

**"Defending a Rodinian Account of Self-Defense"**  
**pre-publication draft**

**Introduction:**

There's a widespread intuition that if the only way an innocent person can stop her villainous attacker from killing her is to kill him instead, then she is morally permitted to do so. But *why* is it that she is permitted to employ lethal force on an aggressor if that is what is required to save her life? My primary goal in this paper is to defend David Rodin's fairly recent and under-recognized account of self-defense that answers this question.<sup>1</sup> There are roughly two kinds of non-consequentialist accounts of self-defense: forced-choice accounts and rights-based accounts.<sup>2</sup> I first examine what I take to be the most plausible forced-choice account of self-defense and I argue that it is unable to withstand two recent criticisms. I then proceed to adjudicate between two prominent rights-based accounts of self-defense: call them the Thomson/Uniacke account and the Rodinian account. Any rights-based account of self-defense must explain how it is that X, who villainously tries to kill Y, forfeits his right to life. I argue both that Thomson/Uniacke's explanation cannot account for the clear permissibility of killing a certain kind of aggressor in self-defense and that the attempts that could be made to account for this permissibility are either ad-hoc or permit the killing of persons that are morally on par with innocent bystanders. I point out how Thomson/Uniacke can evade the seeming difficulties that I raise by only permitting lethal defensive force against culpable aggressors. But allowing defensive force to be employed only on the culpable goes against one of its central tenets. I then

---

<sup>1</sup> David Rodin, War and Self-Defense, (Oxford: Oxford University Press, 2002), pp. 18-99.

<sup>2</sup> *ibid*, p. 55.

discuss the Rodinian account, how it evades the criticisms I raise, as well as its other virtues. I conclude that while it has difficulties of its own, it is the more plausible one to adopt.<sup>3</sup>

### **Two Paradigmatic Cases of Self-Defense**

I am on my usual nighttime jog when someone up ahead spots me and begins to approach. I notice he has a rather large knife drawn so I quickly veer off to the left. After catching up with me my attacker tackles me from behind and starts stabbing me. I realize I'm pinned down and that the only way to escape this encounter alive is to kill my attacker. So I struggle for my pocketknife and stab him until he falls over dead. My attacker acted with the intention to kill me. Furthermore, he was neither psychotic nor acting under duress; nor was he hallucinating such that he mistakenly thought I had the intention of killing him. Thus my attacker was fully responsible for his actions.<sup>4</sup> Call this paradigm case, 'night-attack 1 (NA1)'.

Consider a similar case, 'night-attack 2' (NA2). Here I'm jogging with my wife and she is attacked. As she is being attacked I run up to her attacker and attempt to tackle him away from her. I realize that the only way she can escape this encounter alive is if I kill her attacker. So I

---

<sup>3</sup> Jeff McMahan has recently endorsed what he calls the Responsibility account of self-defense. See McMahan, "The Basis of Moral Liability to Defensive Killing", *Philosophical Issues*, 15 (2005), pp. 386-405. On this account, roughly, a person is liable to defensive killing when he is morally responsible for an unjust act that gives rise to "a threat of unjust harm to others, where a harm is unjust if it is one to which the victim is not liable and to which she has not consented" (p. 394). McMahan distinguishes between moral responsibility and moral culpability. A person is morally responsible for an act that gives rise to an unjust threat if and only if the act is foreseeably risk-imposing and stems from the person's voluntary control (pp. 394, 397-398). A person is morally culpable for an act if and only if the act is a result of wrongful intent, recklessness, or negligence (p. 394). McMahan himself mentions how his account can be talked about in terms of rights (pp. 400-401), thus it could be viewed as a particular rights-based account, one that is closer to the Rodinian account than the Thomson/Uniacke account. Later I will mention the advantages the Rodinian account has over the Responsibility account.

<sup>4</sup> I take it that one can undertake and accomplish an action x, with the intention (the aim) of accomplishing x, yet not be responsible for his action because of reasons such as insanity or physical compulsion. Thus for a person to be responsible for an act entails not only that he intend the act, but that he be free of compulsion, insanity and the like. More will be said below about these instances of an attacker not being responsible for his actions. Cases involving attackers that are not, for whatever reason, responsible for their actions will be non-paradigmatic cases of self-defense.

draw my pocket-knife and do just that. Just like in NA1, my wife's attacker was fully responsible for his actions.

While NA2 is strictly speaking a case of other rather than self-defense, for simplicity's sake I will be subsuming other-defense under the heading of self-defense. Self-defense then extends to defense of others. Thus I take both NA1 and NA2 to be examples of a paradigmatic case of self-defense.<sup>5</sup>

Despite the strong legal and moral prohibitions against homicide it is commonplace to think that my act of killing in both NA1 and NA2 is justified and not merely excused. That is, it is not as though my actions in both cases are morally wrong, yet because of things like fear, or duress, or natural instinct, I'm not to be blamed or punished. If this were the case my acts of killing would be merely excused. Rather, I am not to be blamed for my acts of killing because they are consistent with what morality requires of me. Moreover, while intuitively in NA1 I am not obligated to kill my attacker, but am at liberty to do so, in NA2 I am seemingly obligated to kill the attacker in order to protect my wife.<sup>6</sup> Furthermore, in both NA1 and NA2 I am seemingly justified in killing any number of attackers if that is what is necessary to save either my own or my wife's life. Finally, while I am justified in killing the attacker (or attackers) in both NA1 and NA2, in neither case is the attacker (or attackers) justified in killing me even though it is true that his life is threatened given my attack on him. There is, then, a moral asymmetry that exists between my attacker and me.

---

<sup>5</sup> It is not uncommon to extend the notion of self-defense to include defense of others. See for example, David Rodin, *War and Self-Defense*, p. 38. Also, Phillip Montague, "Self-Defense and Choosing Between Lives", *Philosophical Studies* 40 1981, p. 211. Richard Norman, *Ethics Killing and War* (Cambridge: Cambridge University Press, 1995) pp. 131-132.

<sup>6</sup> Montague, p. 211.

Consider three basic features present within any standard case of self-defense:<sup>7</sup> (1) Attacker acts with the intention of killing Victim, and is responsible for his actions. (2) Victim is innocent; she has done nothing that would justify the attack. (3) Victim is, despite the strong prohibition against committing homicide, justified in killing Attacker (or any number of Attackers) if that is the only way to keep Victim from being killed. But, Attacker (or Attackers) is neither justified nor excused if they happen to kill Victim who is fighting back with lethal force.<sup>8</sup> The goal now is to come up with a theory of self-defense that accounts for and explains why (3) holds when (1) and (2) hold. Consider, now, what I take to be the most plausible forced-choice account of self-defense by Phillip Montague.

### Montague's 'Forced Choice' Account of Self-Defense

For Montague, standard self-defense situations are instances of a broader class of cases that fulfill the following three conditions:

"(i) Some individual x can escape being harmed if and only if some other individual y is himself harmed; (ii) z (who may be identical to x) is in a position to determine which of the two individuals will be harmed; (iii) it is y's fault that he and x are in a situation in which one of them will be harmed".<sup>9</sup>

Whenever these three conditions are met, it would seem that (ceteris paribus) z (if not identical to x) would be obligated to choose to distribute harm towards y rather than x since y is responsible for the predicament where harm is to befall one of them. And, seemingly, z (if identical to x) would be (ceteris paribus) permitted (i.e. at liberty) to distribute harm towards y.<sup>10</sup>

The two ceteris paribus conditions that apply to any situation that satisfies the above three

---

<sup>7</sup> A similar summary is given by Montague, p. 210.

<sup>8</sup> The terms "Attacker" and "Victim" originally come from J.J. Thomson, *Self-Defense and Rights, The Lindley Lectures*, (Lawrence Kansas: University of Kansas Press, 1977) p. 3. She uses "Aggressor" rather than "Attacker".

<sup>9</sup> Phillip Montague, "Punishment and Societal Defense", *Criminal Justice Ethics* 2:1 1983 (Winter/Spring), p.31. For other similar 'forced choice' accounts see Cheney Ryan, "Self-Defense, Pacifism, and the Possibility of Killing", *Ethics*, Vol. 93. No3 April, 1983: pp. 508-524. And, Norman, pp. 117-127.

<sup>10</sup> Montague, "Punishment and Societal Defense", pp. 31-32.

conditions can be labeled CP1 and CP2. According to CP1, "the distribution of unavoidable harm among those who are to blame for the existence of that harm must be proportional to the harm that would be suffered by innocent persons under a different distribution".<sup>11</sup> So, the harm that is channeled towards y, if it is to be just, must be roughly the same degree and kind (or at least not exceed the degree and kind) of harm that would have been channeled towards z had a different distribution occurred. CP2 states, roughly, that if z's distribution of harm towards y would result in the harming of an innocent bystander, then it is not clear that z would be justified in directing harm towards y.<sup>12</sup> Montague calls conditions (i), (ii), and (iii) as well as CP1 and CP2 the 'distribution thesis'.<sup>13</sup>

Consider the following hypothetical that satisfies the distribution thesis (the upper case letters in this hypothetical stand for concrete instances of the lower case letters above): Y is a flight instructor for 'seaside planes' who is giving X his first flying lesson. Prior to entering the plane Y's girlfriend was quite flirtatious with X. X is a gentleman and did not provoke the flirtatious behavior and is really quite embarrassed about it. Y is rather angry and jealous about the whole thing so while airborne he decides to get back at X by taking the plane into a nosedive in hopes of greatly traumatizing X. The engine stalls as a result and they have to crash land in the ocean. Some time has passed so they have drifted out into the middle of the ocean where the swells are gigantic due to an oncoming storm. Z, a rescue helicopter pilot, has spotted them both but the helicopter is only big enough to carry one of them. Furthermore, Z is unable to come

---

<sup>11</sup> *ibid*, p. 32-33.

<sup>12</sup> *ibid*, pp. 32-33. More will be said about CP1 and CP2 below.

<sup>13</sup> Phillip Montague, "The Morality of Self-Defense, A Reply to Wasserman", *Philosophy and Public Affairs*, Vol. 18, No1, Winter 1989, p. 82.

back to make another pick up because the storm will be too intense to allow the helicopter to be airborne.<sup>14</sup>

Here is a case where the distribution thesis is satisfied and where justice would seemingly require that Z pick up X rather than Y. Z has a choice between saving either X's life or saving Y's life. Z is "forced to choose" between lives in that no matter how he chooses to act, at least one of them (X or Y) will die as a result of what he chooses. In situations like this, where all people cannot be saved, it seems as a matter of principle that the lives of the innocent are to be preferred.<sup>15</sup> In this case, X is innocent; it was Y's culpable behavior that landed them in this predicament where only one of them can be saved. Since Z can only save one, he is seemingly obligated to save X.<sup>16</sup> Furthermore, CP1 and CP2 are apparently satisfied in that X would have suffered the same fate as Y did had Y been picked up instead of X. Moreover, saving X and leaving Y did not result in the harming of someone else.

For Montague, even in a case where more than one person was somehow equally responsible for the crash landing, justice would still require that the one innocent person, as opposed to the several culpable persons, be rescued. Say, for example, that the culpable behavior of A and B (the other two flight instructors), along with Y's culpable behavior, all played an equal role in the plane crashing. Assuming that X is a quite large and heavy fellow and the three instructors are all very light such that Z can rescue either X or the instructors, it would still seem that the just thing for Z to do would be to rescue X even though it is the case

---

<sup>14</sup> This example is a variation of Montague's example; see "Punishment and Societal Defense", p. 32.

<sup>15</sup> Montague, "Self-Defense and Choosing Between Lives", p. 215. Montague takes this principle from John Locke, *of Civil Government* (Second Treatise), Ch. III.

<sup>16</sup> *ibid*, p.32. Note that, for Montague, the culpable behavior of Y was somewhat aggressive in nature but it need not have been in order to justify Z is rescuing X. That is, Y could have been responsible for the crash either by being reckless and or negligent in some way. Say, for example, Y did not have any malicious intent to hurt X; rather Y was looking for a good time so after taking several shots from his whiskey bottle he thought it would be fun to send the plane into a nosedive making the engine stall. See, Montague, "Self-Defense and Choosing Between Lives", p. 211.

that Z's helicopter had the capability to pick-up the three instructors. The main point here is that it is moral culpability and moral innocence that determine who should be harmed and who should not, not the sheer number of lives. So even though the total harm done is greater if Z decides to channel harm towards the three instructors rather than X, intuitively morality requires that Z not direct harm towards X (i.e. save X) because of X's innocence.<sup>17</sup>

Standard self-defense situations, so it is contended, also fulfill the distribution thesis. Attacker (Y) deliberately creates a situation where either he or Victim (X) will be harmed (killed). Third Party (Z) is in a position to determine who will be harmed (killed). Third Party can do nothing and thereby allow Attacker to harm Victim (for if Attacker is not stopped Victim will likely die). Or, Third Party can choose to save Victim by channeling harm towards Attacker. In this case the harm that befalls Attacker stems directly from Third Party's agency in that Third Party (by stabbing, for example) is the direct cause of Y's death. This is opposed to the above 'seaside' example where Z acts in a way (e.g. picks up X and fly's away) that allows harm that is external to Z (e.g. massive waves) to befall Y. Here, strictly speaking, the massive waves were the direct cause of Y's death, but Z is the one that is still directly responsible for that happening.

Again there is nothing Third Party can do that will result in both Victim and Aggressor living. Thus it would seem that justice would obligate Third Party to save Victim rather than Attacker, for it is the latter's culpable action that created the situation where all cannot be saved. Importantly, if Third Party is obligated to save Victim, then it would seem to follow that Victim (whether there is a Third Party or not) is at least free to save herself from harm by directing harm onto Attacker.<sup>18</sup> On the face of it, the moral asymmetry between Attacker and Victim is

---

<sup>17</sup> Montague, "Punishment and Societal Defense", p. 32.

<sup>18</sup> Montague, "Self-Defense and Choosing Between Lives", p.216.

explained. Attacker has the power to relent thus making it so both he and Victim can escape with their lives intact. So from his perspective, condition (i) is not fulfilled. This is so even if Victim is fighting back. Now if Attacker relents while the Victim does not, and Victim takes the life of Attacker, it is not at all clear that Victim would be justified in his actions, although perhaps he may be excused.

### Replies to Montague's Account of Self-Defense

In this section I discuss two primary objections to Montague's account of self-defense, one leveled by David Wasserman, the other by David Rodin. I claim that both objections in the end are successful. I begin with Wasserman.

#### Wasserman's Reply

Is Montague's account of self-defense open to a counter-example? One might think, contrary to Montague, that the fulfillment of the distribution thesis is not sufficient to morally justify the selection of the culpable, as opposed to the innocent, for receiving harm. Consider the following scenario, labeled Transplant:

There is only one healthy liver available for two people ('Young' and 'Old') who are in need of a liver transplant without which they will die. Old is infirm, advanced in years and is expected to live six to eight months after transplant. Young is expected to live another forty years if he gets a transplant. However, the reason he needs a new liver is because he poisoned his old one through years of heavy drinking. He admits that he knew all along that heavy drinking would ruin his liver, but he has a 'wake-up' call and desires to live as long as he can alcohol free.

While it is Young's fault that makes it the case that he needs a new liver, intuitively we think Young should receive the transplant despite his culpable behavior. Or at least we think that it is not clear that Old should get it despite his innocence in this case. But Montague's account,



so it is claimed, would seem to have Old receive the transplant since he is not at fault for the situation he is in where either he or Young will be harmed.<sup>19</sup>

The claim is that Transplant satisfies the distribution thesis yet it is not clear that the culpable party should, as a matter of justice, be selected to receive harm. Thus, even though standard self-defense situations may satisfy the distribution thesis, it has not been shown that Victim is in fact justified in killing Attacker on account of the latter's culpable behavior. But is Transplant even a counter-example? In what follows I will say why it appears at first blush it is not. But I will then argue both that Montague's response to a revised Transplant lands him in a dilemma, and that CP2 has the potential to give Montague a substantial problem when it comes to assessing standard self-defense cases.<sup>20</sup>

---

<sup>19</sup> David Wasserman, "Justifying Self-Defense", *Philosophy and Public Affairs*, Vol., 16 No. 4 Autumn 1987, p.367.

<sup>20</sup> It's perhaps worth mentioning that there is another type of counter-example that is aimed at a slightly different version of the distribution thesis; it's the original, thus slightly older version that Montague views as weaker than the version stated above. The version reads: (i) "individuals X1,..., Xn are situated such that harm will inevitably befall some but not all of them; (ii) that they are so situated is the fault of some but not all members of the group; (iii) the nature of the harm is independent of the individuals who are harmed; (iv) Y, who is not necessarily included in X1,...,Xn is in a position to determine who will be harmed" (See, Montague, "Self-Defense and Choosing Between Lives", p. 215).

The counter-example to this older version (call it Shipwreck) reads: The ship is sinking and there is a group of people, including the captain of the ship, cramming into the only lifeboat that is not yet completely full. They have made it in but one of the members needs to be thrown overboard otherwise the entire lifeboat will go down with the ship. The captain is responsible for the wreck for he was intoxicated on the job, which explains why he hit the iceberg that was in plain sight. It was the culpable behavior of the captain that landed the group in the situation where some will inevitably be harmed; furthermore, some can escape harm just in case the captain receives harm. According to the distribution thesis, then, the captain should be the one to be thrown overboard. (This is a variation of the counter-example given by David Wasserman, "Justifying Self-Defense", p.367. Richard Norman gives essentially the same example. See, p. 126).

But selecting the captain for harm, if it can be justified at all, is seemingly justified in terms of punishment, specifically on retributive grounds. But punishment, if it is to be legitimate, requires it to be exacted from impartial and authoritative institutions, which is lacking in this case [this particular claim is made explicit in Norman, pp. 126-127. The claim is seemingly more implicit in Wasserman. In any event, Wasserman is clear that the sacrifice of the captain has a punitive (retributive) nature and because of this it is doubtful that the sacrifice of the captain is just. See Wasserman, pp. 371-372]. To be sure, the captain acted badly so as to cause the situation where some will die. But what he did is in the past, the consequences have been set in motion and now there is really nothing anybody, including the captain, can do that will reverse those consequences (ibid, pp. 371-372). The captain, even if "snarling and unrepentant... is no longer causing the harm and has lost the opportunity to undo it" (ibid, pp. 371-372). Thus "his sacrifice has a retributive character that is only confirmed by our conviction that he richly deserves it" (ibid, pp. 371-372). Because the harm that befalls the captain is seemingly just personal vindictiveness, it is not clear that his sacrifice would be morally just (ibid, pp.371-372. Also see Norman, p. 126).

Does Shipwreck defeat the old Montague? For two reasons it seems that it does not. First, recall that the objection was basically that because the harm that befalls the captain is seemingly just personal vindictiveness, it is

At first blush it seems that Transplant is not a genuine counter-example for it seemingly does not satisfy (iii). Young is not responsible for the harm that could befall Old. While Young and Old are in a situation where harm will befall one of them, it is seemingly a stretch to say that the culpable behavior of Young caused that situation for both of them.<sup>21</sup> Montague is confident, however, that Transplant can easily be modified so as to make it satisfy (iii).<sup>22</sup> However, he claims that such a modified Transplant cannot satisfy CP1. Recall that CP1 is a proportionality condition that states that, roughly, if the harm that is to be distributed towards the culpable party is disproportionate to the harm that would fall on the innocent party under a different distribution, then it is not clear that the culpable party should, as a matter of justice, receive the harm. So how does Transplant, assuming that (iii) is satisfied, fail to meet CP1? Montague claims that the harm done to Young (the loss of thirty good years), if Old receives the liver, "differs significantly" than the harm done to Old (the loss of several low quality months), if Young receives the liver.<sup>23</sup> Presumably the harm done to Young on one distribution would be

---

not clear that his sacrifice would be morally just. But it is not clear that the nature of the harm that the captain receives is in fact retributive in nature. If it is, there would be no moral difference between the act of throwing the captain overboard when there is not any room in the lifeboat and the act of throwing him overboard despite the fact that there is room. But there clearly is a difference between these two acts. The latter is a clear case of retribution. But in the former act, even though some people may feel that the captain ought to "pay" for what he did, it is not clear how the grounds for throwing the captain overboard have to be retributive in nature. To be sure, the captain, as opposed to an innocent person, deserves (in a broad sense of the term) to be thrown overboard, but it is hard to see why doing so has to be thought of in terms of punishment. If harm is to *inevitably* come to some person or other, it seems reasonable to distribute that harm to the one who is ultimately responsible for causing the harm, and this even in the absence of any sort of motive of retaliation (See Montague, "The Morality of Self-Defense: A Reply to Wasserman", p. 88).

Secondly, in cases like Shipwreck, where the behavior of the culpable party is in the past, the fact remains that innocent people in the present are in danger of being harmed as a consequence of what the culpable party did. The people in the lifeboat are still forced to choose between lives in that no matter what they do some people will be harmed. This is so despite it being the case that the act that caused them to be in this situation is in the past. So just because the captain's culpable action was in the past, we seemingly do not have to view his sacrifice as retributive in nature, as opposed to channeling harm to the guilty as opposed to the innocent, given the fact that presently the guilty and the innocent cannot both escape the harm (ibid, pp. 88-89).

<sup>21</sup> Montague, "The Morality of Self-Defense: A Reply to Wasserman", p. 84.

<sup>22</sup> ibid, p. 84.

<sup>23</sup> ibid, p. 85.

quite major and far worse than the harm done to Old on a different distribution. Because CP1 is not satisfied, modified Transplant is not a genuine counter-example.<sup>24</sup>

But this response by Montague is troubling. If we are to think that harm can be distributed unequally in the way that Montague thinks it can, then it seems we are vulnerable to getting counter-intuitive results in standard self-defense situations. Specifically, consider a case where a sickly cancer patient with six months to live is attacked by a young and healthy nurse. If the cancer patient manages to grab the syringe and kill the nurse, the nurse would have her life cut short by many years. And if the nurse kills the patient, she would have her life cut short by six miserable months. It would seem that Montague would have to say that the harm done to the nurse on one distribution would be worse than the harm done the patient on another. But certainly we want to say that the cancer patient was clearly justified in killing her assailant, that her act was not disproportionate. Going back to modified Transplant, Montague could rescind and claim that on either distribution the harm would be equal in that either Old or Young will *die*. But then this concedes that modified Transplant is a successful counter-example: one that shows that the satisfaction of the distribution thesis is not sufficient to morally justify the harming of the culpable party. For, again, intuitions don't clearly favor Old receiving the transplant, while they do pull somewhat in the direction of Young receiving it despite his culpable behavior in the matter.

What accounts for the intuition in favor of Young? It's, again, not the case that if Young doesn't get the transplant he will be harmed to a much greater degree than Old would if he doesn't get it. The intuition can seemingly be accounted for if we take into consideration two distinctions: killing and letting die (or more generally between doing and allowing), and being harmed and receiving benefit. Transplant is an instance of a more general case where the

---

<sup>24</sup> *ibid*, p. 85.

distribution of harm takes the form of allowing someone to die, as opposed to killing him.

Consider another case of this general sort called *Sickness*: I have the only available cure to a deadly disease that both A and B have, and there's only enough medicine to administer to one of them. If I come to the aid of A, let's say, I will be allowing B to die (I will *bring about* B's death as opposed to killing him). And similarly, if I come to the aid of B, I will be bringing about the death of A. In this case I am seemingly permitted to arbitrarily choose between A or B.<sup>25</sup> But I am seemingly not permitted to arbitrarily choose B, let's say, if it's the case that A will benefit to a great degree by having the medicine (he will live 30 more good years), while B will benefit to a vastly lesser degree by having the medicine (he will live 3 more miserable months). In this case, A seemingly should get the medicine. Now if A happens to be responsible for both of them having the disease (but is repentant in some way), the intuition that A should get the medicine is not as strong but it still seems to outweigh the intuition that B should get it. The point is that in some cases (one's that resemble *Transplant* and *Sickness*), when deliberating about which persons should receive harm, we can factor in potential benefit to those persons. The initial justice-based consideration in favor of Old receiving the transplant is outweighed by the fact that repentant Young would be benefited to a much greater degree than Old would upon receiving the transplant.

There is another problem for Montague that comes to the fore given his CP2. Recall that CP2 basically states that if the distribution thesis is fulfilled, except for the fact that Victim's act of killing Attacker would result in an innocent bystander being harmed, then it is not clear that Victim is justified in killing Attacker. So, for example, if the only way Victim can stop Attacker from killing her is to throw a grenade at Attacker, and Victim foresees that the grenade will

---

<sup>25</sup> See Thomas Nagel, "War and Massacre", in, *War and Moral Responsibility*, in, *A Philosophy and Public Affairs Reader*, ed. Marshall Cohen, (Princeton: Princeton University Press, 1974), pp. 9-11.

either kill or seriously maim a nearby child as well as Attacker, it is questionable whether Victim is permitted to throw the grenade. This seems plausible, Victim may be required to sacrifice her own life rather than Attacker's given the presence of the innocent nearby child. But it seems as though Montague could be problematically committed to saying more than this. For CP2 is somewhat ambiguous concerning what exactly is to count as harm. On one reading, CP2 talks about harm in general, and not just killing (which is, as we have seen, a way of harming). So, imagine that Victim, by either killing Attacker or by warding him off by some other non-lethal means, winds up breaking the arm of an innocent bystander (say Victim and Attacker are wrestling in a crowded area and Victim sees that if he pushes Attacker an innocent child in the vicinity of the falling Attacker could likely break a bone). Intuitively, the innocent child, in virtue of having his arm broken, is harmed; and the harm he suffers is a fairly direct consequence of Victim defending himself. In this situation, the entire distribution thesis (except for CP2) is fulfilled. Would Montague claim that it is not clear that Victim is permitted to kill Attacker in defense of his life? If so, then Montague's account commits us to some highly counter-intuitive consequences. For while the broken arm of the innocent child is a bad state of affairs, it is not so bad as to cancel out the moral permission Victim has to defend his very life.

Perhaps it is better to read CP2 as restricting the type or magnitude of harm an innocent bystander can receive as a direct result of Victim defending himself. So, maybe we can say that if an innocent bystander is to receive a magnitude of harm that is greater than or equal to the magnitude of harm that Victim would receive if he does not defend himself, then it is not clear that Victim is permitted to defend himself. But even a restricted CP2 is problematic for Montague. Let me flesh out my objection by first noting another seeming ambiguity in CP2 (which also applies to the restricted CP2) concerning the phrase "it is unclear whether Victim is

permitted to defend himself". One reading of CP2 states that the distribution thesis is just plain silent on whether or not Victim can defend himself given that an innocent bystander will be harmed if he does. Or, CP2 could be saying that there is a presumption against Victim defending himself given that an innocent bystander will be harmed if he does. On either reading it seems that CP2 is problematic. To see this consider the following scenario:

Say I am playing a pick-up basket ball game with a group of other basketball enthusiasts and no referees. Quickly into the game I realize that my opponent (call him Chip) is an overly aggressive poor sport. He has already, while guarding me, pulled me into himself and given me a knee to the back causing me to feel a significant amount of pain. After asking him to quit, I feel him tugging at my shirt once again. Suppose that the only way to keep him from kneeing me again is to give him a jolt with my elbow and shove him off of me. Also suppose it is likely that once I do shove him he will no longer try and knee me throughout the course of the game. However, if I do shove him, it is likely that another player (maybe two) will be hit by Chip, causing them to feel a significant amount of pain (the idea here is that Chip will involuntarily fall into the other player(s) as a result of me pushing him). The type and magnitude of pain the other player(s) will feel if I shove Chip is roughly the same type and magnitude of pain I would feel if I allow Chip to knee me.

Now maybe it would be especially nice of me to take another knee in the back from Chip and then just leave the game altogether. But it is seemingly not the case that I am obligated to stop playing because there is a bully in our midst. The bottom line is it seems fairly straightforward to me (though I admit that intuitions are not crystal-clear here) that I would be permitted to shove Chip, perhaps given that I apologetically explain to other player(s) that got hit by Chip why I did what I did. But on either reading of revised CP2, it is not at all

straightforward that I am permitted to shove Chip. This it seems to me is problematic. There is no presumption that I should take another hit in the back from Chip, I am seemingly permitted to defend myself. And because of this, there's no reason to be silent on whether or not I should defend myself.

My goal has been to present this scenario as evidence against the truth of revised CP2. In this scenario I am in a situation where no matter what I do someone will be harmed. I can do nothing and experience pain; or I can defend myself from that pain by causing Chip to experience pain. By doing so, I also cause (in a fairly direct way) other innocents to feel pain, but I am seemingly permitted to anyway. And this despite the fact that the type and magnitude of harm that another bystander(s) experiences is roughly the same type and magnitude of harm I would experience if I allow Chip to hurt me. It seems to me that the problems I raised against Montague provide a prima facie case against the plausibility of his forced-choice account of self-defense. I turn now to a brief discussion of Rodin's objection.

#### Rodin's Reply

David Rodin claims that Montague's account implicitly denies that in standard self-defense situations, Victim is responsible for his act of defensive killing. Victim is merely responsible for an act that distributes harm, not for an act of killing per se.<sup>26</sup> But, for Rodin, this is problematic for we naturally think of Victim's act of killing as his act, something he himself is responsible for. It is normal to ask of Victim (who kills in self-defense) and to have Victim anticipate the question, 'why did you do that'?<sup>27</sup>

What is Rodin getting at here? Go back to the 'seaside' example. To be sure, Z acts in a way (e.g. picks up X and flies away) that allows harm that is external to Z (e.g. massive waves)

---

<sup>26</sup> Rodin, p. 63.

<sup>27</sup> *ibid*, pp. 63-65.

to befall Y. Here, strictly speaking, the massive waves were the direct cause of Y's death. Even though Z is the one that is still responsible for Y dying as opposed to X, it is perhaps a stretch to say that Z killed Y. But in standard self-defense situations, I see no reason why we cannot say that Victim's act of distributing harm takes the form of killing. The act of killing is one way a person can distribute harm. In this case, unlike the 'seaside' example, the harm that befalls Attacker stems directly from Victim's agency in that Victim (by stabbing, for example) is the direct cause of Attacker's death. Victim, by killing Attacker, acts in such a way as to distribute harm towards Attacker. So, seemingly there is no reason to claim that Victim is not responsible for an act of killing.

But Rodin must have something else in mind. Something like the following seems a plausible interpretation: not all, but many hypothetical situations that Montague could give that fulfill the distribution thesis and call for the sacrifice of the culpable party would be one in which the nature of the sacrifice (i.e. the harm directed towards the culpable party) will be an instance of allowing someone to die rather than killing them. But there is a problem when it comes to standard self-defense situations, which of course are supposed to be instances that fulfill the distribution thesis. Standard self-defense situations are unquestionably instances of doing harm to the culpable party rather than allowing harm to befall them. This thesis doesn't quite capture what is going on when Victim kills Attacker. In self-defense, it is Victim's act that is the direct cause of Attacker's death, where this isn't the case with many other situations that fulfill the distribution thesis. It's difficult to see, then, how self-defense situations are merely instances of the distribution thesis.

Put differently, in any instance where I kill someone (say in self-defense), the degree or level of my responsibility for the death of that someone is seemingly much higher than the



degree of my responsibility for the death of someone that I either allow to happen, or likewise, bring about by something that I do.<sup>28</sup> Now what we are seeking in a theory of self-defense is what justifies my act of self-defensive killing, given the strong prohibition against homicide in general. But something seems amiss in a theory that says what justifies my act of killing is essentially the same as what justifies my act of letting someone die.

### **Grounding Self-Defense in Rights**

I will now sketch a rough preliminary rights-based account of self-defense. I begin with a minimalist account in order to lay down (and in some cases reiterate) some essentials that any rights-based account of self-defense must both contain and account for. But I also begin with such an account to motivate a fundamental challenge that any successful rights-based account must answer: how to explain the moral asymmetry between Victim and Attacker. After outlining this challenge, I will discuss a popular (and what I take to be the most plausible) response most proponents of a rights-based account of self-defense give in order to address the moral asymmetry challenge. This response can be called a 'forfeit' account (sometimes referred to as simply 'forfeit')<sup>29</sup> in that it claims, roughly, that Attacker's right to life is somehow abolished or forfeited. I then briefly mention two prima facie problems with 'forfeit' that any rights-based account of self-defense must address. Lastly, I critically examine two particular (and prominent) rights-based accounts of self-defense. The first account is given by Suzanne Uniacke and J.J. Thomson,<sup>30</sup> the second account comes by way of David Rodin. With a fair amount of detail I will present both accounts, paying particular attention to each of their discussions concerning the

---

<sup>28</sup> Bernard Williams says something like this; "Against Utilitarianism", in *Utilitarianism: For and Against*, eds. Williams and Smart (Cambridge: Cambridge University Press, 1973), in *Ethical Theory, Classical and Contemporary Readings*, ed. Louis Pojman, (Belmont: Wadsworth Publishing, 1998) p. 227.

<sup>29</sup> See Thomson, p. 3

<sup>30</sup> I should note that Uniacke and Thomson have similar accounts that were developed independently of each other. Uniacke gives the more detailed account, so, below, in an effort to portray what I have called the 'Thomson/Uniacke account', I will primarily present Uniacke's account while adding in details from Thomson where necessary.

forfeiture of the right to life. It is my contention that something along the lines of a Rodinian account of self-defense is the most plausible to adopt. I hope to show that such an account, while it has its problems, does the best job of both meeting specific challenges and explaining our intuitions concerning self-defense.

### A Preliminary Rights-Based Account of Self-Defense

As Rodin has said, most people find that the simplest and most natural way to think about self-defense is in terms of rights.<sup>31</sup> According to a rights-based account, persons have a right to life, which is a right to not be killed by another person. Grounded in this right is the right to self-defense: the right to defend one's life against an imminent or already occurring aggressive attack. It would seem that a natural consequence of an individual having a right *to* something (whether it be a personal possession of some sort such as a piece of land, a valuable material object, or one's very life) is the fact that that individual has the right to undertake certain actions (forceful if need be) in order to make sure that their right to that something is not violated.<sup>32</sup> To be sure, the actions that are taken, if they are harmful, must be both necessary and proportionate. The requirement of proportionality, roughly, dictates that any harmful consequences that may stem from an action I do undertake in order to ensure that my right to X is not violated must not be excessive (disproportionate) compared to the value of X. I seemingly have a right that nobody steals my car. If, however, I notice someone in the process of taking my car, I am not permitted to shoot him dead as a means of preventing him from taking it. Such an act on my part would be

---

<sup>31</sup> Rodin, p.70

<sup>32</sup> *ibid*, pp. 36-38.

clearly disproportionate. My car does not have sufficient value to warrant the amount of harm I caused the thief. Proportionality is a fairly intuitive requirement of justice. Concerning self-defense against an attacker, it is fairly uncontroversial to judge that one's own life is sufficiently valuable to warrant the taking of the attacker's life.<sup>33</sup>

Necessity roughly requires that an action I do undertake in order to protect X is the least harmful means of protecting X.<sup>34</sup> Again, I would never be permitted to shoot the thief trying to steal my car, even if that was the only way of stopping him. But say I probably could have scared the thief off by yelling at him and yet I choose to stop him by hitting him with a broom handle. Both of these actions are seemingly proportionate yet hitting the thief was unnecessary. I could have brought about the same result (the scarring off of the thief) by a less harmful means. All this is to say that Victim has a right to defend his life, and he is permitted to kill Attacker if that is the only way he can keep Attacker from killing him. But if Victim judges that he is probably able to escape Attacker or subdue him by some non-lethal means, he is obligated to protect his life by doing just that rather than protecting his life by killing Attacker.<sup>35</sup> The notion

---

<sup>33</sup> *ibid*, p. 43.

<sup>34</sup> *ibid*, p. 40.

<sup>35</sup> To be sure, my sketch of the necessity requirement is a bit too simplistic. Two things can be said here. First, it is certainly difficult for any person facing attack to assess probabilities, let alone numerically assess them. But imagine I face a lethal attack and judge that there is a substantial degree of likelihood that I can non-lethally subdue or escape my attacker. Say it seems to me 80% probable I can talk someone pointing a gun at me into not shooting, but I am virtually certain I could seriously injure him (and thereby defend myself) by employing one of my karate techniques. Thinking in terms of percentages it is likely that I'll be able to talk him out of it. But am I required to try and talk to him and take that 20% chance that I'll be killed? What if my karate techniques are virtually certain to kill him rather than seriously injure him, would I then be required to talk to him? What are my obligations if my chances of being killed by trying to talk to him are 15%, or 10%? I am inclined to think that the necessity requirement obligates self-defenders to employ the least harmful means of protecting X only when it seems to them that the chances of successfully employing the least harmful means are extraordinarily high. Second, what about cases where there is in fact a less harmful way of protecting X that, through no fault of my own, I am unaware of? There is someone shooting at me and I judge that the only way to defend myself is to shoot my gun (harnessed under the table I am sitting at) back at him. But little do I know that next to my gun is a switch to open the trap door that my assailant is standing on. If I flip the switch, he assuredly falls into a pile of foam where he is apprehended by security. If I had known about the switch, I would have certainly been required to flip it. It turns out I shot my assailant dead. While I am certainly excused for my actions, have I violated the necessity requirement nonetheless such that I wronged him (violated his right to life)? For now I will set these complications aside and stick with the simplistic account of necessity.

of necessity vis-à-vis self-defense, while also an intuitive requirement of justice, can also be further supported by an additional argument: when we consider what it is we are protecting when we engage in self-defense, the requirement of necessity gains plausibility. I, of course, am protecting my life from an attacker. And an essential part of what makes my life valuable and worth defending is the fact that I uphold certain values (e.g. respect for other persons). So if I harm another person unnecessarily I am being destructive of the very thing I am trying to protect by acting contrary to my most deeply held values.<sup>36</sup>

#### The Problem of Moral Asymmetry and the Forfeit Account

Obviously, more needs to be said (and will be said throughout) in both explaining and defending a rights-based account. A particularly acute problem, though, that arises for any defender of a rights-based account is how to explain the moral-asymmetry between Victim and Attacker. Recall that this moral asymmetry picks out the fact that Victim is permitted to kill Attacker, but not vice-versa, even though it is the case that Victim, in the course of defending his own life, is trying to take the life of Attacker. Now so far I have claimed that what explains why it is the case Victim is permitted to kill Attacker is the fact that Victim has a right to self-defense that is in some sense derivative from his right to life. But Attacker of course is also a person and hence has a right to life; and presumably derivative upon Attacker's right to life is the right to defend that life. So, if Attacker, upon trying to kill Victim, finds himself in the position where his own life is threatened by the defensive behavior of Victim, it would seem that Attacker has the right to (and is therefore permitted to) defend his own life. And likewise it would appear that Victim would not be justified in killing Attacker given the fact that Attacker has the right not to be killed by another person.<sup>37</sup>

---

<sup>36</sup> *ibid*, p. 41.

<sup>37</sup> *ibid*, p. 70. Also see, Thomson, p. 3.

The primary way a defender of a rights-based account can attempt to avoid this problem and hence explain the moral asymmetry between Victim and Attacker is to argue that Attacker, in virtue of his initial attack on Victim, has forfeited his right to life. So, if Victim in the course of self-defense does kill Attacker, he has not violated Attacker's right to life (Attacker no longer has a right to life), thus Victim has not done anything wrong. Likewise, since Attacker has forfeited his right to life, he no longer has the right to undertake actions in order to protect it. Thus, if he does kill Victim, and even if killing him is the only way to protect his own life, Attacker would have done something he does not have a right to do, making it so that what he does is impermissible.<sup>38</sup>

#### Two Problems with the Forfeit Account

There are two *prima facie* problems with 'forfeit' that any rights-based account of self-defense must address. First, if, as is commonly thought, the right to life is universal and inalienable, then human beings by definition cannot forfeit or cease to have a right to life. We possess the right to life simply in virtue of being a human being. Thus, one's conduct as a human being, even if it is villainous, cannot determine whether or not she possesses this right.<sup>39</sup>

Secondly, 'forfeit' seemingly cannot account for the requirement of necessity on justified self-defense. Assume that Attacker does forfeit his right to life on account of his initial aggression and intent to kill. This initial aggression and intent does not necessarily preclude Victim from being able to flee, or from being able to subdue Attacker by some non-lethal means. But if Victim is able to flee Attacker, why would he be obligated to do so given that Attacker no longer has a right to life? It would seem that if Attacker genuinely does not have the right to live, then Victim would not be prohibited in killing him period, regardless of whether or not he is

---

<sup>38</sup> Thomson p. 3. Also, Rodin, pp. 70-71.

<sup>39</sup> Suzanne Uniacke, *Permissible Killing, The Self-Defense Justification of Homicide*, (Cambridge: Cambridge University Press, 1994), pp. 195-196. Also see, Rodin, p.71; and Thomson, *Self-Defense and Rights*, p. 14.

able to escape. But again this does not seem right. Similarly, say Attacker upon trying to take the life of Victim, suddenly sprains his own ankle such that he is now tending to his ankle rather than trying to kill Victim. Is his right to life still forfeited? He after all still possesses the evil intent to resume his attack once he is able. If he ceases to have the right to life, again, why would Victim be required to flee? If he is supposed to suddenly regain his right to life, it is odd to think that whether or not one has the right to life or not depends on contingent factors such as having a hurt ankle. Furthermore, how exactly are we to understand this process of losing and regaining a right?<sup>40</sup>

### **The Thomson/Uniacke Rights-Based Account of Self-Defense**

I turn now to outlining the particulars of the Thomson/Uniacke account of self-defense. The first thing to note is that according to Thomson/Uniacke, forfeiture of the right to life does not require that the person forfeiting her right be responsible for her conduct. Their account seeks to ground a 'unitary' right of self-defense.<sup>41</sup> A unitary right of self-defense is one that permits homicide not only against culpable attackers but also against what can be called Innocent Compelled Aggressors (Compelled Aggressors for short), Innocent Threats, and Innocent Ignorant Aggressors (Ignorant Aggressors for short).<sup>42</sup> The same reason you have for killing a culpable attacker also permits you to kill Innocent Threats as well as Compelled and Ignorant Aggressors.<sup>43</sup>

Neither Innocent Threats nor Compelled or Ignorant Aggressors are responsible for the danger that they pose to another person. A Compelled Aggressor acts with the intention of

---

<sup>40</sup> Thomson, pp. 3-4. Rodin, pp. 72-73

<sup>41</sup> Uniacke, p. 157.

<sup>42</sup> "Aggressor" (whether it be Compelled or Ignorant) ought not be confused with "Attacker", which refers to a person culpable for his aggression.

<sup>43</sup> The term "Innocent Threat" comes from J.J. Thomson, "Self-Defense", *Philosophy and Public Affairs*, Vol. 20, No. 4. (Autumn, 1991), pp. 284-288. My term "Compelled Aggressor" is synonymous with her "Innocent Aggressor".

killing you, but he is not responsible for his behavior in that it stems from circumstances that are not at all under his control.<sup>44</sup> Importantly, the character of Compelled Aggressor does not enter into the explanation of his behavior.<sup>45</sup> An example is someone who, because he is under the influence of a mind-altering drug that someone else put in his coffee, is running after you with a knife hoping to kill you. His villainous aim is to kill you and he acts on that aim, but his intention and actions are entirely a result of the drug operating on his brain.<sup>46</sup>

Ignorant Aggressors are not compelled to act in the way that they do. But they are non-culpably ignorant of the fact either that their victims are innocent or that their actions will likely cause harm. Say, for example, actor 1 on a movie set fires a gun at actor 2 that he (actor 1) for good reason thought was loaded with blanks when in fact it is loaded with bullets.<sup>47</sup> It turns out a stagehand secretly loaded it with bullets and gave it to actor 1. The stagehand has repeatedly given actor 1 the same gun loaded with blanks, and he's always shown himself to be a harmless person, thus actor 1 has no reason to suspect the gun may be loaded. Actor 1, then, assuming he shot actor 2 dead, was non-culpably ignorant of the facts concerning the gun that he fired.

An Innocent Threat is someone "whose mere movements *qua* physical object or mere presence constitutes a threat to our life".<sup>48</sup> A Threat poses a danger to your life but he does not engage in an act. His presence and bodily movements are neither voluntary nor desired.<sup>49</sup> For example, a Threat could be a fat man who is falling down towards you because a huge gust of

---

<sup>44</sup> Michael Otsuka, "Killing the Innocent in Self-Defense", *Philosophy and Public Affairs*, Vol. 23, No.1. (Winter, 1994), pp. 74-75, pp.74-75; 90. Otsuka, like Thomson, uses the term "Innocent Aggressor" rather than "Compelled Aggressor".

<sup>45</sup> *ibid*, p. 75.

<sup>46</sup> *ibid*, p. 75. A Compelled Aggressor could also be a person who acts on an intention to kill you, but that intention is not malicious (villainous) in that she is having hallucinations that you are villainously trying to kill her; thus she thinks she is acting in self-defense. But she is also under the influence of a mind-altering substance that was forced on her, thus she is not responsible for her actions. See Thomson, *Self-Defense and Rights*, p.6.

<sup>47</sup> This example comes from Rodin, pp. 90-91.

<sup>48</sup> Otsuka, p. 75. Otsuka adopts this definition from Nancy Davis, "Abortion and Self-Defense", *Philosophy and Public Affairs*, Vol. 13, No. 3, (Summer, 1984), p. 190. I will sometimes not use "Innocent" and just employ "Threat".

<sup>49</sup> Otsuka, p. 75.

wind blew him off a tall building. You are unable to step out of the way so if you do not incinerate him with your flame-thrower he will fall on you and kill you, while he himself survives the fall.<sup>50</sup> Or, a Threat could be a sleepwalker who is trapped in a small room with you, and he happens to be violently wielding a sword, and you happen to be in the way of it.

For Thomson/Uniacke, Threats as well as Compelled and Ignorant Aggressors -- despite the fact that they are not at fault for the danger they pose to another person's life -- are still doing something objectively wrong in that the person whom they are endangering has done nothing to forfeit her own right to life. Thus it is permissible to kill them in self-defense.<sup>51</sup>

Much more will be said below about exercising the right of self-defense on the innocent. But for now consider the Thomson/Uniacke take on the nature of the right of self-defense. For Uniacke, an individual's right to defend her own life is the right to employ force (subject to the requirements of proportionality and necessity) that repels or wards off an immediate and unjust threat to her life.<sup>52</sup> This right falls under a broader moral permission persons have to engage in defensive acts that directly thwart unjust harm in general. So someone trying to brand me with a cattle prod, for example, is an immediate and unjust threat that I am entitled to repel. The act of self-defense is justified precisely because the act falls under this broader permission.<sup>53</sup> Attacker, by trying to take the life of Victim, is inflicting imminent unjust harm on her. Victim then is permitted to employ lethal force on Attacker in order to block the unjust harm that would otherwise befall him. Put differently, the permissibility of the act of killing in self-defense is

---

<sup>50</sup> *ibid*, p. 75. This example of an Innocent Threat is a modification of an example that was first introduced by Robert Nozick, *Anarchy, State and Utopia*, (New York: Basic Books, 1974), p. 34.

<sup>51</sup> Rodin, p. 83.

<sup>52</sup> Uniacke, p. 158.

<sup>53</sup> *ibid*, p. 188-192.



grounded in the fact that such an act is defensive in nature: it fends off immediate and unjust harm.<sup>54</sup>

For Uniacke, what exactly constitutes an unjust and immediate threat? Consider first what it is to be an 'immediate' threat. A threat is immediate just in case it is of the type that can be "repelled, resisted, or warded off".<sup>55</sup> Thus, an immediate threat is not someone who is merely suspected to pose a threat in the future; nor is an immediate threat one whose infliction of harm is in the past.<sup>56</sup>

An 'unjust' threat to my life is one who both endangers my life (threatens to violate my right to life) through his conduct and lacks the right to do so.<sup>57</sup> The conduct of an unjust threat to my life can result in my death such that my right to life would be violated.<sup>58</sup> The important point here is that one who is confronted with an unjust threat to her life does not cease to possess her own right to life, making it so that she is wronged if she is killed by the unjust threat.

According to this account, culpable Attackers certainly count as immediate and unjust threats. But culpability is not required for immediacy, nor is it required for unjustness.<sup>59</sup> Recall the examples of Compelled and Ignorant Aggressors. They count as immediate threats to my life in that their actions are of the type that can be repelled and fended off by me. Furthermore, they do not have the right to do what they are doing; if they were to kill me my right to life would be clearly violated. Thus they are unjust threats. Moreover, Innocent Threats are immediate and unjust threats to my life as well. The fat man falling towards me (who does not have a right to

---

<sup>54</sup> *ibid*, 188-192.

<sup>55</sup> *ibid*, p. 165. For Uniacke, in cases of self-defense, the immediacy of the threat of an Attacker is not sufficient to render lethal defensive force on part of the Victim necessary. So, for example, someone lunging at me with a knife can pose an immediate threat to my life in that his act of lunging can be warded off and repelled. But I could be able to fend off the attack by knocking the knife out of his hands. See Uniacke, p. 213.

<sup>56</sup> Rodin, p. 41. Also, George Fletcher, *Basic Concepts in Criminal Law*, (Oxford: Oxford University Press, 1998), p. 133.

<sup>57</sup> Uniacke, p. 174-175.

<sup>58</sup> Thomson, *Self-Defense*, pp. 300-303.

<sup>59</sup> Uniacke, p. 174-175.

take my life) can be warded-off and repelled. And, in this case, if he falls on me I will be killed, thus making it so my right to life is violated.

Now consider Uniacke's particular account of forfeit and its relation to the moral asymmetry issue. She gives a particular characterization of what it means exactly to have a right forfeited: there are conditions under which a person does not possess a right to life; those conditions being when she conducts herself in a way so as to become an immediate and unjust threat to someone else's life.<sup>60</sup> This follows when we appropriately specify the scope of the right to life: the right to life is not the right to not be killed by another person. Rather, for a person to have a right to life is for her to have the right to not be killed by another person just so long as she herself does not pose an unjust immediate threat to someone else.<sup>61</sup> Thus the explanation of the moral asymmetry between Attacker and Victim (and between Victim and both Aggressors as well as Threat) lies in the scope of the right to life. Victim's right to life is in jeopardy of being violated--this accounts for the impermissibility of Attacker's actions; and Attacker, by hypothesis, does not have the right to life -- this explains the permissibility of Victim's actions. Attacker's right to life is forfeited in the sense that he has fulfilled certain conditions that make it so he ceases to possess it. Thus, should he be killed by Victim, it is not the case that his right was violated.<sup>62</sup>

#### Revisiting the Two Main Problems for Forfeit

Getting back to the two main objections to 'forfeit', the Uniacke/Thomson account is able to answer both of them. Recall that the first objection claims that forfeiture is incompatible with

---

<sup>60</sup> For Uniacke, the term "conduct" is used so as to include the danger posed by Innocent Threats. Conduct is used loosely to refer to intentional action as well as involuntary bodily movements, and things that merely happen to people e.g. being blown off of a tall building. Pp. 172-173.

<sup>61</sup> *ibid*, pp. 209-214.

<sup>62</sup> Uniacke (as well as Rodin) see no substantive difference between talking in terms of forfeiture and talking in terms of specifying the scope of the right to life. They are both ways of talking about the same moral fact; namely, that when certain conditions are met, an individual can fail to possess the right to not be killed by another person. Uniacke, pp. 206-209. Rodin, p. 74.

the very conception of the right to life. The reply to this (which is seemingly open to any proponent of forfeit) is to simply deny that the right to life is inalienable and unconditional. This move should not be too surprising for there are other important human rights, such as the right to liberty and privacy that are also conditional upon behavior.<sup>63</sup> The police can apprehend me against my will, for example, if I commit a crime. To be sure, we possess our human rights (like the right to life) in virtue of the kinds of beings we are.<sup>64</sup> We might say that our nature as persons is a necessary condition for the possession of human rights. But there is really no compelling reason to suppose that merely being a human being is sufficient to make it so that there are no conditions under which we fail to possess these rights, the right to life included.<sup>65</sup>

The second objection to 'forfeit' mainly questions how the necessity requirement on justified self-defense can be accounted for given forfeiture. Recall Attacker who is no longer an imminent threat to Victim on account that he has sprained his ankle. He is presently not trying to take Victim's life, for he is tending to his ankle. Well, given the Thomson/Uniacke specification of the right to life, the conditions are such that he maintains his right to life; the circumstances are such that he is no longer an immediate and unjust threat to Victim's life.<sup>66</sup> And one must be such a threat if she is to forfeit her right to life.

But what if Attacker, upon spraining his ankle, is still presently attacking Victim? It just so happens now that Victim is able to escape because Attacker is hobbled. Here Attacker, in virtue of being an unjust immediate threat, seemingly does not have a right to life; yet the question remains: why is Victim still required to escape Attacker even though he (Attacker) ceases to have a right to life?

---

<sup>63</sup> Uniacke, p. 196. Rodin, p. 71.

<sup>64</sup> Uniacke, p. 204.

<sup>65</sup> *ibid*, p. 199.

<sup>66</sup> *ibid*, pp. 198-199.

Uniacke answers by claiming that if one is an unjust immediate threat to another person, she only possesses a qualified right to life. If she is killed unnecessarily, then her right to life has been violated.<sup>67</sup> At this point, Uniacke's specification of the right to life reads as follows: X has the right to life just so long as it is not the case that X is both (1) an immediate and unjust threat to person Y, and (2) that the nature of X's threat requires a lethal defensive response from Y. To simplify things, we can say that the immediacy in clause (1) entails and thereby subsumes clause (2).<sup>68</sup>

Given this particular specification, hobbled Attacker still retains his right to life even though he still is in the process of attacking. [It's worth noting that Thomson essentially endorses this same specification.<sup>69</sup> She claims that X (whether he be an Attacker, Innocent Aggressor, or Innocent Threat) ceases to possess a right to life if and only if X does not have the right to kill some other individual Y and will otherwise kill Y unless X himself is killed].<sup>70</sup>

### Problems for the Thomson/Uniacke Account

I turn now to discuss what I take to be two main problems for the Thomson/Uniacke account. My criticisms turn on the claim made by Thomson/Uniacke that the right of self-

---

<sup>67</sup> *ibid*, p.213. Uniacke has another answer to this question which says, Victim does not wrong hobbled Attacker by killing him; however, Victim's act of killing is still wrongful on account that he harmed Attacker unnecessarily (p. 213). But this view doesn't seem right. It fails to recognize the incredible stringency of the right to life. Intuitively, hobbled Attacker would indeed be wronged if he were to be killed. This can be seen by considering cases of Threats as well as Compelled and Ignorant Aggressors. For example, the fat man is falling down the well towards me. If my gun has two options, one that vaporizes and one that shoots out a safety net that fastens around the inner circumference of the well, I seemingly am obligated to choose the latter option. I would be doing a great injustice to him if I easily had it within my power to save both of us but I choose to kill him instead.

<sup>68</sup> I will now be assuming this entailment throughout.

<sup>69</sup> Thomson, "Self-Defense", p. 302.

<sup>70</sup> *ibid*, p. 292; 303.

defense is unitary. This will become clearer as the discussion proceeds, but for now note that the first problem for Thomson/Uniacke concerns how to account for cases involving persons who are not unjust immediate threats, yet intuitively their right to life has been forfeited. Consider a case where someone (call him Grenadier) exposes me to a grenade that is no longer under his control, but that he purposely triggered in order to kill me.<sup>71</sup> Uniacke is clear that Grenadier is not himself an immediate and unjust threat; the threat is the grenade itself.<sup>72</sup> Because of this, if I were to push Grenadier onto the grenade in order to save myself (if I do not do this I will die and he will live), I would not be committing homicide *in* self-defense; rather I would be committing homicide *in the course* of self-defense.<sup>73</sup> To commit homicide in the course of self-defense is to kill someone as a means to protecting yourself from an immediate threat. Uniacke says that I am permitted to push Grenadier onto the grenade in order to save myself. For Uniacke, one is permitted to kill someone *in the course of* self-defense if and only if that someone is culpable for that which threatens your life. So, I would not be permitted to kill a grenadier in the course of self-defense if he unwittingly and through no fault of his own exposed me to a live grenade.<sup>74</sup>

Uniacke is certainly right to say that I am permitted to kill Grenadier. If there is any right of self-defense at all, it seemingly has to permit me, if it is necessary save my own life, to kill a villainous aggressor who has purposely exposed me to life endangering things (e.g. grenades, land-mines, wild animals, etc). But why am I permitted to kill in this case? A requirement on ceasing to possess the right to life is being an unjust immediate threat to someone else, and Grenadier has not met this requirement.

---

<sup>71</sup> Uniacke, p. 187.

<sup>72</sup> *ibid*, p. 187.

<sup>73</sup> *ibid*, pp. 187-188.

<sup>74</sup> *ibid*, pp. 187-188.

Uniacke could add to the specification of the right to life: X has the right to life just so long as it's not the case that X is either (1') an immediate and unjust threat to Y, or (2') one who *culpably* exposes Y to an immediate unjust threat such that the only way Y can save himself is to kill X. But here things start looking too ad hoc. We have merely taken our intuitions about what counts as permissible killing in self-defense and specified the right to life to fit those intuitions; thus making it so our intuitions explain our concept of the right to life (as well as our other concepts about rights) instead of the other way around.<sup>75</sup>

To illustrate this ad hoc nature, consider someone running towards me carrying a large butcher knife. He's not out to attack me; in fact he doesn't even see me. Unfortunately, through no fault of his own he trips making it so he is lunging right at me.<sup>76</sup> I am trained in the martial arts and the only way I can keep the knife from plunging into me is to give a quick blocking technique that hits underneath his arm forcing the knife back into him. He still comes crashing in to me from his momentum but the knife is no longer a danger to me. Now consider that same person running towards me without a knife. He is not out to attack me; in fact he doesn't even see me. Unfortunately, through no fault of his own he trips. By sheer accident, his foot catches a trip wire sending a large sharp object plummeting towards me from the ceiling. The only way I can keep the sharp object from hitting me is if I employ that very same blocking technique on him. (If I don't employ the technique, he'll crash in to me from the momentum but the sharp object will soar over his body and in to me. If I do employ the technique, I will have lifted his upper body up just enough so that the sharp object hits him instead of me). I have a difficult time seeing how the person who trips in the first case does forfeit his right to life (he satisfies (1')), while the person in the second case does not (he satisfies neither (1') nor (2')). To be sure,

---

<sup>75</sup> Rodin, p. 72; Thomson, *Self Defense and Rights*, pp. 16-17.

<sup>76</sup> This is modeled after an example given by Uniacke, p. 188.

there is a widely held intuition that using people as shields in order to protect oneself from danger is impermissible; and I am using the person as a shield in the second case but not in the first. But it seems to me that in this case (and in cases similar to this) the fact that I use someone as a shield is morally irrelevant. It would be odd for someone who witnessed the two cases to say: 'yes, in the first case you were justified in taking action so that the knife goes into his body rather than yours; but in the second case, no, no, that is overstepping the bounds of morality'. Even if we assume that my act in the second case is worse than my act in the first case, it cannot be so much more worse that I have failed to meet an obligation. I happen to think that I am not permitted to kill the person in either case. My point is that if we allow my life to take precedence in the first case, we would be strained to come up with a morally compelling reason why my life doesn't take precedence in the second case. And it is precisely the just mentioned specification of the right to life that states that my life does take precedence in the first case but not in the second.

In my view, the best way out of this difficulty is to permit defensive force only against the culpable. Uniacke, in other words, could add a culpability condition to (1') making it so the person in the first example does not forfeit his right to life. But this of course goes against Uniacke's (and Thomson's) insistence that the right to self-defense be unitary.

But there is another option for Uniacke given the constraint that the right to self-defense is unitary. She could expand the notion of 'immediate and unjust threat' to include both persons in the two trip cases (as well as Grenadier and non-culpable grenadier). Immediate and unjust threats, then, can include those who, as a *direct result of* their conduct, create a danger (they have no right to create) that while no longer under their control, presents an immediate threat to my

life.<sup>77</sup> 'Conduct', again, is to be used in a broad sense; it need not (though it may) imply fault of the person who engages in such conduct. So conduct can refer to involuntary bodily movements, or to things that just *happen* to you (e.g. being blown off a building by a huge gust of wind).<sup>78</sup> Take non-culpable grenadier, for example. The live grenade is a direct result of his conduct in that he was the one that accidentally triggered it, and as soon as he did it, my life was in danger. So in a sense, if I were to push him onto the grenade, I would be defending myself against *him*.

Problems still arise, however. For it is not clear that X's 'conduct' that directly results in an immediate and unjust threat to Y is sufficient to allow for the permissibility of Y killing X. To see this, consider the notion of an Innocent Bystander. Innocent Bystanders are persons who do not in any way threaten your life; they are not responsible (causally or otherwise) for what does threaten your life. Thus, they do not even 'conduct' themselves in a way that directly creates an immediate threat to your life.<sup>79</sup>

To see an example of a Bystander, say I am at a track meet when suddenly I notice a soaring javelin headed my way. It is clearly impermissible for me to grab someone nearby so as to use him as a shield in order to save myself.<sup>80</sup> This nearby person (a Bystander) has nothing to do with the immediate threat to my life (the javelin soaring my way); our intuitions are clear that I am not permitted to sacrifice his life in order to save mine. But now say that the person next to me is a referee/judge of sorts who, by the raising of his arm, signals to the javelin thrower many yards away when it is time to throw the javelin. The referee/judge suddenly has an involuntary jerk of his right arm (something he has never had before). The javelin thrower yards away sees this and straightway throws the javelin. As the javelin is rushing towards me I realize what has

---

<sup>77</sup> Uniacke herself suggests that this is a position she can take. P, 187.

<sup>78</sup> *ibid*, pp. 172-173.

<sup>79</sup> I am endorsing Otsuka's definition of an Innocent Bystander. Otsuka, p. 75.

<sup>80</sup> Thomson calls this an instance of both "using a bystander" and "substituting a bystander". Thomson, "Self-Defense", p. 289-290.



happened and I thus grab the referee/judge and use him to shield me from the javelin. The javelin soaring towards me is a direct result of referee/judge's conduct. I admit that it may be worse to use him as a shield in the first instance rather than the second instance, but not much worse. I fail to see a clear moral difference between the two instances. It is difficult to see how neurons firing in his brain that cause his arm to involuntarily raise make it so my life suddenly takes precedence over his.

Or say I am in a car being chased by some villains shooting at me. I certainly am not permitted to run down a Bystander innocently crossing the street who happens to be in my way, even if running him down is my only hope of escaping.<sup>81</sup> Now say that I round a corner and have a very slight lead on the villains. Up ahead I spot a manhole that I can easily jump down (I'll exit the car) in order to hide. As I am approaching the manhole though an innocent pedestrian crosses the street, blocking my way to the manhole. This action by the pedestrian slows me down just enough to allow the villains to round the corner. The exact location of the villains (who are shooting at me) and the exact time at which they are shooting at me is a direct result of the pedestrian's action of innocently crossing the street. The pedestrian is responsible for this situation I am in. But surely I cannot now run him over. Just as I am not permitted to run the Bystander over in the first instance, I am not permitted to run the pedestrian over now.<sup>82</sup>

#### Innocent Aggressors and Innocent Threats

The second main problem with the Thomson/Uniacke account specifically involves Threats as well as Compelled and Ignorant Aggressors. Recall that a primary goal of this

---

<sup>81</sup> *ibid*, p. 290. Thomson has called this a case of "riding roughshod over a bystander".

<sup>82</sup> This general strategy of using the clear impermissibility of killing a Bystander in self-defense to shed light on the seeming impermissibility of killing various non-Bystanders in self-defense is employed by Otsuka; see pp. 74-77. Otsuka claims that killing a Bystander is morally on par with killing a Compelled Aggressor and Threat, thus, just as it is impermissible to kill a Bystander, so it is impermissible to kill a Compelled Aggressor and Threat (I discuss this position below). The cases I have been talking about (e.g. non-culpable grenadier) don't quite involve standard examples of a Compelled Aggressor or Threat. While there is room to give them some sort of "Innocent" label if we wanted to, I will not worry about doing this.

account is to establish a unitary right of self-defense: a right that permits one to kill in self-defense, both kinds of Aggressors and Threats in addition to culpable Attackers. I think, however, that the argument employed by the Thomson/Uniacke account for why we are permitted to kill both kinds of Aggressors and Threats is less than compelling. First, recall the argument: a Compelled or Ignorant Aggressor or Innocent Threat ceases to possess a right to life in virtue of being an immediate and unjust threat to his victim. The victim then is permitted to kill him; if the victim does not kill him, his own right to life will be violated.<sup>83</sup>

What is problematic here is the claim that both kinds of Aggressors and Threats (if they kill their victims) will violate their victim's right to life.<sup>84</sup> Consider an Innocent Threat: the falling fat man certainly does not have the right to kill me; and it is true that unless I incinerate him, he, qua falling body, will kill me. But does it follow that he will violate my right not to be killed if I do not incinerate him?<sup>85</sup> Consider a safe falling down towards me rather than a fat man (the rope by which it was being pulled up the building, through the fault of no one, unfortunately happened to snap). If I do not incinerate the safe, it will fall on me and kill me. But it is odd to say that if the safe falls on me, my right to not be killed was violated.<sup>86</sup> The safe itself didn't violate my right to life. Nor is it clear that the safe (or the event of the safe falling on me) *caused* my right to life to be violated.<sup>87</sup> For if my right to life were violated in any way, then my death would have been an injustice; something or someone would have wronged me. But this is not the case. The event of my death would have been bad, or tragic, or unfortunate. But it is not clear that my death was an injustice.<sup>88</sup>

---

<sup>83</sup> Thomson, "Self-Defense", pp. 302-305.

<sup>84</sup> Otsuka, pp. 79-80. Rodin pp. 85-87.

<sup>85</sup> Rodin p. 85-86.

<sup>86</sup> Otsuka, p. 80.

<sup>87</sup> *ibid*, pp. 81-82. This is supposed to be a weaker claim than: 'the safe violated my right to life'.

<sup>88</sup> Rodin, p. 87.

So the important question is, is there any morally relevant difference between the fat man, qua falling human object, and the falling safe? Seemingly the answer is No. For the fat man is falling through no fault of his own. He is not even doing anything to endanger my life. Rather, he is merely falling towards me. It was a huge gust of wind that overpowered him and blew him off; furthermore, it was not as though he should not have been on top of the building. It is difficult to see, then, the morally relevant difference between the falling safe and the falling fat man. And hence, it is hard to see how it is that a safe cannot violate my right to life (or cause my right to be violated) but that the falling fat man can.<sup>89</sup>

Another way to put this thought is as follows.<sup>90</sup> Whatever our view is concerning the precise nature of rights, it is commonly held that for any given person's right to life there is a corresponding duty on other people to respect that right. The right to life could entail this corresponding duty such that the right and duty are two separate entities and the former grounds (and is logically prior to) the latter.<sup>91</sup> Or the right to life and corresponding duty could be logically on a par such that they are really just two different ways of viewing the same concept. So, seen from my perspective, X's duty to refrain from killing me just is my right not to be killed. And, seen from X's perspective, my right not to be killed just is his duty to refrain from killing me.<sup>92</sup> However we view the nature of rights, in order for X to violate someone's right to life, X has to first possess a duty to refrain from killing another person, and then X must conduct himself in such a way that violates that duty. But the falling fat man, qua falling object (body) is, like the safe, not the kind of thing that can possess a duty, let alone violate it. Hence, if the body lands on me, it doesn't violate its duty to refrain from killing me. To be sure, given my right to

---

<sup>89</sup> Otsuka, pp. 81-82.

<sup>90</sup> See Rodin, pp. 86-87.

<sup>91</sup> Montague, "Self-Defense and Choosing Between Lives", p. 208.

<sup>92</sup> *ibid*, p. 208. This take on the nature of rights is often called the 'correlativity of rights and obligations' doctrine. The account of self-defense I discuss and endorse at the end of this paper basically holds to this doctrine.

life, the fat man qua moral subject, possesses a duty to refrain from killing me. But the fat man has been converted by the wind into a dangerous falling object. Thus he (qua moral subject) is unable to control his body, and in a sense (if he is conscious) is just a helpless onlooker of the object (his body) that is falling down towards me.<sup>93</sup> It is not clear, then, that he has violated a duty to not kill me, and hence it is not clear that he has forfeited his own right to life. Thus it would seemingly be impermissible to incinerate him.

What about Compelled Aggressors? It would seem that, like Threats, Compelled Aggressors are unable to violate the rights of their victims, thus they too do not cease to have a right to life.<sup>94</sup> It was claimed that the Compelled Aggressor's evil intent and actions fail to be explained by *his* character.<sup>95</sup> Rather, both the evil intention and act are explained by factors completely beyond his control (say my co-worker Mike has become a Compelled Aggressor). These factors include someone slipping Mike a drug that completely (though temporarily) alters his psychological make-up. The drug acts on his brain, which in turn causes him to act (and to have intentions) that he otherwise would never have. Without getting into the complex issue of the nature of personhood, it is seemingly safe to say that the "real" Mike (Mike functioning normally apart from the influence of the drug) is not present doing these harmful things to me. Even if we were to say that the "real" Mike is present, able to be aware of both the intention to kill me as well as the actions proceeding from his body, he would not be able to stop these actions and intention. The drug has compelled him to attack; he is not responsible for what is

---

<sup>93</sup> Otsuka, pp. 84-85.

<sup>94</sup> See Rodin, pp. 86-87. Otsuka pp. 90-94.

<sup>95</sup> Roughly, his character is his set of beliefs and dispositions that comprise an important part of his unique psychological make-up when he is functioning normally.

endangering my life.<sup>96</sup> Thus while Mike, qua moral agent, possesses a duty not to kill me, it is not clear that he has violated that duty, if he were to kill me.

The point can be made in a slightly different way. Intuitively, ought implies can. So, someone such as Compelled Aggressor seemingly cannot be obligated (i.e. does not have a duty) to refrain from actions that he does not have any control over. It is not clear, then, that if he were to kill me he would have done something wrong by violating an obligation or duty of his. Likewise, because he is not obligated in the just mentioned way, I do not have any sort of claim against him that he not engage in acts that he has no control over; thus it is not clear that he would wrong me if I were to be killed by him.<sup>97</sup> Again, my death would have been tragic and unfortunate but seemingly not an injustice. Because the Compelled Aggressor cannot violate my right to life, it has not been shown that he has forfeited his right to life and that I am consequently permitted to kill such an Aggressor.

Consider another argument in support of the claim that it is impermissible to kill both kinds of Aggressors and Threats. Say Villain puts a gun to my head and tells me that if I don't take the gun out of his other hand and shoot X with it, he (Villain) will shoot me dead. If I shoot X, then I will live.<sup>98</sup> I certainly do not want to shoot X; but I also do not want to be shot myself. The fear in me is so great that it is on the verge of compelling me to do what I otherwise would not do: commit homicide. Some would say that my shooting X would be wrong but because I am under duress, I would be excused for my actions. But seemingly more people than not would say that my shooting X is not even excused. English law, for example, does not recognize duress

---

<sup>96</sup> Otsuka, p. 93.

<sup>97</sup> Rodin, pp. 86-87.

<sup>98</sup> It is not clear to me that X in this case can be classified as an Innocent Bystander. For he is seemingly, at least in part, causally responsible for the threat to my life. Villain after all wants X dead; and if it weren't for X, Villain would not be threatening my life.

as an excuse for committing homicide.<sup>99</sup> The idea here is that the effects of fear on my will and personality, though powerful, are not the same (and are not as powerful) as the effects of hallucinogenic drugs on my will and personality. It is more plausible to say that the former cannot literally compel me to act while the latter can. Thus I am morally responsible for my act of shooting (if I were to shoot X) and morally blameworthy.<sup>100</sup>

The upshot is that my shooting X is contrary to morality regardless if it is excused. So what are the similarities between the case where Villain threatens to kill me and the case where an Aggressor of either kind (or Threat) threatens to kill me? In both cases, if I do not kill somebody who is innocent, then I will surely be killed. In the Villain case, morality requires that I allow myself to be killed. Why is it that morality does not require this of me in an Aggressor or Threat case? It seems to me that there is not a morally relevant difference between the two kinds of cases. Villain holds a gun to my head and is about to kill me; but there is something I can do to protect myself, I can kill an innocent person. Or, Compelled (or Ignorant) Aggressor holds a gun to my head and is about to kill me; but there is something I can do to protect myself, I can kill an innocent person. In the Compelled Aggressor case, again, at the risk of being grossly metaphorical, the innocent person is temporarily trapped within the body of the thing (or if you like, the crazed attacker) that is pointing a gun to my head. Mike (temporarily under the influence of the drug) threatens me with a gun. It might as well be Villain pointing the gun at me, pressuring me to shoot back (I have a gun too) for it is not, strictly speaking, Mike who is threatening me. And yet if I do shoot back, innocent Mike dies, for he will eventually come out from under the influence of the drug. The bottom line is that, just like in the Villain case, the person I will be killing in order to save myself is not morally responsible for the threat that I

---

<sup>99</sup> *ibid*, p. 91.

<sup>100</sup> *ibid*, p.91.

face. So since it is impermissible to kill in the Villain case, it is hard to see why it is not impermissible in the Threat and Aggressor cases.

As I wind down this section, there seems to me to be a presumption that the innocent are immune from being killed in self-defense. This is clearly seen in cases involving Innocent Bystanders. For those who think that Aggressors and Threats (while innocent) should be killed in self-defense and that Bystanders should not be killed in self-defense, the burden of proof is seemingly on them to show why this is the case. They could meet that burden by showing that Aggressors and Threats will violate one's right to life unless they themselves are killed. However, it has been my primary contention that they have not met this burden.

I have tried to give a prima facie case showing that the Thomson/Uniacke account, the most prominent rights-based account of self-defense that attempts to ground a unitary right of self-defense, is less than compelling. It seems to me that if there is any right of self-defense at all, it must be one that permits self-defense against culpable attackers only. Rodin's account of self-defense holds to this claim, and it is to his account that I now turn.

### **Rodin's Account of Self-Defense**

One of the primary strengths of Rodin's account is that it gives insight into why exactly the right to life is conditional upon conduct. Insight is given concerning what it is about the fact of Attacker aggressing against Victim that makes it so Attacker ceases to have the right to life while Victim has the right to kill Attacker; this it seems to me is something lacking in the

Thomson/Uniacke account.<sup>101</sup> Before outlining Rodin's account, what is needed is a particular account of the nature of rights in general.

Rodin holds to a kind of correlativity of rights and duties doctrine.<sup>102</sup> Specifying this idea a bit further, there are a number of different fundamental notions that can be defined via ostension and by specifying the logical relations that these fundamental notions stand in.<sup>103</sup> One of those notions is an obligation (or duty). An obligation is essentially relational in that it is held by an individual (or individuals) who then owes it to another individual (or individuals). More specifically, any given obligation is a relation that holds between (1) an individual who possesses the obligation (i.e. a subject), (2) an individual whom is owed the obligation (i.e. an object), and (3) what specifically is owed to the object by the subject (i.e. the content).<sup>104</sup>

In addition to the notion of an obligation, there are three other basic notions: a claim, a no-claim, and a liberty. Each of these three notions is also essentially relational in that each one of them obtains between a particular object, subject, and content. Moreover, each of these four notions stands in various logical relations with the others. So, the logical correlate of an obligation or duty is a claim.<sup>105</sup> Say I owe X a particular sum of money. A certain relation

---

<sup>101</sup> This is also lacking in McMahan's Responsibility account; see footnote 3 of this paper. Furthermore, the solution to the problem of 'forfeit' discussed in this section gives the Rodinian account an advantage over the Responsibility account.

<sup>102</sup> In particular, Rodin essentially holds to a Hohfeldian conception of rights. Rodin's exposition of Hohfeld follows L.W. Sumner's analysis of Hohfeld: L.W. Sumner, The Moral Foundation of Rights, (Oxford: Oxford Univ. Press, 1987), chpt 1.

<sup>103</sup> Rodin, p. 17.

<sup>104</sup> *ibid*, p. 18.

<sup>105</sup> A putative counter-example to this claim is the view that we seemingly have some sort of duty to give to charity, but it is not clear that the beneficiaries of our charitable giving have a claim on us that we so give. If they did have a claim on us then what we would contribute would cease to be charity; for charity is a gift given graciously. I am not sure though that this is a successful counter-example for we can seemingly distinguish between the object of the duty and the recipient of the content of the duty. For example, I may promise to look after my brother's child. My obligation then is to my brother, and he is the one that has a claim on me. His child does not have such a claim on me, though he is the one that will be receiving the care that I have a duty to give. Similarly, the object of the duty to contribute to charity, then, can perhaps be seen to be mankind in general, or God, or perhaps morality (justice) itself. While the recipients of the content of the duty can be seen to be the specific recipients of the charity. See Rodin, pp. 19-20.



obtains between X and me. This relation can be described in two different ways; it can be described from my perspective in terms of an obligation (I have an obligation to pay him). Or it can be described from X's perspective in terms of a claim (he has a claim against me that I pay him).<sup>106</sup>

The logical contradictory of a claim is a no-claim, which is just the absence of a claim against a particular individual (or individuals). The logical correlate of a no-claim is a liberty. Say I no longer owe X money. Again, a certain relation obtains between the two of us that can be described from either his perspective or mine. From his perspective, the relation can be described in terms of a no-claim against me that I pay him the money. From my perspective, it can be described in terms of a liberty I have with respect to him, which is just an absence of an obligation to pay him.<sup>107</sup>

So, for Rodin, given this brief account of the nature of rights, Victim's right to life is basically a relation that obtains between him and other people in general, as well as him and Attacker in particular. This relation can be conceived of in two different ways. First, from Victim's perspective, his right to life is conceived of as a claim against others that they not kill him. From Attacker's perspective, Victim's right to life is conceived of as an obligation that he (Attacker) has to refrain from killing Victim.

What about the particular right of self-defense? Rodin takes the familiar line that one's right of self-defense is derivative upon his right to life.<sup>108</sup> My right to life, again, can be said to be a claim against others that they not take my life. Derivative upon this claim is a right (more specifically, a liberty) to use necessary and proportionate defensive measures to ensure that my

---

<sup>106</sup> *ibid*, p. 18.

<sup>107</sup> *ibid*, pp. 18-19.

<sup>108</sup> Rodin, following J. Raz, claims that 'derivative' in this instance means 'acquiring moral justification from'. It does not mean 'logically entailed by'. Rodin, p.37. J. Raz, "On the Nature of Rights", *Mind*, 93, (1984) p, 197.

particular claim is not violated. Rodin claims (and rightly so, I think) that this liberty to defend my life follows as a simple corollary of my right to life.<sup>109</sup> If I have a right to X (whether it be my life, a piece of property, freedom of speech, or whatever), then even though I am bound by the requirements of necessity and proportionality, I am at liberty to protect X and to ensure that nobody takes it from me.<sup>110</sup> The liberty that follows from the right *to* my life (as well as *to* other things) is normally thought of as a “full liberty”: I am free to defend my life, and I am free to not defend it if I so choose.<sup>111</sup>

So now for the crucial question: how exactly are we to understand this idea of forfeiting the right to life, particularly how it is Attacker forfeits his right to life but Victim does not? Rodin's answer to this focuses on the idea that the right to life can be conceived of in terms of an obligation (whereas his explanation of the right of self-defense focuses on the idea that the right to life can be conceived of in terms of a claim). Rodin's answer to the crucial question, then, begins with the observation that Phillip Montague has made that the obligations we have with one another are in part reciprocal.<sup>112</sup> In general, an obligation we may have with another person may be cancelled depending on how that person behaves towards us.<sup>113</sup> Say, for example, I promise to take care of my neighbor's cat while he is out of town; this creates an obligation I have with respect to my neighbor. But if my neighbor, just prior to leaving town, for no good reason begins to insult me and egg my house, then it seems that my obligation to help him is cancelled. My obligation to him is not overridden, as if I had a more pressing obligation to fulfill. Rather, because of his behavior towards me, my obligation to him, despite my initial promise, is erased. Put differently, my particular obligation towards him is erased on account

---

<sup>109</sup> Rodin, p. 37.

<sup>110</sup> *ibid*, p. 37.

<sup>111</sup> *ibid*, pp.38-39.

<sup>112</sup> Montague, "Self-Defense and Choosing Between Lives", p. 214 ff; Rodin, p. 78.

<sup>113</sup> *ibid*, p. 214.

that he willfully ignored an obligation he has towards me (which is to treat me with a minimal amount of respect). There is some intuitive appeal to this idea but more needs to be said. What if I am unaware that my neighbor has insulted me and egged my house? Is my obligation to him in this case erased? This is a difficult question but I am inclined to think that it is not. If *unknown* to me he eggs my house, and I then decide to leave town making it so I will be unable to take care of his cat, then it's seemingly not implausible to say that we have both done something wrong, we have both ignored obligations that we have towards each other. By leaving town, I have still seemingly wronged him by breaking my promise. It seems as though somehow the promise and attendant obligation are erased only when I realize that he has wronged me. Perhaps another way of putting this is while our obligations are somehow reciprocal in nature, they are not correlative in nature. Thus it's not the case that someone ignoring an obligation towards me just is for me to be no longer obligated to him. Now, again, if I don't recognize that someone has ignored an obligation to me, that doesn't mean he hasn't wronged me, but it does mean that I would wrong him by ignoring my relevant obligation to him.<sup>114</sup>

---

<sup>114</sup> There are still some questions that can be raised concerning this idea that our obligations are reciprocal. It is not implausible to suppose that my obligation to take care of my neighbor's cat is cancelled. But is it always the case that our obligations are cancelled when another person ignores their obligations towards us? If so, exactly which obligations of ours are cancelled? And, why exactly are our obligations conditional upon how others behave towards us? So, for example, while it may be that I am no longer obligated to take care of my neighbor's cat, it does *not* seem as though I am no longer obligated to refrain from vandalizing his property. Take another example: parents are obviously obligated to provide food and shelter for their children. Now if the children become lazy and mean-spirited, then it is certainly not the case that the parent's obligation to provide for their children is cancelled. Or, perhaps more controversially, take a case where a wife has ignored her obligation to stay faithful to her husband. It is not clear that the husband is now released from his obligation to stay faithful while still in the marriage, though he of course is permitted to divorce. And upon learning that his wife has ignored her obligation, his obligation to refrain from physically harming her is certainly not cancelled. One could say that given that it is not entirely clear what determines which of our obligations are cancelled when others have ignored their obligations towards us, Rodin is less than compelling when he claims that our obligation to refrain from killing an attacker is cancelled given that that aggressor has ignored an obligation he owes us. Sure, it is not implausible to suppose that sometimes when others ignore their obligation towards us, some of our obligations towards them can be cancelled. But then again, some obligations of ours remain. So, regarding cases of self-defense, how can we be sure that Victim's obligation to refrain from killing Attacker is indeed cancelled? For all we know, this particular obligation of Victim remains. There is seemingly some force to this objection against Rodin's account of self-defense, but I think in the

Now Rodin takes this principle—that the obligations we have with one another are in part reciprocal—and applies it to the idea that the right to life can be forfeited. To say that all persons have the right to life is just to say that all persons have an obligation to refrain from killing (and attempting to kill) other persons. How are we to understand this exactly? We could say that any one person has an obligation to every other person that she refrains from killing other innocent people.

I have an obligation, then, to refrain from killing X. But if I see that X, for no good reason, begins to villainously act towards me such that my life is threatened (by doing this he has willfully ignored an obligation he has towards me), my obligation towards him (which is to refrain from killing him) is seemingly cancelled. It is in this sense that his right to life has been forfeited. Now my obligation towards him being cancelled just is for him to have a no-claim against me that I not kill him. And to have a no-claim against me is just for me to be at liberty to kill him. Thus I have not wronged him if I were to kill him. But X has wronged me; for X trying to kill me (or in fact killing me if he succeeds) is for him to violate a claim I have against him. And to violate a claim I have against him is for him to do something that he is not at liberty to do.<sup>115</sup>

So what about the issue of third parties killing in defense of others? I mentioned that any one person has an obligation to every other person that she refrains from killing other innocent people. This admittedly sounds a little odd. If I attack you, it's natural to think I have willfully

---

end it is unduly skeptical. Sure, the skeptic can claim that for all we know, Victim's obligation to refrain from killing Attacker remains. But this is not compelling, because for all we know Victim's obligation does not remain. More to the point, we have already taken it as a given that there are some conditions or other that make it so an attacker can be justifiably killed by his victim. That there may not be conditions under which we cease to have an obligation to refrain from killing others is not a claim we are considering. Furthermore, if we take seriously the various examples where seemingly our obligations are cancelled because of other people's unjust behavior towards us, then it is not implausible to suppose that the conditions that make up a lethal attack on an innocent victim are those conditions where an innocent victim ceases to have the obligation to refrain from killing.

<sup>115</sup> Rodin, pp. 78-79.

ignored an obligation I have towards you, but it's not as natural to think I have also ignored an obligation I have towards everyone else. But is it terribly counter-intuitive to think that if I attack X, I have ignored an obligation I have towards both X and Y? It's seemingly fairly commonplace to think that one has an obligation to "all of humanity" (or to "mankind in general" or even to "Justice itself") to refrain from killing other people.<sup>116</sup> Claiming that any one person has an obligation to every other person that she refrain from killing other innocent people is a way of understanding what it is to be obligated in this way to "all of humanity".<sup>117</sup> It's difficult to say exactly what grounds this obligation that everyone has towards everyone else. Perhaps it's the fact that human beings recognize that human life in general is good and valuable.<sup>118</sup> If these brief remarks have any plausibility, then we have an explanation for the permissibility of other-defense when the "other" person is a stranger. In addition to this, the intimate relationships we have towards our friends and family seemingly make it so other people are obligated towards us to refrain from harming our intimates.<sup>119</sup> So then, I have an obligation to refrain from killing X. But if I see that X, for no good reason, begins to villainously act towards either a stranger or an intimate such that his life is threatened (by doing this X has willfully ignored an obligation he has towards me in addition to ignoring an obligation he has towards him), my obligation towards X (which is to refrain from killing him) is seemingly cancelled.

At this point we need to return to the issue of being aware of when a person has willfully ignored an obligation he has towards us. I have claimed that my act (qua act) of breaking my

---

<sup>116</sup> *ibid*, pp. 19-20.

<sup>117</sup> Moreover, it could be that a part of what explains why we are so outraged when we hear about other people that are murdered is the fact that the murderer has violated an obligation he has towards us as well as towards the victim. But does this mean that if my neighbor is murdered, that the murderer has wronged me to the same degree that he has wronged my neighbor? It would seem as though the answer is problematically 'yes', and I frankly don't know what to say about it. Though it is still seemingly open to me to say that my neighbor has been *harmed* to a much greater degree than myself.

<sup>118</sup> Rodin seems to hold to something like this, pp. 37-39.

<sup>119</sup> Rodin seems to hold to something like this, pp. 37-39.

promise to my neighbor is justified only when I am aware that he has ignored his obligation to me to show me minimal respect. This entails that if I am a victim of someone trying to kill me (or a third party to someone trying to kill a victim) and I am unaware of what the attacker is doing, then my act of killing attacker would be unjustified. Say someone has his gun sights on me and is just about to shoot me. I see him in the rafters but I don't see his gun. I, not knowing he is about to shoot me, take aim at him and fire; just as I do this, he fires at me. If we both manage to kill one another, then seemingly both of us have done something wrong, both of us have ignored an obligation we have towards one another. We could say that neither of us forfeited our right to life. To say the shooter in the rafters forfeited his right to life with respect to me is to, again, say that my obligation to refrain from killing him was cancelled. But it wasn't cancelled given that I didn't realize the shooter was about to kill me. To say that I forfeited my right to life with respect to the shooter is to say that he no longer had an obligation to refrain from killing me. But given the scenario, he was never aware of the fact that I was ignoring an obligation I had towards him by taking aim and shooting. But if the shooter somehow had good reason to believe that I wasn't aware of his gun and that I was ignoring an obligation I had towards him, then his obligation to refrain from killing me would be cancelled.

Similarly, consider a case of other-defense. Say someone is unbeknown to me villainously attacking victim. The attacker is ignoring an obligation (to refrain from killing innocent people) he has towards me, and the victim; he is wronging both of us. But my obligation to refrain from killing him still stands which means he has not forfeited his right to life with respect to me. I would wrong him, then, if I were to kill him.

Some will surely be uncomfortable with the idea that a victim who is unaware that he is facing lethal attack (or a third party who is unaware that a victim is facing lethal attack) is

unjustified in killing the attacker. It may be thought that X being an immediate and unjust threat to Y's life automatically makes X forfeit his right to life, period. But it's not clear that anyone sympathetic to a rights-based account of self-defense that adheres to forfeit can hold to this. To see this, say at t1 stranger with villainous intent starts stabbing innocent passerby, immediately threatening his life. At t2, while stranger is still attacking passerby, I turn the corner and with villainous intent start stabbing stranger, immediately threatening his life. I am so enraged at my life's circumstances that I am *oblivious* to the fact that he is harming passerby. Assume my act (qua act) is justified on account that stranger is attacking passerby, stranger has forfeited his right to life because he is attacking passerby (my stabbing stranger can be seen as an instance of protecting innocent passerby). Now say at t3, while I am stabbing stranger, passerby is so enraged at me (he sees that I was the one that cut him off on the freeway just a few hours earlier) that he could care less that stranger is attacking him, and that I am attacking stranger. So passerby starts attacking me with a knife. At this point I haven't done anything wrong, so passerby being an immediate threat to me forfeits his own right to life. But because passerby has forfeited his own right to life, stranger's attack on him becomes permissible (stranger regains his right to life). And because stranger's attack on him becomes permissible, my attack on stranger suddenly becomes impermissible. But if my attack at this point is impermissible, it is also permissible. Why? Assume my attack is impermissible; passerby's act of stabbing me (qua act) becomes permissible. Passerby is no longer an unjust threat to me, so he hasn't forfeited his right to life. And since passerby hasn't forfeited his right to life, stranger's attack on him becomes impermissible. And because of this, my attack on stranger becomes permissible. At t3, my act of stabbing is both permissible and impermissible, hence the contradiction.<sup>120</sup>

---

<sup>120</sup> See Russell L. Christopher, "Self-Defense and Defense of Others", *Philosophy and Public Affairs*, Vol.27, No.2 (Spring 1998), pp. 123-141 (esp. pp. 123-128). Also, R Christopher, "Unknowing Justification and the Logical

The way out of this logical problem is to stipulate that because I lack a reasonable belief in (or knowledge of) the fact that the stranger is lethally attacking innocent passerby, the stranger doesn't forfeit his right to life with respect to me.<sup>121</sup> Given the Rodinian account, my obligation to refrain from killing the stranger has not been annulled for I am not aware of the fact that he is violating an obligation he has towards me, thus I am not justified in lethally attacking him. It's seemingly worth mentioning that that I am not justified in attacking the stranger is consistent with the law. According to the *Dadson Principle*, roughly, I am guilty of culpable homicide if I kill a person and am not aware of the circumstances that, had I been aware of them, would have justified me in killing.<sup>122</sup>

#### Rodin's Response to Forfeit

I want to examine how Rodin's account of self-defense answers the main problem (mentioned earlier) of forfeit. The main problem is that any rights-based account of self-defense that claims that Attacker forfeits his right to life must account for the necessity requirement on self-defense. Assume that Attacker does forfeit his right to life on account of his initial aggression and intent to kill. This initial aggression and intent does not necessarily preclude Victim from being able to flee, or from being able to subdue Attacker by some non-lethal means. But if Victim is able to flee Attacker, why would he be obligated to do so given that Attacker no longer has a right to life? It would seem that if Attacker genuinely does not have the right to live, then Victim would not be prohibited in killing him period, regardless of whether or not he is able to escape. But again this does not seem right. Similarly, say that Attacker, upon trying to take the life of Victim, suddenly sprains his own ankle such that he is now tending to his ankle

---

Necessity of the Dadson Principle in Self-Defense", *Oxford Journal of Legal Studies*, Vol. 15, No. 2 (Summer, 1995), pp. 229-251.

<sup>121</sup> Russell L. Christopher, "Self-Defense and Defense of Others", pp. 123-128.

<sup>122</sup> See Rodin, pp. 73-74, 76, fn 6, and Christopher, "Unknowing Justification and the Logical Necessity of the Dadson Principle in Self-Defense", pp. 229-231.



rather trying to kill Victim. Is his right to life still forfeited? He after all still possesses the evil intent to kill. If he ceases to have the right to life, again, why would Victim be required to flee? If he is supposed to suddenly regain his right to life, it is odd to think that whether or not one has the right to life or not depends on contingent factors such as having a hurt ankle. Furthermore, how exactly are we to understand this process of losing and regaining a right?<sup>123</sup>

Rodin's response to this objection is just to claim that if it is no longer necessary for Victim to kill Attacker (for whatever reason), then Attacker has regained his right to life. Furthermore, and importantly, given the relational nature of rights, it is not at all odd to claim that the forfeiture of Attacker's right to life is dependent upon contingent factors that are true of either himself or Attacker. Rodin says:

"if we follow Hohfeld in viewing all rights as relational then it follows that forfeiture (or limitations to the scope of) a right will also be viewed in relational terms. This implies that the forfeiture of a right should be viewed as a fact about the normative relationship between two specific parties. In which case there is every reason to believe that the forfeiture of a right will turn upon facts about the status, condition, actions, and intentions of both the parties."<sup>124</sup>

If we view the right to life as essentially a relation that obtains between persons, then whether or not this particular relation obtains, like other relations, will depend upon the persons who stand in this relation. But why think this exactly? Rodin is not terribly explicit in answering this but I think the following can shed some light on this question. Take the relation of 'taller than', for example. Whether or not X stands in the 'taller than' relation with respect to Y is going to depend on contingent features true of X and Y. It is the number of inches (or whatever unit of measurement you like) that happen to comprise the heights of X and Y that determines whether or not X is taller than Y. If X is 6 feet 3 inches tall and Y happens to be 6 feet 2 inches tall, then X is of course taller than Y. But things can quite easily change. Y can

---

<sup>123</sup> Thomson, pp. 3-4. Rodin, pp. 72-73.

<sup>124</sup> *ibid*, p.76.

grow a couple of inches making it so X no longer stands in the taller than relation with respect to Y. Or take the 'mother-in-law of' relation. Whether or not X stands in this particular relation with respect to Y is going to depend on certain contingent conditions. X could stand in this relation with respect to Y one day but circumstances could change such that this is no longer the case. But then again, at a later time, depending on the circumstances, X could once again stand in this relation with respect to Y. The main point to take from these examples is the idea that with respect to the nature of many relations (e.g. 'greater than', 'faster than'), various contingent factors determine whether or not the relation obtains between particular people. It is no different with the right to life. We could perhaps say that X having the right to life with respect to Y is just to claim that Y stands in the 'duty to do A' relation with respect to X (where A stands for refraining from killing). The existence of this relation between X and Y, like many other relations, will depend on various contingent conditions true of either X or Y. If, for example, X is attacking Y but it so happens that Y is able to escape, then Y stands in this relation with respect to X. But Y no longer stands in this relation with respect to X if it is the case that Y is unable to do so. Moreover, given that rights can be thought of in relational terms, it's not odd to claim that at t1 Y does stand in the 'duty to do A' relation with respect to X (given that X is not attacking Y and Y is not aware that X is attacking Z), while Z does not stand in this relation with respect to X (given that X is attacking Z and Z is aware of it).<sup>125</sup> It's seemingly not unlike how in a foot race, we can say Y is, at the same time, 'in front of' X while not 'in front of' Z.

I don't want to claim that the account of self-defense that I have defended is not without its difficulties. I have tried to point out some along the way. It seems to me though that the problems the Rodinian account faces are less severe than the problems facing the

---

<sup>125</sup> *ibid*, p. 76.

Thomson/Uniacke account. The goal then has been to show that one can be reasonable in adopting a Rodinian account of self-defense.<sup>126</sup>

---

<sup>126</sup> Many thanks to Matt Hanser for his helpful comments on this paper.