

Necessity

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1 My Competitors

PHILOSOPHERS HAVE CHOSEN the term ‘unnecessary’ to pick out whatever it is that is objectionable about choosing the more harmful defensive option in cases like:

Easy Defense. Attacker attempts to impose serious harm on Victim. Defender knows that she has two equally good and easy ways to protect Victim from harm: either by imposing serious harm on Attacker or by imposing mild harm on Attacker.

Desiderata on an account of necessity:

1. The account should provide a unified explanation of what’s wrong with choosing the more harmful option *both* in Easy Defense and in Easyish Defense.
2. The account should assign a plausible role to the presence of bystanders.
3. The account should identify the wrong suffered by those subjected to unnecessary harm.
4. The account should accurately reflect the stringency of the defender’s duty to not impose unnecessary harm.
5. The account, ideally, will contribute to a unified account of liability.
6. The account doesn’t have counterintuitive implications.

My foils:

DISCOUNT. The imposition of defensive harm on an attacker is unnecessary just in case there are other defensive options that impose less (expected) aggregate, morally weighted harm. (McMahan, Lazar)

RESCUE. The imposition of defensive harm is unnecessary just in case it would violate the attacker’s right to easy rescue. (Quong)

Somewhat confusingly, philosophers are using this term of ordinary English as a quasi term of art.

Easyish Defense. As in Easy Defense, except that Defender will suffer a dislocated finger if she imposes the mild harm on Attacker.

I am here assuming, along with most theorists, that necessity is “internal” to liability: a person who is liable to harm is only ever liable to necessary harm. (See Frowe for an exception to this view.)

Quong, Clark, McMahan, and Lazar all reject the following account on the grounds that it fails with respect to desideratum (1):

NAIVE. The imposition of defensive harm on an attacker is unnecessary just in case it is possible to protect his victims to the same degree by imposing less harm on the attacker and bystanders.

DISCOUNT does pretty well with respect to (5), since it effectively identifies the necessity constraint with the wide proportionality constraint.

But Quong and I both contend that DISCOUNT does poorly with (2) and (3). Quong's case:

Too Many Bystanders: Attacker will kill Victim unless Defender stops him. Defender has two options: (i) do nothing, or (ii) throw a grenade that will kill Attacker but also kill ten bystanders.

RESCUE does much better with (3). But I think it struggles with (4):

Drunk Boating. You are a passenger in a boat. The pilot, Alice, is slightly inebriated. As a result, she is heading on a collision course with a reef. Nearby, the pilot of another boat, Bob, is also slightly inebriated. As a result, his boat is taking on water. You have two ways to defend yourself. You can kill Alice and take control of the boat, in which case you can save Bob from drowning. Or you can disable the boat's engine, in which case you won't need to kill Alice, but you will be unable to save Bob.

According to RESCUE, the only wrong you would do to Alice by unnecessarily killing her is your duty to rescue her from death. So killing Alice should be no more a wrong to Alice than failing to rescue Bob is a wrong to Bob.

In the paper I also express worries about (6) — counterintuitive implications — but these are contingent on following Quong in endorsing a “threshold” view of duties of rescue.

2 *My Account*

THE FOUNDATION OF my account is Tadros's principle of liability:

DEFENSIVE LIABILITY BY DUTY (DLD). When an attacker has a duty to avert his threat (or would have such a duty were he able to avert his threat), the attacker loses certain rights against being harmed as a means or side effect of the aversion of his threat.

I like DLD because it offers a unified explanation for:

First, why liability is goal-relative — why attackers only make themselves liable to be harmed in service of certain goals.

Second, why aggressors “regain” many of their rights to not be harmed once that attack concludes.

The problem for DISCOUNT is that it implies that choosing the more harmful option in Too Many Bystanders is wrong *for the same reason* the more harmful option is wrong in Easy Defense. That's implausible. Seriously harming Attacker in Easy Defense *wrongs Attacker*. Throwing the grenade in Too Many Bystanders does not wrong Attacker; it only wrongs the bystanders.

I didn't explore this in the paper, but I wonder whether RESCUE doesn't also struggle at (2). Suppose two people are drowning, and I can only save one. Suppose I flip a coin to choose whom to save. I don't then wrong one of them when I save the other. But now consider Drunk Boating in light of that fact: this would imply that adding in the presence of the bystander, Bob, makes it so that killing Alice does not wrong her. I find that implausible.

This phenomenon of rights recovery was one that puzzled Thomson.

Third, why there is an upper limit (the proportionality limit) on how much harm someone is liable to, why that limit slopes upward with the severity of the threat, and why that limit often exceeds the severity of the threat.

The key here is the fact that duties have a demandingness level, in addition to have a content. When S has a duty, she has a duty, of demandingness d , to see to it that e .

My test for whether it is proportionate to impose harm H on attacker: compare *imposing H* with *doing nothing* — would the attacker have a duty to bear this difference in defensive cost (H) in order to see to the difference in defensive gain between these two options?

On my view, the necessity test is just a more general version of the proportionality test:

DIFFERENTIAL DUTY. A defensive option is unnecessary just in case there is an alternative defensive option such that the attacker would not be required to bear the difference in defensive harm between the two options to secure the difference in defensive gain.

How does this do with our desiderata?

1. The account gives a unified diagnosis of Easy Defense and in Easyish Defense. ✓
2. The account should assign a plausible to the presence of bystanders. ✓
3. The account should identify the wrong suffered by those subjected to unnecessary harm. ✓
4. The account should accurately reflect the stringency of the defender's duty to not impose unnecessary harm. ✓
5. The account, ideally, will contribute to a unified account of liability. ✓
6. The account doesn't have counterintuitive implications. ?

Consider how it does in Too Many Bystanders and Drunk Boating — cases where **DISCOUNT** and **RESCUE** imply implausible difference-making roles for bystanders.

Imposing unnecessary harm on someone, given **DIFFERENTIAL**, infringes their negative right to not be harmed, and not merely their positive right to rescue.

I'm not sure. I'm more worried about the following case than the paper lets on:

Dual Threat. Alice and Bob each attempt to kill you. Killing either one of them will suffice to scare the other off.