

RESCUE AND NECESSITY

A REPLY TO QUONG

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SUPPOSE that *A* is wrongfully attempting to kill you. *A* is therefore liable to defensive harm: he has forfeited his right not to be proportionately harmed by you. Suppose the only way to stop *A*'s attack is by launching a large grenade at him, blowing off his arms and legs. We take it that this would be proportionate. So, you are permitted to impose this harm on *A* in self-defense.

Next suppose that you can stop *A* by launching either the large grenade or a smaller one that would blow off his left arm only. While each of your defensive alternatives is proportionate, now it is impermissible to launch the large grenade at *A*. Doing so would violate the necessity condition on imposing harm.

Jonathan Quong provides an ingenious account of the necessity condition.¹ According to Quong, even though *A* is liable to defensive harm, *A* retains his right to be rescued. We agree. If while wrongfully attempting to kill you, *A* tripped and fell onto a trolley track, putting him in imminent danger of losing three of his limbs, it would be impermissible not to rescue *A* if this were costless to you. Failing to rescue *A* would violate *A*'s right to be rescued from serious harm. Crucially, Quong holds that this is also why it would be wrong to launch the large grenade at *A* rather than the small grenade: by blowing off four of *A*'s limbs in proportionate self-defense rather than blowing off one of *A*'s limbs in proportionate self-defense, you are failing to costlessly rescue three of *A*'s limbs. The impermissibility of imposing unnecessary harm in self-defense is explained in terms of the violation of the right to be rescued.

While we think there is much to be said for Quong's account of the necessity condition, it has implausible implications. In what follows, we present three related objections to Quong's view. First, consider:

Conflict: Albert is wrongfully attempting to kill you. Meanwhile, Betty has tripped and fallen onto a trolley track, where a trolley is about to sever her right arm and legs. You can (1) press a button that stops Albert

¹ Quong, *The Morality of Defensive Force*, ch. 5.

by severing his left arm (allowing Betty's right arm and legs to be severed); (2) press a button that stops Albert by severing his arms and legs and, separately, moves Betty out of the way of the trolley that was going to sever her right arm and legs; or (3) do nothing, allowing yourself to be killed by Albert and Betty's right arm and legs to be severed.

Quong's account implies there are conflicting rights to be rescued. If you do 1, you contravene Betty's right to be rescued. If you do 2, you contravene Albert's right to be rescued. Either way, the harm that would be prevented is three limbs. So, Quong's account implies either that both 1 and 2 are permissible or else that you are required to toss a coin to decide between 1 and 2 if you are not going to do 3. This, after all, is what holds when there is a conflict between Albert's right to be rescued and Betty's equally stringent right to be rescued.

The problem is that 2 seems impermissible. Notice that 2 does not violate the means principle: it does not harm Albert as a means to saving Betty. Instead, 2 has two causally separate effects: pressing the button causes one effect on Albert, and it causes another effect on Betty.²

Intuitively, it is impermissible to do 2 rather than 1 because this involves causing one person (Albert) to lose three limbs while preventing another person (Betty) from losing three limbs. In general, it is impermissible to cause a harm H to one person while preventing that same harm H to another person. Indeed, it is impermissible to cause harm H to one person while preventing a significantly greater harm $H+$ to another person. Option 2 would remain impermissible even if it prevented Betty from losing four limbs.

While Quong does not consider cases similar to Conflict, he does consider the objection that his rescue account of the necessity condition is mistaken because "the necessity condition is a constraint against harming, and so it is more demanding than a duty of rescue."³ In response, he offers the following pair of cases:

Attack: Albert wrongfully attacks Betty. Betty has two ways of averting Albert's attack: using lethal defensive force (which is narrowly proportionate), which will cause no harm to Betty, or jumping to safety at some cost C to herself.

2 See Quong, *The Morality of Defensive Force*, 178, for his formulation of the means principle. Note that 2 does not violate other related principles, such as F. M. Kamm's "doctrine of productive purity" (*Intricate Ethics*, 164) or Ketan H. Ramakrishnan's "utility" principle ("Treating People as Tools," 134).

3 Quong, *The Morality of Defensive Force*, 143.

Drowning: Albert is wrongfully attempting to attack Betty. Betty can avert Albert's attack by simply doing nothing, as Albert will then step onto a faulty bridge, causing him to fall into a lake and drown. Alternatively, Betty can jump into an alcove, at some cost C to herself. If she jumps into the alcove, Albert will withdraw before reaching the faulty bridge.⁴

Quong writes that "the only apparent difference is that, in *Drowning*, Betty must provide aid, whereas in *Attack* Betty must refrain from harming Albert. Intuitively, however, it does not seem to me that the cost Betty is duty bound to bear should be higher in *Attack* than in *Drowning*."⁵ He concludes that the objection in question is mistaken.

While we accept Quong's view on this pair of cases, it does not follow that the objection in question is mistaken. Even though the duty to save Albert in *Drowning* is as strong as the duty not to kill Albert in *Attack*, that does not imply that, in *Conflict*, the duty to save Betty from losing three limbs is as strong as the duty not to cause Albert to lose three limbs.

The duty to save Albert in *Drowning* is as strong as the duty to not kill Albert in *Attack*, because as Quong claims, Albert forfeits his right not to be proportionately harmed in self-defense, yet in both cases he retains his right to be rescued. The level of cost Betty is required to incur is the same in both cases, because in both cases she has only a duty to rescue Albert. But now consider our second objection, based on the following variant of *Attack*:

Attack (Extra Threat): Albert is wrongfully attempting to sever Betty's arm. Meanwhile, a runaway trolley is independently threatening to sever her legs. Betty can (1) press a button that stops Albert by severing his left finger, saving Betty's arm but allowing her legs to be severed; (2) press a button that stops Albert by severing his left arm and, separately, moves Betty out of the way of the trolley that was going to sever her legs; or (3) do nothing, allowing herself to lose an arm and both legs.

In this case, 2 seems impermissible. While Albert forfeits his right not to be proportionately harmed in self-defense, intuitively, he retains more than just a right to be rescued. Intuitively, Albert retains a stringent right not to have *additional* harm imposed on him while averting the threat to Betty *from the trolley*. This right is more stringent than a right to be rescued: while Betty can

4 We have modified Quong's original version of *Drowning* (*The Morality of Defensive Force*, 143) so that allowing Albert to die is what stops the attacker's threat. This makes *Drowning* closer to *Attack*.

5 Quong, *The Morality of Defensive Force*, 143–44.

permissibly rescue her legs rather than rescue Albert's left arm, she cannot permissibly cause Albert to lose his left arm as a side effect of rescuing her legs; the former does not wrong Albert but the latter does. Since on Quong's rescue account, Betty's only duty to Albert is a duty to rescue him from the harm corresponding to the difference between losing his left arm and losing his left finger, his account implies that 2 is permissible.

Conflict is different in that 1 and 2 are equally costly to the agent, where 2 involves doing harm to the attacker while preventing harm to a bystander and 1 involves allowing harm to the bystander. But the crucial point is again that while Albert forfeits his right not to be proportionately harmed in self-defense, intuitively he retains more than just a right to be rescued—it is permissible to save three of Betty's limbs rather than save three of Albert's limbs if you choose between them fairly. Intuitively, however, 2 is impermissible because it violates the necessity constraint. Intuitively, Albert retains a stringent right not to have *additional* harm imposed on him while averting the threat to Betty for which he is not responsible.⁶ The fact that this right is more stringent than Betty's right to be rescued is what explains why 2 is impermissible. Similar remarks apply to Attack (Extra Threat). This suggests that violating the necessity constraint involves the violation of a right that is more stringent than a right to be rescued.

So, even if cases such as Attack and Drowning fail to show that the necessity condition is more stringent than a duty of rescue, cases such as Conflict and Attack (Extra Threat) plausibly do show this.

Could Quong not respond by conceding that 2 in Conflict and 2 in Attack (Extra Threat) are impermissible, not because they violate the necessity condition but because the attacker is not liable to the additional harm these acts impose? An immediate problem with this response is that these acts *do* seem impermissible because they violate the necessity condition. But even setting this problem aside, this response is unavailable to Quong. According to his rescue account of necessity, even when you gratuitously impose additional yet proportionate harm on an attacker in self-defense, you wrong them only by violating their right to be rescued. The attacker has forfeited their right not to be proportionately harmed in self-defense; this particular harm is proportionate, and they are therefore liable to it. However, the attacker is not *fully* liable to the additional harm because they do not forfeit their right to be rescued. On Quong's view, the attacker is therefore *partially* liable to the additional harm:

6 We mention responsibility for threats primarily for illustrative purposes. Our objection does not essentially rely on the moral responsibility account of liability, which is defended by Jeff McMahan ("The Basis of Moral Liability to Defensive Killing"), among others.

though they have forfeited their right not to be proportionately harmed in self-defense, they still retain the right to be rescued from such harm.⁷

So in Conflict, Quong's account is committed to the claim that Albert is liable to the additional harm of 2 in the sense that he has forfeited his right not to be harmed proportionately—this is true regardless of whether 2 saves Betty as a side effect (i.e., regardless of whether the additional harm of 2 is gratuitous). Albert is not liable to the additional harm of 2 only in the sense that he has not forfeited his right to be rescued. But as we have already seen, the right to be rescued does not explain why 2 is impermissible. Similar remarks apply to Attack (Extra Threat).

Alternatively, Quong could respond to our objection by embracing the implication of his account that 2 in Conflict is permissible. In defense of this claim, he might argue that we can consider the opportunity costs of rescuing a liable agent. For even if a liable agent cannot forfeit her right to be rescued, perhaps this right can diminish in strength relative to others' rights to be rescued. While such a consideration would favor 2 over 1 in Conflict, appealing to it would go significantly beyond Quong's view that the necessity condition is explained simply by the right to be rescued. First, Quong himself rejects the claim that a liable agent's right to be rescued can diminish in cost-requiring strength, and so he cannot offer such a response to our objection based on Attack (Extra Threat).⁸ Second, at least without some further explanation, it would seem implausible that a liable agent's right to be rescued cannot diminish in cost-requiring strength *but can* diminish in strength relative to others' rights to be rescued. This suggests Quong cannot defend the permissibility of 2 in Conflict in the way proposed.

Underlying our intuitions about both Conflict and Attack (Extra Threat) is the thought that a liable agent only forfeits their rights against being harmed *for the purpose of preventing threats for which they are responsible or which they intend*. For example, since Albert is not responsible for the independent threat to Betty posed by the trolley in Attack (Extra Threat), he is not liable to the additional harm of averting this threat involved in 2. Conflict is similar in this regard.⁹ We have added "or which they intend," as there might be cases in

7 On the connection between necessity and liability, see Quong, *The Morality of Defensive Force*, 145–48.

8 See Quong, *The Morality of Defensive Force*, 143–44.

9 Intuitively, Albert would forfeit this right if he were responsible for the threat to Betty. To see this, consider

Conflict (Double Attack): Albert is wrongfully attempting to kill you and sever Betty's right arm and legs. You can (1) press a button that severs Albert's left arm, stopping Albert's attack on you without stopping his attack on Betty; (2) press a

which an agent forfeits their rights against being harmed to prevent a threat when they intend to bring about the same harm as this threat, even if they are not responsible for the threat itself.¹⁰ But notice that in Attack (Extra Threat), Albert is not only not responsible for the independent threat to Betty's legs: he also does not intend that harm either (he intends only to sever her arm). Given these facts about Albert's responsibility and intentions in Attack (Extra Threat), 2 is impermissible. Conflict is similar in this regard.

Quong could amend his view to account for intuitions about cases such as Conflict and Attack (Extra Threat). However, this would involve departing from the simple and elegant idea that the duty not to impose additional harm encoded in the necessity condition just consists in a duty of rescue.¹¹

In addition to our objections based on Conflict and Attack (Extra Threat), here is a third, related, point against Quong's rescue account of necessity. If the duty not to impose unnecessary harm in self-defense just is a duty of rescue, factors that affect the stringency of duties of rescue would presumably similarly affect the stringency of the duty not to impose unnecessary harm in self-defense. Even if this is plausible with respect to factors such as the magnitude of harm prevented, it does not seem plausible with respect to other factors.

Some have argued, for instance, that if you are physically near someone you can rescue, have a direct personal encounter with them, or are the only person who can rescue them, you have an especially stringent duty to rescue this person.¹² According to some such views, if you can save four of distant A's limbs or two of nearby B's limbs, you are permitted to save B, even though if both A and B were nearby you would be required to save A.

But now suppose distant A is wrongfully attempting to kill you while a boulder is about to crush two of nearby B's limbs. You can avert A's attack without harming A or you can press a button that severs four of distant A's limbs while, separately, saving nearby B from losing two limbs. If the duty not to impose

button that severs Albert's arms and legs, stopping both of his attacks; or (3) do nothing, stopping neither of Albert's attacks.

In this case, 2 seems permissible, if not required.

10 Suppose that Villain 1 and Villain 2 each independently sent a different hitman to kill Victim. Villain 2's hitman never shows up. However, Victim can prevent Villain 1's hitman from killing him only by using Villain 2 as a shield for the hitman's bullet. Perhaps Victim is permitted to do this. Even though Villain 2 is not responsible for the bullet, he intends to bring about the same harm as this threat.

11 Quong also cannot plausibly say that the right to be rescued explains our intuitions about the necessity condition at least in ordinary cases of self-defense that do not involve a conflict between an attacker's and a third party's rights to be rescued, since Attack (Extra Threat) involves no such conflict.

12 See, for example, Kamm, *Intricate Ethics*; and Woollard, *Doing and Allowing Harm*.

additional harm on *A* in self-defense just is a duty of rescue, and if distance affects duties of rescue as noted, then it would be permissible to sever four of distant *A*'s limbs while saving nearby *B* from losing two limbs. But this seems very implausible. A similar point applies to other factors, such as whether you have a direct personal encounter with those you can rescue or are the only person who can rescue them.

We are not claiming that distance, direct personal encounter, or being a unique potential rescuer do affect the stringency of duties to rescue. We claim only that if Quong's rescue account of necessity is correct, then these factors would presumably similarly affect the stringency of the duty not to impose unnecessary harm in self-defense, and it seems very implausible that these factors would have such effects. At least, this seems significantly less plausible than the view that these factors affect duties of rescue. This is further evidence against Quong's account of necessity.¹³

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13 For helpful comments, we are grateful to Joseph Bowen, Cécile Fabre, and an anonymous referee for the *Journal of Ethics and Social Philosophy*.