

**ANTI-WAR PACIFISM AND THE PRINCIPLE OF SELF-DEFENCE**

ANTI-WAR PACIFISM AND  
THE PRINCIPLE OF SELF-DEFENCE

By

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## Abstract

This thesis explores and critiques the ethical perspective on warfare known as 'anti-war pacifism'. Anti-war pacifism maintains that although interpersonal lethal self-defence is permissible in certain contexts, participation in the massive use of lethal force in warfare is morally prohibited. On this unique pacifist view, the magnitude of killing coordinated and exercised by enormous groups of soldiers differentiates killing in war from killing in private self-defence.

Yet, some writers have suggested that in certain contexts the principle of self-defence can by itself justify the resort to war. If this view is correct, then it would seem that those theorists who wish to hold onto the principle of self-defence must necessarily withdraw their allegiance to the pacifist camp. Consequently, advocates of the anti-war pacifist position must admit that war can be justified in certain contexts, and that participation in war is sometimes morally permissible. Such an admission would necessarily render the anti-war pacifist position incoherent, since to claim both the principle of self-defence and an absolute moral objection to warfare is to argue that war is sometimes permissible and that war is never permissible.

Building on Robert K. Fullinwider's analysis, and incorporating the account of self-defence articulated by Suzanne Uniacke, this thesis defends the view that acceptance of the principle of self-defence is tantamount to an acceptance of certain limited wars. A war justified according to the principle of self-defence, the 'self-defensive war', is subject to numerous constraints in regards to its initiation and conduct. Nevertheless, the theoretical possibility of the self-defensive war renders the anti-war pacifist position an impotent moral theory of warfare, one that cannot be theoretically defended and therefore ought to be abandoned.

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It is my hope that this thesis represents the beginning of my career in peace research and advocacy. My commitment to peace and global security was probably born during the 1991 Gulf War, where I distinctly remember having the pleasure of debating these kinds of issues with my father, Prashant Kantilal Gatha. It is to him that I would like to dedicate this project. He inspired me like no other to always ask this philosopher's favourite question - 'but why?'

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## -- Chapter 1 --

### The Morality of Warfare and the Principle of Self-Defence

#### Introduction

Attention to the morality of warfare is no less pressing having now entered the 21<sup>st</sup> century. The reasons are many: atrocities committed in vicious ethnic conflicts around the globe, the continuing development and proliferation of weapons of mass destruction, the ever increasing economic and cultural integration of nation states, and most recently the U.S. proposed Missile Defence Shield, which some suggest will only initiate a new and more threatening arms race than that which the world already went through during the Cold War. This list of reasons is certainly not exhaustive, but they explain and justify further theoretical and moral investigation as to the desirability and perhaps necessity of participation in warfare.

A brief survey of the literature on the ethics of war will reveal that there is tremendous disagreement on the relationship between war and morality. These disagreements are reflected in what Duane Cady has described as the “moral continuum on peace and war.”<sup>1</sup> On one end of the continuum is the realist approach to war, which maintains that morality is superseded by the national interests of sovereign states, and is therefore not applicable to war. A.J. Coates succinctly explains this view:

[r]ealism resists the application of morality to war. Such resistance is typically part of a more general moral skepticism that is applied not just to

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<sup>1</sup> Cady, Duane. *From Warism to Pacifism*, p. 123.



the extreme circumstance of war but to international relations in general. The reason for this resistance is twofold. In the first place, it springs from the conviction that the reality in question is morally intractable, the dynamics of international relations and war being seen to confound most, if not all attempts to apply an alien, moral structure to them. Secondly, and more urgently, it arises from the fear that the very attempt to impose a moral solution has tragic consequences.<sup>2</sup>

On this view, because the relationships between states are dominated by self-interest and concerns for power, morality can simply have no impact on their behavior. Morality, according to the political realist, has no business and can accomplish little in interfering with the reality of war.

At the other extreme lies the position of absolute pacifism. Absolute pacifism is the view that killing can never be morally justified. The view is often grounded in a more general moral position against violence - that "it is wrong always, everywhere, for anyone to use force against another human being."<sup>3</sup> However, not all pacifists endorse an absolute rejection of violence. In fact, many pacifists would agree that the absolute version of pacifism is too strong, and indeed to borrow a phrase from Judith Jarvis Thomson, they may well believe the position presents an "excessively high-minded conception of the requirements of morality."<sup>4</sup>

Indeed, many pacifists accept the principle of interpersonal lethal self-defence as legitimate. They therefore reject the absolute prohibition against killing and other violent measures in private instances.<sup>5</sup> These pacifists will argue that acceptance of the

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<sup>2</sup> Coates, A.J. *The Ethics of War*, p. 18.

<sup>3</sup> Cady, p. 58.

<sup>4</sup> Thomson, Judith Jarvis. "Self-Defence", p. 285.

<sup>5</sup> There are also 'non-lethal pacifists', those who accept the use of violence in certain private situations, but reject the use of *lethal* force. An individual of this

legitimacy of self-defence is not tantamount to an acceptance of war. A more moderate position of pacifism that endorses this type of view is often termed 'anti-war pacifism' or 'collectivist pacifism', and this is the view that writers such as Duane Cady and Robert L. Holmes have endorsed. Anti-war pacifism maintains that, "any participation in the massive use of lethal force in warfare is morally prohibited."<sup>6</sup> On this view, the magnitude of violence coordinated and exercised by groups of soldiers differentiates killing in wars from killing in private self-defence.

Robert Holmes emphasizes this point when he critiques the view that private self-defence justifies war: "[n]otions like self-defence and security, which derive their significance from interpersonal relations, are carried over to the macro level as though they had precisely the same significance there, which they do not."<sup>7</sup> On this moderate pacifist position, warfare is morally unacceptable in a way that private justified violence is not. For Holmes, it is the egregious level of suffering and violence sustained by innocent persons in war that renders it morally unacceptable<sup>8</sup>.

According to Cady, between the realist and pacifist positions lie various moral appraisals of warfare. One such position, the 'just war theory', is arguably the most influential and widely accepted perspective on the morality of war. Much has been

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orientation might "be a pacifist (morally opposed to all war [and all killing]) yet use physical strength to resist abuse...without contradicting or compromising her principles." See Cady, p. 62.

<sup>6</sup> Sterba, James. "Reconciling Pacifists and Just War Theorists", p. 23. See also Cady for his explanation of collectivist pacifism, p. 62-64.

<sup>7</sup> Holmes, Robert. *On War and Morality*, p. 261.

<sup>8</sup> See Holmes, *On War and Morality*. Holmes' argument is unique among pacifists. Holmes focuses on the significance of killing innocents in war (civilian non-combatants) and determines that their inevitable deaths render that practice morally indefensible.

written on just war theory, and although its theoretical roots originate from Christian authors such as St. Augustine, it attracts today an impressive secular following<sup>9</sup>. The appeal of just war theory is obvious, for it fits nicely with the common sense view that although war is a horrible and deeply tragic event, it is sometimes necessary at the very least to prevent a greater evil from occurring. It is this putative fact of warfare that just war theorists pick up on, and in pointing to examples such as World War Two<sup>10</sup>, their position finds its strength.

Of these three general perspectives on the relationship between war and morality, it is clear that the realist approach can only make sense if one chooses to embrace a deep moral skepticism. Wars are fought and won by human beings, and if it is the case that the

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<sup>9</sup> The 'just war theory' is a set of conditions that outline when war can be morally acceptable. Just war theorists typically cite several traditional conditions that must be satisfied in order for war to be considered just. These conditions are distinguished between those that must be fulfilled in order to initiate a war (*jus ad bellum*) and those that must be fulfilled during the conduct of war so that it will be legitimate (*jus in bello*). *Jus ad bellum* conditions include but are not limited to the following: the war must have a just cause, the war can be initiated only by a legitimate authority, the war must be fought with the right intention (e.g. not for the pursuit of wealth or territory), the war must be fought as a last resort, the war must have a reasonable chance of success, the war must be formally declared by the proper authority, and the war must be fought according to the condition of proportionality (the good achieved by the war must outweigh the bad). *Jus in bello* conditions typically demand that the war abide by the condition of non-combatant immunity and that the means used in war be proportional to the ends they seek to achieve. See Norman, Richard. *Ethics, Killing, and War*, p. 118-119.

<sup>10</sup> Just war theorist Michael Walzer believes that World War Two provides a compelling example of the Just War. The evil of Nazism was so great that its elimination made war both necessary and desirable. He writes, "[n]azism was an ultimate threat to everything decent in our lives, an ideology and a practice of domination so murderous, so degrading even to those who might survive, that the consequences of its final victory were literally beyond calculation, immeasurably awful. We see it – and I don't use the phrase lightly – as evil objectified in the world, and in a form so potent and apparent that there could never have been anything to do but fight against it." See Walzer, Michael. *Just and Unjust Wars*, p. 253.



[i]f there is one view on which the opinions of moral and political philosophers tend to converge, it is the view that self-defensive behavior, whether by individuals or by nations, is morally superior to aggressive behavior. Self-defence thus possesses an aura of respectability that seems to render it eminently suitable as a rallying point for agreement on the ethical legitimacy of warfare.<sup>13</sup>

Other writers have also made similar comments. Jeff McMahan explains that if we can justify war by the principle of self-defence, "...there is no discontinuity between the morality of killing in ordinary life and the morality of killing in war."<sup>14</sup> The absence of any discontinuity between killing in private life and killing in war is theoretically attractive since it establishes a unitary explanation for almost all instances of intentional killing<sup>15</sup>.

Recall from above that moderate anti-war pacifists will accept the legitimacy of the principle of self-defence within interpersonal contexts. However, it would seem that if the principle of self-defence can indeed ground a morality of warfare and justify the resort to war in certain circumstances, those who wish to hold onto this principle must necessarily withdraw their allegiance to the pacifist camp. For the possibility that war might be justified by the principle of self-defence not only renders anti-war pacifism unattractive, but perhaps even incoherent.<sup>16</sup>

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<sup>13</sup> De Roose, Frank. "Self-Defence and National Defence", p. 159.

<sup>14</sup> McMahan, Jeff. "Innocence, Self-Defence and Killing in War", p. 195.

<sup>15</sup> An exception might be a terminally ill patient who requests to have his life ended. This instance of intentional killing could not be justified according to the principle of self-defence. Nevertheless, killing of this sort is rare and does not detract from the appeal of finding a principle (i.e. the principle of self-defence) that can explain and validate most instances of justified interpersonal killing.

<sup>16</sup> Reitan, Eric. "The Irreconcilability of Pacifism and Just War Theory: A Response to Sterba", p. 117.

This thesis will argue for precisely the above claim – that an acceptance of the principle of self-defence *is* an acceptance of war. That is, from the principle of self-defence, a morality of warfare can be generated. Herein I will define such wars as ‘self-defensive wars’, and as it will be made evident in the following chapter, a war fought on the principle of self-defence must be conducted according to very stringent moral standards. Few wars can be justified by this moral principle, far fewer than the number of wars that could be justified by traditional just war theory<sup>17</sup>. In this way, the self-defensive war constitutes a middle position on the moral continuum of warfare between traditional just war theory and anti-war pacifism.<sup>18</sup> The implication of a morality of war grounded on the principle of self-defence is important. Since war can be justified according to it, all ostensible pacifists who accept this principle are not in fact *genuine* pacifists. Genuine pacifists cannot accept the principle of self-defence<sup>19</sup> and maintain that war is never morally permissible.

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<sup>17</sup> I explain this in more detail in the following chapter where I discuss who can be killed in the self-defensive war, and who can be killed in traditional just war theory.

<sup>18</sup> Conceptually, the self-defensive war is a version of just war theory, since it also specifies a set of conditions that outline when war can be morally acceptable. However, war grounded on the principle of self-defence, the self-defensive war, is conceptually distinct from a war justified by traditional just war theory. Again, this will be made more evident in the following chapter, where I describe the unique *jus ad bellum* and *jus in bello* conditions specified by the self-defensive war. To wage a self-defensive war one must abide by far more stringent conditions than those offered by traditional just war theory, and in this way the self-defensive war occupies a conceptual space between traditional just war theory and pacifism.

<sup>19</sup> The principle of lethal self-defence shall herein be often abbreviated as the ‘PSD’.

### Robert K. Fullinwider – Self-Defence and War

Perhaps what is still the most influential contemporary treatment of the relationship between the morality of warfare and the PSD comes from Robert K. Fullinwider in his short but convincing paper entitled “War and Innocence”. Fullinwider’s paper has been criticized heavily, and I will address the problems with his analysis throughout my discussion. Nevertheless, the core of his position, that war can be justified through appeal to the PSD, and that this type of war will demand stringent moral constraints on its conduct and initiation, will form the basis of the position I defend in this thesis.

Fullinwider approaches the problem in a slightly different way. Fullinwider starts with the assumption that war can sometimes be justified, but he is dissatisfied with the moral distinction between combatants and non-combatants that has been suggested by various writers in the just war tradition. Fullinwider does not explicitly define the term ‘combatant’. According to the *New Oxford English Dictionary*, a combatant is defined as a “person engaged in fighting during a war”<sup>20</sup>. The meaning of the phrase ‘engaged in fighting’ is vague – in order to be a combatant must one be actively engaged in combat with an opponent, or can one simply be contributing in any way to the war effort? For the purposes of clarity and simplicity, I have chosen to define combatants as all soldiers during wartime who are armed with lethal force and have been trained for the purpose of killing human beings.<sup>21</sup>

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<sup>20</sup> Pearsall, Judy. *New Oxford English Dictionary*, page 364.

<sup>21</sup> It is important to note that the definition of ‘combatant’ can lead to various implications for a morality of warfare. If, for example, a moral theory of warfare

Fullinwider's purpose in writing this piece was to argue against the position of writers such as Elizabeth Anscombe and Paul Ramsey, who justified acts of war on the grounds of punishment.<sup>22</sup> For example, Anscombe believes that the right to war against aggressive combatants is similar to the coercive power legitimately exercised by governments to restrain and put down internal dissension. Anscombe claims that the right to attack enemy soldiers (and go to war) "does belong to rulers precisely because of the threat of violent coercion exercised by those in authority which is essential to the existence of human societies."<sup>23</sup> In this way, enemy soldiers are understood as acting in much the same way as domestic criminals, and they are justifiably killed as an act of punishment.

Fullinwider observes that dividing who can be killed in war and who cannot between combatants and non-combatants produces strange and ultimately counter-intuitive results for Anscombe's analysis. He writes, "...from the point of view of punishment, it is odd, if not perverse, to view the enthusiastically supportive non-

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stipulates that only combatants can be targeted and killed in a war, it will be very important to determine who are the combatants and who are the non-combatants.

<sup>22</sup> See for example Anscombe, Elizabeth, "War and Murder" and Ramsey, Paul, *The Just War*. Fullinwider also takes issue with George Mavrodes' paper "Conventions and the Morality of War" arguing that war can be justified on a non-conventional principle, i.e. the principle of self-defence. See Fullinwider, Robert K. "War and Innocence", p. 91-95.

<sup>23</sup> Anscombe, Elizabeth. "War and Murder", p. 45. Anscombe's view is open to the following objection. Rulers arguably have the right to coerce internal dissenters through violent means – but why should we agree that that right includes the right to put them to death? Since the right to kill external aggressors derives from the right to kill internal dissenters, it may only be the case that rulers have the right to punish external aggressors, not kill them.



combatant as innocent and the reluctant combatant as guilty.”<sup>24</sup> If punishment is what grounds the distinction between who can be killed in war and who cannot, then it would seem more appropriate that a war-mongering shop-keeper should be killed than an eighteen-year old soldier conscripted against his will. Fullinwider therefore claims that, “[b]ecause we most commonly speak of innocence in connection with crime and punishment and because we also speak of innocent victims of war, Anscombe and Ramsey have been led to defend the innocents in war by appeal to the wrong model.”<sup>25</sup> According to Fullinwider, the correct theoretical model that we should appeal to in our evaluation of war is the principle of self-defence.

Fullinwider believes that a nation is only justified in killing and going to war when the PSD can be used to justify such action. He writes: “I claim that a nation may justifiably kill in self-defence...[f]rom the point of view of self-defence, only those are justifiably liable to be killed who pose the immediate and direct jeopardy.”<sup>26</sup> In the case of war, only the nation’s armed forces or combatants are the agents of jeopardy, and they alone may be legitimately attacked with lethal force. Fullinwider defends his view through the use of an example wherein ‘Jones’ justifiably kills ‘Smith’ in self-defence. Fullinwider asks us to imagine the following scenario: “[j]ones is walking down the street. Smith steps from behind the corner of a nearby building and begins to fire a gun at Jones, with the appearance of deliberate intent to kill Jones. Surrounded by buildings,

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<sup>24</sup> Fullinwider, p. 91.

<sup>25</sup> Fullinwider, p. 93.

<sup>26</sup> Fullinwider, p. 93.

Jones is afforded no means of escape. Jones, who is carrying a gun himself, shoots at Smith and kills him.<sup>27</sup>

Fullinwider has provided a paradigm instance of self-defence. Smith has put Jones' life in immediate and mortal danger, and it is only by killing Smith that Jones can save his life. According to Fullinwider, "[f]rom the point of view of self-defence, these facts about Smith's actions are the *only* relevant ones."<sup>28</sup> Thus any other considerations, such as Smith's motivation in killing Jones, are irrelevant to the justifiability of Jones killing Smith. A further consequence of this view is that Jones would not be justified in killing anyone else who may have helped create the circumstances he is placed in. For example, if mobsters had kidnapped Smith's children and demanded that Smith kill Jones in order to save his children, Jones would still not be justified by the PSD in killing anyone but Smith. Although it is clear that the mobsters are morally culpable for their offense, and may deserve punishment for their infraction, that punishment cannot be derived from the PSD. It is only those who pose a direct and mortal threat to one's life that can be killed or harmed in self-defence.

Fullinwider claims that if we were to speak of guilt and innocence as categories in instances of self-defence, we must say that Smith alone was guilty.<sup>29</sup> Moving from the example of Smith and Jones to the circumstances of war, Fullinwider suggests that if some nation 'A' were to attack some nation 'B', the armed forces of nation A stand to opponent nation B as Smith stood to Jones, and it is the armed forces of A that B may use

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<sup>27</sup> Fullinwider, p. 92.

<sup>28</sup> Fullinwider, p. 92.

<sup>29</sup> Fullinwider, p. 93.

force against. The author comments, “[t]he active combatants, their arms, ammunition, war machines and facilities, are the legitimate targets of intentional destruction.”<sup>30</sup>

Drawing further from Smith and Jones, because Jones is not allowed to kill Smith’s accomplices in self-defence, those citizens of nation A that support the combatants engaged in fighting (by cooking for them, driving in supplies for them, fixing their planes, etc.) are considered innocent according to the PSD. Furthermore, *a fortiori*, typical non-combatant civilians (farmers, children, schoolteachers, etc.) are also innocent on this view. These individuals, be they civilians or non-active combatants<sup>31</sup> are therefore considered immune to attack. As Fullinwider concludes, to kill all those who are not directly threatening the lives of others “is to kill unjustifiably from the point of view of self-defence.”<sup>32</sup>

Fullinwider does consider the counterargument that “the point of view of self-defence is not the sole governing point of view when it comes to killing in war.”<sup>33</sup> Perhaps Anscombe was *half correct*, that punishment serves in addition to the PSD as a justification for killing in war. On this view, only combatants can be killed according to the PSD, but specific non-combatants may be killed as punishment for their unlawful actions in initiating a war (e.g. unjust politicians).

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<sup>30</sup> Fullinwider, p. 94.

<sup>31</sup> By ‘non-active’ combatants I mean those combatants who are soldiers not currently engaged in fighting, e.g. soldiers at rest.

<sup>32</sup> Fullinwider, p. 94.

<sup>33</sup> Fullinwider, p. 95.

But Fullinwider maintains that even if the principle of punishment did justify the killing of some non-combatants<sup>34</sup>, the indiscriminate techniques of modern warfare make it impossible to avoid killing innocent non-combatants as well. Fullinwider writes, “[t]echniques of warfare – combat, bombing, shelling, burning – are too indiscriminate in their destruction to serve as legitimate instruments of punishment.”<sup>35</sup> Fullinwider published his paper in 1975, but his point is certainly no less persuasive today. The NATO bombardment against the former Yugoslavia in 1999 provides us with a convincing reminder of the indiscriminate nature of even the most modern pieces of weaponry.<sup>36</sup> The killing of innocent non-combatants is justified neither by the principle of punishment nor the PSD. For this reason, Fullinwider concludes “if we wish to justify killing during war by the means of war, the only applicable perspective is self-defence.”<sup>37</sup>

### Three Unanswered Questions

Although a very useful introduction to the possibility that war can be grounded on the principle of self-defence, Fullinwider’s essay prompts several unanswered questions. Let me suggest that there are three main issues that demand deeper analysis. First, and

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<sup>34</sup> I have raised doubts about this possibility above. See footnote 23.

<sup>35</sup> Fullinwider, p. 96.

<sup>36</sup> Human rights Watch reported that “[f]rom the beginning of Operation Allied Force, NATO and allied government and military officials stressed their intent to limit civilian casualties and harm to the civilian population...Despite precautions, including the use of a higher percentage of precision-guided munitions than in any other major conflict in history, civilian casualties occurred...Human Rights Watch found that there were ninety separate incidents involving civilian deaths during the seventy-eight day bombing campaign. Some 500 Yugoslav civilians are known to have died in these incidents.” See *Civilian Deaths in the NATO Air Campaign*.

<sup>37</sup> Fullinwider, p. 96.

perhaps most important, is the question of what justifies the principle of self-defence? All that Fullinwider has told us in terms of the moral justification of self-defence is that it is legitimate.<sup>38</sup> But surely this will not do. To justify a war on the PSD, we need a greater explanation of what grounds the right to self-defence, and whether we all possess this right in the same way. In other words, it is insufficient to simply observe that the PSD is legitimate – we must also have an answer to the question of what makes it so.

Another issue that requires much more attention is how the PSD constrains the conduct of persons in instances of private self-defence and in war. What actions are allowed and what actions are forbidden in a war of self-defence? Fullinwider has provided some answers to this question, for example his observation that only those “who pose the immediate and direct jeopardy” can be harmed.<sup>39</sup> However, there are a host of other questions that remain unanswered. What are the moral limitations of the right to self-defence? Can I use any amount of force required to save my own life or the life of others? Can I kill innocent bystanders in the course of defending my own life? The answers to these questions will have great impact on our morality of warfare. For example, is it morally acceptable according to the PSD to foreseeably kill innocent civilians in defending other persons’ lives? Questions along these lines must be answered if we are to make sense of a war justified by the PSD.

Finally, Fullinwider’s analysis yields some ambiguity as to the relationship between the PSD and the justification of war. He writes at one point that “a nation may

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<sup>38</sup> Fullinwider, p. 92.

<sup>39</sup> Fullinwider, p. 94.

justifiably kill in self-defence.”<sup>40</sup> It is unclear whether Fullinwider’s example of the PSD (Smith and Jones) is meant to serve as an analogy for the legitimate defence of a nation, or as a direct justification for the defence of that nation’s citizens. The importance of this distinction cannot be underemphasized. If it is the nation that has a right to defend itself, then we must explain how a nation can have both interests in self-preservation and also a right to defend itself. On the other hand, if the PSD is being used to directly justify the defence of individuals, greater elaboration is required on how individual / private self-defence can justify the massive exercise of lethal force that is essential to war.

It is clear that Fullinwider’s view needs to be filled out in various ways in order for it to provide a defensible theory on the morality of warfare. Some of the necessary tinkering can be achieved by pushing some of Fullinwider’s suggestions further or replying to specific objections to his view. However, what would seem to be essential in fortifying Fullinwider’s position is the inclusion of a more full-bodied articulation and explanation of the principle of self-defence and its justification. Its general acceptance in both law and morality notwithstanding, numerous divergent accounts have been put forth to explain this complex problem. What has proved most difficult in the explanation of self-defence is the justification of saving the victim’s life over the life of the aggressor. I have chosen to adopt several aspects of the view offered by Suzanne Uniacke and also supported by Judith Jarvis Thomson in order to expand and make more credible Fullinwider’s account. What follows is a brief summary and revision of Uniacke’s view

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<sup>40</sup> Fullinwider, p. 94.

so that we can begin to answer some of the difficult questions raised by Fullinwider's thesis and articulate in greater detail the war of self-defence.

### **Suzanne Uniacke and the Self-Defence Justification of Homicide**

There are three important issues that any full account of the PSD must explain in order to be credible. These are: a description of what constitutes an act of self-defence, an outline of the set of circumstances under which self-defence is morally justified, and an explanation of what justifies the use of lethal force when the above conditions are met. I turn now to examine Suzanne Uniacke's investigation into each of these three topics.

Uniacke presents her view on the PSD and its justification in her book entitled *Permissible Killing*. Following Fullinwider, Uniacke notes that in circumstances of self-defence, the threat must be immediate. Uniacke does not explicitly define the term immediate, but agrees with David Wasserman that the immediate threat refers only to the 'present' threat.<sup>41</sup> In order to capture this concept with greater precision, I shall herein define an immediate threat in the following way: x is an immediate threat if and only if x will imminently destroy or very likely destroy another human being (or human beings).

In the self-defensive context, to kill an individual who is not the immediate threat would be to kill in the *course of* self-defence as opposed to killing *in* self-defence. Uniacke writes, "[s]omeone who is not an immediate threat, who is killed as either a means or an incidental effect of resisting, repelling or warding off an immediate threat, is

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<sup>41</sup> See Wasserman, David "Justifying Self-Defence".

killed in the course of self-defence. Force used *in self-defence* resists, repels, or wards off someone who is him- or herself an immediate threat.”<sup>42</sup>

The above quotation represents Uniacke’s initial formulation of the PSD. Killing in the course of self-defence, is not self-defensive killing or killing according to the PSD. Rather, to kill in the course of self-defence is to kill in *self-preservation*. Fullinwider’s example of Smith and Jones demonstrates the difference. If Jones were to attack a group of mobsters who coerced Smith into attacking Jones, the mobsters would be attacked (or killed) in the course of self-defence, and hence in self-preservation. This follows on Uniacke’s view since the mobsters, although casually connected to the assault, are nevertheless not the immediate threat.<sup>43</sup> The mobsters do not pose an immediate threat to Jones since it is not they who will imminently destroy Jones. Killing the mobsters therefore cannot be allowed by appeal to the principle of self-defence.

Another essential aspect of an instance of self-defence is the fact that, perhaps obviously, the act is specifically *defensive*. Acts of self-defence are in reaction to offensive acts. Uniacke is careful to explain that not all offensive acts are properly understood as assaults or attacks. The terms ‘attack’ and ‘assault’ typically imply a particular mental element to hurt or defeat on the part of the offender.<sup>44</sup> Not all offensive situations are like this however – an individual might defend himself against an agent

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<sup>42</sup> Uniacke, p. 158-159.

<sup>43</sup> Note that Uniacke is not yet suggesting that self-defence is justified and self-preservation is not. Her purpose is first to understand precisely what it means to kill in self-defence. Killing those who do not pose the immediate threat, whether justified by some other moral principle cannot be justified by the PSD since it is not an instance of self-defence.

<sup>44</sup> Uniacke, p. 160.



who has no intention to harm him (e.g. a runaway truck barreling toward a victim operated by a helpless driver). The truck driver, although an immediate threat to the pedestrian, is not properly regarded as either an attacker or assailant.

A further reason why not all offensive acts are properly understood as attacks or assaults is that one can act in self-defence against offensive threats that are completely passive. A commonly cited example comes from Robert Nozick's book *Anarchy, State and Utopia*, where an individual is thrown down a well and will inevitably crush and kill another person at the bottom of the well<sup>45</sup>. The threat in this example is passive, and since he is not acting<sup>46</sup>, he cannot be understood as either attacking or assaulting the defender. Finally, an additional reason why the terms 'attack' and 'assault' are too restrictive is that we can sometimes defend ourselves against immediate threats that are not even (strictly speaking) offensive. Uniacke illustrates this point with an example of an aggressor and victim who are each trying to strangle one another. She writes, "as an aggressor I might defend myself against my victim's self-defence by preventing the victim from cutting off my air supply."<sup>47</sup> Here I (the aggressor) act in self-defence even though the immediate threat is itself defensive.

In light of these reasons Uniacke suggests the following specification of what constitutes an act of self-defence. She writes: "[f]orce is clearly used in self-defence against an immediate threat who is an assailant; or an attacker; or someone who would be

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<sup>45</sup> Nozick, Robert. *Anarchy, State, and Utopia*, p. 34.

<sup>46</sup> Uniacke observes that, "someone who threatens harm *only as an object* (as a stone might), and not as an agent even in the widest sense, is not an assailant...yet he is an immediate threat of a type that might be resisted, repelled or warded off." See page 164.

<sup>47</sup> Uniacke, p. 164.

assaulting me were the threat he poses to be an act on his part; or someone who is not attacking me only because his acts are not offensive, or only because he does not intend to harm or defeat me.”<sup>48</sup>

All force used in self-defence resists, repels or wards off an immediate threat, and the above specification explains the conditions of immediate threat relevant to instances of self-defence. What is most important to note about this specification is that immediate threats resisted, repelled or warded off in self-defence may be active or passive, culpable or non-culpable. Again, the claim here is not that all acts of self-defence are justified, but rather that instances of force used against immediate threats as specified above constitute genuine instances of self-defence.

Difficult cases can certainly arise in determining whether an individual constitutes an immediate threat. Uniacke defines these problematic instances as cases of ‘contingent threats’, where someone exposes me to an immediate threat in virtue of their actions.<sup>49</sup> An example might be of someone who is unwittingly blocking my escape from an immediate threat by standing in the only available doorway. Uniacke believes that force used against a contingent threat is properly understood as force used in the *course* of self-defence (hence in self-preservation), not *in* self-defence, provided “a contingent threat merely exposes me to something or someone else which in the circumstances we identify as the immediate threat.”<sup>50</sup> It is more correct to say that a contingent threat in

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<sup>48</sup> Uniacke, p. 164-165.

<sup>49</sup> Uniacke, p. 167.

<sup>50</sup> Uniacke, p. 168.

these circumstances is killed out of necessity, but such killings are not instances of genuine self-defence.

However, Uniacke believes that in some cases, where a contingent threat acts in assisting the immediate threat, that contingent threat may be killed in self-defence since he also becomes part of the overall immediate threat. If, for example, a person purposefully blocks my exit so that I cannot avoid the immediate threat posed by his accomplice on the other side of the room, an attack on the person blocking the doorway is an instance of self-defence against a legitimate part of the immediate threat (perhaps if I were to use the blocking person as a shield). In these circumstances, the person blocking my exit remains a contingent threat, but also becomes part of the immediate threat.

Uniacke's account is in need of slight revision on this point. Contingent threats expose victims to a distinct immediate threat. They themselves are not the immediate threat, and thus cannot be killed in self-defence. As noted above, only immediate threats can legitimately be killed in self-defence. Uniacke identifies accomplices to immediate threats as contingent threats that become part of the 'overall immediate threat' through their actions in assisting the immediate threat. Yet, according to Uniacke's own account, if the accomplice is merely a contingent threat and not the immediate threat himself, he cannot be killed in self-defence. The accomplice's desire and intention to see me killed is insufficient to render him an immediate threat. Thus it is unclear why Uniacke believes that contingent threats can somehow become part of the overall immediate threat and subsequently be killed in self-defence.

It seems more appropriate to identify these sorts of accomplices not as contingent threats, but as immediate threats themselves. Contingent threats merely expose me to something or someone else that in the circumstances can be identified as the distinct immediate threat. Yet, the accomplice who pins me down while his partner attempts to beat me to death, or who purposefully blocks my exit so that I may not escape does not merely expose me to a distinct immediate threat. Rather, these accomplices themselves pose immediate threats to my life. Through their actions, they will imminently destroy or very likely destroy me. Accomplices can therefore be killed in self-defence not because they are contingent threats that become part of the overall immediate threat through their intentions, but because they themselves pose immediate threats. Again though, to attack a genuine contingent threat that happens to accidentally expose me to a separate and distinct immediate threat would be to kill out of self-preservation, since a contingent threat cannot appropriately be defined as an immediate threat.<sup>51</sup>

Through an adaptation of Uniacke's account, we have now answered the first question as to what a full account of the PSD requires, namely what sorts of actions constitute a genuine instance of self-defence. Uniacke next moves to an explanation of when self-defence is morally justified, and a description of the moral constraints that apply to a person who exercises self-defence.

Uniacke is determined to ground a unitary right of self-defence – one that will provide the same justification for all morally acceptable instances of self-defence. That

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<sup>51</sup> The case against killing innocent bystanders in self-defence is clearly even stronger, and will be discussed below as a moral constraint on the positive right of self-defence.

is, Uniacke will argue that instances of self-defence “that most of us think are obviously justified”<sup>52</sup> can be justified on the same grounds. Those grounds are that the immediate threat to be resisted, repelled or warded off is *unjust*. Unjust threats are immediate threats that violate a person’s right to life.<sup>53</sup> Uniacke further contends that an unjust immediate threat to something of proportionate value to the life of the victim can also justify a lethal defensive response. Consequently, if a victim were about to have his foot chopped off by an immediate threat, the victim may respond with lethal defensive force since the victim’s foot is of proportionate value to his own life.

My own view is that justifying lethal defensive force according to what the victim perceives to be of proportional value to his own life permits a much wider range of legitimate self-defensive actions than is morally acceptable. This follows since it’s not clear why an attack on someone’s foot or finger violates that victim’s right to life. In some extreme situations, where the victim may bleed to death from his injury, this might be challenged, but typically an injury such as this will not lead to the victim’s death, and thus not threaten his life. In addition, we must be wary of the difficulty in determining what is appropriately considered to be of proportionate value to a person’s life. If a victim of vandalism were to claim that his prized Monet was of the same value to him as his life, he would seem to have permission to use lethal defensive force against the vandal. This widens the scope of permissible self-defence too much, for the vandal has certainly not forfeited his right to life by attempting to steal a painting (no matter how

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<sup>52</sup> Uniacke, p. 172.

<sup>53</sup> I discuss this aspect of Uniacke’s theory in more detail below, where I explore her justification for the principle of self-defence.

valuable). As I will argue below, only those immediate threats that violate the right to life of their victim have forfeited their own right to life, and can be legitimately killed in lethal self-defence. *Pace* Uniacke, this analysis will therefore maintain a narrower account of justified self-defence that only allows for the exercise of lethal defensive force when a victim's life is unjustly immediately threatened.

Obvious cases of unjust immediate threats include offensive assaults and attacks on persons, such as Smith's attack against Jones in Fullinwider's example. However, according to Uniacke, unjust threats need not necessarily be active – the example earlier of a man thrown down a well is a passive unjust threat. Uniacke writes, “in order to threaten or violate someone else's right not to be killed one need not be acting; further, one might simply be the victim of bad luck.”<sup>54</sup>

As the passive threat example demonstrates, unjust threats also need not be morally culpable. For consider also the following familiar example of a person who walks in his sleep. One night, plagued by a terrible dream, sleepwalker Henry not only gets up for a walk but also retrieves a pistol and attempts to take the life of his sleeping brother Stanley. The sleepwalker is clearly not culpable for his attempt to kill his brother, since he is completely unconscious and unaware of his actions. Henry is by all reasonable accounts, an innocent threat. Nevertheless, Henry constitutes an unjust immediate threat to Stanley's life, since his attempt at killing will violate Stanley's right to life. Similarly, the right to self-defence against unjust *culpable* threats is not based on the culpability of the threat. Uniacke writes, “the positive right to use lethal force against

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<sup>54</sup> Uniacke, p. 175. Uniacke notes that Judith Thomson also shares this view. See Thomson, “Self-Defence”.

a culpable threat *does not derive* from the aggressor's culpability: it derives from the fact that he or she is an unjust immediate threat."<sup>55</sup> According to Uniacke, culpability is therefore not necessary in order for an offender to constitute an unjust threat, nor does it provide the justification for our right to self-defence.

Uniacke contends that there are several moral limitations in exercising the positive right to self-defence against unjust immediate threats. Two of the most powerful constraints on acting in self-defence are the requirements that force used against an unjust threat be both necessary and proportionate. These two separate requirements are each unique, and should not be conflated into one. The requirement of necessity demands that the use of lethal force in self-defence is unavoidable or indispensable, and could not be prevented by less violent means. The requirement of proportionality demands that the force used is not disproportionate to the injury that it is inflicted to protect. On my view, as I have explained above, only an attack on one's life can justify the resort to lethal defensive force. The use of lethal defensive force is disproportionate to the injury inflicted if that injury will not lead to the victim's death.

Returning to Fullinwider's example, let us say that Jones uses lethal force against Smith after Smith has attacked Jones in an attempt to kill him. Jones kills Smith because he has no choice and that action is unavoidable in order to save his own life. In this case, killing Smith would also be in proportion to the offense, since Jones' life is at stake. In some cases, however, necessity and proportionality do not intersect in this way. Uniacke suggests an example that demonstrates this alternative possibility, posing a situation

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<sup>55</sup> Uniacke, p. 188.

where my enemy and I stand on the precipice of a cliff. Suppose my enemy attempts to step on my toe and the only way to stop her from doing so is to push her off the cliff. Pushing her off the cliff is necessary to avoid her stepping on my toe, but it is certainly not proportionate to the offense my enemy is about to commit. Uniacke writes, “[f]or instance, if I really do need to push someone off a cliff in order to prevent her from stepping on my toe, use of this force in self-defence would be impermissible because disproportionate to the interest being protected.”<sup>56</sup> Killing my enemy by throwing her off the cliff would be disproportionate to her offense against me. The example highlights the important distinction between the necessary and proportionate force that are both required in a justified instance of self-defence.

In determining whether an immediate threat is unjust (if it violates the victim’s right to life) or if it is necessary to use lethal force in order to resist, repel or ward off an unjust immediate threat, we can incorporate Jeffrie Murphy’s conception of ‘reasonable belief’. Murphy makes note of the importance of reasonable belief in situations of self-defence, writing “[t]he only requirement is that the belief be reasonable given the evidence that is available.”<sup>57</sup> In terms of necessity, I must have a reasonable belief that lethal force is necessary to resist, repel or ward off the unjust immediate threat. Consider the following example. Late one night I am confronted by a heavily intoxicated individual on the streets of Toronto. The staggering old man declares that I have offended him and that he must kill me with his laser gun. I can be reasonably certain that even if the man had a laser gun (not in itself a reasonable possibility), his aim wouldn’t

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<sup>56</sup> Uniacke, p. 34.

<sup>57</sup> See Murphy, Jeffrie, “The Killing of the Innocent”, p. 535.



be good enough to hit me in his current state. Clearly the exercise of lethal force in such an instance would not be necessary, since escape is a viable option<sup>58</sup>.

Uniacke also points out that although we possess the positive right to self-defence circumstances may arise where it will be wrong all things considered to exercise that right. The positive right to self-defence is not absolute, and at times we may be morally required to withhold the exercise of that right. Uniacke observes that, “in some circumstances self-defence against an unjust threat will also directly harm unoffending persons (e.g. innocent bystanders)...in some circumstances morality can require that I not defend myself.”<sup>59</sup> This constraint must follow since it is not justified by the PSD to kill non-offending bystanders in the course of self-defence. She writes, “I have no positive right to use lethal force on an unoffending person (e.g. an innocent bystander) in the course of self-defence or in defence of another, nor in other circumstances of self-preservation or preservation of another.”<sup>60</sup> On this view, only the unjust immediate threat can be justifiably killed in self-defence.

One final but crucial aspect of the permissibility of self-defence is the positive right of third parties to defend the lives of victims against unjust immediate threats. It might be thought that no third party right exists – that the positive right to self-defence is limited to only the victim of an unjust immediate threat. This seems reasonable if the right to self-defence is grounded solely on the victim’s right not to be killed, or right to

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<sup>58</sup> Murphy’s criterion of reasonable belief is also useful in determining whether or not an individual poses an immediate threat. In this example, it would be unreasonable to suggest that the staggering drunk will imminently destroy or likely destroy me.

<sup>59</sup> Uniacke, p. 182.

<sup>60</sup> Uniacke, p. 183.

life. Uniacke disagrees with this view noting that, “the fact that one party poses an unjust immediate threat to another’s life can be sufficient to ground the permissibility of third party intervention on behalf of the victim.”<sup>61</sup> The source of the permissibility in both an instance of self-defence and in defending another is the same. In both circumstances an unjust immediate threat is being resisted, repelled or warded off to prevent the infliction of lethal harm. Naturally the same limitations on the exercise of self-defence apply to the exercise of defence of others. Nevertheless, as Uniacke dramatically proclaims, “surely it can be permissible that I defend a helpless person’s life against a maniac’s attack, by using lethal force if necessary.”<sup>62</sup>

We have now established what constitutes an instance of self-defence, and also an explanation of when self-defence is justified. But what grounds the permissibility of the positive right to self-defence? There has been great debate on this simple question, and the answer will inevitably be linked to whatever moral theory one chooses allegiance to. For some, as I have alluded to above, the permissibility of self-defence is grounded in the fact that the offender is morally culpable for his actions. Philip Montague endorses the culpability view of self-defence. The following passage reveals Montague’s commitment to this view:

when faced with a forced choice between lives, it is sometimes permissible to kill some number of persons in order to save the lives of others; the fact that one course of action in a forced choice situation involves *defending* someone’s life from someone else’s aggressive or threatening behavior is one among many factors relevant to whether killing is permissible, but does not in itself distinguish from a moral standpoint defensive forced choice situations from others in which killing

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<sup>61</sup> Uniacke, p. 178.

<sup>62</sup> Uniacke, p. 208.

is permissible; special moral significance does attach, however, to the fact that a life-threatening situation is created by someone's *culpable* behavior, whether intentional, reckless, or negligent.<sup>63</sup>

According to Montague then, it is an unjust immediate threat's culpability that highlights the moral asymmetry between victim and offender.

I do not intend to enter the depths of the arguments surrounding this position here, but it seems to me the culpability explanation of the right to self-defence is deficient in one important area. If culpability is what grounds the right to kill an unjust threat in self-defence, how can we explain the positive right to self-defence that seems to exist when that unjust immediate threat is morally innocent? Even Jeff McMahan, a proponent of the culpability account, expresses his concern about this difficulty.

McMahan calls his account the 'justice-based account of the right to self-defence'. He summarizes it as follows: "in cases in which a person's culpable action (whether past or present does not matter) has made it inevitable that someone must suffer harm, it is normally permissible, as a matter of justice, to ensure that it is the culpable person who is harmed rather than allowing the costs of his wrongful action to be imposed on the morally innocent."<sup>64</sup>

According to McMahan's (and Montague's) account, it is a person's culpability that defeats the presumption against harming him. Uniacke's view, which I endorse throughout this thesis, stands against McMahan's justice account. The justice account has great difficulty in explaining the positive right to self-defence against innocent

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<sup>63</sup> Montague, Philip, "Self-Defence and Choosing Among Lives", p. 211.

<sup>64</sup> McMahan, Jeff, "Self-Defence and the Problem of the Innocent Attacker", p. 259.

offenders. McMahan admits as much when he discusses a variation of Nozick's 'Innocent Projectile' example – the man thrown down a well and used as a weapon against his wishes. McMahan writes, “[b]ecause the Innocent Projectile is not morally culpable for the threat he poses, Justice offers the potential victim no justification for killing him; yet most people believe that it would be permissible to kill him.”<sup>65</sup>

McMahan eventually argues that the permission to exercise self-defence against non-culpable offenders should simply be a convention accepted on the grounds of its social utility, since the justice account cannot yield a convincing justification for the killing of an innocent attacker.<sup>66</sup> This seems to me a profoundly unsatisfactory resolution to the problem. McMahan's admission is really that the justice account cannot explain the positive right to self-defence in obvious situations, and we must therefore turn to a separate justification (social utility) in such instances. The justice account is therefore unable to fully explain the positive right to self-defence and should be abandoned on these grounds.

If culpability is not what justifies the positive right to self-defence, what is it that grounds its permissibility? According to Uniacke, the moral permissibility of the use of force in self-defence is partially grounded in the fact that the act is essentially defensive. She writes, “the positive right to self-defence is grounded in the fact that force directly blocks the infliction of unjust harm.”<sup>67</sup> It is a necessary condition of the positive right to lethal self-defence that it be exercised in defence of persons' lives. But this is only half

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<sup>65</sup> McMahan, p. 264.

<sup>66</sup> McMahan, p. 289.

<sup>67</sup> Uniacke, p. 186.

the explanation of why we are justified in *taking the life* of the unjust threat – defending my life is not a sufficient justification to take the life of another. What is also required is an explanation of why the life of another person (the offender) can be taken in self-defence.

The answer lies in the ‘unjustness’ of the immediate threat. As described above, Uniacke maintains that a threat is unjust when it violates the right to life of its victim. That ‘violation’ by the unjust threat results in the forfeiture of his or her right to life. Uniacke explains the need for a forfeiture theory in justifying acts of self-defence. She notes: “[a] theory of forfeiture is necessary to the justification of self-defence because, as I have said, the permissibility of one’s directly blocking unjust harm, even grave unjust harm such as the violation of one’s right to life, has moral limits. The rights...of other people limit the positive right to act directly to resist, repel or ward off the infliction of unjust harm.”<sup>68</sup> Only those who have forfeited their right to life by violating the right to life of others pose unjust immediate threats, and it is their forfeiture of the right to life that tips the scales in favour of the victim’s life over the life of the offender.<sup>69</sup>

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<sup>68</sup> Uniacke, p. 191.

<sup>69</sup> Note that on Uniacke’s account, passive and non-culpable unjust threats that may simply be the victim of bad luck (the innocent projectile thrown down the well) also forfeit their right to life when they pose an immediate unjust threat. Forfeiture of a right does not require moral culpability. Uniacke’s view is endorsed by Judith Jarvis Thomson. Thomson writes, “[s]ome people, I think, take it that forfeiting a right by definition requires fault. No matter. What is in question is not whether the innocent aggressor forfeits his right but whether he lacks it. And once we agree that he is about to violate your right – and that you can prevent this only by killing him – it seems right to conclude that he no longer has a right that you not kill him.” Thomson thus agrees that non-culpable innocent threats can forfeit their right to life and be justifiably killed in self-defence. See Thomson, p. 285.

Uniacke explains that the application of the term ‘forfeiture’ in describing the loss of right to life sustained by unjust immediate threats is misleading. She writes, “a forfeit is a penalty...and the imposition of a penalty by way of a forfeited right constitutes a disadvantage which need not imply the culpability or punishment of the one who forfeits.”<sup>70</sup> Since non-culpable unjust immediate threats can also be justifiably killed in self-defence, ‘forfeiture’ of the right is not an appropriate term to describe the status of an unjust immediate threat’s right to life. Uniacke instead favours outlining the ‘scope of the right to life’, since this description better reflects the character of unjust immediate threats.

The possession of the right to life is conditional, and that condition is that we not act as an immediate unjust threat to another person. This claim is important for it means that, “as individuals we do not possess the right to life simply in virtue of the kinds of beings we are (humans, persons, autonomous beings).”<sup>71</sup> Rather, according to Uniacke, we possess the right to life both in virtue of the type of beings we are, and our just conduct. The right to life is a human right, and though it is possessed partly in virtue of our status as human beings, this is not sufficient to guarantee that right.<sup>72</sup> Uniacke thus specifies the scope of the right to life required by a unitary account of self-defence as follows: “someone who is an unjust immediate threat to the life or proportionate interest

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<sup>70</sup> Uniacke, p. 195.

<sup>71</sup> Uniacke, p. 201.

<sup>72</sup> I do not mean to claim here that non-humans cannot also possess a right to life. I am only referring to the human right to life, which is the most basic of all human rights. In the next section I discuss Uniacke’s account of the human right to life and its justification.

of another does not possess an unqualified right not to be killed.”<sup>73</sup> For our purposes, since I have rejected the permissibility of self-defensive killing based on the violation of ‘proportionate interests’, the scope of the right to life is rewritten as follows: someone who is an unjust immediate threat to the life of another does not possess an unqualified right not to be killed.

Uniacke also adds to this another important point. She notes that this specification does not tell us what acts are justified or not justified all things considered. In a passage I will return to later, Uniacke writes, “[t]his specification allows that violation of someone’s right to life can be justified; for instance, an unoffending person might justifiably be killed in the course of self-defence or in circumstances of necessity. However, the killing of unoffending persons (those who are not unjust threats) must be justified on agent-neutral grounds as the lesser evil.”<sup>74</sup> Note that Uniacke is not contradicting her earlier claim that we have no positive right to kill innocent bystanders in the course of self-defence. That view is correct, but it may be that in certain situations killing non-offenders may be justified on other grounds than self-defence.

Uniacke has admittedly provided an incomplete theoretical justification for the positive right to self-defence. She has explained that it flows from the more general right to life, and that it is grounded in the fact that it is essentially defensive and permits the use of lethal force against only those who have lost their right to life in virtue of becoming an unjust immediate threat. However, Uniacke herself confesses, “[a] defence

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<sup>73</sup> Uniacke, p. 217.

<sup>74</sup> Uniacke, p. 217.

of the above specification, as derived from a view about why persons have a right not to be killed in the first place, is something I cannot realistically attempt here."<sup>75</sup>

Earlier I pointed out the three issues an account of the principle of self-defence must satisfactorily answer if we are to accept it. They are, again, an explanation of what constitutes an act of self-defence, a description of the circumstances in which such an act is morally permissible, and an explanation as to what grounds the permissibility of lethal force in self-defence. Uniacke has provided us with discussions of all three of these issues, though we cannot be completely satisfied with the resolution of her justification of the right to life. In order to fully accept her account, and to draw on it to strengthen Fullinwider's view, we must find a satisfactory explanation of why each person possesses the right not to be killed - the fundamental human right to life.

### **Grounding the Idea of basic Human Rights**

In order to accept Uniacke's account of the PSD and apply it to the situation of war, we must be satisfied with an explanation as to why individuals possess a human right to life that is conditional upon their just conduct. Obviously this is no simple task, and like Uniacke, I cannot hope to answer this question in a completely satisfactory way without setting aside the chief aim of this project. To fully answer the question of why human beings possess such a right would require the articulation and defence of a full moral theory of human rights. Nevertheless, there are several points I would like to make regarding the justification of basic human rights, particularly the right to life.

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<sup>75</sup> Uniacke, p. 218.



It seems fair to say that we live in an international political culture that is heavily influenced and shaped by the concept of human rights. The *Universal Declaration of Human Rights*<sup>76</sup> and its impact on legal systems and public policies around the world is an excellent example of this relatively recent phenomenon, but there are many other international documents recognized by governments in which human rights are emphasized.<sup>77</sup> Indeed, as David Luban has written, “talk of individual rights does capture much of the moral reality of contemporary politics.”<sup>78</sup> Furthermore, United Nations peacekeeping missions and even wars have been carried out (at least nominally) for the cause of human rights.<sup>79</sup> It is clear then that human rights are important to people across the globe, and represent some of the basic shared moral intuitions that most human beings in the 21<sup>st</sup> century accept. This at the very least gives the idea of human rights a deep sense of legitimacy. Now, as I said earlier of the principle of self-defence, that a moral idea has a sense of legitimacy is not sufficient for us to fully endorse and accept it. Nevertheless, at the very least, the respect most of us are inclined to pay to the concept of human rights is certainly a reason to take them seriously.

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<sup>76</sup> The Universal Declaration of Human Rights states in its preamble, “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world...”, and in article 3: “[e]veryone has the right to life, liberty, and security of person.” See *The Universal Declaration of Human rights* (1948).

<sup>77</sup> The International Covenant on Civil and Political Rights (1976), The International Covenant on Economic, Social and Cultural Rights (1976), and European Convention on Human Rights (1950) are only a few examples of the numerous documents that recognize and entrench human rights. See Zablacki, *Human Rights Documents*.

<sup>78</sup> Luban, David. “Just War and Human Rights”, p. 209.

<sup>79</sup> Recent peacekeeping efforts in East Timor and Kosovo aimed to not only secure peace, but also the basic human rights of those who have suffered from ethnic violence.

There have been numerous attempts to justify the existence and validity of human rights, and this very much depends on whatever moral theory one chooses allegiance to. Indeed for some, universal human rights follow from the tenets of their religion. For example, certain versions of Christianity maintain that all human beings are sacred, and from that sacredness human beings possess certain rights in virtue of their relationship to God.<sup>80</sup> There are also of course a variety of secular defences of human rights. Ronald Dworkin for example has suggested that human life “has intrinsic and objective value quite apart from any value that it might have to the person whose life it is...and the idea that each individual human life is inviolable is therefore rooted...in two combined and intersecting bases of the sacred: natural and human creation.”<sup>81</sup> There are many other such moral theories of human rights that one can appeal to in seeking out a philosophical justification.<sup>82</sup>

Nevertheless, for some, all of these theories may inevitably turn out to be unsatisfactory. There are certainly critics of the notion of human rights that believe the idea to be completely groundless. Perhaps according to some of these critics, the project of the Enlightenment has been a great failure, and the notion that all human beings possess certain basic rights is ridiculous given the postmodern end to metaphysics and of all things ultimately grounded on a God that doesn't exist. Such a person might share the following sentiment of Jürgen Habermas who once wrote, “[t]he thoughts and

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<sup>80</sup> See Perry, Michael. *The Idea of Human Rights*, p. 15-25.

<sup>81</sup> Dworkin, Ronald. *Life's Dominion*, p. 69-83.

<sup>82</sup> For further examples, see David Gauthier, *Morals by Agreement* and John Rawls, *A Theory of Justice* and “The Law of Peoples”. Both authors have applied their versions of contractarianism to the idea of basic human rights.

expectations directed toward the common good have, after metaphysics has collapsed, only an unstable status.”<sup>83</sup>

Few have endorsed this sort of view more forcefully and more convincingly than the American pragmatist Richard Rorty. But even on a view as skeptical of moral authority as Rorty’s, the idea of human rights can find not only a place, but also validity. Rorty has described his pragmatist philosophy as one that seeks to abandon what he calls ‘human rights foundationalism’ and focus instead on “making our own culture – the human rights culture – more self-conscious and more powerful, rather than demonstrating its superiority to other cultures by an appeal to something transcultural.”<sup>84</sup> We can return to Uniacke’s brief discussion of human rights to understand the pragmatist’s critique and solution to the problem of grounding the validity of the right to life.

Uniacke remarks in a footnote that, “[f]or convenience, and following accepted convention, [she will] use ‘human rights’ to refer to those moral rights that we are said to possess by virtue of the types of beings we are.”<sup>85</sup> These rights therefore apply to all human beings, and are thus universal in their scope. However, as I described above, Uniacke does not believe that human rights are unconditional, for they can be forfeited if we conduct ourselves unjustly (e.g. violating another human being’s right to life). She writes, “[n]atural rights are grounded in our nature and are conditional rights; their continued possession, by those who possess these rights in virtue of their nature, is

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<sup>83</sup> Habermas, Jürgen. “Transcendence from Within, Transcendence in this World”, p. 209.

<sup>84</sup> Rorty, Richard. “Human Right, Rationality, and Sentimentality”, p. 117.

<sup>85</sup> Uniacke, p. 195-196.

conditional on conduct.”<sup>86</sup> For Uniacke then, in order for the basic human right to life to obtain, it is necessary that one behaves in the appropriate way and, obviously, be a human being. On this view, there is some feature of human nature common to all human beings that (along with their just conduct) grounds their right to life.

Uniacke, in ‘following accepted convention’, endorses a project that Rorty has described as, “spelling out what all and only the featherless bipeds have in common, thereby explaining what is essential to being human.”<sup>87</sup> But as Rorty explains in his fascinating book *Philosophy and Social Hope*, theorists like Uniacke “have trouble spelling out what this commonality consists of.”<sup>88</sup> Rorty therefore believes that there is no non-circular way of defending the claim that we have an obligation to help all human beings just as we have an obligation to help those closest to us. He claims that this position, “has never been backed up by an argument based on neutral premises, and it never will be.”<sup>89</sup> Rorty believes that the current widespread belief in human rights is a product of contingent historical and cultural circumstances. On this view, appeals to an independent moral truth about human existence are fruitless and have provided no increase in any sort of ‘moral knowledge’. Rorty comments, “[s]ince no useful work seems to be done by insisting on a purportedly ahistorical human nature, there probably is no such nature.”<sup>90</sup>

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<sup>86</sup> Uniacke, p. 210.

<sup>87</sup> Rorty, “Human Rights, Rationality and Sentimentality”, p. 114.

<sup>88</sup> Rorty, *Philosophy and Social Hope*, p. 86.

<sup>89</sup> Rorty, “Human Rights, Rationality and Sentimentality”, p. 125.

<sup>90</sup> Rorty, “Human Rights, Rationality and Sentimentality”, p. 119.

Rorty therefore suggests we give up the search for commonality, and work instead “on our ability to make the particular little things that divide us seem unimportant – not by comparing them with the one big thing that unites us but by comparing them with other little things.”<sup>91</sup> This can be achieved not only by sharing our sentimental stories with other cultures, but also drawing on philosophy to “summarize our cultural intuitions about the right thing to do in various situations.”<sup>92</sup> The philosophical idea of human rights is one such way of summarizing our historically and culturally contingent moral intuitions. Human rights do not reflect any sort of moral truth on this view, but that does not mean they cannot find validity and normative force in their social construction. Thus even on the pragmatic and historicist view of morality, the entrenchment and recognition of universal basic human rights is not impossible.<sup>93</sup>

There are a couple of final points I would like to discuss about the justification of the right to life as it relates to the chief aim of the present discussion. First, there are those who will not only find the idea of human rights to be groundless, but may also find themselves skeptical of any measure of force the moral point of view might have. The complete moral skeptic will contend not only that human rights are meaningless, but also that morality does not apply to warfare, since morality cannot apply to anything. As far as the moral evaluation of warfare is concerned, this kind of complete moral skeptic will in effect share the same evaluation of the relationship between war and morality as the

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<sup>91</sup> Rorty, *Philosophy and Social Hope*, p. 86.

<sup>92</sup> Rorty, “Human Rights, Rationality and Sentimentality”, p. 117.

<sup>93</sup> To forestall any confusion, let me be clear that I am in no way endorsing Rorty’s pragmatic perspective on morality or on human rights. The point I am trying to draw attention to is that it may not be necessary to philosophically ground the idea of human rights in order for them to have force or plausibility.

political realist. Recall from above that the political realist believes that morality does not apply to war since its concerns must be subsumed by concerns for power and national interest. I explained that the political realist who insists that morality does not apply to individuals in war is essentially reduced to a moral skeptic since he is unable to fully appreciate that the moral point of view must apply to war if it applies to the welfare of human beings. This consequence might impact and change the views of certain political realists, but this type of reply will of course have no impact on the complete moral skeptic.

I confess that I find myself unable to respond adequately to the complete moral skeptic. Virtually no aspect of this project could get off the ground without sensitivity to the welfare of human beings. More importantly, I must make clear that the main goal of this thesis is to establish what theoretical consequences follow for the morality of warfare *if* we accept the principle of self-defence. To this end, whether or not I have here established sufficient grounds for accepting the right to life and the positive right to self-defence is irrelevant. For if it can be demonstrated that a commitment to the positive right to self-defence is not consistent with an absolute moral objection to war, the chief aim of this project will have succeeded.

Finally, as for Uniacke's assertion that the basic human right to life is conditional upon our just conduct, this seems to me a reasonable suggestion for those who advocate human rights. Michael Perry agrees that even the most basic human rights cannot be absolute. Perry considers the basic human right not to be tortured. He asks, "[i]s it really the case that there are no imaginable conditions under which it would be morally

permissible to subject a person to torture?...the claim that the moral right not to be subjected to torture is absolute or unconditional is, for many persons deeply counterintuitive.”<sup>94</sup> Perry suggests an example whereby a terrorist has set up a bomb that will destroy an entire city, and we will only be able to locate the bomb if the terrorist is tortured. Surely to withhold torturing the terrorist is to give no weight at all to consequentialist moral reasoning, and could only be described as fanatical. Any moral perspective that can give no weight to consequentialist reasoning is insensitive to the moral complexities of human existence. Human rights certainly ought to be conditional - not absolute, and as Perry comments, “whether A ought not to be done to a *particular* human being, or to *particular* human beings, might well depend on various particularities of context, such that it would be mistaken to say that A absolutely – unconditionally – ought not to be done to any human being, that it may not be done no matter what the particularities of context.”<sup>95</sup>

It seems correct then, to agree with Uniacke that whatever the basis of human rights might be, it is best to consider them conditional and not absolute. Uniacke’s suggestion that in terms of the principle of self-defence, human beings forfeit their right to life upon violating the right to life of others is therefore both a plausible and reasonable scope of the human right to life.<sup>96</sup>

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<sup>94</sup> Perry, Michael. *The Idea of Human Rights*, p. 94.

<sup>95</sup> Perry, Michael. *The Idea of Human Rights*, p. 93.

<sup>96</sup> This is not to say that there may not be other conditions under which a right to life can be forfeited. It is certainly possible that an individual may forfeit their right to life in some other way than violating another person’s right to life, but in order to exercise lethal force against that person *in self-defence*, that individual must have forfeited her right to life in virtue of violating someone’s else’s right to life.

### Fullinwider's Position Revisited

We have seen how there are a number of ways we can justify a belief in and moral commitment to universal human rights, including the right to life.<sup>97</sup> Having established the plausibility of the claim that human beings possess a right to life conditional upon our just conduct, we can now accept Uniacke's basis for her account of the PSD. The task of the following chapter will be to move forward in our analysis and apply Uniacke's account of the PSD to the particulars of war.

In our preliminary evaluation of Fullinwider's view I pointed out three issues that demanded greater clarification. They are the justification of the positive right to self-defence, the moral constraints on self-defensive conduct, and the question of whether the PSD is meant to serve as an analogy for nations at war, or as a direct justification for the right of individuals in war to kill enemy combatants. In adopting and revising Uniacke's account of self-defence in support of Fullinwider's, we have found a rigorous explanation of what grounds the positive right to self-defence and what moral constraints restrict its conduct.

Uniacke's account of the PSD fits nicely with Fullinwider's own. Both authors insist that only those who pose the immediate threat can be killed in self-defence. Fullinwider also shares Uniacke's contention that the mental state of the unjust immediate threat is not relevant to the positive right of self-defence – so long as the victim's right to life has been violated by the unjust immediate threat, that threat has forfeited his right to life and can justifiably be killed according to the various moral

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<sup>97</sup> I assume that if we accept the legitimacy of basic human rights, it is necessary that one of those rights be the right to life.



constraints I discussed above. I want now to address the issue of what role the PSD occupies in the moral evaluation of warfare.

As I have mentioned, there is some ambiguity in Fullinwider's analysis as to what role that the principle of self-defence plays in the morality of warfare. At one point in his analysis, Fullinwider claims that, "a nation may justifiably kill in self-defence."<sup>98</sup> This quotation would seem to indicate that nations can wage war in self-defence by *analogy* to the interpersonal situation of Smith and Jones. But Fullinwider is also clear about the following: "[t]he active combatants, their arms, ammunition, war machines and facilities, are the legitimate targets of intentional destruction."<sup>99</sup> This quote suggests that it is the combatants who pose an immediate threat that can be killed in self-defence, not the nation for which they fight. How then should we interpret Fullinwider's thesis on the role of the PSD in evaluating the morality of war?

In fact, it is not necessary to labour over the question of what Fullinwider had in mind, because the analogical interpretation is not sound. Richard Norman explains the failure of the analogical interpretation in his discussion of the principle of self-defence and its relationship to the morality of warfare. Although Norman's account of self-defence is significantly different than the account I am endorsing, his criticism of the analogy is not at odds with Uniacke's explication of the PSD. Norman writes:

as the defence of the individual's right to life and liberty will justify overriding the attacker's right to life and liberty, so also the defence of the community's rights to territorial integrity and political sovereignty will justify overriding the aggressor community's rights to territorial integrity and political sovereignty. That, however, is not, of course, what we were

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<sup>98</sup> Fullinwider, p. 94.

<sup>99</sup> Fullinwider, p. 94.

supposed to be arguing for. We needed a justification for *killing* to defend the community. The analogy, understood strictly as an analogy, cannot provide one.<sup>100</sup>

The PSD cannot analogically justify killing human beings in defence of nations. As Norman's comment illustrates, according to the analogy the defending nation at most has the right to attack with lethal force the territorial integrity and political sovereignty of the nation that constitutes the unjust immediate threat. Whatever this might mean, it certainly does not provide a clear or obvious justification for a nation to kill human beings.

Jeffrie Murphy arrived at a similar conclusion before Fullinwider even wrote his piece. Murphy shares Fullinwider's view that war can only ever be justified if fought according to the principle of self-defence. Murphy comments:

[t]hough I am obviously inclined to regard the concept of self-defence as having an important application in the context of war, I am skeptical that the 'self' to be legitimately defended must always be the nation or the state. It is at least worth considering the possibility that the only moral problems arising in war are the oldest and most common and most important – namely, are human beings being hurt and killed, who are they, and why are they?<sup>101</sup>

I suggest that Murphy's comment accurately reflects the proper role of the PSD in the morality of warfare. That role is not to guide us by analogy, but to provide a direct justification for the killing of unjust immediate threats in war.

In the following chapter I outline the war of self-defence and address several objections to its possibility. In doing so, I will draw from Robert Fullinwider's account of the principle of self-defence and its application to warfare. As I have argued,

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<sup>100</sup> Norman, Richard. *Ethics, Killing, and War*, p. 134.

<sup>101</sup> Murphy, p. 539.

Fullinwider's position needs to be strengthened by a fuller account of the PSD, and I will utilize much of Suzanne Uniacke's account in articulating the morality of warfare grounded on the PSD. It will become clear that very few wars can ever be justified by appeal to the principle of self-defence. Nevertheless, my argument will maintain that acceptance of this principle will entail an acceptance that certain wars, wars conducted according to very stringent moral standards, can be morally justified.

-- Chapter 2 --

The Self-Defensive War

Recourse to War: *Jus ad bellum*

Following the traditional just war theory model, it will be helpful in detailing the war of self-defence<sup>102</sup> if we distinguish between the conditions necessary to initiate war (*jus ad bellum*) and the legitimate conduct of combatants within a war (*jus in bello*). As we saw earlier in the distinction between what constitutes instances of self-defence and what constitutes instances of justified self-defence, we can also observe the distinction between what conditions are required for a self-defensive war to be initiated, and what sort of conduct within the self-defensive war is permissible.

However, the similarity of the self-defensive war to the traditional just war begins and ends with this shared theoretical distinction. The conditions of *jus ad bellum* and *jus in bello* for the self-defensive war are significantly different from those of traditional just war theory. As I described in chapter 1, traditional just war theory specifies several conditions of *jus ad bellum* and *jus in bello* that must be fulfilled in order for a war to be considered morally acceptable. For example, traditional just war theory declares that in order for a war to be initiated, there must be a 'reasonable hope of success'. It is clear that this just war condition does not pertain to the initiation of a self-defensive war. The

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<sup>102</sup> I will sometimes refer to the 'war of self-defence' or the 'self-defensive war'. These terms refer to those wars that can be justified by appeal to the principle of interpersonal self-defence.

positive right to self-defence is not denied to a victim if that victim does not have a reasonable hope of defeating an unjust immediate threat. In other words, if there is even a slight chance that I can survive an attack on my life, since the threat I face has forfeited his or her right to life and my actions constitute an instance of permissible self-defence, I need not be concerned with the possibility that the odds may be overwhelmingly against me and that I may not defeat my opponent. The just war condition of 'reasonable hope of success' does not therefore apply to the self-defensive war. The self-defensive war will consequently have its own unique set of *jus ad bellum* and *jus in bello* conditions, which I will now explain.

In order to justify the initiation of a self-defensive war, one that is justified according to the principle of self-defence, the lives of individuals must be placed in jeopardy by the presence of unjust immediate threats. The self-defensive war is always defensive; it is a war that is fought in defence of persons' lives in order to resist, repel or ward off lethal attack. There is therefore only one condition of *jus ad bellum* for the self-defensive war – that the conditions required for justified lethal self-defence have been obtained, so that it is only by lethal force that unjust immediate threats can be resisted, repelled or warded off from destroying human lives.

In the context of the self-defensive war, it must of course be the case that significant numbers of persons are both being threatened and are threatening. If an individual or small group of individuals were to pose an unjust immediate threat to a single individual or small group, it would be inappropriate to define such a conflict as one that can create the conditions necessary for 'war'. In order for some conflict to be

considered a war, it must involve an armed conflict between “different nations or states or different groups within a nation or state.”<sup>103</sup> In war, such ‘groups’ are typically the armies that represent two or more separate populations of individuals that share a unique religious, cultural or political bond. Only when the armed forces of a population pose unjust immediate threats do the conditions of a self-defensive war obtain.<sup>104</sup>

It is immediately apparent that only the initiation of relatively few wars can be permissible on this view. Any war, for example, that is aggressive in its nature, which inflicts harm upon individuals for any purpose besides resisting, repelling or warding off unjust immediate threats, cannot be morally justified on this view. To attack such persons would be to kill beyond the scope of permissible self-defence, and could therefore not be justified by appeal to the PSD. For example, Iraq’s 1990 invasion of Kuwait could in no way be understood as a self-defensive war since it was certainly not justified according to the PSD. Iraq’s motivation in attacking the citizens of Kuwait was not to defend the lives of human beings, but to annex the territory and natural resources of a neighboring state. In killing out of conquest, the Iraqi army killed far beyond the scope of justified self-defence.

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<sup>103</sup> *The New Oxford English Dictionary*, p. 2080.

<sup>104</sup> There might certainly be circumstances of conflict more aptly defined as self-defensive ‘battles’ rather than ‘wars’. If, for example, a small, armed group were to attack some other group we might hesitate to call this type of conflict a war. Where the lines are exactly drawn is not my concern, my point is simply that in order for the conditions of the self-defensive *war* to obtain, the scale of the unjust immediate threat must reach a certain level. Again, this is not to say that self-defensive action is not justified if that scale is not reached, but only that such small defensive actions are not properly understood as self-defensive wars.

Furthermore, it is also impermissible on this view to initiate a preemptive military attack on an enemy that one suspects is about to attack. A preemptive attack on an enemy would also be to kill beyond the scope of self-defence since the target of such an attack does not present an unjust immediate threat. Israel's preemptive attack against Syria, Egypt, and Iraq in 1967 is one that cannot be justified by the PSD. It began a six-day war that was not self-defensive even though it was nominally initiated on such grounds. The threat of aggression alone is insufficient to warrant the exercise of lethal force in self-defence, since bellicose statements and aggressive posturing do not violate an individual's right to life. Again, war can only be justified according to the PSD when it is waged against unjust immediate threats in order to defend the lives of human beings.

An example will help make the circumstances of the self-defensive war more clear, and Frank de Roose suggests a useful hypothetical case from which to build on. He writes, "[s]uppose there exist two neighboring nuclear superpowers one of which, called Aggressia, suddenly and without being provoked launches a grand scale conventional invasion of the territory of the other power, called Defensia."<sup>105</sup> In this example, a nation's armed forces have attacked the citizens of another nation for some reason other than the defence of human lives against unjust immediate threats. Those combatants of Aggressia who pose unjust immediate threats to the citizens or combatants of Defensia have thus forfeited their right to life, and may therefore be targeted and killed in self-defence. Furthermore, as I discussed in the previous chapter, the positive right to self-defence extends to third parties. It is therefore not the case that unjust immediate threats

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<sup>105</sup> de Roose, p. 164.

can only be killed by their victims. Defensia's combatants can therefore coordinate their actions and kill in defence of others as will be necessary in a large-scale military conflict.<sup>106</sup>

Now, the constraints upon conduct within the self-defensive war are many, and I will discuss those below under the *jus in bello* conditions required by self-defensive wars. However, before we can move to a discussion of permissible conduct in the self-defensive war, we must face a powerful objection outlined by Richard Norman. Norman contends that the self-defensive war is not a possibility, since no war would ever come to pass if it was fought on the grounds of self-defence. Norman writes, “[i]f this principle were followed...wars would never begin. The attackers need never fire a shot, and the defenders would themselves have no justification for opening fire.”<sup>107</sup>

Suppose the government of Aggressia makes clear its intent to invade and annex the territory and resources of Defensia, but insist that they will not kill any citizen or combatant of Defensia unless they are met with lethal resistance. According to the PSD, combatants of Defensia are not morally permitted to attack the invading army with lethal force, since the invaders do not pose any unjust immediate threat. Combatants of Aggressia's invading army have not violated the right to life of Defensia's citizens, and have therefore not forfeited their own respective rights to life. If all nations invaded their enemies in this way, the conditions necessary for the self-defensive war to be initiated

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<sup>106</sup> Throughout this chapter and the next I will come back to the example of Aggressia and Defensia to further illustrate the details of the self-defensive war.

<sup>107</sup> Norman, p. 170.



would never obtain, and war could therefore never be justified on the principle of self-defence.

This is an interesting objection that must be adequately answered if we are to believe that war can be grounded on the principle of self-defence. Jeff McMahan argues that this criticism is unpersuasive, and suggests two responses in reply to it. First, according to McMahan, “even though the invading forces do not directly threaten anyone’s life, the threat they pose to the invaded country’s political independence is sufficiently serious to warrant a lethal defensive response...[i]t is arguable that the political independence of the state is...a value that the citizens may permissibly defend by lethal means.”<sup>108</sup> Recall from the previous chapter that lethal defensive force is only justified as a response to unjust immediate threats to persons’ lives. The use of lethal force in defence of the political independence of one’s nation-state can therefore only be justified if allowing a non-lethal army to move in and annex one’s territory and resources will immediately threaten one’s life.

This however does not seem a likely consequence of a non-lethal invasion. Rather, it seems more plausible that an invading army of this sort will spare the lives of its victims, perhaps exploiting them for labour purposes during their occupation. Furthermore, it stands to reason that the main motivation in launching a non-lethal invasion is precisely to avoid having to kill one’s enemies. Appealing once again to Jeffrie Murphy’s ‘reasonable belief’ criterion, it would not appear to be a reasonable belief that allowing a non-lethal army to invade one’s territory will necessarily lead to

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<sup>108</sup> McMahan, p. 196.

one being killed. There is therefore very weak support for the possibility that allowing a non-lethal army to invade one's territory will imminently lead to one's death. Thus, according to the account of self-defence that I have been defending, the lethal exercise of force against a non-lethal army in defence of the political independence of one's nation state cannot be justified. McMahan's first reply therefore fails to answer Norman's objection satisfactorily, since an attack on the political independence of one's nation state does not create the required conditions of justified self-defence.

McMahan's second reply is somewhat more helpful, but is in need of revision. McMahan contends that even if the threat to a country's political independence is not sufficient to warrant responses of lethal self-defence, it is the threat of lethal violence in response to resistance that provides a sufficient justification for the resort to lethal self-defence. McMahan asks us to consider what rights I might have against a burglar who enters my home and demands that unless I hand over my most valued possessions, he will shoot me in cold blood. McMahan contends that, "as soon as the thief structures the situation in such a way that the attempt to defend one's possessions automatically creates a need for self-defensive killing, one's right to self-defence is immediately activated. One is permitted to kill the thief even without first provoking him to attack by attempting a non-lethal defence of one's possessions."<sup>109</sup> Relating his suggestion back to the circumstance of war, McMahan adds, "since resistance is justified, the soldiers in effect confront a lethal threat that they may meet with lethal defensive force."<sup>110</sup>

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<sup>109</sup> McMahan, p. 196.

<sup>110</sup> McMahan, p. 196.

Let us suppose then that the combatants of Aggressia enter the territory of Defensia and make it clear they will attack no one unless they meet lethal resistance. It is clear that the citizens and combatants of Defensia cannot attack their invaders with lethal force out of self-defence. They can however, engage in a nation-wide campaign of non-violent resistance and civilian disobedience. This would involve various tactics ranging from the initiation of labour strikes to more daring endeavours such as standing in front of advancing tanks. Faced with systematic and spirited resistance of this sort, Aggressia's combatants and political leaders will be faced with two choices – attack and use lethal force against the citizens and combatants of Defensia, or retreat back into their own territory. If they choose to attack and use lethal force, they shall forfeit their right to life and the conditions of justified self-defence shall obtain. The citizens of Defensia can then initiate a military campaign in addition to their non-violent resistance movement against those combatants of Aggressia who constitute unjust immediate threats. The result will be a war fought according to the PSD against the invading army of Aggressia.

If the Aggression combatants choose not to fight, they will most likely find themselves without the resources needed to sustain their occupation and eventually be forced to retreat back to their own territory. This is the same conclusion Robert Holmes reaches in his discussion of non-violent resistance. In a passage meant to illuminate the obstacles a non-violent campaign would present to a cold war Soviet army invading the United States, he wrote the following:

Consider a population of 240 million persons committed to non-violent resistance against an invading army bent upon ruling the country. A large industrialized society like ours cannot be run, much less be run with the efficiency necessary to make it worthwhile to try to do so, without the

cooperation of its population. People are needed to run factories, grow food, collect trash, and perform thousands of other essential tasks...Deny to an invading army that support – as one can through passive resistance, strikes, boycotts, civil disobedience, and other non-violent techniques – and you render it virtually incapable of attaining its objectives.<sup>111</sup>

Holmes' suggestion is equally applicable to the hypothetical invasion of Aggressia. Unable to continue their occupation without Defensia's cooperation, Aggressia's combatants would have no choice but to eventually retreat. Obviously, if this were the outcome of the conflict between Aggressia and Defensia, and Aggressia attempted to annex Defensia with only the *threat* of force, no war would come to pass. But this does not prove that war cannot be justified by the PSD, only that in some circumstances non-violent resistance can prevent the outbreak of war.

The example does admittedly begin to sound far-fetched, perhaps even fantastical. The reason for this is that Norman's hypothetical scenario - an invading army intent on annexing some nation-state without firing a shot - is itself quite unlikely. It seems dubious that a nation, willing to expend the massive resources involved in a sustained military campaign intent on occupying and ruling over a foreign territory, would do so without weakening the defensive capabilities of their target first. Yet, any effective weakening of defensive capabilities would certainly involve the foreseeable killing of Defensia's citizens, provoking the initiation of a self-defensive war. In fact, it seems clear that any sort of invasion like this would be destined to fail without the use of lethal force. The decision to then resort to force will, as McMahan suggests, create the conditions of justified self-defence.

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<sup>111</sup> Holmes, p. 273.

We have now determined the conditions under which a war of self-defence may justifiably be initiated. When the defence of human lives is necessary against combatants or soldiers that constitute unjust immediate threats, defensive lethal force may be used to resist, repel or ward off those threats. As the example of Aggressia and Defensia illustrates, the self-defensive war must be in defence of human lives, and only a situation that immediately threatens the basic human rights possessed by those defending themselves can create the conditions necessary for the self-defensive war<sup>112</sup>.

However, although the PSD has been shown to justify the initiation of a self-defensive war, it must also be proved that conduct within war can be justified by this principle. If the conduct of combatants in war cannot be justified on the PSD, then war itself cannot be justified by this principle. For the self-defensive war to be justified, both aspects of war - the initiation and conduct within - must be permissible according to the PSD. I turn now to an examination of permissible conduct within a self-defensive war, and explain how such conduct can be justified by the principle of self-defence.

### **Conduct Within War: *Jus in bello***

There are two main questions that need to be answered in terms of permissible conduct in the self-defensive war: who can legitimately be targeted and killed and what moral constraints exist upon the exercise of military force? The first question has traditionally been framed in the distinction between the innocent and non-innocent, the

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<sup>112</sup> The self-defensive war might also be justified within a nation-state, if for example the government of that state initiated a policy of genocide or ethnic cleansing against a particular cultural or racial group living under its authority.

former of which are said to be morally immune to attack, the latter of which are legitimate targets of lethal force during wartime. For many in the just war theory tradition, this distinction corresponds to the distinction between combatants and non-combatants. One of the principal conditions of the just war is that only combatants may be intentionally attacked and killed. The distinction between innocent and non-innocent can also be applied to the self-defensive war, but we shall see that in the framework of these types of war the distinction does not correspond to that between combatants and non-combatants.

Who precisely is innocent and immune to attack in the self-defensive war, and what makes them so? Who, in other words, are the individuals that pose unjust immediate threats and can therefore be killed in self-defence? The question of wartime innocence is one of the most controversial and popular topics of discussion in the morality of warfare. Robert Holmes has gone so far as claiming that “[n]othing is more central to the moral assessment of war, and this issue is at the heart of the question whether the waging of war can be justified...”<sup>113</sup> It is therefore a topic well worth investigating, and in this section I will examine some of the explanations of wartime innocence that have been put forth. An examination of these views will help make clear the unique distinction between the innocent and non-innocent that we find in the self-defensive war, which I will detail toward the end of this section.

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<sup>113</sup> Holmes, p. 183.

### Innocence and the Self-Defensive War

The non-innocent in the self-defensive war, those who can legitimately be targeted and killed are only those who pose unjust immediate threats. Recall that an unjust immediate threat is one that violates the right to life of another human being(s) and will most likely succeed in destroying the life of that human being(s). We can therefore immediately discount two senses of innocence that have no bearing on the question of who can be killed in the self-defensive war. The first is the unconditional sense of innocence, innocence 'simpliciter' as Jeffrie Murphy puts it. By this I mean the sense in which a person is of pure heart, wishes no ill toward other human beings, and generally behaves in a way deserving of moral praise. This conception of innocence cannot be relevant to the question of who can legitimately be killed in a self-defensive war.

For consider as an example an elderly woman who generally minds her own business and resides peacefully in a small village. Secretly, this octogenarian carries great hate inside her soul, and longs for her nation to conduct an aggressive war with the purposes of annihilating the citizens of some neighboring state. Surely this woman, who is arguably non-innocent in the unconditional moral sense, cannot be a legitimate target in the self-defensive war. In order for a non-innocent to lose her immunity from lethal attack, it must be the case that she poses an unjust immediate threat.

There is no such threat in the case outlined above. Her hate alone presents no immediate threat to anyone's life, and cannot violate another individual's right to life. The character of this octogenarian may be morally corrupt, but this cannot justify attacking her in self-defence, yet alone with lethal force. It would certainly be fair to say

that she is morally non-innocent, but it is clear that moral non-innocence of this sort is not sufficient for the loss of one's right to life, and of immunity from lethal attack. A sense of innocence relevant to the war fought in self-defence must in some way be related to a person's unjust conduct in the war, not just their mental state or character defects.

The second sense of innocence that is also of little help in determining who can be killed in the self-defensive war is the legal sense. Although there are some international laws against specific war crimes, the law is often silent in circumstances of wartime non-innocence. Jeffrie Murphy picks up on this point writing,

Those who have written on the topic of protecting innocents in war would not want to regard the killing of an enemy soldier engaged in an attack against a fortified position as a case of killing the innocent. He is surely, in the right sense (whatever that is), among the guilty (or, at least, among the non-innocent) and is thus a fitting object for violent death. But he is in no sense *legally* guilty. There are no rules of international law prohibiting what he is doing....<sup>114</sup>

This is not to say that international laws will never be written to declare legal non-innocence in such a case, but since there are currently few laws that speak to the innocence of combatants in situations similar to the one outlined above, we cannot go far in determining who is innocent and who is non-innocent in the self-defensive war according to the legal definition of those terms.

One of the most influential explanations of wartime innocence comes from an analysis of war by G.E.M. Anscombe. Recall my brief discussion of Anscombe's view in chapter 1. Anscombe believes that the right to war against aggressive combatants is similar to the coercive power of governments to restrain and put down internal

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<sup>114</sup> Murphy, p. 531



dissension. Anscombe claims that the right to attack enemy soldiers “does belong to rulers precisely because of the threat of violent coercion exercised by those in authority which is essential to the existence of human societies.”<sup>115</sup> In this way, aggressive combatants are understood as acting in much the same way as domestic criminals. Anscombe endorses the protection of the innocent in war, writing “[t]he principal wickedness which is a temptation to those engaged in warfare is the killing of the innocent.”<sup>116</sup> Anscombe next describes how we can determine the non-innocent in war: “[w]hat is required for the people attacked to be non-innocent in the relevant sense, is that they should be engaged in an objectively unjust proceeding which the attacker has the right to make his concern; or – the commonest case – should be unjustly attacking him.”<sup>117</sup>

Conversely, those persons who do not contribute to the war effort, who are simply “maintaining the life of the country”<sup>118</sup> are considered by Anscombe to be innocent and immune to attack. Anscombe explains in more detail that the innocent are “not fighting and are not engaged in supplying those who are with the means of fighting.”<sup>119</sup> This would include the elderly, children, and all those who are simply going about their normal lives as best they can during time of war. Anscombe admits there may be

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<sup>115</sup> Anscombe, Elizabeth. “War and Murder”, p. 45.

<sup>116</sup> Anscombe, p. 44.

<sup>117</sup> Anscombe, p. 45.

<sup>118</sup> Anscombe, p. 52.

<sup>119</sup> Anscombe, *Mr. Truman's Degree*, p. 67.

borderline cases, but claims that “the fact of twilight does not mean you cannot tell day from night.”<sup>120</sup>

Can Anscombe’s view of wartime innocence / non-innocence be applied to the war of self-defence? It would seem not, since Anscombe’s definition of wartime non-innocence is wider than that which the principle of self-defence can accept. If the innocent in war are all those who are ‘not fighting or engaged in supplying those who are with the means of fighting’, then of course all those who are fighting and engaged in supplying those combatants are non-innocent in war, and can be legitimately attacked and killed.

Now, as A.J. Coates quite correctly points out, “the peaceful activities of civil society become militarized in war.”<sup>121</sup> Civilians during wartime often perform tasks that engage them in supplying the means of warfare. Consider then, an air-traffic controller whose duty is to coordinate the landing of planes that bring military equipment into his warring nation. On Anscombe’s account, the air-traffic controller, supplying the means of fighting, is appropriately regarded as non-innocent and liable to attack. Or consider an automobile factory worker, whose plant is converted into one that makes tanks. The factory worker, like the air-traffic controller, is contributing to the war effort and supplying the means of warfare, and can therefore be permissibly attacked and killed on Anscombe’s view.

Yet neither the air-traffic controller nor the factory worker can be considered non-innocent according to the principle of self-defence. Whatever indirect threat each may

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<sup>120</sup> Anscombe, p. 52.

<sup>121</sup> Coates, A.J., *The Ethics of War*, p. 238.

pose, neither one can be understood as constituting an unjust immediate threat, violating the right to life of a human being. Thus no matter how much each of these citizens may support an aggressive war their nation has undertaken neither can be killed in self-defence. Anscombe's perspective on wartime non-innocence, typical of the just war tradition, is too broad to help us specify who can be killed in the war of self-defence.

Michael Walzer, also writing in the just war theory tradition, carries the torch from Anscombe's view to his own theory of wartime innocence. Walzer's discussion of wartime innocence is closer to what we're looking for, for he defines the innocent as all those who "have done nothing to lose their rights."<sup>122</sup> Persons who have done nothing to lose their rights are granted moral immunity in war – they cannot be legitimately attacked<sup>123</sup>. Walzer gives as an example those persons who will cook food for an army. He writes, "[a]n army, to be sure, has an enormous belly, and it must be fed if it is to fight. But it is not its belly but its arms that make it an army. Those men and women who supply its belly are doing nothing peculiarly warlike."<sup>124</sup>

In contrast, are the men and woman who are trained to use arms and fight – the combatants. It is the fact that the soldier or combatant has been made into a dangerous person through his own will that makes him non-innocent in the relevant sense.<sup>125</sup> According to Walzer then, combatants are non-innocent because in their role as soldiers

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<sup>122</sup> Walzer, Michael. *Just and Unjust Wars*, p. 145.

<sup>123</sup> Although Walzer recognizes the immunity of innocents as he defines them, he does not believe that innocence to be absolute. He notes that there is a limit to the due care they are entitled to and claims, "the absolute rule against attacking civilians does not apply." See Walzer, p. 156.

<sup>124</sup> Walzer, p. 145.

<sup>125</sup> Walzer, p. 145.

they lose their right to immunity from attack. He writes, “we are all immune to start with; our right not to be attacked is a feature of normal human relationships. That right is lost by those who bear arms ‘effectively’ because they pose a danger to other people.”<sup>126</sup>

It might seem initially that Walzer’s definition of innocence in war is not discernible from Anscombe’s. An army’s cooks, although partaking in an occupation that is not necessarily warlike, nevertheless become essential to the war effort through their labour. But Walzer’s justification for their innocence is different than Anscombe’s. It is not simply the fact that non-combatants’ work is not intrinsically military, or that it is the same work they would be doing during peacetime. Rather, what distinguishes their innocence and moral immunity is the fact that they have done nothing to lose their rights. But what exactly does it mean, according to Walzer, to say that soldiers are non-innocent and subject to lethal force because they have lost their rights?

Walzer provides us with two clues as to how he understands the forfeiture of rights. First, the soldier has *allowed* herself to become a dangerous individual, and is therefore responsible for her loss of moral immunity. The soldier has put herself in the position of becoming a lethal weapon trained to kill, and Walzer believes that the soldier bears ultimate responsibility for acting in this role. Second, it is also in virtue of their activities during war that soldiers lose their moral immunity from attack. The soldier is engaged in attacking or threatening to attack other persons, and therefore forfeits her

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<sup>126</sup> Walzer, p. 145.

moral immunity from attack. Walzer writes, “[w]e try to draw a line between those who have lost their rights because of their warlike activities and those who have not.”<sup>127</sup>

Walzer’s first reason explaining why combatants are non-innocent and have lost their rights to immunity is quite dubious irrespective of what the principle of self-defence might say about it. We can grant to Walzer the claim that soldiers have typically consented to being made into dangerous persons, capable of killing other human beings. But why should their consent to learning to fight and to being armed remove their right not to be attacked? Consider the domestic example of a policeman in comparison. The policeman, like the soldier, has been trained to kill and harm human beings. The policeman has also been armed, and in virtue of being so is virtually as dangerous as a soldier. But surely the policeman has not lost his right not to be killed. If the policeman were to intentionally attack an innocent man with lethal force, then we could legitimately claim that he has lost his right to immunity. But it is not simply in virtue of being trained to kill, or of being made into a dangerous man, that he loses his immunity to attack.

Walzer might reply by claiming that the soldier loses his moral immunity to attack because unlike the policeman, the soldier has been trained for the single purpose of killing and harming human beings. The policeman has been trained for the purpose of providing security and help to human beings, and his ability to inflict lethal harm is not his primary function. However, it can be similarly argued that it is not the soldier’s primary function to kill or injure other human beings either. Soldiers are trained for various duties that range from maintaining lines of communication between soldiers and

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<sup>127</sup> Walzer, p. 145.

their commanders, healing the sick and wounded, or even for the noble purpose of protecting human beings (as is the case for United Nations Peacekeepers). Thus it is often the case that the soldier's role as a 'dangerous person' is secondary to their primary role. For these reasons, the suggestion that soldiers or combatants lose their right to immunity from attack in virtue of their role as individuals trained in warfare cannot be correct.

Walzer's second justification as to why combatants lose their moral immunity seems to be on the more correct track to help specify who can be killed in a war fought on the PSD. This is the claim that soldiers or combatants lose their immunity from attack because they pose a threat to others, or are engaged in warfare and attacking other human beings. Note however that there is a significant difference between posing a threat to another in virtue of being a soldier, and in actually carrying out that threat in an attempt to harm someone. An example may help clarify the difference. A combat jet-fighter mechanic is a combatant as I have defined them, i.e. he is a member of an armed military force who in addition to repairing fighter planes has been trained to kill human beings and is presumably armed with lethal force. Contrast this soldier with the jet-fighter pilot whom the mechanic supports. The pilot, also trained to kill is not only a threat to other human beings, but when he flies out and drops bombs on enemy combatants actually engages in the destruction of human beings. For Walzer, both soldiers are relevantly non-innocent, and have lost their rights to moral immunity from attack.

The problem with applying Walzer's definition of wartime innocence to the self-defensive war is that according to the PSD, Walzer's theory misconceives under what

circumstances the combatant conditionally loses his rights. In terms of his rights, the mechanic is no different than the policeman we discussed above. Both are armed and trained to kill, and both are correctly considered dangerous individuals that can pose a threat. But neither one, simply in virtue of being a capable threat, constitutes an unjust immediate threat, one who has violated the right to life of another human being. According to the PSD, this characteristic is necessary in order for a combatant to be non-innocent in war, and liable to attack.<sup>128</sup>

Returning to Fullinwider's specification of who can be killed in war, we are now in a position to clear up some ambiguities in his analysis. Fullinwider states at one point that the non-innocents in war are "the nation's armed forces" and the "active combatants", but then also defines them as only those who "pose the immediate and direct jeopardy."<sup>129</sup> It is clear that the non-innocent according to the PSD cannot be every soldier in a nation's armed forces, for many combatants (as the jet-fighter mechanic example illustrates) are innocent according to the principle of self-defence (they do not pose unjust immediate threats). Fullinwider's term 'active combatants' is closer to the definition of non-innocent we are looking for. The 'active combatants', those who pose

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<sup>128</sup> Walzer and I both generally identify combatants with soldiers. However, we disagree on the important point of which soldiers can legitimately be killed during warfare. Walzer believes that all soldiers or combatants are legitimate targets of lethal force. I suggest instead that although all combatants may pose a threat in virtue of their role as soldiers, many of them do not constitute unjust immediate threats and have done nothing to lose their right to immunity from attack. The difference between Walzer's view on wartime non-innocence and the view of the PSD highlights the fact that the moral standards of self-defensive wars are much more stringent than just wars. According to just war theory, all combatants are legitimate targets during war, even if they are inactive. It follows that war can be justified more easily by traditional just war theory standards than by the standards of the PSD.

<sup>129</sup> Fullinwider, p. 94

unjust immediate threats, are those who like the combat pilot, or the frontline soldier are unjust immediate threats engaged in the destruction of human beings.<sup>130</sup>

Conversely then, all those combatants who do not pose an unjust immediate threat are innocent in the self-defensive war, and cannot legitimately be attacked and killed. This would typically include mechanics, truck drivers, medics, rescue personnel, translators, ship hands, etc. It also follows, *a fortiori*, that all civilians, including politicians responsible for the initiation and conduct of war, are considered innocent and morally immune from attack in the self-defensive war. This remains the case regardless of their culpability in terms of initiating or continuing the war. It is certainly the case that these civilians may be punished on grounds of their moral and perhaps legal non-innocence, but they cannot legitimately be killed in self-defence. Virtually all non-combatants retain their moral immunity from attack in the self-defensive war.<sup>131</sup>

There will however be some combatants (and possibly civilians) that do not fall easily into the innocent / non-innocent category. These are combatants who fall under Uniacke's discussion of contingent threats. If a combatant merely exposes me to an immediate threat, then that combatant is a contingent threat, and to kill him would be to

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<sup>130</sup> To be clear, the combat pilot or the frontline soldier are only liable to attack and considered non-innocent when they pose an unjust immediate threat, and have forfeited their right to life. As explained in chapter 1, the right to life is conditional upon just conduct. Therefore the combat pilot and frontline soldier regain their conditional right to life when they cease to pose an unjust immediate threat. When these combatants are at rest for example, they retain their immunity from attack just as ordinary civilians do, and from the point of view of self-defence, they are then regarded as innocents in war.

<sup>131</sup> The exceptions might be guerillas or terrorists; non-combatants who are not part of any organized or legitimate armed forces but nevertheless constitute an unjust immediate threat.



kill in the course of self-defence. This combatant would therefore be innocent according to the PSD, and therefore morally immune from attack. An example of a contingent threat in war would be the following. Imagine a situation where a small group of Defensia's soldiers are concealing themselves and a few civilians inside the remains of a recently bombarded village. Outside, attack helicopters from Aggressia's army are flying overhead searching (and seeking to destroy) any individuals their initial attack may have spared. Perhaps out of fear or panic, one of the younger soldiers of Defensia's army runs out of the house into the open streets screaming and drawing attention to himself. If the young man is not stopped, he will surely draw a lethal response to himself and to the remaining soldiers and civilians that are trying to survive.

The young combatant is a contingent threat – his actions will present others with an unjust immediate threat against their lives. That unjust threat would never materialize if the boy were shot before he attracts the attention of the attack helicopters. An attack on the boy is nevertheless unjustified according to the principle of self-defence, which maintains that attacking a contingent threat is to kill in the course of self-defence, and hence, in self-preservation. As I discussed in the previous chapter, force used against a contingent threat is properly understood as forced used in the *course* of self-defence not *in* self-defence, provided “a contingent threat merely exposes me to something or someone else which in the circumstances we identify as the immediate threat.”<sup>132</sup>

Conversely, some combatants who may not be obviously engaged in destroying human beings may nevertheless be considered immediate threats through their actions. A

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<sup>132</sup> Uniacke, p. 168.

pilot, for example, who flies a reconnaissance mission over his enemy will often pose an immediate threat, and justifiably be killed in self-defence. The reconnaissance pilot will imminently destroy or likely destroy his enemy if he relays their location to weaponry that is stationed elsewhere. Like the accomplice discussed in the previous chapter who pins me down preventing me from escape, the reconnaissance pilot poses an unjust immediate threat that may be resisted with lethal force. This follows since the pilot is in effect using remote weaponry to destroy his enemy. Unlike the frightened combatant outlined above, the reconnaissance pilot does not merely expose his targets to a distinct immediate threat, but poses an immediate threat himself. Note that lethal force is only justified in this instance since it is necessary to destroy the unjust immediate threat to survive. If the potential victims can conceal themselves from the reconnaissance pilot successfully, they are not justified in exercising lethal force against him.

### **The Primacy of Material Non-Innocence**

I have already described how moral non-innocence is not sufficient according to the PSD to forfeit one's immunity from attack. The octogenarian who wishes to see her enemies mercilessly crushed, the political leader who initiates and oversees the conduct of an aggressive war, and the (inactive) combatant who takes pleasure in seeing his enemies suffer are all morally non-innocent. They are all morally culpable in varying degrees, and may well deserve to be punished for their actions. None of them, however, unless they also pose unjust immediate threats, are relevantly non-innocent insofar as their immunity in the war of self-defence is concerned.

These citizens, the morally non-innocent, are nevertheless *materially* innocent. I borrow the distinction between ‘moral’ and ‘material’ innocence from Jeff McMahan’s discussion in “Innocence, Self-Defence, and Killing in War”, and it is deserving of greater elaboration. In the context of the self-defensive war, both combatants and non-combatants can potentially be morally non-innocent of the war. Following Robert Holmes, I believe there are degrees of moral non-innocence. Holmes explains that the concept of, “[n]on-innocence encompasses both guilt and responsibility.”<sup>133</sup> In this way, politicians who direct an aggressive war are rightly considered morally non-innocent, since they are the cause and initiators of war. Soldiers, although not responsible for the initiation and continuance of war, are nevertheless guilty of their participation in an aggressive war and are also morally non-innocent. However, these persons are not necessarily materially non-innocent, since it is only those who pose an unjust immediate threat that are materially non-innocent, and liable to lethal attack.<sup>134</sup>

In fact, the morally innocent can be found even deeper in the civilian population. Consider again the embittered and warmongering octogenarian I discussed above. She is neither guilty of nor responsible for the initiation of a war or for her conduct in a war. Nevertheless, in a weak sense, because of her internal attitudes toward the war and toward her enemies, she can be characterized as morally non-innocent of the war. This suggests that there are degrees of moral non-innocence. The greater one’s responsibility

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<sup>133</sup> Holmes, p. 185.

<sup>134</sup> At the end of chapter three I have included an appendix that displays the various permutations of moral innocence / non-innocence, material innocence / material non-innocence, combatant and non-combatant. Combinations of these features yield eight general categories of individuals in war, six of which persons in wartime can actually fall in. See Appendix A.

for the war and immoral conduct within the war, the greater degree to which one is morally non-innocent of the war. The same can be said of material non-innocence. A particular combatant may be materially non-innocent to a greater extent than another if he is engaged in the destruction of larger numbers of human beings, or if he is perhaps more directly responsible for the attack on his targets (perhaps the bombardier is more materially guilty than the pilot who flies the plane over their target). Nevertheless, all those who pose an unjust immediate threat to the lives of others are equally liable to lethal attack in self-defence.

There are two important consequences that follow from the distinction between innocent and non-innocent I have here articulated. The first consequence is also perhaps the most controversial aspect of the self-defensive war, and it is the claim that reluctant or even conscripted soldiers may justifiably be killed in virtue of their material non-innocence. Recall from Uniacke's discussion that non-culpable and even passive threats that violate the right to life of human beings can nevertheless pose an unjust immediate threat and be justifiably killed in lethal self-defence. As I noted above, "the positive right to use lethal force against a culpable threat *does not derive* from the aggressor's culpability: it derives from the fact that he or she is an unjust immediate threat."<sup>135</sup> It follows on this account that even if a soldier doesn't morally support the war in which he is fighting, so long as he poses an unjust immediate threat he can justifiably be killed in self-defence.

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<sup>135</sup> Uniacke, p. 188.

The second consequence of who may be killed in the self-defensive war relates to the question of who retains the positive right to self-defence in war. Those combatants who pose unjust immediate threats, the materially non-innocent, have violated the right to life of their intended victims. In doing so, the materially non-innocent have forfeited their right to life and may be resisted, repelled or warded off in order to save human lives. Their victims, those who attempt to defend themselves with lethal force, pose immediate threats to their attackers – but they do not pose *unjust* immediate threats. This follows since those who defend themselves cannot violate the right to life of their attackers, since the attackers have forfeited that right through their actions. The consequence of this is clear – those attackers who have forfeited their right to life do not possess any positive right to self-defence. The positive right to self-defence is grounded upon the basic human right to life that is conditional upon just conduct. Those combatants who pose unjust immediate threats have acted unjustly by violating the right to life of other human beings, and thus do not possess the positive right to exercise lethal self-defence.

### **An Objection to the Primacy of Material Non-Innocence**

Lawrence Alexander is an author who has criticized the view that only the materially non-innocent can be killed in self-defence. Alexander's objections have been raised against Fullinwider's account, and although I have revised certain aspects of Fullinwider's view, these objections nevertheless apply to my account of the self-defensive war and must be addressed. Alexander believes that the distinction I have grounded upon the principle of self-defence between those who can be killed and those

who cannot (i.e. the distinction between the materially non-innocent and materially innocent) is incorrect, and that the PSD actually permits the killing of much more than only the materially non-innocent. If Alexander's observation is correct, then it is permissible in a self-defensive war to attack and kill much larger numbers of persons, enlarging the scope of wars that may be fought on grounds of the PSD.

Alexander begins his critique by reexamining Fullinwider's example of Smith and Jones, whereby Smith has been coerced by mobsters to kill Jones. Alexander contends that if Jones can just as easily kill the mobsters to end the threat to his life, he may do so in spite of the fact that the mobsters do not present an unjust immediate threat. He notes, "[f]rom the standpoint of the Principle of Self-Defence, both the mobsters and Smith are necessary causes of the danger to Jones because killing either the mobsters or Smith removes the danger."<sup>136</sup> Moreover, Alexander believes that if it is just as possible to kill the mobsters instead of killing Smith (who is morally innocent) the former is the right course of action. Alexander writes:

May Jones invoke the Principle of Self-Defence to kill the mobsters instead of Smith if by doing so he will cause Smith to relent? Of course he may...Jones should kill the mobsters in such a situation even if the mobsters could not kill Jones directly...Jones should therefore kill the ones who are morally guilty, not the one who is morally innocent...any interpretation of self-defence that permitted only the killing of Smith would be morally perverse.<sup>137</sup>

According to Alexander, the situation is the same in war. Many non-combatants pose threats in virtue of their causal relationship to the more immediate threats their army

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<sup>136</sup> Alexander, Lawrence. "Self-Defence and the Killing of Noncombatants", p. 100.

<sup>137</sup> Alexander, p. 101.

poses. These non-combatants are therefore necessary causes of the immediate danger posed to an enemy. Alexander therefore concludes that if a pilot who bombs his enemy may be killed in self-defence, “so may the supplier, a non-combatant, perhaps by bombing the truck in order to blow up the munitions.”<sup>138</sup> Moreover, Alexander suggests that even innocent civilians could be killed in self-defence because of the necessary causal threat they can pose. Incredibly, Alexander writes: “I conclude, therefore, that the intentional killing of innocent non-combatants is not necessarily immoral if one accepts the Principle of Self-Defence.”<sup>139</sup>

Let me begin my reply to Alexander by returning to the example of Smith, Jones, and the coercive mobsters. Alexander is quite correct that both the mobsters and Smith are necessary causes of the unjust immediate threat presented to Jones. However, the key difference between Smith and the mobsters is that Smith’s death is necessary for Jones’ survival, while the mobsters’ deaths are not. That the mobsters are a necessary cause of danger to Jones is not sufficient grounds to kill the mobsters in self-defence. Jeffrie Murphy offers an example that reveals this important point. He writes:

Consider the case of the homicidal diabetic: He is chasing you through the woods of an enclosed game preserve, attempting to kill you for sport with a pistol. However, because of his medical condition, he must return to a cabin in the middle of the preserve every hour in order that his aged mother can give him an insulin shot. Without it, he will take ill or die and will thus be forced to abandon his attempt to kill you. Even if blocking that insulin shot seems your only hope, killing the mother in order to do it would be a very doubtful case of self-defence.<sup>140</sup>

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<sup>138</sup> Alexander, p. 105.

<sup>139</sup> Alexander, p. 105.

<sup>140</sup> Murphy, p. 538.

Uniacke might add to Murphy's conclusion that to kill the aging mother would be to kill in the course of self-defence, and in self-preservation. The aging mother, like the mobster, is a necessary cause of the unjust immediate threat posed by the homicidal diabetic and by Smith. Killing each of them would be sufficient for ending the unjust immediate threat presented. However, neither of their deaths is necessary in order to save the life of a human being. Neither can therefore be killed in self-defence, no matter how morally guilty they may be.<sup>141</sup>

Returning to the circumstances of war, Alexander is incorrect in concluding that because unjust immediate threats may be killed, so too can the necessary cause(s) of unjust immediate threats. Blowing up the non-combatant truck supplier might well be sufficient to resist, repel or ward off the unjust immediate threat a battalion might pose. Similarly, carpet-bombing every farm in the territory of an attacking nation might also be sufficient to resist, repel or ward off the unjust immediate threats posed by an invading army. We might even suppose that bombing the families of those who constitute unjust immediate threats might be sufficient to resist, repel or ward off those threats. All of these measures could have an impact on combatants that would cause them to cease in their attack.

Yet none of these options can be justified according to the PSD. To justifiably kill an immediate threat in self-defence, it must be necessary to kill that specific threat in

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<sup>141</sup> This is not to say that killing the morally non-innocent mobsters might not be justified on other grounds (e.g. punishment). Alexander might well be correct that any full moral theory that permitted only the killing of Smith would be 'morally perverse'. Nevertheless, the concern here is only with the principle of self-defence, which I maintain can only permit the killing of those unjust immediate threats that in order to save lives must be resisted, repelled or warded off with lethal force.



order to save lives. Killing a necessary cause(s) of an unjust immediate threat is not necessary in order for one to resist, repel or ward off that threat, unless that cause constitutes the unjust immediate threat itself (as in the case of Smith). By arguing that necessary causes can be killed in self-defence Alexander effectively dissolves the core of the principle of self-defence. The PSD is essentially a defensive act, one that can only take life when it is absolutely necessary to do so in order to survive.

### **Constraints on the Exercise of Lethal Force in War**

In the previous two sections I have attempted to answer the question of who may be legitimately killed in the self-defensive war. To sum up, the materially non-innocent, those who pose unjust immediate threats, are the only combatants who may be intentionally and foreseeably killed in the self-defensive war. Moral non-innocence, no matter how strong, is not sufficient to render one a legitimate target of lethal self-defence. In the self-defensive war, it is material non-innocence alone that makes a combatant a legitimate target. It therefore also follows on this account that only those combatants who are defending the lives of human beings against unjust immediate threats possess the positive right to self-defence.

An account of who may justifiably be killed in the self-defensive war is not yet a full account of permissible conduct in the self-defensive war. This follows since there are several constraints on the killing of the materially non-innocent. It is not the case that the materially non-innocent can be killed by any means and in any set of circumstances.

As in cases of interpersonal self-defence, there are moral constraints upon the legitimate exercise of lethal force in the self-defensive war.

The first constraint on killing in the self-defensive war has already been discussed in the previous section – it is only those who have forfeited their right to life who may be intentionally and foreseeably killed in the self-defensive war. We encountered this condition in my discussion of an invading non-lethal army, where I suggested that war could only be justified against such an army if they violate the basic right to life of their enemies, and thus forfeit their own right to life in doing so. To kill those who have not forfeited their right to life is to kill beyond the scope of self-defence, and thus impermissible in the self-defensive war.

That discussion also brought to light the constraint that all lethal force exercised must be necessary. As I said earlier, if human lives can be saved without resort to lethal force, then the principle of self-defence demands that such action be undertaken. In order to justifiably kill in self-defence it must be the case that such force is necessary in order to resist, repel or ward off unjust immediate threats. An example where this constraint might come into effect in a self-defensive war is the following. Suppose long-range missiles are being fired from Aggressia into the territory of Defensia, killing citizens and destroying the country's infrastructure. Defensia also possesses long-range missile weaponry that is capable of both destroying missile launching facilities and incoming missiles themselves. According to the PSD, it is necessary only to destroy the incoming missiles in order to save human lives. It is not necessary to attack the missile launching facilities in Aggressia and kill the unjust immediate threats. If, as in this case, it is not

reasonably perceived as necessary to kill in order to resist, repel or ward off the unjust immediate threat, then it is impermissible to do so.

The exercise of force in the self-defensive war must also be proportionate to the force that is being defended against. This constraint would presumably be uncommon in the context of war, since an aggressive army will typically attack with the intention of killing their enemies, not simply incapacitating them or harming them in some way short of killing them. Nevertheless, situations in the self-defensive war could arise where the constraint comes into effect. For example, returning to Norman's hypothetical non-lethal invasion, one technique this type of army might employ is the use of tear gas. If a situation arose whereby the only recourse citizens of Defensia had in warding off the threat of tear gas was in killing those who pose the threat, that killing would be disproportionate to the offense committed, and therefore forbidden by the principle of self-defence.

Yet, perhaps the most important constraint on the exercise of lethal force in the self-defensive war is that the materially innocent can never be intentionally or foreseeably killed during warfare.<sup>142</sup> According to the PSD, those who do not pose an unjust immediate threat, the materially innocent, cannot be legitimately killed in either war or interpersonal contexts. Such persons are immune, and in killing them one violates their right to life. To kill such bystanders while defending oneself would be to kill in the course of self-defence, and in self-preservation. This constraint places heavy demands on

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<sup>142</sup> See my discussion in chapter 3 of the distinction between foreseeable and accidental killings of materially innocent persons. In that discussion I concede that the latter is permissible in self-defence.

what is permissible in the self-defensive war. As we saw earlier, it is not only civilians and politicians that can be materially innocent in war, but often many combatants and soldiers. Recall the jet-fighter mechanic who although armed and threatening is nevertheless immune to attack in the self-defensive war. Because of this constraint upon justified conduct, according to the PSD only military tactics and strategy that do not intentionally or foreseeably kill innocent bystanders (in this case, all those who are materially innocent) are permissible.

An example can help make the burden of this constraint more vivid. Suppose that a substantial component of Aggressia's attack on Defensia's involves bombing sorties (warplanes that drop ordnance on selected targets in Defensia). Suppose further that Aggressia's planes are based at an airfield adjacent to a small town. Defensia, fighting a self-defensive war, might be inclined to attack these planes while on the ground refueling, so that their threat can more easily be eliminated. Even if Defensia intends only to destroy the planes and not human beings, an attack on the grounded planes would foreseeably kill materially innocent bystanders – civilian or otherwise.

To foreseeably kill the materially innocent is, however, impermissible according to the principle of self-defence. Moreover, even if a handful of the persons in that area could be considered part of the overall immediate threat these warplanes pose; the risk to those who are merely contingent threats near the airfield would render such an attack impermissible according to the principle of self-defence. To fight a war by the constraints of the self-defensive war is to sometimes not fight at all when it is reasonably certain that those who do not pose unjust immediate threats will be killed.

The constraint of bystander immunity not only limits the tactics a defensive army may employ, but also the type of weaponry it may use in its exercise of lethal self-defence. Any weapon that will foreseeably destroy persons other than those who pose unjust immediate threats cannot be employed to attack offenders in the self-defensive war. Fullinwider makes the same point, writing:

Since usually combatants are in uniform, with weapons, on battlefields, instruments of war can be used in way which (roughly) avoids the death of non-combatants. However, instruments which cannot be used in a discriminating way, and whose use entails extensive non-combatant casualties (e.g. hydrogen bombs), are ruled out for use even in self-defence.<sup>143</sup>

Nuclear, chemical and biological weaponry are all obvious candidates of weapons that cannot be used in a self-defensive war, because of their potential for killing those who are materially innocent, and immune to attack. Yet, there are many other indiscriminate conventional weapons whose use will foreseeably cause harm and perhaps kill the materially innocent. Landmines and cluster bombs are two other types of weapons too indiscriminate to be used in a self-defensive war. The locations of landmines are often forgotten long after a military conflict has ceased. In countries such as Afghanistan, Angola, Bosnia, Cambodia, Chechnya, Croatia, Iraq, Mozambique, Nicaragua, and Somalia thousands of unsuspecting civilians have lost limbs and often their lives after stumbling upon one of these devices.<sup>144</sup> Cluster bombs are just as indiscriminate as

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<sup>143</sup> Fullinwider, p. 96.

<sup>144</sup> This according to the website for the *International Campaign to Ban Landmines*, which also claims that in Cambodia alone there are over 35,000 amputees injured by landmines. In an article entitled "The Problem" the *Campaign* also states, "[w]hat makes antipersonnel mines so abhorrent is the indiscriminate destruction they cause. Mines cannot be aimed. They lie dormant until a person or animal triggers their

landmines, though their impact on the innocent is much more immediate. When released, a cluster bomb disperses lethal shrapnel over a very wide area, sometimes over a few square kilometers. Since it is a weapon unable to discriminate between those who can and cannot be killed, those who fight in a self-defensive war are not permitted to employ such arms against their attackers.

The restriction of weapon types completes the list of *jus in bello* conditions that must be followed in a self-defensive war. In a war grounded upon the principle of self-defence, only unjust immediate threats may be intentionally and foreseeably killed. In just war terminology, all materially innocent persons are morally immune to attack in war. The conditions of *jus in bello* also specify certain constraints on the exercise of lethal force against the materially non-innocent. Military action undertaken against unjust immediate threats must be necessary, proportionate to the offense committed, and abide by the condition of bystander immunity.<sup>145</sup>

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detonating mechanism. Antipersonnel mines cannot distinguish between the footfall of a soldier and that of a child." See *The Problem*.

<sup>145</sup> Again, I am not suggesting that there are no possible circumstances that would justify the killing of the materially innocent in war. As Uniacke writes, "...an unoffending person might justifiably be killed in the course of self-defence or in circumstances of necessity. However, the killing of unoffending persons (those who are not unjust threats) must be justified on agent-neutral grounds as the lesser evil." See Uniacke, p. 217. The killing of the materially innocent may be justified on grounds other than the principle of self-defence. For example, one might argue that the assassination of a cruel and implacable dictator can be justified on grounds of social utility or even punishment. A full moral theory of warfare would probably incorporate principles of these sorts. However, insofar as what the principle of self-defence permits, and what sort of conduct is permissible in a genuine war of self-defence, materially innocent bystanders, no matter how morally guilty, may not be intentionally or foreseeably killed in war.

### Theoretical Consequences of the Self-Defensive War

My goal in the present chapter has been to outline and detail the nature of the self-defensive war, and to demonstrate how a war could theoretically be fought on the principle of interpersonal self-defence. It is clear that given the current geopolitical structure and typical behavior of nation states, a war fought on the principle of self-defence would undoubtedly be a rare occurrence. The constraints on both who can be killed and how they can be killed are particularly stringent in a war of self-defence, and given the predominance of self-interested attitudes found in nation states, there are numerous obstacles on the path to self-defensive wars.

However, to prove that any such war has ever been fought, or will ever be fought, is not the aim of this project. Rather, my concern has been to demonstrate how a theoretical acceptance of the principle of self-defence is also a theoretical acceptance of certain limited types of wars. If a war is conducted according to the parameters of the self-defensive war as I have articulated them, that war is justified by the principle of self-defence. The initiation and conduct of war can therefore be theoretically grounded upon the principle of self-defence. Thus, acceptance of the principle of self-defence is an acceptance of war.

In the following chapter, I discuss the ramifications of this conclusion to the moral perspective of anti-war pacifism. There I will engage the discussions of anti-war pacifists Robert Holmes, Eric Reitan, and David Cochran. The conclusion I have arrived at in this chapter, that war can be grounded upon the PSD, is highly problematic for the anti-war pacifist. The anti-war pacifist is determined to maintain both an acceptance of

the principle of interpersonal self-defence and an absolute objection to war. If the analyses in chapters 1 and 2 are correct, to advocate the anti-war pacifist position is to advocate a position composed of two contradictory claims – that no wars are justified and that some wars are justified. But to advocate a position that holds two contradictory claims is to advocate an incoherent position – which I will suggest is exactly what anti-war pacifism is reduced to.



-- Chapter 3 --

**Anti-War Pacifism: Replies and Concluding Remarks**

**The Impossibility of Anti-War Pacifism**

According to the principle of interpersonal lethal self-defence, certain wars, wars that are conducted according to strict but manageable standards, are morally justified. For convenience I have termed such conflicts 'self-defensive wars', and described their nature in the previous chapter. The self-defensive war can only be initiated when the lives of individuals are immediately and unjustly threatened, and must be conducted according to the criteria of justified self-defence. When the required conditions of the PSD to initiate the self-defensive war are met, and the conflict is also fought according to the restrictions of the PSD, the principle of interpersonal self-defence can justify the resort to war.

Since war can be justified on the principle of self-defence, the anti-war pacifist finds himself in a difficult position, one that is faced with two unattractive choices. He can either reject the principle of interpersonal self-defence, maintaining an absolute moral objection to all wars, or he may retain the principle of self-defence but inevitably accept that war can sometimes be morally justified. The anti-war pacifist cannot endorse both moral principles, for together they are contradictory.

If the anti-war pacifist sacrifices the principle of interpersonal self-defence, he chooses to embrace a stronger pacifist position – one that perhaps only accepts the

exercise of non-lethal violence or rejects the legitimate exercise of violence at all. If the putative anti-war pacifist chooses instead to ally himself with the principle of self-defence and grudgingly admits the possibility of a moral war, he is no longer a pacifist at all. Rather, the admission that certain types of war are morally justified moves him further along Duane Cady's continuum toward the just war theorist camp. Although acceptance of the principle of self-defence and self-defensive wars certainly does not categorize him as a traditional just war theorist, an acceptance of the moral permissibility of war under certain conditions secures his theoretical perspective as one outside any pacifist position.

The consequence of being forced to make one of these choices renders the 'anti-war pacifist' position incoherent as it has been traditionally articulated. A moral position of warfare that declares all wars unjust and some wars not unjust is self-contradictory, and must be abandoned. That being said, a pacifist may still choose to describe himself as an 'anti-war pacifist', but in order to maintain that position he must redefine what it means. For example, an anti-war pacifist could reject both the possibility of a moral war and the exercise of lethal self-defence, but not object to the use of violent force in certain circumstances. Yet, as I have indicated above, this is simply to rename the 'non-lethal pacifist' position, leaving no distinctive content to the anti-war pacifist perspective.

A conclusion similar to my own can be found in the works of James Sterba. In 'Reconciling Pacifists and Just War Theorists', Sterba defends the view that the most defensible versions of pacifism and just war theory can be reconciled with one another in practice (i.e. both will impose the same restrictions on the practice of war). Sterba begins

his argument by postulating basic interpersonal self-defence scenarios that can be accepted by both just war theorists and anti-war pacifists, and subsequently enlarges the scale of each scenario to see how far the anti-war pacifist position can be pushed. Eventually, Sterba concludes that some large-scale military conflicts can resemble the cases he outlines, and “this shows that anti-war pacifists are not justified in regarding every participation in the massive use of lethal force in warfare as morally prohibited.”<sup>146</sup>

### **Criticisms and Clarifications**

Those who have identified themselves as anti-war pacifists (as I have characterized the position) are not unaware of the type of criticism I have raised against their view. In order to defeat the conclusion that their position is incoherent, anti-war pacifists must demonstrate that a commitment to the principle of self-defence is not a commitment to any kind of war – i.e. the violence of war cannot be acceptable no matter what the principle of self-defence might say in interpersonal circumstances. Three prominent authors who have defended the anti-war pacifist position are David Carroll Cochran, Eric Reitan, and Robert L. Holmes. Each author attempts to demonstrate how

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<sup>146</sup> Sterba, James. “Reconciling Pacifists and Just War Theorists”, p. 34. Sterba and I both agree that a pacifist position committed to the principle of self-defence must accept the legitimacy of certain wars. Ultimately however I cannot agree with Sterba that pacifism and just war theory can ever be completely reconciled. So long as a pacifist gives up the principle of self-defence he may continue to reject the moral acceptability of warfare, and remain in opposition to any just war theory perspective. Although, in fairness to Sterba, he is concerned only in reconciling what he believes to be the most defensible versions of each theory – anti-war pacifism being the most defensible version of pacifism according to Sterba.

the principle of self-defence is ill equipped to justify either the initiation of or conduct within war, and I turn now to an examination of their arguments.

Although he identifies anti-war pacifism as ‘war pacifism’, David Carroll Cochran supports the familiar anti-war pacifist view that one can maintain both an absolute rejection of war and an acceptance of the principle of self-defence. In his article entitled ‘War-Pacifism’, Cochran expresses his view quite clearly:

[a] belief that killing an individual attacker in self-defence can be morally justified does not necessarily entail a belief that war, even one fought against aggression, can be morally justified. This article advocates a form of pacifism that maintains an unequivocal opposition to war while acknowledging that killing in self-defence is morally permissible under certain conditions.<sup>147</sup>

Cochran goes on to provide several distinct arguments as to why an acceptance of the PSD does not entail an acceptance of some wars.<sup>148</sup>

Cochran believes that the justifying conditions of self-defence do not and cannot obtain in war, and so by its very nature, war remains morally impermissible.<sup>149</sup> One reason the justifying conditions of self-defence do not obtain is that war destroys individual moral agency. It accomplishes this by “integrating the individual into a system that makes fundamental moral choices on his or her behalf.”<sup>150</sup> War turns human beings into weapons, and consequently strips them of their autonomy and moral freedom.

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<sup>147</sup> Cochran, David Carroll. “War Pacifism”, p. 161.

<sup>148</sup> At this point I have chosen to ignore two of Cochran’s criticisms – one regarding the innocence of combatants and one regarding the self-defence requirement of necessity – since they overlap criticisms of Reitan and Holmes. I will address them both later in this chapter.

<sup>149</sup> Cochran, p. 165. Cochran seems to ignore the possibility that war might be justified on grounds other than self-defence, but let us assume that Cochran is referring only to what the PSD itself can justify.

<sup>150</sup> Cochran, p. 166.

Although one might be tempted to reply that those soldiers who have volunteered to fight retain their individual moral agency, Cochran believes that “[w]hat war does to individual soldiers and their moral agency is wrong, whether those soldiers consent to such wrongdoing or not.”<sup>151</sup>

Destroying an individual’s moral agency is wrong, and any enterprise that necessarily cripples an agent’s ability to choose when he should kill (a deeply serious choice) must also be wrong. Cochran is not explicit about how individual moral agency compares in a standard case of interpersonal self-defence, but his implication is quite clear. One of the reasons Jones is justified in killing Smith is that Jones is in control of his actions – it is *his* decision to take the life of Smith in self-defence. The moral agency of a person is therefore preserved in situations of interpersonal self-defence, since the choice to kill is made by the actual victim of aggression. In contrast, individual moral agency is destroyed in the circumstances of war. Again, according to Cochran, “[w]ar destroys individual moral agency by eliminating a person’s control over issues as morally important as killing by transforming human beings into instruments of war, into weapons themselves.”<sup>152</sup>

Yet, there is significant reason to believe that soldiers do in fact retain their individual moral agency in spite of the hierarchical organization of military forces. Combatants always retain the choice to either fight or stand down. Whether they are coerced, manipulated or even held at gunpoint, the choice to lay down one’s weapon and not participate in an act of killing is always available to each of us – combatant or

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<sup>151</sup> Cochran, p. 167.

<sup>152</sup> Cochran, p. 167.

civilian. Even Robert Holmes, a deeply committed pacifist admits that soldiers “bear ultimate responsibility for what they do.”<sup>153</sup> There is no doubt that soldiers are placed under heavy pressure to comply with their orders, but this does not remove nor even mitigate their responsibility in killing human beings. The choice to kill is always one’s own, and thus Cochran’s claim that war necessarily destroys individual moral agency is not substantiated.

Cochran continues his defence of anti-war pacifism by outlining a further reason why the justifying conditions of self-defence do not obtain in the circumstances of war. Cochran believes that crucial to any justification of self-defence is a moral asymmetry between attacker and defender. For Cochran, the relevant asymmetry in a situation of self-defence comes from the moral culpability of the attacker, and in this way he shares a culpability account of the PSD with Jeff McMahan and Philip Montague.<sup>154</sup> Cochran concedes the material guilt of soldiers in war – that they pose unjust immediate threats to others and are responsible for acts of aggression within war. However, according to Cochran,

all soldiers are aggressors, in that they seek out and try to kill enemy soldiers, but, at the same time, all soldiers act in self-defence, in that they try to kill enemy soldiers before those soldiers can kill them. In this way, soldiers are equally culpable for individual acts of aggression within the course of war. But this kind of equal culpability cannot provide the ‘critical asymmetry’ required to justify killing.<sup>155</sup>

Cochran thus concludes that the kind of killing that occurs in war does not meet the justifying conditions of self-defence, since all soldiers are morally equivalent to one

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<sup>153</sup> Holmes, p. 187.

<sup>154</sup> See Chapter one, pages 26-28.

<sup>155</sup> Cochran, p. 169.

another during warfare, and the required inequality between aggressor and defender is absent.

Cochran is correct that a necessary feature of justified self-defence is a moral asymmetry between attacker and defender. However, Cochran is incorrect in suggesting that there is no asymmetry between different groups of soldiers in every type of war, and specifically in the self-defensive war. Here we must recall the distinction observed in chapter one between instances of self-defence and instances of justified self-defence. Those who violate the right to life of others act in self-defence against their victim's counterattacks, but their actions are not justified instances of self-defence. I also elaborated on this point in the previous chapter, where I explained that one of the consequences of the self-defensive war is that only those soldiers who defend themselves or others against unjust immediate threats retain the positive right to self-defence.<sup>156</sup> This follows since counterattacks against unjust immediate threats do not violate any right to life - unjust immediate threats have forfeited their right to life in attacking their victim.

There is therefore a crucial moral difference between the aggressive actions of attackers and defenders in a self-defensive war. Those who attack do not possess the positive right to self-defence since they have forfeited their right to life in violating the right to life of others. This asymmetry is certainly not to be found in every kind of war. In a war where both parties seek to annihilate one another, where both unjustly attack one another, no rights would be violated and all combatants would be morally equivalent to one another. Nevertheless, the asymmetry required in a justified instance of self-defence

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<sup>156</sup> See chapter two p.67.

can be found in a self-defensive war, and Cochran is therefore incorrect that war can never meet this condition of justified self-defence.

Another set of responses comes from Eric Reitan, who defends the anti-war pacifist position in his reply to James Sterba. Reitan understands the problem he is faced with, and explains that if the principles that underlie anti-war pacifism permit at least a few wars, “this is to say that anti-war pacifism is incoherent, because as soon as a moral perspective renders legitimate even a few wars, one no longer has a pacifist moral perspective, but instead has a just war perspective.”<sup>157</sup> Reitan admits there is some reason to believe that acceptance of the PSD is problematic for the anti-war pacifist position. He explains that if individuals were to defend themselves against an unjust invading army, “so long as their acts of violent defence are an individual or ‘private’ response to the belligerent acts of unjust aggressors...the anti-war pacifists...would be perfectly within their rights to defend themselves and their families with even lethal violence.”<sup>158</sup> Of course, the anti-war pacifist cannot permit such defensive action to become organized and coordinated, but Reitan appreciates that at first glance “[t]here seems to be no morally significant reason to prefer such unorganized private violence to organized collective violence.”<sup>159</sup>

Reitan believes this view can be challenged, and he sets out to find a “plausible moral principle that rules out all wars without qualification, but nevertheless leaves room

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<sup>157</sup> Reitan, Eric. “The Irreconcilability of Pacifism and Just War Theory: A Response to Sterba (1992)”, p. 118.

<sup>158</sup> Reitan, p. 118.

<sup>159</sup> Reitan, p. 119.



for private acts of self-defence.”<sup>160</sup> Like Cochran, Reitan wants to maintain an absolute objection to all war, but also an acceptance of the PSD in certain situations. However, Reitan’s strategy is somewhat different than Cochran’s. Instead of suggesting reasons why the PSD cannot justify the resort to war, Reitan will attempt to establish a sound moral principle upon which anti-war pacifism can rest, so that it can maintain a rejection of war and acceptance of the PSD.

Reitan determines that the ‘Principle of Non-Aggressor Immunity’ (PNI) can serve as the foundation for anti-war pacifism that he is looking for. This principle dictates that

violence is morally permissible only if, first, the violence is a response to an immediate threat to the life or well-being of oneself or other innocent persons; second, the violence is directed against a person who is immediately responsible for this threat by virtue of being presently engaged in an act of unjust aggression; and third, violence is the only plausible way to protect the life or well-being of the threatened person(s) from the unjust aggressor.<sup>161</sup>

Reitan observes the interpretive difficulty of what it means to be ‘presently engaged in an act of unjust aggression’, and attempts to make this more clear. After reviewing several interpretations of the PNI, Reitan finally settles on what he calls the ‘moderate’ interpretation of the principle (PNIM). This reading of PNI “states that it is morally legitimate to do violence to another human being only if that person is presently inflicting or preparing to inflict injuries unjustly.”<sup>162</sup>

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<sup>160</sup> Reitan, p. 119.

<sup>161</sup> Reitan, p. 120.

<sup>162</sup> Reitan, p. 125.

The PNIM is essentially a version of the principle of self-defence. Reitan's claim is that his version of the PSD, PNIM, cannot justify the initiation of war because "as soon as defensive violence becomes organized, there is an inevitable tendency to launch pre-emptive strikes, to initiate assaults, to seek out invading soldiers and kill them before they have a chance to do any damage, to strike at soldiers in a belligerent force who are not immediately engaged in hostile actions, etc."<sup>163</sup> Such action would inevitably target and kill soldiers who are not currently inflicting injuries or preparing to inflict injuries, and would thus be impermissible according to PNIM.

Furthermore, supposing an army were to act only according to the PNIM, combatants would be unable to conduct violence in situations other than those of private or individual self-defence. Reitan explains: "[l]et us imagine a nation which tries to follow this principle in the face of an invasion...it is hard to imagine an organized military force acting according to these principles, in which surrender and flight take precedence over standing and fighting."<sup>164</sup> An army acting according to PNIM would only be able to attack enemies when absolutely necessary and only against those enemy soldiers who are engaged in or preparing to immediately inflict harm.

Reitan contends that the result of this sort of conflict would be 'a far cry from war', and "any organized military response to an organized military aggression that is limited in its means by PNIM would be hopelessly ineffective and doomed to failure."<sup>165</sup> Reitan explains further, "...since it seems a reasonable requirement on the waging of war

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<sup>163</sup> Reitan, p. 120.

<sup>164</sup> Reitan, p. 127.

<sup>165</sup> Reitan, p. 127.

that it have some chance of success, someone who holds to PNIM would be forced to the conclusion that no war can be justified.”<sup>166</sup> Thus to fight according to PNIM cannot be to fight in a war since one cannot engage in aggressive activities typical to warfare and because the sum of permissible activities can have no reasonable chance of success – a necessary condition of any just war.

If these claims are correct, then the PNIM can indeed serve as a foundation for anti-war pacifism, since it justifies interpersonal lethal violence but does not allow the undertaking of war. Yet, upon closer inspection, it becomes clear that some wars (specifically self-defensive wars) can be justified by the moderate version of the Principle of Non-Aggressor Immunity. Let us recall Reitan’s moderate interpretation of the PNIM: “it is morally legitimate to do violence to another human being only if that human being is presently inflicting or preparing to inflict injuries unjustly.”<sup>167</sup> But those who are presently inflicting or preparing to inflict injuries unjustly are the same combatants who I identified in the previous chapter as the materially non-innocent, or in Uniacke’s terms, the unjust immediate threats.<sup>168</sup> As I have already explained, a self-defensive war can be waged according to this restriction on who can be killed. To fight along such lines is a matter of political will, not to overcome a necessary feature of warfare.

More importantly, Reitan seems to underestimate what the PNIM can allow in the circumstances of war. Reitan believes that an army that acts according to this principle cannot be fighting a genuine war. For example, he suggests that an army acting

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<sup>166</sup> Reitan, p. 127.

<sup>167</sup> Reitan, p. 125.

<sup>168</sup> With the exception of contingent threats, as I explain above.

according to the PNIM will be forced to run away, hide or surrender whenever it is not necessary to kill. Let us return to the example of Aggressia and Defensia. Aggressia's first wave of attacks on Defensia includes bombing sorties and long-range missile and mortar attacks. Why should we suppose that Defensia's combatants are not permitted to fight back in such circumstances but resort to fleeing or surrendering? It is certainly not obvious that choosing not to fight back would be the best way to save their lives. Rather, to flee from these attacks would be tantamount to suicide if Aggressia's attacks could be reasonably perceived as intended to destroy and kill Defensia's inhabitants. To flee or surrender in this type of defensive situation would be comparable to Jones turning his back and running away from Smith knowing full well that Smith will shoot him in the back. Reitan's PNIM does not demand that defending combatants must surrender their lives, but quite the opposite.

Reitan also maintains that to fight according to the PNIM is to fight with no reasonable chance of success, but in order to fight a moral war one must have a reasonable chance of success. As I have explained, the criterion of 'reasonable hope of success' is not applicable to the self-defensive war, since individuals still retain the positive right to self-defence whether or not their defensive actions will likely succeed.<sup>169</sup> Moreover, it's not clear why Reitan believes that a reasonable requirement on the waging of war is that it has some chance of success. If this were the case, we would be forced to say that any army that ever fights against another with no reasonable chance of success cannot be fighting a morally justified war. This cannot be correct, and is illustrated once

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<sup>169</sup> See chapter two, page 2.

again by the example of Aggressia and Defensia. Suppose Defensia has no reasonable hope of success, but fights to resist, repel and ward off the unjust immediate threats that violate its citizens' rights to life. Why should this render Defensia's war immoral? So long as Defensia's army respects the constraints dictated by the conditions of the self-defensive war, its lethal resistance against those who have forfeited their right to life is justified. The self-defensive war thus rejects the traditional just war theory condition of 'reasonable chance of success', since it does not apply to circumstances of justified lethal self-defence.

Without the addition of the 'reasonable chance of success' criterion, the self-defensive war can be fought according to the PNIM, and this principle does not therefore support anti-war pacifism anymore than the PSD. Those pacifists who wish to maintain an absolute rejection to war cannot also maintain the PNIM or the PSD. Since it requires at least one of these principles in order to be coherent, anti-war pacifism once again falls apart.

There is one final, and compelling criticism I will address that comes from the work of Robert L. Holmes. Holmes also contends that an acceptance of violence in specific situations is not necessarily an acceptance of war.<sup>170</sup> His argument begins with the uncontroversial claim that killing innocent persons is presumptively wrong. According to Holmes, the innocent in war are all those who are neither responsible for

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<sup>170</sup> Holmes writes, "...it seems to me that war can be shown to be wrong without assuming a commitment to non-violence, even though a commitment to non-violence entails holding that war is wrong." See Holmes, Robert L. "Pacifism for Nonpacifists", p. 400.

the initiation of war, nor for immoral conduct within a war.<sup>171</sup> There are five categories of persons that members of a nation justly warred against will fall into. There are initiators of wrongdoing (politicians), agents of wrongdoing (soldiers and commanders), contributors to the war effort (arms manufacturers, etc.), war supporters (journalists, etc.), and non-contributors and non-supporters (children, the elderly, etc.).<sup>172</sup> Holmes declares that initiators and agents of wrongdoing are morally guilty (or at least non-innocent), non-contributors and non-supporters are innocent, and all persons between these two categories are non-innocent in ways weaker than the agents and initiators of wrongdoing.

Upon further review however, Holmes discovers that in each category we can very likely find innocent persons. For example, in terms of the second category ‘agents of wrongdoing’, Holmes writes, “[w]hen the penalty for refusing to serve may be imprisonment or even death, responsibility for service, particularly if one opposes the war and makes known that opposition, may be sufficiently mitigated that we should call such a person innocent, or at least not guilty.”<sup>173</sup> Since innocents can be found in each category, it is inevitable that modern wars will kill innocent people. Holmes explains that these deaths will be inevitable because of “[n]ot only the character of modern weaponry but also the principles on which most nations conduct war.”<sup>174</sup> Since the killing of innocent persons is presumptively wrong and modern war inevitably kills innocent persons, it follows for Holmes that modern war is presumptively wrong.

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<sup>171</sup> Holmes, *On War and Morality*, p. 185.

<sup>172</sup> Holmes, *On War and Morality*, p. 187.

<sup>173</sup> Holmes, *On War and Morality*, p. 187.

<sup>174</sup> Holmes, *On War and Morality*, p. 188.

Essentially, Holmes' conclusion is based on two main premises. The first main premise is that everyone in war – combatants and non-combatants alike – is potentially innocent. He bases this premise on various sub-premises including his claim that soldiers are typically innocent relevant to the war in which they fight.<sup>175</sup> Holmes' second main premise is that the character of modern weaponry and the principles upon which most nations conduct war entail that in all modern wars innocents will necessarily be killed. Thus even if one could positively identify a group of wartime non-innocents, they could not be intentionally or foreseeably killed without the additional intentional or foreseeable killings of genuine innocents. Taken together<sup>176</sup>, with the additional premise that it is always presumptively wrong to kill innocents, these premises yield the disturbing conclusion that all modern wars are presumptively immoral.

The challenge Holmes' argument presents to this thesis is quite powerful, for it provides an avenue for the anti-war pacifist to morally distinguish cases of interpersonal self-defence with cases of war. In war, innocent persons will always be foreseeably killed, but this is not the case in circumstances of interpersonal self-defence. Note that Holmes' argument is different from Reitan's. Reitan is concerned that armies will inevitably intentionally seek to kill materially innocent combatants, those combatants who are idle or not currently engaged in destroying or preparing to destroy human beings. Again, as I have outlined it in chapter two, this need not be the case in the self-defensive

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<sup>175</sup> Innocent persons can be found in other categories as well, e.g. political dissenters in the category of political leaders who initiate an unjust invasion.

<sup>176</sup> Together these two premises yield what Mark Vorobej identifies as Holmes' 'Inevitability Thesis' – the claim that "it is at least foreseeable that innocents will be killed in any modern war, even if these killings are not intended." See Vorobej, p. 171.

war. But note that Reitan is not concerned about defensive military operations harming innocent non-combatants. According to Reitan, defensive military violence “may not lead inevitably to the practice of violence against non-combatants and innocent bystanders.”<sup>177</sup> In contrast, Holmes’ argument against the justification of war focuses directly on the unacceptability of the inevitable intentional or *foreseeable* killing of materially innocent combatants and non-combatants.

I concede to Holmes without question that it is presumptively wrong to kill innocent persons. However, the view which I am defending does not agree with either the claim that all combatants can potentially be innocent, or the claim that there is no way to intentionally or foreseeably kill only the materially non-innocent of the combatant population. Holmes quite clearly does not acknowledge the distinction between moral and material non-innocence. If he did, he would have to admit that within the combatant population, those combatants who pose unjust immediate threats are always materially non-innocent. Holmes correctly recognizes that the materially non-innocent can in fact be morally innocent when he explains that reluctant conscripts are not responsible for the initiation of war. For Holmes that is sufficient to guarantee their immunity from lethal attack. But as I have been arguing throughout this thesis, in the self-defensive war *moral* innocence is *not sufficient* to guarantee immunity from attack.

The consequence of this is clear. Although Holmes is correct that morally innocent persons can potentially exist in both the combatant and non-combatant populations, he is incorrect that this renders all persons in wartime morally immune from

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<sup>177</sup> Reitan, p. 120.



attack. In the context of the self-defensive war, those combatants who are materially non-innocent are legitimate targets of lethal force, and it is therefore not the case that all combatants or soldiers in all wars can potentially be innocent.

Holmes' second main premise is the claim that in any modern war innocent persons will be inevitably killed because of the character of modern weaponry and the principles upon which nations conduct war. Let us look first at the issue of modern weaponry. The question relevant to this analysis is whether the character of modern weaponry precludes the possibility of a self-defensive war that can avoid the intentional and foreseeable deaths of materially innocent persons. Now, without doubt, although I have described how some weapons are forbidden in the self-defensive war (landmines and cluster bombs), virtually no weapon is so precise that it can avoid killing materially innocent persons in war<sup>178</sup>. However, I suggest that in the self-defensive war the problem of indiscriminate weaponry is sufficiently mitigated, and there are at least two reasons why this is the case.

The first point to note is the distinction between the accidental and foreseeable deaths of materially innocent persons. It is certainly possible that materially innocent persons may be killed by accident in a defensive war. Holmes presents an example of such circumstances when he describes a farmer who inadvertently wanders onto a

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<sup>178</sup> A.J. Coates agrees that innocent deaths in war are inevitable when he writes, “[r]ealistically, such deaths are an inevitable part of war, and especially of any modern war.” See Coates, p. 239. However, as I explain below, that such deaths are inevitable is insufficient to alone render war immoral, or to distinguish it from justified interpersonal self-defence.

battlefield, and is subsequently killed in search of his missing goat.<sup>179</sup> This sort of death is purely accidental, and neither intentional nor foreseeable. I suggest that in a legitimate self-defensive war, the deaths of materially innocent persons will typically be accidental. An example (much like Holmes' farmer above) might be a commercial aircraft carrying materially innocent civilians that is destroyed by anti-aircraft weaponry gone astray. Their deaths, obviously tragic, are nevertheless accidental deaths that are neither intended nor foreseen. They obviously will not have been intended since according to the conditions of the self-defensive war the aircraft was not a legitimate target. But their deaths could also not have been foreseen, since commercial air travel in the territory of a war will almost certainly be prohibited.

Mark Vorobej explains why these types of accidental deaths are not foreseeable in a morally relevant sense. He writes, "if the deaths of these innocents were foreseeable, then modern warfare is no different in principle, in this regard, from the social practices surrounding, say, airplane or automobile travel, which also predictably result in the accidental deaths of (large numbers) of innocents."<sup>180</sup> Although it is inevitable that accidental innocent deaths will occur in any modern war (including the self-defensive war), it is not inevitable that these deaths will be intentional or foreseeable.

It should also be pointed out that the inevitability of innocent deaths in war does not distinguish war from justified instances of self-defence. Those who would defend themselves must restrain themselves if it is foreseeable that their action will kill a materially innocent bystander. However, if through a victim's self-defensive actions an

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<sup>179</sup> Holmes, p. 198.

<sup>180</sup> Vorobej, Mark. "Pacifism and Wartime Innocence", p. 177.

innocent bystander is accidentally killed, the defender is not morally censurable for that death.

This might be controversial, but consider the issue in the context of Smith and Jones. In attempting to kill Smith in self-defence, Jones' bullet ricochets off Smith's (surprisingly bullet-proof) wristwatch, and kills an innocent bystander nearby. Jones obviously did not intend the death of the bystander, nor did he foresee that his legitimate self-defensive action would result in such a tragedy. One could hardly make the argument that Jones was negligent in his action – the death of the bystander is a pure accident. Accidental deaths can occur in interpersonal instances of self-defence just as they can occur in war, but in neither case is self-defensive action rendered immoral because of such outcomes. Once the distinction between accidental and foreseeable deaths is recognized, along with the fact that accidental deaths do not render self-defensive action unacceptable, it becomes clear that the problem of indiscriminate weaponry does not entail innocent persons being necessarily intentionally or foreseeably killed in war.

Nevertheless, Holmes' additional suggestion, that the principles upon which most nations conduct war preclude the possibility of a war that kills only the materially non-innocent, may be a more serious charge. This argument presents my view with the challenge that although a war may start out as purely self-defensive, the demands of military necessity entail that a nation at war will eventually do whatever is necessary to attain military victory. Let us return to the hypothetical example of Aggressia and Defensia to illuminate Holmes' argument. Combatants of Aggressia attack Defensia

without provocation. Those combatants of Aggressia that are materially non-innocent can legitimately be repelled with lethal force by members of Defensia. So far so good – only the relevantly non-innocent are being attacked and killed. Holmes' concern is that if the war goes poorly for Defensia, or if the government of Defensia decides that it will not allow itself to be vulnerable again, their army will launch an aggressive war against the citizens of Aggressia in their own territory. Inevitably, materially innocent persons of Aggressia will be intentionally or foreseeably killed, and thus Defensia's nominal self-defensive war cannot be morally justified.

There are at least two responses available to the position I am defending. First, as Mark Vorobej observes, Holmes is guilty in this argument of a fallacy of hasty generalization. Vorobej writes, "from the fact that most nations have behaved in this way one cannot infer that all nations behave this way or that those which do are bound to continue to do so."<sup>181</sup> In other words, just because most nations have in the past launched aggressive wars when attacked, it doesn't follow that no nation could simply end the fighting after the unjust immediate threats have been resisted, repelled or warded off.

Furthermore we must ask why it might seem to Holmes so far fetched that a nation could conduct a purely defensive war. I concede to Holmes that we have yet to see a war fought according to the PSD. Yet, as Walzer claims, what is acceptable in war and what is not is in fact something that people decide. He writes, "[a]s both anthropological and historical evidence suggests, they [people] can decide...that war is limited war – that is, they have built certain notions about who can fight, what tactics are

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<sup>181</sup> Vorobej, p. 179.

acceptable, when battle has to be broken off, and what prerogatives go with victory into the idea of war itself.”<sup>182</sup>

If Walzer’s suggestion is correct, then it certainly seems possible that some wars in the future could be fought on purely self-defensive grounds, where only the materially non-innocent are intentionally or foreseeably killed. The demands of military necessity that we have witnessed in past conflicts are not written in stone. In an evolving global community of nations more integrated with one another than ever before, the political will required in order to fight a self-defensive war can be generated.

Holmes’ Inevitability Thesis, that in all modern wars innocents will necessarily be intentionally or foreseeably killed is not correct. Neither the character of modern weaponry, nor the principles upon which most nations conduct war entail this result. Consequently, Holmes argument is unsuccessful in morally distinguishing collective self-defensive actions in the self-defensive war with individual interpersonal instances of justified self-defence. Thus, the anti-war pacifist is again forced to accept the legitimacy of some wars, or abandon the principle of self-defence. Either way, the anti-war pacifist position is rendered incoherent, and ought to be abandoned as a legitimate moral perspective on the activity of warfare.

### **Concluding Remarks**

This examination has sought to establish the incoherence of the anti-war pacifist position, and we are now in a position to summarize the conclusions of the preceding

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<sup>182</sup> Walzer, p. 24.

investigation. Following Suzanne Uniacke and others, I have suggested that all human beings possess a basic right to life, conditional upon their just conduct. The principle of self-defence asserts that lethal force is justified when exercised in order to resist, repel or ward off an unjust immediate threat. Only unjust immediate threats, those offenders who violate a victim's right to life and are about to destroy or very likely destroy human beings, may be permissibly killed in self-defence. Such threats may be targeted and killed by victims or third parties, so long as the threat is reasonably perceived to be violating a victim's right to life.

When the scale of a conflict becomes large enough, and the lives of individuals are threatened by militarily organized unjust immediate threats, the initiation of a self-defensive war, one fought according to the principle of self-defence, is justified. The self-defensive war is fought purely in defence of persons' lives, and it is never aggressive. The self-defensive war must also abide by the conditions of justified self-defence. This includes: intentional and foreseeable attacks against only the materially non-innocent, the exercise of lethal force only when necessary and proportionate, and absolute respect for bystander immunity (including the selective use of weapons and military tactics during warfare).

A war fought according to the above conditions is justified by the principle of lethal self-defence. Anti-war pacifism maintains that although interpersonal lethal self-defence can sometimes be warranted, participation in war can never be morally justified. Yet, as I have argued, an acceptance of the principle of lethal self-defence is tantamount to an acceptance of war. Thus anti-war pacifists such as Robert Holmes, David Cochran

and Eric Reitan cannot endorse both an absolute moral objection to warfare and an acceptance of the principle of lethal self-defence. To maintain both the principle of self-defence and an absolute objection to all wars is logically incoherent, for it is to assert that war is sometimes permissible *and* that war is never permissible. Advocates of the anti-war pacifist view must therefore give up one of these two fundamental axioms. However, either choice will necessarily undermine the tenability of anti-war pacifism, since this view is defined by acceptance of both these premises. This inconsistency in the traditional anti-war pacifist position renders it an impotent moral theory of warfare, one that cannot be theoretically defended and therefore ought to be abandoned.

It should be clear that this discussion has not disproved the moral perspective of pacifism – only a specific type of pacifism. Anti-war pacifists can remain in the pacifist camp by endorsing a non-lethal form of pacifism or even a non-violent brand of pacifism.<sup>183</sup> Neither of these forms of pacifism has been discussed in any detail throughout this thesis, though we can conclude that no form of pacifism can endorse the principle of lethal self-defence. For as soon as a pacifist accepts this principle, he is forced to accept the legitimacy of the self-defensive war, and thus can no longer remain a genuine pacifist.

The fact that pacifism and the principle of self-defence are incompatible does not render the genuine pacifist position untenable. Yet, I believe it points to a more general problem with the pacifist perspective that is evident in the following quote from David Cochran. He writes: “[r]eal pacifism is hard; it must carry the burden of watching

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<sup>183</sup> See page 2 where I define these perspectives.

injustice being done while maintaining strict moral limits on how we may respond. It has not solved the problem of war. Rather, it only offers a moral judgment of war: that is, the killing found in war is morally impermissible and so there is no such thing as the just war."<sup>184</sup> The pacifist is forbidden from exercising lethal force in defence of human life. On this view, war, a practice that inevitably involves the killing of human beings (at least materially non-innocent human beings) can under no possible set of circumstances be justified. Pacifism demands, as Cochran outlines, that when all non-violent or non-lethal techniques of resistance have failed against an unjust aggressor (say, in a genocidal war), we are inevitably left helpless as innocent persons (perhaps including ourselves) are extirpated.

For most of us, I believe, the demands of pacifism are more than we can tolerate, and to simply bear witness to such odious circumstances as those described above would be unacceptable. Yet, if one is willing to accept that in the face of such evil victims may kill their offenders in defence of their lives, that they may sometimes fight to preserve the lives of those who are lethally attacked without warrant, one need not allow such injustices to persist unfettered. Acceptance of the principle of lethal self-defence is an acceptance that war can be justified when innocent lives are threatened by unjust immediate threats, and it is an acceptance that it is sometimes better to truculently resist aggression with all force required than to surrender human life to unjustified lethal violence.

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<sup>184</sup> Cochran, p. 177.



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### Appendix A – Categories of Individuals in War

Category of Individual	Example
Morally Innocent / Materially Innocent / Non-Combatant	Child.
Morally Non-Innocent / Materially Innocent Non-Combatant	Politician that initiates an aggressive war.
Morally Non-Innocent / Materially Non-Innocent Non-Combatant	N/A
Morally Innocent / Materially Non-Innocent Non-Combatant	N/A
Morally Innocent / Materially Innocent Combatant	Conscripted medical officer.
Morally Innocent / Materially Non-Innocent Combatant	Conscripted front-line soldier.
Morally Non-Innocent / Materially Innocent Combatant	Warmongering jet-fighter mechanic.
Morally Non-Innocent / Materially Non-Innocent Combatant	Warmongering front-line soldier.