Self-Defense against Rights-Intrusions (Non-Culpable and Culpable)

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What rights of self-defense does an agent have in response to prospective rights intrusions? I here first modify the account in Vallentyne (2011) of enforcement rights against *non-culpable intruders* and then extend it to include rights against *culpable violators*. The basic account holds that an agent has an enforcement right to intrude against another if the defensive intrusion (1) suitably *reduces* the *intrusion-harm* to the agent, (2) is no more harmful to the other than *necessary* to achieve the reduction, and (3) imposes intrusion-harm on the other that is *proportionate* in a specified manner to the reduction achieved. The crux of the theory comes from the proportionality conditions, which are sensitive to: (1) the intrusion-harm that the other would impose in the absence of defensive action, (2) his degree of agent-responsibility for such intrusion-harm, and (3) his degree of culpability for the action producing this harm. A radical feature of the theory is that there are no proportionality restrictions against a rights-violator who is *fully culpable* and is agent-responsible for intrusion-harm.

Throughout, I focus solely on self-defense. I leave the extension to the defense of others for another occasion. For simplicity, I shall assume that no other people are affected in any

relevant way.

1. Background

In this section, I state some background assumptions and define some basic terminology

I shall assume that the permissibility of an action is determined by the facts at the time of action, and not merely by what the agent believes the facts to be, or by what her evidence supports. For example, killing an innocent person with no benefit to anyone else is wrong, even if the agent believes, and her evidence strongly supports, the view that killing the person was permissible because it was necessary to stop her from wrongly imposing enormous harm on others. This, of course, is a controversial view, but I believe it to be the correct view, and I assume it for simplicity of presentation.[1] Most, but probably not all, of my claims could be recast to be compatible with alternative assumptions.

Individuals have, I shall assume, certain basic rights, such as certain rights of bodily integrity (e.g., the right not to be killed or assaulted). For simplicity, I shall assume a choice-protecting conception of rights for which consent plays a crucial role, although a similar account can be given for interest-protecting rights.

A person's rights define certain conditions (e.g., that he not be hit) such that, if the conditions are violated without the valid consent of the right-holder, then the right is *intruded upon*. A right is not intruded upon when the condition is violated with the valid consent of the holder. The following terminology will be used below:

Non-autonomous intrusion: The intrusion is not the result of a (sufficiently) autonomous choice of the intruder (e.g., an infant striking you) and thus is neither permissible nor

impermissible (and neither just nor unjust).

Autonomous Intrusion: The intrusion is the result of an autonomous choice of the intruder (e.g., a normal adult striking you) and is thus either permissible or impermissible (and either just or unjust).

Just intrusion: The intrusion does not wrong the rightholder because there is an undercutting justification (e.g., suitable self-defense).

Unjust intrusion (infringement): The intrusion wrongs the rightholder because there is no undercutting justification (e.g., attacking an innocent person).

Permissible infringement (*mere infringement)*: The intrusion wrongs the right-holder but is permissible because there is an overriding justification (e.g., saving a million lives).

Impermissible infringement (*violation)*: The intrusion is impermissible because it wrongs the right-holder without any overriding justification.

Our core question concerns the conditions under which (e.g., defensive) attack *does not wrong* the person attacked. I will *not* here address what, if any, overriding justifications might make it *permissible* to unjustly attack a person. For simplicity, readers may suppose that, in the cases discussed, there is no overriding justification present, and that there are no relevant impersonal constraints, and thus that the defensive attack is permissible if and only if it does not wrong the attacked person or anyone else.

In the remainder of this section, I flag some methodological issues relevant to my project. Like most theorists, I hold that the plausibility of a moral theory is determined by how well it captures our judgments in reflective equilibrium. This requires that the theory be sensitive to

issues of plausibility both at the abstract theoretical level and at the level of assessment about particular cases. It leaves open, however, the relative importance of the theoretical level vs. the concrete level. Because I take the theoretical level fairly seriously, my reflective views tend to be more *revisionary* than those of most people. As a result, readers who attach relatively little significance to theoretic virtues are unlikely to find the views defended here plausible.

A related point is that, at the theoretical level, I will attempt to provide a reasonably full *specification* of morally valid enforcement rights. Doing this will involve a fair amount of complexity, and this will, no doubt, put off some readers. The main alternative approach is to specify simpler *pro tanto* principles and leave open the messy business of how they interact. I believe that both kinds of approach are important and useful, but my interest is in providing a reasonably full specification. Doing so has the disadvantage of complexity and of effectively ensuring that the principles are false in some (if not many) respects. The advantage is that the very real complexity is grappled with and the claims are specified carefully enough to be refutable. If all theoretical investigation were to end in a year, then the pro tanto approach would clearly be more useful. If, however, investigation is to continue for a much longer period, then the specificationist approach will, I believe, be one useful way of making progress over time by uncovering specific errors. In any case, it is in this spirit that I advocate the principles that follow.

2. Self-Defense against a Non-Culpable Intruder

In this section, I modify the theory of Vallentyne (2011), which addresses the rights of self-defense against *non-culpable* intruders (i.e., as explained below, those who are not agent-responsible for acting wrongly). In the next section, I extend the theory to cover defense against

culpable intruders. Readers should consult the earlier article for greater clarification and defense of the general features of the approach I take.

A core feature of the theory that I will defend is its appeal to intrusion-harm. *Intrusion-harms* are harms from rights-intrusions (as defined above), and thus do not include all harms (e.g., harms caused by illness). The harm is the extent of the setback to the agent's interests in some suitable sense.[2] In Vallentyne (2011), I mistakenly appealed to only setbacks to *wellbeing*. This is too narrow, since interests may include much more (e.g., the lives of loved ones, or the family home) and rights protect those interests as well.

Unqualified references to intrusion-harm should be understood as references to *direct* intrusion-harm (i.e., harm to the right-holder) and not to indirect intrusion-harm (i.e., harms to third parties whose rights are not intruded upon; e.g., emotional harm to my wife when I am beaten up). Moreover, throughout, intrusion-harm is to be understood as the *objectively expected value* (i.e., probability-weighted value) of the *net uncompensated* intrusion-harm, at the time of assessment. For example, if (1) there is 90% chance of your intruding upon my rights, with an initial harm of 10, and (2) if you do so intrude, there is a 20% chance of you fully compensating me and an 80% chance of you not compensating me at all, then the associated intrusion-harm is 7.2 (=.9x(.2x0 + .8x10)). Intrusion-harm that is certain to be fully compensated is thus irrelevant. (I defend this counter-intuitive view in the earlier paper.) Finally, intrusion-harms include not only primary intrusion-harm (e.g., injury from assault) but also secondary intrusion-harms from the failure to provide any *owed* compensation (or other rectification) for the primary intrusion. Thus, although I claim that only future intrusion-harms are relevant for the determination of the liberty-rights to defend oneself, these harms include the harms of not receiving owed compensation for past intrusions.

I shall now identify the key motivating ideas for the approach that I shall articulate. *One motivating idea* is the view that defensive intrusion-harm against another is just (relative to intrudee), when *it suitably reduces intrusion-harms imposed on the defending agent*. Call the relevant intrusion-harms *actionable*. For non-culpable intrusions, the actionable intrusion-harms, I claim, are those from wrongful (i.e., unjust) intrusions (i.e., rights infringements), non-autonomous (non-just but not unjust) intrusions, as well as *just intrusions against non-autonomous intrusion*. In Vallentyne (2011), I mistakenly limited the relevant intrusion-harms to *non-just* intrusion-harms (the first two categories). I defended the view that one could, under certain conditions, justly intrude upon the rights of non-autonomous intruders, but I failed to recognize that, under certain circumstances (subject to necessity and proportionality), agents who are non-autonomously intruding upon others (e.g., because wind-blow) can also (e.g., if they have a weapon) justly defensively intrude upon the rights of those justly defending against their non-autonomous intrusion. Because non-autonomous intrusions do not *infringe* the rights of those they intrude upon, the intruding individuals maintain, I claim, the same rights of self-defense as non-intruders—even though they lose other rights (they are not wronged by, or owed compensation for, suitable defensive attack). I therefore now include intrusion-harm from just infringement against non-autonomous intrusion among the relevant intrusion-harms against which one may defend. I call this broader category *actionable intrusion-harm*.

A further problem with Vallentyne (2011) is that my formulation of the necessity and proportionality conditions, for a given individual, mistakenly ignored the intrusion-harm imposed by, or on, other intruding individuals. The necessity of harming a given individual was thus limited to what could be accomplished *without intruding upon the rights of others*. Where there are other intruders, however, there is no reason to rule out intruding upon their rights.

Likewise, the proportionality condition, for a given intruder, only took into account the intrusion-harms to that intruder and to the defending agent. Where there are other intruders, however, the intrusion-harm to them must also be factored in.

In what follows, I fix these mistakes by making a slight revision to the necessity condition and a radical change to the proportionality condition (although one that retains the original spirit). Here is the schema, which I will subsequently fill in.

Enforcement: In a given choice situation, Agent has a moral liberty, against Target, to perform a specific act of intrusion upon Target, if each of the following conditions holds:

(1) **Harm Reduction**: Agent's intrusion against Target lowers the (expected value of net uncompensated direct) actionable intrusion-harm to Agent by all other individuals compared with that value if Agent does not, in that choice situation, intrude autonomously upon Target or others;[3]

(2) **Necessity**: Agent has no alternative action that (a) achieves or exceeds the above reduction in intrusion-harm to Agent, (b) imposes an equal or smaller intrusion-harm on each individual other than Target, (c) is no worse for Agent, and (d) is better for Target.[4]

(3) **Proportionality:** The (expected value of the net uncompensated direct) intrusion-harm to Target by Agent's intrusion is aggregatively proportionate (to be explained below).

Stated in this generic form, the principle is relatively weak. It only states a sufficient condition for having a liberty-right to intrude against another, and it leaves open the content of the proportionality condition. It should be noted, however, that it allows imposing an intrusion-harm on one person when it suitably reduces the actionable intrusion-harms from *other*

individuals (deterrence). This is, however, subject to the proportionality restrictions for the given individual, which are based (as will become clearer below) on the intrusion-harms that he is expected to impose. Thus, deterrence is allowed only where it is proportionate (unlike, for example, the utilitarian view). Somewhat controversially, however, I hold that the proportionality constraints are the same for deterrence as they are for prevention.

The crucial content of the theory comes from its theory of proportionality. In this section, we shall focus, as I did in Vallentyne (2011), on non-culpable intruders (i.e., agents who are not agent-responsible for acting wrongly; e.g., because of unavoidable ignorance). The next section extends the view to cover culpable intruders. Here and throughout, I shall only consider cases where the intruders are *independent and not coordinating their actions as part of a joint plan*. Dealing with intrusions from joint actions is complex and requires a more elaborate treatment than I can give here.[5]

A *second motivating idea* for the theory I defend is the view that there are no relevant *theory-independent* facts about proportionality. Proportionality is simply a place-holder for whatever limits the correct theory of defensive action places on the harm imposed on individuals. If this is correct, then a theory schema, such as the one above, can't simply appeal to "whatever the independently correct account of proportionality is", since there is no such thing. A full theory of enforcement rights must specify the relevant limits, and I attempt to do this below.

A *third motivating idea* for the theory I defend is the view that (1) proportionality allows greater defensive intrusion-harm the more the intruder is *agent-responsible* for imposing intrusion-harm, but (2) proportionality allows some defensive action against intruders *even when they bear no agent-responsibility for intruding upon anyone's rights.* Let me explain.

An individual is *agent-responsible* (or attributively/morally responsible) for some

outcome (which may be an action) to the extent that it is suitably attributable to her agency. There is, of course, disagreement about what is required for agent-responsibility, but I shall here assume, for illustration, that it depends on the extent to which (1) the outcome is the result of the individual's autonomous choice, (2) the choice is suitably resistible (e.g., suitably free of compulsion), and (3) the outcome is suitably foreseeable by the individual. In what follows, I shall assume, more controversially, that agent-responsibility for a given outcome comes in degrees, between 0 and 1. Moreover, where an agent is, for example, .8 responsible for an intrusion-harm of 10, I shall equate this with being fully (1.0) responsible for intrusion-harm of 8 (.8 x 10).

Authors (e.g., Otsuka 1994; McMahan 1994, 2009) who hold that *all* intrusion-harm is disproportionate against those who are not agent-responsible for intrusion-harm would, of course, reject the second part of the above motivating idea. I believe, however, that, although the absence of agent-responsibility imposes very strict limits on proportionality, it does not impose a limit of zero. Instead, the limit is set in part by what will minimize "excess" intrusion-harm (to be developed below). Thus, even if Target imposes a threat not attributable to his agency (e.g., being unexpectedly windblown or the behavior of a baby), some degree of intrusion-harm can be proportionate. In such cases, Target *does not infringe* any rights (since there is no agency), but Target does *intrude* upon rights and is thus different from an innocent bystander. That is why some intrusion-harm can be proportionate. For a defense, see Tadros (2011, ch. 11; 2015?) and Vallentyne (2011).

Proportionality (above) states that, in a given choice situation, an action by Agent is proportionate, relative to Target, just in case it is *aggregatively proportionate*. This is to be understood as follows. First, the action must be *absolutely proportionate* for Target, where the

limit of such proportionality is based solely on (1) Target's past and possible future actions (e.g., the intrusion-harm that he will impose on Agent), (2) the extent to which he is agent-responsible for such harm, or for acting wrongly. This limit is insensitive to what intrusion-harms *others* may impose in the absence of defensive action and is also insensitive to what options are *feasible* for the defending agent. Absolute proportionality places an upper bound on what is (effectively) proportionate, but the latter will typically be lower because of aggregative considerations.

Aggregative proportionality, by contrast, is sensitive to aggregative concerns (e.g., the total intrusion-harm to Agent and to Target, as well as to other intruders, if there are any) and also to what options are feasible for the defending agent. For example, it may be absolutely proportionate to kill one person when this is the only way to save one's life, but it may be aggregatively disproportionate when one can save one's life simply by bearing some very small cost. Moreover, it may be absolutely proportionate, relative to each of several intruders, to kill him to save your life, but it may be aggregatively disproportionate to kill all of them by a single act. This may be so, for example, when there are 1000 windblown people for each of whom the impact of their body is sufficient to kill you.

To help clarify the distinction between absolute and aggregative proportionality, let me make a substantive claim about absolute proportionality.

> **Absolute Proportionality** (Version 1; non-culpable case only): If, in the absence of defensive action by Agent, Target would non-culpably impose n units (in expected value) of actionable intrusion-harm on Agent or others (where $n \geq 0$), of which the (expected value of) the intrusion-harm for which he would be agent-responsible is m units ($0 \leq m \leq n$), then up to (and including) n+m units of intrusion-harm to him is absolutely proportionate

for Agent to impose. If Target imposes no intrusion-harm on others, then anything beyond that is absolutely disproportionate for Agent to impose on him.

If Target is not agent-responsible for any of the intrusion-harm he imposes, then it is absolutely proportionate to impose up to n units of intrusion-harm on him in order to avoid n units from him, but absolutely disproportionate to impose greater intrusion-harm. If he is agent-responsible for some of that intrusion-harm, then the limits of absolute proportionality are increased by that amount.

Absolute proportionality, for a given individual, is based on the total actionable intrusion-harm that the individual would impose on Agent *or others*. In this paper, however, I shall limit my attention to cases where there is no harm to others. Extending the account from self-defense to defense of others involves some complexities that I wish to avoid here.

Absolute proportionality, for Target, relative to Agent, is based on the actionable intrusion-harm Target would impose on Agent, *in the absence of defensive action by Agent*. By "defensive action" I mean any action taken by Agent to reduce the intrusion-harm imposed by Target on Agent (or others). This includes actions that do not intrude upon the rights of Target or others, such as ducking, retreating, or shielding. Thus, whereas Harm Reduction uses a baseline where Agent does not *intrude* upon the rights of Target or others, Absolute Proportionality uses a baseline where Agent does not engage in defensive action against Target. This rules out defensively intruding upon the rights of others, as well as non-intrusive defensive actions. It thus sets a lower baseline for the intrusion-harm to Agent.

The amount of actionable intrusion-harm that Target would, in the absence of defensive action, impose on Agent is based on the probabilities of each of the various ways that Agent

might respond non-defensively. Note to self, after publication: These probabilities are based on how Agent would act in the absence of any dangers from Target, or perhaps if Agent believed there were no such dangers. Typically, there are several such ways and that is why there is an appeal to the expected (i.e., probability-weighted) value of the intrusion-harm to Agent. *For simplicity, in the examples below, I shall assume that there is only one such option and it will be A1 (the first listed option).* Moreover, for any given non-defensive action taken by Agent, there may be several ways that Target might respond (and various intrusion-harms that he might impose). Again, I appeal to the expected value of the intrusion-harms that Target may impose in response to each of Agents options. *All the numbers in the examples reflect the expected value of the intrusion-harm to Agent and others*.

Absolute Proportionality makes two controversial claims: (1) that it is absolutely proportionate to harm non-responsible intruders, up to the level of intrusion-harm that they would impose, and (2) that responsibility for intrusion-harm increases the limits of absolute proportionality by simple addition. I defended roughly these claims in Vallentyne (2011), and I won't repeat the defense here.

Absolute proportionality imposes an upper limit on the amount of intrusion-harm that may be imposed on each individual without wronging him. Effective proportionality, however, may impose a lower limit based on aggregative considerations and what is feasible for the defending agent. Consider the following example, in which Target 1 and Target 2 are each independently intruding upon Agent. Suppose, that in the absence of defensive action (assumed below to be just action A1), Target 1 would impose 10 units of intrusion-harm and Target 2 would impose 5 units, and that neither would be agent-responsible for the harm he would impose. Suppose that Agent has five options, with the associated intrusion-harms displayed

below (where 10+5 under the Agent column represents 10 units of actionable intrusion-harm on Agent from Target 1 and 5 units from Target 2):

Example 1

	Intrusion-Harms		
	Agent	Target 1	Target 2
A1	10+5	0	0
A2	0+0	9	1
A3	1+0	3	2
A4	0+2	4	2
A5	0+0	30	0

Here, for example, the expected value of the actionable intrusion-harm to Agent, if Agent performs A3, is 1 (1 unit from Target 1 and 0 units from Target 2). Moreover, the expected value of the intrusion-harm that Agent will impose, if she performs A3, is 3 to Target 1 and 2 to Target 2.

In this example, assuming no agent-responsibility, A1-A4 are each absolutely proportionate for both Target 1 (with a limit of 10, which is the amount of intrusion-harm he would impose on Agent in the absence of defensive action) and Target 2 (with a limit of 5). A5 is absolutely disproportionate for Target 1 (since it imposes 30 units of intrusion-harm) but proportionate for Target 2. It seems plausible that A2 is effectively (although not absolutely) disproportionate to Target 1. It seems disproportionate for him to bear 9 units of intrusion-harm (and Target 2 only 1 unit and Agent none), when it is feasible for Agent to perform A3, which

imposes 1 unit of intrusion-harm on Agent, 3 units on Target 1, and 2 units on Target 2 (for a total of 6). Given that none of them is agent-responsible for any intrusion-harm, all the intrusion-harm is "excessive" (to be explained below), and effective proportionality seems to require keeping such harm to a minimum (6 rather than 9).

To make this idea more precise, let us say that a non-culpable individual bears *excess intrusion-harm* from Agent to the extent the intrusion-harm imposed on him by Agent exceeds the intrusion-harm to Agent for which he *would be agent-responsible* in the absence of Agent's defensive action.[6] (Keep in mind throughout that, although non-culpable individuals are not agent-responsible for acting wrongly, they may well be agent-responsible for imposing intrusion-harm. They may, for example, reasonably but falsely believe that they are permissibly infringing the person's rights.) Moreover, all actionable intrusion-harm to Agent by others is excessive. In the above example, the individuals bear no agent-responsibility for the intrusion-harm they impose, and hence all intrusion-harm is excessive. For each feasible action for Agent, we can now calculate the *total* excess intrusion-harm that it imposes (including any excess intrusion-harm imposed on her by others in response). The total excess intrusion-harm is 15 for A1, 10 for A2, 6 for A3, 8 for A4, and 30 for A5.

We can now determine what the *minimum total excess intrusion-harm* is relative to those feasible actions of Agent that are *absolutely proportionate* for all other individuals. Above, only A1-A4 are absolutely proportionate for Target 1 and Target 2, and A3 has the lowest total excess intrusion-harm (6). Let us say that an action by Agent is *aggregatively proportionate*, relative to a given individual, just in case it imposes no greater intrusion-harm on him than is imposed by some absolutely proportionate feasible option for Agent that, relative to such options, minimizes total excess intrusion-harm. Only A1 and A3 are aggregatively proportionate for Target 1 and

Target 2. (Note that an option is judged aggregatively disproportionate for a given individual only if it makes her worse off than *all options* that minimize the total excess intrusion-harm.)[7]

The Proportionality condition above requires aggregative proportionality. Thus, A1 and A3 are (aggregatively) proportionate for both Target 1 and Target 2. For Target 1, A2 is disproportionate (since 9 >3), A4 is disproportionate (since 4>3), and A5 is disproportionate (since 30>3). (The absolute disproportionality of A5 ensures that it is aggregatively disproportionate). For Target 2, all five options are aggregatively proportionate (since all impose no more than 2 units of intrusion-harm). Given that none of the individuals are agent-responsible for any intrusion-harm, it seems quite plausible that A3, which has the lowest total intrusion-harm is the only proportionate action in addition to A1 (non-defense). In this case, Agent has a liberty-right to perform A1 and bear the intrusion-harm from Target 1 (10) and Target 2 (5). She also has a liberty-right to defend herself by performing A3 and bearing 1 unit of intrusion-harm (from Target 1), while imposing 3 units of intrusion-harm on Target 1 and 2 units on Target 2. She does not, however, have a liberty-right to avoid all intrusion-harm, since A2 and A5 are each aggregatively disproportionate for Target 2. This is an example of how sometimes the aggregative component of Proportionality requires Agent to bear some (and sometimes all) of the intrusion-harm from others.

Let us now consider two versions of the above example where Target 1 is at least partly agent-responsible for the intrusion-harm he would impose. Suppose first that Target 1 would be agent-responsible for all 10 units of intrusion-harm that he would impose and that Target 2 would be agent-responsible for none of the 5 units that he would impose. In that case, A5 is still absolutely disproportionate for Target 1 (since 30 > 10+10). The excessive intrusion-harm calculation, however, becomes as follows:

Example 2: Same as Example 1, except Target 1 is agent-responsible for 10 and Target 2 is agent-responsible for 0:

	Excess Intrusion Harm				Aggregatively Proportionate	
	Agent	Target 1	Target 2	Total	Target 1	Target 2
A1	10+5=15	0-0=0	0-0=0	15	y	y
A2	0+0=0	9-9=0	1-0=1	1	y	y
A3	1+0=1	3-3=0	2-0=2	3	y	n
A4	0+2=2	4-4=0	2-0=2	4	y	n
A5	0+0=0	30-10 =20	0-0=0	20	n	y

In this responsibility case, only A2 minimizes the excess intrusion-harm. This is because, although the total intrusion-harm is larger than that of A3 (10 vs. 6), much of that harm (all 9 units to Target 1) is offset by Target 1's agent-responsibility for intrusion-harm (whereas none of the intrusion-harm to Target 2 is so offset). Aggregative proportionality is focused on minimizing *excess* intrusion-harm, not on minimizing intrusion-harm, and thus differential responsibility can make a big difference. In this case, for Target 1, A1-A4 are each aggregatively proportionate (no more than A2's 9 units of intrusion-harm), but A5 is aggregatively disproportionate. For Target 2, by contrast, A1, A2, and A5 are each aggregatively proportionate (no more than A2's 1 unit of intrusion-harm), but A3 and A4 are each aggregatively disproportionate. Consequently, only A1 (no defensive action) and A2 are proportionate for all individuals. Given that Target 1 is agent-responsible for all of his intrusion-harm, but Target 2 is agent-responsible for none of his, it seems plausible that A2 is proportionate and A3 is not (since

A2 reduces the excess intrusion-harm to Target 2, with no increase of excess intrusion-harm to Target 1). Unlike the original non-responsibility case, Agent has a liberty-right to impose 9 units of intrusion-harm onto Target 1 and bear none herself. Target 1's agent responsibility for intrusion-harm generates this difference.

Let us now reconsider the example on the assumption that Target 1 is agent-responsible for just 7 (rather than all) of the 10 units of intrusion-harm that he would impose and Target 2 is still agent-responsible none of the intrusion-harm that he would impose. In that case, A5 is still absolutely disproportionate for Target 1 (since 30 > 10+7). The excessive intrusion-harm calculation is as follows:

Example 3: Same as Example 1, except Target 1 is agent-responsible for 7 and Target 2 is agent-responsible for 0:

	Excess intrusion-harm				Aggregatively Proportionate	
	Agent	Target 1	Target 2	Total	Target 1	Target 2
A1	10+5=15	0-0=0	0-0=0	15	y	y
A2	0+0=0	9-7=2	1-0=1	3	y	y
A3	1+0=1	3-3=0	2-0=2	3	y	y
A4	0+2=2	4-4=0	2-0=2	4	y	y
A5	0+0=0	30-7=23	0-0=0	23	n	y

In this case, A5 remains absolutely disproportionate for Target 1 (since 30 > 10+7). Of A1-A4, A2 and A3 each minimize the total excess intrusion-harm (each reducing it to 3). Thus, for Target 1, any option with intrusion-harm to him no greater than 9 (the largest intrusion-harm

to him from any option that minimizes excess intrusion-harm) is proportionate, and, for Target 2, any option with intrusion-harm to him no greater than 2 is proportionate. In this case, A1-A4 are each proportionate for both.[8] Note that A4 is aggregatively proportionate for each, even though it doesn't minimize total excess intrusion-harm. This is because, when there is more than one option that minimizes that total, for a given individual, the limit for proportionality is the *largest* intrusion-harm to him by an option that does minimize the total.

Note that A2 produces a total of 10 units of intrusion-harm, whereas A3 produces only 6 units of intrusion-harm (including 1 to Agent). Nonetheless, both are judged aggregatively proportionate for Target 1 and Target 2, since both minimize excess intrusion-harm. A2 produces greater total intrusion-harm, but none of it is excessive, since for both Target 1 and Target 2 the intrusion-harm to them is below the level for which each is agent-responsible.

One might hold that, when there is more than one option that minimizes total excess intrusion-harm, only the ones with the *lowest total* intrusion-harm are relevant as benchmarks for proportionality. I believe, however, that this is not correct. This would impose lower limits on proportionality and thereby inappropriately restrict Agent's liberty to defend herself. Of course, she is still subject to the *necessity* requirement (ruling out, roughly, options for which there is an alternative that achieves at least as much reduction in intrusion-harm, with less harm to the targeted individuals, and no greater harm to Agent or others). Moreover, *absolutely disproportionate* options are (aggregatively) disproportionate, and so they too are ruled out. Finally, given that the additional intrusion-harm is not in excess of the intrusion-harm for which the targeted individual is agent-responsible, it is plausible that Agent should have the liberty to choose among such options (e.g., for what is best for her).

Where there is more than one option that minimizes total excess intrusion-harm, one

might alternatively hold that that only options that best *equalize* excess intrusion-harm are proportionate. After all, by definition, excess intrusion-harm is harm in excess of that for which the individuals would be agent-responsible. If justice requires some kind of brute luck equality of wellbeing (and I fully agree that it does), this is reflected in the primary rights that individuals have. It will be relevant for determining whether there is a rights-intrusion, how much intrusion-harm there was, and what compensation is owed. It won't, however, always require equalizing excess intrusion-harm (even from among options that minimize the total) in a given choice situation, since it will be sensitive to the extent to which some individuals antecedently have more than their fair share of wellbeing and others less.[9]

In sum, for a non-culpable intruder, it is absolutely disproportionate for Agent to impose more intrusion-harm on him than the sum of the intrusion-harm the intruder would impose on Agent in the absence of defensive action and the amount of intrusion-harm for which he would be agent-responsible. Absolutely disproportionate options are (effectively) disproportionate. Not all absolutely proportionate options, however, are proportionate. They must also pass the aggregative proportionality requirement. Any option that, relative to the absolutely proportionate options, minimizes the total (for all individuals) excess intrusion-harm is aggregatively proportionate relative to all individuals. Moreover, for any individual, any option that imposes *no more intrusion-harm* on him than *some* option that minimizes total excess intrusion-harm is aggregatively proportionate. Proportionality requires absolutely aggregative proportionality, and thus sometimes requires the agent to bear some or all of the threatened intrusion-harm.

Thus, for any given intrusion-harm to Agent, it will be aggregatively disproportionate to impose even a small intrusion-harm on other (independent, non-culpable) intruders, if they are sufficiently numerous. Some may object, of course, that intrusion-harms to intruders are not

aggregatable in this way (and should be ignored) if they are sufficiently small (either absolutely or relative to the intrusion-harm they impose). I see no good reason to exclude even very small intrusion-harms. If, however, there is good reason to do so, a very slight modification of the above view can accommodate this concern.

Before generalizing this approach to cover self-defense against *culpable* intruders, let us note some controversial features of this approach, which I defend in the earlier paper. First, there is no appeal to retribution. Harm-reduction (either preventing an intrusion or ensuring compensation for a past intrusion) is the core notion. Second, the reduction in actionable intrusion-harm need not be a reduction in the intrusion-harm imposed by Target. It may be a reduction in the intrusion-harm imposed by others. This allows deterrence effects to be relevant (although subject to individualized proportionality restrictions for Target). Third, there is no requirement that the intrusion against which one defends be imminent or even highly likely. It may be in the distant future. What matters is the expected value of the actionable intrusion-harm, which is determined by the probabilities of the intrusion (which are typically lower the more distant in time it is) and the size of the intrusion-harm. Fourth, proportionality is not based on desert or on an independent theory of proportionality. It is simply a placeholder for a specification of the limits on the intrusion-harm that may be imposed. Fifth, the above approach focuses exclusively on intrusion-harm and is not sensitive to whether it is from intrusions upon rights to one's *person* or upon one's rights to *external things*. What matters is how harmful the intrusion is, not the kind of right involved. These are all controversial features and each is discussed in the earlier paper.

3. Self-Defense against Culpable Rights-Violators

So far we have considered only non-culpable intrusions. Let us now consider defensive action against culpable intrusions. An intrusion is *culpable* just in case the agent is *agent-responsible for wrongly* imposing it (e.g., she freely and knowingly acts wrongly in intruding). It's important to note that a given action may intrude upon more than one right (e.g., my striking you may also intrude upon my wife's right that I keep my promise to her not to strike anyone). One intrusion may be culpable (e.g., if I break my promise to my wife knowing that it is wrong to do so) even if the other is not (e.g., if I strike you because I falsely, but faultlessly, believe that it is a permissible way of stopping you from doing a great evil). Below, we shall address how to aggregate intrusion-harms, some of which are culpable and some of which are not. To start, however, we shall focus on the simple case where there is only culpable intrusion-harm.

Because culpability, as I understand it here, is factive, culpable intrusion entails that the intrusion is wrong and hence a violation (and not merely an infringement or non-autonomous intrusion). There is, of course, the possibility of a "guilty mind" when nothing wrong is done (e.g., the agent falsely believes that she is acting wrongly), but that is not what I mean by "culpability".

Culpability is here understood in the sense of agent-responsibility for *wrongly* (impermissibly) intruding and not in the weaker sense of agent-responsibility for *wronging someone* (i.e., infringing someone's rights). An agent who knowingly and freely wrongs someone to save a million lives is not culpable in this stronger stipulated sense, if the action is permissible (because of an overriding justification), or even if it is impermissible but she faultlessly did not believe that it was. I shall assume the weaker kind of culpability does *not* increase the limits of proportionality.

In the preceding section, I articulated three of the motivating ideas for the proposed principles: the harm reduction requirement, proportionality as merely a theoretical placeholder, and proportionality being based both on intrusion-harm imposed and on agent-responsibility for such harm. A *fourth motivating idea* of the view I defend is that proportionality sometimes increases with culpability for the intrusion-harm imposed. It is one thing to act wrongly when one has a good excuse for doing so (couldn't have known it was wrong, under severe duress, etc.), and quite another when one has no good excuse and is thus culpable to some extent. Innocent victims surely have more freedom to defend themselves the greater the culpability of the attacker, and that is because the proportionality constraints are weakened.

I shall assume that we can assess *degrees* of culpability, for a given intrusion, ranging from 0 to 1. The degree of culpability is based on the degree of agent-responsibility for intruding wrongly (which is sensitive to degrees of belief, degrees of resistibility, etc.).[10] This, of course, is a major assumption that brushes over important and complex issues. It is, however, beyond the scope of this paper to address these issues more fully.

When and how does culpability increase the limits of proportionality? There are, of course, many ways that it might do so, but I shall focus on the simplest ways.

I claim that culpability does *not* increase proportionality in the case where the agent is not agent-responsible for *intrusion-harm*. For example, suppose that I know that it is wrong for me to trespass on your land, but I do not impose any intrusion-harm in doing so.[11] In that case, I claim, the proportionality limits are the same as if I were not culpable. Or suppose that I do impose some intrusion-harm, but I am not agent-responsible for doing so (e.g., because I could not have known that taking just one step on your land would damage an expensive plant that you had seeded there). Here too, I claim that the proportionality limits are the same as if I were not

culpable.

More generally, *a fifth motivating idea* of the view I defend is that culpability *merely magnifies* the impact on proportionality of agent-responsibility for intrusion-harm, and thus has no impact where the latter is zero. This is, of course, controversial, but I shall assume it in what follows.

How does culpability magnify the impact of agent-responsibility for intrusion-harm for the purposes of determining proportionality? One possibility is simply to multiply the latter by [1 + dc], where dc is the relevant degree of culpability. This would mean, however, that culpability could at most *double* the factor for agent-responsibility for intrusion-harm. Proportionality, I believe, is more sensitive to culpability than that. Of course, an alternative is to multiply the agent-responsibility for intrusion-harm by [1 + nxdc], where n is some specified numeric constant (e.g., 10). This, I believe, is implausible for two reasons. First, any particular value for n, other than 1, seems arbitrary, and this remains so even if n is allowed to take on a range of values (e.g., 9-11). Second, if someone is *fully* culpable for a given intrusion-harm for which he is responsible, then, I claim, proportionality should impose *no limits*. In such a case, an innocent defender should not have to endure any avoidable net intrusion-harm no matter how great the intrusion-harm to her attacker.

A *sixth motivating idea* of the view I defend, then, is that *full* culpability removes all proportionality limits. Combining this with the fifth motivating idea—that culpability merely magnifies agent-responsibility for intrusion-harm—leads naturally to the idea that, in the proportionality condition, the factor for agent-responsibility for intrusion-harm is *divided by 1-dc*, where dc is the degree of Target's culpability for the actionable intrusion-harm. Where there is 0 degree of culpability, there is no magnification, but as the degree of culpability approaches

1, the magnification becomes arbitrarily large. Let me spell out this idea more concretely before providing some additional defense.

Let us say that, for a given action of Target, the actionable intrusion-harm to Agent for which Target is agent-responsible is *culpability-adjusted*, when it is divided by 1-dc for that action. In order to determine absolute proportionality, and excess intrusion-harm, we must determine the amount of intrusion-harm to Agent for which Target would be agent-responsible in the absence of defensive action. If there is only one non-defensive action open to Agent, and there is only one way that Target would respond to such action, then the culpability-adjusted intrusion-harm for which Target would be agent-responsible is simply the amount of intrusion-harm for which Target would be responsible divided by 1-dc, where dc is Target's degree of culpability in so acting. In general, however, there may be several non-defensive actions open to Agent and several responses to each on the part of Target. In the next two paragraphs, I shall describe how such cases are assessed. Readers not interested in the technical details may skip these two paragraphs.

For each non-defensive action that Agent might take, we can calculate the *expected value* of Target's culpability-adjusted actionable responsible intrusion-harm to Agent. This is the sum, over each action open to Target in response, of the probability of Target performing that action multiplied by its actionable intrusion-harm for which Target would be responsible, divided by 1-dc for that action. Suppose, for example, that, in response to a given non-defensive action by Agent, Target would perform either (1) a1 with .9 probability, 10 units of actionable responsible intrusion-harm, and .1 degree of culpability, or (2) a2 with .1 probability, 2 units of actionable responsible intrusion-harm, and .9 degree of culpability. For the given non-defensive action by Agent, the expected value of Target's culpability-adjusted actionable responsible intrusion-harm

is 12 (= [.9x10/(1-.1)] + [.1x2/(1-.9)]).

In general, there will be several non-defensive actions open to Agent. Given Agent's choice disposition in the situation, there will be, I shall assume, a probability associated with each action that she might choose, on the assumption that she acts non-defensively (and thus all defensive actions have zero (conditional) probability for this calculation). We can now take the expected value, over the different non-defensive actions open to Agent, of the expected value of the culpability-adjusted intrusion-harm for which Target would be agent-responsible (calculated as outlined in the previous paragraph). For example, suppose that Agent has just two feasible non-defensive actions, A1 and A2, and, if she acts non-defensively, she is 80% likely to perform A1 and 20% like to perform A2. Suppose further that, based on the calculation method of the previous paragraph, the expected value of the culpability-adjusted intrusion-harm for which Target would be agent-responsible, if Agent performs A1, is 12, and that value, if Agent performs A2, is 4. Then the expected value of the culpability-adjusted intrusion-harm for which Target is agent-responsible, if Agent acts non-defensively, is 10.4 (=.8x12 + .2x4).

In the remainder of the paper, I shall assume, for simplicity, that there is only one non-defensive action open to Agent (A1) and that the culpability-adjusted intrusion-harms for which Target is agent-responsible are the expected (probability-weighted) values described above.

We can now generalize the conditions for absolute proportionality and for excess intrusion-harm to cover the case of culpable intruders.

> **Absolute Proportionality** (Version 2): If, in the absence of defensive action by Agent, Target would impose n units (in expected value) of actionable intrusion-harm on Agent or others (where $n \geq 0$), of which the (expected value of) the *culpability-adjusted*

intrusion-harm for which he would be agent-responsible is m units ($0 \leq m \leq n$), then up to (and including) n+m units of intrusion-harm to him is absolutely proportionate for Agent to impose on him. If Target imposes no intrusion-harm on others, then anything beyond that is absolutely disproportionate for Agent to impose on him.

This is the same as the first version, except that the intrusion-harm for which Target is agent-responsible has been culpability-adjusted. (Again, for this paper, we shall assume that Target intrudes upon no other people. A further generalization is required to handle this case.)

We can now generalize the definition of excessive harm to cover the case where Target is culpable. The benchmark for excessive harm is simply the (expected value of) the *culpability-adjusted* intrusion-harm for which Target would be agent-responsible, in the absence of defensive action by Agent.

Aggregative proportionality, and hence (effective) proportionality, can now be applied to the generalized conceptions of absolute proportionality and excessive harm. Thus, the basic principles remain the same. The only new issue is whether the formula for the adjustment for culpability is plausible.

One objection to this approach is that there is a *discontinuity* in the proportionality limit when Target is fully culpable. Because culpability merely magnifies the adjustment to proportionality for agent-responsibility for intrusions harm, there is no effect, if there is no such responsibility. If, however, there is even the slightest level of such responsibility, then full (1.0) culpability effectively magnifies it to infinity,[12] thereby eliminating any effective proportionality limit. This is indeed a troubling feature. It does not, however, arise, if, as I claim, no one is ever fully culpable. In that case, the magnification is always finite, and there is no discontinuity.

I believe that individuals are never fully (1.0) agent-responsible for their actions or their results and thus that they are never fully culpable. I believe this because the choices of agents are always influenced by all sorts of factors that do not reflect their agency (what options are feasible, what results are foreseeable, etc.). Even when an agent's choice is perfectly autonomous, her degree of belief that she is acting wrongly is 1.0, and her choice is highly resistible, the agent's choice-making capacities, here choice-implementing capacities, and her opportunities for choice are always due, in part, to factors "external" to her agency (her genetic make-up, early childhood socialization, brute luck events later in life). I believe therefore that an agent's choices, and their results, are always partly attributable to external circumstances and never fully attributable to her.[13] In particular, no one is ever 100% agent-responsible for acting wrongly. This is, of course, a highly controversial issue, and here I will simply note that the discontinuity problem does not arise, if, as I believe, agents are never fully culpable.

A possible objection remains, however. Even if agents are never fully culpable, they may be sufficiently culpable for the adjustment for culpability to be so great that proportionality has *no practical force*. Proportionality may impose limits, but they may be so great that, in practice, no action ever exceeds them. Whether this is so depends, of course, on how culpable individuals can be. If they can never be more than 50% culpable, then the magnification is limited to doubling, and the purported problem presumably does not arise. Indeed, the problem may not arise even if individuals can be up to .9 (or even .99) culpable, since the magnification would be limited to multiplication by ten (or one hundred). I suspect that culpability is typically so limited. When it is not (e.g., culpability can get arbitrarily close to 1.0, but can never be 1.0), then it seems quite plausible that proportionality has no practical limit (except, for sufficiently small intrusion-harms). I see little reason for an innocent victim to have to bear a non-trivial cost out of

concern for a virtually fully culpable intruder.

Given Harm Reduction and Necessity above, the above approach entails that Agent is at liberty, against a sufficiently highly culpable intruder, to kill him when this is the only way to stop him from stealing her chocolate bar and thereby imposing a very small unjust intrusion-harm.[14] This certainly seems extreme, but it is worth keeping in mind three limiting factors. First, the justice of killing the culpable intruder only holds where it is *necessary* to reduce actionable intrusion-harm to the defender. It is not just, for example, if merely grabbing the chocolate bar would suffice. Second, the relevant actionable intrusion-harm is *net of compensation* later obtained. It is not just to kill the culpable intruder if he can be later made to compensate fully for his wrong. Third, given the possibility of mistakes, practical reason, relative the goal of minimizing the moral badness of one's impermissible action, will often direct one *not* to impose a large intrusion-harm to avoid a small one. It is often practically irrational, relative the above goal and to an agent's epistemic (or subjective) probabilities, to take chance of doing something very bad for little benefit. Finally, there is also strong *prudential* practical reason not to kill an *apparently* highly culpable intruder to protect one's chocolate bar: the intruder may not be culpable, and may not even be intruding unjustly. In general, given our epistemic limitations, it's not prudentially wise to impose a very large intrusion-harm on another to avoid a small intrusion-harm. If one is mistaken, one may have a large debt of compensation.

A final and very general objection to the above approach is that it presupposes unrealistic precision in agent-responsibility (for intrusion-harm, or for acting wrongly). I fully agree that it is far from clear that agent-responsibility for intrusion-harm and culpability is measurable as precisely as I have assumed. Fortunately, however, there is no need to be committed to such precision. Instead of there being a single measure of agent-responsibility, there may be family of

admissible measures. Where there is agreement among these measures that a given action is proportionate, then Proportionality will be determinate. Where, however, the measures disagree, Proportionality will be indeterminate. Whatever indeterminacy there is in agent-responsibility and culpability should indeed be reflected in Proportionality. I see no reason to assume that an adequate theory of proportionality must be perfectly precise. I merely assume precision here for simplicity of presentation. Of course, if the family of admissible measures of agent-responsibility is too broad (e.g., so that there is agreement only on ordinal matters), then the approach taken in this paper must be rejected. There is, however, no compelling evidence that this is so.

Before concluding, I shall make one further extension of the theory with respect to culpable intruders. Recall that the theory focuses on *actionable* intrusion-harm, where, *for non-culpable intruders*, in addition to intrusion-harm from non-autonomous intrusions and unjust intrusions, it includes just intrusions against non-autonomous intrusion (which ensures that non-autonomous intruders maintain their rights of self-defense, even when they are liable to defensive attack). I now claim that, *for culpable intruders*, some cases of unjust intrusion-harm are *not* actionable, and hence they do not ground a liberty to defend against them.

Suppose that Target is attempting to beat up Agent and that he is highly culpable. Suppose that, in the struggle, Agent attempts to impose unnecessary harm on Target. This violates Necessity and thus wrongs Target. Does this mean that Target now has a liberty to impose a certain amount of intrusion-harm on Agent in order to minimize the unnecessary harm?[15] Or suppose that Agent attempts to impose an aggregatively disproportionate intrusion-harm (e.g., imposes a 1000 unit harm to avoid a 1 unit harm). This violates Proportionality and thus wrongs Target. Does this mean that Target now has a liberty to impose a certain amount of intrusion-harm to minimize the disproportionate harm? I claim that culpable Target does not

always have such rights of defense, even though he is wronged.

Fully non-culpable individuals have rights to compensation and rights to self-defense against all wrongful intrusion-harm, even when it is not absolutely disproportionate. By contrast, I claim, *fully culpable* intruders, if there are any, have such rights only when the wrongful intrusion-harm is *absolutely disproportionate*. Thus, although it wrongs them to impose unnecessary or aggregatively disproportionate intrusion-harm, it does not always give them any rights to compensation or self-defense. This gives more wriggle room for defenders against culpable intrusion. Of course, I have indicated that I deny that anyone is ever fully culpable, but this hypothetical provides the basis for an extension to *partially* culpable intruders.

Suppose that, Target's (expected value of his) degree of culpability, in the absence of defensive action by Agent is dc, where dc<1. I claim that Agent's unjust intrusion-harm to Target is actionable (i.e., relevant to the right of self-defense) just to the extent that it exceeds *the sum* of (1) the maximum intrusion-harm to Target that does not wrong him (i.e., that is both necessary for harm-reduction and aggregatively proportionate for Agent to impose on him), and (2) dc multiplied by the excess of the maximum intrusion-harm to Target that is *absolutely proportionate* for Agent to impose on him over the maximum intrusion-harm that does not wrong him. Thus, if Target is fully non-culpable (dc = 0), then all non-just intrusion-harm to him is actionable (as claimed in the previous section). If Target is strictly partially culpable (0<dc<1), then the limit for actionable intrusion-harm increases toward the (higher) limit of absolute proportionality.

Thus, I claim that, for at least partially culpable intruders, not all unjust intrusion-harm is actionable. The more they are culpable, the greater the gap in the level of intrusion-harm that wrongs them and intrusion-harm that is actionable (grounds a right to self-defense and

compensation). This seems exactly right. Innocent defenders should have more wriggle room against those who are more culpable.

4. Conclusion

I have formulated, with a limited defense, a partial theory of enforcement rights. The theory only provides a *sufficient condition* for having a liberty-right, against another, to infringe her rights. I believe that the theory can be extended to a full theory, giving necessary and sufficient conditions for such a liberty, by including some enforcement rights (1) to protect others (and not just oneself), (2) against intrusions that are part of coordinated joint actions (which I have here ignored), and (3) against those who are agent-responsible for *contributing* (facilitating) to imposition of intrusion-harms by others. Thus, I believe, that with respect to cases where these factors are absent, the above theory provides necessary and sufficient conditions for having a liberty-right to intrude upon another's rights. Defending that claim, however, is beyond the scope of this paper.

It is important to keep in mind that I have only defended a theory of the *liberty-rights*, against another, to intrude defensively against him. If one has such a liberty right, one does not wrong him in so intruding. Even if one has liberty-rights to intrude against another, it is an open question, whether it is *permissible* to do so. It may be impermissible because it wrongs someone else (e.g., when one made a contract with someone else never to intrude in the given manner) or, perhaps, because it is impersonally wrong (although I would argue that there are no such wrongs). Moreover, even if one does *not* have a liberty-right to intrude upon someone, it may nonetheless be permissible to do so (even though it wrongs him) because there is an overriding justification (e.g., harming an innocent person to save a million lives). In short, I have not

addressed the larger issue of permissibility.

The above theory of enforcement rights is based on the following six motivating ideas: (1) Defensive intrusion-harm against another is just when *it suitably reduces actionable intrusion-harms to the defending agent*. (2) There are no relevant *theory-independent* facts about proportionality (proportionality is merely a placeholder for limits to be specified). (3) Proportionality allows greater defensive intrusion-harm the more the intruder is *agent-responsible* for imposing intrusion-harm, but it also allows some defensive intrusion-harm against intruders *when they bear no agent-responsibility for intruding upon anyone's rights*. (4) Culpability (responsibility for acting wrongly) can increase the limits of proportionality. (5) Culpability *merely magnifies* the impact of agent-responsibility for intrusion-harm, and thus has no impact where the latter is zero. (6) *Full* culpability removes all proportionality limits (although I claim that no one is ever fully culpable).

These are, of course, controversial ideas. Even if they are accepted, the particular specifications I give to flesh out these ideas will be controversial. I have attempted to give some motivation for the specifications, but I clearly have not given a rigorous defense. Moreover, given their specificity, they are surely mistaken in many ways. My hope is that the mistakes are correctible within the general approach, but I won't be surprised if certain fundamental aspects of the approach turn out to be mistaken. I believe, however, that the approach is promising enough to be worthy of further consideration. At a minimum, exposing its errors should be instructive.[16]

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[1] For discussion, see Thomson (1991) and Lazar (2012).

[2] I assume, however, that interests are specified non-morally, and hence that the mere infringement of a right is not always a setback to interests (e.g., a non-damaging trespass on one's land).

[3] In Vallentyne (2011), I mistakenly omitted to rule out intrusion against others.

[4] Note that Necessity is a strict (non-moralized) necessity condition. It requires that the reduction in harm not be achievable with less harm to Target, without others bearing a further relevant cost. Some authors understand the necessity requirement to be a moralized requirement that weights the benefits and harms in some way. See, for example, Lazar (2012) and Frowe (2015?). For insightful discussion of this issue, see Draper (2015?).

[5] For example, suppose that you and I plan to kill Smith by simultaneously shooting him in the head, where each shot is sufficient for his death, and each of us is highly disposed to do our part

in this plan. In such a case, my shooting him in the head has little impact on whether he dies, given that you are highly likely to kill him in any case. Where agents act jointly, this can't be the relevant assessment of impact for the purposes of moral assessment. Instead, the outcome (e.g., death) must be compared with something like what would have happened had none of the joint agents done their part in the plan. Dealing with this issue is, however, beyond the scope of this paper. For insightful discussion, see Parfit (1984, pp. 67-86), Michael Zimmerman (1985), Kutz (2000), and Tadros (2013).

[6] Note that the baseline for *excess harm* is the intrusion-harm for which the individual is agent-responsible, whereas the baseline for *absolute disproportionality* is that plus the intrusion-harm imposed (whether responsible or not).

[7] My appeal to aggregation is similar in some respects to that of McMahan (2011, pp. 156-57). First, my appeal to excess intrusion-harm is similar in spirit to his appeal to "residual injustice", although I don't claim that there is literally a distributive injustice. Second, my appeal to aggregative proportionality agrees with his claim that, when too many innocent aggressors are killed to save one life, it is (narrowly) disproportionate, and hence wrongs them. Third, just as McMahan tentatively suggests that the residual injustice for culpable aggressors may be below the threshold of aggregation, I hold, as we shall in the next section, that, in the case of highly culpable aggressors, the threshold for excess intrusion-harm may be so high that it is rarely reached in practice.

[8] If there were a sixth option with 9 units of harm to Target 1 and 2 units of harm to Target 2, it too would be proportionate for each.

[9] Thus, unlike distributive-justice-based accounts of self-defense, I deny that rights of self-

defense are based on "local" distributive justice (internal to the self-defense situation). Instead, there are primary rights to distributive justice based on "global" considerations (e.g., genes, childhood environment, as well as imposition of intrusion-harms), and the secondary rights of self-defense are not so sensitive. For discussion of the former approach, see McMahan (2002, pp. 401-22) and Montague (1981).

[10] An agent who is unsure whether her intrusion is wrong will, at least on the simplified model, have some degree of belief that it is wrong.

[11] Many accounts of culpability are not, I think, sufficiently explicit that (1) culpability requires agent-responsibility for wrongdoing, and (2) full agent-responsibility for intrusion-harm (even if impermissible) is not sufficient for culpability.

[12] Where Target is fully culpable (dc =1), and agent-responsible for n units of intrusion-harm, n/(1-dc) = n/0, and division by 0 is not mathematically well defined. I stipulate, however, that in this case the culpability-adjusted intrusion-harm for which he is agent responsible is the limit, as dc approaches 1 from below, of n/(1-dc), and that value is infinity.

[13] For an articulation and defense of this position, see Vallentyne (2008).

[14] For a more radical rejection of proportionality requirements, see Alexander (1980, e.g., p. 209).

[15] For insightful discussion of such cases, see Quong (2012) and Frowe (2015?). It's important to keep in mind that defensive action that does not prevent the completion of an attack need not involve unnecessary intrusion-harm. First, it may reduce intrusion-harm in the future because of deterrence effects. Second, often merely resisting an attack has important psychological benefits that reduce the intrusion-harm.

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