

Necessity and Other-Defence¹

Permissions to inflict defensive harm are constrained by the necessity requirement. The necessity requirement holds that, if a harm is unnecessary, it is impermissible to inflict it.² If you could defend yourself against an attacker by either killing her or by knocking her unconscious, all other things being equal, it is impermissible for you to kill her. By permitting agents to inflict no more harm than necessary to avert a threat, the necessity requirement ensures that defensive harms are inflicted for the sole purpose of averting a threat, as opposed to, for example, retributive purposes.³

In many real-world contexts that may require defensive force, agents do not act alone. Consider law enforcement, combatants in war, or a group of countries deliberating how best to rein in a rogue state posing a threat to international security – through military action by country A or diplomatic pressure by country B. Situations in which a threat could be averted by more than one agent raise the question: what if it is unnecessary for one agent to inflict a defensive harm because another could avert the same threat in a less harmful manner? If X could avert Z's attack only by killing her, and Y could avert Z's attack by mildly injuring her, would X violate the necessity requirement in killing Z?

How we understand the necessity requirement in cases involving multiple agents determines who is permitted to inflict what harms, and on what grounds: it determines whether victims must refrain from acting in self-defence when a third party could rescue them in a less harmful manner; whether third parties are required to intervene not just to rescue victims but also to minimise harm to targets and bystanders; and, on some views, what rights targets of defensive acts forfeit, based on what is necessary to avert their threat.⁴

This paper explores the case for extending the necessity requirement across multiple defensive agents. In cases in which several agents could avert an unjust threat of harm, this paper suggests, their

¹ Special thanks for helpful comments to Paul Billingham, David Birks, Daniel Butt, Simon Caney, Cécile Fabre, Helen Frowe, Jeff McMahan, Alison McQueen, and two anonymous referees, who were instrumental in improving this paper. For helpful discussion, I am also grateful to Joe Chapa, Philipp Gisbertz, Jess Gliserman, Kerah Gordon-Solmon, Felix Koch, Rhiannon Neilson, Brianna Rosen, Bob Underwood, and audiences at the Einstein Ethics Group Early Career Workshop in Moral Philosophy at Humboldt University in Berlin, the Stanford Center for Ethics in Society Junior Scholars Workshop, and the Ethics and Political Philosophy Early Career Conference at the University of Reading. Parts of this paper were written during fellowships with the Edmond J. Safra Center for Ethics at Harvard University and the McCoy Center for Ethics at Stanford University. Sincere thanks to both institutions.

² For discussion and a sample of views, see Seth Lazar, "Necessity in Self-Defense and War," *Philosophy & Public Affairs* XL, 1 (2012): 3–44; Jeff McMahan, "The Limits of Self-Defense," in Christian Coons and Michael Weber, eds., *The Ethics of Self-Defense* (New York: Oxford University Press, 2016), pp. 185–210; Thomas Hurka, "Proportionality and Necessity," in Larry May, ed., *War: Essays in Political Philosophy* (Cambridge: Cambridge University Press, 2008), pp. 127–44; Kaila Draper, "Necessity and Proportionality in Defense," in Coons and Weber, eds., *The Ethics of Self-Defence, op. cit.*, pp. 172–184.

³ For example, Victor Tadros, *The Ends of Harm* (Oxford: Oxford University Press, 2011), p. 53.

⁴ These are views on which liability to some harm presupposes that this harm is necessary. I consider these below.

respective duties and permissions may become interdependent. Whether it is necessary, and to that extent permissible, for one agent to use defensive force may accordingly depend on whether another agent is likely to avert the same threat in a less harmful manner. The reason for this, I argue, lies in the instrumental character of justifications for defensive harming. Insofar as both liability-based and lesser-evil justifications serve primarily to prevent unjust harms, and not to punish even liable targets, the most compelling view of necessity is one that seeks to minimise harms by extending the constraint across agents pursuing the same defensive end.⁵ This conception of necessity, however, seeks only to minimise harms in pursuit of a specific defensive aim; it does not seek to tell us which one of several ends to pursue based on how harmful different acts of rescue would be. The application of this constraint is also limited by conditions of uncertainty. In cases in which it is impossible for victims to know whether others will come to their rescue, it is permissible for them to inflict harms on an evidence-relative basis which it is, in a fact-relative sense, unnecessary and hence impermissible to inflict.

Some contemporary moral philosophers – revisionist just war theorists, who derive the morality of harming in war from the morality of harming in individual self-defence – have been criticised for not taking seriously the collective reality of war. In elucidating how the necessity requirement operates in situations involving multiple agents, this paper goes some way towards reconciling key commitments of individualist morality with the fact that, more often than not, defensive agents do not act alone. By working through how we should apply the necessity requirement in situations in which more than one defensive agent could avert a threat of harm, and illuminating the extent to which agents united by the same defensive aim may be jointly constrained, this discussion brings to the fore vital questions that have remained largely obscure.

Before we proceed, a preliminary point. The right not to be harmed is typically thought to confer both duties of non-interference and duties of assistance on others.⁶ If Aggressor threatens to violate Victim's right not to be harmed, Victim may enforce Aggressor's obligation not to harm him by engaging in necessary and proportionate self-defence, and Rescuer may incur a duty to assist Victim's defence by enforcing Aggressor's obligation not to harm Victim. Rescuer's permission to harm in Victim's defence, however, does not presuppose Victim's own permission to harm in self-

⁵ I use 'requirement' and 'constraint' interchangeably here.

⁶ For example, Helen Frowe, *The Ethics of War and Peace* (London: Routledge, 2011), pp. 26–29.

defence.⁷ Rescuer's permission to harm in Victim's defence presupposes only Victim's right not to be harmed. While Victim's and Rescuer's permissions to harm in Victim's defence share the same basis in Victim's right not to be harmed, Victim's right not to be harmed is merely a necessary, not a sufficient, condition for both Victim's and Rescuer's permissions to harm Aggressor in Victim's defence.⁸

Permissions to inflict defensive harm are moreover constrained by considerations of necessity and proportionality. To the extent that the circumstances determining what is necessary and proportionate vary for different agents, their respective permissions to use defensive force will differ accordingly. Hence, there may be cases in which Victim is permitted to inflict a particular harm on Aggressor in self-defence, but Rescuer is prohibited from inflicting the same harm on Aggressor in Victim's defence, and vice versa. Rescuer's permission to harm in Victim's defence is thus neither contingent on nor automatically entailed by Victim's own permission to harm Aggressor in self-defence.

For the purposes of this discussion, I will assume that the costs third-party rescuers would incur by acting in other-defence are not prohibitively high, and that the demands placed on them in the cases discussed do not bear on whether rescuers are under a duty to rescue in the first place.⁹ In the cases I consider, I will assume that Rescuer is able and willing to intervene, and that Victim knows this. For the most part, I thus set contingent issues concerning coordination and agreement between different agents aside, except where I address them explicitly.

In most real-world cases, defensive agents operate under conditions of uncertainty. For example, if someone attacks you as you walk home at night, you may not know whether a bystander will intervene in your defence, or whether your attacker happens to have a weak knee, so that kicking him would avert the attack, rendering shooting him unnecessary. Nonetheless, I will sometimes assume perfect knowledge about the facts regarding necessity for the sake of analysis; though I will also address difficulties posed by uncertainty about such matters where relevant.

I TWO CONCEPTIONS OF NECESSITY

⁷ See also Nancy Ann Davis, "Abortion and Self-Defense," *Philosophy & Public Affairs* XIII, 3 (1984): 175–207, at p. 187; Judith Jarvis Thomson, "Self-Defense," *Philosophy & Public Affairs* XX, 4 (1991): 283–310, at p. 306. For illuminating discussion of the relationship between self- and other-defence, see Jonathan Parry, "Defensive Harm, Consent, and Intervention," *Philosophy & Public Affairs* XLV, 4 (2017): 356–96.

⁸ For a different view, on which victims have a Hohfeldian power to transfer their agent-relative permission to harm in self-defence to third parties, see Cécile Fabre, "Permissible Rescue Killings," *Proceedings of the Aristotelian Society* CIX, Part 2 (2009): 149–64.

⁹ For an account of duties to rescue which sidesteps the problem of extreme demandingness altogether, see Zofia Stemplowska, "Doing More Than One's Fair Share," *Critical Review of International Social and Political Philosophy*, XIX, 5 (2016): 591–608.

We can distinguish between two conceptions of the necessity requirement. First, it might ensure that no agent inflicts more harm than it is necessary *for her* to inflict to avert an unjust threat. I will refer to this as the *agent-centred* conception of the necessity requirement ('agent-centred necessity' for short). Second, it might ensure that targets of defensive acts suffer no more than the *overall* minimum amount of harm necessary to avert the threat they pose. I will refer to this as the *target-centred* conception of the necessity requirement ('target-centred necessity').

Agent-centred necessity constrains a person's acts with regard to the harm which it is necessary *for her* to inflict to avert an attack. That is, agent-centred necessity constrains individuals' actions with reference only to other actions those same agents could perform, without reference to what other agents might be able to do. For example, if X can avert an attack by inflicting either ten or five units of harm, and Y can avert the same attack by inflicting three or four units of harm, an agent-centred conception of necessity will permit X to inflict five units of harm, and Y to inflict three units of harm. It will not tell us anything about whether X or Y should act. Since agent-centred necessity demands that individuals take the least harmful course of action available to them, the fact that Y can avert the attack in a less harmful manner than X has, as far as agent-centred necessity is concerned, no bearing on what it is permissible for X to do.

The purview of target-centred necessity is broader. On a target-centred view, the necessity requirement serves primarily to minimise the degree of harm suffered by the target of the defensive action, all things considered. The purpose of target-centred necessity is not to constrain individuals' actions for their own sake but to ensure that targets do not suffer more harm than necessary, irrespective of who inflicts it. Accordingly, in cases with multiple defensive agents, what matters is how much harm the target suffers – not who inflicts it. The key implication of this is that target-centred necessity may apply interpersonally, that is, to multiple agents with one accord. For example, if X could avert an attack by inflicting either ten or five units of harm, and Y could avert the same attack by inflicting only three units of harm, a target-centred, interpersonal view of necessity would extend to both X and Y, and permit only the infliction of three units of harm, all other things being equal.

This interpersonal application of the necessity requirement does not treat X and Y as a 'pair' or group agent. It still constrains the harmful acts of individuals qua individuals. But, unlike the agent-centred conception, target-centred necessity is sensitive to other agents' options. This is to say that what it is permissible for X to do is sensitive to what options Y has available. In this sense, the moral jurisdiction of target-centred necessity is broader than that of the agent-centred conception, extending

across defensive agents. What it is necessary, and to that extent permissible, for one agent to do may consequently, at least in a fact-relative sense, be contingent on what it is possible for another agent to do.

Now, in many real-world situations, people act under conditions of considerable uncertainty. For example, Victim might believe that there is only a 90% chance that Rescuer will defend him. Rescuer may be deliberating and may not yet have made up her mind about whether to intervene. It might also simply be indeterminate if she will indeed rescue Victim.¹⁰ In cases in which Victim can defend himself only by inflicting a lethal harm on Aggressor, and Rescuer can defend Victim by merely injuring Aggressor, the application of the necessity constraint to the actions of Victim is complicated in the following way. If Victim knows that Rescuer will save him if he does not engage in self-defence, then Victim's engaging in self-defence is prohibited by the necessity requirement. However, if Victim cannot know that Rescuer will save him, then Victim's act of self-defence, while still prohibited by the necessity requirement in a fact-relative sense, will be permissible in an evidence-relative sense. What Victim is permitted to do thus depends on what Victim reasonably believes Rescuer will do, and vice versa. We will return to resulting complications shortly. First, I will try to make a case for target-centred necessity.

1.1 A Case for Target-Centred Necessity

Insofar as the permissibility of defensive acts is subject to requirements to minimise harm, permissions to inflict defensive harm are inherently contingent on which defensive options are available. In cases in which multiple agents could avert the same threat of harm, the instrumental nature of both liability-based justifications and lesser-evil justifications, I propose, calls for a target-centred view which extends the necessity constraint across multiple agents' options. Consider first liability-based justifications for harming.

Liability-based justifications are instrumental in character, unlike retributive justifications for harming, which assume that harm is non-instrumentally valuable.¹¹ Liability-based justifications primarily serve to determine on whom unavoidable harms should fall. Although they generally presuppose a certain degree of moral or causal responsibility for bringing about a threat of harm, this matters only to the extent that it indicates a normative difference between a threat and her victim in bringing about an unjust threat of harm.¹² Since liability-based justifications for harming, rather than

¹⁰ I am grateful to Jeff McMahan for helpful discussion of this.

¹¹ Although liability is partly a function of the just distribution of harm, it is not the purpose of liability-based justifications to bring about justice. See McMahan, "The Limits of Self-Defense," *op. cit.*

¹² See Jeff McMahan, *The Ethics of Killing: Problems at the Margins of Life* (New York: Oxford University Press, 2002),

serving a punitive function, result from a mere normative asymmetry between agents, general duties of beneficence require that harms to targets of defensive acts be minimised.¹³ In this light, target-centred necessity delivers intuitively more compelling verdicts in cases with multiple defensive agents than agent-centred necessity. To see this, consider first the well-known case of

Conscientious Driver: Driver, who always keeps his car well maintained and always drives carefully and alertly, decides to drive to the movies. On the way a freak accident occurs that causes his car to veer out of control in the direction of a pedestrian. The out-of-control car will now kill the pedestrian unless the pedestrian destroys the car with a grenade, thereby killing Driver.¹⁴

According to Jeff McMahan's (agent-)responsibility-based account of liability, Driver is liable to defensive harm, because he voluntarily undertook to drive and is, to that extent, responsible for the threat posed to Pedestrian.¹⁵ This creates an ever-so-slight moral asymmetry between Driver and Pedestrian, which provides the latter with a liability-based justification for killing the former in self-defence. In this case, it is simply unfortunate for Driver that he is more responsible than Pedestrian for bringing about the threat of harm. Now consider

Conscientious Driver II: Everything is the same as in Conscientious Driver I, with the addition of Rescuer. Rescuer can, and will, push a button that will trigger spike strips on the road, deflating Driver's tires and saving Pedestrian's life. This would merely injure Driver.

Since the defensive act serves solely to avert the threat that Driver poses to Pedestrian, and not to punish Driver, harms to Driver ought to be minimised, even if he has made himself liable to defensive harm. A scenario in which Driver is mildly injured by Rescuer is preferable to one in which he is killed by Pedestrian, even if Driver voluntarily engaged in the potentially risky act of driving.

Agent-centred necessity does not distinguish between Pedestrian killing Driver and Rescuer injuring Driver, since each act is necessary when considered in isolation. Target-centred necessity, by contrast, extends to both Pedestrian's and Rescuer's ability to avert the threat posed by Driver. What

pp. 401–2; Jeff McMahan, "The Basis of Moral Liability to Defensive Killing," *Philosophical Issues* xv, 1 (2005): 386–405; Richard Norman, *Ethics, Killing, and War* (Cambridge: Cambridge University Press, 1995), pp. 122–3; David Rodin, "Justifying Harm," *Ethics* cxxii, 1 (2011): 74–110.

¹³ See Joanna Firth and Jonathan Quong, "Necessity, Moral Liability, and Defensive Harm," *Law and Philosophy* xxxi, 6 (2012): 673–701; Michele Madden Dempsey, "Against Liability: A Reason-Based Account of Self-Defense," in Coons and Weber, eds., *The Ethics of Self-Defense, op. cit.*, pp. 211–32; David Rodin, "The Lesser Evil Obligation," in Saba Bazargan-Forward and Samuel C. Rickless, eds., *The Ethics of War: Essays* (New York: Oxford University Press, 2017), pp. 28–45; Adil Ahmed Haque, *Law and Morality at War* (Oxford: Oxford University Press, 2016), p. 120.

¹⁴ Jeff McMahan, *Killing in War* (New York: Oxford University Press, 2009), p. 165.

¹⁵ For the sake of the discussion, we might as well assume that Pedestrian is sitting in a park or is in a pedestrian zone, far away from where cars should be. McMahan's assumption is that Pedestrian is not engaging in a risky activity.

is necessary to stop Driver's car is, on this view, determined with reference to both Pedestrian and Rescuer. Insofar as Rescuer is able and willing to push the button, target-centred necessity will tell us that, since it is unnecessary for Pedestrian to kill Driver, it is impermissible for him to do so. Given the instrumental nature of liability-based justifications for harming, and the imperative to minimise defensive harms to the greatest extent possible, this looks like the correct verdict.

More concretely, since the permissibility of defensive harming is subject to requirements to minimise harm as far as possible, it makes sense not to limit relevant defensive options to specific agents. After all, what happens to be necessary to avert an attack may be completely beyond agents' control. How vulnerable the attacker happens to be, whether the victim happens to have access to a weapon, or what else the victim might be able to do to avoid being harmed, for example, may depend on completely contingent circumstances. Insofar as the form which a defensive act may permissibly take is not tied to people's own agency to begin with, there is no principled reason to think of necessity as agent-centred, and to restrict necessity's purview to the defensive harms a particular agent could inflict.¹⁶ To the extent that agents cannot control what it is necessary for them to do in any case, we might as well include other defensive agents' options in the necessity consideration. Hence, what it is necessary for Victim to do may, at least in a fact-relative sense, depend on what Rescuer will do, and vice versa.

In many real-world cases, agents lack perfect knowledge about the facts regarding necessity. As indicated earlier, there may consequently be a difference between what it is permissible for agents to do in a fact-relative sense and what it is permissible for them to do in an evidence-relative sense.¹⁷ What Victim and Rescuer are permitted to do in an evidence-relative sense will depend on their ability to communicate and coordinate their actions, and on what it is reasonable for each agent to believe about the other. If Victim cannot know that Rescuer will come to his defence, the fact that Victim's act of self-defence is unnecessary on a fact-relative basis has no bearing on what it is permissible for him to do on an evidence-relative basis.

One possible view, then, is that the necessity requirement is target-centred in a fact-relative sense but that, given epistemic constraints, the agent-centred view will nonetheless apply in most

¹⁶ However, there may be contingent reasons, some of which I address below.

¹⁷ Insofar as evidence might be person-dependent, in the sense that evidence to one person with certain beliefs will not mean the same thing as to another person with different beliefs, one might prefer the relevant contrast to be between fact-relativity and belief- or credence-relativity. I leave it open what label is most appropriate. What matters, as far as my argument is concerned, is the contrast between facts and what a person reasonably believes to be the case. I thank an anonymous referee for pressing me on this. For the distinction, see Derek Parfit, *On What Matters: Volume 1* (Oxford: Oxford University Press, 2011), pp. 150–51. For broader discussion of challenges raised by uncertainty and the resulting significance of probabilities, see Larry Alexander, "The Need to Attend to Probabilities – For Purposes of Self-Defense and Other Preemptive Actions," *San Diego Law Review* LV, 2 (2018): 223–29. See also Seth Lazar, "Risky Killing: How Risks Worsen Violations of Objective Rights," *Journal of Moral Philosophy* XVI, 1 (2019): 1–26.

cases. Thus, on a fact-relative basis, victims are required to refrain from harming threats in self-defence if a third party will avert the attack in a less harmful manner. But, given uncertainty about what others will do, it may nonetheless be permissible for victims to inflict greater harms on aggressors than third parties might be able to inflict.

In addition, one might think that, insofar as victims may treat their own lives with a certain degree of partiality, their agent-relative prerogative permits them to prioritise their own life such that they are permitted to engage in defensive harm, notwithstanding that the necessity requirement prohibits this in a fact-relative sense in light of the availability of less harmful defensive options. Unless victims are reasonably certain that third parties will avert the attack, they need not refrain from engaging in self-defence. We will return to this below.

For the moment, set aside contingent concerns about uncertainty, and consider why one might resist the target-centred view of necessity. One might hold that there is special value in victims acting in self-defence, even when third parties could rescue victims in a less harmful manner. For example, Michael Robillard has argued that defending one's honour constitutes a self-standing moral reason in justifications for the use of defensive force, irrespective of whether the harm one would inflict in self-defence would satisfy the necessity requirement.¹⁸ The thought is that, even if the harm one inflicts fails to meet the necessity requirement, acting in self-defence effectively serves to defend one's honour and to reaffirm one's threatened moral status.¹⁹ From this perspective, one might think, agent-centred necessity looks more appealing, because being defended by a third party would not reaffirm one's moral status as effectively as acting in self-defence.

I think we should resist this honour-based view as an argument for agent-centred necessity.²⁰ This is for three reasons. First, the view rests on a dubious premise. It is open to doubt whether it really is victims' honour that permits the infliction of ineffective harms. The assumption on which the honour-based view relies is that there are cases in which victims should be permitted to defend themselves, even if this would be ineffective in averting an attack, because this is necessary to defend

¹⁸ See Michael Robillard, "Fighting for One's Self," in Bradley Jay Strawser, Ryan Jenkins, and Michael Robillard, eds., *Who Should Die? The Ethics of Killing in War* (New York: Oxford University Press, 2018), pp. 102–117, at p. 108.

¹⁹ See also Daniel Statman, "On the Success Condition for Legitimate Self-Defense," *Ethics* cxviii, 4 (2008): 659–686; Gerhard Øverland, "On Disproportionate Force and Fighting in Vain," *Canadian Journal of Philosophy* xli, 2 (2011): 235–261. For discussion, see Helen Frowe, "The Role of Necessity in Liability to Defensive Harm," in Coons and Weber, eds., *The Ethics of Self-Defense*, *op. cit.*, pp. 153–170; Helen Frowe, "Liability and Necessity," in her *Defensive Killing* (Oxford: Oxford University Press, 2014), pp. 88–120; Kimberly Kessler Ferzan, "Defending Honor and Beyond: Reconsidering the Relationship Between Seemingly Futile Defense and Permissible Harming," *Journal of Moral Philosophy* xv, 6 (2018): 683–705. See also Quong and Firth, "Necessity, Moral Liability and Defensive Harm," *op. cit.*, p. 689.

²⁰ For discussion of why we might reject appeals to honour in general, see Rodin, "Justifying Harm," *op. cit.*, pp. 92–93; Joe Bowen, "Necessity and Liability: On an Honour-Based Justification for Defensive Harming," *Journal of Practical Ethics* iv, 2 (2016): 79–93; Kieran Oberman, "Killing and Rescuing: Why Necessity Must Be Rethought," *Philosophical Review* cxxix, 3 (2020): 433–63, at p. 451.

their honour.²¹ But it is hardly obvious that honour enters the picture as something that needs defending at all. It is neither necessarily the case that unjust threats of harm put victims' honour at stake, which may be entirely subjective, nor that relying on other-defence could not effectively restore it.²² One might even think that being defended by a third party does more to protect one's honour than having to defend oneself. This may, in any case, be subjective.

Second, and more importantly, Robillard suggests that, if Victim is permitted to inflict harm to defend his honour even if this would be ineffective in averting a threat, then Victim is also permitted to inflict harm that is rendered unnecessary – and, in this sense, excessive – by the prospect of being defended by a third party in a less harmful manner. In his words, ‘not only could a victim’s defense of honor justify her (apparent) failure to meet necessity due to ineffective force, but it could also explain (apparent) failures to meet necessity due to effective though excessive uses of force.’²³ So, the assumption is that it is permissible for victims to inflict harms to defend their honour even if harming is insufficient to avert an attack; and the assertion is that it is, for the same honour-based reason, permissible for victims to inflict harms that are excessive given that a third party could defend them in a less harmful manner.

But contrary to what Robillard assumes, inflicting harm that is insufficient and hence ineffective is significantly morally different from inflicting harm that is excessive, even if both instances of harming fail to meet the necessity requirement. Victim's permission to inflict harms in cases in which harming is ineffective, I submit, results from the very conditions that render the use of defensive force ineffective. If the reason why defending oneself is likely to be ineffective is a threatener's determination to engage in conduct that violates stringent moral constraints against harming, then this is what permits the use of defensive force in the face of likely ineffectiveness.²⁴ The crux thus lies in the reason why defensive acts are likely to be insufficient. What permits ineffective harms is Aggressor's continued wrongdoing, as this is what renders Victim's defensive act ineffective in the first place.²⁵

21 These are what Helen Frowe describes as ‘insufficiency cases.’ See Frowe “The Role of Necessity in Liability to Defensive Harm,” *op. cit.*, p. 157; Frowe, “Liability and Necessity,” *op. cit.* See also Statman, “On the Success Condition for Legitimate Self-Defense,” *op. cit.*

22 Oberman makes this point in “Killing and Rescuing,” *op. cit.*, at p. 451.

23 Robillard, “Fighting for One’s Self,” *op. cit.*, pp. 110–111.

24 Since this consideration is agent-neutral, it is, for the same reason, permissible for a third party to inflict ineffective harms in Victim's defence.

25 My aim here is not to specify all necessary conditions that must be met for ineffective harms to become permissible. For discussion, see Frowe “The Role of Necessity in Liability to Defensive Harm,” *op. cit.*; Ferzan, “Defending Honor and Beyond,” *op. cit.* While these views focus on victims' honour, my suggestion points to the target's liability, so a fuller account would need to explain how targets can be liable to ineffective harms. One possibility, on which I remain agnostic, is that necessity is external to liability (see Section II below); another possibility is that insufficient harms do not violate the necessity requirement, because, as I argue here, there is a difference between excessive harms and insufficient harms, and the

What explains the permissibility of inflicting ineffective harms in insufficiency cases is thus not necessarily Victim's honour but the fact that the defensive act is rendered ineffective by the fact that the threatener is bent on acting in a way that violates moral constraints.²⁶ This consideration is characteristic of cases in which Victim's defensive force is rendered ineffective by Aggressor's wrongdoing, but not of cases in which Victim's defensive force is rendered excessive by Rescuer's ability to save Victim in a less harmful manner. Ineffective harms are different from excessive harms.

While Robillard derives the permissibility of inflicting excessive harms from the permissibility of inflicting ineffective harms, I think this is mistaken. That the necessity requirement may not prohibit the infliction of ineffective harms in certain cases is no indication that it permits the infliction of excessive harms in cases in which victims' act of self-defence is rendered unnecessary, and thus excessive, by the prospect of less harmful other-defence.

Here is the third reason why honour-based considerations need not commit us to agent-centred necessity. Suppose, for the sake of argument, that we do not want to dismiss honour-based considerations completely.²⁷ Accommodating these considerations does not require an agent-centred view of necessity, because these considerations, if indeed they count, have a more direct bearing on proportionality calculations than on the necessity constraint.²⁸ The necessity constraint, after all, serves primarily to assess different means available to agents in averting a threat of harm. It requires that, all other things being equal, agents choose the least harmful means to achieving a specific end. Defending one's honour, and related considerations like self-emancipation and the aim of affirming one's moral status, by contrast, are more accurately described as ends a defensive act might pursue. They are not means to be assessed against alternative means to achieving some specified end. Insofar as these considerations fall under the purview of proportionality assessments, they do not demand that we treat necessity as agent-centred rather than target-centred.

II THE SIGNIFICANCE OF THE AGENT-CENTRED/TARGET-CENTRED DISTINCTION

Whether we think of necessity as agent-centred or target-centred matters because, in cases in necessity requirement, plausibly conceived, prohibits only the former. It would far exceed the scope of this paper to attempt to resolve the question, so I offer these considerations as a starting point. Thanks to an anonymous referee for pressing me on this.

²⁶ For a case that illustrates this, see Frowe, *Defensive Killing*, *op. cit.*, p. 99.

²⁷ Social reformers and revolutionaries, including Frederick Douglass, Amílcar Cabral, Frantz Fanon, and Karl Marx, have defended the moral value of *self*-emancipation as significantly greater than that of *other*-emancipation. I am grateful to Simon Caney and an anonymous referee for pressing me on this. My argument does nothing to deny that self-emancipation cannot conceptually be achieved through other-emancipation. It merely suggests that these considerations affect proportionality rather than necessity. For related discussion, see Simon Caney, "Responding to Global Injustice: On the Right of Resistance," *Social Philosophy & Policy* xxxii, 1 (2015): 51–73; Parry, "Defensive Harm, Consent, and Intervention," *op. cit.*

²⁸ In fact, Robillard himself acknowledges this possibility. See Robillard, "Fighting for One's Self," *op. cit.*, p. 111.

which multiple defensive agents could avert the same threat of harm, the agent-centred/target-centred distinction has a direct bearing on what it is permissible to do, all things considered. In fact, whether necessity is agent-centred or target-centred is of greater consequence to the permissibility of harming than how necessity relates to liability – more precisely, whether we treat necessity as internal or external to liability.

In essence, internalists treat necessity as a necessary condition for liability. What harms it is necessary to inflict thus determines what rights against defensive harm attackers forfeit.²⁹ Externalists, by contrast, see the necessity constraint as separate from a target's liability. For externalists, whether harming is necessary bears on whether harming is permissible, but not on whether people would be wronged by being unnecessarily harmed.³⁰ What is at stake in the debate about whether necessity is internal or external to liability is not what harms it is *permissible* to inflict. Both internalists and externalists prohibit unnecessary harms. The disagreement, rather, is about *why* agents must not inflict more harm than necessary, and whether people hold rights against unnecessary harms.³¹

In this respect, more hangs on whether we think of necessity as agent-centred or target-centred than on whether we think necessity is internal or external to liability. We can disagree about whether necessity is internal or external to liability without disagreeing about what harms it is permissible for defensive agents to inflict in many cases. But whether necessity is agent-centred or target-centred makes a significant difference to what harms it is, in a fact-relative sense, permissible to inflict, because whether we think of necessity as agent-centred or target-centred has a direct bearing on what harms count as necessary to begin with.

For internalists, whether necessity is agent-centred or target-centred will determine to what harms targets make themselves liable in cases with multiple defensive agents. For example, in *Conscientious Driver II*, on a target-centred view, Pedestrian's killing Driver does not satisfy necessity, so Driver is not liable to be killed. Driver is only liable to be injured, so Pedestrian would wrong him by killing him. For externalists, whether necessity is agent-centred or target-centred has no bearing on liability, but raises the question of whether what counts as necessary for Pedestrian should be sensitive to Rescuer's ability to save Pedestrian. According to externalists, threateners can be liable

29 For example, Rodin, "Justifying Harm," *op. cit.*; McMahan, *Killing in War* and "The Limits of Self-Defense," *op. cit.*; Kaila Draper, *War and Individual Rights: The Foundations of Just War Theory* (New York: Oxford University Press, 2016).

30 For a defence of externalism, see Helen Frowe, "Noncombatant Liability in War," in Helen Frowe and Gerald Lang, eds., *How We Fight: Ethics in War* (Oxford: Oxford University Press, 2014), pp. 185–6, and her *Defensive Killing*, *op. cit.*, Chapter 4. See also Firth and Quong, "Necessity, Moral Liability, and Defensive Harm," *op. cit.*

31 There are other disagreements I set aside here, for example about whether proportionality is internal to liability. For discussion, see Frowe, *Defensive Killing*, *opt. cit.*, pp. 105–7. See also McMahan's review thereof in *Ethics* cxxvi, 3 (2016): 825–831.

to harms that fail to satisfy necessity, but harms that fail to satisfy necessity are nonetheless impermissible. So even if Driver is liable to Pedestrian killing him, if we treat necessity as target-centred, it is impermissible for Pedestrian to kill Driver, because Rescuer's ability to save Pedestrian renders this unnecessary.³²

The agent-centred/target-centred distinction also has practical significance. In many real-world situations that require defensive harming, multiple agents act in coordinated fashion. Think of soldiers in war, teams of law enforcement officers, or an alliance of states jointly opposing an enemy. In such cases, the conditions in which agents operate are typically institutionally coordinated; agents share common goals and may also be bound by associative duties.³³ This lends the target-centred conception of necessity special relevance. For, as I will shortly argue, in cases in which multiple defensive agents are pursuing the same defensive aim, they are jointly bound by the necessity constraint.

Let us take stock. I have begun to make a case for a target-centred necessity requirement, which constrains agents' permissions to harm with reference to what other agents might be able to do. I have also explained why it matters whether this is right. But the argument still requires some clarification. In particular, target-centred necessity has no bearing on situations in which agents must choose between different acts of rescue.

III THE SCOPE OF TARGET-CENTRED NECESSITY

The target-centred conception of necessity that I have set out applies only to cases in which multiple agents can fend off the same threat. It does not extend to cases in which agents must decide which one of several acts of rescue to perform, based on which act would cause the least harm overall. This is important because one might think that the same requirement to minimise defensive harm which supports target-centred necessity entails that we should seek to minimise harms across targets.³⁴ But this is not the case. Whether necessity is agent-centred or target-centred has no bearing on whether agents must, when faced with several options to rescue, choose that which will cause the least amount of harm, all things considered. Consider

³² To the extent that Aggressor would be permitted to engage in counter-defence against Victim to defend herself against harms to which she is not liable, Rescuer's duty might also serve to protect Victim from counter-defence by Aggressor, which would be justified if Victim threatened Aggressor with unnecessary defensive harms.

³³ For related discussion, see Christopher Kutz, "The Difference Uniforms Make: Collective Violence in Criminal Law and War," *Philosophy & Public Affairs* xxxiii, 2 (2005): 148–180; Seth Lazar, "Associative Duties and the Ethics of Killing in War," *Journal of Practical Ethics* 1, 1 (2013): 3–48; Yitzhak Benbaji and Daniel Statman, *War By Agreement* (Oxford: Oxford University Press, 2019).

³⁴ Thanks to Simon Caney and Cécile Fabre for pressing me on this.

Trap Door: Victim is standing on a trap door above a crocodile swamp. Villain is about to pull the lever that will make Victim plummet to his death. Victim can save his life only if he shoots and kills Villain. However, Rescuer can easily prevent Villain from pushing the button by breaking Villain's finger, and is willing to do so.

In this case, target-centred necessity says that it is unnecessary for Victim to kill Villain, because Rescuer can instead break Villain's finger. Now consider

Trap Doors: Victim A is standing on a trap door above the crocodile swamp. Villain A is about to pull the lever to kill Victim A. Victim B is standing on a trap door elsewhere, and is also being eyed by hungry crocodiles. Villain B is about to pull the lever killing Victim B. Rescuer can either save Victim A's life by killing Villain A, or she can save Victim B's life by breaking Villain B's finger. Both Victims are equally innocent, and both Villains equally culpable. The only difference between the two acts of rescue is the amount of harm that would be required to save a life.

In this case, target-centred necessity is silent. It does not demand that Rescuer save Victim B rather than Victim A on account of the fact that this would require her to cause less harm overall. This might be true independently.³⁵ But it is not implied by the target-centred conception of necessity that I have proposed.

The necessity constraint seeks to compare different means to achieving the same end. It is not concerned with assessing which one of several possible ends to pursue.³⁶ In *Trap Door*, there is only one end – saving Victim – whereas, in *Trap Doors*, there are two distinct ends – saving Victim A and saving Victim B. In *Trap Door*, both Victim's and Rescuer's respective acts would achieve the same just goal of saving Victim's life. The target-centred necessity constraint accordingly compares Victim's act of lethal self-defence to Rescuer's less harmful act of breaking Villain's finger in Victim's defence. In this case, there is only one just goal, but different ways of achieving it. As far as the necessity requirement is concerned, what matters is that the less harmful act, irrespective of who performs it, still achieves the same just goal of saving Victim's life.

By contrast, in *Trap Doors*, the moral facts of the case are different. In *Trap Doors*, Rescuer is faced with two independent just aims: saving Victim A and saving Victim B. Rescuer's choice is not between several ways of achieving the same end. Rather, Rescuer could pursue one of two independent just goals. The fact that she can save Victim B in a less harmful way than Victim A is therefore, as far as the necessity constraint is concerned, irrelevant. If Rescuer is faced with two

³⁵ For a defence of this view, see Kieran Oberman, "Killing and Rescuing: Why Necessity Must Be Rethought," *op. cit.*

³⁶ See Jeff McMahan, "Proportionate Defence," in Jens David Ohlin, Larry May, and Claire Finkelstein, eds., *Weighing Lives in War* (Oxford: Oxford University Press, 2017), pp. 131–154.

distinct, potential targets and two independent liability considerations, target-centred necessity does not aggregate harms between them.³⁷ Since Rescuer is dealing with two morally unrelated victims, and hence two morally independent just goals, the necessity constraint applies to each act of defence severally. Which goal Rescuer ought to pursue is a question on which the necessity requirement remains silent.

One might think that Rescuer should save Victim B rather than Victim A on account of the fact that this would require inflicting less harm.³⁸ For example, one might hold that, in addition to giving each Victim an equal chance of survival, Rescuer has a competing moral reason to save Victim B, since his rescue could be achieved in a less harmful way than rescuing Victim A. We might thus think that Rescuer can achieve one of two equally good ends, and that, all other things being equal, performing the less harmful rescue is the morally better option, all things considered.³⁹

But, for the necessity requirement to demand that Rescuer perform the less harmful of two different acts of rescue, we would need to redefine the end of Rescuer's act so broadly as to render the separateness of persons between victims irrelevant. In a case in which Rescuer could save one life by causing a death or a different life by breaking a finger, all other things being equal, for the necessity requirement to prohibit causing the death, both acts of defence would need to serve the same purpose – for example, that of saving *a* life, so that there is no morally relevant difference between Victim A and Victim B.

Kieran Oberman has recently defended such a view.⁴⁰ He argues that we should describe the aims of defensive acts in the broadest possible terms. Whether a particular harm is necessary accordingly depends not merely on whether there are alternative ways of achieving the same end; but on whether one could achieve a relevantly alternative end in a less harmful way. For example, in *Trap Doors*, Oberman would say that, since there is nothing that distinguishes Victim A from Victim B, we must define Rescuer's aim as that of saving *a* life. Since saving Victim B merely requires injuring Villain B, killing Victim A becomes unnecessary.

Now, my aim is not to settle how we should think about cases like *Trap Doors* in general. My

³⁷ This is different from cases in which multiple individuals pose a collective threat, and one could inflict different amounts of harm on different aggressors. For discussion of this type of case, see Frances Kamm, *Ethics for Enemies: Terror, Torture, and War* (Oxford: Oxford University Press, 2011), pp. 133–134; Jeff McMahan, 'Liability, Proportionality, and the Number of Aggressors,' in Bazargan-Forward and Rickless, eds., *The Ethics of War, op. cit.*, pp. 3–27; Patrick Tomlin, 'Distributive Justice for Aggressors,' *Law and Philosophy* xxxix, 4 (2020): 351–379. See also Kamm's discussion on sacrificability in her *Intricate Ethics: Rights, Responsibilities, and Permissible Harm* (New York: Oxford University Press, 2007), p. 255.

³⁸ For a view according to which states should alleviate poverty instead of fighting wars on roughly such grounds, see Kieran Oberman, 'War and Poverty,' *Philosophical Studies* clxxvi, 1 (2019): 197–217.

³⁹ Thanks to Jeff McMahan for pressing me on this.

⁴⁰ Oberman, 'Killing and Rescuing,' *op. cit.*, p. 436.

aim is to clarify why target-centred necessity remains silent in *Trap Doors*, and need not commit us to the view Oberman endorses. Oberman is right to point out that, if only the end is defined broadly enough, then the necessity requirement will effectively determine which of several acts of rescue an agent ought to perform. In this case, each act of rescue itself constitutes a different way of achieving the sufficiently broadly defined end. But defining our ends in the broadest possible terms to minimise harm makes sense in significantly fewer cases, I think, than Oberman's account implies. This is because the requirement to minimise harm is not always paramount. In *Trap Doors*, for example, the moral importance of the separateness of innocent persons arguably outweighs that of minimising harm across liable threateners. Accordingly, since both victims are innocent, and both villains are liable, Rescuer has a moral reason to give each Victim an equal chance of survival. Assuming that all other things, including the cost to Rescuer, are equal, it is therefore, on my view, permissible for her to flip a coin. Oberman would object that the difference between giving each victim an equal chance of survival and saving Victim B is not a difference worth killing for, and that we should therefore take the necessity requirement to prohibit killing Villain A.⁴¹ But the fact that rescuing Victim B does not involve killing seems like a dubious justification for failing to give Victim A any chance of survival.

Oberman shares the premise on which target-centred necessity rests – that '[a] duty to minimize the violation of the prohibition on killing is agent-neutral: it requires people to minimize killings overall, irrespective of who kills.'⁴² For the same reason, target-centred necessity says that agents who are pursuing the same end are jointly bound by the necessity requirement. The difference to Oberman's view is that the target-centred view of necessity I have proposed does not presume that the duty to minimise harms extends to a duty to minimise harms across different ends one might pursue. Hence, in *Trap Doors*, Oberman's view would demand that Rescuer save Victim B rather than Victim A. By contrast, the target-centred view of necessity I have advanced only enters the picture once the relevant defensive aim has already been specified.

In sum, the imperative to minimise harm which motivates target-centred necessity does not obligate Rescuer to save Victim B rather than Victim A in *Trap Doors*. There is a difference between the requirement to minimise harm as a constraint on how we achieve a specified end and the requirement to minimise harm as an end in itself. Identifying the least harmful way of averting a threat of harm is a different moral enterprise from choosing which one of several ends to pursue.⁴³ So, if Rescuer must choose between two different victims, and hence two distinct ends, target-centred

41 Oberman, "Killing and Rescuing," *op. cit.*, pp. 441–44.

42 Oberman, "Killing and Rescuing," *op. cit.*, p. 448.

43 See also Victor Tadros, "Unjust Wars Worth Fighting For," *Journal of Practical Ethics* IV, 1 (2016): 52–78; Draper, *War and Individual Rights*, *op. cit.*

necessity does not demand that Rescuer save the victim whose rescue would require a lesser degree of defensive force. That this is what Rescuer ought to do might be the case, but this would require a distinct justification. The target-centred conception of the necessity constraint that I have proposed is no such justification. Whatever reason Rescuer might have for saving Victim B rather than Victim A, it will be something other than target-centred necessity.

IV TARGET-CENTRED NECESSITY AND WIDE PROPORTIONALITY

Third parties may be required to engage in defensive acts to minimise harms victims might otherwise cause. Earlier, I showed how this applies in the context of liability-based justifications for defensive harming. We will now consider lesser-evil justifications. In particular, target-centred necessity may imply that third parties are required to prevent harms to innocent bystanders which it would be proportionate for victims to inflict. Consider

Trap Door II: Victim is standing on a trap door above the crocodile swamp. Villain is about to pull the lever to kill Victim. Victim can save his life only by forcefully pushing Villain away. Villain would knock over innocent Bystander as a side effect, who would consequently have two of her toes bitten off by an irritated crocodile.

Since the harm Bystander would suffer is significantly smaller than the lethal harm against which Victim is defending himself, it is permissible for Victim to infringe Bystander's right not to be harmed. Victim has a lesser-evil justification for harming Bystander as a side effect of his defensive act, given that the lethal harm he would suffer is significantly more severe than the harm of losing two toes which Bystander would suffer. Victim's act of self-defence is, in other words, proportionate in the 'wide' sense.⁴⁴ Now consider

Trap Door III: Everything is the same as in *Trap Door II*, except for the fact that Rescuer can easily push Villain away from the lever, saving Victim's life, without knocking over innocent Bystander, whose set of toes would remain complete.

Although Victim's defensive act is proportionate, it is unnecessary. If the necessity requirement extends across both Victim and Rescuer, it is unnecessary for Victim to harm Bystander as a side effect. Since Bystander is innocent and has no duty to sacrifice her toes, even though forcing her to do so would not violate the proportionality requirement, the basic duty to minimise harms to innocent people requires Victim to refrain from acting. After all, Rescuer can save him without harming

⁴⁴ Jeff McMahan draws the distinction between narrow and wide proportionality in his *Killing in War*, *op. cit.*, pp. 20–21.

Bystander. Thus, even if Victim's self-defensive act is proportionate, Victim may be all-things-considered prohibited from acting if Rescuer can and will avert the threat without harming Bystander.

It is generally impermissible for third parties to kill more bystanders in defending victims than victims would be permitted to kill in defending themselves.⁴⁵ However, if third parties can cause *less* harm, or *fewer* deaths, as a side effect of defending victims than victims would be permitted to cause in the absence of third parties, third parties' ability to minimise harm to innocent individuals provides a positive reason for third parties to act, and a reason for victims to refrain from doing so. Beside the duty to assist victims' defence, third parties' duty to rescue may thus be partially grounded in a more general duty to minimise harm which innocent bystanders would otherwise suffer as a proportionate side effect of victims' own defensive acts.

If Victim's defensive act would infringe Bystander's right not to be harmed, but Rescuer's defensive act would not, or do so to a lesser degree, then this may render it all-things-considered impermissible for Victim to harm Bystander, and provide Rescuer with a positive reason to intervene – not merely to protect Victim's right, but also Bystander's right not to be harmed as an unnecessary, albeit proportionate, side effect of Victim's defence. If this is right, target-centred necessity may, at least on a fact-relative basis, prohibit Victim from performing a defensive act, even if the harm this would cause to innocent others would be proportionate.⁴⁶

This also applies in cases in which the harms Victim and Rescuer would respectively cause as a side effect of Victim's defence would not fall on the same bystanders. Consider

Trap Door IV: The situation is the same as in *Trap Door II* – Victim can save himself by causing Bystander to lose two toes as a side effect. Alternatively, Rescuer can save Victim by causing a different bystander to lose just one toe as a side effect. Both bystanders are innocent.

Given that Rescuer can save Victim in a way that will cause less harm to an innocent person than Victim's act of self-defence would, it may be these-things-considered impermissible for Victim to defend himself. This is despite the facts that (a) causing Bystander to lose two toes would be proportionate in the circumstances, and (b) Rescuer would harm a different bystander. Since both bystanders are equally innocent, and there is nothing that morally distinguishes them, there is no moral reason why Victim's rather than Rescuer's bystander should bear the proportionate cost of

⁴⁵ For discussion, see Jeff McMahan, "The Just Distribution of Harm Between Combatants and Noncombatants," *Philosophy & Public Affairs*, xxxviii, 4 (2010): 342–379, at pp. 364–5.

⁴⁶ To be precise, given uncertainty, it is in a fact-relative sense that Victim is prohibited from acting in ways that would proportionately harm bystanders when Rescuer could protect Victim without harming bystanders at all. Rescuer is thus, in a fact-relative sense, required to prevent harms to bystanders which Victim has an evidence-relative permission to inflict.

Victim's defence. Insofar as Rescuer is independently justified in carrying out the defensive act, the fact that she would harm a different bystander than Victim is irrelevant.

This is consistent with my earlier claim that target-centred necessity extends across multiple defensive agents only insofar as they act in pursuit of the same goal. Since both Victim and Rescuer aim to defend Victim against the same threat of harm, Victim's act of self-defence that would cause Bystander to lose two toes as a side effect and Rescuer's act of other-defence that would cause a different bystander to lose one toe as a side effect represent two different means to achieving the same defensive end, insofar as target-centred necessity is concerned.

Unlike the necessity constraint, which compares alternative means of averting a threat of harm, the proportionality requirement compares the consequences of a harmful defensive act to the consequences of non-performance of that act. In a case in which both Victim and Rescuer could avert a threat to Victim, they are both independently constrained by the proportionality requirement. In *Trap Door IV*, it would be proportionate for Victim to cause his bystander to lose two toes, although it would not be necessary; and it would be proportionate for Rescuer to cause her bystander to lose one toe.

At the same time, proportionality remains sensitive to the outcomes of others' acts, at least in some cases. In the *Trap Door* cases, for example, wide proportionality as a constraint on Victim's permission to harm in self-defence is sensitive to the consequences of Rescuer's acts. This, however, is only the case because Rescuer is not violating any moral constraints. In cases of intervening agency in which others will cause wrongful harm, wide proportionality with regard to one's own defensive act is not affected. Consider

Arms: Villain threatens to chop off both of Victim's arms. Victim could fight off Villain by stabbing her. However, if Victim defends himself, Villain's friends will chop off the arms of five other innocent people.⁴⁷

The fact that five other innocent people will suffer severe wrongful harms, I submit, does not render Victim's defensive act disproportionate, because Villain's friends would be acting wrongfully. They would themselves be violating stringent moral constraints. Their wrongful acts should therefore have little, if any, bearing on the proportionality of Victim's own defensive act. In cases of intervening agency in which others will violate moral constraints as a result of one's own defensive act, this is

⁴⁷ Based on Frowe, *Defensive Killing*, *op. cit.*, 129. For discussion, see Kimberly Kessler Ferzan, "Omissions, Acts, and the Duty to Rescue," in Dana Kay Nelkin and Samuel C. Rickless, eds., *The Ethics and Law of Omissions* (New York: Oxford University Press, 2017), pp. 217–234, at p. 227. For detailed discussion of the relevance of others' actions and agents' own conception of causation in posing risks of harm, see Larry Alexander and Kimberly Kessler Ferzan's *Reflections on Crime and Culpability: Problems and Puzzles* (Cambridge University Press, 2018), pp. 24–26.

heavily discounted in the wide proportionality of one's own defensive act. If this is right, wide proportionality considerations are sensitive to the moral difference between justified and wrongful harms others will cause as a result of one's action or inaction. While I lack the space to defend this view properly here, the point, for the purposes of this discussion, is that wide proportionality in the *Trap Door* cases is sensitive to the consequences of Rescuer's acts, insofar as Rescuer is acting justifiably. Rescuer is not violating any moral constraints, so her actions may be counted in Victim's wide proportionality calculation.⁴⁸

As I have begun to indicate, a target-centred conception of necessity may provide third parties with positive reasons for intervening in certain cases – not only to rescue threatened victims, but also to minimise harms to others. Third parties may thus be required to intervene in cases in which victims are prohibited from acting because victims' self-defensive harm would be disproportionate.⁴⁹ That is, in cases in which Victim is prohibited from harming in self-defence because this would violate the wide proportionality constraint, Rescuer may be required to defend Victim, so long as this will only proportionately harm bystanders as a side effect. Consider

Trolley: Victim is stuck on the trolley tracks. He could pull the lever diverting the trolley away from himself and onto another set of tracks, but this would kill five innocent bystanders as a side effect.

In this case, Victim's defensive act satisfies the necessity requirement – there is nothing else he could do to save his life – but fails to meet the proportionality requirement. It is impermissible to kill five innocent people to save oneself, so Victim is required to let himself be run over. Now consider

Trolley II: Everything is the same as in *Trolley*, with the addition of Rescuer, who can divert the trolley onto a third set of tracks where it will merely bruise one innocent bystander.

Grant that the act of bruising an innocent bystander is proportionate, as Rescuer will thereby avert a substantially greater harm to Victim. If Victim is prohibited from performing a defensive act because

⁴⁸ There is good reason to think that wide proportionality is sensitive to the moral difference between just and unjust harms others will cause as a result of one's own action. After all, wide proportionality is also sensitive to how outcomes are brought about. For example, it is sensitive to the moral asymmetry between doing and allowing harm, and the moral difference between intended and unintended harms. In this light, it seems natural to think that it should also be sensitive to the difference between just and unjust harms.

⁴⁹ This view, however, need not rely on a target-centred conception of necessity. Duties to rescue are compatible with an agent-centred view of necessity: it is possible to hold the agent-centred view, such that the necessity requirement is met even if Victim would inflict more harm in self-defence than Rescuer would in Victim's defence and, at the same time, to hold that Rescuer is required to intervene because this will cause less harm to bystanders. Thanks to an anonymous referee for this point.

this would cause disproportionate harm to innocent bystanders, and Rescuer can easily intervene to avert the threat in a way that will cause proportionate harm to bystanders, Rescuer is required to act, whereas Victim is prohibited from doing so. If this is right, third parties may be required to intervene to defend victims who are prohibited from acting in other-defence on the grounds that this would cause disproportionate harms to innocent bystanders. In this case, Rescuer would not be acting on a duty to minimise harms to bystanders, but on an ordinary duty to rescue Victim from a wrongful threat of harm, so long as harms caused to innocent people as a side effect are proportionate.

Let us, once again, take stock. The permissibility of inflicting defensive harm is subject to what defensive options are available: it is impermissible to inflict more harm than is necessary to avert a threat. Insofar as the overall permissibility of a defensive act is a function of what it is all-options-considered necessary to do, I argued, the necessity requirement's purview may extend across defensive agents. This is true for both liability-based justifications for harming and for lesser-evil justifications, which are constrained by considerations of wide proportionality. One upshot of target-centred necessity in both contexts, as we have seen, is that Victim's and Rescuer's respective permissions to use force in Victim's defence become interdependent. What it is necessary for Victim to do to avert a threat is sensitive to what options are available to Rescuer, and vice versa. Before I close, here are three additional points worth noting.

V IMPLICATIONS

First, third parties' reasons to intervene to minimise harm are not integral to target-centred necessity. It is possible to subscribe to the target-centred view of necessity while denying that it provides third parties with reasons to intervene to minimise harm at least to liable targets. Target-centred necessity, rather than presupposing, implies positive reasons for rescuers to intervene. It is thus possible for externalists, who hold that attackers may be liable to harm exceeding that which is necessary to avert their attack, to adopt target-centred necessity without committing to the view that third parties have positive reasons to intervene to minimise harm to liable targets.⁵⁰

Second, I suggested earlier that real-world conditions of uncertainty render it generally unlikely that it will be impermissible for victims to defend themselves, even if others could rescue them in less harmful ways. In cases in which it is uncertain what other agents will do, I said, victims may retain their evidence-relative permissions to harm in self-defence. But this is not the whole story. In cases in which third parties could avert a threat in a less harmful manner but it is uncertain whether they will

⁵⁰ I am grateful to an anonymous referee for this point.

intervene, agents may have a duty to dispel some of the uncertainty by seeking to influence others' actions.⁵¹ If Victim can move Rescuer to repel Aggressor's attack in a way that is significantly less harmful than Victim's own defensive action would be, he might be required to do so, unless this would be unreasonably costly. This might be true especially in cases in which the harms to be minimised would not fall exclusively on liable targets, but also on innocent bystanders. What Victim ought to do may thus depend not merely on what he can reasonably believe Rescuer will do. But what Rescuer will do may be influenced by what Victim does to begin with. In some cases, what one agent is permitted to do thus depends on what she can make others do.⁵²

For example, it is a common assumption that military humanitarian interventions, which entail significant risks to innocent civilians, may only become permissible once other, non-military forms of intervention, such as economic sanctions or diplomatic pressure, have been exhausted. These views rely on presumptive duties to pressure other agents to take actions that will preclude the need for more violent measures. Broadly speaking, a target-centred conception of necessity may thus also bear on the notion of 'last resort.'⁵³ If a rogue state's threat of aggression could be countered through either military intervention by neighbouring country A, which would foreseeably kill many innocent people, or diplomatic pressure from country B, and country A could move country B to act to minimise harms, military intervention by country A may be unnecessary, even if this is the only effective option available to country A.

Finally, as we saw, in cases in which Victim can defend himself only by causing severe harm, and Rescuer can defend Victim by causing minor harm, the application of target-centred necessity to the actions of Victim is complicated by uncertainty about whether Rescuer will intervene. One question this raises is how certain Victim must be that Rescuer will intervene and succeed in defending Victim, before Victim's use of greater defensive force becomes unnecessary and thus impermissible.⁵⁴ While I cannot hope to fully resolve the matter, here is a starting point. Suppose that Rescuer could avert a threat in a less harmful way than Victim, but it is uncertain whether Rescuer will intervene. Whether Victim must bear some extra risk by refraining from acting in self-defence

⁵¹ In addition, potential defensive agents might have a moral duty to make their (just) defensive aims not just 'theirs' but to build coalitions and perhaps institutions capable of sharing their defensive aims, to minimise harms especially to non-labile persons. I am grateful to an anonymous referee for this point.

⁵² It is thus possible to recast target-centred necessity in agent-centred terms. One might say that necessity compares the defensive options available to agents and remains, in this broad sense, agent-centred, even though the options to be compared include those available to third parties. Thanks to an anonymous referee for this point, which I think would be a different way of capturing the target-centred conception of necessity.

⁵³ See Jens David Ohlin and Larry May, "Necessity and the Principle of Last Resort in the Just War Tradition," in Jens David Ohlin and Larry May, eds., *Necessity in International Law* (Oxford: Oxford University Press, 2016), pp. 15–38.

⁵⁴ I thank an anonymous referee for pressing me on this.

and relying on Rescuer, I propose, may depend on (a) the severity of the threat Victim faces and (b) the severity of the harm Victim's defensive act would cause to innocent bystanders and, in some cases, even to liable targets.

In many cases, as noted earlier, real-world and epistemic constraints render it unlikely that victims are prohibited from defending themselves on the basis of less harmful options being available to third parties. This is true especially in cases in which the threat of harm to victims is severe. In some cases, however, the possibility of third-party other-defence may require Victim to bear additional risks of harm to spare innocent others, which Victim would not be required to bear in the absence of the possibility of being rescued.⁵⁵ For example, victims may be required to bear some additional cost to avoid harming innocent bystanders as a side effect of their self-defensive act if the harms with which they (victims) are threatened fall below a certain threshold. Consider

Trolley III: Victim is stuck on the trolley tracks, with the trolley approaching. Victim will be killed by the trolley unless he diverts it onto the other tracks, where it will break innocent Bystander's leg. Rescuer, who could stop the trolley and save Victim's life without harming Bystander, seems to be taking her time. Victim estimates that Rescuer will be able to stop the trolley in time to save him, but cannot be certain.

I take it that it is permissible for Victim to divert the trolley himself. Since the threat of harm to Victim is lethal and the harm to Bystander proportionate, Victim is not required to bear the risk of lethal harm in waiting for Rescuer to spare Bystander. Now consider

Trolley IV: Victim is stuck on the trolley tracks, with the trolley approaching. The trolley will run over and break both of Victim's legs unless he diverts it onto the other tracks, where it will break innocent Bystander's foot. Rescuer, who could stop the trolley and save Victim without harming Bystander, seems to be taking her time. Victim estimates that Rescuer will be able to stop the trolley in time, but cannot be certain.

In this case, Victim may be required to bear the increased risk of being injured himself to spare innocent Bystander, even if harming Bystander as a side effect of diverting the trolley would be proportionate. This is because the harm Victim would suffer, if the risk were realised, is, broadly speaking, compensable. After a certain amount of time, he will have fully recovered. While the same is true for innocent Bystander, Victim is, in this situation, subject to the general constraint against harming. In combination with the fact that Bystander is innocent, the likelihood of Rescuer's success in stopping the trolley may therefore require Victim to bear the risk of being compensably harmed

⁵⁵ Thanks to Kerah Gordon-Solmon and Felix Koch for helpful discussion on this.

rather than inflicting an albeit proportionate harm on an innocent person.

The reason for this, I think, is that agents have what David Rodin calls ‘justice-based reasons’ to refrain from engaging in harmful self-defence to protect their right not to be harmed, and instead to ‘defer vindication of rights to post facto redress’ in cases in which the harms defensive agents would suffer are compensable.⁵⁶ After all, inflicting defensive harm can be morally risky, insofar as it is often not obvious whether one’s target is indeed morally liable to the harm one would inflict. What is troubling about uncertainty about a target’s liability is the risk of inflicting harm on a person to which she may not be liable. The same is true if one inflicts harm on innocent bystanders, irrespective of whether the harm would be proportionate – except, in this case, we *know* that innocent bystanders are not liable. In many cases, they consequently acquire claims to be compensated for having had their rights harmfully infringed. If Rodin is right that morally innocent agents can be required to suffer an actual harm, for which they are then compensated, to avoid the risk of inflicting harms on targets to which these targets may not be liable, then agents can also be required to bear the mere *risk* of a compensable harm to avoid inflicting harms on innocent bystanders to which bystanders are, as a matter of certainty, not liable.

Finally, in addition to bystanders’ innocence and uncertainty about target’s liability, there is a third reason why Victim might be required to bear some additional risk in relying on Rescuer to minimise harm. This is that targets may be liable on the basis of only minimal responsibility, such as when a threat is merely agent-responsible – as opposed to, say, culpable. For example, in *Conscientious Driver II*, if Pedestrian could save his life either by killing Driver or by merely injuring Driver and suffering a small harm himself, then Pedestrian ought to suffer a small harm himself, given that Driver is merely minimally responsible for posing the threat. For the same reason, Victim may be required to bear the added risk of relying on Rescuer to act in cases in which the target’s liability is based on minimal (agent-) responsibility – at least if the harm with which Victim is threatened is compensable.

VI CONCLUSION

Many real-world situations that raise questions about the permissibility of defensive force involve more than one defensive agent. This is true for state agents in international politics, combatants in armed conflict, and persons working in law enforcement, for example, who have common goals, are institutionally coordinated, and may be bound by associative duties. This paper

⁵⁶ Rodin, “Justifying Harm,” *op. cit.*, p. 107. Non-compensable harms paradigmatically include death, torture, rape, and grievous bodily injury, but where precisely we should draw the line is a question I will leave open.

argued that agents pursuing the same defensive end are jointly bound by the necessity requirement. In such situations, we should treat necessity not as serving to minimise harms any particular agent might inflict, but as serving to minimise harms suffered by targets of defensive acts. Insofar as the overall permissibility of a defensive act is a function of what it is all-options-considered necessary to do, the necessity requirement's purview may extend across defensive agents. In cases in which multiple defensive agents could avert the same threat of harm, their respective duties and permissions may become interdependent. If it is unnecessary for one agent to inflict a defensive harm because another could easily avert the same threat in a less harmful manner, it may be impermissible for the former to act and obligatory for the latter to do so. However, the purview of target-centred necessity is limited. It does not entail a duty to perform the least harmful of several potential acts of rescue, insofar as these constitute different ends, although we might think that such a duty obtains independently. In addition, the practical impact of target-centred necessity is limited by conditions of uncertainty: in cases in which it is impossible for victims to know whether others will come to their rescue, the applicable conception of necessity is agent-centred rather than target-centred, and what harms it is permissible to inflict in an evidence-relative sense may diverge from what harms it is permissible to inflict in a fact-relative sense. At the same time, there may be cases in which victims must incur some additional risk to themselves in relying on rescuers to come to their defence, to minimise harms to innocent bystanders, so long as threatened harms to victims are below a certain threshold. In such cases, a target-centred conception of necessity may also imply a potential duty for third parties to avert unjust threats of harm to victims to minimise harms to others. In this sense, other-defensive harming may be required not merely as a result of ordinary duties to rescue victims, but also as a result of duties to minimise harms to liable targets and innocent bystanders.

To close, despite the necessity requirement's significance in constraining permissions to harm in self- and other-defence, its role in situations involving multiple defensive agents can be obscure. This discussion sought to go some way towards demystifying critical aspects of necessity by throwing light on the extent to which agents united by the same defensive aim may be jointly constrained.