

## VIII—PERMISSIBLE RESCUE KILLINGS

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Many believe that agent-centred considerations, unlike agent-neutral reasons, cannot show that victims have the right to kill their attackers in self-defence, let alone establish that rescuers have the right to come to their help. In this paper, I argue that the right to kill in self- or other-defence is best supported by a hybrid set of reasons. In particular, agent-centred considerations account for the plausible intuition that victims have a special stake, which other parties lack, in being to thwart the attackers. That special stake plays an important part justifying victims' right to obtain help, and rescuers' right to give it.

### I

*Introduction.* Let us remind ourselves of, and adapt, one of Judith Thomson's best-known scenarios (Thomson 1991):

*Villainous truck driver:* A villainous truck driver is moving towards *V* at speed, with a shotgun aimed at her; as he has fired at her already, there is little doubt that he is bent on killing her. Unfortunately, *V* cannot defend herself. She will die unless *R*, who happens to be on the scene and is armed, kills him.

May *R* come to *V*'s rescue? Whilst the question of killing in self-defence has exercised a number of philosophers, that of killing in defence of others has not, or at least not to the same extent<sup>1</sup>—perhaps because many subscribe to the view that, as Judith Thomson puts it in her well-known article on self-defence, 'the permissibility of *X* killing *Y* in self-defence goes hand in hand with the permissibility of *Z* killing *Y* in defence of *X*' (Thomson 1991, p. 306). This view seems intuitively plausible: most people, I suspect, believe that a rescuer (*R*) is entitled to kill an attacker (*A*) in defence of the latter's

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<sup>1</sup> Christopher (1998) and Rivera-Lopez (2006) are two notable exceptions.

victim (*V*), particularly if *A* is morally culpable, as is the case in our example.<sup>2</sup> In fact, many would probably also take the view, which I have defended elsewhere, that *R* is sometimes under a duty to kill *A* in defence of *V* (Fabre 2007).

The ‘hand in hand’ view admits of two interpretations, the first one of which Thomson endorses. Either the victim is permitted to kill the lethal threat by virtue of an agent-neutral justification, in which case the rescuer is also permitted to kill the threat by virtue of that very same justification, or the victim has an agent-relative justification for killing the threat—from which the rescuer’s own justification for intervening derives. Agent-neutral justifications in turn divide into impersonal reasons for killing (such as, for example, bringing about a better world) and reasons which rest on facts about the attacker (such as, for example, the fact that he is morally guilty). The prevalent view of rescue killings, in the recent literature, is that agent-neutral reasons for self-defensive killings confer on third parties a right to kill in defence of victims, whereas victim-centred justifications at best provide a (weak) justification for self-defensive killings and cannot support rescue killings (McMahan 1994a; Davis 1984; Uniacke 1994).<sup>3</sup>

In this paper, I seek to show that victim-centred arguments have an important role to play in justifying the rescue killings of culpable attackers.<sup>4</sup> The most often discussed of such justifications is the partiality view, whereby individuals are entitled, at least up to a point, to show partiality towards themselves by giving priority to their own fundamental project, goals and attachments over those of others. The argument from partiality ultimately rests on the thought that agents have a special stake in, and standpoint on, their own projects and goals, which impartial observers lack (Nagel 1991). In §II, I shall argue that partiality provides a victim-centred justification for the view that *V* is permitted, and has the right, to kill *A*, so long as it is suitably constrained by impartial requirements to be set

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<sup>2</sup> I also suspect that many hold that *R* may kill *V*’s morally innocent attacker (*IA*), such as a psychotic attacker, precisely because *IA* threatens *V* who has not herself done anything to harm him. However, some philosophers deny that *V* may kill *IA* (in one-to-one cases); by implication, on that view, *R* may not kill *IA* either. See, for example, Otsuka (1994).

<sup>3</sup> McMahan (1994a) makes that point in his discussion of partiality as a justification for the self-defensive killing of *innocent* attackers, but it obviously applies to the case of culpable attackers.

<sup>4</sup> I take no stand on the permissibility of killing *innocent* threats in defence of others.

out presently. In §III, I shall deploy that victim-centred justification in support of the view that *R* has the right to kill *A* in defence of *V*, and argue that it constrains whatever agent-neutral reasons there might be in support of *R*'s right. In short, self-defensive and rescue killings are best supported by a hybrid set of reasons.

Before I begin, some preliminary remarks are in order. First, I endorse the interest-based theory of rights, whereby for *X* to have a right means that some important interest(s) of *X*'s is important enough to hold other parties under some duty to him (Kramer 2001; MacCormick 1977; Raz 1986). I shall revisit that assumption in §II. Secondly, I focus on moral, rather than legal, rights. Thirdly, I distinguish between being at liberty to *p* and having the right to *p*. For *X* to be at liberty to *p* implies that *X* is not under a duty not to *p*, which in turn implies that others lack a right that *X* not *p*. By contrast, for *X* to have a right to *p* implies that others are under a duty to let her *p*. Now, it is true that, in general, if *X* is at liberty to *p*, then *X* also has the right to do so, and vice versa. There are cases, however, where rights and liberties come apart, so that one sometimes has a right to do wrong, and one is sometimes permitted to do something which others are not under a duty to let us do (Waldron 1981). Throughout this paper, claims of the form 'V has the right to kill A in self-defence' or 'R has the right to kill in A defence of V' must be taken to imply that V and R are permitted to kill A. Claims of the form 'V/R is permitted to kill A', by contrast, must be read as making no pronouncement on their *right* to do so.

Fourthly, I focus on one-to-one cases, where only one of either the victim or the attacker will die, and thus ignore considerations pertaining to numbers. I also assume that the victim and the rescuer do not stand in a special relationship with each other: they are neither parent and child, nor friends, nor colleagues, nor employer and employee. Nor is the rescuer a policeman or a soldier on duty. For my purposes here, *R* is a stranger who happens to be at the critical place at the critical time. Finally, I assume that, in one-to-one cases, the intentional killing of innocent bystanders is morally impermissible.

## II

*Partiality and the Right to Kill in Self-Defence.* At the bar of partiality, it seems quite obvious that if anyone is permitted to kill a culpable attacker, his victim is. For to say that *V* is not permitted to kill her attacker in self-defence is to say, in effect, that she is under a duty to give priority to his life over her own. On grounds of partiality, however, there are limits to what one can ask of *V* to sacrifice for the sake of others: to ask of *V* that she sacrifice her life for the sake of another surely is asking too much (Grotius 2005, book II, ch. 1, §III; Quong 2009).

Or is it? A standard objection to the partiality argument for self-defensive killing is that it unacceptably licenses the self-defensive killing of innocent bystanders. For if a victim is permitted to kill her attacker on the grounds that she may give greater weight to the preservation of her own life than to his, then (it is argued) she may kill an innocent bystander intentionally, on those very same grounds. Either one accepts, wholly implausibly, that intentionally killing bystanders is permissible, in which case one can endorse partiality as a justification for self-defence; or one holds on to the much more plausible prohibition on the killing of bystanders, in which case one has to look elsewhere for an account of *V*'s right to kill the villainous truck driver (McMahan 1994a). In so far as we assume, at the outset, that one may not deliberately kill innocent bystanders in self-defence, the objection, if sound, strikes at the heart of the partiality justification.

Now, we must distinguish between two variants of the objection. In its strong variant, it holds that the partiality justification for self-defensive killing implies that the killing of innocent bystanders is permitted. In its weaker variant, it holds that partiality does not have the resources to condemn such killings. Whilst the strong variant fails (or so I shall now argue), the second variant has a point; but one should not infer from that concession that partiality has no part to play in justifying self-defence.

The strong variant of the bystander objection fails for the following reason. An agent has a right, recall, if and only if some important interest of hers is important enough to hold a third party under a duty to her to promote, or not to harm, that interest. By the same token, an agent is morally permitted to do something if an interest of hers is important enough to deny others a claim that she not do it.

Yet, having an interest in  $p$  is only a necessary, and not a sufficient, condition for an agent to have a liberty or a right in respect of  $p$ . Accordingly, the partiality justification is not committed to regarding the fact that one's interest in survival is under threat as a sufficient condition for being permitted to kill in self-defence. In fact, it can allow that there are limits to the extent to which one may give priority to one's interests, such as (in that instance) whether the target of one's self-defensive move is causally responsible for the fact that one is under threat. Innocent bystanders, by definition, are not, whereas attackers are. Partiality is also compatible with the entirely plausible claim that a culpable attacker, such as our villainous truck driver, is not permitted to kill his victim in his *own* defence. Thus, the partiality argument for self-defence can and should stipulate that one is permitted intentionally to kill in self-defence (on grounds of partiality) if and only if the following two conditions are met:

- (a) One's survival is at stake.
- (b) One is directly threatened by the target of one's self-defensive actions.

Opponents of the partiality view will remain unconvinced. They will argue (as per the weak variant of the objection) that partiality on its own cannot discriminate between cases where  $V$  has the right to kill and cases, such as that of the bystander, where  $V$  must desist. What justifies  $V$ 's permission to kill, therefore, is not partiality, but whatever consideration we invoke to distinguish  $A$  from  $B$  (McMahan 1994a, pp. 270–1). Such considerations typically take the following form: by culpably attacking  $V$ ,  $A$  has forfeited his right not to be killed, and  $V$  is permitted to defend herself by killing him precisely because he no longer has a right not to be killed. The bystander has not attacked  $V$ , and therefore has not forfeited his right not to be killed by her. Consequently,  $V$  is not permitted (and lacks the right) to kill him (Thomson 1991; Uniacke 1994). We thus have a criterion for distinguishing  $A$  from  $B$ —a criterion which partiality is unable to provide.<sup>5</sup>

Now, I agree that partiality cannot, *on its own*, explain why  $V$

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<sup>5</sup> The forfeiture view is one kind of agent-neutral justification for self-defensive killings. One other view claims that  $A$  *no longer has* a right not to be killed, as a result of his attack. In the remainder of this paper, I shall use the forfeiture view as a foil to constrained partiality, but merely for the sake of exposition: my criticisms of that view apply, *mutatis mutandis*, to other agent-neutral justifications.

may kill *A* and not *B*. However, that claim neither entails nor implies that partiality has no role to play in justifying self-defensive (and, as we shall see, other-defensive) killings. In fact, unlike the forfeiture view (and agent-neutral arguments in general), partiality makes sense of the intuition that *V* stands in a special relationship to her attacker, as a result of which she has a special reason, which others lack, for killing him: he is threatening *her life*, and no one else's, and, accordingly, she has a vested interest, which others (on the whole) lack, in thwarting his attack.

Proponents of the forfeiture view are likely to rejoin that their account does show why *V* may kill *A*, and that the partiality justification is therefore redundant. Furthermore, they will press, the advantage of the forfeiture view (indeed, of any justification for self-defensive killing which adverts to facts about the attacker as opposed to facts about the victim) is that it extends to the right to kill in defence of others: for if the fact that *A* is posing a lethal threat to *V* is what causes him to forfeit his right not to be killed, then all other agents, and not merely *V*, have a justification for killing him (Thomson 1991; Uniacke 1994). By contrast—it is often said—victim-centred reasons cannot furnish *R* with a justification for killing *A*.

I shall argue in §III that such reasons can be brought to bear on justifications for rescue killings. My more immediate target, at this juncture, is the claim that the forfeiture view can explain why *V*, and indeed any other agent, may kill *A*. The right not to be killed is regarded—and rightly so—as a right *in rem*, that is, a right that one has against the world at large (by contrast with rights *in personam*, which are held against specific, identifiable individuals). The forfeiture view claims that if an attacker has forfeited his right to life, he has forfeited it *in rem*. However, that move is too hasty: for it does not follow from the claim that an attacker has forfeited his right that no one kill him that he is liable to lethal violence from *any* individual against whom he had that right. Rather, that claim, if it suggests anything, only suggests that it is no longer the case that *everyone* is under a duty not to kill him. Whether or not *any* of all those against whom he previously had that right—and, in particular, third parties—is now at liberty to kill him is precisely what needs to be shown. Partiality, as I have argued, offers a convincing reason as to why *V* may kill *A*: if *A* has forfeited his right not to be killed against anyone, then surely he has forfeited it *against his victim*. Whether he has forfeited it against other parties requires fur-

ther argument. I shall suggest in §III that any such argument must take into account *V*'s special interest in *A*'s being thwarted.

In sum, an argument to the effect that *V*, *R*, or both may kill *A* in self-defence must provide two justifications: (a) a justification for conferring permission to kill on, specifically, *V*, *R*, or both, and (b) a justification for conferring that permission to kill, specifically, *A*. Admittedly partiality cannot perform the latter task on its own. However, and to reiterate, the forfeiture view fails to capture what is at stake, *for V specifically*, in *A*'s being thwarted. And it is at this juncture that partiality (constrained by impartial considerations directed to (a)) can step into the breach.

So far, I have posited that *V* is permitted to defend herself at the bar of constrained partiality, but I have not shown that she has the right to do so. Yet, she clearly does. On the interest theory of rights, to say that *V* has that right is to say that her interest in surviving is important enough to hold some other people under a duty not to harm it. Not only does this impose on others a duty not to kill her in the first instance; it also imposes on them a duty not to interfere with her self-defensive steps. Now, *A* himself is obviously under that duty. Return to the case of the villainous truck driver, whose victim will die unless he is killed first. At  $t_0$ , the driver steers his truck at great speed towards *V*; at  $t_1$ , *V* fires at him, and misses. She is about to fire again: is the driver permitted, at  $t_2$ , to increase his speed so as to run over her first, so as to ensure not merely that she will die, but that she will die before she has the time to shoot him to death? There is no doubt that the victim displays lethal agency towards the driver. There is equally no doubt that the driver would protect himself from her by running her over. Most people would deny that he is permitted to do so, on the grounds (correct in my view) that in so far as he is not permitted to attack *V* at time  $t_0$ , he similarly is not permitted to attack her *in his own defence* at time  $t_2$ . The fact that his retaliatory move at  $t_2$  is an act of self-defence against *V*'s self-defensive move at  $t_1$ , rather than an act of unprovoked aggression as per  $t_0$ , is irrelevant.

The foregoing point leads us to add one further condition to the constrained partiality justification for self-defensive killing. Not only must an agent's survival be under threat from the target of her self-defensive action (in order for her to have the right to kill in self-defence); it must also be the case that her survival is not at stake as a result of her own unprovoked attack. *V* thus has the right to kill *A* in

self-defence on grounds of (constrained) partiality; he, on the other hand, lacks that right, however strong his interest in his own survival might be. By culpably posing a lethal threat to *V*, her attacker has forfeited his right not to be killed *by her*, which means that, as he no longer has that right, *V* does not wrong him by killing him. That, in turn, means that he is not permitted to thwart her self-defensive action by retaliating.<sup>6</sup>

### III

*Partiality and the Right to Kill in Defence of Others.* To recapitulate, I have argued that victim-centred considerations can justify self-defensive killings when constrained by impartial considerations such as, in this instance, *A*'s culpably posing a threat to *V*. As I have noted, some believe that the reason why such considerations are appealing as a justification for *V*'s permission to kill *A* (*her* life is at stake) is also why they fail as a justification for *R*'s permission to kill *A* in defence of *V*. For although it is easy to see why a victim may give priority to her life over her attacker's, it is not so easy to see why a rescuer (who, recall, does not stand in a special relationship to *V*) may choose *V*'s life over *A*'s, on victim-relative grounds. Yet, in this section, I shall argue that constrained partiality justifies *R*'s right to kill *A* in defence of *V*.

In the conflict which opposes *V* and *A*, and in which both their lives are at stake, *R*'s options are the following:

- (1) Do nothing and remain neutral between *A* and *V*.
- (2) Intervene on *A*'s side and help him kill *V*.
- (3) Intervene on *V*'s side and help her kill *A*.

Clearly *R* may not opt for (2). As we have just seen, *A* is under a duty not to retaliate against *V*'s self-defensive move, which implies that *V* has a right against him to kill him. Suppose now that *R* is in

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<sup>6</sup> The point may sound obvious, but it pays to note that, in the context of war, it is highly controversial. For it is a central tenet of war ethics that soldiers are permitted to defend themselves against the enemy, no matter how unjust the war which they are prosecuting. On the contrary, or so I argue here by implication, soldiers who culpably wage an unjust war are not permitted to kill in self-defence once the war has started (at least provided that their enemy is not trying to kill them in unjust ways—for example, by inflicting needless pain on them). Were they to do so, they should be regarded as common murderers (McMahan 1994*b*; Rodin 2002).



a position to help *A* by preventing *V* from picking the gun. Surely he may not do so: for if *V*'s interest in remaining alive is important enough to hold *A* under a duty not to save his own life, it is important enough to hold third parties under a duty not to prevent her from picking the gun. Likewise, it would be wrong of them to thwart *V* by helping the culpable attacker get the additional weapon he would need in order to overcome *V*'s self-defensive action—let alone by killing her (indeed, in most jurisdictions they would be charged with the criminal offence of aiding and abetting in the commission of a crime). The basic point, here, is this: if *A* is under a duty not to retaliate against *V* in self-defence, then others are under a duty not to interfere with her as she tries to block *A*'s unjust lethal threat.

Thus, *V* has a right *in rem*—against the world at large—to kill a culpable attacker in self-defence. Moreover, or so I now contend, *R* has a right to come to her rescue and kill her attacker, precisely because *V* has that right, *at the bar of (constrained) partiality*. In other words, constrained partiality justifies granting *R* the right to opt for (3), from which it follows that he is not under a duty to opt for (1).<sup>7</sup>

The constrained partiality justification for *V*'s right to kill *A* invokes the undisputed claim that, in a forced choice between her life and *A*'s, *V* cannot be expected to give priority to *A*'s: *V* may kill *A*, indeed, has a right *in rem* to do so, precisely because *her* life is at stake. According to critics of partiality, even if that is true, it simply cannot explain why *R* may kill *A* in defence of *V*. In reaching that conclusion, however, those critics overlook a crucial feature of the interest-based theory of rights. According to that theory, recall, an agent has a right if an interest of his is important enough to hold some other person(s) under some duty. As applied to permissions, or liberties, the theory holds that an agent is at liberty to *p* if an interest of his is important enough to deem it (morally) permissible for him to *p*. Not only does the interest theory account for rights and liberties; it also accounts for powers—the ability to change not merely one's own, but also others' moral or legal relationships by granting them rights and liberties. Paradigmatic examples of powers are buying and selling goods (since one changes one's (legal or moral) relationship to purchasers and buyers in respect of those goods), and

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<sup>7</sup> When arguing for the duty to kill in defence of others in my 'Mandatory Rescue Killings' (Fabre 2007), I claimed, in effect, that *R* may not opt for (1).

promising (since one changes one's moral relationship to promisees by placing oneself under a duty—and thus granting them a right—to act in certain ways). On the interest theory, then, agents' interests in controlling material resources, as well as in having certain kinds of relationships with one another, are not merely protected by claims and liberties: they are also protected by the power to bestow on other agents rights and liberties over, respectively, those goods and various aspects of those relationships. More generally, individuals' interests are served, not merely by permissions to act in certain ways and rights against others to do so, but also by powers to grant similar rights and permissions to third parties.<sup>8</sup>

Now, I submit that *V*'s fundamental interest in surviving *A*'s attack is not merely protected by a right to kill *A*: it is also protected by a power to transfer that right to *R*. If *V*'s interest in survival is important enough (as it surely is) to be protected by a permission and a right so to act, then surely it is important enough to be protected by a power to transfer that right to third parties. To claim otherwise is to fail adequately to protect *V*'s fundamental interest in surviving *A*'s attack. To put it differently, the reasons which support the conferral on *V* of the right to kill *A* herself surely also support granting her the power to authorize *R* to do so on her behalf by transferring that very same right to him.

Opponents of constrained partiality might still remain unconvinced. They might insist that there are convincing agent-neutral reasons for conferring on both *V* and *R* the permission to kill *A*, and that the account I have defended in this paper is redundant. They might point out, for example, that all agents are permitted to stop wrongdoers from committing an injustice, if necessary by imposing heavy (though proportionate) costs on them, such as, in that instance, the costs of dying. On that view, *R* is permitted, and indeed, has the right, to kill *A*, simply in virtue of the fact that *A* is unjustly attacking *V*.

This, however, would not justify the defensive killing of morally innocent attackers, since, *ex hypothesi*, there is nothing, morally speaking, to distinguish between those attackers and their victims.<sup>9</sup>

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<sup>8</sup> Powers can work in different ways, of course. Thus, one may have a power to divest oneself of one's right altogether (for example, by selling a good), or to extend that right to someone else without losing it oneself (for example, by turning a private property right into a joint property right), or to grant someone a new right (for example, by promising that one shall turn up at 4 pm for coffee). Those differences are not relevant to my argument here.

To be sure, that will not trouble those who believe that we ought not to kill innocent attackers anyway. But it should worry those who take the opposite view. More importantly, the move under study overlooks a crucial consideration, to wit, that it is not enough to ensure that justice obtains; one must also ensure that the right person decides whether or not to bring about justice. By way of example, before concluding that the well off may, and have the right to, help the needy (thereby acting justly), we must, if we can, tend to (*inter alia*) the needy's views on whether or not they wish to receive help.<sup>10</sup> In the case at hand here, where *R* is witnessing a lethal conflict between *V* and *A* in which no one else is under threat, *V* surely is the person who should ultimately decide whether or not *R* may kill *A*.

That point is wholly in the spirit of the constrained partiality justification for self-defensive killings. As I noted at the outset, to honour partiality does not require merely that we allow agents to confer greater weight (up to a point) on their own goals than on those others; it requires, more generally, accepting that agents have a special standpoint *vis-à-vis* those goals that others lack. According to constrained partiality, then, *V* may kill *A* because she may confer greater weight to her life than to his; but by that token, she may desist from killing him, because she may confer lesser weight to her life than to his (perhaps she is a radical pacifist). In one-to-one cases, in other words, it is up to *V*, and to no one else, to decide who will survive.<sup>11</sup> Once a third party is involved, if only as a witness, to begin with, of *A*'s attack, it is up to *V* to decide (as we saw earlier) whether he may intervene.

The foregoing point should not be taken to imply that *V*'s *explicitly* consenting to *R*'s killing *A* and thereby transferring her right to him is a necessary condition for the latter to acquire that right. To insist on explicit consent would be too demanding, since there might be cases where *V* is unable to give such consent, and where we

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<sup>9</sup> In cases where *IA* might go on to kill (for example, *IA* is a severely psychotic serial killer), and on the assumption that numbers do matter, then *R* may well have an agent-neutral justification for helping *V*. In this paper, however, I focus on one-to-one cases.

<sup>10</sup> That requirement, which elsewhere I call a requirement of fairness (Fabre 2002), is not often mentioned in the literature on justice. See Dworkin (2006, p. 177) for a notable exception.

<sup>11</sup> If there is reliable information that *A*, if not stopped now, will carry on killing third parties, then *V*'s refusal to have him killed would not carry much weight, if any.

might still want to allow for the possibility that she has good reasons for having *A* killed. Rather, in the absence of *V*'s explicit authorization, *R* acquires that right if, and only if, he has reasonable grounds for believing that *V* would authorize him to kill *A* if she were in a position to do so.

But now my argument for *R* to kill *A* in defence of *V* might be thought vulnerable to the following challenge.<sup>12</sup> That is, one might think that in the cases which occupy us here, where *R* happens to be in the right place at the right time, the constrained partiality argument does not add much to agent-neutral justifications for rescue killings. For in such cases, it seems to be enough, for any third party to have that right, that they should happen to be around and that they should have reasonable grounds for believing that *V* would transfer their right to them if she could do so. If that is so, then it is unclear what constrained partiality achieves that agent-neutral justifications do not already. For according to those justifications, it is true of any agent who happens to be on the scene that they may kill *A*, and it is not clear that we gain anything by seeking to identify some interest(s) of victims which might be important enough to be protected by authorizing *R* to act on her behalf.

Yet, we have at least identified another justification—one which was thought unpromising by its opponents—in favour of *R*'s right: the fact that two different kinds of arguments yield the same conclusion is no objection to either. In any event, we do gain quite a lot. For in so far as some form of consent from *V*, whether explicit, implicit or presumptive, must be secured, *R*'s right to kill *A* partly stems from *V*'s authorizing *R*, which implies that an interest of *V*, and thus reasons relative to *V*, (partly) justify the right.<sup>13</sup>

The foregoing considerations do not imply that *V*'s interest in getting help is sufficient (in the absence of countervailing considerations as to, for example, what *A* might do if unchecked) to grant her

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<sup>12</sup> I am grateful to Shepley Orr for helping me clarify my thoughts on that point.

<sup>13</sup> I am *not* here covertly endorsing the choice theory of rights (that great rival of the interest theory), which holds that for *X* to have a right against *Y* in respect of *p* means that *X* himself is able to demand or waive the performance by *Y* of the relevant duties, and to demand redress should *Y* fail to fulfil those duties. (For defences of the choice theory, see, for example, Hart 1955, Simmonds 1998, Steiner 1994.) My claim, rather, is that to confer on agents an interest-based right in respect of *p* is entirely compatible with giving them the option not to exercise that right. That is not the same as the claim that it is a necessary condition for them to qualify as a rights-holder that they must have the mental and physical capacities for deciding whether or not to exercise rights.

the power to authorize *R*, or to have her preferences regarding the weight one should accord her life count as decisive. For on the interest theory of rights, *R* cannot have either rights or permissions unless they serve some interest(s) of his. Yet, in the case at hand, it is possible to identify such an interest, namely, an interest in providing others with the assistance which they need.<sup>14</sup> It is the combination of *R*'s interest and of *V*'s interest in transferring her right to kill *A* which provides the former with the right to kill *A* in defence of *V*, and it is in that sense, then, that *R*'s right to kill a culpable attacker in rescue of *V* derives from *V*'s partiality-based right to self-defence.

Before I conclude, let me tie up a few loose ends. First, the constrained partiality defence of rescue killings is compatible with the claim that *R* is sometimes under a duty to kill *A* in defence of *V*. That *R* is under a duty so to act is consistent with his having the right to do so: put differently, that *R* is morally obliged to help *V* does not contradict the claim that others are under a duty to let him do so. In fact, his interest in not being interfered with while helping *V* is the stronger for the fact that he must help her. Moreover, that *R* is under a duty to *V* to help her is compatible with the claim that *V*'s interest in surviving is important enough to be protected by a power to transfer her right to kill to him. For she may, after all, decide to relieve him of his duty to her. Either she allows him not to kill *A*, in which case she may still permit him to do so and thus may still transfer her right to him (a right which he may or may not exercise); or she forbids him to help her, in which case she does not transfer her right to him. In either case, at the bar of constrained partiality, she still has the power, *vis-à-vis* *R* and *A*, to change the former's set of entitlements.

Second, although *V* has the right to kill *A* in self-defence, she may exercise that right only if certain conditions obtain—for example, only if killing him is the only way she can save her life, or if she is able to kill him without also killing some innocent bystanders. Accordingly, although she has the power to transfer her right to *R*, the latter may exercise it only if those conditions obtain. Suppose, for example, that *A* is using a group of children as a shield, that *V* would have a clear shot at him if she were armed, but that *R* has no

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<sup>14</sup> For a longer argument along those lines, which I deploy in support of (limited) mercenarism, see Fabre (2010). Those readers familiar with the various moves and countermoves made by proponents of the interest theory of rights versus proponents of the choice theory, will have recognized here an attempt to show that rights which agents are given by others through the exercise of a power can nevertheless be seen to serve some interest(s) of the former.

choice but to shoot through the children, killing several in the process. Some people might be tempted to argue that *R* may kill *A*, on the grounds (for example) that the death of those children is an unintended though foreseen side-effect of his shooting at *A*. On the contrary, I believe that this is one case where *R* may not exercise the right that *V* has transferred to him.

Conversely, in some cases, *V* will not, though *R* will, be permitted to exercise the right to kill *A*—if, for example, *V* would, but *R* would not, kill innocent bystanders in the process of shooting at *A*. Again, that in no way weakens the constrained partiality view. One might think that it does. That is, one might think that the claim that *V* may not, in that case, exercise her right to kill *A*, is tantamount to the claim that she lacks the right, *in that instance*, to kill *A* in self-defence; and if she lacks that right, then she cannot (in virtue of the constrained partiality justification) transfer it to *R*. However, although *V* lacks the right to kill *A* *under those circumstances*, she nevertheless retains the right to kill *A* should the circumstances be different. And it is that right which she can transfer to *R*—on the grounds, to repeat, that her interest in surviving, if it is strong enough to be protected by a right to kill her attacker in self-defence under the right circumstances, is also strong enough to be protected by a power to transfer that right to *R*.

Finally, and relatedly, *V*'s choice of third parties, and thus her power to transfer her right to them, is subject to some moral constraints. Suppose that *R* is a psychopath who, if given by *V* the right to kill *A*, would do so by torturing *A* to death, instead of killing him with a single bullet to the head. In that case, *V* lacks the power to transfer to him the right to kill *A*. The point is not that *R* may not exercise that right (as seen in the example we reviewed in the last paragraph but one). Rather, the point is that *R* simply cannot acquire that right from *V* in the first instance.<sup>15</sup>

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<sup>15</sup> I am grateful to Jonathan Quong for pressing me on this point. In private correspondence, Quong outlined another case where *V* might not, in fact, have the power to transfer her right to *R*. Suppose that *R* is culpably engaged in the business of attacking *A*; does *V* nevertheless have the power to transfer to him her right to kill *A*? Here is one case where it strikes me that she does. In 1945, German soldiers resisted the Soviet invasion of their country. In so far as Germany had unjustly attacked the USSR in the spring of 1941, their acts of resistance, which took the form of killing Soviet soldiers, were unjust. However, as is well known, many Soviet soldiers committed atrocities against civilians on their way to Berlin, such as, notably, the rape (individual and collective) of an estimated two million German

## IV

*Conclusion.* To conclude, I have argued that at the bar of partiality (in virtue of which individuals are entitled, at least up to a point, to confer greater weight on their own interests than on those of others), a victim, *V*, not only is entitled to defend herself against a culpable attacker, but also does have the power to confer on a potential rescuer, *R*, the permission, and the right, to kill that attacker. *Pace* its critics, victim-centred considerations have an important role to play in justifying rescue killings. Whether or not the argument deployed here to that effect applies to the rescue killing of morally innocent attackers must await another occasion.<sup>16</sup>

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women. It seems to me that a German woman threatened with gang rape at the hands of Soviet soldiers did have the power to transfer to German soldiers her right to kill her attackers. (I am assuming, not too controversially, that rape is serious enough a wrongdoing to warrant killing the rapist, at least in those cases where victims have good reasons to believe that their lives will be in danger if they try to resist.) If the common nationality between victims and rescuers in that example is what, in readers' view, justifies the rights transfer, let us take instead examples of Polish or Romanian victims of Nazi brutality who, upon being freed by Soviet troops from concentration camps, were raped by their 'liberators'.

<sup>16</sup> Earlier versions of this paper were presented at the Nuffield Political Theory Workshop in 2007 and at a meeting of the Aristotelian Society on 9 February 2009. I am grateful to both audiences for helpful discussions. In addition, the paper greatly benefitted from written comments and responses provided by Shepley Orr, Michael Otsuka, and David Lloyd Thomas. I am particularly thankful to Jonathan Quong, who not only read and commented on two drafts, but also persuaded me not to give up on the paper altogether.

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