

Review Journal of Political Philosophy,
Volume 9

Review Journal of Political Philosophy,
Volume 9

Edited by

J. Jeremy Wisniewski

**CAMBRIDGE
SCHOLARS**

P U B L I S H I N G

Review Journal of Political Philosophy,
Volume 9

Edited by J. Jeremy Wisnewski

This book first published 2012

Cambridge Scholars Publishing

12 Back Chapman Street, Newcastle upon Tyne, NE6 2XX, UK

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

Copyright © 2012 by J. Jeremy Wisnewski and contributors

All rights for this book reserved. No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the copyright owner.

ISBN (10): 1-4438-3995-7, ISBN (13): 978-1-4438-3995-2
ISSN: 1752-2056

TABLE OF CONTENTS

Acknowledgments	vii
-----------------------	-----

Addendum to Volume 8.2 Naomi Zack's Ethics for Disaster	ix
---	----

Articles

The Trilemma of Moral Preparedness	1
Sven Ove Hansson	

Defending A Rodinian Account of Self-Defense	7
Jacob Blair	

Children Are People: Liberty, Opportunity, and Just Parenthood	49
Melina Constantine Bell	

<i>ΛΑΙΜΩΝ</i> in Heraclitus: God, Destiny, Or Man's Highest Degree of Being?	87
Yiorgo N. Maniatis	

Political Liberalism and Respect for Citizens as Reasoners	107
Melissa Yates	

Book Reviews

Jeff McMahan, <i>Killing In War</i>	131
Oxford University Press, 2009. 250pp, £19.99 (\$35.00). (Hbk), ISBN 978-0-19-954866-8. Reviewed by Nolen Gertz	

ACKNOWLEDGMENTS

All journals benefit from the good graces of those academics who volunteer their time to make journals run smoothly and professionally. This Journal has had more of its share of good grace. The lion's share of thanks for the journal goes to members of the editorial board. In particular, I would like to thank the following individual persons for their continual help:

Thom Brooks, University of Sheffield
Janet Donohoe, West Georgia State University
R. D. Emerick, Palomar College
Gordon Hull, Iowa State University
Glen Pettigrove, Massey University
Jose-Antonio Orosco, Oregon State University
Mark Sanders, University of North Carolina, Charlotte
P.A. Woodward, East Carolina University

I would also like to thank Jordan Liz, my editorial assistant, for his assistance in preparing the manuscript, slowly but surely, as well as the editorial staff at Cambridge Scholars Publishing, and in particular Amanda Millar, for continuing support of the journal.

ADDENDUM TO VOLUME 8.2: NAOMI ZACK'S *ETHICS FOR DISASTER*

Due to an error on my part, Sven Ove Hansson's paper "The Trilemma of Moral Preparedness" was not included in its proper place. Hansson's superb paper should have been included alongside other papers in Volume 8.2—a volume dedicated to the exploration and critique of Naomi Zack's *Ethics for Disaster* (Rowman and Littlefield, 2009). I want to offer my apologies to Dr. Hansson, as well as to readers of the journal.

—J. Jeremy Wisnewski
Editor, *Review Journal of Political Philosophy*
Hartwick College
Oneonta, NY

THE TRILEMMA OF MORAL PREPAREDNESS

SVEN OVE HANSSON

ROYAL INSTITUTE OF TECHNOLOGY

A fat man gets stuck in the mouth of a cave. Is it allowable to kill him in order to save people in the cave from being drowned by the rising water? (Nielsen 1972)

Is it morally permitted to eat the dead bodies of other humans if that is the only way to avoid starving to death?

Is it morally acceptable to throw out some of the people from a lifeboat if there is no other way to prevent the lifeboat from sinking?

Is it allowed to kill one person if that is the only way to save nine others from being killed by someone else? Is it perhaps even morally required? (Williams 1973, pp. 97–99)

Should the military shoot down a passenger aircraft that has been taken over by terrorists who intend to crash it into a building? (Youngs 2008)

These are a few of the many scenarios for life-and-death dilemmas that have been discussed by philosophers. A moral dilemma is a situation of choice in which it seems as if we act wrongly whichever option we choose. The most serious moral dilemmas are those in which the wrongdoings we have to choose between are all atrocious, such as killing an innocent person or letting many people die. Such extreme dilemmas can also be called “tragic choices”, since whatever option is chosen, the choice will be seen in hindsight as tragic. Tragic choices are (fortunately) much less frequent in ordinary life than in philosophical discussions, but they are encountered in various disaster situations.

A Moral Trilemma

Two standpoints about moral problems in disaster situations have a central role in Naomi Zack’s highly informative and thought-provoking book

Ethics for Disaster. First, she claims that we ought to know beforehand what moral standpoints we will take in disaster situations. According to the Code of Ethics for Disaster that she proposes, we have a moral obligation to plan for disaster. (p. 126) This planning should be “general enough to allow for unforeseen contingencies” (p. 19), and it should include decisions on the moral principles to be applied in disasters:

There is nothing wrong with providing exceptions or specifications to our moral principles before the fact of a disaster and then applying those specifications when the time comes. But, there is clearly something suspect in making up the exceptions and specifications in the moment of a disaster because that opens the door to mere rationalization and justification after the fact. (p. 41)

Hence she endorses the following thesis:

- (1) We should decide beforehand what moral standpoints to take in various possible future disasters.

Secondly, Zack asserts that the ethics of normal situations are sufficient in disaster. According to her Code of Ethics for Disaster, disaster planning and response should comply with “broad consensual intuitions about what human beings are permitted to do to one another in normal times.” (p. 126) These principles include “not intending harm and positively preserving human well-being.” (p. 19) This is indeed “the main thesis of this book.”(xiii) We can summarize it as follows:

- (2) Our plans for how to act in disasters should not transgress the moral principles that we honour in normal times.

A major argument for this thesis is that we might otherwise be led to accept “a limitation of resources before the fact, when there may still be time to ensure that there are enough resources through more extended preparation”. (p. 27)

But, unfortunately, although (1) and (2) are both plausible as they stand, they cannot both be complied with, given the following empirical precondition that appears to be unavoidably true:

- (3) There are plausible disaster scenarios in which none of the available options complies with the moral principles that we honour in normal times.

Examples that confirm the veracity of (3) are not difficult to find; let me mention just three: In a serious pandemic, a scarce prophylactic drug can be distributed either to those with the best chances of surviving due to the drug, or alternatively to those whose work is most essential to prevent the spread of the disease. Terrorists can force their enemies to either kill innocent persons or witness the death of a much larger number of people. People stranded in the wilderness may have a choice between cannibalism and death. Clearly, if we decide beforehand what moral standpoints to take in extreme disasters, as (1) requires, then according to (3) we must do this for situations in which the ethics of normal times cannot be applied. In such cases, (2) cannot be complied with. This is the *trilemma of moral preparedness*.

Some Failed Escape Routes

Although Zack does not discuss the problem presented in this trilemma, some of her proposals can be seen as potential escape routes from it.

Hence, she claims that instead of planning for deviations from normal moral principles, we should take the measures needed to avoid situations in which these principles cannot be adhered to. (p. 24) This is clearly a sound proposal, but as she points out herself, it does not always work. (It is particularly often inoperative in poor countries with severely limited resources for disaster preparation.) Zack also makes a distinction between “planning as part of preparation” and “response planning that could be appropriate after the disaster has struck or is imminent in a situation of limited resources or inadequate preparation”. (p. 24) Presumably, strict adherence to normal ethical principles is required only in the former type of planning. However, this distinction does not eliminate the trilemma. If response planning is exempted from thesis (2), then it is not affected by the trilemma. But the other, preparative type of planning is still subject to the trilemma. Some might be tempted to replace (2) by the following, weaker principle:

- (2') Publicly known plans for how to act in disasters should not transgress the moral principles that we honour in normal times.

The weakened thesis would allow governments to have secret plans for breaches of normal morality in extreme emergencies, and this is compatible with (1) and (3). But although a retreat from (2) to (2') would save us (or at least the government) from the trilemma, secret plans for

actions that contradict common moral standpoints would create other, arguably worse problems.¹

Zack wisely eschews this option:

Broad public discussion of the allocation of limited resources in emergencies should be a vital component of disaster preparation in a democratic society, a component thus far overlooked. (p. 26)

Solving the Trilemma

I am the father of two children. It is not difficult to construct hypothetical situations in which both their lives are threatened and I can at most save one of them. Hopefully, I would then be able to choose one of them rather than letting them both die. But I have no idea how I would be able to make such a dreadful choice or what its outcome would be. The very idea of making such a choice appals me. In the unlikely event that I would have to make it, the memory of having done so would plague me for the rest of my life. If I knew whom I would choose (for instance from the outcome of a very reliable psychological test), then that knowledge in itself would be a burden on my mind. This, by the way, is the lesson that we should learn from William Styron's (1979) novel *Sophie's Choice*. In a German concentration camp, Sophie had been forced to choose one of her children for survival. For the rest of her life, that decision filled her with unbearable feelings of guilt and self-recrimination. Would it make someone a better parent – or in some other way a better person – if she knew beforehand which of her children she would save if placed in Sophie's situation? In my view, such knowledge would, to the contrary, be an indication of parenthood problems. We expect a parent to love each of her children so much that nothing is more important to her. This example refers to an individual quandary, but equally credible arguments can be made about social quandaries. It is conceivable that in a disastrous pandemic, a country's healthcare system would deprioritize certain groups (such as the very old). But in a normal situation, members of these groups have the same priority as anyone else. A prior decision about which groups to deprioritize in an extreme emergency could most likely have a negative social impact. This is a reason not to make such decisions until they are really needed. The following simple rule for tragic choices is proposed: *Do not make a tragic choice unless you need to!* This rule contradicts the above principle (1) and thereby offers a solution to the trilemma of moral preparedness.

References

- Nielsen, Kai (1972) "Against Moral Conservatism", *Ethics* 82:219-231.
- Piper, Adrian M.S. (1978) "Utility, Publicity, and Manipulation", *Ethics* 88:189-206.
- Sen, Amartya and Bernard Williams (1982), "Introduction: Utilitarianism and Beyond", pp. 1-22 in Amartya Sen and Bernard Williams, *Utilitarianism and Beyond*. New York: Cambridge University Press.
- Sidgwick, Henry (1907), *The Methods of Ethics*, 7th ed. London: Macmillan.
- Styron, William (1979) *Sophie's Choice*. New York: Random House.
- Williams, Bernard. (1973) "A Critique of Utilitarianism", pp. 77-150 in Smart, J. J. C. and B. Williams, *Utilitarianism: For and Against*. Cambridge University Press: Cambridge.
- Youngs, Raymond (2008) "Germany: Shooting down aircraft and analyzing computer data", *International Journal of Constitutional Law* 6: 331–348
- Zack, Naomi (2008) *Ethics for disaster*. Lanham: Rowman and Littlefield.

Notes

¹ (2') is reminiscent of the secret moral deliberations that Henry Sidgwick (1907) proposed to avoid some of the problems of act utilitarianism. For critical comments on that proposal, see Piper 1978 and Sen and Williams 1982.

DEFENDING A RODINIAN ACCOUNT OF SELF-DEFENSE

JACOB BLAIR

UNIVERSITY OF CALIFORNIA, SANTA BARBARA

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.¹ There are roughly two kinds of non-consequentialist accounts of self-defense: 'forced-choice' accounts and 'rights-based' accounts.² 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 their central tenets. I then 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.³

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.⁴ 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 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.⁵ 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.⁶ Furthermore, in both NA1 and NA2 I would seemingly be 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 the 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. Consider three basic features present within any standard case of self-defense:⁷ (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.⁸ 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".⁹

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*.¹⁰ The two *ceteris paribus* conditions that apply to any situation that satisfies the above three 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".¹¹ 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 *x* 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*.¹² Montague calls conditions (i), (ii), and (iii) as well as CP1 and CP2 the 'distribution thesis'.¹³ 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 back to make another pick up because the storm will be too intense to allow the helicopter to be airborne.¹⁴

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 these, where all people cannot be saved, it seems as a matter of principle that the lives of the innocent are to be preferred.¹⁵ 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.¹⁶ 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 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.¹⁷

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.¹⁸ On the face of it, the moral asymmetry between Attacker and Victim is 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.¹⁹

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 although 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.²⁰ 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.²¹ Montague is confident, however, that Transplant can easily be modified so as to make it satisfy (iii).²² 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 forty 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.²³ Presumably the harm done to Young on one distribution would be 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.²⁴ 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 do not 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 does not get the transplant he will be harmed to a much greater degree than Old would if he does not 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 distribution of harm takes the form of allowing someone to die, as opposed to killing them. 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 A, I will be bringing about the death of B. In this case, I am seemingly permitted to arbitrarily choose between A or B.²⁵ 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 thirty more good years), while B will benefit to a vastly lesser degree by having the medicine (he will live three 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 (ones 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 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 throws Attacker down to the ground 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 basketball 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 immature, 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 his unsportsmanlike conduct, I feel him tugging at my shirt once again. Suppose that the only way to keep him from kneeling 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 seems to me to be 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 – 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*.²⁶ 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'?'²⁷ 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) 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 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 is not 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 (say in the 'sea side' example).²⁸ 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 (e.g. my act in the sea-side example).

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')²⁹ 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,³⁰ 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 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.³¹ 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.³² 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 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.³³ Necessity roughly requires that an action I do undertake in order to protect X is the least harmful means of protecting X.³⁴ 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.³⁵ The notion 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.³⁶

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 also 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.³⁷ 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.³⁸

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, an individual's conduct as a human being, even if it is villainous, cannot determine whether or not she possesses this right.³⁹ 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 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?⁴⁰

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.⁴¹ 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).⁴² The same reason you have for killing a culpable attacker also permits you to kill Innocent Threats as well as Compelled and Ignorant Aggressors.⁴³ 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 killing you, but he is not responsible for his behavior in that it stems from