I have defended this option elsewhere (Hereth 2021) and still find it promising. Second, concede that Villain is morally liable but deny that this translates into a *permission* for Victim to harm him. Jeffrey Reiman (1997) somewhat famously conceded that capital offenders were *deserving* of execution, which entails being liable to execution, but denied the permissibility of executing them. And even Frowe concedes that a "person who is morally liable to harm may still enjoy moral immunity from harm" (2014: 188). Of course, it falls to defenders of pacifism to say precisely *how* that immunity is generated, which I have also defended elsewhere (Hereth 2017). But that challenge is altogether different from the challenge to explain Villain's apparent moral liability, which pacifism can indeed explain. Because the explanatory challenges of Datum 6 are being fought elsewhere, I will proceed as if the jury is out as to which view offers the better explanation and presume a tie.

3.3 *Intuitions About Agent-Regret*

The final two moral intuitions concern the *rationality* of agent-regret (Williams 1981):

Datum 9: Victim's agent-regret for killing Villain is *rational*.

Datum 10: Villain's agent-regret for killing Victim is *rational*.

Almost everyone thinks Villain's agent-regret for killing Victim is rational in both *Duress* and *Gunpoint*: both killings are morally impermissible, and thus Villain is rational in regretting their actions. So, both the Excuse View and the Justification View adequately explain Datum 10. But what of Datum 9? I'll consider the phenomenon of *moral agent-regret* in those who maim or kill in private self-defense or during warfare. To begin, let's consider Carolyn Price's four possible grounds for moral agent-regret:

- a. Culpable mistakes. These are cases in which I deliberated badly, or acted hastily or ineptly. In future, I could take more care.
- b. Unwitting mistakes. These are cases in which I chose badly, not because I was foolish or careless, but because I was (blamelessly) ignorant of some relevant feature of the situation. In future, I will know better.³⁴

34 Cf. Barnum-Roberts (2011) on whether it's possible to be sorry for some action but not regret it.

- c. Unlucky choices. These are cases in which my choice turned out badly because of some chance combination or turn of events. Clairvoyance aside, I could not have predicted the mishap; hence there is nothing I can learn from my experience that will help me to avoid a similar mishap in future.
- d. Uncomfortable choices. These are cases in which I must make a difficult choice: whatever I do, I will lose something I care about. I stand by my choice, but feel bad about sacrificing something that matters to me. (Price 2020: 148)

Neither the Justification View nor the Excuse View is compatible with (a). By stipulation, we aren't concerned with cases in which blameless *ignorance* is the principal exculpatory factor, so we can also set (b) aside. For similar reasons, we can set (c) aside. That leaves us with (d): uncomfortable choices in which, whatever the agent does, they will lose *something* of value to them. In kill-or-be-killed and maim-or-be-maimed cases, what the agent or their attacker stands to lose is transparent.

Consider the testimonies of persons who kill in self-defense or war, many of whom exhibit moral agent-regret (Williams 2019, Maguen *et al.* 2016). Kevin Sites, in an article for *Aeon*, describes the agent-regret of combatants in heart-breaking detail:

In 368 consecutive days of travel, 71 airplanes, 30 countries and 21 wars, the indisputable truth I found was this: combat is almost always the shortest and smallest part of any conflict, while collateral damage or civil destruction is war's most enduring legacy. But even more surprising to me was that former combatants often became casualties themselves. War veterans I met across the globe, from Somalia to Sri Lanka, feel that they killed a part of their own humanity every time they pulled the trigger, becoming collateral damage as well.

SITES 2014

Veteran suicides point to their intense feeling of agent-regret.³⁵ In an effort to combat unaddressed guilt,

VA clinicians developed a disruptive new theory they've termed 'moral injury'—the notion that it's not simply witnessing trauma that undoes

35 Cf. Puniewska's (2015) interview with San Francisco VA psychologist Shira Maguen: "We've done many focus groups and veterans have told me that nothing really prepares you for killing in war, even with the training," she says.

combat veterans, but guilt; and in particular, guilt over two things: killing and not being killed. The implication is that we humans are fairly resilient in our ability to see horrible things and somehow continue functioning, but we're not so good at living with what we consider our more shameful deeds. Even if killing seems justified by the demands and duties of war, it sends our moral compasses spinning.

SITES 2014

What distinguishes moral injury from garden-variety PTSD, according to VA psychologists Shira Maguen and Brett Litz, is "a sense of 'transgression', a betrayal of what's right" (Sites 2014).³⁶ Indeed, we are often disturbed by people who kill *without* exhibiting any regret or remorse, as in the case of the former Israeli soldier Elor Azaria, who shot a wounded Palestinian soldier and claimed he "has no regrets" (Associated Press 2018). Writing for *The New York Times*, Kareem Fahim details a case of domestic robbery:

A jeweler spent the rest of his life wishing he had never chased after two men who robbed his Brooklyn store. He told his family that he meant only to wound them when he pulled the trigger. Insurance, he lamented, would have covered the theft.

FAHIM 2009

How should we react to these testimonies? In particular, is their agent-regret *rational*?³⁷ My own view is that while we should allow for the possibility of

36 Cf. Holroyd's (2017) view that a distinctive feature of agent-regret is its intention-like state about how one would have acted differently if given a second chance. As most people who kill in apparently justified self-defense *don't* express a desire to have acted differently, it may be that the psychological phenomenon I'm describing here isn't agent-regret. Perhaps, for example, it's more akin to shame or moral injury. For more on the distinctive features of regret, see Scarre (2017). For more on moral injury, see Cahill, Kinghorn, & Dugdale (2023).

37 Cf. Bittner (1992) for more on rational regret. Should we also presume the rationality of veterans who *don't regret* killing or maiming their enemies in warfare? Yes, as a matter of consistency. But for two reasons, this doesn't help the Justification View. First, *not regretting* your actions isn't the same as *approving of or admiring* your actions. So, presuming that veterans without agent-regret are rational is consistent with thinking they are missing something important. Second, for veterans who approve of or admire killing their enemies in war, this causes a dilemma for the Justification View: Presuming the rationality of *both* agent-regret and agent-admiration for descriptively identical actions is *necessarily* irrational, since the former implies the actions were impermissible whereas the latter implies they were permissible (or even obligatory). As actions cannot be both impermis-

irrational agent-regret, we should *presume* its rationality out of respect for the lived experience and testimonies of those who have killed and maimed others.³⁸ McMahan's (1993: 279) swift dismissal of the rationality of these claims runs counter to this presumption and should be rejected.³⁹

On some views like Paddy McQueen's (2017), agent-regret is rational if and only if the agent was unjustified in their decision at the time. If McQueen is right, then we must first determine whether the regretful combatants and the regretful jeweler acted unjustifiably. Combined with a presumption of *rational* agent-regret, it follows that neither the combatants nor the jeweler acted with justification. So, under McQueen's account, the Justification View is false. Given that the combatants and the jeweler are intuitively blameless, that leaves only the Excuse View as a viable account.⁴⁰ Still, plenty of philosophers reject McQueen's account and propose alternatives, such as the following:

Agent-regret is rational iff and because the agent values the unchosen alternative.

BAGNOLI 2000

Agent-regret is rational iff and because the agent's actions don't manifest the agent's values.

TANNENBAUM 2007

sible and impermissible, one group of veterans must be mistaken. However, the Excuse View can avoid this dilemma by maintaining that veterans with agent-regret regret *their actions*, whereas veterans with agent-admiration admire *their motives*. There's nothing inconsistent with the belief that you did the wrong this for the right reasons. Because the Excuse View can preserve the rationality of *both* veteran groups, it should be preferred over the Justification View, which cannot preserve the rationality of both groups.

38 Greasley (2012) reviews and rejects regret-based arguments for the impermissibility of abortion. However, such arguments bear an important disanalogy with the current case as the moral status of fetuses is disputed whereas pacifism concerns *pro tanto* rights-bearers.

39 Cf. McMahan (1994: 271) and Uniacke (1994: 16).

40 Cf. Sussman's (2018) account of agent-regret wherein agent-regret is rational iff and because the (i) agent's vulnerability led to deep conflict through nothing but bad luck, (ii) the agent was forced to violate another's right to protect their own right, and (iii) the agent ought to disown their wrong while recognizing it as blameless. Sussman's descriptive conditions are noticeably satisfied by Frowe's *Duress* case. So, rational agent-regret concerns unjustified (i.e., impermissible) actions for which one is blameless—in short, in cases of *moral excuse*.

Agent-regret is rational iff and because the agent is licensed to limit the effects of, or compensate for, their actions.

PRICE 2020

Agent-regret is rational iff and because the agent prefers that the causal antecedents for their choice had not occurred.

SCARRE 2017

At face value, each of these accounts is compatible with the JUSTIFICATION VIEW. An agent can *justifiably* kill or maim an unjust attacker while valuing the unchosen alternative (Bagnoli) or claiming their action doesn't manifest their values (Tannenbaum). The agent can seek to resuscitate or otherwise medically aid the unjust attacker upon disarming them (Price) or compensate the unjust attacker's family for their loss (Price). Finally, the agent can (and should) prefer they had never needed to defend themselves or another (Scarre).

Upon further examination, however, Tannenbaum's account is unavailable to defenders of the Justification View. If defensive killing is *justified* and the agent believes that, then their actions *did* manifest their values: namely, that defending oneself from an unjust threat is morally permissible. A similar problem arises with Price's account when we inquire about the sense in which one is 'licensed' to limit the effects of, or compensate for, one's actions. If 'licensed' simply means 'permitted,' then moral agent-regret is rational in any case where one is permitted to limit the effects of, or compensate for, one's actions. But that implausibly implies that if I praise someone and am permitted to limit the effects of my praise, then I automatically have grounds to regret my praise. By contrast, if 'licensed' means 'obligated,' it's hard to see how an obligation to limit the effects of, or compensate for, my actions is compatible with those actions being morally justified.⁴¹

How about the accounts of Bagnoli and Scarre? The former characterizes "the proper object of agent-regret as a *valuable unchosen and not necessarily overriding alternative*" (Bagnoli 2000: 177). Had the value of the alternative been overriding it would have been obligatory, and the Justification View could not accommodate it. For Bagnoli, an alternative is valuable "insofar as there are reasons to value it" (2000: 178), and there are indeed reasons to value the life of

⁴¹ McMahan (2009: 8) claims nonliable parties have legitimate claims to compensation when they are unjustly, but justifiably, harmed. However, defenders of the Justification View can't avail themselves of this option without jettisoning the moral liability of unjust attackers, which is central to their view about why self-defense is morally justified.

an unjust attacker, their (supposed) moral liability notwithstanding. However, this account justifies *too much* agent-regret. I might have chosen any number of careers, partners, companion animals, etc., many of which would have led to a different but nonetheless valuable life. Yet if I regret the choices that led to my current life on that basis alone, my agent-regret is not rational. This cheapens agent-regret by making its rationality too commonplace. Finally, Scarre's account is implausible. Suppose I intensely dislike you but find myself seated next to you on a train. Sensing the need to be decent and polite, I sincerely ask how you are. However, I would prefer that I had not been in this position in the first place—by taking another bus, choosing my seat more cautiously, etc. So, I prefer that the causal antecedents of my choice to behave politely had not occurred. Yet none of that makes my agent-regret *rational*.⁴² Nor would it be rational if I chose more distant causal antecedents, such as my choice to live in Boston (where the train runs and you live), or having ever been born, or the creation of railways in Boston.

In summary: The best explanation for the moral agent-regret expressed post-harming by combatants and civilians is that they acted *unjustifiably*. This is true provided we at least presume the rationality of post-harming agent-regret, which I argue we should.

3.4 Summary

Here's a final accounting of how well the Justification View and the Excuse View account for the *unweighted* intuitive data:

- Datum 1: Victim is *morally blameless*. [tie]
- Datum 2: Victim is *morally nonliable*. [tie; slight EV]
- Datum 3: Expecting Victim to forego defending against Villain is *unreasonable*. [tie]
- Datum 4: Victim killing Villain is (objectively) *justified*. [JV]
- Datum 5: Villain is *morally blameworthy*. [tie]
- Datum 6: Villain is *morally liable*. [tie; slight JV]
- Datum 7: Expecting Villain to forego attacking Victim is *reasonable*. [tie]
- Datum 8: Villain killing Victim is (objectively) *unjustified*. [tie]
- Datum 9: Victim's agent-regret for killing Villain is *rational*. [EV]
- Datum 10: Villain's agent-regret for killing Victim is *rational*. [tie]

⁴² Had my politeness been *insincere*, then my agent-regret would have been rational since it's rational to regret insincerity. But I have stipulated that my politeness was sincere.

Here's how the two views fare account for the *weighted* intuitive data, excluding ties:

Highly Intuitive (Data 8, 7, 5, and 10): tie

Intuitive (Data 6, 1, 3, and 4): JV by slightly more than +1

Weakly Intuitive (Data 2 and 9): EV by slightly more than +1

On the plausible assumption that stronger intuitions count as stronger evidence for a view, the Justification View comes out ahead of the Excuse View by faring better in the Intuitive category. In the next section, I offer reason to believe that the Justification View's advantage is not only minor, but illusory.

4 The Fair Use Principle

Up until this point, I have argued that the conjunction of pacifism and the Excuse View can competitively explain a broad swath of our moral intuitions about paradigmatic cases of self-defense and other-defense. Still, pacifism might come up a tad short, leaving the Justification View (and thus anti-pacifism) with some explanatory advantage. I'll now contend that this advantage is minuscule and does not justify an anti-pacifist consensus. To begin, recall the moral intuition neither pacifism nor the Excuse View can explain:

Datum 4: Victim killing Villain is (objectively) *justified*.

One route for pacifists to take is to ask *why* we should accept this intuition, as it's doubtful the anti-pacifist could say much without begging the question. Fortunately, there's a better response available to the pacifist. To begin, consider James Rachels' (1975) infamous argument against the moral distinction between killing and letting die:

Rachels' Pairwise Argument

1. If killing were intrinsically worse than letting die, then persons should be less liable to criminal penalties for letting die rather than killing.
2. The person who lets someone drown rather than drowning them should not be less liable to criminal penalties on that basis.
3. So, killing is not intrinsically worse than letting die.

The key intuition is (2). Can defenders of the killing/letting die distinction incorporate that intuition? Yes, in several ways. First, there are ample reasons

not to proportion criminal penalties with moral severity. If you murder a million innocents and I murder one more, that serves as no defense for leniency despite it being morally worse – even by Rachels' consequentialist lights. Second, the person who merely lets someone drown would, given their motives, be willing to drown the person. So, we should not judge the *agents* differently, and perhaps *that* is what our intuitions are tracking in (2). For argument's sake, let's assume one or more of these strategies succeeds. If so, we should conclude the intuitive truth of (2) isn't evidence against the killing/letting die distinction. Call this the

FAIR USE PRINCIPLE

When evaluating the plausibility of rival theories J and E, the use of intuitive datum *d* against E and for J is *epistemically permissible* only if J better explains *d* than E.

Notice that the Fair Use Principle concerns only *rival* (i.e., incompatible) theories. Rachels' view is that the killing/letting die distinction is false. His opponents claim it is true. Assuming defenders of the distinction can (with equal success) accommodate the intuitive datum expressed in (2) above, that datum cannot be used as leverage against the killing/letting die distinction. I'll now defend adapting this move to explanation. That is, I will defend the following variant of the Fair Use Principle:

FAIR USE PRINCIPLE*

When evaluating the plausibility of rival theories J and E, the use of datum *d*'s *full intuitive force* against E and for J is epistemically permissible only if (i) *d* is better explained by J than E and (ii) no intuitive components of *d* are equally well-explained by E.

As an analogy, consider that you are not epistemically permitted to claim *full* credit for the current speed of your car if I am (successfully) pushing it. The reason why is because your contribution to the car's speed is only *partial*. Similarly, if the intuitive components of *d* are equally well-explained by E, then J cannot claim full explanatory credit for *d*. The reason why is because J's explanatory contribution *overlaps* the explanatory contribution of E with respect to *d*. Permitting J to use *d*'s full intuitive force against E is just as epistemically inappropriate as claiming full credit for your car's current speed. To determine the credit you deserve, we must consider your contribution in isolation from mine. By analogy, to determine the intuitive force to which J is entitled with respect to *d*, we must consider J's contribution in isolation from E's.

Earlier in the paper, I remarked that Datum 4 is intuitively *derivative*. By this, I mean that the moral intuition *Victim killing Villain is (objectively) justified* borrows intuitive support from other intuitions like *Victim wouldn't be blameworthy for killing Villain*, *Victim wouldn't be liable for killing Villain*, and *Victim can't reasonably be expected not to kill Villain*. To support this claim, I appealed to some plausible counterfactuals like the following: *If Victim is morally justified in harming Villain then Victim is morally blameless for harming Villain* is uncontroversially true. So, if we adjust our credences downward for the consequent, we should do the same for the antecedent. As a result, Datum 4 should not be classified as Weakly Intuitive rather than Intuitive. To see the impact of the Fair Use Principle* with respect to the Justification View, we must isolate intuitive overlap. We can do that by suspending judgment about the consequents of the following conditionals:

- Conditional 1: If Victim is morally justified, then Victim is *morally blameless*.
- Conditional 2: If Victim is morally justified, then Victim is *morally nonliable*.
- Conditional 3: If Victim is morally justified, then expecting Victim to forego defending against Villain is *unreasonable*.

Suspend judgment about each of the consequents and assume you don't know that Victim is blameless, nonliable, and cannot be reasonably expected to forego defensively harming Villain. Earlier in the paper, I noted that ethicists frequently appeal to Victim's blamelessness and the like as *evidence of* Victim's action being morally justified. So, agnosticism about Victim's blamelessness and the like is *lost evidence for* Victim's action being morally justified.

When applied in this way, the Fair Use Principle* has two important implications. First, defenders of the Justification View are not permitted to use Data 1-3 or 5-10 as evidence against the Excuse View. That seriously weakens *Bottom-Up Intuitive Arguments*. That remains true *even if* we count Data 1-3 and 5-10 as evidence for the Justification View, as it's one thing to claim those data are evidence *for* the Justification View and another to claim they are evidence *against* the Excuse View. Second, intuitive principles entailing or expressing the Justification View lose intuitive downstream support. From the standpoint of reflective equilibrium, then, the case for the Justification View is seriously weakened by the evidential bracketing of Data 1-3 and 5-10.

5 Conclusion

Pacifism is the view that necessarily, the nonconsensual harming of pro tanto rights-bearers is all-things-considered morally impermissible. Critics of pacifism frequently point to common moral intuitions about self-defenders and other-defenders as evidence that pacifism is false and that self- and other-defense are often morally justified. I call this the Justification View and defend its rival, the Excuse View. According to the latter, a robust view of moral excuse adequately explains the common moral intuitions invoked against pacifism and is compatible with pacifism. The paper made a case for pacifism via the Excuse View in four steps.. First, I identified ten intuitive data points that require explanation. Second, I introduced the justification/excuse distinction. Third, I demonstrated the Excuse View's equal explanatory power with respect to the intuitive data. Fourth, I defended and applied the following principle:

FAIR USE PRINCIPLE*

When evaluating the plausibility of rival theories J and E, the use of datum *d*'s *full intuitive force* against E and for J is epistemically permissible only if (i) *d* is better explained by J than E and (ii) no intuitive components of *d* are equally well-explained by E.

I concluded that the conjunction of pacifism and the Excuse View renders the intuitive defense of the Justification View largely moot. Pacifism may be false, but not because it is as counterintuitive as most have supposed. If nothing else, this shifts the burden of proof to anti-pacifists and provides a much-needed theoretical reprieve to pacifists.

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