Under what conditions, if any, are we entitled to kill another person? This question is asked in a variety of contexts, and receives a variety of answers. Prima facie the central cases in which a person is entitled to kill another person are of two sorts. Firstly, there is the standard self-defense situation in which one agent intends to kill another agent, and has no moral justification for killing. Secondly, there are cases in which one's life is not being threatened, but nevertheless the wrong done, or about to be done, warrants a life threatening response. I will investigate the first of these two central types of justification for killing, killing in self-defense.

Theories of Justifiable Killing in Self-Defense

Most of the available accounts of the justification of killing in self-defense have come under attack. The most obvious theory is the simple right to life account. This views posits a basic right to life or right not to be killed. On this view I am entitled to kill in self-defense in virtue of my having a right to life, coupled with the fact that my life is under threat, and I will be killed unless I intervene and intervene by killing my attacker. The general problem here is that the attacker himself has a right to life (or a right not to be killed) and it is not clear how it is not being violated by the person killing the attacker in self-defense.

There are three obvious permutations of the simple right to life view. Firstly, there is the possibility that the right to life is an absolute right, secondly, a right that can be cancelled, and, thirdly, a right that is neither absolute nor cancellable but one that can be overridden.

The right to life posited by the simple right to life theory cannot be an absolute right. For if everyone has an absolute right to life then attackers have an absolute right to life. But if attackers have an absolute right to life then there are no circumstances in which defenders are justified in killing attackers. Therefore defenders are not morally justified in killing their attackers in self-defence.

The notion of an absolute right to life seems too weak. It has the effect of ruling out the possibility of justified killing in self-defence.

On the cancellation account any agent's right not to be killed is can-
celled if that agent tries to kill another agent, and will kill him unless the defending agent intervenes to defend himself.

However this account has untoward consequences. Consider a man who tries to kill someone, and would have killed that person if the person had not intervened. The defender saves his own life, but his defensive action causes the attacker to lose an arm and a leg. Assume that this attacker is apprehended and serves a thirty year sentence for attempted murder. Assume also that he feels remorse for his action and that while in gaol he undergoes a process of moral regeneration. This causes him to spend all the money he earns in gaol on educating the children of the man he tried to murder. On the theory under consideration, such a would-be murderer does not have any right not to be killed. His right was cancelled by his attempt on someone else's life. Accordingly, he has no right to self-defence. Shortly after completion of his gaol sentence he is attacked by three robbers who will kill him if he does not kill all of them. But he has no right to defend himself. Moreover since it is three lives against one presumably he is obligated to allow them to kill him.

The version of the simple right to life theory in terms of a cancellable right to life is highly problematic. Unlike the notion of an absolute right, the notion of a cancellable right is too strong. The notion of an absolute right to life is too weak to enable the defender to justifiably kill the attacker in self-defence. But the notion of a cancellable right to life is too strong. It enables justified killing in self-defence but at a high cost. The cost is that unsuccessful attackers lose their right to defend themselves against unjustified attacks. This suggests that we need a stronger notion than that of an absolute right but a weaker notion than that of a cancellable right. The obvious candidate is that in terms of a right to life that is overridden.

On this account while neither the attacker nor the defender has an absolute right to life, both the attacker and the defender maintain their right to life (or right not to be killed). Accordingly, in the standard self-defense case, there is a choice to be made between two persons, both of whom have an (overridable) right not to be killed. So we need to look for some difference between the attacker and the defender which is such as to tip the balance in favour of the defender. We need to find a consideration that overrides the attacker’s right not to be killed, but not the defender’s right not to be killed. Presumably this difference cannot be merely that the attacker is a deadly threat to the defender or that the attacker intends to kill the defender or both of these considerations. For in our standard self-defence case, the defender in defending himself will constitute a deadly threat to the attacker and intends to kill the attacker.

Perhaps the difference between the attacker and the defender is that the attacker intends to kill the defender without having any reasonable justifi-
cation whatsoever—the attacker intends to kill the defender because, say, the defender is an irritating person—whereas the defender kills the attacker with a justification which has at least some force; the defender kills to preserve his life. So the difference between the attacker and the defender lies purely in the different reasons each has for intending to kill the other.

We now have the following justification for killing in self-defence. Whatever happens someone’s right not to be killed will be violated; it is morally preferable that the right not to be killed of a person who intends to kill without any reasonable justification, be violated, than the right not to be killed of a person who intends to kill in order to save his life.

This account accommodates cases involving one attacker and one defender. But given that attackers have a right not to be killed, what of cases in which a single defender confronts a number of attackers? Assume that the actions of the attackers are individually (and jointly) sufficient to kill the defender. It will not be sufficient to kill one of the attackers; if the defender is not to be killed he or she will have to kill all the attackers. How does the fact that their attempt to kill the defender was without moral justification outweigh the fact that ten persons—each with a right not to be killed—are to be killed, and not simply one person? To put the point another way, how can ten violations of the right not to be killed—albeit a set of violations committed in order to save a (single) life—be morally preferable to one violation of the right not to be killed—albeit a violation without any justification whatsoever? (Note that even if the defender is attacked ten times he can only die once; so his right to life can only be violated once.)

The general problem with this version of the simple right to life theory is that the notion of an overridable right not to be killed while stronger than the notion of an absolute right to life is still too weak to underpin the right to self-defence. The right to self-defence is a right that one is entitled to exercise whether one’s attackers be one or many.

The failure of the simple right to life theory, whether it is presented in terms of a right to life that is absolute or cancelled or overridden, suggests that we ought to look to the notion of a suspended right. A suspended right is a right that is suspended under certain conditions but is not cancelled. So the notion of a suspended right is weaker than that of a cancelled right. On the other hand a suspended right is not simply overridden. The notion of suspension is stronger than the notion of being overridden and a suspendable right to life is not absolute. The notion of a suspended right not to be killed is taken up in the next section.

The failure of the simple right to life theory also suggests that we need to look at theories that either abandon or significantly complicate the notion of a right to life. I will now look at three more recent theories each of which does one or other of these things.
Montague provides the first of these accounts. His is a fault based account of justified killing in self-defense—whether or not one agent is entitled to kill another in self-defense is partly a matter of whether the attacker intended to kill the defender, or was otherwise at fault in constituting a threat to his life. However there is a difference between Montague's theory and standard fault based accounts in that Montague construes justified killing in self-defense as a species of forced-choosing between lives. The attacker is forcing the choice between two lives, his own and the defender's. This justifies killing in self defense, on the grounds that it is the fault of the attacker that this choice exists. Montague's account focuses on the difference between the attacker and the defender qua attacker and defender; the attacker qua attacker is forcing the choice. In this important respect it is unlike the simple right to life accounts discussed earlier.

The second recent theory is a new version of the Hobbesian rights-based account. This account gives a priority to self-defense over other moral requirements. The emphasis here is on the importance to an individual of his or her own life, and the special responsibility an individual has for preserving his or her own life. This account makes a significant adjustment to the basic right to life account by positing an absolute but agent-centred right to self-defence.

The third recent theory is the no-fault rights based theory. On this account whether or not an attacker is at fault in constituting a deadly threat to some defender is irrelevant to the question of the justifiability of killing in self-defense. It is the fact that the attacker is a deadly threat—coupled with the fact that the defender cannot disarm the attacker—that is of consequence. This account focuses on the attacker qua deadly threat.

An immediate problem with the fault based forced-choice conception is that it has the effect of obliterating a morally important distinction. In our standard self-defense case, the defender has a right, but not an obligation, to kill the attacker. By contrast, a third party has an obligation, but not a right, to kill the attacker. (I assume here that the third party cannot prevent the attacker from killing the defender other than by killing him, and that his intervention does not put agents other than the attacker at risk.) But on the forced-choice conception the situation of the defender and that of the third party are, morally speaking, identical. Each faces a choice between the life of an attacker and that of a defender. But since in each case it is the attacker that is forcing the choice, there is an obligation in each case to kill the attacker. So the defender is obligated to kill the attacker. But equally the third party is obligated to kill the attacker.

In respect of the fault based forced-choice account we need to distinguish two senses of forcing the choice. Let us take the case of the Nazi pointing a gun at the head of the mayor, and telling him to shoot the resistance fighter or be shot himself. Here the Nazi is forcing a choice on
the mayor, in the sense of intentionally creating a situation in which someone has to choose between lives. (Call this the thick sense of forcing the choice.) However this is not the sense of forcing the choice in standard cases of self-defense. In these cases the attacker has no such intention; he does not seek to create a situation in which the defender could have the choice of killing him. Rather the attacker simply intends to kill the defender. The only sense in which the attacker is forcing the choice is as follows. The attacker is a deadly threat to the defender, and a threat which can only be removed by the defender’s action of killing the attacker. (Call this the thin sense of forcing the choice.) But this thin sense of forcing the choice is not adequate to generate a fault based theory of self-defense, and Montague’s account is fault based. For the thin sense of forcing the choice involves no reference to the attacker’s intention to kill the defender.

Now it might be replied to this that the thin sense of forcing the choice is (contra Montague) sufficient to enable the provision of an acceptable theory of justified killing in self-defense. I believe this claim to be false, and will shortly try to demonstrate this when I look at Thomson’s no fault theory.

The Hobbesian rights-based approach has a weak and a strong form. The weak form being advocated by Teichman. In the strong form I have an absolute right to self-defense, even if the threat to my life is innocent; the (so-called) attacker does not intend to kill me. On the weak form I have an absolute right to self-defense only if my attacker intends to kill me; being a deadly threat is insufficient.

The central objection to both versions of this view is that they fail to take into account the possibility that the defender is in some way culpable. (The weak version is to be preferred to the strong version in that it at least takes into account the intention of the attacker.)

Firstly, the defender might have culpably (e.g. intentionally) brought it about that the attacker is trying to kill him. Or the defender may in some other way have provided the attacker with a morally justifiable reason to kill him. Or both of these conditions may obtain.

An example of the latter possibility is sufficient to call both versions of this theory into question. Suppose an SS guard in a concentration camp wants to be attacked by one of the prisoners so he can kill the prisoner. Firstly, in the presence of the prisoner the SS guard shoots the prisoner’s wife dead and threatens to shoot his child. Secondly, the guard offers a knife to the prisoner. The prisoner then attacks the SS guard and will kill the guard unless the guard intervenes by killing the prisoner. The guard fires his gun killing the prisoner in self-defence. The SS guard has intentionally and culpably brought it about that the prisoner will try to kill him. He has forced the prisoner’s choice in the thick sense. Moreover by killing
the prisoner’s wife and threatening his child he has provided the prisoner with a further moral justification for killing him. It is clear that, all things considered, the prisoner has an adequate moral justification for killing the guard. It is also clear that the guard does not have an adequate moral justification for killing the prisoner, notwithstanding the fact that the prisoner is trying to kill the guard and will succeed unless the guard kills the prisoner. In this case any right to self-defense the SS guard may have is overridden. Moreover such a right is overridden irrespective of whether it is grounded in the mere fact that the prisoner is a deadly threat to the guard (strong Hobbesian version) or that fact taken in conjunction with the further fact that the prisoner intends to kill the guard (weak Hobbesian version).

The no-fault rights based conception has been propounded by Judith Jarvis Thomson. Thomson argues that whether or not B intends to kill A, or is otherwise at fault in constituting a threat to the life of A, is irrelevant to determining the justifiability of A’s act of killing in self-defense. She thinks that the following two conditions are individually necessary and jointly sufficient for justifiable killing in self-defense. Firstly, the attacker, agent B, must constitute a de facto threat to the life of another agent, A (and A did not pose a prior threat to B’s life). Secondly, the only way that the defender, A, can prevent B from killing him, is by killing B. In such cases, argues Thomson, B has no right not to be killed by A, irrespective of whether B intended or was otherwise at fault in coming to constitute a threat to A’s life.

Thomson is wrong to claim that fault is irrelevant to the justification of self-defense. This can be brought about by considering one of her own examples.

Thomson considers the case of the drug crazed truck-driver (agent B). Thomson claims that it would be morally permissible for agent A to kill the driver to save himself even though (since drug crazed) B is not at fault. Thomson also claims that one cannot use bystanders to save oneself. But let us complicate her example. Assume that A could throw bystander, C, in front of the truck, and thereby save himself. Now the difference between the truck driver and the bystander, on Thomson’s account, is that while neither are at fault, the truck driver and not the bystander, is the deadly threat. Therefore, A is not entitled to throw the bystander, C, in front of the truck. So far so good. But now let us assume that the bystander is in fact the person who injected the truck-driver with the drug in order to get the truck-driver to kill A. On Thomson’s account this makes no difference; it would still be wrong for A to throw C in front of the truck. For the only morally relevant consideration is whether or not C is a deadly threat; the fact that C is at fault is morally irrelevant. But surely the defender, A,
would be entitled to throw the bystander, C, in front of the truck to save himself, and for the reason that C was at fault in injecting the drugs into the truck-driver. This example demonstrates that in some cases of self-defense one ought to kill the person at fault rather than the person who constitutes the deadly threat. So fault is clearly relevant to the justification of killing in self-defense.

The Fault-Based Internalist Theory (FIST)

All the theories we have considered are inadequate. However their failure points to a number of criteria of adequacy for any account of justifiable killing in self-defense. Firstly, the justification of killing in self-defense is not simply that there is a deadly threat or that there is a deadly threat which can only be removed by killing the person who constitutes the deadly threat. Fault is involved in the justification of self-defense. The objection to the no-fault theory brought this point out. Secondly, any right to life, or right not to be killed that an individual might have, is dependent on, or in some way linked to, that individual discharging his or her obligation not to kill others. In other words, the moral value of an agent’s life is partly dependent on the value that agent puts on the lives of others. The objections to the Hobbesian account bring this out. Thirdly, the linkage has to be such that the right not to be killed is suspended, and not cancelled or overridden. The objections to the simple right to life theories seem to justify this claim. Fourthly, the linkage has to relativised to some extent to the defender and his attacker. The defender is not obligated to respond to the life-threatening attack in the way that a third person is obligated to respond. One’s legitimate interest in one’s own life, and the responsibility for it, is different from another person’s legitimate interest in, or responsibility for, one’s life. The first objection to the force-choice theory evidences this consideration. Moreover whatever force the Hobbesian account has—and it has some force—rests on this intuition. Fifthly, the attacker’s reason for attacking is a morally relevant consideration. The objections to the Hobbesian view brought this out. Sixthly, whether or not the attacker forced the choice (thick sense) is a morally relevant consideration. Whatever appeal the forced-choice theory has—and it has some appeal—rests on this thought.

Given these criteria of adequacy, I suggest the following fault-based internalist (suspendable) rights based theory (FIST). You have a right not to be killed by me and I have a concomitant obligation not to kill you. However you suspend your own right not to be killed by me if you come to have the following properties: (1) you are a deadly threat to me; (2) you intend to kill me, and you are responsible for your having this intention to kill me; (3) you do not have a strong and decisive moral justification for killing me, and you do not, with respect to a strong and decisive moral
justification for killing me, believe that you have it, and believe this with good reason.

Accordingly, each person, X, has a set of suspendable rights not to be killed; X has a right not to be killed by Y and a right not to be killed by Z etc. X also has a set of suspendable obligations not to kill; X has an obligation not to kill Y and an obligation not to kill Z etc. Here my right not to be killed generates an obligation on your part not to kill me.

There are three conditions on the suspension corresponding to three features of the attacker, it being understood that the attacker himself suspends his right in virtue of possessing these three features. Condition (1) simply states what being an attacker consists in, namely, being a deadly threat. Condition (2) expresses the requirement that the attacker must be responsible for the fact that he is a deadly threat. Finally, condition (3) signals the relevance to justified killing in self-defence of the attacker’s reason for his attack. It should be noted that this reason has to be decisive in the sense that if the agent has one of these strong moral justifications it is a necessary and sufficient reason for the agent acting as he/she does.

These rights are such that when one member of the set of rights is suspended, the other rights (and concomitant obligations) remain in force. Thus if A’s right not to be killed by B is suspended then B no longer has an obligation not to kill A. However A still has a right not to be killed by C, and thus C’s obligation not to kill A remains in force.

It must also be noted that these rights not to be killed can not only be suspended, they can also be overridden. So while A might still have a right not to be killed by, say, C, it might be the case that it is morally permissible for C to kill A. This would be the case if A’s right not to be killed by C was overridden (but not suspended).

According to FIST that a person stands to his attacker in a different way from the way in which a third person stands to that attacker makes a crucial difference to the kind of moral justification available to the third person for killing the attacker. The third person confronts a choice—if he can decisively intervene to save the defender’s life, but only by killing the attacker—between two lives, one guilty and one innocent. From the point of view of the third person, both the defender and the attacker have a right not to be killed, and consequently the third person has a strong obligation not to kill the attacker (or the defender). However the third person confronts a choice between killing a would-be murderer and allowing an innocent person to be killed. In that case he ought to choose to preserve the life of the innocent person. Here the third person’s obligation not to kill the attacker is not suspended; it is overridden. The duty of the third person to preserve an innocent life, coupled with the fact that the attacker is the guilty party, is sufficient to override the attacker’s right not to be killed by the third person.
In FIST the notion of a strong moral justification in the set of conditions for suspension, is intended to be embrace a fairly wide array of moral considerations. These would include considerations such as that the defender forced a choice upon the attacker in some thick sense of forcing the choice, and that the defender had seriously wronged the attacker. The conditions are incomplete insofar as what is to count as a strong moral justification is not spelled out. But this incompleteness is unavoidable.

An important feature of FIST is that the attacker suspends his right not to be killed in cases in which the defender does not have to kill the attacker to save his life. There are two general background intuitions here. Firstly, that whether or not a person has such a fundamental right as the right not to be killed must depend on properties of that person. It cannot depend on whether someone else, for example, the defender, has or does not have a capacity to defend himself. Secondly, that if a person intentionally kills other people without any justification whatsoever then that person has called into question their very entitlement to live; a person’s right to live is not something that exists independently of the respect that that person has for the right to life of others. FIST, however, focuses, in particular, on the absence of any right of the attacker that he be spared by the defender—the one the attacker sought to kill. When the defender disarms the attacker, everything is not as it was before the attack. Before the attack the presumption is that the attacker-to-be recognises my right not to be killed. The attack reverses this presumption. The presumption must now be that the attacker does not recognise the existence of his obligation not to kill the defender.

Notwithstanding my commitment to FIST, an account in terms of an attacker’s suspension of his right not to be killed, I am still able to maintain, and do maintain, that the defender has, or might have, an obligation (of a different kind) not to kill the attacker in cases in which it is not necessary to kill the attacker to preserve his own life. If so, this obligation is not the obligation generated by the right that each agent has not to be killed. Rather it would be one of a number of obligations. Some of these are generated by features of the attacker. For example, there is the obligation not to destroy what has value, and the life of the attacker still has, or may well have, value. And there is the related obligation to be merciful to those who have wronged you. Other obligations involve considerations that are external to the attacker. For example, there may be dire consequences for the attackers family if you kill him. Or perhaps there will be dire consequences for the community if defenders generally kill their attackers. Hence the existence of laws to the effect that one must not kill in self-defence unless one has to. So my account is able to accommodate the intuition that one ought not to kill in self-defense unless one has to.

In FIST the right not to be killed is relativised to single agents. Never-
theless FIST can accommodate killers who seek not to kill victims qua individuals, but qua members of some group. Suppose some person has a policy of killing people who belong to a certain category e.g. a certain race group, or persons with a price on their head. Suppose also that I am a member of this category and have reason to believe that unbeknownst to the killer I am the next person belonging to that category that he will try to kill. Perhaps my name is on the latest hit list the killer is about to receive. In this kind of case the killer has an intention to kill someone belonging to the category to which I belong, and as a result will kill me unless I intervene. In such cases although the killer does not, strictly speaking, have an intention to kill me, nevertheless his right not to be killed by me is suspended.

Objections to FIST

Having outlined my favoured account of the justifiable killing in self-defense, namely FIST, I will now deal with a number of objections to it.

Firstly, it might be objected that the intuition that one ought not to kill one's attacker unless one really has to, is not sufficiently catered for by FIST. In particular, it might be claimed that—contra what I have said above—the right of the attacker not to be killed by me is not suspended if I can defend myself without killing my attacker. On this view the fact that the attacker is a deadly threat who intends to kill the defender without good reason is not sufficient for it to be the case that the attacker's right not to be killed is suspended. The further condition required is that it is not the case that the defender can disarm the attacker. Let us term this alternative conception to FIST, the fault based externalist (suspended) rights based theory or FEST. I will now argue that FIST is to be preferred to FEST.

Suppose that there is a small, but very real, possibility that a defender will be killed if he chooses the option of disarming, rather than killing, his attacker. To simplify matters, assume also that the only moral considerations of consequence are the rights not to be killed of attacker and defender and the value of their lives. So we are abstracting away from consequentialist considerations, legal obligations etc. Now according to FEST defender is strongly obligated to try to disarm attacker, notwithstanding the risk to his own life. For attacker has a right not to be killed. By contrast according to FIST attacker has no such right, and defender does not have the strong obligation not to kill attacker generated by this right. Rather defender has a relatively weak obligation not to kill attacker. This is the obligation based on the value of attacker's life, as distinct from the one generated by attacker's right not to be killed. This weak obligation not to kill attacker is overridden by the existence of the risk to defender's own life. Under these circumstances it would, according to FIST, be an act of
superrogation if defender chose to try and disarm attacker. But surely in this kind of case an attacker is not entitled to a non-lethal response from the defender. Surely the defender is not strongly obligated to put his own life at risk to preserve the life of someone who is culpably and unjustifiably trying to kill him. So FIST ought to be preferred to FEST.

It might be argued that FEST merely needs to be weakened to accommodate this counter-example. The condition in question could be weakened so as to read: the defender cannot disarm the attacker without putting the defender’s life at risk. 18 Let us call this weakened version of FEST, weak FEST.

But what if the defender’s life is not at risk, but he will lose an arm and a leg in the process of trying to disarm his attacker? The condition needs to be further weakened to: the defender cannot disarm the attacker without either putting his own life at risk or incurring serious harm to him/herself. We now have an even weaker form of FEST, call it very weak FEST.

What if the attacker has tried to kill the defender in the past and will try to kill the defender in the future? In other words the attacker is a standing deadly threat to the defender. We require the double barrelled condition: (a) the defender cannot disarm the attacker without either putting his own life at risk or incurring serious harm to him/herself, or; (b) the defender’s disarming of the attacker will not remove any future threat posed by the attacker to the life of the defender. We now have a weak form of very weak FEST.

Unfortunately, even this heavily qualified and complicated condition is inadequate. Assume there is an extreme pacifist who will have to either severely wound or kill his attacker if he is to preserve his own life. The pacifist chooses rather to be killed. The attacker does not have a right not to be killed, yet this attacker does not meet the qualified condition above. So the condition will have to be modified yet again.

Thus a necessary condition for an attacker’s right not to be killed being suspended is: (a) the defender cannot disarm the attacker without either putting his own life at risk or incurring serious harm to him/herself, or; (b) the defender’s disarming of the attacker will not remove any future threat posed by the attacker to the life of the defender, or; (c) the defender chooses not to disarm the attacker even though the defender knows that if he so chooses the attacker will kill him. We have a very weak form of a very weak form of FEST.

Even this host of qualifications is incomplete. What of additional future burdens on the defender?. Suppose the defender can disarm the attacker, but will then have to keep him prisoner at great expense if he is to prevent the attacker from further attacks? What of future threats, not to the life of the defender, but rather to the lives of the defender’s family? Surely the attacker does not have a right not to be killed by the defender if the de-
There are three relevant points to be made concerning FEST. Firstly, it is gradually moving away from its original position, and closer to FIST. Eventually the positions will become more or less indistinguishable. FEST becomes weak FEST becomes very weak FEST becomes FIST. At that point FEST will have surrendered to FIST; FIST has remained unchanged through the objector's process of transformation. Secondly, in the course of its transformation, FEST is generating an enormously complicated condition. Surely such a complicated condition cannot determine whether or not an agent has such a basic right as the right not to be killed. Thirdly, the ground of these complications is not to be found in any facts about the bearer of the right, the attacker. Rather the ground lies in facts external to the attacker, facts about the ability or willingness of the defender to defend himself. Surely whether or not an agent has such a basic right cannot be located in facts about another agent. For these three reasons FIST ought to be preferred to FEST.

A second objection to FIST is as follows. Whereas this conception of a suspended right not to be killed has some plausibility when we consider the moment of the attack, it becomes implausible when we consider later times. Surely the former attacker has a right not to be killed by his former defender when they meet ten years later—yet according to FIST there would be no such right.\footnote{19}

On FIST the presumption is that the former attacker does not recognise any obligation not to kill the former defender, and is therefore a deadly threat to the former defender. However presumptions can be overridden. So the matter turns on whether or not the former attacker has—in virtue of his or her actions in the ten year period—overturned the presumption.

If it is not the case that there is strong evidence that the former attacker now accepts the right of the (former) defender not to be killed, and is therefore no longer a standing deadly threat, then the presumption has not been overridden. Such evidence might consist of such things as remorse on the part of the former attacker that he or she once tried to kill the former defender,\footnote{20} and a sustained attempt on the part of the former attacker to reform his or her character.

Moreover even if the presumption against the attacker has not been overturned there are various other moral barriers to the former defender killing the former attacker. For there obligations to preserve what has value, to obey the law, to take into account consequences, and so on. The passage of time has possibly strengthened some of these. For example, if the former attacker has completed a prison sentence, and this has had deterrent effects him, then there might now be strong consequentialist grounds for leaving him be.
A third problem for my account is the existence of the following apparent kind of counter-example. In war soldiers who surrender have a right not to be summarily killed. Yet these very same soldiers have been attempting to kill their captors. Are not their captors entitled to kill these soldiers, given that the captors are fighting a just war in defence of their lives and their country?

There may be consequentialist reasons for having conventions governing the conduct of war and these may be sufficient to override the entitlement of captors to kill their prisoners. It may also be that in some wars or in some circumstances captured soldiers have no such right. Perhaps captured SS guards have no such right. However there are many wars, and many cases where captured soldiers do seem to have such a right and there seems to be a stronger reason for this than the existence of conventions justified by recourse to consequentialist considerations.

There are many cases where captors are not entitled to kill their prisoners and that the reasons are not simply consequentialist ones. In such cases the existence of the soldiers’ rights not to be killed remains in force—notwithstanding their attempts to kill one another—and that this explains why prisoners have a right not to be summarily executed. But how can this be so, given my theory of self-defence and given that the captors have been engaged in a just war of self-defence? Does not my theory assert that an attacker’s right not to be killed—an attacker fighting an unjust war—is suspended?

It asserts this only if the attacker is attacking the defender under certain conditions. These conditions include the condition that the soldiers are responsible for their intentions to kill. This condition might not be met by, for example, conscripted soldiers. Or at least conscripts might have diminished responsibility.\(^2^1\) In that case conscripts’ rights not to be killed would not have been suspended.

Another condition that might not be met is the following one: in respect of what are in fact strong moral justifications, the attacker does not (with good reason) falsely believe that he has one of these justifications. Accordingly, if the soldiers of both sides believe (with good reason) they are fighting a war of self-defense then their rights not to be killed remain in force. No soldier’s right not to be killed is suspended under such circumstances. However, the moral situation of the soldiers falsely believing they are fighting a just war is weaker than that of the soldiers truly believing that they are fighting a just war. The obligation not to kill of the latter, but not the former, is overridden.

Finally, there is a problem in cases of innocent threats to one’s life. Many theorists claim that one is morally justified in killing innocent threats to one’s life.\(^2^2\) However my account is consistent with there being an obligation not to kill innocent threats. Let us take the example of two
men on a very small island. One of the men, A, through no fault of his own becomes radio-active. His radioactivity will not bring about his own death, however it will (slowly) cause the other man, B, to die. The radio-active man, A, could avoid bringing about B's death by committing suicide. He could then be buried. Alternatively, B could kill A and bury him. On my account A has a right not to be killed and, therefore, B has an obligation not to kill A, even though A is a threat to his life. For his part, A has an obligation not to kill B, but A is unable to meet his obligation not to kill B, other than by committing suicide.

In such cases we typically experience a feeling of indecisiveness; we are not sure whether B is entitled to kill A. On the one hand it is not obvious that B ought not to kill A. After all, A constitutes a threat to B's life; A is not simply a bystander. On the other hand A is not at fault, and perhaps it is a greater evil for B to intentionally kill an innocent threat than for A to be allowed innocently to kill B.

B has an obligation not to kill A, but if he did kill A there would be a mitigating circumstance, namely that A constituted a threat to B's life. A has an obligation not to kill B, and A ought to do whatever he can to avoid killing B. However there is a mitigating circumstance if A does not avoid killing B. The circumstance is that A is not responsible for the situation in which he constitutes a threat to B, coupled with the fact that A will have to kill himself in order to avoid killing B.23

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Notes


3. See especially Thomson “Self-defense and Rights” and “Self-defense” (op. cit.) and Wasserman (op. cit.). On Thomson’s positive account see Teichman (op. cit.). See also Miller “Self-defense and Forcing the Choice between Lives” (op. cit.), and “Thomson on Killing in Self-defense.”

4. See Ryan (op. cit., p. 513) and Thomson “Self-defense and Rights” (op. cit.)

5. This point is made by a number of commentators. See, for example, Thomson (op. cit., p. 35), Wasserman (op. cit., p. 359), and Teichman (op. cit., p. 75). For general attacks on the notion of forfeiture, see Ryan (op. cit., p. 511), and Fletcher (op. cit., p. 143-45).

6. This point is made by Wasserman (op. cit., p. 359).

7. See Montague (op. cit.), and Ryan (op. cit., p. 515f). I discuss the forced-choice theory in more detail Miller “Self-defense and Forcing the Choice between Lives” (op. cit.).

8. Unless pacifism is true. In that case no-one is ever entitled or obligated to kill.

9. See Teichman (op. cit.).

10. See J. J. Thomson “Self-defense” (op. cit.), I discuss the no-fault theory in “No-fault Theory of Self-defense” (op. cit.).


12. *Ibid.*, p. 305. Nor can it be argued here that the bystander C constitutes the deadly threat in that he caused the driver to go berserk. Thomson rejects this. See op. cit., p. 298-99. In any case it is false. For C’s action of injecting drugs into the driver is not even in part constitutive of the situation that consists of A being at risk. The risk to A consists only of the truck being driven at him.


14. Ryan (op. cit., p. 519) makes this kind of point in his discussion of “negative bonds.”

15. See Ryan (op. cit.), p. 512.

16. I owe this way of putting the point to Kevin Presa.

17. See Wasserman (op. cit.), p. 359.

18. I owe this argument to Chien Liew Ten.

19. I owe this argument to Allen Hazen.


21. Andrew Alexandra drew my attention to this point. See Miller “On the Morality of Waging War Against the State” (op. cit.), and “Just War Theory: Case of South Africa” (op. cit.).

22. See J. J. Thomson “Self-defense” (op. cit.).

23. Thanks to Andrew Alexandra, John Bigelow, Tony Coady, Allen Hazen, Ian Macdonald, Crawford Miller, Len O’Neill, Kevin Presa and Chin Liew Ten for criticisms of earlier versions of this paper.