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RESPONSE TO WAR AND SELF-DEFENSE

War as Self-Defense

Jeff McMahan

First imagine a case in which a person uses violence in self-defense; then imagine a case in which two people engage in self-defense against a threat they jointly face. Continue to imagine further cases in which increasing numbers of people act with increasing coordination to defend both themselves and each other against a common threat, or a range of threats they face together. What you are imagining is a spectrum of cases that begins with acts of individual self-defense and, as the threats become more complex and extensive, the threatened individuals more numerous, and their defensive action more integrated, eventually reaches cases involving a scale of violence that is constitutive of war. But if war, at least in some instances, lies on a continuum with individual self- and other-defense, and if acts of individual self- and other-defense can sometimes be morally justified, then war can in principle be morally justified as well. It follows that the only coherent forms of pacifism are those that reject the permissibility of individual self- or other-defense—for example, those based on an absolute prohibition of violence or killing.

David Rodin, in his illuminating and provocative book, argues to the contrary that war cannot be justified as self-defense, either individual or collective.¹ He distinguishes two strategies that seek to defend the permissibility of war by appealing to rights of self-defense. The “analogical strat-

egy” claims that war can be an act of self-defense by the state that is analogous to an act of self-defense by an individual. This strategy develops an account of national defense by simply rewriting the theory of individual self-defense, substituting states for individual persons. Rodin’s objections to this strategy are convincing. I would add to them that, because it treats the state as an individual agent, this strategy cannot give a plausible account of the requirement of discrimination.

The “reductive strategy” claims that national defense is reducible to the defense of individuals. Rodin distinguishes two versions. According to one (which I sketched in the opening paragraph), national defense is just many individuals “exercising the right of self-defense at the same time and in an organized fashion.” According to the other, it is “the state exercising the right of defense on behalf of its citizens” (p. 140). My aim in this essay will be to rebut Rodin’s various objections to the reductive strategy.

PREVENTIVE DEFENSE

Rodin’s first objection begins by observing that “soldiers fighting a defensive war are permitted to use violence against persons who pose no imminent threat to anyone”—

¹ David Rodin, *War and Self-Defense* (New York: Oxford University Press, 2003). All in-text citation references are to this book.

for example, against soldiers who are sleeping or retreating from the conflict. Violence against such persons, Rodin argues, “exceeds that which could be justified solely in terms of the right of individual self-defense, for this right does not include a right of preemptive attack” (pp. 127–28).

It is true that in the individual case preventive defense is usually unjustified. Normally one may not kill a sleeping person even if one has reason to believe that this person will pose a lethal threat the following day. And it is also wrong, because it is unnecessary for self-defense, to kill an erstwhile attacker who is now in headlong flight. But conditions of war are different from these situations in domestic society.

War involves threats that consist of activities organized in phases over extended periods of time. A soldier sleeping in invaded territory has already attacked and is engaged in attacking in the same way that I am engaged in writing this essay even while I pause to make a cup of tea. The appropriate analogy in civil life is with a gang of villains who invade one’s home, lock oneself and one’s family in, and plan to kill everyone the next day. If the only way—or perhaps just the best way—to prevent these killings is to kill the gang members in their sleep, that is certainly permissible.

Similarly, the reason one may not kill a fleeing attacker is that he may no longer pose a threat or, if he might, there are better ways of responding; for example, by alerting the police. If, by contrast, an attacker’s retreat is merely strategic—if, for example, he has withdrawn temporarily to prepare for a renewed attack—it would be misguided chivalry to wait politely while he catches his breath. In war, there are no police to capture and restrain a retreating army, and retreats in war are presumptively strategic unless accompanied by a declaration of surrender.

They enable soldiers to recover, regroup, and renew the attack. Thus an attack on retreating forces may be a necessary act of defense against those who are, in the extended sense just noted, presently engaged in unjust aggression.

It is worth adding that the permissibility of attacking sleeping or retreating soldiers is not necessarily grounded in what Rodin calls “rights of personal self-defense.” A soldier who attacks retreating forces might be at no personal risk yet still be justified in his attack. His aim might be to protect his comrades or his civilian population from the threat still posed by the retreating forces. Individual rights of other-defense are no less important than individual rights of self-defense in the justification of many acts of war.

RETREAT AS A REQUIREMENT OF PROPORTIONALITY

Rodin’s next argument appeals to the claim that “the requirement of necessity which is implicit in the right of self-defense generates a requirement for threatened persons to retreat if it is possible to avoid harm without resort to force by so doing.” Thus, if the reductive strategy were correct, it would entail “a general requirement to appease international aggression, if it were possible to avoid bloodshed in this way” (p. 128). But this is not, Rodin observes, the way we normally think of the right of national defense.

The mistake here is to see the requirement of retreat as a corollary of the requirement of necessity when it is in fact a corollary of the requirement of *proportionality*. If one can retreat in safety from a confrontation with an attacker, that does not mean that defensive action is unnecessary. It may be unnecessary in order to defend one’s *safety*, but it may be necessary to defend one’s right

to be where one is. It is simply that to kill a person, even an unjust aggressor, would be disproportionate to the importance of one's being able to remain where one is (though in many jurisdictions the legal duty to retreat does not apply if one is in one's home). In short, retreat normally involves loss, though loss that is insufficiently grave to justify killing in order to avoid it.

This is crucial to understanding the application of the requirement of retreat to the case of international aggression. For capitulation to aggression would involve significant losses for individual victims even if no lives would be lost. The question is whether the losses would be sufficiently serious that killing the individual agents of aggression would be proportionate.

Rodin addresses this question in the course of developing what he presents as a different argument directed against the second version of the reductive strategy. This argument is that if national defense were simply defense by the state of the lives of its citizens, there could be no right of national defense against what I will call *lesser aggression*: that is, aggression that does not immediately threaten the lives of individuals (for example, the seizure of a sparsely populated territory). Rodin claims that "international aggression need not pose an imminent threat to any right of sufficient magnitude to make proportionate the use of defensive lethal force" (p. 133). For the lethal violence of war to be proportionate, in other words, there must be an imminent threat to people's lives (or perhaps, as he adds in a footnote, a threat of maiming or enslavement); lesser threats—to territory, liberty, and so on—are insufficiently serious for war to be a proportionate response. If this is right, the understanding of national defense implied by the reductive strategy does seem to demand capitulation to lesser aggression.

WAR IN RESPONSE TO LESSER AGGRESSION

These two arguments—the one that appeals to the requirement of retreat and the one that focuses on lesser aggression—amount in the end to the same basic claim; namely, that if the reductive strategy were correct, it would be either unnecessary or disproportionate to kill, and therefore impermissible to resort to war, in response to aggression that does not immediately threaten people's lives. Since the traditional theory of the just war asserts a right to resort to war in response to lesser aggression, the reductive strategy is incompatible with traditional just war theory. (The traditional theory contains a requirement of proportionality, but on Rodin's assumptions it must be different from that implied by the reductive strategy.)

I believe, by contrast, that the reductive strategy can in principle justify war in response to lesser aggression. There are two ways of defending this claim.

The first defense begins by observing that *most* international aggression poses no immediate threat to people's lives in that aggressors are usually happy to take what they want without killing anybody provided they can get it without meeting resistance. The threat to kill is normally what Rodin calls a *conditional threat*: the aggressors will kill only *if* they encounter resistance that might be overcome by force. Rodin's claim is that if what the aggressors want does not require them to kill anyone unless they meet with resistance, the reductive strategy implies that killing them in self-defense would be wrong. For killing would be a *disproportionate* response to the *immediate* threat to lesser values; and it would be an *unnecessary* response to the *conditional* threat to people's lives because that threat can be avoided by capitulation.

These situations, however, typically have a more complex structure that Rodin fails to consider. To understand this structure, it is useful to consider an analogy at the individual level. Rodin himself supplies one: a situation in which “someone . . . threatens to take your life if you do not give him a dollar” (p. 134). Rodin is right that it would be disproportionate to kill this person just to preserve the dollar. But there are proportionate responses that might offer some chance of success: you might, for example, kick the thief in the shin and then try to knock the gun from his hand. Thus you have three options: surrender the dollar, attempt a proportionate response, kill the thief. If you attempt a proportionate response—an option Rodin does not consider—but it fails, the thief will then act on his conditional threat to kill you: he will force you into a situation in which you must either kill or be killed. Suppose the chance of your being killed in that case is high. To follow that option might be sporting but it would be foolish, both prudentially and morally. The only acceptable options, therefore, are handing over the dollar and killing the thief in anticipation of his potentially lethal response to any proportionate measure you might take. But can he, by making his conditional threat, really reduce your morally acceptable options to one: capitulation?

I am uncertain whether this defense of the permissibility of killing in response to conditional threats to life is ultimately persuasive.² So let me turn to the second defense, which attempts to show that in the case of aggression, war may in some cases be a proportionate response even when there is no immediate threat to life, but only a conditional one.

Rodin’s claim that killing, and therefore war, must be disproportionate unless there is an immediate threat to life fails to take suffi-

cient account of several considerations. First, common sense recognizes the permissibility of killing a culpable aggressor in individual self- or other-defense in response to a variety of nonlethal threats—for example, threats of rape, torture, mutilation, kidnapping, unjust imprisonment, enslavement, and even theft of property if the effect on the owner’s well-being would be profound. It is likely that international aggression that does not immediately threaten anyone’s life will nevertheless pose nonlethal threats of sufficient gravity that killing at least some of the aggressors would be a proportionate defensive response. Unjust aggression virtually always threatens the freedom of individuals in various ways. Even if it does not involve enslavement or even imprisonment, aggression deprives individuals of control over the character and direction of their “common life.” As the resurgence of nationalism has dramatically demonstrated, collective life and collective identity, and therefore collective self-determination, are matters of profound concern to people. Rodin argues convincingly that the analogical strategy is inadequate to justify war as the defense *by the state* of the common life, as if the common life were the life of the state itself. But there is another possibility that is more plausible—namely, that membership in the collective and participation in collective self-determination are of sufficient importance to the well-being of *individuals* to come within the scope of those individuals’ rights of self- and other-defense.

The question, again, is whether the common life is sufficiently important in the lives of individuals that it could be proportionate

² For an earlier articulation of this defense, see Jeff McMahan, “Innocence, Self-Defense, and Killing in War,” *Journal of Political Philosophy* 2, no. 3 (September 1994), pp. 195–96.

to *kill* aggressors to defend individuals against the losses they would suffer if the integrity of the common life were violated. While it may be true that it would be disproportionate to kill even a single aggressor to defend only one person's interest in the preservation of the common life, the proportionality calculation may come out quite differently if we take account of the number of individuals whose participation in the common life may be vitiated by external aggression. Each combatant engaged in resisting aggression is defending not just his own interest but the interests of many other people in the preservation of their common life. It may, in short, be proportionate to kill a certain number of aggressors to defend the lesser interests of a much larger number of innocent victims.

One further consideration that helps to make killing a proportionate response to lesser aggression is deterrence. Capitulation to lesser aggression may embolden other potential aggressors, thereby imperiling collective self-determination elsewhere. The fact that defensive war may help to deter other instances of lesser aggression cannot be ignored in the proportionality calculation.

I conclude that killing need not be a disproportionate response to lesser aggression and that the requirement of retreat does not apply when capitulation would involve losses that could be prevented by lethal but proportionate resistance.

REVISING JUST WAR THEORY

I have thus far replied to three of Rodin's arguments against the reductive strategy. But he has two further objections and I will conclude by responding briefly to each. The objection that he regards as the "most decisive" is, in my view, actually the weakest. He claims—rightly, I think—that the justifica-

tion for individual self-defense appeals to a moral asymmetry between the attacker and the victim. But according to the traditional theory of the just war, the justification for killing in war is independent of, and indeed incompatible with, the idea that there is an asymmetry of moral status between attackers and defenders, or between just and unjust combatants. For "the soldiers of the aggressive state have as much right to kill defending soldiers as the defending soldiers have to kill them" (p. 128). The moral basis, if any, for killing in war must therefore be different from the moral basis for individual self-defense.

What this shows is that the reductive strategy is incompatible with the traditional just war theory—in particular the latter's assumption that the rules of *jus in bello* are independent of the rules of *jus ad bellum*. But the conclusion we should draw is not that the reductive strategy is false but that the traditional theory is. It is simply false that those who fight in an unjust cause are morally justified in killing. While those who participate in an unjust war may have a variety of *excuses*, there can be no *justification* for violence or killing *in pursuit of unjust aims*.³

Finally, Rodin has one further argument that is directed explicitly against the version of the reductive strategy that interprets national defense as the defense of individuals by the state. He notes that if the aim of national defense were simply the defense of individuals, national defense and humanitarian intervention would have the same justification. Yet the justification of humanitarian intervention is, he claims, "in deep tension with" the moral basis of national defense (p. 131). For the goal of national defense is "the maintenance of state sovereignty" while justified humanitarian inter-

³ Ibid.

vention is based on “an explicit permission to violate it” (p. 130). In short, humanitarian intervention, when it is justified, overrides the right of national defense and cannot therefore be grounded in the same considerations.

This problem arises from Rodin’s assumption that the goal of national defense is the preservation of state sovereignty. Because the reductive strategy in fact rejects that assumption, the objection misses its target. There is no irreconcilable tension between humanitarian intervention and national defense. For when humanitarian intervention is justified, there can be no right of national defense against it, least of all by the state that is the agent of the perse-

cution that provides the just cause for the intervention. The guilty state must not resist but must instead stop its persecution of its citizens. As soon as it does this, the intervening state’s just cause will have been achieved and it will be obliged to terminate the intervention. If it fails to do so, it will be fighting without a just cause, in which case national defense may then be justified. But in that case it will be defense against unjustified aggression, not against humanitarian intervention.

For these reasons, I believe that the reductive strategy withstands all five of Rodin’s objections. It offers a sound foundation for a much-needed revision of the traditional theory of the just war.